



Agenda item:

[No.]**GENERAL PURPOSES COMMITTEE****On 28th June 2010**Report Title. **Adoption of powers to regulate Sex Entertainment Venues**Report of **Niall Bolger – Director of Urban Environment**

Signed :


 26th May 2010

Contact Officer : Robin Payne – Head of Enforcement Services

Wards(s) affected: **All**

Report for: Key Decision

1. Purpose of the report

1.1. To seek approval for the adoption powers contained in Schedule 3 of the 1982 Act Local Government Act 1982 (the 1982 Act) as inserted by Section 27 of the Policing and Crime Act 2009. The effect of this provision, if adopted, is to 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.

1.2. The report also seeks to establish a fee for applications made.

2. State link(s) with Council Plan Priorities and actions and /or other Strategies:

- 2.1. Haringey's Strategic Partnership strategy 'Safer for All' seeks to reduce harm from antisocial behaviours and in particular to protect families and children.
- 2.2. Our Licensing Policy Statement currently reflects the legal position that venues can operate without licence 11 times a year without licence.

3. Recommendations

- 3.1. That the General Purpose Committee resolve to refer to full Council to adopt the amendment to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as inserted by Section 27 of the Policing and Crime Act 2009, to allow the

licensing of sexual entertainment venues.

3.2. That The General Purposes Committee agree to set a fee of £2,700 for an application. No part of this fee will be returnable.

4. Reason for recommendation(s)

4.1. Under the Licensing Act 2003 currently applications can be made for sexual entertainment. Applications must be considered against four prescribed Licensing Policy objectives. Our experience in Haringey has been that the Licensing Act does not easily and adequately deal with the concerns that such venues can have for local communities. The former Cabinet Member for Community Safety and Enforcement lobbied for change so that those wishing to object to applications could better reflect their concerns about local impact. Adopting this amendment will provide a better framework for considering applications for sexual entertainment venues.

5. Other options considered

5.1. The Council can choose to adopt after 6 April 2011, or not at all. If adopted after 6 April 2011 the Council will be required to undertake public consultation before adopting, and as soon as is reasonably practicable after that date. Adopting later would incur additional costs and mean that the existing unsatisfactory arrangements would continue for longer.

6. Summary

6.1. Members of this committee are asked to agree to the proposal that the Council adopt Schedule 3 to the 1982 as amended to regulate lap dancing clubs and similar venues, and to set a corresponding fee to enable an application.

7. Chief Financial Officer Comment.

7.1. The costs of preparing this report and implementing the associated recommendations can be contained within existing budgets.

8. Head of Legal Services Comments

8.1. The Council has already adopted Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. It may now resolve to adopt Schedule 3 as amended by Section 27 of the Policing and Crime Act 2009 which would permit the more effective regulation of lap dancing clubs and similar venues. The procedure for adoption is found in Section 2 of the 1982 Act as summarised in the

body of this report. If the amended schedule is adopted by 6 April 2011 there will be no statutory requirement to consult local residents or workers. Non statutory Home Office guidance on Sexual Entertainment Venues was published in March 2010.

9. Equalities & Community Cohesion Comments

The Government carried out an Equality Impact Assessment to see if there would potentially be some less favourable treatment of groups that would be affected and how this could be mitigated. No negative impact on equalities groups were foreseen.

10. Consultation

10.1. No consultation has been undertaken. Licensing Committee has been informed of this report.

11. Service Financial Comments

11.1. An appropriate fee level for this application process that is compliant with the EU Services Directive as implemented in the UK by the Provision of Services Regulations 2009. Schedule 3 to the 1982 Act provides that an applicant for the grant, renewal, variation or transfer of a sex establishment licence shall pay a reasonable fee as determined by the Council. Having surveyed fees set by our neighbouring boroughs this Authority propose a reasonable fee of £2700 for an application for a Sexual Entertainment Venue (SEV) licence.

12. Local Government (Access to Information) Act 1985

12.1. The Policing and Crime Act 2009

The Local Government (Miscellaneous Provisions) Act 1982

Home Office Guidance for Sexual Entertainment Venues dated 1 April 2010

13. Background

13.1. The Policing and Crime Act 2009 ("the 2009 Act") amends Schedule 3 of the Local Government (Miscellaneous Provisions Act) 1982 to allow the licensing of "Sexual Entertainment Venues".

13.2. Section 27 introduces a new category of sex establishment called a "sexual entertainment venue". A "sexual entertainment venue" is defined as "any premises, which relevant entertainment is provided before a live audience for the financial gain of the organiser or the 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 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. The audience can consist of one person. It is likely to cover lap dancing, pole dancing, table dancing, strip shows, peep shows and live sex shows.

- 13.3. Lap dancing does not currently require a premises licence under the Licensing Act 2003 and no special provisions are made in the 2003 Act for lap-dancing venues. If an application for performance of dancing is submitted and unopposed, the authority must grant it subject to mandatory conditions.
- 13.4. If representations are made by an interested party or responsible authority then the authority may, following a hearing, impose other conditions or reject the application providing the rejection is in line with at least one of the four general licensing objectives under the Licensing Act 2003. This severely restricts the scope for objections and limits these to situations which could apply to establishments such as pubs, restaurants and food takeaways. The special, and more controversial sexual aspects of a lap dancing venue or similar may not be considered.
- 13.5. The Government consulted with Local authorities, and other relevant parties, as to whether or not the Licensing Act 2003 provided adequate provisions to regulate such activities. Results of consultation showed that many respondents, including local authorities, thought it was not fit for purpose as it did not allow the issues that really concerned residents faced with such an application to have a voice
- 13.6. The amendment to the 1982 Act provides a more specified approach to Sexual Entertainment Venues and their control. The Licensing Authority can apply prescribed conditions on grounds not covered by the Licensing Act 2003, for example dealing with the location of the premises and the character of the area, the hours of operation, the display of adverts, the visibility of the interior and the managerial control of premises. The local authority may further prescribe different standard conditions on a sexual entertainment venue compared to other sex establishments, such as a sex shop.
- 13.7. A further report with proposals for a Sex Establishment Policy will be brought to this committee at a later date which will set out all criteria against which decisions can be made. This could include setting an effective nil resolution for the borough.

14. Formal Adoption Arrangements

- 14.1. Section 27 came into force on 6th April 2010. Following this date local authorities may 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 to decide on.

- 14.2. If the local authority fails to adopt Schedule 3 in the way described above, within twelve months of the new legislation taking effect (6th April 2011), it must then carry out a full public consultation exercise before deciding whether to formally adopt Schedule 3 of the 1982 Act as amended. The purpose of the duty to consult, if you have not adopted this legislation within 12 months, is to ensure that local authorities consider the views of local people where, for whatever reason, they have not adopted the provisions
- 14.3. There are detailed transitional provisions contained in the legislation. Currently there are no sexual entertainment venues in this local authority's area so the transitional arrangements will not be activated.
- 14.4. Haringey Council has already adopted Schedule 3 to the 1982 Act for the licensing of sex shops and sex cinemas. However a further resolution is necessary before the provisions introduced by Section 27 will have effect in the local authority area.
- 14.5. Should Members of Full Council agree to the adoption of the amendment, they must also specify the day on which it shall come into force in the area. The specified day must be more than one month after the day on which the resolution was passed. The local authority will then publish a notice that they have passed the resolution referred to above for two consecutive weeks in a local newspaper. The first publication shall not be later than 28 days before the day specified in the resolution for the provisions to come into force in the local authority's area.

15. The timescale for the adoption is as detailed below

It is now necessary to track this through to final publication in line with the timetable as detailed below :

- 27th May 2010 Consult Licensing Committee to refer to General Purpose
- 28th June 2010 – report goes to GPC to agree adoption by Full Council and set fees
- 19th July 10 – report goes to Full Council for adoption . Public notice to be given for 28 days