

LICENSING AND SAFETY COMMITTEE

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SEX ESTABLISHMENTS AND SEXUAL ENTERTAINMENT VENUES

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Summary

To advise Members of the changes to the Local Government (Miscellaneous Provisions) Act 1982 introduced by the Policing and Crime Act 2009 in respect of Sexual Entertainment Venues and to recommend a way forward.

1. Budget and Policy Framework

- 1.1 The Council approved the existing Statement of Licensing policy for use in November 2007 and it remains in force for a period of 3 years.
- 1.2 This policy is used when dealing with issues raised under the Licensing Act 2003 only.
- 1.3 The powers the Council has to regulate sex establishments are contained in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. In order to be able to use these powers a local authority has to adopt them through a prescribed process. Medway formally adopted the current provision on 19 July 2000 and delegated the licensing function to a sub-committee of Licensing & Safety.
- 1.4 This is a matter for the Licensing and Safety Committee to decide.

2. Background

- 2.1 The Council has a current policy setting a limit of two sex establishments licences allowable within the Medway area – this is likely to be affected by the EU Services Directive (2006/123/EC) and may need to be reviewed.
- 2.2 The types of premises currently falling within the criteria for licensing are sex shops and sex cinemas. Medway currently licenses 1 sex shop, in High Street, Chatham. There are no sex cinemas. These

premises have not given rise to complaint or required enforcement action.

- 2.3 Section 27 of the Policing and Crime Act 2009 has extended the provisions of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 by introducing a new category of sex establishment called “sexual entertainment venues”. The purpose of this amendment is to give Local Authorities greater control over venues, currently licensed under the Licensing Act 2003, that provide some form of sexual entertainment. In order to implement these amendments a local authority must adopt the legislation. Adoption of the provisions is not mandatory. These provisions came into effect on 6 April 2010.
- 2.4 A sexual entertainment venue is defined as “any premises at which relevant entertainment is provided before a live audience for financial gain of the organiser or the entertainer”
- 2.5 The meaning of “relevant entertainment” is any live performance or live display of nudity, which is of such a nature that 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). An audience can consist of just one person (e.g. where the entertainment takes place in private booths).
- 2.6 It is expected that this would apply to the following forms of entertainment:
- Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows
 - Live sex shows
- 2.7 If these provisions are adopted, there is an exemption for premises that provide sexual entertainment infrequently. These are defined as premises where there are no more than 11 events of sexual entertainment in any period of 12 months that the individual events last no more than 24 hours and there is at least a month between each event. These premises will continue to be regulated under the Licensing Act 2003
- 2.8 If a Council does not make a resolution to adopt Schedule 3 of the 1982 Act, within one year of the Policing and Crime Act 2009 (one year = April 2011) coming into force, it must as soon as reasonably practicable consult local people about whether it should make such a resolution.
- 2.9 There is no statutory requirement for a local authority to have a sex establishment policy against which to evaluate applications for sexual

entertainment venues, but the Home Office considers it to be best practice. Good practice dictates that this policy would need to be publicly consulted upon.

2.10 The policy will need to cover such matters as:

- Administrative matters such as application procedures, hearing procedures
- The suitability of the applicant to hold a licence
- The locality and number of sex establishments likely to be allowed
- The character of the relevant locality
- Human rights assessment
- Equalities assessment.

2.11 The Council may delegate the hearing and determination of applications to a committee.

3. The Current Situation

3.1 Venues that provide lap dancing, pole dancing and the like do not, currently, require a separate licence. Previously this would have been included as music and dancing on a Premises Licence granted under the Licensing Act 2003.

3.2 Any representations against a Premises Licence can only be based on the four licensing objectives namely:

- The prevention of crime and disorder
- The prevention of public nuisance
- The protection of public safety
- The protection of children from harm

3.3 As a consequence licensing authorities cannot consider any objections from local people and businesses that may be based on matters outside the scope of the four objectives, such as whether a lap dancing club would be appropriate given the character and locality of the area in which it is proposed to be located.

4. Effects of the new legislation

4.1 The amendments to Schedule 3 of the 1982 Act will, in particular

- Allow local people to oppose an application for a sexual entertainment venue if they have legitimate concerns that it would be inappropriate given the character of an area, for example, if the area was primarily a residential area. However however, an objection cannot be made on strictly moral or religious grounds.

- Require licences to be renewed at least annually (as opposed to Premises Licences granted under the Licensing Act 2003 which run for the life of the business) at which point local people will have the opportunity to raise representations to the local authority.
- Allow a local authority to impose a wider range of conditions than they are currently able to under the Licensing Act 2003. Different conditions can apply for sexual entertainment venues to those already in place for sex shops and sex cinemas.
- Allow a local authority to decide whether or not to set a limit on the number of sex establishments of a particular type in a locality, as well as the number of sex establishments generally taking into account any effect produced by the provisions of EU Services Directive. The limit for a particular locality may be set as nil, but it is however unlikely that a local authority could set the limit as nil for the whole of its area without running the risk of judicial review.

5. Transitional Arrangements

- 5.1 If the provisions are adopted the transitional period starts on the date the amendments the Schedule 3 of the 1982 Act come into force in the relevant local authority area i.e. 'the 1st appointed day'. The 1st appointed day has to be not less than one month after the resolution being adopted. The resolution will need to be properly advertised to comply with the Schedule to the Act. The transitional period will last for 12 months and end on 'the 3rd appointed day'.
- 5.2 Existing operators who hold a premises licence or club premises certificate under the Licensing Act 2003 will not be given preferential treatment or be automatically granted licences under the provisions of Schedule 3 of the 1982 Act. They will be able to continue to operate over the 12-month transitional period.
- 5.3 During the first six months of the transitional period existing and new operators can apply for a sexual entertainment venue licence. At the end of this 6-month period (i.e. the 2nd appointed day') the licensing authority must consider all applications together and cannot grant any licences until all the applications have been considered. Once considered the licensing authority can grant as many licences as it sees fit.
- 5.4 After the first six months licences can still be applied for and each application must be considered individually on its own merits.
- 5.5 Applications for sexual entertainment venue licences will be made to the Council with a copy being sent to the Police. Notice of the application must be given in the local press and displayed on the premises. If granted, conditions may be imposed related to amongst other things, regulating opening times, the display of advertisements and the visibility of the interior of the premises to passers by.
- 5.6 New applications decided on or after the 2nd appointed day become effective immediately.

5.7 Applications for premises already operating as sexual entertainment venues, but under the Licensing Act 2003, may be decided on or after the 2nd appointed day, but do not go live under the new legislation until the 3rd appointed day

5.8 Any condition on an existing Premises Licence granted under the Licensing Act 2003, which relates exclusively to sexual entertainment will be deemed to have been deleted from the Premises Licence at the end of the 12-month transitional period (the 3rd appointed day)

6. Risk Management

6.1 The provisions contained in Schedule 3 of the 1982 Act are adoptive and there are prescribed procedures to be followed for adoption to be successful:

- The Council must pass a resolution, adopting Schedule 3, specifying the day the provisions are to come into effect (this day can be no earlier than one month after the resolution)
- The Council must then publish a notice in a local newspaper in two consecutive weeks stating that they have passed such a resolution and its general effect. (The first notice must appear no later than 28 days before the date the provisions come into force)

Failure to follow the correct procedures could result in challenge against any subsequent decisions on enforcement action.

6.2 Putting in place a sex establishments licensing policy will aid transparency and consistency of approach. However careful consideration will need to be given to its content, particularly any numerical limits set, to ensure that they can be legitimately justified and judicial review avoided. Such a policy would need to be subject to wide consultation with stakeholders in order to be meaningful and thus needs some months to be developed.

6.3 If the Council do not adopt the new licensing powers for sexual entertainment venues at an early stage, then local residents and businesses could become critical that the Council is content to rely upon potentially less stringent controls afforded by the Licensing Act 2003.

7. Financial and legal implications

7.1 Section 17 Crime & Disorder Act 1998 - The introduction of a new licensing regime under Schedule 3 of the 1982 Act gives the Council new powers to tackle issues of concern to communities around crime and anti social behaviour associated with sex establishments.

7.2 The licensing team will continue to engage in effective partnership working with agencies such as the police and other relevant authorities to deliver effective enforcement in respect of crime and anti social behaviour.

- 7.3 There are no set statutory fees for the licensing of sex establishments or sexual entertainment venues. There can be different fees set for each type of licence, but they must be set at a level aiming only to recoup the council's costs and be capable of being justified as such.
- 7.4 It is anticipated that premises applying for a sexual entertainment venue licence will also be licensed under the Licensing Act 2003 (for alcohol etc). The same Licensing Officers will be used for enforcement visits under both sets of legislation. Thus combined inspections may be carried out and costs minimised.

8. Options

- 8.1 **Option 1** To take no action and continue to enforce sexual entertainment through the provisions of the Licensing Act 2003. However the legislation would then require a consultation process being undertaken next year (i.e. after April 2011) to ascertain public opinion. The outcome of the consultation might then encourage adoption of the powers at a later stage.
- 8.2 **Option 2** To be proactive and adopt Section 27 of the Policing and Crime Act 2009 which amends Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 in relation to sexual entertainment venues I. This could be done either:
- **Option 2A** Without setting a licensing policy and determining each application on its own merits. With this option the operational date (1st appointed day) could follow fairly swiftly after the resolution. One month is the statutory minimum lead-in time. If the Committee wished to pursue this option the Committee would need to recommend adoption to full Council, with a recommendation that provisions come in to effect as soon as possible.
 - or, **Option 2B** with the intention of introducing of a licensing policy to ensure transparency and consistency and also to guide operators intending to make application/s for any type of sex establishment in the area of Medway. The lead in time will need to be much greater if a Licensing policy is to be developed and consulted upon prior to the first appointed day. A realistic timescale for this option would be to work towards approving and publishing a policy by the end of January 2011, with the first appointed day being set as say 1 April 2011. If the Committee wished to pursue this option officers would commence drafting a policy and report back to the Committee (probably in October) before commencing public consultation on the policy. The Committee would need to recommend adoption to full Council, but recommend that the provisions do not come in to effect until a later date to allow for the time to adopt the policy, e.g. 1 April 2011
- 8.3 **Option 3** To adopt the provisions, but not until after a licensing policy has been drafted and consulted upon. Whilst the resolution would not be made until later (e.g. January 2011) the operational date could then follow on more quickly than with option 2B. If the Committee wished to pursue this option the Committee could indicate that it is minded to

recommend to Council adoption of the provisions but defer actual referral until after the policy has been consulted upon.

9. Recommendations

- 9.1 The Committee is asked to consider the options within the above report and to decide which option as set out in paragraph 8 it wishes to pursue.

Reference documents:

Local Government (Miscellaneous Provisions) Act 1982 introduced by the Policing and Crime Act 2009.

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