

<b>DECISION-MAKER:</b>	<b>LICENSING COMMITTEE</b>
<b>SUBJECT:</b>	LICENSING OF SEXUAL ENTERTAINMENT VENUES
<b>DATE OF DECISION:</b>	14 JULY 2011
<b>REPORT OF:</b>	HEAD OF LEGAL AND DEMOCRATIC SERVICES
<b>STATEMENT OF CONFIDENTIALITY</b>	
None	

### **BRIEF SUMMARY**

The Licensing Committee is requested to consider amendments to the Local Government (Miscellaneous Provisions) Act 1982, introducing a new category of sex establishment - "sexual entertainment venues" and to authorise consultation on whether to formally adopt the new statutory provisions.

### **RECOMMENDATIONS:**

- (i) That the Committee consider this report, and
- (ii) authorise the Head of Legal and Democratic Services to consult with interested parties on the adoption of the provisions and bring a further report prior to submission to full Council

### **REASONS FOR REPORT RECOMMENDATIONS**

1. Although the amendments to the Local Government (Miscellaneous Provisions) Act 1982 (the "1982 Act") are adoptive, the Council is required by the recent Policing and Crime Act 2009 (the "2009 Act") to consult on the adoption of the provisions relating to "sexual entertainment venues" ("SEVs").

### **DETAIL (Including consultation carried out)**

2. Following the implementation of Licensing Act 2003 (the "2003 Act") the Council, as Licensing Authority, has a statutory duty to licence premises for the sale or supply of alcohol, regulated entertainment and/or late night refreshment. Regulated entertainment includes music and performances of dance such as lap dancing but, under the 2003 Act, if no relevant representations relating to the licensing objectives are received from responsible authorities or interested parties, the Licensing Authority must grant the licence according to the terms of the application.
3. Conversely, if the provisions of Schedule 3 of the 1982 Act were formally adopted in relation to SEVs, licensing authorities would potentially be able to regulate such premises on wider grounds than the 2003 Act allows. In addition, the potential for comment on applications for SEVs from the community is not restricted by vicinity, as it is under the 2003 Act, where valid representations are restricted to persons or businesses in the vicinity of premises, bodies representing them or councillors.
4. 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.

6. It is proposed that the consultation will be with the proprietors of existing premises in Southampton identified as providing entertainment which the amended legislation seeks to regulate and with residents and businesses in the city.
7. It is intended that the consultation will be by correspondence with the identified premises, and a notice in the local press referring any interested parties to further detailed information on the City Council's web site
8. Southampton City 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 3<sup>rd</sup> July 1995.
9. Under the existing adopted provisions five licensed sex shops and no licensed sex cinemas currently have licences in Southampton.
10. Although the Council has discretion to adopt 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.
11. Such a recurring commitment would require considerable financial and staff resources, for which no budgetary provision is currently identified.

## **RESOURCE IMPLICATIONS**

### **Capital/Revenue**

12. If adopted, the additional officer workload should be relatively small, and any extra work and cost offset by additional fee income from applications. This will be kept under review. There is also the cost of advertising the proposal which will be met from fee income.
13. If the new provisions were not adopted, there would be an ongoing unfunded resource implication for the procedures outlined in paragraphs 8 and 9 above.

### **Property/Other**

14. None.

## **LEGAL IMPLICATIONS**

### **Statutory Power to undertake the proposals in the report:**

15. The 2009 Act amended the Local Government (Miscellaneous Provisions) Act 1982 with effect from 6<sup>th</sup> 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.
16. If Council decides not to adopt the provisions within one year of them coming into force (i.e. before 6 April 2011), then the legislation requires that the Council must consult local people, as soon as is reasonably practicable after that date, in order to consider their views about whether it should make such a resolution.

### **Adoption Procedure:**

17. 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.
18. 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.
19. The licensing of SEVs is not a matter which can be determined by the Executive.
20. 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:**

21. 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.
22. 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.
23. However, 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.
24. 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.
25. 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:**

26. **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.

27. **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.

**28. 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.

**29. 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.

**30. 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 23 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:**

31. 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.

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:**

32. 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.

### **Consultation Regarding the New Provisions**

33. Whilst there is no statutory requirement for the local authority to consult with local people as regards making a resolution to adopt these provisions prior to 6 April 2011 (See paragraph 4.4 above), the licensing team has informally consulted the following parties and sought their views on the new provisions to assist the Committee and Council when considering the adoption of the provisions:

- Existing operators of premises which are within the definition of SEVs
- The Chief Officer of Police
- Community Safety

Where responses have been received, they are attached as Appendix A to this report.

### **Consideration of Adoption of New Powers by Council**

34. It is intended that Council will consider the recent amendments and consider as to 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:

- The date that the new regime will come into effect;
- Delegation of the statutory function (to include the setting of fees) to

- the Licensing Committee;
- Delegation of powers to officers to approve applications 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 matter set out in this report must be considered in light of the above obligations.

**POLICY FRAMEWORK IMPLICATIONS**

37. None.

<b>AUTHOR:</b>	Name:	John Burke	Tel:	023 8083 3002
	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.	
2.	

**Documents In Members’ Rooms**

1.	None
----	------

**Integrated Impact Assessment**

Do the implications/subject/recommendations in the report require an Integrated Impact Assessment to be carried out?	Yes/No
--	--------

**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:**

<b>WARDS/COMMUNITIES AFFECTED:</b>	Not applicable
------------------------------------	----------------