

DECISION-MAKER:	LICENSING COMMITTEE		
SUBJECT:	DRAFT POLICY, CONDITIONS AND APPLICATION FORM FOR SEX ESTABLISHMENTS		
DATE OF DECISION:	25 APRIL 2013		
REPORT OF:	HEAD OF LEGAL, HR AND DEMOCRATIC SERVICES		
<u>CONTACT DETAILS</u>			
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STATEMENT OF CONFIDENTIALITY			
N/A			

BRIEF SUMMARY

The Council has previously adopted legislative provisions enabling the regulation of sex establishments, including sexual entertainment venues.

At its meeting of 11 July 2012, Council delegated authority to the Head of Legal, HR and Democratic Services to prepare a draft policy, standard licence conditions, and an application form for the licensing of sex establishments to be referred for consideration by the Licensing Committee. This report seeks approval of the draft policy and application form, and approval to undertake consultation in relation to the draft standard licence conditions.

RECOMMENDATIONS:

- (i) That the Committee approve the draft policy and application form for the grant, renewal or transfer of a Sex Establishment Licence subject to any amendments the Committee wish to make, authority for which is delegated to the Head of Legal, HR and Democratic Services; and
- (ii) That the Committee approve the draft conditions for sex establishments for consultation, subject to any amendments the Committee wish to make, authority for which is delegated to the Head of Legal, HR and Democratic Services.

REASONS FOR REPORT RECOMMENDATIONS

1. The provisions of the Local Government (Miscellaneous Provisions) Act 1982 which pertain to the regulation of sex establishments have been adopted by the Council, and most recently, the amended provisions relating to sexual entertainment venues. Now that the provisions have been adopted, it is necessary to introduce a licensing policy and application form in relation to sex establishments generally, as well as a pool of licensing conditions to be imposed upon individual licences as necessary.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

2. The Council should implement a policy, application form and conditions for sex establishments in order to support and underpin the statutory licensing process contained within the Act.

DETAIL (Including consultation carried out)

3. **Adoption of legislation:**

Sex establishments can be regulated under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act'), provided the appropriate provisions of that Act have been adopted by Council as licensing authority for the area. The definition of sex establishments traditionally included sex cinemas, hostess bars and sex shops, but was widened by section 27 of the Policing and Crime Act 2009 to include sexual entertainment venues.

4. The Council originally adopted Schedule 3 of the 1982 Act insofar as it related to sex shops and sex cinemas in 1983, and subsequently readopted the provisions with effect from 3 July 1995.

5. A report was considered by the Licensing Committee on 14 July 2011 regarding the adoption of the power to licence sexual entertainment venues as provided for in the amended 1982 Act. A public consultation was subsequently carried out, and a further report was considered by the Committee on 22 March 2012, which resolved to recommend Council formally adopt the new powers. Council adopted the powers at its meeting of 11 July 2012, and delegated authority to the Head of Legal, HR and Democratic Services to prepare a draft policy (including application form) and standard conditions to be adopted by the Licensing Committee in due course.

6. **Sex Establishment Policy:**

A draft sex establishment policy has been prepared and is attached at appendix 1 to this report. The policy provides definitions of the types of establishments which fall within the remit of the policy and the licensing regime generally, sets out the requirements for holding a licence and grounds for refusal, and provides information on the application and appeal process.

7. The draft policy is a reflection of the current statutory licensing regime, home office guidance, and good practice from other local authorities.

8. **Sex Establishment Application Form:**

A draft application form for the grant, renewal or transfer of a sex establishment has been prepared and is attached at appendix 2 to this report.

10. Unlike other licensing regimes, there is no prescribed application form for an application under Schedule 3 to the 1982 Act. However, such an application must be in writing and contain the details set out in paragraph 10 of Schedule 3 along with such other details as the Licensing Authority may reasonably require. The draft form at Appendix 2 is proposed to be the recommended application form for applicants, although an application could still be valid if made without the form provided the required details are submitted. There must also be provision for submission of applications electronically.

11. **Sex Establishment Licensing Conditions:**

Schedule 3 to the 1982 Act gives the licensing authority the power to make regulations prescribing standard conditions applicable to licences for sex establishments. Conditions are effectively terms, conditions or restrictions placed upon a licence when it is granted, renewed or transferred. Standard conditions may include, but are not limited to:

- Opening and closing hours;
- Displays and advertisements on or in sex establishments;
- Visibility of the interior of a sex establishment to passers-by;
- Any change in use from one kind of sex establishment to another.

12. The licensing authority may also specify other conditions specific to individual premises, dependent on the type of activity undertaken and the type of premises. These may include, but are not limited to:

- Specifying minimum distances between the audience and performers;
- Control of access to changing room facilities;
- Control of private viewings.

13. A series of draft conditions are attached as appendix 3 to this report, and are presented to the Committee for initial comment and amendment prior to being released for consultation. Consultees include the trade and the public, and the results of the consultation will be presented to the Committee in due course before final adoption.

14. This report also seeks authority for the Head of Legal, HR and Democratic Services to make any amendments to the draft conditions as a result of initial consideration of the conditions by the Committee prior to embarking on consultation.

RESOURCE IMPLICATIONS

Capital/Revenue

15. Additional officer time in administering the licensing regime and any associated costs should be offset by additional fee income from applications. The level of fees would be kept under regular review.

The cost of enforcement is not able to be met from the income derived from fees charged.

Property/Other

16. None.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

17. The Local Government (Miscellaneous Provisions) Act 1982 as amended, gives licensing authorities the ability to regulate sex establishments with the adoption of Schedule 3 to the Act.

Other Legal Implications:

- 18. Section 17 of the Crime and Disorder Act 1998 places a statutory duty upon the Council to exercise its various functions with due regard to the likely effect of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.
- 19. The Human Rights Act 1998 requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. Any action undertaken by a 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.

POLICY FRAMEWORK IMPLICATIONS

20. None.

KEY DECISION? No

WARDS/COMMUNITIES AFFECTED:	
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SUPPORTING DOCUMENTATION

Appendices

1.	Draft Sex Establishment Policy
2.	Draft Sex Establishment Application Form
3.	Draft licensing conditions

Documents In Members' Rooms

1.	None.
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Equality Impact Assessment

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out.	No
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Other Background Documents

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

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	
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