

ORIGINATING SECTION : PUBLIC PROTECTION SERVICE

REPORT TO : LICENSING COMMITTEE

22:06:10

TITLE : RESOLUTION TO APPLY FOR THE LICENSING OF SEXUAL ENTERTAINMENT VENUES

1. PURPOSE

1.1 For Members to consider adopting the amendment to the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 by Section 27 of the Policing and Crime Act 2009. This introduces a Licensing regime for "sexual entertainment venues" such as lap dancing.

1.2 The report proposes a consultation process to be undertaken prior to any recommendations being forwarded to full council

1.3 The report further proposes that a draft policy for sex establishments should be consulted on if it is decided to adopt the new regime. This would give the Council greater control over issues such as suitability of applicants, the number of establishments and where they can be located.

2. RECOMMENDATIONS

That members consider the outcome of a consultation and if considered appropriate request the Council to adopt the amendment to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 by Section 27 of the Policing and Crime Act 2009, to allow the licensing of sexual entertainment venues.

3. KEY ISSUES

3.1 Section 27 of the Policing and Crime Act 2009 amends Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to allow the Licensing Authority to licence "sexual entertainment venues", where "relevant entertainment" is provided before a live audience for the financial gain of the organiser or the entertainer.

3.2 This brings the licensing of lap dancing and pole clubs and other similar venues under the regime set out in the 1982 Act, which is currently used to regulate establishments such as sex shops and sex cinemas. Adoption of the Act will mean operators providing "relevant entertainment", such as lap dancing clubs will have to apply for a separate sex establishment licence. These premises are currently licensed under the Licensing Act 2003 as "regulated entertainment" whereby local people can only object on the grounds of the four licensing objectives. Under the new regime local people will be able to make representations on wider grounds and have greater say over the number and location of the establishments in their area. Licence holders will have to renew annually, at which point local people again will have the opportunity to raise objections.

3.3 There will be exemptions for premises where the sexual entertainment is provided infrequently, ie not more than eleven occasions in a twelve month period, they must be greater than one month apart and must not last for

more than 24 hours. These premises will still be regulated under the Licensing Act 2003 and would need to apply for Temporary Event Notices.

3.4 Existing Operators who hold a premises licence or a club premises certificate under the 2003 Act will not be given preferential treatment or be automatically granted licences under the provisions of the schedule 3 of the 1982 Act. They will however be able to continue to operate over a 12 month transitional period starting from when the new provisions are adopted to give existing operators time to adapt.

3.5 During the first six months of the transitional period existing and new operators can apply for a new licence. At the end of this period the licensing authority must consider all applications together and cannot grant any licences until all the applications have been considered. The number of licences available may be limited so it would be unfair to grant on a first come first served basis. Once considered a licensing authority can grant as many licences as they see fit in accordance with the policy. After the first six months licences can still be applied for and each application must be considered individually on its own merit.

3.6 It is proposed that the consultation period on whether the Council should adopt the new provisions will run from July 2010 to September 2010 and the following groups will be consulted.

- Police Licensing Team
- Shared Neighbourhood teams
- Ward Councillors
- Businesses Licensed under the Licensing Act 2003
- Resident and Business Associations
- Faith Groups

4. RATIONALE

4.1 Section 27 came into force on 6th April 2010. Local Authorities may now resolve to adopt Schedule 3 to the 1982 Act as amended by the 2009 Act so it can have effect in their area. Adoption is a matter for the Council on recommendation from the Licensing Committee.

4.2 If the Local Authority fails to adopt Schedule 3 within 12 months of the new legislation taking effect, it must then carry out a full public consultation exercise before formally adopting.

4.3 Although many local authorities will have already adopted Schedule 3 to the 1982 Act for the licensing of sex shops and cinemas, a further resolution is necessary before the provisions introduced by Section 27 will have effect in the local authority area.

4.4 The procedure for local authorities to adopt Schedule 3 as amended by Section 27 is set out in section 2 of the 1982 Act. Firstly, the local authority must pass a resolution specifying that the amendments made by section 27 to that Schedule, shall apply to their area and the day on which it shall come into force in the area. The specified day must be more than one month after the day on which the resolution was passed.

4.5 The local authority shall publish notice that they have passed the resolution referred to above for two consecutive weeks in a local newspaper. The first publication shall not be later than 28 days before the day specified in the resolution for the provisions to come into force in the local authority's

area.

POLICY

4.6 There is no requirement for an authority to have a sex establishment policy but it would again be considered good practice to have considered and have in place a local policy prior to the adoption of schedule 3 of the 1982 Act. See attached Appendix 1 – Sex Establishment Policy – proposed headings. It is proposed that the policy details are consulted on as above. The policy could covers matters such as

- Administrative matters such as application procedures, fees, hearing procedures
- The suitability of the applicant to hold a licence
- The locality and the number of sex establishments allowed
- The character of the relevant locality

5. POLICY IMPLICATIONS

5.1 Approval of a sexual entertainment venue policy will need to go through the Council's decision making process.

6. FINANCIAL IMPLICATIONS

6.1 The adoption of a new licensing regime under Schedule 3 of the 1982 Act will be carried out within the existing budget and staff resources available. Applicants will be required to pay a reasonable fee as determined by the Council. Applications will be renewed annually and annual fees will be charged subject to an annual review. The Licensing Committee will need to consider an appropriate fee level.

7. LEGAL IMPLICATIONS

7.1 Section 2 of the 1982 Act provides for the adoption of the provisions contained in schedule 3, which allows the Council to control by way of a licensing regime, sex establishments in their area.

7.2 The provisions contained in schedule 3 of the 1982 Act are adoptive and there are prescribed procedures to be followed for adoption to be successful.

7.3 The Council must pass a resolution, adopting schedule 3, specifying the day the provisions are to come into effect (this day can be no earlier than one month after the date of the resolution)

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

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

7. 6 Where a local authority does not make a resolution under section 2 within the period of one year beginning with the coming into force of the legislation, the local authority must as soon as is reasonably practicable, consult local people about whether the local authority should make such a resolution

8. RESOURCE IMPLICATIONS

8.1 Existing staff in the public protection service will undertake the associated work involved in adopting the legislation and consulting and producing a sexual establishment policy

9. CONSULTATIONS

As detailed in Key Issues.

10 . CONTACT OFFICER

Donna Riding – Principal Officer - Licensing
Telephone 01254 222505

Appendix 1

Sex Establishment Policy – proposed headings

1. Introduction

This will set out the circumstances where a licence will be required, and the scope of the policy (ie. the licences to which it will apply).

2. Hours of operation

This will set out any standard hours of operation to apply – *do you want to consider such a “default” clause?*

3. Location/number of premises

This will set out:

- a) Where in the Borough sexual encounter venues may be located. *There will be a presumption against licences being granted outside any areas you specify. What parts of the Borough would you consider to be suitable? Town centres/frontages (maybe by reference to UDP definitions)? Particular wards?*
- b) The number of premises – either within a particular area, across the Borough or both. *What would you like to specify under this head?*
- c) Sensitive areas – areas of particular concern, such as proximity to places of worship, schools etc; proximity to areas with high levels of recorded crime; cumulative impact of other sexual encounter venues. *Any other considerations in terms of location to be included?*

4. Other considerations to be taken into account

This may include:

- a) Planning issues
- b) Whether the applicant is a fit and proper person to hold a licence. *Anything else?*

5. Consultation/publicity for applications

This will set out who we will consult on receipt of an application, and the publicity requirements to be undertaken by the applicant. *Any ideas as to who should be consulted? Ward councillors? Community groups? Neighbouring properties?*

6. Other information for applicants

This may include:

- a) Duration of the licence

- b) "Standard" conditions
- c) Any other statutory requirements
- 7. Other information for interested parties
- 8. Further information/contact points

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