

## LICENSING COMMITTEE

8 DECEMBER 2010

### REPORT OF HEAD OF REGULATORY SERVICES

#### SEX ENTERTAINMENT VENUES

##### 1.0 PURPOSE OF REPORT

- 1.1 To consider recommending Full Council to adopt the amended provisions of Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 as they relate to 'Sex Entertainment Venues'.

##### 2.0 RECOMMENDATIONS

- 2.1 **That the Licensing Committee recommend to Full Council that they adopt the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 as amended by the Policing and Crime Act 2009. This allows for the regulation of Sex Entertainment Venues, and that the responsibility for the determination of applications for such licences be delegated to Licensing Committee, also that the fees for these establishment be set at the same level as for Sex Establishment Licences which is currently £1,600 per annum.**

##### 3.0 KEY ISSUES

- 3.1 Following the amendment to Local Government (Miscellaneous Provisions) Act 1982 by section 27 of the Policing and Crime Act 2009 a new category of venue has been created, this is a Sex Entertainment Venue. This brings the licensing of lap dancing and pole dancing clubs and other similar venues under the regime set out in the 1982 Act (currently used to regulate sex shops and sex cinemas) rather than under the Licensing Act 2003.
- 3.2 A Sex 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 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 be reasonable assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (by verbal or any other means)*' An audience can consist of just one person (e.g. where the entertainment takes place in private booths).
- 3.3 Guidance issued by the Home Office indicates that while 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

3.4 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 live display of nudity does not mean that a sex entertainment venue licence will necessarily be required. For example, if the display forms part of a drama or dance performance in the 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. Display of nudity is also defined in the act.

3.5 The relevant entertainment must be provided for the financial gain of the organiser or entertainer. The organiser means any person who is responsible for the organisation or management of the relevant entertainment or the premises at which the relevant entertainment is provided.

3.6 The following are not sexual entertainment venues for the purposes of the 1982 Act:

(a) sex shops and sex cinemas;

(b) any premises that at the time in question:

1. Has not provided relevant entertainment on more than 11 occasions within the previous 12 months;
2. No such occasion has begun within the period of one month beginning with the end of any previous occasion;
3. No such occasion has lasted more than 24 hours; or

(c) premises specified or described in an order made by the relevant national authority.

3.7 Premises which provide entertainment on an infrequent basis will continue to be regulated under the Licensing Act 2003, insofar as they are providing entertainment under that Act. Any premises that provide relevant entertainment on more occasions, or for a longer period of time, than is permitted under the exemption will be operating as a sexual entertainment venue, and will have committed an offence unless they hold a sexual entertainment venue licence.

#### 4.0 **POLICY AND CORPORATE IMPLICATIONS**

4.1 Local Authorities are not required to publish a licensing policy in relation to Sex Entertainment Venues but can do so if they wish. It is not intended to have such a policy as any application can be dealt with on its own merits.

#### 5.0 **FINANCIAL AND OTHER RESOURCE IMPLICATIONS**

5.1 As no such establishments currently exist within the Borough this report will have no effect on the Council's finances. Should there be an application the fee has been set at such a level to cover the cost of providing that licence. The process for determining sex entertainment licences is the same as for sex establishments it is therefore recommended that the fees be set at the same level.

#### 6.0 **LEGAL IMPLICATIONS/POWERS**

6.1 Adoption of this legislation must be by resolution of the Full Council.

- 6.2 The new powers to regulate Sex Entertainment Venues are not mandatory and will only apply where they have been adopted. Where adopted, the new powers will allow the Authority to refuse an application on potentially wider grounds than is permitted under the Licensing Act 2003 and will give local people a greater say over the regulation of lap dancing or similar venues in their area by allowing objections on wider grounds.
- 6.3 If the council does not adopt Schedule 3 (as amended by the Policing and Crime Act 2009) by 6 April 2011 then it will be necessary to consult all people who live and work in the Borough about whether this Council should make such a resolution.
- 6.4 It is recommended that responsibility for determination of applications should be delegated to the Licensing Committee.
- 6.5 This adoption, if approved, will be advertised in the press in accordance with the legislative requirements
- 7.0 **COMMUNITY SAFETY**
- 7.1 Any application will be subject to conditions which will be appropriate to the application and will take into account any Community Safety issues.
- 8.0 **EQUALITIES**
- 8.1 The Government has carried out an Equality Impact Assessment of the legislation and has found that no unintended or disproportionate impact is likely.
- 9.0 **RISKS**
- 9.1 Not to adopt this amendment and to maintain the status quo would allow prospective Sex Entertainment Venues to take advantage of a perceived loophole in the Licensing Act 2003.
- 10.0 **CLIMATE CHANGE**
- 10.1 There are no matter relating to climate change.
- 11.0 **CONSULTATION**
- 11.1 No consultation is required.
- 12.0 **WARDS AFFECTED**
- 12.1 All wards.

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Reference : Q : Committees