

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

LICENSING COMMITTEE – 1 MARCH 2011

Title of report	READOPTON OF SCHEDULE 3 OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 AS AMENDED BY THE POLICING AND CRIME ACT 2009
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Purpose of report	To consult with the Licensing Committee on the adoption of the above legislation and associated matters
Strategic aims	Strong and Safer Communities Prosperous Communities
<p>Implications:</p> <p>Financial/Staff</p> <p>Link to relevant CAT</p> <p>Risk Management</p> <p>Equalities Impact Assessment</p> <p>Human Rights</p>	<p>All resources employed in the implementation of the legislation must be recovered from licensing fees and charges</p> <p>Safer CAT</p> <p>If the provisions are not adopted by the Council on April 6 2011 a consultation process must be undertaken with local people.</p> <p>Equality Impact Assessment to be undertaken during 2011/2012.</p> <p>In determining applications, the principles of the Human Rights Act 1998 must be taken into consideration. The Act acknowledges that local authorities are entitled, amongst other things, to act where this is in the 'general interest'. Should it be decided to refuse or to grant an application, or to attach conditions, the rights of appeal that exist through the Magistrates' Court will ensure that the principles of the Human Rights Act are adhered to.</p>

Transformational Government	Not applicable.
Comments of Head of Paid Service	Report is satisfactory
Comments of Section 151 Officer	Report is satisfactory
Comments of Monitoring Officer	Report is satisfactory
Consultees	Leicestershire Constabulary.
Background papers	Policing and Crime Act 2009. Local Government (Miscellaneous Provisions) Act 1982. Licensing Act 2003. Home Office Guidance.
Recommendations	<p>TO CONSIDER AND COMMENT ON THE FOLLOWING RECOMMENDATIONS PRIOR TO CONSIDERATION AND ADOPTION BY COUNCIL ON 29TH MARCH 2011;</p> <p>A) TO RE-ADOPT THE LEGISLATION UNDER SCHEDULE 3 OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982;</p> <p>B) TO SET A DATE FOR THE ‘FIRST APPOINTED DAY’;</p> <p>C) TO APPROVE THE DRAFT SEX ESTABLISHMENT LICENSING POLICY;</p> <p>D) TO DELEGATE TO THE LICENSING COMMITTEE DETERMINATION OF SEXUAL ENTERTAINMENT VENUE LICENCE APPLICATIONS;</p> <p>E) TO DELEGATE THE AUTHORITY TO DETERMINE AN APPLICATION TO RENEW AND TRANSFER A LICENCE (WHERE NO OBJECTIONS HAVE BEEN RECEIVED) TO THE DIRECTOR OF SERVICES;</p> <p>F) TO SET THE FEES FOR 2011/2012</p> <p>G) TO DELEGATE TO THE DIRECTOR OF SERVICES AUTHORITY TO ADMINISTER SEXUAL ENTERTAINMENT VENUE LICENCE APPLICATIONS, MAKE MINOR CHANGES TO THE POLICY FOR SEXUAL ENTERTAINMENT VENUES AND TO SET FEES FOR THE GRANT, RENEWAL AND VARIATION OF LICENCES;</p> <p>H) TO DELEGATE TO THE MONITORING OFFICER AUTHORITY TO MAKE CONSEQUENTIAL CHANGES TO THE COUNCIL CONSTITUTION.</p>

1.0 Background

- 1.1 To enable a Local Authority to license sex establishments in its area it has to first adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. In this Schedule sex establishment means a sex cinema or a sex shop. This Council adopted Schedule 3 at its meeting on Tuesday 9th November 1982 with the adoption coming into force on 1st January 1983 (**see Appendix 1**). Following amendments to the act officers consider it prudent to re-adopt the provisions of Schedule 3.
- 1.2 Other 'adult entertainment' was controlled through Public Entertainment licences until the introduction of premises licences and the Licensing Objectives by the Licensing Act 2003.
- 1.3 In turn section 27 of the Policing and Crime Act 2009 has now taken away control of sex establishments from the Licensing Act 2003 and at the same time amended Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. The amendment to the 1982 act by the 2009 act introduces the concept of a 'sexual entertainment venue'.
- 1.4 A 'sexual entertainment venue' is defined as any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer. Other relevant definitions can be found at **Appendix 2**.
- 1.5 Currently only one premises within the District has a condition on its Licensing Act 2003 Premises Licence which could mean it falls within the definition of a sexual entertainment venue. It has been closed for some time and is not expected to open in the short term.
- 1.6 If the legislation is adopted it will give the Authority power to license premises providing relevant entertainment.
- 1.7 It is not expected that demand for Sexual Entertainment Venue licences will be high especially as premises are allowed to provide relevant entertainment on no more than 11 occasions in any 12 month period without the need to be licensed.

2.0 Adoption of Legislation

- 2.1 Once Schedule 3 of the 1982 act has been adopted, the Council has the option to either adopt, or not, the amendments made to the 1982 act by section 27 of the 2009 act.
- 2.2 If it has not resolved to adopt the legislation within a year of it coming into force, i.e. before 6 April 2011, the Authority must consult local people on whether the Authority should make such a resolution.
- 2.3 If the decision is made to adopt the legislation the Council must set the 'first appointed day' which will be a date in excess of 28 days from the date of resolution. Officers must then place two notices at least 28 days before the 'first appointed day' in local newspapers advertising and setting out the effect of the resolution.
- 2.4 Applications for a licence made in the 12 months following the 'first appointed day' will be dealt with in accordance with legislation and Home Office Guidance.

3.0 Licensing Policy

- 3.1 A licensing policy has been drafted and can be found at **Appendix 3**. The policy details the grounds for refusing to grant, transfer and renew a licence application. The policy indicates that the appropriate number of sexual entertainment venues allowed in the locality is Nil. Also contained within the draft policy is a list of prescribed standard conditions.

4.0 Decision Making

- 4.1 As any application for a Sexual Establishment Venue licence is likely to be an emotive issue it is recommended the Council delegate the power to determine the following applications to the Licensing Committee:

Grant a licence

Vary a licence

Renew a licence where relevant objections have been received

Transfer of a licence where relevant objections have been made

- 4.2 It is recommended Council delegate the following powers to the Director of Services:

Renew a licence where relevant objections have not been received

Transfer of a licence where relevant objections have not been received

Revoke a licence

- 4.3 Other matters relating to the administration of the Sexual Establishment Venues including the review of fees should be delegated to the Director of Services.
- 4.4 Changes to the Council Constitution will be necessary and it is recommended that the Council authorises the Monitoring Officer to make appropriate changes.

5.0 Transitional Arrangements

- 5.1 Legislation is in place to deal with the transitional arrangements spanning the 1st, 2nd and 3rd appointed days. The 2nd appointed day will be the six months following the 1st appointed day. The 3rd appointed day will be 12 months after the 1st appointed day.
- 5.2 The District has only one existing operator who will have, prior to the 1st appointed day, a 2003 Act licence and can lawfully use premises as a sexual entertainment venue under that licence (see paragraph 1.5 above). This operator will be allowed to continue providing relevant entertainment until the 3rd appointed day or the determination of any application they have submitted before that time, whichever is later.
- 5.3 Applicants will be able to submit their application for a sexual entertainment venue from the 1st appointed day onwards, however, no application will be determined before the 2nd appointed day. If granted those licences will come into effect immediately.

6.0 Fees

- 6.1 Schedule 3 to the 1982 Act states that an application for the grant, renewal, variations or transfer of a licence shall pay a reasonable fee. It is recommended the following fees be

introduced which are consistent with the current fees for Sex establishments licences:

Application	Fee
Grant / Variation	£2927
Renewal	£1882
Transfer	£1255

- 6.2 The proposed fee has been benchmarked against other local authorities that have set their fees. A comparison is provided by the table below:

Local authority	Fee
Hinckley & Bosworth BC	£3000
Melton BC	£1600
South Derbyshire	£2100

7.0 Amendment to Constitution

- 7.1 Should members recommend that the provisions of Schedule 3 of the 1982 act are re-adopted consequential amendments will be required to the constitution. A draft of those amendments are detailed below.
- 7.2 The current constitution would be amended on page 57 by adding the following to section 4.1 – ‘FUNCTION – To consider matters concerning the discharge by the Council of its licensing functions under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009. MATTERS RESERVED FOR A DECISION – Application for a Sexual Establishments Venue licence’.

