



Report of: **Service Director of Public Protection**

Meeting of:	Date	Agenda item	Ward(s)
Licensing Committee	28 February 2011	B1	All

Delete as appropriate		Non-exempt
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SUBJECT: Sex Establishment Licensing

1. Synopsis

- 1.1 The Council has the ability to licence sex establishments under the Local Government (Miscellaneous Provisions) Act 1982. The Police and Crime Act 2009 introduced an amendment to allow Local Authorities to adopt schedule 3 to bring sexual entertainment venues, such as lap dancing premises, in to the licensing regime. This provision was adopted by Council on 2 December 2010.
- 1.2 The 1982 Act also allows the council to control the number of sex establishments by setting limits on the number of premises in any given locality. Details of the proposed approach to limiting numbers are contained in the draft Sex Establishment Licensing Policy attached as appendix 1.
- 1.3 The Act allows the council to charge fees for new, renewal, variation and transfer of sex establishment licences. Fees have to be set on a cost recovery basis. A new fee structure is proposed in paragraph 3.13 below.
- 1.4 The Act allows the council to set standard conditions for premises operating as sex establishments. The proposed conditions for premises providing sexual encounter entertainment is contained in appendix 2.

2. Recommendations

- 2.1 To agree the Sex Establishment Licensing Policy in appendix 1
- 2.2 To agree the proposed fees in paragraph 3.13 for premises licensed as sex establishments under the Local Government (Miscellaneous Provisions) Act 1982 from 1 April 2011
- 2.3 To agree the Standard Conditions for Sexual Entertainment Venues in appendix 2

3. Background

Sex Establishment Licensing Policy

- 3.1 In 2010 council's were given additional powers under the Police and Crime Act 2009 to regulate premises providing lap dancing by allowing them to adopt schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to bring sexual entertainment venues into the licensing regime for

- sex establishments. The council adopted schedule 3 at its meeting on 2 December 2010.
- 3.2 The adoption of schedule 3 Local Government (Miscellaneous Provisions) Act 1982, as amended, allows the council to
- set a limit on the number of sexual entertainment venues that is appropriate for the borough and
 - licence sexual entertainment venues
- 3.3 The council has been responsible for regulating sex shops and sex cinemas since 1982 but it has never had a written policy on its approach to licensing. The ability to include sexual entertainment venues within the licensing regime from 1 April 2011 presents an ideal opportunity for the council to establish its policy thereby giving greater clarity and transparency to licensees, applicants and residents.
- 3.4 There are currently 4 licensed sex shops operating in the borough and a further 5-7 premises currently providing sexual entertainment which will fall into the scope of the licensing regime on 1 April 2011.
- 3.5 The Sex Establishment Licensing Policy sets out the council's intended approach to regulating sex establishments through licensing and the procedure that it will adopt in relation to applications for sex establishment licences
- 3.6 The policy covers all sex establishments including:
- Sex shops- i.e. premises selling sex articles
 - Sex cinemas i.e. premises showing adult films
 - Sexual entertainment venues i.e. - premises regularly providing lap dancing and other forms of nude dancing
- 3.7 The Licensing Committee meeting on 8 July 2010 agreed that there were a sufficient number of sex shops, sex cinemas and sexual entertainment venues already operating in the borough and that it did not want to see an increase in the numbers of premises that were currently providing these activities. It agreed to seek the views of residents on setting the limit for sex shops, sex cinemas and sexual encounter venues as nil but would not apply this limit to existing premises.

Although the council is still required to consider each application on its merits the policy gives a presumption that the application will be refused unless the applicant can demonstrate exceptional circumstances to justify a departure from the policy.

- 3.8 Residents and businesses affected by the introduction of the policy have been consulted about the proposal to restrict the number of sex establishments, including sexual entertainment venues, operating in the borough. There is support for this proposal with 85% support from respondents to the on line consultation and 100% support from written respondents.
- 3.9 The results of the consultation are in Appendix 3

Sex Establishment Licence fees

- 3.10 In setting the Licence fees the council is required to take into account:
- The EU Services Directive, which came into effect in the UK on 28 December 2009 by the Provision of Services Regulations 2009
 - HM Treasury Guidance on Managing Public Money- in particular Annex 6.2 How to Calculate Fees
 - Local Government Regulation (formerly LACORS) Guidance on the Implementing the EU Service Directive
- 3.11 The Directive requires regulatory bodies to set reasonable and proportionate fees and the guidance highlights the need to set fees on a cost recovery basis. The guidance indicates the elements to costs which should be reflected in fee levels.
- 3.12 The proposed fee structure for Sex Establishments to reflect the cost of dealing with applications, monitoring and enforcement is as follows:

Sex shop or sex cinemas

Application and renewal - £9570

Sexual entertainment venues

Application and renewal - £13,847

Transfer applications - £200

Variation applications -£4106

Refund if application refused - £1755

3.13 Businesses were consulted about setting fee for applications in December 2010. Appendix 5 contains the responses.

3.14 Existing businesses indicate that they are concerned at the level of fee and would welcome any reduction particularly in the current economical climate.

Standard Conditions for Sexual Entertainment Venues

3.15 The council has the ability to set standard conditions covering the operation and management of Sex Establishments. It has already adopted standard conditions for sex shop which are attached to all sex shop licences but these conditions are not sufficient to ensure adequate controls are in place in sexual entertainment venues.

3.16 Specific standard conditions have been developed for sexual entertainment venues which better reflect the controls that the council would expect to be in place in such premises. These are contained in appendix 2

4. Implications

4.1 Financial implications:

The proposed fee levels have been set on a full cost recovery basis.

4.2 Legal Implications:

Sex Establishment Licensing Policy

Local authorities are not required to publish a sex establishment licensing policy but they can do so if they wish.

Under the Local Government (Miscellaneous Provisions) Act 1982 ("the Act") the authority can refuse a licence on the ground that the number of sex establishments in the locality is equal to or exceeds the number (which can be nil) which the authority considers is appropriate. The Act also specifies that a licence can be refused where the grant or renewal would be inappropriate having regard to the character of the locality.

The Provision of Services Regulations 2009 ("the Regulations") came into force on 28 December 2009 and implements the European Services Directive. The Regulations set out conditions which must be met by the authority when granting licences, namely that the process must be clear, objective and transparent. The introduction of the licensing policy will provide guidance to businesses as to how sex establishment licences will be administered in Islington. The policy sets out the criteria the authority will consider regarding location of premises and the impact of premises on the local community.

The policy sets out the authority's intention to limit the number of sex establishments to nil. The proposed policy has considered existing businesses in the borough and the authority will not apply the limitation when considering applications from premises which are already trading. The authority could face a legal challenge, however the stepped approach that has been taken allowing existing businesses to continue to operate is proportionate and fair. New businesses will still be able to apply for a licence although they will have to demonstrate why the authority should depart from its policy. The policy meets the legal requirement that any new application will be considered on its merits.

Sex Establishment Fees

The Act provides that an applicant for the grant, variation, renewal or transfer of a sex establishment licence shall pay a reasonable fee determined by the authority.

The Regulations set out conditions which must be met by the authority when setting and charging fees, namely that the fees must be non-discriminatory, justified, proportionate and transparent. These principles apply to the formulation of all fees charged as part of the licensing process and each fee set must be proportionate and justified.

In calculating a reasonable fee the authority must base this on cost recovery and cannot set an artificially high level to deter a specific service sector. The number of sex establishments can be controlled through the authority's licensing policy and the setting of fees should not be used as a mechanism to control numbers of sex establishments within the borough.

4.3 Environmental Implications:

Nil

4.4 Equality Impact Assessment:

An Equality Impact Assessment was completed on 18 January 2011 and is attached as appendix 4. The Equality Impact Assessment shows that there will be positive impacts on, women, children and young people and community cohesion and neutral impacts on all other groups identified in the assessment.

5. Conclusion and reasons for recommendations

- 5.1 The Licensing Committee indicated its commitment to bring sexual encounter venues into the licensing regime for Sex Establishments when it met on 8 July 2010.

The recommendations in this report to approve the Policy, fees and standard conditions will provide the framework for the licensing regime when the decision of the council takes effect on 1 April 2011.

Appendix 1 **Sex Establishment Policy**

Appendix 2 **Standard Conditions for Sexual Entertainment venues**

Appendix 3 **Response to the public consultation on the proposed Sex Establishment Policy**

Appendix 4 **Equality Impact Assessment**

Appendix 5 **Response to business consultation on fees**

Background papers: (available online or on request)

LACORS guidance on the impact of the Services Directive on councils setting and administering local licence fees within the service sector.

HMTreasury Guidance on Managing Public Money- in particular Annex 6.2 How to Calculate Fees

Final report clearance:

Signed by:



15th February 2011

Service Director for Public Protection

Date

Received by:

Head of Democratic Services

Date

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