

Committee: Licensing Committee

Date: 9 June 2020

Wards: All

Subject: London Local Authorities Act 1991, Review of Special Treatment Licensing

Lead officer: Chris Lee, Director, Environment and Regeneration

Lead member: Councillor Nick Draper, Chair, Licensing Committee

Contact officer: Helen Clark, Commercial Services Manager, London Boroughs of Merton, Richmond upon Thames and Wandsworth Joint Regulatory Services Partnership and Guy Beaumont, Senior Solicitor, South London Legal Partnership.

Recommendations:

- A. The Licensing Committee to adopt the standard conditions for Special Treatment Premises Licences as set out in Appendix A to this report, subject to any amendments arising from consultation with existing licence holders;
 - B. The Licensing Committee to approve the regulations governing applications for the grant, renewal, transfer and variation of special treatment licences and their determination;
 - C. The Licensing Committee to approve the proposal to licence broad categories of treatments;
 - D. The Licensing Committee to note the proposed fee structure subject to consultation with existing licence holders;
 - E. The Licensing Committee to agree that the above changes will take effect from 1st April 2021;
 - F. The Licensing Committee to confirm the current list of approved health practitioners of special treatment establishments whose members are exempted from the need for licensing and to delegate authority to the Head of the Regulatory Services Partnership to approve or reject any application to the Council for inclusion on the list in the future.
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1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 Premises where special treatments establishments are provided must be licensed under the London Local Authorities Act 1991 ('The Act')
- 1.2 The Act allows the Council to make regulations prescribing the terms, conditions and restrictions on or subject to which licences, or licences of a particular class, are to be granted, renewed or transferred. Where such regulations have been made all licences granted are subject to those standard conditions unless they have been expressly excluded or amended.
- 1.3 With the implementation of the Merton, Richmond and Wandsworth Regulatory Services Partnership a review of the Special Treatment licensing processes

across the Boroughs has been undertaken with the intention that a single system of licensing be implemented across the three Boroughs. This report sets out the proposed revisions to the existing licensing system subject to consultation with existing licence holders, including:

- the adoption of new standard conditions;
- the approval of regulations governing applications for grant, renewal, transfer and variation of special treatment licences and their determination;
- revision to the fee structure based on risk to more accurately reflect cost;
- to delegate authority to the Head of the Regulatory Services Partnership to approve or reject any applications to the Council for inclusion on the list of approved health practitioners of special treatment establishments whose members are exempted from the need for licensing
- to amend the licence to specify the category of treatment that can be carried out at the premises rather than to specify every particular treatment.

2. DETAILS.

2.1 Background

Part II of the London Local Authorities Act 1991 requires that persons providing premises where special treatments are offered must hold a licence. A Special Treatment Establishment is defined in the Act as a premises that is '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'. The Act does provide for a number of exemptions (e.g. medical practitioners, dentists and bona fide members of a body of health practitioners). Since the introduction of the Act many new types of treatments have come onto the market and a judgement must always be made as to whether they fall within the definition of a special treatment.

The Act provides a mechanism for the Council to prescribe the terms, conditions and restrictions it deems appropriate with regard to the licensing process. This includes the setting of fees at a level to fully recover its costs in administering and enforcing the licensing regime and the adoption of standard conditions to which all licensed premises must adhere unless specifically exempted. The Act lays out a number of areas that such conditions should relate (although these are not to be taken as exclusive) and includes: -

- the maintenance of public order and safety;
- the number of persons who may be allowed to be on the premises at any time;
- the qualifications of the persons giving the special treatment;
- the taking of proper precautions against fire, and the maintenance in proper order of means of escape in case of fire, means for fighting fire and means of lighting, sanitation and ventilation of the premises;
- the maintenance in safe condition of means of heating the premises;
- the hours of opening and closing the establishment for special treatment;
- the safety of any equipment used in connection with the special treatment and the way in which the treatment is given;

- the cleanliness and hygiene of the premises and equipment;
- the manner in which the establishment is operated and the way it is advertised.

2.2 Review of licensing process

With the implementation of the Merton, Richmond and Wandsworth Regulatory Services Partnership a review of the licensing processes across the boroughs has been undertaken with the intention that a single system of licensing be implemented across the three boroughs. This will benefit businesses wishing to provide special treatments in any of the three boroughs as there will be clear and standardised requirements regardless of where they wish to trade. In addition, the implementation of a single licensing system will produce the most a cost effective service for the residents and businesses in the three Boroughs.

As a result of the review it is proposed:

- (i) That the current fee structure be revised so as to provide a single structure across the service that is clear, current and reflects the cost of the service.
- (ii) That the current standard conditions be revised to provide a single set of conditions that are clear, current and enforceable
- (iii) to introduce standardised regulations governing applications for grant, renewal, transfer and variation of special treatment licences and their determination
- (iv) To introduce a standardised application form and licence template.
- (v) To amend the licence to specify the category of treatment that can be carried out at the premises rather than to specify every particular treatment
- (vi) To pass responsibility for the approval or rejection of all applications for inclusion on the list of approved health practitioners of special treatment establishments to the Head of the Regulatory Services Partnership.

2.3 Standard conditions

The current standard conditions for Special Treatment Establishments situated in Merton provide a minimum standard for licensees, preferring instead to place the responsibility for ensuring compliance with health and safety requirements onto the licence holder. As part of the work to implement a single licensing system across the three boroughs, the opportunity has been taken to review and update the standard conditions for all three boroughs. It is now felt that more detailed conditions should be adopted in Merton to assist business, by being more specific in the Council's requirements, as well as assisting licensing officers when carrying out enforcement visits.

The proposed conditions are shown in Appendix A to this report. The existing conditions relating to the competence of persons who can give treatments and client record keeping have been retained but amplified. The existing condition requiring that the tariff of charges be displayed has been retained as has the condition relating to clinical waste.

The following new conditions are proposed:-

- (i) **Premises** – conditions 18 – 27
- (ii) **Equipment** – conditions 29 – 31

(iii) **Treatment specific conditions** – conditions 39 to end

2.4. Standardised Regulation governing the determination of licence applications

Although, in general, the system for determining applications for the grant, renewal, transfer and variation of Special Treatment Licence applications is similar across all three boroughs, the opportunity has been taken to formalise the process through the adoption of Regulations, as allowed for under section 7 of the London Local Authorities Act 1991.

The proposed Regulations are shown in Appendix B to this report

2.5 Fee Structure

Currently the fees are based on the number of people who can be treated on the premises at any one time i.e. on the size of the premises, with an additional fee if skin piercing, light treatments: including UV (sunbeds), lasers, light therapy and electric treatments are provided and a higher additional fee if tattooing and/or body piercing is provided.

The basing of the fee on the size of a premises does not accurately reflect the administration and enforcement work associated with the licensing regime. It is proposed that the fee structure be revised so as to provide a single fee structure across all three boroughs that is clear, current and reflects the proposed revised regime. Premises will be split into three bands based on the risk of the treatment being offered and the time taken to inspect and carry out enforcement action.

Currently there are 50 licensed Special Treatment Establishments in Merton. Of these 18 will fall within the 'high risk' band . i.e. carry out tattooing, body piercing, and laser treatments; 32 within the 'medium risk' band. No premises are deemed low risk i.e. carry out ear lobe and nostril piercing.

It is likely that the fees for high risk Special Treatment Establishments will increase, whilst others may see their fees reducing slightly.

Responsibility for fee setting lies with the Assistant Director of Environment and Regeneration and the fees, based on the new fee structure if agreed, will be presented for approval in February 2021, coming into effect on the 1st April 2021.

2.6 Grouping of Special Treatments

Currently, when issued, the licence itemises the individual treatments that can be carried out at the premises. However, this can be limiting, requiring the licence holder to seek a variation even if they wish to carry out a treatment similar to that already approved, e.g. a different type of massage. It is proposed that in future these will be grouped into 8 categories and premises will be able to provide any treatment falling within the general category.

2.7 Approved Health Practitioners

Under the Act there are a number of exemptions from the need for licensing. These are laid out in Section 4 of the Act and includes, among others, any premises where the special treatment is carried out by or under the supervision of:

- A medical practitioner duly registered by the General Medical Council; or
- of any bona fide member of a body of health practitioners which has given notice in writing to the borough council that it:
 - (a) has a register of members;
 - (b) requires as qualification of membership qualification by way of training for, and experience of, the therapy concerned;
 - (c) requires its members to hold professional indemnity insurance;
 - (d) subjects its members to a code of conduct and ethics, including a prohibition of immoral conduct in the course of their practice;
 - (e) provides procedures for disciplinary proceedings in respect of its members; and has supported that notice with satisfactory documentary evidence, if required by that Council; or
 - (f) in the case of acupuncture, a dentist registered under the Dentists Act 1984.

This Council is a member of the London Special Treatment Licensing Working Party (through the Regulatory Services Partnership) which, amongst other matters, considers whether they acknowledge that bodies fall within the definition of body of health practitioners meeting the requirements laid out above. In making their decision whether or not to approve any such body the Council has regard to the guidance from the Working Party. Attached as Appendix C is the current list for confirmation.

It is proposed that in future responsibility to approve or reject any application to the Council for inclusion on the list of approved health practitioners of special treatment establishments whose members are exempted from the need for licensing; be delegated to the Head of the Regulatory Services Partnership to ensure consistency across all three Boroughs.

3. Consultation undertaken or proposed.

It was hoped that consultation with existing licenced Special Treatment premises could have taken place prior to this Committee, with comments included for the Licensing Committee's consideration. However, in view of the closure of premises due to the Covid 19 pandemic, this has not been possible.

It is, therefore, proposed to consult these premises as soon as feasible following this Committee, with any substantive comments being brought back to a further Committee meeting later this year, or early next year.

4. Timetable.

Changes to the standard conditions and the licensing of broad categories of treatment to come into effect immediately for new applications and from the first renewal after 1st November 2020 for existing licences

The new fee structure and fees to come into effect on the 1st April 2021

5. Financial, resource and property implications.

5.1 One of the purposes of this report is to seek approval to amend the fee structure.

5.2 It is anticipated that there will be a further report to Committee in October reporting back on consultation responses, and the recommended fees to be applied.

5.3 The method of fee setting will be on a cost recovery basis following government guidance on licensing fee setting, taking into account both the processing of the application and enforcement of the regime.

6. Legal and statutory implications.

6.1 The Council's powers and duties under Part II of the London Local Authorities Act 1991 are set out in the body of this report. There are no further legal implications arising directly from this report.

7. Human rights, equalities and community cohesion implications.

7.1 These are statutory functions and are applied globally.

8. Crime and Disorder Implications.

8.1 None for the purposes of this report

9. Risk management and health and safety implications.

9.1 All risk and health and safety implications have been considered when compiling this report. None are apparent.

10. Appendices – the following documents are to be published with this report and form part of the report.

Appendix 'A' – Proposed standard conditions

Appendix 'B' - Proposed regulations governing applications for the grant, renewal, transfer and variation of special treatment licences and their determination

Appendix 'C' – List of Bodies of Health Practitioners granted exemption by the London Borough of Merton

11. Background Papers – the following documents have been relied on in drawing up this report but do not form part of the report.

11.1 Existing licence conditions, Merton, Richmond and Wandsworth

11.2 Existing fee structure, Merton, Richmond and Wandsworth