

Subject: Adoption of amended Schedule 3,
Local Government (Miscellaneous Provisions)
Act 1982

Status: For Publication

Report to: Licensing Committee
Policy Scrutiny Committee
Committee
Council

Date: 28th June 2010
27th July 2010
13th September 2010

Report of: Director of Business

Portfolio

Holder: Environmental Services

Key Decision: No

Forward Plan General Exception Special Urgency

1. PURPOSE OF REPORT

1.1 To adopt Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009 in order that the Licensing Authority is able to regulate sexual entertainment venues.

2. CORPORATE PRIORITIES

2.1 The matters discussed in this report impact directly on the following corporate priorities and associated corporate objective/s.

- Delivering Quality Services to Customers (Customers, Improvement)
- Promoting Rossendale as a cracking place to live and visit (Economy)

3. RISK ASSESSMENT IMPLICATIONS

3.1 There are no specific risk issues for members to consider arising from this report.

4. BACKGROUND AND OPTIONS

4.1 The increase nationally in the number of lap dancing clubs since the implementation of the Licensing Act 2003 has become a concern for many local communities. Currently any representations made against premises licence

applications for venues providing lap dancing and similar entertainment can only be based on the four licensing objectives, namely:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance
- The protection of children from harm

As a result, licensing authorities could not consider the objections of local people and businesses that were based on matters outside the scope of the four objectives noted above, for example, such as whether a lap dancing club would be appropriate given the character and locality of the area in which it was proposed to be situated.

4.2 The government has responded to calls for further controls to be introduced specific to lap dancing clubs and similar premises by introducing legislation through the Policing and Crime Act 2009 to reclassify such venues as a new 'Sexual Entertainment Venue' under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. (LGMPA 1982)

4.3 Appendix A details the amendments to Schedule 3 of the 1982 Act and Appendix B details Schedule 3 of LGMPA 1982.

4.4 Legislative Proposals

4.5 As detailed above Section 26 of the Policing and Crime Act 2009 introduces a new category of 'Sex Establishment' under Schedule 3 to the 1982 Act called a 'Sexual Entertainment Venue' which is defined as:-

'any premises at which Relevant Entertainment is provided before a live audience for financial gain of the organiser or the entertainer'.

4.6 This new category covers venues that provide 'Relevant Entertainment' which is defined as:-

'any live performance or any live display of nudity which is of such a nature that, ignoring financial gain, it must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means)'.

4.7 Such venues will require a Sex Establishment Licence. However, there is an exemption for premises which provide such entertainment infrequently (see Appendix A new paragraph 2A (3) (b) to be inserted into Schedule 3 to the 1982 Act) and, even if premises do qualify as a Sexual Entertainment Venue, the local authority still has the discretion to waive the requirement for a licence.

4.8 In summary the amendments to Schedule 3 to the 1982 Act will, in particular;

- allow local people to oppose an application for a Sex Establishment licence if they have legitimate concerns that a Sexual Entertainment Venue would be

inappropriate given the character of an area, for example, if the area was primarily a residential area.

- require licence's to be renewed at least annually, at which point local people will have the opportunity to raise objections (if any), with their local authority.
- allow a local authority to reject a licence application if they believe that to grant a licence for a Sexual Entertainment Venue (including a lap dancing club) would be inappropriate given the character of a particular area.
- allow a local authority to set a limit on the number of Sexual Entertainment Venues that they think is appropriate for a particular area.
- allow a local authority to impose a wider range of conditions on the licences of Sexual Entertainment Venues than they are currently able to under the Licensing Act 2003.

4.8 These new legislative provisions took effect on 6th April 2010.

4.9 This Council originally adopted the previous Schedule 3 on the 26th May 2004 with the adoption coming into effect on the 1st July 2004. The amended Schedule 3 will now have to be re-adopted if it is to have effect in the Borough of Rossendale.

4.11 There is a 'Transitional Period' for the implementation and application process for new 'Sexual Entertainment Venues'.

4.12 Any operator – new or existing - who wishes to provide 'Relevant Entertainment 'at the end of the transitional period ' will be required to apply for a Sex Establishment licence in the manner set out in Schedule 3 to the 1982 Act.

4.13 Existing operators will be allowed to continue to provide 'Relevant Entertainment 'under their existing permission without interruption for the duration of the transitional period or until their application for a Sex Establishment licence has been determined, whichever is the later.

4.14 The transitional period will start on the date the amendments to Schedule 3 to the 1982 Act comes into force in the relevant local authority area (the 1st appointed day). It will last for 12 months.

4.15 For 6 months following the 1st appointed day, applicants will be able to submit applications, all of which will be considered together by the local authority at the end of the period. In effect all current operators apply for a new type of licence and all applications get decided together at the end i.e. not first come first granted basis

4.16 Applications received after the first 6 months (the 2nd appointed day) will be considered after applications received before the 2nd appointed day have been determined.

4.17 Licence's granted for Sexual Entertainment Venues will not take effect until the conclusion of the 12 month transitional period (the 3rd appointed day).

- 4.19 Any pre-existing operator who has failed to obtain a licence after the third appointed day will not be permitted to provide Relevant Entertainment unless they have an application submitted..
- 4.20 The Government has decided, having listened to views from previous consultations, that existing operators will not be given 'Grandfather Rights' and will have to apply for a new type of licence.
- 4.21 With regards to Article 1, Protocol 1 of the Human Rights Act, further guidance will be provided to local authorities to ensure they exercise their powers in accordance with Convention rights before the provisions are commenced.
- 4.22 Further reports will be submitted to the Licensing Committee in relation to the adoption of the provisions under the 1982 Act, fees, standard terms and conditions, application forms and Policy.

COMMENTS FROM STATUTORY OFFICERS:

5. SECTION 151 OFFICER

- 5.1 There are no material financial implications.

6. MONITORING OFFICER

- 6.1 The Council must make a decision based on all relevant information and following consideration of all relevant Council policies

7. HEAD OF PEOPLE AND POLICY (ON BEHALF OF THE HEAD OF PAID SERVICE)

- 7.1 There are no specific human resources implications.

8. CONCLUSION

- 8.1 Whilst at this time there are no premises within the Borough to which this legislation applies, the Council would be unable to regulate under this Act unless it adopts the amended Schedule.

9. RECOMMENDATION(S)

- 9.1 That the Policy Overview & Scrutiny Committee recommends to Council the adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009
- 9.2 That the Council resolves to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009

9.3 That an implementation date be set six weeks from the date the resolution is passed in order that the necessary advertisements may be placed.

10. CONSULTATION CARRIED OUT

10.1 None

11. COMMUNITY IMPACT ASSESSMENT

Is a Community Impact Assessment required No

Is a Community Impact Assessment attached No

12. BIODIVERSITY IMPACT ASSESSMENT

Is a Biodiversity Impact Assessment required No

Is a Biodiversity Impact Assessment attached No

Contact Officer	
Name	Tracy Brzozowski
Position	Licensing and Planning Enforcement Manager
Service / Team	Business Directorate
Telephone	01706 238602
Email address	tracybrzozowski@rossendalebc.gov.uk

Appendices	
Document	Appendix Number
Extract from the Policing and Crime Act 2009 relating the sex establishments	Appendix A
Extract from Schedule 3 Local Government (Miscellaneous Provisions) Act 1982.	Appendix B