
REPORT TO:	FULL COUNCIL	AGENDA ITEM: 20
DATE OF MEETING:	28th February 2011	CATEGORY: DELEGATED
REPORT FROM:	HEAD OF COMMUNITY SERVICES	OPEN PARAGRAPH NO: N/A
MEMBERS' CONTACT POINT:	Carl Jacobs 595717	DOC:
SUBJECT:	Adoption of Local Government (Miscellaneous Provisions) Act 1982 as amended by The Policing and Crime Act 2009	REF: C/MyFiles/Com/ES/Sex Establishments
WARD(S) AFFECTED:	All	TERMS OF REFERENCE:

1.0 Recommendations

- 1.1 That Members approve the adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by The Policing and Crime Act 2009.
- 1.2 That members reaffirm the adoption of the Local Government (Miscellaneous Provisions) Act 1982, schedule 3 which relates to sex shops and sex cinema's which was previously adopted in 1982/3.
- 1.3 If approved by Members that the date of adoption be the 1st April 2011.
- 1.4 That Consultation of the SDDC Policy on Sex Establishments Licensing and Conditions commence and once completed a report on the consultation results and possible adoption of the Policy and Conditions be brought before the Licensing and Appeals Committee.
- 1.5 That Members confirm the proposal that all applications received for sex establishment Licences will only be approved after consideration by the Licensing and Appeals Sub Committee.

2.0 Purpose of Report

- 2.1 To adopt legislation which will allow Communities and Members greater powers over the numbers and locations of sex establishments i.e. lap dancing clubs within the South Derbyshire District Council area should an application be received.
- 2.2 To reaffirm the adoption of the Local Government (Miscellaneous Provisions) Act 1982 (LGMPA) in relation to sex shops and sex cinema's which was previously approved in 1982/3.

3.0 Detail

- 3.1 Existing legislation under the Licensing Act 2003 does not give communities or Local Authorities sufficient powers to control sex establishments such as a potential lap-dancing club within their area. Under the Licensing Act 2003, licensing authorities may only impose controls on sex establishments (whether by attaching conditions or outright refusal) if a relevant representation has been made on the application. This has to be made by a responsible authority (e.g. the police) or interested party (local resident) living within the vicinity of the proposed premises. In addition the authority may only consider imposing conditions or even deciding on an outright refusal of the application in order to promote one of the licensing objectives. These are the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm. It would be difficult to provide evidence that harm would arise from such an application in relation to the licensing objectives. The problem has been exacerbated by the decision in the High Court in 2008 (Thwaites V Wirral Borough MC), which emphasised that findings as to future harm need to be based on evidence.
- 3.2 In order to address this concern Section 27 of the Policing and Crime Act 2009 reclassifies lap dancing clubs and similar premises as sexual entertainment venues. This gives local authorities the power to regulate such venues as sex establishments under Schedule 3 of the LGMPA, should in the future an application be received by this Authority.
- 3.3 These new measures would need to be adopted by this Authority by the 6th April 2011. If the Authority chooses not to adopt these powers by that date then a condition of the legislation requires that the authority must, as soon as practicable, consult local people about whether it should adopt.
- 3.4 The Act makes no provision for the publication or not of a Sex Establishment Licensing Policy or Conditions. Modern licensing legislation takes the opposite approach, in recognition of the main benefits that a policy can bring: transparency, accountability, certainty, consistency and the promotion of good standards in licensing. Policies produced in relation to the Licensing Act, Gambling Act and Private Hire have over the last few years achieved this.
- 3.4 It is additionally proposed that the Policy and Conditions goes out for consultation in order to receive constructive feed back from the trade and the public. The policy and conditions appear at Appendix A.
- 3.5 If Members adopt the provisions of the LGMPA and agree to the consultation of both the Policy and Conditions, It is proposed that a further report will be brought before the Licensing and Appeals Committee once consultation has been completed.
- 3.6 The LGMPA lays down statutory requirements for adoption. This is not an executive Function and must be adopted or rejected by full council.
- 3.7 The resolution must state the date upon which the regime is to come into effect. This date must be at least one month after resolution and it is suggested that the date of adoption be the 1st April 2011.

4.0 Financial Implications

4.1 None

5.0 Corporate Implications

5.1 None

6.0 Community Implications

6.1 The adoption of LGMPA in relation to Sex Establishments will provide increased protection and powers for Communities to make representations where applications are received for sexual establishments.

7.0 Conclusions

7.1 The adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by The Policing and Crime Act 2009, will provide additional powers for both the community and members to decide if it is appropriate to allow sexual establishments in certain areas of the district.

8.0 Background Papers

8.1 Sex Establishment Licensing Policy and Conditions – Appendix A