



Changes to the law could strip Lap Dancing Clubs of their licences

BRIEFING

Introduction

The Government has come under pressure to address what is widely regarded as a loophole in the law, which enables lap dancing venues to be regulated under the same legislation as pubs, clubs and disco dancing.

It has been well documented in the media that under the current law, there has been an increase in the number of lap dancing venues and many communities feel powerless to object to the opening of a new lap dancing club in their area.

From April, the law will change to give objectors more power to object to a licence for a lap dancing club.

The Old Law

Before the Licensing Act 2003 ('the 2003 Act') came into force, lap dancing clubs were required to obtain a public entertainment licence with a special condition to allow lap dancing to take place. It was easier for a local authority to refuse an application for a licence or to designate appropriate areas for such establishments to open.

Under the 2003 Act, an interested party can only object to a licence being granted to a venue on the basis of the four licensing objectives:-

1. The prevention of crime and disorder;
2. The promotion of public safety;
3. The prevention of public nuisance; and
4. The protection of children from harm.

It soon became apparent to objectors that it was very difficult to object to a new licence for a lap dancing club on the basis of the licensing objectives. It is no easy task for an objector to obtain evidence that a lap dancing club will increase crime and disorder in an area.

Equally, owners of lap dancing clubs have taken advantage of the relaxation of the laws under the 2003 Act, as a licensing committee cannot take into account concerns that a lap dancing club could detract from an area, or that it is in an inappropriate location. This has led to reports of a growing number of lap dancing clubs opening in town centres.

The New Law

Following public anger at the way lap dancing clubs are regulated under the 2003 Act, the new Policing and Crime Act 2009 will change the law regulating such establishments, with the new rules coming into force in April 2010.

Lap dancing venues will now be regulated under the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act'). It is up to each local authority to decide whether the provisions of the



1982 Act should apply to their area, so it is possible that the new legislation will not necessarily apply all over England and Wales. Interested parties should make enquiries with their local authority to find out if the new laws will affect their area, although it should be noted that local authorities who have not adopted the new legislation within a year of it coming into force will be required to consult with local people as to whether the new rules should apply to their area.

Under the new legislation, lap dancing clubs will be classified as “sexual entertainment venues”. “Relevant entertainment” is defined as any live performance or any live display of nudity provided solely or principally for the purpose of sexually stimulating any member of the audience.

The new legislation will not apply to venues where “relevant entertainment” has taken place on no more than eleven occasions within a 12 month period, although the Secretary of State has the power to amend or repeal this qualification.

Importantly there will be no “grandfather rights” for existing lap dancing clubs. If they wish to continue trading they will need to apply for a licence under the new regime. The Government has undertaken that existing lap dancing clubs will be given a reasonable period, probably 12 months from April 2010, to apply for a licence. Lap dancing clubs will face closure if they fail to apply for a new licence within the transitional period.

The New Procedure

The following paragraph outlines the procedure under the new legislation:-

- The applicant will make a written application for a licence to the local authority and will be required to give public notice of the application in a local newspaper and to display notices of the application for 21 days on or near the premises;
- Any person wishing to object to a licence should give written notice of the objection to the appropriate authority not later than 28 days after the date of the application, stating in general terms the grounds of the objection;
- Before refusing to grant a licence, the appropriate authority should give the applicant an opportunity to appear before and be heard by a committee or sub-committee.

The main changes to the law relate to the grounds under which an authority can refuse to grant a licence including:-

- The number of establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider appropriate for the area.

The legislation states that “nil” may be an appropriate number for the purposes of this paragraph;



- The grant of the licence would be inappropriate having regard to:-
 - the character of the relevant locality;
 - the use to which any premises in the vicinity are put; and
 - the layout, character or condition of the premises in respect of which the application is made.

These grounds of refusal are more tailored than the current licensing objectives to deal with the issues which could result from having a lap dancing club in a particular area. Objectors clearly have much more power to object to a licence, although the circumstances will vary in each case.

However, many club owners are concerned that the changes to the law will lead to job losses in the industry if existing lap dancing clubs lose their licences.

Conclusion

It seems likely that the debate surrounding the morality and ethics of lap dancing clubs will continue for many years to come. However, the Government has now recognised that many people want reassurance that lap dancing clubs

will be properly regulated and situated in appropriate areas, instead of becoming unwanted neighbours in the community.

Owners of lap dancing clubs should consult a licensing solicitor at an early stage, ideally before they put in their application for a new licence, to put themselves in a stronger position to obtain a licence under the new rules. They should also consider whether they can obtain any evidence which will support their application for a licence.

Equally, those who have concerns about existing lap dancing clubs, now have an opportunity to ask their local authority to refuse to grant a licence on the grounds that would not have been successful under the old regime. Without doubt, some existing venues, faced with organised opposition, will be forced to close. Early advice should be taken by those who are considering such action and keep an eye out for those public notices advertising the applications.

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