

BRECKLAND COUNCIL

Report of the Director of Community Services to the General Purposes Committee – 12 January 2011

Adoption of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 and Section 27 of the Policing and Crime Act 2009

1. Purpose of Report

- 1.1 That members consider the adoption of the provisions of section 27 of the Policing and Crime Act 2009, which provides for the regulation of sexual entertainment venues.

2. Recommendations

- 2.1 That the General Purposes Committee recommends that Breckland Council resolves that Schedule 3 of the Local Government Miscellaneous Provisions Act 1982 as amended by Section 27 of the Policing and Crime Act 2009 shall apply to the Breckland District Council area and that these provisions come into force on the 1st April 2011 as 'the first appointed day'.
- 2.2 That Breckland Council sets a reasonable fee for applications for Sexual Entertainment Venues, the amount of that fee being delegated to the Principal Officer to calculate and set.
- 2.3 That Breckland Council has a policy on sexual entertainment venues. This policy to be drafted by the Principal Licensing Officer and subject to public consultation.

Note: In preparing this report, due regard has been had to equality of opportunity, human rights, prevention of crime and disorder, environmental and risk management considerations as appropriate. Relevant officers have been consulted in relation to any legal, financial or human resources implications and comments received are reflected in the report.

3. Information, Issues and Options

3.1 Background

- 3.1.1 Section 27 of the Policing and Crime Act 2009 introduces a new category of Sex Establishment called 'sexual entertainment venues', which allows local authorities to regulate lap dancing clubs and similar venues under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
- 3.1.2 Schedule 3 originally empowered local authorities to licence "sex establishments" which covered sex cinemas and sex shops. However, following the introduction of Section 27 of the Policing and Crime Act 2009, Schedule 3 was amended to include "sexual entertainment venues". This new category covers venues that provide 'relevant entertainment'. Relevant entertainment is defined as "*any live performance or display of nudity which is of such a nature that, it must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience*".
- 3.1.3 This provision came into force on 6 April 2010. Local authorities may now resolve to adopt Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended by the 2009 Act so that it has effect in their area.

- 3.1.4 The legislation is not mandatory for local authorities, however, if Breckland Council chooses not to adopt the relevant provisions to regulate sexual entertainment venues by 6 April 2011, then the authority must consult local people about whether they should adopt these provisions as soon as is reasonably practical after that date.
- 3.1.5 In adopting these provisions premises which previously provided these facilities as "Regulated entertainment" under the Licensing Act 2003 licences will no longer be able to do so and will require a sex establishment licence. However there are exemptions for premises where the sexual entertainment is provided infrequently, i.e. not more than eleven occasions in a twelve-month period, they must be greater than one month apart and must not last for more than 24 hours. These premises will still be regulated under the Licensing Act 2003 and would need to apply for Temporary Events Notices.
- 3.1.6 Adoption of this legislation will :
- Allow local people to oppose an application for a sexual entertainment venue licence if they have legitimate concerns that a lap dancing club would be inappropriate, given the character of the area, for example if the area was primarily residential or next to a school etc.
 - Require licences to be renewed at least yearly, at which point local people will have the opportunity to raise objections with the local authority.
 - Allow Breckland Council to set a limit on the number of sex entertainment venues as they think appropriate for the area.
 - Allow Breckland Council to impose a wider range of conditions on the licences of lap dancing clubs that they are currently able to under the Licensing Act 2003.
 - Allow Breckland Council to set reasonable fees to cover administration and enforcement costs.
- 3.1.7 Breckland Council is not required to publish a licensing policy relating to sex entertainment venues although we can do so if we wish as long as it does not prevent any individual application from being considered on its merits.

3.2 Adoption

- 3.2.1 The procedure for local authorities to adopt Schedule 3 as amended by section 27 are set out in Section 2 of the Local Government (Miscellaneous Provisions) Act 1982. Firstly, Breckland Council must pass a resolution specifying that the amendments made by section 27 to Schedule 3 shall apply to their area and the day on which it shall come into force in the area. The specified day must be more than one month after the day on which the resolution was passed.
- 3.2.2 Breckland Council must then publish a notice in a local newspaper for two consecutive weeks stating that they have passed such a resolution and its general effect. The first notice must appear no later than 28 days before the provisions are due to come into force.
- 3.2.3 There will be a transitional period for 12-months beginning with the date that Breckland Council resolves that Schedule 3 as amended by the 2009 Act will come into force in their area. This provision is to allow any existing venues to obtain the appropriate licence. There are currently no such venues in the Breckland District.
- 3.2.4 If the Council resolves to adopt the legislation, the operator of a proposed Sex Entertainment venue will have to apply for a licence under the Act. There is no presumption that the licence will be granted.

3.3 Options

Members may:

- Recommend that Full Council resolves to adopt the relevant provisions to enable the regulation of sexual entertainment venues and that these provisions come into force on the 1st April 2011 as the first appointed day; or
- Recommend that the legislation is not adopted and that a formal public consultation across the district then takes place to consider adoption.

3.4 Reasons for Recommendation(s)

- 3.4.1 That Breckland Council should consider adopting Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 in order to regulate sexual entertainment venues.

4. Risk and Financial Implications

4.1 Risk

- 4.1.1 I have completed the Risk Management questionnaire and can confirm that risk has been given careful consideration, and that there are no significant risks identified associated with the information in this report.

4.2 Financial

- 4.2.1 There will be advertising costs attached to the public notices which need to be published in the local press which are required for the correct adoption of the legislation. A fee will be payable by any applicants which will offset these costs over time. The process of adopting the legislation and the licensing process will be administered by the licensing team and the fees will be set to cover these costs.
- 4.2.2 Should the Council fail to adopt or choose not to adopt the relevant provisions, then a consultation must take place with all local people across the Breckland district about whether these provisions should be adopted. This will result in associated costs.

5. Legal Implications

- 5.1 Adoption or consultation must take place and if appropriate a resolution must be properly advertised to comply with the legal requirements of the Act.

6. Other Implications

- a) Equalities: None
- b) Section 17, Crime & Disorder Act 1998: None
- c) Section 40, Natural Environment & Rural Communities Act 2006: None
- d) Human Resources: None
- e) Human Rights: None
- f) Other: [e.g. Children's Act 2004] None

7. Alignment to Council Priorities

- 7.1 Building Safer and Stronger Communities & Prosperous Communities

8. Ward/Community Affected

8.1 All

Background Papers

Home Office Guidance: Sexual Entertainment Venues (March 2010)

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Key Decision Status (Executive Decisions only): Not applicable