

**THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA****MEETING OF THE COUNCIL - 8 DECEMBER 2010****ITEM 6 - SUBMISSIONS FROM THE CABINET****REPORT BY THE EXECUTIVE DIRECTOR OF TRANSPORT,  
ENVIRONMENT AND LEISURE SERVICES****REPORT ON THE ADOPTION OF THE LOCAL GOVERNMENT  
(MISCELLANEOUS PROVISIONS) ACT 1982 AS AMENDED BY THE  
POLICING AND CRIME ACT 2009 – SEXUAL ENTERTAINMENT  
VENUES**

The Policing and Crime Act 2009 amends Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to allow Local Authorities to licence lap dancing clubs and similar operations as Sexual Entertainment Venues. This amendment to the Local Government (Miscellaneous Provisions) Act 1982 can be adopted regardless of whether or not a particular Local Authority has already adopted the remainder of this Act. This report recommends that the Council adopts this amendment and sets up a licensing regime for Sexual Entertainment Venues in this Borough.

**FOR DECISION**

**1. Background**

- 1.1 This report sets out the amended Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 contained within the Policing and Crime Act 2009. The amendment introduces a new form of licensable premises, 'Sexual Entertainment Venues'. The Policing and Crime Act 2009 amends Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. The effect of this is that a Local Authority may pass a resolution to adopt the new provisions of Schedule 3, thereby adopting the new regime for the regulation of Sexual Entertainment Venues.
- 1.2 The relevant section of the Policing and Crime Act (section 27) is attached as Appendix A and the relevant schedule of the Policing and Crime Act (schedule 3) is attached as Appendix B to this report. Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 is attached as Appendix C to this report.

## **2. The Legislation**

2.1 Section 27 of the Policing and Crime Act 2009 amends Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to include Sexual Entertainment Venues as a class of Sex Establishment.

2.2 A Sexual Entertainment Venue is defined as:

Any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer, and

“relevant entertainment” means:

Any live performance; or  
Any live display of nudity;

which is of such a nature that, ignoring financial gain, it must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).

2.3 This legislation is aimed mainly at regulating premises commonly known as “lap dancing or table dancing” clubs. Currently, such premises may only be licensed in the same way as pubs and clubs under the Licensing Act 2003, with only the four licensing objectives being considered when applications are made;

The prevention of crime and disorder  
The prevention of public nuisance  
Public safety, and  
The prevention of harm to children

2.4 By adopting the amended Local Government (Miscellaneous Provisions) Act 1982 it would mean that lap/table dancing clubs can be regulated by the local authority under the same controls as sex shops. This would mean that factors such as the suitability of the applicant, the character of the locality, the use to which any premises in the vicinity are put, the layout, character or condition of the premises, the number of sex establishments in the relevant locality, can also be considered when dealing with an application. A Local Authority can also decide the number of Sexual Entertainment Venues that would be appropriate in a relevant locality, and that number may be nil.

2.5 However, any policy regarding the maximum number of Sexual Entertainment Venues within the Borough could be the subject of a

legal challenge. Experience of similar decisions made by Local Authorities in relation to sex shops, and challenged in the courts, indicates that the Borough would need to be sub divided, maybe ward by ward, and evidence to support for example, a zero policy, would have to be supplied for each of the sub divisions.

- 2.6 As described in paragraph 2.4 above, the matters a committee may consider when dealing with an application for a Sexual Entertainment Venue are much wider than the restrictions contained within the Licensing Act 2003 i.e. the four licensing objectives. In view of this, the need for a policy limiting the number of Sex Entertainment Venues in any part of the Borough is low. Additionally, the absence of a "zero" policy would avoid the risk of having to successfully defend any such policy in the High Court.
- 2.7 Any application for a Sexual Entertainment Venue Licence would be made to the Licensing Team and would follow the Rules and Procedures already laid down for sex shop licences. If an application received objections then the matter would be heard the Regulation and Enforcement Review Committee. This Committee would also set a fee for the grant, renewal and transfer of a Sexual Entertainment Venue licence.
- 2.8 The decision as to whether to adopt this new form of regulation is for each local authority to determine. For this change in legislation to be effective in any Local Authority area that Authority must resolve to adopt these provisions and specify the day from which they apply in that district (the appointed day). This date must be at least one month after the day on which the resolution is passed and the Director of Legal Services would have to publish the statutory notices necessary for the adoption of these provisions.
- 2.9 The legislation came into force on the 6 April 2010, subject to being adopted by individual Local Authorities. However, if no resolution to adopt is made within 12 months of this date then the Authority **must** consult with persons who live or work in the Authority's area as soon as reasonably practicable about whether the Authority should pass such a resolution (and thereby adopt the new means of regulation of Sexual Entertainment Venues).
- 2.10 If this Local Authority adopts these provisions then Sexual Entertainment Venues will be subject to similar regulation to that currently in place for sex shops.

### **3. Exemption from Licensing Requirements**

- 3.1 There is one significant difference from the licensing requirements of sex shops/sex cinemas and sexual entertainment venues contained within the amended legislation. This is that a premises may provide sexual entertainment on up to eleven occasions per year, for no more than 24 hours on each occasion, and no such occasion begins less than one month from the end of the last occasion, without the need for a Sexual Entertainment Venue Licence.
- 3.2 By comparison with the current regime under the Licensing Act 2003, it is feasible that an event organiser could hold a similar event by submitting a Temporary Event Notice, which could attract an objection from the Police. Under the new legislation (if adopted) an organiser would not have to inform the Local Authority or the Police that such an event was going to be provided to the public if the premise already had the benefit of a permission to provide music and dancing under the Licensing Act 2003.
- 3.3 Generally the new legislation appears to strengthen controls over sexual entertainment venues. However, this exemption in the new licensing regime appears to be relaxing controls, albeit that a particular premises is limited to eleven unlicensed events per year.

#### **4. The Position in the Royal Borough**

- 4.1 The Royal Borough currently has just one premises that has the necessary permissions to provide lap/table dancing entertainment. It is conceivable that other premises that already have permission to provide music and dancing may want to branch out into lap/table dancing as the current legislation has little in it to prevent them from so doing.
- 4.2 Although this Authority may not wish to set limits for the number of Sexual Entertainment Venues in particular areas, any operators wishing to provide such entertainment would have to go through a much more thorough licensing process if these provisions are adopted.
- 4.3 Additionally, unlike premises licensed under the Licensing Act 2003, a licence for a Sexual Entertainment Venue will last for a maximum of 12 months, after which the operator would have to go through a full renewal process. If valid concerns have been raised regarding the operation of an individual premises the Authority has the power to refuse to renew the licence for a variety of reasons as noted in paragraph 2.4.

#### **5. Consultation**

5.1 The Authority has the freedom to consult with whoever it wishes on whether to adopt these provisions or not within the twelve month period that commenced on the 6 April 2010. If no decision has been made by the 5 April 2011 this Authority **must** consult with persons who live or work in the Authority's area as soon as reasonably practicable.

## **6. Financial Implications**

6.1 If the new regulation is adopted, the licence fee for a Sex Entertainment Venue can be set to cover the Council's costs.

## **7. Legal Implications**

7.1 The legal implications of this proposal have been included in the body of this report.

## **8. Equalities Implications**

8.1 There are no Personnel or Equality implications contained within the report.

## **9. Recommendation**

9.1 Council is asked to adopt the provisions of Section 27 of, and Schedule 3 to, the Policing and Crime Act 2009, and the amendments to Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.

9.2 Council is asked to make no recommendation regarding maximum numbers of Sexual Entertainment Venues in any particular area of the Royal Borough.

9.3 That if Council resolves to adopt these provisions a commencement date of the 7 February 2011 is proposed, and after this date any applications that fulfil the criteria for a Sexual Entertainment Venue licence would be subject to this new legislation.

**Tot Brill**  
**Executive Director for Transport, Environment and Leisure**  
**Services**

## **FOR COMPLETION BY AUTHOR OF REPORT:**

Local Government (Access to Information) Act 1985 –

Public Background Papers used in preparation of this report:

The Policing and Crime Act 2009

Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982

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**Section 27 Policing and Crime Act 2009**

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—

(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 subparagraph (3)(c) or (6) by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

(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—

“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 control of anything seized under sub-paragraph (1) may request any authorised officer of a local authority who seized it to provide a, immediately before the seizure, had custody or 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.

## **Appendix B**

### **Schedule 3 of The Policing and Crime Act 2009**

## **LAP DANCING AND OTHER SEXUAL ENTERTAINMENT VENUES ETC: TRANSITIONAL PROVISION**

Effect of section 27: cases where no existing resolutions passed

- 1 A resolution made on or after the coming into force of section 27 by a local authority under section 2 of the 1982 Act that Schedule 3 to that Act is to apply to the area of the local authority applies to that Schedule as amended by section 27.

Effect of section 27: cases where existing resolutions in force

- 2(1) Sub-paragraph (2) applies if a local authority has, before the coming into force of section 27, resolved under section 2 of the 1982 Act that Schedule 3 to that Act is to apply to the area of the local authority.
- (2) The amendments made by section 27 do not apply to the area of the local authority concerned and the resolution concerned does not apply to the Schedule as amended by section 27 but the local authority may resolve that the Schedule as amended by section 27 is to apply to their area.
- (3) Section 2 of the 1982 Act has effect in relation to a resolution under sub-paragraph (2) that Schedule 3 to that Act as amended by section 27 is to apply to the area of a local authority as section 2 of that Act has effect in relation to any resolution under that section that the Schedule is to apply to the area of a local authority.
- (4) The definition of "the appropriate authority" in paragraph 5 of Schedule 3 to the 1982 Act has effect as if the reference to a resolution under section 2 of that Act included a reference to a resolution under sub-paragraph (2).

### **Power to make transitional provision on adoption of Schedule 3 to the 1982 Act as amended**

- 3(1) The relevant national authority may by order make such transitional, transitory or saving provision as the relevant national authority considers appropriate in connection with the coming into force, in consequence of a resolution of a local authority under section 2 of the 1982 Act or paragraph 2(2) above, of Schedule 3 to that Act as amended by section 27.

(2) An order under this paragraph may, in particular, make different provision from that made by paragraphs 28 and 29 of Schedule 3 to that Act (and may accordingly provide for those paragraphs not to apply).

(3) The power of the relevant national authority under this paragraph—

(a) is exercisable by statutory instrument,

(b) may be exercised so as to make different provision for different purposes or different areas,

(c) includes power to make supplementary, incidental or consequential provision.

### **Duty to consult about adopting Schedule 3 to the 1982 Act as amended**

4(1) Sub-paragraph (2) applies if a local authority has not made a resolution under section 2 of the 1982 Act or (as the case may be) paragraph 2(2) above within the period of one year beginning with the coming into force of section 27.

(2) The local authority must, as soon as reasonably practicable, consult local people about whether the local authority should make such a resolution.

(3) In sub-paragraph (2) “local people” means persons who live or work in the area of the local authority.

### **Interpretation**

5 In this Schedule—

“the 1982 Act” means the Local Government (Miscellaneous Provisions) Act 1982 (c. 30),

“relevant national authority” means—

(a) in relation to England, the Secretary of State, and

(b) in relation to Wales, the Welsh Ministers,

“local authority” has the same meaning as in Part 2 of the 1982 Act (see section 2(5) of that Act);

and references in this Schedule to the coming into force of section 27 are references to the coming into force of that section for purposes other than the purposes of the Secretary of State or the Welsh Ministers making orders.



## Appendix C

### **SCHEDULE 3 TO THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982**

#### **Control of Sex Establishments**

1 Nothing in this Schedule—

- (a) shall afford a defence to a charge in respect of any offence at common law or under an enactment other than this Schedule; or
- (b) shall be taken into account in any way—
  - (i) at a trial for such an offence; or
  - (ii) in proceedings for forfeiture under section 3 of the Obscene Publications Act 1959 or section 5 of the Protection of Children Act 1978; or
  - (iii) in proceedings for condemnation under Schedule 3 to the Customs and Excise Management Act 1979 of goods which section 42 of the Customs Consolidation Act 1876 prohibits to be imported or brought into the United Kingdom as being indecent or obscene; or
- (c) shall in any way limit the other powers exercisable under any of those Acts.

Meaning of "sex establishment"

2 In this Schedule "sex establishment" means a sex cinema or a sex shop.

Meaning of "sex cinema"

- 3(1) In this Schedule, "sex cinema" means any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which—
- (a) are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage—
    - (i) sexual activity; or
    - (ii) acts of force or restraint which are associated with sexual activity; or
  - (b) are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions, but does not include a dwelling-house to which the public is not admitted.
- (2) No premises shall be treated as a sex cinema by reason only—
- (a) if they are licensed under [section 1 of the Cinemas Act 1985], of their use for a purpose for which a licence under [that section] is required; or—

- (b) of their use for an exhibition to which section 6 of that Act (certain non-commercial exhibitions) applies given by an exempted organisation within the meaning of section 6(6) of that Act.]

#### Meaning of "sex shop" and "sex article"

- 4(1) In this Schedule "sex shop" means any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating—
  - (a) sex articles; or
  - (b) other things intended for use in connection with, or for the purpose of stimulating or encouraging—
    - (i) sexual activity; or
    - (ii) acts of force or restraint which are associated with sexual activity.
- (2) No premises shall be treated as a sex shop by reason only of their use for the exhibition of moving pictures by whatever means produced.
- (3) In this Schedule "sex article" means—
  - (a) anything made for use in connection with, or for the purpose of stimulating or encouraging—
    - (i) sexual activity; or
    - (ii) acts of force or restraint which are associated with sexual activity; and
  - (b) anything to which sub-paragraph (4) below applies.
- (4) This sub-paragraph applies—
  - (a) to any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and
  - (b) to any recording of vision or sound, which—
    - (i) is concerned primarily with the portrayal of, or primarily deals with or relates to, or is intended to stimulate or encourage, sexual activity or acts of force or restraint which are associated with sexual activity; or
    - (ii) is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.

#### Miscellaneous definitions

- 5(1) In this Schedule—
  - "the appropriate authority" means, in relation to any area for which a resolution has been passed under section 2 above, the local authority who passed it;
  - "the chief officer of police", in relation to any locality, means the chief officer of police for the police area in which the locality is situated; and
  - "vessel" includes any ship, boat, raft or other apparatus constructed or adapted for floating on water.

- (2) This Schedule applies to hovercraft as it applies to vessels.

#### Requirement for licences for sex establishments

- 6(1) Subject to the provisions of this Schedule, no person shall in any area in which this Schedule is in force use any premises, vehicle, vessel or stall as a sex establishment except under and in accordance with the terms of a licence granted under this Schedule by the appropriate authority.
- (2) Sub-paragraph (1) above does not apply to the sale, supply or demonstration of articles which—
- (a) are manufactured for use primarily for the purposes of birth control; or
- (b) primarily relate to birth control.
- 7(1) Any person who—
- (a) uses any premises, vehicle, vessel or stall as a sex establishment; or
- (b) proposes to do so,
- may apply to the appropriate authority for them to waive the requirement of a licence.
- (2) An application under this paragraph may be made either as part of an application for a licence under this Schedule or without any such application.
- (3) An application under this paragraph shall be made in writing and shall contain the particulars specified in paragraph 10(2) to (5) below and such particulars as the appropriate authority may reasonably require in addition.
- (4) The appropriate authority may waive the requirement of a licence in any case where they consider that to require a licence would be unreasonable or inappropriate.
- (5) A waiver may be for such period as the appropriate authority think fit.
- (6) Where the appropriate authority grant an application for a waiver, they shall give the applicant for the waiver notice that they have granted his application.
- (7) The appropriate authority may at any time give a person who would require a licence but for a waiver notice that the waiver is to terminate on such date not less than 28 days from the date on which they give the notice as may be specified in the notice.
- Grant, renewal and transfer of licences for sex establishments
- 8 Subject to paragraph 12(1) below, the appropriate authority may grant to any applicant, and from time to time renew, a licence under this Schedule for the use of any premises, vehicle, vessel or stall specified in it for a sex establishment on such terms and conditions and subject to such restrictions as may be so specified.
- 9(1) Subject to paragraphs 11 and 27 below, any licence under this Schedule shall, unless previously cancelled under paragraph 16 or

revoked under paragraph 17(1) below, remain in force for one year or for such shorter period specified in the licence as the appropriate authority may think fit.

- (2) Where a licence under this Schedule has been granted to any person, the appropriate authority may, if they think fit, transfer that licence to any other person on the application of that other person.
- 10(1) An application for the grant, renewal or transfer of a licence under this Schedule shall be made in writing to the appropriate authority.
- (2) An application made otherwise than by or on behalf of a body corporate or an unincorporated body shall state—
    - (a) the full name of the applicant;
    - (b) his permanent address; and
    - (c) his age.
  - (3) An application made by a body corporate or an unincorporated body shall state—
    - (a) the full name of the body;
    - (b) the address of its registered or principal office; and
    - (c) the full names and private addresses of the directors or other persons responsible for its management.
  - (4) An application relating to premises shall state the full address of the premises.
  - (5) An application relating to a vehicle, vessel or stall shall state where it is to be used as a sex establishment.
  - (6) Every application shall contain such particulars as the appropriate authority may reasonably require in addition to any particulars required under sub-paragraphs (2) to (5) above.
  - (7) An applicant for the grant, renewal or transfer of a licence under this Schedule shall give public notice of the application.
  - (8) Notice shall in all cases be given by publishing an advertisement in a local newspaper circulating in the appropriate authority's area.
  - (9) The publication shall not be later than 7 days after the date of the application.
  - (10) Where the application is in respect of premises, notice of it shall in addition be displayed for 21 days beginning with the date of the application on or near the premises and in a place where the notice can conveniently be read by the public.
  - (11) Every notice under this paragraph which relates to premises shall identify the premises.
  - (12) Every such notice which relates to a vehicle, vessel or stall shall specify where it is to be used as a sex establishment.
  - (13) Subject to sub-paragraphs (11) and (12) above, a notice under this paragraph shall be in such form as the appropriate authority may prescribe.
  - (14) An applicant for the grant, renewal or transfer of a licence under this Schedule shall, not later than 7 days after the date of the application, send a copy of the application to the chief officer of police.

- (15) Any person objecting to an application for the grant, renewal or transfer of a licence under this Schedule shall give notice in writing of his objection to the appropriate authority, stating in general terms the grounds of the objection, not later than 28 days after the date of the application.
- (16) Where the appropriate authority receive notice of any objection under sub-paragraph (15) above, the authority shall, before considering the application, give notice in writing of the general terms of the objection to the applicant.
- (17) The appropriate authority shall not without the consent of the person making the objection reveal his name or address to the applicant.
- (18) In considering any application for the grant, renewal or transfer of a licence the appropriate authority shall have regard to any observations submitted to them by the chief officer of police and any objections of which notice has been sent to them under sub-paragraph (15) above.
- (19) The appropriate authority shall give an opportunity of appearing before and of being heard by a committee or sub-committee of the authority—
  - (a) before refusing to grant a licence, to the applicant;
  - (b) before refusing to renew a licence, to the holder; and
  - (c) before refusing to transfer a licence, to the holder and the person to whom he desires that it shall be transferred.
- (20) Where the appropriate authority refuse to grant, renew or transfer a licence, they shall, if required to do so by the applicant or holder of the licence, give him a statement in writing of the reasons for their decision within 7 days of his requiring them to do so.
- 11(1) Where, before the date of expiry of a licence, an application has been made for its renewal, it shall be deemed to remain in force notwithstanding that the date has passed until the withdrawal of the application or its determination by the appropriate authority.
- (2) Where, before the date of expiry of a licence, an application has been made for its transfer, it shall be deemed to remain in force with any necessary modifications until the withdrawal of the application or its determination, notwithstanding that the date has passed or that the person to whom the licence is to be transferred if the application is granted is carrying on the business of the sex establishment.

#### Refusal of licences

- 12(1) A licence under this Schedule shall not be granted—
  - (a) to a person under the age of 18; or
  - (b) to a person who is for the time being disqualified under paragraph 17(3) below; or
  - (c) to a person, other than a body corporate, who is not resident in the United Kingdom or was not so resident throughout the period of six

- months immediately preceding the date when the application was made; or
- (d) to a body corporate which is not incorporated in the United Kingdom; or
  - (e) to a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.
- (2) Subject to paragraph 27 below, the appropriate authority may refuse—
- (a) an application for the grant or renewal of a licence on one or more of the grounds specified in sub-paragraph (3) below;
  - (b) an application for the transfer of a licence on either or both of the grounds specified in paragraphs (a) and (b) of that sub-paragraph.
- (3) The grounds mentioned in sub-paragraph (2) above are—
- (a) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
  - (b) that if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;
  - (c) that the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality;
  - (d) that the grant or renewal of the licence would be inappropriate, having regard—
    - (i) to the character of the relevant locality; or
    - (ii) to the use to which any premises in the vicinity are put; or
    - (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.
- (4) Nil may be an appropriate number for the purposes of sub-paragraph (3)(c) above.
- (5) In this paragraph “the relevant locality” means—
- (a) in relation to premises, the locality where they are situated; and
  - (b) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.

#### Power to prescribe standard conditions

- 13(1) Subject to the provisions of this Schedule, the appropriate authority may make regulations prescribing standard conditions applicable to licences for sex establishments, that is to say, terms, conditions and restrictions on or subject to which licences under this Schedule are in general to be granted, renewed or transferred by them.
- (2) Regulations under sub-paragraph (1) above may make different provision—

- (a) for sex cinemas and sex shops; and
- (b) for different kinds of sex cinemas and sex shops.
- (3) Without prejudice to the generality of sub-paragraphs (1) and (2) above, regulations under this paragraph may prescribe conditions regulating—
  - (a) the hours of opening and closing of sex establishments;
  - (b) displays or advertisements on or in such establishments;
  - (c) the visibility of the interior of sex establishments to passersby; and
  - (d) any change of a sex cinema to a sex shop or a sex shop to a sex cinema.
- (4) Where the appropriate authority have made regulations under sub-paragraph (1) above, every such licence granted, renewed or transferred by them shall be presumed to have been so granted, renewed or transferred subject to any standard conditions applicable to it unless they have been expressly excluded or varied.
- (5) Where the appropriate authority have made regulations under sub-paragraph (1) above, they shall, if so requested by any person, supply him with a copy of the regulations on payment of such reasonable fee as the authority may determine.
- (6) In any legal proceedings the production of a copy of any regulations made by the appropriate authority under sub-paragraph (1) above purporting to be certified as a true copy by an officer of the authority authorised to give a certificate for the purposes of this paragraph shall be prima facie evidence of such regulations, and no proof shall be required of the handwriting or official position or authority of any person giving such certificate.

#### Copies of licences and standard conditions

- 14(1) The holder of a licence under this Schedule shall keep exhibited in a suitable place to be specified in the licence a copy of the licence and any regulations made under paragraph 13(1) above which prescribe standard conditions subject to which the licence is held.
- (2) The appropriate authority shall send a copy of any licence granted under this Schedule to the chief officer of police for the area where the sex establishment is situated.

#### Transmission and cancellation of licences

- 15— In the event of the death of the holder of a licence granted under this Schedule, that licence shall be deemed to have been granted to his personal representatives and shall, unless previously revoked, remain in force until the end of the period of 3 months beginning with the death and shall then expire; but the appropriate authority may from time to time, on the application of those representatives, extend or further extend the period of three months if the authority are satisfied that the extension is necessary

for the purpose of winding up the deceased's estate and that no other circumstances make it undesirable.

- 16 The appropriate authority may, at the written request of the holder of a licence, cancel the licence.

#### Revocation of licences

- 17(1) The appropriate authority may, after giving the holder of a licence under this Schedule an opportunity of appearing before and being heard by them, at any time revoke the licence—
- (a) on any ground specified in sub-paragraph (1) of paragraph 12 above; or
  - (b) on either of the grounds specified in sub-paragraph (3)(a) and (b) of that paragraph.
- (2) Where a licence is revoked, the appropriate authority shall, if required to do so by the person who held it, give him a statement in writing of the reasons for their decision within 7 days of his requiring them to do so.
- (3) Where a licence is revoked, its holder shall be disqualified from holding or obtaining a licence in the area of the appropriate authority for a period of 12 months beginning with the date of revocation.

#### Variation of licences

- 18(1) The holder of a licence under this Schedule may at any time apply to the appropriate authority for any such variation of the terms, conditions or restrictions on or subject to which the licence is held as may be specified in the application.
- (2) The appropriate authority—
- (a) may make the variation specified in the application; or
  - (b) may make such variations as they think fit; or
  - (c) may refuse the application.
- (3) The variations that an authority may make by virtue of sub-paragraph (2)(b) above include, without prejudice to the generality of that sub-paragraph, variations involving the imposition of terms, conditions or restrictions other than those specified in the application.

#### Fees

- 19 An applicant for the grant, renewal or transfer of a licence under this Schedule shall pay a reasonable fee determined by the appropriate authority.

#### Enforcement

- 20(1) A person who—

- (a) knowingly uses, or knowingly causes or permits the use of, any premises, vehicle, vessel or stall contrary to paragraph 6 above; or
  - (b) being the holder of a licence for a sex establishment, employs in the business of the establishment any person known to him to be disqualified from holding such a licence; or
  - (c) being the holder of a licence under this Schedule, without reasonable excuse knowingly contravenes, or without reasonable excuse knowingly permits the contravention of, a term, condition or restriction specified in the licence; or
  - (d) being the servant or agent of the holder of a licence under this Schedule, without reasonable excuse knowingly contravenes, or without reasonable excuse knowingly permits the contravention of, a term, condition or restriction specified in the licence,
- shall be guilty of an offence.

21 Any person who, in connection with an application for the grant, renewal or transfer of a licence under this Schedule, makes a false statement which he knows to be false in any material respect or which he does not believe to be true, shall be guilty of an offence.

22(1) A person guilty of an offence under paragraph 20 or 21 above shall be liable on summary conviction to a fine not exceeding [£20,000].

(2) A person who, being the holder of a licence under this Schedule, fails without reasonable excuse to comply with paragraph 14(1) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding [level 3 on the standard scale].

#### Offences relating to persons under 18

23(1) A person who, being the holder of a licence for a sex establishment—

- (a) without reasonable excuse knowingly permits a person under 18 years of age to enter the establishment; or
- (b) employs a person known to him to be under 18 years of age in the business of the establishment,

shall be guilty of an offence.

(2) A person guilty of an offence under this paragraph shall be liable on summary conviction to a fine not exceeding [£20,000].

#### Powers of constables and local authority officers

24 If a constable has reasonable cause to suspect that a person has committed an offence under paragraph 20 or 23 above, he may require him to give his name and address, and if that person refuses or fails to do so, or gives a name or address which the constable reasonably suspects to be false, the constable may arrest him without warrant.

25(1) A constable may, at any reasonable time, enter and inspect any sex establishment in respect of which a licence under this Schedule is for the time being in force, with a view to seeing—

- (i) whether the terms, conditions or restrictions on or subject to which the licence is held are complied with;
  - (ii) whether any person employed in the business of the establishment is disqualified from holding a licence under this Schedule;
  - (iii) whether any person under 18 years of age is in the establishment; and
  - (iv) whether any person under that age is employed in the business of the establishment.
- (2) Subject to sub-paragraph (4) below, a constable may enter and inspect a sex establishment if he has reason to suspect that an offence under paragraph 20, 21 or 23 above has been, is being, or is about to be committed in relation to it.
- (3) An authorised officer of a local authority may exercise the powers conferred by sub-paragraphs (1) and (2) above in relation to a sex establishment in the local authority's area.
- (4) No power conferred by sub-paragraph (2) above may be exercised by a constable or an authorised officer of a local authority unless he has been authorised to exercise it by a warrant granted by a justice of the peace.
- (5) Where an authorised officer of a local authority exercises any such power, he shall produce his authority if required to do so by the occupier of the premises or the person in charge of the vehicle, vessel or stall in relation to which the power is exercised.
- (6) Any person who without reasonable excuse refuses to permit a constable or an authorised officer of a local authority to exercise any such power shall be guilty of an offence and shall for every such refusal be liable on summary conviction to a fine not exceeding [level 5 on the standard scale].

#### Offences by bodies corporate

- 26(1) Where an offence under this Schedule 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, any 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.
- (2) Where the affairs of a body corporate are managed by its members sub-paragraph (1) above shall apply to the acts and defaults of a member in connection with his function of management as if he were a director of the body corporate.

#### Appeals

- 27(1) Subject to sub-paragraphs (2) and (3) below, any of the following persons, that is to say—

- (a) an applicant for the grant, renewal or transfer of a licence under this Schedule whose application is refused;
  - (b) an applicant for the variation of the terms, conditions or restrictions on or subject to which any such licence is held whose application is refused;
  - (c) a holder of any such licence who is aggrieved by any term, condition or restriction on or subject to which the licence is held;
  - (d) a holder of any such licence whose licence is revoked, may at any time before the expiration of the period of 21 days beginning with the relevant date appeal to the magistrates' court acting for the relevant area.
- (2) An applicant whose application for the grant or renewal of a licence is refused, or whose licence is revoked, on any ground specified in paragraph 12(1) above shall not have a right to appeal under this paragraph unless the applicant seeks to show that the ground did not apply to him.
- (3) An applicant whose application for the grant or renewal of a licence is refused on either ground specified in paragraph 12(3)(c) or (d) above shall not have the right to appeal under this paragraph.
- (4) In this paragraph—
- "the relevant area" means—
  - (a) in relation to premises, the petty sessions area in which they are situated; and
  - (b) in relation to a vehicle, vessel or stall, the petty sessions area in which it is used or, as the case may be, desired to be used as a sex establishment; and
- "the relevant date" means the date on which the person in question is notified of the refusal of his application, the imposition of the term, condition or restriction by which he is aggrieved or the revocation of his licence, as the case may be.
- (5) An appeal against the decision of a magistrates' court under this paragraph may be brought to the Crown Court.
- (6) Where an appeal is brought to the Crown Court under sub-paragraph (5) above, the decision of the Crown Court shall be final: and accordingly in section 28(2)(b) of the Supreme Court Act 1981 for the words "or the Gaming Act 1968" there shall be substituted the words ", the Gaming Act 1968 or the Local Government (Miscellaneous Provisions) Act 1982".
- (7) On an appeal to the magistrates' court or the Crown Court under this paragraph the court may make such order as it thinks fit.
- (8) Subject to sub-paragraphs (9) to (12) below, it shall be the duty of the appropriate authority to give effect to an order of the magistrates' court or the Crown Court.
- (9) The appropriate authority need not give effect to the order of the magistrates' court until the time for bringing an appeal under sub-paragraph (5) above has expired and, if such an appeal is duly brought, until the determination or abandonment of the appeal.

- (10) Where a licence is revoked or an application for the renewal of a licence is refused, the licence shall be deemed to remain in force—
  - (a) until the time for bringing an appeal under this paragraph 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 and no further appeal is available, until the licence is renewed by the appropriate authority.
- (11) Where—
  - (a) the holder of a licence makes an application under paragraph 18 above; and
  - (b) the appropriate authority impose any term, condition or restriction other than one specified in the application, the licence shall be deemed to be free of it until the time for bringing an appeal under this paragraph has expired.
- (12) Where an appeal is brought under this paragraph against the imposition of any such term, condition or restriction, the licence shall be deemed to be free of it until the determination or abandonment of the appeal.

#### Provisions relating to existing premises

- 28(1) Without prejudice to any other enactment it shall be lawful for any person who—
  - (a) was using any premises, vehicle, vessel or stall as a sex establishment immediately before the date of the first publication under subsection (2) of section 2 above of a notice of the passing of a resolution under that section by the local authority for the area; and
  - (b) had before the appointed day duly applied to the appropriate authority for a licence for the establishment, To continue to use the premises, vehicle, vessel or stall as a sex establishment until the determination of his application.
- (2) In this paragraph and paragraph 29 below “the appointed day”, in relation to any area, means the day specified in the resolution passed under section 2 above as the date upon which this Schedule is to come into force in that area.
- 29(1) This paragraph applies to an application for the grant of a licence under this Schedule made before the appointed day.
  - (2) A local authority shall not consider any application to which this paragraph applies before the appointed day.
  - (3) A local authority shall not grant any application to which this paragraph applies until they have considered all such applications.
  - (4) In considering which of several applications to which this paragraph applies should be granted a local authority shall give preference over other applicants to any applicant who satisfies them—
    - (a) that he is using the premises, vehicle, vessel or stall to which the application relates as a sex establishment; and

- (b) that some person was using the premises, vehicle, vessel or stall as a sex establishment on 22nd December 1981; and
- (c) that—
  - (i) he is that person; or
  - (ii) he is a successor of that person in the business or activity which was being carried on there on that date.