

DECISION-MAKER:	LICENSING COMMITTEE
SUBJECT:	LICENSING OF SEXUAL ENTERTAINMENT VENUES
DATE OF DECISION:	22 MARCH 2012
REPORT OF:	HEAD OF LEGAL, HR AND DEMOCRATIC SERVICES
STATEMENT OF CONFIDENTIALITY	
None	

BRIEF SUMMARY

This report seeks consideration of the adoption of the provisions for the licensing of sexual entertainment venues and the preliminary public consultation.

RECOMMENDATIONS:

- (i) The Licensing Committee is requested to note the contents of this report, and
- (ii) Recommend to Council that consideration is given to the formal adoption of the legislation requiring sexual entertainment venues to be licensed, and
- (iii) If Council resolves to adopt the legislation, to set the date on which the licensing provisions will come into effect and to delegate:
 - the statutory function (to include the making of policy, standard conditions and the setting of fees) to the Licensing Committee, and
 - the power to determine applications made for sexual entertainment venue licences to the Licensing (General) Sub-Committee, and
 - the arrangements for publication of statutory notices and powers to approve applications for renewal where no valid objections have been received to the Head of Legal, HR and Democratic Services.

REASONS FOR REPORT RECOMMENDATIONS

1. The parts of the Local Government (Miscellaneous Provisions) Act 1982 (the "1982 Act") relating to sex establishments are adoptive, and the Council is required by the Policing and Crime Act 2009 (the "2009 Act") to consider whether or not to adopt the provisions relating to sexual entertainment venues ("SEVs").

DETAIL (Including consultation carried out)

2. The Licensing Committee considered a report from the Head of Legal and Democratic Services on 14th July 2011 regarding the adoption of the power to license sexual entertainment venues contained in the amended Local Government (Miscellaneous Provisions) Act 1982 and resolved that consultation be carried out regarding the adoption of those provisions. Notice of that consultation appeared in the Southern Daily Echo on 22nd November

2011 and on the City Council's web site. Operators of those premises identified as being potentially affected by the adoption of the provisions were notified individually. A copy of the consultation notice is attached at Appendix 1. At the close of the consultation period, five responses had been received, which are reproduced at Appendix 1.

3. Although the Licensing Act 2003 regulates the sale or supply of alcohol, regulated entertainment and/or late night refreshment, an effect of the adoption the SEV provisions would be to remove the requirement for regulated entertainment at SEV licensed premises to be authorised under the Licensing Act 2003.
4. The SEV provisions permit licensing authorities a wider discretion in regulating such premises than the 2003 Act allows, where determinations and conditions imposed are constrained by the statutory licensing objectives. However, it should be made clear that representations on moral grounds to the nature and type of premises are not legitimate grounds for objection.
5. The determination as to whether or not to adopt the SEV provisions is required to be made by Council. The Council originally adopted Schedule 3 of the 1982 Act in so far as they related to sex shops and sex cinemas in 1983 and readopted them with effect from 3rd July 1995.
6. Under the existing adopted provisions four licensed sex shops and no licensed sex cinemas currently have licences in Southampton.
7. If Council were to resolve to adopt the provisions, a further report would be brought to Licensing Committee detailing proposed conditions for any licences granted and setting out the steps which although the Council has discretion to adopt (or not) the new provisions relating the sexual entertainment venues, the legislation requires the Council to carry out an extensive public consultation annually and, if it determines that the new SEV provisions will *not* be adopted, publish detailed reasons why it does not intend to adopt those provisions on each occasion.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

8. None, since consideration of adopting the powers to license SEVs is a legal duty.

RESOURCE IMPLICATIONS

Capital/Revenue

9. If adopted, the additional officer workload and associated costs should be offset by additional fee income from applications. This will be kept under review.
10. If the new provisions were not adopted, there would be an ongoing unfunded resource implication for the annual consultation procedures above.

Property/Other

11. None.

LEGAL IMPLICATIONS

Statutory Power to undertake the proposals in the report:

12. The 2009 Act amended the Local Government (Miscellaneous Provisions) Act 1982 with effect from 6th April 2010, by introducing a new category of sex establishment called “SEVs” enabling local licensing authorities to adopt provisions for the regulation of lap dancing clubs and similar venues under Schedule 3 of the 1982 Act. Previously the power was limited to sex shops and sex cinemas.
13. If Council decides not to adopt the provisions the legislation requires that the Council must consult local people, annually, in order to consider their views about whether it should make such a resolution.

Adoption Procedure

14. The adoption procedure is by a Council resolution. In considering such a resolution, Council may have regard to any recommendation made by the Licensing Committee. If Council decides to adopt the new provision it must state the date upon which the new regime is to come into effect which must be at least one month after the resolution is made. Council would be recommended to delegate to the Licensing Committee responsibility for establishing the detail of any policies and standard conditions, and thus sufficient time should be allowed for the Licensing Committee to determine these issues.
15. The licensing of SEVs is not a matter which can be determined by the Executive.
16. The notice must also state the general effect of the provisions adopted which will include:
- That sexual entertainment venues will be required to apply for a licence;
 - That there will be an opportunity for objections to be made to the grant, renewal, variation and transfer of licences; and
 - That licences may be granted; granted with conditions or refused.

Sexual Entertainment venues:

17. Paragraph 2A of Schedule 3 as inserted by section 27 sets out the meaning of a “sexual entertainment venue” and “relevant entertainment” for the purposes of the statutory provisions.

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 entertainer.”

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).”

It should be noted that an audience can consist of just one person e.g. when the entertainment takes place in private booths.

Relevant entertainment is therefore different from regulated entertainment as defined in the Licensing Act 2003.

18. In terms of considering what constitutes “relevant entertainment” each case must be judged on its merits, but the informal guidance produced by the Home Office suggests that the definition of relevant entertainment would apply to the following forms of entertainment as they are most commonly understood:
- Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows
 - Live sex shows
19. However, the list above cannot be exhaustive and, as the understanding of the exact nature of these descriptions may vary, it should therefore merely be used as an indicator for certain types of entertainment. Ultimately, decisions on the licensing of individual premises as sexual entertainment venues will depend on the content of the entertainment provided and not on how it is described.
20. The relevant entertainment must be provided for the financial gain of the “organiser” or “entertainer”. “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. In most cases this definition will relate to the manager of the premises but there could be circumstances where it will relate to an individual who is responsible for organising the relevant entertainment on behalf of the persons responsible for the management of the premises.
21. The 1982 Act also sets out those premises that are not sexual entertainment venues. These are:
- Sex shops and sex cinemas
 - Premises which provide entertainment on an infrequent basis. These are defined as premises where –
 - a. No relevant entertainment has been provided on 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.
 - Private dwellings with no public admittance

Transitional Provisions:

22. **Transitional period**

Should a local authority resolve that the new provisions will have effect in its area, the new legislation sets out a “transitional period” which will last for 12 months beginning with the date that the local authority resolves that the provisions will come into force in its area – this date would be known as “the

first appointed day”. Six months following the first appointed day will be known as the “second appointed day” and the day on which the transitional period ends will be known as the “third appointed day”.

These dates will vary across individual authority areas as it will be dependent upon when local authorities resolve to adopt the new provisions.

23. Existing operators

In order to allow sufficient time for existing operators to comply with the new regime (i.e. those operators who, immediately before the first appointed day, have a licence under the 2003 Act and lawfully use premises as a SEV) they will be allowed to continue to provide relevant entertainment until the third appointed day or until the determination of any application submitted before that time (including any appeal against the refusal to grant a licence), whichever is the later.

24. New applicants

New applicants are considered to be those persons who wish to use premises as a SEV after the first appointed day but do not already have a premises licence or club premises certificate under the 2003 Act or do have such a licence but have not taken any steps towards operating as such.

After the first appointed day, new applicants will not be able to operate as a SEV until they have been granted a sexual entertainment venue licence.

25. Determining applications received on or before the second appointed day

Applicants will be able to submit their application for a SEV from the first appointed day onwards. However, as the local authority is able to refuse applications having regard to the number of sex establishments they consider appropriate for a particular locality, all applications made on or after the first appointed day and on or before the second appointed day shall be considered together. This is to ensure that applicants are given sufficient time to submit their application and that all applications received on or before the second appointed day are considered on their individual merit and not on a first come, first served basis.

26. No applications will be determined before the second appointed day. After this date the local authority must decide what, if any, licences should be granted. If a new applicant is granted a licence it will take effect immediately. If an existing operator is granted a licence, it will not take effect until the third appointed day, up to which point they will be allowed to continue to operate under their existing premises licence or club premises certificate.

27. Determining applications received after the second appointed day

Applications made after the second appointed day shall be considered when they are made but only after all applications made before or on the second appointed date have been determined.

As in paragraph 27 above, licences granted to new applicants shall take effect immediately and licences granted to existing operators will take effect from the third appointed day or, if later, the date the application is determined.

Licensing Policies:

28. Local licensing authorities are not required to publish a licensing policy relating to sex establishments but can do if it wishes so long as it does not prevent any individual application from being considered on its merits at the time the application is made. A policy may include statements about where the local licensing authority considers a location for such venues to be appropriate or inappropriate. This could be set out in general terms by reference to a particular type of premises, such as a school or place of worship, or more specifically, by reference to a defined locality. Equally, the policy could give an indication of how many sex establishments, or sex establishments of a particular kind, they consider to be appropriate for a particular locality. Different policies or separate sets of criteria may be applied in respect of different types of sex establishments. This may relate to distinctions between the operating requirements of different establishments for the fact that the location that the local authority considers appropriate for a sex shop may be different to that for a SEV.
29. At present, the policy of the Council relating to the licensing of sex establishments (shops and cinemas) is to consider each case on its individual merits.

Licensing Conditions:

30. If a local licensing authority has decided to grant a licence it has power to impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual premises concerned or standard conditions applicable to all sex establishments, or particular types of sex establishments.
31. Examples of the matters that standard conditions may address can include, but are not restricted to:
- The hours of opening and closing
 - Displays and advertisements on or in sex establishments
 - The visibility of the interior of a sex establishment to passers-by
 - Any change of use from one kind of sex establishment to another.
32. If such standard conditions are introduced by the local authority, they will apply to every licence granted, renewed or transferred by the authority unless they have been expressly excluded or varied.

Consideration of Adoption of New Powers by Council

33. It is intended that Council will consider whether or not to adopt the new licensing provisions at a future meeting. Should Council resolve to adopt the provisions then further recommendations will be made in respect of the following matters:
- 34.
- The date that the new regime will come into effect;
 - Delegation of the statutory function (to include the making of policy, standard conditions and the setting of fees) to the Licensing Committee;
 - Delegation of powers to officers to approve applications for renewal of

licences where no valid objections have been received;

- Arrangements for publication of statutory notices
- Preparation of proposed policy and standard conditions for consideration and approval by the Licensing Committee.

Other Legal Implications:

35. Section 17 of the Crime and Disorder Act 1998 places the Council under a duty to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area
36. The Human Rights Act 1998 Act requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the Council to act in a way that is incompatible (or fail to act in a way that is compatible) with the rights protected by the Act. Any action undertaken by the Council that could have an effect upon another person's Human Rights must be taken having regard to the principle of proportionality - the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the Council which affects another's rights must be no more onerous than is necessary in a democratic society. The matters set out in this report must be considered in light of the above obligations

POLICY FRAMEWORK IMPLICATIONS

37. None.

AUTHOR:	Name:	John Burke, Licensing Manager	Tel:	023 8083 2306
	E-mail:	licensing.policy@southampton.gov.uk		

SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

1.	Consultation of adoption and responses.
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Documents In Members' Rooms

1.	None.
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Integrated Impact Assessment

Do the implications/subject/recommendations in the report require an Integrated Impact Assessment to be carried out.	No
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Other Background Documents

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1. Home Office Guidance relating to Sexual	

	Entertainment Venues	
2.		

Integrated Impact Assessment and Other Background documents available for inspection at:

WARDS/COMMUNITIES AFFECTED:	Not applicable
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