

**LICENSING COMMITTEE – 19<sup>th</sup> MAY 2010**

**REGULATION OF LAP DANCING AND OTHER SEXUAL ENTERTAINMENT VENUES**

**Agenda Item 7**

**Portfolio Area:** Licensing  
**Report Presented by:** Rachel Crouch

**Background Papers:** Sexual Entertainment Venues – Guidance for England and Wales (Home Office, March 2010)  
**Corporate Implications:** Please refer to table at end of report  
**Options:** See body of report  
**Risks:** If Braintree District Council fails to adopt the new legislation there is the potential for some sexual entertainment venues within the District to remain unregulated.

**Executive Summary**

To consider adoption of new legislation relating to the business of premises previously known as ‘sex establishments’. The legislation amends provisions in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 adding a new category of premises, namely “a sexual entertainment premises”. Adoption of this legislation will permit greater regulation of lap dancing clubs and similar venues within the District.

**Decision**

Members are requested to note the contents of the attached report and recommend that the amendment to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 be adopted by Braintree District Council.

**1. BACKGROUND**

Under the Local Government (Miscellaneous Provisions) Act, 1982, Section 2 and Schedule 3, Braintree District Council has previously adopted the provisions relating to the control of Sex Establishments, requiring sex cinemas and sex shops to apply for a licence.

The Policing and Crime Act 2009 amends Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to allow the Licensing Authority to license “sexual entertainment venues”, where “relevant entertainment” is provided before a live audience for the financial gain of the organiser or the entertainer. “Relevant entertainment” means “any live performance or any live display of nudity” i.e. Lap dancing, pole dancing, Table dancing, Strip shows, Peep shows, etc.

These premises currently require a Premises Licence under the Licensing Act 2003. No special provisions are made in the 2003 Act for lap-dancing venues. If an application is submitted to the licensing authority for a Premises Licence the authority must grant the licence subject to certain mandatory conditions.

If relevant representations are made by an interested party (e.g. residents or local businesses) or a responsible authority (e.g. the police or fire service in the area) then the authority can,

following a hearing, impose other conditions or reject the application. However, it will only be able to do so where such a step is necessary to promote one of the four licensing objectives set out in the Act:

Licensing objectives:

- Prevention of public nuisance
- Prevention of crime and disorder
- Public safety
- Protection of children from harm

The new legislative controls available to the Licensing Authority will strengthen the role that local communities can play in deciding whether a sexual entertainment venue is inappropriate for the locality. The Licensing Act 2003 has empowered local residents in general, but currently it is hard to make an effective objection against an adult entertainment venue unless its operation can be shown to be undermining one of the four licensing objectives.

The aim is to bring the licensing of premises such as lap-dancing premises in line with other “sex establishments” such as “sex shops” and “sex cinemas” and to recognise that local people have legitimate concerns about where such premises are located.

If the amendment is adopted the Licensing Authority can attach terms, conditions and restrictions to any licence either in the form of conditions specific to the individual licence, or standard conditions applicable to all sex establishments.

Conditions could be attached on grounds not covered by the Licensing Act 2003 eg

- (a) the hours of opening and closing of sex establishments;
- (b) displays or advertisements on or in such establishments;
- (c) the visibility of the interior of sex establishments to passers-by;

If Braintree District Council were to make regulations as above, every such licence granted, renewed or transferred shall be granted subject to any standard conditions applicable to that type of premises unless they have been expressly excluded or varied. Any proposals for the introduction of standard conditions would be the subject of a committee report to the licensing committee at a later date.

The new provisions are adoptive and require businesses:

- to apply for a licence for a sexual entertainment venue
- to adhere to conditions on any licence issued for such premises.

## **2. LEGAL**

As the Council has already adopted the provisions contained within the Local Government (Miscellaneous Provisions) Act 1982, it need only adopt the amendments to schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 for the new provisions to be effective.

If the Local Authority has not resolved to adopt this amendment to schedule 3 of the LGMP Act 1982 within one year of it coming into force (by 6 April 2011), the Council must consult local people as to whether they should make such a resolution.

### **3. DEFINITIONS**

A “*sexual entertainment venue*” is 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*” means

- (a) Any live performance; or
- (b) Any live display of nudity

which is 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 one person).

The following are NOT sexual entertainment venues:-

- (a) sex cinemas and sex shops;
- (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; and
  - (iii) no such occasion has lasted for more than 24 hours.

The Secretary of State has the power to amend or repeal the above provisions but cannot increase the number of occasions when unlicensed “*relevant entertainment*” can take place.

### **4. IMPACT ON BUSINESSES**

Businesses that currently carry out “*relevant activities*” that now fall under the definition of “*a sexual entertainment venue*” will need to apply for a licence if they wish to continue providing these “*relevant activities*”.

If Members agree to the adoption of this legislation, and once the process has been completed, it will be an offence to provide, or permit to be provided “*relevant activities*” without the appropriate licence.

A fee is already established for the application of a licence for a sex establishment. It is proposed that the same fee for the new category of “*a sexual entertainment venue*” will apply, that is £4,000 for a new license (£2,000 for renewal). The applicant must apply to renew the license on an annual basis.

An application for the grant, transfer or renewal of a license shall give public notice of the application no later than 7 days after the date of the application. Public notice shall be given by publishing an advertisement in a local newspaper circulating in the Braintree District area. Notice of the application shall also be displayed for 21 days beginning with the date of the application on or near the premises and in a place where the notice can be conveniently read by the public.

In the event of a valid objection to a license being received the applicant will be advised of the general nature of the objection. If the objection cannot be mutually resolved the application will be referred to licensing committee for a decision.

## 5. NEXT STEPS

If members agree to recommend the adoption of the legislation, a resolution must be considered by a meeting of the Council and passed.

The local authority shall publish notice that they have passed a resolution to adopt the amendments made by section 27, paragraph 2(2) of Schedule 3 to the 2009 Act for two consecutive weeks in a local newspaper that is circulated in their area. 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. The notice should state the general effect of Schedule 3.

The Licensing team will need to prepare a policy on sex establishments, including sexual entertainment venues.

Should the Council resolve to adopt the legislation, all relevant businesses in the District will be notified of the proposed adoption of the legislation and the need for the organiser to apply for a licence to run a sexual entertainment venue.

## 6. CONCLUSION

To not adopt the amendment and maintain the status quo would allow prospective sexual entertainment venues to take advantage of a perceived loophole in the Licensing Act 2003.

## 7. BACKGROUND PAPERS

Sexual Entertainment Venues – Guidance for England and Wales (Home Office, March 2010)

<b>Corporate Implications</b>			
<b>Financial:</b>	None, the regulation of "sexual entertainment venues" will be undertaken within existing resources.		
<b>Legal:</b>	If Braintree District Council fails to adopt the new legislation there is the potential for sexual entertainment venues within the District to remain unregulated.		
<b>Equalities &amp; Diversity:</b>	None		
<b>Customer Impact:</b>	Safety of customers will be improved if the entertainment provided by a premises is properly regulated		
<b>Environment &amp; Climate Change:</b>	None		
<b>Consultation/Community Engagement:</b>	Local Committees		Partners
	Public		Staff
<b>Key Decision:</b>	Yes		
<b>Public/Private Report:</b>	Public		
<b>Officer Contact:</b>	Rachel Crouch		
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# Minutes

## Licensing Committee

19<sup>th</sup> May 2010

### Minute Extract

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INFORMATION: Members were reminded that the Council had adopted the provisions of the Local Government (Miscellaneous Provisions) Act 1982, Section 2 and Schedule 3, relating to the control of sex establishments which meant that any sex cinemas or sex shops within the District had to apply to the Council for a licence granted under the Licensing Act 2003. However, recent changes to the Policing and Crime Act 2009 had amended Schedule 3 of the 1982 Act and this required that any 'sexual entertainment venue' where 'relevant entertainment' was being provided before a live audience for the financial gain of the organiser, or the entertainer should be licensed by the Council also. 'Relevant entertainment' meant 'any live performance, or any live display of nudity' such as lap dancing, pole dancing, table dancing, strip shows and peep shows.

The aim of the amended legislation was to bring the licensing of venues such as lap-dancing premises in line with sex cinemas and sex shops and to recognise that local people had legitimate concerns about where such premises were located.

If adopted, the amended legislation would enable the Council to attach terms, conditions and restrictions to any licences issued, either in the form of specific conditions for a particular venue, or standard conditions applicable to all sex establishments. Conditions could be attached relating to matters such as the opening and closing times of the premises; displays or advertisements on, or in such establishments; and the visibility of sex establishments to passers-by. Any proposals to introduce standard conditions would be the subject of a report to the Licensing Committee.

It was proposed that the application fee should be £4,000 for a new 'sexual entertainment venue' licence and £2,000 for the renewal of an existing licence. Licences would be renewable on an annual basis. Applications for the grant, transfer, or renewal of a licence would be subject to requirements regarding public notice and, in the event of an objection being submitted, the application would be referred to the Licensing Committee for determination.

In considering this report, Members had regard to the document 'Sexual Entertainment Venues – Guidance for England and Wales' which had been issued by the Home Office in March 2010.

DECISION: That it be **Recommended to Council** that the amendment to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 be adopted.