

**BODY:** Licensing Act Committee

**DATE:** 11<sup>th</sup> October 2010

**SUBJECT:** Interim update of public consultation - Council's Sex Encounter Policy, regarding the control of Sex Establishments, Section 26 of Policing and Crime Act 2009.

**REPORT OF:** Kareen Plympton, Licensing Manager

**Ward(s):** All

**Purpose:** To provide Members with an interim update regarding feedback received so far following public consultation regarding the Council's draft Sex Establishment Policy.

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**Recommendations:**

- a) Members are invited to note the feedback received so far in relation to the draft Policy and proposals to adopt the provisions of Section 26 of the Policing and Crime Act 2009 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
- b) Delegate any further revisions of the Policy to the Chair of the Licensing Committee, Senior Head of Development and Environment, and Cabinet Portfolio Holder prior to consideration by Cabinet and Full Council.
- c) Note the revised implementation timetable for consultation, review and implementation.

## 1.0 Introduction

- 1.1 The increase nationally in the number of lap dancing clubs and adult entertainment venues since the implementation of the Licensing Act 2003 has become a concern for many local communities.
- 1.2 Central Government has responded to calls for further controls to be introduced, specifically governing lap dancing clubs and similar premises. This has resulted in the introduction of legislation in the form of the Policing and Crime Act 2009. This re-classifies current "Sexual Establishments" as 'Sexual Entertainment Venues' under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. (LGMPA 1982).

## 2.0 Legislative Proposals

- 2.1 As detailed above, Section 26 of the Policing and Crime Act 2009 introduces a new category of 'Sex Establishment' under Schedule 3, called a 'Sexual Entertainment Venue.' This is defined as 'any premises at which relevant

entertainment is provided before a live audience for the financial gain on the part of the organiser or the entertainer.'

- 2.2 'Relevant Entertainment' is defined as 'any live performance or any live display of nudity which is of such a nature that, ignoring financial gain, it must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience.' This includes pole dancing, lap dancing, strip tease and so on.
- 2.3 Such venues will require a Sex Establishment Licence. However, there is an exemption for premises which provide this type of entertainment 'infrequently.' The Act still permits sexual entertainment to be provided in premises, providing it occurs on no more than eleven occasions a year, with at least a month's "other" entertainment in between, without the need for it to be registered as a sexual entertainment venue.

### **3.0 Adoption of Provisions**

- 3.1 At its last meeting on 19<sup>th</sup> July 2010, Members agreed to adopt the relevant provisions of the Policing and Crime Act 2009, and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
- 3.2 Members also agreed to release the draft Sex Establishment Policy for public consultation.

### **4.0 Consultation**

- 4.1 Consultation in relation to the draft Sex Establishment Policy commenced at 12 noon on the 27<sup>th</sup> August 2010 and concludes at 12 noon on 19<sup>th</sup> November 2010.
- 4.2 A range of organisations and individuals have been directly consulted about the proposals, including:
- Sussex Police
  - Ward Councillors
  - Neighbourhood Panels and Residents Groups
  - Licensed premises in the Borough
  - Current operators of sex establishments
  - Hospitality and Trade associations
- 4.3 The draft Policy is placed on the Council's website in 2 locations to maximise accessibility, [www.eastbourne.gov.uk/licensing](http://www.eastbourne.gov.uk/licensing) and [www.eastbourne.gov.uk/consultation](http://www.eastbourne.gov.uk/consultation)
- 4.4 In addition, views and feedback regarding the draft policy are being sought via the Borough Council's pages on Facebook and Twitter. These are social networking sites, particularly popular with the 18–35 age bracket.
- 4.5 Early monitoring of these social networking sites has shown that more responses are elicited where direct questions are asked about the draft Policy. For example, Question of the day - "Should the Council control the number of sex encounter venues in the Borough?"

## **5.0 Overview of feedback**

- 5.1 To date, the Authority has received 6 responses via the on line consultation page. These are from persons operating a business or as residents in the Borough. No responses have been received via Twitter or Facebook to date. However, work is ongoing to generate interest and feedback via this medium.
- 5.2 There has been no feedback, positive or negative, regarding the content of the draft Policy however there is unanimous agreement that the provisions of the Policing and Crime Act 2009 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 should be adopted by the Council.
- 5.3 This would allow for greater Council control in relation to sex encounter venues, and communities to have a greater say in relation to the location and control of venues.
- 5.4 Following a formal request, the Licensing Manager has presented an overview of the draft Sex Encounter Policy to the Town Centre, Langney and St Anthony's Neighbourhood Panels. Residents and partners attending these Panels offered their support to the adoption of these provisions, and the broader draft policy.
- 5.5 Hard copies of the policy questionnaire were left for attendees to complete, since several do not have access on line facilities, and wanted to offer a fuller response. The Licensing Team are awaiting the return of these questionnaires, and feedback will be incorporated as appropriate. A copy of the questionnaire is included at Appendix 1.
- 5.6 Work is ongoing with the Council's Legal Team regarding the form and content of the Policy in the advent of Government guidance and legal interpretation. However, this should not significantly alter the key aims, objectives or content of the Policy.
- 5.7 Sussex Police have indicated that they support the adoption of the provisions, which will afford the Council and other enforcement partners with a wider range of powers to regulate activity.

## **6.0 Timetable For Implementation**

- 6.1 There is a slight revision in relation to the consultation and implementation timetable. This was agreed in conjunction with the Chair of Licensing to enable full and meaningful consultation to take place over a 12 week period.

6.2	<b>Procedure</b>	<b>To be Completed by</b>
	Public consultation	Public Consultation 27 <sup>th</sup> July - 19 <sup>th</sup> November 2010
	Full Licensing Committee: <ul style="list-style-type: none"><li>- To consider interim results of consultation</li><li>- Delegate any further revisions to Chair of Licensing Committee, Portfolio Holder and Senior Head</li></ul>	11 <sup>th</sup> October 2010

of Development and Environment prior to consideration by Cabinet and Full Council.	
Seek Cabinet Approval	15 <sup>th</sup> December 2010
Seek Annual Council Approval	23 <sup>rd</sup> February 2011
Publication of Policy	February 2011
Policy in force	March/April 2011

## **7.0 Community Safety and Links To Strategic Vision**

- 7.1 The introduction of the new licensing regime under Schedule 3 of the Local Government Miscellaneous Provisions Act 1982 gives the Council powers to tackle issues of concern to local communities around crime, disorder and anti social behaviour, associated with sex establishments.
- 7.2 The Licensing Team will continue to work in partnership with enforcement agencies such as Sussex Police and Trading Standards to deliver effective enforcement in respect of crime, disorder and anti social behaviour.
- 7.3 The Corporate Plan sets out the Council's priority themes and aims by 2015. It aims to promote:
- A prosperous economy offering an 'outstanding seaside destination and gateway to South Downs National Park;'
  - A wide range of employment;
  - A transformed and accessible Town Centre;
  - A modern sophisticated town that people want to live in, work & visit with space for businesses to grow;
  - More community enforcement activity;
- 7.4 The Sex Establishment Policy plays a key role in delivering these aims.

## **8.0 Policy Review**

- 8.1 If the relevant legislative provisions are adopted, the Sex Establishment Policy will be kept under regular review, at least every 3 years or sooner if required.

## **9.0 Recommendations**

- 9.1
- a) Members are invited to note the feedback received so far in relation to the draft Policy and proposals to adopt the provisions of Section 26 of the Policing and Crime Act 2009 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
  - b) Delegate any further revisions of the Policy to the Chair of the Licensing Committee, Senior Head of Development and Environment, and Cabinet Portfolio Holder prior to consideration by Cabinet and Full Council.
  - c) Note the revised implementation timetable for consultation, review and implementation.

## **10.0 Financial & Resource Implications**

- 10.1 Lap dancing, Pole dancing and similar venues are currently licensed under the Licensing Act 2003, and as such, the fees are set by statute. It is proposed that when the Council fully adopts the provisions of Section 26 of the Policing and Crime Act 2009, then fees will be set locally, having regard to the cost of implementation, administration and enforcement of the provisions. Applications will be renewed annually and the licence fee will be regularly reviewed to ensure that it covers the cost of the service.

## **11.0 Human Rights**

- 11.1 The provisions of the Human Rights Act, 1998, must be borne in mind by the Committee when taking licensing decisions under the Licensing Act, 2003. Particular regard should be had to Article 1 of the First Protocol, which relates to the protection of property and the peaceful enjoyment of possessions and property.
- 11.2 Article 8 relates to the right to respect for private and family life, home and correspondence - should also be borne in mind. While the Human Rights Act makes it unlawful for a local authority to act or to fail to act in a way that is incompatible with a Convention right, Article 1 of the First Protocol and Article 8 are both qualified rights which means that interference - to a justifiable extent - may be permitted as long as what is done:
- Has a basis in law;
  - Is intended to pursue a legitimate purpose
  - Is necessary and proportionate; and
  - Is not discriminatory;

## **Background Papers:**

The Background Papers used in compiling this report were as follows:

- Local Government (Miscellaneous Provisions) Act 1982;
- Policing and Crime Act 2009;
- Sexual Entertainment Venues, Guidance For England and Wales, Home Office 2010;

To inspect or obtain a copy of the above documents please refer to the contact officer, or visit [www.eastbourne.gov.uk/housing](http://www.eastbourne.gov.uk/housing).