

	<p>REPORT TO CABINET ON 15 FEBRUARY 2011, LICENSING COMMITTEE ON 21 FEBRUARY 2011, AND COUNCIL TO BE HELD ON 25 FEBRUARY 2011</p>
	<p>Key Decision YES</p> <p>Forward Plan Ref No N/A</p>
<p>Corporate Priority Developing Safer & Stronger Communities</p>	<p>Cabinet Portfolio Holder Cllr. Jonathan Dixon</p>

**JOINT REPORT OF: HEAD OF LEGAL AND SUPPORT SERVICES
AND HEAD OF ENVIRONMENTAL SERVICES – 11/114**

WARDS AFFECTED: All

**SUBJECT: LICENSING: SCHEDULE 3 OF THE LOCAL
GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT
1982**

RECOMMENDATION (S):

It is proposed that it be recommended to Council that:

1. Council agree to adopt the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009 and to undertake the regulation of lap dancing establishments under the Local Government (Miscellaneous Provisions) Act 1982 with effect from 1 April 2011.
2. Re-affirm adoption of the Local Government (Miscellaneous Provisions) Act 1982 insofar as it relates to the regulation of licensable activities under that act, namely street trading, refreshment premises and acupuncture, tattooing, ear-piercing and electrolysis.
3. Subject to such decision as may be made by Council in relation to the regulation of street trading the Council publish notice of confirming the decisions of Council in relation to the adoption of the provisions of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) in the Scarborough Evening News and the Whitby Gazette on two consecutive weeks in accordance with the requirements within the legislation.

REASON FOR RECOMMENDATION (S):

To provide the Council with the wider powers available under the provisions of the LG(MP) Act 1982 to regulate lap dancing establishments.

1. INTRODUCTION

- 1.1 On 25 October 1982 the Council adopted the Local Government (Miscellaneous Provisions) Act 1982 through its Policy and Resources Committee and was introduced with effect from 1 January 1983.
- 1.2 The Act provided a range of powers to local authorities for the regulation and control of licensable activities. Those activities include public entertainment, the control of sex establishments, street trading, the control of refreshment premises, the control of acupuncture, tattooing, ear-piercing and electrolysis premises.
- 1.3 The introduction of the Licensing Act 2003 provided for the regulation of entertainment premises and to the present lap dancing establishments have been regulated under this Act. However, the Council continues to regulate street trading, refreshment premises and acupuncture, tattooing, ear-piercing and electrolysis through the LG(MP) Act 1982.
- 1.4 Section 27 of the Policing and Crime Act 2009 amended the Local Government (Miscellaneous Provisions) Act 1982 to enable the regulation of lap dancing under the Local Government (Miscellaneous Provisions) Act 1982 in authorities which adopt those regulations.
- 1.5 This report is prepared to support the proposal that the Council adopt the provisions of the Act and consequently amend the arrangements for regulation of lap dancing pursuant to the Licensing Act 2003 to include use of the powers pursuant to the Local Government (Miscellaneous Provisions) Act 1982.
- 1.6 Any adopting the provisions of the Miscellaneous Provisions Act is required to publish a notice 28 days before the provisions come into effect.
- 1.7 Given:
 - (a) the passage of time since 1982;
 - (b) the changes in Licensing law since that time;
 - (c) the separate report on the agenda from the Corporate Strategy Overview and Scrutiny Committee recommending changes to the Street Trading regime,it is also considered prudent to make clear through publication of a comprehensive notice those parts of the 1982 Act which the Council enforce through the Local Government (Miscellaneous Provisions) Act.

2. CORPORATE AIMS/PRIORITIES AND THE COMMUNITY PLAN

- 2.1 The proposed decision supports the Corporate Objectives and the Community Plan in particular; 'Developing Safer & Stronger Communities' and also 'Creating Quality Environments'.

3. BACKGROUND AND ISSUES

- 3.1 Lap dancing premises are currently licensed under the provisions of the Licensing Act 2003 to provide regulated entertainment involving music and dancing. In order to enable tightening of the controls on such venues the government introduced as part of the Policing and Crime Act 2009 provisions which enable lap dancing to be regulated under the wider powers available under the Local Government (Miscellaneous Provisions) Act 1982 in line with the other types of Sex Establishments (Sex Shops and Sex Cinemas) and to recognise that local people have legitimate concerns about where such premises are located.
- 3.2 It is expected that the definition of relevant entertainment would apply to the following forms of entertainment as they are commonly understood:
- Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows
 - Live sex shows
- 3.3 The change will enable an Authority to judge the application on a greater range of issues than permitted by the licensing objectives of the Licensing Act. The provisions will not however come into force until they have been adopted by the Authority. It is necessary for the Council to formally adopt the provisions in accordance with the statutory procedure.
- 3.4 Currently, lap dancing premises only require a Premises Licence under the Licensing Act 2003 to authorise the dancing element, the music and the alcohol for example. No special provisions are made in the 2003 Act for lap dancing or other similar venues.
- 3.5 The premises licence must be granted in the form applied for without any requirement for a licensing hearing, unless relevant representations are made to the Authority. Where no objections are received conditions are limited to any conditions offered by the applicant in the Operating Schedule and the Mandatory Conditions of the Licensing Act 2003.
- 3.6 The adoption of the new provisions will provide the Authority with greater control over premises wishing to provide entertainments involving nudity in the interests of public protection.

4. CONSULTATION

- 4.1 Members of the Licensing Committee have had the benefit of a briefing upon the new provisions.

5. ASSESSMENT

- 5.1 Sex Establishment Licences are issued under the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. Currently there are no premises licensed as sex establishments operating in the Borough of Scarborough.
- 5.2 Where Lap Dancing premises have been licensed in the Borough they have been licensed under the provisions of the Licensing Act 2003 to provide regulated entertainment involving music and dancing. The Licensing Committee has delegated authority to exercise the Council's powers under the Act.
- 5.3 Section 25 of the Policing and Crime Act 2009 enables the Council to undertake the licensing of Sexual Entertainment under the Local Government (Miscellaneous Provisions) Act 1982. The change will enable an Authority to judge the application on a greater range of issues than permitted by the licensing objectives of the Licensing Act.
- 5.4 If the Council resolves to adopt the amendment to the Act, it will provide the Authority with the same powers to consider the licensing of "Sexual Entertainment Venues" (e.g lap dancing clubs) as the Authority currently has for the other categories of licensed sex establishment (sex shops and sex cinemas).
- 5.5 A number of advantages arise from adopting the wider powers available under the 1982 Act. These include the power to impose conditions, for example relating to opening hours, advertising and the visibility of interiors to passers by. The Authority will also be able to refuse to grant or renew a licence on the grounds that such an establishment would be inappropriate having regard to the character of the area and the use of other premises in the area (e.g. local schools). There are, in addition, a number of other grounds for the refusal of an application.
- 5.6 In summary the amendments to Schedule 3 to the 1982 Act will:
- prevent a licence being granted by default (ie in the absence of any objection);
 - 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 licences 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.

- charge an appropriate level of fees to cover the cost of processing the application, administration, inspection and enforcement.

5.7 Having regard to the wider powers available under the 1982 Act it is recommended that Full Council resolves to adopt the 1982 Act provisions as amended.

5.8 For the avoidance of any confusion as to what is regulated pursuant to the 1982 Act it is also recommended that Council takes the opportunity to confirm that its continued agreement to the regulation of street trading, refreshment premises and acupuncture, tattooing, ear-piercing and electrolysis pursuant to the Local Government (Miscellaneous Provisions) Act 1982.

6. IMPLICATIONS

6.1 The following implications have been identified:

a) Financial

- (i) If the Authority adopts the amendment to the Act, specific fees can be applied on a cost recovery basis for Sex Establishments. A further report on fees will be submitted. These fees are in addition to any fees connected with obtaining any Premises Licence under the 2003 Act that may or may not be required.
- (ii) If the Authority resolves not to adopt the amendment to the Act on or before 6 April 2011 there is a legislative duty to conduct a full borough wide consultation exercise (“as soon as is reasonably practicable”) which is likely to be extremely costly in both time and staff resources.

b) Legal

Council adopted the original form of the Local Government (Miscellaneous Provisions) Act 1982 on 25 October 1982 for introduction on 1 January 1983. Licensing law has changed significantly since that time, in particular as a consequence of the introduction of the Licensing Act 2003. It is considered prudent to make clear in notice published consequent to the decision of Council what is regulated pursuant to the LG(MP) Act 1982.

c) Policy

If the Authority adopts the amendment to the 1982 Act it is proposed to introduce revised guidance relating to: ‘Sex Establishment Licensing Procedure and Conditions.’ This guidance will include the new category of licensed Sex Establishment, the ‘Sexual Entertainment Venue’, and will set out the licensing conditions associated with this. A Report will also be produced providing the opportunity for determination of a new fee structure.

7. ACTION PLAN

- 7.1 The Member recommendation as to whether or not to adopt the amendment to the Act shall be referred to Full Council.
- 7.2 If Full Council determines to adopt the new provisions, notice is required to publish notice of its intention to introduce the amendment within the legislation.
- 7.3 The Licensing Committee will subsequently receive a further Committee Report to be entitled 'Sex Establishment Licensing Procedure and Conditions' which Officers are required to develop. This document will be subject to a consultation exercise with key stakeholders and will involve the setting of fees for these venue types. The fee structure and content of this guidance document will be the subject of this Committee Report due to be presented to Members at the beginning of summer 2011.

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Background Papers:

Please give details of all publicly accessible (non private) background papers applicable to the report.

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT ALAN FANE ON 01723 384304 e-mail alan.fane@scarborough.gov.uk