
Report of the Assistant Chief Executive (Corporate Governance)

Licensing and Regulatory Panel

Date: 22nd June 2010

Subject: Sexual Entertainment Venues – Adoption of Provisions
Local Government (Miscellaneous Provisions) Act 1982

Electoral Wards Affected:

Specific Implications For:

Ethnic minorities

Women

Disabled people

Executive Summary

The Policing and Crime Act 2009 amends the Local Government (Miscellaneous Provisions) Act 1982 s2 and Sch 3 to introduce a new classification of sex establishment, namely sexual entertainment venues. This brings to lap dancing, pole dancing and other “relevant entertainment” a new licensing regime.

The legislation is adoptive and this report seeks the Panel’s opinion on whether the council should adopt the provisions of this act.

1.0 Purpose Of This Report

- 1.1 The purpose of this report is to provide information for Members on the new legislation for lap dancing clubs and seeks the Panel's decision on whether the council should adopt the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009.

2.0 Background Information

- 2.1 The Home Office has released guidance on Sexual Entertainment Venues (attached at **Appendix 1**). In the Ministerial Foreword Alan Campbell, Parliamentary Under-Secretary of State for Crime Reduction explains:
- 2.2 "In September 2008 the Home Secretary announced the Government's intention to give local people greater say over the number and location of lap dancing clubs in their area. This followed a consultation with local authorities which highlighted concerns that existing legislation did not give communities sufficient powers to control where lap dancing clubs were established.
- 2.3 In order to address these concerns, section 27 of the Policing and Crime Act reclassifies lap dancing clubs as sexual entertainment venues and gives local authorities in England and Wales the power to regulate such venues as sex establishments under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.
- 2.4 These new measures, which took effect on 6th April 2010 in England will, if adopted by local authorities, give local people a greater say over where and how many lap dancing clubs open and operate in their neighbourhoods."

3.0 Main Issues

3.1 Definition of Sexual Entertainment Venue

- 3.2 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.*"

- 3.3 The meaning of 'relevant entertainment' is "*any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether verbal or other means).*" An audience can consist of just one person (e.g. where the entertainment takes place in private booths).

- 3.4 It is expected that the definition of relevant entertainment would apply to lap dancing, pole dancing, table dancing, strip shows, peep shows and live sex shows.

3.5 Exemptions

3.6 Paragraph 2A(3) of schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 sets out those premises that are not sexual entertainment venues. These are:

- sex shops and sex cinemas (which are separately defined)
- premises which provide relevant entertainment on an infrequent basis. These are defined as premises where –
 - a) no relevant entertainment has been provided on no more than 11 occasions within a 12 month period;
 - b) no such occasion has begun within a period of one month beginning with the end of the previous occasions; and
 - c) no such occasion has lasted longer than 24 hours
- other premises or types of performances or displays exempted by an order of the Secretary of State.

3.7 Adopting the Provisions

3.8 The Local Government (Miscellaneous Provisions) Act 1982 is adoptive legislation which means that the council will need to resolve to adopt Schedule 3 to the 1982 Act as amended by the 2009 Act so that it has effect in this area. The process involves the council passing a resolution, than advertising the decision in a local paper.

3.9 The legislation requires that should the council decide not to adopt the provisions, they shall seek the views of local people about whether they should make such a resolution.

3.10 Policy and Standard Conditions

3.11 The council, if they decide to adopt the provisions, will have the option of adopting a policy which may include a limit on the number and/or locality of lap dancing premises in the area. The council may adopt standard conditions which can be applied to all sexual entertainment venue licences.

3.12 The council may also chose to adopt a policy and standard conditions for sex shops and sex cinemas.

3.13 Application Process

3.14 There will be special arrangements in place for a transitional period to allow for an initial tranche of applications to be considered at the same time. This period will last for 12 months beginning with the date the council resolves that Schedule 3 will come into force (1st appointed day).

3.15 Applicants will be required to submit an application form and a fee and advertise in a local paper. Anyone will be able to register an objection within the consultation period. New applications will be considered by the Licensing and Regulatory Panel.

Further and more detailed information on the application process will be provided as part of the application pack.

3.16 Refusal of a Licence

3.17 The Local Government (Miscellaneous Provisions) Act 1982 sets out the grounds for refusing an application for grant, renewal or transfer of the licence. Broadly the licence must not be granted to a minor, or to someone who is not fit and proper. The licence can also be refused if it is contrary to the council's policy. Any refusal will be notified to the applicant in writing.

4.0 Implications For Council Policy And Governance

4.1 There will be ramifications for both council policy and governance on the transitional process itself. If council decides to adopt Sch 3 to the Local Government (Miscellaneous Provisions) Act 1982, the council may decide to adopt a policy on the location and numbers of licensed sexual entertainment venues in the district. Before the adoption of the policy the council may decide to consult with stakeholders and the public. The timescale for this is likely to be mid 2010.

5.0 Legal And Resource Implications

5.1 Legal advice will be required to advise the council:

- If it is decided to adopt these provisions.
- In the drafting of the policy.
- In the case of a judicial review of the policy.
- In the case where an existing operator is not successful in securing a new licence.

5.3 Any subsequent consultation is likely to attract a large number of responses, both from the trade, members of the public and interested action groups. This will have resource implications for Entertainment Licensing.

5.4 The transitional arrangements will also apply pressure on the council with a high number of objections expected for each of the applications and a high risk of appeal.

6.0 Conclusions

6.1 The Government has provided local authorities with a way of controlled the number and location of lap dancing clubs in their area.

6.2 The legislation is adoptive which requires the council to formally adopt the provisions. If the council decides not to, it will need to undertake a public consultation seeking the views of local residents on whether to make such a resolution by April 2011.

7.0 Recommendations

7.1 That members note the contents of the report and:

- recommend to council to adopt the provisions of Schedule to the Local Government Miscellaneous Provisions Act 1982 as amended by the Policing and Crime Act 2009.

OR

- recommend to council not to adopt said provisions, but to instigate a consultation with local people.