

Taunton Deane Borough Council

Full Council – 5 October 2010

Regulation of Sexual Entertainment Venues

Report of the Licensing Manager

(This matter is the responsibility of Executive Councillor Ken Hayward)

1. Executive Summary

Full Council is asked to consider adopting the amended provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, which introduced an adoptive licensing regime for “sexual entertainment venues” and delegating the power to administer and enforce the regime to the Licensing Committee.

2. Background

2.1 Currently, the only control over sexual entertainment venues is the requirement to obtain a Premises Licence under the Licensing Act 2003, in the same way that a pub or nightclub must be licensed to sell alcohol and provide entertainment. No special provisions are made in the 2003 Act for sexual entertainment venues. If an application is submitted to the licensing authority for a Premises Licence, the authority must grant the licence, subject to certain mandatory conditions.

2.2 If relevant representations are made by interested parties, for example residents or local businesses or a responsible authority, for example the Police or Fire Service of the area, then the authority can, following a hearing, impose other conditions or reject the application. Even then, under the current regime, it will only be able to do so where such a step is necessary to promote one of the four licensing objective set out in the Act as outlined below:-

- Prevention of public nuisance;
- Prevention of crime and disorder;
- Public safety; and
- Protection of children from harm.

- 2.3 Section 27 of the Policing and Crime Act 2009 has amended the Local Government (Miscellaneous Provisions) Act 1982 by introducing a new category of sex establishment called 'sexual entertainment venue'. This amendment allows local authorities to regulate lap dancing clubs and similar venues under Schedule 3 of the 1982 Act as is currently the case with sex shops and sex cinemas.
- 2.4 Section 27 of the Policing and Crime Act 2009 also gives Local Authorities more powers to control the number and location of lap dancing clubs and similar venues in their area.
- 2.5 These powers are however not mandatory and only apply where they are adopted by Local Authorities. Where adopted, these provisions allow local authorities to refuse an application on potentially wider grounds than is permitted under the Licensing Act 2003.

3. Report

- 3.1 The Council has adopted the Local Government (Miscellaneous Provisions) Act 1982 so that sex cinemas and sex shops must be licensed and currently licenses two sex shops. The Policing and Crime Act 2009 has amended the Local Government (Miscellaneous Provisions) Act 1982 Act to allow the Authority to license sexual entertainment venues where relevant entertainment is provided before a live audience for financial gain of the organiser or entertainer.
- 3.2 The meaning of 'relevant entertainment' is "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)." An audience can consist of just one person (for example, where the entertainment takes place in private booths).
- 3.3 Guidance issued by the Home Office further clarifies the definition of relevant entertainment by stating that "we would expect that the definition of relevant entertainment would apply to the following forms of entertainment as they are commonly understood:-
 - Lap dancing;
 - Pole dancing;
 - Table dancing;
 - Strip shows;
 - Peep shows; and
 - Live sex shows".

3.4 Limited provision is made within the Act for premises to provide relevant entertainment without authorisation, provided that certain limits are not exceeded as set out below:-

- There have not been more than eleven occasions on which relevant entertainment has been so provided which fall (wholly or in part) within the period of 12 months ending with that time;
- No such occasion has lasted for more than 24 hours; and
- No such occasion has begun within the period of one month beginning with the end of any previous occasion on which relevant entertainment has been so provided (whether or not that previous occasion falls within the 12 month period).

If the amendment to the 1982 Act is adopted, any premises wishing to provide relevant entertainment beyond these limits would require to be licensed.

3.5 If adopted, the Act would allow the Council wider powers to refuse a Licence or impose conditions than it would be permitted under the Licensing Act 2003 for example:-

- The business would be managed for the benefit of a third party who would be refused a licence;
- The number of sex establishments in the locality equals or exceeds the number considered appropriate;
- Whether it would be inappropriate to grant a Licence having regard to:-
 - The character of the locality;
 - The use of other premises in the locality; and
 - The layout, character, condition or location of the premises.

3.6 In order to implement these provisions, the Council will need to adopt the relevant provisions which have been inserted into the 1982 Act.

3.7 Whilst it is not compulsory to adopt the amendment to Schedule 3 of the Local Government (Miscellaneous) Act 1982, if the Local Authority has not passed a resolution to adopt Schedule 3 by 6 April 2011 the legislation requires that it **MUST**, as soon as practicable, consult local people about whether it should make such a decision. 'Local people' means people who live and work in the local Authority area.

3.8 Should the Council resolve to adopt the amendment to Schedule 2, notices specifying the date that the resolution will come into effect will be required to be placed in a local newspaper circulating in their area. The first notice must not be later than 28 days before the day specified in the resolution for the coming into force of Schedule 3 in the local authority's area and the notice must also state the general effect of the Schedule.

4. Finance Comments

The Council will be able to charge a fee that is reasonable and proportionate to the cost of the authorisation procedure.

5. Legal Comments

- 5.1 Local Authorities have the ability to control the licensing of Sex Establishments by adopting Schedule 3 of the Act.
- 5.2 Paragraph 8 of Schedule 3 to the Act, provides that a Local Authority may grant or renew a licence for a Sex Establishment, on such terms and conditions and subject to such restrictions as may be specified
- 5.3 Paragraph 9 of Schedule 3 to the Act provides that a Local Authority may grant a licence for a period of one year or such shorter periods as it considers appropriate.
- 5.4 Paragraph 10 of Schedule 3 to the Act provides that a Local Authority requires an applicant to publish the fact of an application for a sex encounter venue in a local newspaper for not less than seven day after the day of application and notice of the application shall also be displayed for 21 day s beginning with on date of application on or near the premises.
- 5.5 Paragraph 12 (3) allows a local authority to refuse to renew or grant an application for a licence on any one or more of grounds (a) to (d):-
- (a) That the applicant is unsuitable to hold the licence, by reason of having been convicted of an offence or for any other reason;
 - (b) That if the licence were to be granted, renewed or transferred, the business to which it refers would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he had made the application himself;
 - (c) That the number of Sex Establishments in the relevant locality at the time the application is made is equal to or exceeds the number, which the authority considers appropriate for that locality;
 - (d) That the grant or renewal of the licence would be inappropriate having regard;
 - i) to the character of the relevant locality;
 - ii) to the use to which any premises in the locality are put; or
 - iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.
- 5.6 Paragraph 12 (4) allows a Local Authority to determine that it might be inappropriate to have any Sex Establishments at all in a given relevant locality.

- 5.7 Paragraph 13 enables a Local Authority to attach standard conditions to a licence for sex establishments.

6. Links to Corporate Aims

The adoption of the amendment of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 will afford the Council greater control than currently available under the Licensing Act and allow communities to ensure local focus in decisions made.

7. Environmental and Community Safety Implications

Adopting the amended provisions would increase the opportunity to impose conditions to improve community safety.

8. Equalities Impact

The proper regulation of this type of activity should help promote equality within Taunton Deane. Any Policy on the licensing of sex establishments subsequently adopted, would be subject to an Equalities Impact Assessment.

9. Risk Management

Adopting the recommendations will mean the Council can properly regulate this type of establishment in the public interest and can efficiently carry out its licensing functions.

10. Partnership Implications (if any)

None

11. Recommendations

- 11.1 That Council resolve to adopt the amended provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 with effect from 3 January 2011.
- 11.2 That Council resolve to delegate authority to the Licensing Manager to carry out the necessary advertising to comply with Section 2 of the Local Government (Miscellaneous Provisions) Act 1982.
- 11.3 That Council resolve to delegate the power to licence Sexual Entertainment Venues under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to the Community Services Manager or in his absence the Licensing Manager.

11.4 That Council resolve to delegate the power to determine policy and fees for sex establishments licensed under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to the Licensing Committee.

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