

Appendices



NORTHAMPTON
BOROUGH COUNCIL

Item No.

6

Ward: N/A

Name of Committee:	LICENSING
Meeting Date:	25 May 2010
Directorate:	Public Protection
Corporate Manager:	Steve Elsey
Agenda Status:	Public part of Agenda

Report Title	Sexual Entertainment Venues.(Policing and Crime Act 2009).
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1. Recommendations

1) It is recommended that the Council do pass a resolution as authorised under Section 2 of the Local Government (Miscellaneous Provisions) Act 1982, to adopt Schedule 3 (as amended by Section 27 of the Police and Crime Act 2009) of the Local Government (Miscellaneous Provisions) Act 1982.

The said Act is to come into force on 1st July 2010 and it is recommended that the resolution do take effect on this date.

2) It is recommended that the Council also amend the existing 'Sex Establishment' Policy, agreed by the Licensing Committee at its meeting on 28th May 1998, to include the words 'Sex Entertainment Venues' and to place a restriction on both location and numbers in the following terms:-

"That the appropriate number of Sex Establishments and Sex Entertainment Venues in the Borough of Northampton be restricted to the following localities:

- a) The area bounded by and including the Wellingborough Road, Kettering Road and Abington Avenue be limited to three.
- b) The area of Regent Square be restricted to a single "Sex Establishment".

2. Summary

From April a change in the law was introduced by the Policing and Crime Act 2009 to give local communities a stronger say over the establishment and location of lap dancing clubs and similar establishments in their area, and Local Authorities more power to reject applications for lap dancing clubs or impose conditions on the Licences. It brought the licensing of lap dancing clubs in line with other sex establishments such as sex shops and sex cinemas. This change in legislation is aimed at recognising that local people do have legitimate concerns about where lap dancing clubs are located.

Lap Dancing

Lap dancing premises are currently regulated under the Licensing Act 2003 (“the 2003 Act”) and require a Premises Licence under Section 1 of the 2003 Act. There are no special provisions made within the 2003 Act for lap dancing clubs and so applications are submitted in the same way as a pub or restaurant. If an application is submitted to the Licensing Authority for a Premises Licence the only mandatory conditions which apply relate to the sale of alcohol. It is only if relevant representations are made by an interested party that the Authority can, following a hearing, impose other conditions or reject the application. Even then it will only be able to do so where such a step is necessary to promote one of the four licensing objectives as set out in the 2003 Act – (prevention crime and disorder, public safety, prevention of public nuisance and the protection of children from harm).

The powers that are available to Local Authorities to control the establishment of lap dancing premises or impose conditions on their licences are therefore very limited. Following a DCMS consultation with Local Authorities the majority of those that responded felt that their current powers to regulate lap-dancing clubs were inadequate and wanted the Government to intervene.

It has also been documented in the media that under the current law there has been an increase in the number of lap dancing venues and many communities felt powerless to object to the opening of a new lap-dancing club in their area.

From April 2010

Lap dancing venues will now be regulated under the Local Government (Miscellaneous Provisions) Act 1982 (the “1982 Act”). It is up to each Local Authority to decide whether the provisions of the 1982 Act should apply to their area, so it is possible that the new legislation will not necessarily apply all over England and Wales. However, those Local Authorities who resolve to adopt Schedule 3, as amended, will be able to impose a wider variety of conditions on lap dancing clubs e.g. relating to opening hours, adverts and the visibility of the interior to passers by.

Local Authorities will also be able to refuse to grant or renew a Licence on the grounds that such a club would be inappropriate having regard to the character of the area, the use of other premises in the area (e.g. local schools) and they may also have regard for the number of similar premises in the area, if the application is

equal to or exceeds the number the Authority considers appropriate. It will be possible to dictate that “nil” would be an appropriate number for lap dancing premises within an area.

Similarly, local residents will be able to make written representations to the Local Authorities on these grounds, rather than being limited to make representations based on the four licensing objectives found in the Licensing Act 2003.

Under the new legislation, lap-dancing clubs will be classified as “sexual entertainment venues”. “Relevant entertainment” is defined as “any live performance or any live display of nudity provided solely or principally for the purpose of sexually stimulating any member of the audience.”

The legislation allows the local authority to decide what, in its opinion, should be included as relevant entertainment but it is suggested that the following should come under its control:

- Lap dancing
- Pole dancing
- Table dancing
- Strip shows
- Peep shows
- Live sex shows

With the new legislation, there will be no “grandfather rights” for existing lap dancing clubs. If they wish to continue trading they will need to apply for a Licence under the new regime. A transitional period of 12 months will be given to existing lap dancing clubs to apply for a new Licence. However premises, which fail to apply for a new Licence within this period, will face closure.

Existing clubs or those wishing to operate new lap dancing premises will need to make an application for a new licence to the Local Authority and be required to give public notice of the application in a local newspaper and at the premises. Any persons wishing to object to their licensing must give written notice within a statutory 28 day consultation period stating the general grounds of their objection. Any contested application will be considered before the Authority’s appropriate committee or sub-committee.

3. Procedures

Grandfather rights for existing operators - no protection rights will be given. Existing operators will have to apply for, and will be treated the same as, new operators.

Transitional Period - will be 12 months from the adopted date.

Existing Operators – that is those operators who, immediately before the 1st appointed day, have a 2003 Act licence and use the premises as a sexual entertainment venue under that licence or are undertaking preparatory work to use the venue in that way will be allowed to continue to provide relevant entertainment until the 3rd appointed day or the determination of any application that they have submitted before that time (including any appeal against the refusal to grant a licence), whichever is later.

Existing Conditions - any condition on an existing Premise Licence which relates exclusively to lap dancing will, as from the 3rd appointed day (this is the date the licence comes into force at the end of the 12 month transitional process) be deemed to have been deleted from the Premise Licence. Basically, the condition will still appear upon the licence but will have no force. The Government suggests that operators may want to apply for a "minor variation" application to remove these redundant conditions to avoid confusion. From the 3rd appointed day the sexual entertainment will be regulated by the conditions upon the new Sexual Entertainment Licence. The conditions upon the Premises Licence will continue to regulate the other licensable activities – eg. alcohol; late night refreshment, (etc).

3A. Any Relevant Policies

Local Government (Miscellaneous Provisions) Act 1982.
Sex Shop Licence Conditions.
The Council Policy on Sex Establishments.
Northampton Borough Council Licensing Policy.

4. Options and Evaluation of Options

That the Committee adopt or amend the proposals.

5. Resource Implications (including Financial Implications)

The Licensing Department will issue and enforce the new licence.

6. Consultees (Internal and External)

Internal	Legal
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External	Home Office. Sexual Entertainment Venues. Guidance for England and Wales.
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7. Compliance Issues

Finance Comments
A fee of £3000.00 per annum is charged for the issue of a Sex Establishment Licence, it is proposed to charge the same fee for a Sex Entertainment Venue.
Legal Comments
The proposed resolution 1 is sanctioned by Parliament under the appropriate legislation and the Committee will be acting vires if minded to pass the resolution.
Crime and Disorder Issues
N/A
Equality Impact Assessments
N/A
Human Rights Act Implication
Local Authorities must take into account any rights the existing operator may have under Article 1, Protocol 1 of the European Convention of Human Rights,(which entitles every person to the peaceful enjoyment of their possessions) and Article 10 (freedom of expression).

Other compliance issues

None

8. Background Papers

Home Office	Policing and Crime Bill	
	Supplementary Guidance	30/11/09 12/02/10

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