

**LICENSING COMMITTEE : 3 November 2009  
PUBLIC PROTECTION COMMITTEE: 3 November 2009**

**Report of the Chief Strategic Planning and Environment Officer**

**CONSULTATION ON SEX ESTABLISHMENT LICENSING**

**1. Background**

- 1.1 Sex Establishment Licences are issued under the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. Currently four premises are licensed as sex establishments in Cardiff.
- 1.2 Lap Dancing premises are licensed under the provisions of the Licensing Act 2003 to provide regulated entertainment involving music and dancing. Where the activity involves nudity the operators normally have an additional set of conditions attached to their licence. Not all premises will have notified the authority that they are providing lap dancing entertainment however it is believed that there are five premises currently licensed to provide lap dancing entertainment.
- 1.3 Section 25 of the Policing and Crime Bill, currently being considered by Parliament, is to enable the Welsh Assembly Government to amend Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. In essence the Bill is to transfer lap dancing from regulation under the Licensing Act 2003 to regulation under the Local Government (Miscellaneous Provisions) Act 1982. This will enable an authority to judge the application on a greater range of issues than permitted by the licensing objectives of the Licensing Act. The amendments, excisable by statutory instrument, will be such so as to include sex encounter venues as premises which require a licence under Schedule 3. Sex encounter venues are defined as premises which provide to an audience, more frequently than once a month, live performances or displays of nudity intended to be sexually stimulating. The Bill also provides a number of enforcement measures for police officers and local authority officers.
- 1.4 The Home Office has issued a consultation document on the transitional arrangements which could be adopted should the Policing and Crime Bill be enacted. This report is to provide details of the consultation document in respect of the transitional provisions proposed.

**2. Details of the Consultation.**

- 2.1 On 21 September 2009 the Home Office issued a consultation document entitled "Regulation of Lap Dancing Clubs – Consultation on Transitional Arrangements." The consultation seeks views on proposals relating to transitional arrangements

relating to the regulation of lap dancing clubs and similar venues. A transitional period will be necessary 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.

2.2 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 in order to enable a wider range of considerations to be taken into account than the licensing objectives of the Licensing Act 2003. 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 establishments as sex establishments under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. The amendments will in summary:

- 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.

The current consultation is not in connection with these provisions which have already been consulted upon. The consultation deals only with the transitional arrangements should the Bill be enacted.

2.3 The government do not propose to provide existing operators with “grandfather rights” or any form of preferential treatment as part of the transition system so that each operator would need approval despite their having an existing licence. The 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 (ie their human rights) when deciding an application. The Government acknowledge 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 but 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.

- 2.4 The transitional arrangements are to provide a system for operators to make application to the local authority. 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 the amended 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)
- 2.5 The effect will be that existing operators will be able to continue under their existing permission without interruption during a local transitional period of up to twelve months or until their application is determined, whichever is sooner. For six months after the first appointed date, applicants will be able to submit applications - all of which can be considered together by the local authority. Applications received after the second appointed day (after the first six months) will be considered after applications received before the second appointed day have been determined. New licences will not come into effect until the end of the transitional period on the third appointed day.
- 2.6 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.
- 2.7 The requirement to obtain a licence under Schedule 3 of the 1982 Act will enable local people to have the opportunity to make representations to the local authority on the application. 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.

2.8 The consultation document contains questions for respondents to address, details of which together with recommended responses are contained in Appendix A

### **3. Timescale.**

3.1 The consultation closes on 14 December 2009.

3.2 Subject to the Policing and Crime Bill receiving Royal Assent, the government believes 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 Welsh Assembly has passed a resolution to bring the Act into force together with transitional arrangements. The local authority will then need resolve that the amendments to Schedule 3 of the 1982 Act should apply to the area and appoint a day for the provisions to come in force in that area.

3.3 Prior to the commencement of the provisions, the Home Office has undertaken to 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.

### **4. Achievability**

This report contains no financial, equality, personnel or property implications. The government has carried out an equality assessment of the proposed legislation which has found that no unintended or disproportionate impact is likely. Any application submitted under the 1982 Act must be accompanied by the appropriate fee which is set at a level to cover the cost of dealing with the application.

### **5. Legal Implications**

5.1 The legal implications are adequately described in the text of this Report.

### **6. Recommendation**

6.1 That the report be noted and that the responses to the consultation document, detailed in Appendix A be approved.

**Sean Hannaby**  
**Chief Strategic Planning and Environment Officer**

**24 September 2009**

This report has been prepared in accordance with procedures approved by Corporate Managers.

Background Papers: Standard Licence Conditions for a Sex Establishment.

APPENDIX A.

**Regulation of Lap Dancing Clubs – Consultation on Transitional Arrangements.**

**Responses:**

<b>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?</b>
The provision of lap dancing entertainment has a wider impact on the locality than can be considered under the Licensing Act 2003 and the Act should therefore apply to existing operators to enable local residents to have these wider concerns considered.
<b>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?</b>
The proposed timescales are appropriate.
<b>33. Do you agree with the proposed approach for identifying existing operators?</b>
Agreed.
<b>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’?</b>
The automatic deletion of existing relevant conditions is agreed. Existing licence holders should be required to produce their existing 2003 Act licence as part of an application under Schedule 3 of the 1982 Act so that the conditions can be explicitly deleted from the licence by the licensing authority.
<b>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?</b>
No Comment.

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

April 2010 would be an appropriate date.

**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?**

Agreed.