

December 2009

Fawcett Society and OBJECT:

Joint response to the consultation on transitional arrangements regarding the regulation of lap dancing clubs

Introduction

- The Fawcett Society and OBJECT are grateful for the opportunity to respond to this consultation.
- Having originally sought an extension of the Local Government (Miscellaneous Provisions) Act 1982 so as to bring lap-dancing within its purview, the Fawcett Society and OBJECT are particularly grateful to the Government for its proposal to legislate in this manner.
- Fawcett Society and OBJECT strongly support the proposals in the transitional arrangements to bring all lap-dancing venues within the regulation of the legislation and consider the transitional period to be adequate and reasonable to enable the transition to take place in an orderly manner.
- The specific questions raised by the consultation are set out and answered below.

The consultation questions

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?

- The proposal is supported. All venues should be brought under the same regime without preferential treatment given to existing operators.
- Preferential treatment would seriously undermine the intention of the legislation . to give local authorities and local people greater powers to regulate lap dancing clubs in their area. As the Government notes, some lap dancing clubs operating today were granted a license despite substantial opposition in the relevant locality. Local people were unable to object on the basis of factors such as the character of area, the appropriate number of premises for a particular locality, or gender equality concerns. This legislation seeks to redress previous failings in the licensing regime for lap dancing clubs, therefore it is right that all lap dancing clubs should fall within its purview.
- If preferential treatment was to be accorded, it would be very difficult to draw a line. For instance, would the line be drawn between current lap-dancing establishments and those with licences which permitted lap-dancing (or, more realistically, did not exclude it)? Or would it be drawn between current lap-dancing establishments and those which had only occasionally put on lap-dancing? Or would it be drawn between those who did and did not

have licences which permitted lap-dancing granted before a particular date. The risk is that the publication of transitional provisions will provoke a rush of premises seeking to get under the wire by whatever means. This was the experience of the Gambling Act 2005 when the Government, wishing there to be only 16 new casino licences, left the window open long enough for 120 applications to be made under the former legislation.

- In so far as preferential treatment would distinguish between lap-dancing venues and other licensed venues, this would again give rise to difficulties of interpretation, and would be anti-competitive. It is right that all operators should play on a level playing field.

What are your views on the proposed time periods between the 1st, 2nd and 3rd appointed dates and do you believe that a transitional period of 12 months in total is appropriate?

The periods are considered to be entirely reasonable.

Do you agree with the proposed approach for identifying existing operators?

Yes.

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'?

- The principle of non-duplication is agreed.
- However, it will be necessary for the transitional provisions to be very clear as to the test for which conditions are to be deleted. For example, a condition may relate to the safety of performers, in which case it would continue to be relevant if non-sexual dance performance continues to be provided under the Licensing Act 2003. Therefore, the only conditions which should be deleted are those which relate solely and exclusively to the sexual nature of the entertainment, e.g. provisions regarding contact, notices on tables regarding non touching of dancers etc.

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?

- It is in principle sensible to make provision for sex encounter establishment licences to be treated as sex encounter venue licences upon adoption of the 2009 Act provisions. In practice, it is unlikely that this provision will have a significant practical effect. That is because the proviso to Schedule 3 paragraph 3A of the Local Government (Miscellaneous Provisions) Act 1982 excludes premises which are licensed for regulated entertainment under the Licensing Act 2003. That is one of the reasons why the 2009 Act provisions were required.
- The proviso aside, the definition of sex encounter establishment in Schedule 3 paragraph 3A of the 1982 Act is wider than the definition of sexual entertainment venue in the 2009 Act. For example, the former includes premises (other than sex cinemas) at which pictures are exhibited by whatever means for the purpose of sexual stimulation.
- Furthermore, the provisions regarding hostess bars set out in Section 33 of the London Local Authorities Act 2007 are far wider than the provisions regarding sexual entertainment in the 2009 Act. For example, hostess bars include premises offering the provision of companions for customers on the premises. (Again, there is an exemption for premises with a licence under the Licensing Act 2003.)

- There are two reasons why London authorities may be reluctant to adopt these provisions. The first is that their powers under Schedule 3 paragraph 3A of the 1982 Act and under section 33 of the London Local Authorities Act 2007 allow them to regulate a wider range of premises than under section 27 of the 2009 Act. The second is that the frequency exemption written into section 27 of the 2009 Act means that they may lose actual or potential control over occasional performances.
- In summary, the new provisions have left the law in a somewhat unsatisfactory state, because:
 - the existing London provisions create exemptions for venues with premises licences under the Licensing Act 2003, even though that Act does not recognise community concerns of the kind protected by the 2009 legislation;
 - the 2009 legislation is narrower in scope and creates exemptions for occasional performances.
- A solution to this in London is to repeal sub-paragraphs (i) and (ii) of the Proviso to Schedule 3 paragraph 3A of the 1982 Act, so that premises could not avoid regulation under the sex licensing provisions merely by having a licence for regulated entertainment or late night refreshment under the Licensing Act 2003. That would enable London authorities to regulate hostess bars and lap-dancing venues under the existing London provisions without any of the upheaval of transition to the new regime.
- Failing that, London authorities should be enabled to adopt the new provisions without losing the ability to regulate hostess bars. The Transitional Provisions Order should make explicit provision to this effect.

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?

- It is most important that the provisions are not repealed, but extended to encompass premises which need but lack a licence pursuant to the 2009 Act.
- Furthermore, it should encompass premises which would need a licence but for the frequency exemption, because otherwise premises will be able to secure the economic advantage of advertising sex entertainments without the burden of having to apply for a licence for the purpose or having to obey management conditions on the licence. This is not only inequitable but is liable to produce a rash of sex-oriented leafleting for unregulated sex entertainment on the high street.

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

The proposal is agreed.

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?

- The Fawcett Society and OBJECT comment only that the impact assessment should take into account the benefit to local communities and local authorities, both at first instance and on appeal, of basing objections on grounds which are germane to the 2009 provisions, such as gender equality and character of area, rather than having to base objections around the Licensing Act 2003 objectives.
- The benefits are financial as well as practical, because it will no longer be necessary to call evidence relating to crime and disorder when the heart of the objection lies elsewhere. Further, the fact that refusals based upon the appropriate number of premises in the locality and the character of the area cannot be appealed to the magistrates court will result in a substantial saving communities, local authorities and the Courts Service.

Other matters

1. The Fawcett Society and OBJECT have argued that the 2009 Act provisions should not be adoptive, because they will create a bifurcated regime in which lap dancing establishments will be developed without the interposition of any of the desirable controls introduced by the new regime, leading to later attempts to impose retrospective regulation at local level. The Fawcett Society and OBJECT submit that a far preferable approach would have been to enable local authorities to use their waiver powers under the LGMPA 1982 to exempt premises which they consider do not require regulation.
2. However, given that the proposals are adoptive, the transitional provisions will need to cater for those authorities who make a later decision to adopt. In any event, they will also need to cater for authorities who decide to waive the need for licences for certain premises.

For further information about this consultation response contact:

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