

**EXPLANATORY MEMORANDUM TO
THE POLICING AND CRIME ACT 2009 (CONSEQUENTIAL PROVISIONS)
(ENGLAND) ORDER 2010**

2010 No. 723

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order repeals provisions of a number of local Acts as a result of the coming into force of section 27 of the Policing and Crime Act 2009 (the “2009 Act”). Those provisions require lap dancing clubs and similar venues to be licensed under Schedule 3 to the Local Government (Miscellaneous) Provisions Act 1982 (the “1982 Act”) where local authorities choose to adopt the provisions.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Section 27 of the Policing and Crime Act 2009 makes provision for local authorities in England and Wales to regulate lap dancing clubs and similar venues as sex establishments under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. It will be for local authorities to resolve to adopt the new provisions for their area.

4.2 Three local Acts which apply in London (where local authorities resolve to adopt the provisions) now need to be amended as a consequence of the 2009 Act provisions using the power in section 112 of the 2009 Act (minor and consequential amendments and repeals and revocations).

4.3 Firstly, the Order will, upon London local authorities adopting the 2009 Act provisions, repeal section 12 of the Greater London Council (General Powers) Act 1986 (the “1986 Act”) in that area. This will mean that London local authorities will no longer be able to adopt the provisions requiring sex encounter establishments to be regulated under Schedule 3 to the 1982 Act. This is because the new category of sexual entertainment venue is intended to remove the need for the sex encounter establishment category. The repeal is seen as consequential on the coming into force of the 2009 Act provisions because there is a significant overlap between the two categories. Specifically, the premises defined as sex encounter establishments in what section 12 of the 1986 Act purports to insert as paragraphs 3A(1)(a) to (c) of Schedule 3 to the 1982 Act, all involve a performance or display of nudity as is required for premises to be a sexual entertainment venue. It is true that the mischief being dealt with in paragraph 3A(1)(d) of that Schedule is different from the mischief being dealt with in the 2009 Act provisions in that section 27 of the 2009 Act concentrates on live

performances or live displays of nudity whereas paragraph 3A(1)(d) is about displays of pictures at premises which are designed to produce sexual stimulation or encouragement. However, Parliament was aware that the 2009 Act provisions were intended to replace the sex encounter establishment regime in its entirety to provide a regulatory regime which could instead be adopted across the whole of England and Wales. Paragraph 589 of the explanatory notes accompanying the 2009 Act makes this clear and Lord Brett also explained this to the House of Lords at Report stage of that Bill (see HL Deb 5 November 2009 volume 714, column 450). The Government believes that there are no premises of the type described in paragraph 3A(1)(d) currently being licensed as sex encounter establishments and takes the view that only displays of nudity covered by the 2009 Act now need to be regulated.

4.4 Where local authorities have adopted section 12 of the 1986 Act but not the 2009 Act provisions, it will be open to them to continue to regulate sex encounter establishment as provided for by the 1986 Act. The Order will also allow premises with a sex encounter establishment licence immediately before the 2009 Act provisions come into force in an area to continue to operate as if they had been granted a sexual entertainment venue licence.

4.5 Secondly, the Order amends section 22 of the London Local Authorities Act 2004 (the “2004 Act”) so that it will not be an offence to solicit people, or permit the soliciting of people, to attend premises which are licensed as sexual entertainment venues or, have had their requirement for such a licence waived.

4.6 Thirdly, the Order makes consequential amendments to section 33 of the London Local Authorities Act 2007 so that London local authorities can continue to adopt the provisions in that section which allow for the regulation of hostess bars under the 1982 Act regime.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 Local authorities are being given powers to regulate lap dancing clubs and similar venues as sex establishments under Schedule 3 to the 1982 Act. This will give local authorities more control over the number and location of lap dancing clubs in their area and local people a greater say over licence applications.

7.2 At the same time, the Government realises that some local authorities may want to continue to regulate lap dancing clubs and similar venues using their existing powers (either under the Licensing Act 2003 or the section 12 of the 1986 Act). This

Order will enable them to do so. However, where London local authorities have not yet adopted the powers to regulate sex encounter establishments under section 12 of the 1986 Act or decide to adopt the 2009 Act provisions, it has always been intended that the sex encounter establishment category (which largely overlaps with the sexual entertainment venue category) should no longer apply in the area. Areas outside of London have never needed to adopt such a category and the Department is only aware of a few such establishments being so licensed in London. The majority of London local authorities who responded to a Government consultation did not raise any concerns about the Government's proposals. It can never have been anticipated by Parliament that the sex encounter establishment would be preserved in its entirety and instead, as discussed in paragraph 4.3 above, Parliament clearly intended that there would be a consequential repeal and saving of section 12 of the 1986 Act. The 2009 Act was intended to create a voluntary scheme of control for performances and displays of nudity for the entire country and as a consequence it is both necessary and appropriate for this section of a local Act to be repealed to avoid a different regime operating in London. As the Government believes that there are no premises of the type described in paragraph 3A(1)(d) currently being licensed as sex encounter establishments, it is doubtful that removing these provisions will have any effect in practice.

7.3 The amendments to the 2004 Act will enable lap dancing clubs and similar venues to continue to solicit for custom, subject to any conditions in their licence. In this way, the Order will preserve the existing position for lap dancing clubs licensed under the Licensing Act 2003.

7.4 London local authorities have expressed a desire to retain the possibility of regulating hostess bars and this Order allows for that despite the repeal of section 12 of the 1986 Act (the sex encounter establishment category).

- ***Consolidation***

7.5 Not applicable.

8. Consultation outcome

8.1 Between 21st September 2009 and 14th December the Home Office held a public consultation on the transitional arrangements for the lap dancing measures in the Policing and Crime Act 2009. A copy of the consultation document and responses is available at <http://www.homeoffice.gov.uk/documents/cons-2009-sev/index.html>. Respondents to the consultation broadly agreed with the measures introduced by this instrument. Those who provided a response include the Local Government Association, the Fawcett Society, Object and the Lap Dancing Association.

9. Guidance

9.1 Guidance has been produced by the Home Office for local authorities and other interested parties to explain the effect of this Order and the coming into force of the relevant 2009 Act provisions. The guidance will be available on the Home Office website before the 6th April 2010.

10. Impact

10.1 The impact on business, charities or voluntary bodies of this Order is negligible and will, in any event, depend on local authorities adopting the new provisions.

10.2 The impact on the public sector is that London local authorities who choose to adopt the lap dancing provisions introduced by the Policing and Crime Act 2009 will no longer be able to regulate premises as sex encounter establishments and will instead regulate relevant premises as sexual entertainment venues. In practice, the impact will be negligible as we are only aware of a few lap dancing clubs which are currently regulated as sex encounter establishments because of the exemption for premises which hold a premises licence or club premises certificate authorising the provision of regulated entertainment under the Licensing Act 2003. Furthermore, such establishments will automatically have their licences converted to sexual entertainment venue licenses.

10.3 An Impact Assessment has not been prepared for this instrument. However, an Impact Assessment was prepared for the 2009 Act provisions and can be found at <http://www.homeoffice.gov.uk/documents/cons-2009-sev/index.html>.

11. Regulating small business

11.1 The legislation applies to small business. However, the legislation (in terms of this Order) does not create any additional requirements for affected businesses.

12. Monitoring & review

12.1 The impact of the 2009 Act provisions will be reviewed on an ongoing basis.

13. Contact

Thomas Cottam at the Home Office Tel: 0207 035 0453 or email: Thomas.Cottam@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.