

TELFORD & WREKIN COUNCIL

**LICENSING COMMITTEE – 8TH SEPTEMBER 2010
COUNCIL – 7TH OCTOBER 2010**

POLICING AND CRIME ACT 2009

REPORT OF: SERVICE DELIVERY MANAGER - PUBLIC PROTECTION

1. Purpose

- 1.1 For Members to consider if Telford & Wrekin Council should adopt Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended by s27 of the Policing and Crime Act 2009.

2. Recommendations

- 2.1. It is recommended that Members :
- 2.1.1 Determine to recommend to Full Council that the Borough of Telford and Wrekin adopt the amendments made by Section 27 of the Policing and Crime Act 2009 to Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 to come into effect on 1st January 2011 throughout the whole of administrative area of the Borough of Telford and Wrekin.
- 2.1.2 Determine to recommend to Full Council that the responsibilities of the above be delegated to the Licensing Committee under Section 101 of the Local Government Act 1972.

3. Summary

- 3.1 Since introduction of the Licensing Act 2003, lap dancing clubs have been licensed under the 2003 Act. Section 27 of the Policing and Crime Act 2009 reclassifies lap dancing clubs as sexual entertainment venues and gives local authorities in England and Wales the power to regulate such venues as sex establishments under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.
- 3.2 These new measures, took effect on 6th April 2010 in England and if adopted by local authorities, give local people a greater say over where and how many lap dancing clubs may open and operate in their neighbourhoods.

4. Previous Minutes

4.1 None

5 Information

5.1 Background

5.1.1 In 1982 the Local Government (Miscellaneous Provisions) Act 1982 (LGMPA) introduced the licensing of sex shops and sex cinemas.

5.1.2 In 1995 the Council adopted the Local Government (Miscellaneous Provisions) Act 1982 granting powers to require licences to open sex establishments in the district of Telford & Wrekin. The Act defines a sex establishment as either a 'sex cinema' or a 'sex shop'.

5.1.3 Section 27 of the Policing and Crime Act 2009 introduces a new category of sex establishment called 'sexual entertainment venue', which will allow local authorities to regulate lap dancing clubs and similar venues under Schedule 3.

5.1.4 Whilst there is not a perceived problem with this type of premises in Telford & Wrekin, this report recommends the adoption of the new regulatory powers as a preventative measure.

5.1.5 If Members choose not to adopt the new powers the Council will continue to rely solely on the Licensing Act 2003 to control such premises. The Licensing Act 2003 permits representations to be made which relate to one of the licensing objectives:-

- the prevention of crime and disorder,
- public safety,
- the prevention of public nuisance; and
- the protection of children from harm.

It does not allow objections to be made on the grounds of the number of premises in the area, character of the area, suitability of premises for the activity, the suitability of the management or use of premises in the area.

5.1.6 Section 27 gives local authorities more powers to control the number and location of lap dancing clubs and similar venues in their area. These powers are not mandatory and will only apply where they are adopted by local authorities. 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.

5.1.7 Paragraph 2A of Schedule 3 as inserted by section 27 sets out the meaning of a 'sexual entertainment venue' and 'relevant entertainment' for the purposes

of these provisions. 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.*”

5.1.8 The meaning of ‘relevant entertainment’ is “*any live performance or live 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).*” An audience can consist of just one person (e.g. where the entertainment takes place in private booths).

5.1.9 While local authorities should judge each case on its merits, it is expected that the definition of relevant entertainment would apply to the following forms of entertainment as they are commonly understood:

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

5.1.10 Adoption of schedule 3 also allows councils to set conditions and fees for the grant, renewal, transfer and variation of such licences and the number of licences that may be issued in the area.

5.1.11 Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 was adopted by Full Council in 1995. Section 2 of the LGMPA enables an authority to adopt the amendments made by Section 27 of the Policing and Crime Act 2009 to Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.

5.1.12 To adopt the amendments, firstly, the local authority must pass a resolution specifying that the amendments made by section 27 of the Policing and Crime Act 2009, shall apply to their area and the day on which it shall come into force in the area. The specified day must be more than one month after the day on which the resolution was passed. The local authority shall publish a notice that they have passed a resolution for two consecutive weeks in a local newspaper. The first publication shall not be later than 28 days before the day specified in the resolution for the provisions to come into force. If Members accept the recommendation to this report, the proposed timetable is as follows:

- a. Adoption of Resolution – 7th October 2010;
- b. Adverts detailing general effect of Resolution during weeks of 18th and 25th October 2010
- c. Resolution Comes Into Force – 1st January 2011.

5.1.13 If a local authority adopts the amendments made by Section 27 of the Policing and Crime Act 2009 to Schedule 3, a premises in the district, where licensable

activities as defined under the Licensing Act 2003 take place, shall still require to be licensed under the 2003 Act. In practice, this will mean that the vast majority of lap dancing clubs and similar venues will require both a sexual entertainment venue licence for the provision of 'relevant entertainment', and a premises licence or club premises certificate for the sale of alcohol or provision of other types of regulated entertainment.

5.1.14 If a local authority has not made a resolution to adopt the provisions introduced by section 27 of the Policing and Crime Act 2009 within one year of it coming into force it must, as soon as is reasonably practicable, consult local people about whether they should make such a resolution.

5.2 Equal Opportunities

5.2.1 This Report adheres to the Council's Equality and Diversity Scheme and does not discriminate on the grounds of race, gender, disability, age, religion or belief or sexual orientation.

5.2.2 The Sex Discrimination Act 1975 obliges local authorities, in carrying out their functions, to have due regard to the need to eliminate unlawful discrimination and harassment and to promote equality of opportunity between men and women.

5.2.3 Gender equality may be relevant in sex licensing in relation to:

- Harassment/victimisation/exploitation of performers
- Exclusion of single women from clubs
- Fear of women using the vicinity of clubs

5.3 Environmental Impact

5.3.1 Not applicable for the purposes of this report.

5.4 Legal Comment

5.4.1 Section 27 of the Policing and Crime Act 2009 amends Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. The effects of the amendment and the considerations in relation to the same are set out in the body of the report.

5.5 Links with Corporate Priorities

5.5.1 This report has links to community protection and cohesion.

5.6 Financial Comment

5.6.1 As the Act reclassifies the establishments it is anticipated that adopting the amendments will lead to an increase in officer time in processing this type of application. As a result these establishments will be required to provide the relevant application fee applicable at the time for a sex establishment in

addition to the premises license fee. The number of such applications is deemed to be insignificant and therefore will be absorbed within the existing resource of the team.

5.7 Risks and Opportunities

5.7.1 In proposing this action the Corporate Risk Management Methodology has been complied with. This approach is not intended to eliminate risks but to identify the risks and manage them. However not all risks can be managed all of the time and some risks may not have been identified.

5.7.2 The following key risks and opportunities associated with this action have been identified and assessed and arrangements will be put in place to manage them.

Should the Council resolve not to adopt the amendments made by Section 27 of the Policing and Crime Act 2009 to Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 there may be a risk of legal challenge.

6. Ward Implications

6.1 This report has Borough wide Implications

7. Background Papers

7.1 Local Government (Miscellaneous Provisions) Act 1982

7.2 Licensing Act 2003

7.3 Policing and Crime Act 2009

7.4 Home Office Sexual Entertainment Venues Guidance for England and Wales

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