



Home Office

Regulation of Lap Dancing Clubs

Consultation on Transitional Arrangements

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Ministerial Forward



In September 2008, the previous Home Secretary announced her intention to bring forward important reforms to empower communities in England and Wales by giving them a greater say about the location and number of lap dancing clubs and similar establishments in their local areas.

To achieve this we have introduced measures in the Policing and Crime Bill to allow local authorities to regulate lap dancing clubs as sex establishments under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.

These important reforms will give local authorities the powers they have called for to allow them to respond more effectively to the views of local people, who have become increasingly concerned about the number of lap dancing clubs being established in their communities.

The measures are still being scrutinised by Parliament, but as we prepare for the Bill passing into law, we need to consider what form the transitional arrangements will take to ensure we move smoothly from the current regime to the new one. These arrangements will be important as they will help ensure that local authorities, businesses, and, of course, the communities who will be affected by the new reforms will have time to prepare and adjust. We recognise the impact on business but have always been clear that this needs to be balanced against ensuring local people have sufficient voice in their communities. We hope that the proposals set out in this consultation document strike this balance and will help those that need to take appropriate steps to adapt to the new licensing regime.

This, therefore, is an important consultation. It gives interested parties an opportunity to tell us how they will be affected by our proposals and, if necessary, allow us to take into account their concerns before bringing forward the transitional arrangements in secondary legislation.

We hope you will take the opportunity to give us your views.

ALAN CAMPBELL

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

MINISTER FOR CRIME REDUCTION

Consultation Summary

Scope of the consultation

Topic of this consultation:	Proposals for transitional arrangements for the provisions in the Policing and Crime Bill relating to the regulation of lap dancing clubs and similar venues.
Scope of this consultation:	This consultation seeks views on proposals relating to transitional arrangements. This is not a consultation on the decision to reclassify lap dancing clubs as sex establishments.
Geographical scope:	England and Wales
Impact assessment (IA):	An updated impact assessment is included with this consultation.

Basic Information

To:	<ul style="list-style-type: none">• Local Authorities• Existing operators• New operators• Licensing practitioners• Local residents• Campaign Groups• Local Businesses• Police
Duration:	21 th September to 14 th December
Enquiries and Responses	Thomas Cottam 4th Floor, Peel Building 2 Marsham Street London SW1P 4DF SEVconsultation@homeoffice.gsi.gov.uk
Additional ways to become involved:	As this consultation concerns a relatively small number of venues and deals with issues that are technical in nature, it will primarily be a written exercise.
After the consultation:	A summary of responses will be placed on the Home Office website.

Background

Getting to this stage:	<p>In Summer 2008 the Department of Culture, Media and Sport (DCMS) held a consultation with local authorities regarding the regulation of lap dancing clubs. A majority of respondents felt that additional powers specific to lap dancing clubs were necessary.</p> <p>As part of the Policing and Crime Bill introduced in Parliament on the 19 December 2008, the Government included provisions to reclassify lap dancing clubs and similar establishment as sex establishments under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.</p>
Previous engagement:	<p>In addition to the DCMS consultation with local authorities, the Home Office sent a letter in September 2008 to selected stakeholders seeking views on the proposal to bring lap dancing clubs under the regulation of the 1982 Act. Over the last year Home Office officials also met with a number of interested groups and presented at events for licensing practitioners.</p>

Introduction

1. This paper sets out the Government's proposals for the implementation of the amendments to Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') made by the Policing and Crime Bill¹.
2. It explains the background to the policy and the proposed transitional arrangements that will be set out in secondary legislation, once the Bill has received Royal Assent.
3. The proposals set out in Section Two relate to the implementation of clause 26 of the Policing and Crime Bill which extends to England and Wales only.
4. In summary the Government is proposing that:
 - Any operator – new or existing - who wishes to provide 'relevant entertainment' at the end of the transitional period will be required to apply for a sex establishment licence in the manner set out in Schedule 3 to the 1982 Act.
 - Existing operators will be allowed to continue to provide 'relevant entertainment' under their existing permission without interruption for the duration of the transitional period or until their application for a sex establishment licence has been determined, whichever is the later.
 - The transitional period will start on the date Schedule 3 to the 1982 Act comes into force in that area (the 1st appointed date). It will last for 12 months.
 - For 6 months following the 1st appointed date, applicants will be able to submit applications all of which will be considered together by the local authority.
 - Applications received after the first 6 months (the 2nd appointed date) will be considered after applications received before the 2nd appointed date have been determined
 - Licences granted for sex encounter venues will not take effect until the conclusion of the transitional period (the 3rd appointed date)
 - Where a London local authority has previously adopted the sex encounter establishment category introduced by the London Local Authorities (General Powers) Act 1986, this category will be replaced by the new sex encounter venue category upon the adoption of the provisions introduced by the Policing and Crime Bill by the local authority.

¹ <http://services.parliament.uk/bills/2008-09/policingandcrime.html>

5. We welcome your views on all the proposals and are particularly interested to hear your views on the specific questions asked throughout this consultation document. This is not a consultation on the Government's decision to reclassify lap dancing clubs and similar venues as sex establishments.

6. Please send your comments to:

Thomas Cottam
4th Floor, Peel Building
2 Marsham Street
London
SW1P 4DF

or

SEVconsultation@homeoffice.gsi.gov.uk

7. You should also contact the consultation team should you require a copy of this consultation paper in any other format, e.g. Braille, Large Font, or Audio.

8. This document is available on the Home Office website.

Section One – Background

9. This section outlines the background to the measures introduced by the Policing and Crime Bill and explains what the policy seeks to achieve.

Policy Background

10. The increase in the number of lap dancing clubs in recent years has become an issue of concern for many local communities. Estimates suggest that the number of venues has doubled since 2004 and there are now close to 300 throughout the United Kingdom.² Other estimates put the figure closer to 150.³ Most lap dancing clubs are regulated under the Licensing Act 2003 ('the 2003 Act'), under which they hold a premises licence/club premises certificate to provide 'regulated entertainment'. Under the 2003 Act, the objections of local people and businesses must be based on the four licensing objectives, namely: the prevention of crime and disorder; public safety; prevention of public nuisance and the protection of children from harm. As a result, licensing authorities cannot consider the objections of local people and businesses that are based on matters outside the scope of these four objectives, such as whether a lap dancing clubs is appropriate given the character of an area.
11. In June 2008 Gerry Sutcliffe, the Parliamentary Under Secretary of State at the Department of the Culture, Media and Sport, wrote to the chief executives of local authorities to clarify how they viewed the powers available to them under the 2003 Act and to seek their views on whether these, and other controls, were sufficient to address the concerns of local people and businesses. The majority of those who responded felt that additional legislation should be introduced to provide controls that are specific to lap dancing clubs and similar premises and suggested that Schedule 3 to the 1982 Act should be used for this purpose⁴. This approach was also supported by a wide range of stakeholders including the Local Government Association, the National Organisation of Residents Associations and the campaign groups Object and the Fawcett Society.
12. Alternative approaches that sought to make changes to the 2003 Act and utilise existing planning legislation were proposed by industry representatives who opposed the use of the 1982 Act. However, it was felt that such changes, especially those making use of planning legislation, would be overly complex and would not provide sufficient additional powers called for by many local authorities to regulate lap dancing clubs.

² *A Growing Tide*, Object, April 2008:

<http://www.object.org.uk/files/A%20Growing%20Tide%20Report%202008.pdf>

³ Figure provided by the Lap Dancing Association

⁴ http://www.culture.gov.uk/reference_library/foi_requests/5500.aspx

13. Therefore the Government announced on the 2 December 2008 that they would introduce legislation to reclassify lap dancing clubs and other similar venues as 'sex establishments' under the 1982 Act⁵. These provisions were included in the Policing and Crime Bill, which was introduced in Parliament on 19th December 2008.

The Policing and Crime Bill and the Local Government (Miscellaneous Provisions) Act 1982

14. Clause 26 of the Policing and Crime Bill introduces a new category of sex establishment under Schedule 3 to the 1982 Act called a 'sex encounter venue'. This new category covers venues that provide 'relevant entertainment'. Relevant entertainment is defined as any live performance or display of nudity "*which is of such a nature that, ignoring financial gain, it must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means)*". Such venues will require a sex establishment licence. However, there is an exemption for premises which provide such entertainment infrequently (see new paragraph 2A(3)(b) to be inserted into Schedule 3 to the 1982 Act) and, even if premises do qualify as a sex encounter venue, the local authority still has the discretion to waive the requirement for a licence.

15. In summary Schedule 3 to the 1982 Act will, in particular:

- allow local people to oppose an application for a sex establishment licence if they have legitimate concerns that a lap dancing club would be inappropriate given the character of an area because for example, if the area was primarily a residential area.
- require licences to be renewed at least yearly, at which point local people will have the opportunity to raise objections with their local authority.
- allow a local authority to reject a licence application if they believe that to grant a licence for a lap dancing club would be inappropriate given the character of a particular area.
- allow a local authority to set a limit on the number of sex encounter venues that they think is appropriate for a particular area.
- allow a local authority to impose a wider range of conditions on the licences of lap dancing clubs than they are currently able to under the 2003 Act.

⁵ Announcement made in *Fair Rules for Strong Communities*, December 2008:
<http://www.number10.gov.uk/wp-content/uploads/fair-rules-for-strong-communities.pdf>

Section Two – Proposals for Regulations

16. To implement the measures introduced by Clause 26 of the Policing and Crime Bill there will need to be a transitional period to allow existing lap dancing clubs and other venues falling within the definition of a sex encounter venue time to comply with the new legislation. The transitional arrangements and the duration of the transitional period will be specified in secondary legislation made by the Secretary of State in England and Welsh Ministers in Wales.
17. This section sets out the proposals for these transitional arrangements and forms the main part of this consultation. We would welcome comments on this section and in particular your comments on those areas where specific questions have been raised.

How will the 1982 Act apply to existing operators?

18. Representations have been made to the Government by industry representatives to exclude existing operators, who have explicit permission in their existing licences to provide 'relevant entertainment', from the new regime or at least to give them preferential treatment when their sex establishment licences fall to be determined for the first time. Such provisions, often referred to as 'grandfather rights', were made when the 2003 Act and the Gambling Act 2005 were introduced.
19. After careful consideration, it is proposed that similar provisions should not be made for the purposes of the Policing and Crime Bill and that existing lap dancing clubs who wish to continue to provide 'relevant entertainment' should be required to apply for a new sex establishment licence in the manner set out in Schedule 3 to the 1982 Act, subject to the transitional arrangements set out below.
20. Although the local authority will need to consider any rights an existing licence holder may have under Article 1, Protocol 1 of the European Convention on Human Rights when deciding an application, the Government is not proposing to give existing licence holders preferential treatment or indeed, exclude them from the provisions on the face of the Bill.
21. It is acknowledged that as a result of this approach, some existing businesses may have to stop providing 'relevant entertainment' or, in a small number of cases, close. While we understand the concerns that have been expressed by the industry, we believe that to automatically grant existing lap dancing clubs a sex establishment licence would be contrary to the intent behind these reforms, which is to give local people greater say over the number and location of lap dancing clubs in their area.

22. We are aware that in recent years there have been instances where lap dancing clubs have been granted licences despite significant local opposition. In many of these cases licensing authorities were unable to consider local opposition that fell outside the scope of the four licensing objectives.⁶ In some cases, the result has been that lap dancing clubs have opened, and continue to operate, against the wishes of local people. For this reason, the Government believes that local communities should be given the opportunity to have their say over how or whether existing venues operate in the future.
23. We are mindful of the UK's obligations under EU law. Paragraphs 28 and 29 to Schedule 3 of the 1982 Act set out the provisions for dealing with existing sex shops and sex cinemas when these provisions were first commenced. Paragraph 29(4) provided that when considering several applications for sex establishment licences, local authorities would have to give preference to existing operators. A similar approach was considered with regards to sex encounter venues. However, it was concluded that such provisions would now be unlikely to survive a legal challenge in respect of Article 43 EC or the Services Directive.
- 24. What are your views on the proposal that the new regime should apply to existing operators and that the transitional provisions should not provide for them to be given preferential treatment when their application for a sex establishment licence comes to be determined?**

Transitional Period

25. The transitional period is the time that existing operators will be given to comply with the new legislation.
26. The transitional period will commence on the date the provisions in the Policing and Crime Bill come into force in the particular local authority area ('the 1st appointed date'). The Secretary of State then intends to specify a date 6 months after the 1st appointed date which will be known as the '2nd appointed date'. The Government is proposing that between the 1st and 2nd appointed dates applicants, who can be either existing operators or new applicants, will be able to submit applications to be considered by the local authority. At the end of this period, local authorities will consider all applications received during this period and will not grant any application until they have done so.
27. This approach would ensure that where local authorities have decided to set a limit on the number of premises that they consider appropriate for a particular locality, all applications submitted during this period will be considered before the local authority decides which applicants should be granted a licence. Applications received after the 2nd appointed date will be considered individually by local authorities.

⁶A *Growing Tide*, Object, December 2008:
<http://www.object.org.uk/files/A%20Growing%20Tide%20Update%20Dec%202008.pdf>

28. On the 3rd appointed date, which it is proposed will be 6 months after the 2nd appointed date all venues in that local authority area, unless awaiting the determination of an outstanding application, will have to be compliant with the new legislation.
29. The transitional period is the period between the 1st and 3rd appointed dates and is therefore currently intended to last for 12 months.
30. Under these proposals existing venues would be able to continue to provide 'relevant entertainment' under their existing premises licence or club certificate until the end of the transitional period, or until any application for a sex establishment licence submitted during the transitional period has been determined, whichever is the later. This will apply to all existing operators, irrespective of whether or not an application for sex establishment licence is submitted or whether or not such an application, if submitted, is granted.
- 31. What are your views on the proposed time periods between the 1st, 2nd and 3rd appointed dates and do you believe that a transitional period of 12 months in total is appropriate?**
32. For the purposes of these transitional arrangements, it is proposed that an 'existing operator' is defined as a person operating any premises that on the 1st appointed day is authorised under an existing premises licence or club premises certificate, either explicitly or implicitly to provide entertainment that would be defined as 'relevant entertainment' under Clause 26 of the Policing and Crime Bill. Where licence holders are uncertain as to whether or not they are able to provide 'relevant entertainment' under their existing premises licence or club certificate they should contact the relevant local authority for guidance.
- 33. Do you agree with the proposed approach for identifying existing operators?**
34. Annex 1 shows how the transitional arrangements for existing operators would work under these proposals.

New Operators

35. Where a premises without authorisation under an existing premises licence or club premises certificate, wishes to provide 'relevant entertainment' after the 1st appointed date, it is proposed that they will be required to apply for a sex establishment licence following the process set out in Schedule 3 to the 1982 Act, as amended by the Policing and Crime Bill. Under these proposals new operators will not be able to provide 'relevant entertainment' unless and until a sex establishment licence has been granted. Under these proposals new applications received before the 2nd appointed day would be considered at the same time as those applications from existing operators that are received by this date.

Outstanding Applications

36. It is proposed that premises which have made an application before the 1st appointed date under the 2003 Act for a premises licence or club premises certificate authorising the provision of relevant entertainment is treated as a new operator for the purpose of these arrangements where the application remains outstanding after the 1st appointed date. They will therefore have to submit an application for a sex establishment licence under Schedule 3 to the 1982 Act.

Existing Conditions

37. Where existing operators have sought explicit permission, when applying for a premises licence or club premises certificate under the 2003 Act to provide 'relevant entertainment' as defined in clause 26 of the Policing and Crime Bill, it is likely that they will be subject to licence conditions that apply directly to the provision of that entertainment. For example, where a lap dancing club has explicit permission to provide nude entertainment, they may have licence conditions that prohibit physical contact between performers and customers.
38. It is proposed that where such licence conditions are present on either an existing premises licence or clubs premises certificate, these conditions will be read as though they have been deleted from the premises licence or club premises certificate from the 3rd appointed day onwards. Where existing lap dancing clubs and similar venues are granted sex establishment licences for the provision of relevant entertainment, any conditions relating to the provision of that entertainment will be regulated by that licence alone.
- 39. What are your views on the proposal for dealing with conditions on existing premises licences/clubs premises certificates that relate specifically to the provision 'relevant entertainment'?**

What does this mean for local people?

40. When an application is made to the local authority for a sex establishment licence, whether during the transitional period or after it, local people will have the opportunity to make representations to the local authority. It is important to note that these representations will be expected to address the provision of relevant entertainment and not activities that will continue to be authorised under the 2003 Act, such as the provision of alcohol and other forms of regulated entertainment.

Sex Encounter Establishments

41. The 1982 Act contains a category of sex establishment called a 'sex encounter establishment', which was introduced by the Greater London Council (General Powers) Act 1986. This category only applies in London where the relevant local authority has adopted the provisions. It only covers those venues that offer sexually explicit entertainment (such as peep shows) but are not licensed under the 2003 Act.
42. The Government is proposing that the new category of sex encounter venue will replace the existing sex encounter establishment category upon a London Borough's adoption of the new provisions. If a London Borough, that has previously adopted Schedule 3 to the 1982 Act as amended by the Greater London Council (General Powers) Act 1986, decides not to adopt Schedule 3 to the 1982 Act as amended by the Policing and Crime Bill, the existing sex encounter establishment regime will remain in force.
43. Where a London Borough decides to adopt Schedule 3 of the 1982 Act as amended by the Policing and Crime Bill, secondary legislation will set out that where a sex encounter establishment licence has been previously granted it will be treated as though it were granted under the new sex encounter venue regime, retaining any conditions previously granted.
44. **What are your views on the proposals relating to the existing sex encounter establishment category? Also are you aware of any type of venue that currently requires a licence for a sex encounter establishment that would not require a licence for a sex encounter venue as defined in Clause 26 of the Policing and Crime Bill?**

Hostess Bars

45. Schedule 3 of the 1982 Act also includes a category of sex establishment called 'hostess bar', which was introduced by the London Local Authorities Act 2007 and therefore does not apply outside of London. We do not intend to make any changes to the hostess bar provisions.

Section 2 of the London Local Authorities Act 2004

46. Section 22 of the London Local Authorities Act 2004 (as amended by section 72 of the London Local Authorities Act 2007), applies only in London and appears to be of uncertain extent. On one interpretation it could be seen as prohibiting anyone from soliciting people to attend a sex establishment if the impression is given that the activities are, in fact, licensed under the 2003 Act. Another interpretation is that it creates that offence and an offence of soliciting people to attend a sex establishment.

47. Do you believe that section 22 of the London Local Authorities Act 2004 should be amended in light of the amendments being made in the Policing and Crime Bill?

Timescales – Next Steps

48. The consultation closes on the 14th December 2009. Once responses have been reviewed a summary of the responses will be placed on the Home Office website. Subject to the Policing and Crime Bill receiving Royal Assent, the provisions on lap dancing are expected to be commenced in April 2010. However, the provisions will only take effect in any given area once the relevant local authority has passed a resolution to adopt them and appoints a day for the provisions to come in force in that area.

49. Prior to the commencement of the provisions, the Home Office will write to every local authority in England and Wales to ensure that they are aware of when the provisions come into force and what it will mean for them. The Home Office will also issue a press release and information will be made available in advance on the Home Office website (www.homeoffice.gov.uk) about the commencement date.

50. What are your views on the proposal to commence these provisions in April 2010?

Impact Assessment

51. As part of this consultation we have revised the Impact Assessment (IA) that was published when the Policing and Crime Bill was introduced in Parliament on the 18 December 2008.

52. The revised IA attempts to estimate the potential cost to industry of these proposals. Due to the lack of information relating specifically to the sector this legislation will impact upon, the estimates in the IA should only be seen as indicative.

53. Do you agree that the suggested costs and benefits set out in the Impact Assessment are a reasonable estimate of the potential costs and benefits? If not, can you provide evidence of what any likely costs and benefits should be?

Consultation

Confidentiality & Disclaimer

54. The information you send us may be passed to colleagues within the Home Office, the Government or related agencies.
55. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 [FOIA], the Data Protection Act 1998 [DPA] and the Environmental Information Regulations 2004).
56. If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
57. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
58. The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Complaints

59. If you have a complaint or comment about the Home Office's approach to consultation, you should contact the Home Office Consultation Co-ordinator, Nigel Lawrence. Please DO NOT send your response to this consultation to Nigel Lawrence. The Co-ordinator works to promote best practice standards set by the Government's Code of Practice, advises policy teams on how to conduct consultations and investigates complaints made against the Home Office. He does not process your response to this consultation.
60. The Co-ordinator can be emailed at:

Nigel.Lawrence@homeoffice.gsi.gov.uk or alternatively write to him at:

Nigel Lawrence, Consultation Co-ordinator
Home Office
Performance and Delivery Unit
3rd Floor Seacole
2 Marsham Street
London
SW1P 4DF

Government's Code of Practice on Consultation

The Consultation follows the Government's Code of Practice on Consultation – the criteria for which are set out below:

Criterion 1 – When to consult – Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2 – Duration of consultation exercises – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3 – Clarity of scope and impact – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4 – Accessibility of consultation exercises – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5 – The burden of consultation – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6 – Responsiveness of consultation exercises – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7 – Capacity to consult – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

The full Code of Practice on Consultation is available at:

<http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html>

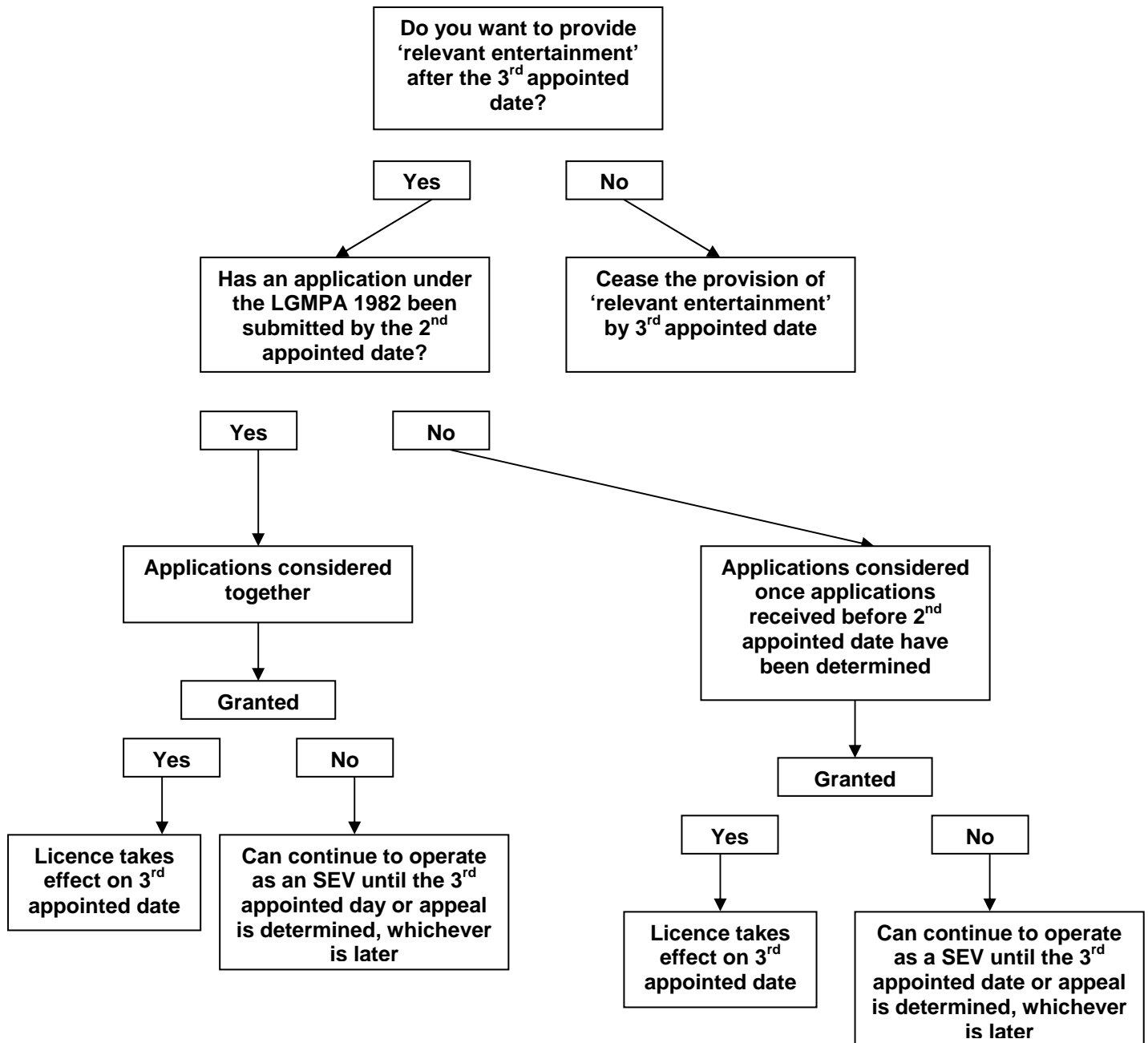
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Annex 1

Proposed Transitional Arrangements for Existing Operators



Summary: Intervention & Options

Department /Agency: Home Office	Title: Impact Assessment of new measures to regulate lap-dancing clubs	
Stage: Final	Version: 2.0	Date: 7 September 2009
Related Publications:		

Available to view or download at:

<http://www.>

Contact for enquiries: Thomas Cottam

Telephone: 020 7035 0453

What is the problem under consideration? Why is government intervention necessary?

Lap dancing premises are currently regulated under the Licensing Act 2003. However, under this legislation the powers available to local authorities to control the establishment of lap-dancing premises or impose condition on their licences are limited. Following a Department for Culture, Media and Sports consultation with local authorities a majority of those that responded felt that their current powers to regulate lap-dancing clubs were insufficient to address the concerns of local people and wanted Government to intervene. On 21 September 2008 the Home Secretary announced the Government's intention to address this issue.

What are the policy objectives and the intended effects?

To give local communities a stronger say over the establishment and location of lap-dancing clubs in their area and local authorities more power to reject applications for lap-dancing clubs or impose conditions on licences. To bring the licensing of lap-dancing clubs in line with other sex establishments such as sex shops and sex cinemas. To recognise that local people have legitimate concerns about where lap-dancing clubs are located.

What policy options have been considered? Please justify any preferred option.

Option 1 - Do Nothing, maintain the status quo

Option 2 - Reclassify lap-dancing clubs as 'Sex Establishments' under the 1982 Local Government (Miscellaneous Provisions) Act

Option 2 is the preferred option as the existing 'Sex Establishment' legislation adequately covers lap-dancing and similar activities and the provision within the 1982 Act gives a stronger say to local communities and more powers to local authorities.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? We will review the implementation of this policy and its impact on local authorities and industry on an ongoing basis.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

.....Date:

Summary: Analysis & Evidence

Policy Option: 2

Description: Reclassify lap-dancing clubs as 'Sex Establishments' under the 1982 Local Government (Miscellaneous Provisions) Act

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' 10 year costs, 300 premises, low - high closure Private sector admin burden: £6m - £5.1m Private sector licensing fee: £16.4 - £14.2m Private sector closure/loss of 'relevant entertainment': £0-£4.3m Public Sector Licensing Regime: £16.4 - £14.2m
	One-off (Transition)	Yrs	
	£ 0 - 4.3million	1	
	Average Annual Cost (excluding one-off)		
£ 3.3million		Total Cost (PV)	£ 33.5m - 33.2m
Other key non-monetised costs by 'main affected groups' Cost to local authority of implementing the new measures.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Transfer to Local Authorities from Licence Fee applications: £16.4 - £14.2million
	One-off	Yrs	
	£ 0		
	Average Annual Benefit (excluding one-off)		
£ 1.6 - 1.4million		Total Benefit (PV)	£ 14.1m - 12.3m
Other key non-monetised benefits by 'main affected groups' Gives local communities more power to control the number and location of lap dancing clubs in their area.			

Key Assumptions/Sensitivities/Risks: Costs assume that all local authorities who have lap dancing clubs in their area will adopt the new measures and all existing premises apply for sex establishment licences.

Price Base Year 2009	Time Period Years 10	Net Benefit Range (NPV) £ -19.4m to -20.9m	NET BENEFIT (NPV Best estimate) £ -20m
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What is the geographic coverage of the policy/option?			England & Wales	
On what date will the policy be implemented?			TBC	
Which organisation(s) will enforce the policy?			Local Authorities	
What is the total annual cost of enforcement for these organisations?			£	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£ N/A	
What is the value of changes in greenhouse gas emissions?			£ N/A	
Will the proposal have a significant impact on competition?			Yes/No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)		
Increase of	£ 0.5 -0.43m	Decrease of	£ 0m	Net Impact	£ 0.5 - 0.43m

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Background

What is meant by Lap Dancing Club?

For the purpose of these measures the term 'lap dancing club' is a broad term encompassing certain venues that provide entertainment with a sexual content. In addition to lap dancing, this may also include, but is not limited to, stripping, table dancing and pole dancing. The Policing and Crime Bill will classify such premises as sex encounter venues, which is defined as premises where "relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer". For the purpose of the legislation "relevant entertainment" is defined as any live performance or display of nudity, "which is of such a nature that, ignoring financial gain, it must be reasonably assumed to be provided solely or principally for the purposes of sexually stimulating any member of an audience (whether by verbal or other means". The Bill contains an exemption for premises where "relevant entertainment" is provided on an infrequent basis, defined as no more than 11 occasions in a 12 month period with a period of more than one month between each occasion.

Number of establishments affected

Currently, existing lap-dancing clubs will most likely be regulated under the Licensing Act 2003 and are therefore difficult to differentiate from other licensed premises and clubs. For this reason, the availability of accurate data on the number of premises that will be affected by this legislation is limited. Some estimates state that there are roughly 300 existing lap-dancing clubs. The Lap Dancing Association put the figure closer to 150.

How many of these clubs are actually affected will not be known until the licensing regime begins operating. There is the potential for an impact on lap dancing clubs in localities where local authorities choose to adopt the power and where communities choose to oppose license applications and renewals. However, while the impact may directly affect a large proportion of lap dancing clubs, owing to the relatively small size of this part of the sector the overall impact on the entertainment/leisure and the economy as a whole is likely to be small.

Location of Lap Dancing Clubs

For the reasons explained above, it is difficult to be precise about the distribution of lap dancing clubs in England and Wales. However, research provided by the campaign group Object suggests that while there are concentrations of venues in large metropolitan areas, such as London, Birmingham and Leeds, as might be expected, there are also multiple venues located in smaller cities and an increasing trend towards venues opening in towns and suburban areas. This research identifies close to 300 "lap dancing establishments", which are located in roughly one third of all local authorities.

Rationale

Lap dancing premises currently require a premises licence under section 1 of the 2003 Licensing Act. No special provisions are made in the 2003 Act for lap-dancing clubs. If an application is submitted to the licensing authority for a premises licence the authority must grant the licence subject to certain mandatory conditions, the only relevant ones for lap dancing clubs being those related to how and when alcohol is supplied.

It is only if relevant representations are made by an interested party (e.g. residents or local businesses) or a responsible authority (e.g. the police or fire services in the area) that the authority can, following a hearing, impose other conditions or reject the application. Even then, it will only be able to do so where such a step is necessary to promote one of the four licensing

objectives set out in the Act – preventing crime and disorder; public safety; prevention of public nuisance; the protection of children from harm.

Premises licences are not subject to renewal and last until they are revoked, suspended, surrendered or the holder becomes mentally unstable, insolvent or dies (sections 26 to 28). They can be reviewed following representations by an interested party or a responsible authority but the authority will only consider representations relating to one or more of the four licensing objectives.

As licensing authorities are unable to consider any objections on matters outside the scope of the four licensing objectives, the Government is aware that increasingly lap dancing clubs have been allowed to open despite widespread local opposition.¹

Therefore, following consultation with local authorities, the Government decided that local communities should be given more powers to control the number and location of lap dancing clubs in their area.

Objectives

To give local communities a stronger say over the establishment and location of lap-dancing clubs in their area and local authorities more power to reject applications for lap-dancing clubs or impose conditions on licences. To bring the licensing of lap-dancing clubs in line with other sex establishments such as sex shops and sex cinemas. To recognise that local people have legitimate concerns about where lap-dancing clubs are located. Under these provisions, local people will be able to object to an application for a lap-dancing club on the grounds that such an establishment would be inappropriate given the character of the area or, for instance, if located in an area that is primarily residential.

Options

Option 1 - Do Nothing, maintain the status quo.

Option 2 - Reclassify lap-dancing clubs as 'Sex Establishments' under the 1982 Local Government (Miscellaneous Provisions) Act

Option 2 is the preferred option - Placing lap-dancing clubs under the category of 'Sex Establishments' as defined by the 1982 Local Government (Miscellaneous Provisions) Act. Those local authorities who resolve to adopt Schedule 3, as amended, will be able to impose a wider variety of conditions on lap dancing clubs e.g. relating to opening hours, adverts, visibility of the interior to passers by. Local authorities will also be able to refuse to grant or renew a licence on the grounds that such a club would be inappropriate having regard to the character of the area or the total number of similar premises in the locality.

Similarly, local people will be able to make written representations to the local authorities on these grounds, rather than being limited to making representations based on the four licensing objectives found in the 2003 Act. Licences would only last a maximum of one year before requiring renewal.

¹A *Growing Tide*, Object, December 2008:
<http://www.object.org.uk/files/A%20Growing%20Tide%20Update%20Dec%202008.pdf>

The Lap Dancing Association proposed an alternative approach that included using planning legislation to control the establishment of lap dancing clubs. This approach was considered but was opposed by the Local Government Association and some industry representatives² who argued that it would be overly complicated and bureaucratic. It was also felt that this approach would not adequately address the issue of giving communities a stronger say.

Appraisal

Option 2 - Reclassify lap-dancing clubs as 'Sex Establishments' under the 1982 Local Government (Miscellaneous Provisions) Act

Costs

Costs to Local Authorities

The level of take-up by local authorities is difficult to predict as it will depend greatly on local circumstances and where lap dancing clubs are located. Responses to the Department for Culture, Media and Sports (DCMS) consultation suggest that these measures are well supported by local authorities and therefore we anticipate a relatively high take-up, especially in those areas where lap dancing clubs are located or where specific issues relating to applications for lap dancing clubs have arisen in the past.

Those local authorities that resolve to adopt the provisions will face costs of processing applications and monitoring premises to ensure compliance. There may also be costs associated with enforcement action that is required where premises breach their licence conditions or operate without a licence. Under the new provisions, local authorities are able to recover costs by setting a 'reasonable fee' for licence applications. This is accounted for in the summary table.

Costs to Business – Based on 300 establishments

Costs to local authorities will be recovered from new applicants and existing club operators when licenses are renewed. In addition all clubs will be faced with the additional administration and legal costs of applying for a new sex establishment licence and the subsequent annual renewals and some may choose to offer alternative entertainment in order not to face more regular licensing.

Additional costs to the sector arise where applications are rejected under the new act where they would previously have been approved or where an application for renewal was not previously required. In some cases the club will be licensed to continue trading in the same way but in others the license may be revoked or refused, necessitating either a change in the type of entertainment offered or closure of the club. For applications for new clubs it may restrict the potential areas or locations within an area where the club can operate and impact on revenue where the location is less favourable for the business. In some cases this may deter investment altogether. Where renewals are rejected there will be some loss of revenue if the club has to revert to an alternative role under the 2003 Licensing Act or sunk costs where the club chooses to close.

Legislation will be clearly directed at regulating sex establishments and not any premises that might occasionally feature performances, exhibitions or entertainment that involves nudity or sexual stimulation, such as theatrical performances/art or a one-off or infrequent performances of 'relevant entertainment' in a pub or nightclub.

² Peter Stringfellow's evidence to Department of Culture Media & Sport Select Committee hearing – 25 November 2008

It is possible that this legislation may capture some premises, such as 'peep shows' that operate outside London and are not currently licenced under the Licensing Act 2003, but do provide services or performances that are for the purpose of sexual stimulation. The number of such premises is not known but is believed to be very low.

The Government is proposing a transitional period of one year for business to comply with the new regime. This will delay the full impact on business, especially the cost associated with closures or venues being forced to operate without 'relevant entertainment', for this period.

The Cost of a Sex Establishment Licence

Information provided by the Lap Dancing Association based on the current cost of sex establishment licences in local authorities across UK puts the average fee for a new licence at £5447 and £4981 for a renewal.

Therefore the total cost of applying for a licence in year 1 would be around £1.6m for 300 premises.

After year 1 the cost burden as a result of renewing sex establishment on licenses on a yearly basis would be around £1.5m. However, this figure may be lower after year 1 if there are closures or premises continue to operate without 'relevant entertainment'.

Administrative Costs

The average administrative cost of applying for a new licence is estimated to be around £2,000 per application resulting in a total cost to industry of approximately £600,000 per year.³ However, as with the application fee, this figure may be lower after year 1 if there are closures or premises continue to operate without 'relevant entertainment'.

Cost of Operating Without 'Relevant Entertainment'

Where existing venues are refused a sex establishment licence or decide that applying for a licence would be too costly, they may decide to continue to operate without 'relevant entertainment', for example as a nightclub, bar or pub. This may incur a loss of revenue. We have estimated that this lost revenue would represent 20% of a premises' annual turnover. We have also estimated that this could apply to up to 10% of all existing lap dancing venues. These figures should only be seen as indicative and do not necessarily represent a likely outcome.

Assuming that existing lap dancing clubs consist of Micro (1-9 employees) and Small (9 – 50 employees) businesses at a ratio of 50/50, we have estimated that the cost to industry would be up to around £1,225.⁴

Cost of Business Closures

Where existing venues are refused a sex establishment licence or decide that applying for a licence would be too costly, they maybe forced to close. We have estimated that this could apply to up to 5% of all existing lap dancing clubs.

Assuming that existing lap dancing clubs consist of Micro (1-9 employees) and Small (9 – 50 employees) businesses at a ratio of 50/50, we have estimated that the cost to industry would be up to around £3,060.⁵

³ Figure provided by the Lap Dancing Association

⁴ Figures based on Department for Business, Innovation and Skills SME statistics.

⁵ Figures based on Department for Business, Innovation and Skills SME statistics.

Benefits

- These new powers will allow local communities to have a greater say over the establishment and location and of lap-dancing clubs in their area and will bring the licensing of lap-dancing clubs in line with the licensing of other sex establishments such as sex shops and sex cinemas, which are currently licensed under the 1982 Act.
- Where the provision adopted local people will be able to object to lap-dancing clubs if they felt that it would adversely impact the character of a particular area or, for example, that its proximity to a school or place of worship was inappropriate.
- Gives local authorities more scope to reject applications for lap-dancing clubs or impose conditions on their licences if they deem that such measures are necessary to address the concerns of local people.

Assessment of the costs and benefits

The purpose of this policy is to empower local communities and give them more say over the make-up and character of their local area. Where they have reasonable and legitimate concerns about the location or establishment of lap-dancing clubs, local authorities will have more powers to consider these concerns when reviewing a licence application.

The Government acknowledges that costs will fall to industry as a result of this legislation, and some lap-dancing clubs may close or be restricted from operated from certain locations. However, we believe that the cost to industry is outweighed by the wider objective of giving power to local communities to control the establishment and location of lap dancing clubs.

Risks

Option 2 - Reclassify lap-dancing clubs as 'Sex Establishments' under the 1982 Local Government (Miscellaneous Provisions) Act

There is a risk that some local authorities may decide not to adopt the new legislation. However, we believe this is a small risk as a significant number of local authorities have indicated their support for this legislation, as it will allow them to regulation lap dancing clubs and similar establishment more effectively.

Enforcement

As existing lap-dancing clubs are already licensed under the Licensing Act 2003 there will be no additional licensed premises as a result of this policy. Therefore, we do not anticipate that these proposals will result in significant increased enforcement costs for the police or local authorities or subsequent prosecution costs for the Crown Prosecution Service (CPS).

In addition, experience of the Licensing Act 2003 suggests that very few licence breaches result in prosecutions as local authorities have the power to deal with such offences by other means. In order to minimise transition costs and reduce the potential for licensees inadvertently failing to comply with the new legislation (with the resultant costs for the police or local authorities, CPS and Her Majesty's Court Service) local authorities will be encouraged to work closely with industry and promote any legislative changes prior to adopting the provisions in their area.

Implementation

The Government is proposing to commence these provisions in April 2010. However, they will only come into force in individual local authority areas when the relevant local authority resolves to adopt them. Once a local authority has passed a resolution to adopt the provisions the Government is proposing that there will be a transitional period that lasts for 12 months.

Monitoring and Evaluation

The effectiveness of the new regime and the impact on industry and local authorities will be monitored on an ongoing basis.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes/No	Yes/No
Small Firms Impact Test	Yes/No	Yes/No
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes/No	Yes/No
Disability Equality	Yes/No	Yes/No
Gender Equality	Yes/No	Yes/No
Human Rights	Yes/No	Yes/No
Rural Proofing	Yes/No	Yes/No

Annexes

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