

EXETER CITY COUNCIL

**LICENSING COMMITTEE
24 JULY 2012**

**POLICING AND CRIME ACT 2009
ADOPTION OF AMENDMENTS TO PART 2 SCHEDULE 3 LOCAL GOVERNMENT
(MISCELLANEOUS PROVISIONS) ACT 1982**

SEX ENTERTAINMENT VENUES & SEX ESTABLISHMENTS

1. PURPOSE OF REPORT

- 1.1 To resolve to adopt the amendments made to Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 (“the 1982 Act”) by section 27 Policing and Crime Act 2009 (“the 2009 Act”) to allow the regulation of lap dancing and other sexual entertainment venues.
- 1.2 To adopt a policy in respect of the regulation of sex establishments, including sexual entertainment venues.

2. BACKGROUND

- 2.1 In September 2008, following a consultation with local authorities that highlighted concerns about the lack of control over where lap dancing clubs were established, the Government announced its intention to give local people a greater say over the number and location of lap dancing clubs in their area.
- 2.2 Section 27 of the 2009 Act followed creating “sexual entertainment venues” that covers venues for activities such as pole-dancing, table dancing and striptease to be regulated as sex establishments under Schedule 3 of the 1982 Act alongside sex cinemas and sex shops.
- 2.3 There are statutory restrictions on who may apply for a sex establishment licence. For example, any person whose application in relation to the same venue has been refused within the last 12 months is excluded.
- 2.4 There is statutory provision for objections to the grant, renewal or transfer of the one year sex establishment licence. Broadly, the applicant must not be unsuitable to hold a licence by reason of having committed an offence or for any other reason but there is also provision for objection having regard to the character of the relevant locality or the use to which premises in the vicinity are put.

3. LEGAL CONSIDERATIONS

- 3.1 These powers are not mandatory and will only apply where adopted by local authorities. Where adopted, these provisions will allow local authorities to refuse an application on potentially wider grounds than is permitted under the Licensing Act 2003 and will give local people a greater say over the regulation of lap dancing clubs and similar venues in their area.
- 3.2 Local authorities are encouraged to adopt these provisions and are required to undertake a statutory consultation if they choose not to do so.

- 3.3 It was the intention of the Licensing Committee of 2 February 2010 to adopt the amendments to Schedule 3 of the 1982 Act together with a policy for the regulation of sex entertainment venues. A resolution was made on that date however subsequent scrutiny of the enabling legislation reveals that the power to make that resolution had not arisen
- 3.4 Section 27 came in to force on 6 April 2010 and local authorities could resolve following this date to adopt Schedule 3 as amended by the 2009 Act so it had effect in their area.
- 3.5 The procedure for local authorities to adopt Schedule 3 as amended by section 27 is set out in section 2 of the 1982 Act. A local authority must pass a resolution specifying that the amendments to Schedule 3 made by section 27 shall apply to their area and the day on which they will come in to force in the area. The specified day must be more than one month after the day on which the resolution is passed. There is a requirement to publish a notice on two consecutive weeks in a local newspaper that is circulated in the area the first publication of which shall be not later than 28 days before the day specified.
- 3.6 There are transitional provisions that apply for a 12 month period beginning with the date that the local authority resolves that Schedule 3 as amended by the 2009 Act will come in to force. This is aimed at allowing existing operators time to comply with the new regime. Where operators have a Licensing Act 2003 licence and lawfully use premises as a sexual entertainment venue under that licence they may continue to do so for 12 months from legislation being adopted or determination of any application submitted before that time whichever is later. These provisions are aimed at ensuring applications are considered on their individual merit and not on a first come first served basis.
- 3.7 Upon resolving to adopt the sexual entertainment venue provisions of the 2009 Act, the Council must ensure that the licensing policy for sex establishments is up to date and reflect the changes introduced by section 27. The Council's existing Sex Establishment Policy is amended to reflect the new legislation.
- 3.8 A body of case law exists that informs policy making under Schedule 3 of the 1982 Act. The broad principles are:
- An authority can adopt any reasonable policy guidelines to help it determine applications. There is no duty to publish or consult on the policy but it must not prevent any individual application being heard on its own merits.
 - The policy may indicate how many sex establishments of each kind are appropriate in any particular locality.
 - The policy may include statements about what are appropriate or inappropriate locations for sex establishments. In deciding what a relevant locality is, an authority can either consider the whole of its administrative area and what its constituent localities are, or start with the applicants proposed sex establishment and then consider the locality in which it is situated. There is no requirement to draw boundaries on a map.
 - Indications are that it is not desirable to define the whole of an authority's administrative area as one locality as this may be too wide.
 - Members are entitled to change their views on the nature of a relevant locality. For example, before a renewal there may be a change in the nature of surrounding establishments which could reasonably lead to a refusal. There can

be no expectation that a licence where granted will be renewed continually if the area in question has changed in character.

- There will be a low level engagement of Articles 10 and 1 of the European Convention on Human Rights but in general it seems that an authority will be able to restrict both freedom of expression and enjoyment of possessions for the protection of the public.

- 3.9 These procedural steps were followed previously. The resolution to adopt the new legislation on 9 August 2010 was made on 2 February 2010 on the understanding that the new legislation had come in to force on 29 January 2010 in line with other significant amendments to the Licensing Act 2003 made by the 2009 Act.
- 3.10 Subsequent review of the enabling provisions reveals that the section 27 amendments did not come in to force until 6 April 2010 and that there was no power for the Licensing Committee to make the resolution before that time. While the Licensing Committee's intention was clear on 2 February 2010 and the relevant policy amendments were also adopted, this would not be robust enough to withstand a legal challenge and therefore the Licensing Committee is advised to begin the procedure for adoption of the amendments again.
- 3.11 The proposed date for the resolution bringing in to force Schedule 3 as amended by the 2009 Act is Monday 3 September 2012. This will become the "first appointed day" for the purposes of the transitional provisions.
- 3.12 The new legislation is aimed at empowering local communities specifically in relation to the numbers of sexual entertainment venues in any particular locality. The present circumstances have little impact on this power as only one application to licence a Sex Entertainment Venue has been received since February 2010. The licence was subsequently granted but had lapsed before renewal and before these circumstances were known about. That premises can continue to operate lawfully under an existing Licensing Act 2003 premises licence (with appropriate conditions) pending the adoption of Schedule 3 as amended by the 2009 Act.

4 RESOLUTION

- 4.1 The Licensing Committee resolve to adopt Schedule 3 of 1982 Act as amended on 3 September 2012 and resolve to adopt the Sex Establishment Policy as amended (Appendix I).

ASSISTANT DIRECTOR ENVIRONMENT

Local Government (Access to Information) Act 1985 (as amended)

Background papers used in compiling this report:

Home Office Guidance on Sexual Entertainment Venues March 2010

R v Birmingham City Council and others Ex p. Quietlynn Ltd (1985) 83 L.G.R. 461

R v Peterborough City Council and others Ex p. Quietlynn Ltd, The Times, July 28, 1986

Belfast City Council v. Miss Behavin' Ltd (Northern Ireland) [2007] UKHL 19