



Reigate & Banstead
BOROUGH COUNCIL
Banstead | Horley | Redhill | Reigate

REPORT OF:	HEAD OF ENVIRONMENTAL SERVICES
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TO:	REGULATORY COMMITTEE
DATE:	3 FEBRUARY 2011

AGENDA ITEM NO:	4	WARD(S) AFFECTED:	ALL
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SUBJECT:	POLICING AND CRIME ACT 2009
PURPOSE OF THE REPORT:	TO CONSIDER THE PROVISIONS OF SECTION 27 OF THE POLICING AND CRIME ACT 2009 WHICH AMEND SCHEDULE 3 OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 RELATING TO SEXUAL ENTERTAINMENT VENUES.

RECOMMENDATIONS:

1. To adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009, to come into force from 1 April 2011.
2. To delegate to the Regulatory Committee authority to deal with applications under Schedule 3, as amended.
3. To set the fee level for applications under Schedule 3, as amended, in line with that for other Sex Establishment Licences.

The recommendations require adoption by Council.

SUMMARY:

1. The Policing and Crime Act 2009 has introduced a new category of sex establishment called "sexual entertainment venue". Premises that provide "relevant entertainment" such as lap, table and pole dancing, will be required to license the premises under the existing regime currently used to license sex shops and sex cinemas.
2. The new powers are not mandatory and will only apply where they have been adopted.
3. This report details the new powers and confirms that the Council is required to consult residents should it decide not to adopt the legislation.

BACKGROUND

1. Members may be aware that in September 2008 the then Home Secretary announced the Government's intention to give local people greater say over the number and location of lap dancing clubs in their area. This followed consultation with Local Authorities which highlighted concerns that existing legislation did not give communities sufficient powers to control where lap dancing clubs were established.
2. To address these concerns, Section 27 of the Policing and Crime Act 2009 (the 2009 Act) introduces a new category of Sex Establishment called a 'Sexual Entertainment Venue' (SEV). Local Authorities in England and Wales may adopt the power to regulate such venues under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (the 1982 Act), which the Council has previously adopted to license sex shops and sex cinemas.
3. A SEV is defined as "any premises at which relevant entertainment is provided before a live audience for financial gain of the organiser or the entertainer". The meaning of '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)." An audience can consist of just one person (e.g. where the entertainment takes place in private booths) and it is not a prerequisite that there be any nudity.
4. Guidance issued by the Home Office directs local authorities to judge each case on its own merits, however it would be expected that the definition of relevant entertainment would apply to the following forms of entertainment as they are commonly understood:
 - Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows
 - Live sex shows
5. Although there are examples in the paragraph above, ultimately decisions as to whether to license premises as SEVs shall depend on the content of the entertainment provided and not the name it is given. Furthermore, a 'premises' will include any vessel, vehicle or stall but does not include a private dwelling to which the public are not admitted.
6. The definition of relevant entertainment makes reference to a 'live display of nudity', however the Guidance indicates that 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.

7. The following are not sexual entertainment venues for the purpose of the 1982 Act:
 - (a) sex shops and sex cinemas;
 - (b) any premises that at the time in question:
 - (i) has not provided relevant entertainment on more than 11 occasions within the previous 12 months;
 - (ii) no such occasion has begun within the period of one month beginning with the end of any previous occasion;
 - (iii) no such occasion has lasted for more than 24 hours; or,
 - (c) premises specified or described in an order made by the relevant national authority.
8. Premises which provide relevant entertainment on an infrequent basis (as described above) will continue to be regulated under the Licensing Act 2003 (the 2003 Act). Any premises that provide relevant entertainment on more occasions, more frequently or for a longer period of time than is permitted under the exemption will be operating as a sexual entertainment venue and will have committed an offence under Schedule 3 unless they hold a sexual entertainment venue licence or the local authority has waived the requirement for such a licence.
9. With regard to the latter point above, an applicant can apply for a waiver either as part of the application for a licence or separately. The local authority can grant a waiver if they consider that to require a licence would be unreasonable or inappropriate. A waiver can be terminated at any time by giving 28 days notice.

FACTORS FOR CONSIDERATION

10. Although the Council has already adopted Schedule 3 to the 1982 Act for the licensing of sex shops and sex cinemas, a further resolution is necessary before the provisions introduced by Section 27 will apply. The adoption will allow the Authority the power to refuse an application on potentially wider grounds (as listed in paragraphs 11 and 12 below) than is permitted under the 2003 Act and will give local people a greater say over the regulation of lap dancing in pubs and similar venues in their area.
11. The 1982 Act sets out mandatory grounds for the refusal of an application. These are that the applicant:
 - (a) is under eighteen years of age;
 - (b) is disqualified from holding a sex establishment licence;
 - (c) is not a body corporate, and has not been resident in an EEA state for 6 months preceding the application;
 - (d) is a body corporate which is not incorporated in an EEA state
 - (e) in the last 12 months has been refused a Licence at those premises.

12. The 1982 Act also lists discretionary grounds for refusal of an application and therefore allows the Authority greater powers to refuse a Licence or impose conditions than it would be permitted under the 2003 Act , for example:
 - (a) the applicant is unsuitable by reason of having been convicted of an offence or for any other reason,
 - (b) the business would be managed for the benefit of a third party who would be refused a licence,
 - (c) the number of sex establishments in the locality equals or exceeds the number considered appropriate; and
 - (d) whether it would be inappropriate to grant a Licence having regard to:
 - (i) the character of the relevant locality;
 - (ii) the use of other premises in the vicinity; and
 - (iii) the layout, character, or condition of the premises.
13. Should the Council not make a resolution under section 2 of the 1982 Act to adopt these provisions within the period of one year from 6th April 2010, it must as soon as is reasonably practicable, consult local people about whether it should make such a resolution.
14. The new licensing arrangements are dealt with under the 1982 Act rather than the 2003 Act and SEV applications are considered under the same criteria previously applied by the Regulatory Committee to sex shops. It is therefore proposed that the new powers should fall within the remit of this Committee rather than the Licensing Act Committee.

PROCEDURES FOR ADOPTION AND TRANSITION

15. The procedure to adopt the new provisions is set out in Section 2 of the 1982 Act. Firstly, the Council must pass a resolution that Schedule 3 of the 1982 Act as amended by Section 27 of the 2009 Act, is to apply in its area. The resolution must specify the day on which it shall come into force, known as the first appointed day (FAD). The specified day must be more than one month after the day on which the resolution was passed.
16. The Council must then publish a Notice that it has passed the resolution for two consecutive weeks in a local newspaper. The first publication must not be later than 28 days before the day specified in the resolution for the provisions to come into force. The Notice should state the general effect of the resolution. On the basis that the Committee recommends Council to make the appropriate resolution, this could be considered by Council at its meeting on the 10th February 2011, the resolution could be effective from 1st April 2011.
17. The Policing and Crime Act 2009 (Commencement No. 1 and Transitional and Savings Provisions) (England) Order 2010 details the transitional provisions for SEVs. Existing operators, who immediately before the FAD have a licence under the 2003 Act to lawfully use the premises as a SEV under that licence or are undertaking preparatory work to use the venue in that way, will be allowed to

continue to provide relevant entertainment until the third appointed day (which will be one year from FAD) or the determination of any application they have submitted before that time.

RESOURCE IMPLICATIONS

18. Schedule 3 to the 1982 Act states that an applicant for the grant, renewal, variation or transfer of a Sex Establishment licence shall pay a reasonable fee determined by the appropriate authorities. It is intended that this fee is set at a level that covers the associated costs. The current fee for the grant of a Sex Establishment licence is currently £1710 for an initial grant (the balance payable on final determination of cost) and £708 for renewal variation or transfer.
19. The cost of advertisement in the newspaper is not covered by the licence fee. It is estimated that the cost of 2 adverts will be in the region of £1000 each, which will need to be met from the licensing budget.

LEGAL IMPLICATIONS

20. The adoption procedure is through a resolution of the authority and so is a matter for the full council. In considering such a resolution Council may wish to have regard to the recommendation of this Committee.

STATUTORY POWERS

21. The new statutory powers arising from The Policing and Crime Act, 2009 which inserts paragraph 2A into Schedule 3 to the Local Government (Miscellaneous Provisions) Act, 1982, and amends the definition of a sex establishment to include sexual entertainment venues are described in detail above.

CONCLUSIONS

22. The adoption of these new measures does not give such premises an automatic entitlement to operate within the area; rather it provides the Council with the means by which applications for such premises can be properly determined. Furthermore, it would allow the Council to refuse an application on potentially wider grounds than is permitted under the 2003 Act and will give local people a greater say over the regulation of lap dancing clubs and similar venues in the Borough.

Background Papers: None

Annexes:

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| Annex 1 | Table of comparisons giving the current position and the effect of licensing Sexual entertainment venues under the amended legislation. |
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Task/Activity	Current position under the Licensing Act 2003 and if the new legislation is not adopted	Position if the new legislation is adopted under the Local Government (Miscellaneous Provisions) Act 1982
Advertising of applications	Yes. Newspaper and premises for a period of 28 days	Yes. Newspaper and premises for a period of 28 days
Representations for and against	Yes. 28 Days	Yes. 28 Days
Geographical limitations on who may make representations	Yes. Vicinity of application premises, interested parties and responsible authorities only	None
Relevance of representations	Yes. Must be related to the licensing objectives listed in the Act	Yes. Must be relevant to the application and usually in accordance with any policy but there is a wider discretion
Conditions on licence	Yes. Conditions may only be; mandatory (required by the Act), imposed at a hearing where relevant or taken from the operating schedule. Conditions must be necessary, appropriate and aimed at promotion of the licensing objectives. Standard conditions may not be imposed.	Yes. Wider discretion and standard or specific conditions may be imposed.
Maximum duration of licence	In perpetuity unless suspended, revoked or surrendered	Up to one year
Renewal requirement	No - but may be reviewed	Yes. Annually
Offer of SEV type activities	Yes -on limited occasions	Yes
Can a limit be set on the number of SEV type premises	No. Each application must be considered on its merits and refused only following representation if it does not conform to one or more of the licensing objectives.	Yes - But reasons must be stated to defend any challenge
If the appropriate number of SEV's is set at nil, can we refuse to consider an application	N/A	No - The requirement to consider applications on their own merits does not permit automatic refusal
Determination of licence	Consideration linked only to promotion of the licensing objectives, taking account of the licensing policy, statutory guidance and any relevant case law.	Mandatory and discretionary grounds are laid down in the legislation. Must take account of case law, policy and any statutory guidance
Fee Level	Statutory fee set based upon non domestic rateable value of the premises.	Locally set fee