

**Special General Licensing and
Registration Committee**

Date: 13 May 2010

**Subject: Policing and Crime Act
2009 including Sex
Establishments and Sexual
Entertainment Venues**



Report of Terry Collins, Corporate Director, Neighbourhood Services

1. Purpose of the Report

To inform members of new powers and provisions resulting from the Policing and Crime Act 2009.

The Licensing Committee is asked to consider the legislation relating to the licensing of sex establishments and sexual entertainment venues with the view to adopting the same now that the relevant sections of the Policing and Crime Act 2009 have come into force (6th April 2010).

2. Background

The Policing and Crime Act received Royal Assent on 12 November 2009. This Act amends several pieces of legislation and creates new law in other areas. The Act gives police and local authorities new powers to tackle the issues of most concern to communities, like alcohol misuse, gang violence, alcohol-related crime and disorder, prostitution and lap-dancing clubs. This report summarises the changes that impact on the role of the Licensing Authority.

3 The Policing and Crime Act 2009

3.1 Councillors Powers

Section 33 amends sections 13 and 69 of the Licensing Act 2003 to allow members of a licensing authority to act as 'interested parties'. This allows members of licensing authorities (i.e. any Councillor) to make representations relating to licence applications or to make an application for a licensing review, powers which under the Licensing Act 2003 are only exercisable currently by interested parties e.g. persons living within the vicinity of the premises or responsible authorities e.g. the police.

This is a significant change in that it means that any elected member of the County Council may now make representations on applications relating to any premises situated within the boundary of Durham County Council.

3.2 Selling alcohol to children

Section 28 amends the offence of persistently selling alcohol to children so that the offence is committed if alcohol is sold to an individual under the age of 18 on two or more occasions.

3.3 Confiscating alcohol from young persons

Section 29 amends the Confiscation of Alcohol (Young Persons) Act 1997 so that police officers can confiscate sealed containers of alcohol from young persons in public places without needing to prove that they were consuming alcohol or that they intended to consume alcohol in a public place. This amendment also allows the police to return, where appropriate, individuals that are reasonably suspected of being under 16 to their home or a place of safety.

3.4 Offence of persistently possessing alcohol in a public place

Section 30 introduces a new offence of persistently possessing alcohol in a public place. Young people under 18 can be prosecuted for this offence if they are caught with alcohol in a public place three or more times within a 12 month period. The maximum punishment for this is a level 2 fine (currently £500).

3.5 Sex Establishments

Section 2 of the Local Government (Miscellaneous Provisions) Act 1982 allows the Councils to resolve to adopt Schedule 3 to the Act. This enables the Council to licence sex establishments including for example sex shops and sex cinemas. If Schedule 3 is not adopted, the Council will have little or no control over these types of premises.

3.6 Sexual Entertainment Venues

The Licensing Act 2003 makes no provision with respect to certain activities such as 'lap' dancing, 'table' or 'pole' dancing.

Lap dancing and similar forms of sexual entertainment are not themselves designated as licensable activities under the Act and as such if an applicant discloses in a Premises Licence application that he/she intends to have entertainment of this type, a Licensing Committee would only need to be satisfied that the entertainment would meet the licensing objectives and could not reject the application just because it is lap dancing. Moral grounds are not relevant to such an application nor will they be for any subsequent application under the new legislation.

On the 2nd December 2008 the Government announced that they would introduce legislation to classify lap dancing clubs and other similar venues as 'sex establishments' under the Local Government (Miscellaneous Provisions) Act 1982 Act.

The relevant provisions are now included in the Policing and Crime Act 2009 which received Royal Assent on the 17th November 2009.

Lap Dancing premises have now been defined as 'sexual entertainment venues' to distinguish them from other types of sex establishments like sex shops and sex cinemas.

The appointed day for the new provisions to come into effect is 6th April 2010.

In relation to sexual entertainment venues, the 2009 Act, by bringing sexual entertainment venues within the 1982 Act, has a number of important provisions. The Act:

- Allows local people to oppose an application for a sexual entertainment venue licence if they have legitimate concerns that activities at such a venue would be inappropriate given the character of an area. For example, because an area is primarily residential in nature;
- Requires licences to be renewed at least annually; at which point local people would again have the opportunity to raise objections with their local authority;
- Allows a local authority to reject a licence application if they believe that to grant a licence for a sexual entertainment venue would be inappropriate given the character of a particular area;
- Allows a local authority to set a limit on the number of sexual entertainment venues that they think is appropriate for a particular area; and;
- Allows a local authority to impose a wider range of conditions on the licences of sexual entertainment venues than is currently possible under the Licensing Act 2003.

Where local authorities such as Durham County Council have not resolved to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 before the coming into force of Section 27 of the Policing and Crime Act 2009, the amendments made to Schedule 3 by section 27 will apply automatically if a resolution to adopt Schedule 3 is made subsequently. If Schedule 3 is not adopted, the Council will have little or no control over Sexual Entertainment Venues.

4.0 Detail

4.1 Sex Establishments

In order to implement these provisions, the Council will need to adopt schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982).

A resolution to adopt section 2 schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 must be passed at least a month before the adoption takes effect, and the Council must publish a notice that the resolution has been passed for two consecutive weeks in a local newspaper.

Sex shop and sex cinemas which are licensable under this legislation are any premises, vehicle, vessel or stall used for a business that consists to a significant degree of the display of R18 films (a sex cinema) or selling, hiring, exchanging, lending, displaying or demonstrating sex articles (a

sex shop). Sex articles are items intended to simulate or encourage sexual activity or acts of force or restraint associated with sexual activity.

Sex cinemas do not include private residences where the public are not admitted or where a premises licence under the Licensing Act 2003 authorising exhibitions of films is in force.

The Council can specify the application form and the supporting information to be provided. An application may be from a company or individual but must include the applicant's name and address, company details if appropriate, the address of the premises, the opening hours and a fee.

Applications must be served on the Chief Officer of Police and normally be advertised in the local press, and a notice must be displayed outside the premises for a period of 21 days.

The Council is allowed to set fees which reasonably represent the costs incurred. The EU Service Directive that came into force on 28th December 2009 requires fees for the granting of licences to be cost neutral.

When considering an application, the Council may assess a range of factors including whether or not the premises are in an inappropriate location, such as near a school, a place of worship or family shopping area. The Council may also impose limits on a specific "locality" (as defined in Schedule 3) based on the character of the area. If required, a policy could be developed which would incorporate such matters and considerations.

4.2 Sexual entertainment venues

If Schedule 3 of the 1982 Act is adopted by the Council, sexual entertainment venues such as Lap dancing will become licensable within the boundary of the County Council. It is important to note that they will not be a licensable activity under the Licensing Act 2003 but under the Local Government (Miscellaneous Provisions) Act 1982.

This will allow the Council to introduce procedures for dealing with sexual entertainment venues in a similar way to the controls available for dealing with sex establishments. This could include the introduction of a policy controlling the type, number and location of these types of premises, the application of standard conditions to each premises, and the setting of fees for the grant, renewal or transfer of a licence.

A "sexual entertainment venue" is defined as 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 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 consist of just one person. It

should also be noted that there does not have to be “a live display of nudity” for the entertainment to come within the provisions.

For the purposes of this legislation, the following are not classed as sexual entertainment venues:

- sex shops and sex cinemas;
- any premises that at the time in question:
 - That has not provided relevant entertainment on more than 11 occasions within the previous 12 months;
 - That on no occasion has relevant entertainment begun within the period of one month beginning with the end of any previous occasion; and
 - On no occasion has relevant entertainment lasted for more than 24 hours
- Other premises exempted by order of the Secretary of State, or in Wales the Welsh Ministers (sub-paragraph (3)(c)). In addition, under sub-paragraph (6) they may also make an order that certain types of performances or displays of nudity are not to be treated as relevant entertainment for the purposes of the Schedule.

The wider powers that are available to the Council following a resolution to adopt the legislation include the ability to consider the applicant’s suitability; the nature of the premises; the character of the local neighbourhood; how many premises may be suitable for a particular area; and other relevant matters. Again, If required, a policy could be developed which would incorporate such matters and considerations.

If a local authority has not made a resolution under section 2 of the 1982 Act within the period of one year beginning with the coming into force of section 27, the Authority must, as soon as reasonably practicable, consult local people about whether the local authority should make such a resolution. “Local people” means persons who live or work in the area of the local authority.

If this Council does not adopt the Act within a period of 12 months following the 6th April 2010, additional costs will befall it thereafter in having to arrange a consultation.

5.0 Material Considerations

With regard to sexual entertainment venues and the proposed implementation of the legislation, any operator – new or existing - who wishes to provide ‘relevant entertainment’ at the end of the transitional period will be required to apply for a sex establishment licence in the manner set out in Schedule 3 to the 1982 Act.

Existing operators will be allowed to continue to provide ‘relevant entertainment’ under any existing permission without interruption for the

duration of the transitional period or until their application for a sex establishment licence has been determined, whichever is the later.

The transitional period will start on the date Schedule 3 to the 1982 Act comes into force in that area (the 1st appointed date). It will last for 12 months.

For 6 months following the 1st appointed date, applicants will be able to submit applications all of which will be considered together by the local authority at the end of the period. In effect any current operators would apply for a new type licence and all applications get decided together at the end and not on a first come first granted basis.

Applications received after the first 6 months (the 2nd appointed date) will be considered after applications received before the 2nd appointed date have been determined.

Licences granted for sexual entertainment venues will not take effect until the conclusion of the 12 month transitional period (the 3rd appointed date).

Any pre-existing operator who has failed to obtain a licence after the 3rd appointed day will not be permitted to provide relevant entertainment unless he has an application submitted within this time that has yet to be determined.

Taking into consideration the various potential costs associated with the administration of applications for Sex Establishments including Sexual Entertainment Venues, the application/annual fee has been set at £3000. This figure will be reviewed on an annual basis.

6.0 Licensing Policy

Although Local Authorities are not required to publish a licensing policy relating to sex establishments it is intended that the Council's licensing officers will develop such a policy and that this be brought to the attention of the Licensing Committee for their consideration.

7.0 Conclusion

The provisions within the Policing and Crime Act bring in a number of changes affecting Local Government and importantly will reclassify lap-dancing clubs as "sexual entertainment venues" under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

It is intended that local communities will have a stronger say over the establishment and location of lap-dancing clubs and allow them to make objections on grounds wider than is currently allowed. Local people will be able to oppose an application if they have legitimate concerns that a lap-dancing club would be inappropriate given the character of an area, for example, if the area was primarily a residential area, close to schools, youth clubs, community halls etc. Local authorities will have the power to set a cap on the number of lap-dancing clubs that they think is

appropriate for a particular area and impose a wider range of conditions on the licences.

8.0 Recommendation

The Licensing Committee is asked to recommend to full Council that it adopts Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and the amendment to Schedule 3 of the Local Government (Miscellaneous Provisions) Act by section 27 of the Policing and Crime Act 2009

Background papers:

- Local Government (Miscellaneous Provisions) Act 1982
- Policing and Crime Act 2009
- Sexual Entertainment Venues – Guidance for England and Wales

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Appendix 1: Implications

Finance: There are no financial considerations associated with this report.

Legal: All applications have to be processed in accordance with the requirements of the legislation. The report outlines the legal implications that arise from Section 26 of the Policing and Crime Act 2009. Further changes make take place as the Act progresses through the legislative process.

Staffing: There are no staffing considerations associated with this report.

Equality and Diversity: There are no equality or diversity considerations associated with this report.

Accommodation: There are no accommodation considerations associated with this report.

Crime and Disorder: The licensing process provides for local residents and other interested parties to make representations in relation to licensing applications. The effective regulation of licensed premises ensures that premises are operated in a manner that promotes the licensing objectives under the Licensing Act as well in accordance with the Council's policies in relation to venues licensed pursuant to the 1982 Act.

Sustainability: Licensed premises provide a key role as an employer, in regeneration, and in attracting people to the city. The efficient regulation of licensed premises plays an essential role in enabling businesses to thrive and maximise contribution to the economy of the region and sub-region.

Human Rights: There are no human rights considerations associated with this report.

Localities and Rurality:

Young People: The licensing of sex establishments including sexual entertainment venues will facilitate the protection of young people from harm.

Consultation: Not applicable at this stage

Health: There are no particular health considerations associated with this report.