

Consider Introducing a Licensing regime for “sexual entertainment venues”

Licensing Committee

Date: 18th July 2012

Author:	Interim Licensing Manager
Wards:	All
Locality Affected:	All
Parishes Affected:	All

1. Purpose and Reasons

- 1.1 The report asks the Committee to consider recommending to Council, the adoption of 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 This would allow the authority to impose a potentially wider range of conditions on the licences of Sexual Entertainment Venues than they are currently able to under the Licensing Act 2003.

2. Recommendations

- 2.1 That the amendment to the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 by Section 27 of the Policing and Crime Act 2009 be adopted.
- 2.2 That it be recommended to Full Council that the amendment to the legislation is adopted by this Authority.

3. Detail

- 3.1 Section 27 of the Policing and Crime Act 2009 amends Schedule 3 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 dancing clubs and other similar venues out of the Licensing Act 2003 regime and into the regime set out in the 1982 Act, which is currently used to regulate establishments such as sex shops and sex cinemas. The Licensing Act 2003 will still be relevant if a premise carries out other licensable activities e.g. the sale of alcohol or the provision or regulated entertainment that is not relevant entertainment.
- 3.3 The Home Office have issued guidance to assist local authorities in the adoption and implementation of the amended legislation. This is included in this report at **Appendix 1**.

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- 3.4 Formal Adoption of the New Provisions Section 27 came into force on 6th April 2010. Following this date, local authorities may resolve to adopt Schedule 3 to the 1982 Act as amended by the 2009 Act so that it has effect in their area. Adoption is a matter for the Council on recommendation from the Licensing Committee.
- 3.5 If the local authority failed to adopt Schedule 3 in the way described above, within twelve months of the new legislation taking effect, it must then carry out a full public consultation exercise before formally adopting the legislative amendments
- 3.6 This authority did not adopt the amendment within the specified time, so if the recommendation to adopt is approved, authority is sought to undertake a full public consultation exercise
- 3.7 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 within this District. The specified day must be more than one month after the day on which the resolution was passed.
- 3.8 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.
- 3.9 There is currently no Council policy covering “relevant entertainment” (live performances or live display of nudity) at “sexual entertainment venues” as defined by Section 27 of the Policing and Crime Act 2009. If the legislative amendment is to be adopted a policy may be put in place provided it does not prevent any individual application being considered on its merits at the time the application is made. There is no requirement to have such a policy.

Supporting Information

- 3.10 The increase nationally in the number of lap dancing clubs since the implementation of the Licensing Act 2003 has become a concern for many local communities. Currently any representations made against premises licence applications for venues providing lap dancing and similar entertainment can only be based on the four licensing objectives, namely:
- The prevention of crime and disorder;
 - Public safety;

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- The prevention of public nuisance;
 - The protection of children from harm.
- 3.11 As a result, licensing authorities could not consider the objections of local people and businesses that were based on matters outside the scope of the four objectives noted above, for example, such as whether a lap dancing club would be appropriate given the character and locality of the area in which it was proposed to be situated.
- 3.12 The Government has responded to calls for further controls to be introduced specific to lap dancing clubs and similar premises by introducing legislation through the Policing and Crime Act 2009 to reclassify such venues under “Sexual Establishments” as a new ‘Sexual Entertainment Venue’ under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

Implications of the Changes

- 3.13 As detailed above Section 27 of the Policing and Crime Act 2009 introduces a new Category of ‘Sex Establishment’ under Schedule 3 to the 1982 Act called a ‘Sexual Entertainment Venue’. In the definition of this type of venue, the entertainment 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)’. Such venues will require a Sex Establishment Licence.
- 3.14 However, there is an exemption for premises which provide such entertainment infrequently and, even if premises do qualify as a Sexual Entertainment Venue, the local authority still has the discretion to waive the requirement for a licence.
- 3.15 In summary, the amendments to Schedule 3 to the 1982 Act will: Allow local people to oppose an application for a Sex Establishment licence for example if they have legitimate concerns that a Sexual Entertainment Venue would be inappropriate given the character of an area.
- 3.16 Require licences to be renewed at least annually, at which point local people will have the opportunity to raise objections (if any) with their local authority.
- 3.17 Allow a local authority to reject a licence application on potentially wider grounds than currently permitted by the Licensing Act 2003 if they believe, for example that to grant a licence for a Sexual Entertainment Venue (including a lap dancing club) would be inappropriate given the character of the relevant locality.
- 3.18 Allow a local authority to impose a potentially wider range of conditions on the licences of Sexual Entertainment Venues than they are currently able to under the Licensing Act 2003.

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- 3.19 These new legislative provisions took effect from the 6th April 2010.
- 3.20 This Council originally adopted the previous provisions of the LGMPA 1982 and the Council will now need to adopt the new provisions which have been inserted into Schedule 3.
- 3.21 The Council may wish to produce a new separate policy in relation to ‘Sex Establishments’ licensing including, for example, an indication of how many sex establishments, or sex establishments of a particular kind, it considers to be appropriate for a particular locality. It doesn’t have to do this to be able to refuse an application on the grounds that at the time an application is determined the number of sex establishments is equal to or exceeds the number which the Council considers is appropriate for that locality. However, it may be advisable to set this kind of detail out in a policy to ensure transparency and consistency.

Proposed Implementation

- 3.22 The Home Office have consulted on and have now proposed a ‘Transitional Period’ for the implementation and application process for new ‘Sexual Entertainment Venues’. Any Operator – new or existing - who wishes to provide ‘Relevant’ for the duration of the transitional period or until their application for a Sex Establishment licence (submitted before the expiry of the transitional period) has been determined, whichever is the later.
- 3.23 The transitional period will start on the date this authority adopts the amendments to Schedule 3 to the 1982 Act (the 1st appointed day). It will last for 12 months.
- 3.24 For 6 months following the 1st appointed day, applicants will be able to submit applications all of which will be considered together by the local authority at the end of the period. In effect all current operators apply for a new type of licence and all applications get decided together at the end i.e. not first come first granted basis.
- 3.25 Applications received after the first 6 months (2nd appointed day), will be considered after applications received before the 2nd appointed day have been determined.
- 3.26 Licences granted for Sexual Entertainment Venues will not take effect until the conclusion of the 12 month transitional period (the 3rd appointed day).
- 3.27 Any pre-existing operator who has failed to obtain a licence after the 3rd appointed day will not be permitted to provide Relevant Entertainment unless they have submitted an application within this time that has yet to be determined.

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- 3.28 The Government has decided, having listened to views from previous consultations, that existing operators will not be given ‘Grandfather Rights and will have to apply for a new type of licence.
- 3.29 That the suggested date of coming into force of this amendment to Schedule 3 is to be confirmed. This will allow the authority time to consult upon and formulate a policy, conditions and fees prior to the implementation date if the Council were to decide to adopt the legislation.

4. Alternative Options

- 4.1 To agree to the adoption of the amendment.
- 4.2 To decline to make the said adoption.

5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 5.1 Lap dancing venues are currently licensed under the Licensing Act 2003 and, as such, the fees are set by statute. It is proposed that if a local authority adopts the new Schedule 3 then reasonable fees will be set by the local authority. This means that we must have regard to cost of implementation, administration and enforcement of the legal requirements.
- 5.2 The recommendations of this report should be contained within existing budgets.

Legal and Human Rights Implications

- 5.3 There are no material legal implications arising from the adoption of the new provisions provided the relevant statutory procedures are followed.
- 5.4 The Council must ensure it complies with the EU Services Directive 2006/123/EC when applying the licensing provisions in Schedule 3. The regulations may affect the way fees are set, applications are processed and licences are granted.
- 5.5 When making decisions the Council must take into account any existing rights operators may have under Article 1 of the European Convention on Human Rights (which entitles every person to the peaceful enjoyment of their possessions) and Article 10 (freedom of expression).

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

- 5.6 This report and recommendations are being considered under Licensing Legislation and any implications will be considered within this context.
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Diversity Impact Assessment

- 5.7 There are no negative impacts of opportunity for any known group. The Government has carried out an equality impact assessment of the proposed legislation which has found that no unintended or disproportionate impact is likely.
- 5.8 Applications are considered in accordance with legislative requirements and each case is judged on its own merits. Therefore there are no equality impact issues in respect to the issuing of licences.

Risk Management

- 5.9 There is a risk that if the authority chooses not to adopt this amendment to the legislation, that there could be an increase in the number of sexual entertainment establishments within the area.
- 5.10 Similarly, it would mean that existing or new applications for such premises would remain licensed under the Licensing Act 2003. This would reduce the ability to apply conditions to the licence to those which meet the four licensing objectives

6. Consultees

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

7. Background Papers

- 7.1 None

8. Appendices

- 8.1 Appendix 1 - Home Office Guidance
- 8.2 Appendix 2 - Draft Policy