

REPORT TO: LICENSING COMMITTEE - 23 FEBRUARY 2011

REPORT BY: LICENSING MANAGER

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**Local Government Miscellaneous Provisions Act 1982 – Schedule 3 – as amended by Section 27 of the Policing and Crime Act 2009.
Power to licence sexual entertainment venues.**

1.0 Purpose of report

The purpose of this report is for the Licensing Committee to consider recent amendments to the Local Government (Miscellaneous Provisions) Act 1982 (the “1982 Act”) that introduces a new category of sex establishment called “sexual entertainment venues” (“SEVs”). In addition the Licensing Committee is also required to recommend to Council that consideration is given to whether or not to formally adopt the new statutory provisions.

2.0 RECOMMENDATION

RECOMMENDED that:

- (1) The Licensing Committee note the contents of this report; and***
- (2) Recommend to Council that consideration is given to formal adoption of the new provisions.***

3.0 Background Information

- 3.1 Since the introduction of the Licensing Act 2003 (the “2003 Act”) in November 2005, the Council, as Licensing Authority, has a statutory duty to licence premises for the sale or supply of alcohol, regulated entertainment and/or late night refreshment. Regulated entertainment would include performances of dance such as lap dancing but under the 2003 Act, if no relevant representations relating to the four licensing objectives are received from responsible authorities or interested parties, then the Licensing Authority must grant the licence as applied for.
- 3.2 Conversely, if the provisions of Schedule 3 of the 1982 Act have been formally adopted in relation to SEVs, then this would enable local authorities to licence and regulate them on potentially wider grounds than is permitted under the 2003 Act. It will also give local people a greater say over the regulation of SEVs in their area. However, it should be made clear that representations on moral grounds to the nature and type of premises are not regarded as legitimate grounds for objection.
- 3.3 Portsmouth City Council originally adopted Schedule 3 of the 1982 Act in so far as they related to sex shops and sex cinemas on 1 December 1982.

4.0 Legal Considerations

- 4.1 Section 27 of the Policing and Crime Act 2009¹ (the “2009 Act”) introduces a new category of sex establishment called “sexual entertainment venues” (SEVs) which will now enable local authorities to regulate lap dancing clubs and similar venues under Schedule 3 of the 1982 Act. Previous definitions were limited to either sex shops or sex cinemas.
- 4.2 This new provision is intended to give local authorities more powers to control the number and location of SEVs in their area. However, these powers can only be exercised if they are formally adopted by local authorities.
- 4.3 Should the Council decide to adopt the provisions, a further resolution will be necessary to incorporate the new provisions.
- 4.4 If the Council decides not to adopt the provisions within one year of them coming into force (i.e. before 6 April 2011), then the legislation requires that the Council must consult local people, as soon as is reasonably practicable after that date, in order to consider their views about whether it should make such a resolution.

5.0 Adoption Process

- 5.1 The adoption procedure is by way of formal resolution of the authority and therefore is a matter to be determined by Council. In considering such a resolution, Council may have regard to any recommendation made by the Licensing Committee.
- 5.2 If Council decides to adopt the new provision it must state the date upon which the new regime is to come into effect which must be at least one month after the resolution is made.
- 5.3 The Council is required to publish a notice that it has passed such a resolution in two consecutive weeks in a local newspaper. The first publication date must not be later than 28 days before the day specified in the resolution when the new regime is intended to commence.
- 5.4 The notice must also state the general effect of the provisions adopted which will include:
 - That sexual entertainment venues will be required to apply for a licence;
 - That there will be an opportunity for objections to be made to the grant, renewal, variation and transfer of licences; and
 - That licences may be granted; granted with conditions or refused.

¹ Section 27 of, and Schedule 3 to the Policing and Crime Act 2009 came into force in England on 6 April 2010 as did the Policing and Crime Act 2009 (Consequential Provisions) (England) Order 2010.

6.0 Sexual Entertainment Venues

- 6.1 Paragraph 2A of Schedule 3 as inserted by section 27 sets out the meaning of a “sexual entertainment venue” and “relevant entertainment” for the purposes of the statutory provisions.

A sexual entertainment venue is defined as:

“Any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or entertainer.”

Relevant entertainment is defined 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).”

It should be noted that an audience can consist of just one person e.g. when the entertainment takes place in private booths.

Relevant entertainment is therefore different from regulated entertainment as defined in the Licensing Act 2003.

- 6.2 In terms of considering what constitutes “relevant entertainment” each case shall be judged on its merits but the informal guidance produced by the Home Office suggests that the definition of relevant entertainment would apply to the following forms of entertainment as they are most commonly understood:

- Lap dancing
- Pole dancing
- Table dancing
- Strip shows
- Peep shows
- Live sex shows.

- 6.3 However, the above list is not exhaustive and, as the understanding of the exact nature of these descriptions may vary and therefore should merely be used as an indicator for certain types of entertainment as ultimately decisions to licence premises as sexual entertainment venues shall depend on the content of the entertainment provided and not the name it is given.

- 6.4 The relevant entertainment must be provided for the financial gain of the “organiser” or “entertainer”.

“Organiser” means any person who is responsible for the organisation or management of the relevant entertainment or the premises at which the relevant entertainment is provided. In most cases this definition will relate to the manager of the premises but there could be circumstances where it will relate to an individual who is responsible for organising the relevant entertainment on

behalf of the persons responsible for the management of the premises.

6.5 The 1982 Act also sets out those premises that are NOT sexual entertainment venues. These are:

- Sex shops and sex cinemas;
- Premises which provide 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.
- Private dwellings with no public admittance.

7.0 Transitional Provisions

7.1 Transitional Period

Should a local authority resolve that the new provisions will have effect in its area, the new legislation sets out a “transitional period” which will last for 12 months beginning with the date that the local authority resolves that the 2009 Act will come into force in its area – this date would be known as “the 1st appointed day”. Six months following the 1st appointed day will be known as the “2nd appointed day” and the day on which the transitional period ends will be known as the “3rd appointed day”.

These dates will vary across individual authority areas as it will be dependent upon when local authorities resolve to adopt the new provisions.

7.2 Existing Operators

In order to allow sufficient time for existing operators to comply with the new regime (i.e. those operators who, immediately before the 1st appointed day, have a licence under the 2003 Act and lawfully use premises as a SEV) they will be allowed to continue to provide relevant entertainment until the 3rd appointed day or until the determination of any application submitted before that time (including any appeal against the refusal to grant a licence), whichever is the later.

7.3 New Applicants

New applicants are considered to be those persons who wish to use premises as a SEV after the 1st appointed day but do not already have a premises licence or club premises certificate under the 2003 Act or do have such a licence but have not taken any steps towards operating as such.

After the 1st appointed day, new applicants will not be able to operate as a SEV until they have been granted a sexual entertainment venue licence.

7.4 Determining Applications Received On or Before the 2nd Appointed Day

Applicants will be able to submit their application for a SEV from the 1st appointed day onwards.

However, as the local authority is able to refuse applications having regard to the number of sex establishments they consider appropriate for a particular locality, all applications made on or after the 1st appointed day and on or before the 2nd appointed day shall be considered together. This is to ensure that applicants are given sufficient time to submit their application and that all applications received on or before the 2nd appointed day are considered on their individual merit and not on a first come, first served basis.

No applications will be determined before the 2nd appointed day. After this date the local authority must decide what, if any, licences should be granted.

If a new applicant is granted a licence it will take effect immediately. If an existing operator is granted a licence, it will not take effect until the 3rd appointed day, up to which point they will be allowed to continue to operate under their existing premises licence or club premises certificate.

7.5 Determining Applications Received After the 2nd Appointed Day

Applications made after the 2nd appointed day shall be considered when they are made but only after all applications made before or on the 2nd appointed date have been determined.

As in paragraph 7.4 above, licences granted to new applicants shall take effect immediately and licences granted to existing operators will take effect from the 3rd appointed day or, if later, the date the application is determined.

8.0 Licensing Policies

8.1 Local authorities are not required to publish a licensing policy relating to sex establishments but can do if it wishes so long as it does not prevent any individual application from being considered on its merits at the time the application is made.

A policy may include statements about where the local authority considers a location for such venues to be appropriate or inappropriate. This could be set out in general terms by reference to a particular type of premises, such as a school or place of worship, or more specifically, by reference to a defined locality.

Equally, the policy could give an indication of how many sex establishments, or sex establishments of a particular kind, they consider to be appropriate for a particular locality.

Different policies or separate sets of criteria may be applied in respect of different types of sex establishments. This may relate to distinctions between

the operating requirements of different establishments for the fact that the location that the local authority considers appropriate for a sex shop may be different to that for a SEV.

At present, the policy of the Council relating to the licensing of sex establishments (shops and cinemas) is to consider each case on individual merit (minute no. 13/2002 refers).

9.0 Licence Conditions

- 9.1 If a local authority has decided to grant a licence it has power to impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual premises concerned or standard conditions applicable to all sex establishments, or particular types of sex establishments.

Examples of the matters that standard conditions may address can include, but are not restricted to:

- The hours of opening and closing
- Displays and advertisements on or in sex establishments
- The visibility of the interior of a sex establishment to passers-by
- Any change of use from one kind of sex establishment to another.

If such standard conditions are introduced by the local authority, they will apply to every licence granted, renewed or transferred by the authority unless they have been expressly excluded or varied.

10.0 Consultation Regarding the New Provisions

- 10.1 Whilst there is no statutory requirement for the local authority to consult with local people as regards making a resolution to adopt these provisions prior to 6 April 2011 (See paragraph 4.4 above), the licensing manager has informally consulted the following parties and sought their views on the new provisions to assist the Committee and Council when considering to adopt any resolution:

- Existing operators of SEVs
- The Chief Officer of Police
- Solent Feminist Network
- Hidden Violence Unit, Community Safety

Their responses are attached as Appendix A to this report.

11.0 Consideration of Adoption of New Powers by Council

- 11.1 It is intended that Council will consider the recent amendments and give consideration as to whether or not to formally adopt the new licensing provisions at its meeting on 22 March 2011.

Should Council resolve to adopt the provisions then further recommendations will be made in respect of the following matters:

- The date that the new regime will come into effect;
- Discharge of its statutory function (to include the setting of fees) to the Licensing Committee;
- Delegation of powers to officers to approve applications where no objections to licences have been received;
- Arrangements for publication of statutory notices;
- Preparation of proposed policy and standard conditions for consideration and approval by the Licensing Committee;

12.0 Equalities Impact Assessment

- 12.1 A preliminary equalities impact assessment has been undertaken in respect of this proposal.

13.0 Appendices

Appendix A Responses received in respect of adoption of the new provisions;

Appendix B Home Office Guidance relating to Sexual Entertainment Venues



Licensing Manager