

#### **4. Reason for recommendation(s)**

- 4.1. As a local authority we are receiving more enquiries for customers wanting to operate such establishments and adopting this amendment gives the council and the community at large a better opportunity to raise concerns and discuss any views. Previously such applications had to be considered under the Licensing Act 2003 which did not allow for residents concerns to be considered as they were restricted to the four objectives of that Act and matters such as the suitability of the locality could not be taken into account. The Lead Member for Community Safety and Enforcement lobbied for changes to enable the community to have a greater say in these matters.
- 4.2. The Policing and Crime Act 2009 therefore enables us to deliver a licensing service and associated enforcement functions that will contribute to the Councils vision of making a safe environment for people to enjoy and live. The Council does not have a policy currently that deals with the licensing of sex establishments or sex entertainment venues and will therefore need to produce and consult on a policy.
- 4.3. Adopting the amendment would give the Council as much control as possible and the community as protection as possible.

#### **5. Other options considered**

- 5.1. The Committee may wish to not resolve to make a resolution applying schedule 3 of the Local Government Miscellaneous Provisions Act 82 at this time.
- 5.2. The Committee may resolve to not make any such resolution within one year of this power coming into force (6<sup>th</sup> April 2011) but will as soon as is reasonably practicable after 6<sup>th</sup> April 2011 consult with local people about whether they should make such a resolution.
- 5.3. Both of these options will leave the Council and therefore the community unprepared and to some extent unprotected.

#### **6. Summary**

- 6.1. That the Committee note the content of this report and agree to adopt Schedule 3 to the 1982 as amended to regulate lap dancing clubs and similar venues.

#### **7. Chief Financial Officer Comments**

## **8. Head of Legal Services Comments**

8.1. The Council has already adopted Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. It may now resolve to adopt Schedule 3 as amended by Section 27 of the Policing and Crime Act 2009 which would permit the more effective regulation of lap dancing cubs and similar venues. The procedure for adoption is found in Section 2 of the 1982 Act as summarised in the body of this report. If the amended schedule is adopted by 6 April 2011 there will be no statutory requirement to consult local residents or workers. Non statutory Home Office guidance on Sexual Entertainment Venues was published in March 2010

## **9. Equalities & Community Cohesion Comments**

The Government carried out an Equality Impact Assessment to see if there would potentially be some less favourable treatment of groups that would be affected and how this could be mitigated. No negative impact on equalities groups were foreseen.

## **10. Consultation**

10.1. The Committee are invited to make any comments on this report which will be taken forward to General Purpose Committee.

## **11. Service Financial Comments**

11.1. The General Purposes Committee will need to consider an appropriate fee level for this application process and we are mindful that we must ensure the fees are not set high and that they are compliant with the EU Services Directive as implemented in the UK by the Provision of Services Regulations 2009. Schedule 3 to the 1982 Act provides that an applicant for the grant, renewal, variation or transfer of a sex establishment licence shall pay a reasonable fee as determined by the Council.

## **12. Local Government (Access to Information) Act 1985**

12.1. S182 Guidance to Local Authorities under The Licensing Act 2003 issued by the Department of Culture Media and Sports

12.2. The Licensing Act 2003.  
Policing and Crime Act 2009

## **13. Background**

13.1. Section 27 of the Policing and Crime Act 2009 (“the 2009 Act”) amends Schedule 3 of the Local Government (Miscellaneous Provisions Act) 1982 to allow the licensing of “Sexual Entertainment Venues”. Section 27 introduces a new category of sex establishment called a “sexual entertainment venue”. A “sexual entertainment venue” is defined as “any premises, which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.” “Relevant entertainment” may take the form of a live performance or live display of nudity and must be of such a nature that, ignoring financial gain, it must reasonably be assumed to have been provided solely or principally for the purpose of sexually stimulating any member of the audience. The audience can consist of one person. It is likely to cover lap dancing, pole dancing, table dancing, strip shows, peep shows and live sex shows.

Lap dancing does not currently require a premises licence under the Licensing Act 2003 and no special provisions are made in the 2003 Act for lap-dancing venues. If an application is submitted and unopposed, the authority must grant it subject to mandatory conditions.

If representations are made by an interested party or responsible authority then the authority may, following a hearing, impose other conditions or reject the application providing the rejection is in line with at least one of the four general licensing objectives under the Licensing Act 2003. This severely restricts the scope for objections and limits these to situations which could apply to establishments such as pubs, restaurants and food takeaways. The special, and more controversial sexual aspects of a lap dancing venue or similar may not be considered.

The Government consulted with Local authorities, and other relevant parties, as to whether or not the Licensing Act 2003 provided adequate provisions to regulate such activities.

Results of the consultation showed that many respondents, including local authorities, thought it was not fit for purpose as it did not allow the issues that really concerned residents faced with such an application to have a voice.

The amendment to the 1982 Act provides a more specified approach to Sexual Entertainment Venues and their control.

### 13.2. The meaning of Sexual Entertainment Venue

The Policing and Crime Act 2009 has now extended the definition of “sex establishment” to include “sexual entertainment venues” as defined in Schedule 3 of the 1982 Act as amended.

The Council should judge each case on its merits, it is expected that the definition of relevant entertainment would apply to the following forms of

entertainment:

Lap dancing	Pole dancing
Table dancing	Strip shows
Peep shows	Live sex shows

(This list is not exhaustive)

### 13.3. Premises that are not sexual entertainment venues

The revision not only sets out what is a sexual entertainment venue but also what is not, and the following would not be sexual entertainment venues:

- Sex shops and sex cinemas (which are separately defined in the Schedule 3 to the 1982 Act);
- Premises which provide relevant entertainment on an infrequent basis. These are defined as premises where-
  - 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; and
  - c) no such occasions has lasted longer than 24 hours.

Other premises or types of performances or displays exempted by an order of the Secretary of State.

## 14. The Adoption process

14.1. To consider adopting the amendment to Schedule 3 of the 1982 Act Local Government Act 1982 ( the 1982 Act ) as inserted by Section 27 of the 2009 Act. The effect of this provision, if adopted, is to 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.

New legislative controls available to the Licensing Authority through this adoption will strengthen the role that local communities can play in deciding whether a lap dancing premises, or other such like activity, is appropriate in the locality.

The aim is to bring the licensing of lap-dancing premises in line with other sex establishments such as sex shops and sex cinemas and to recognise the legitimate concerns of local people.

Section 27 gives local authorities more powers to control the number and location

of lap dancing clubs and similar venues in their area. These powers are not mandatory and will only apply where adopted by local authorities. Where adopted, these provisions will allow local authorities to refuse an application on potentially wider grounds than is permitted under the 2003 Act.

If the amendment is adopted the Licensing Authority can also apply prescribed conditions on grounds not covered by the Licensing Act 2003 e.g. dealing with the location of the premises and the character of the area, the hours of operation, the display of adverts, the visibility of the interior and the managerial control of premises. The local authority may prescribe different standard conditions on a sexual entertainment venue compared to other sex establishments, such as a sex shop.

### **Formal adoption of the new provisions**

Section 27 came into force on 6th April 2010. Following this date local authorities may resolve to adopt Schedule 3 to the 1982 Act as amended by the 2009 Act so that it has effect in their area. Adoption is a matter for the Council to decide on following a recommendation from the General Purposes Committee.

If the local authority fails to adopt Schedule 3 in the way described above, within twelve months of the new legislation taking effect (6<sup>th</sup> April 2011), it must then carry out a full public consultation exercise before deciding whether to formally adopt Schedule 3 of the 1982 Act as amended. There are detailed transitional provisions contained in the legislation. Currently there are no sexual entertainment venues in this local authority's area so the transitional arrangements will not be activated.

The purpose of the duty to consult, if you have not adopted this legislation within 12 months, is to ensure that local authorities consider the views of local people where, for whatever reason, they have not adopted the provisions.

This Council and many other Councils have already adopted Schedule 3 to the 1982 Act for the licensing of sex shops and sex cinemas. However a further resolution is necessary before the provisions introduced by Section 27 will have effect in the local authority area.

The procedure for local authorities to adopt Schedule 3 as amended by Section 27 is set out in section 2 of the 1982 Act. Firstly, the local authority must pass a resolution specifying that the amendments made by section 27 to that Schedule, shall apply to their area and the day on which it shall come into force in the area. The specified day must be more than one month after the day on which the resolution was passed.

The local authority shall publish notice that they have passed the resolution referred to above for two consecutive weeks in a local newspaper. The first publication shall not be later than 28 days before the day specified in the

resolution for the provisions to come into force in the local authority's area.