

Licensing and Regulatory Committee
Cabinet
Council

23 February 2011
15 March 2011
22 March 2011

Name of Cabinet Member:

Cabinet Member (Corporate and Neighbourhood Services) Councillor Townshend

Director Approving Submission of the report:

Director of Community Services

Ward(s) affected:

All

Title:

Sexual Entertainment Venues

Is this a key decision?

Yes

The proposal in the report is a key decision because it will involve the Council licensing sexual entertainment venues anywhere in the City and the licensing of such venues may be deemed to have a significant affect upon the communities living and working in those wards where such premises are located.

Executive Summary:

The Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 has been amended by Section 27 of the Policing and Crime Act 2009. This introduces a new licensing regime for “sexual entertainment venues” such as lap dancing clubs.

On 9th November 1982, the Council decided to adopt Part 2 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 which are the provisions for dealing with the licensing of sex establishments which, at that time, were sex shops and sex cinemas only. One licence currently exists with this Authority, under this legislation, for a sex shop.

Section 27 of the Policing and Crime Act 2009 amends Schedule 3 Local Government (Miscellaneous Provisions) 1982 to permit the Licensing Authority to license “sexual entertainment venues”, where “relevant entertainment” is provided before a live audience for the financial gain of the organiser or the entertainer.

This brings the licensing of lap dancing clubs, pole dancing clubs and other similar venues under the regime set out in the 1982 Act. This Licensing Authority has one such establishment at present, licensed under the Licensing Act 2003. There are no grandfather rights available for existing operators entitling them to automatically obtain a 1982 Act licence. The legislation instead provides for a 12 month transitional period and during the first six months of the transitional period existing operators will have to apply for a Sexual Entertainment Venue licence but may continue to operate under a 2003 Act licence.

Section 27 of the Policing and Crime Act 2009 came into force on 6th April 2010. Following this date local authorities are able to resolve to adopt Schedule 3 to the 1982 Act as amended by the 2009 Act so that it has effect in their area. Adoption is a matter for the Council on recommendation from Cabinet.

If the Council fails to adopt Schedule 3 in the way described above within twelve months of the new legislation taking effect, (by 6th April, 2011) it must then carry out a full public consultation exercise on whether it should adopt sexual entertainment venue licensing powers.

The costs of licensing will be met from fees, although there would be some minor advertising costs at the outset.

Recommendations:

Licensing and Regulatory Committee is requested to:

Review the report and report any recommendations to the Cabinet for their consideration.

The Cabinet are requested to:

Recommend to Council that it adopts the resolutions detailed in the paragraphs 1 to 4 immediately below.

Council are requested to resolve to:

1. Adopt the provisions of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended by Section 27 of the Policing and Crime Act 2009) in relation to the licensing of "sexual entertainment venues" in the City of Coventry. Such provisions come into force from 1st June 2011.
2. Delegate to the Licensing and Regulatory Committee and the Director of Community Services the powers to discharge the Council's functions for licensing "sex establishments" in accordance with the following arrangements;
 - (a) First grant or revocation of licences – Licensing and Regulatory Committee;
 - (b) Renewal, transfer or variations of licences where objections are made – Licensing and Regulatory Committee;
 - (c) Renewal, transfer or variations of licences where no objections are made – Director of Community Services;
 - (d) Granting waivers – Licensing and Regulatory Committee;
 - (e) Administration, entry / inspection, enforcement – Director of Community Services (except that prosecutions shall be authorised by the Licensing and Regulatory Committee).
3. Delegate the approval of a "sex establishment policy", including setting fee levels and adopting standard licence conditions to the Cabinet Member (Corporate and Neighbourhood Services)
4. Authorise the Director of Community Services to publish notice of the resolution to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by Section 27 of the Policing and Crime Act 2009) in accordance with section 2 of the 1982 Act.

List of Appendices included:

None.

Other useful background papers:

Local Government (Miscellaneous Provisions) Act 1982

<http://www.legislation.gov.uk/ukpga/1982/30/contents>

Policing and Crime Act 2009

<http://www.legislation.gov.uk/ukpga/2009/26/contents>

Minutes of full Council meeting held on 7th September 1982

City Archives

Sexual Entertainment Venues Guidance for England & Wales

<http://www.lacors.gov.uk/lacors/upload/24193.pdf>

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

Yes - Licensing and Regulatory Committee on 24th February 2011 – **Briefing Note appended to this report**

Will this report go to Council?

Yes - 22nd March 2011

Report title: Sexual Entertainment Venues

1. Context (or background)

- 1.1 Currently lap dancing clubs and other similar venues are licensed under the provisions of the Licensing Act 2003 and do not fall within the licensing regime of the Local Government (Miscellaneous Provisions) Act 1982 under which sex shops and sex cinemas are regulated. The previous Government felt that local communities should have more control over where lap dancing clubs are located and enacted legislation in the form of the Policing and Crime Act 2009, which, if adopted by Local Authorities, amends the 1982 Act to include lap dancing clubs and 'relevant entertainment' venues as "sexual entertainment" venues. For the purposes of this legislation 'relevant entertainment' includes "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)".

2. Options considered and recommended proposal

- 2.1 Section 27 of the Policing and Crime Act 2009 came into force on 6th April 2010. Following this date local authorities are able to resolve to adopt Schedule 3 to the 1982 Act as amended by the 2009 Act so that it has effect in their area. Adoption is a matter for the Council on recommendation from Cabinet.
- 2.2 If the Council fails to adopt Schedule 3 in the way described above within twelve months of the new legislation taking effect, it must then carry out a full public consultation exercise to establish whether it should formally adopt these controls locally.
- 2.3 The adoption of Schedule 3, as amended, would also enable the Council to determine a policy in relation to applications for sex establishments including, for example, sexual entertainment venues, sex shops and sex cinemas, covering matters such as, a maximum number, the suitability of the applicant or area, the operation and management of the premises, standard licence conditions and fees.
- 2.4 It is proposed that should Council agree to adopt the new provisions, that a policy clearly stating the Council's position with regards to sex establishments is formulated and subjected to public consultation. It is proposed that such a policy be approved by the Cabinet Member (Corporate and Neighbourhood Services).
- 2.5 It is proposed that should Council agree to adopt the new provisions that it agrees for these responsibilities to be discharged by the Licensing and Regulatory Committee and officers within the Directorate. Council will be recommended to adopt a scheme of delegation for all types of "sex establishment" (i.e. sex shops, sex cinemas or sexual entertainment venues) whereby all decisions to grant licences for the first time, to revoke licences or to determine renewals/ transfers / variations attracting objections are taken by the Licensing and Regulatory Committee. In the interests of efficiency other 'routine' applications which do not attract objections will be processed by officers.

3. Results of consultation undertaken

- 3.1 The Home Office undertook a twelve week consultation, commencing in September 2009, on the Government's proposals regarding the transitional arrangements for the lap dancing provisions introduced by the Policing and Crime Bill.
- 3.2 In summary, the proposals were broadly welcomed by the majority of respondents and received significant support amongst Local Authority respondents, including Coventry. The City Council submitted views that the adoption of the new provisions would allow, if

necessary, for greater control to either grant a licence with restrictions or reject an application for reasons other than those which fall under the four licensing objectives of the Licensing Act 2003.

- 3.3 During the consultation, however, club operators expressed concerns about the potential impact of the proposed provisions on the industry and club employees expressed concerns about potential impact on their jobs.
- 3.4 In response to the consultation, the Government decided to broadly adopt the proposals however, in response to concerns raised; changes were made to the definition of "existing operator" and to the way in which existing conditions on premises licence and club premises certificates, granted under the provisions of the Licensing Act 2003, are dealt with when an existing operator is granted a sex establishment licence. There are no grandfather rights available for existing operators to gain a licence under the new regime.

4. Timetable for implementing this decision

- 4.1 If the Council does adopt Schedule 3 (as amended by the 2009 Act) then they must publish notice that they have 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 as the date when the provisions come into force. The Notice should state the general effect of the adoption.
- 4.2 The Home Office has made transitional regulations under which, broadly speaking, existing operators will have 6 months (from when the provisions come into force locally) in which to apply for a 1982 Act licence and may continue to operate under a Licensing Act 2003 authorisation for 12 months from when the provisions come into force locally.
- 4.3 Local Authorities are also encouraged to engage with known sexual entertainment venues at the earliest opportunity, once a decision has been made to adopt the provisions, to ensure affected businesses are aware of what action they need to take in order to comply with the new regime.
- 4.4 This work and monitoring of timescales will be undertaken by the Licensing team within Public Safety and Housing.

5. Comments from Director of Finance and Legal Services

5.1 Financial implications

The 1982 Act states, with regard to fees for this function, that the "applicant for the grant, renewal or transfer of a licence under this Schedule shall pay a reasonable fee determined by the appropriate authority".

Fees for Sex Establishment (Sex Shop) Licences, under the 1982 Act, are set to recover the costs of carrying out the function under the Act; in other words that the service would be cost neutral to the Authority.

The process for sexual entertainment venue licences is the same as for sex establishment licences and it is therefore likely that the fees would be set at the same level.

Should the provisions be adopted, there will be some minor advertising costs at the outset which will be funded from existing Licensing budgets.

5.2 Legal implications

Should the new provisions be adopted, the legal framework for the issuing of sex establishment licences will be laid down by statute and covers the following matters:

Exemptions – Premises may hold up to 11 events involving "relevant entertainment" a year without the need for a 1982 Act licence. For example, this could apply to pubs that occasionally provide 'striptease' nights. However, such events may still require authorisation under the Licensing Act 2003 if they involve 'regulated entertainment' e.g. a performance of dance.

Notices – Applicants for sex establishment licences must give public notice of their intention to apply for a licence to the Police, advertise it in a local newspaper and display a notice at the premises.

Application Forms – Although there is no prescribed form for a sex establishment licence, the City Council has developed an application form which satisfies the requirements set out in paragraph 10 of schedule 3.

Single Point of Contact – Upon receipt of an electronic application, the appropriate authority must notify the chief officer of police within 7 days of the application being made.

Objections – The appropriate authority should have regard to any relevant objections received within 28 days of the application. Objections solely on moral grounds or values are not deemed relevant.

Hearings – Before refusing an application, all applicants should be given the opportunity to appear before and be heard by the local authority committee or sub committee.

Conditions – Once the appropriate authority has granted a licence, they are able to impose terms, conditions and restrictions on that licence.

Duration of licences – Sex establishment licences can be granted for up to one year.

Appeals – Applicants may appeal to the Magistrates Court, however, if a licence is refused on the grounds of saturation or that the grant of a licence would be inappropriate given the character of the locality, then appeal may be by way of judicial review.

Offences – A range of offences exist under the provisions of the legislation, including the use of a premise as a sex establishment venue without a licence. Persons found guilty of such offences are liable, upon conviction, to a fine of up to £20,000.

6. Other implications

Local Authorities must provide for applications to be made electronically in accordance with Article 9 of the EU Services Directive 2006/123/EC.

6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?

The adoption of the new provisions will contribute towards the corporate objectives of creating a safer and more confident City and developing a creative, active and vibrant City.

6.2 How is risk being managed?

If the Local Authority has not made a resolution to adopt the provisions introduced by section 27 of the 2009 Act by 6th April 2011, it must, as soon as reasonably practicable, consult local people about whether they should make such a resolution. The outcomes of the consultation must be published on the internet. It is anticipated that this would be more costly to the Local Authority, involve considerable delay in implementing the new provisions and cause unnecessary confusion for existing businesses or new applicants.

If adopted, a policy clearly stating the Council's position with regards to sex establishments will be formulated and subjected to public consultation.

In addition, local residents will have an opportunity to 'have a say' in each application by objecting, if they so wish. All applications which are subject to objections will be considered by Committee.

6.3 What is the impact on the organisation?

In Coventry there is currently one sex establishment under the 1982 Act and one sexual entertainment venue under the provisions of the Licensing Act 2003. If the current level of applications for such venues continues, it is anticipated that the adoption of the new provisions will have a minimal impact on staffing.

6.4 Equalities / EIA

The Equalities Impact Assessment for the Licensing service was reviewed in November 2010.

6.5 Implications for (or impact on) the environment

None.

6.6 Implications for partner organisations?

The Police have an opportunity to consider all applications for sex establishment licences; however, they are currently a Responsible Authority for the purposes of the Licensing Act 2003 and are consulted on the majority of licensing applications. It is therefore not anticipated that the adoption of the new provisions will have a significant impact on police resources.

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Coventry City Council

9.3.2a

Briefing note

To
Cabinet

15th March, 2011

Subject
Sexual Entertainment Venues

1 Purpose of the Note

- 1.1 To confirm to Cabinet the outcome of the consideration by the Licensing and Regulatory Committee of this report on 23rd February, 2011.

2 Recommendations

- 2.1 The Cabinet is recommended to:-

- a) Note that the Licensing and Regulatory Committee supports the adoption of the resolutions listed in the recommendations within the report.

3 Information/Background

- 3.1 The Licensing and Regulatory Committee (the Committee) considered this report at its meeting on 23rd February, 2011.
- 3.2 The Committee supported the adoption of the resolutions proposed within the report and welcomed the fact that the adoption of the new provisions would allow for greater control of all types of sex establishments.
- 3.3 The Committee discussed the report in detail especially grandfather rights and the transition period. It was noted that the policy will be approved by the Cabinet Member (Corporate and Neighbourhood Services) in due course.

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