

Item No. 8.	Classification: Open	Date: 28 September 2010	Meeting Name: Licensing Committee
Report title:		Adoption of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009 – Licensing of Sexual Entertainment Venues	
Ward(s) or groups affected:		All	
From:		Strategic Director of Environment & Housing	

RECOMMENDATION

1. That the committee recommends council assembly to agree the adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009, so as to provide a local licensing regime for the licensing of 'sexual entertainment venues.

BACKGROUND INFORMATION

2. Section 27 of the Policing and Crime Act 2009, came into effect on 6th April 2010. It has had the effect of reclassifying lap dancing clubs and similar as 'sexual entertainment venues' and now offers local licensing authorities in England and Wales adoptive provisions to regulate such venues as sex establishments under schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.
3. These powers are not mandatory, however, and will only apply where they are adopted by local authorities. Where adopted, these provisions will allow local authorities to consider and determine applications on potentially wider grounds than is permitted under current law and will give local people a greater say over the regulation of lap dancing clubs and similar venues in their area. Importantly, this new provision gives local authorities powers to control the numbers and location of lap dancing clubs and similar venues in their area. If these provisions are not adopted then the status quo remains, enabling lap dancing and similar clubs to operate as music and dancing venues under the 2003 Licensing Act.
4. This report sets out the current legislative position and provides detail on the new licensing provisions. It asks the committee to recommend to council assembly the adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009.
5. If these adoptive provisions are taken up, officers will return to the licensing committee and council assembly in due course with full proposals for the new licensing process and a draft supporting licensing policy. If the committee or, thereafter, council assembly are not minded to take up the adoptive provisions at this stage, the council is required by the governing legislation to go out to public consultation on the matter within one year of it coming into force. In this case officers will progress plans for public consultation on the matter to take place.

6. Guidance on the new 'sexual entertainment venues' licensing scheme has been produced by the Home Office. Copies may be viewed or downloaded at <http://www.lacors.gov.uk/lacors/upload/24193.pdf>

KEY ISSUES FOR CONSIDERATION

Current legislative position

7. Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 provides local licensing authorities with adoptive licensing provisions for sex establishments, comprising the categories of sex shops and sex cinemas.
8. London local authorities which have additionally adopted the amendment to Schedule 3 to the 1982 Act offered by the Greater London Council (General Powers) Act 1986 are also able to regulate a third category of sex establishment known as 'sex encounter establishments' (covering any lawful entertainment, performance or service provided by persons who are without clothes or expose their breasts, genitals, urinary or excretory organs). This authority adopted all of the relevant provisions when the licensing responsibility moved across to London councils following the abolition of the Greater London Council in 1986.
9. However, an exemption contained under sub-paragraph 3A(i) of the 1982 Act, provides that premises which hold either a premises licence or a club premises certificate issued under the (now) Licensing Act 2003, which allows them to provide either regulated entertainment or late night refreshment, are not to be regarded as sex encounter establishments.
10. This exemption means that, in practice, there are very few premises in London that are licensed as sex encounter establishments. The majority of venues providing lap dancing, table dancing or other similar striptease entertainment currently need hold only premises licences with music and dancing issued under the 2003 Act to operate lawfully. Applications for premises licence under the 2003 Act are subject only to considerations relevant to the four licensing objectives being:
 - The prevention of crime and disorder;
 - Public safety;
 - The prevention of public nuisance; and
 - The protection of children from harm.

Meaning of sexual entertainment venues

11. Paragraph 2A of Schedule 3 as inserted by Section 27 of the Policing and Crime Act 2009 defines the newly created category of 'sexual entertainment venue' as "any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer". The meaning of 'relevant entertainment' is "any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must be 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)".
12. Guidance produced by the Home Office provides that while local authorities should judge each case on its merits, the definition of relevant entertainment would be expected to apply to the following forms of entertainment as they are commonly understood:

- Lap dancing;
 - Pole dancing;
 - Table dancing;
 - Strip shows;
 - Peep shows; and
 - Live sex shows.
13. The guidance emphasises that although reference is made to “live display of nudity” the mere fact that there is a display of nudity does not mean that a sex establishment licence will necessarily be required. For example, if the display forms part of a drama or dance performance in a theatre, in most cases it cannot reasonably be assumed to be provided ‘solely or principally for the purpose of sexually stimulating any member of the audience’.
14. Paragraph 2A(14) of Schedule 3 sets out the definition of a ‘display of nudity’. In the case of a woman, it means exposure of her nipples, pubic area, genitals or anus and, in the case of a man, it means exposure of his pubic area, genitals or anus.
15. References made to the ‘organiser’ under the definition 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.
16. The new provisions do include some clarifications and exemptions. Spontaneous displays of nudity or a lap dance by a customer or guest will not result in the premises being classified as a sexual entertainment venue. Furthermore, paragraph 2A(93) of Schedule 3 sets out those premises that are not sexual entertainment venues. These are:
- Sex shops and sex cinemas (which fall into other categories under the 1982 Act);
 - Premises which provide relevant entertainment on an infrequent basis. These are defined as 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.
17. Premises which provide relevant entertainment on an occasional basis will continue to be regulated by the 2003 Act. Premises which provide relevant entertainment on a regular basis will require a licence under the 1982 Act and, in all probability, a further licence under the 2003 Act should alcohol or late night refreshment sales be intended, but they will no longer be able to operate only under a 2003 Act licence alone.

Applications process

18. The provisions contained within Schedule 3 of the 1982 Act provide for
- Written applications to be made for a sex entertainment licence providing details as set out in the Act and as the local authority may reasonably require;
 - Payment of a reasonable fee;
 - Public advertisement of applications by way of a notice exhibited at the premises for a period of 21 days and a notice published in a local newspaper;
 - Written objections to be lodged relevant to the ground for refusal of a licence (see paragraph 19 of this report); and
 - Public hearing of the application and any objection.

19. Paragraph 12 of Schedule 3 sets out the grounds for refusing an application. A licence must not be granted:

- To a person under the age of 18;
- To a person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the last 12 months;
- To a person, other than a body corporate, who is not resident in an EEA State or was not resident throughout the period of six months immediately preceding the date when the application was made; or
- To a body corporate which is not incorporated in an EEA state; or
- To a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

20. Additionally, a licence may be refused where:

- The applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- If the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;
- The number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality;
- That the grant of the licence would be inappropriate, having regard –
 - To the character of the area or the relevant locality; or
 - To the use to which any premises in the vicinity are put; or
 - To the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

Locality

21. As stated above, a local licensing authority may refuse applications on grounds related to an assessment of the 'relevant locality'. The Home Office guidance establishes that it is reasonable and potentially useful to future applicants for a local authority to decide in advance of receiving applications that certain areas are, or are not, appropriate locations for sex establishments or a particular number of sex establishments. Case law has defined that a 'relevant locality' cannot be an entire local authority area or entire city or town. All applications must be considered upon their own merits.

Conditions

22. Once a local authority has decided to grant a licence the authority is able to impose terms, conditions and restrictions on that licence. Subject to the provision in section 23 of this report below, these can be in the form of either standard conditions applicable to all sex establishments or specific categories of sex establishment or conditions specific to the particular operation under consideration at the time.

23. Conditions may address, but are not restricted to:

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

Policy implications

24. While local authorities are not required to publish a licensing policy relating to sex establishments they can do so if they wish so long as it does not prevent any individual application from being considered on the merits at the time the application is made.
25. Presently, this authority has statements of licensing policy under both the 2003 Licensing Act (covering alcohol, regulated entertainment and late night refreshment) and also the 2005 Gambling Act. In accordance with the legislation, the statement of policy under the 2003 Licensing Act is currently subject of review required to be carried out every three years. It presently contains policies concerning the grant of premises licences which provide for the provision of 'adult' regulated entertainments, including reference to location. If these new adoptive provisions are taken up then it is proposed that a new specific sex establishments licensing policy be developed form the basis of the content in the 2003 Act policy.
26. It is proposed that, among it's various references, a sex establishments licensing policy would concern itself with
 - The licensing process including consultation provisions;
 - Definition of circumstances where the grant of a licence would be inappropriate; and
 - Standard conditions applicable to the grant of licences
27. The process of policy development would form the subject of a further report.

Timetable for implementation

28. In the event that the adoptive provisions are to be taken up, council assembly must pass a resolution stating this decision and which specifies the day (the 1st appointed day) that the provisions will come into effect in the area. The specified date must be more than one month after the day on which the resolution was passed.
29. The resolution and the date of the 1st appointed day must then be published in notices appearing for two consecutive weeks in a local newspaper circulated in its area. The first publication of the notices must give at least 28 days notice of the specified date.
30. A 'transitional period' then commences lasting twelve months beginning with the 1st appointed day. The process that follows is set out below
 - To allow time to comply with the new regime, existing operators, who immediately before the 1st appointed day, hold a premises licence issued under the 2003 Licensing Act, which allows the licensee to lawfully use premises as a sex entertainments venue will be allowed to continue to provide relevant entertainment until either the 3rd appointed day (which falls twelve months after the 1st appointed day) or until such time as any application they have submitted is determined;
 - New operators (who do not hold relevant 2003 Act premises licences) who wish to use premises as sexual entertainment venues after the 1st appointed day will not

- be able to use those premises until they have been granted a sexual entertainment venue licence;
- After the 2nd appointed day (which falls six months after the 1st appointed day) the local authority must consider all applications received since the 1st appointed day, together. New applications granted will then take immediate effect. Licences granted to existing operators come into effect on the 3rd appointed day.
- Applications made after the 2nd appointed day shall be considered when they are made but only once all applications made before the 2nd appointed day have been determined.

Community impact statement

31. There are no premises currently operating within Southwark under a sex establishments licence issued under the Local Government (Miscellaneous Provisions Act 1982 (as amended)).
32. There are a very small number of premises licensed under the 2003 Licensing Act that have identified within their initial applications, an intention to provide 'adult' regulated (music and dancing) entertainment. It is believed that few among those that have indicated such intention to use 2003 Act premises licences in this way are doing so.
33. However, this authority has previous experience of applications for licences within the Southwark area for premises, which had the provisions being introduced under section 27 of the Policing and Crime Act 2009 been in force at the time, would have required 'sex entertainment venue licences':
 - The first application involved the related operation of a 'swingers club' in the SE1 area;
 - The second concerned an application to establish a lap dancing venue in the SE15 area;
 - The third concerned an application to establish a lap dancing club in the SE1 area.
34. In each case, the response to public consultation exercises held on the applications was considerable. The local media reported on each circumstance. The associated public hearings were lengthy and resource consuming. In each case members sitting in determination of the applications voiced concerns that their deliberations were constricted by the boundaries of the legislation the applications were made under.
35. On the back of these experiences this authority, along with many others, made representations to the Home Office seeking law change that would bring about a position where applications for adult entertainment licences could be considered on their merits but with all relevant matters (including location in particular) properly taken into account.
36. These new legislative provisions are seen to be the direct result of representations made from many quarters for such a law change.
37. One of the stated intentions of this authority as licensing authority within its licensing policies is to seek to enable responsible well managed businesses that benefit the local community to succeed but also to ensure that proper protections are afforded to the community against irresponsible operators.
38. The adoption of these new provisions is anticipated to enable better decision making around the adult entertainment market sector with the local community enabled to raise its concerns around all relevant matters and for decisions to be taken upon proper

consideration of those factors.

Resource implications

39. Schedule 3 to the 1982 Act states that the application for grant, renewal, variation or transfer of a sex establishment licence shall pay a reasonable fee determined by the appropriate authority, but does not expand upon what would be considered to be reasonable.
40. Currently the fee for a new sex establishment licence is £7,604.
41. In the event that the new provisions are adopted a costings exercise will be carried out aimed at establishing appropriate application fees on a cost recovery basis. Regard will be had to existing guidance issued by the former Local Authority Co-Ordinator for Regulatory Services (LACORs) now Local Government Regulation.

Consultation

42. No consultation has take place in the preparation of this report. As is noted in the report if the council does not adopt these provisions then formal public consultation must be carried out within one year of the date of them coming into force.
43. The cabinet member for community safety made the following comments

“This report seeks the adoption of new legislative powers enabling a licensing regime for lap dancing and similar establishments. For this authority in particular, having previously called for legislative change in the licensing position, it represents a progressive step in enabling full and proper debate of relevant issues around future licence applications for the establishment of such venues. This positive move forward is welcomed by the cabinet”

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law & Governance

44. The adoption of the provisions of Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 as amended is intended to address a lacuna in the existing legislation in such a way as to enable local authorities to exercise greater control over the establishment and management of sexual entertainment venues in their area. The relevant procedures are clearly set out in the body of this report. The licensing committee will note that the council is not required to adopt the amended legislation but that if it determines not to do so the council must undertake a public consultation by 6 April 2011.

Finance Director (Env/ET/160810)

45. There are no financial implications as a result of adopting the proposed legislation to provide a licensing regime for the licensing of sexual entertainment venues. If these new adoptive provisions are approved, then a further report will be presented to the committee with a proposed licensing policy, licensing process and fees. In line with the guidance, the fees will be set an appropriate level to recover the full cost including a reasonable proportion of overheads.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Local Government (Miscellaneous Provisions) Act 1982 and related subsequent legislation Policing & Crime Act 2009 Licensing Act 2003 LACORS Guidance on fee setting Various 2003 Act case files Home Office Guidance on Sex Entertainment Venues	Health Safety Licensing & Environmental Protection Unit, C/O The Chaplin Centre, Thurlow Street, London, SE17 2DG	Name: Mrs Kirty Read Phone number: 020 7525 5748

AUDIT TRAIL

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Finance Director	Yes	Yes
Cabinet Member	Yes	Yes
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