

FOR DECISION BY COUNCIL

Gloucester City Council

COMMITTEE	:	LICENSING & ENFORCEMENT FULL COUNCIL (TO ADOPT SCHEDULE) LICENSING AND ENFORCEMENT FULL COUNCIL (TO APPROVE POLICY)
DATE	:	18 JANUARY 2011 24 FEBRUARY 2011 14 JUNE 2011 21 JULY 2011
SUBJECT	:	ADOPTION OF THE AMENDED SCHEDULE 3 TO THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 FOR REGULATION OF LAP DANCING AND OTHER SEXUAL ENTERTAINMENT VENUES
DECISION TYPE	:	BUDGET AND POLICY FRAMEWORK
WARD	:	ALL
REPORT BY	:	GILL RAGON - GROUP MANAGER OF ENVIRONMENTAL HEALTH AND REGULATORY SERVICES
NO. OF APPENDICES	:	1: PROPOSED SEX ESTABLISHMENT POLICY STATEMENT
REFERENCE NO.	:	ES21006

1.0 PURPOSE OF REPORT

- 1.1 To advise members of the legislative changes affecting the licensing of lap dancing clubs and similar venues.
- 1.2 To consider adopting the amendment to the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 that has been amended by Section 27 of the Policing and Crime Act 2009. This introduces a licensing regime for 'sexual entertainment venues'.
- 1.3 To present the draft Sex Establishments Policy Statement for approval by the Licensing and Enforcement Committee for consultation.

2.0 RECOMMENDATIONS

- 2.1 The Licensing and Enforcement Committee recommend to full Council they adopt the amendment to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 by Section 27 of the Policing and Crime Act 2009. With an implementation date of 1st April 2011 to be recommended, for the provisions of Section 27 to come into effect in Gloucester City.
- 2.2 The draft Sex Establishments Policy Statement is approved by the Licensing and Enforcement Committee for 12 weeks consultation period. Results of the

consultation will then be presented back to the Licensing and Enforcement Committee to approve as a final version for adoption by Full Council.

3.0 BACKGROUND

- 3.1 On 1st November 1982 this Council resolved to adopt the provisions of Part II Section 2 (1) of Schedule 3 of the Local Government Miscellaneous Provisions Act 1982. This came into force on 11th January 1983.
- 3.2 The Government has responded to calls for further controls to be introduced specific to lap dancing clubs and similar premises by introducing legislation through the Policing and Crime Act 2009 to reclassify such venues as “sex establishments” under the Local Government (Miscellaneous Provisions) Act 1982.
- 3.3 Section 27 of the Policing and Crime Act 2009 amends Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to allow the licensing of “sexual entertainment venues”, where ‘relevant entertainment’ is provided before a live audience for the financial gain of the entertainer or organiser. For these purposes ‘relevant entertainment’ means ‘any live performance or any live display of nudity’ i.e. striptease, lap dancing etc. which is of such nature, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means). There are also a number of activities, which are specifically referred to as not being “relevant entertainment”.
- 3.4 Venues such as lap dancing premises currently require a Premises Licence under Section 1 of the Licensing Act 2003. If an application is submitted for a Premises Licence, and there are no relevant representations, the Licensing Authority must grant it subject to Mandatory Conditions.
- 3.5 If Relevant Representations are made by an Interested Party (e.g. those from residents and/or local businesses) or a Responsible Authority (e.g. Police, Fire Service etc.) then the Licensing Authority can following a hearing, impose other conditions or reject the application providing the rejection is in line with at least one of the 4 Licensing Objectives, which are as follows:
 - The prevention of crime and disorder
 - Public Safety
 - The prevention of public nuisance
 - The protection of children from harm
- 3.6 The new legislative controls available to the Licensing Authority will strengthen the role that local communities can play in deciding whether a lap dancing premises is appropriate in the locality.
- 3.7 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 where such premises are located. Current legislation regulating sex shops and sex cinemas will remain unchanged and will continue to be regulated by the Local Government (Miscellaneous Provisions) Act 1982.

3.8 If the amendment to the 1982 Act is adopted, the Licensing Authority can apply prescribed conditions on the grounds not covered by the Licensing Act 2003 e.g. location, hours, display of adverts, visibility of the interior.

3.9 In summary, the amended Schedule 3 to the 1982 Act:

3.9.1 Allows Local Authorities to adopt the legislation.

3.9.2 Allows local people to oppose an application for a “sex establishment” licence if they have legitimate concerns that, for example, a lap dancing club would be inappropriate given the character of an area because, for example, the area was primarily a residential area.

3.9.3 Requires “sex establishment” licences to be renewed at least yearly, at which point local people will have the opportunity to raise objections with the Local Authority.

3.9.4 Allows a Local Authority to reject a “sex establishment” licence application if they believe that to grant a licence for a “sexual entertainment venue” such as a lap dancing club would be inappropriate given the character of a particular area.

3.9.5 Allows a Local Authority to set a limit on the number of “sex entertainment venues” that they think appropriate for a particular area.

3.9.6 Allows a Local Authority to impose a wider range of conditions on the “relevant entertainment” licences that includes lap dancing clubs, than they are currently able to do under the Licensing Act 2003.

3.9.7 The new legislation allows the Local Authority to decide what, in its opinion, should be included as “relevant entertainment” but it is suggested that the following should come under its control:

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

4.0 PROGRESS

4.1 If the Local Authority has not resolved to adopt the provision introduced by section 27 within one year of it coming into force it must as soon as reasonably practicable, consult local people about whether they should make such a resolution.

4.2 These new legislative provisions came into force on 6th April 2010.

4.3 If the Council does adopt an amended Schedule 3, then there would be a need for a policy, and in order to formulate such a policy there would be a need for consultation. A draft Sex Establishments Policy Statement has been prepared and can be found in Appendix 1.

- 4.4 In either case consultation will need to take place.
- 4.5 The draft Sex Establishment Policy Statement has a few paragraphs highlighted in yellow, these can be found on page 3 (para. 3.1.4 & 3.1.5) and page 11 (para. 7.4) of Appendix 1. These matters are put to Members for decision should they resolve to approve this Policy Statement for consultation.
- 4.6 Further paragraphs are highlighted in grey on pages 21-26 of Appendix 1; these indicate amendments and additions to the current sex shop licensing policy guidelines and standard regulations for sex establishment licenses which were approved by Council on 10th July 2002, and the guidelines relating to Pole/Lap/Striptease Dancing which were approved by the Licensing and Enforcement Committee on 26th July 2005.

5.0 FUTURE WORK

- 5.1 There is currently no Council Policy covering 'relevant entertainment' at 'sexual entertainment venues' as defined in the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009. If the legislative amendment is to be adopted a policy will be required.
- 5.2 The intended adoption would be advertised in the press in two consecutive weeks and consultation will take place over 12 weeks before adopting any policy. The draft Sex Establishment Policy Statement in Appendix 1 incorporates the existing sex establishment/sex shop policy and includes "sexual entertainment venues". In accordance with the current policy, it will be possible to restrict such premises by number and by location.
- 5.4 Further reports will be submitted to the Licensing and Enforcement Committee in relation to the adoption of the provisions under the 1982 Act, fees, standard terms and conditions, application forms and procedures and amendments to the policy.

6.0 CONCLUSIONS

- 6.1 Not adopting the amended legislation and maintaining the status quo would allow prospective "sexual entertainment venues" to take advantage of a perceived loophole in the Licensing Act 2003. Therefore, avoiding standard conditions specific for the control of sexual entertainment activities and avoiding objections relating to matters outside the four Licensing Objectives e.g. in relation to locality and appropriate number.

7.0 FINANCIAL IMPLICATIONS

- 7.1 The current fee for sex establishments/shops is allocated as £10,700 and Gloucester City Council currently has one unit that would be deemed a sexual entertainment venue.
- 7.2 The revised Act will cause fees charged to be reviewed - however the specific amount for our authority has not been decided. The fee would need to be set in line with the European Services Directive: Guidance for Local Authorities and LACORS

Guidance on the impact of the Services Directive on Councils setting and administering local licence fees within the service sector.

- 7.3 Any consultation work required would be met through the current licensing budgets. The cost of issuing any licenses would be met through the allocated fees.

8.0 LEGAL IMPLICATIONS

- 8.1 Section 27 of the Policing and Crime Act 2009 makes amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
- 8.2 The Council has not delegated to the Licensing and Enforcement Committee the responsibility or function in relation to the adoption of the amended Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
- 8.3 For the amendments to apply in Gloucester, the Council must resolve to adopt the amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and follow the procedure set out in section 27 of the Act.
- 8.4 Local Authorities must take into account any rights the existing operator may have under Article 1, Protocol 1 of the European Convention of Human Rights, (which entitles every person to the peaceful enjoyment of their possessions) and Article 10 (freedom of expression).

9.0 RISK MANAGEMENT IMPLICATIONS

- 9.1 The key risks arising from this relate to decisions taken by the Licensing and Enforcement Committee. Any decisions made which are unreasonable or unlawful could be open to legal challenge resulting in loss of image, reputation and potential financial penalty.

10.0 PREDICTIVE IMPACT ASSESSMENTS (EQUALITIES) AND COMMUNITY COHESION

- 10.1 At this stage there is insufficient evidence to judge whether there is an adverse impact or any risks to customers in the areas of gender, disability, age, ethnicity, religion, sexual orientation and community cohesion. A full impact assessment will be carried out through consultation over a 12 week period.

11.0 OTHER CORPORATE IMPLICATIONS

1. Community Safety

None

2. Environmental

None

3. Staffing

None

4. Trade Union

None

Background Papers : Standard regulations – Sex Establishment licences
Sex Shop Licensing Policy

Published Papers : Local Government (Miscellaneous Provisions) Act 1982
Policing and Crime Act 2009
Licensing Act 2003

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