
Meeting: Regulation Committee
Date: 17 November 2010
Subject: Adoption of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 and Section 27 of the Policing and Crime Act 2009
Report of: Gary Alderson, Director of Sustainable Communities
Summary: Adoption of the relevant provisions of the Local Government (Miscellaneous Provisions) Act 1982, for the licensing of Sexual Entertainment Venues.

Contact Officer: Patricia Davies (licensing & Policy Officer); David McBain (Licensing Enforcement Officer)
Public/Exempt: Public
Wards Affected: ALL
Function of: Council

CORPORATE IMPLICATIONS

Council Priorities:

Educating, protecting and providing opportunities for children and young people – By regulating sexual entertainment venues conditions can be placed on licences to protect children from harm.

Managing growth effectively – Legislation allows the Council to restrict the number and location of such premises.

Creating safer communities – The conditions that will be considered for licences will be in order to prevent crime and disorder, to protect public safety and to prevent public nuisance.

Financial:

There will be advertising costs attached to the public notices which need to be published in the local press and are required for the correct adoption of the legislation. A fee will be payable by applicants which will offset these costs over time. The process of adopting the legislation, and the licensing process will be administered by the licensing team and the fees will be set to cover these costs.

Legal:

Compliance with the Local Government (Miscellaneous Provisions) Act 1982. Without proof of adoption we would be unable to support any decision to refuse a licence for a sex establishment.

Risk Management:

Failure to adopt this legislation will lead to current premises in the area being operated without the correct conditions and controls in place to protect the community.

Staffing (including Trades Unions):

None

Equalities/Human Rights:

The Council has a legal duty to proactively promote race, gender and disability equality and to tackle discrimination experienced by other vulnerable groups. The council does not take a moral stand in adopting this policy and recognises that Parliament has made it lawful to operate a sex establishment, and that such businesses are a legitimate part of the retail and leisure industries. It is the role of the Licensing Authority to administer the licensing regime in accordance with the law.

Community Safety:

The adoption of the legislation to regulate sexual entertainment venues will allow the council to take all reasonable steps to reduce crime and disorder within Central Bedfordshire under Section 17 of the Crime and Disorder Act 1998.

Sustainability:

In adopting this legislation Central Bedfordshire Council will be able to develop a policy to ensure a vibrant and thriving leisure industry with safe and well kept premises which will be run in an appropriate manner.

RECOMMENDATIONS:

1. That the Regulation Committee recommend that Full Council adopts the relevant provisions to enable the regulation of sexual entertainment venues and that these provisions come into force on the 1st April 2011 as ‘the first appointed day’.
2. That the Regulation Committee recommend that Full Council delegate responsibility for the licensing of sexual entertainment venues to the Regulation Committee and ask the Constitution Advisory Group to amend the Constitution accordingly.

Introduction

1. Adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and Section 27 of the Policing and Crime Act 2009, will enable the Council to control the licensing of sexual entertainment venues such as lap dancing clubs.

Note: There is no option to adopt Section 27 and not Schedule 3, as section 27 only amends schedule 3.

2. Schedule 3 originally empowered local authorities to licence “sex establishments” which covered sex cinemas and sex shop. However, following the introduction of Section 27 of the Policing and Crime Act 2009, Schedule 3 was amended to include “sexual entertainment venues”. This new category covers venues that provide ‘relevant entertainment’. Relevant entertainment is defined as *“any live performance or display of nudity which is of such a nature that, it must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience”*.
3. The former South Beds District Council and Mid Beds District Councils had adopted Schedule 3, but due to the amendments introduced by Section 27 of the Policing and Crime Act 2009, it is now necessary to readopt Schedule 3 (including the amendments made by Section 27) to be able to licence all sexual entertainment venues as well as sex shops and sex cinemas.
4. The legislation is not mandatory for local authorities, however, if the Council chooses not to adopt the relevant provisions to regulate sexual entertainment venues by 6 April 2011, then the authority must consult local people about whether they should adopt these provisions as soon as is reasonably practical after that date.
5. In adopting these provisions premises which previously provided these facilities as “Regulated entertainment” under the Licensing Act 2003 licences will no longer be able to do so and will need a sex establishment licence.
6. Within Central Bedfordshire there are currently four establishments that fall within Schedule 3: two sex shops and two sexual entertainment venues (which have both been regulated to date by the addition of voluntary conditions on their premise licence under the Licensing Act 2003).
7. Under the legislation, local authorities are allowed to set a limit on the number of sex entertainment venues that they consider appropriate for a particular locality.
8. Adoption of this legislation will :
 - Allow local people to oppose an application for a sex establishment licence if they have legitimate concerns that a lap dancing club would be inappropriate, given the character of the area, for example if the area was primarily residential or next to a school etc.
 - Require licences to be renewed at least yearly, at which point local people will have the opportunity to raise objections with the local authority.
 - Allow a local authority to set a limit on the number of sex establishments as they think appropriate for the area.
 - Allow a local authority to impose a wider range of conditions on the licences of lap dancing clubs that they are currently able to under the Licensing Act 2003.
 - Allow the local authority to set reasonable fees to cover administration and enforcement costs. (Suggested fees will be proposed during the consultation period, for agreement by the relevant working group).

Adoption

9. For successful adoption, the local authority must pass a resolution under Section 2 of the Local Government (Miscellaneous Provisions) Act 1982 to adopt Schedule 3 and specify the day the provisions are to come into effect. This must be no earlier than 1 month after the date of the resolution.
10. The local authority must then publish a notice in a local newspaper for two consecutive weeks stating that they have passed such a resolution and its general effect. The first notice must appear no later than 28 days before the provisions are due to come into force.
11. If the Council resolves to adopt the legislation, the operator of a proposed sex establishment will have to apply for a licence under the Act. There is no presumption that the licence will be granted.
12. Under the Central Bedfordshire Council Constitution the Regulation Committee already has delegated responsibility to licence Sex Shops and Sex Cinemas under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
13. It is recommended that the Constitution Advisory Group are asked to revise the scheme of delegated responsibilities to add to the Regulation Committee delegations "Powers to licence sexual entertainment venues" in Part E2 Annex D of the Constitution.
14. A Central Bedfordshire Council policy on sex establishments is currently out for consultation. This consultation runs from 18 October 2010 to 9 January 2011. Subject to Recommendation 2 being approved, the Policy will then be brought to the Regulation Committee for approval.
15. It is recommended that for Central Bedfordshire Council the date the provisions come into effect is the 1 April 2011 ("the first appointed day"). This will allow adequate time for notices, consultations and the setting of fees.
16. Any existing premise seeking a sexual entertainment venue licence could then apply between 1 April and 1 October 2011 ("the second appointed day").
17. Any such applications must be determined together after 1 October 2011 so that none have priority over another.
18. Any such licences granted will not have effect until 1 April 2012 (the "third appointed day"). Any existing premises falling under the definition of a sexual entertainment venue can continue to operate under their premises licence for a period as specified in The Policing and Crime Act 2009 (Commencement No. 1 and Transitional and Saving Provisions) (England) Order 2010.

Conclusion

19. Central Bedfordshire Council should consider adopting Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 in order to regulate both new sexual entertainment venues and those already in existence in Central Bedfordshire. The provisions should come into force from the 1 April 2011 (“the first appointed day”) to allow sufficient time for advertising of the intention to adopt and for a 12 week consultation on the licensing of sexual entertainment venues policy.

Appendices: None.