
Report of the Assistant Chief Executive (Corporate Governance)

Licensing and Regulatory Panel

Date: 22nd June 2010

Subject: Sexual Entertainment Venues – Adoption of Policy and Standard Conditions
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 provides for local authorities to adopt a policy and standard conditions relating to sexual entertainment venues, sex shops and sex cinemas.

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 the adoption of a policy and standard conditions for sex establishments.

2.0 Background Information

2.1 Previous Reports

- 2.2 On 2nd July 2008 Cllr Blake made a White Paper Motion to Council. The Council resolved unanimously to welcome the moves by Roberta Blackman-Woods MP and the Licensing Minister Gerry Sutcliffe to give local authorities more power to control the number of lap-dancing clubs within their boundaries and urged all Leeds MPs to support the Private Members Bill.

- 2.3 On 9th December 2009 the Assistant Chief Executive took a report to Executive Board to seek approval of the response to the Government Consultation on the Transitional Provisions. At that meeting there was a high level of interest in the adoption of the provisions and the adoption of a policy once the legislation was commenced.

2.4 Definition of Sexual Entertainment Venue

- 2.5 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.*”

- 2.6 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).

- 2.7 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.

2.8 Exemptions

- 2.9 The Act provides a number of exemptions from licensing. They include:

- 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.

2.10 Adoption of a Policy

2.11 There is no requirement for a local authority to adopt a policy. But if Members indicate that a policy should be adopted, the policy should:

- Set out its approach for the benefit of operators
- Guide and reassure the public and other public authorities
- Ensure transparency
- Ensure consistency
- Guide and focus the Panel

2.12 Policy Contents

2.13 The policy may deal with:

- Grounds for refusal
- Conditions
- Procedure
- Waiver

2.14 Refusal of applications

2.15 Application can be refused on the following mandatory grounds:

- if the applicant is under 18,
- if the applicant has a disqualification following the revocation of their licence,
- non-resident in the UK,
- company not incorporated in the UK
- or a previous refusal of the applicant at the same premises in the previous 12 months.

2.16 There are also a number of discretionary grounds. These are:

- if the applicant is unsuitable,
- if the business would be managed by or for the benefit of a third party who would be refused licence in their own right
- That the number of sex establishments in the locality or of sex establishments of a particular kind in the locality equals or exceeds the number considered appropriate
- Is inappropriate having regard to:
 - Character of relevant locality
 - Use of premises in vicinity
 - Layout, character, condition or location of the premises.

- 2.17 These discretionary grounds give the Council the ability to state clearly in its policy
- The locations where sex establishments can be sited
 - The locations which are deemed unsuitable
 - The number in those locations that is appropriate
 - The number may be nil
- 2.18 The Council may chose not to define the location and number of premises that are appropriate.
- 2.19 The Council may chose to judge the application on matters such as:
- Disabled access
 - Public safety
 - Sightlines and surveillance
 - Lighting and the ability to monitor
 - Use of private booths
 - The style and character portrayed by the décor
 - The location of the premises – high traffic, high crime, availability of late night transport etc.
- 2.20 Conditions
- 2.21 The Policy may include a pool of conditions which will be available for the Panel to attach to the licence they grant. Different conditions may be set for each type of premises. These conditions may include matters such as hours, display of advertisements, visibility of interior to passers by, use of private hire vehicles, or vehicles as advertising. These conditions could include measures to protect dancers welfare.
- 2.22 The Council also has the ability to attach conditions specific to that application/operation.
- 2.23 Procedure for Applications
- 2.24 The Act does not specify the procedure required to make an application. Therefore the Council has great latitude in deciding the contents of the application form and the supporting documents it requires to make its decision.
- 2.25 The only set requirements laid out in the Act are:
- The application must be made in writing
 - It must include the full address of the premises and
 - The name, permanent address and age of applicant, or name/registered or principal office address of the company and the names and private addresses of directors and other responsible for the management.
- 2.26 This information is required to determine if the application meets the mandatory requirements.

- 2.27 The Council can require reasonable additional information but any requirements should be judged in the context of the Act, i.e.
- To control the number and location of the premises
 - Ensure the suitability for use
 - Ensure the operation is properly managed by reputable individuals
 - Ensure the ultimate management is reputable
 - Ensure the welfare of staff is protected
 - Ensure that customers are safe
 - Ensure the character of the area is protected
 - Ensure the social and environmental impact of the premises is minimized
 - Ensure the applicant intends to comply, and is equipped to comply with standard conditions.
- 2.28 The policy can set out both the application form and the additional documentation. The policy can also set out the requirements for advertising the application including the form of the notice and newspaper advertisement. The policy can also set out how the Council will process objections from residents and ensure anonymity if the objector requests it.
- 2.29 The policy can set out the process used during hearings, including under what circumstances a hearing is held, who is to hear the application, what the process is for the filing of evidence and the rules for the hearing.

3.0 Main Issues

3.1 Policy or No Policy

- 3.2 It is not mandatory to adopt a policy relating to sexual entertainment venues. There has been the ability to set a policy for sex cinemas and sex shops since the Council adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 on 3rd November 1982, but the Council has not adopted a policy so far.
- 3.3 Even if the Council adopts a policy, every application must be determined on its own merits so that the discretion of the council is unfettered and it is within the rights of the Council to determine a licence in spite of its policy.
- 3.4 It is also not a requirement that the council adopts a policy which has a strict locality and numbers policy, as it can refuse any licence application it deems as unsuitable having regard to:
- Character of relevant locality
 - The use of other premises in the vicinity (i.e. schools, churches etc)
 - Layout, character, condition or location of the premises.
- 3.5 Setting a clear locality and or number limit policy on sex establishments, whether they be sexual entertainment venues, sex cinemas or sex shops, would provide a clear and transparent view of the council for applicants. However this would not stop organizations from making an application as the Council can use its discretion and determine the application contrary to its own policy.

3.6 It should be noted that the transitional provisions do not include grandfather rights for existing lap dancing operators. Therefore existing premises have no protection and if they are not successful at securing a new Sexual Entertainment Venue licence they will have to cease trading 12 months after the adoption of the legislation in Leeds.

3.7 Developing the Policy

3.8 As can be seen from this report, the policy relating to sexual entertainment venues can be detailed and prescriptive. It can provide a regulatory system to ensure a number of controls about the way the venues are run in the Leeds area. It will also be subject to legal challenge especially in view of the point made at 3.6.

3.9 As such Members may decide it would be more appropriate for the policy to be developed by a working group of Members and officers. The working group can invite specialists to provide advice on the content of the policy and decide upon the consultation methodology.

3.10 Members may also wish to take this opportunity to establish a policy for sex shops and sex cinemas and amend the standard conditions that are already applied to these licences. However, as the existing premises are not subject to the transitional arrangements in place for sexual entertainment venues, their licence will continue under their existing terms until such time it is amended on renewal. It will apply to any new applications.

3.11 Consultation Methodology

3.12 It is the Council's usual practice to develop a policy, in consultation with relevant stakeholders and to undertake a three month public consultation with members of the public, the trade and stakeholders. If there are major changes after public consultation a second public consultation will be required.

3.13 There is the opportunity to get guidance from the residents of Leeds through the Citizens Panel to gauge the public's view on lap dancing establishments. The Citizens Panel will seek the views of 18,000 residents of Leeds and has a response rate of 50%. However there is a cost implication of approximately £8,000.

4.0 Implications for Council Policy and Governance

4.1 This report is to advise the probable contents of the policy and the consultation process rather than to consult on the policy, therefore any implications for Council Policy and governance will be identified and addressed during the presentation of the policy itself.

4.2 The adoption of a policy under the Local Government (Miscellaneous Provisions) Act 1982 is a responsibility delegated to the Licensing and Regulatory Panel under the Council's constitution. When the policy is ready for adoption it should be referred back to Council for adoption at the same time as the Council resolution to adopt the provisions of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009.

5.0 Legal and Resource Implications

- 5.1 Legal advice will be required to advise the council on the proposed policy to ensure that it is legally water tight and resistant to challenge.
- 5.2 Once a policy has been developed the 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 who will need to handle enquiries from the public and written responses to the consultation.
- 5.3 The transitional arrangements will also apply pressure on the council with a high number of objections expected for each of the applications.

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. It has also given the Council great latitude in deciding the policy relating to sex establishments in the Leeds area.
- 6.2 Having decided to adopt the provisions of the Act, the Council can adopt a policy relating to the application and determination of applications for lap dancing clubs, sex shops and sex cinemas.
- 6.3 As the policy will be detailed and open to legal challenge, the Panel may decide to form a working group to develop the policy and seek specialist guidance.

7.0 Recommendations

- 7.1 That members note the contents of the report and to decide:
- Whether to adopt a policy.
 - To form a working group to gather further information, seek specialist advice and to develop the policy.

Background Papers

Verbatim Report – Council 2nd July 2008
Home Office Guidance – Sexual Entertainment Venues