

Committee Name and Date of Committee Meeting

Cabinet – 18 March 2019

Report Title

Adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 relating to ‘Sexual Entertainment Venues’

Is this a Key Decision and has it been included on the Forward Plan?

Yes

Strategic Director Approving Submission of the Report

Name of Strategic Director

Report Author(s)

Lewis Coates, Head of Service – Regulation and Enforcement
01709 823117 or lewis.coates@rotherham.gov.uk

Ward(s) Affected

Borough-Wide

Report Summary

This report outlines a proposal to adopt the amended Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 that classifies lap dancing clubs and similar establishments, as ‘sexual entertainment venues’.

This report asks Cabinet to consider the findings of the public consultation on the adoption of the powers and to recommend that Council adopts the powers, to support more effective licensing of such venues and reflect the views of local communities.

Recommendations

1. That Cabinet recommend to Council to pass a resolution to adopt powers contained within Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).
2. That Cabinet recommend to Council that the appointed day for the provisions coming into effect is one month and one day from that resolution being made.
3. That Cabinet recommend that Council delegate responsibility for the discharge of the adopted functions in relation to individual licences of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to the Licensing Board.

List of Appendices Included

- Appendix 1 Consultation on the adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 relating to 'Sexual Entertainment Venues'
- Appendix 2 Equalities Impact Assessment – Adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 relating to 'Sexual Entertainment Venues'

Background Papers

- Home Office Guidance for England and Wales in relation to Sexual Entertainment Venues
- Council Meeting 5th December 2018
Minute 103: Recommendation from Cabinet – Consultation on the Adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and a Rotherham Sex Establishment Licensing Policy
- Cabinet 19th November 2018
Minute 62: Consultation on the Adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and a Rotherham Sex Establishment Licensing Policy

Consideration by any other Council Committee, Scrutiny or Advisory Panel

Overview and Scrutiny Management Board – 30 January 2019

Council – 22 May 2019

Council Approval Required

Yes

Exempt from the Press and Public

No

Adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 relating to ‘Sexual Entertainment Venues’

1. Background

- 1.1 Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (‘the 1982 Act’) was amended by Section 27 of the Policing and Crime Act 2009, which classified lap dancing clubs and the like, as ‘sexual entertainment venues’ within the definition of ‘sex establishments’ found in the 1982 Act.
- 1.2 The definition of ‘sex establishment’ within the 1982 Act already included ‘sex cinemas’ and ‘sex shops’, which the Council already licences within the specific provisions. The amendments to Schedule 3 of the 1982 Act, will add ‘sexual entertainment venues’ to the meaning of ‘sex establishments’ within the 1982 Act.
- 1.3 This amendment is only available to Councils where the provisions are formally adopted. Home Office guidance highlights that public consultation on the adoption of the powers is not statutorily required but that it is good practice to seek public views.¹
- 1.4 Currently, premises where lap dancing or similar activity takes place in Rotherham are licensed and regulated under the Licensing Act 2003. This arrangement does not provide for appropriate regulation of these premises and activities, or for attachment of appropriate conditions to licences, given that the available conditions under the Licensing Act 2003 are not specific to ‘sex establishments’.
- 1.5 In December 2018, the Council requested that a public consultation be undertaken to understand the view of local communities in respect of the Council adopting these powers.
- 1.6 The subsequent consultation began on 19th December 2018 and ended on 20th February 2019.

2. Key Issues

- 2.1 The Policing and Crime Act 2009 amendments and guidance, extended the meaning of ‘sex establishment’ within the 1982 Act, to include ‘sexual entertainment venues’ such as:
 - Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows and
 - Live sex shows

¹ Home Office, Sexual Entertainment Venues: Guidance for England and Wales, 2010, 3.8

2.2 The amendment to the meaning of 'sex establishment' extends the prescribed provisions within the 1982 Act to 'sexual entertainment venues'. These provisions include annual applications for sex establishment licences; grants, renewals and transfer of licences; variations and revocation of licenses; refusal of applications; and powers to make standard conditions.

3. Options considered and recommended proposal

3.1 **Option 1:** the Council does not adopt the provisions provided within the amended Schedule 3 to the 1982 Act.

3.2 This option would maintain the current position of regulating lap dancing clubs through the Licensing Act 2003, rather than the more suitable provisions under the 1982 Act which allows for prescription of appropriate standards to the industry.

3.3 **Option 2:** the Council adopts the amended Schedule 3 to the 1982 Act. This is the preferred option.

3.4 The preferred option to adopt Schedule 3 of the 1982 Act will allow the Council to licence and regulate 'sexual entertainment venues' within the most appropriate regime provided for by the 1982 Act.

3.5 This option will, amongst other things, ensure that specific and relevant conditions can be attached to licences that would be otherwise unavailable to the Council, allowing the most appropriate enforcement and licencing for this kind of establishment.

3.6 In addition, adoption of the powers will enable Cabinet to consider the usefulness of developing Policy around these particular venues.

4. Consultation on proposal

4.1 The consultation opened on 19th December 2019 and ended on 20th February 2019. Whilst this period was longer than that stated in the report to Council in December 2018, extra time was allowed for the consultation to cover the Christmas period and provide for sufficient time for responses to be provided.

4.2 The public consultation covered a broad spectrum of considerations that a public view was desired upon, which can be divided into two key elements: the adoption of powers; and the matters that need to be considered for Policy development should the powers be adopted. This paper focuses only upon the adoption of powers. Policy development will be considered at a later date.

4.3 Consultation responses were received from the following general groupings:

- Residents
- Business
- Religious Groups
- Women's Interest Groups
- Industry Workers
- Charities

- Others

- 4.4 The consultation was delivered online together with specific community interest groups being written to advising of the consultation. In addition, printed copies of the consultation were made available at key access points and also provided to Councillors.
- 4.5 The consultation was publicised through a range of channels including social media, press releases, online promotion and written correspondence.
- 4.6 The consultation asking whether the Council should adopt powers to regulate and licence sex establishments, elicited the return of 422 responses, with a clear majority of respondents strongly agreeing or agreeing with the proposal for the Council to adopt the amended powers.
- 77.01% (325 responses) strongly agreed or agreed with the Council's proposals
 - 4.73% (20 responses) neither agreed or disagreed with the Council's proposals
 - 16.58% (70 responses) disagreed or strongly disagreed with the Council's proposals
 - 1.65% (7 responses) did not provide a view
- 4.7 From the responses it is clear that there is a public desire to adopt powers to improve the licencing and regulation of 'sex establishments' including 'sexual entertainment venues'.
- 4.8 A more detailed outline of the consultation responses can be found at Appendix 1.

5. Timetable and Accountability for Implementing this Decision

- 5.1 If a resolution is passed by the Council to adopt the amended Schedule 3 of the 1982 Act, the provisions will come into effect one month and one day after the resolution has been passed. This is the first appointed day.
- 5.2 If the powers are adopted, then within 28 days of the resolution being made, the matter will be publicised, stating the general effect of Schedule 3, for two consecutive weeks in a local newspaper that is circulated in the area.
- 5.3 Six months after the resolution comes into effect, the Council must consider all applications for licences that have been received after the first appointed day, together. If granted, the licences of new applicants will take immediate effect, whilst those of existing operators will come into effect after the transitional period.
- 5.4 If the powers are ultimately adopted, there is a requirement that a transitional period of twelve months is allowed for existing operators from the date that the resolution comes into force to allow compliance of existing licence holders. This is the third appointed day.

- 5.5 Whilst the functions under Schedule 3 are the responsibility of Council, the discharge of those functions can be delegated to the Licensing Board.
- 5.6 It is anticipated that if the powers are adopted, then Cabinet would be able to consider the adoption of a specific Policy relating to 'sex establishments' including 'sexual entertainment venues'.
- 5.7 Within the first six months of the scheme a costings exercise will be undertaken to review fees and to establish appropriate fees based upon full cost recovery.

6. Financial and Procurement Advice and Implications

- 6.1 Schedule 3 to the 1982 Act provides for the setting of a reasonable fee for applications for the granting, renewal, variation or transfer of a sex establishment licence.
- 6.2 The current annual fee is £7,635 for a new sex establishment licence. It is anticipated that were the powers to be adopted, then one further establishment in Rotherham would be brought into this charging scheme as existing 'sex shops' and 'sex cinemas' already fall within the provisions of the 1982 Act.
- 6.3 The current fee will be reviewed to ensure that it continues to recover all costs associated with sex establishment licence applications, in line with Central Government guidelines.
- 6.4 There are no anticipated procurement implications should the powers be adopted.

7. Legal Advice and Implications

- 7.1 If the provisions are to be adopted, Council must pass a resolution stating this decision.
- 7.2 If a resolution is made by the Council to adopt the amended Schedule 3 of the 1982 Act, then the Council must set a date (the first appointed date) from which the resolution takes place, not less than one month after the resolution has been passed.²
- 7.3 If a decision is made to adopt the powers, the Council must publish a notice that they have passed a resolution, stating the general effect of Schedule 3, for two consecutive weeks in a local newspaper that is circulated in the area. The first publication should not be later than 28 days before the day specified in the resolution for the provisions to come into force in the area.³
- 7.4 If the powers are ultimately adopted, there is a requirement that a transitional period of twelve months is allowed from the date that the resolution comes into force to allow compliance of existing licence holders.⁴ The transitional period allows for the following process:

² Home Office, Sexual Entertainment Venues: Guidance for England and Wales, 2010, 3.6

³ Home Office, Sexual Entertainment Venues: Guidance for England and Wales, 2010, 3.7

⁴ Home Office, Sexual Entertainment Venues: Guidance for England and Wales, 2010, 4.2

- To allow time to comply with the new regime, existing operators, who immediately before the first appointed day, hold a premises licence issued under the 2003 Licensing Act, which allows the licensee to lawfully use premises as a sex entertainments venue will be allowed to continue to provide relevant entertainment until either the third appointed day (which falls twelve months after the first appointed day) or until such time as any application they have submitted is determined.
- New operators (who do not hold relevant 2003 Act premises licences) who wish to use premises as sexual entertainment venues after the first appointed day will not be able to use those premises until they have been granted a sexual entertainment venue licence.
- After the second appointed day (which falls six months after the first appointed day) the local authority must consider all applications received since the first appointed day, together. New applications granted will then take immediate effect. Licences granted to existing operators come into effect on the third appointed day.
- Applications made after the second appointed day shall be considered when they are made but only once all applications made before the second appointed day have been determined.

7.5 Whilst the functions under Schedule 3 are the responsibility of full Council, the discharge of those functions can be delegated to the Licensing Board.⁵

8. Human Resources Advice and Implications

8.1 There are no HR implications arising from this report.

9. Implications for Children and Young People and Vulnerable Adults

9.1 Children may be exposed to the risk of emotional or psychological harm if sex establishments are not effectively regulated, through coming into contact with activities or promotion of activities that are only appropriate for adults.

9.2 Vulnerable adults may be exploited by the practices of sex entertainment venues, consequently it is vital that appropriate safeguarding measures are taken to regulate such premises in order to mitigate the risks to vulnerable adults of exposure to any form of significant harm including, sexual, physical, emotional and psychological harm.

9.3 It is considered that the adoption of the amended Schedule 3 of the 1982 Act along with the introduction of the Sex Establishment Licensing Policy will allow for the effective regulation of sex establishments in Rotherham and the mitigate the risk of harm that is presented to children, young people and vulnerable adults.

⁵ Section 101 of the Local Government Act 1972; Home Office, Sexual Entertainment Venues: Guidance for England and Wales, 2010, 3.2 and 3.3

10. Equalities and Human Rights Advice and Implications

- 10.1 An Equality Impact Assessment has been undertaken on the proposed adoption of Schedule 3 (see Appendix 2), and identified that the adoption has no adverse impacts on equalities and human rights.
- 10.2 The findings of the Equality Impact Assessment will be incorporated into the final Sex Establishments Licensing Policy should it be adopted.

11. Implications for Partners

- 11.1 There are no implications anticipated for partners.

12. Risks and Mitigation

- 12.1 Failure to implement the adoptive legislation, presents continuing risks to children and vulnerable adults.
- 12.2 Failure to address sex establishments effectively with the best available tools presents a number of risks which would include:
- Lack of effective controls to regulate and licence 'sex establishments'
 - No licence conditions to support the welfare of workers in the industry
 - Possible adverse effects on the reputation of the Council.

13. Accountable Officer(s)

Tom Smith, Assistant Director, Community Safety and Street Scene
Paul Woodcock, Strategic Director of Regeneration and Environment

Approvals obtained on behalf of:-

	Named Officer	Date
Strategic Director of Finance and Customer Services	Julie Copley	21.02.2019
Assistant Director of Legal Services	Liz Anderton	21.02.2019
Head of Procurement	N/A	N/A
Assistant Director of Human Resources and Organisational Development	John Crutchley	20.02.2019

*Report Author: Lewis Coates – Head of Service, Regulation and Enforcement
01709 823117 or lewis.coates@rotherham.gov.uk*

This report is published on the Council's [website](#).