

## 6. Sexual Encounters Venues

*Executive Portfolio Holder:* Ric Pallister (Health, Housing and Spatial Planning)  
*Assistant Director:* Laurence Willis, Environment  
*Lead Officer:* Nigel Marston, Licensing Manager, Licensing Service  
*Contact Details:* nigel.marston@southsomerset.gov.uk or (01935) 462137

### Purpose of the Report

The Policing and Crime Act 2009 reclassifies lap dancing and pole dancing clubs as Sexual Encounter 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 became available 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, sex encounter venues open and operate in their neighbourhood.

### Recommendation(s)

That Committee is asked to RECOMMEND that Council:

- (1) Pass a resolution to adopt section 27 paragraph 2(2) of Schedule 3 to the Policing and Crime Act 2009.
- (2) To set a Licensing fee for a Sexual Encounter Venue, i.e.
  - Grant £10,926
  - Renewal £2,864
  - Transfer £2,864
- (3) To delegate to the Licensing Manager all powers under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, and section 27 paragraph 2(2) of Schedule 3 to the Policing and Crime Act 2009, subject to the Council Scheme of Delegation.

### Background

The Council has adopted Local Government (Miscellaneous Provisions) Act 1982 and, under Schedule 3 of the Act, already licenses one sex shop in Sherborne Road, Yeovil.

The Policing and Crime Act 2009 came into force on the 6th April 2010 and introduced a new category of sex establishment called a 'Sexual Encounter Venue', which will allow local authorities to regulate lap dancing clubs and similar venues as an amendment to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1882.

The new category covers venues that provide "Relevant Entertainment", which 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)."

Examples of this type of venue include premises offering entertainment commonly described as:

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

The definition of sexual encounter venues excludes:

- Sex shops and sex cinemas (which are separately defined in Schedule 3 to the 1982 Act).
- Premises, which provide 'Relevant Entertainment' on an infrequent basis.

Premises which provide relevant entertainment on an infrequent basis will continue to be regulated under the Licensing Act 2003, insofar as they are providing regulated entertainment by virtue of a premises licence, club premises certificate or a temporary event notice issued under that Act. Any premises that provide relevant entertainment on more occasions than the exemption allows, will be operating as a sexual entertainment venue and will require a sexual entertainment venue licence

For example:

- on no more than 11 occasions within a 12 month period);
- more frequently or for a longer period of time than is permitted (over 24 hours)

The new legislative controls available to the Licensing Authority will strengthen the role that local communities can play in deciding whether a sex establishment venue is appropriate for a particular locality. The provisions bring the licensing of lap dancing premises and similar venues in line with other "sex establishments" and allow the Licensing Authority to prescribe standard conditions on grounds not covered by the Licensing Act 2003; for example, location, hours, display of adverts and the visibility of the interior of the premises.

Should the Authority adopt the provisions, there will be a further 12 month transitional period where existing operators (of which there are none in the District) can apply for licences under the new laws. There are no automatic "grandfather rights" as there were under the Licensing Act 2003 and the Gambling Act 2005. New applicants can also within the first 12 months period apply to the Licensing Authority for a Sexual Entertainment Venue Licence; however, applications may not be determined before a period of six months after the date the provisions are adopted.

While local authorities are not required to publish a policy relating to sex establishments, they can do so if they wish as long as it does not prevent any individual application from being considered in its merits at the time the application is made.

If Council are minded to adopt this legislation it is intended that a policy will be brought forward for approval following a period of public consultation and before the first day on which applications can be determined.

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. If this legislation is adopted the fee structure set out in recommendation 2 to this report is recommended for approval to ensure full cost recovery. Research has been carried out

into the fees set or proposed by other Council's in the surrounding area and these are contained in Appendix A. It will be seen that these fees vary considerably.

In determining the proposed fee levels in recommendation 2, I have had regard to the European Services Directive - Guidance for Local Authorities and LACORS Guidance on the impact of the Services Directive on councils setting and administering local licence fees. In effect fees set must be proportionate to the effective cost of the procedure dealt with and must not be used as an economic deterrent or to raise additional funds for the Council. It is anticipated that any initial application for the grant of a licence under this legislation would face considerable opposition, which would be costly to the Council in respect to hearings and possible appeals. It is at this initial application stage where objections are most likely. The recommended fee for the initial application of £10,926 is based on the estimated costs of an appealed application for a licence in the Magistrates Court and is in line with the current fee for a licensed sex shop application.

Once a licence is granted experience elsewhere has shown that sex establishments generally cause few problems although there is always the possibility of objections being made to the renewal of a licence and perhaps a greater possibility of objections relating to a variation application although that would depend on the type of variation. The proposed fees mirror those fees currently charged by this Council for the same applications in respect to sex shops.

### **Interaction with Licensing Act 2003**

Schedule 7 to the 2009 Act amends the 2003 Act to ensure that premises for which a sexual entertainment venue licence is held, do not also require a premises licence, club premises certificate or temporary events notice in order to provide 'relevant entertainment'.

However, if the premises also carry on other licensable activities they will nevertheless continue to require a premises licence, club premises certificate or temporary events notice under the 2003 Act for those other activities.

In practice, this will mean that the vast majority of lap dancing clubs and similar venues will require both a sexual entertainment venue licence for the provision of 'relevant entertainment', and a premises licence or club premises certificate for the sale of alcohol or provision of other types of regulated entertainment.

If Members choose not to adopt the new powers the Council will rely solely on the Licensing Act 2003 to control such premises and the consideration of applications would be restricted to the four Licensing Objectives – Public Safety, Prevention of Public Nuisance, Prevention of Children from Harm and Prevention of Crime and Disorder.

Whilst the controls available under the Licensing Act may appear wide ranging, in practice powers to refuse such applications are quite restrictive.

### **Increased Controls**

The adoption of the new laws would make available wider discretion to Members.

Refusal options would include

- (a) the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason;
- (b) the number of sex establishments exceeds the number which the authority consider is appropriate for that locality;

- (c) that the grant or renewal of the licence would be inappropriate, having regard to:
- (i) the character of the relevant locality; or
  - (ii) the use to which any premises in the vicinity are put; or
  - (iii) the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

## **Implementation**

If Council is minded to adopt Schedule 3 the legislation requires that an advertisement process (public notice) be undertaken before it can come into effect. A notice must be placed in a local paper circulating in the area for two consecutive weeks with the first publication being not later than 28 days before the date specified on which the provisions come into force. If Council resolve to adopt the legislation with it coming into effect on the 1<sup>st</sup> June 2011 the notices would be placed as required during April and May 2011. These notices are not a consultation but intended as notification that the Council has adopted this power.

Whilst applications could be made for a Sexual Entertainment Venue licence from the 1 June 2011, (the date proposed for the adopted legislation to come into effect), the legislation prevents the Council considering any application for the first six months. This means that the earliest opportunity for an applicant to have their application considered would not be until December 2011.

## **Financial Implications**

Costs to the Council of a public consultation should the resolution to adopt not be passed before 6 April 2011.

## **Implications for Corporate Priorities**

There will be a positive impact on Corporate Theme 4, ensuring safe, sustainable and cohesive communities.

## **Other Implications**

None

**Background Papers:** Policing and Crime Act 2009  
Local Government (Miscellaneous Provisions) Act 1982  
Sexual Entertainment Venues – Home Office Guidance  
England and Wales (March 2010)