

AGENDA

Regulatory Committee

Date: **Tuesday 6 July 2010**

Time: **2.30 pm**

Place: **The Council Chamber, Brockington, 35 Hafod Road,
Hereford**

Notes: Please note the **time, date** and **venue** of the meeting.

For any further information please contact:

Pete Martens, Committee Manager Planning & Regulatory

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Agenda for the Meeting of the Regulatory Committee

Membership

Chairman	Councillor JW Hope MBE
Vice-Chairman	Councillor PGH Cutter
	Councillor CM Bartrum
	Councillor DJ Benjamin
	Councillor SPA Daniels
	Councillor JHR Goodwin
	Councillor RC Hunt
	Councillor Brig P Jones CBE
	Councillor PJ McCaull
	Councillor GA Powell
	Councillor A Seldon

GUIDANCE ON DECLARING PERSONAL AND PREJUDICIAL INTERESTS AT MEETINGS

The Council's Members' Code of Conduct requires Councillors to declare against an Agenda item(s) the nature of an interest and whether the interest is personal or prejudicial. Councillors have to decide first whether or not they have a personal interest in the matter under discussion. They will then have to decide whether that personal interest is also prejudicial.

A personal interest is an interest that affects the Councillor more than most other people in the area. People in the area include those who live, work or have property in the area of the Council. Councillors will also have a personal interest if their partner, relative or a close friend, or an organisation that they or the member works for, is affected more than other people in the area. If they do have a personal interest, they must declare it but can stay and take part and vote in the meeting.

Whether an interest is prejudicial is a matter of judgement for each Councillor. What Councillors have to do is ask themselves whether a member of the public – if he or she knew all the facts – would think that the Councillor's interest was so important that their decision would be affected by it. If a Councillor has a prejudicial interest then they must declare what that interest is. A Councillor who has declared a prejudicial interest at a meeting may nevertheless be able to address that meeting, but only in circumstances where an ordinary member of the public would be also allowed to speak. In such circumstances, the Councillor concerned will have the same opportunity to address the meeting and on the same terms. However, a Councillor exercising their ability to speak in these circumstances must leave the meeting immediately after they have spoken.

AGENDA

		Pages
1.	<p>ELECTION OF CHAIRMAN AND APPOINTMENT OF VICE-CHAIRMAN</p> <p>To note that at the meeting of Council on 28 May 2010, Councillor JW Hope MBE was elected as Chairman of the Regulatory Committee and Councillor PGH Cutter was appointed Vice-Chairman.</p>	
2.	<p>APOLOGIES FOR ABSENCE</p> <p>To receive apologies for absence.</p>	
3.	<p>NAMED SUBSTITUTES (IF ANY)</p> <p>To receive details any details of Members nominated to attend the meeting in place of a Member of the Committee.</p>	
4.	<p>DECLARATIONS OF INTEREST</p> <p>To receive any declarations of interest by Members in respect of items on the Agenda.</p>	
5.	<p>MINUTES</p> <p>To approve and sign the Minutes of the meeting held on 1st June, 2010.</p>	1 - 4
6.	<p>PROCEDURAL ARRANGEMENTS</p> <p>To note the procedural arrangements for the meeting.</p>	5 - 6
7.	<p>HIGHWAYS ACT 1980, SECTION 119, PROPOSED PUBLIC PATH DIVERSION ORDER - FOOTPATH MB4 MUCH BIRCH</p> <p>To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath MB4 in the parish of Much Birch.</p> <p>Ward Affected: Pontrilas</p>	7 - 12
8.	<p>ADOPTION OF SCHEDULE 3 TO THE LOCAL GOVERNMENT (MISC PROVISIONS) ACT 1982</p>	13 - 18
	<p>Appendix 1 - SCHEDULE 3 CONTROL OF SEX ESTABLISHMENTS</p>	19 - 30
	<p>Appendix 2 - SECTION 27 OF THE POLICING AND CRIME ACT 2009</p>	31 - 34
	<p>Appendix 3 - MINISTERS LETTER TO CHIEF EXECUTIVE</p>	35 - 36
	<p>Appendix 4 - HOME OFFICE GUIDANCE</p>	37 - 72
9.	<p>REVIEW OF A THREE YEAR DUAL (HACKNEY CARRIAGE AND PRIVATE HIRE) DRIVER'S LICENCE</p> <p>To consider appropriate action with regard to the continuance of a 3 year dual (hackney carriage and private hire) driver's badge and the collection of outstanding paperwork and money in relation to the annual self declaration.</p>	73 - 76

EXCLUSION OF THE PUBLIC AND PRESS

In the opinion of the Proper Officer, the following item will not be, or is likely not to be, open to the public and press at the time it is considered.

RECOMMENDATION: that under section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Schedule 12(A) of the Act, as indicated below:

Information which is likely to reveal the identity of an individual

- | | |
|--|------------------|
| <p>10. APPLICATION FOR A DUAL HACKNEY CARRIAGE & PRIVATE HIRE DRIVER'S LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976</p> <p>To consider an application for a dual licence.</p> | <p>77 - 84</p> |
| <p>11. APPLICATION FOR A DUAL HACKNEY CARRIAGE & PRIVATE HIRE DRIVER'S LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976</p> <p>To consider an application for a dual licence.</p> | <p>85 - 96</p> |
| <p>12. APPLICATION FOR A DUAL HACKNEY CARRIAGE & PRIVATE HIRE DRIVER'S LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976</p> <p>To consider an application for a dual licence.</p> | <p>97 - 104</p> |
| <p>13. APPLICATION FOR A DUAL HACKNEY CARRIAGE & PRIVATE HIRE DRIVER'S LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976</p> <p>To consider an application for a dual licence.</p> | <p>105 - 112</p> |
| <p>14. DUAL HACKNEY CARRIAGE & PRIVATE HIRE DRIVER'S LICENCE - TO CONSIDER A MATTER REGARDING THE HOLDER OF A DUAL LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976</p> <p>To consider matters regarding a dual licence holder.</p> | <p>113 - 126</p> |
| <p>15. DUAL HACKNEY CARRIAGE & PRIVATE HIRE DRIVER'S LICENCE - TO CONSIDER A MATTER REGARDING THE HOLDER OF A DUAL LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976</p> <p>To consider matters regarding a dual licence holder.</p> | <p>127 - 130</p> |
| <p>16. DUAL HACKNEY CARRIAGE & PRIVATE HIRE DRIVER'S LICENCE - TO CONSIDER A MATTER REGARDING THE HOLDER OF A DUAL LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976</p> <p>To consider matters regarding a dual licence holder.</p> | <p>131 - 138</p> |

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- Attend all Council, Cabinet, Committee and Sub-Committee meetings unless the business to be transacted would disclose 'confidential' or 'exempt' information.
- Inspect agenda and public reports at least five clear days before the date of the meeting.
- Inspect minutes of the Council and all Committees and Sub-Committees and written statements of decisions taken by the Cabinet or individual Cabinet Members for up to six years following a meeting.
- Inspect background papers used in the preparation of public reports for a period of up to four years from the date of the meeting. (A list of the background papers to a report is given at the end of each report). A background paper is a document on which the officer has relied in writing the report and which otherwise is not available to the public.
- Access to a public Register stating the names, addresses and wards of all Councillors with details of the membership of Cabinet and of all Committees and Sub-Committees.
- Have a reasonable number of copies of agenda and reports (relating to items to be considered in public) made available to the public attending meetings of the Council, Cabinet, Committees and Sub-Committees.
- Have access to a list specifying those powers on which the Council have delegated decision making to their officers identifying the officers concerned by title.
- Copy any of the documents mentioned above to which you have a right of access, subject to a reasonable charge (20p per sheet subject to a maximum of £5.00 per agenda plus a nominal fee of £1.50 for postage).
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HEREFORDSHIRE COUNCIL

BROCKINGTON, 35 HAFOD ROAD, HEREFORD.

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HEREFORDSHIRE COUNCIL

MINUTES of the meeting of Regulatory Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Tuesday 1 June 2010 at 2.00 pm

Present: Councillor JW Hope MBE (Chairman)
Councillor PGH Cutter (Vice Chairman)

Councillors: CM Bartrum, DJ Benjamin, JHR Goodwin, RC Hunt, PJ McCaull, GA Powell and A Seldon

1. CHAIRMAN

The Committee noted that Councillor JW Hope had been elected Chairman for the ensuing year at the recent Annual Council meeting.

2. VICE-CHAIRMAN

The Committee noted that Councillor PGH Cutter had been appointed Vice-Chairman for the ensuing year at the recent Annual Council Meeting.

3. MEMBERSHIP OF THE COMMITTEE

The Chairman welcomed Councillor GA Powell to her first meeting of the Committee.

4. APOLOGIES FOR ABSENCE

Apologies for absence were submitted on behalf of Councillors SPA Daniels, J Seldon and Brigadier P Jones.

5. NAMED SUBSTITUTES (IF ANY)

There were no named substitutes present at the meeting

6. DECLARATIONS OF INTEREST

There were no declarations of interest made at the meeting.

7. MINUTES

RESOLVED: THAT the Minutes of the meeting held on 4th May 2010 be approved as a correct record and signed by the Chairman.

8. TO CONSIDER A 2 % UPLIFT ON THE TAXI LICENCE FEES AND CHARGES - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

The Regulatory Services Manager presented a report about a suggested 2% increase on taxi licence fees and charges. He advised that the hackney carriage/private hire licence fees had not been increased since April 2007 and that the Council had required that there should be a

2% increase to fees and charges for the current financial year. He said that the proposals had been advertised and that the local Herefordshire Taxi Association had been consulted separately and had submitted objections which were set out in the report. No other objections had been received. He drew attention to the fact that in 2009 / 2010, the full cost of hackney carriage and private hire licensing to the Council amounted to £231,397 compared to an income of only £145,730. Therefore the service made a loss and was in effect subsidised in the region of £85,000. A 2% increase in fees would only realise a total income figure of about £148,000 and mean that the service would need to continue to be subsidised.

The Regulatory Services Manager drew attention to the fact that in line with Central Government and Audit Commission guidance, the Council was developing an overall Charging Policy for Services. This would involve a review of the level of subsidy provided by council tax payers towards Council services and the options for full-cost recovery for the provision of relevant services. The policy was likely to result in changes to charging levels which would be implemented over the medium-term. This meant that the proposed 2% increase might need subsequent revision to ensure full cost accounting and cost recovery. He also said that the financial adviser to the service had indicated that if the fees and charges were not increased, savings or increases would have to be made in other areas.

The Committee discussed the proposals and noted that the proposed increase was fairly modest given the length of time that had elapsed since the previous one. It was also noted from figures tabled at the meeting that although some of the fees charged by adjoining licensing authorities were higher, there were some that were lower. The Regulatory Services Manager said that it may be that those Councils had a subsidising policy but that he would find out more information from them about how their fees were arrived at.

RESOLVED THAT:

a 2% uplift be approved as an interim price increase to hackney carriage/private hire fees and charges, subject to a more detailed review being undertaken as a full cost recovery exercise.

9. PROCEDURAL ARRANGEMENTS

The Committee noted the procedural arrangements for the following items to ensure that Officers and applicants received a fair hearing.

RESOLVED: THAT under section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in Schedule 12(A) of the Act

10. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER'S LICENCE - TO DETERMINE WHETHER AN APPLICANT IS A FIT AND PROPER PERSON TO HOLD A DUAL DRIVER'S LICENCE. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

The Principal Lawyer and the Regulatory Services Manager referred to agenda item No. 10 and said that an applicant for a dual hackney carriage/private hire licence had not attended the meeting. The Committee noted that the applicant had also failed to appear before it previously. The Committee was of the view that because of his previous convictions, in the absence of any mitigation he was not a fit and proper person under

the meaning of the provisions of the Local Government Miscellaneous Provisions Act 1976 and decided that the application should be refused.

RESOLVED THAT:

an application for a dual hackney carriage/private hire drivers licence be refused because in the absence of any mitigation, the applicant was not deemed to be a fit and proper person under the meaning of the provisions of the Local Government Miscellaneous Provisions Act 1976 and had failed to appear before the Committee.

11. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER'S LICENCE - TO DETERMINE WHETHER A LICENCE HOLDER CONTINUES TO BE A FIT AND PROPER PERSON TO HOLD A DUAL DRIVER'S LICENCE. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

A report was presented by the Principal Lawyer and the Regulatory Services Manager regarding agenda item No 11 which set out the circumstances that had led to a driver having his dual hackney carriage/private hire licence suspended, and the matter being referred to the Committee. The Committee noted the legal proceedings which had taken place since the licence had been suspended.

Having considered all of the facts put forward by the Regulatory Services Manager and received the advice of the Principal Lawyer, the Committee decided that the driver was not a fit and proper person under the meaning of the Local Government (Miscellaneous Provisions) Act 1976 and that his hackney carriage/private hire driver's licence should be revoked.

RESOLVED THAT:

a dual hackney carriage/private hire drivers licence be revoked because the licence holder had ceased to be a fit and proper person under the meaning of the Local Government (Miscellaneous Provisions) Act 1976.

The meeting ended at 2.40 pm

CHAIRMAN

REGULATORY COMMITTEE
LICENSING APPEAL PROCEDURE

1. Introduction by Legal Advisor to the Committee.
2. Licensing Officer outlines the case.
3. Applicant (or his solicitor) sets out his case.
4. The Committee and the Officers can ask questions about the application and the applicant or his representative can ask the Committee or the Officers questions.
5. Applicant or his representative is asked if he would like to make further comment or representation, or if he requires time to comment or investigate (if so the Chairman will defer further consideration of the application).
6. In dealing with each application, the applicant (and any representative) should also withdraw should be asked to withdraw when they have finished their presentation. All officers, other than the Legal Adviser to the Committee, should also withdraw. It would be preferable for the applicant and officers to await the decision at different locations.
7. If either the applicant or the officer are needed to furnish additional information, they should all be invited back before the Committee. When the additional information has been furnished, they should all be asked to leave again.
8. The Committee can then reach a decision in the usual way, but in the absence of parties.
9. The applicant and officers will then be invited to return. The Chairman will announce the decision. The Chairman should also say that the decision will be communicated in writing in due course, and that the applicant will be informed of any right of appeal (if the decision is one of refusal).
10. When the first applicant is finished, that applicant should leave. Deal with the second and subsequent applications in the same way.



MEETING:	REGULATORY COMMITTEE
DATE:	6 JULY 2010
TITLE OF REPORT:	HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH MB4 (PART) IN THE PARISH OF MUCH BIRCH
PORTFOLIO AREA:	

CLASSIFICATION: Open

Wards Affected

Pontrilas

Purpose

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath MB4 in the parish of Much Birch.

Key Decision

This is not a Key Decision.

Recommendation

That Committee agrees to make a public path diversion order under Section 119 of the Highways Act 1980, to divert footpath MB4 (part), in the parish of Much Birch, as illustrated on drawing number: D374/274-4.

Key Points Summary

- An application was made in 2005 to divert footpath MB 4 in the parish of Much Birch for Health & Safety and privacy of new home.
- The proposals were sent to pre-order consultation to which there were no objections but comments from two organisations.
- The applicant amended his proposals in line with the suggestions made from the organisations.

Alternative Options

- 1 Under Section 119 of the Highways Act 1980 the Council has the power to make diversion orders. It does not have a duty to do so. The Council could reject the application on the

Further information on the subject of this report is available from
Will Steel, Public Rights of Way Manager on (01432) 845980

grounds that it does not contribute sufficiently to the wider ambitions and priorities of the Council. If the order is not made, the path will continue to travel through the garden of 'The Underhills'.

Reasons for Recommendations

- 2 The public path order should be made because it is felt that it meets the criteria set out in s 119 of the Highways Act and there have been no objections at pre-order consultation stage.

Introduction and Background

- 3 Before an order is made to divert a footpath under the Highways Act 1980, it is necessary to gain a decision from the Regulatory Committee as they hold the delegated authority to make this decision.

Key Considerations

- 4 Stephen Turner, who is the landowner, made the application on 12th of July 2005. The reasons given for making the application were, 'Health and safety during building works and some privacy to the home once complete'.
- 5 The applicant has carried out all pre order consultation. The proposal has general agreement - although the Open Spaces Society and the Ramblers Association both made suggestions, which the applicant has listened to and has then amended his proposals accordingly.
- 6 The applicant has agreed to pay for advertising and to reimburse, in full, the Council's costs incurred in making the diversion order. The local member, Cllr. Smith supports the application.
- 7 The proposed diversion meets the specified criteria as set out in section 119 of the Highways Act 1980 in that:
- The proposal benefits the owner of the land crossed by the existing path.
 - The proposal does not alter the point of termination of the paths.
 - The proposal is not substantially less convenient to the public.

Community Impact

- 9 The Parish Council have been consulted and support the proposals.

Financial Implications

- 10 The applicant, Mr Turner, has agreed to pay for all administration and advertising costs associated with this order along with any works necessary in bringing the path into being.

Legal Implications

- 11 Under Section 119 of the Highways Act 1980 the Council has the power to make diversion orders. It does not have a duty to do so

Risk Management

- 12 If an order is made to divert footpath MB4 as suggested within this report, there is a risk that the order will receive objections and would therefore require referral to the Secretary of State. However, this risk has been minimised by assessing user group and statutory undertaker opinion at pre-order consultation stage. The comments which were received by the Open Spaces Society and the Ramblers Association were then taken note of and the proposals amended accordingly. There were no objections.
- 13 The making of diversion orders under HA 1980, s119 is a power of the Authority and not a duty. The Committee could therefore decline to make an order and reject this report. However, the path would then remain through the garden of 'The Underhills', thus impacting upon the privacy and enjoyment of the landowners of the property.

Consultees

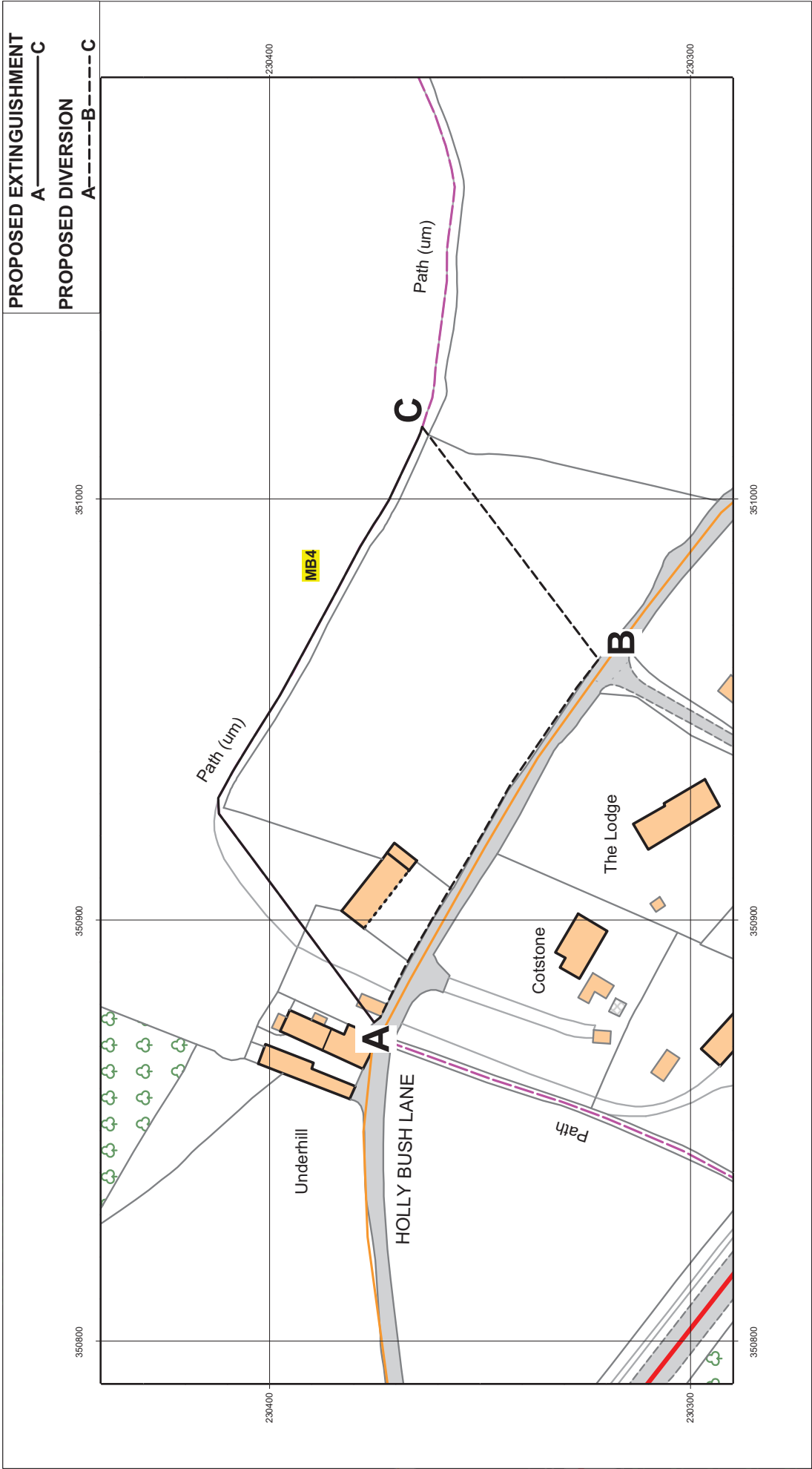
- Prescribed organisations as per Defra Rights Of Way Circular 1/08.
- Local Member – Cllr. Smith
- Much Birch Parish Council.
- Statutory Undertakers.

Appendices

- 14 Order Plan, drawing number: D374/274-4

Background Papers

None.



PROPOSED EXTINGUISHMENT
A ——— C

PROPOSED DIVERSION
A - - - - B - - - - C

Herefordshire Council
Public Rights of Way
PO Box 41
Leominster
HR6 0ZA
Tel.: (01432) 260000
Fax.: (01432) 260579

PUBLIC FOOTPATH	— — — — —
PUBLIC BRIDLEWAY	+ + + + +
RESTRICTED BYWAY	v v v v v
BYWAY OPEN TO ALL TRAFFIC	x x x x x

LOCATION PLAN - Public footpath MB4 (part)
Parish of Much Birch

DWG No. D374/274-4
SCALE 1:1250

NORTH

HEREFORDSHIRE
COUNCIL

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MEETING:	REGULATORY COMMITTEE
DATE:	6 JULY 2010
TITLE OF REPORT:	ADOPTION OF SCHEDULE 3 TO THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 AND SECTION 27 OF THE POLICING AND CRIME ACT 2009
PORTFOLIO AREA:	ASSISTANT DIRECTOR - ENVIRONMENTAL HEALTH & TRADING STANDARDS PUBLIC HEALTH DIRECTORATE

CLASSIFICATION: Open

Wards Affected

Countywide

Purpose

To consider adopting Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 and the amendments created by Section 27 of the Policing and Crime Act 2009.

Key Decision

This is not a key decision.

Recommendation(s)

THAT Committee:

- (a) **adopt Schedule 3 and the amendments of Section 27 which gives power to regulate lap dancing clubs and similar venues**

Alternative Options

- (a) **Refuse to adopt Schedule 3 and Section 27; or**
- (b) **Reach some other decision.**

Note: There is no option to adopt Section 27 and not Schedule 3, as Section 27 only amends this schedule. Also, the legislation is not mandatory for local authorities. However, if the amendment within the Policing and Crime Act is not adopted by 6th April 2011, then local authorities must consult local people about whether they should do so as soon as is reasonably practicable after that date.

Further information on the subject of this report is available from
Marc Willimont Regulatory Services Manager (01432) 261986

Reasons for Recommendations

The legislation empowers local authorities to licence “sex establishments” which means a sex cinema or a sex shop. However, following the introduction of the amendment under the Policing and Crime Act, this will now include a ‘sexual entertainment venue’. This new category covers venues that provide ‘relevant entertainment’. Relevant entertainment is defined as “*any live performance or display of nudity which is of such a nature that, it must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience*”. Under the legislation, local authorities are allowed to set a limit on the number of such establishments they consider appropriate for a particular locality.

Key Points Summary

- Allows the Local Authority to control the number of sex establishment within a particular locality

Introduction and Background

- 1 The Policing and Crime Act 2009 amended Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 to include sexual entertainment venues.
- 2 It is thought that certainly South Herefordshire District Council and Hereford City Council did adopt Schedule 3 although it has been impossible to identify when or find any written record of this, as the decision would have been historic and lost in the merging of councils in 1998.
- 3 This Authority needs to be in a position to prove that it did adopt Schedule 3 which it is not in position to do at this time. Therefore, to ensure we are able to prove adoption, the matter is placed before the Committee.
- 4 At this time it would appear that Herefordshire Council has no power or means of controlling the operation of sex establishments. To protect children and preserve the character of certain localities it is essential that this situation be rectified as soon as possible.
- 5 The Local Government (Miscellaneous Provisions) Act 1982 contains provisions to control such establishments through a scheme of licensing. However, to do this the Council must first adopt Schedule 3 of the Act. This allows local authorities to control, by way of a licensing regime, the number, locality and operation of sex establishments in their area. Virtually all other local authorities across the country have carried out this adoption process.
- 6 For successful adoption, the local authority must pass a resolution under Section 2 of the Local Government (Miscellaneous Provisions) Act 1982 to adopt Schedule 3 and specify the day the provisions are to come into effect. This must be no earlier than 1 month after the date of the resolution.
- 7 The local authority must then publish a notice in a local newspaper for two consecutive weeks stating that they have passed such a resolution and its general effect. The first notice must appear no later than 28 days before the date the provisions are to come into force.
- 8 If the Council resolves to adopt the legislation, the operator of a proposed “sex establishment” will have to apply for a licence under the Act. There is no presumption that the licence will be granted.
- 9 Section 12(3)(c) of Schedule 3 of the 1982 Act confers a power on the licensing authority to refuse a sex establishment licence on the grounds that “the number of sex establishments in

the *relevant locality* at the time the application is made, is equal to or exceeds the number which the authority considers is appropriate for that locality”.

- 10 Paragraph (d) goes on to say “that the grant or renewal of the licence may be inappropriate, having regard to:
 - the character of the relevant locality
 - the use to which premises in the vicinity are put; or
 - the layout, character or condition of the premises in respect of which the application is made.”
- 11 This means that the local authority can refuse a licence because there is already an appropriate number of sex establishments in an area and/or that a sex establishment would ‘conflict’ with the character of the area or other premises nearby e.g. schools, places of worship etc.
- 12 It is intended that a policy on sex establishments be drafted by the Environmental Health & Trading Standards to give guidance to members on these issues. It is proposed that this draft policy receives wide consultation and be presented to the Regulatory Committee for approval.
- 13 To control the impact of a sex establishment in an area, Schedule 3 of the Act allows a District Council to impose conditions on such things as:
 - hours of opening and closing,
 - the nature of displays or advertisements on or in such establishments and
 - the visibility of the interior of such establishments to passers by.These controls are designed to protect children. The policy on sex establishments will detail what kind of conditions may be appropriate in particular circumstances.
- 14 In respect of the amendment created by the Policing and Crime Act, in June 2008 the Department for the Culture, Media and Sport, wrote to Local Authorities to clarify how they viewed the powers available to them under the 2003 Licensing Act and to seek their views on whether these, and other controls, were sufficient to address the concerns of local people and the business. The majority of those who responded, including Herefordshire Council, felt that additional legislation should be introduced to provide controls that are specific to lap dancing clubs and similar premises. This approach was also supported by a wide range of other stakeholders, including the Local Government Association, the National Organisation of Resident’s Associations and the campaign groups ‘Object’ and the ‘Fawcett Society’.
- 15 As a result of this consultation exercise, from the 6th April 2010 local authorities in England will be able to adopt new additional powers to regulate lap dancing clubs and similar venues.
- 16 Section 27 of the Policing and Crime Bill introduces a new category of sex establishment under Schedule 3 to the 1982 Act called a ‘sexual entertainment venue’. This new category covers venues that provide ‘relevant entertainment’. Relevant entertainment is defined as “*any live performance or display of nudity which is of such a nature that, it must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience*”. These new ‘sexual entertainment venues’ will therefore require a sex establishment licence. However, there is an exemption for premises which provide such entertainment infrequently and, even if premises do qualify as a sexual entertainment venue, the local authority still has the discretion to waive the requirement for a licence.
- 17 In Summary schedule 3 to the 1982 Act will, in particular:
 - Allow local authorities to adopt the legislation.
 - Allow local people to oppose an application for a sex establishment licence if they have

legitimate concerns that a lap dancing club would be inappropriate, given the character of the area, for example if the area was primarily residential or next to a school etc.

- Require licences to be renewed at least yearly, at which point local people will have the opportunity to raise objections with the local authority.
- Allow a Local authority to reject a licence application if they believe that to grant a licence for a lap dancing club would be inappropriate given the character of a particular area.
- Allow a local authority to set a limit on the number of sex encounter venues that they think appropriate for a particular area.
- Allow a local authority to impose a wider range of conditions on the licences of lap dancing clubs than they are currently able to under the 2003 Act.

18 Subject to the agreement to adopt the Legislation then the Licensing Authority will draw a Policy in respect of the Licensing of Sexual Entertainment Venues.

19 This policy will be subject to the consultation process prior to being brought back before Committee.

20 Justifiable costs covering the administration and enforcement relating solely to these licenses can be recovered. A “reasonable” fee must be set to reflect this. Fees may not be used as a means of discouraging applications. A suggested fee will be proposed during the consultation process on the policy.

Key Considerations

21 Whether to adopt Schedule 3 and thereby be able to control the number of sex establishments.

Community Impact

22 The application for a ‘sex establishment’ may impact upon the local community. The proposed adoption of these new powers should help mitigate this.

Financial Implications

23 There will be advertising costs attached to the public notices required by the procedure to be published in the local press. A reasonable fee is payable by businesses, which will offset these costs over time.

24 The process of adopting the legislation, and the licensing process will be administered within existing resources by the Licensing Team, Environmental Health and Trading Standards.

Legal Implications

25 Without proof of adoption we would be unable to support any decision to refuse a licence for a sex establishment.

Risk Management

26 Not applicable

Consultees

- 27 A 12 week consultation programme in relation to Section 27 was carried out by the Home Office. This included Chief Executives of local authorities, Local Government Association, National Organisation of Residents' Associations and campaign groups.

Appendices

Appendix 1- copy of Schedule 2 & 3 The Local Government (Miscellaneous Provisions) Act 1982

Appendix 2 - copy of the relevant Section 27 of the Policing and Crime Act 2009

Appendix 3 - Ministers Letter to Chief Executive (England)

Appendix 4 - Home Office Guidance

Local Government (Miscellaneous Provisions) Act 1982 (c. 30)

SCHEDULE 2

AMENDMENTS CONSEQUENTIAL ON SECTION 1

“Part I Adopting and Licensing Authorities

Area	Authority which may adopt this Act	Licensing authority
A district.	The council of the district.	The council of the district.
A London Borough.	The Greater London Council acting with the consent of the Common Council.	The Greater London Council.
The City of London.	The Greater London Council acting with the consent of the Common Council.	The Greater London Council.
The Isles of Scilly.	The Council of the Isles of Scilly.	The Council of the Isles of Scilly.”

SCHEDULE 3

CONTROL OF SEX ESTABLISHMENTS

Saving for existing law

- 1 Nothing in this Schedule—
- (a) shall afford a defence to a charge in respect of any offence at common law or under an enactment other than this Schedule; or
 - (b) shall be taken into account in any way—
 - (i) at a trial for such an offence; or
 - (ii) in proceedings for forfeiture under section 3 of the Obscene Publications Act 1959 or section 5 of the Protection of Children Act 1978; or
 - (iii) in proceedings for condemnation under Schedule 3 to the Customs and Excise Management Act 1979 of goods which section 42 of the Customs Consolidation Act 1876 prohibits to be imported or brought into the United Kingdom as being indecent or obscene; or
 - (c) shall in any way limit the other powers exercisable under any of those Acts.

Meaning of “sex establishment”

- 2 In this Schedule “sex establishment” means a sex cinema or a sex shop.

Meaning of “sex cinema”

- 3 (1) In this Schedule, “sex cinema” means any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which—
- (a) are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage—
 - (i) sexual activity; or
 - (ii) acts of force or restraint which are associated with sexual activity; or
 - (b) 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.
- (2) No premises shall be treated as a sex cinema by reason only—
- (a) if they are licensed under], of their use for a purpose for which a licence under Cinemas Act 1985 is required; or—
 - (b) of their use for an exhibition to which section 6 of that Act (certain non-commercial exhibitions) applies given by an exempted organisation within the meaning of section 6(6) of that Act.

Meaning of “sex shop” and “sex article”

- 4 (1) In this Schedule “sex shop” means any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating—
- (a) sex articles; or
 - (b) other things intended for use in connection with, or for the purpose of stimulating or encouraging—
 - (i) sexual activity; or
 - (ii) acts of force or restraint which are associated with sexual activity.
- (2) No premises shall be treated as a sex shop by reason only of their use for the exhibition of moving pictures by whatever means produced.
- (3) In this Schedule “sex article” means—
- (a) anything made for use in connection with, or for the purpose of stimulating or encouraging—
 - (i) sexual activity; or
 - (ii) acts of force or restraint which are associated with sexual activity; and
 - (b) anything to which sub-paragraph (4) below applies.

(4) This sub-paragraph applies—

(a) to any article 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 or manufacture of any such article; and

(b) to any recording of vision or sound,

which—

(i) 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

(ii) is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.

Miscellaneous definitions

5 (1) In this Schedule—

“the appropriate authority” means, in relation to any area for which a resolution has been passed under section 2 above, the local authority who passed it;

“the chief officer of police”, in relation to any locality, means the chief officer of police for the police area in which the locality is situated; and

“vessel” includes any ship, boat, raft or other apparatus constructed or adapted for floating on water.

(2) This Schedule applies to hovercraft as it applies to vessels.

Requirement for licences for sex establishments

6 (1) Subject to the provisions of this Schedule, no person shall in any area in which this 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 this Schedule by the appropriate authority.

(2) Sub-paragraph (1) above does not apply to the sale, supply or demonstration of articles which—

(a) are manufactured for use primarily for the purposes of birth control; or

(b) primarily relate to birth control.

7 (1) Any person who—

(a) uses any premises, vehicle, vessel or stall as a sex establishment; or

(b) proposes to do so,

may apply to the appropriate authority for them to waive the requirement of a licence.

(2) An application under this paragraph may be made either as part of an application for a licence under this Schedule or without any such application.

(3) An application under this paragraph shall be made in writing and shall contain the particulars specified in paragraph 10(2) to (5) below and such particulars as the appropriate authority may reasonably require in addition.

(4) The appropriate authority may waive the requirement of a licence in any case where they consider that to require a licence would be unreasonable or inappropriate.

(5) A waiver may be for such period as the appropriate authority think fit.

(6) Where the appropriate authority grant an application for a waiver, they shall give the applicant for the waiver notice that they have granted his application.

(7) The appropriate authority may at any time give a person who would require a licence but for a waiver notice that the waiver is to terminate on such date not less than 28 days from the date on which they give the notice as may be specified in the notice.

Grant, renewal and transfer of licences for sex establishments

8 Subject to paragraph 12(1) below, the appropriate authority may grant to any applicant, and from time to time renew, a licence under this Schedule for the use of any premises, vehicle, vessel or stall specified in it for a sex establishment on such terms and conditions and subject to such restrictions as may be so specified.

9 (1) Subject to paragraphs 11 and 27 below, any licence under this Schedule shall, unless previously cancelled under paragraph 16 or revoked under paragraph 17(1) below, remain in force for one year or for such shorter period specified in the licence as the appropriate authority may think fit.

(2) Where a licence under this Schedule has been granted to any person, the appropriate authority may, if they think fit, transfer that licence to any other person on the application of that other person.

10 (1) An application for the grant, renewal or transfer of a licence under this Schedule shall be made in writing to the appropriate authority.

(2) An application made otherwise than by or on behalf of a body corporate or an unincorporated body shall state—

- (a) the full name of the applicant;
- (b) his permanent address; and
- (c) his age.

(3) An application made by a body corporate or an unincorporated body shall state—

- (a) the full name of the body;
- (b) the address of its registered or principal office; and
- (c) the full names and private addresses of the directors or other persons responsible for its management.

(4) An application relating to premises shall state the full address of the premises.

(5) An application relating to a vehicle, vessel or stall shall state where it is to be used as a sex establishment.

(6) Every application shall contain such particulars as the appropriate authority may reasonably require in addition to any particulars required under sub-paragraphs (2) to (5) above.

(7) An applicant for the grant, renewal or transfer of a licence under this Schedule shall give public notice of the application.

(8) Notice shall in all cases be given by publishing an advertisement in a local newspaper circulating in the appropriate authority's area.

(9) The publication shall not be later than 7 days after the date of the application.

(10) Where the application is in respect of premises, notice of it shall in addition be displayed for 21 days beginning with the date of the application on or near the premises and in a place where the notice can conveniently be read by the public.

(11) Every notice under this paragraph which relates to premises shall identify the premises.

(12) Every such notice which relates to a vehicle, vessel or stall shall specify where it is to be used as a sex establishment.

(13) Subject to sub-paragraphs (11) and (12) above, a notice under this paragraph shall be in such form as the appropriate authority may prescribe.

(14) An applicant for the grant, renewal or transfer of a licence under this Schedule shall, not later than 7 days after the date of the application, send a copy of the application to the chief officer of police.

(15) Any person objecting to an application for the grant, renewal or transfer of a licence under this Schedule shall give notice in writing of his objection to the appropriate authority, stating in general terms the grounds of the objection, not later than 28 days after the date of the application.

(16) Where the appropriate authority receive notice of any objection under sub-paragraph (15) above, the authority shall, before considering the application, give notice in writing of the general terms of the objection to the applicant.

(17) The appropriate authority shall not without the consent of the person making the objection reveal his name or address to the applicant.

(18) In considering any application for the grant, renewal or transfer of a licence the appropriate authority shall have regard to any observations submitted to them by the chief officer of police and any objections of which notice has been sent to them under sub-paragraph (15) above.

(19) The appropriate authority shall give an opportunity of appearing before and of being heard by a committee or sub-committee of the authority—

(a) before refusing to grant a licence, to the applicant;

(b) before refusing to renew a licence, to the holder; and

(c) before refusing to transfer a licence, to the holder and the person to whom he desires that it shall be transferred.

(20) Where the appropriate authority refuse to grant, renew or transfer a licence, they shall, if required to do so by the applicant or holder of the licence, give him a statement in writing of the reasons for their decision within 7 days of his requiring them to do so.

11 (1) Where, before the date of expiry of a licence, an application has been made for its renewal, it shall be deemed to remain in force notwithstanding that the date has passed until the withdrawal of the application or its determination by the appropriate authority.

(2) Where, before the date of expiry of a licence, an application has been made for its transfer, it shall be deemed to remain in force with any necessary modifications until the withdrawal of the application or its determination,

notwithstanding that the date has passed or that the person to whom the licence is to be transferred if the application is granted is carrying on the business of the sex establishment.

Refusal of licences

- 12 (1) A licence under this Schedule shall not be granted—
- (a) to a person under the age of 18; or
 - (b) to a person who is for the time being disqualified under paragraph 17(3) below; or
 - (c) to a 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) to a body corporate which is not incorporated in the United Kingdom; 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.
- (2) Subject to paragraph 27 below, the appropriate authority may refuse—
- (a) an application for the grant or renewal of a licence on one or more of the grounds specified in sub-paragraph (3) below;
 - (b) an application for the transfer of a licence on either or both of the grounds specified in paragraphs (a) and (b) of that sub-paragraph.
- (3) The grounds mentioned in sub-paragraph (2) above are—
- (a) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
 - (b) that 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;
 - (c) that the number of sex establishments in the relevant locality at the time the application is made 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.
- (4) Nil may be an appropriate number for the purposes of sub-paragraph (3)(c) above.

(5) In this paragraph “the relevant locality” means—

- (a) in relation to premises, 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.

Power to prescribe standard conditions

- 13 (1) Subject to the provisions of this Schedule, the appropriate authority may make regulations prescribing standard conditions applicable to licences for sex establishments, that is to say, terms, conditions and restrictions on or subject to which licences under this Schedule are in general to be granted, renewed or transferred by them.
- (2) Regulations under sub-paragraph (1) above may make different provision—
- (a) for sex cinemas and sex shops; and
 - (b) for different kinds of sex cinemas and sex shops.
- (3) Without prejudice to the generality of sub-paragraphs (1) and (2) above, regulations under this paragraph may prescribe conditions regulating—
- (a) the hours of opening and closing of sex establishments;
 - (b) displays or advertisements on or in such establishments;
 - (c) the visibility of the interior of sex establishments to passersby; and
 - (d) any change of a sex cinema to a sex shop or a sex shop to a sex cinema.
- (4) Where the appropriate authority have made regulations under sub-paragraph (1) above, every such licence granted, renewed or transferred by them shall be presumed to have been so granted, renewed or transferred subject to any standard conditions applicable to it unless they have been expressly excluded or varied.
- (5) Where the appropriate authority have made regulations under sub-paragraph (1) above, they shall, if so requested by any person, supply him with a copy of the regulations on payment of such reasonable fee as the authority may determine.
- (6) In any legal proceedings the production of a copy of any regulations made by the appropriate authority under sub-paragraph (1) above purporting to be certified as a true copy by an officer of the authority authorised to give a certificate for the purposes of this paragraph shall be prima facie evidence of such regulations, and no proof shall be required of the handwriting or official position or authority of any person giving such certificate.

Copies of licences and standard conditions

- 14 (1) The holder of a licence under this Schedule shall keep exhibited in a suitable place to be specified in the licence a copy of the licence and any regulations made under paragraph 13(1) above which prescribe standard conditions subject to which the licence is held.
- (2) The appropriate authority shall send a copy of any licence granted under this Schedule to the chief officer of police for the area where the sex establishment is situated.

Transmission and cancellation of licences

- 15 In the event of the death of the holder of a licence granted under this Schedule, that licence shall be deemed to have been granted to his personal representatives and shall, unless previously revoked, remain in force until the end of the period of 3 months beginning with the death and shall then expire; but the appropriate authority may from time to time, on the application of those representatives, extend or further extend the period of three months if the authority are satisfied that the extension is necessary for the purpose of winding up the deceased's estate and that no other circumstances make it undesirable.
- 16 The appropriate authority may, at the written request of the holder of a licence, cancel the licence.

Revocation of licences

- 17 (1) The appropriate authority may, after giving the holder of a licence under this Schedule an opportunity of appearing before and being heard by them, at any time revoke the licence—
- (a) on any ground specified in sub-paragraph (1) of paragraph 12 above; or
- (b) on either of the grounds specified in sub-paragraph (3)(a) and (b) of that paragraph.
- (2) Where a licence is revoked, the appropriate authority shall, if required to do so by the person who held it, give him a statement in writing of the reasons for their decision within 7 days of his requiring them to do so.
- (3) Where a licence is revoked, its holder shall be disqualified from holding or obtaining a licence in the area of the appropriate authority for a period of 12 months beginning with the date of revocation.

Variation of licences

- 18 (1) The holder of a licence under this Schedule may at any time apply to the appropriate authority for any such variation of the terms, conditions or restrictions on or subject to which the licence is held as may be specified in the application.
- (2) The appropriate authority—
- (a) may make the variation specified in the application; or
 - (b) may make such variations as they think fit; or
 - (c) may refuse the application.
- (3) The variations that an authority may make by virtue of sub-paragraph (2)(b) above include, without prejudice to the generality of that sub-paragraph, variations involving the imposition of terms, conditions or restrictions other than those specified in the application.

Fees

- 19 An applicant for the grant, renewal or transfer of a licence under this Schedule shall pay a reasonable fee determined by the appropriate authority.

Enforcement

- 20 (1) A person who—
- (a) knowingly uses, or knowingly causes or permits the use of, any premises, vehicle, vessel or stall contrary to paragraph 6 above; or
 - (b) being the holder of a licence for a sex establishment, employs in the business of the establishment any person known to him to be disqualified from holding such a licence; or
 - (c) being the holder of a licence under this Schedule, without reasonable excuse knowingly contravenes, or without reasonable excuse knowingly permits the contravention of, a term, condition or restriction specified in the licence; or
 - (d) being the servant or agent of the holder of a licence under this Schedule, without reasonable excuse knowingly contravenes, or without reasonable excuse knowingly permits the contravention of, a term, condition or restriction specified in the licence,
- shall be guilty of an offence.
- 21 Any person who, in connection with an application for the grant, renewal or transfer of a licence under this Schedule, makes a false statement which he knows to be false in any material respect or which he does not believe to be true, shall be guilty of an offence.

- 22 (1) A person guilty of an offence under paragraph 20 or 21 above shall be liable on summary conviction to a fine not exceeding £20,000.
- (2) A person who, being the holder of a licence under this Schedule, fails without reasonable excuse to comply with paragraph 14(1) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Offences relating to persons under 18

- 23 (1) A person who, being the holder of a licence for a sex establishment—
- (a) without reasonable excuse knowingly permits a person under 18 years of age to enter the establishment; or
- (b) employs a person known to him to be under 18 years of age in the business of the establishment,
- shall be guilty of an offence.
- (2) A person guilty of an offence under this paragraph shall be liable on summary conviction to a fine not exceeding £20,000.

Powers of constables and local authority officers

- 24 If a constable has reasonable cause to suspect that a person has committed an offence under paragraph 20 or 23 above, he may require him to give his name and address, and if that person refuses or fails to do so, or gives a name or address which the constable reasonably suspects to be false, the constable may arrest him without warrant.
- 25 (1) A constable may, at any reasonable time, enter and inspect any sex establishment in respect of which a licence under this Schedule is for the time being in force, with a view to seeing—
- (i) whether the terms, conditions or restrictions on or subject to which the licence is held are complied with;
- (ii) whether any person employed in the business of the establishment is disqualified from holding a licence under this Schedule;
- (iii) whether any person under 18 years of age is in the establishment; and
- (iv) whether any person under that age is employed in the business of the establishment.
- (2) Subject to sub-paragraph (4) below, a constable may enter and inspect a sex establishment if he has reason to suspect that an offence under paragraph 20, 21 or 23 above has been, is being, or is about to be committed in relation to it.

(3) An authorised officer of a local authority may exercise the powers conferred by sub-paragraphs (1) and (2) above in relation to a sex establishment in the local authority's area.

(4) No power conferred by sub-paragraph (2) above may be exercised by a constable or an authorised officer of a local authority unless he has been authorised to exercise it by a warrant granted by a justice of the peace.

(5) Where an authorised officer of a local authority exercises any such power, he shall produce his authority if required to do so by the occupier of the premises or the person in charge of the vehicle, vessel or stall in relation to which the power is exercised.

(6) Any person who without reasonable excuse refuses to permit a constable or an authorised officer of a local authority to exercise any such power shall be guilty of an offence and shall for every such refusal be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Sex establishments

27 Regulation of lap dancing and other sexual entertainment venues etc

(1) Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (c. 30) (control of sex establishments) is amended as follows.

(2) In paragraph 2 (meaning of “sex establishment”) after “means a” insert “sexual entertainment venue.”

(3) After paragraph 2 insert—

“Meaning of “sexual entertainment venue”

2A (1) In this Schedule “sexual entertainment venue” means any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

(2) In this paragraph “relevant entertainment” means—

- (a) any live performance; or
- (b) any 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 the audience (whether by verbal or other means).

(3) The following are not sexual entertainment venues for the purposes of this Schedule—

(a) sex cinemas and sex shops;

(b) premises at which the provision of relevant entertainment as mentioned in sub-paragraph (1) is such that, at the time in question and including any relevant entertainment which is being so provided at that time—

- (i) there have not been more than eleven occasions on which relevant entertainment has been so provided which fall (wholly or partly) within the period of 12 months ending with that time;
- (ii) no such occasion has lasted for more than 24 hours; and
- (iii) no such occasion has begun within the period of one month beginning with the end of any previous occasion on which relevant entertainment has been so provided (whether or not that previous occasion falls within the 12 month period mentioned in sub-paragraph (i));

(c) premises specified or described in an order made by the relevant national authority.

(4) The relevant national authority may by order amend or repeal sub-paragraph (3)(b).

(5) But no order under sub-paragraph (4) may—

- (a) increase the number or length of occasions in any period on which sub-paragraph (3)(b) as originally enacted would permit relevant entertainment to be provided; or
- (b) provide for shorter intervals between such occasions.

(6) The relevant national authority may by order provide for descriptions of performances, or of displays of nudity, which are not to be treated as relevant entertainment for the purposes of this Schedule.

(7) Any power of the relevant national authority to make an order under this paragraph—

(a) is exercisable by statutory instrument;

(b) may be exercised so as to make different provision for different cases or descriptions of case or for different purposes; and

(c) includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision.

(8) A statutory instrument containing an order under sub-paragraph (4) may not be made by the Secretary of State unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(9) A statutory instrument containing an order made under sub-paragraph (3)(c) or (6) by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament.

(10) A statutory instrument containing an order under sub-paragraph (4) may not be made by the Welsh Ministers unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

(11) A statutory instrument containing an order made under sub-paragraph (3)(c) or (6) by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

(12) For the purposes of this paragraph relevant entertainment is provided if, and only if, it is provided, or permitted to be provided, by or on behalf of the organiser.

(13) For the purposes of this Schedule references to the use of any premises as a sexual entertainment venue are to be read as references to their use by the organiser.

(14) In this paragraph—

“audience” includes an audience of one;

“display of nudity” means—

(a) in the case of a woman, exposure of her nipples, pubic area, genitals or anus; and

(b) in the case of a man, exposure of his pubic area, genitals or anus;

“the organiser”, in relation to the provision of relevant entertainment at premises, means any person who is responsible for the organisation or management of—

(a) the relevant entertainment; or

(b) the premises;

“premises” includes any vessel, vehicle or stall but does not include any private dwelling to which the public is not admitted;

“relevant national authority” means—

(a) in relation to England, the Secretary of State; and

(b) in relation to Wales, the Welsh Ministers;

and for the purposes of sub-paragraphs (1) and (2) it does not matter whether the financial gain arises directly or indirectly from the performance or display of nudity.”

(4) In paragraph 9(1) (duration of licence) after “paragraph 16” insert “or 27A below”.

(5) In paragraph 12(3) (refusal of licences) for paragraph (c) substitute—

“(c) that 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;”.

(6) In paragraph 13 (power to prescribe standard conditions)—

(a) in sub-paragraph (2)(a) after “for” insert “sexual entertainment venues,”,

(b) in sub-paragraph (2)(b) after “of” insert “sexual entertainment venues,”,
and

(c) in sub-paragraph (3) for paragraph (d) (as originally enacted) substitute—

“(d) any change from one kind of sex establishment mentioned in sub-paragraph (2)(a) above to another kind of sex establishment so mentioned.”

(7) In paragraph 19 (fees in relation to applications) after “grant,” insert “variation,”.

(8) After paragraph 25 (powers of constables and local authority officers) insert—

“25A (1) A person acting under the authority of a warrant under paragraph 25(4) may seize and remove anything found on the premises concerned that the person reasonably believes could be forfeited under sub-paragraph (4).

(2) The person who, immediately before the seizure, had custody or control of anything seized under sub-paragraph (1) may request any authorised officer of a local authority who seized it to provide a record of what was seized.

(3) The authorised officer must provide the record within a reasonable time of the request being made.

(4) The court by or before which a person is convicted of an offence under paragraph 20 or 23 of this Schedule may order anything—

(a) produced to the court; and

(b) shown to the satisfaction of the court to relate to the offence;

to be forfeited and dealt with in such manner as the court may order.

(5) But the court may not order the forfeiture of anything under sub-paragraph (4) if it (whether alone or taken together with other things being forfeited which appear to the court to have been in the custody or control of the same person) is worth more than the amount of the maximum fine specified in paragraph 22(1).

(6) Sub-paragraph (7) applies if a person claiming to be the owner of, or otherwise interested in, anything that may be forfeited applies to be heard by the court.

(7) The court may not order the forfeiture unless the person has had an opportunity to show why the order should not be made.”

(9) After paragraph 27(10) (appeals) insert—

“(10A) Sub-paragraph (10) does not apply if the grounds for refusing an application for the renewal of a licence are those set out in paragraph 12(3)(c) or (d) of this Schedule.”

(10) After paragraph 27 (appeals) insert—

“Premises which are deemed sexual entertainment venues

27A (1) This paragraph applies if—

- (a) premises are subject to a licence for a sexual entertainment venue; and
- (b) their use would be use as such a venue but for the operation of paragraph 2A(3)(b).

(2) This Schedule applies as if—

- (a) the premises were a sexual entertainment venue; and
- (b) the use or business of the premises was use as, or the business of, such a venue.

(3) But the appropriate authority must cancel the licence if the holder of the licence asks them in writing to do so.

(4) In this paragraph “premises” has the same meaning as in paragraph 2A.”

(11) Schedule 3 (provisions which are transitional on this section) has effect.



Home Office

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PARLIAMENTARY UNDER SECRETARY OF STATE

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I am writing to make you aware that from the 6th April 2010 local authorities in England will be able to adopt additional powers to regulate lap dancing clubs and similar venues. The powers will be commenced in Wales in due course on a date to be decided by the Welsh Ministers.

Section 27 of the Policing and Crime Act 2009 amends Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 to introduce a new category of sex establishment called 'sexual entertainment venue', which, if adopted by a local authority, will require premises in that area who provide 'relevant entertainment', such as lap dancing, to obtain a sex establishment licence. There is an exemption for premises that provide relevant entertainment on an infrequent basis.

On 12th February, following a 12-week consultation on the transitional provisions, the Government confirmed that where the provisions are adopted all lap dancing clubs, including existing venues operating lawfully under the Licensing Act 2003, will be required to apply for a sex establishment licence. Under these arrangements existing operators will be able to continue to operate for 12-months after the new provisions come into force in their area or the determination of any application which they submit for a licence during that period, whichever is the later.

The purpose of the new legislation is to empower local communities. We know that many local communities feel that the existing legislation does not adequately address their concerns with regards to lap dancing clubs opening in their neighbourhoods. Under the new regime, local people will be able to oppose applications for lap dancing clubs on wider grounds than is currently allowed, such as that it would be inappropriate given the character of an area or the use to which other premises in the vicinity are put. Local authorities will also be able to set a limit on the number of lap dancing clubs they consider appropriate for a particular locality.

The legislation is not mandatory for local authorities. We are aware that not all local authorities have lap dancing clubs in their area. Therefore, local authorities will have the flexibility to decide whether and, if so, when the new provisions should come into force in their area. However, we would expect

local authorities to consider the views of local people and, indeed, local authorities which have not adopted the new regime by 6th April 2011 must consult local people about whether they should do so as soon as is reasonably practicable after that date.

I would encourage all local authorities to engage with existing operators at the earliest opportunity to ensure they are aware of what these changes mean for them and what action they will need to take in order to comply with the new regime.

The necessary orders that will bring these provisions into force will be published shortly. The Home Office will also be publishing guidance which will be available on the Home Office website.

A handwritten signature in black ink that reads "Alan Campbell". The signature is written in a cursive, flowing style.

ALAN CAMPBELL



Home Office

Sexual Entertainment Venues

Guidance for England and Wales

Contents

Ministerial Foreword	4
1. Introduction	5
Definitions	5
Policing and Crime Act 2009	5
The Guidance	5
2. Policing and Crime Act 2009	7
Meaning of Sexual Entertainment Venue	7
Nudity	8
The Organiser	8
Spontaneous Entertainment	9
Premises that are not Sexual Entertainment Venues	9
Amendments to the Licensing Act 2003	10
Consultation with Local People	11
3. Local Government (Miscellaneous Provisions Act) 1982	13
The Appropriate Authority	13
Committee or Sub-Committee	13
Adopting the Provisions	14
Requirement for a Sex Establishment Licence	15
Premises that are Deemed to be Sexual Entertainment Venues	15
Notices	16
Application Forms	16
Single Point of Contact	17
Fees	17
Objections	18
Hearings	18
Refusal of a Licence	19
Relevant Locality	20
Licence Conditions	22
Duration of Licences	23

Appeals	23
Licensing Policies	23
Offences	24
Provisions Relating to Existing Premises	25
The Services Directive	25
4. Transitional Arrangements	27
Transitional Period	27
Existing Operators	27
New Applicants	28
Determining Application Received Before the 2nd Appointed Day	28
Determining Application Received After the 2nd Appointed Day	29
Outstanding Application	29
Existing Licence Conditions	30
ECHR Considerations	31
Changes to licensing policies	32
London	32
Sex Encounter Establishments	32
Hostess Bars	33
Soliciting for Custom	33
Annex A: Guide to Transitional Period and Existing Operators	35
Annex B: Guide to Transitional Period and New Applicants	36

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

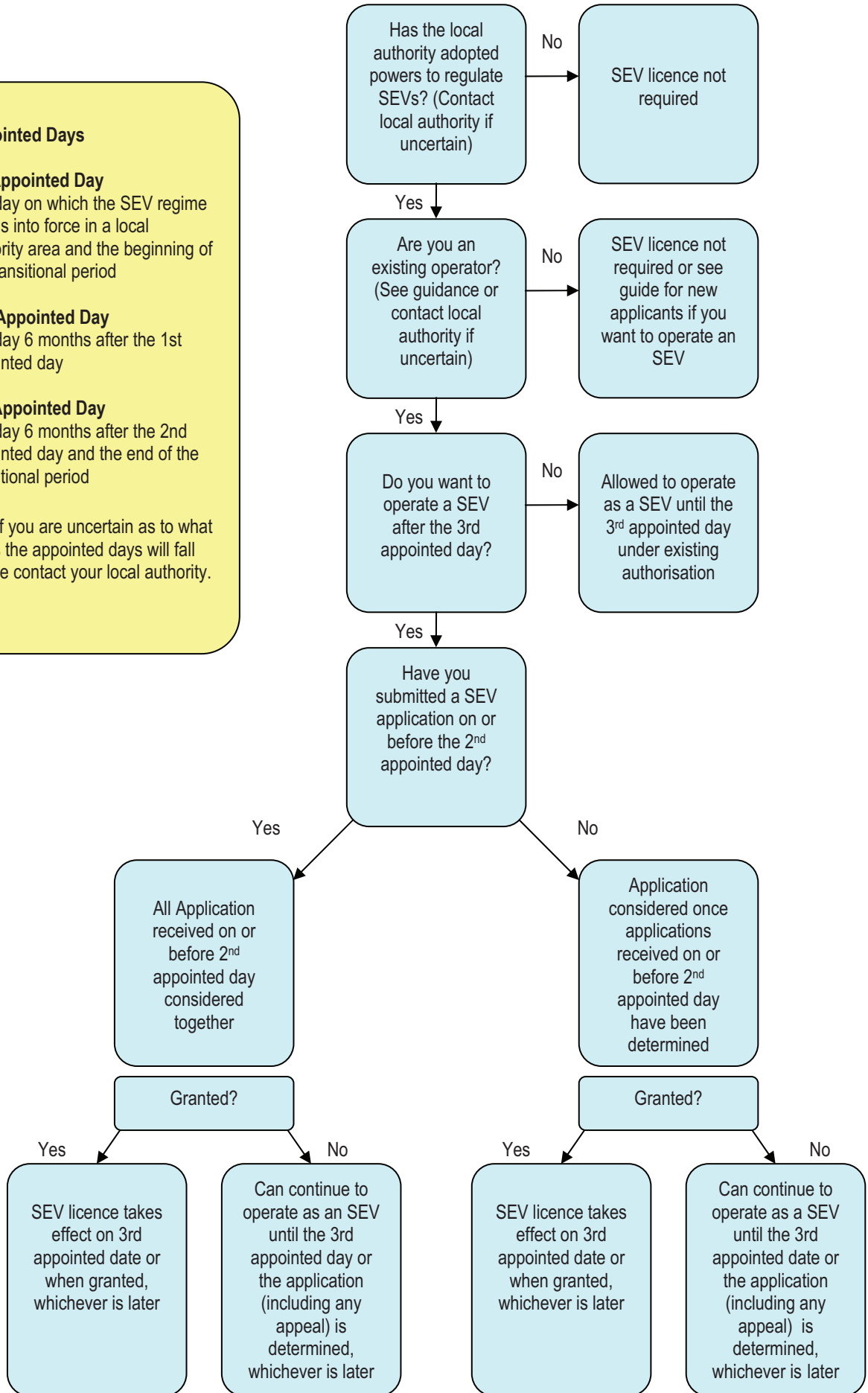
Appointed Days

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

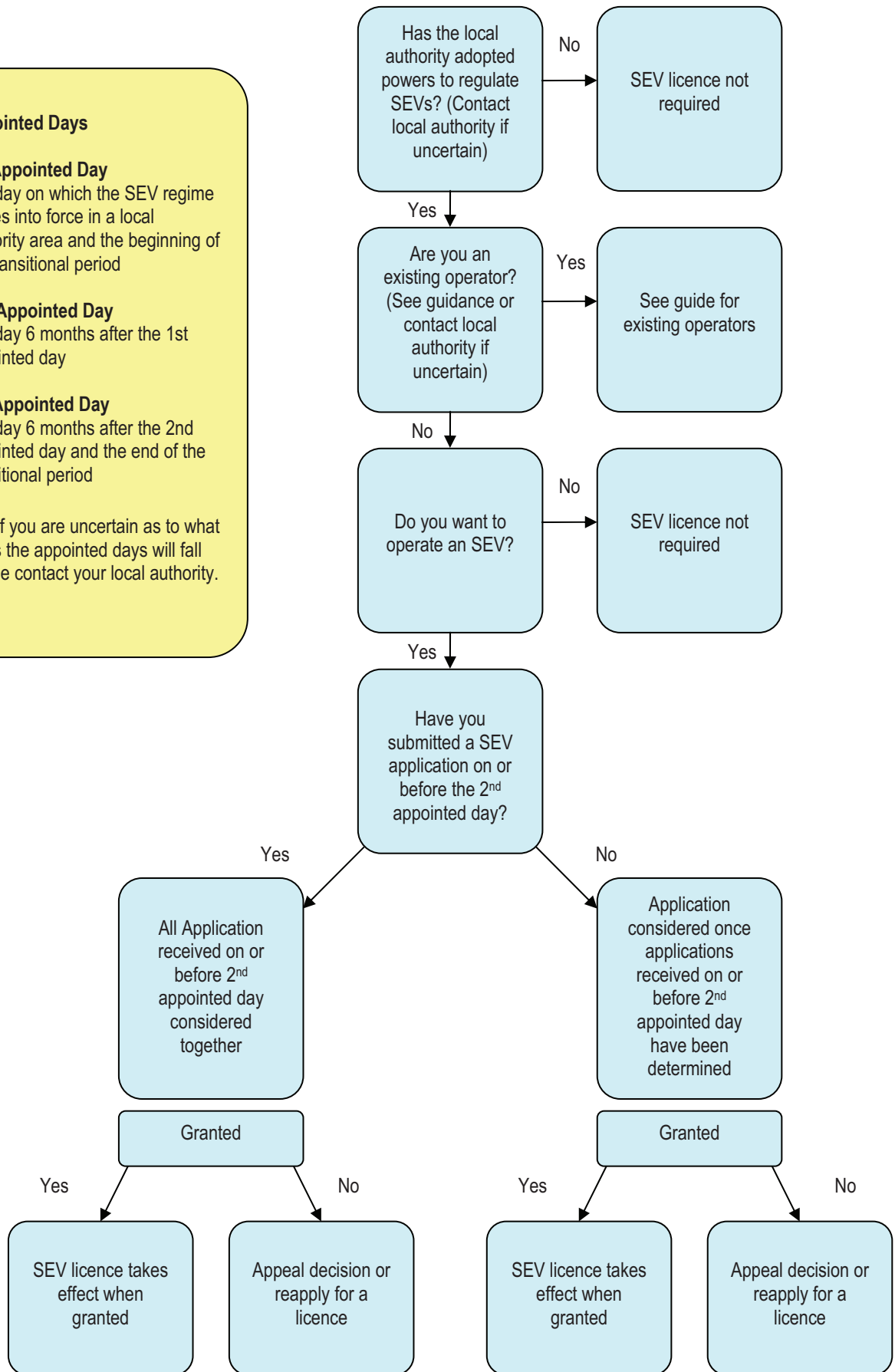
Appointed Days

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

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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.



MEETING:	REGULATORY COMMITTEE
DATE:	6 JULY 2010
TITLE OF REPORT:	REVIEW OF 3 YEAR DRIVER BADGE AND DECISION REGARDING OUTSTANDING CRB FORMS, MEDICAL FORMS AND MONEY OWING TO THE COUNCIL
PORTFOLIO AREA:	ASSISTANT DIRECTOR - ENVIRONMENTAL HEALTH & TRADING STANDARDS PUBLIC HEALTH DIRECTORATE

CLASSIFICATION: Open

Wards Affected

Countywide

Purpose

To consider appropriate action with regard to the continuance of a 3 year dual driver's badge and the collection of outstanding paperwork and money in relation to the annual self declaration.

Key Decision

This is not a key decision.

Introduction and Background

- 1 The 3 year dual badge began in April 2007, following a review of the licensing policy and fees. Previously the renewal had been an annual application, with a 3 year CRB and a 5 year Medical requirement. The requirements regarding the timing of checks remains unchanged.
- 2 It was agreed that a 3 year badge had to include an annual self declaration regarding the status of the drivers medical and CRB. The fee for a three year badge was calculated to exclude the annual fee of £45, as money has to be recovered annually in line with the way the Council's budgets are managed.
- 3 A decision was taken at the Regulatory Committee meeting of 3rd November 2009 to revert back to an annual dual driver badge, the intention being for this to coincide with a full cost accounting fee review of taxi licence fees whereby this annual fee could be calculated.
- 4 This full cost accounting fee review did not go ahead for corporate reasons and instead the service was requested to increase fees by only 2%.

Further information on the subject of this report is available from
Claire Berrow – Licensing Officer 01432 383542

- 5 Therefore, for the time being, it is proposed to keep the 3 year badge until a full cost accounting fee review can take place and be agreed.
- 6 Despite sending two reminders to the trade for self-declarations, we have been unable to collect 74 self declarations which equates to a £3,330 loss in public income. Some drivers have outstanding medicals, some CRBs and others the application and fee.

Key Considerations

- 7 Whether or not to accept all or some of the amendments to the way in which we administer dual driver badges.
- 8 Also how to proceed with the effective collection of the required declarations and monies owed both from current and future non-payments.

Recommendation(s)

THAT:

- (a) **The Dual Driver Badge continues to be a 3 year renewal until the licence fees can be fully cost accounting reviewed to include an annual fee; and**
- (b) **Those drivers with outstanding payments, self-declaration forms, Criminal Record Bureau checks and medicals are given an automatic suspension notice following two reminders. The dates on the notices to be agreed by committee.**

Alternative Options

Keep the 3 year renewal

Advantages: The 3 year badge is cheaper to administer if the trade comply with their annual declarations and payments etc. For this reason the Herefordshire Taxi Association openly supports the 3 year badge and has criticised the potential return to an annual badge. Retention of the 3 year badge would enable a full review of licence fees to be in place before any future changes are made.

Disadvantages: the Taxi Licensing Unit has to continually deal with the additional administrative burden of a 3 year badge with annual self-declaration, as a very significant percentage of the trade do not comply with their annual obligations in relation to payment and self declarations etc. The risk to the public is high when drivers are not fulfilling their annual CRB and Medical obligations. Loss of income and inevitable suspension of drivers would be likely to persist.

Reasons for Recommendations

9. Whilst the licensing authority still intends to implement the return to an annual badge it cannot do so until the fees are subjected to a full cost accounting review to take account of all relevant costs associated with the running of the service.

Community Impact

- 10 It is felt that any decision will have only a minor impact on the community as a whole, as it relates specifically to the taxi trade.

Financial Implications

- 11 Council income would be increased resulting in less subsidy of the service.

Legal Implications

- 12 Under the terms of the Local Government (Miscellaneous Provisions) Act 1976 s 51 (Private Hire Drivers) Town Police Clauses Act 1847 s 46 (Hackney Carriage Drivers), local authorities may make reasonable conditions for the regulation of both hackney carriages and private hire vehicles, drivers and operators.

Any person aggrieved by any conditions, which have been imposed, has a right of appeal to the Magistrates Court.

Key Points Summary

- 13 Thirty-two non returned self declarations.
- 14 Proposal to keep 3 year badge until full review of fees take place.

Appendices

Appendix 1 – recommendation from Regulatory Committee held on 3 November 2009.

Background Papers

None.

APPENDIX 1

Recommendation from Regulatory Committee held 3rd Nov 2009

Item 53:

RESOLVED THAT :

- (a) dual hackney carriage/private hire driver's licences revert back to being issued for a 12 month period; and
- (b) those drivers with outstanding payments, Criminal Record Bureau Checks or medicals be given until 30th November to provide the necessary information, otherwise their licences will be suspended.

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