



**AGENDA ITEM: 9**

**LICENSING & GAMBLING  
COMMITTEE: 25 May 2010**

**LICENSING & APPEALS  
COMMITTEE: 25 May 2010**

**COUNCIL: 21 July 2010**

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**Report of: Executive Manager Community Services**

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**SUBJECT: POWERS TO LICENCE SEXUAL ENTERTAINMENT VENUES**

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Wards affected: Borough wide

## **1.0 PURPOSE OF REPORT**

1.1 To request that the necessary action is taken in order to adopt the powers conveyed in Section 27 of the Policing and Crime Act 2009, and thereby amending Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, to allow for the licensing of Sexual Entertainment Venues.

## **2.0 RECOMMENDATIONS TO LICENSING AND APPEALS COMMITTEE / LICENSING AND GAMBLING COMMITTEE**

2.1 That the content of the report be noted.

## **3.0 RECOMMENDATIONS TO COUNCIL**

3.1 That a resolution be passed in accordance with paragraph 2(2) of Schedule 3 of the Policing and Crime Act 2009, that the amendments made by Section 27 of the Policing and Crime Act 2009 to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 be adopted and shall apply to the Borough of West Lancashire.

3.2 Subject to paragraph 3.1 above:

- (i) The amendments made by Section 27 of the Policing and Crime Act 2009 to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 shall come into force on a date specified by Council.

- (ii) In accordance with Section 2 of the Local Government (Miscellaneous Provisions) Act 1982, the Executive Manager Community Services be given delegated authority to prepare and publish a Notice stating that the Council has passed the resolution contained in paragraph 3.1 of this report.
  - (iii) The power to licence sex shops and sex cinemas be removed from the functions of the Licensing and Appeals Committee.
  - (iv) The power to licence Sex Establishments under the Local Government (Miscellaneous Provisions) Act 1982 be added to the functions of the Licensing and Gambling Committee.
- 3.3 That, if the Council does not approve the recommendation at paragraph 3.1 of this report, but wishes the public and local businesses to be consulted prior to making a decision:
- (i) That, if the Council does not approve the recommendation at paragraph 3.1 above, the Executive Manager Community Services undertake a public consultation exercise to ascertain whether a resolution should be passed in accordance with paragraph 2(2) of Schedule 3 of the Policing and Crime Act 2009 within West Lancashire and report the findings of the consultation back to Council.

## **4.0 BACKGROUND**

- 4.1 Members may be aware that in September 2008 the Home Secretary at that time announced the Government's intention to give local people greater say over the number and location of lap dancing clubs in their area. This followed consultation with Local Authorities which highlighted concerns that existing legislation did not give communities sufficient powers to control where lap dancing clubs were established.
- 4.2 In an attempt to address these concerns, Section 27 of the Policing and Crime Act 2009 (the 2009 Act) reclassifies lap dancing clubs into a new category of Sex Establishment called a 'Sexual Entertainment Venue' (SEV) and gives Local Authorities in England and Wales the power to regulate such venues under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (the 1982 Act). For Members information, Schedule 3 of the 1982 Act refers to the licensing of 'Sex Establishments', i.e. sex shops and sex cinema, and has been amended to include paragraph 2A which defines an SEV and 'relevant entertainment'.
- 4.3 An SEV 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."* Whereas the meaning of 'relevant entertainment' is given 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).”*

4.4 Both definitions aim to provide a pragmatic interpretation and therefore an audience can consist of just one person. Whilst the determination of each case will be judged on its merits, it is 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

4.5 As this list is only indicative, ultimately, decisions as to whether to licence premises as SEVs shall depend on the content of the entertainment provided and not the name it is given. Furthermore, a ‘premises’ will include any vessel, vehicle or stall but does not include a private dwelling to which the public are not admitted.

4.6 Paragraph 2A also defines those premises that would not be classed as SEVs, namely:

- sex shops and sex cinemas (which are separately defined in Schedule 3 to the 1982 Act);
- premises which provide relevant entertainment on an infrequent basis. These are defined as premises where:
  - a) no relevant entertainment has been provided on more than 11 occasions within a 12 month period;
  - b) no such occasion has begun within a period of one month beginning with the end of the previous occasions; and
  - c) no such occasion has lasted longer than 24 hours.
- other premises or types of performances or displays exempted by an order of the Secretary of State.

4.7 The new powers also amend the Licensing Act 2003 (the 2003 Act) to ensure that premises for which an SEV licence is required, or held, do not also require a Premises Licence, Club Premises Certificate or Temporary Events Notice in order to provide relevant entertainment. This is because such entertainment is expressly excluded from the definition of ‘regulated entertainment’ found in the 2003 Act. However, if the premises also provide other licensable activities (e.g. the sale/supply of alcohol or the provision of regulated entertainment that is not relevant entertainment), they will nevertheless continue to require the relevant authorisation under the 2003 Act.

## **5.0 CURRENT POSITION**

- 5.1 These powers are not mandatory and will only apply where they are adopted. Whilst the Council has already adopted Schedule 3 of the 1982 Act, the resolution contained in paragraph 3.1 of this report is still necessary before the provisions introduced by Section 27 of the 2009 Act would have effect in the Borough.
- 5.2 This new legislation took effect on 6<sup>th</sup> April 2010 in England and can be adopted from that time. However, the adoption of these new measures does not give such premises an automatic entitlement to operate within the Borough; rather it provides the Council with the means by which applications for such premises can be properly determined. Furthermore, it would provide the Council with the means to refuse an application on potentially wider grounds than is permitted under the 2003 Act and will give local people a greater say over the regulation of lap dancing clubs and similar venues in the Borough.
- 5.3 Conversely, if the Council decides not to adopt the new powers to regulate SEVs, such premises can operate without licence and without appropriate controls.

## **6.0 ISSUES**

- 6.1 This legislation is not mandatory. Given that the Council does not currently licence any Sex Establishments within the Borough, and Officers are unaware of any additional premises that would fall within the definition of an SEV, the Council has the flexibility to decide whether and, if so, when the new provisions should come into force in the Borough.
- 6.2 *Adopting the provisions*  
While there is no statutory duty to do so, the Council may, as a matter of good practice, wish to seek the views of local people and businesses prior to deciding whether to pass the resolution. Members will be aware of the resource intensive nature of public consultations and will wish to consider whether the commitment of such resources is necessary and appropriate. The adoption of this legislation is a positive step and provides the means by which SEVs can be suitably licensed and regulated. It is unlikely that it would be opposed in any way, particularly as there are no existing licensed businesses that may raise an objection.
- 6.3 However, it should be noted that if the Council decides not to adopt the new legislation by the 6<sup>th</sup> April 2011, Section 27 of the 2009 Act places an obligation on the Council to undertake a public consultation exercise to ascertain whether it should make such a resolution.
- 6.4 The procedure to adopt the new provisions is set out in Section 2 of the 1982 Act. Firstly, the Council must pass the resolution contained in paragraph 3.1 of this report specifying that the amendments made by Section 27 of the 2009 Act to Schedule 3 of the 1982 Act shall apply to the Borough and also specify the day on which it shall come into force. The specified day must be more than one month after the day on which the resolution was passed.

- 6.5 The Council must then publish a Notice that it has passed the resolution 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 for the provisions to come into force. The Notice should state the general effect of the resolution.
- 6.6 *Fees*  
Schedule 3 to the 1982 Act states that an application for the grant, renewal, variations or transfer of a Sex Establishment licence shall pay a reasonable fee determined by the appropriate authorities.
- 6.7 The fee for the grant of a Sex Establishment licence is currently £5450.00 and has been recently reviewed to ensure compliance with the requirements of the EU Services Directive, in that only those costs attributable are included in the fee - which includes all direct and indirect costs, including a full proportional share of overhead costs, insurance, depreciation and cost of capital charge.
- 6.8 *Overview of the licensing process*  
The process by which Sex Establishments are licensed remains unchanged, as Section 27 of the 2009 Act only amends the definition of a Sex Establishment to include SEVs rather than to create a new licensing regime. Accordingly, an applicant for a Sex Establishment licence must submit the application to the Council, including the prescribed fee, and advertise the application in the local press and on the premises. If objections are received within 28 days of application, this would necessitate a hearing of the relevant Committee, which would resolve either to grant the licence (with additional conditions if necessary) or refuse the application on one or more of the grounds contained in the 1982 Act. If no objections are received, the licence would be determined under delegation to the Executive Manager Community Services. All Sex Establishment licences are granted for a period of 12 months.
- 6.9 *Discharge of functions and delegations*  
The functions of Schedule 3 of the 1982 Act are currently discharged on behalf of Council by the Licensing and Appeals Committee. However, if Council adopts the provisions of Section 27 of the 2009 Act, it would be appropriate that these duties, in addition to the new provisions for SEVs, be transferred to the Licensing and Gambling Committee. This is because the Licensing and Gambling Committee has existing responsibility for licensing alcohol and regulated entertainment under the 2003 Act, which could be closely allied to an SEV application.
- 6.10 For Members information, the current delegation to the Executive Manager Community Services already refers to "Sex Establishment" licences and would therefore not require amendment as SEVs would be incorporated into the definition of a Sex Establishment.

## **7.0 PROPOSALS**

- 7.1 As detailed above, the Council must pass a resolution if it wishes to adopt these new provisions. The resolution must be passed in accordance with paragraph 2(2) of Schedule 3 of the Policing and Crime Act 2009, stating that the

amendments made by Section 27 of the Policing and Crime Act 2009 to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 have been adopted and shall apply to the Borough of West Lancashire.

7.2 Therefore, if Council approves the resolution, it must also approve the following to ensure the administrative requirements of the legislation are adhered to:

- (i) Set the date when the amendments made by Section 27 of the Policing and Crime Act 2009 to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 shall come into force.
- (ii) The Executive Manager Community Services be given delegated authority to prepare and publish a Notice stating that the Council has passed the resolution to appear in 2 consecutive weeks in the local press.
- (iii) The power to licence sex shops and sex cinemas be removed from the list of functions of the Licensing and Appeals Committee.
- (iv) The power to licence Sex Establishments under the Local Government (Miscellaneous Provisions) Act 1982 be added to the list of functions of the Licensing and Gambling Committee.

7.3 However, if the Council does not approve the recommendation at paragraph 3.1 above, the Executive Manager Community should be granted delegated authority to undertake a public consultation exercise to ascertain whether a resolution should be passed in accordance with paragraph 2(2) of Schedule 3 of the Policing and Crime Act 2009 within West Lancashire and report the findings of the consultation back to Council.

## **8.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY**

8.1 This legislation has the potential to impact upon the Community Strategy. The contents of the report has the following links with the Community Strategy: Community Safety (issues A and E); Economy and Employment (issue D).

## **9.0 FINANCIAL AND RESOURCE IMPLICATIONS**

9.1 The contents of this report can be delivered within existing resources.

## **10.0 RISK ASSESSMENT**

10.1 The Council is under no obligation to adopt these new provisions. However, while there is no statutory duty to do so, the Council may, as a matter of good practice, wish to seek the views of local people and businesses prior to deciding whether to pass the resolution. Furthermore, if the new powers are not adopted by the 6<sup>th</sup> April 2011, Section 27 of the 2009 Act places an obligation on the Council to conduct a public consultation exercise to determine whether it should adopt the new powers.

10.2 Members will be aware of the resource intensive nature of public consultations and will wish to consider whether the commitment of such resources is necessary and appropriate, particularly when the adoption of this legislation is a positive step and provides the means by which applications for SEVs can be properly determined and suitably licensed. The public and responsible businesses are likely to see the adoption of this legislation as a responsible act, and therefore, it is unlikely that it would be opposed in any way, particularly as there are no existing licensed businesses that may raise an objection. However, if the Council did not adopt the new provisions, it would only have limited powers to regulate SEVs and such premises could operate without licence and without appropriate controls – which would effectively contravene the Corporate Priority Action Plan and not ‘combat crime and the fear of crime’.

## **11.0 CONCLUSIONS**

11.1 Section 27 of the 2009 Act aims to give 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 the Council. However, if adopted, these provisions will allow the Council to refuse an application on potentially wider grounds than is permitted under the 2003 Act and will give local people a greater say over the regulation of lap dancing clubs and similar venues in the Borough.

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### **Background Documents**

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

### **Equality Impact Assessment**

There is no evidence from an initial assessment of an adverse impact on equality in relation to the equality target groups.

### **Appendices**

None