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| BODY: | Licensing Act Committee |
| DATE: | 19 July 2010 |
| SUBJECT: | Control Of Sex Establishments, Section 26 of Policing and Crime Act 2009 |
| REPORT OF: | Kareen Plympton, Licensing Manager |
| Ward(s): | All |
| Purpose: | <p>At the last Full Licensing Committee on 11th November 2009, Members indicated an intention to adopt the new provisions relating to the control and management of sex establishments, to include the reclassification of lap dancing, & pole dancing.</p> <p>The purpose of the report is to endorse and ratify the decision to adopt the new provisions. This will enable the Council, as the Licensing Authority, greater control of sex establishments.</p> <p>Members are also asked to release the draft Sex Establishment Policy for public consultation</p> |
| Contact: | <p>Kareen Plympton, Licensing Manager, Telephone 01323 415937 or internally on extension 5937</p> <p>E-mail address kareen.plympton@eastbourne.gov.uk</p> |
| Recommendations: | <p>a) Members are recommended to adopt the relevant provisions of the Policing and Crime Act 2009 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. (LGMPA 1982)</p> <p>b) Release the draft Sex Establishment Policy for public consultation.</p> |

1.0 Introduction

- 1.1 The increase nationally in the number of lap dancing clubs since the implementation of the Licensing Act 2003 has become a concern for many local communities.
- 1.2 Currently, any representations made against a premises licence application for a venue providing lap dancing and similar entertainment can only be considered within the context of the four Licensing Objectives, namely:
 - The prevention of crime and disorder;
 - Public safety;
 - The prevention of public nuisance;
 - The protection of children from harm;
- 1.3 As a result, licensing authorities cannot consider the objections of local people and businesses that are based on matters outside of the scope of the four objectives detailed. For example, the Council as the Licensing Authority could not consider whether a lap dancing club would be appropriate given the character of an area in which it was proposed to be

situated.

- 1.4 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' 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'.
- 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 will include 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 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.
- 2.4 Central Government has the power to amend those limits, albeit not to shorten the intervals or increase the numbers allowed.
- 2.5 If the Council chooses to adopt the new legislative provisions, it would have greater control over sexual entertainment venues.
- 2.6 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 their 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.

- 2.7 These new legislative provisions took effect on 6th April 2010, but require a local authority to adopt them before they can be put into effect. If the Council wishes to adopt Schedule 3 of the Act it must pass a resolution and publicize this in a prescribed way before the provisions can take effect.
- 2.8 The Council originally adopted the previous provisions of the Local Government Miscellaneous Provisions Act 1982 in 1984 and the Council will now need to adopt the new provisions which have been inserted into Schedule 3.
- 2.9 If the Council does not make a resolution to adopt Schedule of the Local Government Miscellaneous Provisions Act 1982 within one year of the legislation coming into force, they must, as soon as is reasonably practicable, consult with all local people about whether or not they should make such a resolution. This would require a full public consultation with persons who live or work within the Local Authority area.
- 2.10 Entertainment provided at lap-dancing clubs which is 'integral' to the provision of the lap-dancing, such as music and dancing, will be regarded as "regulated entertainment" under the Licensing Act 2003 and will also need the relevant consents in order to be licensed appropriately.
- 2.11 Eastbourne already has one licensed sex shop which will continue to trade under "grandfather rights" provisions, Having taken advice from Legal Counsel, it has been agreed that it would not be appropriate for the Council to specify a fixed number or nil sex encounter establishments Policy for localities within the Borough.
- 2.12 The draft Policy sets out the relevant factors that will be considered in determining the relevant character of the locality in respect of each application.
- 2.13 The Policy helps to ensure that applicants, "interested parties" and statutory consultees are aware of the matters 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.

3.0 Consultation

- 3.1 It is proposed that there be a consultation period on whether the Council should adopt the new provisions and an associated Sex Establishment Policy. There is no requirement for the Council to have a Sex Establishment Policy, but this is considered good practice.
- 3.2 The draft Sex Establishment Policy is included at Appendix 1, and covers:
 - Administrative matters: application processes, hearings, conditions;
 - Applicant suitability;
 - Locality and number of establishments permitted;
 - Character of the relevant locality;

- 3.3 It is proposed that the consultation period will run from July 2010 – October 2010 for a minimum of 12 weeks. A wide range of persons throughout the Borough will be consulted including:
- Sussex Police;
 - Ward Councillors;
 - Residents’ Groups and Neighbourhood Panels;
 - Business Associations;
 - Those currently operating sex establishments;
- 3.4 Details of the consultation will also be posted on the Council’s website at www.eastbourne.gov.uk/consultation.

4.0 Timetable For Implementation

| 4.1 | Stage requirement | To be Completed by |
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| | Full Licensing Committee to : <ul style="list-style-type: none"> - Initially adopt the provisions of the legislation - Consider report on the new legislation in respect of sex establishments and content of draft policy | 19 th July 2010 |
| | Public consultation | Public Consultation July - October 2010 |
| | Full Licensing Committee: <ul style="list-style-type: none"> - To consider results of consultation and make recommendations - Delegate any further revisions to Chair of Licensing Committee, Portfolio Holder and Senior Head of Service prior to consideration by Cabinet | October 2010 |
| | Seek Cabinet Approval | 20 th October 2010 |
| | Seek Annual Council Approval | 17 th November 2010 |
| | Publication of Policy | January 2011 |
| | Policy in force | February 2011 |

5.0 Transitional Provisions If Adopted

- 5.1 The Home Office has consulted on, and proposes a “transitional period” for the implementation and application process for new ‘Sexual Entertainment Venues’.
- 5.2 Any operator, new or existing who wishes to provide ‘Relevant Entertainment’ at the end of the transitional period will be required to apply for a Sex Establishment licence in the manner set out in Schedule 3 to the 1982 Act.
- 5.3 Existing operators will be allowed to continue to provide ‘Relevant Entertainment’ under their existing permission without interruption for the duration of the transitional period or until their application for a Sex

Establishment licence has been determined, whichever is the latter.

- 5.4 The transitional period will start on the date the amendments to Schedule 3 to the 1982 Act comes into force in the relevant Local Authority area. This is termed as the 1st Appointed Day. The transitional provisions will last for 12 months.
- 5.5 For 6 months following the 1st Appointed Day, applicants will be able to submit applications, all of which will be considered together by the local authority at the end of the period. In effect, all current operators apply for a new type of licence. All applications will be decided together at the end i.e. not on a "first come, first granted" basis.
- 5.6 Applications received after the first 6 months, termed the 2nd Appointed Day will be considered after this.
- 5.7 Licences granted for Sexual Entertainment Venues will not take effect until the conclusion of the 12 month transitional period, termed the 3rd Appointed Day.
- 5.8 Any pre-existing operator who has failed to obtain a licence after the 3rd Appointed Day will not be permitted to provide "Relevant Entertainment" unless they have an application submitted within this time that has yet to be determined.
- 5.9 The Government has decided, having listened to views from previous consultations, that existing operators will not be given 'Grandfather Rights' and will also have to apply for a new type of licence.

6.0 Community Safety and Links To Strategic Vision

- 6.1 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.
- 6.2 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.
- 6.3 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;

7.0 Policy Review

- 7.1 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.

8.0 Recommendations

8.1 Members are recommended to:

- (a) Adopt the relevant provisions of the Policing and Crime Act 2009 regarding the control of sex establishments.
- (b) Release the draft Sex Establishment Policy for public consultation.

9.0 Financial & Resource Implications

9.1 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 if the Council 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.

10.0 Human Rights

10.1 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.

10.2 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.