

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

20 DECEMBER 2010

**REPORT OF CORPORATE
MANAGEMENT TEAM**

COUNCIL DECISION

Portfolio - Housing & Community Safety – Lead Cabinet Member – Councillor Nelson

LICENSING OF SEXUAL ENTERTAINMENT VENUES: ADOPTION OF SCHEDULE 3 OF LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 AS AMENDED

1. Summary

This report asks Members to consider the adoption of the amendment to the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 by Section 27 of the Policing and Crime Act 2009. This introduces a Licensing regime for "sexual entertainment venues" such as lap dancing.

The report further proposes that members consider consulting on a draft policy for sex establishments if it is decided to adopt the new regime. This would give the Council clearer control over issues such as suitability of applicants, the number of establishments and where they can be located.

2. Recommendations

1. That Members consider the outcome of the consultation undertaken so far and if considered appropriate request the Council to adopt the amendment to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 by Section 27 of the Policing and Crime Act 2009, to allow the licensing of sexual entertainment venues.
2. That Members recommend the preparation of a draft Sexual Entertainment Policy by officers for consultation with relevant parties.

3. Reasons for the Recommendations/Decision(s)

1. Section 27 of the Policing and Crime Act 2009 came into force on 6 April 2010 and amended Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. It is adoptive legislation and will only apply to the Borough if the Council resolve to adopt the amended Schedule 3.
2. Although there is no statutory requirement to have a policy concerning Sexual Entertainment Venues, it may be helpful for a policy to be introduced after consultation with the appropriate bodies and individuals. The policy may include consideration being given to the number of such establishments, if any, in various locations in the Borough and the requirements that would be expected to be in place before any such licence is granted.

4. Members' Interests

Members (including co-opted Members with voting rights) should consider whether they have a personal interest in the item as defined in the Council's code of conduct (**paragraph 8**) and, if so, declare the existence and nature of that interest in accordance with paragraph 9 of the code.

Where a Member regards him/herself as having a personal interest in the item, he/she must then consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest (**paragraphs 10 and 11 of the code of conduct**).

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting considering the business is being held -

- in a case where the Member is attending a meeting (including a meeting of a select committee) but only for the purpose of making representations, answering questions or giving evidence, provided the public are also allowed to attend the meeting for the same purpose whether under statutory right or otherwise, immediately after making representations, answering questions or giving evidence as the case may be;
- in any other case, whenever it becomes apparent that the business is being considered at the meeting;

and must not exercise executive functions in relation to the matter and not seek improperly to influence the decision about the matter (**paragraph 12 of the Code**).

Further to the above, it should be noted that any Member attending a meeting of Cabinet, Select Committee etc; whether or not they are a Member of the Cabinet or Select Committee concerned, must declare any personal interest which they have in the business being considered at the meeting (unless the interest arises solely from the Member's membership of, or position of control or management on any other body to which the Member was appointed or nominated by the Council, or on any other body exercising functions of a public nature, when the interest only needs to be declared if and when the Member speaks on the matter), and if their interest is prejudicial, they must also leave the meeting room, subject to and in accordance with the provisions referred to above.

AGENDA ITEM

REPORT TO CABINET

20 December 2010

**REPORT OF CORPORATE
MANAGEMENT TEAM**

COUNCIL DECISION

**LICENSING OF SEXUAL ENTERTAINMENT VENUES: ADOPTION OF SCHEDULE 3 OF
LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 AS AMENDED**

SUMMARY

This report asks Members to consider the adoption of the amendment to the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 by Section 27 of the Policing and Crime Act 2009. This introduces a Licensing regime for "sexual entertainment venues" such as lap dancing.

The report further proposes that members consider consulting on a draft policy for sex establishments if it is decided to adopt the new regime. This would give the Council clearer control over issues such as suitability of applicants, the number of establishments and where they can be located

RECOMMENDATIONS

1. That Members consider the outcome of the consultation undertaken so far and if considered appropriate request the Council to adopt the amendment to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 by Section 27 of the Policing and Crime Act 2009, to allow the licensing of sexual entertainment venues.
2. That Members recommend the preparation of a draft Sexual Entertainment Policy by officers for consultation with relevant parties.

DETAIL

1. Section 27 of the Policing and Crime Act 2009 came into force on 6 April 2010 and amended Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. Schedule 3 is adoptive legislation and will only apply to the Borough if the Council resolve to adopt the amended Schedule 3.
2. The government found it necessary to amend the 1982 Act because there was concern about the number of lap dancing establishments and similar such establishments opening across the country. No licence specific to this type of entertainment was required to be able to provide such entertainment. This is because this type of entertainment is classed as 'dancing' or entertainment similar to dancing and therefore can be licensed under the auspices of a Premises Licence or Club Premises Certificate under the Licensing Act 2003 (the '2003 Act'). The 2003 Act as appreciated is designed to primarily licence the supply of alcohol and regulated entertainment (what was previously public entertainment).

3. Under the 2003 Act, Licensing Authorities can only impose controls on lap dancing establishments or striptease premises if a representation has been made in relation to that application and the Licensing Authority consider it necessary to either refuse the application or impose restrictions on the licence if necessary to promote the four licensing objectives under the 2003 Act. For a number of reasons, it would prove difficult for Licensing Authorities to refuse an application for such a licence without evidence (as opposed to speculation) that granting such a licence would harm any of the licensing objectives.
4. This is exacerbated by the Guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003 that must be consulted whenever a 2003 Act application for a licence is being made. Insofar as lap dancing is concerned paragraph 2.17 of the Guidance states:

'The Indecent Displays Act 1981 prohibits the public display of indecent matter, subject to certain exceptions. It should not therefore be necessary for any conditions to be attached to licences or certificates concerning such displays in or outside the premises involved. For example, the display of advertising material on or immediately outside such premises is regulated by this legislation. Similarly, while conditions relating public safety in respect of dancing may be necessary in certain circumstances, the laws governing indecency and obscenity are adequate to control adult entertainment involving striptease and lap dancing which goes beyond what is lawful. Accordingly, conditions relating to the content of such entertainment which have no relevance to crime and disorder, public safety, public nuisance or the protection of children from harm [the four licensing objectives under the Licensing Act 2003] could not be justified. In this context, however, it should be noted that it is in order for conditions relating to the exclusion of minors or the safety of performers to be included in premises licence or club premises certificate conditions where necessary. The Local Government (Miscellaneous Provisions) Act 1982 insofar as its adoptive provisions relate to sex establishments, sex shops, sex cinemas and in London sex encounter establishments – also remains in force.'
5. That paragraph of the Guidance thus makes it clear that Licensing Authorities should be slow to impose conditions on lap dancing establishments etc. and that they are advised that existing legislation is in place to deal with any problems that may be caused by such establishments. Particular reference is made in the Guidance to sex shops and sex cinemas in the context of the 1982 Act. Up until this point, other than in London, sexual entertainment venues like lap dancing establishments are not captured by the 1982 Act.
6. Clearly, parliament has now found it necessary to deal specifically with the issue of lap dancing and striptease entertainment and the licensing of such entertainment.
7. Although there is no statutory requirement to have a policy concerning Sexual Entertainment Venues, it may be helpful for a policy to be introduced after consultation with the appropriate bodies and individuals. The policy may include consideration being given to the number of such establishments, if any, in various locations in the Borough and the requirements that would be expected to be in place before any such licence is granted.
8. Schedule 3 Paragraph 4 of the Policing and Crime Act 2009 relates to the issue of consultation in terms of adopting the amended Schedule 3 of the 1982 Act. If the Council has not adopted Schedule 3 by 6 April 2011 then there is a requirement for the Council to “as soon as reasonably practicable, consult local people about whether the local authority should make such a resolution”. “Local people” are defined as persons who live or work in the Borough.
9. Although there is no statutory duty to consult on the adoption of the amended Schedule 3 at this stage, the Home Office has issued Guidance on the licensing of sexual entertainment venues and paragraph 3.8 in the Guidance states:

'While there is no statutory duty to do so, [consult] 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 new regime'.

10. Given the impact that this new licensing regime would have on existing venues and the part that the wider community can have in influencing the licensing or otherwise of such establishments, it was considered sensible by officers for there to be consultation before the adoption of the new Schedule 3. A short consultation questionnaire was sent to
 - Cleveland Police Force;
 - Cleveland Fire Brigade;
 - Existing Premise Licence holders;
 - Existing Club Premise Certificate holders;
 - Existing Personal License holders;
 - Representatives of businesses and residents in the Stockton Borough Council area;
 - The Local Safeguarding Children's Board;
 - Trade bodies and Associations; and
 - A number of Solicitors Practices who undertake licensing work in this area.
11. Eighteen responses to the questionnaire were received and are summarised at Appendix 1.
12. The Licensing Committee considered a report on the Licensing of Sexual Entertainment Venues at its meeting on 21 October 2010 and they recommended that it should be passed on to Cabinet with the recommendations outlined above for approval

FINANCIAL IMPLICATIONS

The cost of licensing sexual entertainment venues, should the Council choose to adopt the amended Schedule 3 of the 1982 Act, can be met from within available resources. If the new legislation is ultimately adopted, the Council will need to consider an appropriate fee structure in terms of the application / renewal fee to be charged to recover costs as the question of fees is left entirely to each local authority.

LEGAL IMPLICATIONS

If the Council chooses to adopt the new provisions then the appropriate legal process will need to be followed. If the Council choose not to adopt the amended Schedule 3 and have not done so by April 2011 the Council has to consult with the local people as to whether or not it should adopt the amended Schedule 3.

RISK ASSESSMENT

This (subject matter of report) is categorised as low to medium risk. Existing management systems and daily routine activities are sufficient to control and reduce risk.

SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS

Environment and Housing The adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act has an impact on the communities' environment. Through the maintenance of a proposed strategic Licensing Policy there will be opportunities to further improve the environment, to the benefit of all

Safer Communities Community Safety is one of the main reasons for adopting the revised Schedule 3 of the Act. The administration and enforcement of the Act should assist in reducing crime and disorder

CONSULTATION INCLUDING WARD/COUNCILLORS

Consultation was undertaken with Members and those individuals/groups outlined in paragraph 10 of the report

Name of Contact Officer: David Kitching
Post Title: Trading Standards & Licensing Manager
Telephone No.: (01642) 526530
Email Address: dave.kitching@stockton.gov.uk

Education related? No

Background Papers The Licensing Act 2003
Guidance issued under Section 182 of the Licensing Act 2003
Home Office Sexual Entertainment Venues Guidance for England and Wales

Ward(s) and Ward Councillors: N/A

Property N/A

Summary of Consultation Responses

	% Yes	% No
1. Should the Council adopt the amended Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982?	89	11
2. If the Council does adopt the Schedule should it have Sexual Entertainment venues Policy guidelines?	100	0
3. Should the Policy include:		
a) Standard hours of operation?	78	22
b) Number of premises within one area?	89	11
c) Proximity to sensitive areas? (i.e. places of worship, schools etc)	95	5
d) Whether the applicant is fit and proper to hold a licence?	100	0
e) Planning Issues?	78	22
f) Duration of the licence?	84	16
g) Standard Conditions?	100	0
h) Location of venues?	84	16

4. What parts of the Borough would you consider to be suitable?

Comments Received:

- Industrial Estates
- Away from residential areas
- Town Centre locations not Housing Estates or places like Teesside Park
- The Arc
- School areas, church areas, private estates
- Town centre in proximity to existing nightclubs etc
- Commercial/non-residential areas
- Town centre as an entertainment venue
- All parts if monitored correctly
- None ideally, but if we are forced to have such places then as far as possible from residential areas
- Town centre where it would be easier to Police
- Rear of High Street/Prince Regent Street
- Residents within 400 meters should have a major say
- Local residents to be notified and to have a say in a 400 metre radius
- Not really, but they should be well away from Town Centres and local communities where there are young people.

5. Other comments received

“Any sites should be only in night club and entertainment areas”

“Whilst not totally in agreement with the need for such entertainment, it is imperative that venues should be excluded from areas frequented by children and young persons”

“I feel that we shouldn't have any sexual entertainment venues in Stockton. If we do, then there should be located away from retail and residential areas – preferably on industrial estates”

“Places like these establishments should never be placed where they could cause offence to the local residents especially the older generation i.e. near pensioners bungalows”

“Keep away from suburbs, keep away from places where young people congregate, limit numbers of licences drastically”

“With all the restrictions and licenses on the workingmen's clubs at the present time, they need items of entertainment which will bring their members into the clubs, within reason. Some, not all clubs, will periodically stage ladies and also gents evenings, perfectly organised and monitored by their committees. The revenues from which are helping to keep our clubs open through very difficult times. We all have our CPC's and should be adhering to them in which we look after our children's welfare at any cost”

“We should make it as difficult as possible for anyone to establish such places of entertainment”

“Licences should be short term – no more than a year and renewals should be subject to a full process”