

REPORT TO: LICENSING & REGULATORY COMMITTEE
CABINET
COUNCIL

DATE: 07/06/2010
10/06/2010
08/07/2010

SUBJECT: **SEX ESTABLISHMENT LICENCE – SEXUAL ENTERTAINMENT VENUE**

WARDS AFFECTED: All

REPORT OF: P.J. Moore,
Environmental & Technical Services Director

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**EXEMPT/
CONFIDENTIAL:** No

PURPOSE/SUMMARY:

To seek Members endorsement of the recommendations to the Council:

- (a) approving the adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act, 1982, as amended by S.27 of the Policing and Crime Act 2009;
- (b) the giving of delegated powers to Licensing (Sexual Entertainment Venues) Sub-Committees and to the Environmental & Technical Services Director in respect of certain functions under the Policing and Crime Act, 2009 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act, 1982; and
- (c) to seek the approval of Members for proposed conditions and fees in respect of this process.

REASON WHY DECISION REQUIRED:

1. The Policing and Crime Act, 2009 amends Schedule 3 to the Local Government (Miscellaneous Provisions) Act, 1982, reclassifying lap dancing clubs as “sexual entertainment venues” and giving local authorities the power to regulate such venues as sex establishments under Schedule 3 to the Local Government (Miscellaneous Provisions) Act, 1982. However the powers are not mandatory and will only apply where they have been adopted.
2. To enable the Council to prescribe standard conditions and to charge a fee for this new function.

RECOMMENDATION(S):

That the Licensing and Regulatory Committee:

- (a) Endorses the adoption of Schedule 3 the Local Government (Miscellaneous Provisions) Act, 1982, as amended by Section 27 of the Policing and Crime Act, 2009; and,

- (b) Endorses the recommended delegation of functions to the Licensing (Sexual Entertainment Venues) Sub-Committee; and,
- (c) Endorses the proposed conditions and fees; and,
- (d) Recommends that Cabinet approve the Recommendations, set out in paragraphs (a) – (c), above to Council.

That Cabinet:

- (a) Recommends the adoption of Schedule 3 the Local Government (Miscellaneous Provisions) Act, 1982, as amended by Section 27 of the Policing and Crime Act, 2009; and,
- (b) Recommends the approval of the recommended delegation of functions to the Licensing (Sexual Entertainment Venues) Sub-Committee; and,
- (c) Approves the proposed conditions and fees as set out in paragraph 43 of the report in respect of Sexual Establishment Venues Licences; and,
- (d) Recommends that Council approve the Recommendations set out in paragraphs (a) – (b) above.

That the Council:

- (a) Approves the adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act, 1982, as amended by S.27 of the Policing and Crime Act 2009;
- (b) Adopts the recommended delegation of functions relating to the establishment of a Licensing (Sexual Entertainment Venues) Sub-Committee;
- (c) Authorises the Licensing and Regulatory Committee to delegate its functions under Schedule 3 of the Local Government (Miscellaneous Provisions) Act, 1982, as amended by S.27 of the Policing and Crime Act 2009 to Licensing (Sexual Entertainment Venues) Sub-Committees each consisting of three members of the Licensing and Regulatory Committee;
- (d) Authorises the Assistant Chief Executive to determine the composition (i.e. membership) of any Licensing (Sexual Entertainment Venues) Sub-Committee from within the membership of the Licensing and Regulatory Committee for the purposes of convening meetings of the Licensing (Sexual Entertainment Venues) Sub-Committees;
- (e) Recommends that Part 3 of the Constitution - Responsibility for Functions (Delegations to Regulatory and Non-Executive Committees) be amended to take account of recommendations (b), (c) and (d) above.

KEY DECISION: No

FORWARD PLAN: No

IMPLEMENTATION DATE: 22/07/2010

ALTERNATIVE OPTIONS:

Not to adopt Schedule 3 of the 1982 Act as amended by Section 27 of the Policing and Crime Act 2009.

Not to prescribe conditions or fees for this new function.

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IMPLICATIONS:

Budget/Policy Framework:

Financial:

The proposed fees will provide cost recovery for the services provided.

<u>CAPITAL EXPENDITURE</u>	2010/ 2011 £	2011/ 2012 £	2012/ 2013 £	2013/ 2014 £
Gross Increase in Capital Expenditure	–	–	–	–
Funded by:	–	–	–	–
Sefton Capital Resources	–	–	–	–
Specific Capital Resources	–	–	–	–
<u>REVENUE IMPLICATIONS</u>	–	–	–	–
Gross Increase in Revenue Expenditure	–	–	–	–
Funded by:	–	–	–	–
Sefton funded Resources	–	–	–	–
Funded from External Resources	–	–	–	–
Does the External Funding have an expiry date? Y/N N	When?			
How will the service be funded post expiry?				

CORPORATE OBJECTIVE MONITORING:

<u>Corporate Objective</u>	<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1 Creating a Learning Community		√	
2 Creating Safe Communities	√		
3 Jobs and Prosperity		√	
4 Improving Health and Well-Being		√	
5 Environmental Sustainability		√	
6 Creating Inclusive Communities		√	
7 Improving the Quality of Council Services and Strengthening local Democracy		√	
8 Children and Young People		√	

Legal:

None

Risk Assessment: None

Asset Management: None

Consultation Undertaken/Views

- Merseyside Police.
- Legal.

LIST OF BACKGROUND PAPERS RELIED UPON IN THE PREPARATION OF THIS REPORT

- *Certain provisions of the Policing and Crime Bill* – Report to Licensing & Regulatory Committee, 19th January 2009.
- *Proposed response to Home Office consultation – “Regulation of Lap Dancing Clubs – Consultation on Transitional Arrangements”* – Report to Licensing & Regulatory Committee, 26th October 2009.
- Policing and Crime Act 2009.
- *Sexual Entertainment Venues - Guidance for England and Wales* – Home Office.
- *The Policing and Crime Act 2009 (Commencement No. 1 and Transitional and Saving Provisions) (England) Order 2010* – Statutory Instrument No. 722 / 2010.
- *The Policing and Crime Act 2009 (Consequential Provisions) (England) Order 2010* – Statutory Instrument No. 723 / 2010.
- Local Government (Miscellaneous Provisions) Act 1982.

Background

1. Members will recall from previous Reports that Schedule 3 of the Policing and Crime Act 2009 (“the 2009 Act”) inserted a new category of “sex establishment” called a “sexual entertainment venue” into Schedule 3 to the Local Government (Miscellaneous Provisions) Act, 1982 (the “1982 Act”). Thus bringing 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, rather than under the Licensing Act 2003 (“the LA03”).
2. 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 private booths).

3. The Guidance issued by the Home Office over these matters indicates that whilst local authorities should judge each case on its own merits, it would be expected that the definition of relevant entertainment would apply to the following forms of entertainment as they are commonly understood:
 - Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows
 - Live sex shows
4. It should be noted that 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.
5. Paragraph 2A(14) of Schedule 3 sets out the definition of a 'display of nudity'. In the case of a woman, this means exposure of her nipples, pubic area, genitals or anus and, in the case of a man; this means exposure of his pubic area, genitals or anus.
6. 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 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.
7. 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.
8. The following are not sexual entertainment venues for the purpose of the 1982 Act:
 - (a) sex shops and sex cinemas;
 - (b) any premises that at the time in question:
 - (i) has not provided relevant entertainment on more than 11 occasions within the previous 12 months;

- (ii) no such occasion has begun within the period of one month beginning with the end of any previous occasion;
 - (iii) no such occasion has lasted for more than 24 hours; or,
 - (c) premises specified or described in an order made by the relevant national authority.
9. Premises which provide relevant entertainment on an infrequent basis will continue to be regulated under the LA03, insofar as they are providing regulated entertainment under that Act, either by virtue of a premises licence or club premises certificate issued under Part 3 or Part 4 or a temporary events notice issued under Part 5 of 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 and will have committed an offence under Schedule 3 unless they hold a sexual entertainment venue licence or the local authority has waived the requirement for such a licence.
10. With regard to the latter point, an applicant can apply for a waiver either as part of the application for a licence or separately. The local authority can grant a waiver if they consider that to require a licence would be unreasonable or inappropriate. Where a waiver is granted the appropriate authority should inform the applicant that a waiver has been granted. The waiver may last for such a period that the appropriate authority think fit, but can be terminated by the appropriate authority at any time with 28 days notice.

Adopting the Provisions

11. As outlined above, Section 27 of the 2009 Act allows local authorities to regulate lap dancing clubs and similar venues under Schedule 3 of the 1982 Act and gives local authorities powers to control the number and location of lap dancing clubs and similar venues in their area. However, these powers are not mandatory and will only apply where they have been adopted. Where adopted, the provisions of Schedule 3 will allow the Authority the power to refuse an application on potentially wider grounds than is permitted under the LA03 and will give local people a greater say over the regulation of lap dancing in pubs and similar venues in their area.
12. For the purposes of the 1982 Act the “appropriate authority” is responsible for determining applications for sex establishment licences. The “appropriate authority” means the local authority which has passed a resolution under Section 2 of the 1982 Act to adopt Schedule 3, as amended by the 2009 Act, in their area.

13. Functions under Schedule 3 are the responsibility of full Council. However, under Section 101 of the Local Government Act, 1972, local authorities may arrange for the discharge of these responsibilities by a Committee or Sub-Committee of the appropriate authority. An authority may delegate its functions to those who sit on the Licensing Committee set up to discharge licensing functions under the LA03. It is recommended that the functions are delegated to Sub-Committees. Members should note that when dealing with an application for a Sex Establishment Licence, the members of the Sub-Committee would not be acting as the Licensing Committee under the LA03 but would, instead be exercising their functions under Schedule 3 of the 1982 Act.
14. Section 27 of the 2009 Act which amends Schedule 3 of the 1982 Act came into force on 6 April 2010. By adopting Schedule 3 (as amended by the 2009 Act), the amendments will have effect in the Borough. Members will be aware that the Authority has already adopted Schedule 3 to the 1982 Act for the licensing of sex shops and sex cinemas. The adoption of Schedule 3 (as amended by the 2009 Act) will enhance the Authority's control of those venues operating as sex establishments, as defined in Schedule 3.
15. Should Schedule 3 (as amended by the 2009 Act) be adopted the Authority must publish notice that they have passed the resolution under Paragraph 2(2) of Schedule 3 of the 2009 Act 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.
16. Should Members approve the recommendations set out in this report, it is anticipated that the provisions shall come into force on 22nd July 2010.

Applications

17. In general the Authority has discretion whether or not to grant a licence for the use of any premises, vehicle, vessel or stall to be used as a class of sex establishment.
18. A Licence cannot, however, be granted to:
 - a person under 18;
 - a person who has held a licence but has had it revoked within 12 months preceding the date of application;
 - to a person, other than a body corporate, who is not resident in an EEA State or was not so resident throughout the period of six months immediately preceding the date when the application was made;
 - to a body corporate which is not incorporated in an EEA State; or
 - a person who has within the last 12 months preceding the date of the application been refused a licence in respect of the same premises.

19. When determining a licence application, the local authority must have regard to any rights the applicant may have under Article 10 (right to freedom of expression) and Article 1, Protocol 1 (protection of property) of the European Convention on Human Rights.
20. Paragraph 10 (15) of Schedule 3 of the 1982 Act gives a statutory right to any person to object to an application. However, only objections received within the statutory 28 days can be considered: *R v Birmingham City Council and others, ex parte Quietlynn Ltd and others* (1985) 83 LGR 461.
21. If objections are received then the Authority is under a duty to provide, in general terms, details of the objections to the applicant. However, without the consent of the objector the Authority cannot divulge their name and address.
22. The Authority must give the applicant an opportunity of appearing before the body making the decision before refusing an application.
23. The Authority may refuse an application for the grant or renewal of a licence on one or more of the grounds below:
 - (a) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
 - (b) that if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;
 - (c) that the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality;
 - (d) that the grant or renewal of the licence would be inappropriate, having regard to:
 - (i) the character of the relevant locality; or
 - (ii) the use to which any premises in the vicinity are put; or
 - (iii) the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.
24. An applicant whose application for the grant or renewal of a licence is refused, or whose licence is revoked, on any ground specified in Paragraph 18 above does not have a right to appeal unless the applicant seeks to show that the ground did not apply to him.
25. Similarly, an applicant whose application for the grant or renewal of a licence is refused on either ground specified in Paragraph 23 (c) or (d) above does not have the right to appeal the decision. In such cases the applicant can only challenge the refusal by way of judicial review.

26. The following may at any time, before the expiration of the period of 21 days following receipt of the application's determination, appeal to the magistrates' court acting for the relevant area:
- (i) an applicant for the variation of the terms, conditions or restrictions on or subject to which any such licence is held whose application is refused;
 - (ii) a holder of any such licence who is aggrieved by any term, condition or restriction on or subject to which the licence is held; or,
 - (iii) a holder of any such licence whose licence is revoked.

Power to prescribe standard conditions

27. The Authority may make regulations prescribing Standard Conditions to be applicable to licences for sex establishments, i.e terms, conditions and restrictions on or subject to which the licences are in general to be granted, renewed or transferred.
28. These Conditions may regulate:
- the hours of opening and closing of the sex establishment;
 - displays or advertisements on or in such establishments;
 - the visibility of the interior of sex establishments to passers-by; and,
 - any change from one kind of sex establishment to another kind of sex establishment.
29. These regulations may make different provision for sexual entertainment venues, sex cinemas and sex shops, and as well as for different kinds of sexual entertainment venues, sex cinemas and sex shops.
30. Where these Conditions have been made every Licence granted, renewed or transferred by the Authority will be presumed to have been done so subject to the Standard Conditions being applicable.
31. This Authority already have Standard Conditions prescribed in respect of sex shops (these being approved by the Licensing and Committee on 22nd March 2004), however these are inappropriate for use with regard to sexual entertainment venues.
32. Under the old Public Entertainment Licence regime there were prescribed certain conditions relating to those premises which conducted striptease, lap dancing or similar entertainment under the 1982 Act.
33. These conditions have been updated and adapted in consultation with Merseyside Police and are included in the Annex to this Report.

Transitional arrangements

34. The 'transitional period' will last for 12-months beginning with the date that the local authority resolves that Schedule 3 as amended by the 2009 Act will come into force in their area ('the 1st appointed day'). Six months following the 1st appointed day will be known as the '2nd appointed day' and the day on which the transitional period ends will be known as the '3rd appointed day'.
35. The appointed days will therefore vary across local authority areas depending on when individual local authorities resolve that the provisions will come into force in their area.
36. For Sefton, therefore, the proposed 1st appointed day would be 22nd July 2010; the 2nd appointed day would be 22nd January 2011; with 22nd July 2011 being the 3rd appointed day.
37. Under these arrangements any existing lap dancing clubs or similar venues who wish to continue to provide "relevant entertainment" will be required to apply for a new sex establishment licence without the benefit of 'grandfather rights'.
38. It should be noted that there are currently no premises within the Borough providing "relevant entertainment" that would need to "convert" under the transitional arrangements set out by the Home Office.
39. Between the 1st and 2nd appointed day applicants would be able to submit applications to be considered by the local authority. At the end of this period, local authorities would consider all applications received during this period together and would not grant any licences until all the applications have been considered. Consequently applications received after the 2nd appointed day would be considered individually.
40. Licences granted to new applicants would take effect immediately while licences granted to existing operators would take effect on the 3rd appointed day which would be 6 months after the 2nd appointed day, or, if longer, when their application is determined. Existing operators who do not apply for or are not granted a sex establishment licence would be able to provide relevant entertainment under the terms of their premises licence or club premises certificate until the 3rd appointed day.

Fees

41. 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*".

42. In setting the fees in respect of Sex Establishment (Sex Shop) Licences, under the 1982 Act, the Committee limited Sefton's fees to those that recover the costs of carrying out the function under the Act; in other words that the service would be cost neutral to the Authority. Costs covering administration (including any hearings and appeals), inspection, and enforcement and will include direct costs and indirect costs, including a full proportional share of overhead costs, insurance, depreciation and cost of capital charge. Under the Act the process for the Renewal of a Licence is the same as that followed for the Grant of a Licence hence the fees for both functions are identical.
43. The above process is the same as the new function and consequently it is recommended that the fees be the same, as below:

Grant £1206.00	Renewal £1206.00	Transfer £605.00
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**Sexual Entertainment Venue
Standard Conditions**

1. Premises licensed as a Sexual Entertainment Venue under the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act, 1982, shall be used only for the purpose of a Sexual Entertainment Venue as defined in Paragraph 2A of the said Schedule 3 and shall not be used, wholly or in part, for any other purpose during the period the premises are licensed as a Sexual Entertainment Venue.
2. An appropriate room, to be agreed in writing with Sefton Council, shall be set aside to provide a changing and rest area for entertainers. Arrangements shall be made to ensure that there is restricted access to this room which shall be maintained at all times whilst the licensable activities are taking place and until such time as all performers using the dressing room have finished.
3. No person under the age of 18 years of age shall be admitted to or allowed on the premises whilst licensable activities are taking place.
4. No lewd or indecent conduct or conduct likely to cause a breach of the peace shall be permitted on the premises.
5. Door Supervisors, registered in accordance with the Security Industry Authority, shall be on duty at all times when licensable activities are taking place.
6. The Licence Holder shall provide at least one female Door Supervisor during the same period.
7. Patrolling attendants, registered as Door Supervisors, shall continually monitor all entrances/exits/toilets.
8. Performers shall be aged not less than 18 years.
9. Only the performers shall provide the entertainment, no audience participation shall be permitted.
10. During any lap dancing performance, performers may not:
 - a) touch customers in any way;
 - b) approach closer than 30cms (12") from any part of a patron;
 - c) part their legs;
 - d) climb onto furniture provided for patrons; or,
 - e) simulate sex acts.
11. No performance shall involve the use of sex articles (as defined in the Local Government (Miscellaneous Provisions) Act 1982).

12. Any person who can be observed from the outside of the premises must be properly and decently dressed. Scantily clad individuals shall not exhibit in the entranceway or in the area surrounding the premises.
13. The Licence Holder shall not display outside the premises, or on any advertising material, photographs or other images which indicate and suggest that striptease or similar dancing takes place on the premises and which may be offensive.
14. CCTV shall be provided in the form of a recordable system, capable of providing pictures of evidential quality in all lighting conditions particularly facial recognition.
15. CCTV cameras shall encompass all ingress and egress to the premises and all areas where the licensable activity occurs.
16. CCTV equipment shall be maintained in good working order and recordings kept in date order, numbered sequentially and kept for a period of 31 days and handed to Police on request.
17. The CCTV recording equipment and tapes/discs shall be kept in a secure environment under the control of the Licence Holder or other responsible named individual.
18. Appropriate signage representative in respect of the use of CCTV at the premises shall be displayed in conspicuous positions.