

DECISION-MAKER:	COUNCIL
SUBJECT:	LICENSING OF SEXUAL ENTERTAINMENT VENUES
DATE OF DECISION:	11 JULY 2012
REPORT OF:	HEAD OF LEGAL, HR AND DEMOCRATIC SERVICES
STATEMENT OF CONFIDENTIALITY	
NONE	

BRIEF SUMMARY

This report is to inform Council of amendments to the Local Government (Miscellaneous Provisions) Act 1982 (“the 1982 Act”) which introduces a new category of sex establishment, namely sexual entertainment venues (“SEVs”) and for Council to give consideration to formal adoption of the new licensing provisions.

RECOMMENDATIONS:

- (i) That Council notes that at its meeting on 22 March 2012, the Licensing Committee considered the amendments to the 1982 Act and recommend that Council adopt the licensing provisions for SEVs;
- (ii) Resolves to adopt Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009 (“the 2009 Act”), and the following recommendations shall apply:-
 - That the new statutory provisions that will apply to Southampton City Council are with effect from the 20 August 2012;
 - That authority be delegated to the Licensing Committee to discharge its statutory functions (including the adoption of policy and setting of fees) under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended;
 - That the Head of Legal, HR and Democratic Services be given delegated authority to:
 - arrange formal publication of the statutory notices in a local newspaper;
 - approve applications in such cases where no objections are made to the grant, renewal, transfer or variation of sex establishment licences;
 - prepare a draft policy together with standard conditions application to sex establishments for consideration and adoption by the Licensing Committee.

REASONS FOR REPORT RECOMMENDATIONS

1. The parts of the 1982 Act are adoptive, and the Council is required to consider amendments introduced to the 1982 Act by virtue of the Policing and Crime Act 2009 to consider whether or not to adopt the new provisions relating to sexual entertainment venues.

DETAIL (Including consultation carried out)

2. On 14 July 2011, the Licensing Committee considered a report from the Acting Head of Legal and Democratic Services regarding the adoption of the power to licence sexual entertainment venues as provided for in the amended 1982 Act.
3. Following consideration of the available powers, the Licensing Committee resolved that public consultation be carried out regarding the adoption of such provisions. This was undertaken between 22 November 2011 and 20 December 2011 and resulted in five responses being received. These are reproduced at Appendix 1.
4. A further report was considered by the Licensing Committee on 22 March 2012 following the public consultation and resolved to recommend to Council that consideration be given to the formal adoption of the legislation to licence sexual entertainment venues together with associated legal provisions and delegations.
5. If Council were to resolve to adopt the provisions, a further report would be prepared for consideration and determination by the Licensing Committee in respect of the preparation of a draft sex establishment policy together with standard conditions application to sex establishments.
6. Whilst the Licensing Act 2003 (“the 2003 Act”) regulates the sale or supply of alcohol, regulated entertainment and/or late night refreshment, regulation of such types of sexual entertainment as lap or pole dancing can only be achieved via adoption of Schedule 3 of the 1982 Act in respect of sexual entertainment venues.
7. Adoption of such powers must be made by Council and would enable a local authority to licence and regulate such entertainment on potentially wider grounds than is permitted under the 2003 Act, however, it should be made clear that representations on these types of sex establishment premises on moral grounds are not legitimate ground for objection.
8. 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 subsequently readopted them with effect from 3 July 1995.
9. Under the existing adopted provisions, there are currently four licensed sex shops and no licensed sex cinemas in Southampton.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

10. None, since consideration of adoption of the powers to licence SEVs is a legal duty.

RESOURCE IMPLICATIONS

Capital/Revenue

11. If adopted, the additional officer workload and associated costs should be offset by additional fee income from applications. The level of the fee would be kept under regular review.
12. The cost of enforcement is not able to be met from the income derived from the fee charged.

Property/Other

13. None

LEGAL IMPLICATIONS

Statutory Power to undertake the proposals in the report:

14. The 2009 Act amended the Local Government (Miscellaneous Provisions) Act 1982 with effect from 6th April 2010 by way of introducing a new category of sex establishments, namely sexual entertainment venues. This enabled local licensing authorities to adopt the provisions for regulating lap dancing and similar venues under Schedule 3 of the 1982 Act. Previous control of such establishments was limited to sex shops and sex cinemas.
15. If a local licensing authority has not made a resolution to adopt the provisions introduced by the 2009 Act within one year of it coming into force, it must, as soon as is reasonably practicable, consult local people about whether they should make such a resolution.
16. The purpose of this duty is to ensure that local licensing authorities consider the views of local people where, for whatever reason, they have not adopted the provisions.
17. Public consultation has been undertaken as set out in paragraph 3 above.

Adoption Procedure

18. The process of adoption of the legislation is by way of Council resolution. In considering such a resolution, Council may have regard to any recommendations made by its Licensing Committee.
19. Should Council decide to adopt the new provisions, 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.
20. It is recommended that Council delegate to the Licensing Committee responsibility for establishing the detail of any policies, standard conditions and fees. The licensing of SEVs is not a matter which can be determined by the Executive.
21. As part of the adoption process, the licensing authority must advertise its intention to adopt the legislation by way of public notice. The notice must set out the general effect of the provisions 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;
 - That licences may be granted, granted with conditions or refused.

Sexual Entertainment Venues:

22. The 2009 Act sets out the meaning of a “sexual entertainment venue” and “relevant entertainment” and are summarised below:

Sexual Entertainment Venue

“Any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or entertainer”

Relevant Entertainment

“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 also 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.

23. When 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
24. However, the list above is not 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 upon the content of the entertainment provided and not how it is described.
25. 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.*
26. 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 occasions 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:

27. 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.

28. 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.

29. 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 licence.

30. 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.

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.

31. **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 30 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

32. Local licensing authorities are not required to publish a licensing policy relating to sex establishments but can do so 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 or the fact that the location that the local authority considers appropriate for a sex shop may be different to that for a SEV.

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

33. 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.

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.

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

34. Should Council resolve to adopt the provisions relating to SEVs, then additional recommendations also need to be considered in respect of the following matters:
- 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 the publication of the 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 a statutory duty upon the Council 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 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 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. 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

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SUPPORTING DOCUMENTATION

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

Appendices

1.	Responses to public consultation regarding adoption of legislation
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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	
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Integrated Impact Assessment and Other Background documents available for inspection at:

WARDS/COMMUNITIES AFFECTED:	Not applicable
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