

# WIRRAL COUNCIL

## LICENSING HEALTH AND SAFETY AND GENERAL PURPOSES COMMITTEE

10 JANUARY 2011

### LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

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#### 1.0 EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to seek the approval of Members to the proposed adoption of the amendments to Schedule 3 of The Local Government (Miscellaneous Provisions) Act 1982 made by Section 27 paragraph 2(2) of Schedule 3 to the Policing and Crime Act 2009, in order that it may be recommended to Council for final approval on the 14 February 2011 and for the provision to come into force on the 1 April 2011. Approval is also sought to recommend to Council that any application under the above amended legislation be delegated to this Committee for determination.

#### 2.0 BACKGROUND

- 2.1 The Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 allows the Council to control by way of its licensing regime, sex establishments in the form of sex cinemas and sex shops. This was adopted by Wirral Council on 6 October 1982 and came into force on 8 November 1982.
- 2.2 Section 27 of The Policing Crime Act 2009 introduces a new category of sex establishment called 'sexual entertainment venue' which allows local authorities to regulate lap dancing clubs and similar venues under Schedule 3 of The Local Government (Miscellaneous Provisions) Act 1982 and gives local authorities more powers to control the number and location of these type of premises.
- 2.3 Paragraph 2A of Schedule 3 as inserted by Section 27 of the 2009 Act sets out the meaning of a 'sexual entertainment venue' and 'relevant entertainment'.
- 2.4 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'.
- 2.5 The meaning of 'relevant entertainment' is "any live performance or 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 an audience". An audience can consist of just one person.
- 2.6 The definition of relevant entertainment can include the following:

Lap Dancing  
Pole Dancing  
Table Dancing  
Strip Shows

Peep Shows  
Live Sex Shows

- 2.7 Decisions as to whether a premises should be licensed as a sexual entertainment venue will depend on the content of the entertainment provided.
- 2.8 Paragraph 2A(3) of Schedule 3 sets out those premises that are not classed as sexual entertainment venues for the purpose of the legislation. These are:
- (i) Sex Shops and Sex Cinemas (which are separately defined in Schedule 3 to the 1982 Act)
  - (ii) Premises that provide relevant entertainment on an infrequent basis. These are defined as premises where
    - a) no relevant entertainment has been provided on more than 11 occasions within the last 12 month period
    - b) no such occasion has begun within a period of one month beginning with the end of the previous occasion and
    - c) no such occasion has lasted longer than 24 hours
- 2.9 Premises that provide relevant entertainment on an infrequent basis will continue to be regulated under The Licensing Act 2003 insofar as they provide regulated entertainment under the Act.
- 2.10 Schedule 7 to the 2009 Act amends The Licensing Act 2003 to ensure that premises for which a sexual entertainment licence is required do not also require a Premises Licence unless they also carry on other licensable activities such as the supply of alcohol. Premises which fall under the exemption created for infrequent entertainment, as referred to in paragraph 2.8 above, do not require a sexual entertainment venue licence but will need an appropriate authorisation under The Licensing Act 2003, for example to cover the performance of dance. The exemption from requirements of The Licensing Act 2003 for live music or the playing of recorded music at venues that are licensed as sexual entertainment venues does not apply to such venues.
- 2.11 The powers provided by Section 7 of the 2009 Act are not mandatory and will only apply where they are adopted by local authorities. If the provisions are adopted they will allow the Council potentially wider grounds, than permitted under The Licensing Act 2003, upon which to consider an application. The provisions also enable local people to have a say on the regulation of these type of premises.
- 2.12 Should Members resolve to adopt the amendments to Schedule 3 of The Local Government (Miscellaneous Provisions) Act 1982 made by Section 27 paragraph 2(2) of Schedule 3 to the Policing and Crime Act 2009 a 'transitional period' will come into effect once the adoption process has been completed.
- 2.13 The procedure for local authorities to adopt amendments made by Section 27 of the 2009 Act is set out in Section 2 of The Local Government (Miscellaneous Provision Act) 1982. Firstly the local authority must pass a resolution specifying that the amendments shall apply and the day on which they shall come into force. The specified day must be one month after the day on which the resolution was passed.

- 2.14 The local authority shall publish a notice that they have passed the resolution for two consecutive weeks in a local newspaper. The first publication shall not be later than 28 days before the day specified in the resolution for the provisions to come into force. It is therefore proposed that the specified date should be 1 April 2011. As stated above this will mark the start of a 'transition period'.
- 2.15 The 'transition period' will last for 12 months beginning with the specified date for the amendment to come into force. Six months following the 1<sup>st</sup> appointed day will be known as the 2<sup>nd</sup> appointed day and the day on which the transitional period ends will be known as the 3<sup>rd</sup> appointed day.
- 2.16 There is currently one premises licensed as a sex shop in Wirral, located at 4 Marion Street Birkenhead, known as Scandals. The transitional period will have no effect on these premises.
- 2.17 There are currently no known premises in Wirral providing entertainment within the definition of a 'sexual entertainment venue' and therefore no premises currently licensed that would have to take any action during the transition period. The transition period will however, be relevant to any new applications received on or after the 1<sup>st</sup> appointed day as this triggers processes that have to be followed during this period of time.
- 2.18 In considering the application for Scandals on 23 July 2001 Members of this Committee also resolved that the number of sex establishments appropriate for Central Birkenhead be one. Other than this resolution there is no current policy in place relating to sex establishments.
- 2.19 Upon resolving to adopt the amendments to Schedule 3 of The Local Government (Miscellaneous Provisions) Act 1982 Members may wish to review the resolution made in 2001 and have in place appropriate policies to deal with applications for both sex establishments and sexual entertainment venues. Should this be the case a further report will be brought to this Committee.

### **3.0 FINANCIAL & STAFFING IMPLICATIONS**

- 3.1 There are no financial implications arising out of this report.

### **4.0 EQUAL OPPORTUNITIES IMPLICATIONS**

- 4.1 There are no equal opportunities implications arising out of this report.

### **5.0 ANTI POVERTY IMPLICATIONS**

- 5.1 There are no specific anti poverty implications arising directly out of this report.

### **6.0 SOCIAL INCLUSION IMPLICATIONS**

- 6.1 There are no specific social inclusion implications arising directly out of this report.

### **7.0 LOCAL AGENDA 21 IMPLICATIONS**

7.1 There are no specific Local Agenda 21 implications arising directly out of this report.

## 8.0 **LOCAL MEMBER SUPPORT IMPLICATIONS**

8.1 This report affects the entire Borough.

## 9.0 **COMMUNITY SAFETY IMPLICATIONS**

9.1 There are no community safety implications arising directly out of this report.

## 10.0 **PLANNING IMPLICATIONS**

10.1 There are no planning implications arising out of this report.

## 11.0 **BACKGROUND PAPERS**

11.1 There are no background papers.

## 12.0 **RECOMMENDATION**

12.1 That Members of this committee approve and recommend to Council for final approval at its meeting on the 14 February 2011 the adoption of the amendments to Schedule 3 of The Local Government (Miscellaneous Provisions) Act 1982 made by Section 27 paragraph 2(2) of Schedule 3 to the Policing and Crime Act 2009 in order for the provision to come into force on the 1 April 2011.

12.2 That Members also recommend to Council that any application under the above amended legislation be delegated to this Committee for determination.

This report was prepared by Margaret O'Donnell who can be contacted on 0151 691 8606.