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Lap dancing clubs - how are they licensed?

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Section 27 of the *Policing and Crime Act 2009* reclassified lap dancing clubs as sexual entertainment venues and gave local authorities the power, if they adopted the legislation, to regulate such venues as sex establishments under Schedule 3 to the *Local Government (Miscellaneous Provisions) Act 1982*.

The vast majority of local authorities are believed to have adopted the legislation.

A sex establishment licence to operate a lap dancing club is granted by the local authority for one year. An application must then be made for its renewal.

Objecting to a licence

It is possible to object to an application for a new licence, or the renewal of an existing one. Objections must be made on the basis that, among other things, a lap dancing club would be "inappropriate" in regard to:

- the character of the relevant locality; or
- the use to which any premises in the vicinity are put; or
- the layout, character or condition of the premises in respect of which the application is made.

A licence application can also be rejected if the local authority considers that the number of lap dancing clubs is equal to or exceeds the number that it considers appropriate for the "relevant locality".

Home Office guidance (March 2010) states that local authorities should not consider objections that are based on "moral grounds/values".

Scotland

Section 76 of the *Air Weapons and Licensing (Scotland) Act 2015* amended Part III of the *Civic Government (Scotland) Act 1982* to introduce a discretionary licensing framework for lap dancing clubs. This came into force on 26 April 2019 and broadly mirrors the system introduced in England and Wales through the *Policing and Crime Act 2009*.

The Scottish Government has published guidance (March 2019) for local authorities.

Many councils are consulting on whether to adopt the new framework.

1. Lap dancing clubs in England and Wales

The *Policing and Crime Act 2009* reclassified lap dancing clubs as "sexual entertainment venues" [SEVs] and gave local authorities the power, if they adopted the legislation, to regulate such venues as sex establishments under Schedule 3 to the *Local Government (Miscellaneous Provisions) Act 1982* [Schedule 3]. Any person wishing to operate a sex establishment – an SEV, sex cinema or a sex shop - requires a sex establishment licence from the local authority.[1]

The change introduced by section 27 of the 2009 Act was in response to concerns that, under the *Licensing Act 2003*, local communities did not have sufficient powers to control where lap dancing clubs were established.[2] According to the Home Office guidance, the reclassifiation allows local authorities to refuse a licence application on wider grounds than under the 2003 Act and gives local people a greater say in the licensing process.[3]

The changes came into force in April 2010 in England and May 2010 in Wales.

The Home Office has said that it does not have "precise numbers" for how many local authorities have adopted the 2009 legislation.[4] However, according to one text, the vast majority have done so.[5]

1.1 Sexual entertainment venues

Paragraph 2A of Schedule 3 defines an SEV as "any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer."

"Relevant entertainment" is defined as:

> (a) any live performance; or
>
> (b) any live display of nudity;[6]
>
> which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means)

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1 Unless the requirement for a licence has been waived under para 7 of Schedule 3

2 Further background on this is available in part 3 of the Library's Research Paper (RP 09/04) on the *Policing and Crime Bill 2008-09*

3 Home Office, *Sexual Entertainment Venues: Guidance for England and Wales*, March 2010, p4

4 HC Deb 10 September 2013 c223WH . If a local authority hasn't adopted the 2009 Act, lap dancing clubs will continue to be licensed as "regulated entertainment" under the *Licensing Act 2003*

5 Paul Maginn and Christine Steinmetz (eds), *(Sub)Urban sexscapes: geographies and regulation of the sex industry*, Routledge, 2015, chapter 8

6 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.

An audience can consist of just one person (e.g. where the entertainment takes place in private booths).[7]

The Home Office guidance states that, while local authorities should judge each case on its merits, it would expect "relevant entertainment" to apply to the following:

- lap dancing;
- pole dancing;
- table dancing;
- strip shows;
- peep shows;
- live sex shows.

The guidance notes that a display of nudity does not necessarily mean that a sex establishment licence will be needed – e.g. "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."[8]

Premises that are not sexual entertainment venues

Under paragraph 2A(3) of Schedule 3, premises that provide "relevant entertainment" on an "infrequent basis" are not sexual entertainment venues. This means premises where:

- no relevant entertainment has been provided on more than 11 occasions within a 12 month period;
- no such occasion has begun within a period of one month beginning with the end of the previous occasions; and
- no such occasion has lasted longer than 24 hours.

During a September 2013 Westminster Hall debate, the Home Office said that the exemption was meant to cover "premises such as a pub hosting a one-off birthday party at which a strippergram has been booked" and which "should not require regulation in the same manner as lap-dancing clubs that offer entertainment every night, or even every week or month."[9]

Premises providing relevant entertainment on an infrequent basis will be regulated under the *Licensing Act 2003*.[10]

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7 Paragraph 2A(14) of Schedule 3
8 Home Office guidance, March 2010, para 2.6
9 HC Deb 10 September 2013 c224WH
10 i.e. through a premises licence or club premises certificate or a temporary events notice; For further detail on premises that are not SEVs, see paras 2.11–2.16 of the Home Office guidance

1.2 The licensing process

Under Schedule 3, any person wishing to operate a lap dancing club needs a sex establishment licence from the local authority.[11] A licence is granted for one year. An application must then be made for its renewal.

Once a local authority has decided to grant an SEV licence, it can impose terms, conditions and restrictions on the licence, either in the form of conditions specific to the individual licence or standard conditions applicable to all sex establishments. Standard conditions can relate to:

- the hours of opening;
- displays and advertisements;
- the visibility of the interior to passers-by;
- any change of use from one kind of sex establishment to another.

It is an offence to knowingly contravene, or without reasonable excuse to knowingly permit the contravention of, a term, condition or restriction specified in a licence. A person guilty of an offence can be fined up to £20,000.

Licensing policies

Although not required, many councils publish a licensing policy relating to sex establishments. A policy may include a statement about the locations that a council is likely to consider inappropriate for sex establishments. This could be set out in general terms by reference to a type of premises, such as a school or place of worship, or more specifically, by reference to a defined locality.[12] A policy may also state how many sex establishments a council considers appropriate for an area.

However, a licensing policy must not prevent an individual licence application from being considered on its merits.[13]

The licensing process is set out in chapter 3 of the Home Office guidance.[14] A brief overview of some of the key points is given below.

When must a licence not be granted?

An application for an SEV licence must not be granted when, among other things:

- an applicant is under the age of 18;
- a person is disqualified after having a licence revoked in a local authority area within the last 12 months.

When can an application be refused?

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11 Unless the requirement for a licence has been waived under paragraph 7 of Schedule 3; In addition to an SEV licence, lap dancing clubs will, under the *Licensing Act 2003*, require a premises licence for the sale of alcohol

12 Home Office guidance, March 2010, para 3.46

13 Ibid, para 3.45

14 Ibid, paras 3.13 – 3.55

An application for a licence can be refused, or objected to (see the following section) when, among other things:

- the applicant would be unsuitable to hold a licence because of a conviction "or for any other reason";
- the number of sex establishments in the "relevant locality" at the time of the application is equal to, or exceeds, the number which the authority considers appropriate for the locality. This number can be "nil";
- the granting of a licene would be inappropriate with regard to:
    - the character of the relevant locality; or
    - the use to which any premises in the vicinity are put; or
    - to the layout, character or condition of the premises, in respect of which the application is made.[15]

A decision on what "relevant locality" means is a matter for a local authority, to be decided on the facts of an individual application.[16]

The Home Office guidance, referring to case law, notes that "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".[17]

How can people object to a licence?

Local residents and campaigners often want to know what they can do to stop a lap dancing club from opening, or having its licence renewed. Any person can make objections, but these must relate to one of the grounds for refusing a licence (listed above) and must be submitted to a local authority within 28 days of a licence application.

According to case law, while local authorities are under no obligation to offer an oral hearing to objectors, they may do so at their discretion.[18]

A legal text on licensing notes that the grounds for refusing a licence under Schedule 3 "confer a wide discretion and will not easily be shown to be unreasonable…"[19]

There is no right of appeal if a council grants a licence, despite objections. In a March 2017 PQ response, the Home Office said:

> (…) The absence of a right of appeal against a local authority licensing committee's decision is counter-balanced by the additional conditions prospective licensees must satisfy such as having regard to the characteristics of the area and the use to which other premises in the vicinity are put…[20]

15 The grounds for refusing a licence are set out in full in para 12(3) of Schedule 3
16 Home Office guidance, March 2010, para 3.34
17 Ibid, para 3.36
18 Ibid, para 3.26
19 Philip Kolvin, *Licensed premises: law, practice and policy* (2nd ed), Bloomsbury, 2013, p668
20 PQ 64808 [on sex establishment licensing], answered 1 March 2017

Moral objections

The Home Office guidance, referring to case law, states that objections to SEV licences should not be based on "moral grounds/values".[21]

Licence renewals in 2019

A number of recent licence renewals have been controversial.

Sheffield

In September 2019, Spearmint Rhino had its licence renewed.[22] Camapigners had argued that "strip clubs contribute to a culture where men feel entitled to women's bodies"[23], that former dancers at the Sheffield club had complained about sexual harrasment and assault, and that passers-by felt unsafe. Sheffield Rape and Sexual Abuse Centre, located 350 metres from the club, also opposed the renewal, after a consultation with clients found "overwhelmingly negative" views of the club.

A council investigation found that there had been 74 breaches of the club's licensing conditions and 145 breaches of its code of conduct.

Performers at the club, academics, and Sheffield Hallam's student union argued that closing the club would force women to work underground. Some dancers also claimed that undercover filming by campaigners was "revenge porn tactics" and that they had been "ignored by feminists claiming to rescue us".[24]

Despite the licence breaches, the council said the renewal application would be granted. Campaigners said the decision was "shocking" and that they would object to the club's licence renewal next year. Dancers at the club said the council's decision was a "huge milestone in breaking the social stigma that surrounds sex work".[25]

Bristol

In January 2019, the Urban Tiger club had its licence renewed. Campaigners had claimed that it "objectified" dancers and that violence against women was linked to sexist culture encouraged by lap dancing clubs.[26] It was also argued that the club is too close to residential apartments and areas used by families.

The club's barrister told the council's hearing that the club's dancers were "strong, independent feminists" working in a safe environment and that customers and dancers adhered to the club's code of conduct.[27]

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21 Home Office guidance, March 2010, para 3.23
22 "Sheffield strip club keeps licence despite opposition by feminist coalition", *Guardian*, 17 September 2019
23 Charlotte Mead, branch leader of Sheffield Women's Equality party, quoted in "Sheffield strip club keeps licence despite opposition by feminist coalition", *Guardian*, 17 September 2019
24 Ibid
25 Ibid
26 "Lap dancing venue wins license renewal despite being threatened with closure from equality groups", *Telegraph*, 17 January 2019
27 Ibid

There were no objections from the police to the renewal, and the council found no issues with the club.

2. Lap dancing clubs in Scotland

Section 76 of the *Air Weapons and Licensing (Scotland) Act 2015* amended Part III of the *Civic Government (Scotland) Act 1982* to introduce a discretionary licensing framework for lap dancing clubs. This came into force on 26 April 2019 and broadly mirrors the system introduced in England and Wales through the *Policing and Crime Act 2009*.

The Scottish Government has published guidance (March 2019) for local authorities.

In summer 2019, the City of Edinburgh Council consulted on whether to adopt the new framework. A majority of respondents (65%) were in favour of doing so.[28] The Council has agreed in principle to adopt the legislation, but there will be further consultation, before a final decision is made in 2020.[29]

A Glasgow City Council consultation closed in August 2019. The outcome has not yet been announced.

Other councils have launched their own consultations.

[28] "Strippers' union call for safety and rights of performers to shape Edinburgh Council's licensing plans for lap-dancing clubs", *Edinburgh News*, 17 October 2019

[29] "Edinburgh steps closer to licensing its lap dancing bars", *BBC News*, 21 October 2019

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