

## **Council – 24 February 2011**

### **Adoption of Schedule 3 to The Local Government (Miscellaneous Provisions) Act 1982 As Amended - Sexual Entertainment Venues**

**Service Area:** Public Safety

**Wards:** All

#### **1. Summary of report**

- 1.1 To introduce in the Borough, powers contained in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended, to regulate lap dancing clubs and similar venues.

#### **2. Recommendations**

- 2.1 That Council resolve under Schedule 3 sub – paragraph 2 of the Policing and Crime Act 2009 (PCA) that Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009 is to apply to the area of this local authority. That the Schedule as amended shall come into force on the 6th April 2011, this date being more than one month after the passing of this resolution.
- 2.2 That Council resolve that the Licensing and Safety Committee be given delegated authority to licence ‘sex establishments’ as defined from time to time in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
- 2.3 That Council resolve to implement the procedure under section 2 of the Local Government (Miscellaneous Provisions) Act 1982 for the adoption of the schedule as amended.

#### **3. Background information**

- 3.1 Section 27 of the Policing and Crime Act 2009 inserts a new category of sex establishment called a ‘sexual entertainment venue’ into Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (the ‘1982 Act’). This will bring the licensing of lap dancing and pole dancing clubs and other similar venues under the regime set out in the 1982 Act, which is currently used to regulate establishments such as sex shops and sex cinemas.
- 3.2 Local authorities must resolve to adopt the amended Schedule. Once adopted, the amended Schedule gives local authorities more powers to control the number and location of lap dancing clubs and similar venues in their area, and to refuse an application on wider grounds than would otherwise be possible under the regime of the Licensing Act 2003. The Home Office Guidance states that it is intended that local people will have a greater say over the regulation of lap dancing clubs and similar venues in their area.

- 3.3 Paragraph 2A of Schedule 3 as inserted by section 27 of the PCA sets out the meaning of a 'sexual entertainment venue and 'relevant entertainment'.
- 3.4 A sexual entertainment venue is defined as 'any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer'.
- 3.5 Relevant entertainment means 'any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience. An audience can consist of just one person (e.g. where the entertainment takes place in private booths)
- 3.6 The Home Office Guidance states that it is expected that the definition of relevant entertainment would apply to the following forms of entertainment as they are commonly understood. This list is not exhaustive and should only be treated as indicative.
- Lap dancing
  - Pole dancing
  - Table dancing
  - Strip shows
  - Peep shows
  - Live sex shows
- 3.7 The relevant entertainment must be provided for the financial gain of the 'organiser' or the 'entertainer'. The organiser means any person who is responsible for the organisation or management of the relevant entertainment or the premises at which the relevant entertainment is provided. In most cases this will refer to the management of the premises.
- 3.8 The following are not to be considered as sexual entertainment venues:
- Sex shops and sex cinemas
  - Premises which provide relevant entertainment on an infrequent basis. These are defined as:
    - (a) no relevant entertainment has been provided on more than 11 occasions within a 12 month period.
    - (b) no such occasion has begun within a period of one month beginning with the end of the previous occasions.
    - (c) no such occasion has lasted longer than 24 hours.
  - premises or types of performance exempted by the Secretary of State.
- 3.9 If the Council has not made a resolution to adopt the provisions introduced by section 27 of the PCA within one year of it coming into force, it must, as soon as is reasonably practicable, consult local people about whether they should make a resolution.

3.10 On 21 July 2010, the Licensing and Safety Committee passed the following resolution;

‘That Council be recommended to adopt Section 27 of the Policing and Crime Act 2009, which allows Local Authorities to regulate lap dancing clubs and similar venues under the provisions of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. These premises to be known as sexual entertainment venues.’

To facilitate this resolution Council is advised to resolve the recommendation as detailed in paragraph 2.1 above.

3.11 A policy on the licensing of such venues and the conditions that will be attached to such licences is currently being drafted. Consultation will take place with all relevant parties, before the policy is taken to the Licensing and Safety Committee for approval.

#### **4. Resource considerations**

##### **4.1 Financial**

4.1.1 The licensing will be carried out within existing resources. If adopted, a fee for sex entertainment will need to be set by the Licensing and Safety Committee.

##### **4.2 Legal:**

4.2.1 Section 27 of, and Schedule 3 to, the Policing and Crime 2009 Act came into force on 6 April 2010 along with the Policing And Crime Act 2009 (Consequential Provisions) (England) Order 2010.

4.2.2 Sub paragraph 2 of Schedule 3 of the Policing and Crime Act 2009 enables a local authority to adopt by resolution the provisions in the amended Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 for the licensing of sex establishments.

4.2.3 On 1 January 1983, Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 was adopted by Walsall Council. Although the Council has adopted Schedule 3 to the 1982 Act for the licensing of sex shops and sex cinemas, a further resolution is necessary before the provisions introduced by section 27 of the PCA will have effect.

4.2.4 In order to adopt the powers introduced by section 27 of the PCA the Council must adopt Schedule 3 as amended by Section 27 of the PCA. Section 2 of the Local Government (Miscellaneous Provisions) Act 1982 prescribes the procedure to be followed. The Council must pass a resolution that the Schedule as amended by section 27 of the PCA is to apply to its area on a day specified in the resolution. The specified day must be more than one month after the day on which the resolution was passed.

- 4.2.5 If adopted, the Council shall publish a notice stating that they have passed the resolution for two consecutive weeks in a local newspaper that is circulated within the area. The first publication shall not be later than 28 days before the day specified in the resolution.
- 4.2.6 Whilst there is no statutory duty to do so, prior to deciding whether to pass a resolution, local authorities may, as a matter of good practice, wish to seek the views of local people and businesses. The Secretary of State also encourages local authorities to engage with known sexual entertainment venues at the earliest possible opportunity once a decision to adopt the provisions has been made, to ensure affected businesses are aware of what action they will need to take in order to comply with the regime.
- 4.2.7 If the Council does not make a resolution to adopt the provisions introduced by section 27 of the PCA within one year of it coming into force (6 April 2010) it must, as soon as is reasonably practicable, consult local people about whether the Council should make such a resolution.
- 4.2.8 The Constitution as drafted gives the Licensing and Safety Committee powers to licence sex shops and sex cinemas. This should be extended by Council to include all 'sex establishments' as defined in the amended Schedule.

#### **4.3 Staffing:**

- 4.3.1 There are no staffing implications.

### **5. Citizen impact**

Local authorities must resolve to adopt the amended Schedule. Once adopted, the amended Schedule gives local authorities more powers to control the number and location of lap dancing clubs and similar venues in their area, and to refuse an application on wider grounds than would otherwise be possible under the regime of the Licensing Act 2003. The Home Office Guidance states that it is intended that local people will have a greater say over the regulation of lap dancing clubs and similar venues in their area.

### **6. Community safety**

Workers of sex establishments and their clientele will be safer if venues are licensed properly. Also, communities may be reassured if such venues aren't allowed to be situated in residential areas.

### **7. Environmental impact**

None arising from this report.

### **8. Performance and risk management issues**

None arising from this report.

**9. Equality implications**

None arising from this report.

**10. Consultation**

A policy on the licensing of such venues and the conditions that will be attached to such licences is currently being drafted. Consultation will take place with all relevant parties, before the policy is taken to the Licensing and Safety Committee for approval

**Background papers**

Published statutes and Home Office Guidance.

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**Signed:**

**Executive Director: Jamie Morris**

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