

Licensing Committee

Control of Sexual Entertainment Venues

4 March 2011

Report of Head of Safer Communities, Urban and Rural Services

PURPOSE OF REPORT

The purpose of this report is to outline the changes made in Section 27 of the Policing and Crime Act 2009 amending Schedule 3 of the Local Government (Miscellaneous Provisions) Act, 1982 which enable local authorities to be able to determine applications for sexual entertainment venues

This report is public

Recommendations

The Licensing Committee meeting is recommended:

- (1) To agree that, in accordance with Section 2 (1) of the Local Government (Miscellaneous Provisions) Act, 1982, the Council resolves that Schedule 3 of that Act as amended by Section 27 of the Policing and Crime Act, 2009, shall apply to the District of Cherwell with effect from 4 March 2011.
- (2) To agree that the proposed conditions governing the operation of Sexual Entertainment Venues as set out at Appendix A be approved and attached to all licences issued by the Council.
- (3) To authorise the Head of Urban & Rural Services in consultation with the Chairman of the Licensing Committee, to make any minor alterations to the setting of fees in relation to the processing of applications for sexual entertainment venues

Executive Summary

Introduction

- 1.1 The Policing and Crime Act 2009 introduces amendments to Section 2, Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 permitting local authorities to be able to determine applications for sexual entertainment venues

1.2 The changes brought about by the new legislation introduce activities not previously defined and now described as sexual entertainment. Such activities include:

- Lap Dancing
- Pole Dancing
- Table Dancing
- Strip Shows
- Peep Shows
- Live sex Shows

The above list is not exhaustive and, as the understanding of the exact nature of these descriptions may vary, should only be treated as indicative. The full definition is included in the guidance issued by the Home Office; a copy of this guidance is attached at Appendix 2.

1.3 The purpose of the report is to inform the Licensing Committee in relation to the process (and the effect) for the adoption of the revised Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by section 27 of the Policing and Crime Act 2009), which enables local authority regulation of lap dancing clubs and similar venues which has not previously been authorised

Proposals

- 2.1 That the contents of this report be noted in relation to the amended provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 in respect of the licensing of Sexual Entertainment Venues.
- 2.2 The Committee may resolve that Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) will apply to the Council's area with effect from 4 April 2011.
- 2.3 The Committee may resolve not to make a resolution applying Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) at this time.
- 2.4 The Committee may resolve not to make such a resolution as mentioned above by 6 April 2011, but to consult people about whether it should make such a resolution as soon as reasonably practicable thereafter.
- 2.5 The Committee are also asked to determine whether or not a policy is required in accordance with the items listed above, and to approve the list of conditions set out in Appendix 1 as an interim measure to be attached to all licences enabling existing businesses to continue trading.

Background Information

- 3.1 Prior to 1982 there was no control over the operation of sex establishments. Section 2 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act (LGMPA) 1982 enabled local authorities the power to licence sex establishments, defined in this particular Act as sex shops and sex cinemas. The Council adopted these provisions on 2 June 1983
- 3.2 The Local Government (Miscellaneous provisions) Act 1982 gave local authorities the power to licence sex establishments, defined in this particular Act as sex shops and sex cinemas.
- 3.3 Under existing legislation local authorities have no power to regulate sexual entertainment venues as defined in paragraph 1.2
- 3.4 The Policing and Crime Act 2009 was introduced on 6 April 2010. This Act introduced changes to Schedule 3 of the Local Government (Miscellaneous Provisions) Act which permit local authorities to licence sexual entertainment venues. Local authorities have until 6 April 2011 to formally adopt the changes in the legislation. Failure to do so would mean that the Council would subsequently be required to consult local businesses and residents “as soon as is reasonably practicable” on whether or not to adopt the amended provisions.
- 3.5 Originally a separate provision of the 1982 Act gave local authorities powers to regulate adult entertainment by means of a Public Entertainment Licence. The introduction of the Licensing Act 2003 abolished Public Entertainment Licences; instead any premise engaged in any one of the licensable activities listed in the Licensing Act 2003 had to apply to the local authority for a Premise Licence. This was not a like for like replacement, however, and had the effect of leaving sexual entertainment unregulated by the local authority.
- 3.6 Cherwell District Council currently has 2 premises that would require licensing under the new provisions. There are no current licensed sex shops in the district.
- 3.7 Should the Committee resolve to adopt the amendments as stated above; both existing operators will be required to apply for licences as sexual entertainment venues to enable them to continue trading. Letters have been sent to both traders advising them of this matter and giving guidance on the processes they need to follow. Full details of the transitional provisions are set out at the end of the Home Office Guidance, attached at Appendix 2.
- 3.8 Currently, sexual entertainment venues as defined in the 2009 Act do not require a licence. This situation will not change if the Committee resolve not to adopt the specified amendments.
- 3.9 Should the Committee resolve to adopt the amendments; no new applications will be granted until such time as the authority has a full policy in place to deal with such matters, as described in paragraph 3.11.
- 3.10 Should the Committee resolve to adopt the amendments, the authority is then legally required to advertise the amendment for a period of two consecutive weeks, no later than twenty eight days prior to the amendments coming into force. The proposed date for the amendments coming into force is currently 4 April 2011. Further details on the requirements of advertising are attached in

the guidance issued by the Home Office at Appendix 2.

- 3.11 There is no statutory requirement on a local authority to have a policy on SEV licensing, but it is best practice to adopt a policy which sets out its approach for the benefit of operators, guides and reassures the public and other public authorities and ensures transparency and consistency. It is proposed that if the Committee adopt the amendments, a policy will be formulated and a thorough consultation will take place prior to the policy being brought back to Committee for its approval.
- 3.12 Committee are asked in the interim period to approve the standard conditions attached at Appendix 1. to be attached to licences issued to existing traders, should they apply, to prevent unregulated establishments being present in the district.
- 3.13 Committee are reminded that there is no statutory requirement to consult prior to the amendments being adopted and therefore the authority will not grant any new applications until a full policy is in place.
- 3.14 As the authority may receive applications in the interim period in respect of sexual entertainment venues, namely the two already in existence, the Committee is asked to approve the list of conditions set out in Appendix 1 to be attached to all licences issued prior to a full policy being out into place. This would enable existing businesses to continue trading.
- 3.15 Currently, there are no fees set for applications in relation to sexual entertainment venues as this type of application has not previously existed. The Policing and Crime Act 2009 allows local authorities to charge a reasonable and proportionate fee. Therefore, it is proposed that the fees will be set at the same level as sex shops which are currently £3,000.
- 3.16 The matter of fees will also be taken into consideration when formulating a new policy and reviewed as part of the consultation inline with neighbouring authorities.

Key Issues for Consideration/Reasons for Decision and Options

- 4.1 The Head of SCURS has a duty of care to the public and so any determination will always be made in the interested of public safety as well as service provision to the public
- 4.2 Each application must be considered on its own merits

The following three options have been identified. The approach in the recommendations is believed to be the best way forward

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| Option One | To approve all of the proposals listed in paragraph 2.2 and adopt the amended schedules to the Act |
| Option Two | To approve all of the proposals listed in paragraph 2.2 and adopt the amended schedules to the Act and to then create and consult upon a policy in respect of licensing sexual entertainment venues as soon as is practicable |

Option Three Not to approve all of the proposal listed in paragraph 2.2 and adopt the amended schedules to the Act and to carry out a full consultation as soon as is practicable

Consultations

No Consultation is required at this stage. Should the Committee resolve not to adopt the amendments as outlined above, a full consultation will need to take place with local businesses and residents prior to any applications being determined or policies adopted.

Implications

Financial: No Financial Implications.
Comments checked by Karen Muir, Corporate System Accountant, 01295 221559

Legal: It is not a statutory requirement for the Council to adopt the proposed amendments at this time but it should be noted by the Committee that by not doing so, the Council has no regulatory control over such establishments.

The legal implications of adoption are as stated above.
Comments checked by Paul Manning, Solicitor, 01295 221691

Risk Management: There is a risk to the Councils reputation if it is not able to deal with establishments of this nature by not having due processes in place.
Comments checked by Claire Taylor, Corporate Strategy and Performance Manager, 01295 221563

Wards Affected

All

Document Information

Appendix No	Title
Appendix 1	Proposed Standard Conditions
Appendix 2	Copy of the Home Office Guidance in relation to Sexual entertainment Venues
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