

<b>Meeting:</b>	<b>Regulatory Committee</b>
<b>Meeting date:</b>	<b>19<sup>th</sup> February 2015</b>
<b>Title of report:</b>	<b>To consider 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 approve the Sex Establishment Policy</b>
<b>Report by:</b>	<b>Head of Trading Standards and Licensing</b>

## **Classification**

Open

## **Key Decision**

This is not an executive decision.

## **Wards Affected**

Countywide

## **Purpose**

- a) To recommend to Council the adoption and date for adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009 following consultation; and
- b) To agree and recommend the draft sex establishment policy for adoption by Council following consultation.

## **Recommendation**

**That:**

- (a) **The adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009 be recommended to Council to commence on the 42nd day after the agreement by Council.**

- (b) **That the Sexual Establishment Policy attached at appendix 1 be amended in accordance with the Officer recommendation and that the amended policy be recommended to Council for approval**

## **Alternative Options**

1. To refuse to recommend the adoption Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009 to Council. This would mean that there would be no control over Sexual Establishments within the County.
2. To reject the officer recommendations and leave the policy as is and recommend the polices to Council for adoption. This would fail to take account of the public consultation.
3. To accept some of the recommendations and reject others and recommend the polices to Council for adoption. This may mean that some or all of the consultation is considered to be ignored without reason.
4. To refuse to recommend the policies be adopted by council. This is not recommended because it would in effect mean that the policy was not in line with current legislative requirements.
5. To reach some other decision.

## **Reasons for Recommendations**

6. 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**

7. The proposal to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009 appeared before the Regulatory Committee on 12<sup>th</sup> September.
8. At the same time the draft Sexual Establishment Policy appeared before the committee together with the proposed consultation strategy.
9. These were endorsed by the Regulatory Committee and the matters went before Council on 26<sup>th</sup> September 2014, where the adoption of Schedule, the draft policy and consultation strategy were approved.
10. The Policing and Crime Act 2009 amended Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 to include sexual entertainment venues.
11. 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.

12. 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.
13. 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.
14. 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.
15. 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.

16. 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.

Subject to agreement to adopt the relevant legislation, then a Policy in respect of the licensing of sexual entertainment venues can be adopted.

17. This policy has been subject to the consultation process prior to being brought back before Committee.

18. Should the Committee 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.
19. 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.
20. This policy has been drafted on the assumption that the appropriate number will be nil but if the Committee considers that a different number is appropriate, modifications to the policy will need to be made.
21. 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.

## **Community Impact**

22. 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 duty**

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

## **Financial implications**

24. The licensing section is required to operate the function on a full cost recovery basis. The fees for Sexual Establishment will be set if adoption is agreed. A robust policy which is fit for purpose is essential if full cost recovery is to be maintained.

## **Legal Implications**

25. 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.

## **Risk Management**

26. It Council failed to adopt the legislation then the authority is required to consult with the public to obtain their opinion in respect of adoption. Such consultation is likely to be expensive and could still require the authority to adopt the legislation.

27. Without the legislation there is no power to stop sexual entertainment venues opening within the county.
28. If the policy is adopted it could be challenged through Judicial review, although such challenge could only be in respect of process which meets the requirements of the legislation.

## **Consultees**

29. In accordance with the legislation the licensing section has consulted the following:
  - a. The chief officer of police for West Mercia
  - b. One or more persons who represent the interests of Licensed establishments in Herefordshire (An operator of a Lap Dancing Club in Hereford)
  - c. 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 (The HAND [Herefordshire Against Night Time Disorder] for Hereford, Ross on Wye, Ledbury, Kington, Leominster and Bromyard)
  - d. In addition to this Parish Councils were consulted
  - e. A Public Notice was also placed in the Hereford Times
  - f. Only one response was received.
  - g. Nobody has objected to the adoption of Schedule 3.

## **Appendices**

Appendix 1 Draft policy

Appendix 2 Consultation summary

## **Background Papers**

None.