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A. J. May



Birmingham City Council Act 1990

CHAPTER xiii

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ELIZABETH II



1990 CHAPTER xiii

An Act to authorise the control of establishments
for massage or special treatment in the city of
Birmingham. [28th March 1990]

WHEREAS—

(1) The city of Birmingham (hereinafter referred to as “the city”) is under the management and local government of Birmingham City Council (hereinafter referred to as “the Council”);

(2) It is expedient to authorise the control of establishments for massage or special treatment in the city:

(3) The purposes of this Act cannot be effected without the authority of Parliament:

(4) In relation to the promotion of the Bill for this Act the requirements of section 239 of the Local Government Act 1972 have been observed:

1972 c. 70.

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title and commencement.

- 1.—(1) This Act may be cited as the Birmingham City Council Act 1990.
 (2) This Act shall come into operation on the expiry of a period of three months beginning with the date on which it is passed.

Interpretation.

2. In this Act—
 “authorised officer” means an officer of the Council authorised by the Council in writing to act in relation to this Act;
 “the chief constable” means the chief constable of the West Midlands Police;
 “the city” means the city of Birmingham;
 “the Council” means Birmingham City Council;
 “establishment for massage or special treatment” means any premises used or represented as being or intended to be used by way of business for the reception or treatment of persons requiring—
 (a) massage; or
 (b) electric treatment or radiant heat, light or electric vapour treatment or sauna or other baths for therapeutic treatment; or
 (c) other similar treatment.

Licensing of persons to carry on establishments.

- 3.—(1) As from the commencement of this Act, no person shall carry on an establishment for massage or special treatment in the city without a licence from the Council authorising him to do so.

(2) The Council may, on the application of any person, grant or renew to him a licence under this Act on such terms and conditions as may be specified in the licence.

(3) A licence under this Act shall be for such period, not exceeding 13 months, specified in the licence as the Council may determine.

(4) An application for a licence or the renewal of a licence under this Act shall be made to the Council and the applicant shall in the application state—

- (a) his full name and age;
 (b) his private address or, if the application is made by or on behalf of a company, society, association or other body, the registered or principal office (if any) of that body and, so far as may reasonably be required, the names and private addresses of the directors or other persons directly or indirectly responsible for the management of the body;
 (c) the name under which and the address at which the establishment is carried on or proposed to be carried on;
 (d) the nature of the establishment and of the business carried on or proposed to be carried on thereat;
 (e) his qualifications (if any) for the carrying on of that business;
 (f) whether, and if so to what extent, he is or has been interested or employed in any other establishment for massage or special treatment; and

(g) such further information (if any) as the Council may reasonably require with respect to him or the establishment carried on, or proposed to be carried on, by him.

(5) With his application for a licence under this Act the applicant shall pay such reasonable fee to cover the expense of the Council in dealing with such applications as the Council may by resolution prescribe; and different fees may be prescribed for applications of different kinds.

(6) An applicant for a licence or the renewal of a licence under this Act shall, upon making his application, give notice of the application to the chief constable and such an application shall not be entertained by the Council unless they are satisfied that the applicant has complied with this subsection.

4.—(1) On considering an application for a licence or the renewal of a licence under this Act the Council shall take into consideration any representations which may be made to the Council by the chief constable with respect to the application or the establishment to which it relates.

Grant, renewal
and transfer of
licences.

(2) The Council may refuse to grant or renew a licence under this Act or may revoke a licence so granted in the case of—

- (a) any person under the age of 21;
- (b) any person who has been convicted of an offence under the Sexual Offences Acts 1956 to 1976 or the Street Offences Act 1959 or who may be otherwise unsuitable to hold such a licence;
- (c) any premises which are unsuitable for the purposes of an establishment for massage or special treatment or in which the accommodation or provision for such treatment is not reasonably adequate or suitable;
- (d) any establishment which has been or is being improperly conducted;
- (e) any establishment in which adequate professional, technical or other staff is not available for the administration of such massage or special treatment as may there be provided; or
- (f) any establishment which is being carried on in contravention of the provisions of this Act or any byelaw made thereunder.

1959 c. 57.

(3) Before refusing to grant or renew a licence under this Act or deciding to revoke a licence so granted, the Council shall give to the person applying for the grant or renewal of a licence or, in the case of a revocation, the holder of the licence, an opportunity of appearing before and of being heard by a committee or sub-committee of the Council, and if so required by him, the Council shall within 7 days after their decision give him notice thereof containing a statement of the grounds on which it was based.

(4) The Council may on the application of the holder of a licence under this Act, or of any person to whom he wishes to assign the licence, transfer the licence to that person; and subsections (4) to (6) of section 3 (Licensing of persons to carry on establishments) of this Act and subsections (1) to (3) above shall apply to a transfer and to a proposed transferee as they apply to the grant of a licence under this Act and to an applicant therefor.

(5) Where, before the date of expiry of a licence granted under this Act, an application has been made for the renewal of that licence, the licence shall be deemed to remain in force, notwithstanding that the date of expiry of the licence has passed, until the determination of the application by the Council or until the withdrawal of the application.

(6) Where, before the date of expiry of a licence granted under this Act, an application has been made for the transfer of that licence, the licence shall be deemed to remain in force (with any necessary modifications) notwithstanding that the date of expiry of the licence has passed or that the applicant for such transfer is carrying on an establishment for massage or special treatment in respect of which the licence was granted until the determination of the application by the Council or until the withdrawal of the application.

Byelaws as to establishments.

5.—(1) The Council may make byelaws—

- (a) prescribing the books, cards or forms to be kept by every person holding a licence under this Act showing the business conducted by him so far as it relates to his establishment for massage or special treatment;
- (b) prescribing the entries to be made in connection with such business in such books, cards or forms; and
- (c) generally for regulating any premises used for the purposes of, or in connection with, any such establishment.

(2) Every person holding a licence under this Act shall keep exhibited in a suitable place (to be approved by the Council) in the premises to which the licence relates a copy of the byelaws for the time being in force under this section.

Offences under this Act.

6.—(1) A person who—

- (a) carries on an establishment for massage or special treatment, or permits such an establishment to be carried on, contrary to subsection (1) of section 3 (Licensing of persons to carry on establishments) of this Act or in contravention of terms or conditions specified in a licence under this Act; or
- (b) on an application for a licence or the renewal of a licence under this Act provides any information which he knows to be false in a material respect or intentionally withholds any material information that is required by this Act to be provided;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) A person who—

- (a) without reasonable excuse contravenes any byelaw made under this Act; or
- (b) issues, publishes or displays or causes to be issued, published or displayed an advertisement relating to an establishment for massage or special treatment in respect of which he knows—
 - (i) that the establishment is not licensed under this Act and no application for a licence in respect of it has been made;
 - (ii) that a licence under this Act has expired or been revoked or an application for a licence under this Act has been refused;
 after the expiration of a period of 7 days beginning with the date on which the Council give him notice that the establishment is not licensed and no application for a licence in respect of it has been made or that the licence has expired or been revoked, or that the application has been refused;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale and to a daily fine not exceeding one-tenth of level 3 on the standard scale.

(3) Any person who, without reasonable excuse, contravenes the provisions of subsection (2) of section 5 (Byelaws as to establishments) of this Act shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale and to a daily fine not exceeding one-tenth of level 2 on the standard scale.

(4) On conviction of any person for an offence under subsection (1) or (2) above the court may, instead of, or in addition to, imposing a fine, make an order revoking a licence granted to him under this Act.

7.—(1) Any of the following persons, that is to say —

Appeals.

- (a) an applicant for the grant, renewal or transfer of a licence under this Act whose application is refused;
- (b) an applicant for the grant or renewal of a licence under this Act who is aggrieved by the terms, conditions or restrictions on or subject to which any such licence is granted or renewed; or
- (c) a licence holder of any such licence whose licence is revoked under section 4 (Grant, renewal and transfer of licences) of this Act;

may at any time before the expiration of the period of 21 days beginning with the date on which he is notified in writing of the refusal or decision appeal to a magistrates' court.

(2) An appeal by either party against the decision of the magistrates' court under this section may be brought to the Crown Court.

(3) On an appeal to the magistrates' court or to the Crown Court under this section the court may make such order as it thinks fit and it shall be the duty of the Council to give effect to such order.

(4) Where a person was lawfully carrying on an establishment for massage or special treatment immediately before the commencement of this Act and has before that date duly applied for a licence under this Act, it shall be lawful for him to continue to carry on that establishment for that purpose until he is informed of the decision with regard to his application and —

- (a) if the application is successful, until a licence is granted by the Council under this Act; or
- (b) if the application is refused, during such further time as is provided under the provisions of this section as respects an application for the renewal of a licence which is refused.

(5) Where any licence is revoked under this Act or an application for the renewal of such a licence is refused, the licence shall be deemed to remain in force —

- (a) until the time for bringing an appeal under this section has expired and, if such an appeal is duly brought, until the determination or abandonment of the appeal; and
- (b) where an appeal relating to the refusal of an application for such a renewal is successful until the licence is renewed by the Council.

(6) Where any licence is renewed under this Act and the Council specify any term, condition or restriction which was not previously specified in relation to that licence, the licence shall be deemed to be free of it —

- (a) until the time for bringing an appeal under this section has expired and, if such an appeal is duly brought, until the determination or abandonment of the appeal; and

- (b) where an appeal relating to any such term, condition or restriction is successful until the licence is renewed in accordance with the decision.

Powers of entry, inspection and examination.

8.—(1) An authorised officer, on producing, if so required, a duly authenticated document showing his authority, or any police constable, may at all reasonable times enter and inspect—

(a) any premises in respect of which a licence under this Act is for the time being in force, or specified in an application for such a licence; or

(b) any other premises which he has reasonable cause to believe are used or intended to be used for the purposes of, or in connection with, an establishment for massage or special treatment:

for the purpose of ascertaining—

(i) whether there is, or has been, in or in connection with the premises, a contravention of the provisions of this Act or of any byelaw made thereunder or of any term or condition on which a licence under this Act has been granted; or

(ii) whether or not circumstances exist which would authorise the Council to take action under this Act.

(2) An authorised officer or a police constable may exercise powers under subsection (1) (b) above only if he has been granted a warrant by a justice of the peace.

(3) (a) A justice may grant a warrant under this section only if he is satisfied either—

(i) that notice of intention to apply for a warrant has been given to the occupier of the premises; or

(ii) that the case is one of urgency or that the premises are unoccupied or the occupier is temporarily absent, or that the giving of notice of intention to apply for a warrant would defeat the object of entry.

(b) A warrant under this section shall authorise entry, if need be, by force but shall cease to have effect at the expiration of a period of 7 days beginning with the day on which it is granted.

Savings.

9.—(1) Nothing in this Act shall apply to—

(a) an establishment for massage or special treatment carried on by a registered medical practitioner or by a member of any organisation or association which specifies qualifications by way of training for and experience of the therapy concerned for the practice by its members of chiropractic, osteopathy, naturopathy or acupuncture, being a member who is required by that organisation or association to observe professional standards in such practice; or

1960 c. 58.

(b) any hospital provided by the Secretary of State or by a charity which is registered under section 4 of the Charities Act 1960 or which, by virtue of subsection (4) of that section is not required to be registered; or

1984 c. 23.

(c) any nursing home which is for the time being registered under Part II of the Registered Homes Act 1984 or exempted from registration under that Part; or

(d) any premises which are an establishment for massage or special treatment merely by reason of face or scalp massage being administered in those premises.

(2) Subsection (1) of section 3 (Licensing of persons to carry on establishments) of this Act shall not apply to a person registered by any board established under the Professions Supplementary to Medicine Act 1960, a member of the Chartered Society of Physiotherapy who is not so registered or to a registered nurse. 1960 c. 66.

(3) Nothing in this Act shall prejudice or affect the operation of any of the relevant statutory provisions as defined in Part I of the Health and Safety at Work etc. Act 1974. 1974 c. 37.

10.—(1) Where an offence under this Act, or against any byelaw made under this Act committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of the offence. Liability of directors, etc.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.