



Notice of a public meeting of

Gambling, Licensing & Regulatory Committee

- To:** Councillors Douglas (Chair), Boyce (Vice-Chair), Aspden, Flinders, Gillies, Hayes, Hunter, Looker, Mason, Mercer, D Myers, Orrell, Richardson, Shepherd and Taylor
- Date:** Monday, 7 September 2015
- Time:** 4.00 pm
- Venue:** The Snow Room - Ground Floor, West Offices (G035)

AGENDA

1. **Declarations of Interest**

At this point in the meeting, Members are asked to declare:

- any personal interests not included on the Register of Interests
- any prejudicial interests or
- any disclosable pecuniary interests

which they may have in respect of business on this agenda.

2. **Minutes** (Pages 1 - 2)

To approve and sign the minutes of the meeting held on 20th July 2015.

3. **Public Participation**

At this point in the meeting members of the public who have registered their wish to speak regarding an item on the agenda or an issue within the Committee's remit can do so. The deadline for registering is **Friday 4th September at 5.00 pm.**

Filming or Recording Meetings

Residents are welcome to photograph, film or record Councillors and Officers at all meetings open to the press and public. This includes the use of social media reporting, i.e. tweeting. Anyone wishing to film, record or take photos at any public meeting should contact the Democracy Officer (whose contact details are at the foot of this agenda) in advance of the meeting.

The Council's protocol on Webcasting, Filming & Recording of Meetings ensures that these practices are carried out in a manner both respectful to the conduct of the meeting and all those present. It can be viewed at:

https://www.york.gov.uk/downloads/file/6453/protocol_for_webcasting_filming_and_recording_council_meetingspdf

4. Renewal of Sex Establishment Licence for Black Orchid (1st floor Tokyo), 3-5 Toft Green, York, YO1 6JT

(Pages 3 - 54)

This report seeks Members determination of an application for the renewal of a Sex Establishment Licence for a sexual entertainment venue which has been made under the Local Government (Miscellaneous Provisions) Act 1982, Schedule 3 Control of Sex Establishments in respect of Black Orchid (1st floor, 3-4 Toft Green, York, YO1 6JT).

5. Explosives Policy (Pages 55 - 74)

This report seeks Members support for the Council's Explosives Policy. It advises of the recent changes to legislation and the consultation undertaken. The policy is attached at appendix 1 of the report.

Democracy Officer:

Name: Judith Betts

Contact Details:

- Telephone – (01904) 551078
- E-mail – judith.betts@york.gov.uk

For more information about any of the following please contact the Democracy Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats

Contact details are set out above.

This information can be provided in your own language.

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

 (01904) 551550

This page is intentionally left blank

City of York Council

Committee Minutes

Meeting	Gambling, Licensing & Regulatory Committee
Date	20 July 2015
Present	Councillors Douglas (Chair), Boyce (Vice-Chair), Flinders, Gillies, Hayes, Hunter, Mason, Mercer, D Myers, Orrell, Richardson and Taylor
Apologies	Councillors Aspden, Looker and Shepherd

1. **Declarations of Interest**

At this point in the meeting, Members were asked to declare any personal, prejudicial or pecuniary interests they may have in the business on the agenda.

Councillor Gillies declared a personal and prejudicial interest as he used to be a Station Taxis Hackney Driver and was known to one of the parties.

Councillor Mason declared a personal interest as he had used one of the legal firms employed by one of the parties.

2. **Exclusion of Press and Public**

Resolved: That the press and public be excluded from the meeting during consideration of agenda item 5 on the grounds that the report contains information relating to the financial or business affairs of an individual(s). This information is classed as exempt under Paragraph 3 of Schedule 12A to Section 100A of the Local Government Act 1972, as amended by the Local Government (Access to information) (Variation) Order 2006.

3. **Minutes**

Resolved: That the minutes of the last two meetings held on 16th and 23rd February 2015 be approved and signed by the Chair as a correct record.

4. Public Participation

It was reported that there had been no registrations to speak under the Council's Public Participation Scheme.

5. Proprietorship of Hackney Carriage Vehicle Licence

Members were asked to determine a claim by the driver of a Hackney Carriage Vehicle that he being the proprietor of the licensed vehicle, is entitled to have his name entered on the vehicle licence. The matter had been previously considered by the Committee in February 2015. Following that meeting, both parties were given further time to provide satisfactory proof of ownership.

The Licensing Manager updated the Committee to advise that she had been asked by both parties to bring the matter back to the Committee but since the report had been published, it had been confirmed that the matter was now being dealt with by the Courts.

Representations were heard from both parties Solicitors who confirmed that it was the intention of both parties to pursue a declaration of ownership of the vehicle by the County Court.

Resolved: That following the statements made by both parties Solicitors, the committee agreed to defer the matter until the decision of the court and delegate authority to Officers to determine the renewal of the licence following the decision of the court.

Reason: To satisfactorily prove ownership of the vehicle to the taxi licensing authority to enable the licence to be renewed.

Councillor Helen Douglas, Chair
[The meeting started at 4.00 pm and finished at 4.15 pm].

**Gambling, Licensing & Regulatory Committee**

7 September 2015

Report of the Assistant Director – Housing & Community Safety

**Local Government (Miscellaneous Provisions) Act 1982 Schedule 3
as amended by Policing and Crime Act 2009****Renewal of Sex Establishment Licence for Black Orchid (1st floor
Tokyo), 3-5 Toft Green, York, YO1 6JT****Summary**

1. This report seeks Members determination of an application for the renewal of a Sex Establishment Licence for a sexual entertainment venue which has been made under the Local Government (Miscellaneous Provisions) Act 1982, Schedule 3 Control of Sex Establishments in respect of Black Orchid (1st floor, 3-4 Toft Green, York, YO1 6JT).
2. Name of applicant: Tokyo Industries (Lincoln York Hull) Ltd
3. Summary of Application: A copy of the application is attached at Annex 1 of this report and is summarised as follows: This is an application for the renewal of a Sex Establishment Licence which authorises hours of opening Monday to Sunday 21:00hrs to 03:30hrs, and 18:00hrs to 04:30hrs on York Racecourse Race Days only.
4. Members should note the applicant extended the existing operating hours on completing the application form. The applicant was advised this was an application to renew existing hours and an extension to operating hours would require an application to vary the licence. Such an application has not been received.
5. The premises currently has a premises licence issued under the Licensing Act 2003. A copy of the premises licence is attached at Annex 2 and is summarised as follows:

Licensable Activity	Current Days & Hours
Films	Monday to Sunday 11:00 – 03:30
Boxing or Wrestling	Monday to Sunday 11:00 – 02:00
Live Music	Monday to Sunday 11:00 – 03:30
Recorded Music	Monday to Sunday 11:00 – 03:45
Performance of Dance	Monday to Sunday 11:00 – 03:30
Late Night Refreshment	Monday to Sunday 23:00 – 03:45
Supply of Alcohol (On sales only)	Monday to Sunday 11:00 – 03:30
Opening Hours	Monday to Sunday 11:00 – 04:00
Non Standard Timings for all activities	From the end of permitted hours on New Year's Eve until the start of permitted hours New Year's Day. An additional hour on the day British Summertime commences.

Background

6. On 6 April 2010, section 27 of the Policing and Crime Act 2009 was introduced. This legislation reclassified lap dancing clubs and other similar venues as 'sexual entertainment venues'; a sex establishment under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. This allowed Local Authorities who adopted the provisions of the legislation to regulate lap dancing clubs and similar venues under the same regime as sex shops.
7. Sexual entertainment venues are defined as 'any premises at which relevant entertainment is provided for a live audience for the financial gain of the organiser or the entertainer'. The meaning of relevant entertainment is 'any live performance or any live display of nudity which is of such a nature that, ignoring financial gain, it must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means)'.
8. This Authority adopted the provisions of the legislation on 7 October 2010 when the resolution was approved by full council. A copy of City of York Council's Policy for the Determination of Applications for Sexual Entertainment Venues is attached at Annex 3.
9. A copy of the Standard Conditions Applicable to Licences Issued to Sex Establishments which were approved by Full Council is attached at Annex 4.

Consultation

10. Consultation was carried out by the applicant and the Licensing Authority in accordance with paragraph 10 of Schedule 3 of the 1982 Act relating to the process which the applicant must follow for the application to be considered valid.
11. No objections to the application were received.

Other Relevant Information

12. There are no planning implications in relation to this application.

Options

13. By virtue of paragraphs 10, 12 and 13 of schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended), the Committee have the following options available to them in making their decision:
 14. Option 1: Renew the licence.
 15. Option 2: Renew the licence with modified/additional conditions imposed by the licensing committee.
 16. Option 3: Refuse the application.

Analysis

17. The following could be the result of any decision made by this Committee:
 18. Option 1: This decision cannot be appealed at Magistrates Court by an objector to the application. The only route to challenge the decision is by way of Judicial Review in the High Court.
 19. Option 2: This decision could be appealed at Magistrates Court by the licence applicant.
 20. Option 3: This decision could be appealed at Magistrates Court by the licence applicant.

Council Plan

21. The approved City of York Council Standard Conditions Applicable to Licences issued to Sex Establishments will support the Council's priority to protect vulnerable people and create jobs and grow the economy.

Implications

22. The implications arising from this report are:

- **Financial** - N/A
- **Human Resources (HR)** – N/A
- **Equalities** – N/A
- **Legal** – Dependant upon the option agreed, the decision could be appealed through either Judicial Review in the High Court or Magistrates Court by the applicant.
- **Crime and Disorder** - The Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authority's responsibility to co-operate in the reduction of crime and disorder in the city.
- **Information Technology (IT)** – N/A
- **Property** – N/A
- **Other** – none

Risk Management

23. All Members are aware that any decision which is unreasonable or unlawful could be open to challenge resulting in loss of image, reputation and potential financial penalty.
24. The report details the options available to the Committee in determining the application and recommends that a decision be reached. There are no risks involved with this recommendation.

Recommendations

25. Members determine the application for the grant of the licence in accordance with the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 as amended by the Policing and Crime Act 2009.

Reason: As required by the legislation.

Contact Details

Author:	Chief Officer Responsible for the report:		
Lesley Cooke Licensing Manager Ext 1515	Steve Waddington Assistant Director - Housing & Community Safety Ext 4016		
	Report Approved	√	Date 27/08/15

Wards Affected: Micklegate

Annexes

- Annex 1** - Copy of application
- Annex 2** - Copy of Premises Licence issued under the Licensing Act 2003
- Annex 3** - Copy of CYC Policy for the Determination of Applications for Sexual Entertainment Venues
- Annex 4** - Copy of Standard Conditions Applicable to Licences issued to Sex Establishments
- Annex 5** - Legislation and Policy Considerations

This page is intentionally left blank



CITY OF YORK COUNCIL
Licensing Services, Hazel Court EcoDepot, James Street, York, YO10 3DS

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 AS AMENDED
SCHEDULE 3 – CONTROL OF SEX ESTABLISHMENTS
Application for the Grant / Renewal / Transfer of a Sex Establishment Licence

TYPE OF VENUE

- Sexual Entertainment Venue Sex Shop Sex Cinema

TYPE OF APPLICATION

- Grant Renewal Transfer

APPLICANT DETAILS

1. Is the applicant:

- An individual (please answer questions 2, 5 to 9)
 A company or other corporate body (please answer questions 3, 5 to 9)
 A partnership or other unincorporated body (please answer questions 4, 5 to 9)

2. Full name of applicant (individual):

Former or previous names: None

Home address:

Post town:

Post code:

Telephone numbers:

Date of birth:

3. Name of applicant (company name): Tokyo Industries (Lincoln York Hull) Ltd

Address of registered or principal office: 201 Chapel Street

Post town: Manchester Post code: M3 5EQ

Registration number: UK 8171028

4. Name and address of applicant:

Names and addressed of applicant's partners (please use additional sheet):

5. Are there any other persons responsible for the management of the premises/business other than the partners? Please state their names and addresses:

Paul Sinclair
Matthew Radcliffe
Harriet Rhodes
Paul Gourley

- | | |
|---|----|
| 6. a. Has the applicant ever been known by any other name? | NO |
| b. Has the applicant ever been convicted of a criminal offence? | NO |
| c. Has the applicant ever been refused a sex establishment licence? | NO |
| d. Has the applicant ever had a sex establishment licence revoked? | NO |
| e. Has the applicant ever been served with a winding up petition? | NO |

If the answer to any of these questions is yes, please provide details:

7. Applicants' trading address or head office (other than the premises)

The trading address is restricted to just the application premises. The Company holds a Registered office at 201 Chapel Street Manchester. M3 5EQ, and an Accounts Office at Berkley House, 18-24 High Street, Edgeware, London. HA8 7RP.

8. Will the business for which this licence is sought be carried on for the benefit of a person other than the applicant? NO

If the answer is yes, state the name, address, place of registration, registered number and the identity of all directors, company secretary and those with a greater than 10% shareholding (use separate sheet if necessary).

9. Does the applicant operate any other sex establishments, licensed or otherwise? Please state name, address, and type of sex establishment of each.

No

PREMISES DETAILS

10. Please state the name the business will be known as: Black Orchid

11. Is the premises a Building Vehicle Vessel Stall

12. Where is it proposed to use the vehicle, vessel or stall?

13. Does the company propose to only operate on the internet? No
(f yes answer Q14 to 19 only)

14. Premises address 3-5 Toft Green

Post town York

Post code Y01 6jt

Telephone number at premises

15. Which part of the premises is to be used as a sex establishment? The second floor

16. Is the applicant owner lessee sub-lessee other

17. If the applicant rents the property state:

a. Name and address of landlord: Aaron Mellor, 38 Union Street, Oldham. OL1 1DJ (the landlord is also the Managing Director of the incorporated applicant Tokyo Industries (Lincoln York Hull) Ltd

b. Name and address of the superior landlord: As Above

c. Total annual rental: £8,000

d. Length of unexpired term: 4yrs

e. Notice required to terminate tenancy: no termination

18. Please provide details of the building management company (if appropriate):

19. State the current use of the premises: Same as application

20. Has planning permission, or a certificate of lawful use, been obtained for the use of the proposed premises? YES

21. Can members of the public access the premises:
 a. Directly from the street? YES
 b. From other premises? NO
 c. Not at all? (internet sales only)

22. Are the premises currently being used as a sex establishment?
 Please provide details of the business currently operating the business: Same as application

OPERATING SCHEDULE

23. Opening hours: (If internet sales only please tick here and continue to Q 26)

Monday	Tuesday	Wednesday	Thursday	Friday
9pm till 4am	9pm till 4am	9pm till 4am	9pm till 4am	9pm till 4am
Saturday	Sunday			
9pm till 4am	9pm till 4am			

Any non-standard timings: Amended hours on York race days to open from 6pm till 5am

24. Has the applicant entered into any written or oral agreement in connection with the business, for example a management agreement, partnership agreement or profit share arrangement? Please provide details.

a. Please provide details of any lender, mortgage or others providing finance:

b. Please provide details of any merchandising agreements:

PREMISES MANAGEMENT

25. Please state the name of the person who will be in day to day control of the premises (the manager).
 Paul Sinclair

a. Will the manager be based at the premises YES
 b. Will the management of the premises be the manager's sole occupation YES

26. Who will be in control of the premises in the manager's absence (relief manager)? Matthew Radcliffe / Harriett Rhodes

a. Will the relief manager be based at the premises in the absence of the manager? YES

If you have ticked no to any of the above please provide details.

EXTERNAL APPEARANCE AND ADVERTISING – DO NOT COMPLETE FOR RENEWAL APPLICATION

27. Please describe the proposed exterior signage and advertising. Please include nature, content and size of each sign and any images to be used:

Please note that a drawing of the front elevation is required to be submitted with this application.

28. Please describe how the interior of the premises is obscured to passersby:

29. Please describe any proposed window displays:

30. Please describe how the business is to be advertised, ie business cards, billboard advertising, personal solicitation, advertising on motor vehicles, radio or television advertising:

APPLICATIONS FOR SEXUAL ENTERTAINMENT VENUES ONLY

31. Is the proposal for full nudity? YES

32. Describe the nature of the entertainment eg lap-dancing, pole dancing, stage strip tease:
 Lap dancing

33. State measures to ensure employees age and right to work in the UK:

Passport and NI number are taken and copied and kept on file for each employee.

34. Describe training and welfare policies:

Please enclose a copy of the welfare policy for performers (or equivalent document).

35. Please set out any further information you wish the authority to take into account.

The premises have traded without issue or problem for almost 12mths since trade began. The management team and operational standards were regarded as the 'Best in the West Yorkshire' by inspecting SEV officials.

36. Is there any information on this form you do not wish to be seen by members of the public? If so state which information and the reasons why you do not wish it to be seen.

CHECKLIST & ENCLOSURES

Enclosures

- I have made or enclosed payment of the fee
- I have enclosed three sets of plans of the premises
- I have enclosed a drawing of the street elevation of the premises
- In the case of an application to transfer the licence, include the completed Consent to Transfer form

DECLARATION

I declare that I have served notice of this application on North Yorkshire Police.

I declare that a public notice advertising this application has today been displayed upon the proposed premises where it may be conveniently read by the public and will remain thereon for a period of 21 days. A copy of the notice and the standard declaration is enclosed.

I declare that within seven days of the date of this application a public notice advertising this application will be publicised in the legal notices column of the local press.

A copy of the relevant press edition will be forwarded to the City of York Council Licensing Section.

I understand that if I do not comply with the above requirements my application will be rejected.

Any person who, in connection with an application for a grant, renewal or transfer of a sex establishment licence, makes a false statement which he knows to be false in any material respect of which he does not believe to be true is guilty of an offence and liable on summary conviction to a fine not exceeding £20,000.

SIGNATURES

Signature of applicant or applicant's solicitor or other duly authorised agent. If signing on behalf of the applicant please state in what capacity.

Signature Signature

Name (print)	Name (print)
Date <u>30th June 2015</u>	Date
Capacity <u>Venue Manager</u>	Capacity
Contact name (where not previously given) and address for correspondence associated with this application:	
Post town	Post code
Telephone number (if any)	
If you would prefer us to correspond with you by email, your email address (optional)	

Guidance Notes

1. Please return this completed application form to:

City of York Council
 Licensing Section
 Hazel Court EcoDepot
 James Street
 York
 YO10 3DS

2. Please make cheques/postal orders payable to City of York Council.
3. The applicant is responsible for serving notice of this application on North Yorkshire Police, Licensing Section, Fulford Road, York, YO10 4BY
4. Requirements for layout plan (**NB plan not required for renewal applications**)

The plan must show:

1. The layout of the premises including eg stage, bars, cloakroom, WCs, performance area, booths, dressing rooms.
2. The extent of the boundary of the premises.
3. The extent of the public areas.
4. Uses of different areas in the premises eg performance areas, reception, staff facilities.
5. Structures or objects (including furniture) which may impact on the ability of individuals to use exits or escape routes without impediment.
6. Location of points of access to and egress from the premises.
7. Any points used in common with other premises.
8. Position of CCTV cameras.
9. Where the premises includes a stage or raised area, the location and height of each stage or area relative to the floor.
10. The location of any steps, stairs, elevators or lifts.
11. The location of any public conveniences, including disabled WCs.
12. The location and type of any fire safety and other safety equipment.
13. The location of the kitchen (if applicable).
14. The location of emergency exits.

Unless agreed with City of York Council, the plan should be drawn to a standard scale with a key showing the items mentioned above. The standard scale is 1:100.

DANCERS AND PERFORMERS WELFARE POLICY

- Dancers and performers shall be provided with secure and private changing facilities.
- Dancers and performers shall be provided with private toilet/hand washing facilities.
- Dancers and performers can deposit any valuables with the management by way of a sealed/signed envelope, to be kept in a safe upon their arrival at the club and returned at the end of their shift.
- Each new dancer and/performer will be given a full and detailed induction upon their commencement of employment at the club. This will include all club rules, conduct, code of conduct, unit familiarity, fire evacuation procedures and health and safety. This will be documented by way of the company dancer/performers contract.
- Any dancer or performer who expresses a grievance with a fellow dancer or performer or a member of management or staff from the company will have the matter dealt with by way of the company's grievance policy as set out in the company manual.
- At the conclusion of a shift all performers will be provided with a company nominated taxi or escorted to their own transport by a member of security staff or management.
- All entrances to private areas to which members of the public are not permitted access shall have clear signage stating that access is restricted.
- Any exterior smoking area for use by performers shall be kept secure and separate to any public smoking areas..
- There must be a minimum of one member of security staff and or management on any floor where performance of sexual entertainment is taking place.



LICENSING ACT 2003

PREMISES LICENCE

Schedule 12

Part A

Part 1 Premises details

Premises licence number
CYC - 009396

Postal address of premises:

3-5 Toft Green

Post town: **York**

Post code: **YO1 6JT**

Telephone number: 01904 620203

Expiry date: This licence has no expiry date.

Licensable activities authorised by the licence:

Films
Boxing or Wrestling
Live Music
Recorded Music
Performances of Dance
Late Night Refreshment
Supply of Alcohol

The times the licence authorises the carrying out of licensable activities:

FILMS

Indoors

Monday 11:00 - 03:30	Tuesday 11:00 - 03:30	Wednesday 11:00 - 03:30	Thursday 11:00 - 03:30
Friday 11:00 - 03:30	Saturday 11:00 - 03:30	Sunday 11:00 - 03:30	

BOXING OR WRESTLING

Indoors

Monday 11:00 - 02:00	Tuesday 11:00 - 02:00	Wednesday 11:00 - 02:00	Thursday 11:00 - 02:00
Friday 11:00 - 02:00	Saturday 11:00 - 02:00	Sunday 11:00 - 02:00	

LIVE MUSIC

Indoors

Monday 11:00 - 03:30	Tuesday 11:00 - 03:30	Wednesday 11:00 - 03:30	Thursday 11:00 - 03:30
Friday 11:00 - 03:30	Saturday 11:00 - 03:30	Sunday 11:00 - 03:30	

RECORDED MUSIC

Indoors

Monday 11:00 - 03:45	Tuesday 11:00 - 03:45	Wednesday 11:00 - 03:45	Thursday 11:00 - 03:45
Friday 11:00 - 03:45	Saturday 11:00 - 03:45	Sunday 11:00 - 03:45	

PERFORMANCES OF DANCE

Indoors

Monday 11:00 - 03:30	Tuesday 11:00 - 03:30	Wednesday 11:00 - 03:30	Thursday 11:00 - 03:30
Friday 11:00 - 03:30	Saturday 11:00 - 03:30	Sunday 11:00 - 03:30	

LATE NIGHT REFRESHMENT

Indoors

Monday 23:00 - 03:45	Tuesday 23:00 - 03:45	Wednesday 23:00 - 03:45	Thursday 23:00 - 03:45
Friday 23:00 - 03:45	Saturday 23:00 - 03:45	Sunday 23:00 - 03:45	

SUPPLY OF ALCOHOL

Monday 11:00 - 03:30	Tuesday 11:00 - 03:30	Wednesday 11:00 - 03:30	Thursday 11:00 - 03:30
Friday 11:00 - 03:30	Saturday 11:00 - 03:30	Sunday 11:00 - 03:30	

Non Standard Timings for Films, Boxing or Wrestling, Live Music, Recorded Music, Performances of Dance, Late Night Refreshment and Supply of Alcohol:

From the end of permitted hours New Years Eve to the start of permitted hours New Years Day.

An additional hour to the standard and non-standard times on the day when British Summertime commences.

The Opening Hours of the Premises

Monday 11:00 - 04:00	Tuesday 11:00 - 04:00	Wednesday 11:00 - 04:00	Thursday 11:00 - 04:00
Friday 11:00 - 04:00	Saturday 11:00 - 04:00	Sunday 11:00 - 04:00	

Non Standard Timings:

From the end of permitted hours New Years Eve to the start of permitted hours New Years Day.

An additional hour to the standard and non-standard times on the day when British Summertime commences.

Where the licence authorises supplies of alcohol whether these are on and/or off supplies:

On the premises

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premise licence:

Name: Tokyo Industries (Lincoln York Hull) Ltd

Address: 201 Chapel Street
Manchester
M3 5EQ

Telephone number: None

Email address: None

Registered number of holder, for example company number, charity number (where applicable):

08171028

Annex 1 – Mandatory conditions

MANDATORY CONDITIONS IN RELATION TO THE SUPPLY OF ALCOHOL

1. In accordance with section 19 of the Licensing Act 2003, where a premises licence authorises the supply of alcohol, the licence must include the following conditions.
2. The first condition is that no supply of alcohol may be made under the premises licence -
 - (a) at a time where there is no designated premises supervisor in respect of the premises licence, or
 - (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
3. The second condition is that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
4. (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises –

- (a) games or other activities which require or encourage, or are designed to require or encourage individuals to –
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
- (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
- (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
- (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
- (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).

5. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

6. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.

(2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

(3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either –

- (a) a holographic mark, or
- (b) an ultraviolet feature.

7. The responsible person must ensure that –
- (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures –
 - (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25ml or 35ml; and
 - (iii) still wine in a glass: 125ml;
 - (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
 - (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

MANDATORY CONDITION: ALCOHOL PRICING

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
2. For the purposes of the condition set out in paragraph 1 –
- (a) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
 - (b) “permitted price” is the price found by applying the formula –
$$P = D + (D \times V)$$
where –
 - (i) P is the permitted price,
 - (ii) D is the rate of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
 - (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
 - (c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence –
 - (i) the holder of the premises licence,
 - (ii) the designated premises supervisor (if any) in respect of such a licence, or
 - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
 - (d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
 - (e) “value added tax” means value added tax charged in accordance with the Value Added Tax Act 1994.

3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
4. (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.
(2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

MANDATORY CONDITION: EXHIBITION OF FILMS

- (1) In accordance with section 20 of the Licensing Act 2003, where a premises licence authorises the exhibition of films, the licence must include a condition requiring the admission of children to the exhibition of any film to be restricted in accordance with this section.
- (2) Where the film classification body is specified in the licence, unless subsection (3)(b) applies, admission of children must be restricted in accordance with any recommendation made by that body.
- (3) Where -
 - (a) the film classification body is not specified in the licence, or
 - (b) the relevant licensing authority has notified the holder of the licence that this subsection applies to the film in question, admission of children must be restricted in accordance with any recommendation made by that licensing authority.
- (4) In this section - 'children' means persons aged under 18; and 'film classification body' means the person or persons designated as the authority under section 4 of the Video Recordings Act 1984 (c.39) (authority to determine suitability of video works for classification).

MANDATORY CONDITION: DOOR SUPERVISION

- (1) In accordance with section 21 of the Licensing Act 2003 (as amended by section 25 Violent Crime Reduction Act 2006), where a premises licence includes a condition that at specified times one or more individuals must be at the premises to carry out a security activity, the licence must include a condition that each such individual must -
 - (a) be authorised to carry out that activity by a licence granted under the Private Security Industry Act 2001; or

(b) be entitled to carry out that activity by virtue of section 4 of that Act.

(2) But nothing in subsection (1) requires such a condition to be imposed -

(a) in respect of premises within paragraph 8(3)(a) of Schedule 2 to the Private Security Industry Act 2001 (c.12) (premises with premises licences authorising plays or films), or

(b) in respect of premises in relation to -

(i) any occasion mentioned in paragraph 8(3)(b) or (c) of that Schedule (premises being used exclusively by club with club premises certificate, under a temporary event notice authorising plays or films or under a gaming licence, or

(ii) any occasion within paragraph 8(3)(d) of that Schedule (occasions prescribed by regulations under that Act).

(3) For the purposes of this section -

(a) "security activity" means an activity to which paragraph 2(1)(a) of that Schedule applies, and which is licensable conduct for the purposes of that Act (see section 3(2) of that Act), and

(b) paragraph 8(5) of that Schedule (interpretation of references to an occasion) applies as it applies in relation to paragraph 8 of that Schedule.

Annex 2 – Conditions consistent with the operating schedule

Licensing Objectives

Prevention of Crime & Disorder

1. Digital CCTV will be installed to cover the premises and will include all areas to where public have access to consume alcohol and where licensable activities are undertaken.
2. CCTV will be maintained, working and recording at all times when the premises are open.
3. The recordings will be of evidential quality in all lighting conditions and will be of sufficient quality to be produced in court or other such hearing.
4. Copies of the recordings will be kept available for any responsible authority for 28 days.
5. Copies of the recordings will display the correct time and date of the recording.
6. A member of staff trained to use the CCTV system shall be on duty at all times so as to ensure the recorded images are made available for inspection and downloading immediately upon request to any responsible authority.

7. All images downloaded from the CCTV system must be provided in a format that can be viewed on readily available equipment without the need for specialist software.

8. Clear notices shall be prominently displayed requesting customers to leave the premises and the area in a quiet and orderly manner.

9. The only acceptable proof of age identification shall be a current passport, photocard driving licence or identification carrying the PASS logo.

10. Drinking vessels of any type shall not be allowed to enter or leave the premises whilst under the customers care; save for movement into the outside drinking area attached to the venue.

11. Documented staff training will be given regarding the retail sale of alcohol; the conditions attached to the premises licence; and the opening times of the venue.

12. Such records (referred to in condition 11) shall be kept for at least one year and they will be made available immediately upon a reasonable request from any responsible authority.

13. A Refusals Register and Incident Report Register will be kept. Such documents will record incidents of staff refusals to under-age or drunk people as well as incidents of any anti-social behaviour and ejections from the premises.

14. Both documents (referred to in condition 13) shall be kept for at least one year and they will be made available immediately upon a reasonable request from any responsible authority.

15. The venue shall partake in the York night-time economy radio system.

16. There shall be no consumption of alcohol by patrons queuing to enter the premises.

17. When any entrance is being used by members of the public door supervisors shall be positioned at every entrance to the premises in accordance with conditions 18, 19 and 20. For the purpose of clarity the entrances to the venue are the door leading to the main club; the door leading to the bar area (ie the middle entrance); the door leading to the Sexual Entertainment Venue; (the total number of door supervisors is applicable across the licensed area not necessarily two per door at all times unless customers numbers dictate such deployment).

18. An adequate number of door supervisors (at least one plus one per hundred customers ie a minimum of two at any time) shall be provided at the venue from 21:00hrs until the venue closes for business on the following occasions:-

- i) every Friday and Saturday evening
- ii) the evening before a Bank Holiday
- iii) the evening of race meetings held at York Racecourse (save for the family meeting held in September and the first meeting held in May).

19. Save for occasions when the audience is less than one hundred customers an adequate number of door supervisors (at least one plus one per hundred customers ie a minimum of two at any time) shall be provided at the venue whenever live music (that does not fall under the definition laid out in the Live Music Act) is being undertaken at the venue; their deployment being at least one hour prior to the start of any concert until the venue closes for business.

20. An adequate number of door supervisors (at least one plus one per hundred customers ie a minimum of two at any time) shall be provided at the venue from 23:00hrs until the venue closes for business on all other occasions.

21. So as to ensure the licensing objective the prevention of crime and disorder is not undermined, there shall be a total capacity limit of 860 people.

22. If a DJ is used on any night they will ask customers to leave quietly.

23. Any person who appears to be intoxicated or who is behaving disorderly will not be allowed entry to the venue. Any person within this venue who appears to be intoxicated or who is behaving disorderly will be given care and consideration in leaving the venue.

24. Text/radio pagers are used within the venue, they are monitored by a responsible member of staff.

25. Toughened glass is used in the venue.

26. Music and dancing will be a prominent feature of trading.

27. For the purpose of clarity the licensable area of the venue shall be restricted to the building only. There shall be no licensable activities undertaken on the footpath directly outside the venue.

The following conditions apply to the outside drinking area:-

28. The boundary of the outside area shall be clearly defined by a barrier at all times the area is being used.

29. Customers shall remain seated when consuming alcohol in the
30. There shall be no sale of alcohol in the outside area.
31. The outside area shall not be used for the consumption of alcohol after 21:30hrs. For the purpose of clarity, after 21:30hrs the outside area shall only be used by people who wish to smoke
32. The outside area shall be cleared of drinking vessels by 21:45hrs.

Public Safety

33. A person trained in first aid will be at the venue who will have received training in any problems associated with alcohol and drug misuse.
34. A qualified first aider shall be present throughout any sporting entertainment involving boxing, wrestling, judo, karate or sport of a similar nature.
35. Where a ring is used it will be constructed by a competent person and shall be inspected by a competent authority before use and any material used to form the skirt of the ring shall be flame retardant.
36. The seating layout shall be agreed with the appropriate authorities.

Public Nuisance

37. No amplified music or regulated entertainment shall be provided in the entrance, reception or lobby areas of the premises.
38. The internal lobby doors to the main entrance and the doors from the reception to the main dance floor and the cafe bar shall be kept closed except when being used for entry or exit.
39. Access to the smoking area after 23:00hrs, shall be via the main entrance door only.
40. During provision of live or recorded music, the emergency exit doors in the centre of the Toft Green facade leading from the Beer Keller area shall be kept shut after 23:00hrs and prior to that the doors shall only be opened for ingress or egress.
41. Any patrons waiting outside the premises for entry into the venue, and those using the smoking area shall be managed by premises staff to ensure noise arising from these patrons, such as shouting, singing and chanting is kept to a minimum.

42. Consumption of alcohol shall not be permitted in the smoking area outside of the Beer Keller after 21:30hrs.

43. Documented patrols shall be carried out by members of staff at no less than hourly intervals during the hours of opening to the public. These patrols shall monitor the noise arising from within the premises and created by patrons within the vicinity of the premises. These checks shall be undertaken outside the building each hour at three locations: to the left hand side of the facade, adjacent to 1 Toft Green; to the right hand side of the building, adjacent to the rear of 92 Micklegate and on Barker Lane, adjacent to Lawrance House. The checks shall be completed and recorded in accordance with a procedure to be agreed with City of York Council within 1 month of issue of the varied licence granted 24 September 2014.

44. The internal double doors between the Beer Keller and the Fibbers club shall be kept closed after 23:00hrs.

45. A direct contact number for the duty manager shall be made available to residents living in the vicinity of the premises on request.

46. Staff training shall be given and documented regarding all matters relating to the licence and its conditions. Records of training shall be kept for 3 years.

Protection of Children from Harm

47. A person under the age of 18 years will only visit the venue with a responsible adult usually for the purpose of dining unless there is an event especially organised for the youth market. Unaccompanied persons under the age of 18 are not welcome in the venue except at events especially organised for the youth market.

48. The venue intends to have specially organised events for the youth market when the venue will adhere to the following Company Policies:

- a) Admission Policy
- b) General Policies Statement
- c) Code of Conduct for Staff Statement and
- d) Child Protection Policy

For Regulated Entertainment consisting of Music and Dancing

a) The licence holder shall attach a copy of the City Council's Rules for the Management of Places of Public Entertainment to the valid licence. This document shall form part of the licence.

b) The licence holder shall ensure prompt compliance with any written report received from the City Council.

c) The licence holder shall ensure prompt compliance with any written report received from North Yorkshire Fire and Rescue Service.

d) The noise generated from the use of these premises shall not exceed a Noise Rating 25 (ISO.R=1966: 1971) when measured at a distance of one metre from the nearest noise sensitive facade and be of such a level so as not to constitute a nuisance to inhabitants of the neighbourhood.

e) In accordance with Condition 1.11 of the Rules of Management of Places of Public Entertainment licensed by the City of York Council, written consent is hereby given for these premises to be used for entertainment attended wholly or mainly be children subject to the attached conditions being complied with. This consent is limited to Tuesday evenings between the hours of 18:30 - 21:00 when the premises may remain open for disco and dancing from 14 to 17 year olds.

Schedule of additional conditions to be complied with when entertainments attended wholly or mainly by children are given.

1. A sufficient number of competent and adequately trained adult attendants shall be on duty during events which are to be attended wholly or mainly by children. The minimum number of attendants on duty must be as follows:

One attendant for every 100 or part there of accomodated on the ground floor.

One attendant for every 50 or part there of accommodated on the first floor.

Persons whose normal duties are other than the assistance of persons entering the entertainment area, should not be included in calculating the number of attendants.

2. Attendants must be specifically instructed as to their essential duties and responsibilities in the event of fire or other emergency.

3. Attendants should be easily identifiable by means of some conspicuous clothing or marking system which is visible under all lighting conditions.

4. Training of attendants must include instruction in the following areas:

a) the action to be taken upon discovering a fire;

b) the action to be taken upon hearing the fire alarm;

c) raising the alarm, including the location of the alarm call points and alarm indicator panels;

d) the correct method of calling the fire brigade;

e) the location and use of fire fighting equipment;

- f) knowledge of escape routes;
- g) knowledge of the method of operation of any special escape door fastenings;
- h) appreciation of the importance of fire doors and the need to close all doors at the time of a fire and on hearing the fire alarm;
- i) the operating of all escape doors not in regular use, to ensure that they function satisfactorily; and
- j) evacuation of the building to an assembly point at a place of safety (to include reassuring persons attending the entertainment and escorting them out of the premises).

5. Attendants must have attended at least one practice fire drill following completion of training.

6. Notices must be prominently displayed where parents deposit children, saying that in the event of an emergency children will be escorted by a member of staff to a named collection point outside the building.

7. Account should be taken of the additional responsibility caused by the attendance of disabled children. Further attendants will need to be on duty, the number of which will depend on the number of disabled children attending and the nature of their disabilities.

Annex 3 – Conditions attached after a hearing by the licensing authority

1. There shall be no admissions to the premise after 03:00hrs, except for patrons using the smoking terrace.

2. The sale of alcohol shall cease 30 minutes before closing time.

3. The sale of late night refreshment shall cease 15 minutes before closing time.

4. Recorded music shall cease 15 minutes before closing time.

5. All licensable activities, namely; Films, Live Music and Performance of Dance, shall cease 30 minutes before closing time.

6. The licensable activity, Boxing and Wrestling, shall cease by 02:00hrs.

7. A dispersal policy agreed with the Licensing Authority and North Yorkshire Police shall be adhered to at all times.

8. There will be no drinking in the smoking area.

9. There will be no seating in the smoking area.

10. There will be no licensed entertainment in the smoking area.

11. One marshal will control the access and egress from the internal door in the premises leading to the smoking area and the second marshal shall monitor the behaviour of those patrons using the smoking area.

Annex 4 – Approved Plan

Plan Number TO/Y0/322/01 & 02

For and on behalf of
The Director of Communities
& Neighbourhoods

Date: 15/08/2005
21/05/2015 (Transfer)

Licensing Services
Hazel Court EcoDepot
James Street
York
YO10 3DS

Phone: 01904 552512
Fax: 01904 551590
Email: licensing.unit@york.gov.uk
Website: www.york.gov.uk/licensing

This page is intentionally left blank



Policy for the Determination of Applications for Sexual Entertainment Venues

In determining applications for sexual entertainment venue licenses the Licensing and Regulatory Committee shall treat each application on an individual basis, on its own merits, in accordance with the Local Government (Miscellaneous Provisions) Act 1982 (as amended).

A decision to refuse the licence may not be made solely on moral grounds or that the establishment may cause offence.

Grounds for Granting or Refusing the Application

A licence **must be** refused on any of the grounds listed in paragraph 12(1) of Schedule 3 of the Local Government (Miscellaneous provisions) Act 1982, that is to say:-

- to a person under the age of 18;
- to a person who is for the time being disqualified as being a licence holder whose licence has been revoked within the previous 12 months;
- to a person, other than a body corporate, who is not resident in the United Kingdom or who was not so resident throughout the period of six months immediately preceding the date when the application was made; or
- to a body corporate that was not incorporated in the United Kingdom; 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.

A licence **may be** refused where any of the following matters mentioned in paragraph 12(2) and (3) of the Act applies:

- (a) The applicant is unsuitable to hold a licence by reason of having been convicted of any offence or for any other reason:
- Officers will make diligent enquiries with the applicant to establish:-
 - That the operator is honest.

- That the operator is qualified by experience to run the type of sex establishment in question.
- That the operator understands the general conditions.
- That the operator is proposing a management structure which delivers compliance with the operating conditions, e.g. through managerial competence, presence, a credible management structure, enforcement of rules internally, a viable business plan and policies for welfare of performers.
- That the operator can be relied upon to act in the best interests of performers, eg in how they are remunerated, the facilities they enjoy, how they are protected and how and by whom their physical and psychological welfare is monitored.
- That the operator can be relied upon to protect the public, eg transparent charging, freedom from solicitation.
- That the operator can show a track record of management of compliant premises, or that s/he will employ individuals who have such a track record.

(b) That if the licence were to be granted, renewed, varied 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, variation or transfer of such a licence if he made the application himself:

- Officers will establish that there would be no third party beneficiary by asking appropriate questions in the application form and by interviewing the applicant.

(c) That the number of sexual entertainment venues in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality:

- The number can be nil, but this decision needs to be rationally underpinned. The Council has not determined any appropriate number of sexual entertainment venues.

(d) That the grant or renewal of the licence would be inappropriate, having regard to the:

- (i) character of the relevant locality; or
- (ii) use to which any premises in the vicinity are put; or
- (iii) layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

- (i) The character of the relevant locality. Relevant locality is defined in relation to premises as “the locality where they are situated”. The locality cannot include for example the whole of the administrative area or an entire town. The relevant locality might cover the area of a ward, specific estates, shopping areas or areas bounded by rivers and major roads. The relevant locality will be determined on a case by case basis dependent on the situation of the proposed licensed premises.
- (ii) The use to which any premises in the vicinity are put. Vicinity is not defined but is clearly an area smaller than relevant locality. It maybe considered in the same context as with the Licensing Act 2003. Regard should not only be had to the juxtaposition of uses within the vicinity but also to the times of operation or occupation of those uses. Sensitive uses will include places of worship, schools, youth clubs, community centres, women’s refuges, parks and leisure facilities. A concentration of residential property particularly included sheltered accommodation for vulnerable groups may also cause concern.
- (iii) The layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made. The premises should meet or can be made to meet the layout and structural requirements set out in the “standard conditions applicable to licences issued to sex establishments”.

This page is intentionally left blank



LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

**STANDARD CONDITIONS APPLICABLE TO LICENCES ISSUED TO
SEX ESTABLISHMENTS**

<u>CONTENTS</u>	<u>PAGE</u>
1.0 DEFINITIONS	1
2.0 GENERAL	1
3.0 TIMES OF OPENING	1
4.0 CONDUCT AND MANAGEMENT OF SEX ESTABLISHMENTS	1 & 2
5.0 USES	3
6.0 GOODS AVAILABLE IN SEX ESTABLISHMENTS	3
7.0 APPEARANCE, CONDITION AND LAYOUT OF THE PREMISES	3 & 4
8.0 ADDITIONAL CONDITIONS RELATING TO SEXUAL ENTERTAINMENT VENUES	4, 5 & 6
ANNEX 1 – HOUSE RULES (CUSTOMERS)	7
ANNEX 2 – HOUSE RULES (PERFORMERS)	8

1.0 DEFINITIONS

1.1 In these conditions save when the context otherwise requires the following expressions shall have the following meanings:

- a) "Sex Establishments", "Sexual Entertainment Venues", "Sex Cinema", "Sex Shop" and "Sex Article" shall have the meanings ascribed to them in the Third Schedule of the Local Government (Miscellaneous Provisions) Act 1982.
- b) "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 licence for a sex establishment granted under the said Third Schedule.
- c) "Approval of the Council" or "Consent of the Council" means the approval or consent of the Council in writing.
- d) "The Council" means the City of York Council.
- e) "Film" shall have the meaning ascribed to it in the Films Act 1960-1980.

2.0 GENERAL

2.1 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.

2.2 The grant 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 the Third Schedule of the Local Government (Miscellaneous Provisions) Act 1982.

3.0 TIMES OF OPENING

3.1 Except with the written consent of the council, the premises shall not remain open to the public outside the hours licensed.

4.0 CONDUCT AND MANAGEMENT OF SEX ESTABLISHMENTS

4.1 Where a Licensee is a body corporate or an un-incorporated 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. Such written details as the Council may require in respect of any new Director, Secretary or Manager are to be furnished within 14 days of a request in writing from the Council.

- 4.2 The Licensee or a responsible person nominated by him in writing for the purpose of managing the sex establishment in his absence and of whom details (including 2 photographs) have been supplied to and approved in writing by the Council shall be in charge of and upon the premises during the whole time they are open to the public. This condition shall be read in conjunction with condition 4.3 below.
- 4.3 The Licensee shall maintain a daily register in which he shall record the name and address of any person who is to be responsible for managing the sex establishments in his unavoidable absence, and the names and addresses of those employed in the sex establishment. The register is to be completed each day within 30 minutes of the sex establishments opening for business and is to be available for inspection by the Police and by authorised officers of the Council.
- 4.4 The name of the person responsible for the management of a sex establishment be he/she the Licensee or a Manager approved by the Council shall be prominently displayed within the sex establishment throughout the period during which he/she is responsible for its conduct.
- 4.5 The Licensee shall retain control over all portions of the premises and shall not let, licence or part with possession of any part of the premises.
- 4.6 The Licensee shall maintain good order in the premises.
- 4.7 No person under the age of 18 shall be admitted to the premises and no person under the age of 18 shall be employed in the business of a sex establishment.
- 4.8 A notice stating that persons under the age of 18 may not enter the premises shall be prominently displayed at the entrance.
- 4.8 The Licensee shall ensure that the public are not admitted to any part or parts of the premises other than those which have been approved by the Council.
- 4.9 No part of the premises shall be used by prostitutes (male or female) for the purposes of solicitation or of otherwise exercising their calling.

- 4.10 Neither the Licensee nor any employee or other person shall seek to obtain custom for the sex establishment by means of personal solicitation outside or in the vicinity of the premises.
- 4.11 The Licensee shall comply with all statutory provisions and any regulations made thereunder.
- 4.12 The Licensee shall ensure that during the hours the sex establishment is open for business every employee wears a badge of a type approved by the Council indicating his name and that he is an employee. In the case of Sexual Entertainment Venues other approved forms of identification maybe accepted.
- 4.13 A copy of the licence and of these conditions shall be exhibited in a prominent place within the premises where the public may see and read them. These displays shall be reproductions to the same scale as those issued by the Council. The copy of the licence required to be displayed as aforesaid shall be suitably framed and the copy of these conditions shall be retained in a clean and legible condition.

5.0 USES

- 5.1 No change of use of any portion of the premises from that approved by the Council shall be made until the consent of the Council has been obtained thereto.
- 5.2 No change between the uses of a sex shop, sex cinema or sexual entertainment venue shall be effected without the consent of the Council.
- 5.3 Neither sex articles nor 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.
- 5.4 A sex shop shall be conducted primarily for the purpose of the sale or hire of goods by retail.

6.0 GOODS AVAILABLE IN SEX ESTABLISHMENTS

- 6.1 All sex articles and other things displayed for sale, hire, exchange or loan within a sex shop shall be clearly marked to show to persons who are inside the shop the respective prices being charged.
- 6.2 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 establishment.
- 6.3 The Licensee shall, without charge, display and make available in the Licensed Sex Establishment, such free literature on infections, safer sex, local services and other related sexual health issues as may be published by York Teaching Hospital NHS Foundation Trust or successor organisation and any other providers as maybe. Such literature is to be displayed in a prominent position approved by the Council adjacent to all cash points in the Licensed Sex Establishment.

7.0 APPEARANCE, CONDITION AND LAYOUT OF THE PREMISES

- 7.1 The Licence Holder shall comply with requirements relating to external appearance of the licensed premises as the Council may consider reasonably necessary. The Licensee shall give prior notice to the Council of any proposed change to the external appearance of the

premises and shall support the prior notice by the submission of detailed drawings to show the proposed changes.

- 7.2 Without prejudice to the generality of condition 7.1 above, no display, advertisement, word, letter, model, sign, placard, board, notice, device, representation, drawing, writing, or any matter or thing (whether illuminated or not) shall be exhibited so as to be visible from outside the premises unless the prior approval of the Council has been received in writing.
- 7.3 The entrance doors 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.
- 7.4 Windows and openings to the premises other than the entrances shall be obscured in a manner and with such material as may be approved by the Council. Plans and drawings showing the proposed scheme shall be submitted to the Council for prior approval. This condition shall not be construed as lessening the obligation of the Licensee under condition 7.3 hereof.
- 7.5 Lighting in all parts of the premises as approved by the Council shall be in operation continuously during the whole of time that the sex establishment is open to the public.
- 7.6 The number, size and position of all doors or openings provided for the purposes of the ingress and egress of the public shall be approved by the Council and shall comply with the following requirements:
 - a) Access to the premises may only be through 2 or more doors placed consecutively, so arranged that when a person enters or leaves the premises the interior of the premises is not recognisable to persons outside the premises.
 - b) All such doors or openings approved by the Council shall be clearly indicated on the inside by the word "Exit".
 - c) 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".
 - d) Save in the case of emergency no access shall be permitted through the premises to any unlicensed premises adjoining or adjacent.

- 7.7 The external doors to the sex establishment shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.
- 7.8 No fastening of any description shall be fitted upon any booth or cubicle within the sex establishment nor shall more than 1 person (including employee be present in any such booth or cubicle at any time).
- 7.9 Alterations or additions either 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.
- 7.10 All parts of the premises shall be kept in a clean and wholesome condition to the satisfaction of the Council.

8.0 ADDITIONAL CONDITIONS FOR SEXUAL ENTERTAINMENT VENUES

- 8.1 The premise will be conducted in a decent, sober and orderly manner at all times. Steps will be taken to ensure that none of the following takes place:
 - a. indecent behaviour including sexual intercourse
 - b. the offer of any sexual or other indecent service for reward
 - c. unlawful possession and/or supply of drugs controlled by the Misuse of Drugs Act 1971.
 - d. any acts of violence against persons or property and/or the attempt or threat of such act likely to cause a breach of the peace.
- 8.2 No one under the age of 18 shall be permitted to enter the premises (or remain on the premises) whilst entertainment of an adult nature is being provided.
- 8.3 All performers shall be over 18 years of age.
- 8.3 Notices to be displayed within the premises and at the entrance informing customers of the "House Rules" that affect them and a warning that "adult entertainment" is provided within the premises.
- 8.4 Written information shall be given to the dancers/entertainers advising them of the house rules for performers and customers and possible consequences of failure to comply.

- 8.5 Adult entertainment shall not take place in a location that could be viewed from outside the premises.
- 8.6 Advertising of adult entertainment either on the premises or otherwise shall not include any photographs or images which indicate that entertainment involving nudity or sexual performance takes place on the premises.
- 8.7 CCTV for both monitoring and recording shall be installed, maintained and operated in accordance with Data Protection guidelines and will cover all areas where dancing takes place. All cameras shall continually record whilst the premises are open to the public and recordings shall be kept for a period of 28 days with times and dates indicated. These recordings shall be kept secure and shall be made available to an authorised officer of the Local Authority or a Police Officer on request.
- 8.8 Performers shall be provided with separate dressing/changing rooms which shall be located so as to be separate and set apart from the public facilities. No person other than performers and authorised staff will be allowed in or near the dressing/changing room. Safe and controlled access to the dressing/changing room will be maintained at all times.
- 8.9 There shall be at least one female member of staff authorised to be responsible for the safety and welfare of the performers.
- 8.10 SIA (Security Industry Authority) registered door supervisors shall be positioned at all entrances to the premises throughout the performance and shall be present in the room/area in which the performance takes place.
- 8.11 Dance entertainment shall be given only by performers/entertainers who are engaged exclusively for that purpose. Audience participation shall not be permitted.
- 8.12 Dance entertainment shall only be performed in the areas of the club as marked on the plans deposited with the Licensing Authority and with the Authority's approval. These areas can only be changed with the approval of the Licensing Authority.

- 8.13 If performers are invited to have a drink with a customer, the performer will remain fully clothed during this period. Performers will not be paid commission on the sale of beverages.
- 8.14 On leaving the premise performers will be escorted to their transport by a door supervisor.
- 8.15 Adult entertainment shall not take place before 9.00 pm.
- 8.16 The premises licence holder shall ensure that the house rules for both customers and performers are strictly adhered to.

ANNEX 1

House Rules (Customers)

1. Dancers may only dance to seated customers.
2. Customers must remain clothed at all times.
3. Dancers must not be touched by the customer while they are dancing except for the placing of gratuities into the hand or garter of the dancer at the beginning or conclusion of the performance.
4. No person shall take any video recordings or photographs by any means of the authorised adult entertainment.
5. No persons other than performers and authorised staff shall be permitted in the dressing/changing rooms.
6. Dancers shall re-dress at the conclusion of the performance.
7. Customers who fail to comply with these rules shall be removed from the premise by the management or security staff
8. No customers shall be admitted to the premises or allowed to remain on the premises if they appear to be intoxicated or unruly.
9. The duty manager and security staff will ensure that all customers and performers adhere to the house rules.

ANNEX 2

House Rules (Performers)

1. All performers shall be over 18 years of age. Prior to engagement all performers will provide documentation that they are aged 18 years or over. Checks will be made to make sure the necessary legal work permits to work in the United Kingdom are in place. Should performers be employed from agencies the same checks will be carried out. Management shall keep written record of these checks which shall be available to authorised officers of the council and the Police.
2. No performer shall be allowed to work, if under the judgement of the management, they appear to be intoxicated or under the influence of illegal substances.
3. No performance shall involve the use of sex articles (as defined in the Local Government (Miscellaneous Provisions) Act 1982).
4. Performers shall not use any props or clothing in the act which portrays them as a minor.
5. Garters worn for the collection of gratuities shall be situated no higher than mid thigh.
6. Dancers shall re-dress at the conclusion of the performance and are to remain clothed (minimum bikini top and bottoms) at all times except when giving a performance.
7. Performances of adult nature must be restricted to the designated areas.
8. All staff and performers are forbidden to give personal details including real name and address or other contact details of any other performer or staff member to a customer. Performers are strongly advised not to pass their own personal details to customers.
9. The duty manager and security staff will ensure that all customers and performers comply with the house rules.

This page is intentionally left blank

Legislation and Policy Considerations

1. The following provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) apply to this application:
 - Paragraph 10 (Grant, renewal and transfer of licences for sex establishments) relates to the process which the applicant must have followed for the application to be considered valid.
 - Paragraph 12 (Refusal of licences) relates to the grounds under which an application shall not be granted and also describes the powers by which the licensing authority has a discretion to refuse the licence.
 - Paragraph 13 (Power to prescribe standard conditions).

2. The following provisions of the Home Office Guidance apply to this application:
 - Paragraphs 3.23 – 3.24 (Objections) explain who can object and how this is done and that the applicant must be made aware of the general grounds for the objection before the application is determined.
 - Paragraphs 3.25 – 3.26 (Hearings) explain that the applicant must be given the opportunity to appear and be heard in front of the sub-committee considering the application. Schedule 3 does not make any explicit provision for objectors to be heard, this is left to the discretion of the appropriate authority.
 - Paragraphs 3.32 – 3.31 (Grounds for refusal).
 - Paragraphs 3.32 – 3.38 (Relevant locality) define the meaning of “relevant locality” and the powers of the appropriate authority to decide the maximum number of premises allowed in a particular locality.
 - Paragraphs 3.39 – 3.42 (Licence conditions) explain that once the decision is made to grant, the appropriate authority can attach conditions specific to the individual premises and/or standard conditions for the particular type of establishment. These conditions should not duplicate conditions placed on a premises licence issued under the Licensing Act 2003 and should be appropriate to the activities authorised by the licence.
 - Paragraphs 4.19 – 4.21 (European Convention on Human Rights) explain whilst applications from existing operators can be refused on one or more grounds set out in paragraph 12 of schedule 3 of the 1982 Act, account must be taken of rights existing operators may have under Article 1 of Protocol 1 to the European Convention which protects the peaceful enjoyment of their possessions (including licences) and article 10 (freedom of expression).

3. City of York Council’s Policy for the Determination of Applications for Sexual Entertainment Venues and the Standard Conditions Applicable to Licences issued to Sex Establishments applies to this application.

4. The Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authority's responsibility to co-operate in the reduction of crime and disorder in the city.
5. The Committee is reminded that the Human Rights Act 1998 guarantees the right to a fair hearing for all parties in the determination of their civil rights. The Act also provides for the protection of property, which may include licences in existence, and the protection of private and family life.

NOTE FOR MEMBERS

Extracts from Home Office Guidance for England and Wales relating to Sexual Entertainment Venues.

3.23 When considering an application for the grant, renewal or transfer of a licence the appropriate authority should have regard to any observations submitted to it by the chief officer of police and any objections that they have received from anyone else within 28 days of the application. Any person can object to an application but the objection should be relevant to the grounds set out in paragraph 12 of Schedule 3 for refusing a licence. Objections should not be based on moral grounds/values and local authorities should not consider objections that are not relevant to the grounds set out in paragraph 12. Objectors must give notice of their objection in writing, stating the general terms of the objection.

3.24 Where the appropriate authority receives notice of any objection the authority shall, before considering the application, give notice in writing of the general terms of the objection to the applicant. However, the appropriate authority shall not without the consent of the person making the objection reveal their name or address to the applicant.

Hearings

3.25 Under paragraph 10(19) of Schedule 3, before refusing an application, all applicants should be given the opportunity to appear before and be heard by the local authority committee or sub-committee that is responsible for determining the application.

3.26 Schedule 3 does not make explicit provision for objectors to be heard, but this does not mean that such hearings cannot take place. Rather, case law on this matter states that while local authorities are under no obligation to offer an oral hearing to objectors, they may do so at their discretion. Although a local authority is under a duty to consider any objections 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.

Refusal of a Licence

3.27 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:

- a) to a person under the age of 18;
- b) 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 appropriate authority within the last 12 months;
- c) to a person, other than a body corporate, who is not resident in an EEA State or was not so resident throughout the period of six months immediately preceding the date when the application was made; or
- d) to a body corporate which is not incorporated in an EEA State; or
- e) 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.

3.28 A licence may be refused where:

- a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- b) 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;
- c) 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 consider is appropriate for that locality;
- d) that the grant or renewal of the licence would be inappropriate, having regard -
 - i. to the character of the relevant locality;
 - ii. to the use to which any premises in the vicinity are put; or
 - iii. to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

3.29 A decision to refuse a licence must be relevant to one or more of the above grounds.

3.30 When determining a licence application, the local authority must have regard to any rights the applicant may have under Article 10 (right to freedom of expression) and Article 1, Protocol 1 (protection of property) of the European Convention on Human Rights.

3.31 The Provision of Services Regulations 2009 amended Schedule 3 to the 1982 Act to state that, if having considered an application for the grant, renewal or transfer of a licence, the appropriate authority decides to refuse it if one or more of the above grounds, it must provide the applicant with reasons for the decision in writing.

Relevant Locality

3.32 Paragraph 12(3)(c) and 12(3)(d) of Schedule 3 allow appropriate authorities 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. Nil may be the appropriate number.

3.33 Schedule 3 to the 1982 Act does not define “relevant locality” further than to say that:

- (a) in relation to premises, it is the locality where they are situated; and
- (b) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.

3.34 Clearly, the decision regarding what constitutes the ‘relevant locality’ is a matter for the appropriate authority. However, such questions must be decided on the facts of the individual application.

3.35 Therefore, it is reasonable and potentially useful to future applicants, for a local authority to decide in advance of receiving any applications that certain areas are, or are not, appropriate locations for a sex establishment or a particular number of sex establishments. Nevertheless, all applications must be considered on their individual merits.

3.36 When considering a particular application case law has indicated that the relevant locality does not have to be a clearly pre-defined area nor are local authorities required to be able to define its precise boundaries. Therefore, while a local authority is not prevented from defining the exact area of the relevant locality, it is equally free to conclude that it simply refers to the area which surrounds the premises specified in the application and does not require further definition. Nevertheless a local authority’s view of what constitutes a locality could be open to challenge if they took a completely unreasonable view of the area covered, for example, by concluding two sex establishments 200 miles away from one another were in the same locality. Case law indicates that a relevant locality cannot be an entire local authority area or an entire town or city.

3.37 Once the appropriate 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.

3.38 Section 27 amends paragraph 12(3) (c) of Schedule 3 to allow local authorities to determine an appropriate number of sex establishments of a particular kind. In practice, this means that the appropriate authority may, for example, decide that a particular locality is suitable for a sex shop but is not suitable for a sexual entertainment venue or vice versa.

Licence Conditions

3.39 Once the appropriate authority has decided to grant a licence they are able to impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual licence under paragraph 8 of Schedule 3 or standard conditions applicable to all sex establishments, or particular types of sex establishments, prescribed by regulations made by the appropriate authority under paragraph 13 of Schedule 3.

3.40 Paragraph 13 provides examples of the matters that standard conditions may address which include but are not restricted to:

- The hours of opening and closing
- Displays and advertisements on or in sex establishments
- The visibility of the interior of a sex establishment to passers-by
- Any change of use from one kind of sex establishment to another

3.41 Where the appropriate authority decides to produce standard conditions under paragraph 13 they will apply to every licence granted, renewed or transferred by the authority unless they have been expressly excluded or varied.

3.42 Most sexual entertainment venues will require a 2003 Act licence as well as a sex establishment licence. Where this is the case, local authorities should avoid duplicating licence conditions and should ensure that conditions imposed on each licence are relevant to the activities authorised by that licence. For example, conditions relating to the sale of alcohol should only appear on a premises licence or clubs premises certificates and should not be imposed on sexual entertainment venue licence. Likewise, conditions relating the provisions of relevant entertainment should appear on the sexual entertainment venue licence and not a premises licence or club premises certificate. Local authorities should also avoid imposing conditions on either licence that are contradictory.



Gambling, Licensing & Regulatory Committee 7 September 2015

Report from the Assistant Director – Housing and Community Safety

Explosives Policy

Summary

1. This report seeks members support for the Council's Explosives Policy. It advises of the recent changes to legislation and the consultation undertaken. The Policy can be found at Annex 1.
2. The report seeks a recommendation to Full Council that the policy be approved.

Background

3. The Explosive Regulations 2014 (2014 Regs) came into force on 1 October 2014.
4. The Health and Safety Executive (HSE) has worked with stakeholders since 2010 to review existing health and safety related explosives legislation. With the aim to consolidate, modernise and, where practicable, simply the legislative arrangements.
5. The 2014 Regs consolidate and therefore revokes a number of existing explosives regulations. It brings together the requirements of health and safety related explosives legislation into a framework based around common topics such as authorisation, safety, security and placing on the market.
6. As a result of the consolidation the Approved Code of Practice to the Manufacture and Storage of Explosives Regulations 2005 has been withdrawn, along with relevant guidance.

7. The main changes to the regulatory framework include:
- merging registrations into the licensing system;
 - allowing local authorities to issue licences up to 5 years, aligning them with equivalent HSE/police-issued licences;
 - extending licensing to address storage of ammonium nitrate blasting intermediate (ANBI);
 - exceptions for keeping higher hazard and desensitised explosives without a licence have been updated;
 - tables of separation distances have been restructured to better allow for sites with more than one store; the tables have also been revised to cover quantities of explosives greater than 2000kg;
 - a revised list of explosives that can be acquired or acquired and kept without an explosives certificate from the police;
 - the repeal of the Fireworks Act 1951, as its remaining provisions have been superseded by the Pyrotechnic (Safety) Regulations 2010.

2014 Regs

8. The 2014 Regs defines explosives to mean –
- (a) any explosive article or explosive substance which would –
- i) if packaged for transport, be classified in accordance with the United Nations Recommendations as falling within Class 1; or
 - ii) be classified in accordance with the United Nations Recommendations as
 1. being unduly sensitive or so reactive as to be subject to spontaneous reaction and accordingly too dangerous to transport, and
 2. falling within Class 1: or
- (b) a desensitised explosive, but it does not include an explosive substance produced as part of the manufacturing process which therefore reprocesses it in order to produce a substance or preparation which is not an explosive substance.
9. As a unitary authority City of York Council is the licensing authority under Schedule 1, Section 1(a)(ii) of the 2014 Regs in relation to an application for the storage of up to 2000 kg of other explosive, including fireworks and small arms ammunition, where separation distances can be met.
10. The council issues licences which authorise the storage of explosives. Licences must be granted unless it is of the opinion that the applicant is not a fit person to store explosives.

11. Conditions can be imposed on a licence; every licence must include conditions that specify:
 - the site and, within it, the places where the explosives may be stored;
 - the hazard type, if any, the description and maximum amount of explosives which may be stored or otherwise present, at any one time at any place so specified.
12. Licences can be granted or renewed for a period of up to five years. Licensing authorities determine the duration of licences.
13. Fees are set by Health and Safety (fees) Regulations and are variable dependant on the amount of explosives to be stored and safety distances.

Local Authority Assent Procedure

14. Where the relevant licensing authority is the HSE or the Office of Nuclear Regulation, that authority must issue the applicant with a draft licence containing conditions which the licensing authority proposes to attach to the licence. The applicant must as soon as reasonably practicable send a copy of the application and draft licence to the local authority in whose area the manufacture or storage is proposed to take place.
15. The 2014 Regs stipulates the process that local authorities must follow when considering whether to assent to such application. If relevant representations are received, the local authority must hold a public hearing within 4 months of the date of its receipt of the copy of the application and draft licence, before deciding whether to assent to the application.

Delegation

16. It is recommended that the Assistant Director (Housing and Community Safety) to be authorised to:
 - Grant or renew licences for the storage of explosives, in accordance with the Explosives Regulation 2014, and determine the duration of the licence.
 - Refuse to grant or renew licences for the storage of explosives, in accordance with the Explosives Regulations 2014.

- Revoke licences for the storage of explosives, in accordance with the Explosives Regulations 2014.

17. Where the local authority has to determine whether to assent to an application when relevant representation are received and a public hearing must be held, it is recommended that the hearing panel will be made up of 3 Members of the Gambling, Licensing and Regulatory Committee.

Consultation

18. Consultation took place from 14 May to 30 June 2015, the following parties were consulted:

- North Yorkshire Fire & Rescue Service
- North Yorkshire Police
- Health & Safety Executive
- City of York Council Public Protection Section
- Premises currently licensed (as of May 2015)
- Councillors

19. Only one response was received to the consultation from the HSE. Their response related to their concern of conditions being included within the policy and the possible duplication with legislation. Their concerns have been taken into consideration and the conditions that were included within the draft policy at Annex 1 and 2, have been removed from the final document.

Options

20. Option 1 – approve the policy and officers recommendations regarding the delegation scheme.
21. Option 2 – amended the policy and propose an alternative delegation scheme.

Analysis

22. The council currently licence 35 premises to store explosives, a majority of these premises are supermarkets and convenience stores who store and sell fireworks.

23. Option 1 – will set a policy for applicants, licence holders and officers to follow. It will also set a delegation scheme for dealing with licence applications for the storage of explosives.

Council Priorities

24. The implementation of this policy will support the Council's priority for a prosperous city for all, by helping and supporting business to trade safely.

Implications

25. The direct implications arising from this report are:
- (a) **Financial** - There are no financial implications.
 - (b) **Human Resources (HR)** - There are no HR implications.
 - (c) **Equalities** – There are no equalities implications.
 - (d) **Legal** – There are no legal implications. By approving this report the Council's delegation scheme for determining applications will be in place.
 - (e) **Crime and Disorder** – There are on crime and disorder implications. An effective policy and licensing process will lead to the safe and secure storage of explosives, this will have a positive impact on reducing the potential for crime.
 - (f) **Information Technology (IT)** - There are no IT implications.
 - (g) **Property** - There are no property implications.
 - (h) **Other** - There are no other implications.

Risk Management

26. There are no known risks associated with this report.

Recommendations

27. Members are asked to approve option 1 and recommend to Full council that the explosive policy and delegation scheme be adopted.

Reason: To provide the council will an explosives policy that with aid applicants, licence holders and officer, and provide a delegation scheme for dealing with applications.

Contact Details

Author:	Chief Officer Responsible for the report:		
Lesley Cooke Licensing Manager 01904 551515	Steve Waddington Assistant Director – Housing and Community Safety		
	Report Approved	√	Date 19/08/15
Specialist Implications Officer(s) Head of Legal Services Ext: 1004			
Wards Affected:		All	√
For further information please contact the author of the report			

Background papers

Explosives Regulations 2014

<http://www.legislation.gov.uk/uksi/2014/1638/contents/made?wb48617274=DCA973A7>

Appendices

Appendix 1 - Explosives Policy



Explosives Regulations 2014

Policy



This policy was approved by City of York Council on ????????? 2015.

Should you have any comments as regards this policy please send them via e-mail or letter to the following address:

e-mail: licensing.unit@york.gov.uk

Licensing Section
City of York Council
Eco Depot
Hazel Court
York
YO10 3DS

1. City of York Council is a unitary authority covering an area of 105 square miles and a population of 198,000. It comprises the urban area of York that is surrounded by many small rural and semi-rural settlements covered by parish councils.
2. There are currently 35 premises licensed to store explosives in the City of York area, a majority of these are supermarkets and convenience stores.
3. This authority consulted the following parties in relation to this policy:
 - North Yorkshire Fire & Rescue Service
 - North Yorkshire Police
 - Health & Safety Executive
 - City of York Council Public Protection Section
 - Premises currently licensed (as of May 2015)
 - Councillors
4. Our consultation took place between 14 May 2015 to 30 June 2015.
5. The policy was approved at a meeting of the Full Council on ??????? 2015 and was published via our website on ?????????? 2015.
6. The Explosives Regulations 2014 (2014 Regs) defines explosives to mean –
 - (a) any explosive article or explosive substance which would –
 - i) if packaged for transport, be classified in accordance with the United Nations Recommendations as falling within Class 1; or
 - ii) be classified in accordance with the United Nations Recommendations as –
 - 1) being unduly sensitive or so reactive as to be subject to spontaneous reaction and accordingly too dangerous to transport, and
 - 2) falling within Class 1; or
 - (b) a desensitised explosive,but it does not include an explosive substance produced as part of a manufacturing process which thereafter reprocesses it in order to produce a substance or preparation which is not an explosive substance.
7. City of York Council (the Council) is the licensing authority under Schedule 1, Section 1(a)(ii) of the 2014 Regs, in relation to an application for a licence for the storage within one site of no more than 2000 kilograms of explosives to which paragraph (a)(i) or (b) of the definition of explosives applies.

8. The council issues licences which authorise the storage of explosives.
9. The permitted sale periods as a dutyholder for fireworks are –
 - during the period beginning on the 15th October and ending on the 10th November;
 - during the period beginning on the 26th December and ending on the 31st December;
 - on the first day of the Chinese New year and the three days immediately proceeding;
 - on the day of Diwali and the three days immediately proceeding.
10. All application will be processed in accordance with the 2014 Regs.
11. Application forms and licences are specified by the Health and Safety Executive (HSE).

Grant & Renewal

12. Applicants can be an individual, company or partnership. They must be a fit person.
13. Licences can be granted or renewed for a period of up to five years.
14. The Council will take a proportionate, risk-based approach when dealing with licence applications and the duration of the licence requested. This approach will recognise the nature of the business and the likely lifetime of the licensed site, for example pop up shops and freehold retails.
15. Licences will only be issued to new retailers with no inspection or enforcement history for a maximum period of one year. In the case of pop up shops this period may be limited to the sales period for fireworks as detailed in paragraph nine.
16. If requested as part of the application, licences will be issued to new site where the dutyholder can demonstrate robust safety management systems and has a good history of compliance at another licensed site for a maximum period of one year.
This will enable the dutyholder to demonstrate robust safety management systems at the newly licensed site.

17. Licences will only be issued to existing licensed sites with a mixed or poor history of compliance for a maximum period of one year.
18. Licences will only be issued to existing licensed sites:
 - that have a history of regularly requiring advice;
 - where minor breaches have been identified at inspections; or
 - that has for example high (relevant) staff turnover for a maximum period of one year.

Conditions

19. Any conditions can be imposed on a licence. Every licence must include conditions that specify:
 - the site and, within it, the places where the explosives may be stored, or, in the case of the licence to manufacture explosives, where they may be manufactured;
 - the hazard type, if any, the description and maximum amount of explosives which may be stored or otherwise present, at any one time at any place so specified.

For licences which relate to the storage of pyrotechnic articles at any site where those articles are to be offered for sale, conditions may be attached considered appropriate which relate to:

- the storage and display of those article in areas where they can be purchased;
 - the prevention of risk of fire arising in respect of those articles; and
 - the safe use of fire escapes in that area.
20. The council expects licence holders to comply with the legal requirements of the 2014 Regs and any relevant guidance issued by the HSE.

Variations

21. The Licensing Authority may vary the licence –
 - a) where there has been a change in circumstances such that the separation distances can no longer be maintained and the consequent reduction in the maximum amount of explosive that may be stored is required; or
 - b) in relation to any of the matters it relates to, by agreement with the licensee.
22. A licence may be varied without the agreement of the licensee. The licensee must be given written reasons to afford the licensee the opportunity

of making representations to the licensing authority about it, within a period of 28 days from the date of the notification. Representation can be made in writing, or both in writing and orally.

23. If the licence is varied without the agreement of the licensee, the variation takes effect from a date to be determined by the licensing authority which must be a date after the 28 day period for representations.

Transfer

24. The licensing authority must grant the application for the transfer of a licence unless it is of the opinion that the applicant is not a fit person to store explosives.

Notifications

25. The licensing authority will notify North Yorkshire Fire and Rescue Service, North Yorkshire Police and the Environmental Health Services of all applications granted.

Fees

26. Fees are set by the Health and Safety (Fees) Regulations and are variable dependant on the amount of explosives to be stored and safety distances, a full list of fees can be found at Annex 1.

Death, Bankruptcy or Incapacity of a Licensee

27. If a licensee dies or becomes incapacitated, the licence will remain in force until either –
(a) the expiration of a period of 60 days starting with the date of such death or incapacity;
(b) the grant or refusal of a new licence; or
(c) the transfer of, or refusal to transfer, a licence
whichever is the earlier.
28. If a licensee becomes bankrupt or, in the case of a company, goes into liquidation, administration or receivership or has a receiving order made against it, any liquidator, administration, receiver or trustee in bankruptcy is to be treated as being the licensee.

Refusal of Grant, Renewal or Transfer of Licence

29. The licensing authority must refuse an application for a licence where they are of the opinion that –
 - (a) the applicant is not a fit person-
 - i) to store explosives, in the case of an application for a licence to store explosives.
30. Where the licensing authority proposes to refuse an application it must, before taking such action, notify the applicant of its proposed course of action and afford that applicant the opportunity of making representations to the licensing authority about it, within a period of 28 days from the date of the notification.
31. Representation may be made to the licensing authority in writing, or both in writing or orally.
32. Where the licensing authority decides to refuse an application it must provide the applicant with written reasons for its decision.

Revocation

33. The licensing authority may revoke the licence –
 - (a) where there has been a change in circumstances such as that the site or, within it, any place in which explosives are manufactured or stored which the licence relates to is no longer suitable for the manufacture or storage;
 - (b) where it appears to the licensing authority on information obtained by it after the grant of the licence that the licensee is not a fit person-
 - i) to store explosives, in the case of a person licensed to store explosives; or
 - ii) to manufacture explosives, in the case of a person licensed to manufacture explosives; or
 - (c) by agreement with the licensee.
34. A person whose licence is revoked must ensure that –
 - (a) all explosives are removed from site as soon as practicable after revocation of a licence in respect of that site;
 - (b) those explosives are deposited at a licensed site, or suitable arrangements are made for those explosives to be disposed of; and
 - (c) the licence is returned to the licensing authority within 28 days of the date that the revocation takes effect.

35. Where the licensing authority proposes to revoke the licence, it must, before taking such action, notify the licensee of its proposed course of action and afford that person the opportunity of making representations to the licensing authority about it, within a period of 28 days from the date of the notification.
36. Representation may be made in writing, or both in writing or orally.
37. Where the licensing authority decides to revoke a licence, it must provide in writing to the licensee the reason for its decision.
38. Where the licensing authority revokes the licence, that revocation takes effect from a date to be determined by the licensing authority which must be a date after the 28 day representation period.

Site Inspections and Enforcement Visits

39. Site inspection will be undertaken:
 - (a) prior to the grant of a licence;
 - (b) if required, following the grant of a licence;
 - (c) prior to or following the renewal of a licence: and
 - (d) if information is received that the licence holder is operating outside the requirements of the licence.
40. Enforcement visits will be undertaken to unlicensed premises.

Local Authority Assent Procedure

41. Where the relevant licensing authority is the Health and Safety Executive or the Office for Nuclear Regulation, that authority must issue the applicant with a draft licence containing conditions which the licensing authority proposes to attach to the licence. The applicant must as soon as reasonably practicable send a copy of the application and draft licence to the local authority (the council) in whose area the manufacture or storage is proposed to take place.
42. Within 28 days of sending to the council the applicant must –
 - (a) publish in a newspaper circulating in the locality a notice which must –
 - i) give details of the applications;
 - ii) invite representations on matters affecting the health and safety of persons other than the applicant's employees to be made in writing to the council within 28 days of the date that the notice is first published; and

- iii) give an address within the area of the council at which a copy of the application and draft licence may be inspected, and the address of the council to which any representations must be sent; and
- (b) take other reasonable steps to give that information to every person who resides or carries on a business or other undertaking within the public consultation zone¹.

43. The council must send a copy of any representations to the applicant as soon as reasonably practicable after receiving them.
44. In considering whether to assent, the council must have regard only to health and safety matters.
45. If relevant representations are received, and before deciding whether to assent to the application, the council will hold a public hearing within 4 months of the date of its receipt of the copy of the application and draft licence. The hearing panel will be made of 3 Members of the Gambling, Licensing and Regulatory Committee.
46. If after the 28 day period has elapsed and if no representation have been received, or the only representations received are classed frivolous or immaterial, it may assent to the application without holding a hearing.
47. Not less than 28 days before the hearing the council must publish notice of the date, time and place for the hearing in a newspaper circulating in the locality and send a copy of the notice to –
 - (a) the applicant;
 - (b) the person who made representation;
 - (c) the relevant licensing authority.within 7 days from its publication.
48. The council must notify the applicant and the relevant licensing authority of its decision within 7 days of making it.
49. Failure to –
 - (a) send a copy of the notice to the relevant licensing authority within 3 months from the date that a copy of the application and draft licence was sent to it; or

¹ “public consultation zone” means the area around the store or proposed store, or the building where the manufacture of explosives takes place or is proposed to take place, which, from the centre point of the store or building, has a radius equivalent to double the greatest separation distance required by virtue of these Regulations to apply in the case of that store or building.

(b) notify the relevant licensing authority of its decision within 2 months from the date of publication of the notice, that licensing authority may make a written request to the local authority for it to state in writing whether it assents to the application. If the council does not respond to the written request within 28 days from the date of the request, the local authority is deemed to have assented to the application.

50. A fee is payable to the council, which must not exceed the sum of the costs reasonably incurred by the authority in performing those functions.

Registers and Retention of Documents

51. The council must –

(a) maintain a register containing the following information –

- i) the name of the licensee;
- ii) the licensee's permanent address, unless the licensee's home address is the licensee's only permanent address;
- iii) the address of the site where the explosives are manufactured or stored;
- iv) the hazard type if any, the description and maximum amount of explosive which may be stored or otherwise present to any one time in any place which is specified in the licence;
- v) the nature of the business of the licensee and the intended use of the explosives;
- vi) the kind of explosives manufactured or stored;
- vii) where separation distances are required to be maintained around the store or the building where explosives are manufactured, a plan in a suitable scale sufficient to show those separation distances;
- viii) a map in a suitable scale sufficient to show the location of any store; and
- ix) the kind of store concerned, including the material out of which it is constructed.

the council will be keep this information electronically.

- (b) keep a copy of any licence granted, together with a copy of the application for the licence, for as long as the licence remains valid; and
- (c) send to the HSE on request a copy of any part of the register or other document specified above within such time as the HSE may direct.

ANNEX 1
FEEES FOR LICENCES GRANTED BY LOCAL LICENSING AUTHORITIES

Type of application	Duration	Fee
Licence to store explosives where, by virtue of regulation 27 of, and Schedule 5 to, the 2014 Regulations, a minimum separation distance of greater than 0 metres is prescribed	1 year	£178
	2 years	£234
	3 years	£292
	4 years	£360
	5 years	£407
Renewal of licence to store explosives where a minimum separation distance of greater than 0 metres is prescribed	1 year	£83
	2 years	£141
	3 years	£198
	4 years	£256
	5 years	£313
Licence to store explosives where no minimum separation distance or a 0 metres minimum separation distance is prescribed	1 year	£105
	2 years	£136
	3 years	£166
	4 years	£198
	5 years	£229
Renewal of licence to store explosives where no minimum separation distance or a 0 metres minimum separation distance is prescribed	1 year	£52
	2 years	£83
	3 years	£115
	4 years	£146
	5 years	£178

In the case of application for a licence period of more than one year, the fee payable with the application will be the fee set above for a one year licence. Additional fees will be requested once the licence application is determined.

Licence variations

Varying the name of licensee or address of site	£35
Any other kind of variation	Reasonable cost to the licensing authority of having the work carried out
Transfer of licence	£35
Replacement of licence if lost	£35

Please note that the time-limited fees given above are for whole years. Fees for parts of a year would be on a pro-rata basis.

ANNEX 2

Useful links:

Explosives Regulations 2014: <http://www.legislation.gov.uk/ukxi/2014/1638/made>

HSE: <http://www.hse.gov.uk/explosives/index.htm>

Guidance on Regulations – Safety provisions:
<http://www.hse.gov.uk/pubns/books/l150.htm>

Guidance on Regulations – Security provisions:
<http://www.hse.gov.uk/pubns/books/l151.htm>

Advice for anyone selling fireworks: <http://www.hse.gov.uk/pubns/indg407.htm>

Managing for health and safety (HSG65):
<http://www.hse.gov.uk/pubns/books/hsg65.htm>

Fire and explosion: <http://www.hse.gov.uk/fireandexplosion/index.htm>

This page is intentionally left blank