

Wolverhampton City Council

OPEN DECISION ITEM

<u>Committee</u>	STANDARDS COMMITTEE	Date 13 JANUARY 2011
Originating Service Group(s)	RESOURCES AND SUPPORT	
Contact Officer(s)/ Telephone Number(s)	SARAH HARDWICK 4956	
Title	<u>LICENSING OF SEXUAL ENTERTAINMENT VENUES</u>	

RECOMMENDATION

- (a) To note the decision of Licensing Committee made on 8th December 2010;
- (b) That Full Council be recommended to re-adopt Section 2 and Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982, as amended, to include adoption of new provisions within Schedule 3 introduced by Section 27 of the Policing and Crime Act 2009 to apply to the City of Wolverhampton and the schedule to come into force on 15th March 2011;
- © That the Chief Legal Officer give public notice of this re-adoption in accordance with the requirement of Section 2(2) of the Local Government (Miscellaneous Provisions) Act 1982; and
- (d) That a further report be submitted to the Licensing Committee upon any proposed policy and associated licence fees;
- (e) That the Licensing Committee be authorised to discharge the Council's functions under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982, as amended by Section 27 of the Policing and Crime Act 2009.

1. PURPOSE

1.1 To resolve to recommend re-adoption of provisions within Section 2 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 which will incorporate amendments introduced by Section 27 of the Policing and Crime Act 2009 to allow the licensing of sexual entertainment venues.

2. BACKGROUND

2.1 On 8th December 2010 a report was presented to Licensing Committee, a copy of which is attached at appendix 1. Members of the Licensing Committee were requested to resolve to recommend re-adoption of provisions contained within Section 2 and Schedule 3, as amended, of the Local Government (Miscellaneous Provisions) Act 1982. The need to re-adopt to include the amendment to Schedule 3 has arisen due to a change in this legislation which currently only regulates sex establishments to include sex shops and sex cinemas.

Adoption of the amended legislation will extend the power of the Council and allow them to also regulate sexual entertainment venues, as defined in the report attached at appendix 1. The definition of a Sexual Entertainment Venue is wide however guidance suggests it would almost certainly include the commercial provision of lap dancing, pole dancing, table dancing, strip shows, peep shows and live sex shows.

The report attached at appendix 1 gives a background outlining the current legal position and how that will change following adoption of the amendment to Schedule 3 of the 1982 Act, details of how adoption of the amendment is to be implemented and the benefits to adoption.

A separate report upon this matter is being presented to Special Advisory Group and their response to this will be reported to Standards Committee at the meeting.

The Standards Committee are asked to note the content of the report attached at appendix 1 and recommend; the re-adoption by, Full Council, of Section 2 and the amended Schedule 3 of the 1982 Act; that the Chief Legal Officer be given the authority to give public notice of the re-adoption; and regulatory functions and responsibilities be delegated to licensing Committee. This will enable the Council to better regulate lap dancing clubs and other sexual entertainment venues by allowing them to be regulated in a similar way to sex shops.

3. FINANCIAL IMPLICATIONS

3.1 Please see attached report at appendix 1 (AK/29112010/F)

4. LEGAL IMPLICATIONS

4.1 Please see attached report at appendix 1

5. EQUAL OPPORTUNITIES IMPLICATIONS

5.1 Please see attached report at appendix 1

6. ENVIRONMENTAL IMPLICATIONS

6.1 Please see attached report at appendix 1

7. SCHEDULE OF BACKGROUND PAPERS

Please see attached report at appendix 1

Wolverhampton City Council

OPEN DECISION ITEM

Licensing Committee

Date 8th December 2010

Originating Service Group(s) **RESOURCES AND SUPPORT**

Contact Officer(s)/ **Sarah Hardwick**
on behalf of the Chief Legal Officer

Telephone Number(s) **4956**

Title **Licensing of Sexual Entertainment Venues**

RECOMMENDATION

- (a) That Full Council be recommended to re-adopt Section 2 and Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982, as amended, to include adoption of new provisions within Schedule 3 introduced by Section 27 of the Policing and Crime Act 2009 to apply to the City of Wolverhampton and the schedule to come into force on 15th March 2011;
- (b) That the Chief Legal Officer give public notice of this re-adoption in accordance with the requirement of Section 2(2) of the Local Government (Miscellaneous Provisions) Act 1982; and
- (c) That a further report be submitted to the Committee upon any proposed policy and associated licence fees;
- (d) That the Licensing Committee be authorised to discharge the Council's functions under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982, as amended by Section 27 of the Policing and Crime Act 2009.

1.0 PURPOSE

- 1.1 To resolve to recommend re-adoption of provisions within Section 2 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 which will incorporate amendments introduced by Section 27 of the Policing and Crime Act 2009 to allow the licensing of sexual entertainment venues.

2.0 BACKGROUND

- 2.1 Since the introduction of the Licensing Act 2003 in November 2005, the Council, acting as the Licensing Authority, has had a statutory duty to licence premises providing regulated entertainment. This includes live and amplified music, dancing and dance performances. Under the Licensing Act 2003 if no relevant representations are made to applications they must be granted as applied for.
- 2.2 In contrast, sex shops are classified as sex establishments, licensed under the Local Government (Miscellaneous Provisions) Act 1982. The regime gives the Council a wider discretion in determining whether to grant or refuse licences, greater flexibility on applying licence conditions and the ability to accept representations from a wider scope of the community.
- 2.3 The Government's response to pressure for greater regulatory control of lap dancing and similar entertainment resulted in the recent amendment to Schedule 3 of the 1982 Act, which introduced regulation of establishments providing sexual entertainment within the existing framework of licensing sex establishments.
- 2.4 Section 27 of the Policing and Crime Act 2009 created a new class of licensed sex establishment, the sexual entertainment venue (SEV's). The new provisions give local authorities more powers to control where and how many SEV's open and operate in their area.
- 2.5 Before a Local Authority can licence SEV's under the 1982 Act, they must resolve to adopt the amended provisions of the 1982 Act, even if it has already adopted Schedule 3 for sex shops. Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 was previously adopted by Full Council and Wolverhampton have been issuing licenses for sex establishments since June 1995.
- 2.6 Sexual Entertainment Venues are defined as "any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer."
- 2.7 "Relevant entertainment" means any live performance or 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 (whether by verbal or other means.)
- 2.8 The definition is wide and whether or not a particular kind of entertainment meets that definition must be determined on the basis of the particular facts prevailing and relevant in each case. However, guidance suggests the definition would almost certainly cover the commercial provision of lap dancing, pole dancing, table dancing, strip shows, peep shows and live sex shows. Alcohol sales, late night refreshment and other forms of regulated entertainment will still require a premises licence in accordance with the Licensing Act 2003.

2.9 There are currently 2 premises within Wolverhampton known to be offering relevant entertainment in the form of lap dancing that will need to apply for a SEV licence in order to continue operating.

3.0 IMPLEMENTATION

- 3.1 To re-adopt Section 2 and the amended Schedule 3 the Full Council must first pass a resolution specifying that Section 2 and Schedule 3, to include amendments made in accordance with Section 27 of The Policing and Crime Act 2009 shall apply to Wolverhampton City Council from a stated date, at least 1 month after the day the resolution has been passed.
- 3.2 Notice of the passing of the resolution will need to be advertised for two consecutive weeks in a local newspaper circulating in the area, no later than 28 days before the day specified in the resolution for the adopted provisions to come into force. If the Full Council resolve to adopt provisions of the amended Schedule 3, it is proposed the resolution will come into force on 15th March 2011.
- 3.3 With regard to amended provisions the date the resolution comes into force becomes the first appointed day and begins a 12 month transitional period. Six months following the first appointed day will be known as the second appointed day and the day on which the transitional period ends the 3rd appointed day.
- 3.4 To allow time to comply with the new regime, the existing operator will be allowed to use the premises as a SEV under the Licensing Act licence until the 3rd appointed day or the determination of any application submitted before that time, whichever is the later. New applicants who do not already have a premises licence or club premises certificate to operate after the 1st appointed day will not be able to operate as a SEV until they have been granted a SEV licence. No applications can be determined before the 2nd appointed day.
- 3.5 No business will be able to operate without a SEV licence after the 3rd appointed day. To do so would be an offence. A person guilty of this offence will be liable on conviction to a fine not exceeding £20,000.00.
- 3.6 Provided the recommendations in this report are adopted by Full Council the licensing regulatory functions and responsibilities will be delegated to the Licensing Committee who may then decide to delegate some functions to officers.
- 3.7 A Local Authority is not required to produce a Statement of Licensing Policy relating to sex establishments or sexual entertainment venues but may do so if they wish. The Council would have to consult on any proposed Statement of Licensing Policy and it would be expected that any public consultation would invite views from residents, statutory authorities, businesses likely to be affected and existing and potential premises licence holders. This matter will be the subject of a separate report which it is hoped will be presented to the Licensing Committee in the new year.

4.0 CONCLUSIONS

- 4.1 The Council are not required to re-adopt Section 2 and Schedule 3 however, officers thought it may be clearer to re-adopt all the provisions rather than simply the amendment. No extra costs are incurred in this procedure.

- 4.2 The benefits to adopting the amendments to Schedule 3 of the 1982 Act are that Local Authorities are given more powers to control the number and location of lap dancing clubs and similar venues in their area. These powers will only apply where they are adopted by the Local Authority. Where adopted, these provisions will allow Local Authorities to refuse an application on potentially wider grounds than is permitted under the 2003 Act and will give local people a greater say over the regulation of lap dancing clubs and similar venues in their area.
- 4.3 Therefore, Licensing Committee are asked to consider the contents of this report and recommend to Full Council the re-adoption of Section 2 and the amended Schedule 3 of the 1982 Act together with the delegation of these regulatory functions and responsibilities back to Licensing Committee. This will enable the Council to better regulate lap dancing clubs and other sexual entertainment venues by allowing them to be regulated in a similar way to sex shops.

5.0 FINANCIAL IMPLICATIONS

- 5.1 Schedule 3 to the 1982 Act states that an applicant for grant, renewal or transfer of a sex establishment licence shall pay a reasonable fee, but gives discretion to the Council. It is proposed that fees will be set by the Council but will have regard to the cost of implementation, administration and will be reasonable and proportionate to the costs incurred. (AK/29112010/F)

6.0 LEGAL IMPLICATIONS

- 6.1 The legislation is adoptive, it only becomes operative if it is positively resolved by a local authority that it should be adopted in its area, as outlined in this report. Adoption would also allow the local authority to:
- A). set out a policy for the regulation of establishments
 - B). prescribe standard conditions of operation; and
 - C) Set appropriate fees for licence applications.
- 6.2 If a Council decides not to adopt the provisions introduced by Section 27 of the 2009 Act within one year of it coming into force, that being 6th April 2011, the legislation requires that the Council must then consult local people, as soon as is reasonably practicable, after that date upon whether such a resolution should be made. (SH/26112010/K)

7.0 EQUAL OPPORTUNITIES IMPLICATIONS

- 7.1 No direct implications.

8.0 ENVIRONMENTAL IMPLICATIONS

- 8.1 The report has no direct environmental implications. However, the proportionate regulation of licensable activities in the city has a positive impact on the local trading environment and in particular the night time economy environment in that it targets non-compliance, supports reputable businesses and develops reassurance.

9.0 SCHEDULE OF BACKGROUND PAPERS

Local Government (Miscellaneous Provisions) Act 1982

The Policing and Crime Act 2009 with any associated guidance and regulations