



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

<b>Topic of this consultation:</b>	Proposals for transitional arrangements for the provisions in the Policing and Crime Bill relating to the regulation of lap dancing clubs and similar venues.
<b>Scope of this consultation:</b>	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.
<b>Geographical scope:</b>	England and Wales
<b>Impact assessment (IA):</b>	An updated impact assessment is included with this consultation.

### Basic Information

<b>To:</b>	<ul style="list-style-type: none"><li>• Local Authorities</li><li>• Existing operators</li><li>• New operators</li><li>• Licensing practitioners</li><li>• Local residents</li><li>• Campaign Groups</li><li>• Local Businesses</li><li>• Police</li></ul>
<b>Duration:</b>	21 <sup>th</sup> September to 14 <sup>th</sup> December
<b>Enquiries and Responses</b>	Thomas Cottam 4th Floor, Peel Building 2 Marsham Street London SW1P 4DF  <a href="mailto:SEVconsultation@homeoffice.gsi.gov.uk">SEVconsultation@homeoffice.gsi.gov.uk</a>
<b>Additional ways to become involved:</b>	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.
<b>After the consultation:</b>	A summary of responses will be placed on the Home Office website.

## Background

<b>Getting to this stage:</b>	<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>
<b>Previous engagement:</b>	<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 Bill<sup>1</sup>.
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 1<sup>st</sup> appointed date). It will last for 12 months.
  - For 6 months following the 1<sup>st</sup> 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 2<sup>nd</sup> appointed date) will be considered after applications received before the 2<sup>nd</sup> appointed date have been determined
  - Licences granted for sex encounter venues will not take effect until the conclusion of the transitional period (the 3<sup>rd</sup> 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.

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<sup>1</sup> <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  
4<sup>th</sup> Floor, Peel Building  
2 Marsham Street  
London  
SW1P 4DF

or

[SEVconsultation@homeoffice.gsi.gov.uk](mailto: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.<sup>2</sup> Other estimates put the figure closer to 150.<sup>3</sup> 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 club 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 purpose<sup>4</sup>. 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.

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<sup>2</sup> *A Growing Tide*, Object, April 2008:

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

<sup>3</sup> Figure provided by the Lap Dancing Association

<sup>4</sup> [http://www.culture.gov.uk/reference\\_library/foi\\_requests/5500.aspx](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 Act<sup>5</sup>. These provisions were included in the Policing and Crime Bill, which was introduced in Parliament on 19<sup>th</sup> 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.

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<sup>5</sup> 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.<sup>6</sup> 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 1<sup>st</sup> appointed date'). The Secretary of State then intends to specify a date 6 months after the 1<sup>st</sup> appointed date which will be known as the '2<sup>nd</sup> appointed date'. The Government is proposing that between the 1<sup>st</sup> and 2<sup>nd</sup> 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 2<sup>nd</sup> appointed date will be considered individually by local authorities.

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

28. On the 3<sup>rd</sup> appointed date, which it is proposed will be 6 months after the 2<sup>nd</sup> 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 1<sup>st</sup> and 3<sup>rd</sup> 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 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 2<sup>nd</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 3<sup>rd</sup> 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 14<sup>th</sup> 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](http://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](mailto:Nigel.Lawrence@homeoffice.gsi.gov.uk) or alternatively write to him at:

Nigel Lawrence, Consultation Co-ordinator  
Home Office  
Performance and Delivery Unit  
3<sup>rd</sup> 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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