

FOR: REGULATORY AND LICENSING COMMITTEE

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Agenda Item: 5

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**THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982
THE POLICING AND CRIME ACT 2009 ("THE 2009 ACT")
LICENSING OF SEXUAL ENTERTAINMENT VENUES (SEV'S)**

1. Purpose Of Report

- 1.1 To consider the need for a policy and standard conditions of a licence for the Licensing of Sexual Entertainment Venues detailed within the report.

2. Background

- 2.1 The Local Government (Miscellaneous Provisions) Act 1982 (The Act) Schedule 3, allows a Local Authority to adopt by resolution, arrangements for the licensing control of Sex Establishments (sex shops and sex cinemas). These were adopted on the 12th January 1983. We licence one premise within the district at present but do not currently have any other types of sex establishments.
- 2.2 Under the Policing and Crime Act 2009 a new category of "sex establishment" called a "sexual entertainment venue" (SEV) in Schedule 3 to the Local Government (Miscellaneous Provisions) Act, 1982 was created.
- 2.3 Section 27 of the Policing and Crime Act 2009 introduced amendments to Schedule 3 which made available new powers relating to the control of sexual entertainment venues.
- 2.4 This brings the licensing of lap dancing, pole dancing clubs and other similar venues under the regime set out in the 1982 Act (currently used to regulate establishments such as sex shops and sex cinemas) rather than under the Licensing Act 2003.
- 2.5 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." The meaning of 'relevant entertainment' 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).” An audience can consist of just one person (e.g. where the entertainment takes place in a private booth).

- 2.6 The powers to regulate sexual entertainment venues **are not mandatory** and only apply where the amendment to the 1982 Act has been specifically adopted. Where adopted, the legislation is designed to give local people a greater say over the regulation of sexual entertainment venues in licensed premises in their area by allowing for objections on wider grounds than is allowed currently under the LA2003.
- 2.7 Guidance issued by the Home Office indicates that whilst local authorities should normally judge each case on its own merits, it is expected that the definition of relevant entertainment would at least include the following forms of entertainment:
- Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows
 - Live sex shows
- 2.8 Although the definition of relevant entertainment makes reference to a ‘live display of nudity’, the Guidance indicates that the mere fact that there is a display of nudity does not mean that a sex establishment licence will necessarily be required. For example, if the display forms part of a drama or dance performance in a theatre, in most cases it cannot reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience.
- 2.9 The relevant entertainment must be provided for the financial gain of the ‘organiser’ or ‘entertainer’. The ‘organiser’ means any person who is responsible for the organisation or management of the relevant entertainment or the premises at which the relevant entertainment is provided. The Home Office Guidance states that in most circumstances, this will refer to the manager of the premises, but could also refer to someone who is responsible for organising the relevant entertainment on behalf of the persons responsible for the management of the premises.
- 2.10 The Guidance indicates that the ‘organiser’ must be someone who is in a position of responsibility over the provision of the relevant entertainment and should not be interpreted to mean a member of staff who is merely employed to work during the provision of relevant entertainment. It is only necessary for one person to hold a sexual entertainment venue licence for the premises, even if there is more than one person who is responsible for the organisation or management of the relevant entertainment or the premises.
- 2.11 The following are not sexual entertainment venues for the purpose of the 1982 Act and are therefore exempt from the licensing provisions:
- i) sex shops and sex cinemas;
 - ii) any premises that at the time in question:
 - has not provided relevant entertainment on more than 11 occasions within the previous 12 months;
 - no such occasion has begun within the period of one month beginning with the end of any previous occasion;

- no such occasion has lasted for more than 24 hours;
- iii) premises specified or described in an order made by the relevant national authority.

- 2.12 Premises which provide relevant entertainment on an infrequent basis will continue to be regulated under the LA2003, insofar as they are providing regulated entertainment under that Act. Any premises that provide relevant entertainment on more occasions, more frequently or for a longer period of time than is permitted under the exemption will be operating as a sexual entertainment venue.
- 2.13 They will then have committed an offence unless they hold a sexual entertainment venue licence or the Council has waived the requirement for such a licence.

3. Matters For Consideration

- 3.1 In consideration of the matters outlined in section 2 the purpose of this report is to seek Members views as to whether it is considered necessary or desirable to adopt the new powers.
- 3.2 If the Council were to adopt the amendments it would be able to better control what is or what is not licensed within the district based on what our Members and wider public think. Many local authorities have chosen to do so with some having such venues currently e.g. Tamworth.
- 3.3 Furthermore whilst there is no statutory requirement for the Council to have a policy in relation to sexual entertainment venues and as a result of local discussions carried out with other local near authorities, it was found that the majority of those authorities have decided to adopt policies in relation to SEVs.
- 3.4 There is no statutory requirement for a consultation exercise to be undertaken prior to approving a policy for SEVs but it is suggested it would be good practice to do so.
- 3.5 If the Council decide to adopt the new powers it would also be desirable to introduce standard conditions of a licence which would apply to any SEV licences granted by the Council.
- 3.6 The Licensing Act 2003 already contains a statutory consultation process in relation to approving licensing policies. This includes consulting with :
- the police and other statutory bodies
 - businesses likely to be affected
 - councillors
 - placing notice of the consultation on the Council's web site
- 3.7 It is suggested that a similar consultation process be used in relation to the Policy and standard conditions of licence.
- 3.8 A suggested draft policy and standard conditions of licence for the Licensing of Sexual Entertainment Venues are set out in **Appendices A and B**, for Members consideration and may be approved as the basis for consultation prior to the policy and conditions coming into effect at a later date.
- 3.9 If such a proposal and need is accepted then officers would commence the process of undertaking a consultation exercise on the draft policy and standard conditions of licence for the Licensing of Sexual Entertainment Venues referred to in 2.1 above, for a set period using the normal corporate processes to include the bodies mentioned in 3.6.

4. Strategic Plan Implications

- 4.1 The provision of good quality services by the Council is a key objective.
- 4.2 The licensing and enforcement activities undertaken contribute to the delivery of strategic objectives of “Supporting People” and “Boosting Business and our Economy”.

5. Sustainability Issues

- 5.1 The services provided by Environmental Health, including licensing enforcement activities contributes to the well-being and safety of our residents and towards protecting and providing a high quality and sustainable environment for this and future generations.

6. Human Rights Issues

- 6.1 Article 6 of the Human Rights Act 1998 states that, in determination of a person’s civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
- 6.2 Article 8 states that everyone has the right to respect for his private and family life, his home and his correspondence.
- 6.3 Part II, Article 1 of the Act states that every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

7. Financial Implications

- 7.1 Costs would be incurred in the development of a draft policy and conditions.
- 7.2 When adopted a specified fee would be charged for any application so recovering some of the costs incurred.

8. Risk Management Issues

- 8.1 There is a risk to the Council in respect of legal challenge to any decision made and to the policy and conditions if not considered to be reasonable and proportionate.
- 8.2 In the event of such a premises starting up in the district currently a lack of policy could limit the Councils ability to properly regulate these premises

9. Recommendation

- 9.1 Members to consider the contents of this report and specifically if it wishes to:
- 9.2 Adopt the new amendments the Policing and Crime Act 2009 for a new category of “sex establishment” called a “sexual entertainment venue” (SEV) in Schedule 3 to the Local Government (Miscellaneous Provisions) Act, 1982 and from what date.
- 9.3 Undertake a public consultation exercise to be undertaken prior to approving a policy for SEVs and then to:
- 9.4 Consider and adopt a policy and standard conditions of a licence for the Licensing of Sexual Entertainment Venues under the Local Government (Miscellaneous Provisions) Act 1982 and Policing and Crime Act 2009.

Background Documents:

Appendix A - Draft policy for the Licensing of Sexual Entertainment Venues (SEV)

Appendix B - Draft standard conditions of licence of Sexual Entertainment Venues (SEV)

Web link to Guidance -

<http://www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=5AF8F2C&id=23464>