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16
Public

LICENSING OF SEXUAL ENTERTAINMENT VENUES

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Summary

The Policing and Crime Act 2009 reclassifies certain premises such as lap dancing clubs as Sexual Entertainment Venues and gives local authorities in England and Wales the power to regulate them as Sex Establishments under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

These new measures came into effect on the 6th April 2010 in England and if adopted by the Council will give local people a greater say over where, and how many, sexual entertainment venues operate in their neighbourhoods.

Recommendations

That Council:-

- A Re-affirms the adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, and adopt section 27 of the Policing and Crime Act 2009 by means of Paragraph 2(2) of Schedule 3 of that Act with effect from 1 September 2010.
- B Sets a Licensing fee for a Sexual Entertainment Venue, as follows:

Grant	£1,350
Renewal	£1,350
Transfer	£ 500
- C Delegates to the Assistant Director of Public Protection all powers under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, and section 27 of the Policing and Crime Act 2009 by means of Paragraph 2(2) of Schedule 3 of that Act.
- D Agrees the draft Sexual Entertainment Venues Policy in Appendix 2.

REPORT

1.0 Background

- 1.1 The Council has adopted the Local Government (Miscellaneous Provisions) Act 1982 and, under Schedule 3 of the Act, already licenses two sex shops; The Private Shop, Wyle Cop, Shrewsbury and SX Warehouse, Greenwood Industrial Estate, Cartmel Drive, Shrewsbury.
- 1.2 The Policing and Crime Act 2009 came into force on the 6th April 2010 and introduces a new category of sex establishment called a 'Sexual Entertainment Venue' which allows local authorities to regulate lap dancing clubs and similar venues as an amendment to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1882.
- 1.3 Such venues offer entertainment commonly described as:
- Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows
 - Live sex shows
- 1.4 A full definition of 'Relevant Entertainment' is attached at *Appendix 1*.
- 1.5 Premises that are not sexual entertainment venues include:
- Sex shops and sex cinemas (which are separately defined in Schedule 3 to the 1982 Act)
 - Premises that provide 'relevant entertainment' on an infrequent basis.
 - Other premises or types of performances or displays exempted by the Secretary of State.
- 1.6 These premises will continue to be regulated under the Licensing Act 2003.

2.0 Key Issues

2.1 Licensing Policies

Local Authorities are not required to publish a licensing policy relating to sex establishments but can produce a different policy or criteria for different types of sex establishments. This might be appropriate to reflect distinctions between the operating requirements of different sex establishments or the fact that the location deemed appropriate for a sex shop may be different to that of a sexual entertainment venue. A draft Policy is attached at *Appendix 2*.

2.2 Consultation with Local People

While there is no statutory duty to do so, prior to deciding whether to pass a resolution, local authorities may wish to seek the views of local people and businesses. If a local authority has not made a resolution to adopt the provisions introduced by section 27 within one year of it coming into force it must, as soon as is reasonably practicable, consult local people about whether they should make such a resolution.

The 2009 Act is not prescriptive about how local authorities should consult with local people in order to comply with this duty, but the Secretary of State expects that any consultation exercise carried out under this duty will be fair and meaningful. Local authorities should seek to make any relevant information available to local people in order to inform their understanding and publish the outcomes of the consultation on the internet.

In the absence of any current businesses which would fall within the provisions of the Act it is recommended that consultation is unnecessary in this instance. The process of adoption will require the publication of a notice in the local press and representations can be made to the Council.

2.3 Financial Implications

Schedule 3 to the 1982 Act states that an application for the grant, renewal or transfer of a sex establishment licence shall pay a reasonable fee determined by the appropriate authorities, but does not expand on what would be considered to be reasonable.

The fees recommended for a sexual entertainment venue are:

- Grant £1,350
- Renewal £1,350
- Transfer £500

The grant and renewal fees are equal to the fees set for a Sex Shop licence. There is currently no charge for a transfer of a licence.

3.0 Legal and Policy Implications

3.1 Licences

Licences for sexual entertainment venues can be granted for up to one year.

3.2 Licence Conditions

The Council is able to impose conditions and restrictions on a licence, in the form of conditions and may address such matters as:

- 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.

3.3 Objections

When considering an application for grant, renewal or transfer of a licence, the appropriate authority should have regard to any observations submitted to it by the Chief Officer of Police and any objections that they have received from anyone else within 28 days of the application.

Objections should not be based on moral grounds or values.

Objectors must give notice of their objection in writing, stating the terms of the objection.

3.4 Appeals

In the event that the appropriate authority refuses an application for the grant, renewal or transfer of a sexual entertainment venue, the applicant may appeal the decision in a Magistrates' Court.

3.5 'Relevant Locality'

Authorities may refuse applications on grounds related to an assessment of the 'relevant locality'.

A licence can be refused if either, at the time the application is determined the number of sex establishments, or sex establishments of a particular kind, in the relevant locality is equal to or exceeds the number that the authority considers appropriate for that locality; or that a sex establishment would be inappropriate having regard to the character of the relevant locality, the use to which any premises in the vicinity are put, or the layout, character or condition of the premises.

Nil may be the appropriate number.

4.0 Strategic Licensing Committee

4.1 On 16 June 2010 the Strategic Licensing Committee recommended that Council follow the recommendations A-D above.

5.0 Conclusion

- 5.1 Most Sexual Entertainment Venues will require a licence under the Licensing Act 2003 in addition to a Sexual Entertainment Venue licence.
- 5.2 Where adopted, these provisions will allow local authorities 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 their area.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

- Home Office Guidance for England and Wales.
- Licensing Act 2003

Guidance issued under section 182 of the Licensing Act 2003 (28 June 2007).

Human Rights Act Appraisal

The recommendations contained in this report are compatible with the provisions of the Human Rights Act 1988.

Environmental Appraisal N/A

Risk Management Appraisal

Compliance with the provisions of the Policing and Crime Act 2009 in the consideration of policies and decisions will ensure that actions are not subject to successful legal challenge

Community / Consultations Appraisal

The report provides a recommendation on consultation

Cabinet Member:

Mike Owen

Local Member:

All areas of the Council

Appendix 1 DEFINITIONS (S.27 POLICING AND CRIME ACT 2009)

Appendix 2 DRAFT SEXUAL ENTERTAINMENT VENUE POLICY

DEFINITIONS (S.27 POLICING AND CRIME ACT 2009)

MEANING OF 'SEXUAL ENTERTAINMENT VENUE'

2A

- (1) In this Schedule “sexual entertainment venue” means any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.
- (2) In this paragraph “relevant entertainment” means -
 - (a) any live performance; or
 - (b) any 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 the audience (whether by verbal or other means).
- (3) The following are not sexual entertainment venues for the purposes of this Schedule -
 - (a) sex cinemas and sex shops;
 - (b) premises at which the provision of relevant entertainment as mentioned in sub-paragraph (1) is such that, at the time in question and including any relevant entertainment which is being so provided at that time -
 - (i) there have not been more than eleven occasions on which relevant entertainment has been so provided which fall (wholly or partly) within the period of 12 months ending with that time;
 - (ii) no such occasion has lasted for more than 24 hours; and
 - (iii) no such occasion has begun within the period of one month beginning with the end of any previous occasion on which relevant entertainment has been so provided (whether or not that previous occasion falls within the 12 month period mentioned in sub-paragraph (i));

NOTES

‘audience’ includes an audience of one

‘display of nudity’ means -

- (a) in the case of a woman, exposure of her nipples, pubic area, genitals or anus; and
- (b) in the case of a man, exposure of his pubic area, genitals or anus;

‘the organiser’, in relation to the provision of relevant entertainment at premises, means any person who is responsible for the organisation or management of -

- (a) the relevant entertainment; or
- (b) the premises;

‘premises’ includes any vessel, vehicle or stall but does not include any private dwelling to which the public is not admitted.

DRAFT SEXUAL ENTERTAINMENT VENUE POLICY

The Policing and Crime Act 2009 (Section 27) introduces (from 6th April 2010) a new category of sex establishment called 'Sexual Entertainment Venue' which will allow local authorities to regulate lap dancing clubs and similar venues under Schedule 3 Local Government (Miscellaneous Provisions) Act 1982.

Meaning of 'Sexual Entertainment venue'

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 the entertainer'

Relevant Entertainment is

'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 the 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).

The Local Authority will judge each case on its merit but would expect 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.

For the purpose of these provisions a premises includes any vessel, vehicle or stall, but does not include a private dwelling to which the public are not admitted.

A licence must not be granted:

- (a) to a person under the age of 18 years
- (b) 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 authority within the last 12 months

- (c) to a person, other than a body corporate, who is not resident in an EEA State or was not so resident throughout the period of six months immediately preceding the date when the application was made; or
- (d) to a body corporate which is not incorporated in an EEA State; or
- (e) 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.

A Licence may be refused where:

- (a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- (b) 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 or,
- (c) the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time of the application is determined is equal to or exceeds the number which the authority consider it appropriate for that locality; Nil may be an appropriate number
- (d) the grant or renewal of the licence would be inappropriate having regard -
 - i. to the character of the relevant locality;
 - ii. to the use to which any premises in the vicinity are put; or
 - iii. to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made

A decision to refuse a licence must be relevant to one or more of the above grounds.

Policy Statement

Shropshire Council will treat each case on its own merits but is unlikely to approve applications for a Sexual Entertainment Venue in areas that are predominantly residential or close to 'sensitive premises' such as schools, places of religious worship or places of education and learning, or where they consider such an application is inappropriate to the character of the relevant locality or the use or layout, character or condition of the premises, vessel or vehicle are deemed inappropriate.