

# Public Document Pack

**Date of meeting**      **Tuesday, 17th February, 2015**

**Time**                      **7.00 pm**

**Venue**                    **Committee Room 1, Civic Offices, Merrial Street,  
Newcastle-under-Lyme, Staffordshire, ST5 2AG**

**Contact**                 **Geoff Durham**

## **Licensing Committee**

### **AGENDA**

#### **PART 1 – OPEN AGENDA**

- 1      Apologies**
- 2      Declarations of Interest**
- 3      Application for Renewal of a Licence for a Sexual                      (Pages 3 - 70)  
Entertainment Venue**
- 4      Urgent Business**

**Members:**      Councillors Mrs Bates (Vice-Chair), Miss Cooper, Eastwood, Hambleton,  
Miss Mancey, Mrs Simpson, Tagg, Welsh, Wemyss, Wilkes, Williams,  
Mrs Williams, Mrs Winfield (Chair) and Woolley

**PLEASE NOTE:** The Council Chamber and Committee Room 1 are fitted with a loop system. In addition, there is a volume button on the base of the microphones. A portable loop system is available for all other rooms. Should you require this service, please contact Member Services during the afternoon prior to the meeting.

**Members of the Council:** If you identify any personal training/development requirements from any of the items included in this agenda or through issues raised during the meeting, please bring them to the attention of the Democratic Services Officer at the close of the meeting.

**Meeting Quorums :- 16+= 5 Members; 10-15=4 Members; 5-9=3 Members; 5 or less = 2 Members.**

Officers will be in attendance prior to the meeting for informal discussions on agenda items.

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## **APPLICATION FOR THE GRANT OF A LICENCE FOR A SEX ESTABLISHMENT**

**Submitted by:** Democratic Services Manager

**Portfolio:** Safer Communities

**Ward(s) affected:** Non specific

### **Purpose of the Report**

To consider the application form attached (**Appendix A**) from Mr Todd Woodhouse for the renewal of a Sex Establishment Licence for Lace Gentlemen's Club.

### **Recommendation**

**That the Committee consider the application for the renewal of a licence for a sex establishment and make a decision regarding the granting of the licence.**

### **Reasons**

The Council's Constitution has delegated authority to the Licensing Committee to grant and renew Sexual Entertainment Venue licences.

### **1. Background**

The Local Government (Miscellaneous Provisions) Act 1982 introduced a licensing regime to control sex establishments. The Council adopted schedule 3 of the Act on 31 March 2010 and the schedule took effect on 3 August 2010. This meant that the Council could control and regulate the operation of certain kinds of Sex Establishment within its area. No Sex Establishment can operate unless it has obtained a licence from the Council. Any licence may contain conditions that restrict how that Sex Establishment may trade.

No representations have been received in relation to the application.

### **2. Issues**

- 2.1 All applications for a grant, renewal or transfer of an existing licence must be referred to the Licensing Committee.
- 2.2 Any licence may be granted subject to conditions imposed by the Council therefore an application should not be refused if conditions could adequately address any area of concern.
- 2.3 All licences are subject to the Council's Standard Conditions for Sex Establishments in addition to any conditions that the Licensing Committee may impose.

### **3. Options Considered**

- 3.1 To Grant the Licence as per the original application.
- 3.2 To Grant the Licence with additional conditions.

- 3.3 To refuse the Licence. (The Committee is under a duty to give reasons whenever an application is refused, whether requested to do so by the applicant or not.)
- 3.4 The Committee must, in making its decision base its conclusions on fairness. Before imposing regulatory constraint on an applicant, it must ensure that the applicant knows of the concerns raised and has been given an opportunity to address them, whether by arguing that the concerns are invalid or that they can be met, for example by the imposition of conditions.
- 3.5 All conditions imposed by the Committee must be non-discriminatory, necessary and proportionate.
- 3.6 The decision of the Committee need not be delivered immediately as time may be required for a reasoned decision to be drawn up.

### **Refusal of a Licence**

- 3.7 The Miscellaneous Provisions Act imposes a duty on the Council to refuse to grant a licence to a:-
  - (a) person under the age of 18; or
  - (b) person who is for the time being disqualified following the revocation of a licence; or
  - (c) person, other than a body corporate, who is not resident in the United Kingdom or was not so resident throughout the period of six months immediately preceding the date when the application was made; or
  - (d) body corporate which is not incorporate in the United Kingdom; or
  - (e) 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 of the Sex Establishment, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

### **Discretionary Grounds for Refusal**

The Act allows the Council to refuse to grant or renew a licence on the grounds that:

- (a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason; or
- (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, or
- (c) the number of sex establishments in the relevant locality at the time the application is made or determined is equal to or exceeds the number which the Authority considers is appropriate for that locality; or
- (d) 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 Sex Establishment in the vicinity are put;
  - (iii) to the layout, character or condition of the Sex Establishment, vehicle, vessel or stall in respect of which the application is made
- (e) The Act provides that the appropriate number may be nil. This policy sets the appropriate number of premises at one
- (f) The Council cannot have regard to the morality of sex establishments. Its approval or disapproval of sex establishments is not a matter which can be considered.

6. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

- creating a cleaner, safer and sustainable Borough
- creating a healthy and active community

7. **Legal and Statutory Implications**

- 7.1 The guidance states that any applications received prior to 23 August 2011 are to be considered together and any received after 23 August 2011 would have to be considered at a later date. This is the only application received to date and must therefore be considered by the Licensing Committee prior to any others that may still be received.
- 7.2 The date on which the transitional period ends is 23 February 2012 and it is on this date that the new licence will need to be in place and will take effect..

8. **Equality Impact Assessment**

No adverse impact has been identified

9. **Financial and Resource Implications**

None have been identified

10. **Major Risks**

None identified

13. **Earlier Cabinet/Committee Resolutions**

- 13.1 The Council adopted schedule 3 of the Act on the 31st March 2010.

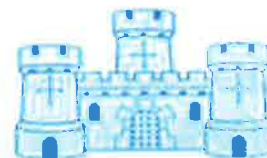
14. **List of Appendices**

**Appendix A:** Application For a Licence for Sex Establishment

**Appendix B:** The Councils Policy in relation to the Licensing of Sex Establishments

**Appendix C:** Guidance issued by the Home Office.

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**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982**  
**APPLICATION FOR THE GRANT / RENEWAL / TRANSFER / VARIATION**  
**OF LICENCE FOR A SEX ESTABLISHMENT**

- If you are completing this form by hand please write legibly in block capitals.
- In all cases ensure that your answers are inside the boxes and written in black ink.
- Use additional sheets if necessary.
- You may wish to keep a copy of the completed form for your records.

If you have specific questions about your application please contact:

Licensing Section  
Newcastle under Lyme Borough Council  
Civic Offices  
Merrial Street  
Newcastle under Lyme  
Staffordshire  
ST5 2AG

Telephone: 01782 717 717

Fax: 01782 711 031

Email: [licensing@newcastle-staffs.gov.uk](mailto:licensing@newcastle-staffs.gov.uk)

You should forward one copy of your application together with the relevant fee to the Licensing section at the above address. Should you wish to pay by cash, please make an appointment.

One copy to the following responsible authority:

Licensing Manager  
Northern Licensing Unit,  
Stoke Police Station,  
Boothan Road,  
Stoke on Trent,  
Staffordshire,  
ST4 4AH

Telephone: 01785 232 840

Email: [northern.licensing@staffordshire.pnn.police.uk](mailto:northern.licensing@staffordshire.pnn.police.uk)

REC No 362358

£2000

27-1-15.

1.

If the application is made on behalf of an individual, please state:

1.	FULL NAME:	TODD IAN WOODHOUSE
2.	ADDRESS:	23 CHERRINGTON ROAD NANTWICH
	POST CODE:	CW5 7AW
3.	TELEPHONE NUMBER:	[REDACTED]
4.	DATE OF BIRTH:	31. 08. 1965
5.	PLACE OF BIRTH (city and country):	AUDLEM, CHESHIRE

2.

If the application is made on behalf of a corporation or unincorporated body, please state:

1.	FULL NAME OF BODY:	
2.	ADDRESS: (of registered or principal officer)	NA
	POST CODE:	
3.	TELEPHONE NUMBER:	



3.

Please give full names and addresses of ALL directors or other persons responsible for the management of the establishment.

	<b>PERSON 1</b>	
1.	FULL NAME:	EMMA CHEADLE
2.	ADDRESS:	23 CHERRINGTON ROAD NANTWICH
	POST CODE:	CW5 7AW
3.	TELEPHONE NUMBER:	[REDACTED]
4.	DATE OF BIRTH:	11.02.1981
5.	PLACE OF BIRTH (town and country)	CREWE, CHESHIRE

	<b>PERSON 2</b>	
1.	FULL NAME:	
2.	ADDRESS:	NA
	POST CODE:	
3.	TELEPHONE NUMBER:	
4.	DATE OF BIRTH:	
5.	PLACE OF BIRTH (town and country)	

	<b>PERSON 3</b>	
1.	FULL NAME:	
2.	ADDRESS:	NA
	POST CODE:	
3.	TELEPHONE NUMBER:	
4.	DATE OF BIRTH:	
5.	PLACE OF BIRTH (town and country)	

Please continue on a separate sheet of paper if required.

4

Is the applicant or any person named in answer to question 3, concerned in any way financially or otherwise in any other business which controls, measures or supplies sex establishments?

YES

☐

NO

☒

If the answer is yes, please give details of the name of the person's concerned, their full home addresses, the name and address of the business and the nature and extent of the connection.

NAME:

ADDRESS:

NA

POST CODE:

TELEPHONE:

BUSINESS NAME:

BUSINESS ADDRESS:

POST CODE:

TELEPHONE:

NATURE AND EXTENT OF THE CONNECTION:

5.

Have you any convictions recorded or pending against you OR if a body corporate or unincorporated body, that body or any of its Directors or persons responsible for its management?

YES

☐

NO

☒

If the answer is yes, please give details below. Please be aware that it is a criminal offence to make a false statement about any convictions recorded or pending.

DATE OF CONVICTION AND COURT ADDRESS	OFFENCE RECORDED OR PENDING	SENTENCE OR FINE (including suspended sentences)
	NA	

6.

Have you been resident in the UK throughout a period of six months immediately preceding the date of this application?

YES

☒

NO

☐

7.

If the application is made behalf of a corporate body, is that body incorporated within the UK?

YES

☐

NO

☐

NA

In respect of each individual who is responsible for the management of the premises in the absence of the Licence holder, please supply the following details:

FORENAME:	EMMA
SURNAME:	CHEADLE
PREVIOUS NAMES:	
ADDRESS:	23 CHERRINGTON ROAD NANTWICH
POST CODE:	CW5 7AW
TELEPHONE:	
DATE AND PLACE OF BIRTH:	CREWE CHESHIRE 11.02.1981
DATE OF WHICH BECAME RESIDENT OF THE UK: (if applicable)	

FORENAME:	GEORGINA
SURNAME:	JOHNSON
PREVIOUS NAMES:	
ADDRESS:	GRAND FORD FARM GRAND FORD LANE ASTON NANTWICH
POST CODE:	CW5 8DD
TELEPHONE:	
DATE AND PLACE OF BIRTH:	CREWE, CHESHIRE 16.01.1983
DATE OF WHICH BECAME RESIDENT OF THE UK: (if applicable)	

Please continue on a separate sheet if required.

8.

Have any of the persons named at any part of this application or their immediate relative or partner any convictions recorded against them? If so, please state:

DATE OF CONVICTION AND COURT ADDRESS	OFFENCE/S RECORDED OR PENDING	SENTENCE OR FINE (including suspended sentences)
	NA	

9.

Have you any reason to believe that a prosecution may be pending against any of the persons or bodies who are named at any part of this application?

YES

☐

NO

☒

If yes, please give details:

NA



10.

Has any person named at any place in this application been associated in any way with any other application for a licence for a sex establishment in the UK?

YES

☐

NO

☒

If yes, please give full details (including the address of the premises and the licensing Council's reference).

NA

11.

Please give details of their occupation during the five years prior to this application. These must include the names and addresses of all employers and the nature and dates of employment. Continue on a separate sheet if required:

PERSON 1	EMPLOYER NO. 1	EMPLOYER NO. 2
FULL NAME:		
FORMER NAME:		
EMPLOYER ADDRESS:	NA	
POST CODE:		
NATURE OF EMPLOYMENT:		
DATES OF EMPLOYMENT FROM AND TO:		

PERSON 1	EMPLOYER NO. 3	EMPLOYER NO. 4
FULL NAME:		
FORMER NAME:		
EMPLOYER ADDRESS:	NA	
POST CODE:		
NATURE OF EMPLOYMENT:		
DATES OF EMPLOYMENT FROM AND TO:		

PERSON 2	EMPLOYER NO. 1	EMPLOYER NO. 2
FULL NAME:		
FORMER NAME:		
EMPLOYER ADDRESS:	NA	
POST CODE:		
NATURE OF EMPLOYMENT:		
DATES OF EMPLOYMENT FROM AND TO:		

PERSON 2	EMPLOYER NO. 3	EMPLOYER NO. 4
FULL NAME:		
FORMER NAME:		
EMPLOYER ADDRESS:	NA	
POST CODE:		
NATURE OF EMPLOYMENT:		
DATES OF EMPLOYMENT FROM AND TO:		



## THE PREMISES

12.

If this application relates to a vehicle / vessel / stall, please give a description and state where it is to be used as a sex establishment:

NA
----

13.

Where the licence is sought in respect of premises, please give the name by which the premises will be known and the full address:

1.	PREMISE NAME:	LACE GENTLEMENS CLUB
2.	ADDRESS:	NELSONS PLACE NEWCASTLE-UNDER-LYME
	POST CODE:	ST5 1EB
3.	TELEPHONE NUMBER:	
4.	EMAIL ADDRESS	
5.	MOBILE TEL. NUMBER	

14.

Is the Premise:

FREEHOLD

☐

LEASEHOLD

☒

15.

If the applicant's interest in the premises is leasehold, please state:

NAME AND ADDRESS OF LANDLORD:	MIC PROPERTIES NEWCASTLE-UNDER-LYME
POST CODE:	
NAME AND ADDRESS OF SUPERIOR LANDLORD : (where applicable)	
LENGTH OF UNEXPIRED TERM OF THE LEASEHOLD:	2.5 YEARS
LENGTH OF NOTICE REQUIRED TO TERMINATE THE TENANCY:	1 MONTH

16.

Has the applicant a financial interest in the business which is the subject of this application?

YES

☒

NO

☐

If yes, please state to what extent the interest exists:

M.D.

17.

Is the business wholly owned by the applicant?

YES

☒

NO

☐

18.

Are the whole of the premises described at question 17 to be used under the licence?

YES

☐

NO

☒

19.

If the answer is no, please state:

Which part of the premises is to be used for the purpose of this licence:	GROUND FLOOR
What use will the remainder of the premises be used for:	CHANGING ROOM & OFFICE
The names of those who are responsible for the management of the remainder of the premises:	TODD IAN WOODHOUSE

20.

Describe the measures being taken to ensure that the interior of the premises is not visible to passers-by?

BLACKED OUT WINDOWS  
BLACKED OUT DOORS

21.

Are the premises, vehicle, vessel or stall in use as a sex establishment at the date of this application?

YES

☒

NO

☐

22.

If yes, please give the name and address of the person(s) or body who now operate the business and (where it is known), the date upon which the premises were first used as such:

1.	NAME:	TODD IAN WOODHOUSE
2.	ADDRESS:	23 CHERINGTON ROAD NANTWICH
	POST CODE:	CW5 7AW
3.	TELEPHONE NUMBER:	[REDACTED]
4.	EMAIL ADDRESS	tar.leisure@btconnect.com
5.	MOBILE TEL. NUMBER	[REDACTED]
6.	DATE:	01.03.2007

23.

During which hours do you wish to trade:

PLEASE USE THE 24 HOUR CLOCK				
Standard days and timings				
Day	Start	Finish	Further Details	
Mon				
Tue				
Wed	21.00	03.00		Seasonal Variations
Thur	21.00	03.00		
Fri	21.00	03.00		
			Non Standard timings	
Sat	21.00	03.00		
Sun				

24.

Please indicate what the premises are to be used for:

ACTIVITY	YES	NO
SEX SHOP		✓
SEX CINEMA		✓
SEX ENCOUNTER ESTABLISHMENT	✓	

25.

Are you (or, in a corporate/unincorporated body, that body), disqualified from holding a licence for a sex establishment?

YES

☐

NO

☒

26.

Have you ever been refused a licence for a sex establishment?

YES

☐

NO

☒

If yes, please give details:

NA

27.

If the application is for a licence for a sex shop, please state whether any part of the premises is to be used for the purpose of displaying films, video recording, DVD's or other moving pictures:

YES

☐

NO

☒

If yes, please indicate how many cubicles are to be provided for viewing and if so how many:

Please ☒

CUBICLES YES	CUBICLES NO	IF YES HOW MANY



28.

Please details what (if any) articles will be offered for sale:

NA

29.

What advertisements or displays are to be exhibited? Please indicate the size(s) of proposed displays or adverts:

DESCRIPTION OF ADVERTISEMENTS	SIZE
NA	

30.

Is there is force against the applicant or any of the persons named at any part of this application a disqualification from holding a licence for a sex establishment under the Local Government (Miscellaneous Provisions) Act 1982?

YES

☐

NO

☒

31.

Is there any further information which the applicant would wish to the Council to take into account when considering this application:

NA
----

**APPLICANTS SHOULD BE AWARE THAT ANY PERSON WHO, IN CONNECTION WITH AN APPLICATION FOR THE GRANT, RENEWAL OR TRANSFER OF A LICENCE, MAKES A STATEMENT WHICH THEY KNOW TO BE FALSE IN ANY MATERIAL RESPECT, OR WHICH THEY DO NOT BELIEVE TO BE TRUE, IS GUILTY OF AN OFFENCE AND LIABLE TO SUMMARY CONVICTION TO A FINE NOT EXCEEDING £20,000.00.**

**DECLARATION:**

I declare that I have checked the information given in this application form and to the best of my knowledge and belief it is correct and I confirm a copy of the application has been sent to the Chief Officer of Police for the area.

SIGNATURE:	<i>Todd Ian Woodhouse</i>
PRINT NAME:	TODD IAN WOODHOUSE
DATE:	27th JAN 2015
DESIGNATION OF SIGNATORY	

SIGNATURE:	
PRINT NAME:	
DATE:	
DESIGNATION OF SIGNATORY	







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4. Exercise of Responsibilities
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10. Relevant Locality
11. Duration of Licences
12. Hours of opening
13. Fitness of applicant

**1. Introduction**

This document sets out the policy of Newcastle under Lyme Borough Council on the Regulation of Sex Establishments and the procedure relating to applications for Sex Establishment Licences.

The Local Government (Miscellaneous Provisions) Act 1982 ('the Act') introduced a licensing regime to control sex establishments. The Council adopted schedule 3 of the Act on the 31<sup>st</sup> March 2010 and the schedule took effect on the 3<sup>rd</sup> August 2010. This means the Council can control and regulate the operation of certain kinds of sex establishments within its area. No sex establishment can operate unless it has obtained a licence from the Council. Any licence may contain conditions that will restrict how that sex establishment may trade.

**2. Period of Licensing Policy**

- 2.1 The Statement of Licensing Policy will be used by the Council in the administration and enforcement of its duties under the Act. It will remain in force for a period of three years from the 23<sup>rd</sup> February 2011 and will be reviewed and subject to further consultation before the end of the three year period.
- 2.2 A new Statement of Licensing Policy will be prepared to come into operation at the expiration of the current Policy.

**3. Review of Licensing Policy**

3. During the currency of any Statement of Licensing Policy the Council will keep the operation of the Policy under review and make appropriate revisions to ensure the effectiveness of the Policy subject to appropriate consultation.

**4. Exercise of Responsibilities**

- 4.1 In exercising its duties and responsibilities under the terms of the Act the Council will have regard to this Statement of Licensing Policy and to guidance issued by the Home Office.

- 4.2 Subject to 4.1 the Council will not follow this policy inflexibly but shall take all relevant factors into consideration in determining an application. Each case will be decided on its merits.

## 5. Definitions

The Term	The Meaning
The Council	Newcastle under Lyme Borough Council
The Act	The Local Government (Miscellaneous Provisions) Act 1982 as amended
Licensed Premises	any premises, vehicle or stall licensed under the Act
Licence Holder	a person who is the holder of a Sex Establishment Licence
Permitted Hours	The hours during which the licensed premises are permitted to be open to the public
Sex Establishment Licence	A licence granted pursuant to Schedule 3 of the Act (as amended)
Relevant Locality	the Borough of Newcastle under Lyme
Inappropriate Proximity	a minimum distance of 100 metres in direct line of sight between the proposed establishment or more in the case of the proposed establishment being in proximity to a primary school
Sex Establishment	Sex Cinema, Sex Shop or Sexual Entertainment Venue
Sex Cinema	Any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced which: <ul style="list-style-type: none"> <li>• Are concerned primarily with the portrayal of or primarily deal with or relate to, or are intended to stimulate or encourage: <ol style="list-style-type: none"> <li>i) sexual activity</li> <li>ii) acts of force or restraint which are associated with sexual activity</li> </ol> </li> <li>• are concerned primarily with the portrayal of , or primarily deal with or relate to, genital organs or urinary or excretory functions, but does not include a dwelling house to which the public is not admitted</li> </ul>
Sex Shop	Any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating – <ol style="list-style-type: none"> <li>a) sex articles;</li> <li>b) other things intended for use in connection with, or for the purpose of stimulating or encouraging:- <ol style="list-style-type: none"> <li>i) sexual activity</li> <li>ii) acts of force or restraint which are associated with sexual activity</li> </ol> </li> </ol>
Sex Article	Anything made for use in connection with, or for the purpose of stimulating or encouraging <ol style="list-style-type: none"> <li>a) sexual activity or</li> <li>b) acts of force or restraint which are associated with sexual activity;</li> </ol> and <ul style="list-style-type: none"> <li>• anything containing or embodying matter to be read or looked at or anything intended to be used either alone or as one of a set, for the reproduction</li> </ul>

	<p>or manufacture or any such article and</p> <ul style="list-style-type: none"> <li>• to any recording of vision or sound which:- <ol style="list-style-type: none"> <li>1. is concerned primarily with the portrayal of, or primarily deals with or relates to, or is intended to stimulate or encourage, sexual activity or acts of force or restraint which are associated with sexual activity; or</li> <li>2. is concerned primarily with the portrayal of, or primarily deals with or relates to genital organs or urinary or excretory functions.</li> </ol> </li> </ul>
Sexual Entertainment Venue	<p>Any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.</p> <p>Relevant Entertainment means:-</p> <ol style="list-style-type: none"> <li>a) any live performance; or</li> <li>b) any live display of nudity;</li> </ol> <p>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 the audience (whether by verbal or other means)</p>

## 6. Requirement for a Licence

- (a) The Act provides that no person shall in any area in which the Schedule is in force use any premises, vehicle, vessel or stall as a sex establishment except under and in accordance with the terms of a licence granted under the Schedule by the authority.
- (b) The Council may waive the requirement for a licence for such period as the Council deems fit in any case where they consider that to require a licence would be unreasonable or inappropriate

## 7. The Application Process

- (a) Individuals, limited companies and firms may apply for a licence. (b) The application form and relevant documentation for the new licence, transfer or renewal must be completed and returned with the appropriate fee as set out in the Council's fees and charges.
- (c) A copy of the application form and supporting documentation must be forwarded to the Chief Officer of Police within seven days.
- (d) A notice of the application will need to be advertised both on or near to the sex establishment and no later than seven days after the application is made in a newspaper circulating within the area of the Sex Establishment. The notice must identify the sex establishment to which it relates and remain in place for 21 days beginning on the date of the application.
- (e) The Council will consult with the Police, Fire and Rescue Service, Council Ward Members, Environmental Health and the Local Planning Authority.
- (f) Objections to the application shall be in writing stating the terms of the objection no later than 28 days after the date of the application.(g) Where objections are received the Council will give notice in writing to the applicant of the general nature of the objection before it is given due consideration.

## **8. Mandatory Ground for Refusal**

8.1 The Act imposes a duty on the Council to refuse to grant a licence to a:-

- (a) Person under the age of 18; or
- (b) Person who is for the time being disqualified following the revocation of a licence; or
- (c) Person, other than a body corporate, who is not resident in the United Kingdom or was not so resident throughout the period of six months immediately preceding the date when the application was made; or
- (d) Body corporate which is not incorporate in the United Kingdom; or
- (e) 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 of the sex establishment, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

## **9. Discretionary Grounds for Refusal**

9.1 The Act allows the Council to refuse to grant or renew a licence on the grounds that:

- (a) The applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason; or
- (b) If the licence were to 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, or
- (c) The number of sex establishments in the relevant locality at the time the application is made or determined is equal to or exceeds the number which the Authority consider is appropriate for that locality; or
- (d) 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 sex establishment in the vicinity are put;
  - (iii) To the layout, character or condition of the sex establishment, vehicle, vessel or stall in respect of which the application is made
- (e) The Act provides that the appropriate number under 6.1(c) may be nil. This policy sets the appropriate number of premises at 1 (one)
- (f) The Council cannot have regard to the morality of sex establishments. Its approval or disapproval of sex establishments is not a matter which can be considered.

## **10. Relevant Locality**

10.1 The Council has determined that it is appropriate to consider the Borough of Newcastle under Lyme as the relevant locality.

10.2 The Council is of the view that it is not appropriate to have a sex establishment situated within inappropriate proximity to:-

- (a) Purely or primarily residential accommodation
- (b) Schools, play areas, nurseries, children's centres or similar premises
- (c) Places of worship
- (d) Community facilities or public buildings including, but not limited to, swimming pools, leisure centres, public parks, youth centres/clubs, and sheltered housing
- (e) Historic buildings or tourist attractions.

- 10.3 The Council is of the view that it may be appropriate to grant a licence in a commercial area where there are no residential premises, such as on a business park.
- 10.4 In considering all applications for the grant of new licences the Council will take into account paragraphs 10.1- 10.3 and the potential impact of the licensed activity on
- (a) Crime and disorder
  - (b) Public nuisance
  - (c) Public safety
  - (d) Protecting children from harm

## **11. Duration of licences**

- 11.1 Licences will generally be issued on an annual basis but can be issued for a shorter term if deemed appropriate.

## **12. Hours of opening**

- 12.1 The Council does not prescribe hours of opening. Hours will be considered on a case by case basis.

## **13. Fitness of applicant**

- 13.1 An applicant must be a fit and proper person to hold a licence. In determining suitability for a new licence or a transfer the Council will in most cases take into account:-
- (a) Previous knowledge and experience of the applicant;
  - (b) Any evidence of the operation of any existing or previous licence held by the applicant, including any licence held in any other borough;
  - (c) Any report about the applicant and management of the Sex Establishment received from statutory objectors/responsible authorities
  - (d) Any criminal convictions or cautions of the applicants

## **14. Determination of Applications**

- 14.1 Each application will be considered on its own merits following the appropriate consultation and in accordance with this Policy.
- 14.2 Any licence may be granted subject to conditions imposed by the Council, therefore an application should not be refused if conditions could adequately address any area of concern
- 14.3 All licences will be subject to the Council's Standard Conditions for Sex Establishments in addition to any conditions that the Licensing Committee may impose
- 14.4 All applications for the grant of a new licence will be determined at a public hearing by the Licensing Committee.
- 14.5 All applications for a renewal of an existing licence where no objections are received will be considered by the Licensing Committee
- 14.5 All applications for a transfer of an existing licence will be referred to the Licensing Committee or a Licensing Sub-Committee to be determined at a public hearing.

## **15. Standard conditions**

- (1) The sex establishment shall be closed throughout Good Friday, Christmas Day and every Sunday.
- (2) A copy of the Sex Establishment Licence and the conditions made by the authority must be kept exhibited in the public area of the sex establishment.
- (3) No person under the age of 18 years is to enter the sex establishment.
- (4) All customers appearing to be under the age of 21 to be required to provide proof of their age before being allowed access to the sex establishment.
- (5) No person under the age of 18 years is to be employed in the business of the sex establishment.
- (6) At all entrances there shall be prominently displayed (so as to be visible at all times to persons approaching the sex establishment) a notice prohibiting entry to all persons under 18 years of age.
- (7) The licensee of the sex establishment shall ensure that all persons employed by the sex establishment are aware of the age restriction on customers and that they exclude or remove from the sex establishment any person attempting to evade the restriction.
- (8) The licensee shall not display outside, near to, or within the sex establishment any advertising material, sign or pictorial display referring to the licensed sex establishment or the goods, articles or services provided by the Sex Establishment, in such a position or manner that it is visible to any person using adjacent highways, streets, footpaths or forecourts except any notice displaying the name or trading title of the licensee, any notice indicating the times of opening of the premise or required by statute, regulation or bylaw applicable to the sex establishment or business carried thereon.
- (9) The sex establishment shall be so arranged by screening or obscuring windows, doors and other openings so that the interior of the licensed sex establishment and the displays of articles sold at the sex establishment shall not be visible at any time to persons outside the building. The external doors shall be fitted with automatic closing devices.
- (10) A police officer or an authorised officer of the Council or the Police may at any reasonable time enter and inspect the sex establishment in respect of which a sex establishment licence is in force or an application for the grant of a new licence has been served.
- (11) All refuse produced by the sex establishment and materials, goods and articles discarded for any reason shall be securely stored within the sex establishment and delivered in closed containers to the refuse collection service.
- (12) The licensee shall make such provision for the reception of goods and articles for sale, hire, exchange, loan, demonstration or display on the sex establishment so that they are received directly into the sex establishment or packaged such that they are not identifiable.
- (13) The licensee or some responsible person nominated by him/her in writing for the purpose and approved by the Council shall be in charge of and upon the



licensed sex establishment during the whole time they are open to the public. Such written nominations shall be continuously available for inspection by authorised officers of the Council or the Police.

- (14) No part of the sex establishment shall be used for the purposes of prostitution.
- (15) The licensee shall ensure that no employee or other person shall seek to obtain custom for the sex establishment by means of personal solicitation or marketing material identifying the sex establishment.
- (16) A record shall be kept of all mail order transactions (if any) in such form as agreed by the Council.
- (17) A CCTV system shall be installed in the sex establishment to the satisfaction of the Police Architectural Liaison Officer or in their absence the Police Licensing Officer. The system shall efficiently record the operation of the sex establishment and automatically indicate the time and date of events recorded to a standard that would be acceptable as evidence in Court. All recordings shall be securely maintained for a minimum of 28 days and shall be made available at the sex establishment for inspection within 24 hours by a police officer or an authorised officer of the Council or the Police.

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# **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 6<sup>th</sup> April as does the Policing and Crime Act 2009 (Consequential Provisions) (England) Order 2010. In Wales, the equivalent provisions come into force on 8<sup>th</sup> 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 council<sup>1</sup>;
  - (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.

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<sup>1</sup> 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 6<sup>th</sup> April 2010 in England and 8<sup>th</sup> May in Wales<sup>2</sup>. 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

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<sup>2</sup> 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 Authorities<sup>3</sup> and LACORS Guidance on the impact of the Services Directive on councils setting and administering local licence fees within the service sector.<sup>4</sup>*

## 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/values<sup>5</sup> 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

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

<sup>4</sup> [www.lacors.gov.uk](http://www.lacors.gov.uk)

<sup>5</sup> 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.<sup>6</sup>

## 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;

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<sup>6</sup> 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.<sup>7</sup>

3.31 The Provision of Services Regulations 2009<sup>8</sup> 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

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

<sup>8</sup> 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.<sup>9</sup>

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

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<sup>9</sup> 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.<sup>10</sup>

- 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

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<sup>10</sup> 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.<sup>11</sup>

- 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

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<sup>11</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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)<sup>12</sup> 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.

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<sup>12</sup> [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

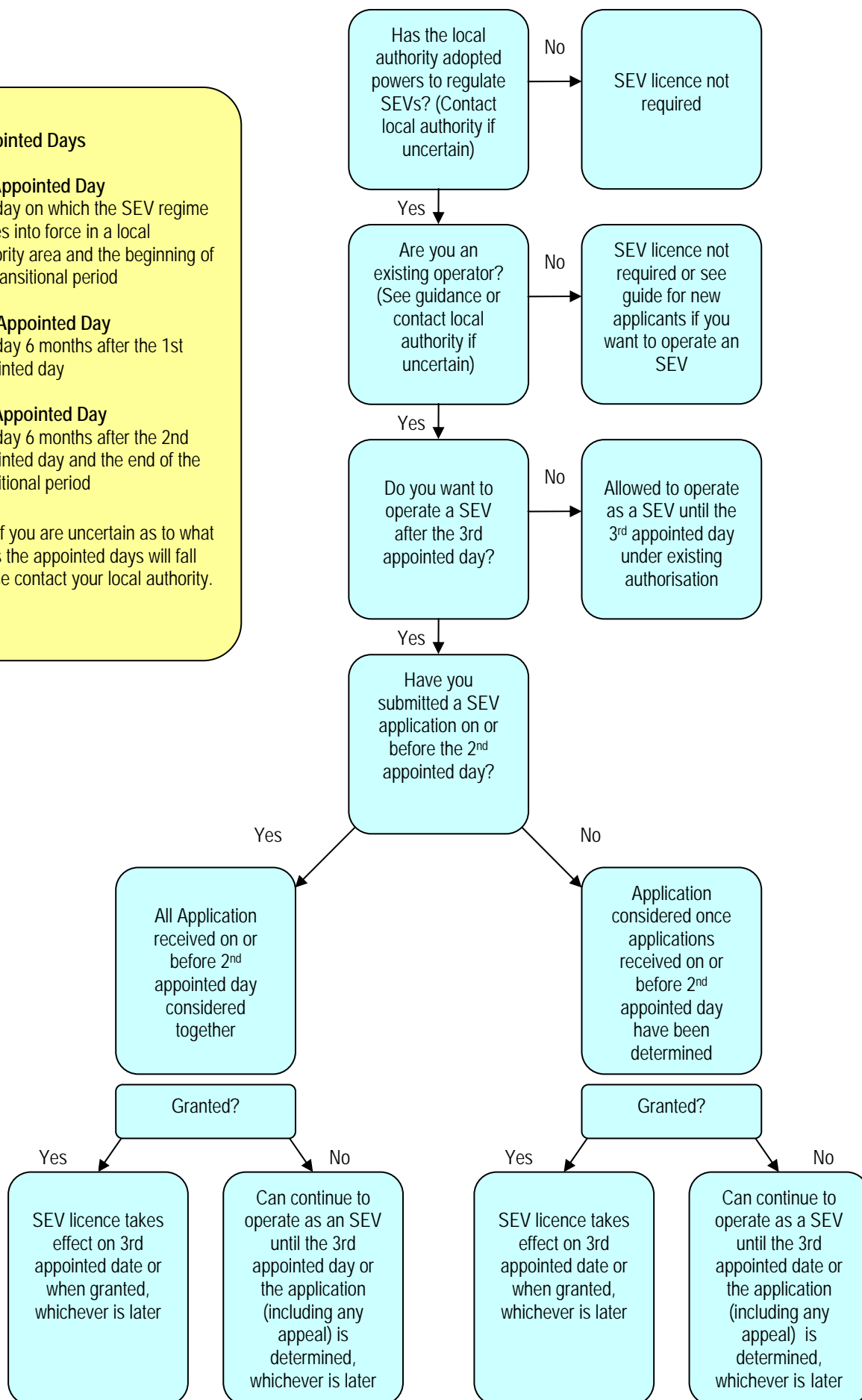
#### 2nd Appointed Day

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.

