

**REPORT FOR: Licensing and General
Purposes Committee**

Date of Meeting: 1 March 2011

Subject: Consideration of adoption of Schedule
3 of the Local Government
(Miscellaneous Provisions) Act 1982 as
amended by section 27 of the Policing
and Crime Act 2009

Responsible Officer: John Edwards, Divisional Director
Environmental Services

Exempt: No

Enclosures:

- Letter from Alan Campbell MP, former Parliamentary Under Secretary of State outlining the changes to the law
- Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982
- Section 27 of the Policing and Crime Act 2009
- Proposed Sex Establishment Licensing Policy
- Six Consultation Responses

Section 1 – Summary and Recommendations

This report summarises the amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, by section 27 of the Policing and Crime Act 2009 relating to the creation of a new category of sex establishment known as 'sexual entertainment venue', and provides the responses to the public consultation exercise, and a proposed Sex Establishment Licensing Policy.

Recommendations:

The Committee is requested to:

1. Consider the responses to the public consultation;
2. Consider whether Harrow should adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009, and if so, refer the matter to Full Council for approval;
3. Consider the proposed Sex Establishment Licensing Policy and either recommend its adoption to Full Council for approval, propose modifications, or reject it.

Section 2 – Report

1. Background

- 1.1. The Local Government (Miscellaneous Provisions) Act 1982 (“the 1982 Act”) introduced a licensing regime to control sex establishments. The regime is only enforceable if the relevant part of the 1982 Act is adopted by a local authority. Harrow Council adopted the relevant part of the 1982 Act, but this legislation has recently been amended to extend the definition of ‘sex establishment’ and so consideration needs to be given to whether the council should resolve that this amended version should apply to its area.

2. Current situation

- 2.1 Section 27 of the Policing and Crime Act 2009 inserts a new category of “sex establishment” known as a “sexual entertainment venue” into Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. This section, if adopted by a local authority, will require premises in that area that are to be used as a sex establishment (including a sexual entertainment venue (e.g. a lap dancing club)), to obtain a (sex establishment) licence from the authority.
- 2.2. The legislation is not mandatory and local authorities have the flexibility to decide whether and, if so, when the new provisions should come into force in their area. However, any authorities that have not adopted the regime by 6 April 2011 have to consult local people about the issue as soon as practicable thereafter. Harrow has already carried out the consultation, the results of which are included with this report.
- 2.3 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.’
- 2.4 “Relevant entertainment” is defined as:

‘(a) any live performance, or
(b) any live display of nudity, which is of such nature that, ignoring financial gain, it must be reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether verbally or other means).’
- 2.5 If the council resolves that schedule 3 of the 1982 Act as amended should apply to its area, this will bring the licensing of lap dancing and pole dancing clubs and other similar venues, under the regime of the 1982 Act, which is currently used to regulate establishments such as sex shops and sex cinemas. There is an exemption for premises that provide relevant entertainment on an infrequent basis.

- 2.5 Should the Committee decide that the amended Schedule 3 of the 1982 Act should not be adopted, the current licensing regime under the 1982 Act will continue so that any premises that operate as a sex shop or sex cinema in Harrow will require a licence from the local authority. However any premises operating as a sexual entertainment venue offering relevant entertainment such as lap dancing or pole dancing, will not require a licence under the 1982 Act and may be able to operate unregulated by the local authority.

3. Consultation

- 3.1 A full public consultation was carried out from 11th October – 31st December 2010 asking for the public's view on whether Section 27 Policing and Crime Act 2009 (which sets out the amendments to Schedule 3 of the 1982 Act) should be adopted in the borough of Harrow.
- 3.2 The consultation also sought comments on the proposed Sex Establishment Licensing Policy for Harrow.
- 3.3 Six responses were received during the consultation which are discussed below.

4. Consultation Responses

- 4.1 Six responses were received during the consultation period as detailed above in section 3. Copies of all of the responses are attached to this report.
- 4.2 All of the responses received support the Section 27 Policing and Crime Act 2009 changes for introduction in Harrow so that any "sexual entertainment venue" (see section 2.3 above) will be required to be licensed by the local authority.
- 4.3 In relation to the proposed Sex Establishment Licensing Policy, three of the responses received expressly supported the proposal that the appropriate number of sex establishments in each ward in Harrow ("relevant locality") should be nil.
- 4.4 Two of the respondents disagreed with the above proposal. One proposed that that the appropriate number of sex establishments per ward in Harrow should be 'one, provided the establishment is not in a residential area', and the other proposed 'not more than one' as this would 'not prejudice the public wish in all cases and better meets the Human Rights Act 1998'.
- 4.5 With regard to the proposal to adopt a presumption of refusal of applications for sex establishment licences, three of the respondents supported this proposal, one supported it subject to the proposed change to allow up to one such establishment, and one respondent disagreed.

5. Proposed Sex Establishment Licensing Policy

- 5.1 The proposed Sex Establishment Licensing Policy aims to set out how the local authority will assess applications for Sex Establishment Licences and under what circumstances such licences may be refused or granted.
- 5.2 Section 12(3) of Schedule 3 of the 1982 Act outlines some of the grounds on which a local authority may refuse an application for a Sex Establishment Licence. These grounds are:
- a.) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reasons; or
 - b.) if the licence were to be granted, renewed or transferred, the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself; or
 - c.) 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; or
 - d.) that the grant or renewal of the licence would be inappropriate, having regard to:
 - i) the character of the relevant locality; or
 - ii) the use to which any premises in the vicinity are put; or
 - iii) the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.
- 5.3 Under part (c) above, the local authority can refuse an application for a sex establishment licence if 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 considers is appropriate for that locality.
- 5.4 When determining the appropriate number of sex establishments in each relevant locality, the 1982 Act provides that the appropriate number may be nil.
- 5.5 The proposed Sex Establishment Licensing Policy proposes that each ward in Harrow will be considered as a “relevant locality” for the purposes of the 1982 Act and the appropriate number of sex establishments in each relevant locality will be nil. This policy has been drafted on the assumption that the appropriate number will be nil but if the Committee considers that a different number is appropriate, modifications to the policy will need to be made.
- 5.6 Furthermore the proposed Sex Establishment Licensing Policy proposes that whilst all applications for sex establishment licences for premises in the borough of Harrow will be considered on their own

merit, there will be a presumption of refusal of applications for such licences.

6. Main options

6.1 The main options for the Committee, having taken into account the consultation responses, are to:

- Decide to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009, and if so, refer the matter to Full Council for approval

Or

- Decide not to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended

AND

- Decide to adopt the proposed Sex Establishment Licensing Policy as drafted, and if so to recommend it to Full Council for approval

- Propose modifications to the Sex Establishment Licensing Policy

- Reject/decide not to adopt the Sex Establishment Licensing Policy

7. Financial Implications

7.1 No financial implications

8. Equalities Impact Implications

8.1 An equalities impact screening process was undertaken and no adverse impacts were identified.

9. Risk Management Implications

9.1 Should the Committee decide not to adopt the amended provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act, any premises operating as a sexual entertainment venue offering relevant entertainment such as lap dancing or pole dancing, will not require a licence under the 1982 Act and may be able to operate unregulated by the local authority.

10. Corporate Priorities

10.1 By adopting the amended provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act and a policy on Sex Establishment Licensing, the Council is contributing towards the corporate priority of building stronger communities by adequately regulating sex establishments including sexual entertainment venues, and by providing clear guidance through policy to operators of such

premises on how applications for sex establishment licences will be assessed and granted.

Section 3 - Statutory Officer Clearance

Name: Kanta Hirani	<input checked="" type="checkbox"/>	on behalf of the* Chief Financial Officer
Date: 16 February 2011		
Name: Paresh Metha	<input checked="" type="checkbox"/>	on behalf of the* Monitoring Officer
Date: 17 February 2011		

Section 4 - Contact Details and Background Papers

Contact: P Sivashankar, Licensing Service Manager, ext 6237

Background Papers:

- Letter from Alan Campbell MP, former Parliamentary Under Secretary of State outlining the changes to the law
- Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982
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