

MEETING:	Council
MEETING DATE:	26 September 2014
TITLE OF REPORT:	Adoption Of Schedule 3 Of The Local Government (Miscellaneous Provisions) Act 1982 As Amended By Section 27 Of The Policing And Crime Act 2009 – Regulations Affecting Sex Establishments And Approval of Draft Sex Establishment Policy
REPORT BY	Director of Economy, Communities and Corporate

CLASSIFICATION: Open

Key Decision

This is not an executive decision.

Wards Affected

County-wide

Purpose

To approve a draft sex establishment licensing policy.

Recommendation

THAT:

- (a) **Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009 be adopted; and**
- (b) **the draft sex establishment licensing policy appended to the report, incorporating the amendment proposed at paragraph 18 of the report, be approved for consultation.**

Alternative Options

- 1 Decide not to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended.
- 2 Reject/decide not to adopt the Sex Establishment Licensing Policy which would mean that the local authority would be able unable to legitimately regulate the provision of such establishments within the county.

Reasons for Recommendations

- 3 By adopting the amended provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act and a policy on sex establishment licensing, the local authority can provide clear guidance through policy to operators of such premises on how applications for sex

establishment licences will be assessed and granted. Communities can be protected from an oversupply of such establishments.

Key Considerations

- 4 The Policing and Crime Act 2009 amended Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 to include sexual entertainment venues.
- 5 Unless schedule 3 is formally adopted Herefordshire Council has no power or means of controlling the operation of sex establishments. Adoption 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 in 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 These provisions allow the local authority to 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.
- 9 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.
- 10 These controls are designed to protect children. The policy on sex establishments will detail what kind of conditions may be appropriate in particular circumstances.
- 11 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.

- 12 Subject to agreement to adopt the relevant legislation, then a Policy in respect of the licensing of sexual entertainment venues can be adopted.
- 13 This policy will be subject to the consultation process prior to being brought back before Committee.
- 14 Should Council decide that the amended Schedule 3 of the 1982 Act should not be adopted, the current licensing regime under the 1982 Act will continue so that any premises that operate as a sex shop or sex cinema in Herefordshire will require a licence from the local authority. However any premises operating as a sexual entertainment venue offering relevant entertainment such as lap dancing or pole dancing, will not require a licence under the 1982 Act and may be able to operate unregulated by the local authority.
- 15 Under part (c) above, the local authority can refuse an application for a sex establishment licence if 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. When determining the appropriate number of sex establishments in each relevant locality, the 1982 Act provides that the appropriate number may be nil.
- 16 This policy has been drafted on the assumption that the appropriate number will be nil but if Council considers that a different number is appropriate, modifications to the policy will need to be made.
- 17 Furthermore the proposed Sex Establishment Licensing Policy proposes that whilst all applications for sex establishment licences for premises in Herefordshire will be considered on their own merit, there will be a presumption of refusal of applications for such licences.
- 18 The Regulatory Committee considered the draft policy on 12 September 2014. The Committee recommended the policy for approval by Council. It did, however, request consideration be given to whether any amendments should be made to paragraph 6.2 of the policy or its executive summary. The Assistant Director Governance, after consultation with the Chairman, proposes the following amendment should be made, adding to the first sentence of paragraph 5 of the executive summary as follows and deleting the second sentence of that paragraph: *“having regard to what is appropriate for the licensing authority’s relevant locality as referred to in paragraph 3.32 of the Home Office Guidance on Sexual Entertainment Venues (March 2010). Notwithstanding this, any application for a sexual entertainment venue will be received and considered on its individual merits.”*

Community Impact

- 19 To protect children, the vulnerable of the community and to preserve the character of certain localities, it is essential that the current regime is properly regulated. Not being able to licence such premises could have an adverse effect on the community especially those who may be at risk and or need of protecting.

Equality and Human Rights

20. There are no equality or human rights issues in relation to the content of this report

Legal Implications

- 21 The Sex Establishment policy has been drafted to reflect current legislative requirements. Failure to do so would leave the authority in breach and open to challenge.

Financial implications

- 22 The licensing section is required to operate the function on a full cost recovery basis. The fees for Gambling Act applications have not altered. A robust policy which is fit for purpose is essential if full cost recovery is to be maintained.

Risk Management

- 23 Failure to reach a decision could result in an application for Judicial Review being made.

Consultation

- 24 The legislation requires us to consult with various groups before we determine our policy and adoption of the Regulations, these include:-
- The chief officer of police for West Mercia
 - One or more persons who represent the interests of Licensed establishments in Herefordshire
 - One or more persons who appear to represent the interest of persons who are likely to be affected by the implementation of the new regulations and policy in Herefordshire.
- 25 Above and beyond this, we intend to give the broadest range of people the opportunity to give us their views. We will therefore also include:
- The Responsible Authorities who are consulted on Licence applications in Herefordshire (Planning, Environmental Health, Child Safeguarding Board, Fire and Rescue Service, HM Revenue and Customs, Gambling Commission)
 - All Ward Councillors of Herefordshire Council and all Local MPs
- 26 The consultation document will be published on the Council Website.
- 27 Consultation will also take place by:-
- Publishing Notices in the local press.
 - Writing to all premises licensed under the Licensing Act 2003
 - Local or National organisations identified as having an interest in Sex Establishments.
 - Notifying Local members.
 - Writing to local organisations acting on behalf of young people and children.
- 28 The responses will be collated and presented to Council following the consultation process. If no responses are received Members can agree the Policy and Legislation be implemented and state a date when the relevant parts of the Acts will be adopted.

Appendices

Draft sex establishment policy

Background Papers

- None