

LICENSING REGULATORY COMMITTEE

Adoption of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009

2nd September 2010

Report of the Licensing Manager

PURPOSE OF REPORT

To inform Members of amendments to the Local Government (Miscellaneous Provisions) Act 1982 with regard to the licensing of sex establishments, introduced by the Policing and Crime Act 2009, and to enable the Committee to make recommendations to Council to make the appropriate resolution to apply the new provisions in the district.

This report is public

RECOMMENDATION

- (1) That Council be recommended to resolve under Section 2(1) of the Local Government (Miscellaneous Provisions) Act 1982 that Schedule 3 to that Act as amended by Section 27 of the Policing and Crime Act 2009 is to apply to the area of the Council from the 1st November 2010, and that the Head of Legal and Human Resources be authorised to arrange for the publication of notices as required by Section 2(2) of the 1982 Act.

1.0 Background

1.1 Members may be aware that in September 2008 the then Home Secretary announced the Government's intention to give local people greater say over the number and location of lap dancing clubs in their area. This followed consultation with Local Authorities which highlighted concerns that existing legislation did not give communities sufficient powers to control where lap dancing clubs were established.

1.2 In an attempt to address these concerns, Section 27 of the Policing and Crime Act 2009 (the 2009 Act) reclassifies lap dancing clubs and similar establishments into a new category of Sex Establishment called a 'Sexual Entertainment Venue' (SEV) and gives Local Authorities in England and Wales the power to regulate such venues under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (the 1982 Act). For Members' information, Schedule 3 of the 1982 Act refers to the licensing of 'Sex Establishments', i.e. sex shops and sex cinemas, and has been amended to include paragraph 2A which defines a SEV and 'relevant entertainment'.

1.3 A SEV is defined as "any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer." Whereas the meaning of 'relevant entertainment' is given 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).”

- 1.4 Both definitions aim to provide a pragmatic interpretation and therefore an audience can consist of just one person. Whilst the determination of each case will be judged on its merits, it is expected 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
 - Live sex shows
- 1.5 As this list is only indicative, ultimately, decisions as to whether to license premises as SEVs shall depend on the content of the entertainment provided and not the name it is given. Furthermore, a ‘premises’ will include any vessel, vehicle or stall but does not include a private dwelling to which the public are not admitted.
- 1.6 Paragraph 2A also defines those premises that would not be classed as SEVs, namely:
- sex shops and sex cinemas (which are separately defined in Schedule 3 to the 1982 Act);
- premises which provide relevant 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.
- 1.7 The new powers also amend the Licensing Act 2003 (the 2003 Act) to ensure that premises for which an SEV licence is required, or held, do not also require a Premises Licence, Club Premises Certificate or Temporary Events Notice in order to provide relevant entertainment. This is because such entertainment is expressly excluded from the definition of ‘regulated entertainment’ found in the 2003 Act. However, if the premises also provide other licensable activities (e.g. the sale/supply of alcohol or the provision of regulated entertainment that is not relevant entertainment), they will nevertheless continue to require the relevant authorisation under the 2003 Act.
- 1.8 Because the new licensing arrangements are to be dealt with under the Local Government (Miscellaneous Provisions) Act 1982 rather than the Licensing Act 2003, they would fall within the remit of this Committee rather than the Licensing Act Committee.

2.0 Current Position

- 2.1 As with the powers to license sex cinemas and sex shops under the original provisions of Section 2 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, these powers are not mandatory and will only apply where they are adopted. This Council resolved on the 3rd November 1982 that the provisions of the original Schedule 3 should apply with effect from the 1st January 1983. In order to apply the new provisions introduced by Section 27 of the 2009, as set out above, it is necessary for the Council to make a further resolution under Section 2 of the 1982 Act.
- 2.2 This new legislation took effect on 6th April 2010 in England and can be adopted from that time. The adoption of these new measures does not give such premises an automatic entitlement to operate within the area; rather it provides the Council with the means by which applications for such premises can be properly determined. Furthermore, it would provide the Council with the means to refuse an application on potentially wider grounds than is permitted under the 2003 Act and will give local people a greater say over the regulation of lap dancing clubs and similar venues in the Lancaster City Council district.
- 2.3 Conversely, if the Council decides not to adopt the new powers to regulate SEVs, such premises can operate without licence and without appropriate controls.
- 2.4 It should be noted that if the Council has not adopted the new legislation by the 6th April 2011, Section 27 of the 2009 Act places an obligation on the Council to undertake a public consultation exercise to ascertain whether it should do so.

3.0 Procedure

- 3.1 The procedure to adopt the new provisions is set out in Section 2 of the 1982 Act. Firstly, the Council must pass a resolution that Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the 2009 Act, is to apply its area. The resolution must specify the day on which it shall come into force. The specified day must be more than one month after the day on which the resolution was passed.
- 3.2 The Council must then publish a Notice that it has passed the resolution for two consecutive weeks in a local newspaper. The first publication must not be later than 28 days before the day specified in the resolution for the provisions to come into force. The Notice should state the general effect of the resolution. On the basis that the Committee recommends Council to make the appropriate resolution, this could be considered by Council at its meeting on the 15th September 2010, and the resolution could be effective from the 1st November 2010.

4.0 Fees

Schedule 3 to the 1982 Act states that an applicant for the grant, renewal, variation or transfer of a Sex Establishment licence shall pay a reasonable fee determined by the appropriate authorities. The fee for the grant of a Sex Establishment licence is currently £5125.00 for an initial grant and then £2500 for renewal. If the appropriate resolution is passed by Council, recommendations will be brought to this Committee for an appropriate licence fee for an SEV licence.

5.0 Overview of the licensing process

The process by which Sex Establishments are licensed remains unchanged, as Section 27 of the 2009 Act only amends the definition of a Sex Establishment to include SEV's rather than to create a new licensing regime. Accordingly, an applicant for a Sex Establishment licence must submit the

application to the Council, including the prescribed fee, and advertise the application in the local press and on the premises. After the statutory 28 days whether objections are received or not the application would be determined by a hearing of the Licensing Regulatory Committee, which would resolve either to grant the licence (with additional conditions if necessary) or refuse the application on one or more of the grounds contained in the 1982 Act.

6.0 Conclusion

- 6.1 As detailed above, the Council must pass a resolution if it wishes to adopt these new provisions. The resolution must be made under Section 2 of the Local Government (Miscellaneous Provisions) Act 1982 stating that Schedule 3 as amended by Section 27 of the Policing and Crime Act 2009 has been adopted and shall apply to the Council's area.
- 6.2 The resolution must be made by full Council, and the Committee is therefore asked to recommend Council to make such a resolution and authorise the Head of Legal Services and Human Resources to publish the appropriate statutory Notice.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

None.

FINANCIAL IMPLICATIONS

The cost of the statutory notices can be met from the corporate advertising budget

Any costs associated with Licensing Enforcement officers' work involved in monitoring licensed premises will be met from within existing resources.

LEGAL IMPLICATIONS

The report has been prepared on behalf of the Head of Legal and Human Resources.

BACKGROUND PAPERS

None

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