



Report No: **288/2010**

Public Agenda Item: **Yes**

Title: **Draft 'Statement of Licensing Policy for Sex Establishments'**

Wards
Affected: **All**

To: **Licensing Committee**

On: **2 December 2010**

Key Decision: **No**

Change to
Budget: **No**

Change to
Policy
Framework: **No**

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1. What we are trying to achieve

- 1.1 To adopt Schedule 3 Local Government (Miscellaneous Provisions) Act 1982, which requires the licensing of Sex Entertainment Venues.
- 1.2 To agree the draft 'Statement of Licensing Policy for Sex Establishments' so that a twelve week public consultation period on it can begin.

2. Recommendation(s) for decision

2.1 It is recommend that:

- (1) Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 is adopted and therefore applies to the Torbay Council area, and
- (2) The draft 'Statement of Licensing Policy for Sex Establishments' is agreed, for public consultation.

3. Key points and reasons for recommendations

- 3.1 By the provisions of the Local Government (Miscellaneous Provisions) Act 1982, Torbay Council is the Licensing Authority in respect of Sex Establishments within Torbay. Section 27 of the Policing and Crime Act 2009 amended Schedule 3 Local Government (Miscellaneous Provisions) Act 1982, including a new type of Sex Establishment called Sex Entertainment Venues.

3.2 To enable Torbay Council to licence Sex Entertainment Venues (SEV's), Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 is required to be adopted.

3.3 With the adoption of Schedule 3 Local Government (Miscellaneous Provisions) Act 1982, the powers found within that Schedule come into force 28 days after the publication of the first of two public notices. These shall be published in consecutive weeks.

3.4 A "Sexual Entertainment Venue" means any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the 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 be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).

3.5 As part of this new process a draft 'Statement of Licensing Policy for Sex Establishments' has been written which covers all three types of Sex Establishments, notably Sex Shops, Sex Cinemas and Sex Entertainment Venues. This is a pre-consultation draft, which assuming it is agreed, will be placed into the public domain for 12 weeks consultation. A final draft Policy that incorporates any amendments following consultation will be presented to Licensing Committee for final agreement, along with any representations in April 2011.

3.6 This draft policy covers several key points that are an important part of the delivery of this licensing regime. The first is the location where these premises can apply and maybe be granted a licence. The second is the numerical limit and the third is the conditions that would apply to those types of premises.

3.7 There are no risks of an appeals or a judicial review at this stage, as this is a draft document and no final decisions are to be made about any particular issue or premises.

For more detailed information on this proposal please refer to the supporting information.

Frances Hughes
Executive Head Community Safety

Supporting Information to Report 288/2010

A1. Introduction and history

- A1.1 By the provisions of the Local Government (Miscellaneous Provisions) Act 1982, Torbay Council is the Licensing Authority in respect of Sex Establishments within Torbay.
- A1.2 Section 27 of the Policing and Crime Act 2009 amended Schedule 3 Local Government (Miscellaneous Provisions) Act 1982, including a new type of Sex Establishment called Sex Entertainment Venues. This is in addition to the two existing types of Sex Establishments, namely Sex Shops and Sex Cinemas.
- A1.3 On 28 October 1982 Torbay Council adopted Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 and has licensed Sex Shops and Sex Cinemas since. To enable Torbay Council to licence Sex Entertainment Venues, the amended Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 is required to be adopted.
- A1.4 A "Sexual Entertainment Venue" means any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the 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 be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).

However premises that provide this type of entertainment less frequently than once per month and therefore 11 or less times per year are not Sex Entertainment Venues for the purpose of the legislation.

- A1.5 With the adoption of Schedule 3 Local Government (Miscellaneous Provisions) Act 1982, the powers found within that Schedule come into force 28 days after the publication of the first of two public notices. These notices shall be published in consecutive weeks. It is therefore anticipated that the adoption would take effect from the end of the first week of January 2011.
- A1.6 The date that Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 comes into effect is called the 'first appointed day'. This gives Applicants who apply for a Sex Entertainment Venue Licence, 6 months in which to make such an application. The final date for those applications will be 6 months after the implementation date and is called the 'second appointed day'. Torbay Council will then have 6 months until the 'third appointed day' to grant or refuse those applications. After the 'third appointed day' existing premises that undertake these types of entertainment and/or have conditions on their Premises Licences granted in accordance with 2003 Licensing Act, will have to cease these activities and those conditions will no longer apply. Those premises with the new licence issued under Local Government (Miscellaneous Provisions) Act 1982 can then operate under the new licence and the conditions that are attached to that new licence. There are no grandfather rights under this

legislation.

- A1.7 The adoption of the amended Schedule 3 Local Government (Miscellaneous Provisions) Act 1982, does not affect the two existing premises which are Sex Shops. There are no Sex Cinemas licensed in Torbay.
- A1.8 A new draft 'Statement of Licensing Policy for Sex Establishments' has been written to address the key issues around the licensing of Sex Establishments. This draft Policy covers all three types of Sex Establishments, notably Sex Shops, Sex Cinemas and Sex Entertainment Venues. This a pre-consultation draft, which assuming it is agreed, will be placed into the public domain for 12 weeks consultation. A final draft Policy that incorporates any amendments following consultation will be presented to Licensing Committee for final agreement, along with any representations in April 2011. This will give any applicants for Sex Entertainment Venue's clear guidance before they have to make their application.
- A1.9 This draft policy covers several key points that are an important part of the delivery of this licensing regime. The first is the characteristics of an area where these types of premises can apply and maybe granted a licence. The second is the numerical limit which can be set for each type of premises and the third is the conditions that would apply to those types of premises.
- A1.10 Within the legislation Torbay Council can refuse an application based upon the characteristics of an area. In the draft policy this is covered by the following paragraph. "Irrespective of the numerical limit, and whilst treating each application upon its own merits, the Council will not licence premises in the relevant locality to:
- (a) a residential area;
 - (b) premises, areas or access routes to such premises or areas which are designed for or attract children or families, such as school, play areas, parks, children's centres, youth clubs, nurseries or leisure facilities, or any other similar establishment;
 - (c) a place of public religious worship;
 - (d) historic buildings, cultural attractions and tourist attractions;
 - (e) educational establishments;
 - (f) community facilities and public buildings;
 - (g) an area with a history of social difficulties;
 - (h) a gateway to an identifiable locality."
- A1.11 The second key point is the numerical limits for each type of premises. In the draft policy this is covered by the following paragraph. "Torbay Council being the Licensing Authority in Torbay for the purposes of the Act recognises that it can set a quantity limit regarding the number of sex establishments in an area. For the purposes of the consultation this has been set as follows.
- Sex Shops – Two (in line with the existing numerical limit)
 - Sex Cinemas – Nil
 - Sex Entertainment Venues (Lap dancing and striptease) – Two"
- A1.12 It is important to note that there is an existing numerical limit for Sex Shops of two. Since there are two Sex Shops operating in Torbay, it is likely that any

change to this would be challenged by one or other operator. It is therefore recommended this remains the same.

A1.13 There is no existing numerical limit for Sex Cinemas, and it is recommended that this is set at zero.

A1.14 Sex Entertainment Venues is a new category and the proposed numerical limit of two has been set to generate debate, as well as reflect the maximum number of premises that may have had this kind of entertainment and be open at any one time. There are at present 5 premises that have conditions on their Premises Licence issued under the Licensing Act 2003, to allow such activities, though all but one remain unused at this time.

A1.15 Within the draft 'Statement of Licensing Policy for Sex Establishments' Appendix C and D are the proposed conditions for Sex Shops and Sex Entertainment Venues respectively. Those for Sex Shops are very similar to those adopted by Licensing Committee in 2000, and so only reflect minor changes with modern day practice.

A1.16 It is recommended that this draft 'Statement of Licensing Policy for Sex Establishments' is agreed and can commence its public consultation within the knowledge that it will be returned to Licensing Committee after the consultation period is finished, for final agreement.

A1.17 There are no are no risks of an appeals or a judicial review at this stage, as this is a draft document and no final decisions are to be made about any particular issue or premises.

A2. Risk assessment of preferred option

A2.1 Outline of significant key risks

There are no risks associated with this report, as firstly the adoption is a legal process and is very unlikely to generate any form of legal challenge that can be substantiated, providing that the legal process is followed. Secondly this is a draft document for public consultation. However, it is important that a draft 'Statement of Licensing Policy for Sex Establishments' amended or not, is agreed for consultation. Failure to do so could mean that Torbay Council would fail to meet its statutory obligation as it has to undertake public consultation on this matter by the end of March 2011.

A3. Options

- A3.1
- (i) To agree the draft 'Statement of Licensing Policy for Sex Establishments'
 - (ii) To agree an amended draft 'Statement of Licensing Policy for Sex Establishments'
 - (iii) To refuse to agree the draft 'Statement of Licensing Policy for Sex Establishments'

A4. Summary of resource implications

A4.1 There are no significant additional resource implications that will derive from the

implementation of this piece of legislation. The fees have been set to cover the costs of the work to deliver this adoption and any subsequent applications.

A5. What impact will there be on equalities, environmental sustainability and crime and disorder?

A5.1 There are no equalities, environmental sustainability or crime and disorder implications.

A6. Consultation and Customer Focus

A6.1 There is a 12 week public consultation on the draft 'Statement of Licensing Policy for Sex Establishments', during December 2010 to February 2011.

A7. Are there any implications for other Business Units?

A7.1 There are no significant implications for other business units relating to this report.

Appendices

Appendix 1 Draft 'Statement of Licensing Policy for Sex Establishments'

Documents available in members' rooms:

Sex Entertainment Venues – Home Office Guidance for England and Wales.

Local Government (Miscellaneous Provisions) Act 1982 is available on line at:

www.opsi.gov.uk

Background Papers:

The following resources and documents were used to compile this report:

- 1 Sex Entertainment Venues – Home Office Guidance for England and Wales
- 2 Local Government (Miscellaneous Provisions) Act 1982