

Committee: **Licensing Committee**

Date: **Friday 4 March 2011**

Time: **10.00 am**

Venue **Bodicote House, Bodicote, Banbury, Oxon OX15 4AA**

Membership

Councillor Kieron Mallon (Chairman)	Councillor Tony Ilott (Vice-Chairman)
Councillor Fred Blackwell	Councillor Nick Cotter
Councillor Michael Gibbard	Councillor Timothy Hallchurch MBE
Councillor P A O'Sullivan	Councillor George Parish
Councillor G A Reynolds	Councillor Lawrie Stratford
Councillor Rose Stratford	Councillor Douglas Webb

AGENDA

1. Apologies for Absence and Notification of Substitute Members

2. Declarations of Interest

Members are asked to declare any interests and the nature of that interest which they may have in any of the items under consideration at this meeting.

3. Petitions and Requests to Address the Meeting

The Chairman to report on any requests to submit petitions or to address the meeting.

4. Urgent Business

The Chairman to advise whether they have agreed to any item of urgent business being admitted to the agenda.

5. **Minutes** (Pages 1 - 4)

To confirm as a correct record the Minutes of the meeting of the Committee held on 9 December 2010.

6. **Minutes of meeting Tuesday 14 December 2010 of Licensing Sub Committee**
(Pages 5 - 8)

To note the minutes of the Licensing Sub Committee meeting held on 14 December 2010.

7. **Minutes of meeting Tuesday 14 December 2010 of Licensing Sub Committee**
(Pages 9 - 12)

To note the minutes of the Licensing Sub Committee meeting held on 14 December 2010.

8. **Minutes of meeting Tuesday 15 February 2011 of Licensing Sub Committee**
(Pages 13 - 16)

To note the minutes of the Licensing Sub Committee meeting held on 15 February 2011.

9. **Control of Sexual Entertainment Venues** (Pages 17 - 60)

Report of Head of Safer Communities, Urban and Rural Services

Summary

The purpose of this report is to outline the changes made in Section 27 of the Policing and Crime Act 2009 amending Schedule 3 of the Local Government (Miscellaneous Provisions) Act, 1982 which enable local authorities to be able to determine applications for sexual entertainment venues.

Recommendations

The Licensing Committee is recommended:

- (1) To agree that, in accordance with Section 2 (1) of the Local Government (Miscellaneous Provisions) Act, 1982, the Council resolves that Schedule 3 of that Act as amended by Section 27 of the Policing and Crime Act, 2009, shall apply to the District of Cherwell with effect from 4 March 2011.
- (2) To agree that the proposed conditions governing the operation of Sexual Entertainment Venues as set out at Appendix A be approved and attached to all licences issued by the Council.
- (3) To authorise the Head of Urban & Rural Services in consultation with the Chairman of the Licensing Committee, to make any minor alterations to the setting of fees in relation to the processing of applications for sexual entertainment venues

Councillors are requested to collect any post from their pigeon hole in the Members Room at the end of the meeting.

Information about this Meeting

Apologies for Absence

Apologies for absence should be notified to democracy@cherwell-dc.gov.uk or (01295) 221589 prior to the start of the meeting.

Declarations of Interest

Members are asked to declare interests at item 2 on the agenda or if arriving after the start of the meeting, at the start of the relevant agenda item. The definition of personal and prejudicial interests is set out in the constitution. The Democratic Support Officer will have a copy available for inspection at all meetings.

Personal Interest: Members must declare the interest but may stay in the room, debate and vote on the issue.

Prejudicial Interest: Member must withdraw from the meeting room and should inform the Chairman accordingly.

With the exception of the some very specific circumstances, a Member with a personal interest also has a prejudicial interest if it is one which a Member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest.

Local Government and Finance Act 1992 – Budget Setting, Contracts & Supplementary Estimates

Members are reminded that any member who is two months in arrears with Council Tax must declare the fact and may speak but not vote on any decision which involves budget setting, extending or agreeing contracts or incurring expenditure not provided for in the agreed budget for a given year and could affect calculations on the level of Council Tax.

Evacuation Procedure

When the continuous alarm sounds you must evacuate the building by the nearest available fire exit. Members and visitors should proceed to the car park as directed by Democratic Services staff and await further instructions.

Access to Meetings

If you have any special requirements (such as a large print version of these papers or special access facilities) please contact the officer named below, giving as much notice as possible before the meeting.

Mobile Phones

Please ensure that any device is switched to silent operation or switched off.

Queries Regarding this Agenda

Please contact Natasha Clark Legal and Democratic Services natasha.clark@cherwell-dc.gov.uk (01295) 221589

Ian Davies
Interim Chief Executive

Published on Thursday 24 February 2011

Agenda Item 5

Cherwell District Council

Licensing Committee

Minutes of a meeting of the Licensing Committee held at Bodicote House, Bodicote, Banbury, Oxon OX15 4AA, on 9 December 2010 at 6.30 pm

Present: Councillor Michael Gibbard
Councillor P A O'Sullivan
Councillor G A Reynolds
Councillor Douglas Webb

Apologies for absence: Councillor Kieron Mallon
Councillor Tony Ilott
Councillor Fred Blackwell
Councillor Nick Cotter
Councillor Timothy Hallchurch MBE
Councillor George Parish
Councillor Lawrie Stratford
Councillor Rose Stratford

Officers: Chris Rothwell, Head of Safer Communities, Urban & Rural Services
Claire Bold, Licensing Team Leader
Natasha Barnes, Licensing & Vehicle Parks Manager
Paul Manning, Solicitor
Natasha Clark, Senior Democratic and Scrutiny Officer

3 **Appointment of Chairman**

Resolved

That Councillor Michael Gibbard be appointed Chairman for the meeting.

4 **Declarations of Interest**

There were no declarations of interest.

5 **Petitions and Requests to Address the Meeting**

There were no petitions or requests to address the meeting.

6 **Urgent Business**

There was no urgent business.

7 **Minutes**

The Minutes of the meeting held on 15 December 2009 and 19 May 2010 were agreed as a correct record and signed by the Chairman.

8 **Minutes of meeting Monday 30 November 2009 of Licensing Sub Committee**

The Minutes of the meeting of the Licensing Sub-Committee held on 30 November 2009 were noted.

9 **Minutes of meeting Friday 15 January 2010 of Licensing Sub Committee**

The Minutes of the meeting of the Licensing Sub-Committee held on 15 January 2010 were noted.

10 **Minutes of meeting Wednesday 24 March 2010 of Licensing Sub Committee**

The Minutes of the meeting of the Licensing Sub-Committee held on 24 March 2010 were noted.

11 **Minutes of meeting Friday 20 August 2010 of Licensing Sub Committee**

The Minutes of the meeting of the Licensing Sub-Committee held on 120 August 2010 were noted.

12 **Minutes of meeting Friday 22 October 2010 of Licensing Sub Committee**

The Minutes of the meeting of the Licensing Sub-Committee held on 22 October 2010 were noted.

13 **Licensing Act 2003 Statement of Licensing Policy**

The Committee considered a report of the Head of Safer Communities, Urban and Rural Services which sought final approval of the Statement of Licensing Policy.

The Licensing and Vehicle Parks Manager advised Members that the development and adoption of the Statement of Licensing Policy was a statutory requirement under the Licensing Act 2003. The function of approving the Statement and the subsequent reviews of it are the responsibility of the Licensing Committee in accordance with Cherwell District Councils Constitution and Scheme of Delegation. The current Statement was approved by Full Council for a period of three years on 22 October 2007 and was published on 1 January 2008. Once published the Licensing Authority must review the Statement triennially.

The Committee was advised that a consultation had taken place between 8 September and 15 November 2010. Further to this consultation a number of amendments had been made to the current policy statement. As with the development of the current policy statement the council had liaised with the other district councils in Oxfordshire and had, where appropriate, incorporated amendments suggested as a result of the consultation process.

The Licensing and Vehicle Parks Manager gave an overview of the consultation responses and any resulting proposed amendments. Members asked a number of questions to seek clarity to which answers were duly given.

Resolved

- (1) That the schedule of responses and proposed alterations on the draft statement of licensing policy be noted.
- (2) That the Head of Safer Communities, Urban & Rural Services be delegated, in consultation with the Chairman of the Licensing Committee, to make any minor alterations to the policy should the publication of regulations make expressed policies inconsistent with the regulations (NB – this would only apply up to the point of publication on Wednesday 5 January 2011, thereafter any alterations would be subject to full consultation in accordance with the Licensing Act 2003).

14

Exception to Licensed Vehicle Policy - Head of Service Guidelines

The Committee considered a report of the Head of Safer Communities, Urban and Rural Services which advised Members of the consideration given him when exercising his delegated powers in determining an application for exception to Licensed Vehicle Policy.

Resolved

- (1) That the consideration given by the Head of Safer Communities, Urban and Rural Services when determining applications for exception to Licensed Vehicle Policy be noted and endorsed.

The meeting ended at 7.20 pm

Chairman:

Date:

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Cherwell District Council

Licensing Sub Committee

Minutes of a meeting of the Licensing Sub Committee held at Bodicote House, Bodicote, Banbury, OX15 4AA, on 14 December 2010 at 11.00 am.

5. Constitution of the Sub Committee

The Membership of the Licensing Sub-Committee for this meeting was Councillors Rose Stratford (Chairman), Reynolds and Lawrie Stratford.

6. Premise Licence Determination Hearing

Environment & Community

D Ian Davies BSc (Hons) DMS **Strategic Director Environment & Community**

Chris Rothwell BSc (Hons) FInst SRM **Head of Safer Communities, Urban & Rural Services**

The logo for Cherwell District Council, featuring the word "Cherwell" in a stylized, serif font with a wavy underline.

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*Please ask for **Licensing**
Direct Dial **01295 753744***

*Our ref
Fax **01295 221878***

*Your ref
Email **licensing@cherwell-dc.gov.uk***

16 December 2010

Dear Sir/Madam

Licensing Act 2003 – Grant of Premises Licence Application
The Cock Horse, 98 Warwick Road, Banbury.

I refer to the hearing of the Licensing Sub-Committee on 20 August 2010 at which the Sub-Committee considered an application in respect of the above premises for the variation grant of a premises licence under the Licensing Act 2003. The decision contained in this letter is a decision of the Licensing Authority.

After considering all the representations made at the hearing the Sub-Committee decided as follows:

The Sub-Committee considered all the submissions made by all parties. They noted that the Licensing Act 2003 states that all licensing matters must promote the four Licensing Objectives. Representations were received from Thames Valley Police in relation to the promotion of the prevention of crime and disorder objective. Interested Parties attended and raised objections about potential issues should the licence be granted in relation to the prevention of public nuisance objective. The Sub-Committee found that no evidence of actual incidents relating to this premise were presented to the Committee. The Committee therefore resolved to approve the application with the inclusion of the following conditions:

- Those submitted by the applicant with the application;
- Those agreed between Thames Valley Police and the applicant, and included at page 3 of the agenda; and
- The following additional conditions:

CD36	A CCTV system shall be installed or the existing system maintained which is fit for the purpose. The system will incorporate a camera covering each of the entrance doors and capable of providing an image which is regarded as 'identification standard.'
CD38	The CCTV system shall incorporate a recording facility which shall be retained and stored in a suitable and secure manner for a minimum of one calendar month. A system shall be in place to maintain the integrity of the recorded image and a complete audit trail maintained. The system will comply with the Data Protection Act 1998 and all signs as required will be clearly displayed. The system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity. For premises using a video recording systems, to maintain the quality of the recorded image the cassette tape shall be used on no more than 12 occasions.
CD39	At the time of installation or upgrading of any CCTV system it shall comply with the current and relevant Thames Valley Police guidelines for Standard Minimum Closed Circuit Television Requirements (Issue 1 July 2004).
CD40	The CCTV system must be notified to the Office of the Information Commissioner, www.informationcommissioner.gov.uk
CD41	<i>The positions of all CCTV cameras shall be clearly shown on the deposited plans and any alteration to the system should only be carried out after consultation with Thames Valley Police and the Licensing Authority.</i>
	A chain will be provided to cordon off the rear of the premises and prevent persons from congregating. The chain will be in use after 23.00 hours, every night. The exact positioning and location of the chain will be agreed between the premises licence holder and Thames Valley Police and notified in writing with a plan showing the precise location to the Licensing Authority within 28 days of the licence being issued.

You have a right of appeal against this decision to the Magistrates' Court within 21 days of the date of this letter. The relevant Magistrates Court for the area is;

Northern Oxfordshire Magistrates Court
The Courthouse
Warwick Road
Banbury
Oxon
OX16 2AW

Tel: 01295 452000
Fax: 01295 452050

Finally, if you have any queries regarding this notice, please contact a member of the Licensing Team on 01295 753744.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Claire Bold', written in a cursive style.

Claire Bold
Licensing Team Leader

The meeting ended at 12.25 pm

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Cherwell District Council

Licensing Sub Committee

Minutes of a meeting of the Licensing Sub Committee held at Bodicote House, Bodicote, Banbury, OX15 4AA, on 14 December 2010 at 2.00 pm.

7. **Constitution of the Sub Committee**

The Membership of the Licensing Sub-Committee for this meeting was Councillors Rose Stratford (Chairman), Reynolds and Lawrie Stratford.

8. **Premise Licence Determination Hearing**

Environment & Community

D Ian Davies BSc (Hons) DMS **Strategic Director Environment & Community**

Chris Rothwell BSc (Hons) FInst SRM **Head of Safer Communities, Urban & Rural Services**

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16 December 2010

Dear Sir/Madam

Licensing Act 2003 – Grant of Premises Licence Application

The Lounge, 60-62 Broad Street, Banbury.

I refer to the hearing of the Licensing Sub-Committee on 20 August 2010 at which the Sub-Committee considered an application in respect of the above premises for the variation grant of a premises licence under the Licensing Act 2003. The decision contained in this letter is a decision of the Licensing Authority.

After considering all the representations made at the hearing the Sub-Committee decided as follows:

The Sub-Committee considered all the submissions made by all parties. They noted that the Licensing Act 2003 states that all licensing matters must promote the four Licensing Objectives. Representations were received from Thames Valley Police in relation to the promotion of the prevention of crime and disorder objective. Interested Parties attended and raised objections about potential issues should the licence be granted in relation to the prevention of public nuisance objective. His concerns were primarily that the applicant would not be able to control the conduct of their patrons when they leave the premises. The Sub-Committee noted in particular paragraphs 2.38 and 2.39 of the Home Office Amended Guidance Issued Under Section 182 of the Licensing Act 2003, and concluded that any conditions to be imposed on the licence would need to be focused on measures within the direct control of the licence holder or club. They acknowledged that beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law. The Committee therefore resolved to approve the application with the following amendments and the inclusion of the following conditions:

- Application amended to the provision of regulated entertainment, the supply of alcohol and Late Night Refreshment from Monday to Sunday from 11:00am to 2:30am the following morning.
- Application amended to reflect that no additional hour will be granted to take account of British Summer Time.
- Application amended to 'consumption on the premises' NOT consumption both on and off the premises.
- All conditions submitted by the applicant with the application;
- All conditions agreed between Thames Valley Police and the applicant, namely;

	A Challenge 21 Policy will be in place at the premise at all times. Anyone who looks under the age of 21 will be asked to show photographic ID to prove they are over 18
	The premises shall participate in the local Pubwatch Scheme
CD47	All Door Supervisors working outside the premises or whilst engaged in the dispersal of patrons at the close of business shall wear 'High Visibility Clothing'.
CD49	All Door Supervisors shall enter their full details in the Premises Daily Register at the commencement of work. This shall record their full name, home address and contact telephone number, the Door Supervisors registration number, the time they commenced and concluded working. If the Door Supervisor was supplied by an agency, details of that agency will also be recorded which shall include the name of the agency, the registered business address and a contact telephone number. The Premises Daily Register will record all incidents in relation to the use of any force by staff or Door Supervisors in the removal of persons from the premises. It shall record the time and date of the occurrence, name or brief description of the person removed, and the details of all the staff or Door Supervisors involved.
	If there is to be a substantial increase in the size of the dance floor, works will not commence with prior consultation with Thames Valley Police

	The premise will ensure any doorstaff on duty are signed into the register on each day of duty. The register will be available for inspection by the authorities at any time the premise are trading
	An incident book will be kept at the premise and all incidents at the premise will be recorded. The register will be available for inspection by the authorities at any time the premise are trading
	A drugs policy will be produced and adhered to at all times

- **And, the following additional conditions:**

PN16	Prominent, clear notices shall be displayed at [all exits / in the beer garden] requesting customers to respect the needs of local residents and leave the premises and the area quietly.
PN29	The premises shall have a written dispersal procedure designed to make the maximum contribution immediately before premises close, and directly thereafter, by exercising pro-active measures, to move customers from the premises and the immediate vicinity in such a way as to cause minimum disturbance or nuisance to neighbours, both residential and business, and to make the minimum impact upon the neighbourhood in relation to potential nuisance, antisocial behaviour, crime and disorder.
	The applicant to make available a personal mobile number and email address for residents to use should they need to notify the applicant of any complaints and/or issues arising.
	All furniture on the patio area (as detailed on the premises plan) to be removed by 11:00pm each night.
	The premises shall have a written door-staff policy to include conditions CD46, CD47, CD48 and CD49
CD46	There shall be an agreed ratio of Door Supervisors to number of persons present. Premises which have a policy that includes the searching of persons shall have at all times Door Supervisors of both sexes on duty.
CD48	All Door Supervisors shall have clear instruction and understanding of their responsibilities.

You have a right of appeal against this decision to the Magistrates' Court within 21 days of the date of this letter. The relevant Magistrates Court for the area is;

Northern Oxfordshire Magistrates Court
The Courthouse
Warwick Road
Banbury
Oxon
OX16 2AW

Tel: 01295 452000
Fax: 01295 452050

Finally, if you have any queries regarding this notice, please contact a member of the Licensing Team on 01295 753744.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Claire Bold', written in a cursive style.

Claire Bold
Licensing Team Leader

The meeting ended at 3.15 pm

Cherwell District Council

Licensing Sub Committee

Minutes of a meeting of the Licensing Sub Committee held at Bodicote House, Bodicote, Banbury, OX15 4AA, on 15 February 2011 at 2.00 pm.

9. Constitution of the Sub Committee

The Membership of the Licensing Sub-Committee for this meeting was Councillors Tony Ilott (Chairman), Blackwell and O'Sullivan.

10. Declarations of Interest

Members declared an interest in the following agenda item:

3. Personal Licence Determination Hearing.

Councillor P A O'Sullivan, Personal, as a resident of the same village as the applicant but the applicant was unknown to him.

11. Exclusion of the Press and Public

Resolved

That as the item had been marked as confidential and the exclusion of the press and public consequently being compulsory in law, the press and public be excluded from the meeting for the following item of business.

12. Personal Licence Determination Hearing

Environment & Community

D Ian Davies BSc (Hons) DMS **Interim Chief Executive**

Chris Rothwell BSc (Hons) Flinst SRM **Head of Safer Communities, Urban & Rural Services**

The logo for Cherwell District Council, featuring the word "Cherwell" in a large, black, serif font with a decorative swoosh underneath.

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15 February 2011

Dear Sir/Madam

Licensing Act 2003 – Grant of Personal Licence Application: Mr Lofti Ghazi

I refer to the hearing of the Licensing Sub-Committee today at which the Sub-Committee considered an application in respect of the above named person for the grant of a personal licence under the Licensing Act 2003. The decision contained in this letter is a decision of the Licensing Authority.

After considering all the representations made at the hearing the Sub-Committee decided as follows:

The Licensing Sub-Committee have considered very carefully the points raised by the Licensing Officer and Thames Valley Police.

The Licensing Sub-Committee have also taken note of the guidance issued under section 182 of the Licensing Act 2003 and note in particular the sections they have been referred to in the Agenda document. Section 4.9 reads 'the Secretary of State recommends that, where the police have issued an objection notice, the licensing authority should normally refuse the application unless there are exceptional and compelling circumstances which justify granting it.

In considering the application the Licensing Sub-Committee have considered whether any such exceptional and compelling circumstances are present in this case such as to justify a grant of the Personal Licence despite Thames Valley Police's objection.

They conclude that no such circumstances were advanced and as such the application is therefore refused.

You have a right of appeal against this decision to the Magistrates' Court within 21 days of the date of this letter. The relevant Magistrates Court for the area is:

Northern Oxfordshire Magistrates Court
The Courthouse
Warwick Road
Banbury
Oxon
OX16 2AW

Tel: 01295 452000
Fax: 01295 452050

Finally, if you have any queries regarding this notice, please contact a member of the Licensing Team on 01295 753744.

Yours faithfully



Claire Bold
Licensing Team Leader

The meeting ended at 2.30 pm

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Licensing Committee

Control of Sexual Entertainment Venues

4 March 2011

Report of Head of Safer Communities, Urban and Rural Services

PURPOSE OF REPORT

The purpose of this report is to outline the changes made in Section 27 of the Policing and Crime Act 2009 amending Schedule 3 of the Local Government (Miscellaneous Provisions) Act, 1982 which enable local authorities to be able to determine applications for sexual entertainment venues

This report is public

Recommendations

The Licensing Committee meeting is recommended:

- (1) To agree that, in accordance with Section 2 (1) of the Local Government (Miscellaneous Provisions) Act, 1982, the Council resolves that Schedule 3 of that Act as amended by Section 27 of the Policing and Crime Act, 2009, shall apply to the District of Cherwell with effect from 4 March 2011.
- (2) To agree that the proposed conditions governing the operation of Sexual Entertainment Venues as set out at Appendix A be approved and attached to all licences issued by the Council.
- (3) To authorise the Head of Urban & Rural Services in consultation with the Chairman of the Licensing Committee, to make any minor alterations to the setting of fees in relation to the processing of applications for sexual entertainment venues

Executive Summary

Introduction

- 1.1 The Policing and Crime Act 2009 introduces amendments to Section 2, Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 permitting local authorities to be able to determine applications for sexual entertainment venues

1.2 The changes brought about by the new legislation introduce activities not previously defined and now described as sexual entertainment. Such activities include:

- Lap Dancing
- Pole Dancing
- Table Dancing
- Strip Shows
- Peep Shows
- Live sex Shows

The above list is not exhaustive and, as the understanding of the exact nature of these descriptions may vary, should only be treated as indicative. The full definition is included in the guidance issued by the Home Office; a copy of this guidance is attached at Appendix 2.

1.3 The purpose of the report is to inform the Licensing Committee in relation to the process (and the effect) for the adoption of the revised Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by section 27 of the Policing and Crime Act 2009), which enables local authority regulation of lap dancing clubs and similar venues which has not previously been authorised

Proposals

- 2.1 That the contents of this report be noted in relation to the amended provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 in respect of the licensing of Sexual Entertainment Venues.
- 2.2 The Committee may resolve that Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) will apply to the Council's area with effect from 4 April 2011.
- 2.3 The Committee may resolve not to make a resolution applying Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) at this time.
- 2.4 The Committee may resolve not to make such a resolution as mentioned above by 6 April 2011, but to consult people about whether it should make such a resolution as soon as reasonably practicable thereafter.
- 2.5 The Committee are also asked to determine whether or not a policy is required in accordance with the items listed above, and to approve the list of conditions set out in Appendix 1 as an interim measure to be attached to all licences enabling existing businesses to continue trading.

Background Information

- 3.1 Prior to 1982 there was no control over the operation of sex establishments. Section 2 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act (LGMPA) 1982 enabled local authorities the power to licence sex establishments, defined in this particular Act as sex shops and sex cinemas. The Council adopted these provisions on 2 June 1983
- 3.2 The Local Government (Miscellaneous provisions) Act 1982 gave local authorities the power to licence sex establishments, defined in this particular Act as sex shops and sex cinemas.
- 3.3 Under existing legislation local authorities have no power to regulate sexual entertainment venues as defined in paragraph 1.2
- 3.4 The Policing and Crime Act 2009 was introduced on 6 April 2010. This Act introduced changes to Schedule 3 of the Local Government (Miscellaneous Provisions) Act which permit local authorities to licence sexual entertainment venues. Local authorities have until 6 April 2011 to formally adopt the changes in the legislation. Failure to do so would mean that the Council would subsequently be required to consult local businesses and residents “as soon as is reasonably practicable” on whether or not to adopt the amended provisions.
- 3.5 Originally a separate provision of the 1982 Act gave local authorities powers to regulate adult entertainment by means of a Public Entertainment Licence. The introduction of the Licensing Act 2003 abolished Public Entertainment Licences; instead any premise engaged in any one of the licensable activities listed in the Licensing Act 2003 had to apply to the local authority for a Premise Licence. This was not a like for like replacement, however, and had the effect of leaving sexual entertainment unregulated by the local authority.
- 3.6 Cherwell District Council currently has 2 premises that would require licensing under the new provisions. There are no current licensed sex shops in the district.
- 3.7 Should the Committee resolve to adopt the amendments as stated above; both existing operators will be required to apply for licences as sexual entertainment venues to enable them to continue trading. Letters have been sent to both traders advising them of this matter and giving guidance on the processes they need to follow. Full details of the transitional provisions are set out at the end of the Home Office Guidance, attached at Appendix 2.
- 3.8 Currently, sexual entertainment venues as defined in the 2009 Act do not require a licence. This situation will not change if the Committee resolve not to adopt the specified amendments.
- 3.9 Should the Committee resolve to adopt the amendments; no new applications will be granted until such time as the authority has a full policy in place to deal with such matters, as described in paragraph 3.11.
- 3.10 Should the Committee resolve to adopt the amendments, the authority is then legally required to advertise the amendment for a period of two consecutive weeks, no later than twenty eight days prior to the amendments coming into force. The proposed date for the amendments coming into force is currently 4 April 2011. Further details on the requirements of advertising are attached in

the guidance issued by the Home Office at Appendix 2.

- 3.11 There is no statutory requirement on a local authority to have a policy on SEV licensing, but it is best practice to adopt a policy which sets out its approach for the benefit of operators, guides and reassures the public and other public authorities and ensures transparency and consistency. It is proposed that if the Committee adopt the amendments, a policy will be formulated and a thorough consultation will take place prior to the policy being brought back to Committee for its approval.
- 3.12 Committee are asked in the interim period to approve the standard conditions attached at Appendix 1. to be attached to licences issued to existing traders, should they apply, to prevent unregulated establishments being present in the district.
- 3.13 Committee are reminded that there is no statutory requirement to consult prior to the amendments being adopted and therefore the authority will not grant any new applications until a full policy is in place.
- 3.14 As the authority may receive applications in the interim period in respect of sexual entertainment venues, namely the two already in existence, the Committee is asked to approve the list of conditions set out in Appendix 1 to be attached to all licences issued prior to a full policy being out into place. This would enable existing businesses to continue trading.
- 3.15 Currently, there are no fees set for applications in relation to sexual entertainment venues as this type of application has not previously existed. The Policing and Crime Act 2009 allows local authorities to charge a reasonable and proportionate fee. Therefore, it is proposed that the fees will be set at the same level as sex shops which are currently £3,000.
- 3.16 The matter of fees will also be taken into consideration when formulating a new policy and reviewed as part of the consultation inline with neighbouring authorities.

Key Issues for Consideration/Reasons for Decision and Options

- 4.1 The Head of SCURS has a duty of care to the public and so any determination will always be made in the interested of public safety as well as service provision to the public
- 4.2 Each application must be considered on its own merits

The following three options have been identified. The approach in the recommendations is believed to be the best way forward

- | | |
|-------------------|---|
| Option One | To approve all of the proposals listed in paragraph 2.2 and adopt the amended schedules to the Act |
| Option Two | To approve all of the proposals listed in paragraph 2.2 and adopt the amended schedules to the Act and to then create and consult upon a policy in respect of licensing sexual entertainment venues as soon as is practicable |

Option Three Not to approve all of the proposal listed in paragraph 2.2 and adopt the amended schedules to the Act and to carry out a full consultation as soon as is practicable

Consultations

No Consultation is required at this stage. Should the Committee resolve not to adopt the amendments as outlined above, a full consultation will need to take place with local businesses and residents prior to any applications being determined or policies adopted.

Implications

Financial: No Financial Implications.
Comments checked by Karen Muir, Corporate System Accountant, 01295 221559

Legal: It is not a statutory requirement for the Council to adopt the proposed amendments at this time but it should be noted by the Committee that by not doing so, the Council has no regulatory control over such establishments.

The legal implications of adoption are as stated above.

Comments checked by Paul Manning, Solicitor, 01295 221691

Risk Management: There is a risk to the Councils reputation if it is not able to deal with establishments of this nature by not having due processes in place.

Comments checked by Claire Taylor, Corporate Strategy and Performance Manager, 01295 221563

Wards Affected

All

Document Information

Appendix No	Title
Appendix 1	Proposed Standard Conditions
Appendix 2	Copy of the Home Office Guidance in relation to Sexual entertainment Venues
Report Author	Claire Bold, Licensing Team Leader
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Sexual Entertainment Venues

Standard Conditions

1. Premises licensed as a Sexual Entertainment Venue under the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, shall be used only for the purpose of a Sexual Entertainment Venue as defined in Paragraph 2A of the said Schedule 3 and shall not be used, wholly or in part, for any other purpose during the period the premises are licensed as a Sexual Entertainment Venue.
2. The permitted activities will only take place in designated areas approved by Cherwell District Council. These areas will be in full view of the audience. No part of the premises accessible to the public shall be concealed from observation without the written consent of the Council.
3. Dressing room (s) must be provided and shall not be accessible to members of the audience prior to, during or after the provision of entertainment
4. No person under the age of 18 years of age shall be admitted to or allowed on the premises whilst licensable activities are taking place. A clear notice shall be displayed at each entrance to the premises in a prominent position so that it can be easily read by persons entering the premises stating: NO PERSONS UNDER THE AGE OF 18 YEARS WILL BE ADMITTED
5. Entertainers that are not performing must not be in the licensed area in a state of undress
6. No lewd or indecent conduct or conduct likely to cause a breach of the peace shall be permitted on the premises.
7. Door Supervisors, registered in accordance with the Security Industry Authority, shall be on duty at all times when licensable activities are taking place.
8. The Licence Holder shall provide at least one female Door Supervisor during the same period.
9. The designated premises supervisor (DPS) or a responsible person nominated in writing shall be present on the premises during the entertainment to ensure compliance with all conditions.
10. A nominated female, authorised by the DPS, will be present to oversee the activities of female performers, and likewise, a nominated male present to oversee the activities of male performers.
11. Patrolling attendants, registered as Door Supervisors, shall continually monitor all entrances/exits/toilets.
12. Performers shall be aged not less than 18 years.
13. Only the performers shall provide the entertainment, no audience participation shall be permitted.

14. During any lap dancing performance, performers may not:
 - touch customers in any way;
 - approach closer than 30cms (12") from any part of a patron;
 - part their legs;
 - climb onto furniture provided for patrons; or,
 - simulate sex acts.
15. No performance shall involve the use of sex articles (as defined in the Local Government (Miscellaneous Provisions) Act 1982).
16. Any person who can be observed from the outside of the premises must be properly and decently dressed. Scantily clad individuals shall not exhibit in the entranceway or in the area surrounding the premises.
17. The Licence Holder shall not display outside the premises, or on any advertising material, photographs or other images which indicate and suggest that striptease or similar dancing takes place on the premises and which may be offensive.
18. CCTV shall be provided in the form of a recordable system, capable of providing pictures of evidential quality in all lighting conditions particularly facial recognition.
19. CCTV cameras shall encompass all ingress and egress to the premises and all areas where the licensable activity occurs.
20. CCTV equipment shall be maintained in good working order and recordings kept in date order, numbered sequentially and kept for a period of 31 days and handed to Police on request.
21. The CCTV recording equipment and tapes/discs shall be kept in a secure environment under the control of the Licence Holder or other responsible named individual.
22. Appropriate signage representative in respect of the use of CCTV at the premises shall be displayed in conspicuous positions.
23. Any of the above conditions may be modified by the Head of Safer Communities, Urban and Rural Services at any time



Home Office

Sexual Entertainment Venues

Guidance for England and Wales

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MINISTERIAL FOREWORD



In September 2008, the previous Home Secretary announced the Government's intention to give local people greater say over the number and location of lap dancing clubs in their area. This followed a consultation with local authorities which highlighted concerns that existing legislation did not give communities sufficient powers to control where lap dancing clubs were established.

In order to address these concerns, section 27 of the Policing and Crime Act 2009 reclassifies lap dancing clubs as sexual entertainment venues and gives local authorities in England and Wales the power to regulate such venues as sex establishments under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.

These new measures, which take effect on 6th April 2010 in England and on 8th May in Wales, will, if adopted by local authorities, give local people a greater say over where and how many lap dancing clubs open and operate in their neighbourhoods.

These are important reforms to further empower local communities and the purpose of this guidance is to provide advice to local authorities, operators, local people and other interested parties on the new measures introduced by section 27 and the associated secondary legislation.

Alan Campbell

A handwritten signature in cursive script that reads "Alan Campbell".

Parliamentary Under-Secretary of State for Crime Reduction

March 2010

INTRODUCTION

Definitions

1.1 In this guidance –

The “2009 Act” means the Policing and Crime Act 2009

The “1982 Act” means the Local Government (Miscellaneous Provisions) Act 1982

The “2003 Act” means the Licensing Act 2003

“Section 27” means section 27 of the Policing and Crime Act 2009

“Schedule 3” means Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982

Policing and Crime Act 2009

1.2 Section 27 introduces a new category of sex establishment called ‘sexual entertainment venue’, which will allow local authorities to regulate lap dancing clubs and similar venues under Schedule 3.

1.3 Section 27 gives local authorities more powers to control the number and location of lap dancing clubs and similar venues in their area. These powers are not mandatory and will only apply where they are adopted by local authorities. Where adopted, these provisions will allow local authorities to refuse an application on potentially wider grounds than is permitted under the 2003 Act and will give local people a greater say over the regulation of lap dancing clubs and similar venues in their area.

The Guidance

1.4 The guidance is provided for local authorities carrying out their functions under Schedule 3, as amended by section 27. It will also be of use to operators, the police and the general public.

- 1.5 Interpretation of the relevant primary and secondary legislation is ultimately a matter for the courts. However, local authorities are encouraged to have regard to the guidance when exercising their functions (although there is no statutory requirement to do so) in order to promote best practice and consistency across England and Wales.
- 1.6 The guidance is composed of 3 sections. Section 2 focuses on the 2009 Act and the definition of 'sexual entertainment venue'. Section 3 provides an explanation of the meaning and effect of Schedule 3 to the 1982 Act and section 4 provides guidance on the transitional provisions as set out in the transitional orders: *The Policing and Crime Act 2009 (Commencement No.1 and Transitional and Saving Provisions)(England) Order 2010* and the *Policing and Crime Act 2009 (Consequential Provisions)(England) Order 2010* and any equivalent orders made by Welsh Ministers in respect to Wales.
- 1.7 Apart from extending the scope of the 1982 Act to cover the licensing of sexual entertainment venues and removing the sex encounter establishment category in those local authority areas that adopt the new provisions, the 2009 Act and the associated secondary legislation makes only minor changes to the operation of Schedule 3.
- 1.8 Section 27 of, and Schedule 3 to, the 2009 Act come into force in England on 6th April as does the *Policing and Crime Act 2009 (Consequential Provisions) (England) Order 2010*. In Wales, the equivalent provisions come into force on 8th May 2010.

POLICING AND CRIME ACT 2009

Meaning of Sexual Entertainment Venue

- 2.1 Paragraph 2A of Schedule 3 as inserted by section 27 sets out the meaning of a 'sexual entertainment venue' and 'relevant entertainment' for the purposes of these provisions. 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.”*
- 2.2 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 (whether by verbal or other means).”* An audience can consist of just one person (e.g. where the entertainment takes place in private booths).
- 2.3 While local authorities should judge each case on its merits, we would expect 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
- 2.4 The above list is not exhaustive and, as the understanding of the exact nature of these descriptions may vary, should only be treated as indicative. Ultimately, decisions to licence premises as sexual entertainment venues shall depend on the content of the entertainment provided and not the name it is given.

- 2.5 For the purposes of these provisions a premises includes any vessel, vehicle or stall but does not include a private dwelling to which the public are not admitted.

Nudity

- 2.6 It is important to note that although the definition of relevant entertainment makes reference to a 'live display of nudity', the mere fact that there is a display of nudity does not mean that a sex establishment licence will necessarily be required. For example, if the display forms part of a drama or dance performance in a theatre, in most cases it cannot reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience.
- 2.7 Paragraph 2A(14) of Schedule 3 sets out the definition of a 'display of nudity'. In the case of a woman, it means exposure of her nipples, pubic area, genitals or anus and, in the case of a man; it means exposure of his pubic area, genitals or anus.

The Organiser

- 2.8 The relevant entertainment must be provided for the financial gain of the 'organiser' or 'entertainer'. The 'organiser' means any person who is responsible for the organisation or management of the relevant entertainment or the premises at which the relevant entertainment is provided. In most circumstances, this will refer to the manager of the premises, but could also refer someone who is responsible for organising the relevant entertainment on behalf of the persons responsible for the management of the premises.
- 2.9 The 'organiser' must be someone who is in a position of responsibility over the provision of the relevant entertainment and should not be interpreted to mean a member of staff who is merely employed to work during the provision of relevant entertainment. It is only necessary for

one person to hold a sexual entertainment venue licence for premises, even if there is more than one person who is responsible for the organisation or management of the relevant entertainment or the premises.

Spontaneous Entertainment

2.10 Where activities that would otherwise be considered to involve the provision of relevant entertainment take place, but are not provided for the financial gain of the organiser or entertainer, such as a spontaneous display of nudity or a lap dance by a customer or guest, the premises will not be considered a sexual entertainment venue by virtue of those circumstances alone. This is because the relevant entertainment must be provided for the financial gain of the organiser or entertainer. However, it should be noted that an organiser may be considered to have provided the entertainment where he has permitted the activity to take place, whether expressly or impliedly.

Premises that are not sexual entertainment venues

2.11 Paragraph 2A(3) of Schedule 3 sets out those premises that are not sexual entertainment venues. These are:

- sex shops and sex cinemas (which are separately defined in Schedule 3 to the 1982 Act);
- premises which 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 a 12 month period;
 - b) no such occasion has begun within a period of one month beginning with the end of the previous occasions; and
 - c) no such occasion has lasted longer than 24 hours.
- other premises or types of performances or displays exempted by an order of the Secretary of State.

2.12 Premises which provide relevant entertainment on an infrequent basis will continue to be regulated under the 2003 Act, insofar as they are

providing regulated entertainment under that Act, either by virtue of a premises licence or club premises certificate issued under Part 3 or Part 4 or a temporary events notice issued under Part 5 of that Act. Any premises that provide relevant entertainment on more occasions, more frequently or for a longer period of time than is permitted under the exemption will be operating as a sexual entertainment venue and will have committed an offence under Schedule 3 unless they hold a sexual entertainment venue licence or the local authority has waived the requirement for such a licence.

Amendments to the Licensing Act 2003

- 2.13 Schedule 7 to the 2009 Act amends the 2003 Act to ensure that premises for which a sexual entertainment venue licence is required or held (or for which the requirement has been waived under paragraph 7 of Schedule 3 to the 1982 Act) do not also require a premises licence, club premises certificate or temporary events notice in order to provide relevant entertainment. This is because such entertainment is expressly excluded from the definition of regulated entertainment found in the 2003 Act. However, if the premises also carry on other licensable activities (e.g. the sale of alcohol or the provision of regulated entertainment that is not relevant entertainment), they will nevertheless continue to require a premises licence, club premises certificate or temporary events notice under the 2003 Act for those other activities, subject to any exceptions contained in that Act.
- 2.14 In practice, this will mean that the vast majority of lap dancing clubs and similar venues will require both a sexual entertainment venue licence for the provision of relevant entertainment and a premises licence or club premises certificate for the sale of alcohol or provision of other types of regulated entertainment not covered by the definition of relevant entertainment.
- 2.15 Live music or the playing of recorded music which is integral to the provision of relevant entertainment, such as lap dancing, for which a sexual entertainment licence is required, is specifically excluded from

the definition of regulated entertainment in the 2003 Act. Therefore, a sexual entertainment venue will not require a premises licence or club premises certificate just because it plays recorded music for a performer to dance to. (Nor will providing entertainment facilities for the purposes of the provision of relevant entertainment be regulated entertainment under the 2003 Act).

- 2.16 Premises which fall under the exemption created for infrequent entertainment do not require a sexual entertainment venue licence but will instead need an appropriate authorisation under the 2003 Act, for example, to cover the performance of dance. The exemption from requirements of the 2003 Act for live music or the playing of recorded music which is integral to relevant entertainment does not apply to such venues.

Consultation with Local People

- 2.17 If a local authority has not made a resolution to adopt the provisions introduced by section 27 within one year of it coming into force it must, as soon as is reasonably practicable, consult local people about whether they should make such a resolution.
- 2.18 The purpose of this duty is to ensure that local authorities consider the views of local people where, for whatever reason, they have not adopted the provisions.
- 2.19 This duty should be seen to be an extension to existing general duties on local authorities to consult and involve local people when exercising their functions.
- 2.20 The 2009 Act is not prescriptive about how local authorities should consult with local people in order to comply with this duty. Local authorities have extensive experience of engaging with local people and will know what works best in their individual areas. Clearly, the Secretary of State expects that any consultation exercise carried out under this duty will be fair and meaningful. Local authorities should

seek to make any relevant information available to local people in order to inform their understanding and publish the outcomes of the consultation on the internet.

- 2.21 In practice, local authorities may decide to consult local people on this matter when they consult and involve local people on broader local priorities and crime and disorder or anti-social behaviour priorities as part of their work to develop Local Area Agreements/Local Delivery Agreements and crime and disorder strategies, as required under various existing duties, including, section 138 of the Local Government and Public Involvement in Health Act 2007 and regulation 12 of the Crime and Disorder (Formulation and Implementation of Strategy) Regulations 2007. This will ensure that consultations are not onerous and form part of the ongoing engagement with local communities undertaken by all local authorities.
- 2.22 For the purposes of this duty 'local people' are defined as anyone who lives or works in the local authority area.

SCHEDULE 3 TO THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

The Appropriate Authority

- 3.1 The appropriate authority is responsible for determining applications for sex establishment licences. For the purposes of the 1982 Act 'appropriate authority' means the local authority which passed a resolution under section 2 of that Act to adopt Schedule 3 in their area. 'Local authority' means—
- (a) the council of a district (including a unitary County Council) or, in Wales, the principal council¹;
 - (b) the council of a London borough; and
 - (c) the Common Council of the City of London.

Committee or Sub-Committee

- 3.2 Functions under Schedule 3 are the responsibility of the full council of the appropriate authority, as defined above. Under section 101 of the Local Government Act 1972, local authorities may arrange for the discharge of these responsibilities by a committee or sub-committee of the appropriate authority.
- 3.3 An authority may delegate its functions to those who sit on its licensing committee set up to discharge licensing functions under the 2003 Act. However, when dealing with an application for a sex establishment licence, the members of the committee would not be acting as the licensing committee under the 2003 Act and would instead be exercising their functions under Schedule 3.

¹ See section 2 of the 1982 Act. Section 17 of the Local Government (Wales) Act 1994 provides that legislative references to district councils are to be interpreted as references to principal councils in Wales. Unitary County Councils have all the functions and powers of district councils.

Adopting the Provisions

- 3.4 Section 27 comes into force on 6th April 2010 in England and 8th May in Wales². On or following this date local authorities may resolve to adopt Schedule 3 to the 1982 Act as amended by the 2009 Act so that it has effect in their area.
- 3.5 Although many local authorities will have already adopted Schedule 3 to the 1982 Act for the licensing of sex shops and sex cinemas, a further resolution is necessary before the provisions introduced by Section 27 will have effect in the local authority area. However, where a local authority has not resolved to adopt Schedule 3 to the 1982 Act before the coming into force of Section 27, the amendments made to Schedule 3 by section 27 will apply automatically if a resolution to adopt Schedule 3 is made subsequently (see Schedule 3 to the 2009 Act).
- 3.6 The procedure for local authorities to adopt Schedule 3 as amended by section 27 is set out in section 2 of the 1982 Act. Firstly, the local authority must pass a resolution specifying that Schedule 3 or, in the case of an authority where Schedule 3 is already in force, the amendments made by section 27 to that Schedule, shall apply to their area and the day on which it or they shall come into force in the area. The specified day must be more than one month after the day on which the resolution was passed.
- 3.7 The local authority shall publish notice that they have passed a resolution under section 2 of the 1982 Act or (in cases where Schedule 3 is already in force but the local authority is adopting the amendments made by section 27) paragraph 2(2) of Schedule 3 to the 2009 Act for two consecutive weeks in a local newspaper that is circulated in their area. The first publication shall not be later than 28 days before the day specified in the resolution for the provisions to come into force in the

² Section 27 (11) was brought into force on 2nd March 2010 but only for the purpose of making the transitional orders.

local authority's area. The notice should state the general effect of Schedule 3.

- 3.8 While there is no statutory duty to do so, prior to deciding whether to pass a resolution, local authorities may, as a matter of good practice, wish to seek the views of local people and businesses. The Secretary of State also encourages local authorities to engage with known sexual entertainment venues at the earliest possible opportunity once a decision to adopt the provisions has been made, to ensure affected businesses are aware of what action they will need to take in order to comply with the new regime.

Requirement for a Sex Establishment Licence

- 3.9 Any person wishing to operate a sex establishment as defined by Schedule 3 requires a sex establishment licence, unless the requirement for a licence has been waived by the appropriate authority.
- 3.10 An applicant can apply for a waiver either as part of the application for a licence or separately. The local authority can grant a waiver if they consider that to require a licence would be unreasonable or inappropriate. Where a waiver is granted the appropriate authority should inform the applicant that a waiver has been granted. The waiver may last for such a period that the appropriate authority think fit, but can be terminated by the appropriate authority at any time with 28 days notice.

Premises that are deemed to be Sexual Entertainment Venues

- 3.11 Paragraph 27A of Schedule 3 deems premises with licences to operate as sexual entertainment venues to be sexual entertainment venues whilst their licence remains in force, irrespective of how frequently they are or have been providing relevant entertainment. This remains the case even if premises operate within the exemption for infrequent events.

3.12 If an operator with a sexual entertainment venue licence is operating within the exemption for infrequent events and no longer wants their premises to be treated as a sexual entertainment venue (e.g. because they are no longer operating as a lap dancing club) they may write to the relevant local authority to request that their licence be cancelled. Upon receiving such a request from a licence-holder a local authority must cancel the licence in question.

Notices

3.13 Applicants for a sex establishment licence must give public notice of the application by publishing an advertisement in a local newspaper that is circulated in the local authority area no later than 7 days after the date the application is made.

3.14 Where the application relates to premises, a notice should also be displayed on or near the premises in a place where it can be conveniently read by members of the public. The notice should be displayed for a period of 21 day beginning with the date the applications was made.

3.15 All notices should be in the form prescribed by the appropriate authority and identify the premises or, if the application relates to a vehicle, vessel or stall, specify where it will be used as a sex establishment.

3.16 There are similar notification requirements for applications made under the 2003 Act. Where an applicant is making an application under both Schedule 3 and the 2003 Act at the same time they may wish to combine these requirements where permitted.

Application Forms

3.17 Unlike the 2003 Act there is no prescribed application form for an application made under Schedule 3 to the 1982 Act. However, the application must be in writing and contain the details set out in paragraph 10 of Schedule 3 along with such other details as the

appropriate authority may reasonably require. Local authorities must provide for applications to be made electronically and may produce and publish recommended application forms for sex establishment licences setting out all the details required.

Single Point of Contact

- 3.18 Following amendments to sub-paragraph 10(14) made by the Provision of Services Regulations 2009, where an application for the grant, renewal or transfer of a licence is made by means of a relevant electronic facility it will be the responsibility of the appropriate authority to send a copy of an application to the chief officer of police, not later than 7 days after the date the application is received.
- 3.19 Where an application is made by any other means the responsibility to send a copy of the application to the chief officer of police within 7 days of the application being made will remain the responsibility of the applicant.
- 3.20 For the purpose of Schedule 3 a relevant electronic facility means the electronic assistance facility referred to in regulation 38 of the Provision of Services Regulations 2009 or any facility established and maintained by the appropriate authority for the purpose of receiving applications under this Schedule electronically.

Fees

- 3.21 Schedule 3 to the 1982 Act states that an application for the grant, renewal, variations or transfer of a sex establishment licence shall pay a reasonable fee determined by the appropriate authorities, but does not expand on what would be considered to be reasonable.
- 3.22 However, local authorities should have regard to the following documents when determining their fee: *The European Services*

Directive: Guidance for Local Authorities³ and LACORS Guidance on the impact of the Services Directive on councils setting and administering local licence fees within the service sector.⁴

Objections

- 3.23 When considering an application for the grant, renewal or transfer of a licence the appropriate authority should have regard to any observations submitted to it by the chief officer of police and any objections that they have received from anyone else within 28 of the application. Any person can object to an application but the objection should be relevant to the grounds set out in paragraph 12 for refusing a licence. Objections should not be based on moral grounds/values⁵ and local authorities should not consider objections that are not relevant to the grounds set out in paragraph 12. Objectors must give notice of their objection in writing, stating the general terms of the objection.
- 3.24 Where the appropriate authority receives notice of any objection the authority shall, before considering the application, give notice in writing of the general terms of the objection to the applicant. However, the appropriate authority shall not without the consent of the person making the objection reveal their name or address to the applicant.

Hearings

- 3.25 Under paragraph 10(19) of Schedule 3, before refusing an application, all applicants should be given the opportunity to appear before and be heard by the local authority committee or sub-committee that is responsible for determining the application.
- 3.26 Schedule 3 does not make explicit provision for objectors to be heard, but this does not mean that such hearings cannot take place. Rather, case law on this matter states that while local authorities are under no

³ <http://www.berr.gov.uk/files/file50026.pdf>

⁴ www.lacors.gov.uk

⁵ R v Newcastle upon Tyne City Council ex parte The Christian Institute [2001] B.L.G.R. 165

obligation to offer an oral hearing to objectors, they may do so at their discretion. Although a local authority is under a duty to consider any objections made within 28 days of the application, it has discretion to hear later objections provided the applicant is given the opportunity to deal with those objections.⁶

Refusal of a Licence

3.27 Paragraph 12 of Schedule 3 sets out the grounds for refusing an application for the grant, renewal or transfer of a licence.

A licence must not be granted:

- (a) to a person under the age of 18;
- (b) to a person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the last 12 months;
- (c) to 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 when the application was made; or
- (d) to a body corporate which is not incorporated in an EEA State; or
- (e) to a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

3.28 A licence may be refused where:

- (a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- (b) if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;

⁶ R v Plymouth City Council v Quietlynn [1998] Q.B. 114.

- (c) the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality;
- (d) that the grant or renewal of the licence would be inappropriate, having regard—
 - (i) to the character of the relevant locality; or
 - (ii) to the use to which any premises in the vicinity are put; or
 - (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

3.29 A decision to refuse a licence must be relevant to one or more of the above grounds.

3.30 When determining a licence application, the local authority must have regard to any rights the applicant may have under Article 10 (right to freedom of expression) and Article 1, Protocol 1 (protection of property) of the European Convention on Human Rights.⁷

3.31 The Provision of Services Regulations 2009⁸ amended Schedule 3 to the 1982 Act to state that, if having considered an application for the grant, renewal or transfer of a licence, the appropriate authority decides to refuse it on one or more of the above grounds, it must provide the applicant with reasons for the decision in writing.

Relevant Locality

3.32 Paragraph 12(3)(c) and 12(3)(d) of Schedule 3 allow appropriate authorities to refuse applications on grounds related to an assessment of the “relevant locality”. A licence can be refused if either, at the time the application is determined the number of sex establishments, or sex establishments of a particular kind, in the relevant locality is equal to or exceeds the number that the authority considers appropriate for that locality; or that a sex establishment would be inappropriate having

⁷ Belfast City Council v Miss Behavin’ Ltd (Northern Ireland) (2007) [2007] UKHL 19

⁸ Regulation 47

regard to the character of the relevant locality, the use to which any premises in the vicinity are put or the layout, character or condition of the premises. Nil may be the appropriate number.

3.33 Schedule 3 to the 1982 Act does not define “relevant locality” further than to say that:

- (a) in relation to premises, it is the locality where they are situated;
and
- (b) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.

3.34 Clearly, the decision regarding what constitutes the ‘relevant locality’ is a matter for the appropriate authority. However, such questions must be decided on the facts of the individual application.⁹

3.35 Therefore, it is reasonable and potentially useful to future applicants, for a local authority to decide in advance of receiving any applications that certain areas are, or are not, appropriate locations for a sex establishment or a particular number of sex establishments. Nevertheless, all applications must be considered on their individual merits.

3.36 When considering a particular application case law has indicated that the relevant locality does not have to be a clearly pre-defined area nor are local authorities required to be able to define its precise boundaries. Therefore, while a local authority is not prevented from defining the exact area of the relevant locality, it is equally free to conclude that it simply refers to the area which surrounds the premises specified in the application and does not require further definition. Nevertheless a local authority’s view of what constitutes a locality could be open to challenge if they took a completely unreasonable view of the area covered, for example, by concluding that two sex establishments 200 miles away from one another were in the same

⁹ See R v Peterborough City Council ex parte Quietlynn 85 L.G.R. 249 for further guidance.

locality. Case law also indicates that a relevant locality cannot be an entire local authority area or an entire town or city.¹⁰

- 3.37 Once the appropriate authority has determined the relevant locality, it should seek to make an assessment of the 'character' of the relevant locality and how many, if any, sex establishments, or sex establishments of a particular kind, it considers appropriate for that relevant locality.
- 3.38 Section 27 amends paragraph 12(3)(c) of Schedule 3 to allow local authorities to determine an appropriate number of sex establishments of a particular kind. In practice, this means that the appropriate authority may, for example, decide that a particular locality is suitable for a sex shop but is not suitable for a sexual entertainment venue or vice versa.

Licence Conditions

- 3.39 Once the appropriate authority has decided to grant a licence they are able to impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual licence under paragraph 8 of Schedule 3 or standard conditions applicable to all sex establishments, or particular types of sex establishments, prescribed by regulations made by the appropriate authority under paragraph 13 of Schedule 3.
- 3.40 Paragraph 13 provides examples of the matters that standard conditions may address which include but are not restricted to:
- The hours of opening and closing
 - Displays and advertisements on or in sex establishments
 - The visibility of the interior of a sex establishment to passers-by
 - Any change of use from one kind of sex establishment to another

¹⁰ R v Peterborough City Council ex parte Quietlynn 85 L.G.R. 249

- 3.41 Where the appropriate authority decides to produce standard conditions under paragraph 13 they will apply to every licence granted, renewed or transferred by the authority unless they have been expressly excluded or varied.
- 3.42 Most sexual entertainment venues will require a 2003 Act licence as well as a sex establishment licence. Where this is the case, local authorities should avoid duplicating licence conditions and should ensure that conditions imposed on the each licence are relevant to the activities authorised by that licence. For example, conditions relating to the sale of alcohol should only appear on a premises licences or clubs premises certificate and should not be imposed on sexual entertainment venue licence. Likewise, conditions relating the provisions of relevant entertainment should appear on the sexual entertainment venue licence and not a premises licence or club premises certificate. Local authorities should also avoid imposing conditions on either licence that are contradictory.

Duration of Licences

- 3.43 Licences for sex establishments can be granted for up to one year.

Appeals

- 3.44 In the event that the appropriate authority refuses an application for the grant, renewal or transfer of a sex establishment licence the applicant may appeal the decision in a magistrates' court, unless the application was refused under 12(3)(c) or (d), in which case the applicant can only challenge the refusal by way of judicial review.

Licensing Policies

- 3.45 While local authorities are not required to publish a licensing policy relating to sex establishments they can do so if they wish as long as it

does not prevent any individual application from being considered on its merits at the time the application is made.¹¹

- 3.46 A licensing policy for sex establishments might include statements about where local authorities are likely to consider to be appropriate or inappropriate locations for such venues. This could be set out in general terms by reference to a particular type of premises, such as a school or place of worship, or more specifically, by reference to a defined locality.
- 3.47 Local authorities could also use a licensing policy to indicate how many sex establishments, or sex establishments of a particular kind, they consider to be appropriate for a particular locality.
- 3.48 Local authorities can also produce different policies or a separate set of criteria for different types of sex establishments. This might be appropriate to reflect distinctions between the operating requirements of different sex establishments or the fact that the location that a local authority considers appropriate for a sex shop may be different to that of a sexual entertainment venue.

Offences

- 3.49 The offences under Schedule 3 are set out in paragraphs 20 to 23 of that Schedule and include:
- knowingly causing or permitting the use of any premises as a sex establishment without a licence;
 - being the holder of a licence, knowingly employing a person in a sex establishment who is disqualified from holding a licence;
 - being the holder of a licence, knowingly contravenes, or without reasonable excuse knowingly permits the contravention of, a term, condition or restriction specified in a licence;
 - being the servant or agent of the holder of a licence, without reasonable excuse knowingly contravenes, or without reasonable

¹¹ R v Peterborough City Council ex parte Quietlynn Ltd (1986) 85 LGR 249

excuse knowingly permits the contravention of, a term, condition or restriction specified in a licence;

- being the holder of a licence, without reasonable excuse knowingly permits a person under the age of 18 to enter the establishment
- being the holder of a licence, employs a person known to them to be under 18 years of age in the business of the establishment.

3.50 A person guilty of any of the above offences is liable on summary conviction to a fine not exceeding £20,000.

3.51 It is also an offence for the holder of a licence, without reasonable excuse to fail to exhibit a copy of the licence and any standard conditions applicable to the licence in a suitable place as specified in the licence. A person guilty to this offence shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Provisions Relating to Existing Premises

3.52 Where a local authority resolves that Schedule 3 apply in their area having not previously made such a resolution, paragraphs 28 and 29 will have effect for the purpose of sex shop, sex cinemas and hostess bars, but will not have effect for the purpose of sexual entertainment venues. The transitional provisions relating to sexual entertainment venues are explained in part 4 of this guidance.

The Services Directive

3.53 Schedule 3 to the 1982 Act constitutes an authorisation scheme under Article 9 of the EU Services Directive 2006/123/EC (“the Directive”) which was implemented in the UK by the Provision of Services Regulations 2009 (“2009 Regulations”), which came into force on 28th December 2009. Local authorities must ensure they comply with the Regulations when applying the licensing provisions in Schedule 3.

3.54 The Department of Business, Innovation and Skills (BIS) has produced guidance for both businesses and local authorities to assist in

understanding the impact of the Directive and 2009 Regulations and what service providers and relevant authorities must do in order to comply. Both guidance documents can be found on the BIS website: <http://www.berr.gov.uk/whatwedo/europeandtrade/europe/services-directive/page9583.html>

- 3.55 In particular, the 2009 Regulations may affect the way in which local authorities set application fees, process applications and grant licences.

TRANSITIONAL PROVISIONS

- 4.1 This section provides guidance on the transitional provisions as set out in the *Policing and Crime Act 2009 (Commencement No.1, and Transitional and Saving Provisions)(England) Order 2010* (“the *Transitional Order*”) and the *Policing and Crime Act 2009 (Consequential Provisions)(England) Order 2010* (“the *Consequential Order*”) and the equivalent orders made by Welsh Ministers for Wales.

Transitional Period

- 4.2 The ‘transitional period’ will last for 12-months beginning with the date that the local authority resolves that Schedule 3 as amended by the 2009 Act will come into force in their area (‘the 1st appointed day’). Six months following the 1st appointed day will be known as the ‘2nd appointed day’ and the day on which the transitional period ends will be known as the ‘3rd appointed day’.
- 4.3 The appointed days will vary across local authority areas depending on when individual local authorities resolve that the provisions will come into force in their area.

Existing Operators

- 4.4 To allow time to comply with the new regime, existing operators, who, immediately before the 1st appointed day, have a 2003 Act licence and lawfully use premises as a sexual entertainment venue under that licence or are undertaking preparatory work to use the venue in that way will be allowed to continue to provide relevant entertainment until the 3rd appointed day or the determination of any application they have submitted before that time (including any appeal against the refusal to grant a licence), whichever is later.

- 4.5 “Preparatory work” refers to work carried out by an operator, such as a refurbishment or refit, in order that they can use the premises as a sexual entertainment venue in the future. The operator will have been granted a 2003 Act licence before the 1st appointed day but will not have used the premises as a sexual entertainment venue by that date. It is likely that such operators will be known to a local authority. However, where a dispute arises between a local authority and an licence-holder over whether the licence-holder qualifies as an existing operator by virtue of this provision the local authority will need to seek evidence from the licence-holder to demonstrate that they clearly intended to operate a sexual entertainment venue in the future and work had been done to achieve this end.
- 4.6 For the purposes of the Transitional Order a “2003 Act Licence” means a premises licence or club premises certificate under which it is lawful to provide relevant entertainment.

New Applicants

- 4.7 New applicants are people who wish to use premises as a sexual entertainment venue after the 1st appointed day but do not already have a premises licence or club premises certificate to operate as such under the 2003 Act or do have such a licence but have not taken any steps towards operating as such. After the 1st appointed day new applicants will not be able to operate as a sexual entertainment venue until they have been granted a sexual entertainment venue licence.

Determining Applications Received On or Before the 2nd Appointed Day

- 4.8 Applicants will be able to submit their application for a sexual entertainment venue from the 1st appointed day onwards.

- 4.9 As the appropriate authority is able to refuse applications having regard to the number of sex establishment they consider appropriate for a particular locality, all applications made on or after the 1st appointed day but on or before the 2nd appointed day shall be considered together. This will ensure that applicants are given sufficient time to submit their application and all applications received on or before the 2nd appointed day are considered on their individual merit and not on a first come first serve basis.
- 4.10 No applications shall be determined before the 2nd appointed day. After the 2nd appointed day the appropriate authority shall decide what if any licences should be granted. If a new applicant is granted a licence it will take effect immediately. If an existing operator is granted a licence, it will not take effect until the 3rd appointed day, up to which point they will be allowed to continue to operate under their existing premises licence or club premises certificate.

Determining Applications Received After the 2nd Appointed Day

- 4.11 Applications made after the 2nd appointed day shall be considered when they are made but only once all applications made on or before that date have been determined. However, reference to determination here does not include references to the determination of any appeal against the refusal of a licence.
- 4.12 As with applications received on or before the 2nd appointed day, licences granted to new applicants shall take effect immediately and licences granted to existing operators shall take effect from the 3rd appointed day or, if later, the date the application is determined.

Outstanding Applications

- 4.13 Local authorities should attempt where possible to determine outstanding applications made under the 2003 Act, which include an application for the provision of relevant entertainment, before the date

that Schedule 3 as amended by the 2009 Act comes into force in their area.

- 4.14 Where it has not been possible to determine application before the 1st appointed day, local authorities should advise applicants that they will need to submit an application for a sex establishment licence as set out in Schedule 3 if they wish to provide relevant entertainment. From the 1st appointed day onwards outstanding applicants shall be dealt with as though they are new applicants.

Existing Licence Conditions

- 4.15 In many cases licences granted under the 2003 Act to existing operators will contain conditions that relate expressly and exclusively to the provision of relevant entertainment. Such a condition might prohibit contact between a performer and customer during a lap dance. In these cases, in order to avoid duplication, where conditions on premises licences or club premises certificates relate only to the provision of relevant entertainment, they shall be read as if they were deleted from the 3rd appointed day onwards.
- 4.16 In cases where conditions on a premises licence or clubs premises certificate are inconsistent with, and less onerous than, the conditions in the licence granted under the 1982 Act they shall likewise be read as though they have been deleted.
- 4.17 Where a local authority decides to grant a sex establishment licence to an existing operator, who is subject to conditions on their existing premises licence or club premises certificate that relate expressly to the provision of relevant entertainment, they may wish to replicate the existing conditions on the new sex establishment licence if they believe that the existing conditions are sufficient. However, they could equally decide to impose new conditions consistent with Schedule 3 if they believe that new or additional conditions are necessary.

4.18 Although the Transitional Order does not require redundant conditions to be physically removed from a premises licence or club premises certificate, operators and local authorities may agree that this is desirable in order to clarify the operator's legal obligations. Such changes can be made via the minor variations procedure under section 41A of the 2003 Act.

ECHR Considerations

4.19 The Transitional Order allows local authorities to refuse applications, whether they are from existing operators or new applicants, on one or more grounds set out in paragraph 12 of Schedule 3. When making such decisions, local authorities must take into account any rights the existing operators may have under Article 1, Protocol 1 of the European Convention on Human Rights (which entitles every person to the peaceful enjoyment of their possessions) and Article 10 (freedom of expression).

4.20 In light of the leading case of *Belfast City Council v Miss Behavin' Ltd* (Northern Ireland)¹² it would be prudent for local authorities to assume that freedom of expression includes the right to use particular premises as sexual entertainment venues and that a person who is denied the right to use his premises as a sexual entertainment venue where he already has a licence to do so under the 2003 Act (or in future under the 1982 Act) has been deprived of possessions. (Some Lords did not decide this point or disagreed that such rights were engaged and therefore it would still be open to local authorities to argue that such rights were not engaged in a particular case). However, in any event, the House of Lords were agreed that such rights would only be engaged at a low level. This led Lord Hoffman to say that if the local authority exercises its powers rationally and in accordance with the purposes of the statutory provisions, it would require very unusual facts for it to amount to a disproportionate restriction on Convention rights.

¹² [2007] UKHL 19

4.21 Nevertheless, local authorities would be well advised to consider whether any interference with the applicant's rights under Article 10 or Article 1, Protocol 1 of the European Convention on Human Rights is necessary and proportionate for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others or, in the case of Article 1, Protocol 1, can be justified in the general interest.

Changes to Licensing Policies

4.22 Many local authorities who have already adopted Schedule 3 will have published a licensing policy for sex establishments. Such policies may provide a useful guide to potential applicants about whether a particular application is likely to be successful or not.

4.23 Upon resolving to adopt the sexual entertainment venue provisions introduced by the 2009 Act, local authorities should ensure that their licensing policies for sex establishments are up to date and reflect the changes introduced by Section 27. This could mean updating existing policies or producing a policy specific to regulation of sexual entertainment venues.

London

Sex Encounter Establishments

4.24 London local authorities which have adopted Schedule 3 to the 1982 Act as amended by the Greater London Council (General Powers) Act 1986 are able to regulate sex encounter establishments. However, under sub-paragraph 3A(i) premises that hold a premises licence or club premises certificate for the provision of regulated entertainment or late night refreshment are not regarded as sex encounter establishments. This means that, in practice, there are very few, if any, premises that are licensed as sex encounter establishments.

- 4.25 Therefore, the transitional provisions set out that where a local authority, which has previously adopted provisions to regulate sex encounter establishments, passes a resolution to adopt Schedule 3, as amended by section 27, the existing sex encounter establishment category will be replaced by the new sexual entertainment venue category.
- 4.26 In these circumstances, an existing sex encounter establishment licence will be treated as though it had been granted under the new sexual entertainment venue regime with any terms, conditions and restrictions carried over.

Hostess Bars

- 4.27 The hostess bar category of sex establishment, as introduced by section 33 of the London Local Authorities Act 2007, is largely unaffected by the 2009 Act provisions.
- 4.28 In cases where a London local authority has already resolved that the hostess bar category has effect in their area, they will be able to retain this category after the amendments made by the 2009 Act have been adopted and the sex encounter establishment category has been repealed, subject to the amendments made to Schedule 3 by the 2009 Act. Where London local authorities have not adopted the sexual entertainment venue provisions, it will still be open for them to resolve to adopt the hostess bar category after the 2009 Act provisions have been adopted without having to adopt the sex encounter establishment category.

Soliciting for Custom

- 4.29 Under Section 22 of the London Local Authorities Act 2004, as amended by Section 72 of the London Local Authorities Act 2007, it is an offence in London to solicit for custom for a sex establishment. However, paragraph 2A provides a defence if the premises concerned are licensed under Part 3 of the 2003 Act.

4.30 When a London local authority resolves to adopt the provisions introduced by Section 27, it will be a defence if the premises are licensed as a sexual entertainment venue under Schedule 3 of the 1982 Act or are operating lawfully under a 2003 Act licence during the transitional period at the time of the alleged offence.

ANNEX A: GUIDE TO TRANSITIONAL PERIOD AND EXISTING OPERATORS

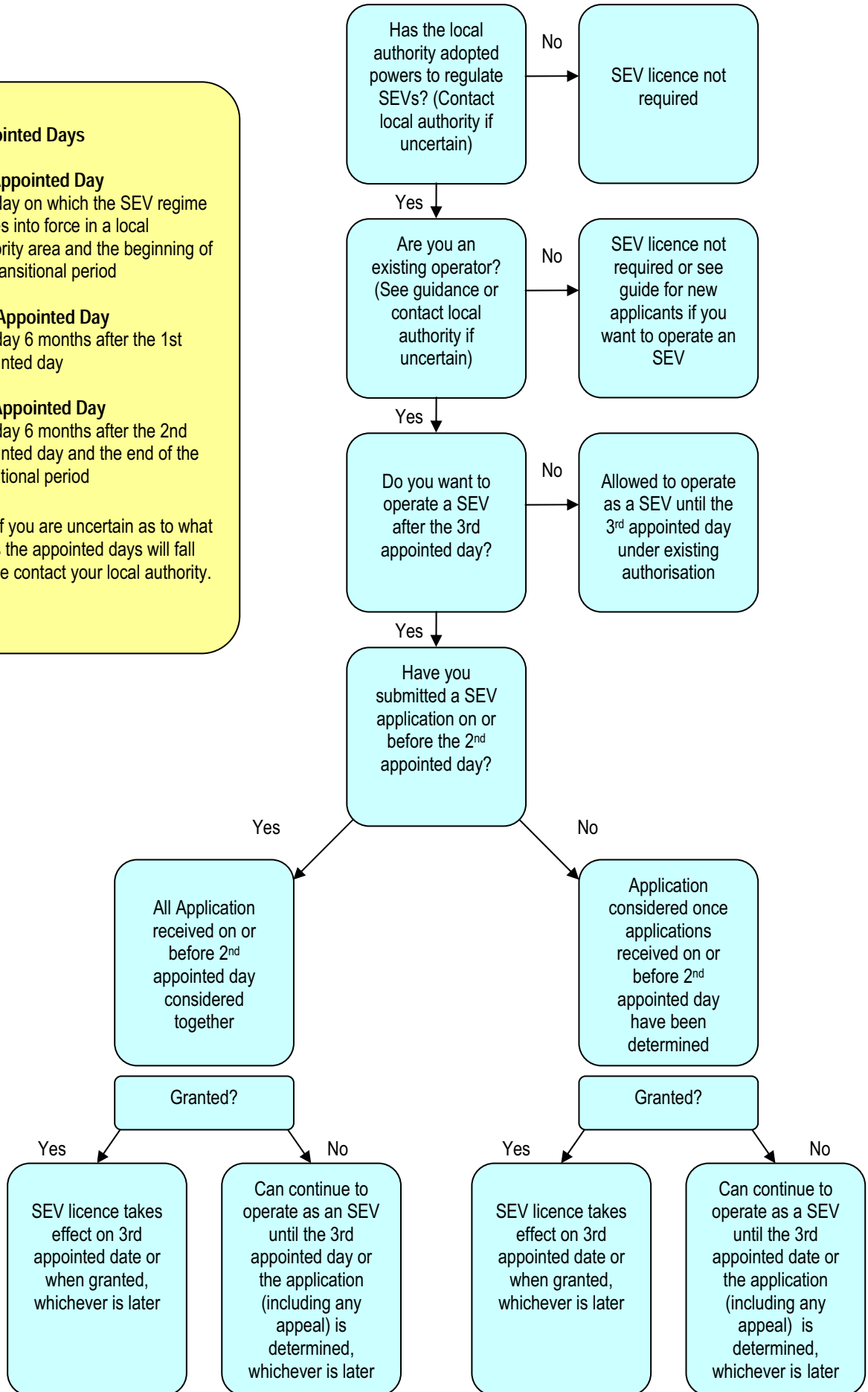
Appointed Days

1st Appointed Day
The day on which the SEV regime comes into force in a local authority area and the beginning of the transitional period

2nd Appointed Day
The day 6 months after the 1st appointed day

3rd Appointed Day
The day 6 months after the 2nd appointed day and the end of the transitional period

NB: If you are uncertain as to what dates the appointed days will fall please contact your local authority.



ANNEX B: GUIDE TO TRANSITIONAL PERIOD AND NEW APPLICANTS

Appointed Days

1st Appointed Day
The day on which the SEV regime comes into force in a local authority area and the beginning of the transitional period

2nd Appointed Day
The day 6 months after the 1st appointed day

3rd Appointed Day
The day 6 months after the 2nd appointed day and the end of the transitional period

NB: If you are uncertain as to what dates the appointed days will fall please contact your local authority.

