

LICENSING COMMITTEE

TUESDAY 22 MARCH 2016

THE LONDON LOCAL AUTHORITIES ACT 1991 - DELEGATIONS & FEE SETTING - SPECIAL TREATMENT LICENSING

SUMMARY:

This report informs the Committee of the adoption by the Council of Part II of the London Local Authorities Act 1991 in respect to the licensing of special treatments; together with its responsibility for the governance of such licences. It invites the Committee to agree to delegate specific functions to officers of the Council and to its Sub-Committee so as to enable it to fulfil its duties and responsibilities under the Act and to set the fees in respect of the various application types that can be made.

The report asks the Committee to:

- i) determine that any licence issued shall remain in force for no more than 12 months;
- ii) agree the delegations as set out in section 3 of the report;
- ii) set the application fees as set out in section 4 of the report; and,
- iv) authorise the Head of Committee Services and Scrutiny to amend the Council's Scheme of Delegations so as to reflect matters agreed by the Committee

1. Introduction

Part II of the London Local Authorities Act 1991 gives London Borough Council's the power to licence and control premises that provide 'special treatments'. This Committee considered these powers, together with the benefits of introducing a new licensing regime in respect of premises where 'special treatments' are provided, when it last met on 21 January 2016 and agreed to ask Council to adopt Part II of the Act.

On 2 March 2016 Council resolved to adopt the provisions of the Part II of the Act and set the "second appointed day" as 1 July 2016. This is the date that the provisions of the Act will come into force in the London Borough of Bexley.

At the same time Council agreed to delegate the responsibility for the governance of the licensing of special treatment to its Licensing Committee and amended its 'orders of reference' accordingly.

A 'notice' advertising the adoption of the Act and informing local businesses of the second appointed day was, as required by the legislation, published in the News Shopper on 17 and 24 March 2016.

In addition, officers will write directly to persons currently providing licensable special treatments, together with local colleges who offer training in such treatments, to inform them of the adoption of the Act. Furthermore, officers will hold a series of 'open days' to support local businesses in making an application for a new licence.

The purpose of this report is to ask the Committee to put in place necessary Officer and Sub Committee delegations so as to facilitate the receipt, validation and

determination of applications for a special treatment licence, including setting various application fees.

2. Part II of the London Local Authorities Act 1991 - Special Treatment Licensing

Establishment for special treatment

The consequence of adopting Part II of the London Local Authorities Act 1991 is that from 1 July 2016 onwards any establishment located in the London Borough of Bexley which is being used to provide 'special treatments' will only be lawfully able to do so if it has the benefit of a licence issued by the Council.

An 'establishment for special treatment' is any premises used, intended to be used or represented as being used for the reception or treatment of persons requiring:

- Massage;
- Manicure;
- Acupuncture;
- Tattooing;
- Cosmetic piercing;
- Chiropody;
- Light, electric or other special treatment of a like kind; or
- Vapour, sauna or other baths.

Exemptions

'Special treatments' that are provided at premises not used for gain or reward are exempt, as are those provided at a hospital or nursing home. Furthermore, the provision of any special treatment by a medical practitioner or registered osteopath or chiropractic is also exempt, as is the provision of acupuncture by a registered dentist.

With regard to other 'health care practitioners', that is persons who uses their skills with a view to the curing or alleviating of bodily diseases or ailments, but does not include persons whose skills are employed mainly for cosmetic alteration or decorative purposes, they are only exempt if they are a bona fide member of a body of health practitioners which has given notice in writing to the Council that it:

- has a register of members;
- requires a qualification for membership qualifications by way of training for, and experience of, the therapy concerned;
- requires its members to hold professional indemnity insurance;
- subjects its members to a code of conduct and ethics, including a prohibition of immoral conduct in the course of their practice; and
- provides procedures for disciplinary proceedings in respect of its members;

It is recommended in section 3 of the report, 'Delegations' that the ability to exempt a specific body of health practitioners sits with the Deputy Director, Public Protection, Housing & Public Realm.

Applications

The Act allows the Council to prescribe regulations setting out the information it needs to determine an application for the grant, renewal, transfer or variation of a licence, together with any notice(s) it requires an applicant to give. Such regulations may also set out the Council's procedure for determining an application. In addition, the Act specifies that an applicant for the grant, renewal or transfer of a licence shall pay a reasonable fee determined by the Council.

It is recommended in section 3 of the report, 'Delegations' that the ability to prescribe what particulars an applicant is required to furnish sits with the Deputy Director, Public Protection, Housing & Public Realm and that the Committee retains the power to set application fees.

Determination

The Act allows the Council to refuse to grant, renew, vary or transfer a licence on any of the following grounds:

- (a) the premises are not structurally suitable for the purpose;
- (b) there is a likelihood of nuisance being caused by reason of the conduct, management or situation of the premises or the character of the relevant locality or the use to which any premises in the vicinity are put;
- (c) the persons concerned or intended to be concerned in the conduct or management of the premises used for special treatment could be reasonably regarded as not being fit and proper persons to hold such a licence;
- (d) the persons giving the special treatment are not suitably qualified;
- (e) the premises have been or are being improperly conducted;
- (f) the premises are not provided with satisfactory means of lighting, sanitation and ventilation;
- (g) the means of heating the premises are not safe;
- (h) proper precautions against fire on the premises are not being taken;
- (i) they are not satisfied as to the safety of equipment used in the special treatment or as to the manner in which the treatment is to be given;
- (j) they are not satisfied as to the safety of the special treatment to be given;
- (k) satisfactory means of escape in case of fire and suitable means for fighting fire are not provided on the premises;
- (l) the applicant has, within the period of five years immediately preceding the application to the borough council, been convicted of an offence under Part II of the Act; or
- (m) the applicant has failed to comply with the Council's prescribed procedure or pay the requisite fee.

It is recommended in section 3 of the report, 'Delegations' that the power to determine unopposed applications for the grant, renewal, variation or transfer of a licence is delegated to the Deputy Director, Public Protection, Housing & Public Realm.

Section 3 of the report, 'Delegations', recommends that where objections are made to an application for the grant, renewal, variation or transfer of a licence the power to determine the application is delegated to the Sub Committee.

Standard Conditions

The Act allows the Council to grant to an applicant and from time to time renew, vary or transfer a licence on such terms and conditions and subject to such restrictions as may be specified.

With regard to the imposition of conditions the Act suggests that such conditions may relate to:

- (a) the maintenance of public order and safety;
- (b) the number of persons who may be allowed to be on the premises at any time;
- (c) the qualifications of the persons giving the special treatment;
- (d) the taking of proper precautions against fire, and the maintenance and proper order of means of escape in case of fire, means for fighting fire and means of lighting, sanitation and ventilation of the premises;
- (e) the maintenance in safe condition of means of heating the premises;
- (f) the hours of opening and closing the establishment for special treatment;
- (g) the safety of any equipment used in connection with the special treatment and the way in which the treatment is given;
- (h) the cleanliness and hygiene of the premises and equipment; and
- (i) the manner in which the establishment is operated and the way it is advertised.

It is recommended in section 3 of the report, 'Delegations' that the power to determine and apply the standard terms, conditions and restrictions to which any licence granted is made subject to is delegated to the Deputy Director, Public Protection, Housing & Public Realm.

Duration

With regard to the duration of a licence, that Act states, once issued a Licence shall remain in force for 18 months or such shorter period specified in the licence as the Council may think fit.

It is recommended that the Committee agree that the maximum period for which a licence shall remain in force shall be 12 months.

Revocation

There are two sets of circumstances in which the Act allows the Council to revoke a licence.

The first is where a licence holder dies and a person carrying on at the place in respect of which the licence was granted the function to which the licence relates is deemed to be the holder of the licence. In such circumstances the Council may

revoke the licence held by the person deemed to be the holder on any of the grounds for refusal set out above.

The second is where a licence holder is convicted of an offence under the Act. In such circumstances the Council may consider the revocation of the licence.

Section 3 of the report, 'Delegations', recommends that the power to revoke an existing licence is, in every circumstance, is delegated to the Sub Committee.

Cancellation

The Act provides for the Council to, at the written request of the holder, cancel the licence.

It is recommended in section 3 of the report, 'Delegations' that the power to cancel a licence is delegated to the Deputy Director, Public Protection, Housing & Public Realm.

Enforcement

It is an offence for any occupier, or other person concerned in the conduct or management, of any premises in the Borough to use, allow to be used, or represent them as being used, as an establishment for special treatment without the benefit of a licence.

In addition, it is an offence if any premises in respect of which a licence is in force are used as an establishment for special treatment otherwise than in accordance with the terms, conditions or restrictions on or subject to which the licence is held.

Inspection & Right of Entry

The Act allows any duly authorised officer of the Council, London Fire and Emergency Planning Authority, together with any police officer, to enter, inspect and examine any premises which are, or which they have reasonable cause to believe are:

- a) used, represented as being used, or intended to be used as an establishment for special treatment without the requisite licence; or
- b) used in contravention of the terms, conditions or restrictions on or subject to which a licence is granted; and may do all things reasonably necessary for the purpose of ascertaining whether an offence has been committed.

Any person who intentionally obstructs any officer acting in the exercise of the above powers shall be guilty of an offence. Furthermore their powers under Section 287 of the Public Health Act 1936 allow officers to apply to a local justice for an entry warrant.

3. Delegations

Officer delegations

It is recommended that the following duties are delegated to the Deputy Director, Public Protection, Housing & Public Realm:

- a) The power to exempt from the requirements of the Act of any bona fide member of a body of health practitioners which has given notice in writing to the council that it satisfies the qualifying criteria set out in section 4(b) (ii) of Part II of the London Local Authorities Act 1991; and has supported that notice with satisfactory documentary evidence, if required.
- b) The power, as set out in section 7 of Part II of the London Local Authorities Act 1991 to prescribe regulations setting out the requisite information with regard to applications for the grant, renewal, transfer or variation of a licence, together with any notice(s) it requires an applicant to give; and the procedure for determining applications.
- c) The power to grant applications, made under section 7 of Part II of the London Local Authorities Act 1991, for the grant, renewal, transfer or variation of a licence which are not subject to objections or representations.
- d) The power, under section 7 of Part II of the London Local Authorities Act 1991, to determine and apply the standard terms, conditions and restrictions to which any licence granted is subject.
- e) The power to cancel a licence in accordance with section 9(3) of Part II of the London Local Authorities Act.

In addition, with regard enforcing the new licensing regime, the Deputy Director, Public Protection, Housing & Public Realm be authorised to enforce the provisions of the Act, either generally or specifically.

Sub-Committee delegations

It is recommended that the following duties are delegated to the Sub-Committee:

- a) The power to refuse applications, made under section 7 of Part II of the London Local Authorities Act 1991, for the grant, renewal, transfer or variation of a licence.
- b) The power to revoke an existing licence under sections 9(2) and 14(3) of Part II of the London Local Authorities Act 1991.

4. Fees

It is recommended that the Committee retains the power to set fees in respect of applications, made under section 7 of Part II of the London Local Authorities Act 1991, for the grant, renewal, transfer or variation of a licence and other administrative processes.

The Council's Health & Safety Team has considered the various types of special treatments caught by the new licensing regime and has determined that the risk attached to the provision of the different treatments varies as does the complexity of compliance inspections, with the most complex being likely to take more officer time.

Given the above, and for the purpose of fee setting, the Committee is requested to allocate the special treatments set out in the Act into three categories, with those in to 'Category A' carrying the most risk and complexity and those in 'Category C' the least. Table 1 below allocates each treatment, with some specified exceptions, into either Category A, B, or C.

Table 1

Treatment	Category	Risk
Light (includes laser), electric or other special treatment of a like kind, but not electrolysis and tanning using UV light.	A	High
Acupuncture, electrolysis, tattooing (which includes semi-permanent make-up, micro-pigmentation and chemical tattoo removal) and cosmetic piercing, but not ear piercing.	B	Medium
Massage, manicure (includes artificial nails), chiropody, vapour, sauna or other baths, ear piercing and tanning using UV light.	C	Low

The Committee is asked to agree the schedule of fees detailed in Table 2 below, which have been set at a level so as to recover the Council's costs in full.

Table 2

Application Type	Premises Category	Fee £
Grant or Provisional Grant	A	800.00
	B	600.00
	C	400.00
Renewal	A	600.00
	B	450.00
	C	300.00
Transfer	ALL	95.00
Variation	ALL	225.00
Variation - Confirmation of Provisional Licence	ALL	225.00
Variation - Add new practitioner to provide treatment currently authorised on licence	ALL	45.00
Change of details	ALL	26.00
Duplicate Licence	ALL	18.00

With regard to premises providing a single 'Category C' treatment, where the provision of such the treatment is ancillary to the main use of the premises, the Committee is asked to consider agreeing 50% reduction of the fee levied in respect an application for the:

- Grant or provisional grant of a licence;
- Renewal;
- Variation; and
- Variation - Confirmation of Provisional Licence

5. Summary of Legal Implications

The Council has adopted the provision of Part II of the London Local Authorities Act 1991 in relation to the licensing of special treatment establishments; and has delegated the duties and responsibilities of adoption of this new licensing regime places on the Council to this Committee. The delegations sought in the report will allow the Committee to discharge those duties.

6. Summary of Financial and Other Implications

There are no specific financial, environmental health, crime and disorder, equal opportunities or human rights implications arising from this report.

As explained in section 4 the recommendation is that fees are set at a level so as to fully recover the cost to the Council in administrating and enforcing the provision of Part II of the London Local Authorities Act 1991.

LOCAL GOVERNMENT ACT 1972 - SECTION 100D

List of Background Documents

Part II of the London Local Authorities Act 1991 - Special Treatment Licensing

Contact officer:	Diane Kraus, Licensing & Trading Standards Manager	Tel: 020 3045 5675
Reporting to:	David Bryce-Smith, Deputy Director, Public Protection, Housing & Public Realm	