

Item 7 Licensing of Sexual Entertainment Venues

Report of the Head of Legal and Democratic (Portfolio: Corporate)

Recommended:

- 1. That the standard conditions for sexual entertainment venue licences as set out in Annex 3 to the report be applied.**

Recommended to Council:

- 2. That Schedule 3 of the Local Government (Miscellaneous Provisions Act) 1982 as amended by section 27 of the Policing and Crime Act 2009 be applied to the Borough of Test Valley.**
- 3. That the powers and duties of the Licensing Committee be amended as set out in Annex 1 to the report.**

Recommended to Cabinet:

- 4. That the fee for a sex establishment licence be set at £1460 for the grant, renewal or transfer of a licence and £182 for the variation of a licence.**
- 5. That the policy with regard to the licensing of sexual entertainment venues as set out in Annex 2 to the report be adopted.**

SUMMARY:

- A change in legislation means venues regularly providing lap and pole dancing are reclassified as “sexual entertainment venues” and can be regulated by local authorities.
- However, these new powers are not mandatory and will only apply where they have been adopted. It is recommended that the Council adopt these new provisions.

1 Introduction

- 1.1** Section 27 of the Policing and Crime Act 2009 allows local authorities to regulate lap dancing clubs and similar venues under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and gives local authorities powers to control the number and location of lap dancing clubs and similar venues in their area. However, these powers are not mandatory and will only apply where they have been adopted. Where adopted, the provisions of Schedule 3 will allow the Council to refuse an application on potentially wider grounds than is currently permitted under the Licensing Act 2003 and will give local people a greater say over the regulation of lap dancing in pubs and similar venues in their area.

- 1.2 Section 27 of the 2009 Act which amends Schedule 3 of the 1982 Act came into force on 6 April 2010. Members will be aware that the Council has already adopted Schedule 3 to the 1982 Act for the licensing of sex shops and sex cinemas. The adoption of the amended Schedule 3 will enhance the Council's control of those venues operating as sex establishments.

2 Background

- 2.1 A sexual entertainment venue is defined as "*any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer*". The meaning of "relevant entertainment" is defined as "*any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means)*". An audience can consist of just one person (e.g. where the entertainment takes place in private booths).
- 2.2 The Guidance issued by the Home Office over these matters indicates that whilst local authorities should judge each case on its own merits, it would be expected that the definition of relevant entertainment would apply to the following forms of entertainment as they are commonly understood: lap dancing; pole dancing; table dancing; strip shows; peep shows; live sex shows.
- 2.3 It should be noted that although the definition of relevant entertainment makes reference to a 'live display of nudity', the Guidance indicates that the mere fact that there is a display of nudity does not mean that a sex establishment licence will necessarily be required. For example, if the display forms part of a drama or dance performance in a theatre, in most cases it cannot reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience.
- 2.4 Paragraph 2A(14) of Schedule 3 sets out the definition of a 'display of nudity'. In the case of a woman, this means the exposure of her nipples, pubic area, genitals or anus and, in the case of a man, this means exposure of his pubic area, genitals or anus.
- 2.5 Premises which provide entertainment on an infrequent basis are exempt from the need for a licence. To comply with this exemption premises must not have provided relevant entertainment on more than 11 occasions within the previous 12 months, no such occasion must have begun within the period of one month beginning with the end of any previous occasion and no such occasion must last for more than 24 hours.

3 Corporate Objectives and Priorities

- 3.1 Licensing of sexual entertainment venues fits into the Council's SCHEME priority of 'creating stronger and safer communities'. As mentioned in paragraph 1.2 above, the Council has already adopted the existing provisions of the 1982 Act to be able to regulate sex shops and sex cinemas and it would seem anomalous not to extend this to include sexual entertainment venues.

4 Consultations/Communications

- 4.1 Formal consultation on this matter has not been undertaken. The changes to legislation were introduced largely as a concern nationally about the perceived increase in the number of such premises and the problems associated with them. This type of premises has not been a cause of problems in Test Valley and at the present time there is only one premise that is likely to need to comply with the new licensing requirements (The George, George Yard, High Street, Andover). The management of those premises are aware that they may need to apply for this new licence. Hampshire Constabulary has asked if the Council will be adopting the new provisions and there is an expectation on their part that the authority will do so.

5 Options

- 5.1 **Option 1 – Do nothing** As has already been mentioned, adoption of the new provisions is not mandatory. If a local authority has not made a resolution to adopt the provisions introduced by the 2009 Act within one year of it coming into force it must, as soon as is reasonably practicable, consult local people about whether they should make such a resolution. The purpose of this duty is to ensure that local authorities consider the views of local people where, for whatever reason, they have not adopted the new provisions. The 2009 Act is not prescriptive about how local authorities should consult with local people in order to comply with this duty. To be effective any consultation would need to be far-reaching and thus could be potentially resource intensive both financially and in terms of officer time. It would seem far more appropriate to adopt the provisions as it seems unlikely any consultation would produce a significant response opposed to adoption.
- 5.2 **Option 2 – Adopt provisions** Functions under Schedule 3 are the responsibility of the full Council. However, under Section 101 of the Local Government Act 1972 local authorities may arrange for the discharge of these responsibilities by a Committee or Sub-Committee and it is recommended that the Licensing Committee be responsible for such matters, as is the case currently with other sex establishments. This will require a change to the powers and duties of the Licensing Committee and a revised list of duties is set out in Annex 1 to this report. There would be no further delegation of matters which would mean that all applications for a sexual entertainment venue licence would need to be determined by the Committee. This replicates the current situation with regard to applications for sex shop licences and officers consider that as an application could be in the public interest then it is appropriate for them to be determined by members and not officers.
- 5.3 While local authorities are not required to publish a licensing policy relating to sex establishments they can do so if they wish as long as it does not prevent any individual application from being considered on its merits at the time the application is made. Consequently it is recommended that the Council adopt a fairly broad policy as set out in Annex 2 to this report.

- 5.4 The Council may make regulations prescribing standard conditions to be applicable to licences for sex establishments, i.e. terms, conditions and restrictions on or subject to which the licences are in general to be granted. The Council already has standard conditions in respect of sex shops, however these are inappropriate for use with sexual entertainment venues and a set of proposed conditions are attached as Annex 3 to this report.

6 Resource Implications

- 6.1 Should Schedule 3 (as amended by the 2009 Act) be adopted, the Council must publish a notice that they have passed such a resolution for two consecutive weeks in a local newspaper. There will be a cost of approximately £500 associated with this for which there is currently no budgetary provision and will thus need to be met from contingencies.
- 6.2 Schedule 3 to the 1982 Act states that the applicant for a sex establishment licence shall pay a reasonable fee determined by the Council, but does not expand on what would be considered reasonable. Previous case law has determined that local authorities should set fee levels such that they are sufficient to cover the cost of administering the licence scheme and no more. In addition, under the EU Services Directive licence fees must be set at a level proportionate to the effective cost of the licensing procedure and must not be used as an economic deterrent or to raise funds. Accordingly officers have undertaken an exercise in calculating the total cost to the Council of processing and issuing a licence which would be £1460. A lesser fee of £182 would cover the cost of varying a licence once issued. These fees will apply to all sex establishments i.e. sex shops and sex cinemas in addition to sexual entertainment venues.

7 Legal Implications

- 7.1 Failure to adopt the provisions of the new legislation will mean that the Council is unable to regulate such establishments. In addition, if the provisions are not adopted within one year of them coming into force, i.e. by 6 April 2011, the Council will be forced to undertake a potentially costly consultation exercise as described in paragraph 4.2 above.

8 Equality Issues

- 8.1 There are no negative impacts of opportunity for any equality target group. The government has carried out an equality impact assessment of the legislation which has found that no unintended or disproportionate impact is likely.

9 Other Issues

- 9.1 Community Safety – none specific.
- 9.2 Environmental Health/Sustainability Issues – none specific.
- 9.3 Property Issues – none specific.

- 9.4 Wards/Communities Affected – potentially the whole Borough but most likely to be Andover and Romsey town centres.

10 Conclusion

- 10.1 The new Policing and Crime Act 2009 introduces an amendment to the Local Government (Miscellaneous Provisions) Act 1982 to allow the licensing of sexual entertainment venues. 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. 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 2009 Act. Whilst there are currently no concerns in Test Valley with regard to sexual entertainment venues it is recommended that the new provisions be adopted thus bringing such premises in line with the existing licensing regime for sex shops and sex cinemas.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
Policing and Crime Act 2009			
Schedule 3 Local Government (Miscellaneous Provisions) Act 1982			
Sexual Entertainment Venues – Guidance for England and Wales – Home Office			
<u>Confidentiality</u>			
It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
No of Annexes:	3		
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