

North East Derbyshire District Council

General Licencing Committee

17 October 2019

Part II of The Local Government (Miscellaneous Provisions) Act 1982 as Amended by Section 27 of The Policing and Crime Act 2009 within the District of North East Derbyshire

Report No LTL/09/19-20/DC/KR of the Licensing Team Leader

This report is public

Purpose of the Report

- To set out the required stages of the legal process to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') and section 27 of the Policing and Crime Act 2009, in order that the licensing authority is able to regulate sex establishments in the North East Derbyshire District.

1 Report Details

- 1.1 Licensing of sex cinemas, sex shops and sexual entertainment venues is governed by Section 2 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Policing and Crime Act 2009 ("the 2009 Act").
- 1.2 All Councils which wish to have the power to licence such establishments are required to adopt Schedule 3 of the 1982 Act and section 27 of the 2009 Act. There is no evidence that North East Derbyshire District Council adopted either the 1982 or the relevant section of the 2009 Act.
- 1.3 It is proposed that, in line with many other District Councils, this District Council formally adopts the legislation and thereafter a draft sex establishment policy would be put before the licensing committee and a period of consultation would follow.
- 1.4 Whilst at the current time there may be no known sex establishments within the District, the Council would be unable to regulate any such establishments in the future unless it adopted the relevant legislation. The formal adoption of the legislation and a policy would mean the Council had powers immediately at its disposal to adequately and fairly address the issue should the need arise.
- 1.5 The 2009 Act amended the 1982 Act to give greater rights to local people to oppose an application for a sex establishment licence. In addition a local

authority can refuse a licence because there is already an appropriate number of sex establishments in an area and/or that a sex establishment would 'conflict' with the character of the area or other premises nearby e.g. schools, places of worship etc. A policy would be able to set out these numbers, and provide further clarity to applicants and local residents alike.

1.6 The procedure for formal adoption of the provisions is set out in full in section 2 of Part II the 1982 Act. The Act can be viewed online at <http://www.legislation.gov.uk/ukpga/1982/30/contents> and a copy can be made available on request to the Legal Services team.

1.7 There are two stages which must be followed:

(1) The Council must pass a resolution under Section 2 of the Local Government (Miscellaneous Provisions) Act 1982 to adopt Schedule 3 of the Act and s.27 of the Policing and Crime Act 2009 and specify the day the provisions are to come into effect.

(Appropriate wording for the Adoption Resolution is set out in Annexe 1).

(2) After Resolution but prior to it **coming into force** the Council is required to publish, for two consecutive weeks, in a local newspaper circulating in our area, a notice that they have passed a resolution, the first publication not being later than 28 days before the date specified in the resolution for the coming into force of the Council's powers.

(The proposed wording of the notice is shown in Annexe 2).

2 Conclusions and Reasons for Recommendation

2.1 It is recommended that the Council adopts the 1982 Act as amended by the 2009 Act in order that the Council could regulate sex establishments. The Licencing Team Leader's view in this regard is supported by the Legal Services team. The power to regulate such establishments is consistent with the Council's general aims to strengthen community cohesion and civic pride within the District whilst seeking to lower crime, fear of crime and anti-social behaviour in the district.

3 Consultation and Equality Impact

3.1 Following Resolution, in accordance with best practice guidance and in the interests of transparency, public consultation should be undertaken on a draft policy.

4 Alternative Options and Reasons for Rejection

4.1 If the relevant legislation is not adopted, the Council will continue to have no licencing regime in relation sex establishments, no controls of the same and in the event of complaints or incidents relating to them, there is a risk that the Council's reputation for protecting the interests of its residents could be called

into question, particularly given that the majority of authorities have adopted the relevant legislation.

5 Implications

5.1 Finance and Risk Implications

5.1.1 The cost implication relating to the publication of statutory notices can be met from the existing licensing budget.

5.2 Legal Implications including Data Protection

5.2.1 Having a formal resolution to adopt the Act, and evidence of the notice is essential to ensure that we have complied with the requirements for Adoption of the Act and to enable enforcement action.

5.3 Human Resources Implications

5.3.1 None.

6 Recommendations

6.1 That Members of the Licensing Committee approve that:

1. Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, 'Control of Sex Establishments' shall apply to the district of North East Derbyshire.
2. This matter be referred to Full Council on 1 November 2019 to pass a resolution under Section 2 of the Local Government (Miscellaneous Provisions) Act 1982 to adopt Schedule 3 of the Act as amended by section 27 of the Policing and Crime Act to come into force on 5 December 2019.
3. The General Licensing Sub Committee be given responsibility to determine applications for Sex Establishments including sexual entertainment venues, sex shops and sex cinemas) under the Local Government (Miscellaneous Provisions) Act 1982 (as amended) where representations have been received and not withdrawn.
4. A draft policy on sex establishments shall be prepared for consultation within the district to clarify the Council's policy on:
 - i. "relevant locality" and "appropriate number";
 - ii. conditions under which sex establishments must operate; and
 - iii. an appropriate fee for applications.
5. The draft policy shall be submitted to a future Licensing Committee for Members' approval for a full 6 week consultation period.

7 Decision Information

<p>Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: <i>BDC: Revenue - £75,000</i> <input type="checkbox"/> <i>Capital - £150,000</i> <input type="checkbox"/> <i>NEDDC: Revenue - £100,000</i> <input type="checkbox"/> <i>Capital - £250,000</i> <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p>	No
<p>Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)</p>	No
<p>Has the relevant Portfolio Holder been informed</p>	Yes
<p>Links to Corporate Plan priorities or Policy Framework</p>	All

8 Document Information

Appendix No	Title
1.	Appropriate wording for the Adoption Resolution is set out in Annexe 1.
2.	Appropriate wording for the press notice is set out in Annexe 2.
<p>Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)</p>	
Home Office Sexual Entertainment Venues Guidance for England and Wales 2010	
Report Author	Contact Number
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Appendix 1

ADOPTION RESOLUTION

RESOLVED

- (1) The provisions of Part II and Schedule 3 of the Local Government (Miscellaneous Provisions) Act and section 27 of the Policing and Crime Act 2009 are to apply to the whole area of the Council on and after the appointed day;
- (2) The appointed day for the purposes of this resolution shall be the of 2019 (being not before 28 days after publication of the first notice that this Council has passed this resolution in a local newspaper circulating in this Council's area);
- (3) [All powers, duties and provisions in the Council Constitution relating to Part II of the Local Government (Miscellaneous Provisions) Act 1982 shall apply on and after the appointed day.]

Appendix 2

ADOPTION RESOLUTION

RESOLVED

- (4) The provisions of Part II of the Local Government (Miscellaneous Provisions) Act are to apply to the whole area of the Council on and after the appointed day;
- (5) The appointed day for the purposes of this resolution shall be the of
2019 (being not before 28 days after publication of the first notice that this Council has passed this resolution in a local newspaper circulating in this Council's area);
- (6)** [All powers, duties and provisions in the Council Constitution relating to Part II of the Local Government (Miscellaneous Provisions) Act 1982 shall apply on and after the appointed day.]