

CHESHIRE EAST COUNCIL

REPORT TO: SUSTAINABLE COMMUNITIES SCRUTINY COMMITTEE

Date of Meeting:	4th November 2010
Report of:	Kate Khan, Legal Services on behalf of Licensing Manager
Subject/Title:	Sexual Entertainment Venues - Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 (as amended)

1.0 Report Summary

- 1.1 The report provides background information in relation to the amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, made by section 27 of the Policing and Crime Act 2009, in relation to 'sexual entertainment venues.' The report requests that the Committee consider both the principle of adoption of the amendments to Schedule 3 and a draft policy on the licensing of sexual entertainment venues, and formulates a consultation response to the Licensing Committee.

2.0 Recommendations

- 2.1 The Committee is requested to consider:
- 2.1.1 the proposed adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009, within the Borough of Cheshire East; and
- 2.1.2 the draft policy on the licensing of sexual entertainment venues set out within the appendix to the report; and
- and to formulate a consultation response to be submitted to the Licensing Committee.

3.0 Reasons for Recommendations

- 3.1 The Licensing Committee has authorised a consultation exercise in relation to the adoption of the amended Schedule 3 of the 1982 Act and a draft policy in relation to the licensing of sexual entertainment venues. The consideration of this matter falls within the remit of the Sustainable Communities Scrutiny Committee.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

5.1 All

6.0 Policy Implications including - Climate change - Health

- 6.1 The report requests that comments are made on a draft policy on the licensing of sexual entertainment venues.

7.0 Financial Implications 2010/11 and beyond (Authorised by the Borough Treasurer)

- 7.1 The consultation exercise includes a consultation on the proposed fees which would apply to applications for sexual entertainment venues (if the legislation were to be adopted). The proposed fees are as follows: New application: £2,260; Renewal: £1,130; Transfer: £500

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 Section 27 of the Policing and Crime Act 2009, which came into force on 6th April 2010, amended Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 in order to provide local authorities with the power to regulate 'sexual entertainment venues.' Further details about the statutory definition of 'sexual entertainment venues' are provided within paragraph 10 of the report.
- 8.2 If a local authority wishes to exercise the 'new' powers within Schedule 3 of the 1982 Act it must formally resolve that the provisions are to have effect in its area. The procedure for adoption is set out within section 2 of the 1982, which provides that the local authority must pass a resolution specifying that the amendments made by section 27 of the 2009 Act to Schedule 3 shall apply to its area and must specify the date on which the resolution shall come into force. The specified day must be more than one month after the date on which the resolution was passed. The local authority is also required to publish notice that a resolution has been made for two consecutive weeks in a local newspaper circulating in the area. The first publication may not be later than twenty-eight days before the date specified in the resolution for the provisions to come into force.
- 8.3 Paragraph 13 of Schedule 3 provides the authority for the Council to "make regulations prescribing standard conditions applicable to licences for sex establishments. Paragraph 13(1A) states that no standard condition may be prescribed in so far it "relates to any matter in relation to which requirements or prohibitions are or could be imposed under the Regulatory Reform (Fire Safety) Order 2005." Paragraph 13(3) provides that regulations may prescribe conditions regulating – (a) the hours of opening and closing of sex establishments; (b) displays or advertisements on or in such establishments; (c) the visibility of the interior of sex establishments to passers-by; and (d) any

change from one kind of sex establishment to another kind of sex establishment. Where the authority has made standard conditions every licence granted, renewed or transferred is presumed to have been granted, renewed or transferred subject to the standard conditions unless they have been expressly excluded or varied.

- 8.4 Paragraph 12 of Schedule 3 sets out the grounds for refusal of an application. Certain grounds, for example that the applicant is under 18 years old or is disqualified, are mandatory grounds for refusal. Other grounds, including those relating to the appropriate number of such establishments in the 'relevant locality,' are discretionary grounds. Further information in relation to the grounds for refusal is set out within the body of the report.

9.0 Risk Management

- 9.1 The Licensing Committee has authorised a consultation exercise on both the principle of adoption and a draft policy; any consultation responses received will be referred to a subsequent meeting of the Licensing Committee.

10.0 Background and Options

- 10.1 Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 makes provision for the regulation of 'sex establishments.' Prior to the enactment of the Policing and Crime Act 2009, the definition of 'sex establishments' was limited to sex shops and sex cinemas. Section 27 of the Policing and Crime Act 2009, which came into force on 6 April 2010, extends the definition of 'sex establishment' to include 'sexual entertainment venues.'
- 10.2 A 'sexual entertainment venue' for the purposes of the 1982 Act is "any premises at which relevant entertainment is provided before an audience for the financial gain of the organiser or the entertainer." 'Relevant entertainment' means "any live performance or any 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 the audience (whether by verbal or other means)."
- 10.3 If a local authority resolved before 6 April 2010 that Schedule 3 of the 1982 Act was to apply within its area, then the amendments in relation to sexual entertainment venues within the 2009 Act do not apply to the area of the local authority; however, the local authority may resolve that Schedule 3 of the 1982 Act, as amended by section 27 of the 2009 Act, is to apply to its area. Each of the three predecessor district Councils made resolutions to adopt the original provisions of Schedule 3 of the 1982 Act. These resolutions have been preserved, and apply to Cheshire East, on the basis of regulation 4 of the Local Government (Structural changes) (Transitional Arrangements) (No 2) Regulations 2008.
- 10.5 At its meeting on 13th September 2010 the Licensing Committee resolved to authorise officers to carry out a consultation exercise in relation to the adoption of the amendments to Schedule 3 of the 1982 Act. The Licensing Committee

also resolved, without prejudice to any decision in relation to adoption, to provide authority for officers to consult in relation to a draft policy (attached as an appendix to this report) and proposed fees (details of which are provided within paragraph 7.1).

- 10.6 As set out within paragraph 8 above, paragraph 12 of Schedule 3 provides both mandatory and discretionary grounds for refusal. The grounds for refusal are set out within the policy appended to the report. Members will note that one of the discretionary grounds for refusal is *“that the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality;”* The proposed policy, as currently drafted, does not seek to place a figure on the number of sexual entertainment venues which it considers appropriate in any locality within the Council’s administrative area but rather states (i) that each application will be determined on its own merits; and (ii) that consideration will be given to the locality in each case and to the number of Sexual Entertainment Venues suitable for that particular locality. A further discretionary ground within paragraph 12 is on the basis that: *“that the grant or renewal of the licence would be inappropriate, having regard –*
- (i) to the character of the relevant locality; or*
 - (ii) to the use to which any premises in the vicinity are put; or*
 - (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.*

Whilst recognising the each application would be determined on its own individual merits, the draft policy sets out certain factors (such as the existence of ‘sensitive uses’ such as worship and education in the relevant locality) which would generally render the grant or renewal of a licence inappropriate.

- 10.7 In addition to setting out the proposed policy relating to the factors relevant to the determination of an application, the draft policy document sets out the application process to be adopted by the Council together with a set of proposed standard conditions. The provisions of paragraph 12 of Schedule 3 in relation to standard conditions are detailed within paragraph 8.3 above. The proposed standard conditions within the attached policy deal with matters including: hours of opening, conduct of the premises, signs doors and window displays, and the employment of persons on the premises.
- 10.8 As part of the consultation exercise, correspondence has been sent to the Police, Town/Parish Councils, representatives of businesses, the proprietors of sexual entertainment venues and other organisations known to have an interest in the regulation of sex establishments. Details of the consultation have been posted on the Council’s website and a press release issued to the local media. The Sustainable Communities Scrutiny Committee is requested to formulate a response to be submitted to the Licensing Committee as part of the consultation exercise.

12.0 Overview of Year One and Term One Issues

- 12.1 None

13.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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