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| MEETING: | REGULATORY COMMITTEE |
| DATE: | 6 JULY 2010 |
| TITLE OF REPORT: | ADOPTION OF SCHEDULE 3 TO THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 AND SECTION 27 OF THE POLICING AND CRIME ACT 2009 |
| PORTFOLIO AREA: | ASSISTANT DIRECTOR - ENVIRONMENTAL HEALTH & TRADING STANDARDS PUBLIC HEALTH DIRECTORATE |

CLASSIFICATION: Open

Wards Affected

Countywide

Purpose

To consider adopting Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 and the amendments created by Section 27 of the Policing and Crime Act 2009.

Key Decision

This is not a key decision.

Recommendation(s)

THAT Committee:

- (a) **adopt Schedule 3 and the amendments of Section 27 which gives power to regulate lap dancing clubs and similar venues**

Alternative Options

- (a) **Refuse to adopt Schedule 3 and Section 27; or**
- (b) **Reach some other decision.**

Note: There is no option to adopt Section 27 and not Schedule 3, as Section 27 only amends this schedule. Also, the legislation is not mandatory for local authorities. However, if the amendment within the Policing and Crime Act is not adopted by 6th April 2011, then local authorities must consult local people about whether they should do so as soon as is reasonably practicable after that date.

Further information on the subject of this report is available from
Marc Willimont Regulatory Services Manager (01432) 261986

Reasons for Recommendations

The legislation empowers local authorities to licence “sex establishments” which means a sex cinema or a sex shop. However, following the introduction of the amendment under the Policing and Crime Act, this will now include a ‘sexual entertainment venue’. This new category covers venues that provide ‘relevant entertainment’. Relevant entertainment is defined as “*any live performance or display of nudity which is of such a nature that, it must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience*”. Under the legislation, local authorities are allowed to set a limit on the number of such establishments they consider appropriate for a particular locality.

Key Points Summary

- Allows the Local Authority to control the number of sex establishment within a particular locality

Introduction and Background

- 1 The Policing and Crime Act 2009 amended Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 to include sexual entertainment venues.
- 2 It is thought that certainly South Herefordshire District Council and Hereford City Council did adopt Schedule 3 although it has been impossible to identify when or find any written record of this, as the decision would have been historic and lost in the merging of councils in 1998.
- 3 This Authority needs to be in a position to prove that it did adopt Schedule 3 which it is not in position to do at this time. Therefore, to ensure we are able to prove adoption, the matter is placed before the Committee.
- 4 At this time it would appear that Herefordshire Council has no power or means of controlling the operation of sex establishments. To protect children and preserve the character of certain localities it is essential that this situation be rectified as soon as possible.
- 5 The Local Government (Miscellaneous Provisions) Act 1982 contains provisions to control such establishments through a scheme of licensing. However, to do this the Council must first adopt Schedule 3 of the Act. This allows local authorities to control, by way of a licensing regime, the number, locality and operation of sex establishments in their area. Virtually all other local authorities across the country have carried out this adoption process.
- 6 For successful adoption, the local authority must pass a resolution under Section 2 of the Local Government (Miscellaneous Provisions) Act 1982 to adopt Schedule 3 and specify the day the provisions are to come into effect. This must be no earlier than 1 month after the date of the resolution.
- 7 The local authority must then publish a notice in a local newspaper for two consecutive weeks stating that they have passed such a resolution and its general effect. The first notice must appear no later than 28 days before the date the provisions are to come into force.
- 8 If the Council resolves to adopt the legislation, the operator of a proposed “sex establishment” will have to apply for a licence under the Act. There is no presumption that the licence will be granted.
- 9 Section 12(3)(c) of Schedule 3 of the 1982 Act confers a power on the licensing authority to refuse a sex establishment licence on the grounds that “the number of sex establishments in

the *relevant locality* at the time the application is made, is equal to or exceeds the number which the authority considers is appropriate for that locality”.

- 10 Paragraph (d) goes on to say “that the grant or renewal of the licence may be inappropriate, having regard to:
 - the character of the relevant locality
 - the use to which premises in the vicinity are put; or
 - the layout, character or condition of the premises in respect of which the application is made.”
- 11 This means that the local authority can refuse a licence because there is already an appropriate number of sex establishments in an area and/or that a sex establishment would ‘conflict’ with the character of the area or other premises nearby e.g. schools, places of worship etc.
- 12 It is intended that a policy on sex establishments be drafted by the Environmental Health & Trading Standards to give guidance to members on these issues. It is proposed that this draft policy receives wide consultation and be presented to the Regulatory Committee for approval.
- 13 To control the impact of a sex establishment in an area, Schedule 3 of the Act allows a District Council to impose conditions on such things as:
 - hours of opening and closing,
 - the nature of displays or advertisements on or in such establishments and
 - the visibility of the interior of such establishments to passers by.These controls are designed to protect children. The policy on sex establishments will detail what kind of conditions may be appropriate in particular circumstances.
- 14 In respect of the amendment created by the Policing and Crime Act, in June 2008 the Department for the Culture, Media and Sport, wrote to Local Authorities to clarify how they viewed the powers available to them under the 2003 Licensing Act and to seek their views on whether these, and other controls, were sufficient to address the concerns of local people and the business. The majority of those who responded, including Herefordshire Council, felt that additional legislation should be introduced to provide controls that are specific to lap dancing clubs and similar premises. This approach was also supported by a wide range of other stakeholders, including the Local Government Association, the National Organisation of Resident’s Associations and the campaign groups ‘Object’ and the ‘Fawcett Society’.
- 15 As a result of this consultation exercise, from the 6th April 2010 local authorities in England will be able to adopt new additional powers to regulate lap dancing clubs and similar venues.
- 16 Section 27 of the Policing and Crime Bill introduces a new category of sex establishment under Schedule 3 to the 1982 Act called a ‘sexual entertainment venue’. This new category covers venues that provide ‘relevant entertainment’. Relevant entertainment is defined as “*any live performance or display of nudity which is of such a nature that, it must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience*”. These new ‘sexual entertainment venues’ will therefore require a sex establishment licence. However, there is an exemption for premises which provide such entertainment infrequently and, even if premises do qualify as a sexual entertainment venue, the local authority still has the discretion to waive the requirement for a licence.
- 17 In Summary schedule 3 to the 1982 Act will, in particular:
 - Allow local authorities to adopt the legislation.
 - Allow local people to oppose an application for a sex establishment licence if they have

legitimate concerns that a lap dancing club would be inappropriate, given the character of the area, for example if the area was primarily residential or next to a school etc.

- Require licences to be renewed at least yearly, at which point local people will have the opportunity to raise objections with the local authority.
- Allow a Local authority to reject a licence application if they believe that to grant a licence for a lap dancing club would be inappropriate given the character of a particular area.
- Allow a local authority to set a limit on the number of sex encounter venues that they think appropriate for a particular area.
- Allow a local authority to impose a wider range of conditions on the licences of lap dancing clubs than they are currently able to under the 2003 Act.

18 Subject to the agreement to adopt the Legislation then the Licensing Authority will draw a Policy in respect of the Licensing of Sexual Entertainment Venues.

19 This policy will be subject to the consultation process prior to being brought back before Committee.

20 Justifiable costs covering the administration and enforcement relating solely to these licenses can be recovered. A “reasonable” fee must be set to reflect this. Fees may not be used as a means of discouraging applications. A suggested fee will be proposed during the consultation process on the policy.

Key Considerations

21 Whether to adopt Schedule 3 and thereby be able to control the number of sex establishments.

Community Impact

22 The application for a ‘sex establishment’ may impact upon the local community. The proposed adoption of these new powers should help mitigate this.

Financial Implications

23 There will be advertising costs attached to the public notices required by the procedure to be published in the local press. A reasonable fee is payable by businesses, which will offset these costs over time.

24 The process of adopting the legislation, and the licensing process will be administered within existing resources by the Licensing Team, Environmental Health and Trading Standards.

Legal Implications

25 Without proof of adoption we would be unable to support any decision to refuse a licence for a sex establishment.

Risk Management

26 Not applicable

Consultees

- 27 A 12 week consultation programme in relation to Section 27 was carried out by the Home Office. This included Chief Executives of local authorities, Local Government Association, National Organisation of Residents' Associations and campaign groups.

Appendices

Appendix 1- copy of Schedule 2 & 3 The Local Government (Miscellaneous Provisions) Act 1982

Appendix 2 - copy of the relevant Section 27 of the Policing and Crime Act 2009

Appendix 3 - Ministers Letter to Chief Executive (England)

Appendix 4 - Home Office Guidance