

Decision Maker: General Purposes and Licensing Committee

Date: 28 July 2010

Decision Type: Non-Urgent Non-Executive Non-Key

Title: LICENSING OF SEXUAL ENTERTAINMENT VENUES

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Chief Officer: Nigel Davies - Director of Environmental Services

Ward: All

1. Reason for report

To advise members of changes to the law relating to sexual entertainment venues and seek their views on the adoption of the provisions in Bromley

2. **RECOMMENDATION(S)**

Members are asked to:

Recommend to Full Council to Resolve to Adopt the provisions of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 Policing and Crime Act 2009 with effect from 1 January 2011 to require the licensing of sex entertainment venues.

Agree to receive further reports:

1. To consider whether to set a limit on the number of sex establishments (sex shops, sex cinemas and sex entertainment venues);
2. On adopting standard licensing conditions; and
3. On the appropriate fee.

Corporate Policy

1. Policy Status: Existing policy.
 2. BBB Priority: Safer Bromley. Children and Young People, Vibrant Thriving Town Centres
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Financial

1. Cost of proposal: Estimated cost Public notice of proposals to adopt the new provisions approx £600
 2. Ongoing costs: N/A.
 3. Budget head/performance centre: Public Protection
 4. Total current budget for this head: £3.3m
 5. Source of funding: Existing Revenue Budget
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Staff

1. Number of staff (current and additional): 58 (Licensing Service 8)
 2. If from existing staff resources, number of staff hours:
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Legal

1. Legal Requirement: Statutory requirement. Adoption of discretionary legal provisions
 2. Call-in: Call-in is not applicable.
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All residents and businesses
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A.
2. Summary of Ward Councillors comments:

3. COMMENTARY

31. The Licensing Act 2003 altered the way that certain sexual entertainment venues such as those offering lap dancing were licensed.
- 3.2 As lap dancing and similar types of entertainment are now included in a general definition of 'Regulated Entertainment' under the Licensing Act 2003 it effectively limited the grounds on which 'representations' could be made to the 4 licensing objectives set out in the Act. These are:
- a. prevention of crime and disorder;
 - b. prevention of public nuisance;
 - c. public safety; and
 - d. the protection of children from harm.
- 3.3 Whereas the licensing of sex shops and sex cinemas under other legislation have wider grounds for objection and refusal including the nature of the locality. (Local Government (Miscellaneous Provisions) Act 1982)
- 3.4 In response to concerns about this situation the Home Office undertook consultation on proposals based on a private Members Bill to remove the licensing of lap dancing venues from the remit of the Licensing Act 2003. Members expressed support for the proposals at that time.
- 3.5 The Government's proposals have now been included in the provisions of the Policing and Crime Act 2009. This sets out a new licensing regime for 'Sexual entertainment venues'. This will bring the licensing of lap dancing and pole dancing clubs and other similar venues under the regime set out in the 1982 Act, which is currently used to regulate establishments such as sex shops and sex cinemas.
- 3.6 A "sexual entertainment venue" is premises where 'relevant entertainment' is provided, or permitted to be provided, by or on behalf of the organiser in front of a live audience for the financial gain of the organiser or entertainer. 'Relevant entertainment' may take the form of a live performance or live display of nudity and must be of such a nature that, ignoring the financial gain, it must reasonably be assumed to have been provided solely or principally for the purpose of sexually stimulating any member of the audience. An audience can be just one person.
- 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.
- 3.7 There are exemptions and the following are not sexual entertainment venues:
- a. Sex shops or Sex cinemas (licensable in their own right)
 - b. Premises where 'Relevant Entertainment' has not been provided more than 11 times in the past 12 months.
- 3.8 The provisions of the Policing and Crime Act 2009 only come into effect if they are adopted by the Council. If the Council does not choose to adopt the new provisions for Sexual Entertainment Venues we would continue to deal with applications for lap dancing and similar

operations using the existing legal provisions. However there is a requirement in the Policing and Crime Act that will require us to consult with local people if we have not adopted the provisions within 12 months of them coming in to force ie by 6 April 2011.

The licensing of lap dancing etc is complicated in London as it is covered by several statutes which have different effects on how the Council can or may wish to apply.

3.9 Current Legal Framework

Sex shops and Sex cinemas are licensed under the Local Government (Miscellaneous Provisions) Act 1982 and are relatively straightforward and will not be considered further in this report.

3.10 In London an additional category of sex establishment – Sex Encounter Establishments – were added to the Local Government (Miscellaneous Provisions) Act 1982, the definition of which is essentially very similar to that for the new category of sexual entertainment venue.

3.10 Lap dancing can be licensed in London under this act but are exempt if the premises are covered by a Premises Licence for alcohol or entertainment (Licensing Act 2003). This means that the only grounds for residents or businesses to object are those based on the four licensing objectives (see paragraph 3.2 above).

3.11 Lap dancing can be permitted under a premises licence (Licensing Act 2003) as part of ‘Regulated Entertainment’ and could be sought under the provisions of a Temporary Event Notice (TEN) for occasional events. Only the Police can object to a temporary event notice on the grounds of crime and disorder.

3.12 Legal Framework if we adopt the Sexual Entertainment Venue provisions

If the Council decide to adopt the new provisions relating to sexual entertainment venues a number of changes to the legal framework will follow

- a. Lap dancing and similar types of entertainment will be removed from the definition of ‘Regulated Entertainment’ under the Licensing Act 2003 so it would not be possible to control it under this Act.
- b. The existing provisions relating to Sex Encounter Establishments will be removed and replaced with the Sexual Entertainment Venue category.
- c. Wider grounds are available for residents and businesses to object, including the nature of the locality.
- d. The Council has the option to state the maximum number of sexual entertainment venues in the locality and that number can be ‘Nil’.
- e. The Council can set standard licensing conditions.
- f. An exemption will be introduced for premises holding lap dancing for up to 11 times a year. There appears to be no provisions to refuse these.

3.13 There are advantages to the adoption of the new Sexual Entertainment Venue provisions in respect of the wider discretion to take in to account the nature of the locality and to set a maximum number of venues.

3.14 Members should be reassured that the adoption of the new provisions for Sex Entertainment Venues will not have any detrimental effect as far as the exemptions for up to 11 events a year is concerned. The legal advice is that as these are not ‘Sex Entertainment Venues’ they still fall

within the control of the Licensing Act 2003 under the provisions of either a full Premises Licence or a Temporary Event Notice.

3.15 Adoption Procedure

If Members decide to adopt the new provisions a formal adoption procedure has to be followed.

1. As we have already adopted the provisions of Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 it would be necessary to resolve to adopt the provisions of Section 27 Policing and Crime Act 2009 as they amend schedule 3 to include Sex Entertainment Venues.
2. The resolution must be given by Full Council. Next Full Council meeting is on 25 October 2010
3. Set a date for the provisions to apply. This must be a minimum of one month from the date of the resolution by Council.
4. Publish a notice for two consecutive weeks in a local newspaper of the resolution to adopt the provisions. The first publication shall not be later than 28 days before the date specified in the resolution for the provisions to come into force.
5. It is proposed that the provisions should apply with effect from 1 January 2011.

4. POLICY IMPLICATIONS

- 4.1 Members have previously agreed a limit of nil for sex shops in Bromley Town Centre. That decision is unaffected if Members agree to adopt the new provisions.
- 4.2 The facility exists under the new provisions to set a limit for the number of 'Sex Entertainment Venues'. Legal advice is that this should be considered separately and will be the subject of a further report.

5. FINANCIAL IMPLICATIONS

- 5.1 The Local Government (Miscellaneous Provisions) Act 1982 permits the Council to set a fee for the licensing of sex establishments. The current fee in respect of a Sex shop or Sex Cinema is £9789 and it is suggested that the same fee should apply in respect of a Sex Entertainment Venue but will be considered in a separate report.
- 5.2 The £600 cost of the public notice will be met from the licences budget (£5,820). It should be noted that there are no such venues in Bromley at the present time and therefore no income is expected.

6. LEGAL IMPLICATIONS

- 6.1 Detailed legal points are discussed in the report. In summary the main considerations are:
 - The adoption of provisions relating to the licensing of Sex Entertainment Venues is discretionary requiring formal adoption by the Council.
 - The new provisions establish a specific licence for Sex Entertainment Venues with wider grounds for local residents to make objections and for the Council to consider.

- The Council can set a limit on the number of Sex Entertainment Venues.
- The exemption of up to 11 events remains licensable under the Licensing Act 2003.

Non-Applicable Sections:	PERSONNEL IMPLICATIONS
Background Documents: (Access via Contact Officer)	Policing and Crime Act 2009 Home Office Guidance for England and Wales Sexual Entertainment Venues