

## LICENSING AND SAFETY COMMITTEE

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### SEX ESTABLISHMENTS AND SEXUAL ENTERTAINMENT VENUES

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#### Summary

The purpose of this report is to ask the Licensing & Safety Committee to consider the draft Policy Statement proposed following changes to the Local Government (Miscellaneous Provisions) Act 1982 introduced by the Policing and Crime Act 2009 in respect of Sexual Entertainment Venues.

#### 1. Budget and Policy Framework

1.1 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, which is ultimately a matter for Full Council.

#### 2. Background

2.1 The Council at its meeting on 27 November 2002 set a limit on the number of sex establishments licenses allowable to be a maximum of two within the Medway area. This is likely to be affected by the EU Services Directive (2006/123/EC) and will need to be reviewed; this would be a decision for Full Council.

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 however 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 include 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 for sexual entertainment venues to a committee, or an officer.
- 2.12 The decision of the Licensing & Safety Committee on the 30 June 2010 was for officers to prepare a draft policy statement, consult and report back to this committee.
- 2.13 Should members decide to go forward with the draft policy statement Fees and Charges will need to be set and approved and amendments made to the scheme of delegations, and these are matters for Full Council.

### **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. Interestingly 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 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 1<sup>st</sup> 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 3<sup>rd</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> appointed day, but do not go live under the new legislation until the 3<sup>rd</sup> 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 3<sup>rd</sup> 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.
- 6.3 If the Council does not adopt the new licensing powers for sexual entertainment venues at an early stage, then local residents and businesses could criticise the Council for being content to rely upon potentially less stringent controls afforded by the Licensing Act 2003.

## **7. Consultation**

- 7.1 As instructed by members at the meeting of the Licensing & Safety Committee on 30 June 2010 a draft Policy Statement has been prepared, correctly advertised as part of a 6-week consultation in the local paper, on the Council website and at the local offices. Details of the consultation have also been sent to responsible authorities, members and members of the trade.
- 7.2 Two responses have been received, one of which agreed with the statement and the other had no further comments to make.

## **8. Financial and legal implications**

- 8.1 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.
- 8.2 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.
- 8.3 There are no statutory fees for 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.
- 8.4 Upon approval of this report officers will prepare a statement of fees and charges that reflect the expected cost of the service for approval by Council as part of the budget setting process.
- 8.5 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.

## **9. Options**

In respect of sexual entertainment venues, the options available for members to consider are listed below.

- 9.1 Options relating to adoption of the sexual entertainment venue policy: -
- 9.1.1 **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 force adoption of the powers at a later stage.
- 9.1.2 **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. 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 (1<sup>st</sup> appointed day) could follow fairly swiftly after the resolution. One month is the statutory minimum lead-in time.
- 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 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.

9.1.3 **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.

9.1.4 Members stated that they were minded to proceed with option 2B, hence the consultation being carried out and this report.

9.2 Options relating to decision-making and officer delegations: -

9.2.1 **Option 1** – All applications in respect of sex establishments to go to the Full Licensing and Safety Committee in line with the current process for sex shops.

9.2.2 **Option 2** - Applications in respect of sex establishments to go to the Full Licensing and Safety Committee where there have been relevant representations received in relation to an application or where conditions have been proposed by officers but not accepted by the applicant and officer delegations to grant any applications whereby no representations have been received and the officer is able to agree suitable conditions with the applicant.

9.2.3 Officers are not able to accurately predict the number of applications expected under this legislation, as establishments may decide to limit “relevant entertainment” taking place to not more than one a month and no more than eleven in a twelve-month period under the Licensing Act 2003, but it is envisaged to be not more than 10 received during the first year.

## **10. Recommendations**

The Committee is recommended to: -

- 10.1 Recommend the adoption of Section 27 of the Policing and Crime Act 2009 to Full Council.
- 10.2 Consider and comment where necessary on the policy as set out in **Appendix A** and forward to Full Council for approval.
- 10.3 To determine which of the options relating to the decision-making process and officer delegations it wishes to recommend to Full Council and to recommend that Full Council amend the terms of reference of the Committee and the Employee Delegations Scheme (both as set out in the Constitution) accordingly.

### **Background papers**

- 1 Committee papers for the Licensing and Safety Committee held on 30 June 2010
- 2 Consultation papers.

### **Lead officer contact**

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