

ELIZABETH II

c. 26



Policing and Crime Act 2009

2009 CHAPTER 26

PART 2

SEXUAL OFFENCES AND SEX ESTABLISHMENTS

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—

2A “Meaning of “sexual entertainment venue”

- (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—

Status: This version of this cross heading contains provisions that are prospective.

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- (a) increase the number or length of occasions in any period on which sub-paragraph (3)(b) as originally enacted would permit relevant entertainment to be provided; or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

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- (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—

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“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—

27A “Premises which are deemed sexual entertainment venues

- (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.

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Changes to legislation:

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Changes and effects yet to be applied to the whole Act, associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 46A inserted by 2010 c. 17 s. 39(2)
- s. 113A inserted by S.I. 2010/976 Sch. 14 para. 106
- Sch. 5A inserted by 2010 c. 17 s. 39(3)

Commencement Orders yet to be applied to the Policing and Crime Act 2009:

Commencement Orders bringing provisions within this Act into force:

- S.I. 2009/3096 art. 2 to art. 4 commences (2009 c. 26)
- S.I. 2010/52 art. 2 commences (2009 c. 26)
- S.I. 2010/125 art. 2 to art. 4 commences (2009 c. 26)
- S.I. 2010/507 art. 2 to art. 5 commences (2009 c. 26)
- S.I. 2010/722 art. 3 commences (2009 c. 26)
- S.I. 2010/999 art. 2 to art. 4 commences (2009 c. 26)
- S.I. 2010/1375 art. 2, art. 3 commences (2009 c. 26)
- S.I. 2010/1986 art. 2 commences (2009 c. 26)
- S.I. 2010/1986 art. 3 amendment to earlier commencing SI 2010/999 art. 4