

Bath & North East Somerset Council	
MEETING:	Council
MEETING DATE:	13 September 2012
TITLE:	Formal procedures for the adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982
WARD:	ALL
AN OPEN PUBLIC ITEM	
<p>List of attachments to this report:</p> <p>Annex A: Outline of report to Council on the 19th July 2012 and Minutes of the meeting.</p> <p>Annex B: Example formal Notice for the local newspapers.</p> <p>Annex C: Proposed timeline</p>	

1 THE ISSUE

1.1 Following the adoption, by Council, of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 in relation to Sexual Entertainment Venues. This report is to agree the date upon which the Schedule takes effect and transition dates together with authorisation for the Divisional Director for Environmental Services to publish the formal notices in the local papers and to approve the fee for a licence.

2 RECOMMENDATION

Council is asked to agree that:

2.1 Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 shall take effect in the boundaries of Bath and North East Somerset Council as from 25th October 2012 and that the Divisional Director for Environmental Services be authorised to publish the requisite notice about the passing of the resolution.

2.2 The first appointed day shall be the 25th October 2012; the second appointed day shall be the 25th April 2013 and the third appointed day the 25th October 2013.

2.3 An application fee of £3,995 is approved for the grant, renewal or transfer of a licence under schedule 3 of the above Act.

2.4 The conditions contained in the adopted policy for Sexual Entertainment Venues are to be attached to each licence.

3 FINANCIAL IMPLICATIONS

3.1 The application fee of £3,995 is to ensure that the Council recovers the whole cost of all the administrative processes required to process an application for the grant, renewal or transfer of a licence. The total forecast annual income to the licencing department is c£8k.

4 CORPORATE OBJECTIVES

- Creating neighbourhoods where people are proud to live
- Building a stronger economy

5 THE REPORT

5.1 On the 19th July 2012 the Council determined to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, the Council also determined to adopt a policy for Sexual Entertainment Venues. A copy of the report to Council and the minutes are provided in Annex A.

5.2 As part of this process the Council now needs to resolve a date when the new provisions come into force across the district. The proposed date is the 25th October 2012.

5.3 Prior to this date the Council is required to place a public notice in local papers for two consecutive weeks prior to the effective date. A copy of the proposed notice is provided in Annex B.

5.4 Following on from the effective date and as required by Regulations the Council also need to approve the first, second and third Appointed dates. These Appointed dates relate to the procedure whereby the Authority process applications and the dates are provided in Annex C.

5.5 The Council also need to determine a fee to cover the cost of the grant, renewal and transfer of a licence. The current fee for a Sex Establishment licence is £3,995; this fee has been calculated taking into account the recovery of all the administrative costs in processing a licence including officer time and the democratic process.

6 RISK MANAGEMENT

6.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

7 EQUALITIES

7.1 An Equalities Impact Assessment has not been completed for this report as this is an extension of the report to Council in July 2012 where the Council's requirements regarding addressing equalities issues were addressed and this report is following the formal procedures listed in the Local Government (Miscellaneous Provisions) Act 1982

8 CONSULTATION

- 8.1 Cabinet Member; Other B&NES Services; Local Residents; Community Interest Groups; Section 151 Finance Officer; Chief Executive; Monitoring Officer.
- 8.2 Consultation on whether or not to adopt the Schedule and also the proposed policy was carried out for the report to Council in July 2012. This report is following the legal requirements to adopt the legislation for the district and the public will be informed of the relevant dates via public notices in local papers published for two consecutive weeks (as required by the Act).

9 ISSUES TO CONSIDER IN REACHING THE DECISION

- 9.1 Social Inclusion; Human Rights; Legal requirements as specified in the Local Government (Miscellaneous Provisions) Act 1982.

10 ADVICE SOUGHT

- 10.1 The Council's Monitoring Officer (Divisional Director – Legal and Democratic Services) and Section 151 Officer (Divisional Director - Finance) have had the opportunity to input to this report and have cleared it for publication.

Contact person	Andrew Jones, Environmental Monitoring and Licensing Manager Tel: 01225 477557
Background papers	Home Office Guidance for England and Wales – Sexual Entertainment Venues.
Please contact the report author if you need to access this report in an alternative format	

FROM
COUNCIL
THURSDAY
19TH JULY 2012

**ADOPTION OF NEW POWERS UNDER SCHEDULE 3 TO THE LOCAL GOVERNMENT
(MISCELLANEOUS PROVISIONS) ACT 1982**  PDF 182 KB

This report invites Council to consider the written submissions and points raised by those involved in the consultation, the content of the Sexual Entertainment Venue policy and to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

Minutes:

The Council considered a report inviting them to consider the written submissions and points raised by those involved in the consultation on the Sexual Entertainment Venue policy, the content of the policy and to adopt legislation to enable greater regulatory control.

In introducing the report, Councillor Dixon pointed out 2 small amendments that would be made to the final version; amending the date in the title to read '2012' and including a condition for 2 SIA registered door staff at premises.

On a motion from Councillor David Dixon, seconded by Councillor Gerry Curran, it was

RESOLVED

1. To adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982;
2. To adopt the Sexual Entertainment Venue policy, provided in Annex B; and
3. To delegate authority to the Licensing Committee to determine applications for new licences.

Example Formal Notice for Local Newspapers

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 AS AMENDED BY THE POLICING AND CRIME ACT 2009 CONTROL OF SEX ESTABLISHMENTS

NOTICE IS HEREBY GIVEN, under Section 2(2) of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009 ("The Act") that Bath and North East Somerset Council resolved on XX XXXXXXXX 2012 to bring into force from XXth XXXXXXXX 2012 Schedule 3 to the Act as amended by section 27 of the Policing and Crime Act which provides for the control of sexual entertainment venues.

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 entertainer. Relevant entertainment is defined as 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 (whether by verbal or other means).

From XXth XXXXXXXX 2012 it becomes an offence, punishable on summary conviction by a fine not exceeding £20,000 to use any premises including any vehicle, vessel or stall in Bath and North East Somerset Council as a sexual entertainment venue unless a licence is in force under the Schedule in respect of the premises. Transitional provisions exist for the period from XXth XXXXXXXX 2012 to XXth XXXXXXXX 2013 for existing operators in that for those premises currently operating as a sexual entertainment venue, that use may continue until the application is determined including any appeal provisions.

A licence shall not be granted to: (a) A person under the age of 18; (b) A person who has been disqualified from holding such a licence; (c) A person, other than a body corporate, who is not resident in an EEA state, or was not so resident throughout the period of six months immediately preceding the date of the application; (d) A body corporate which is not incorporated in an EEA state. No appeal, other than on question of fact, exists against a refusal on any of these grounds.

An application may be refused if: (a) The applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason; (b) The business to which the application relates would be managed by, or carried on for the benefit of a person other than the applicant, who would be refused a licence if he made the application himself; (c) The number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number (which may be nil) which the authority consider is appropriate for that locality; (d) It would be inappropriate to grant the application, having regard to: (i) The character of the relevant locality; (ii) The use to which

any premises in the vicinity are put, or (iii) The layout, character or condition of the premises concerned. An appeal lies to the Magistrates' Court and then to the Crown Court against a refusal on grounds (a) or (b), but no appeal lies against a refusal on grounds (c) or (d).

The provisions of Schedule 3 of the Act provide an opportunity for objections to be made to the grant, renewal, variation and transfer of licences. Licences may be issued for not more than a year and may be subject to such terms, conditions and restrictions as may be specified. Provision is made in the Schedule for the renewal, transfer, revocation and cancellation of licences and for the variation of terms, conditions or restrictions.

Licensed premises may be inspected at any reasonable time by a Constable or an authorised officer of the Council. Those parts of Schedule 3 of the Act that provide that no person in Bath and North East Somerset shall use any premises, vehicle, vessel or stall as a sex cinema or sex shop except under and in accordance with a licence issued by the Council, have previously been adopted by resolution of the Council on 25th October 1993 and continue to have effect.

Dated: XXth XXXXXXXX 2012.

Vernon Hitchman, Head of Legal Services.

Proposed Time Line

Council Meeting

13th September 20121st Appointed day25th October 2012

The day on which the SEV regime comes into force in a local authority area and the beginning of the transitional period.

2nd Appointed day25th April 2013

The day 6 months after the 1st appointed day.

3rd Appointed day25th October 2013

The day 6 months after the 2nd appointed day and the end of the transitional period.