

BODY: General Licensing Committee

DATE: 21st March 2011

SUBJECT: Control Of Sex Establishments and Setting of Fees

REPORT OF: Kareen Plympton, Licensing Manager

Ward(s): All

Purpose: On 23rd February 2011, Full Council passed a resolution to adopt the relevant provisions to enable the Council, as the Licensing Authority, greater control of sex establishments, in accordance with revisions to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and Section 27 of the Policing and Crime Act 2009.

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Recommendations: The Full Licensing Committee are recommended to:

- (1) Note the implementation timetable;
- (2) Set the relevant fees for functions associated for the licensing of sex encounter establishments.

1.0 Legislative Provisions

- 1.1 Section 26 of the Policing and Crime Act 2009 introduces a new category of 'Sex Establishment' under Schedule 3, called a 'Sexual Entertainment Venue' which 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.'
- 1.2 '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 will include pole dancing, lap dancing, striptease and so on.
- 1.3 These 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 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.
- 1.4 Central Government has the power to amend these limits, albeit not to shorten the intervals or increase the numbers allowed.

- 1.5 In summary, the amendments to Schedule 3 to the 1982 Act will:
- Allow local people to oppose an application for a Sex Establishment Licence if they have legitimate concerns that a Sexual Entertainment Venue would be inappropriate given the character of an area, for example, if the area was primarily a residential area.
 - Licences are to be renewed at least annually, at which point local people will have the opportunity to raise objections, if any, with the Local Authority.
 - Allow a Local Authority to reject a licence application if they believe that to grant a licence for a Sexual Entertainment Venue, including a lap dancing club, would be inappropriate given the character of a particular area.
 - Allow a Local Authority to set a limit on the number of Sexual Entertainment Venues that they think is appropriate for a particular area.
 - Allow a Local Authority to impose a wider range of conditions on the licences of Sexual Entertainment Venues than they are currently able to under the Licensing Act 2003.
- 1.6 The new legislative provisions took effect on 6th April 2010, but require a Local Authority to adopt them before they can be put into effect.
- 1.7 The Councils intention to adopt the provisions, alongside a Sex Encounter Policy has been fully consulted upon, and included:
- All statutory consultees under the Licensing Act 2003;
 - East Sussex Fire and Rescue Service;
 - All premises licence holders;
 - Neighbourhood Panels;
 - Ward Councillors.
 - Views were also sought via social networking sites including Facebook and Twitter.
- 1.8 Without exception, those offering feedback stated that they wanted the Council to adopt the provisions as a means to effectively control and manage sex encounter venues.

2.0 Adoption Procedure

- 2.1 The matter was considered twice by the Full Licensing Committee, and approved by Cabinet. The resolution to adopt the provisions was signed off by Full Council on 23rd February 2011.
- 2.2 The implementation of these provisions can be no earlier than one month after the date of the resolution, and is termed the "First Appointed Day."
- 2.3 The Council must publicise its adoption of the resolution in a local newspaper for 2 weeks and a 28 period elapse before the provisions

are to come into force.

- 2.4 It is recommended that the provisions apply from the 1st May 2011, thereby allowing Officers 28 days to advertise the resolution. 1st May 2011 will then become the "First Appointed Day."

3.0 Sex Encounter Policy

- 3.1 As part of the process, the Council has also adopted a Sex Encounter Policy. This helps to ensure that applicants, "interested parties" and statutory consultees are aware of the matters that the Authority will take into account when determining applications. The Policy allows the Authority discretion and flexibility in determining what constitutes "relevant locality," and the determination of applications on their own merits.
- 3.2 There is no requirement for the Council to have a Sex Encounter Policy, but this is considered good practice, since it sets out the matters that will be considered relevant by the Council and procedure to be followed.
- 3.3 The Sex Establishment Policy is available via www.eastbourne.gov.uk/licensing and covers:
- Administrative matters: application processes, hearings and conditions;
 - Applicant suitability;
 - Character of the relevant locality and number of establishments permitted.

4.0 Financial and Resource Implications

- 4.1 Lap dancing, pole dancing and similar venues are currently licensed under the Licensing Act 2003, and as such, the fees are set by statute.
- 4.2 Now that the Council has adopted the provisions of Section 26 of the Policing and Crime Act 2009, the fees need to be set locally, having regard to the cost of implementation, administration and enforcement of the provisions.
- 4.3 Applications will be renewed annually and the licence fee will be regularly reviewed to ensure that it covers the cost of providing the service.
- 4.4 Members are advised that the current fees for Licensed Sex Shops are set as follows:
- Application for a new sex shop.
£3,600
 - Application for a renewal of a sex shop.
£2,050

- Application for a transfer of a sex shop

£1,800

- 4.5 The Licensing Manager will bring to the meeting a list of fee levels adopted or anticipated by other Sussex Authorities where the provisions are adopted to act as a comparator.
- 4.6 Members are recommended to adopt these fees for an application for a sex encounter establishment, its renewal and transfer of a licence. These will be kept under review.

5.0 Community Safety and Links To Strategic Vision

- 5.1 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.
- 5.2 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.
- 5.3 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;

6.0 Policy and Fee Review

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

7.0 Recommendations

- 7.1 The Full Licensing Committee is recommended to:

(1) Note the implementation timetable;

(2) Set the relevant fees for functions associated for the licensing of sex encounter establishments.

8.0 Human Rights

- 8.1 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.
- 8.2 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 are 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.