

## BACKGROUND TO LEGISLATION

## Appendix G

- 1.1. The position concerning the provision of sex-related entertainment is a complex one and some clarification may be helpful.
- 1.2. As the Committee will be aware, Schedule 12 to the London Government Act 1963 governs the licensing of premises for public music and or music and dancing entertainment.
- 1.3. Separate legislation, being the Cinemas Act 1985, covers the licensing of film exhibitions.
- 1.4. A third piece of legislation - the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Greater London Council (General Powers) Act 1986, governs the licensing of “Sex Shops”; “Sex Cinemas”; and “Sex Encounter Establishments”.
- 1.5. Under the 1982 Act a “sex shop” means any “premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending displaying or demonstrating –
  - (a) sex articles; or
  - (b) other things intended for use in connection with, or for the purpose of stimulating or encouraging –
    - (i) sexual activity; or
    - (ii) acts of force or restraint which are associated with sexual activity”.
- 1.6. The same Act defines “Sex Cinema” as “any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures by whatever means produced which –
  - (a) are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage –
    - (i) sexual activity; or
    - (ii) acts of force or restraint which are associated with sexual activity”.
  - (b) are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions.
- 1.7. The Act, as amended by the 1986 Act, defines “Sex Encounter Establishment” as
  - (a) premises at which performances which are not unlawful are given by one or more persons present and performing, which wholly or mainly

comprise the sexual stimulation of persons admitted to the premises (whether by verbal or any other means); or

- (b) premises at which any services which are not unlawful and which do not constitute sexual activity are provided by one or more persons who are without clothes or who expose their breasts or genital, urinary or excretory organs at any time while they are providing the service; or
- (c) premises at which entertainments which are not unlawful are provided by one or more persons who are without clothes or who expose their breasts or genital, urinary or excretory organs during the entertainment; and
- (d) premises (not being a sex cinema) at which pictures are exhibited by whatever means (and whether or not to the accompaniment of music) in such circumstances that it is reasonable for the appropriate authority to decide that the principal purpose of the exhibition, other than the purpose of generating income, is to stimulate or encourage sexual activity or acts of force or restraint associated with sexual activity.”

- 1.8. Under the terms of the above premises it might be reasonably anticipated that premises that provide striptease and like entertainment might be licensed as “sex encounter establishments”. However, the 1982 Act carries an exemption which states that premises that are licensed (and used) under Schedule 12 to the London Government Act 1963 (for public music and dancing) or under the Cinemas Act 1985 (for film exhibitions) shall not be regarded as a sex encounter establishment.
- 1.9. The practice in London seems to be that striptease performances generally and table dancing / lap dancing clubs are licensed under Schedule 12 to the London Government Act 1963 and not under the Local Government (Miscellaneous Provisions) Act 1982, as amended. This is confirmed with the likes of Westminster City Council and Camden Borough Council – the authorities which cover Soho and surrounding areas and also Croydon Borough Council which has recently licensed a new table dancing club. Legally, the position is not entirely clear as case law suggests that activities such as table dancing and lap dancing may not be music, dancing or public entertainment of a like kind.
- 1.10. Generally, however, licensing authorities require that express consent is given before such entertainment may be provided under a public music and dancing licence. This is effected by way of a clause inserted in the standard public music and dancing licence conditions which prohibits the provision of striptease and like entertainment unless the expressed consent of the licensing authority is sought and given. Under the Council’s current standard licence conditions (which are adapted from the Model

National Standard Conditions for Places of Entertainment) recommended by the Association of British Theatre Technicians, the District Surveyors' Association and the Local Government Licensing Forum, the relevant condition can be found as Additional Condition SX. This states that "The premises shall not be used for any purpose which, but for this licence, would require a sex establishment licence."

- 1.11. Additional Condition GO of the Council's Standard Public Entertainment Licence Conditions requires the keeping of "Good Order" upon all such licensed premises. Good Order is defined as including "indecent behaviour, including sexual intercourse".
- 1.12. Among the applications under consideration are requests for both conditions to be waived so as to allow the provision of striptease entertainment and for consenting adults to take part in consensual sexual intercourse under controlled conditions.
- 1.13. The waiving of condition GO would not provide for sexual intercourse between customers to legitimately take place upon the premises. Such would still constitute breaches of the Disorderly Houses Act of 1751 and other public decency laws enforced by the police. The waiving of condition GO by this Council would have the effect, however, of confirming that this Council would not look to take action for breach of its own licence conditions over customers taking part in consensual sexual intercourse.