NORWICH CITY COUNCIL

Report for Resolution

Report To	Licensing Committee	**ITEM**
	18 March 2010	**6**
Report of	Head of Legal, Regulatory & Democratic Services	
Subject	Regulation of Lap Dancing Clubs (Policing and Crime Act 2009)	

Purpose

That Members adopt the provisions of section 27 of the Policing and Crime Act 2009, which provide for the regulation of lap dancing clubs.

Recommendation

That Members resolve to adopt the provisions introduced by section 27 of the Policing and Crime Act 2009 following their commencement on 6 April 2010.

Financial Consequences

The financial consequences of this report are nil.

Corporate Objective/Service Plan Priority

The report helps to achieve the service plan priority of protecting the interests of the public through the administration of the licensing function.

Contact Officers

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Background Documents

Department of Culture, Media and Sport (DCMS) consultation on regulating lap dancing clubs (Summer 2008)

Home Office consultation on transitional arrangements for regulation of lap dancing clubs (21 September 2009)

Background

1. Lap dancing premises are currently regulated under the Licensing Act 2003. However, under this legislation the powers available to licensing authorities to control the establishment of lap-dancing premises or impose conditions on their licences are limited. In the Summer of 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.

2. 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.

3. On 21 September 2009 the Home Office launched a 12-week consultation to seek views on Government proposals regarding the transitional arrangements for the lap dancing provisions introduced by what was at the time clause 26 of the Policing and Crime Bill. The Bill subsequently received Royal Assent on 12 November 2009. Clause 26 is now section 27 of the Policing and Crime Act 2009 ("the 2009 Act"), which, together with the explanatory notes, is reproduced at Appendix A.

4. The Government's response to the consultation on transitional arrangements has now been published and the relevant sections are attached at Appendix B to the report.

5. It should be noted that following the publication of the consultation document Parliament amended the name of the new category of sex establishment introduced by section 27 from 'sex encounter venue' to 'sexual entertainment venue'.

6. When commenced and where adopted, the new provisions will allow local authorities to regulate lap dancing clubs and similar venues as sex establishments under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 ("the 1982 Act") This will give local people a greater say over the number and location of lap dancing clubs in their area.

Commencement

7. The consultation proposed that the provisions introduced by section 27 of the 2009 Act would be commenced in April 2010. In their response, the Government considered April 2010 to be a suitable time to commence the provisions and, therefore, the provisions will be commenced on 6 April 2010.

8. The provisions will not come into force until they have been adopted by a local authority and even then existing operators will have a year to comply with the new regime. The Government believes that this provides sufficient flexibility and time for both local authorities and operators to prepare for the provisions.

APPENDIX A

Sex establishments

27 Regulation of lap dancing and other sexual entertainment venues etc
(1) Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (c. 30) (control of sex establishments) is amended as follows.

(2) In paragraph 2 (meaning of “sex establishment”) after “means a” insert “sexual entertainment venue,”

(3) After paragraph 2 insert—

“*Meaning of “sexual entertainment venue”*

2A (1) In this Schedule “sexual entertainment venue” means any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

(2) In this paragraph “relevant entertainment” means—

(a) any live performance; or

(b) any live display of nudity;

which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).

(3) The following are not sexual entertainment venues for the purposes of this Schedule—

(a) sex cinemas and sex shops;

(b) premises at which the provision of relevant entertainment as mentioned in sub-paragraph (1) is such that, at the time in question and including any relevant entertainment which is being so provided at that time—

(i) there have not been more than eleven occasions on which relevant entertainment has been so provided which fall (wholly or partly) within the period of 12 months ending with that time;

(ii) no such occasion has lasted for more than 24 hours; and

(iii) no such occasion has begun within the period of one month beginning with the end of any previous occasion on which relevant entertainment has been so provided (whether or not that previous occasion falls within the 12 month period mentioned in sub-paragraph (i));

(c) premises specified or described in an order made by the relevant national authority.

(4) The relevant national authority may by order amend or repeal sub-paragraph (3)(b).

(5) But no order under sub-paragraph (4) may—

(a) increase the number or length of occasions in any period on which sub-paragraph (3) (b) as originally enacted would permit relevant entertainment to be provided; or

(b) provide for shorter intervals between such occasions.

(6) The relevant national authority may by order provide for descriptions of performances, or of displays of nudity, which are not to be treated as relevant entertainment for the purposes of this Schedule.

(7) Any power of the relevant national authority to make an order under this paragraph—

(a) is exercisable by statutory instrument;

(b) may be exercised so as to make different provision for different cases or descriptions of case or for different purposes; and

(c) includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision.

(8) A statutory instrument containing an order under sub-paragraph (4) may not be made by the Secretary of State unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(9) A statutory instrument containing an order made under sub-paragraph (3) (c) or (6) by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament.

(10) A statutory instrument containing an order under sub-paragraph (4) may not be made by the Welsh Ministers unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

(11) A statutory instrument containing an order made under sub-paragraph (3) (c) or (6) by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

(12) For the purposes of this paragraph relevant entertainment is provided if, and only if, it is provided, or permitted to be provided, by or on behalf of the organiser.

(13) For the purposes of this Schedule references to the use of any premises as a sexual entertainment venue are to be read as references to their use by the organiser.

(14) In this paragraph—

“audience” includes an audience of one;

“display of nudity” means—

(a)
in the case of a woman, exposure of her nipples, pubic area, genitals or anus; and

(b)
in the case of a man, exposure of his pubic area, genitals or anus;

“the organiser”, in relation to the provision of relevant entertainment at premises, means any person who is responsible for the organisation or management of—

(a)
the relevant entertainment; or

(b)
the premises;

"premises" includes any vessel, vehicle or stall but does not include any private dwelling to which the public is not admitted;

"relevant national authority" means—

(a)
in relation to England, the Secretary of State; and

(b)
in relation to Wales, the Welsh Ministers;

and for the purposes of sub-paragraphs (1) and (2) it does not matter whether the financial gain arises directly or indirectly from the performance or display of nudity."

(4) In paragraph 9(1) (duration of licence) after "paragraph 16" insert "or 27A below".

(5) In paragraph 12(3) (refusal of licences) for paragraph (c) substitute—

"(c) that the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality;".

(6) In paragraph 13 (power to prescribe standard conditions)—

(a) in sub-paragraph (2) (a) after "for" insert "sexual entertainment venues,",

(b) in sub-paragraph (2) (b) after "of" insert "sexual entertainment venues,", and

(c) in sub-paragraph (3) for paragraph (d) (as originally enacted) substitute—

"(d) any change from one kind of sex establishment mentioned in sub-paragraph (2) (a) above to another kind of sex establishment so mentioned."

(7) In paragraph 19 (fees in relation to applications) after "grant," insert "variation,".

(8) After paragraph 25 (powers of constables and local authority officers) insert—

"25A (1) A person acting under the authority of a warrant under paragraph 25(4) may seize and remove anything found on the premises concerned that the person reasonably believes could be forfeited under sub-paragraph (4).

(2) The person who, immediately before the seizure, had custody or control of anything seized under sub-paragraph (1) may request any authorised officer of a local authority who seized it to provide a record of what was seized.

(3) The authorised officer must provide the record within a reasonable time of the request being made.

(4) The court by or before which a person is convicted of an offence under paragraph 20 or 23 of this Schedule may order anything—

(a) produced to the court; and

(b) shown to the satisfaction of the court to relate to the offence;

to be forfeited and dealt with in such manner as the court may order.

(5) But the court may not order the forfeiture of anything under sub-paragraph (4) if it (whether alone or taken together with other things being forfeited which appear to

the court to have been in the custody or control of the same person) is worth more than the amount of the maximum fine specified in paragraph 22(1).

(6) Sub-paragraph (7) applies if a person claiming to be the owner of, or otherwise interested in, anything that may be forfeited applies to be heard by the court.

(7) The court may not order the forfeiture unless the person has had an opportunity to show why the order should not be made."

(9) After paragraph 27(10) (appeals) insert—

"(10A) Sub-paragraph (10) does not apply if the grounds for refusing an application for the renewal of a licence are those set out in paragraph 12(3)(c) or (d) of this Schedule."

(10) After paragraph 27 (appeals) insert—

"*Premises which are deemed sexual entertainment venues*

27A (1) This paragraph applies if—

(a) premises are subject to a licence for a sexual entertainment venue; and

(b) their use would be use as such a venue but for the operation of paragraph 2A (3) (b).

(2) This Schedule applies as if—

(a) the premises were a sexual entertainment venue; and

(b) the use or business of the premises was use as, or the business of, such a venue.

(3) But the appropriate authority must cancel the licence if the holder of the licence asks them in writing to do so.

(4) In this paragraph "premises" has the same meaning as in paragraph 2A."

(11) Schedule 3 (provisions which are transitional on this section) has effect.

Explanatory Notes

This section inserts a new category of “sex establishment” called a “sexual entertainment venue” into Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (the “1982 Act”). This will bring the licensing of lap dancing and pole dancing clubs and other similar venues under the regime set out in the 1982 Act, which is currently used to regulate establishments such as sex shops and sex cinemas.

192. The section would insert a new paragraph 2A into Schedule 3 to the Local Government Act 1982.

193. Sub-paragraphs (1), (2), (12) and (14) of the new paragraph define a “sexual entertainment venue” as premises where relevant entertainment is provided, or permitted to be provided, by or on behalf of the organiser in front of a live audience for the financial gain of the organiser or entertainer. “Relevant entertainment” may take the form of a live performance or live display of nudity and must be of such a nature that, ignoring financial gain, it must reasonably be assumed to have been provided solely or principally for the purpose of sexually stimulating any member of the audience. Sub-paragraph (14) states that an audience can consist of just one person.

194. Sub-paragraph (3) specifies that the following are not sexual entertainment venues for the purpose of the Schedule:

sex shops and sex cinemas;

any premises that at the time in question:

> has not provided relevant entertainment on more than 11 occasions within the previous 12 months;
>
> no such occasion has begun within the period of one month beginning with the end of any previous occasion; and
>
> no such occasion has lasted for more than 24 hours

other premises exempted by order of the Secretary of State, or in Wales the Welsh Ministers (sub-paragraph (3) (c)). In addition, under sub-paragraph (6) they may also make an order that certain types of performances or displays of nudity are not to be treated as relevant entertainment for the purposes of the Schedule.

195. Sub-paragraph (4) states that the Secretary of State, or in Wales the Welsh Ministers, may by order amend or repeal sub-paragraph (3)(b) which is the provision excluding premises which provide relevant entertainment infrequently (i.e. less than eleven times in 12 months etc). However, by sub-paragraph (5), the power cannot be used to increase the number or length of occasions in any period that relevant entertainment can be provided, or provide for shorter intervals between such occasions, than this provision as originally enacted will allow. For example, the order making power could not be used to allow premises to provide relevant entertainment 20 times a year.

196. Sub-paragraphs (7) to (11) make provision relating to the exercise of the order making powers described in sub-paragraphs (3), (4) and (6). In particular, the power to make an order under sub-paragraphs (3) and (6) are subject to the negative

resolution procedure, while the power to make an order under sub-paragraph (4) regarding infrequent entertainment is subject to the affirmative resolution procedure.

197. Sub-paragraph (13) stipulates that it is the organiser that “uses” any premises as a sexual entertainment venue. It is therefore the organiser that must apply for a licence under the 1982 Act. “Organiser” is defined in sub-paragraph (14) as any person who is responsible for the organisation or management of the relevant entertainment or the premises.

198. Sub-paragraph (14) provides various definitions including the meaning of “nudity” in the cases of men and women. The definition of “premises” expressly excludes private dwellings to which the public are not admitted. Sub-paragraph (14) also states that it does not matter whether the financial gain arises directly or indirectly from the performance or display or whether it is the person providing the entertainment who receives the benefit or some other person. Therefore, for example, it should not matter whether those admitted to the premises pay for admission to, or membership of, the club.

199. Subsection (4) is consequential on subsection (10). Subsection (10) inserts a new paragraph 27A into Schedule 3 to the 1982 Act. It makes provision for certain premises to be deemed to be sexual entertainment venues. This is necessary due to the operation of paragraph 2A(3)(b), which stipulates circumstances when premises are not to be considered sexual entertainment venues for the purposes of this schedule, even though they may have a licence to operate as such (for example, if they have only just started operating as a lap dancing club). Paragraph 27A provides that if premises have a sexual entertainment venue licence and they would be categorised as a sexual entertainment venue but for the exemption in paragraph 2A(3)(b) for infrequent events, the premises are deemed to be a sexual entertainment venue for the duration of the licence irrespective of how frequently relevant entertainment is provided. Paragraph 27A (3) states that a local authority must cancel a licence held by someone using such premises if asked to so in writing by the licence holder.

200. Subsection (5) substitutes paragraph 12(3) (c) of Schedule 3 to the 1982 Act, which deals with refusal of licences, to allow local authorities to set a limit on the number of sex establishments of a particular type in a locality, as well as the number of sex establishments generally, and to refuse a licence on the basis that the number of establishments in the locality is equal to or exceeds the number which the authority considers appropriate.

201. Subsection (6) amends paragraph 13(2) and (3) of Schedule 3 to the 1982 Act which provides local authorities with the power to prescribe in regulations standard terms and conditions for sex establishment licences. The amendments allow local authorities to impose different standard conditions on a sexual entertainment venue compared with other kinds of sex establishment, such as a sex shop. Copies of any regulations made by a local authority under paragraph 13 of Schedule 3 must be supplied by the local authority upon request and payment of a reasonable fee.

202. Subsection (7) ensures that the local authority will be able to charge a fee for applications to vary a licence granted under the 1982 Act. Indeed, a reasonable fee set by the local authority is also payable for the grant, renewal or transfer of a licence under the 1982 Act.

203. Subsection (8) inserts a new paragraph 25A into Schedule 3 to the 1982 Act that stipulates the procedure by which the police and local authority officers can,

when acting under the authority of a warrant issued under paragraph 25(4), seize property from premises. The court can then order that property be forfeited following a conviction for an offence under either paragraph 20 (enforcement) or 23 (offences relating to persons under 18) of the 1982 Act. The provisions largely replicate those inserted by the Greater London Council (General Powers) Act 1986 but are necessary as that Act is of limited application. Subsection (9) similarly replicates an amendment made by the 1986 Act.

APPENDIX B

Regulation of Lap Dancing Clubs

Consultation on Transitional Arrangements
Government Response

Introduction

1. On 21 September 2009 the Home Office launched a 12-week consultation[1] to seek views on Government proposals regarding the transitional arrangements for the lap dancing provisions introduced by what was at the time clause 26 of the Policing and Crime Bill. The Bill subsequently received Royal Assent on 12 November 2009. Clause 26 is now section 27 of the Policing and Crime Act 2009 ("the 2009 Act")[2]. This document provides a summary of the responses to the consultation and sets out the Government's response.

2. It should be noted that following the publication of the consultation document Parliament amended the name of the new category of sex establishment introduced by section 27 from 'sex encounter venue' to 'sexual entertainment venue'. In this document the new name is used.

3. When commenced and where adopted, the new provisions will allow local authorities to regulate lap dancing clubs and similar venues as sex establishments under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 ("the 1982 Act")[3]. This will give local people a greater say over the number and location of lap dancing clubs in their area.

4. The consultation closed on 14th December 2009 and received 154 responses from a variety of sources including local authorities, operators, industry employees, third sector organisations and individual respondents.

Summary

5. In summary, the proposals were broadly welcomed by the majority of respondents and received significant support amongst local authorities, third sectors organisations and individual respondents. However, operators expressed concerns about the potential impact of the proposed provisions on the industry, while club employees were concerned about the impact on their jobs.

6. Following the consultation the Government has decided to broadly adopt the proposals as set out in the consultation document. However, in line with views expressed in the responses changes will be made to the definition of an “existing operator” and the way existing conditions on premises licence and club premises certificates are dealt with when an existing operator is granted a sex establishment licence. The changes are explained below.

1 http://www.homeoffice.gov.uk/documents/cons-2009-sev/index.html
2 http://www.opsi.gov.uk/acts/acts2009/ukpga_20090026_en_1
3 http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1982/cukpga_19820030_en_1

How will the 1982 Act apply to existing operators?

Government Proposal

7. The Government proposed that where the provisions are adopted by local authorities, existing lap dancing clubs and similar venues in those areas who wish to continue to provide relevant entertainment will be required to apply for a new sex establishment licence without the benefit of ‘grandfather rights’.

Consultation Responses

8. The proposal was supported by a large majority of respondents who felt that to give existing operators ‘grandfather rights’ or any other form of preferential treatment when their applications come to be considered would critically undermine the intent of the new legislation, which is designed to give local communities a greater say over the regulation of lap dancing clubs and similar venues.

9. A number of local authorities also stressed that giving existing operators grandfather rights or other preferential treatment could potentially conflict with their ability under Schedule 3 to the 1982 Act to restrict sexual entertainment venues in a particular locality to a number that they consider appropriate.

10. However, operators and club employees felt strongly that existing operators, especially those with explicit permission to provide relevant entertainment under the terms of an existing premises licence or club premises certificate, should be granted ‘grandfather rights’ or a degree of certainty that such venues would be granted a sex establishment licence.

11. It was argued that not to grant ‘grandfather right’ to existing operators, who have been granted a licence under the 2003 Act in perpetuity, would be unfair and would place investment and jobs at risk.

12. It was also argued by some respondents from within the industry that the language used in the consultation document did not accurately reflect their position. They stated that they were not seeking “preferential treatment” or to exempt existing businesses from the new regime, but were simply arguing that existing lap dancing clubs with expressed permission to operate as such under the 2003 Act regime should be given ‘grandfather rights’.

13. A number of respondents raised questions regarding the compatibility of the proposal with the ECHR. Operators and the Lap Dancing Association argued that existing permissions under the Licensing Act 2003 that authorise them to provide ‘adult entertainment’ constitutes a possession as defined under Article 1 Protocol 1 and, therefore, any decision to remove that existing permission could potentially breach Article 1 Protocol 1.

14. For similar reasons a number of local authorities sought guidance from the Government regarding the rights of existing operators under Article 1 Protocol 1.

Government Response

15. The Government acknowledges the level of concern from within the lap dancing industry regarding this proposal.

16. These concerns are not taken lightly by the Government. However, having reviewed the consultation responses, we continue to believe that the approach set out in the consultation document is correct. Therefore, where the provisions are adopted by local authorities, existing operators will be required to apply for a sex establishment licence in the same way as new operators.

17. With regards to Article 1 Protocol 1, further guidance will be provided to local authorities to ensure they exercise their powers in accordance with Convention rights before the provisions are commenced.

Transitional Period

Government Proposal

18. It was proposed that the transitional period will last for 12 months starting on the day the new provisions come into force in the relevant local authority area (‘the 1st appointed day’). Six months after the 1st appointed day will be known as the ‘2nd appointed day’. The Government proposed that between the 1st and 2nd appointed day applicants would be able to submit applications to be considered by the local authority. At the end of this period, local authorities would consider all applications received during this period together and would not grant any licences until all the applications have been considered. Applications received after the 2nd appointed day would be considered individually.

19. Licences granted to new applicants would take effect immediately while licences granted to existing operators would take effect on the 3rd appointed day, which, as proposed, would be 6 months after the 2nd appointed day, or, if longer, when their application is determined. Existing operators who do not apply for or are not granted

a sex establishment licence would be able to provide relevant entertainment under the terms of their premises licence or club premises certificate until the 3rd appointed day.

Consultation Responses

20. The vast majority of respondents supported the proposals for the transitional period and felt that 12 months in total was suitable.

21. A very small number of respondents felt that 12 months was too long, either due to the likely low number of applications or because it was felt that lap dancing clubs should be subject to the new regime as soon as possible. Conversely, a small number of operators and some local authorities felt that the transitional period should be longer in order to allow sufficient time to deal with hearings and appeals.

Government Response

22. In light of the support expressed by respondents, the Government has decided to proceed with the proposal as set out in the consultation document. The transitional period will be 12 months.

Existing Operators

Government Proposal

23. For the purposes of transitional arrangements, it is proposed that an ‘existing operator’ is defined as a person operating on the 1st appointed day who is authorised by an existing premises licence or club premises certificate, either explicitly or implicitly, to provide entertainment that would be defined as relevant entertainment under section 27 of the 2009 Act.

Consultation Responses

24. The proposal was broadly supported. However, concern was expressed amongst some local authorities that the definition of an ‘existing operator’ was unclear. Some respondents argued that by defining ‘existing operators’ as venues whose permission under the Licensing Act 2003 “either explicitly or implicitly” authorises them to provide relevant entertainment could result in many more venues being identified as ‘existing operators’ than there are lap dancing clubs or venues who offer relevant entertainment.

25. In order to avoid confusion some local authorities and operators felt that the definition of ‘existing operators’ should be restricted to those who are known to have provided relevant entertainment in the past or those who have explicit permission under the terms of their premises licence or club premises certificate to provide relevant entertainment.

26. A number of respondents felt that Government guidance would be necessary to provide further clarity on the proposal set out in the consultation document.

Government Response

27. We note the concerns expressed by many respondents that the definition of an ‘existing operators’ as set out above could be interpreted widely and potentially include premises that have not previously offered relevant entertainment.

28. We acknowledge the need to tighten the definition and are currently considering alternative approaches.

Existing Conditions

Government Proposal

29. The consultation document proposed that where existing operators who are subject to conditions on their premises licence or club premises certificate that relate specifically to the provision of ‘relevant entertainment’ as defined by section 27 of the 2009 Act, are granted a sex establishment licence, such conditions will be read as though they have been deleted from the premises licence or club premises certificate from the 3rd appointed day onwards.

Consultation Responses

30. The majority of respondents supported the principle that a venue’s licence conditions should not be duplicated on both a sex establishment licence and a premises licence or club premises certificate.

31. However, a significant number of respondents stressed that in certain circumstances licence conditions on a premises licence or club premises certificate, such as those relating to door supervision or CCTV, will be relevant not only to the provision of relevant entertainment but also to other licensable activities that will continue to be authorised under the 2003 Act. For this reason, many respondents urged caution that only licence conditions that relate *“solely and exclusively”* to the provision of relevant entertainment are deleted from a venues premises licence or club premises certificate in the event that they are granted a sex establishment licence.

32. A small number of respondents suggested that in order to avoid confusion relevant licence conditions should not simply be *“read as though they have been deleted”,* but should actually be removed from the premises licence or club premises certificate.

33. A majority of those operators who responded argued that where an existing operator is granted a sex establishment licence conditions in their premises licence or club premises certificate that are specific to the provision of relevant entertainment should be transferred to the new sex establishment licence and the transitional period should not be used as an opportunity to alter an existing set of conditions.

Government Response

34. The Government agrees that only those conditions that relate exclusively to the provision of relevant entertainment should be read as though they have been deleted

to avoid removing conditions from premises licences or club premises certificates that are relevant to the regulation of other activities.

35. Where an existing operator is granted a new sex establishment licence we consider it sufficient that relevant existing conditions are read as though they have been deleted rather than actually removed from their premises licence or club premises certificate. However, we understand that in certain cases a local authority and an operator might come to an agreement that it is preferable for the avoidance of doubt to actually remove redundant licence conditions. This can be done where suitable via the minor variations procedure as set out in section 41A of the 2003 Act.

36. The Government does not intend to limit the discretion that local authorities have under the 1982 Act to impose conditions on sex establishment licences, whether they are granted to existing operators or new applicants. Clearly, where appropriate, local authorities may choose to transfer existing conditions from a premises licence or club premises certificate to a new sex establishment licence, but we do not believe a local authority's capacity to impose new conditions or alter existing conditions should be fettered if they believe that a change or addition is necessary.

Commencement

Government Proposal

49. It was proposed that the provisions introduced by section 27 of the 2009 Act would be commenced in April 2010.

Consultation Responses

50. The vast majority of respondents felt that April 2010 was suitable for the commencement of the provisions. However, some respondents representing the lap dancing industry felt that April 2010 was too soon and did not allow sufficient time for operators to prepare for the new provisions.

51. The Local Government Association (LGA) raised concerns that commencing the provisions in April would clash with the local elections, which would delay when affected local authorities would be able to take the necessary steps to adopt the new legislation.

Government Response

52. In light of the consultation responses the Government considers April 2010 to be a suitable time to commence the provisions. Therefore, these provisions will be commenced on 6 April 2010. Obviously, the provisions will not come into force until they have been adopted by a local authority and even then existing operators will have a year to comply with the new regime. The Government believes that this provides sufficient flexibility and time for both local authorities and operators to prepare for the provisions.

Impact Assessment

Consultation Responses

53. Few respondents commented on the impact assessment (IA) in detail. In general, respondents representing existing operators argued that the IA underestimates the likely cost of the new provisions to industry. Based on a survey of their members the Lap Dancing Association (LDA) state that the entire industry (138 businesses in total) has a turnover of £2.1 billion, pays £60 million in tax annually and employs roughly 15,000 people. Based on these figures the LDA argue that the cost to business and ultimately to the economy could be significant. In addition a number of respondents from within the lap dancing industry also claim that it is not realistic to assume that existing operators can simply change the nature of their business in the event that they are refused a sex establishment licence.

54. Some local authorities and the LGA state that the IA does not take account of the likely increased demands on local authority resources during and after the transitional period. The LGA also argue that the IA does not account for the cost of reissuing premises licence or club premises certificates following the deletion of certain conditions or the cost to local authorities of the duty to consult local people if have not adopt the new provisions after one year following commencement.

55. Other respondents argue that the IA should include the likely benefits to local authorities that will result from the new provisions, including, the ability to make objections on wider grounds rather than having to frame opposition in terms of the licensing objectives.

Government Response

56. The Government continues to believe that the IA represents a fair estimate of the potential costs of the new provisions given the relative uncertainty regarding the number of premises that will be affected. The costs provided in the IA are indicative and we accept that the total cost to industry could be higher than the IA predicts, but we are also aware that it could be lower.

57. With regards to the cost to local authorities, we acknowledge that they may experience increased demands on resources, especially during the transitional period, but are confident that all such costs can be absorbed by licence fees. There is no obligation for local authorities to recall licences in order to delete conditions, although where local authorities want to do so it can be achieved through the existing variation processes. We do not agree that the duty to consult local people imposes a new burden on those local authorities who do not adopt the legislation as the duty is simply an extension of existing duties carried already by local authorities.