

**Committee: LICENSING**

**Agenda Item**

**Date: June 9, 2010**

**6**

**Title: SEX ESTABLISHMENTS**

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Item for decision

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## Summary

1. This report is to inform members of a recent change in the law relating to sex establishments and to recommend to members that they adopt the amended legislation.

## Recommendations

2. That members recommend to Full Council that schedule 3 Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 Policing and Crime Act 2009 is to apply to the district of Uttlesford.

## Background Papers

3. None.

## Impact

- 4.

Communication/Consultation	There is no obligation to consult providing a resolution is passed before the 6 April 2011.
Community Safety	None.
Equalities	None.
Finance	If the council does not resolve to adopt the amended legislation prior to the 6 April 2011 but subsequently wish to do so expense will be incurred in both advertising and consultation.
Health and Safety	None.
Human Rights/Legal Implications	Human rights – under Sch 1 Part II Article 1 Human Rights Act 1998 every natural or legal person is entitled to the peaceful enjoyment of his possessions. Requiring premises to be licensed to be used for a particular purpose undoubtedly interferes

	<p>with that right. However, the Article permits the enforcement of laws to control the use of property in the general interest. Members may well consider that the licensing of sex entertainment venues falls within this exemption.</p> <p>Legal - as set out in the body of this report.</p>
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

## Situation

5. The Local Government (Miscellaneous Provisions) Act 1982 enables local authorities to adopt schedule 3 of that Act which regulates sex establishments. "Sex establishments" are defined as sex cinemas or sex shops. The provisions of the Act are not automatic and only apply where the provisions of the Act have been adopted by a local authority. This authority has adopted the legislation as a result of which it is an offence for anyone to operate a sex establishment in Uttlesford without a licence from the council.
6. Prior to the Licensing Act 2003 public entertainment licences were required for entertainment venues such as lap dancing clubs.
7. The Licensing Act 2003 abolished public entertainment licences. What was formerly termed public entertainment is now licensable under the 2003 Act as regulated entertainment. This limits the ability of local authorities to control sex entertainment venues such as lap dancing and strip tease clubs.
8. The 2009 Act now extends schedule 3 of the 1982 Act to include sex entertainment establishments if the local authority resolve to adopt schedule 3 as amended. Adoption has two significant advantages. Firstly, under the Licensing Act 2003 it is only possible to impose conditions on a licence where representations are made or upon a review of the licence. It follows therefore that unless there is a condition preventing or restricting adult entertainment which was offered in the licence application or imposed following a hearing there are no restrictions on licensed premises within the district providing sex entertainment. Further even when conditions are imposed, they may only relate to the licensing objectives of prevention of crime and disorder; public safety, prevention of public nuisance and the protection of children from harm. Such conditions must be proportionate to secure the adherence to those objectives.
9. Under schedule 3 of the 1982 Act there is a much wider power to impose conditions. In particular the council may make regulations prescribing standard conditions applicable to licences which may include the hours of opening and closing, displays or advertisements on or in the establishments,

the visibility of the interior to passers by and the name under which the business is carried on. The council is also permitted to refuse to grant a licence without representations being made on various grounds including that the number of sex establishments in the relevant locality at the time of the application is made is equal to or exceeds the number at which the authority consider is appropriate for that locality (and for that purpose the number may be zero) or that the grant of a licence would be inappropriate having regard to the character of the locality, the use to which any premises in the vicinity are put or because of the layout character or condition of the premises.

10. Unlike the Licensing Act 2003 where fees are prescribed, the local authority may charge a reasonable fee for granting licences under schedule 3 of the 1982 Act. Such fees would be calculated on a cost recovery basis.
11. In the transitional period running from the 6 April 2010 to the 5 April 2011 local authorities may adopt schedule 3 of the 1982 Act as amended without the need to engage in any consultation or to advertise the fact that the legislation is being adopted. Thereafter there is a statutory consultation and an advertisement process which must be adhered to.

## Risk Analysis

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Risk	Likelihood	Impact	Mitigating actions
Premises are used for sexual entertainment governed only by the provisions of the Licensing Act 2003.	2, such establishments are rarely found in rural areas.	3, whilst applications must be considered on merit members may well consider that Uttlesford is not an appropriate location for such entertainment venues.	If members decide to adopt the amended legislation members may wish officers to work on a suite of standard conditions which would be imposed on the grant of any such licence.

- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.