

<b>LICENSING COMMITTEE</b>	<b>AGENDA ITEM No. 4</b>
<b>29 NOVEMBER 2010</b>	<b>PUBLIC REPORT</b>

Cabinet Member(s) responsible:	Councillor Peter Hiller – Cabinet Member for Housing, Neighbourhoods and Planning	
Contact Officer(s):	Adrian Day, Licensing Manager Darren Dolby, Licensing Regulatory Officer	Tel. 454437 Tel. 453561

## LICENSING OF SEXUAL ENTERTAINMENT VENUES

<b>R E C O M M E N D A T I O N S</b>
<p>It is recommended:</p> <ol style="list-style-type: none"> <li>1. That the Committee recommends to Full Council to resolve to formally adopt the amendments to the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 by Section 27 of the Policing and Crime Act 2009.</li> <li>2. If the Committee decides to adopt the amendment, that officers prepare a draft policy for consultation regarding the regulation of such establishments and report back to Committee prior to adoption of the licensing provisions.</li> <li>3. That the Committee recommend to Full Council to approve the delegation of functions under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to the Licensing Committee or the Executive Director of Operations as outlined in Appendix A.</li> </ol>

### 1. ORIGIN OF REPORT

- 1.1 This report is submitted to Committee following changes in legislation brought about by Section 27 of the Policing and Crime Act 2009 which introduced 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 of the 1982 Act.
- 1.2 Section 27 gives local authorities more powers to control the number and location of lap dancing clubs and similar venues in their area. These powers are not mandatory and will only apply where they are adopted by local authorities. Where adopted, these provisions will allow local authorities to refuse an application on potentially wider grounds than is permitted under the Licensing Act 2003 and will give local people a greater say over the regulation of lap dancing clubs and similar venues in their area.

### 2. PURPOSE AND REASON FOR REPORT

- 2.1 The purpose of this report is to advise members of changes to the law relating to sexual entertainment venues and seek their views on the adoption of the provisions in Peterborough.
- 2.2 This report is for the Committee to consider under its Terms of Reference No. 2.5.1.5 'To monitor and review policy relating to licensing matters and make recommendations to Cabinet or Council as appropriate in relation to any proposed changes'.

### **3. BACKGROUND**

- 3.1 From April 2010 a change in the law was introduced by the Policing and Crime Act 2009. This change gives local communities a stronger say over the establishment and location of lap dancing clubs and similar establishments in their area. It also gives Local Authorities more power to reject applications for lap dancing clubs or impose conditions on the licenses. It brought the licensing of lap dancing clubs in line with other sex establishments such as sex shops and sex cinemas. This change in legislation is aimed at recognising that local people do have legitimate concerns about where lap dancing clubs are located.

#### **Lap Dancing**

- 3.2 Lap dancing premises are currently regulated under the Licensing Act 2003 (“the 2003 Act”) and require a Premises Licence under Section 1 of the 2003 Act. There are no special provisions made within the 2003 Act for lap dancing clubs and so applications are submitted in the same way as a pub or restaurant. If an application is submitted to the Licensing Authority for a Premises Licence the only mandatory conditions that apply relate to the sale of alcohol. It is only if relevant representations are made by either an interested party or responsible authority that the Authority can, following either mediation or a hearing, impose other conditions or reject the application. Even then it will only be able to do so where such a step is necessary to promote one of the four licensing objectives as set out in the 2003 Act (the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm).
- 3.3 The powers that are available to Local Authorities to control the establishment of lap dancing premises or impose conditions on their licences are therefore very limited. Following a Department of Culture, Media and Sport (DCMS) consultation with Local Authorities the majority of those that responded felt that their current powers to regulate lap-dancing clubs were inadequate and wanted the Government to intervene.
- 3.4 It has been documented in the media that under the pre-April 2010 law there has been an increase in the number of lap dancing venues and many communities felt powerless to object to the opening of a new lap-dancing club in their area.

#### **From April 2010**

- 3.5 Lap dancing venues will now be regulated under the Local Government (Miscellaneous Provisions) Act 1982 (the “1982 Act”). It is up to each Local Authority to decide whether the provisions of the 1982 Act should apply to their area, so it is possible that the new legislation will not necessarily apply all over England and Wales. However, those Local Authorities who resolve to adopt Schedule 3, as amended, will be able to impose a wider range of conditions on lap dancing clubs, e.g. opening hours, adverts and the visibility of the interior to passers by.
- 3.6 Whilst Peterborough City Council have already adopted Schedule 3 to the 1982 Act for the licensing of sex shops, a further resolution is necessary before the provisions introduced by section 27 will have effect in the local authority area.
- 3.7 If the local authority has not made a resolution to adopt the provisions introduced by Section 27 within one year of it coming into force (6<sup>th</sup> April 2010), it must as soon as is reasonably practicable to do so consult local people about whether they should make such a resolution.
- 3.8 The local authority may upon adoption of the legislation decide on the number of sex establishments or on the number of a particular kind of sex establishment they consider appropriate for the local authority area or a specified area e.g. city centre. The authority may decide nil being an appropriate number for sex establishments or sex establishments of a particular kind. There is no right of appeal against the authority’s decision to adopt the policy of nil establishments.

- 3.9 The local authority will have the ability to set the licence fee for a sexual entertainment venue as they currently do for sex shops, the licence fee is based on a cost recovery basis.
- 3.10 Local Authorities will be able to refuse to grant or renew a Licence on the grounds that such a club would be inappropriate having regard to the character of the area, the use of other premises in the area e.g. schools and churches and they may also have regard for the number of similar premises in the area, if the application is equal to or exceeds the number the Authority considers appropriate.
- 3.11 Similarly, local residents will be able to make written representations to the Local Authorities on these grounds, rather than being limited to make representations based on the four licensing objectives found in the Licensing Act 2003.
- 3.12 Under the new legislation, lap-dancing clubs will be defined as a type of sex establishment classed as “sexual entertainment venues”. “Relevant entertainment” is “any live performance or any live display of nudity provided solely or principally for the purpose of sexually stimulating any member of the audience.”
- 3.13 The legislation allows the local authority to decide what, in its opinion, should be included as relevant entertainment but it is suggested that the following should come under its control:
- Lap dancing
  - Pole dancing
  - Table dancing
  - Strip shows
  - Peep shows
  - Live sex shows
- (this list is not exhaustive)
- 3.14 With the new legislation, there will be no ‘grandfather rights’ for existing lap dancing clubs. If they wish to continue trading they will need to apply for a Licence under the new regime. A transitional period of 12 months will be given to existing lap dancing clubs to apply for a new Licence. However premises, which fail to apply for a new Licence within this period, will face closure.
- 3.15 Existing clubs or those wishing to operate new lap dancing premises will need to make an application for a new licence to the Local Authority and be required to give public notice of the application in a local newspaper and at the premises. Any persons wishing to object to the licensing of such premises must give written notice within a statutory 28 day consultation period stating the general grounds of their objection. Any contested application will be considered before the Authority’s appropriate committee or sub-committee.

#### **4. REASONS FOR RECOMMENDATIONS**

- 4.1 This is due to a change in the law regarding the licensing of sexual entertainment venues.

#### **5. IMPLICATIONS**

- 5.1 To not adopt the amendment and maintain the current status quo would allow prospective sexual entertainment venues to take advantage of a perceived loophole in the Licensing Act 2003.
- 5.2 To not adopt the amendment to the 1982 Act the authority will have no legal powers to enforce or charge a licence fee for sexual entertainment venues.

**6. BACKGROUND DOCUMENTS**

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985)

Policing and Crime Act 2009.

Home Office Guide

Local Govt MPA 82

LA 2003

ECHR Article 1 Protocol 1