

Licensing (General) Sub-Committee

Wednesday, 14th August, 2013
at 9.00 am

PLEASE NOTE TIME OF MEETING

Committee Room 1 - Civic Centre

This meeting is open to the public

Members

Councillor Cunio (Chair)
Councillor Parnell
Councillor Mrs Blatchford
Councillor Vassiliou
Councillor Lewzey

Contacts

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Head of Legal, HR and Democratic Services
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PUBLIC INFORMATION

Terms of Reference

The Sub-Committee deals with licenses, permits and forms of consent (other than those for which the Council is responsible under the Licensing Act 2003), including

- Hackney carriage and private hire drivers, vehicles and operators
- Public music and dancing
- Amusements with prizes
- Street trading
- Sex establishments

Relevant Representations

Those who have made relevant representations may address the meeting about the matter in which they have an interest with the consent of the Chair.

Southampton City Council's Priorities:

- **Economic:** Promoting Southampton and attracting investment; raising ambitions and improving outcomes for children and young people.
- **Social:** Improving health and keeping people safe; helping individuals and communities to work together and help themselves.
- **Environmental:** Encouraging new house building and improving existing homes; making the city more attractive and sustainable.

- **One Council:** Developing an engaged, skilled and motivated workforce; implementing better ways of working to manage reduced budgets and increased demand.

Smoking policy –

The Council operates a no-smoking policy in all civic buildings.

Mobile Telephones – please turn off your mobile telephone whilst in the meeting.

Fire Procedure – in the event of a fire or other emergency a continuous alarm will sound and you will be advised by Council officers what action to take.

Access – access is available for disabled people. Please contact the Democratic Support Officer who will help to make any necessary arrangements.

Dates of Meetings: Municipal Year 2013/14

Meetings of the Committee are held as and when required.

CONDUCT OF MEETING

Terms of Reference

The terms of reference of the Audit Committee are contained in Article 8 and Part 3 (Schedule 2) of the Council's Constitution.

Rules of Procedure

The meeting is governed by the Council Procedure Rules as set out in Part 4 of the Constitution.

Business to be discussed

Only those items listed on the attached agenda may be considered at this meeting.

Quorum

The minimum number of appointed Members required to be in attendance to hold the meeting is 3.

CONDUCT OF MEETING

DISCLOSURE OF INTEREST

Members are required to disclose, in accordance with the Members' Code of Conduct, **both** the existence **and** nature of any "Disclosable Personal Interest" or "Other Interest" they may have in relation to matters for consideration on this Agenda.

DISCLOSABLE PERSONAL INTERESTS

A Member must regard himself or herself as having a Disclosable Pecuniary Interest in any matter that they or their spouse, partner, a person they are living with as husband or wife, or a person with whom they are living as if they were a civil partner in relation to:

- (i) Any employment, office, trade, profession or vocation carried on for profit or gain.
- (ii) Sponsorship:

Any payment or provision of any other financial benefit (other than from Southampton City Council) made or provided within the relevant period in respect of any expense incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

- (iii) Any contract which is made between you / your spouse etc (or a body in which the you / your spouse etc has a beneficial interest) and Southampton City Council under which goods or services are to be provided or works are to be executed, and which has not been fully discharged.

- (iv) Any beneficial interest in land which is within the area of Southampton.

- (v) Any license (held alone or jointly with others) to occupy land in the area of Southampton for a month or longer.

- (vi) Any tenancy where (to your knowledge) the landlord is Southampton City Council and the tenant is a body in which you / your spouse etc has a beneficial interests.

- (vii) Any beneficial interest in securities of a body where that body (to your knowledge) has a place of business or land in the area of Southampton, and either:

- a) the total nominal value for the securities exceeds £25,000 or one hundredth of the total issued share capital of that body, or
- b) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you / your spouse etc has a beneficial interest that exceeds one hundredth of the total issued share capital of that class.

Other Interests

A Member must regard himself or herself as having a, 'Other Interest' in any membership of, or occupation of a position of general control or management in:

Any body to which they have been appointed or nominated by Southampton City Council

Any public authority or body exercising functions of a public nature

Any body directed to charitable purposes

Any body whose principal purpose includes the influence of public opinion or policy

Principles of Decision Making

All decisions of the Council will be made in accordance with the following principles:-

- proportionality (i.e. the action must be proportionate to the desired outcome);
- due consultation and the taking of professional advice from officers;
- respect for human rights;
- a presumption in favour of openness, accountability and transparency;
- setting out what options have been considered;
- setting out reasons for the decision; and
- clarity of aims and desired outcomes.

In exercising discretion, the decision maker must:

- understand the law that regulates the decision making power and gives effect to it. The decision-maker must direct itself properly in law;
- take into account all relevant matters (those matters which the law requires the authority as a matter of legal obligation to take into account);
- leave out of account irrelevant considerations;
- act for a proper purpose, exercising its powers for the public good;
- not reach a decision which no authority acting reasonably could reach, (also known as the "rationality" or "taking leave of your senses" principle);
- comply with the rule that local government finance is to be conducted on an annual basis. Save to the extent authorised by Parliament, 'live now, pay later' and forward funding are unlawful; and
- act with procedural propriety in accordance with the rules of fairness.

AGENDA

Agendas and papers are available on the Council's website at
www.southampton.gov.uk

1 APOLOGIES AND CHANGES IN MEMBERSHIP (IF ANY)

To note any changes in the membership of the Sub-Committee made in accordance with Council Procedure Rule 4.3.

2 DISCLOSURE OF PERSONAL AND PECUNIARY INTERESTS

In accordance with the Localism Act 2011, and the Council's Code of Conduct, Members to disclose any personal or pecuniary interests in any matter included on the agenda for this meeting.

NOTE: Members are reminded that, where applicable, they must complete the appropriate form recording details of any such interests and hand it to the Democratic Support Officer.

3 STATEMENT FROM THE CHAIR

4 MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)

To approve and sign as a correct record the Minutes of the meeting held on 14 February 2013 and to deal with any matters arising, attached.

5 EXCLUSION OF THE PRESS AND PUBLIC

At a predetermined point during the consideration of all items the Sub-Committee may move into private session in order to receive legal advice when determining issues. The press and the public, unless otherwise excluded by Category 4 of paragraph 10.4 of the Council's Access to Information Procedure Rules, will be invited to return immediately following that private session at which time the matter will be determined and the decision of the Sub-Committee will be announced.

6 APPLICATION FOR GRANT OF A SEXUAL ENTERTAINMENT VENUE LICENCE - FYEO, 135-136 HIGH STREET, SOUTHAMPTON SO14 2BR

Report of the Head of Legal, HR and Democratic Services detailing an application for grant of a sexual entertainment venue licence in respect of 135-136 High Street, Southampton SO14 2BR, attached.

**7 APPLICATION FOR GRANT OF A SEXUAL ENTERTAINMENT VENUE LICENCE -
PLAY HOUSE GENTLEMEN'S CLUB, HARBOUR HOUSE, TOWN QUAY,
SOUTHAMPTON SO14 2AQ**

Report of the Head of Legal, HR and Democratic Services detailing an application for grant of a sexual entertainment venue licence in respect of Play House Gentlemen's Club, Harbour House, Town Quay, Southampton SO14 2AQ, attached.

Tuesday, 6 August 2013

HEAD OF LEGAL, HR AND DEMOCRATIC
SERVICES

SOUTHAMPTON CITY COUNCIL
LICENSING (GENERAL) SUB-COMMITTEE
MINUTES OF THE MEETING HELD ON 14 FEBRUARY 2013

Present: Councillors Cunio (Chair), Mrs Blatchford, Vassiliou and Lewzey

6. **APOLOGIES AND CHANGES IN MEMBERSHIP (IF ANY)**

The Sub-Committee noted that apologies had been received from Councillor Parnell.

7. **MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)**

RESOLVED that the Minutes of the Meeting held on 29th November 2012 be signed as a correct record. (Copy of the minutes circulated with the agenda and appended to the signed minutes).

8. **EXCLUSION OF THE PRESS AND PUBLIC**

RESOLVED that in accordance with the Council's Constitution, specifically the Access to Information Procedure Rules contained within the Constitution, the press and public be excluded from the meeting in respect of Item 6 based on Categories 1 and 2 of paragraph 10.4 of the Access to Information Procedure Rules and be invited to return immediately following private session at which time the matter be determined and the decision of the Panel be announced.

9. **APPLICATION FOR VARIATION OF A SEX SHOP LICENCE**

The Sub-Committee considered the confidential report of the Head of Legal, HR and Democratic Services regarding an application for variation of a sex shop licence. (Copy of report circulated with the agenda and appended to signed minutes).

The applicants were present and with the consent of the Chair addressed the meeting.

RESOLVED that the application to vary the sex shop licence as presented, be granted in part, subject to the following restrictions/amendments:-

- i. change the condition to permit the applicant's son to be employed at premises – **Approved in part.** Condition 28 to be altered to require a nominated person, to be approved by the Licensing Manager (if other than the applicant) with no relevant convictions, to be on the premises at all times that the son is on the premises, to ensure that the son was supervised at all times;
- ii. open on Bank Holidays excluding Christmas Day, Boxing Day and Good Friday – **Approved in part** – A condition will be imposed prohibiting the premises from opening on Good Friday, Christmas Day and every Sunday; and

- iii. change the colour of the shop front to corporation green with cream letters and to display a corporation green coloured open sign measuring 12 x 24 inches – **Approved** subject to all changes being approved by the Licensing Manager.

In implementing the above decision, the Licensing (General) Sub Committee delegated authority to the Head of Legal, HR and Democratic Services to approve conditions and amend the existing conditions to achieve the above.

REASONS

The Sub-Committee noted the concerns relating to the applicant's son's past convictions and actions/behaviour. However, it was noted that there had been no similar offences since this time and it was felt that the changes to conditions 28 and 29 would be sufficient to ensure that the son was supervised at all times (either by the applicant or another nominated person).

There was concern that traders might call at the premises at any time and that without supervision and in light of the relevant previous convictions the son was not an appropriate person to be left in sole charge of the premises.

With regard to closing, the Sub-Committee saw no reason to restrict opening on public holidays generally but was satisfied that it remained appropriate that trading be prohibited on certain days including Sundays.

The proposed new colour scheme was considered in principle to be appropriate, albeit that the Sub-Committee could not see an example of the proposed colour and accordingly delegated authority to the Licensing Manager to approve the same.

In making its decision the Sub-Committee paid careful attention to the impact of the proposed changes and the effect on the locality. In this respect it was stressed that the decision did not set a precedent that showed a careful consideration of the application on its own merits and the premises in its surrounding area.

Agenda Item 6

DECISION-MAKER:	LICENSING (GENERAL) SUB-COMMITTEE		
SUBJECT:	APPLICATION FOR GRANT OF A SEXUAL ENTERTAINMENT VENUE LICENCE – FYEO, 135-136 HIGH STREET		
DATE OF DECISION:	14 AUGUST 2013		
REPORT OF:	HEAD OF LEGAL, HR AND DEMOCRATIC SERVICES		
<u>CONTACT DETAILS</u>			
AUTHOR:	Name:	Phil Bates	Tel: 023 8083 3523
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STATEMENT OF CONFIDENTIALITY

None

BRIEF SUMMARY

The Licensing (General) Sub-Committee is requested to consider and determine the application for grant of a Sexual Entertainment Venue (SEV) licence made by For Your Eyes Only Limited in respect of FYEO, 135-136 High Street, Southampton, SO14 2BR.

RECOMMENDATIONS:

- (i.) That the Sub-Committee consider and determine the application.
- (ii.) That, should the Sub-Committee determine to grant the application, consideration be given to the attachment of standard conditions to such licence (in line with the views expressed by Hampshire Constabulary) (as shown in Appendix 2).

REASONS FOR REPORT RECOMMENDATIONS

1. As the Council has resolved to adopt the provisions of schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 which relate to the licensing of sexual entertainment venues, the Sub-Committee is required to consider and determine the application in line with the current scheme of delegation.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

2. None.

DETAIL (Including consultation carried out)

Background Information

3. The Council originally adopted Schedule 3 of the 1982 Act in so far as they related to sex shops and sex cinemas in 1983 and readopted them with effect from 3rd July 1995.

4. The Policing and Crime Act 2009 amended the Local Government (Miscellaneous Provisions) Act 1982 with effect from 6th April 2010, by introducing a new category of sex establishment called Sexual entertainment venues (SEVs) enabling local licensing authorities to adopt provisions for the regulation of lap dancing clubs and similar venues under Schedule 3 of the 1982 Act. Previously the power was limited to sex shops and sex cinemas.
5. On 11th July 2012, Council resolved to adopt the provisions of schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 which relate to the licensing of SEVs.

The new regime came into force in Southampton on 20th August 2012 (known as the “first appointed day”), after which a 12 month transition period has been in effect.

The effect of the transitional period is that existing operators, who, immediately before the first appointed day, had a Licensing Act 2003 premises licence and lawfully used the premises as a sexual entertainment venue under that licence (or were undertaking preparatory work to use the venue in that way), were allowed to continue to provide relevant entertainment until the 20th August 2013 (the “third appointed day”) or the determination of any application they have submitted before the 20th February 2013 (the “second appointed day”), whichever is later.

After the third appointed day, the regime, and any licences granted, will be fully in force.

The Legislation – Definitions

6. 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 the statutory 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 entertainer.”

Relevant entertainment is defined as:

“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).”

It should be noted that an audience can consist of just one person e.g. when the entertainment takes place in private booths.

Relevant entertainment is therefore different from regulated entertainment as defined in the Licensing Act 2003.

7. In terms of considering what constitutes “relevant entertainment” each case must be judged on its merits, but the informal guidance produced by the Home Office suggests that the definition of relevant entertainment would apply to the following forms of entertainment as they are most commonly understood:

- Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows
 - Live sex shows.
8. However, the list above cannot be exhaustive and, as the understanding of the exact nature of these descriptions may vary, it should therefore merely be used as an indicator for certain types of entertainment. Ultimately, decisions on the licensing of individual premises as sexual entertainment venues will depend on the content of the entertainment provided and not on how it is described.
9. The relevant entertainment must be provided for the financial gain of the “organiser” or “entertainer”.
- “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 cases this definition will relate to the manager of the premises but there could be circumstances where it will relate to an individual who is responsible for organising the relevant entertainment on behalf of the persons responsible for the management of the premises.
10. The 1982 Act also sets out those premises that are NOT sexual entertainment venues. These are:
- Sex shops and sex cinemas;
 - Premises which provide 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.
 - Private dwellings with no public admittance.

Application Details

11. On 14th February 2013, an application for a sexual entertainment venue licence in respect of FYEO, 135-136 High Street, was received from For Your Eyes Only Limited, whose registered office is at 15-16 Stockholm Close, Tyne Tunnel Trading Estate, Tyne & Wear, NE29 7SF. A copy of the application and plans of the premises are attached as Appendix 1
12. The premises does currently benefit from a premises licence issued under the Licensing Act 2003. This licence had effect immediately before the first appointed day, and the premises were operating as a sexual entertainment venue immediately before the first appointed day. Therefore, the transitional provisions have applied to this premises and the premises is currently operating as an sexual entertainment venue.

13. **Legislation – Notices and Objections**

14. Applicants for the grant of an SEV licence are required to display a notice on or near the premises to be licensed for 21 days and advertise give public notice of the application by publishing an advertisement in a local newspaper circulating in Southampton.
15. Any person objecting to an application for the grant of an SEV licence is required to give notice of in writing to the local authority, not later than 28 days after the date of the application.
16. No objections were received in relation to this application within the 28 day consultation period.
17. A copy of the application has been provided to Hampshire Constabulary, who have confirmed that they have no objection to the application.
18. The Act does not provide objectors with an explicit provision to be heard in person by the Sub-Committee. However, those persons from whom valid objections have been received have been advised of the date and time of the meeting and have also been advised that they may only address the meeting at the invitation of the Sub-Committee.
19. When considering an application for the grant, of a licence the Sub-Committee 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 days of the application. Any person can object to an application but the objection should be relevant to the grounds set out in paragraph 12 of the Local Government (Miscellaneous Provisions) Act 1982 for refusing a licence. Objections should not be based on moral grounds/values and local authorities should not consider objections that are not relevant to the grounds for refusal.

20. **The Legislation - Criteria**

21. 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.
22. A licence may be refused by the Sub-Committee 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;
 - (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.
23. A decision to refuse a licence must be relevant to one or more of the above grounds.
24. It is considered advisable to merely deal with this application on its merits and not to embark on an additional exercise of determining a precise “relevant locality” and an appropriate number of establishments in it. Such an exercise is only recommended if after having regard to the area generally if it is felt that the number and / or proximity of premises may be inappropriate.
25. SEV licences can be granted for a maximum of one year, or for such shorter periods specified in the licence as the Sub-Committee may think fit.
26. **The Legislation - Conditions**
27. If the Sub-Committee determines to grant a licence it has power to impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual premises concerned or standard conditions applicable to all sex establishments, or particular types of sex establishments.
- Examples of the matters that standard conditions may address can 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.
- If such standard conditions are introduced by the local authority, they will apply to every licence granted, renewed or transferred by the authority unless they have been expressly excluded or varied.

28. Guidance issued by the Home Office (a copy of which is attached as Appendix 4) states;
- 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.
 - 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.
 - 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.
29. A set of proposed standard conditions to apply to all SEV licences is attached as Appendix 2. In relation to these conditions, the Hampshire Constabulary Western Licensing Team have advised as follows;
- That a condition requiring CCTV storage for 31 days (Section 4.7) will conflict with the CCTV condition on the premises licence issued under the Licensing Act 2003. Should an SEV licence be granted, they have suggested an amendment be made to this condition to require CCTV storage for 28 days, which is in line with the condition that exists on the Licensing Act 2003 premises licence (a copy of which is attached as Appendix 3).
 - That the condition requiring the operation of a Challenge 25 scheme (Section 11.1) would be appropriate for the premises at this time instead of the condition requiring the operation of an ID scanner (Section 11.2).
30. **The legislation - Appeals**
31. In the event that the Sub-Committee refuse an application for the grant of a SEV licence, the applicant may appeal the decision in a Magistrates' Court, unless the application was refused under paragraph 12(3)(c) or (d) of the Local Government (Miscellaneous Provisions) Act 1982, in which case the applicant can only challenge the refusal by way of judicial review.

RESOURCE IMPLICATIONS

Capital/Revenue

32. There are no financial implications as the cost of processing such applications is contained within existing budgets.

Property/Other

33. None.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

34. Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 sets out the City Councils power to determine an application for the grant of an SEV licence.

Other Legal Implications:

35. Section 17 of the Crime and Disorder Act 1998 places the Council under a duty to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

36. The Human Rights Act 1998 Act requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the Council to act in a way that is incompatible (or fail to act in a way that is compatible) with the rights protected by the Act. Any action undertaken by the Council that could have an effect upon another person's Human Rights must be taken having regard to the principle of proportionality - the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the Council which affects another's rights must be no more onerous than is necessary in a democratic society. The matter set out in this report must be considered in light of the above obligations.

POLICY FRAMEWORK IMPLICATIONS

37. None.

KEY DECISION? n/a

WARDS/COMMUNITIES AFFECTED:	Bargate
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SUPPORTING DOCUMENTATION

Appendices

1.	Application for SEV licence made by For Your eyes Only Limited
2.	Copy of proposed standard conditions
3.	Copy of Licensing Act 2003 premises licence
4.	Home Office Guidance relating to SEVs

Documents In Members' Rooms

1.	None.
2.	

Equality Impact Assessment

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out.	No
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Other Background Documents

Equality Impact Assessment and Other Background documents available for inspection at:

Title of Background Paper(s)

Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.		
2.		



Appendix 1
Potterne Farm Cottage
Potterne Way
Three Legged Cross
Wimborne BH21 6RS

Phone: 01202 813658

Mobile 07866 265152

Fax 01202 820478

E-mail

Julia.Palmer@JCPLaw.co.uk



The Licensing Officer
Southampton City Council
Licensing Team
PO Box 1767
Southampton
SO18 9LA

12 February 2013

FAO Mr J Burke

Dear Sir

**FYEO, 135-136 High Street, Southampton
Application for Sexual Entertainment Venue Licence**

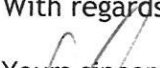
Further to our various exchanges, having regard to the second appointed date of 20 February 2013 in respect of the above, and in the absence of advice of any specific details required under paragraph 10(6) Schedule 3 Local Government (Miscellaneous Provisions) Act 1982, please accept this letter as formal application for a Sexual Entertainment Venue Licence in respect of the above trading venue.

The application is made on behalf of For Your Eyes Only Limited whose registered office is at 15-16 Stockholm Close, Tyne Tunnel Trading Estate, Tyne & Wear, NE29 7SF in respect of the premises currently trading as a gentlemen's club as For Your Eyes Only (FYEO) at 135-136 High Street, Southampton, SO14 2BR. The names and private addresses of the company directors are set out in the attached document.

I attach a copy of the notice which has been sent to the premises for exhibition with immediate effect and I confirm that a notice with the same information will be published in a newspaper circulating in the authority's area within 7 days. In the absence of contrary advice, I shall respectfully assume that this will meet with the council's requirements.

Please let me know the amount of any fee payable, any plan requirements and the details of any standard conditions proposed in respect of such licences, at your earliest convenience. Please also advise of any objections received to the application, in due course.

With regards


Yours sincerely

By email ~~only~~ licensing@southampton.gov.uk

Cc by way of service, email ~~only~~, Southampton.licensing@hampshire.pnn.police.uk

FYEO Southampton Application for SEVL

Details of Directors

Mr Nicie Glenn Campbell



Mr Ladhar Baldev Singh and Mrs Ladhar Bhagwant Kaur both of



Details of Managers

Operations Manager

Mr Blanke Adrian Bertolt

Site Manager

Mr Ivins Alexander Peter



Deputy Manager

Mr Mills Peter Alexander



Standard Conditions applicable to Sex Establishments consisting of Sex Shops, Sex Cinemas or Sexual Entertainment Venues

Southampton City Council, in exercise of the powers conferred by paragraph 13 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 hereby make the following Regulations prescribing standard conditions applicable to licences for sex establishments.

Interpretation

In these Regulations the following expressions that is to say “Sex Establishment”, “Sex Shop”, “Sex Cinema”, “Sexual Entertainment Venue”, “Sex Article”, and “Vessel” shall have the meanings respectively assigned by Schedule 3 of the Act (and where amended by Section 27 of the Policing and Crime Act 2009).

In these Regulations the following expressions shall have the meanings hereby respectively assigned to them namely:

“the Act” means the Local Government (Miscellaneous Provisions) Act 1982, as amended.

“the council” means Southampton City Council and/or any authorised officer acting on behalf of the Council.

“the premises” means any premises, vehicle, vessel or stall licensed under the Act.

“licence holder” means a person who is the holder of a sex establishment licence.

“permitted hours” means the hours during which the licensed premises are permitted to be open to the public.

“licence” means a licence granted pursuant to Schedule 3 of the Act.

Part One – General Conditions

1. Management of Premises

- 1.1. The Licence holder, or some responsible person nominated by him and approved in writing by the council for the purpose of managing the sex establishment (“the manager”), shall have personal responsibility for and be present on the premises at all times when the premises are open to the public.
- 1.2. In accordance with section 14 of the 1982 Act, the Licence holder shall display, on the licensed premises in a conspicuous position, a copy of the licence and/or any special conditions attached.
- 1.3. The name of the person responsible for the management of the sex establishment, whether the licence holder or manager, shall be displayed in a conspicuous position within the premises throughout the period during which he is responsible for the conduct of the premises.
- 1.4. The licence holder shall retain control over all parts of the licensed premises as set out on the approved premises plan and shall not let or part with possession of any part.
- 1.5. No person under the age of 18 shall be admitted to the premises and rigorous identity checks SHALL be made on any person who appears to be under the age of 18.
- 1.6. To ensure compliance of 5 above, the licence holder shall exhibit appropriate warning notices as to the minimum age requirements on both the exterior (frontage) door and also conspicuously on the appropriate inner lobby door.
- 1.7. No person under the age of 18 shall be employed to work at the premises in any capacity or shall be allowed to work at the premises on a self-employed basis.
- 1.8. Neither the Licence holder nor any employee or agent shall tout or solicit custom for the sex establishment immediately outside or in the vicinity of the licensed premises.
- 1.9. Where the Licence holder is a body corporate or an unincorporated body, any change of director, or other person responsible for the management of the body is to be notified in writing to the council within 14 days of any such change. In addition, the Licence holder shall provide any details as the council may require in respect of any new director, officer or manager upon request in writing from the council.

2. Conduct of the Premises

- 2.1. No change from one type of sex establishment to another shall be made without the written consent of the council.
- 2.2. No part of the premises shall be used by prostitutes for the purpose of solicitation or otherwise exercising their calling.

3. Premises Interior and Layout

- 3.1. The premises layout shall comply with deposited plans unless otherwise approved in writing by the council.
- 3.2. No alterations, additions or modifications to either the internal or external parts of the licensed premises shall be made without the prior written consent of the council.
- 3.3. External doors shall be closed at all times other than when persons are entering or leaving the premises. The external doors shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.
- 3.4. The premises shall be fitted with an inner entrance lobby door or partition screen so that no part of the interior of the premises or any of the contents of the premises shall be visible when persons are entering or leaving the premises.

- 3.5. No access shall be permitted through the premises to any other premises adjoining or adjacent except in the case of emergency.
- 3.6. No part of the interior of the licensed premises shall be visible whatsoever to persons outside the premises.
- 3.7. No external advertising, words, signs, displays or illuminations shall be permitted unless previously approved by the council.
- 3.8. The external fabric, appearance and look of the licensed premises shall consist of materials and colours approved by the council in order to:
 - 3.8.1. Ensure that the frontage is of a discreet nature
 - 3.8.2. Ensure that it is appropriate to the character of the locality.

4. CCTV

- 4.1. A recording CCTV system shall be installed and fully operational whilst the venue is open to the public.
- 4.2. The recording equipment will be stored and operated in a secure environment with limited access, to avoid damage, theft, unauthorised viewing and to maintain the integrity of the system.
- 4.3. A record will be kept of any access made to information held on the system.
- 4.4. The system will be serviced at twelve monthly intervals and maintained to a standard that is acceptable to the police licensing department responsible for the area. A record of service and maintenance completed shall be held for a minimum of three years at the premises.
- 4.5. The system clock will be checked regularly for accuracy taking account of GMT and BST.
- 4.6. An additional recording CCTV camera shall be installed and fully operational whilst the venue is open to the public to cover the area outside the front of the premises.
- 4.7. The CCTV system will have sufficient storage capacity for 31 days of good evidential quality images.

5. CCTV Access

- 5.1. Police and authorised officers of the council shall have access to data from the systems quickly and easily and therefore provision will be made for the licensee or a member of staff to have access to the secure area and also be able to operate the equipment and to supply footage in a format which can be easily viewed by police or council officers.
- 5.2. All operators will receive training from the installer when equipment is installed and this training will be cascaded down to new members of staff.
- 5.3. An operator's manual will be available to assist in replaying and exporting data.
- 5.4. The premises shall not be operated pursuant to the grant of a licence until such time as the CCTV System has been approved by the Police. The CCTV must be maintained in a satisfactory working condition and subject to police approval in order to remain operating under the licence.

6. General

- 6.1. The Licence holder shall take all reasonable precautions to ensure public safety on the premises and shall comply with any reasonable request made by the council.
- 6.2. The council may substitute, delete, vary or amend these conditions at any time.

Part Two – Additional Conditions for Premises Operating as Sex Shops

- 6.3. The Licensee shall notify the council of the name, address and date of birth of any manager or employee at the licensed premises at least 7 days prior to commencing employment. The council, in consultation with the police, reserves the right to object to the employment of any person by reason of general unsuitability and/or because of any recorded conviction, reprimand, warning or caution considered relevant in which event the individual concerned shall not be employed at the premises.
- 6.4. The names of any and every employee working on the premises shall be displayed in a conspicuous position on the premises.
- 6.5. No public music or dancing shall be permitted on the premises.
- 6.5.1. No alcohol shall be sold, offered or consumed by either staff or customers on the premises.
- 6.5.2. No facilities to provide or consume food (hot or cold) by members of the public shall be permitted on the premises.

7. Hours of Opening and Closing

- 7.1. Licensed premises shall not, unless approved in writing by the council, be open for the purposes for which the licence is granted on any Sunday, bank or public holiday.
- 7.2. The general permitted hours (unless otherwise varied by the council) for the use of any premises, as a sex shop shall be:
 - 7.2.1. Monday to Saturday inclusive - 0930 until 2000

8. Conduct of the Premises

- 8.1. A sex shop shall be conducted primarily for the purpose of the sale of goods by retail.
- 8.2. All sex articles and other things displayed for sale, hire, exchange or loan within a sex establishment shall be clearly marked to show the price being charged.
- 8.3. All printed matter offered for sale, hire, exchange or loan within a sex establishment shall be available for inspection prior to purchase and a notice to this effect shall be displayed in a conspicuous position within the premises.
- 8.4. No film or video recording shall be exhibited, sold or supplied unless it has been passed by the British Board of Film Certification and bears a certificate to that effect.

9. Premises Interior and Layout

- 9.1. Any facilities on the premises for previewing films, video recordings or other similar material shall be physically separated from the display area of the shop in such a manner that no material being displayed by way of preview shall be visible or audible outside the preview area. The positioning of any playback or viewing equipment shall be approved by the council.

Part Three – Additional Conditions for Premises Operating as Sexual Entertainment Venues

10. External Appearance of the Premises and Public Displays of Information

- 10.1. The exterior of the premises shall not contain any displays or depictions of the human form, or any imagery that suggests or indicates relevant entertainment takes place at the premises, or other language stating the nature of such activities, including use of the word “nude”. The condition does not prevent the use of the words “Licensed Sexual Entertainment Venue” on a single plate in characters no higher than 10 cm at the entrance to the premises.
- 10.2. Any external displays or advertising may only be displayed with the prior approval of the Council.
- 10.3. The prices for entrance and any compulsory purchases within the venue shall be clearly displayed on the exterior of the premises.
- 10.4. All charges for products and services shall be displayed in prominent areas within the premises, and at each customer table and in the bar area.
- 10.5. Rules for customers shall be displayed in prominent areas within the premises, and at each customer table and in the bar area.
- 10.6. No charge shall be applied unless the customer has been made aware of the tariff of charge by the performer in advance of the performance.
- 10.7. Performers may not stand in any lobby, reception or foyer areas or outside the premises entrance for the purposes of greeting customers or encouraging customers to enter the venue.
- 10.8. The use of cruising cars by the premises to solicit for custom and/or transport people to or from the premises is prohibited.
- 10.9. The use of flyers and similar promotional material for the premises is prohibited.

11. Control of Entry to the Premises

- 11.1. The Challenge 25 proof of age scheme shall be operated at the premises whereby any person suspected of being under 25 years of age shall be required to produce identification proving they are over 18 years of age. The only acceptable forms of identification are recognised photographic identification cards, such as a driving licence or passport.

OR at the discretion of the Licensing Authority in individual circumstances the following condition may be applied:

- 11.2. All persons entering the premises must supply verifiable identification details that are passed through a digital scanning and recording system such as Club Scan, Idvista or similar computerised system.
- 11.3. The premises shall maintain a Refusals log whereby any occasion a person is refused entry shall be recorded and available upon request by the Police or an authorised officer of the council.
- 11.4. All individuals employed on the premises to conduct a security activity (within the meaning of paragraph 2(1) (a) of Schedule 2 to the Private Security Act 2001) must be licensed by the Security Industry Authority.
- 11.5. Any person who appears to be drunk / intoxicated or under the influence of illegal drugs shall not be permitted entrance to the premises.
- 11.6. A policy of random searches of persons entering the premises shall be operated.

- 11.7. Any person found to be in possession of illegal drugs upon entry shall be prevented entry and, where possible, restrained until the Police can take such person into custody. Any persons found using illegal drugs on the premises shall be removed from the premises or, where possible, restrained until the Police can take such person into custody.
- 11.8. The licensed premises shall be so arranged by screening or obscuring windows, doors and other openings so that the interior of the licensed premises shall not be visible to persons outside the building.
- 11.9. The premises shall subscribe to an approved radio system and radios shall be operational at all times the premises is open to the public.

12. Conduct of Performers and Rules relating to performances of sexual entertainment

- 12.1. There shall be a written code of conduct for performers that has been agreed in writing by the Licence holder, the council and the Police.
- 12.2. All performers shall be required to certify their agreement to comply with the code and a record shall be kept on the premises and be made available upon request by the Police or an authorised officer of the council. The code shall include the basic criteria as set out in Appendix B to this policy.
- 12.3. No changes shall be made to the Dancer's Code of Conduct without the prior written consent of the council and the Police.
- 12.4. The Dancer's Code of Conduct must include a statement that any dancer who does not comply with the Code of Conduct will face disciplinary proceedings.
- 12.5. All management and staff (including security staff) must be aware of and familiar with the content of the Dancer's Code of Conduct and shall ensure it is complied with at all times.
- 12.6. A copy of the Dancer's Code of Conduct shall be prominently displayed in each area of the premises where the public have access, which shall include toilet areas as well as in any area used as a changing/dressing room for dancers.

13. Code of Conduct for Customers

- 13.1. There shall be a written Code of Conduct for Customers that has been agreed in writing by the Licence holder, the council and the Police.
- 13.2. The code shall include the basic criteria as set out in Appendix C to this policy.
- 13.3. The Code of Conduct for Customers shall be displayed in prominent positions throughout the licensed premises so that it is visible to all patrons.
- 13.4. No changes shall be made to the Code of Conduct for Customers without the prior written consent of the council and the Police.
- 13.5. The Code of Conduct shall include a statement that any customers who fail to comply with the Code of Conduct will be required to leave the premises.
- 13.6. All management and staff (including security staff) must be aware of and familiar with the content of the Code of Conduct for Customers and shall ensure it is complied with at all times.
- 13.7. On any occasion whereby a customer breaches the Code of Conduct, such details shall be recorded in the incident log.
- 13.8. Any customer breaching the rules of the Code of Conduct shall be asked to leave the premises. Any customer who has previously been asked to leave the premises and again breaches the Code of Conduct shall be banned from the premises.

14. Disciplinary Procedure for Performers

- 14.1. The Licence holder shall ensure that a written disciplinary procedure is in force so as to

take appropriate action against performers who breach the Code of Conduct and that a copy of the procedure is provided to each performer who works at the premises.

- 14.2. All performers shall sign an acknowledgement that they have received a written copy of the disciplinary procedure and have read and understood its contents.
- 14.3. Any disciplinary procedure shall NOT make any provision for financial penalties against performers who breach the disciplinary procedure. Any sanctions shall be limited to verbal or written warnings, suspension or revocation of the performer's right to dance at the premises.

15. The Protection of Performers and the Prevention of Crime on the Premises

- 15.1. Performers shall be provided with secure and private changing facilities.
- 15.2. All entrances to private areas to which members of the public are not permitted access shall have clear signage stating that access is restricted.
- 15.3. Any exterior smoking area for use by performers shall be kept secure and separate to any public smoking area.
- 15.4. The Licence holder shall implement a written policy to ensure the safety of performers when leaving the premises following any period of work.
- 15.5. Private booths must not be fully enclosed. There must be a clear sight-line from outside the booth so that any performance of sexual entertainment can be directly monitored.
- 15.6. There must be a minimum of one member of security staff present on any floor where a performance of sexual entertainment is taking place.
- 15.7. Any private booths shall be fitted with a panic button or security alarm.

16. Record Keeping and Management

- 16.1. All performers shall be required to provide valid identification prior to first employment at the premises. Acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or national ID card.
- 16.2. All performers and staff shall be eligible to work in the UK and proof of eligibility records shall be kept on the premises. Management shall ensure that such records are regularly checked to ensure compliance.
- 16.3. Employment records for performers and staff shall be kept for a minimum of 6 months following the cessation of their employment.
- 16.4. Accurate payment and remuneration records shall be maintained and shall be made available upon request to the Police or an authorised officer of the Council. All fees and charges for performers shall be stated in writing and prominently displayed within the changing area.
- 16.5. No films may be shown at the premises unless they have been passed by the British Board of Film Classification. No films classified as R18 shall be shown on the premises.

17. Dress Code

- 17.1. The premises shall operate a dress code for customers to the satisfaction of the Police.

Part Four – Additional Conditions for Premises Operating as Sex Cinemas

18. Film Exhibition

18.1. No film shall be exhibited unless:

- 18.1.1. It has been passed by the British Board of Film Classification (“BBFC”) as a U, PG, 12, 15, 18 or RESTRICTED (18) film and no notice of objection to its exhibition has been given by the council; or
- 18.1.2. The film has been passed by the council as U, PG, 12, 15, 18 or RESTRICTED (18).
- 18.2. If the Licence holder is notified by the council, in writing, that it objects to the exhibition of a film specifying the grounds of objection, such film shall not be exhibited.
- 18.3. The Licence holder shall give at least 28 days notice in writing to the council of any proposal to exhibit any film which has not been classified as specified above. Such a film shall only be exhibited if consent has been obtained from the council in writing and subject to any terms or restrictions contained within such written consent.
- 18.4. When the programme includes a film in the 12, 15 or 18 category, no person appearing to be under the age of 12, 15 or 18 as appropriate shall be admitted to any part of the programme.
- 18.5. If the council does not agree with the category of any film as passed by the BBFC, it may alter the category or prohibit the showing of the film.
- 18.6. Where any notice is given by the council to the Licence holder that it has altered the category of any film, the film shall thereafter be treated as being in the altered category and the conditions application to the exhibition of films in the altered category shall be observed accordingly.
- 18.7. Immediately before each exhibition at the premises of a film (other than a current news-reel) passed by the BBFC, there shall be exhibited on the screen for at least ten seconds and in such a manner as to be easily read by all persons in the auditorium, a reproduction of the certificate of the BBFC or, as regards a trailer, of the statement approved by the BBFC indicating the category of the film.
- 18.8. For a film passed by the council, notices shall be conspicuously displayed both inside and outside the premises so patrons entering can easily read them and which consist of the following wording:

SOUTHAMPTON CITY COUNCIL

(Insert title of film here)

Has been passed by Southampton City Council as

(insert the definition of the category and the category assigned)

- 18.9. Where a trailer is to be exhibited advertising a film passed by the council, the notice shall state:

SOUTHAMPTON CITY COUNCIL

*(Insert the category of trailer here) **trailer advertising** (insert the category of the film) **film***

- 18.10. Every poster, advertisement, photograph, sketch, synopsis or programme relating to a film (other than a current news-reel) exhibited, or to be exhibited at the premises shall indicate clearly the category of the film.

19. Refusals/Incident Log

- 19.1. The Licence holder shall ensure that an incident/refusals log is maintained at the premises. The log shall record the following information:
- Any ejections from the premises
 - Any refused admissions
 - Any refused sales
 - Any inappropriate behaviour by patrons
 - Any failure in the CCTV system
 - Any incidents of crime or disorder
 - Any complaints made by patrons
- 19.2. The record shall show the date and time of the incident; the name of the member of staff reporting the incident; a brief description of the customer involved where appropriate and brief details of the incident together with any action taken by the staff/management of the premises.
- 19.3. The incident log shall be completed as soon as reasonably practicable after any incident has occurred.
- 19.4. The incident log shall be kept in a place where it can be easily accessed by staff working at the premises and all staff shall be aware of the location of the incident log and the need to complete it in such cases as described above.
- 19.5. The Licence holder shall ensure that the incident log is checked periodically and at least on a monthly basis to ensure that staff are completing the log as and when appropriate.
- 19.6. The incident log shall be made available for inspection to the Police or authorised council officers upon request.

20. General

- 20.1. No sex articles or other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity shall be displayed, sold, hired, exchanged, loaned or demonstrated in a sex cinema.

Sexual Entertainment Venues – Code of Conduct for Dancers

The Dancer's Code of Conduct shall include the following conditions as a minimum standard:

- There shall be no intentional physical contact between performers and customers at any time, before, during or after the performance, with the exception of leading a customer by the hand to, or from, an area permitted for performances of sexual entertainment in advance of, or following, a performance.
- The performer may not simulate any sexual act during a performance.
- Performers must not use any inappropriate, lewd, suggestive or sexually graphic language in any public or performance areas of the premises.
- Performers must not touch the breasts or genitalia of another performer, at any time as part of a performance.
- There shall be no use of sex articles (as defined by paragraph 4(3) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982) at any time.
- There shall be no nudity by performers in public areas of the premises, unless the Council has agreed in writing that area may be used for performances of sexual entertainment.
- Performers must fully dress (i.e. no nudity) at the end of each performance.
- Performances of sexual entertainment may only take place in designated areas of the premises as agreed in writing by the Council.
- There shall be no photography permitted by customers on the premises.
- Customers must remain seated for the duration of a performance.
- Performers shall not arrange to meet, or have further contact with, customers outside of the premises.
- Dancers shall not perform if under the influence of alcohol or drugs.
- All dancers shall comply with this Code of Conduct. Any failure to adhere to the rules set out in Code shall result in the dancer becoming subject to the consideration of disciplinary action as set out in the Disciplinary Procedure.

Sexual Entertainment Venues – Code of Conduct for Customers

The Customer's Code of Conduct shall include the following conditions as a minimum standard:

- Customers may not touch dancers during a performance.
- Customers may not make lewd or offensive comments to performers.
- Customers must not harass or intimidate performers.
- Customers must not ask dancers to perform any sexual favour.
- Customers may not perform acts of masturbation or indulge in other sexual behaviour.
- Any customer failing to comply with this Code of Conduct will be asked to leave the premises and may face a time-limited or permanent ban from attending the premises.

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**Schedule 12
Part A
Premises Licence**

Regulation 33,34

Premises licence number	2009/01284/01SPRV
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Part 1 – Premises details

Postal address of premises, or if none, ordnance survey map reference or description,

For Your Eyes Only
135 - 136 High Street
Southampton
SO14 2BR

Telephone number	023 8063 6026
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Where the licence is time limited the dates
Not applicable

Licensable activities authorised by the licence
Films Live music Recorded music Performances of dance Anything similar to live music, recorded music or performances of dance Facilities for making music Facilities for dancing Similar to facilities for music & dance Provision of late night refreshment Supply by retail of alcohol

The times the licence authorises the carrying out of licensable activities
Films
Monday 10:00 - 04:30
Tuesday 10:00 - 04:30
Wednesday 10:00 - 04:30
Thursday 10:00 - 04:30
Friday 10:00 - 04:30
Saturday 10:00 - 04:30
Sunday 10:00 - 04:30

Live music

Monday	10:00 - 04:30
Tuesday	10:00 - 04:30
Wednesday	10:00 - 04:30
Thursday	10:00 - 04:30
Friday	10:00 - 04:30
Saturday	10:00 - 04:30
Sunday	10:00 - 04:30

Recorded music

Monday	10:00 - 04:30
Tuesday	10:00 - 04:30
Wednesday	10:00 - 04:30
Thursday	10:00 - 04:30
Friday	10:00 - 04:30
Saturday	10:00 - 04:30
Sunday	10:00 - 04:30



Performances of dance

Monday	10:00 - 04:30
Tuesday	10:00 - 04:30
Wednesday	10:00 - 04:30
Thursday	10:00 - 04:30
Friday	10:00 - 04:30
Saturday	10:00 - 04:30
Sunday	10:00 - 04:30



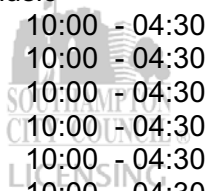
Anything similar to live music, recorded music or performances of dance

Monday	10:00 - 04:30
Tuesday	10:00 - 04:30
Wednesday	10:00 - 04:30
Thursday	10:00 - 04:30
Friday	10:00 - 04:30
Saturday	10:00 - 04:30
Sunday	10:00 - 04:30



Facilities for making music

Monday	10:00 - 04:30
Tuesday	10:00 - 04:30
Wednesday	10:00 - 04:30
Thursday	10:00 - 04:30
Friday	10:00 - 04:30
Saturday	10:00 - 04:30
Sunday	10:00 - 04:30



Facilities for dancing

Monday	10:00 - 04:30
Tuesday	10:00 - 04:30
Wednesday	10:00 - 04:30
Thursday	10:00 - 04:30
Friday	10:00 - 04:30
Saturday	10:00 - 04:30
Sunday	10:00 - 04:30



Similar to facilities for music & dance

Monday	10:00 - 04:30
Tuesday	10:00 - 04:30
Wednesday	10:00 - 04:30
Thursday	10:00 - 04:30
Friday	10:00 - 04:30
Saturday	10:00 - 04:30
Sunday	10:00 - 04:30

Provision of late night refreshment

Monday	23:00 - 05:00
Tuesday	23:00 - 05:00
Wednesday	23:00 - 05:00
Thursday	23:00 - 05:00
Friday	23:00 - 05:00
Saturday	23:00 - 05:00
Sunday	23:00 - 05:00



Supply by retail of alcohol

Monday	10:00 - 04:00
Tuesday	10:00 - 04:00
Wednesday	10:00 - 04:00
Thursday	10:00 - 04:00
Friday	10:00 - 04:00
Saturday	10:00 - 04:00
Sunday	10:00 - 04:00



The opening hours of the premises

Monday	10:00 - 05:00
Tuesday	10:00 - 05:00
Wednesday	10:00 - 05:00
Thursday	10:00 - 05:00
Friday	10:00 - 05:00
Saturday	10:00 - 05:00
Sunday	10:00 - 05:00



LICENSING

Where the licence authorises supplies of alcohol whether these are on and / or off supplies

Alcohol is supplied for consumption both on and off the premises

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence

For Your Eyes Only Limited
15-16 Stockholm Close
Tyne Tunnell Trading Estate
Tyne & Wear
NE29 7SF

Business Phone Number 023 8063 6026

Registered number of holder, for example company number, charity number (where applicable)

04449048

Name, address and telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol

Alexander Peter Ivins



Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol

Licence Number: PERS-LIC-767

Licensing Authority: Test Valley Borough Council

This premises licence is issued by Southampton City Council as licensing authority under part 3 of the Licensing Act 2003 and regulations made thereunder

Dated this 7th day of August 2009

Solicitor to the Council

Licensing – Southampton City Council
PO Box 1344
Southampton
SO15 1WQ



Annex 1 – Mandatory Conditions

- 1 Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
- 2 No supply of alcohol shall be made under the premises licence:
 - (a) at a time when there is no designated premises supervisor in respect of the premises licence, or
 - (b) at a time when the designated premises supervisor for the premises does not hold a personal licence or his personal licence is suspended.
- 3 Where any condition of this licence requires that, at specified times, one or more individuals must be at the premises to carry out a security activity, each such individual must be licensed by the Security Industry Authority, unless the Private Security Industry Act 2001 does not require them to be so licensed.
- 4 The admission of children to films exhibited at the club is restricted in accordance with section 74 of the Licensing Act 2003.
- 5 (1) The responsible person shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children—
 - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);
 - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less;
 - (d) provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on—
 - (i) the outcome of a race, competition or other event or process, or
 - (ii) the likelihood of anything occurring or not occurring;
 - (e) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner.
- 6 The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).
- 7 The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.

- 8 (1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.
- (2) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.
- 9 The responsible person shall ensure that -
- (a) where any of the following alcoholic drinks sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures-
- (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25ml or 35ml; and
 - (iii) still wine in a glass: 125ml; and
- (b) customers are made aware of the availability of these measures.

Annex 2 – Conditions consistent with the operating Schedule

1 B - Exhibition of Films

Films may be exhibited in the licensed premises, subject to the following:

No film shall be exhibited unless it has received a "U", "PG", "12", "12A", "15" or "18" certificate from the British Board of Film Classification or the licensing authority, or it is current news reel which has not been so certified.

Where a programme includes a film in the 12, 12A, 15 or 18 category no person appearing to be under the age of 12 (or unaccompanied in the case of a category 12A film), 15 or 18 as appropriate shall be admitted to any part of the programme; and the licence holder shall display in a conspicuous position a notice in the following terms - PERSONS UNDER THE AGE OF [INSERT APPROPRIATE AGE] CANNOT BE ADMITTED TO ANY PART OF THE PROGRAMME.

Where films of different categories form part of the same programme, the notice shall refer to the oldest age restriction. This condition does not apply to members of staff under the relevant age while on duty provided that the prior written consent of a parent or legal guardian of the member of staff has first been obtained.

Immediately before each exhibition at the premises of a film classified by the British Board of Film Classification or the licensing authority there shall be exhibited on screen for at least five seconds in such a manner as to be easily read by all persons in the auditorium a reproduction of the certificate of the Board or, as regards a trailer advertising a film, of the statement approved by the Board indicating the category of the film. For any film classified by the licensing authority, notices to be displayed both inside and outside the premises so that persons entering can readily read them and be aware of the category attached to any film or trailer.

2 Golden Rules:

If invited, a dancer will dance for the customer. A recommended minimum tip of £5/£10 will be paid for topless and £20 full nude for each recorded track. The dancer will dance for approximately 3 minutes.

Customers may invite a girl to stay at their table for up to 5 recorded tracks and tip her at their discretion. Dancers may accept a drink whilst at the customer's table.

Sit downs are available but must be pre-booked via a manager

Dancers must not be propositioned by customers in any manner.

Waiting staff will provide a drink service.

Dance vouchers may be purchased through the waitress or floor host. This facility is subject to 25% charge including VAT.

The premises accept most major credit cards. Cheques must be supported by a banker's card.

All prices are inclusive of VAT. All prices and details are subject to alteration.

No personal photography is allowed. All cameras must be handed in to the cloakroom before entering the premises.

No phone cameras can be used in the club.

Other than arrival, departure, visiting the cloakroom, lavatory or bar, customers must remain seated at all times.

During the performance the customer must not intentionally touch the performer.

If customers fail to abide by the strict house rules, customers will have to leave FYEO.

3 Prevention of Crime and Disorder:

The premises licence holder shall maintain the existing CCTV to a reasonable standard. It shall enable surveillance of both external and internal areas of the premises including entrances and exits. Recordings shall be retained for 28 days which shall be surrendered to Hampshire Constabulary or the Licensing Authority immediately on request.

SIA licensed door staff will be employed and their duties will include:

- checking that entrants are over 18 years old and that they understand the nature of the entertainment and the Golden Rules.
- monitoring customers and performers to ensure that the Golden Rules are being obeyed and enforcing if necessary.
- checking that the capacity levels are not exceeded.
- monitoring general customer behaviour and enforcement of the Company's policies, including Drugs policies.

The only identification that will be accepted will be that approved by PASS, photo driving licences or passports. The premises shall operate a zero tolerance drugs policy and notices will be displayed to this effect. The management team will co-operate with reasonable suggestions of the Police in connection with their requirements on seizure, reporting etc.

All staff shall receive suitable training in order to meet to the requirements of the Licensing Act 2003.

The Golden Rules regarding customer behaviour will be implemented at all times that the premises are operating with adult entertainment. A copy of these Rules is deposited with the Council and Police and will not be altered without their consent. The content of the Rules will be made known to customers prior to their admission to the dancing area.

The management team will continue to participate in the Pub watch or similar scheme for so long as the same is adequately supported by other sites in the town. The same will apply to any other initiatives which encourage a partnership approach to dealing with issues relating to crime and disorder.

A member of the management team will be on the premises at all times that licensable activities are taking place.

4 Public Safety:

The maximum number of persons who can be accommodated on this site will be 352 (300 on ground floor and 52 in the basement). This figure will not be exceeded without the express permission from the Fire and Environmental Health Officers.

Arrangement will be made to ensure that any capacity limit set for the premises can be properly monitored.

No arrangements are to be made between dancers and customers. No touching is allowed at any time during the performance and when in the main dancing area, customers are required to be seated at all times when dancers are performing.

5 Prevention of Public Nuisance:

The two sets of doors, which form a lobby at the entrance of the premises shall not be fixed in an open position after 21:00 when public music and dancing is provided.

Notices will be displayed at the exit asking customers to leave the premises and the area quietly and to respect the needs of local residents.

There will be no pyrotechnics, fireworks, explosives or similar unless specifically authorised by the Licensing Authority.

No refuse, including keys and bottles, will be moved or placed outside the premises between the hours of 23:00 and 07:00.

6 Protection of Children from Harm:

Under 18's will not be permitted on the premises.

Children must not be able to view any aspect of the entertainment from the public highway.

7 Last entry time 03.30.

Save for genuine guests of the management team, there will be a minimum new entry charge of £10 after 03.00.

Unless previously pre-booked, no groups of more than 7 persons will be allowed to enter after 03.00

On any night when sale of alcohol is offered after 03.00 and/or regulated entertainment after 04.00, an additional door supervisor will be employed.

8 The above licensable activities are permitted for an additional hour on change of GMT to BST as well as on the following occasions:

Bank Holiday Friday - Bank Holiday Monday inclusive; and the day before Christmas Eve until Boxing Day (excluding Christmas Day).

On New Years Eve the permitted hours are from the terminal hour to the commencement of hours on New Years Day.

On a maximum of 12 occasions during each year to hold events outside operating times where details of activity and arrangements are notified to the Council and Police 10 days in advance with the police giving written consent in the case of each activity.

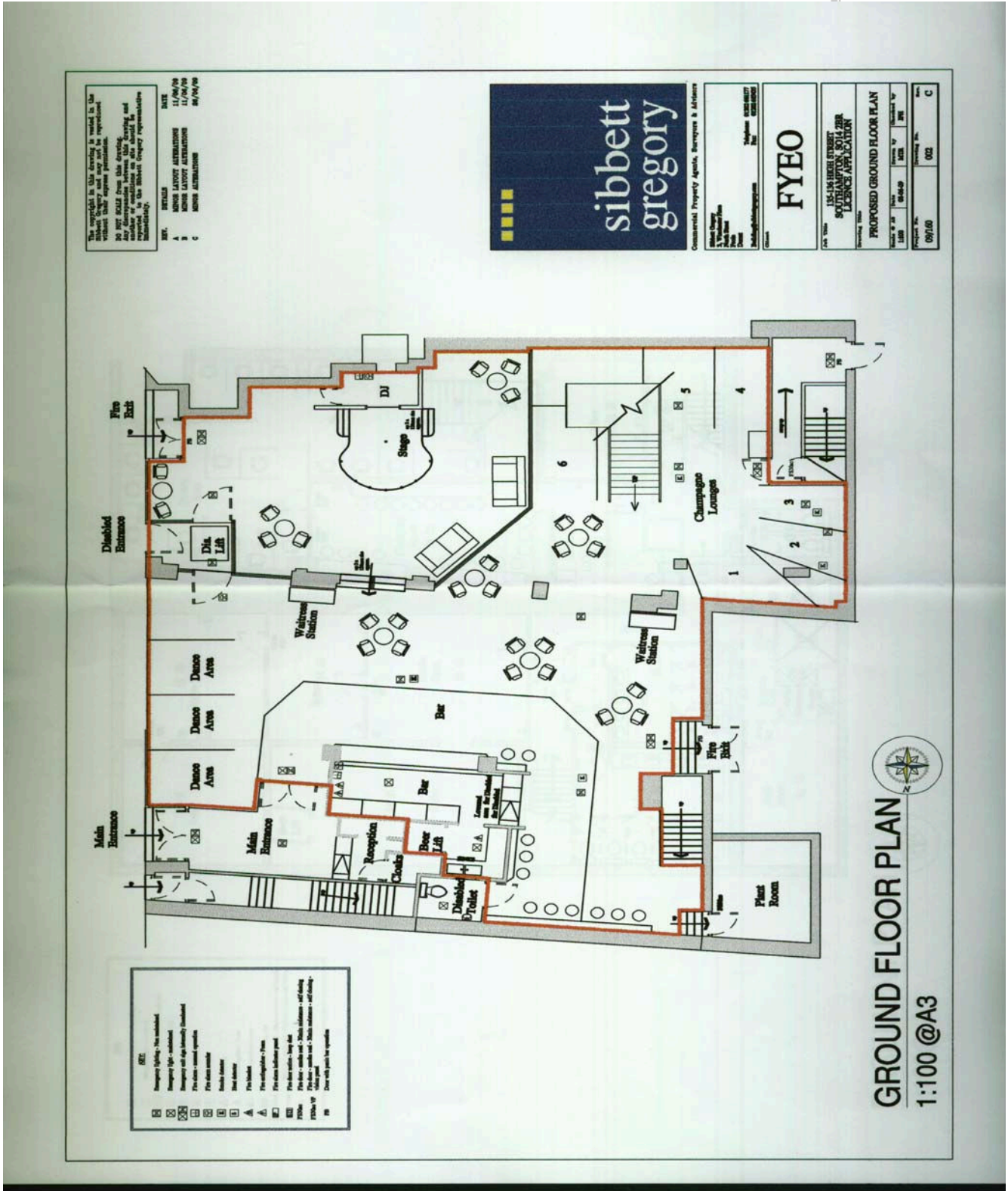
9 EMBEDDED CONDITIONS FROM CHILDREN AND YOUNG PERSONS ACT 1933

It is a condition of your licence that you comply with the extant provisions of the Children and Young Persons Act 1933, as amended.

Annex 3 – Conditions attached after a hearing by the licensing authority

1 None

Annex 4 - Plans



The copyright in this drawing is vested in the author without their express permission.
 DO NOT SCALE from this drawing. Any discrepancies between this drawing and any other drawings shall be reported immediately to the Sibbett Gregory representative.

REV.	DETAILS	DATE
A	MINOR LAYOUT ALTERATIONS	11/04/09
B	MINOR LAYOUT ALTERATIONS	11/04/09
C	MINOR ALTERATIONS	09/06/09



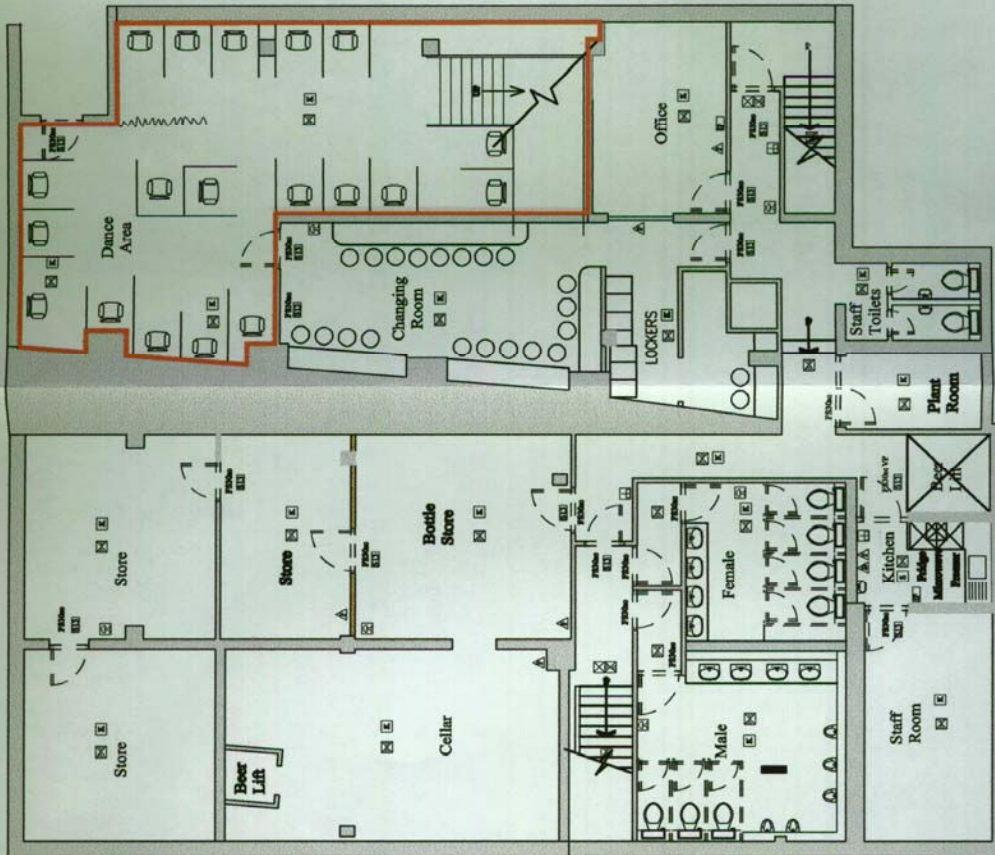
136-136 HIGH STREET
 SOUTHAMPTON, SO14 2BR
 SOURCE APPLICATION

FYEO

PROPOSED BASEMENT PLAN

Scale: 1:100 Date: 09-04-09 Checked by: [Signature]

Project No: 09/05 Drawing No: 002-1 Rev: C



- KEY:
- ☒ Emergency lighting - Not indicated
 - ☒ Emergency light - indicated
 - ☒ Emergency exit sign - usually blue/black
 - ☒ Fire alarm - manual operation
 - ☒ Fire alarm - sound operation
 - ☒ Sound detector
 - ☒ Fire alarm - manual
 - ☒ Fire extinguisher - Free
 - ☒ Fire alarm - indicator panel
 - ☒ Fire alarm - indicator - large sign
 - ☒ Fire alarm - indicator - small sign
 - ☒ Fire alarm - indicator - small sign - off-duty
 - ☒ Fire alarm - indicator - small sign - off-duty - off-duty
 - ☒ Fire alarm - indicator - small sign - off-duty - off-duty
- Drawn with pen for operations



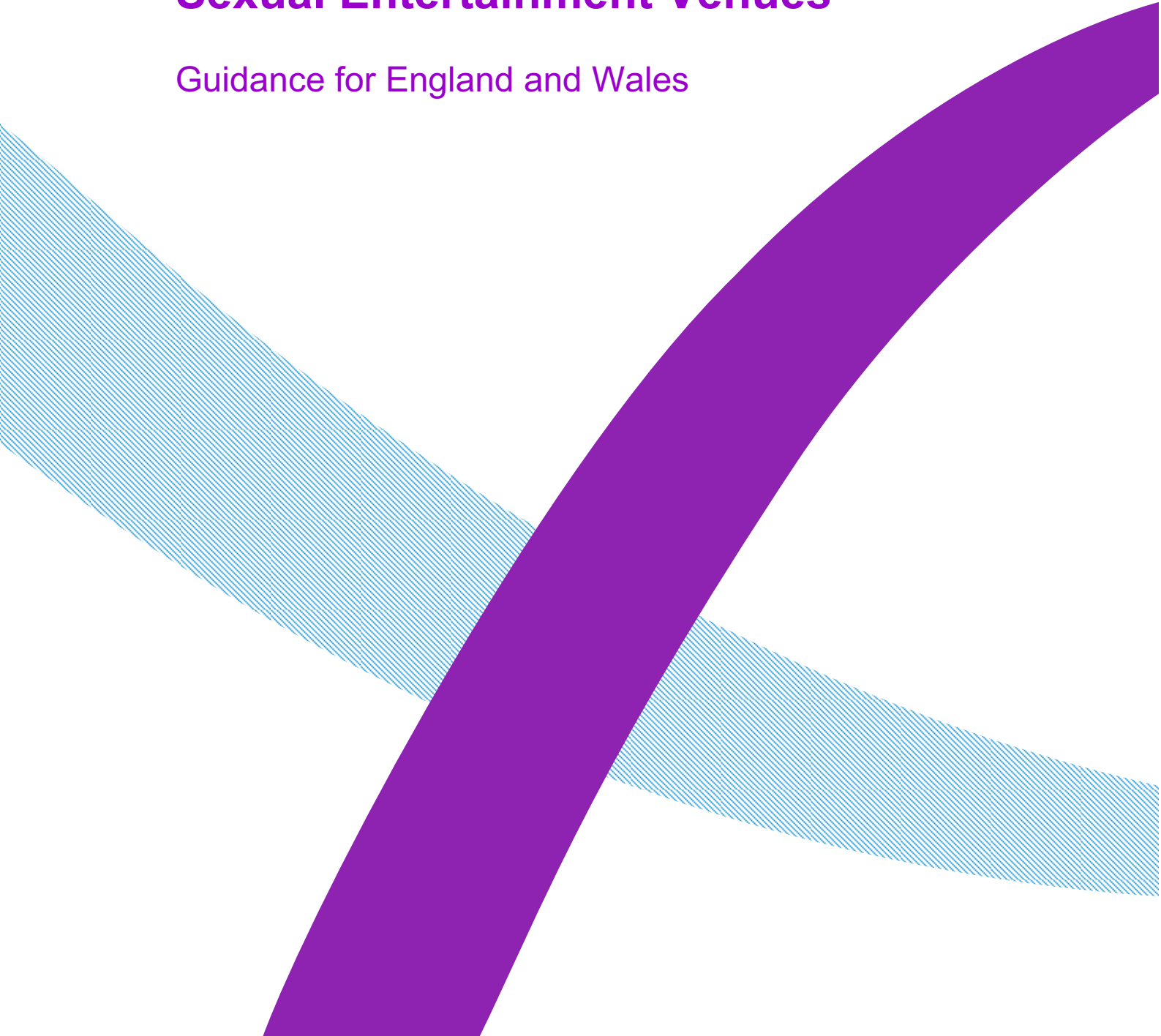
BASEMENT PLAN
 1:100@ A3



Home Office

Sexual Entertainment Venues

Guidance for England and Wales



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MINISTERIAL FOREWORD



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

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

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

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

Alan Campbell

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

Parliamentary Under-Secretary of State for Crime Reduction

March 2010

INTRODUCTION

Definitions

1.1 In this guidance –

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

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

The “2003 Act” means the Licensing Act 2003

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

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

Policing and Crime Act 2009

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

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

The Guidance

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

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

POLICING AND CRIME ACT 2009

Meaning of Sexual Entertainment Venue

- 2.1 Paragraph 2A of Schedule 3 as inserted by section 27 sets out the meaning of a 'sexual entertainment venue' and 'relevant entertainment' for the purposes of these provisions. A sexual entertainment venue is defined as *“any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.”*
- 2.2 The meaning of 'relevant entertainment' is *“any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means).”* An audience can consist of just one person (e.g. where the entertainment takes place in private booths).
- 2.3 While local authorities should judge each case on its merits, we would expect that the definition of relevant entertainment would apply to the following forms of entertainment as they are commonly understood:
- Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows
 - Live sex shows
- 2.4 The above list is not exhaustive and, as the understanding of the exact nature of these descriptions may vary, should only be treated as indicative. Ultimately, decisions to licence premises as sexual entertainment venues shall depend on the content of the entertainment provided and not the name it is given.

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

Nudity

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

The Organiser

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

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

Spontaneous Entertainment

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

Premises that are not sexual entertainment venues

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

- sex shops and sex cinemas (which are separately defined in Schedule 3 to the 1982 Act);
- premises which provide relevant entertainment on an infrequent basis. These are defined as premises where-
 - a) no relevant entertainment has been provided on more than 11 occasions within a 12 month period;
 - b) no such occasion has begun within a period of one month beginning with the end of the previous occasions; and
 - c) no such occasion has lasted longer than 24 hours.
- other premises or types of performances or displays exempted by an order of the Secretary of State.

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

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

Amendments to the Licensing Act 2003

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

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

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

Consultation with Local People

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

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

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

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

The Appropriate Authority

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

Committee or Sub-Committee

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

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

Adopting the Provisions

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

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

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

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

Requirement for a Sex Establishment Licence

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

Premises that are deemed to be Sexual Entertainment Venues

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

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

Notices

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

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

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

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

Application Forms

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

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

Single Point of Contact

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

Fees

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

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

Objections

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

Hearings

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

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

⁴ www.lacors.gov.uk

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

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

Refusal of a Licence

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

A licence must not be granted:

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

3.28 A licence may be refused where:

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

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

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

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

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

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

Relevant Locality

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

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

⁸ Regulation 47

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

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

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

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

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

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

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

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

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

Licence Conditions

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

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

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

Duration of Licences

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

Appeals

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

Licensing Policies

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

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

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

Offences

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

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

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

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

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

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

Provisions Relating to Existing Premises

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

The Services Directive

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

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

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

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

TRANSITIONAL PROVISIONS

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

Transitional Period

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

Existing Operators

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

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

New Applicants

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

Determining Applications Received On or Before the 2nd Appointed Day

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

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

Determining Applications Received After the 2nd Appointed Day

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

Outstanding Applications

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

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

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

Existing Licence Conditions

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

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

ECHR Considerations

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

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

¹² [2007] UKHL 19

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

Changes to Licensing Policies

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

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

London

Sex Encounter Establishments

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

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

Hostess Bars

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

Soliciting for Custom

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

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

ANNEX A: GUIDE TO TRANSITIONAL PERIOD AND EXISTING OPERATORS

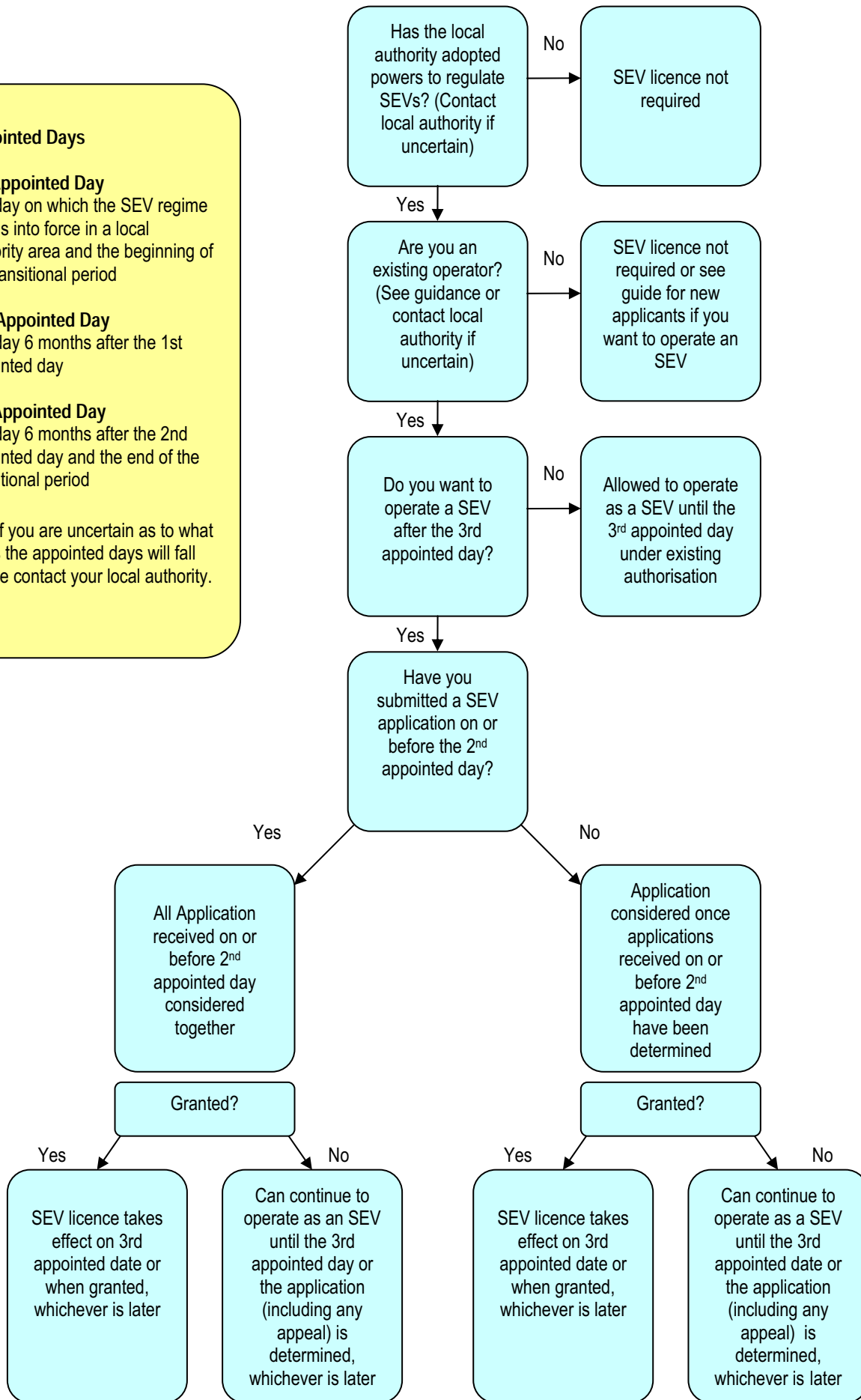
Appointed Days

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

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

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

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



ANNEX B: GUIDE TO TRANSITIONAL PERIOD AND NEW APPLICANTS

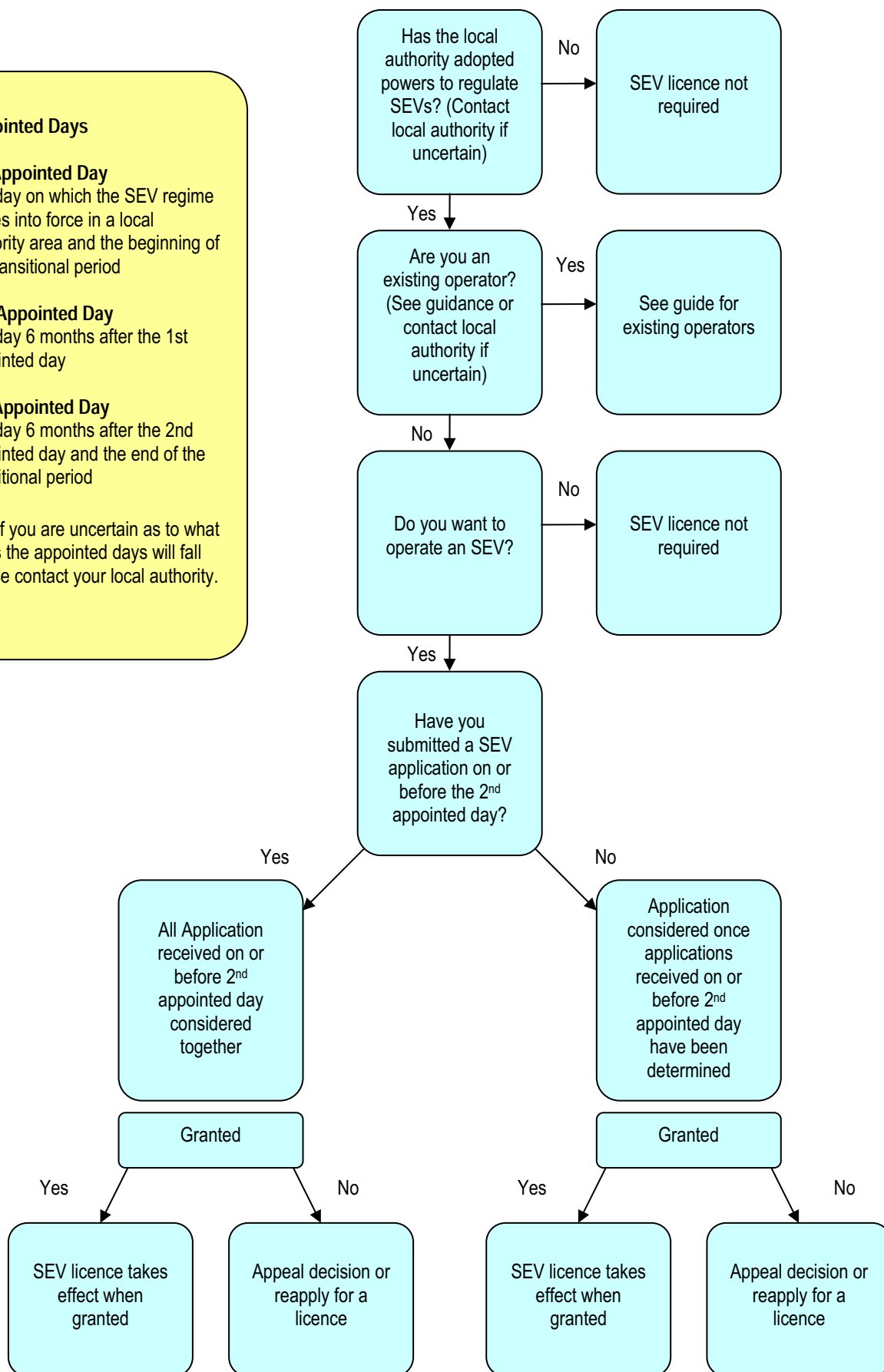
Appointed Days

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

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

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

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



Agenda Item 7

DECISION-MAKER:	LICENSING (GENERAL) SUB-COMMITTEE		
SUBJECT:	APPLICATION FOR GRANT OF A SEXUAL ENTERTAINMENT VENUE LICENCE – PLAY HOUSE GENTLEMEN’S CLUB, HARBOUR HOUSE, TOWN QUAY		
DATE OF DECISION:	14 AUGUST 2013		
REPORT OF:	HEAD OF LEGAL, HR AND DEMOCRATIC SERVICES		
<u>CONTACT DETAILS</u>			
AUTHOR:	Name:	Phil Bates	Tel: 023 8083 3523
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STATEMENT OF CONFIDENTIALITY

None

BRIEF SUMMARY

The Licensing (General) Sub-Committee is requested to consider and determine the application for grant of a Sexual Entertainment Venue (SEV) licence made by Southern Nightclubs Limited in respect of Playhouse Gentlemen’s Club, Harbour House, Town Quay, Southampton, SO14 2AQ

RECOMMENDATIONS:

- (i.) That the Sub-Committee consider the application and 3 objections received, and determine the application.
- (ii.) That, should the Sub-Committee determine to grant the application, consideration be given to the attachment of standard conditions to such licence (in line with the views expressed by Hampshire Constabulary) (as shown in Appendix 3).

REASONS FOR REPORT RECOMMENDATIONS

1. As the Council has resolved to adopt the provisions of schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 which relate to the licensing of sexual entertainment venues, the Sub-Committee is required to consider and determine the application in line with the current scheme of delegation.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

2. None.

DETAIL (Including consultation carried out)

Background Information

3. The Council originally adopted Schedule 3 of the 1982 Act in so far as they related to sex shops and sex cinemas in 1983 and readopted them with effect from 3rd July 1995.
4. The Policing and Crime Act 2009 amended the Local Government (Miscellaneous Provisions) Act 1982 with effect from 6th April 2010, by introducing a new category of sex establishment called Sexual entertainment venues (SEVs) enabling local licensing authorities to adopt provisions for the regulation of lap dancing clubs and similar venues under Schedule 3 of the 1982 Act. Previously the power was limited to sex shops and sex cinemas.
5. On 11th July 2012, Council resolved to adopt the provisions of schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 which relate to the licensing of SEVs.

The new regime came into force in Southampton on 20th August 2012 (known as the “first appointed day”), after which a 12 month transition period has been in effect.

The effect of the transitional period is that existing operators, who, immediately before the first appointed day, had a Licensing Act 2003 premises licence and lawfully used the premises as a sexual entertainment venue under that licence (or were undertaking preparatory work to use the venue in that way), were allowed to continue to provide relevant entertainment until the 20th August 2013 (the “third appointed day”) or the determination of any application they have submitted before the 20th February 2013 (the “second appointed day”), whichever is later.

After the third appointed day, the regime, and any licences granted, will be fully in force.

The Legislation – Definitions

6. 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 the statutory 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 entertainer.”

Relevant entertainment is defined as:

“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).”

It should be noted that an audience can consist of just one person e.g. when the entertainment takes place in private booths.

Relevant entertainment is therefore different from regulated entertainment as defined in the Licensing Act 2003.

7. In terms of considering what constitutes “relevant entertainment” each case must be judged on its merits, but the informal guidance produced by the Home Office suggests that the definition of relevant entertainment would apply to the following forms of entertainment as they are most commonly understood:
 - Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows
 - Live sex shows.
8. However, the list above cannot be exhaustive and, as the understanding of the exact nature of these descriptions may vary, it should therefore merely be used as an indicator for certain types of entertainment. Ultimately, decisions on the licensing of individual premises as sexual entertainment venues will depend on the content of the entertainment provided and not on how it is described.
9. The relevant entertainment must be provided for the financial gain of the “organiser” or “entertainer”.

“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 cases this definition will relate to the manager of the premises but there could be circumstances where it will relate to an individual who is responsible for organising the relevant entertainment on behalf of the persons responsible for the management of the premises.
10. The 1982 Act also sets out those premises that are NOT sexual entertainment venues. These are:
 - Sex shops and sex cinemas;
 - Premises which provide 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.
 - Private dwellings with no public admittance.

Application Details

11. On 14th February 2013, an application for a sexual entertainment venue licence in respect of Playhouse gentlemen’s Club, Harbour House, Town Quay, was received from Southern Nightclubs Limited whose registered office is at The Armoury, Unit R1, Fort Wallington, Fareham, PO16 8TT. A copy of the application and plans of the premises are attached as Appendix 1
12. The premises does currently benefit form a premises licence issued under the Licensing Act 2003. This licence had effect immediately before the first

appointed day, however it is understood that the premises were not operating as a sexual entertainment venue immediately before the first appointed day. Therefore, the transitional provisions have not applied to this premises and the premises is not currently operating as a sexual entertainment venue.

13. **Legislation – Notices and Objections**

14. Applicants for the grant of an SEV licence are required to display a notice on or near the premises to be licensed for 21 days and advertise give public notice of the application by publishing an advertisement in a local newspaper circulating in Southampton.
15. Any person objecting to an application for the grant of an SEV licence is required to give notice of in writing to the local authority, not later than 28 days after the date of the application.
16. Three objections have been received (Two from residential addresses and one from a business address) within the 28 day consultation period. These are attached as Appendix 2.
17. The names and addresses of objectors must be kept confidential unless the objectors indicate otherwise.
18. A copy of the application has been provided to Hampshire Constabulary, who have confirmed that they have no objection to the application.
19. The Act does not provide objectors with an explicit provision to be heard in person by the Sub-Committee. However, those persons from whom valid objections have been received have been advised of the date and time of the meeting and have also been advised that they may only address the meeting at the invitation of the Sub-Committee.
20. When considering an application for the grant, of a licence the Sub-Committee 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 days of the application. Any person can object to an application but the objection should be relevant to the grounds set out in paragraph 12 of the Local Government (Miscellaneous Provisions) Act 1982 for refusing a licence. Objections should not be based on moral grounds/values and local authorities should not consider objections that are not relevant to the grounds for refusal.
21. **The Legislation - Criteria**
22. 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.

23. A licence may be refused by the Sub-Committee 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;

(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.

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

25. It is considered advisable to merely deal with this application on its merits and not to embark on an additional exercise of determining a precise “relevant locality” and an appropriate number of establishments in it. Such an exercise is only recommended if after having regard to the area generally if it is felt that the number and / or proximity of premises may be inappropriate.

26. SEV licences can be granted for a maximum of one year, or for such shorter periods specified in the licence as the Sub-Committee may think fit.

27. **The Legislation - Conditions**

28. If the Sub-Committee determines to grant a licence it has power to impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual premises concerned or standard conditions applicable to all sex establishments, or particular types of sex establishments.

Examples of the matters that standard conditions may address can 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.

If such standard conditions are introduced by the local authority, they will apply to every licence granted, renewed or transferred by the authority unless they have been expressly excluded or varied.

29. Guidance issued by the Home Office (a copy of which is attached as Appendix 5) states;

- 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.
- 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.
- 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.

30. A set of proposed standard conditions to apply to all SEV licences is attached as Appendix 3. In relation to these conditions, the Hampshire Constabulary Western Licensing Team have advised as follows;

- That a condition requiring CCTV storage for 31 days (Section 4.7) will conflict with the CCTV condition on the premises licence issued under the Licensing Act 2003. Should an SEV licence be granted, they have suggested an amendment be made to this condition to require CCTV storage for 30 days, which is in line with the condition that exists on the Licensing Act 2003 premises licence (a copy of which is attached as Appendix 4).
- That the condition requiring the operation of a Challenge 25 scheme (Section 11.1) would be appropriate for the premises at this time instead of the condition requiring the operation of an ID scanner (Section 11.2).

31. **The legislation - Appeals**

32. In the event that the Sub-Committee refuse an application for the grant of a SEV licence, the applicant may appeal the decision in a Magistrates' Court, unless the application was refused under paragraph 12(3)(c) or (d) of the Local Government (Miscellaneous Provisions) Act 1982, in which case the applicant can only challenge the refusal by way of judicial review.

RESOURCE IMPLICATIONS

Capital/Revenue

33. There are no financial implications as the cost of processing such applications is contained within existing budgets.

Property/Other

34. None.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

35. Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 sets out the City Councils power to determine an application for the grant of an SEV licence.

Other Legal Implications:

36. Section 17 of the Crime and Disorder Act 1998 places the Council under a duty to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

37. The Human Rights Act 1998 Act requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the Council to act in a way that is incompatible (or fail to act in a way that is compatible) with the rights protected by the Act. Any action undertaken by the Council that could have an effect upon another person's Human Rights must be taken having regard to the principle of proportionality - the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the Council which affects another's rights must be no more onerous than is necessary in a democratic society. The matter set out in this report must be considered in light of the above obligations.

POLICY FRAMEWORK IMPLICATIONS

38. None.

KEY DECISION? n/a

WARDS/COMMUNITIES AFFECTED:	Bargate
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SUPPORTING DOCUMENTATION

Appendices

1.	Application for SEV licence made by Southern Nightclubs Limited
2.	3 x objections received in relation to the application
3.	Copy of proposed standard conditions
4.	Copy of Licensing Act 2003 premises licence
5.	Home Office Guidance relating to SEVs

Documents In Members' Rooms

1.	None.
2.	

Equality Impact Assessment

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out.	No
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Other Background Documents

Equality Impact Assessment and Other Background documents available for inspection at:

Title of Background Paper(s)

Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.		
2.		



Appendix 1
Potterne Farm Cottage
Potterne Way
Three Legged Cross
Wimborne BH21 6RS

Phone: 01202 813658

Mobile 07866 265152

Fax 01202 820478

E-mail

Julia.Palmer@JCPLaw.co.uk

The Licensing Officer
Southampton City Council
Licensing Team
PO Box 1767
Southampton
SO18 9LA



13 February 2013

FAO Mr J Burke

Dear Sir

**Playhouse Gentlemen's Club, Harbour House, Town Quay,
Southampton, SO14 2AQ
Application for Sexual Entertainment Venue Licence**

I am instructed by Southern Nightclubs Limited, whose registered office is at The Armoury, Unit R1 Fort Wallington, Fareham, PO16 8TT in connection with their proposed operation of the above premises as a gentlemen's club offering entertainment including that now defined as sexual entertainment.

Having regard to the second appointed date of 20 February 2013 in respect of the above, and in the absence of advice of any specific details required under paragraph 10(6) Schedule 3 Local Government (Miscellaneous Provisions) Act 1982, please accept this letter as formal application for a Sexual Entertainment Venue Licence on behalf of Southern Nightclubs Limited in respect of the above venue.

The names and private addresses of the company directors are set out in the attached document.

I attach a copy of the notice which has been sent to the premises for exhibition with immediate effect and I confirm that a notice with the same information will be published in a newspaper circulating in the authority's area within 7 days. In the absence of contrary advice, I shall respectfully assume that this will meet with the council's requirements.

Please let me know the amount of any fee payable, any plan requirements and the details of any standard conditions proposed in respect of such licences, at your earliest convenience. Please also advise of any objections received to the application, in due course.

With regards

Yours sincerely

Mail - licensing@southampton.gov.uk
service, by post and email - Southampton.licensing@hampshire.pnn.police.uk

Harbour House, Southampton

Application for SEVL

Details of Directors

Mr Nicie

Glenn Campbell

Mr Knight

Christopher Wingate

Mr Blanke

Adrian Bertolt



Licensing Team
Southampton City Council
PO Box No. 1767
Southampton SO18 9LA

19 February 2013

Dear Sir,

**Notice of application for a sex establishment licence
Harbour House, Town Quay
Sexual Entertainment Venue "Playhouse Gentlemen's Club".**

I am appalled at the above application and the type of venues that the Council are considering for Southampton. Just the two lines above should be enough for the Licensing Department to think again and very seriously, about the consequences to a residential area with the possibility of a 24/7 gaming and presumably alcohol licence.

It was not long ago [2012] that we had the same concerns about Club Rosso and the impact on the local community. We had meetings with the management and local constabulary who were seriously inconvenienced in the early hours. The records will also show the Licence Dept. reducing the operating hours due to opposition from local residents. It was not long after that the venue closed.

I would ask that the local resident's opposition, in the strongest terms, are taken into consideration before we reduce our very pleasant surroundings into a seedy and noisy strip. You may be aware that we already have a similar venue 'For Your Eyes Only' a little further up the High Street and another one at Leisure World.

I would hope that common sense will prevail when you are debating this inane application. Can we not consider a venue that will appeal to Southampton as a whole, without any reference to 'Sex and Gaming establishments'.

Yours faithfully

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned to the right of the typed name "Yours faithfully".

Licensing Team
Southampton City Council
PO Box 1767
Southampton
SO18 9LA



SIRS

I wish to object in the strongest possible terms to the application for a licence for a 'sexual entertainment venue', lodged by Southern Nightclubs Limited for Harbour House Southampton.

This site has previously been an entertainment venue and caused huge amounts of noise and public disorder nuisance to local residents and businesses. The police are aware of this site and worked with the residents and businesses to ensure it was closed down.

I see no difference between what it was before, and what they are proposing now- except that a 'sexual entertainment venue' will attract considerable more, less salubrious visitors and staff. This will in effect be a brothel I believe.

This site is close to the Town Quay Marina, the Quay businesses, residential blocks and a primary school- and so is a completely inappropriate site for such a low quality business.

Yours sincerely

030702217003

Southampton City Council
Licensing Team
PO Box 1767
Southampton
SO18 9LA



21st February 2013

RE: Southern Nightclubs Ltd Notice of Application for a Sex Establishment
Licence for Playhouse Gentlemen's Club to a Sexual Entertainment
Venue Harbour House Town Quay Southampton SO14 2AQ

Dear Sirs

I write to raise an objection to the above application, as Managing Agent for the
Winkle Street Management Co Ltd of Gloucester Square Southampton SO14 2GJ -
Flats 1-20 The Albany & 21-60 The Greenwich.

The objection is on the grounds of concerns from the residents of the development
in regard to not only a return to the late night noise and disturbance of the
past, but the very likelihood of increased incidents caused by the type of clientele
who would frequent such a proposed venue and the associated human detritus that
will attend the venue and immediate areas surrounding.

There are concerns for personal safety whilst walking in the vicinity, especially for
any women, who will undoubtable be approached by the 'fringe' elements that will
try to ply their trade to the clubs clientele.

We object in the strongest terms and would ask that the Council refuse this
application.

Yours sincerely

A large, stylized handwritten signature in black ink, written over the signature line and extending upwards into the text area.

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Standard Conditions applicable to Sex Establishments consisting of Sex Shops, Sex Cinemas or Sexual Entertainment Venues

Southampton City Council, in exercise of the powers conferred by paragraph 13 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 hereby make the following Regulations prescribing standard conditions applicable to licences for sex establishments.

Interpretation

In these Regulations the following expressions that is to say “Sex Establishment”, “Sex Shop”, “Sex Cinema”, “Sexual Entertainment Venue”, “Sex Article”, and “Vessel” shall have the meanings respectively assigned by Schedule 3 of the Act (and where amended by Section 27 of the Policing and Crime Act 2009).

In these Regulations the following expressions shall have the meanings hereby respectively assigned to them namely:

“the Act” means the Local Government (Miscellaneous Provisions) Act 1982, as amended.

“the council” means Southampton City Council and/or any authorised officer acting on behalf of the Council.

“the premises” means any premises, vehicle, vessel or stall licensed under the Act.

“licence holder” means a person who is the holder of a sex establishment licence.

“permitted hours” means the hours during which the licensed premises are permitted to be open to the public.

“licence” means a licence granted pursuant to Schedule 3 of the Act.

Part One – General Conditions

1. Management of Premises

- 1.1. The Licence holder, or some responsible person nominated by him and approved in writing by the council for the purpose of managing the sex establishment (“the manager”), shall have personal responsibility for and be present on the premises at all times when the premises are open to the public.
- 1.2. In accordance with section 14 of the 1982 Act, the Licence holder shall display, on the licensed premises in a conspicuous position, a copy of the licence and/or any special conditions attached.
- 1.3. The name of the person responsible for the management of the sex establishment, whether the licence holder or manager, shall be displayed in a conspicuous position within the premises throughout the period during which he is responsible for the conduct of the premises.
- 1.4. The licence holder shall retain control over all parts of the licensed premises as set out on the approved premises plan and shall not let or part with possession of any part.
- 1.5. No person under the age of 18 shall be admitted to the premises and rigorous identity checks SHALL be made on any person who appears to be under the age of 18.
- 1.6. To ensure compliance of 5 above, the licence holder shall exhibit appropriate warning notices as to the minimum age requirements on both the exterior (frontage) door and also conspicuously on the appropriate inner lobby door.
- 1.7. No person under the age of 18 shall be employed to work at the premises in any capacity or shall be allowed to work at the premises on a self-employed basis.
- 1.8. Neither the Licence holder nor any employee or agent shall tout or solicit custom for the sex establishment immediately outside or in the vicinity of the licensed premises.
- 1.9. Where the Licence holder is a body corporate or an unincorporated body, any change of director, or other person responsible for the management of the body is to be notified in writing to the council within 14 days of any such change. In addition, the Licence holder shall provide any details as the council may require in respect of any new director, officer or manager upon request in writing from the council.

2. Conduct of the Premises

- 2.1. No change from one type of sex establishment to another shall be made without the written consent of the council.
- 2.2. No part of the premises shall be used by prostitutes for the purpose of solicitation or otherwise exercising their calling.

3. Premises Interior and Layout

- 3.1. The premises layout shall comply with deposited plans unless otherwise approved in writing by the council.
- 3.2. No alterations, additions or modifications to either the internal or external parts of the licensed premises shall be made without the prior written consent of the council.
- 3.3. External doors shall be closed at all times other than when persons are entering or leaving the premises. The external doors shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.
- 3.4. The premises shall be fitted with an inner entrance lobby door or partition screen so that no part of the interior of the premises or any of the contents of the premises shall be visible when persons are entering or leaving the premises.

- 3.5. No access shall be permitted through the premises to any other premises adjoining or adjacent except in the case of emergency.
- 3.6. No part of the interior of the licensed premises shall be visible whatsoever to persons outside the premises.
- 3.7. No external advertising, words, signs, displays or illuminations shall be permitted unless previously approved by the council.
- 3.8. The external fabric, appearance and look of the licensed premises shall consist of materials and colours approved by the council in order to:
 - 3.8.1. Ensure that the frontage is of a discreet nature
 - 3.8.2. Ensure that it is appropriate to the character of the locality.

4. CCTV

- 4.1. A recording CCTV system shall be installed and fully operational whilst the venue is open to the public.
- 4.2. The recording equipment will be stored and operated in a secure environment with limited access, to avoid damage, theft, unauthorised viewing and to maintain the integrity of the system.
- 4.3. A record will be kept of any access made to information held on the system.
- 4.4. The system will be serviced at twelve monthly intervals and maintained to a standard that is acceptable to the police licensing department responsible for the area. A record of service and maintenance completed shall be held for a minimum of three years at the premises.
- 4.5. The system clock will be checked regularly for accuracy taking account of GMT and BST.
- 4.6. An additional recording CCTV camera shall be installed and fully operational whilst the venue is open to the public to cover the area outside the front of the premises.
- 4.7. The CCTV system will have sufficient storage capacity for 31 days of good evidential quality images.

5. CCTV Access

- 5.1. Police and authorised officers of the council shall have access to data from the systems quickly and easily and therefore provision will be made for the licensee or a member of staff to have access to the secure area and also be able to operate the equipment and to supply footage in a format which can be easily viewed by police or council officers.
- 5.2. All operators will receive training from the installer when equipment is installed and this training will be cascaded down to new members of staff.
- 5.3. An operator's manual will be available to assist in replaying and exporting data.
- 5.4. The premises shall not be operated pursuant to the grant of a licence until such time as the CCTV System has been approved by the Police. The CCTV must be maintained in a satisfactory working condition and subject to police approval in order to remain operating under the licence.

6. General

- 6.1. The Licence holder shall take all reasonable precautions to ensure public safety on the premises and shall comply with any reasonable request made by the council.
- 6.2. The council may substitute, delete, vary or amend these conditions at any time.

Part Two – Additional Conditions for Premises Operating as Sex Shops

- 6.3. The Licensee shall notify the council of the name, address and date of birth of any manager or employee at the licensed premises at least 7 days prior to commencing employment. The council, in consultation with the police, reserves the right to object to the employment of any person by reason of general unsuitability and/or because of any recorded conviction, reprimand, warning or caution considered relevant in which event the individual concerned shall not be employed at the premises.
- 6.4. The names of any and every employee working on the premises shall be displayed in a conspicuous position on the premises.
- 6.5. No public music or dancing shall be permitted on the premises.
- 6.5.1. No alcohol shall be sold, offered or consumed by either staff or customers on the premises.
- 6.5.2. No facilities to provide or consume food (hot or cold) by members of the public shall be permitted on the premises.

7. Hours of Opening and Closing

- 7.1. Licensed premises shall not, unless approved in writing by the council, be open for the purposes for which the licence is granted on any Sunday, bank or public holiday.
- 7.2. The general permitted hours (unless otherwise varied by the council) for the use of any premises, as a sex shop shall be:
 - 7.2.1. Monday to Saturday inclusive - 0930 until 2000

8. Conduct of the Premises

- 8.1. A sex shop shall be conducted primarily for the purpose of the sale of goods by retail.
- 8.2. All sex articles and other things displayed for sale, hire, exchange or loan within a sex establishment shall be clearly marked to show the price being charged.
- 8.3. All printed matter offered for sale, hire, exchange or loan within a sex establishment shall be available for inspection prior to purchase and a notice to this effect shall be displayed in a conspicuous position within the premises.
- 8.4. No film or video recording shall be exhibited, sold or supplied unless it has been passed by the British Board of Film Certification and bears a certificate to that effect.

9. Premises Interior and Layout

- 9.1. Any facilities on the premises for previewing films, video recordings or other similar material shall be physically separated from the display area of the shop in such a manner that no material being displayed by way of preview shall be visible or audible outside the preview area. The positioning of any playback or viewing equipment shall be approved by the council.

Part Three – Additional Conditions for Premises Operating as Sexual Entertainment Venues

10. External Appearance of the Premises and Public Displays of Information

- 10.1. The exterior of the premises shall not contain any displays or depictions of the human form, or any imagery that suggests or indicates relevant entertainment takes place at the premises, or other language stating the nature of such activities, including use of the word “nude”. The condition does not prevent the use of the words “Licensed Sexual Entertainment Venue” on a single plate in characters no higher than 10 cm at the entrance to the premises.
- 10.2. Any external displays or advertising may only be displayed with the prior approval of the Council.
- 10.3. The prices for entrance and any compulsory purchases within the venue shall be clearly displayed on the exterior of the premises.
- 10.4. All charges for products and services shall be displayed in prominent areas within the premises, and at each customer table and in the bar area.
- 10.5. Rules for customers shall be displayed in prominent areas within the premises, and at each customer table and in the bar area.
- 10.6. No charge shall be applied unless the customer has been made aware of the tariff of charge by the performer in advance of the performance.
- 10.7. Performers may not stand in any lobby, reception or foyer areas or outside the premises entrance for the purposes of greeting customers or encouraging customers to enter the venue.
- 10.8. The use of cruising cars by the premises to solicit for custom and/or transport people to or from the premises is prohibited.
- 10.9. The use of flyers and similar promotional material for the premises is prohibited.

11. Control of Entry to the Premises

- 11.1. The Challenge 25 proof of age scheme shall be operated at the premises whereby any person suspected of being under 25 years of age shall be required to produce identification proving they are over 18 years of age. The only acceptable forms of identification are recognised photographic identification cards, such as a driving licence or passport.

OR at the discretion of the Licensing Authority in individual circumstances the following condition may be applied:

- 11.2. All persons entering the premises must supply verifiable identification details that are passed through a digital scanning and recording system such as Club Scan, Idvista or similar computerised system.
- 11.3. The premises shall maintain a Refusals log whereby any occasion a person is refused entry shall be recorded and available upon request by the Police or an authorised officer of the council.
- 11.4. All individuals employed on the premises to conduct a security activity (within the meaning of paragraph 2(1) (a) of Schedule 2 to the Private Security Act 2001) must be licensed by the Security Industry Authority.
- 11.5. Any person who appears to be drunk / intoxicated or under the influence of illegal drugs shall not be permitted entrance to the premises.
- 11.6. A policy of random searches of persons entering the premises shall be operated.

- 11.7. Any person found to be in possession of illegal drugs upon entry shall be prevented entry and, where possible, restrained until the Police can take such person into custody. Any persons found using illegal drugs on the premises shall be removed from the premises or, where possible, restrained until the Police can take such person into custody.
- 11.8. The licensed premises shall be so arranged by screening or obscuring windows, doors and other openings so that the interior of the licensed premises shall not be visible to persons outside the building.
- 11.9. The premises shall subscribe to an approved radio system and radios shall be operational at all times the premises is open to the public.

12. Conduct of Performers and Rules relating to performances of sexual entertainment

- 12.1. There shall be a written code of conduct for performers that has been agreed in writing by the Licence holder, the council and the Police.
- 12.2. All performers shall be required to certify their agreement to comply with the code and a record shall be kept on the premises and be made available upon request by the Police or an authorised officer of the council. The code shall include the basic criteria as set out in Appendix B to this policy.
- 12.3. No changes shall be made to the Dancer's Code of Conduct without the prior written consent of the council and the Police.
- 12.4. The Dancer's Code of Conduct must include a statement that any dancer who does not comply with the Code of Conduct will face disciplinary proceedings.
- 12.5. All management and staff (including security staff) must be aware of and familiar with the content of the Dancer's Code of Conduct and shall ensure it is complied with at all times.
- 12.6. A copy of the Dancer's Code of Conduct shall be prominently displayed in each area of the premises where the public have access, which shall include toilet areas as well as in any area used as a changing/dressing room for dancers.

13. Code of Conduct for Customers

- 13.1. There shall be a written Code of Conduct for Customers that has been agreed in writing by the Licence holder, the council and the Police.
- 13.2. The code shall include the basic criteria as set out in Appendix C to this policy.
- 13.3. The Code of Conduct for Customers shall be displayed in prominent positions throughout the licensed premises so that it is visible to all patrons.
- 13.4. No changes shall be made to the Code of Conduct for Customers without the prior written consent of the council and the Police.
- 13.5. The Code of Conduct shall include a statement that any customers who fail to comply with the Code of Conduct will be required to leave the premises.
- 13.6. All management and staff (including security staff) must be aware of and familiar with the content of the Code of Conduct for Customers and shall ensure it is complied with at all times.
- 13.7. On any occasion whereby a customer breaches the Code of Conduct, such details shall be recorded in the incident log.
- 13.8. Any customer breaching the rules of the Code of Conduct shall be asked to leave the premises. Any customer who has previously been asked to leave the premises and again breaches the Code of Conduct shall be banned from the premises.

14. Disciplinary Procedure for Performers

- 14.1. The Licence holder shall ensure that a written disciplinary procedure is in force so as to

take appropriate action against performers who breach the Code of Conduct and that a copy of the procedure is provided to each performer who works at the premises.

- 14.2. All performers shall sign an acknowledgement that they have received a written copy of the disciplinary procedure and have read and understood its contents.
- 14.3. Any disciplinary procedure shall NOT make any provision for financial penalties against performers who breach the disciplinary procedure. Any sanctions shall be limited to verbal or written warnings, suspension or revocation of the performer's right to dance at the premises.

15. The Protection of Performers and the Prevention of Crime on the Premises

- 15.1. Performers shall be provided with secure and private changing facilities.
- 15.2. All entrances to private areas to which members of the public are not permitted access shall have clear signage stating that access is restricted.
- 15.3. Any exterior smoking area for use by performers shall be kept secure and separate to any public smoking area.
- 15.4. The Licence holder shall implement a written policy to ensure the safety of performers when leaving the premises following any period of work.
- 15.5. Private booths must not be fully enclosed. There must be a clear sight-line from outside the booth so that any performance of sexual entertainment can be directly monitored.
- 15.6. There must be a minimum of one member of security staff present on any floor where a performance of sexual entertainment is taking place.
- 15.7. Any private booths shall be fitted with a panic button or security alarm.

16. Record Keeping and Management

- 16.1. All performers shall be required to provide valid identification prior to first employment at the premises. Acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or national ID card.
- 16.2. All performers and staff shall be eligible to work in the UK and proof of eligibility records shall be kept on the premises. Management shall ensure that such records are regularly checked to ensure compliance.
- 16.3. Employment records for performers and staff shall be kept for a minimum of 6 months following the cessation of their employment.
- 16.4. Accurate payment and remuneration records shall be maintained and shall be made available upon request to the Police or an authorised officer of the Council. All fees and charges for performers shall be stated in writing and prominently displayed within the changing area.
- 16.5. No films may be shown at the premises unless they have been passed by the British Board of Film Classification. No films classified as R18 shall be shown on the premises.

17. Dress Code

- 17.1. The premises shall operate a dress code for customers to the satisfaction of the Police.

Part Four – Additional Conditions for Premises Operating as Sex Cinemas

18. Film Exhibition

- 18.1. No film shall be exhibited unless:
- 18.1.1. It has been passed by the British Board of Film Classification (“BBFC”) as a U, PG, 12, 15, 18 or RESTRICTED (18) film and no notice of objection to its exhibition has been given by the council; or
- 18.1.2. The film has been passed by the council as U, PG, 12, 15, 18 or RESTRICTED (18).
- 18.2. If the Licence holder is notified by the council, in writing, that it objects to the exhibition of a film specifying the grounds of objection, such film shall not be exhibited.
- 18.3. The Licence holder shall give at least 28 days notice in writing to the council of any proposal to exhibit any film which has not been classified as specified above. Such a film shall only be exhibited if consent has been obtained from the council in writing and subject to any terms or restrictions contained within such written consent.
- 18.4. When the programme includes a film in the 12, 15 or 18 category, no person appearing to be under the age of 12, 15 or 18 as appropriate shall be admitted to any part of the programme.
- 18.5. If the council does not agree with the category of any film as passed by the BBFC, it may alter the category or prohibit the showing of the film.
- 18.6. Where any notice is given by the council to the Licence holder that it has altered the category of any film, the film shall thereafter be treated as being in the altered category and the conditions application to the exhibition of films in the altered category shall be observed accordingly.
- 18.7. Immediately before each exhibition at the premises of a film (other than a current news-reel) passed by the BBFC, there shall be exhibited on the screen for at least ten seconds and in such a manner as to be easily read by all persons in the auditorium, a reproduction of the certificate of the BBFC or, as regards a trailer, of the statement approved by the BBFC indicating the category of the film.
- 18.8. For a film passed by the council, notices shall be conspicuously displayed both inside and outside the premises so patrons entering can easily read them and which consist of the following wording:

SOUTHAMPTON CITY COUNCIL

(Insert title of film here)

Has been passed by Southampton City Council as

(insert the definition of the category and the category assigned)

- 18.9. Where a trailer is to be exhibited advertising a film passed by the council, the notice shall state:

SOUTHAMPTON CITY COUNCIL

(Insert the category of trailer here) **trailer advertising** *(insert the category of the film)* **film**

- 18.10. Every poster, advertisement, photograph, sketch, synopsis or programme relating to a film (other than a current news-reel) exhibited, or to be exhibited at the premises shall indicate clearly the category of the film.

19. Refusals/Incident Log

- 19.1. The Licence holder shall ensure that an incident/refusals log is maintained at the premises. The log shall record the following information:
- Any ejections from the premises
 - Any refused admissions
 - Any refused sales
 - Any inappropriate behaviour by patrons
 - Any failure in the CCTV system
 - Any incidents of crime or disorder
 - Any complaints made by patrons
- 19.2. The record shall show the date and time of the incident; the name of the member of staff reporting the incident; a brief description of the customer involved where appropriate and brief details of the incident together with any action taken by the staff/management of the premises.
- 19.3. The incident log shall be completed as soon as reasonably practicable after any incident has occurred.
- 19.4. The incident log shall be kept in a place where it can be easily accessed by staff working at the premises and all staff shall be aware of the location of the incident log and the need to complete it in such cases as described above.
- 19.5. The Licence holder shall ensure that the incident log is checked periodically and at least on a monthly basis to ensure that staff are completing the log as and when appropriate.
- 19.6. The incident log shall be made available for inspection to the Police or authorised council officers upon request.

20. General

- 20.1. No sex articles or other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity shall be displayed, sold, hired, exchanged, loaned or demonstrated in a sex cinema.

Sexual Entertainment Venues – Code of Conduct for Dancers

The Dancer's Code of Conduct shall include the following conditions as a minimum standard:

- There shall be no intentional physical contact between performers and customers at any time, before, during or after the performance, with the exception of leading a customer by the hand to, or from, an area permitted for performances of sexual entertainment in advance of, or following, a performance.
- The performer may not simulate any sexual act during a performance.
- Performers must not use any inappropriate, lewd, suggestive or sexually graphic language in any public or performance areas of the premises.
- Performers must not touch the breasts or genitalia of another performer, at any time as part of a performance.
- There shall be no use of sex articles (as defined by paragraph 4(3) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982) at any time.
- There shall be no nudity by performers in public areas of the premises, unless the Council has agreed in writing that area may be used for performances of sexual entertainment.
- Performers must fully dress (i.e. no nudity) at the end of each performance.
- Performances of sexual entertainment may only take place in designated areas of the premises as agreed in writing by the Council.
- There shall be no photography permitted by customers on the premises.
- Customers must remain seated for the duration of a performance.
- Performers shall not arrange to meet, or have further contact with, customers outside of the premises.
- Dancers shall not perform if under the influence of alcohol or drugs.
- All dancers shall comply with this Code of Conduct. Any failure to adhere to the rules set out in Code shall result in the dancer becoming subject to the consideration of disciplinary action as set out in the Disciplinary Procedure.

Sexual Entertainment Venues – Code of Conduct for Customers

The Customer's Code of Conduct shall include the following conditions as a minimum standard:

- Customers may not touch dancers during a performance.
- Customers may not make lewd or offensive comments to performers.
- Customers must not harass or intimidate performers.
- Customers must not ask dancers to perform any sexual favour.
- Customers may not perform acts of masturbation or indulge in other sexual behaviour.
- Any customer failing to comply with this Code of Conduct will be asked to leave the premises and may face a time-limited or permanent ban from attending the premises.

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**Schedule 12
Part A
Premises Licence**

Regulation 33,34

Premises licence number 2012/00701/01SPRD

Part 1 – Premises details

Postal address of premises, or if none, ordnance survey map reference or description,

Maxims Southampton
Town Quay
Southampton
SO14 2AQ

Telephone number 023 8023 6644

Where the licence is time limited the dates

Not applicable

Licensable activities authorised by the licence

Films
Indoor sporting events
Live music
Recorded music
Performances of dance
Anything similar to live music, recorded music or performances of dance
Facilities for making music
Facilities for dancing
Similar to facilities for music & dance
Provision of late night refreshment
Supply by retail of alcohol

The times the licence authorises the carrying out of licensable activities

Films

Monday	10:00 - 06:00
Tuesday	10:00 - 06:00
Wednesday	10:00 - 06:00
Thursday	10:00 - 06:00
Friday	10:00 - 06:00
Saturday	10:00 - 06:00
Sunday	10:00 - 06:00

Indoor sporting events

Monday	10:00 - 06:00
Tuesday	10:00 - 06:00
Wednesday	10:00 - 06:00
Thursday	10:00 - 06:00
Friday	10:00 - 06:00
Saturday	10:00 - 06:00
Sunday	10:00 - 06:00

Live music

Monday	10:00 - 06:00
Tuesday	10:00 - 06:00
Wednesday	10:00 - 06:00
Thursday	10:00 - 06:00
Friday	10:00 - 06:00
Saturday	10:00 - 06:00
Sunday	10:00 - 06:00



Recorded music

Monday	10:00 - 06:00
Tuesday	10:00 - 06:00
Wednesday	10:00 - 06:00
Thursday	10:00 - 06:00
Friday	10:00 - 06:00
Saturday	10:00 - 06:00
Sunday	10:00 - 06:00



Performances of dance

Monday	10:00 - 06:00
Tuesday	10:00 - 06:00
Wednesday	10:00 - 06:00
Thursday	10:00 - 06:00
Friday	10:00 - 06:00
Saturday	10:00 - 06:00
Sunday	10:00 - 06:00



Anything similar to live music, recorded music or performances of dance

Monday	10:00 - 06:00
Tuesday	10:00 - 06:00
Wednesday	10:00 - 06:00
Thursday	10:00 - 06:00
Friday	10:00 - 06:00
Saturday	10:00 - 06:00
Sunday	10:00 - 06:00

Facilities for making music

Monday	10:00 - 06:00
Tuesday	10:00 - 06:00
Wednesday	10:00 - 06:00
Thursday	10:00 - 06:00
Friday	10:00 - 06:00
Saturday	10:00 - 06:00
Sunday	10:00 - 06:00

Facilities for dancing

Monday	10:00 - 06:00
Tuesday	10:00 - 06:00
Wednesday	10:00 - 06:00
Thursday	10:00 - 06:00
Friday	10:00 - 06:00
Saturday	10:00 - 06:00
Sunday	10:00 - 06:00

Similar to facilities for music & dance

Monday	10:00 - 06:00
Tuesday	10:00 - 06:00
Wednesday	10:00 - 06:00
Thursday	10:00 - 06:00
Friday	10:00 - 06:00
Saturday	10:00 - 06:00
Sunday	10:00 - 06:00

Provision of late night refreshment

Monday	23:00 - 05:00
Tuesday	23:00 - 05:00
Wednesday	23:00 - 05:00
Thursday	23:00 - 05:00
Friday	23:00 - 05:00
Saturday	23:00 - 05:00
Sunday	23:00 - 05:00

Supply by retail of alcohol

Monday	00:00 - 00:00
Tuesday	00:00 - 00:00
Wednesday	00:00 - 00:00
Thursday	00:00 - 00:00
Friday	00:00 - 00:00
Saturday	00:00 - 00:00
Sunday	00:00 - 00:00

The opening hours of the premises

Monday	00:00 - 00:00
Tuesday	00:00 - 00:00
Wednesday	00:00 - 00:00
Thursday	00:00 - 00:00
Friday	00:00 - 00:00
Saturday	00:00 - 00:00
Sunday	00:00 - 00:00

Where the licence authorises supplies of alcohol whether these are on and / or off supplies

Alcohol is supplied for consumption both on and off the premises

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence

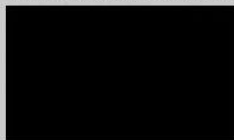
Genting Casinos UK Limited
Circus Casino Star City
Watson Road
Birmingham
B7 5SA
Business Phone Number 0121 325 7792

Registered number of holder, for example company number, charity number (where applicable)

01519689

Name, address and telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol

Aran Alexander Catozzi



Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol

Licence Number: 2010/01375/02SPEN
Licensing Authority: Southampton City Council

This premises licence is issued by Southampton City Council as licensing authority under part 3 of the Licensing Act 2003 and regulations made thereunder

Dated this 28th day of April 2012

Head of Legal, HR & Democratic Services

Licensing – Southampton City Council
Southampton & Eastleigh Licensing Partnership
PO Box 1344
Southampton
SO15 1WQ

Annex 1 – Mandatory Conditions

1 Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

2 No supply of alcohol shall be made under the premises licence:

(a) at a time when there is no designated premises supervisor in respect of the premises licence, or

(b) at a time when the designated premises supervisor for the premises does not hold a personal licence or his personal licence is suspended.

Annex 2 – Conditions consistent with the operating Schedule

1 Non Standard Hours

On New Year's Eve all licensable activities may continue from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.

2 CCTV

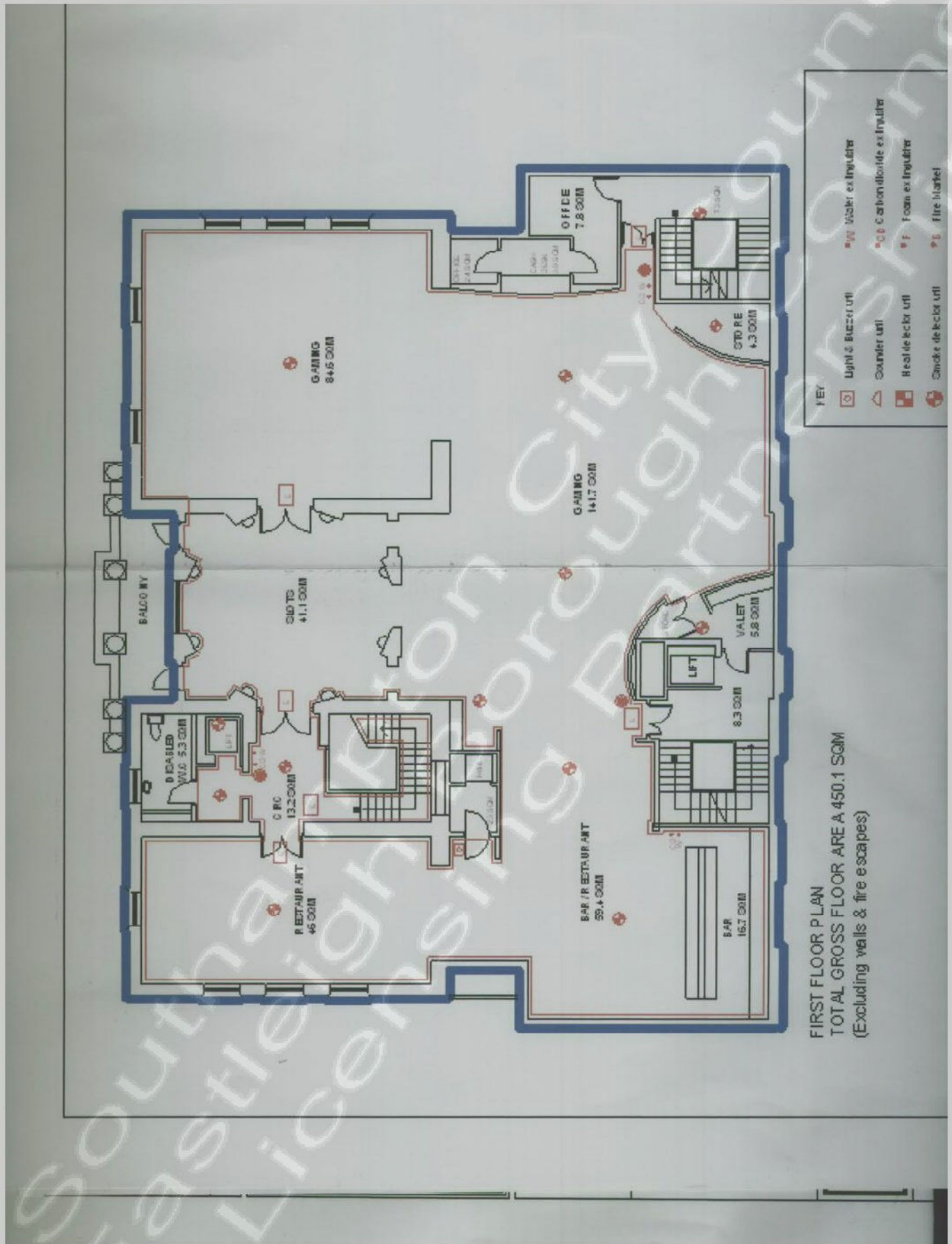
A CCTV system shall be installed and maintained in the licensed premises to the satisfaction of the Licensing Authority and Hampshire Constabulary. As a minimum, it shall enable surveillance of both external and internal areas of the premises including entrances and exits. Recordings from the system shall be of quality acceptable as evidence in a court of law and shall be securely retained at the licensed premises for a minimum period of 30 days after recording, and shall be surrendered to Hampshire Constabulary or the Licensing Authority immediately on request.

3 EMBEDDED CONDITIONS FROM CHILDREN AND YOUNG PERSONS ACT 1933

It is a condition of your licence that you comply with the extant provisions of the Children and Young Persons Act 1933, as amended.

Annex 3 – Conditions attached after a hearing by the licensing authority

1 None



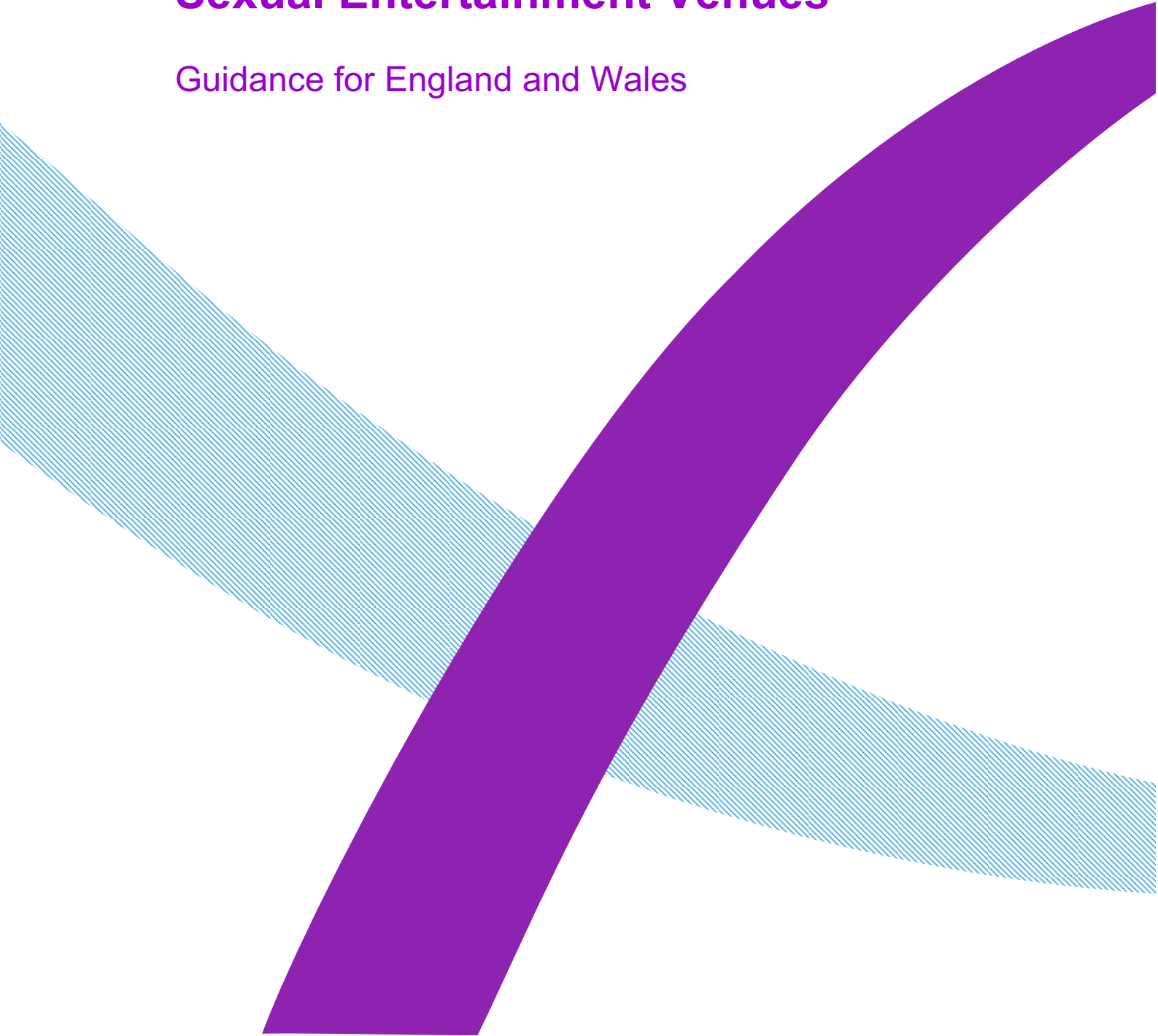
Plan not reproduced to scale.



Home Office

Sexual Entertainment Venues

Guidance for England and Wales



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MINISTERIAL FOREWORD



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

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

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

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

Alan Campbell

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

Parliamentary Under-Secretary of State for Crime Reduction

March 2010

INTRODUCTION

Definitions

1.1 In this guidance –

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

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

The “2003 Act” means the Licensing Act 2003

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

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

Policing and Crime Act 2009

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

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

The Guidance

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

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

POLICING AND CRIME ACT 2009

Meaning of Sexual Entertainment Venue

- 2.1 Paragraph 2A of Schedule 3 as inserted by section 27 sets out the meaning of a 'sexual entertainment venue' and 'relevant entertainment' for the purposes of these provisions. A sexual entertainment venue is defined as *“any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.”*
- 2.2 The meaning of 'relevant entertainment' is *“any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means).”* An audience can consist of just one person (e.g. where the entertainment takes place in private booths).
- 2.3 While local authorities should judge each case on its merits, we would expect that the definition of relevant entertainment would apply to the following forms of entertainment as they are commonly understood:
- Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows
 - Live sex shows
- 2.4 The above list is not exhaustive and, as the understanding of the exact nature of these descriptions may vary, should only be treated as indicative. Ultimately, decisions to licence premises as sexual entertainment venues shall depend on the content of the entertainment provided and not the name it is given.

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

Nudity

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

The Organiser

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

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

Spontaneous Entertainment

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

Premises that are not sexual entertainment venues

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

- sex shops and sex cinemas (which are separately defined in Schedule 3 to the 1982 Act);
- premises which provide relevant entertainment on an infrequent basis. These are defined as premises where-
 - a) no relevant entertainment has been provided on more than 11 occasions within a 12 month period;
 - b) no such occasion has begun within a period of one month beginning with the end of the previous occasions; and
 - c) no such occasion has lasted longer than 24 hours.
- other premises or types of performances or displays exempted by an order of the Secretary of State.

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

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

Amendments to the Licensing Act 2003

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

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

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

Consultation with Local People

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

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

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

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

The Appropriate Authority

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

Committee or Sub-Committee

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

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

Adopting the Provisions

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

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

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

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

Requirement for a Sex Establishment Licence

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

Premises that are deemed to be Sexual Entertainment Venues

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

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

Notices

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

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

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

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

Application Forms

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

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

Single Point of Contact

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

Fees

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

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

Objections

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

Hearings

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

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

⁴ www.lacors.gov.uk

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

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

Refusal of a Licence

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

A licence must not be granted:

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

3.28 A licence may be refused where:

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

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

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

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

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

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

Relevant Locality

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

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

⁸ Regulation 47

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

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

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

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

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

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

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

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

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

Licence Conditions

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

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

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

Duration of Licences

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

Appeals

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

Licensing Policies

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

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

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

Offences

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

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

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

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

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

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

Provisions Relating to Existing Premises

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

The Services Directive

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

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

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

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

TRANSITIONAL PROVISIONS

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

Transitional Period

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

Existing Operators

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

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

New Applicants

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

Determining Applications Received On or Before the 2nd Appointed Day

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

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

Determining Applications Received After the 2nd Appointed Day

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

Outstanding Applications

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

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

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

Existing Licence Conditions

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

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

ECHR Considerations

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

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

¹² [2007] UKHL 19

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

Changes to Licensing Policies

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

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

London

Sex Encounter Establishments

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

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

Hostess Bars

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

Soliciting for Custom

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

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

ANNEX A: GUIDE TO TRANSITIONAL PERIOD AND EXISTING OPERATORS

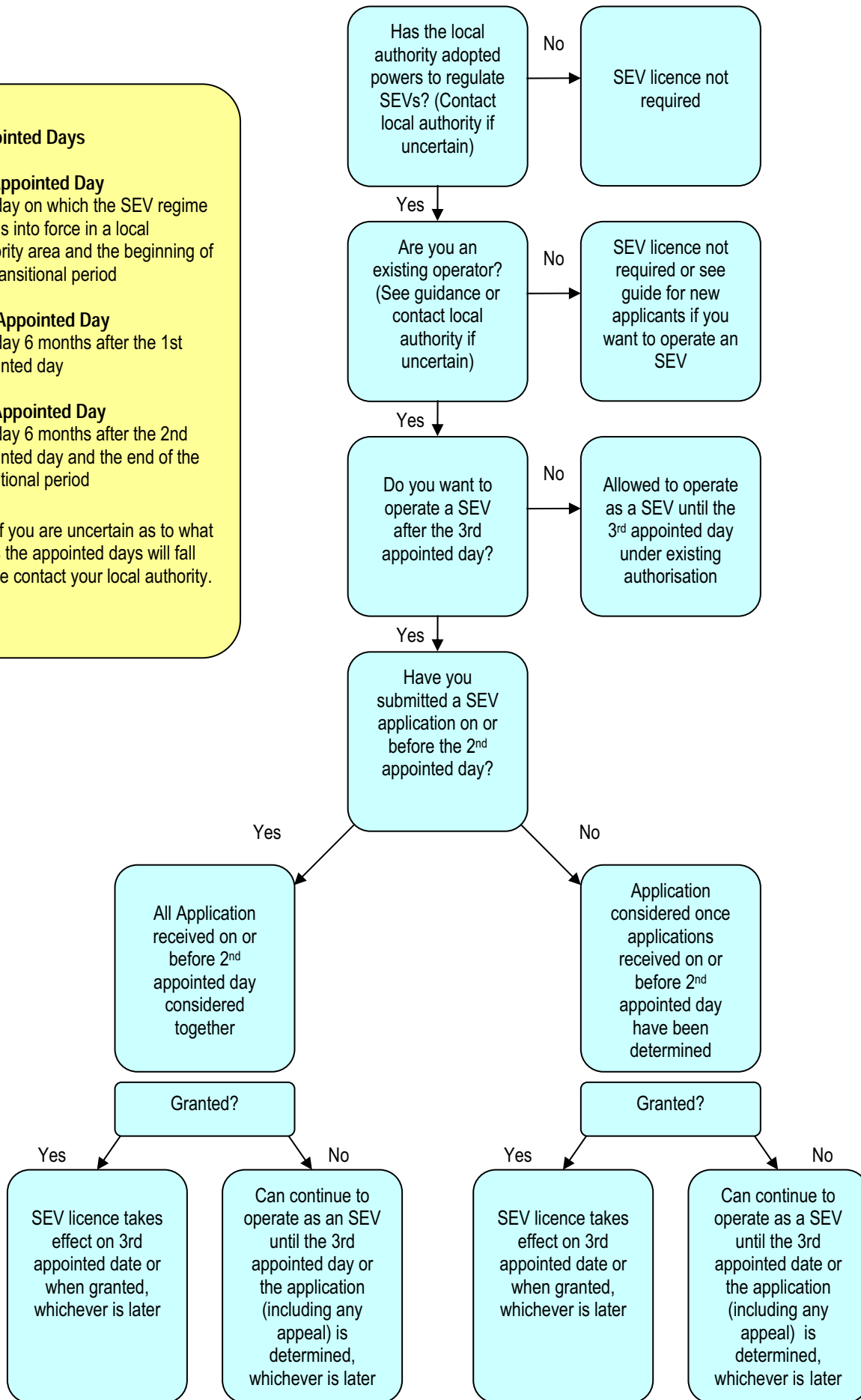
Appointed Days

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

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

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

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



ANNEX B: GUIDE TO TRANSITIONAL PERIOD AND NEW APPLICANTS

Appointed Days

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

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

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

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

