



Report No: **64/2011** Public Agenda Item: **Yes**

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

Wards Affected: **All**

To: **Licensing Committee** On: **17 March 2011**

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 agree the 'Statement of Licensing Policy' for Sex Establishments so that applicants have the guidance required to make applications.

2. Recommendation(s) for decision

- 2.1 It is recommend that:

- (1) The 'Statement of Licensing Policy' for Sex Establishments is agreed.

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 Sexual Entertainment Venues. This new category was adopted by Licensing Committee on the 2nd December 2010.
- 3.2 With the adoption of Schedule 3 Local Government (Miscellaneous Provisions) Act 1982, the powers found within that Schedule came into force on 7th January 2011, 28 days after the publication of the first of two public notices.

3.3 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).

3.4 As part of this new responsibility a draft ‘Statement of Licensing Policy’ for Sex Establishments was written which covers all three types of Sex Establishments, notably Sex Shops, Sex Cinemas and Sex Entertainment Venues. On the 2nd December 2010 the Licensing Committee agreed for the draft policy to go out to public consultation for a 12 week period. This ended on the 2nd March 2011.

3.5 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 of premises and the third is the conditions that would apply to those types of premises.

3.6 In total nine representations were made and a summary of these are included in Appendix 2. Only two representations were made on the new Sexual Entertainment Venues numerical limit, both stating it should be lower than the recommendation of two. This would suggest that two is a reasonable limit to set, so the recommendation is to set this at two.

3.7 There are no risks of an appeal at this stage as no applications are being considered today.

For more detailed information on this proposal please refer to Appendix A.

Frances Hughes
Executive Head Community Safety

Appendix A – Supporting information to Report 64/2011

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 28th October 1982 Torbay Council adopted Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 and has licensed Sex Shops and Sex Cinemas since. On the 2nd December 2010 Torbay Council adopted, the amended Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 so to include Sexual Entertainment Venues.
- 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 were published on the 10th and 17th December 2010 and therefore the adoption took effect from the 7th January 2011.
- A1.6 The 7th January 2011 is called the ‘first appointed day’. This gives Applicants, who apply for a Sexual Entertainment Venue Licence, 6 months in which to make such an application. The final date for those applications will be 7th July 2011 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 issued 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 draft 'Statement of Licensing Policy' for Sex Establishments was 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. A consultation draft was agreed on the 2nd December 2010 and went out to public consultation for a 12 week period ending on the 2nd March 2011. A final draft Policy that incorporates any amendments following the consultation is attached in Appendix 1. The amendments are highlighted for easy comparison to the draft agreed on the 2nd December 2010.

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 could or could not operate. 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

Sexual 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. Both premises were consulted upon this but neither responded with a representation.

- A1.13 There is no existing numerical limit for Sex Cinemas, and it is recommended that this is set at zero.
- A1.14 Sexual Entertainment Venues is the new category and the proposed numerical limit of two had been set to generate debate. However with only two representations made on setting this as a numerical limit of lower than two, this would suggest that two is a reasonable figure, so the recommendation is to set this at two.
- 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 A meeting has been held with the existing operator of a Sexual Entertainment Venue after a detail submission, and the changes to Appendix D reflect that meeting.
- A1.17 In total nine representations were made, and a summary of these are included in Appendix 2. Minor alterations have been made to the draft policy to reflect these representations and as stated above these are highlighted with Appendix 1.
- A1.18 It is therefore recommended that this draft 'Statement of Licensing Policy' for Sex Establishments is agreed.
- A1.19 There are no risks of an appeal at this stage as no applications are being considered today.

A2. Risk assessment of preferred option

A2.1 Outline of significant key risks

There are no risks associated with this report providing the policy is agreed, 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 the only possible challenge would be from a judicial review, however this is unlikely at this stage as those who may have had reason to comment have had ample opportunity to do so due the 12 week consultation period.

If the policy was not agreed then it would be difficult to refuse applications in unsuitable locations or because of numerical limits.

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 has been 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.

Annexes

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

Appendix 2 Summary of consultation responses

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