

## **Appendix 1: Local Government (Miscellaneous Provisions) Act 1982 Considerations**

- 1.1 Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 provides local licensing authorities with adoptive licensing provisions for sex establishments, comprising the categories of sex shops and sex cinemas.
- 1.2 The majority of venues providing lap dancing, table dancing or other similar striptease entertainment currently need hold only premises licences with music and dancing issued under the 2003 Act to operate lawfully. Applications for premises licence under the 2003 Act are subject only to considerations relevant to the four licensing objectives being:
  - The prevention of crime and disorder
  - Public safety
  - The prevention of public nuisance and
  - The protection of children from harm.
- 1.3 Paragraph 2A of Schedule 3 as inserted by Section 27 of the Policing and Crime Act 2009 defines the newly created category of 'sexual entertainment venue' as "any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer". 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 be 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)".
- 1.4 Guidance produced by the Home Office provides that while local authorities should judge each case on its merits, the definition of relevant entertainment would be expected to apply to the following forms of entertainment as they are commonly understood:
  - Lap dancing
  - Pole dancing
  - Table dancing
  - Strip shows
  - Peep shows and
  - Live sex shows
- 1.5 The guidance emphasises that although reference is made to "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'.

- 1.6 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.
- 1.7 The provisions do include some clarifications and exemptions. Spontaneous displays of nudity or a lap dance by a customer or guest will not result in the premises being classified as a sexual entertainment venue. Furthermore, paragraph 2A(3) of Schedule 3 sets out those premises that are not sexual entertainment venues. These are:
- Sex shops and sex cinemas (which fall into other categories under the 1982 Act);
  - Premises which provide relevant entertainment on an infrequent basis. These are defined as where:
    - No relevant entertainment has been provided on more than 11 occasions within a 12 month period;
    - No such occasion has begun within a period of one month beginning with the end of the previous occasions; and
    - No such occasion has lasted longer than 24 hours.
- 1.8 Premises which provide relevant entertainment on an occasional basis will continue to be regulated by the 2003 Act. Premises which provide relevant entertainment on a regular basis will require a licence under the 1982 Act and, in all probability, a further licence under the 2003 Act should alcohol or late night refreshment sales be intended, but they will no longer be able to operate only under a 2003 Act licence alone.

#### Application process

- 1.9 Schedule 3 of the 1982 Act outlines the application process for a sex establishment licence, and provides details of the circumstances that merit (or may merit) refusal of an application for a licence.
- 1.10 Applications for a licence should be made in writing and should provide all details as set out in the 1982 Act and the Council's Sex Establishment Licensing Policy.
- 1.11 In addition, the application process will require:
- The payment of a reasonable fee;
  - Public advertisement of applications by way of a notice exhibited at the premises for a period of 21 days and a notice published in a local newspaper;
  - Written objections to be lodged relevant to the ground for refusal of a licence; and
  - Public hearing of the application and any objection(s) to the application.
- 1.12 The 1982 Act sets out mandatory grounds for the refusal of an application and makes it clear that a licence must not be granted:

- To a person under the age of 18;
- 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;
- To a person, other than a body corporate, who is not resident in an EEA State or was not resident throughout the period of six months immediately preceding the date when the application was made; or
- To a body corporate which is not incorporated in an EEA state; or
- 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.

1.13 Additionally, a Council may choose to refuse licence on discretionary grounds where:

- The applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- 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;
- 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;
- That the grant of the licence would be inappropriate, having regard:
  - To the character of the area or the relevant locality, or
  - To the use to which any premises in the vicinity are put, or
  - To the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

#### Locality

1.14 A local licensing authority may refuse applications on grounds related to an assessment of the 'relevant locality'. The Home Office guidance establishes that it is reasonable and potentially useful to future applicants for a local authority to decide in advance of receiving applications that certain areas are, or are not, appropriate locations for sex establishments or a particular number of sex establishments.

1.15 Nil may be an "appropriate number" where the character of the area is considered to be unsuitable for the siting of a sex establishment.

1.16 The locations will be specifically referenced during the public consultation period that will take place as part of the adoption process. The views of respondents will be taken in account when considering the appropriateness of these locations for inclusion in the policy.

- 1.17 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.
- 1.18 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.
- 1.19 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, and therefore it would be appropriate for the licensing authority to confirm the their interpretation of the term "relevant locality" on a case by case basis.
- 1.20 Case law also indicates that a relevant locality cannot be an entire local authority area or an entire town or city.
- 1.21 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.
- 1.22 Case law has defined that a 'relevant locality' cannot be an entire local authority area or entire city or town. All applications must be considered upon their own merits.

### Conditions

- 1.23 When granting licence to a sex establishment, a local authority is able to impose terms, conditions and restrictions on that licence. These conditions are intended to protect the general public, customers, performers and the local environment.