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THE DEVELOPMENT OF LAW
AND PUBLIC DEBATE
IN THE UNITED KINGDOM
IN RESPECT OF PORNOGRAPHY
AND OBSCENITY

by Ian Taylor

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AND PUBLIC DEBATE
IN THE UNITED KINGDOM
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AND OBSCENITY

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INTRODUCTION

The subject of this review is the present state of the legislation and public debate in the United Kingdom regarding pornography. For practical reasons, we shall confine ourselves – as did the recent British Home Office Report of the Committee on Obscenity and Film Censorship $^{\rm l}$ – to "the laws concerning obscenity, indecency and violence in publications, displays and entertainments" and we shall not be dealing with broadcasting. $^{\rm 2}$

Our topic is obviously beset by several contentious political or moral problems, not least of which is the basic question of defining the field. Conservatives and pragmatists may think that pornography reveals itself "commonsensically" in terms of its subject-matter. Libertarian opinion may deny the very idea of pornography altogether, whilst radicals may insist that the "real" pornography in modern society is the nuclear bomb, racism, imperialism etc. Contemporary feminist writing, in the meantime, is divided not just in respect of its attitude towards the legal repression of the phenomenon of pornography, but also in respect of the very definition of the phenomenon itself.

The common thrust of libertarian, radical and some feminist analysis would appear to involve a rejection of the commonsense notion of pornography as being far too generalised, and thereby allowing the State to take up dangerous new powers of censorship, which in turn could expand unchecked and infringe unwarrantably on the rights of individuals or groups.

Other approaches to the definition of pornography seem often to be guilty of the opposite problem, of being too specific or restrictive (and therefore not comprehensive or declaratory of a general moral or legal principle). So, for example, even in law there is no hard and fast definition of pornography as such:

instead, legal prescriptions develop around very specific charges of "obscenity" and "indecency" and do so largely in response to individual, disconnected public complaints. We shall return to these legal questions later. The shorter Oxford English Dictionary, in dating the earliest appearance of the word "pornography" as being in 1864, defines the term only as the

"Description of the life, manners etc. of prostitutes and their patrons; hence the expression or suggestion of obscene or unchaste subjects in literature or art."

In an age in which hundreds of mass market magazines and videotapes devoted to depictions of sexuality in various forms appear in public places, such a definition of pornography may appear far too restrictive.

For the sake of this review, we can only proceed by recognizing that the definition of our subject matter is continually subject to contest. We are discussing an area in which there is no absolute moral, legal or social concensus.

This review will be organized into three sections. In Section 1, I intend to examine the history of the <u>criminal law</u> dealing with matters of obscenity in England and Wales up until 1978. In Section 2, I want to examine the <u>public debate</u> over pornography and legislative developments in England and Wales since the publication of the Longford Report in 1972, and, in particular, to discuss the context and substance of four new statutes which have been enacted by the Conservative Government with a view to enlarging control over sexual materials and activities. Finally, in Section 3, I want to pay more detailed attention to the latest outbreak of public anxiety in this area – namely, the "panic" over so-called "video nasties" (videotapes gratuitously and exclusively concerned with the depiction of violence and horror).

Section 1 The History and Present State of the Criminal Law 5

Attempts at the legal definition and regulation of obscene material have a long history in the United Kingdom. Some form of licensing of literature existed from the time of Henry VIII (1509-47), although the preoccupations of such censorship were more frequently political and religious than they were directly moralistic. For most of the seventeenth century, however, in an atmosphere of increasing frankness in English theatre and literature, no action was taken to construct or to impose any particular criminal offence. In 1727, however, a Mr. Edmund Curll was prosecuted for publishing a tract entitled Venus in a Cloister or The Nun in Her Smock. An earlier case, that of Read in 1708, which had involved publication of a similar tract fell because the Court decided that the matter could not be decided outside the Ecclesiastical Courts. After considerable legal argument, however, the King's Bench Court in the case of Curll, concluded that there was a temporal offence of obscene libel.

This offence, of obscene libel, survived until 1959 in England and Wales, but it was only infrequently used. The enforcement of laws, then as now, seems to have depended on the existence of powerful popular sentiment or active organizations. Between 1802 and 1817, a body known as the Society for the Suppression of Vice successfully mounted some 40 prosecutions against what it saw as "a pestilent swarm of blasphemous, licentious and obscene books and prints". Forty years later, in 1857, Lord Campbell, the Lord Chief Justice of the day, introduced a Bill which was similarly conceived to repress the spread of prints. The debates on Lord Campbell's Act (as it came to be called) were notable for considerable dismay on many sides at the failure to define the term "obscenity"; and, indeed, Lord Campbell's Act (or the Obscene Publications Act of 1857) eventually decided to leave the definition of obscenity to the courts. The inevitable test case occurred in 1868. The

circumstances arose out of the order made by justices sitting in Wolverhampton that the copies of a pamphlet produced by Mr. Henry Scott, a member of the Protestant Electoral Union, entitled The Confessional Unmasked; showing the depravity of the Romish priesthood, the iniquity of the Confessional and the questions put to females in confession, should be destroyed. Scott appealed the judgement of the bench, on which sat Judge Benjamin Hicklin, on the grounds that the pamphlet was published neither for material gain nor "to prejudice good morals". This appeal was rejected by the Queen's Bench judges in April 1868, and the appeal judgement in what is known as the Hicklin case, has become famous for the formulation advanced by the Lord Chief Justice, Sir Alexander Cockburn. He pronounced that:

"I think the test of obscenity is this . . . Whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall."
([1868] L.R.3 Q.B. 360 at p. 361)

The "Hicklin test" considerably extended the range of materials which could be prosecuted as "obscene". In the 1870's successful attempts were made to prosecute texts like The Fruits of Philosophy: An Essay on the Population Problem (on the grounds that it advocated birth control) and various texts by Zola, Flaubert, de Maupassant and Gautier (these prosecutions being mounted by a puritanical and zerophobic organisation called the National Vigilance Association); and, in the same period, publishers, afraid of the impact of the new test, turned away from authors like Havelock Ellis, George Moore and Edward Carpenter. The overwhelming contradiction, as Geoffrey Robertson observes, was that:

"While the eyes of the nanny were looking over the shoulder of the serious novelist, the ugliest pornography was flourishing behind her back....Repression was all on the surface, and even the Vice Society was moved to lament that 'unfortunately, a long experience has shown that, though the vigorous enforcement of the law is for a long time attended with the best effects, offences of this class always have a tendency to revive'." (Robertson, 1979, p.33)

Robertson underlines his point about the double-edged effects of the Hicklin test by observing that the Queen's Bench judgement was followed by the unchallenged publication of "the great <u>oeuvres</u> of Victorian prurience", namely:

"Lady Bumtickler's Revels (1872); Colonel Spanker's Experimental Lecture (1879); The Story of a Dildoe (1880); My Secret Life (1885); not to mention one classic entitled Raped on the Railway: A True Story of a Lady who was first ravished and then flagellated on the Scotch express (1894)." (lbid)

For all this the Hicklin test became the standard test of obscenity in English law and has also, of course, been the accepted legal definition of obscenity in Canada as well as in Australia and in the U.S. The test also had a very long legal life in England and Wales remaining untouched until the Obscene Publications Act of 1859 (and even there being consolidated into the new law rather than being abolished outright).

The Obscene Publications Act of 1959 resulted from some further instances of "serious literature" falling foul of the 1857 charge of obscene libel. The precipitating circumstances were a 1954 case arising from the determination of the Director of Public Prosecutions to ban the sale of cheap novelties, including those by Hank Jansen, which had been identified in the previous year at an Interpol conference as a cause of sex crimes. The publisher being charged chose to defend himself by arguing that Jansen's prose was no more explicit than that which would be found in books published by Britain's most reputable publishers. In evidence, he offered samples of some recent texts to the judge. As a result of this

manoeuvre, three of Britain's major publishers (Heinemann, Hutchinson and Secker and Warburg) were arraigned before the Central Criminal Court. The ensuing proceedings left obscenity law in England and Wales in total confusion. Almost immediately, a committee chaired by Sir Alan Herber was established by the Society of Authors to press for reform of the law.

The proposals of the Society of Authors were subject to consideration by Select Committees of the House of Commons throughout 1957-8, but it required a Private Member's Bill, tabled by Mr. Roy Jenkins, to speed proceedings. Subjected to considerable amendment in the course of its passage through Parliament, this bill became law as the Obscene Publications Act of 1959.

As the author of the historical appendix in the Williams Report observes, the Obscene Publications Act:

"represented a compromise between the sponsors of the bill and the government. The protection for literature was achieved by the requirement that a published work should be taken as a whole and that it should be judged by its effect on those who were likely to see it rather than on anyone into whose hands it might have fallen, and by the provision of a defense of public good allowing for evidence of artistic, literary or scientific merit to be adduced. As a balance to this greater freedom for literature, the Act at the same time sought to strengthen the law against pornography, particularly by easing the procedures for the seizure of obscene articles and widening the powers of the police. It therefore replaced not only the common law on obscenity-though the offence of obscene libel was not actually abolished-but also Lord Campbell's Act of 1857." (Williams, 1979, p. 170 S 11)

This first Obscene Publications Act, though emanating from a Private Member's Bill, passed through a House of Commons dominated by a reformist Conservative Party and by a reforming Home Secretary, R.A. (later Lord) Butler, and it coincided closely with the passage of legislation limiting the use of the death penalty (the Homicide

Act of 1957), the decriminalisation of suicide (the Suicide Act of 1961) and legislation affecting betting and gambling. These items of legislation taken together have subsequently been seen, therefore, as the first phase in a period of "permissive" legislation in post—war Britian.

The second phase of "permissiveness" is identified with the tenure of the position of Home Secretary by Roy Jenkins, during the period of Labour Government (1964 to 1970). In this phase, legislation was passed which effected the final abolition of capital punishment (the Murder (Abolition) Act of 1965); decriminalized consenting homosexual activity in private (the Sexual Offences Act of 1967); legalized the use of family planning, abortion and divorce; abolished the censorship of the theatre by the medieval office of the Lord Chamberlain and legalised entertainment of the public on Sundays. In 1964, however, early in this phase of "permissive" reform, the Commons were successfully asked to pass a second Obscene Publications Act. This Act had two main purposes, neither of which were especially "permissive". The first concern arose out of the problems of obtaining evidence of an offence. cases held after 1959, the courts had held that the placing of priced articles in shop windows was not an "offer of sale" and the courts had also decided that the sale of articles to police officers was unlikely, given the worldliness and experience of police, "to deprave and corrupt". The 1964 Act attempted to circumvent these evidentiary problems by creating a new offence-possessing an obscene article for gain.

The second concern of the 1964 Act was to allow police to seize photographic negatives: courts had found that such negatives could not properly be defined as "articles" in the meaning of the 1959 Act. The 1964 Act brought within existing legislation any article intended to be used for the reproduction of other articles.

We mention these two, quite technical, features of the 1964 Act for a specific purpose. It is fairly obvious that this Act was in no simple sense a piece of "permissive" legislation, and it is clear that the original 1959 Act was in no way intended to ease or to celebrate the publications or consumption of pornography in the United Kingdom. The primary intentions of some of the key figures in the reform of obscenity law during this period were to protect serious adult literature from the legal harassment which had followed Lord Campbell's Act of 1857 and which were repeated in the prosecution of serious British publishing houses in the early 1950's. The secondary intentions of the Home Secretaries of 1959 and 1964, R.A. Butler and Roy Jenkins, seem to have been to aid the police in their prosecution, in particular, of pornographic magazines. These quite conscious and pragmatic intentions were underwritten, however, by a relatively new philosophy regarding the State's role in the regulation of the morality of the citizenry. That philosophy had been most clearly and intentionally articulated in a famous Report published in 1957, resulting from the deliberations of a Home Office Committee chaired by Lord Wolfenden.

The Wolfenden Committee was initially established as a response to a mushrooming anxiety about an alleged growth of prostitution and homosexuality in the British capital. But the ensuing report is unusual for a government document produced under such circumstances. "Wolfenden" is a measured and quite purposive outline of government strategy in the field of moral regulation: it is in no way a simple-minded reaction to the ongoing panic surrounding its creation. The Wolfenden strategy is stated quite boldly early in the Report:

"We clearly recognize that the laws of any society must be acceptable to the general moral sense of the community. But we are not charged to enter into matters of private moral conduct except insofar as they directly affect the public good. In this field, (the law's) function, as we

see it, is to preserve public order and decency, to protect the citizen from what is offensive and injurious, and to provide sufficient safeguards against exploitation and corruption of others....It is not, in our view, the function of the law to intervene in the private lives of citizens or to seek to enforce any particular pattern of behaviour....Unless a deliberate attempt is to be made by society, acting through the agency of the law, to equate the sphere of crime with that of sin, there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law's business".

(Wolfenden, 1957, pp.9-10, 24)

The Wolfenden strategy, therefore, was one which made a very clear distinction between private sin and public crime. Certain selected aspects of sexual activity (like male homosexual activity, consensually conducted in private, and prostitution organized outside the public domain) should not, in this perspective, be criminal: where such activities intruded into the public view, however, they should be treated not as moral offenses but as crimes against public order. This re-articulation of the character of sexual offences conducted in public should not be mistaken as "permissiveness", however: one of the most important features of the Wolfenden Report was the recommendation it made for substantial increases in the penalties for persistent soliciting, progressively higher fines for repeat offenders and an ultimate maximum of 3 months' imprisonment. The grounds for these proposals were, it should be said, quite unambiguously sexist:

"...the simple fact is that prostitutes do parade themselves more habitually and openly than their prospective customers, and do by their continual presence affront the sense of decency of the ordinary citizen." (Wolfenden, 1957, p. 87)⁹

As commentators have subsequently observed, however, the key feature of prostitution which offended was its <u>visibility</u>; and the <u>subject</u> who is thought to be offended by such visibility seems, indeed, to be the famous "right thinking" man "on the Clapham

omnibus" subsequently invented by Lord Devlin, in his influential reflexious on The Enforcement of Morals, as the source of the sentiment the law ought coercively to protect. (Devlin, 1965). The question determining the law's role in the public realm is what this hypothetical "right thinking man" is prepared to tolerate as "respectable" behaviour in public. Intolerable (non-respectable) behaviour is in no way to be "permitted". The respectability of the public domain requires that individual involvement in sexuality should always be in private.

Examination of the "permissive" legislation of the 1957-9 and 1964-9 periods reveals, indeed, that nearly all this legislation exhibited a double-edged character. On the one hand, there was a "selective privatisation" (and thereby "permitting") of certain aspects of the behaviour in question (e.g. the grounds for divorce were made less public and monolithic and allowance was made for personal sentiments and needs), but, on the other, there was an intensification and extension of the State's ability to define the terms of a divorce settlement (e.g. in relation to division of property, custody of children etc.). A similar "double taxonomy" of "selective privatisation" and rationalisation of the State's role in the defence of the public sphere is apparent in the reforms made in these periods, in particular, in relation to abortion, family planning and homosexuality. 10

Opponents of the reforming Home Secretaries who identified and criticised their reforms as irretrievably libertarian or, indeed, as tantamount to providing a free rein for pornographers were, therefore, quite wide of the mark. One well-known critic of Roy Jenkins' "permissive" Home Secretaryship, Mr. Cyril Black, Conservative M.P. for Louth in Lincolnshire, made several attempts during the late 1960's to embarass the Home Secretary on a broad front and, in 1967, he was eventually successful in persuading a court to issue a warrant for the seizure by the police of all copies

of <u>Last Exit to Brooklyn</u>. The government's response to this was to include in a subsequent Criminal Justice Act an amendment preventing justices of the peace from issuing warrants under Section 3 of the Obscene Publications Act except on application by the police or by and on behalf of the Director of Public Prosecutions: in this way, the government was able to preserve the crucial Wolfenden distinction endowing the State alone with the responsibility for the defence of the <u>public</u> realm and simultaneously limiting the ability of the State (whether acting under the particular influence of a pressure group or on its own initiative) from intervening in the <u>private</u> morals of the citizens (here, the reading preferences of adults).

The period from the passage of the Obscene Publications Act of 1964 to the late 1970's in the United Kingdom was marked by quite considerable moral furore and by several extremely well-publicised cases, 11 but the trajectory of the law has not (until very recently) threatened the domination of the overall Wolfenden strategy. Much of the legislative activity in this period is best described as a rationalisation of existing law. So, for example, the Criminal Law Act of 1977 included in it some measures to bring the exhibition of films within the scope of the Obscene Publications Acts (where previously they had been subject to the common law of indecency). Films have, of course, been subject to censorship in the United Kingdom in much the same way as they have in Canada (except that the Board of Censors is national rather than provincial): but in 1975 the use of the common law offence of indecency against a film shown in a public cinema converted the film industry to the view that they would be better off being subject to regulation via the 1959 Act than the common law.

Before turning to an analysis of the various campaigns that have been waged (with increasing effectiveness) against existing forms of "moral regulation" in the United Kingdom, it is worth our examining the development of some related law. Two of the most pertinent pieces of legislation arose out of "panics" around particular issues.

The Childrens and Young Persons (Harmful Publications) Act of 1955 - to which we shall return in Section 3 of this Report - arose out of a quite considerable hysteria surrounding the entry into Britian of a new wave of horror comics produced in the United States, especially marked during 1954. The Act was passed very rapidly, on the grounds of the felt need to prevent further circulation of these corrupting publications. The Society of Authors (and others) protested against the speed with which the legislation was put through and expressed its concern at the piecemeal character of the Act. Nontheless, this Act was destined to become a permanent part of the obscenity laws of the U.K. and, having beeen renewed by the Expiring Laws Act of 1969, remains in force today.

More recently, in July 1978, the House of Commons - with a view to preventing children being involved in the production of pornography - unanimously approved the Protection of Children Act. This Act arose out of a private member's bill introduced by Mr. Cyril Townsend M.P. but it was drafted in close consultation with an important pressure group, to which we will turn in a moment, entitled the National Viewers and Listeners Association.

Before turning to the NVALA and its recent victories in struggles for legislative reform, we should make it clear that the range of law available to the U.K. government prior to 1978 was by no means restricted to the Acts we have discussed (the Obscene Publications Acts, the Children and Young Persons (Harmful Publications) Act and the Protection of Children Act and the common law offence of obscene libel. Governments could and did make use of legislation governing public order in local authority areas (like the City of London Police Act of 1839) to control the display of

indecent publications, and they also had the power (under the Customs Consolidation Act of 1876) to interfere with mails suspected of being obscene material in process of importation into the U.K. The Post Office Act of 1953 allowed the seizure, and destruction of indecent or obscene articles found in the mails - and this was a much used power, although very few prosecutions were associated with these interventions. The Vagrancy Acts of 1824 and 1834 prohibited the public display of any obscene print, picture or "other indecent exhibition" and this too is a power that has resulted in countless confiscations but few actual prosecutions. Finally, as previously mentioned, the Theatres Act of 1968 Section 2 allowed charges of obscenity to be brought against a theatre, by the Director of Public Prosecutions (this being a new power, since previously the moral regulation of the stage had been the prerogative of the Lord Chamberlain).

It should be clear from the above that by 1978 a range of legal powers were available to governments in the U.K. in respect of the regulation of obscenity and pornography, and, certainly, the description of the form of existing law as "permissive" seems quite inaccurate. As we shall see in Section 2, much of the criticism of the existing laws essentially concerned the difficulty of application of the laws rather than their actual form or legislative intent.

Section 2 The Public Debate and Legislative Developments around Pornography since the Williams Report

Laws on obscenity in the United Kingdom have been subject to very rapid reformulation in substance and in spirit over the last five to six years. No serious observer of these changes has any doubt that these changes have resulted to a very significant extent from the activities of various moralistic pressure groups, of which the National Viewers and Listeners Association is the most important. We need to discuss this organization and its objectives before turning to an account of its recent influence. 13

The NVALA grew out of the tireless activity of a former Principal at a girls' high school in Madeley, Shropshire, Mrs. Mary Whitehouse. Beginning as a very small organization - preoccupied initially with the mere mention of pre-marital sex (called Clean-Up TV) - the association headed by Mrs. Whitehouse now has several thousand members and is widely known to exercise a very close "moral" scrutiny of the output of television (its primary concern), with respect to sexual matters in general as well as some much more directly political issues (like the de facto censorship of Sinn Fein and the IRA on British television, which the NVALA wholeheartedly supports). In recent years, however, Mrs. Whitehouse and some of her supporters have turned their attention to the question of more effective censorhsip of theatres and private cinemas as well as to the topics of magazine and videotape pornography. Mr. Raymond Blackburn achieved some notoriety in the middle to late 1970's, for example, for his frequent attempts to bring private prosecution against theatre companies and commercial retailers for indecent displays and obscenity; and, most famously of all, the festival of Light 14 (with which Mrs. Whitehouse was closely associated) was also responsible in the early 1970's for persuading the Labour peer, Lord Longford, to head up a major "public enquiry" into pornography. The research undertaken by the Longford Committee

(involving, as it did, a rather upright Christian gentleman in visits of observation to live "sex shows" in Amsterdam's red light district) was the subject of massive press coverage in the U.K. The ensuing publication, simply entitled <u>Pornography-the Longford Report</u> was a bestseller and a continuing topic for public discussion for some time to come. (cf. Longford 1972)

The Longford Report can be read as having three main targets. 15

One of the major targets of the Longford Committee was the social scientific work on pornography which was then available and, in particular, the work of Berl Kutchinsky in Denmark. Kutchinsky had recently published work in the USA which purported to demonstrate that some quite marked decreases in Copenhagen in certain sexual offences (exhibitionism, molestation, and minor sexual offences) could be explained as resulting from the abolition in Denmark in 1969 of all legal restrictions on pornography 16 (cf. Kutchinsky 1970). A key theme in Kutchinsky's work was the identification of pornography as having a cathartic effect on potential sex offenders, in providing alternative outlets for sexual expression. A considerable amount of effort is experienced in the Longford Report to try and undermine the credibility of Kutchinsky's research. Later in the 1970's, the NVALA was to sponsor the statistical research of an Australian based psychologist, Dr. John Court, in which attempts were made to show a positive correlation between the amounts of pornography in circulation and the numbers of rapes known to the police in certain countries. (Court, 1976) 17 Court's work also strongly suggested that pornography has an addictive quality, and - so far from being "satiated" by exposure to unlimited amounts of pornography - that the consumer constantly develops a taste for further and ever more elaborate sexual thrills. In Court's argument, this results in a consumer-led market for sado-masochistic pornography, pornography involving bestiality,

or children, and/or exploiting race prejudice, and ultimately including the notorious "snuff movies". Court's overall conclusion, cautiously formulated in his academic papers, is that

"...the ideal of adult freedom must be tempered by the risk of harm to others (especially resulting from the presence of sexually disturbed adults in a community)...

The indications are that this risk is now getting to the point where a serious social problem has developed."

The critique of Kutchinsky was particularly important to the Longford Committee because it very closely tied in with what the Committee saw as the failure of the Obscene Publications Acts to repress pornography within the U.K. The finding that there could be a causal link between the public availability of pornographic magazines and recorded reductions in child molestation offences, for example, provided a solid (and apparently "scientific") basis for the argument that pornography had consequences "for the public good". So Kutchinsky's work was frequently quoted in cases brought to British courts under the 1959 Act as evidence that:

"...the publication of the article in question is justified as being for the public good on the ground that it is in the interests of science, literature, art or hearing, or of other objects of general concern."

(Obscene Publications Act 1959, Sec. 4)

Section 4 further allowed defendants accused of holding or publishing obscene articles (as well as the prosecution) to present "the opinion of experts as to the literary, artistic, scientific or other merits of the article". Throughout the 1960-1972 period, in particular, a large number of important cases were accompanied by presentations by several experts testifying to the "public good" of particular articles. In the famous trial of D.H. Lawrence's <u>Lady Chatterley's Lover</u> in 1960 - the first trial using the public good defence - over 20 expert witnesses testified to the literary merit of the text. Similar arrays of experts were brought by the defence

in the case of Cain's Book by Alexander Trocchi (a novel descibing the life of a New York junkie, published in 1965) (John Calder (Publications) Ltd. v. Powell 1965 2 Q.B. 327); Last Exit to Brooklyn by Hubert Selby Jr. (a novel describing homosexual and heterosexual promiscuity and drug-use) (R.v. Calder and Boyars 1968 52 C.A.R. 706) and the 'OZ' case (the underground magazine discussed earlier) (R.v. Neville and Others (1972 56 C.A.R. at 125). In these and many other less well-publicised cases, the defence arguments brought by experts were thought (at least by the Longford Committee) to be very influential with juries, and certainly it was very difficult to win convictions under the obscene Publications Act of 1959. 18

The Longford Report, therefore, mounted a headlong attack on the public good defense, arguing that

while the defense of 'public good' has respectable ancestry...its moral and intellectual validity is open to the strongest doubt. Its invocation does not arise save in relation to articles which are deemed to have that tendency to deprave or corrupt which is the essence of obscenity within the meaning of the 1959 Act. So what, in effect, is asserted is that the literary or other merits of a work can nevertheless be such as to render it 'for the public good' that those who read it should run the risk of thereby becoming depraved and corrupted. Surely this is nonsense. Mr. John Montgomerie...has rightly said that 'the balancing of depravity against literary merit is farcical. Presumably the better obscenity is written, the more it corrupts (Longford, 1972, pp. 368-9)

The Longford Committee also came out against the formula in the Obscene Publications Act defining obscenity. As indicated earlier, Section 1 (1) of that Act proposed obscenity amounted to a "tendency to deprave and corrupt" audiences into whose hands the material in question might fall. We have shown that this formulation encountered certain key legal difficulties. But these difficulties arose – according to the Longford Committee – because of the attempt

to excuse pornography under certain circumstances. The Committee felt their objections had been "admirably summarised" in a letter to The Times by Mr. Nigel Nicholson (a famous English essayist and historian), which it quoted in full:

"The \overline{OZ} case throws new doubt on the legal definition of obscenity. 'A tendency to deprave and corrupt' is not good enough. It says the opposite of what we usually mean.

If a man exposes himself in the park to a young girl, the shocking sight is more likely to drive her to celibacy than prostitution. 'Deprave and corrupt' could excuse the sale of pornography in a brothel on the grounds that its patrons cannot be more corrupted than they already are. A publication or spectacle might be so repulsive that the defendants could argue (and did argue in the Oz case) that far from encouraging perversion, it renders the very idea of perversion nauseating. So the logic of the present definition of obscenity is that the harder the pornography the greater its deterrent effect and therefore the greater its social value.

Pornography is an evil in itself, and the law has to say so."

(The Times, 9 November 1971)

In order that the law should say just this, and free itself of the public good defence and the restrictive formula requiring proof of "a tendency to deprave and corrupt", the Longford Committee proposed a Draft Bill to replace existing obscenity legislation. In this Bill:

"an article or a performance of a play is obscene if its effect, taken as a whole, is to outrage contemporary standards of decency or humanity accepted by the public at large."
(Longford, 1972, p. 371)

This definition of obscenity would remove the requirement of proving that the material might have corrupting <u>effects</u> and was also said to have the advantage of allowing control of matters other than sex. In particular the Report thought this definition would allow prosecution of publications which presented an "alluring

picture" of drug addiction, and, it continued (without much elaboration):

"It is intended to be directed against the horrifying and degrading descriptions and depictions of violence which are today prevalent."

Lying behind the Longford Report's critique of the social scientific analysis of pornography's cathartic effects and its attempts to circumvent the legal restrictions on prosecutions under the 1959 Act was a third and vital concern. Simply put, that objective was to establish an alternative philosophical rationale for "moral regulation" to that advanced in the Wolfenden Report.

Much of the thinking about moral regulation advanced in the Wolfenden Report closely paralleled the arguments that had been advanced by Mary Whitehouse and the National Viewers and Listeners Association. Whitehouse has been repelled, initially, by increased openness in the early 1960's toward the idea of couples engaging in pre-martial sex "experimentally". For her, these suggestions ran counter to her fundamental "Christian" - as she put it - belief in the need for the repression of sexual concerns even within marriage: sexuality is seen as a very minor element in the establishment and maintenance of family life. "Family life" is seen, fundamentally, as a responsibility (accepted on behalf of God) for the moral training of children. This moral training certainly emphasises the values of good literature, art and nature but carefully extinguishes any examination of sexuality in any of these areas. For Whitehouse, open discussion of sexuality by adults or by anyone in the public terrain constitutes an "invasion of the innocence" of adolescence. So there is, indeed, a repression of certain - some would say natural - features of the human species (namely its erotic and sensual interests). It is also worth noting, in the light of our concerns in Section 3 of this review, how the NVALA's view of television, cinema and videotape violence and horror

is almost entirely concerned with the censorship of <u>imaginary</u> violence and horror, and relatively unmoved by the violence and horror of the mundane world of everyday politics. There is no programme here for the creation of real peace and harmony in the world: only a programme for the suppression of unpleasant violence in the fictional or imaginary world.

The rationale for family life which is constantly invoked in Whitehouse is <u>not</u> utilitarian. That is to say that Whitehouse's view of the primary of family life as the source of individual moral learning is <u>not</u> advocated, in a conditional way, as the means to achieve a just or workable society (for women and men, adults and children, etc.). The view of the family is based almost entirely on the teachings of the Christian Church, and its is to <u>this</u> absolute conception of the family and its moral – not to say religious – role that Mary Whitehouse is committed.

In this view of the world, the cause of discontent in the area of personal, moral, sexual and private lives is not the development of authentic or worthwhile new interests in sexuality or independent personal lives amongst human beings. Nor either are these discontents the results of new strains in the family, and indeed changes in the family form as such, consequent on the entry of large numbers of women into the labour market and/or the other massive changes in the post-war economy of western societies. The discontents are seen to arise because of the undermining of the absolute primacy of the family institution over individuals. For Whitehouse, the NVALA and the Longford Committee, one of the main reasons for this undermining of the family was, indeed, the advance of what Whitehouse identifies as 'liberal-humanism'. 'Liberal' or 'humanist' experts had emerged in positions of influence within British life in the theatre, in art and literature, in law and politics and in the mass media - and had given time and space both to secular and relativistic rhetorics and ideologies. The

consequent "liberalisation" of abortion, divorce law, theatre censorship and of obscenity law (in its application) were an ongoing threat to the primacy of the family (supported by the State) as the source of moral teaching: indeed, one of the consequences of the advance of Wolfenden-type liberalism was the creation of discrepancies between the Christian idea of the State's role as a support for the moral tutorship role of the family and the liberal-humanist's attempt to create arenas of free choice untrammelled by the interference of the State.

Much of the attack that developed during the 1970's on "liberal-humanism" and Wolfenden reformism depended on this fundamentalist Christian familialism. But it is important to note the presence of another important theme in much of the critical literature and especially in the comments made by Lord Longford himself and by the Cambridge-based educationalist, David Holbrook. (Holbrook 1972) The objection made by Holbrook to pornography was to the "objectification" (the de-humanisation) and subordination of women in nearly all pornographic films and magazines: he also underlined the way in which much of the more vivid modern pornography produced an entirely "fantastic" and unreal concept and expectation not just of womanhood but also of male-female relations in general. Pornography abolishes the contradictions and the tragedies, as well as the real triumphs, of human existence - on which, for Holbrook, all great literary and filmic representations of the human condition depend. The aesthetic objection made by David Holbrook was certainly an elitist one (made by a scholar of high culture): the critique was of the desensitising and unsubtle effects of pornography read as literature. Of course, it may be that pornography's mass appeal is not best understood as a literary form. Nonetheless Holbrook's arguments added strength to the largely religious objections of the NVALA.

These increasingly noisy and repeated criticisms of pornography and of the Wolfenden insistence on the maintenance of both public order and private freedoms - were raised by influential elements of the right in British politics. This is not to say, however, that there were no "progressive" or social democratic voices raised against pornography, albeit the majority position within the British Labour and Liberal Parties and amoungst other sectors of organized opinion was in general terms supportive of the Wolfenden strategy, with a significant libertarian fringe being sceptical of the benefits of State intervention on any terms. Professor Bernard Crick, in a series of public lectures on "Crime, Rape and Gin", quite elegantly made the sensible observation that the preoccupation with pornography was preventing serious consideration of other quite vital problems of love, reciprocity and responsibility in "liberated" adult sexual relations. Being a social democrat, Professor Crick was aware that the failure to solve these problems would leave many people (probably mainly women) very poor materially; but he was not so "materialist" as to think that the problems of love in modern society (disconnected as they are from traditional belief in the permanence and patriarchal character of marriage) have no poetic or tragic qualities. (cf. Crick 1974).

Perhaps the most persistent voice raised against pornography (other than that of the N.V.A.L.A.) was the voice of the Women's movement itself. The indictments of pornography in certain sections of the press (the <u>Guardian</u> "Women's Page", <u>Spare Rib</u> and elsewhere) were given further impetus by the revelation that the "Cambridge Rapist" (a violent sex offender who terrified the University town in 1976 and 1977) had a large personal collection of adult magazines, and latterly by the orgy of murders of women engaged in by the so-called "Yorkshire Ripper", Peter Sutcliffe, in 1980-1. During the police hunt for the Yorkshire Ripper, large proportions of the female population were outraged by the police's attempt to impose a curfew on women (arguing that the problem was male violence against

women) and a variety of women's groups (ranging from "Angry Women" to "Women against Violence against Women") engaged in a range of political campaigns under the slogan "Pornography is the theory; rape is the practice".

Members of the women's movement also engaged in direct attacks on "sex establishments" in different parts of the country, daubing slogans on their windows or, occasionally, vandalising the establishments' premises. In London, at least two major "Take Back the Night" marches proceeded through Soho and confronted owners and customers of sex establishments, whilst other demonstrations were held inside the offices of the <u>Sun</u>, <u>Daily Star</u> and <u>Daily Mail</u> newspapers, to protest against the now conventional use in those papers of semi-nude girls on Page Three and the general trivialisation of women's issues. (See, for example, "Anti-Porn Arrests" <u>Quardian</u> 13 December 1980)

There is no difficulty in explaining the widespread anxiety over pornography that arose in Britain during this period, especially amoungst intellectuals and/or religious leaders with an interest in the broad direction of society. The common complaint was that "pornography" was increasingly intrusive and inescapable. By this, the critics meant that scenes of sexuality were on the increase on television; that violence on television also was more prominent (especially in U.S.-imported "cops and robbers" shows) and also, in particular, that the sheer amount of magazine pornography on sale, even in local corner stores, exceeded all previous experience. The argument here was that the "ordinary" customer in a corner store (from young person to old age pensioner) could not avoid being confronted by garish, unsettling and/or frightening, scenes on the cover of pornographic magazines. In some commentaries, the

was becoming more "extreme" and particularly that the magazines were featuring more violence, more children and animals and more exploitation generally.

The empirical evidence for each of these claims varies. There is no serious longitudinal research on the post war development of British television's coverage of sexuality, and any generalisations that are offered are probably based on the weekly counts that members of the NVALA produce by way of programme analysis. These counts tell us nothing, for example, about the context in which a person appeared in the nude, and whether the scenes were framed provocatively or merely "naturalistically". The tendency in these reports is always to speak of a deterioration in television's standards in these areas: no thought seems to be given to the incessant televising of dumb blondes and long legged chorus girls (to the accompaniment of cheap jokes from male comedians) which was an absolutely staple feature of British television in the 1950's.

The evidence for an increased portrayal of violence is also very unsystematic, and much of the research on the effects of such violence is also quite primitive. There certainly has been an increase in the number of relatively violent American series shown on the various British television channels, but, given that British television now has four channels and runs through the day, the proportion of television time devoted to such shows may not have increased. On the other hand, there was undoubtedly a quite marked increase in the number of allegedly 'realistic' machismo police series produced in Britain (The Sweeney, The Professionals, etc.); 21 and these programmes could certainly be indicted for glorifying violence, especially that committed by hard-headed Authority itself (the Police).

What seems to be beyond doubt, however, is the growth of the pornographic magazine industry in Britain. The Williams Committee,

to which we turn in a moment, commissioned its own research into "the circulation and readership of adult magazines" in the U.K. On the basis of obtaining actual circulations of five adult magazines (Club International, Mayfair, Men Only, Penthouse and Playboy (UK edition), the researcher estimated a net total readership of these five magazines as roughly 4 million. 22 The large number of smaller magazines that are available in Britian might raise this figure to 6 million (Williams, 1979, p. 256). The research also showed that the magazines, taken as a whole, had exhibited enormous "readership growth" between 1970 and 1972, a slight decline between 1974 and 1976, a further increase in 1977 and then a return to the levels of 1976. More recent investigation by Pratt reveals there has been a steady decline in the sales of these (and other) sex magazines since 1978 (Pratt, 1984, Table 1). What was clearly a boom industry - pornographic magazine production - may now have been quite severely curtailed by the combined effects of economic recession and the mass marketing of pornographic video.

There is <u>no</u> doubt that the <u>character</u> of the pornography routinely available in magazines in Britain was changing very rapidly in this period. New watersheds were being crossed by the publishers of magazines in the search for audiences. The Williams Report references the initiatives taken in 1973-1974 by a Mr. David Sullivan to produce "riskier" and "more explicit" magazines, which he called <u>Private</u> and (very impudently) <u>Whitehouse</u>. Like their American counterpart - <u>Hustler</u> - these magazines specialized in very glossy close-up photographs of female genitalia (notably the so-called "tunnel shot") and also in the use of bizarre and "fantastic" settings. The rise of <u>Whitehouse</u>'s circulation in th late 1970's paralleled a decline in the circulation of <u>Playboy</u>, which had eschewed any move towards this kind of photography.

The Williams Committee was established, therefore, in the context of a considerable anxiety over the growth of pornographic literature and films as a part of Britain's urban landscape. In particular, the Committee was established as a response to the anxieties which had arisen early in 1977 over the alleged exploitation of children by some producers of pornography. But also - clearly - there was a reassertion of the concern that these magazines should not be so routinely available and thereby potentially so corrupting to minors. Though the police were now using their powers of seizure (under the Customs Consolidation Act and Post Office Acts) with increasing regularity. 24 the growth of the "legitimate" market and the difficulty of winning convictions on obscenity charges, was threatening to undermine the credibility of the Obscene Publications Act. Editorial writers and others were increasingly speaking of the denial of individual liberty that was involved in not being able to enter corner stores or pass bookstalls or newspaper kiosks without being confronted with a pornographic image.

The resulting Report is best conceived, perhaps, as an attempt to rescue the basic Wolfenden strategy. The Committee explicitly rebutts all the pressure of the times to see pornography within a "cause-and-effect" argument. Instead, the Committee recommends that the principal object of the law should be to prevent certain kinds of material causing offence to "reasonable people" and also to prevent it being made available to young people. This objective is underpinned by a concern that the law should operate as the basis of the "harms caused by or involved in the existence of this material." (Williams, 1979, p. 153) But it is also concerned to protect the right of adults to buy most of the currently available material for their private use since, the Report argues, an "objective assessment of likely harm does not support a wider prohibition." (Williams, op. cit. p. 160) The upshot is the key Williams recommendation for "restriction" on the display, sale, hire

etc" of material, such that such material can only be obtained by post, "in a restricted performance," or in premises which are specially designed for the sale of such material. The Williams proposal calls for these premises

- (a) to refuse admission to persons under the age of 18,
- (b) to place a prominent warning sign by all access routes into the building, and
- (c) make no display available to persons not passing beyond the warning notice, other than the name of the business and an indication of its nature.

 (Williams, op.cit., p. 160)

It is worth noting that the "sex industry", as it was increasingly referred to in Britain, had already anticipated many of Williams' proposals. The British Adult Publications Association Ltd. (BAPAL), established in May 1977, actually established its own guidelines to try and prevent distribution of the material to which investigatory committees like Williams might object. The BAPAL Board was actually chaired by the famous now retired member of the British Board of Film Censors, John Trevelyan, and

"the guidelines prohibit photographs of actual sexual intercourse - including oral sex - all forms of illegal and potentially harmful sexual activities, bondage, flagellation and extreme close-ups of the anal or vaginal area."
(Hebert, 1978)

The Williams Report (commissioned by a Labour Government but delivered over two years later, to a Conservative government six months into its mandate, in November 1979) was substantially ignored by the new administration. One suspicion was that the new Home Secretary wanted to give the industry time to put its own house in order. A stronger view was that the new administration's strong faith in the ideology of the free market would prevent it from legislating in the areas of this growth industry. (Pratt 1981) Certainly the evidence for a time was that the mere threat of legal action was producing a response in the sex industry: ²⁵ the fronts

of sex shops in most urban centres and especially in Soho (London's centre for commercial sex establishments) were covered up, and signs of the kind demanded in the Williams Report do now confront any person about to enter one of these establishments. (cf. Ellis 1980) This self-regulation of sex shops was then made permanent by legislation in 1981 (see below).

For the first three years of the first Thatcher government, there were no formal initiatives taken against the sex industry in Britian. One political commentator astutely suggests that the real reason for inaction was that the government had no desire to take up the altogether liberal and utilitarian Williams Report, but neither had they any clear idea as to how to overhaul the mess into which obscenity law had fallen. (Benton, 1982, p. 11).

Indeed the first initiative taken to reform the law in this area during the lifetime of the first Thatcher government arose out of a private member's bill rather than from any policy decision by the government itself. The Indecent Displays (Control) Act, resulting from a Bill brought by Timothy Sainsbury M.P., established an offence of publicly displaying indecent material and made this offence punishable by a fine of 1,000 pounds (about \$1,750), or a prison sentence of up to two years or both. This legislation was clearly intended to circumvent entirely the evidentiary problems encountered by the 1959 Obscene Publications Act by making "display" — as such — of obscene materials a criminal offence. The Act also took up the Williams proposal for a warning notice to be placed at the access to premises where indecent material is to be found, and thereby made lawful what was already being practiced by most merchants in the sex trade.

In July 1982, however, a further initiative took place in a government bill, but in the most unlikely location. Tacked onto the Local Government (Miscellaneous Provisions) Act — a document which

has rightly been described as "a mismash of laws classifying certain local authority powers, including the regulation of acupunture, take-away food shops and firemen's switches for luminous tube signs" (Benton, 1982, p. 10) - was a clause giving local authorities in the United Kingdom (the equivalent of metropolitan and city councils in Canada) the power to introduce a licensing system for "sex establishments". Though Mary Whitehouse of the N.V.A.L.A. claimed credit for this, adding that "Women's Lib" was on her side, research by the New Statesman suggests that the proposal for licensing originated from pressure put by Westminster City Council. Westminster is the London borough covering the notorious area of Soho, which felt by the early 1980's that it had finally lost many of its old ethnic food shops and restaurants to the sex industry. In 1982, according to the Westminster City Council General Purpose Committee there were 186 "sex establishments" in Soho, 35 sex cinemas, 15 video lounges, 33 video film booths, 7 peepshows, 6 "nude encounter parlours", 21 strip clubs, 7 sauna massage parlours and 62 sex shops. 26 The Council was concerned to encourage legislative action on all fronts 27 to turn back the escalating growth of the sex trade within Soho²⁸, but they were also concerned that "the trade" was spreading to other parts of the Council's jurisdiction (particularly Paddington and Victoria). The Westminster Council's arguments were successful when the government began to receive pressure from local authorities elsewhere in England, complaining about the inexorable growth of sex shops in their areas. ²⁹ The Act enabled local councils to use the licenses to exclude sex establishments entirely from what the Act called "appropriate localities". 30

Later in 1982, the government decided to move further and gave time to the Cinematograph (Amendment) Act. This legislation "closed a loophole in the 1952 Cinematograph Act, which had permitted exhibition of films on unlicensed premises, provided that the audience were members of a cinema club." (Kuhn, 1984b, p. 10). The

new law made all film and (mentioned specifically for the first time) video exhibitions "promoted for private gain" liable to censorship. All local cinemas in the United Kingdom (even if they defined themselves as private clubs) would henceforth require a licence "in order to trade". A new certificate called "Restricted 18" is available for premisses predominantly devoted to pornographic material, but the grounds on which the British Board of Censors would award or refuse this certificate are not as yet apparent. The Cinematograph (Amendment) Act - a mere nine pages of substantive legal instrument - marks an important shift in the post-war history of moral regulation in the United Kingdom, for, as Annette Kuhn observes:

"for the past three decades, the film censor's efforts have been devoted to the classification of films for adult audiences. This new measure reintroduces a thoroughgoing censorship of films for adult audiences. This is the definition of 'public' - subject to regulation, in other words - extended to all premises in which films are shown for profit!"

(Kuhn, 1984b, p. 10)

Kuhn wrily notes that

"This contrasts with the exemption of working men's clubs from the Sex Discrimination Act. And now that, under the Local Authority (Miscellaneous Provisions) Act of 1982, local authorities can require the owners of 'sex establishments' to obtain a licence, all premises dealing in sexual representations have effectively been transformed into public places." (lbid)

In this respect alone, the two Acts are a clear rejection of the Wolfenden strategy of legislating simultaneously for public order and private freedom. The Local Government (Miscellaneous Provisions) Act also constructs a blunt instrument for cutting through the years of argument amoungst lawyers, censors and other experts over the interpretation of film. The Act defines the materials to be controlled as

"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 of excretory functions."

(Schedule 3, section 3, p. 68)

As Annette Kuhn has remarked, this is a remarkable attempt, actually unparalleled since Lord Campbell's Act, to establish an "a priori definition of the content of representations to be restricted." (Kuhn, 1984b, p. 11). The fact that the responsibility for decisions in particular cases is handed to the judiciary (other than the British Board of Censors) makes it possible that there will be legal initiatives to restrict even the display of the naked human form on film.

The most recent legislative initiative of the British Government, the Video Recordings Act, also exhibits a very direct kind of interventionism into areas that the Wolfenden would have clearly regarded as "private". The statute, which will pass into law later this year after its final reading in the House of Commons, is directly and ostensibly concerned to examine a particular product — namely, videotape recordings that are concerned "to any extent" with the depiction of certain (unspecified) "human sexuality", "mutilation, torture or other acts of gross violence" or "human genital organs" — with a view to taking it completely off the market. The measure will establish an Authortiy (initially, the British Board of Film Censors) to classify video cassettes as being "suitable for viewing in the home" and to censor them if they are not suitable. The phrase "in the home" is enlarged to mean that

"the video work is suitable for showing to persons of any age (with or without any qualification as to the

desirability of parental guidance with regard to the showing of the work to children or as to the particular suitability of the work for showing to children)..." (Clause 5 (2))³¹

There will be fines of 20,000 pounds for dealers or distributors who make cassettes available to the public without a BBFC classification; and, most ominously of all from the perspective of the many civil-liberarian critics of this new legislation:

"The Board will be enlarged for its new censorship role: it will acquire additional premises and will have two vice-presidents approved by the Home Secretary - the first directly political link in its 70-year history". (Robertson, 1984)

Almost all the 6,000 video titles currently on sale or for rent in the U.K. will have to be vetted by the new Board (the only exceptions are educational videos, or those concerned with sports, religion or music). 32

The Bill has several contradictory features and introduces further complications into the already complex state of obscenity law in the U.K. One of the most peculiar aspects is that the Act will still require programmes that have been shown on television to be submitted to the Board before they can be reissued on videocassette. Another is the double jeopardy that is created for distributors and dealers: the fact that a videocassette has been given a classification by the BBFC does not mean that the Director of Public Prosecutions, local police forces or private prosecutors are prevented from prosecuting distributors or dealers under the Obscene Publications Act on the grounds of having for sale or rent materials which could "tend to deprave and corrupt." The maximum sentence under the Obscene Publications Act for selling a film later found obscene is three years.

Many commentators in Britain - <u>including</u> some proponents of increased censorship - have expressed considerable reservation about the powers which the British government has assumed under the Video Recording Act. But, by the same token, my research indicated that there has been no massive protest about the general intentions of the Act.³⁴ To understand this, it is necessary to trace some of the recent concern about the content and effects in Britain of the new growth industry - the production and viewing of video. This is the subject of the third and final section of this review.

Section 3 The "Video Nasties" Panic 1981-4

Outbreaks of anxiety about the visual representation of violence and its effects are nothing new in Britain. (for a comprehensive and intelligent review of earlier instances cf. Lusted 1983). The phenomenon of the allegedly violent Teddy Boy of the 1950's, for example, was widely attributed by authoritative commentators in Britain to the screening of American gangster movies and , latterly, to the "violent" beat of the early Rock 'n Roll movies. Delinquency in general was frequently connected to the American horror comics which were eventually banned in 1955. Hooliganism around soccer stadiums in the 1960's was put down to the screening of invasions of the pitch and menacing crowd scenes on television. The political violence of the counter-culture in the late 1960's, then the violence of young blacks and poor whites in the 1970's and, of course, the riots of the summer of 1981 were all given an explanation, by various commentators, as a general effect of the viewing of television and as a particular consequence of a process of imitation. These "Clockwork Orange" type explanations have since been attributed a scientific status as behaviourist theory by Hans Eysenck and D.K.B. Nias (1978) and William Belson (1978) in their separate, but substantively very similar, studies of the impact of television on behaviour.

The most recent outbreak of this kind of concern in Britain has arisen around the viewing of certain videotapes, especially by the very young. Before giving more detail on these developments, however, we should explain more about the context of video use in the U.K. According to Intermedia, the journal of the International Institute of Communications, proportionately more Britons own videocassette recorders than any other nationality in the world: Intermedia's estimate for 1983 was that some 30.1 per cent of all TV owners would have a VCR. By contrast, only 10.7 per cent of TV

owners in the USA and 8.4 per cent in Canada were estimated to have a VCR. The world total of videocasette recorders was estimated in 1983 to be 36 million and of these, 6 million were to be found in British homes (17.9 per cent of the world total). According to the Chief Executive of the British Videogram Association, Mr. Norman Abbott, VCR ownership in Britain in March 1984 was 32 per cent of all TV-owning homes and increasing by 1 per cent per month.

Different reasons can be advanced for the very pronounced development of the VCR as a consumer item in Britain - the most obvious of which is that television entertainment and choice of programming is currently only offered on four channels. On the other hand, according to two crime correspondents (who are not known for sensationalism), writing early in 1981:

"...the unpublished side of this flood of new technology entertainment is the existence of a huge racket in video pornography. Among the biggest selling video cassettes by far are those which can be broadly described as erotic entertainment. Not long ago tapes with some sex content were said to have taken as much as 70 per cent of the market. The percentage may still be over 30 per cent." (Parry and Jordan, 1981a)

According to these writers, the growth of the market in pornographic video had occurred largely amongst middle class consumers, taking over from mild drug use as the symbol of "modernism". They go on to detail how pornographic videos had largely been produced on the continent of Europe and smuggled into Britain in container trucks, but suggest that economic reasons had recently encouraged producers of video film to set up operation in Britain where performers are apparently cheaper.

The development of the pornographic video industry in Britain was, of course, significantly eased by the ambiguities in the Obscene Publications Acts. We indicated earlier that it was not

until 1977 that films were brought fully within the scope of the obscenity laws. But the Criminal Law Act which did this did not specify whether the videotape was "a record of pictures", or an "article" under the Obscene Publications Act or television (which section 1(3) of the Act specifically excluded). This confusion has forced police back to the use of the notoriously difficult section 2(1) of the Obscene Publications Act. (cf. Parry and Jordan 1981b)

Videotapes are sold and/or rented in Britain from newly-opened video stores located in what used to be ordinary shops or other commercial premisses, and the owners advertise their tapes from their front windows with eye-catching posters directed at the street.

At some time during 1981, members of the public and the British Videogram Association (the official organisation representing the views of the video industry) made complaints to the Advertising Standards Authority about the "gruesome" character of the advertising that could be seen in certain video stores. 37 The authority upheld the complaints against the advertisements for the video films called Cannibal Holocaust, Driller Killer and S.S. Experiment Camp. This was the first public attempt to "problematise" the issue of horror movies on video. Popular anxiety was recognised a second time by the Daily Mail, a right-wing national newspaper, on 12 May 1982 with a feature article which implied that videos were quite easily obtainable by children (there were, then, no restrictions on the age of renters in video stores and rentals were low enough for children to club together to rent videos, which they could then play on their parents' machines in their parents' absence. A glut of articles then appeared in the Sunday Times (23 May 1982), the Daily Mail (28 May) and the Sunday Times again (30 May 1982). Julian Petley comments:

"The gist of all three articles was that a new kind of extremely violent horror film had become available on cassette, 'films which specialise in sadism, mutilation and cannibalism' (Sunday Times, May 30), films which show 'castration, sadistic attacks on women, and violence including the use of chain saws and electric drills'." (Petley, 1984, p. 68)

It was in one of these articles that the <u>Sunday Times</u> reporter, Peter Clippingdale, coined the term "video nasty", and it was a term that was immediately taken up in the press as a whole. The <u>Sunday Times</u> also revealed that the Metropolitan Police Obscene Publications Squad had seized a copy of <u>S.S. Experiment Camp</u>. The British Videogram Association, in the meantime, was reported as setting up a system of classification, via the British Board of Film Censors, similar to those in use in cinemas. This move was immediately attacked, however, by Mrs. Whitehouse of the NVALA: she denounced the involvement of film censors like Lord Harlech on this classification board, arguing that he (and the BBFC) had previously been far too permissive in the classification of cinema films. As Petley observes, this was

"the first indication that what is being sought is <u>stricter</u> censorship of video than film". (Petley, op. cit., p. 70)

In June, the Director of Public Prosecutions commenced proceedings against three videos (S.S. Experiment Camp, I Spit on Your Grave and Driller Killer), but to the dismay of the NVALA did so under section 3 of the Obscene Publications Act (allowing forfeiture under a magistrate's warrant) rather than section 2 (which allows a maximum 3 year prison sentence). By September, cases against all three videos (along with Death Trap, a video movie that had been shown, slightly cut, in cinemas) were heard in various courts, and found guilty and forfeited. Notice was also served by the Director of Public Prosecutions, Sir Thomas Hetherington (whom

Mrs. Whitehouse had called on to resign for his choice only of a section 2 forfeiture), that future cases would be dealt with under section 3.

On 15 December 1982, Gareth Waddell, Labour Member for Gower, introduced a bill with all-party backing, "to prohibit the rental of videocassettes of adult category to children". This bill was criticised in the liberal press for making no attempt to distinguish between the horror movies which were causing concern and other adult videos; but the Bill did not, in any case, obtain Government approval. In February 1983, the Daily Mail carried a major feature on 'video nasties' under the headline "We Must Protect Our Children Now" and launched a campaign under the rubric Ban the Sadist Videos. A strong attack was made on the then Home Secretary, Mr. William Whitelaw, for his refusal to support the statutory measure proposed by Mr. Waddell. In March, the Daily Telegraph, an "up-market" newspaper on the political right, for the first time revealed that Mrs. Whitehouse had received supportive letters from Margaret Thatcher, encouraging her to press on with the NVALA campaign.

In the meantime, on April 14, the BVA launched its own classification system, indicating that the Government had said in consultations that it was prepared to give the voluntary scheme "a reasonable time" to prove itself. But on June 30, Margaret Thatcher, in question time, indicated that

"it is not enough to have voluntary regulation. We must bring in a ban to regulate the matter." 38

In July, it was revealed that the Home Office (now under a new Home Secretary, Mr. Leon Brittain) had drawn up a draft Bill and that it was expected that whichever Conservative back-bench M.P. topped the ballot for a private members' bill would be given the

chance or the honour to proceed with this draft. This M.P. turned out to be Mr. Graham Bright. The Video Recordings Bill, which we described as the end of section 2, was therefore put to the House of Commons in July by Mr. Bright, had its second reading in November 1983 and passed into law in April 1984. The effect of the Act is, indeed, to <u>outlaw</u> the selling or hiring of any cassette not approved by a centralised state censorship authority. It also makes it an offence to sell or to rent to a child a video classified as suitable only for an adult.

Coincident with this Bill's second reading in Parliament, a great deal of publicity was given to release of a report entitled Video Violence and Children: Childen's Viewing Patterns in England and Wales.

This report was presented in the press under headlines proclaiming that "40% of children aged six watch video nasties" and that "sadistic films have replaced the conjurer at children's parties and the baby sitter". (Barker 1984c, p. 1) The research which had led to these conclusions had been undertaken with some 6,000 children aged 5 to 16 randomly selected from schools throughout England and Wales, who had completed a questionnaire asking them if they had seen certain named video movies. They were then asked to rate as 'great', 'just alright' or 'awful' the movies they had seen. The list of movies was made up of 100 most popular video films (obtained from video traders) plus 32 other films that had currently been found obscene or were under consideration for prosecution by the Director of Public Prosecutions.

The research project had been established by a body which was calling itself, most misleadingly, the Parliamentary Group Video Enquiry. The Group had <u>no</u> direct link to, or status within, Parliament at all, but was actually made up of representatives of a number of churches, the Order of Christian Unity and CARE campaigns

(which is the current name of the festival of Light). It was an <u>ad</u> <u>hoc</u> group in which a leading influence was a Dr. Clifford Hill, late of the London School of Economics. The research project itself emerged out of an agreement between Dr. Hill and the Television Research Unit at Oxford Polytechnic, headed by Mr. Brian Brown (himself a strong Methodist).

The report which was released in November 1983, however, was written by Dr. Hill alone without the agreement of the Oxford Polytechnic team (who had done most of the research), and it was based on an analysis of only 1,044 questionnaires (the only ones to have been computer-analysed at that time). The Report was also written up as if it were a demonstration of a causal relationship existing between the viewing of video and/or television violence and the rates of "real" crime (especially violent crime) in the broader society. The result of this Report was that Mr. Brown (who had indicated his disbelief in "effects" research from the outset) resigned from the Enquiry and the Oxford Television Research Unit has completely withdrawn from the Parliamentary Video Group Enquiry.

It is clear that Dr. Hill was badly mistaken to have released the first volume of the PVGE's enquiry so soon, because the criticism of the inadequacy of the 1,044 sample and also the claims to having provided a causal account have done little for the Group's credibility. It was clear from my interviews with the British Home Office that this research is no longer taken seriously as "scientific" work which could legitimise the new Home Secretary's interventionism.

Clearly, however, there <u>is</u> a serious concern here, albeit one that must be carefully framed. Investigations undertaken by the British Market Research Bureau in Britain between November 1983 and

January 1984 indicated that 16 per cent of 1,059 people, when asked the theme of the last video they rented, identified that theme as "horror". The other figures were

Classic/Thriller	16	per	cent
Comedy	12	per	cent
Adult	7	per	cent
General features	7	per	cent
Children's	5	per	cent
Science fiction	4	per	cent
War	4	per	cent
Musical	2	per	cent
Sport	1	per	cent
Other	1	per	cent

(Source: Forte/BMRB 1984 Table F22)

Renters aged 15 - 19 were much more likely than others, however, to have rented a "horror" video on their last visit to the video store (25 per cent). Other than horror, only comedies and classic/thrillers (at 20 and 11 percent respectively) even began to compete. Clearly, however, some of these videos were of movies like Frankenstein and should not properly be described as "video nasties." According to Robertson (1984) only about thirty of the videos available in British video stores can properly be so described.

These data neither confirm or deny the findings of the Parliamentary Video Group Inquiry with respect to video exposure by children under 15. Given the limited nature of the evidence, libertarians and skeptics tend to deny the Government's claim to be concerned with the protection of impressionable or easily-frightened children.

There is, however, some research on the question, undertaken by British sociologist Keith Roe (at the University of Lund in Sweden). Lund studied questionnaire information obtained from fifty 15-year olds who could be described as heavy users of video, which is now very common in Sweden. One of his key findings was that the "nasty" videos were watched mainly by boys (girls seeming to concentrate on "romantic" videos). But, tellingly:

"most boys preferred adventure videos to nasties - but they actually spent their time watching violence. Many found these violent nasties unpleasant: they reported headaches and feeling 'heavy' or 'tired' afterwards. 'You go to the toilet and feel ill' was how one boy put it in the taped interviews. Some teenagers found it hard to sleep afterwards and use distractions to take their minds off what they had seen. Asked why they watched the stuff, the boys said 'You feel the group pressure. You don't want to show yourself up before your friends.' Or 'they'd say what a coward you are.'" (Patmore, 1983)

We are seriously speaking here of materials that have real significance in the reproduction of a male bravado or insensibility vis-à-vis human suffering. By the same logic, of course, some video portrayals of sexuality are portrayals more of male brutality than they are displays of images that are erotic to both sexes. "video nasties" do seem to have the exclusive intention of constructing, exploring and sometimes even celebrating the erotic character of violence as such, and especially violence against women. In this report, the videos are of a piece with the cinema movies released in the late 1970's in the United States, focussing on the vengeful murder by men of "difficult" or "nagging" women. These movies (Friday the 13th, When a Stranger Calls, Halloween, He Knows You're Alone, Dressed to Kill, etc.) 40 have been widely attacked by the women's movement, on the entirely plausible interpretation that the films represented a direct ideological backlash against feminism in general and strong-minded or independent women in particular.

But this is only one element in the video nasties. The violence on the "nasties" is sometimes perpetrated against men. I Spit on Your Grave, for example, (one of the most infamous of the nasties, produced in the USA), graphically portrays the revenge murder committed by a woman of the four men who had violently raped her (at the beginning of the movie). The violence in Driller Killer is random (in this film, a young artist becomes mentally deranged when he believes he is touched by the devil and he commences to murder 12 people, both men and women, using a powerpack drill). There is a consistent emphasis in many of the nasties on brutal violence against women (especially marked in S.S. Experiment Camp), but there is also a generalised preoccupation with the detail of extreme human pain and suffering.

Now, it seems to this researcher quite naive to depict the popular interest in Britain in video nasties as being literally equivalent to every earlier moral panic about sex and violence, irrespective of historical context. The nasties are not merely a more vivid modern equivalent of nineteenth-century crime magazines or the horror comics of the 1950's.

What cannot be avoided is the apocalyptic character of the video-nasties (and, indeed, of many other horror movies that might not be turned down for public viewing, like Friday the 13th). That is to say that these movies are preoccupied with the detailed and prolonged exploration of extreme violence and death. What else could this be for the audience other than a metaphorical exploration of the possibility of real annihilation? How else to explain the heavy consumption of these materials in a country like Britain, which so transparently experiences itself as a prime target in any limited nuclear war in Europe?

Attempts to legislate on "pornography" in general may soon encounter the limits of the existing unequal relations of the sexes, but that is not, of course, an argument not to act neither on pornography nor on a politics to reduce sexual inequality. So also attempts to legislate on media "violence" may quickly encounter the facts of militarism, nuclear build-up and East-West tension - but that is no argument against acting against both. The hypocrisy is to act as if the larger contexts and their immediate expresssions are not connected.

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FOOTNOTES

- 1. Home Office Report of the Committee on Obscenity and Film Censorship (Chairman: Bernard Williams)

 London: HMSO Cmnd. 7772 (November 1979) (Hereinafter 'the Williams Report' or Williams, 1979).
- 2. The Williams Committee excluded broadcasting from its work on the grounds that it had only recently been subject to review (by the Committee on the future of Broadcasting, chaired by Lord Annan) (Cmnd. 6753, February 1977). However, as the Williams Committee were obviously aware, there is arguably even more public anxiety over the content of some programmes on British television than there is over the control of "obscene publications" or films. The content of television in Britain is not covered by the law of obscenity, but by the legal obligations placed on the Govenors of the BBC and the Independent Broadcasting Authority to ensure that their programmes do not "offend against good taste". An addition is currently being legislated in the Cable and Broadcasting Bill, which will regulate the private cable television companies which are due to begin operation in Britain later in the 1980's. A Cable Authority to be established under this Bill will be charged with the creation and enforcement of codes of practice governing sexuality and violence; and ensuring that programmes do not offend good taste and decency. This proposal is not without opposition, from bodies of opinion who believe that the advent of cable in Britain "offers one opportunity to break out of the strait jacket that so restricts existing television output. To impose identical restriction will reduce (the) value (of Cable)". (Editorial: "Something Nasty on the Box" Guardian 30 January 1984).

- 3. Compare, for example, the searing indictment of "pornographic" magazines and films (very generally and loosely defined) in the essays in Laura Lederer's collection Take Back the Night (1980) or in Kostash (1978) with the attempts to identify an "autonomous" concept of women's sexual pleasure and desire, to be carefully distinguished, as a starting-point, from the puritanism and "patriarchal" definitions of sexuality which seems to inform many new conservative approaches to pornography. (cf. inter alia Brown 1981, Carter 1978 (Preface), Coward 1984, B. Taylor 1981)
- 4. Cf. a useful discussion of this contradiction from a feminist perspective in Kuhn 1984 a, and also in Ellis 1980.
- 5. Much of the discussion in the first part of Section 1 derives from the excellent "Appendix 1" in Williams, 1979, supplemented with the extensive and more discursive treatment provided by Robertson 1979.
- 6. During the summing-up to the jury in the three separate trials, judges used quite different interpretations of the existing law. Secker and Warburg were acquitted whilst in the trial of Heinemann the jury was deadlocked. But the publishing world was shocked by a guilty finding made against Hutchinson (fined a total of 1,000 pounds) and by the sentencing judge's affirmation that it was

"important...for the youth of this country to be protected, and that the fountain of our national blood should not be polluted at its source".

(quoted in St. John Stevas, 1956, p. 116)

7. For a careful dissection of the source of the moral panic over prostitution, and other sexual concerns, in mid-1950's England, see Smart (1981).

- 8. The analysis presented here of the Wolfenden Report and its consequences owes a great deal to the exemplary essay by Stuart Hall (1980).
- 9. The male sentiments behind this statement are best contrasted, perhaps, with the contemporary public awareness (prompted by the general rise of a women's politics since 1957) of the harrassment to which any woman or girl may be subjected to, in areas known for prostitution, by so-called "kerb-crawlers".
- 10. For discussion of the specific features of the "double taxonomies" operative in each of these areas of reform, see Hall op.cit. pp. 12-21 (to whom is also attributable the notion of "selective privatisation").
- 11. Perhaps the most (in)famous legal cases arose around the attempts to use the Obscene Publications Act to prosecute the so-called "underground" or "counter-cultural" press. In three years, the editors of the three most important papers of the British underground were arraigned before the Central Criminal Court I.T. in 1970, OZ in 1971 and Nasty Tales in 1973. The OZ trial, in particular, was an important "cultural moment" in Britain: the editors were remanded for "medical evidence" in Wormwood Scrubs (where prison warders shaved off their lengthy hair) before the Court of Appeal squashed the conviction.

 According the Robertson, this trial provoked more letters to The Times than the Suez Crisis in 1956. (Robertson, 1979, p. 6)
- 12. For a fascinating account of the Comics Campaign Council, established in 1953 to "discourage the production, sale and distribution of these publications" and their role in the banning of the comics, see Barker 1984a. <u>Inter alia</u>, Barker is

able to show that a primary influence within the C.C.C. was the Communist Party of Great Britain, some of whose leading members were concerned to discourage British youth from an unconscious inculcation of the values of Americanism.

- 13. This brief account of the development of the National Viewers and Listeners Association is derived in part from Michael Tracey and David Morrison's critical biography of Mrs. Mary Whitehouse (Tracey and Morrison 1977)
- 14. The Festival of Light had its period of greatest influence in the U.K. in the early 1970's. The festival was an attempt at reproducing an American kind of fundamentalist and popular religion in Britain, thriving on the publicity given to its recruitment of famous individuals (especially from television and cinema) and holding torchlight rallies in defence of "the family" and "traditional Christian values". As was also the case with the NVALA, there was a strong suspicion that the Festival of Light was closely involved with the virulently anti-communist Moral Rearmament Movement (Tracey and Morrison, 1977, pp. 57-69).
- 15. There were some key silences in the Longford Report. On the discussion of the difficulties involved in obtaining prosecutions under the Obscene Publications Act, for example, no attention was given to the question of police corruption. But in the early 1970's, rumours were rife that the Metropolitan Police was heavily involved in the "protection" of the established sex industry. Three major corruption trials (in 1976-7) were to confirm that senior and junior officers of the Obscene Publications Squad had been given large sums of money and had paid vacations in exchange for pornographers being "licensed to trade" or given advanced notice of raids. (cf. Williams 1979, c. 4.14)

- 16. By a variety of questionnaire and other enquiries, Kutchinsky had first eliminated changes in public attitudes towards these sexual offenses and changes in police attitude or changing practice as the source of these very significant declines in offence rates.
- 17. In July 1980, Court was brought to London by the NVALA in order to ask the Home Secretary to disregard the "dishonest" report of the Williams Committee (see "Campaign against 'dishonest' porn report" The Guardian 2 July 1980 and a subsequent supportive editorial in The Sunday Telegraph 6 July 1980). The importance of Court's work lay in its suggestion that pornography might cause a reduction in sex crimes was premature or unjustified.

 The Sunday Telegraph concluded in good populist style:

"With the experts divided, the public should feel free to make up their own minds...by reference to commonsense. On that basis it is unlikely that much more will be heard about the Williams Report".

18. It is worth noting, however, the problematic assumption made here by the Longford Committee that the mass of the British public would accept its own absolutist dismissal of pornography (as well as its definition of what constitutes pornography in the first place) unless misled by the persuasive tongues of liberal experts. The evidence from a mass of jury trials in the area of obscenity in the 1970s would actually suggest that there was enormous dissensus in popular attitudes to the public display of sexual materials in Britain. Public opinion research conducted by the Sunday Times, at the time of Lord Longford's enquiry, into public attitudes towards the display of sexuality on television, in magazines, newspapers, in films and the theatre, revealed a much lower level of anxiety and/or support for restriction than the Longford Committee would have anticipated. cf. Sunday Times 25 February 1973 (Results reproduced in Crick, 1974, p. 51)

- 19. For further information, cf. the best overall account of the recent development and current dilemmas of the Women's Movement in Britain, Coote and Campbell 1982.
- 20. One of the most succinct and insightful critiques on the very conventional (and thereby unhelpful) character of "effects research" on T.V. violence in Britain is by Murdock and McCron (1979), addressing recently published work in this area by the opinion poll expert, Dr. William Belson.
- 21. For an analyis of the changing genres of cops and robbers series on British television since the 1950's, see Clarke 1980.
- 22. The last reported actual average sales (as distinct from "readership") of the five magazines (reported to the Audit Bureau of Circulations) in the 1977—8 period were as below:

(Williams, 1979, p. 251)

Club International	UK and Eire	142,923
(Jan-June 1978)	overseas	188,609
Mayfair	UK and Eire	251,140
(Jan-June 1978)	overseas	168,651
Men Only	UK and Eire	201,538
(Jan-June 1978)	overseas	176,094
Penthouse (Jan-June 1977)		253 , 436
<u>Playboy</u> (UK edition) (July 1976-June 1977)		64 , 811

- 23. The idea of watersheds in pornographic genres derives from the unpublished work of Pratt (1981) some of which will be reproduced in Pratt 1984. According to Pratt, the key watersheds in the U.K. were
 - (i) "breaking the silence" this he dates as the launch of the British edition of <u>Playboy</u> in 1954, two years after the American edition.
 - (ii) the rise of "explicitness". From the early 1960's on, the naked female body was seen in magazines, films and advertising.
 - (iii) "diversification" From about 1966, much more specific kinds of shots of sexuality were seen in cinema and in magazines (Blow Up being the first British film to show pubic hair), male nudity was seen (Women in Love) and discussion of lesbianism emerged (in The Killing of Sister George)
 - (iv) the development of "fantastic" sexual genres. In cinema, from the 1970's, a number of films began to connect sex to horror (in scenes of nude sacrifices, vampires, orgies) whilst others placed sexuality in a specific political or historical context (The Devils, Clockwork Orange). But there were also attempts to develop the old Carry On movies of the 1950's and 1960's into a modern soft pornography, as in the series of Confessions movies (Confessions of a Window Cleaner etc, etc.)
- 24. In 1978, for example, the London Metropolitan Police seized 1,229,111 "obscene items" as against 35,390 in 1969. (Williams, 1979, p. 264)

25. Evidence gathered by Hugh Hebert, a journalist for the Quardian who has closely followed developments in the sex industry in Britain, suggests that the producers of adult magazines had undertaken a variety of pre-emptive moves in advance of the Indecent Displays Act. In particular, the covers of magazines had been "toned down" over the previous two or three years, and the chairman of the British Adult Publishers Association Ltd. was quoted as saying that:

"The poses are now, to a certain extent, ordinary.
What hasn't been cut out are the close-ups, the
vaginal shots. They haven't been toned down as much
as I expected. But the unnatural shots, the use of
vibrators, that's mostly gone."
Sales of adult magazines were thought to be declining, but

Sales of adult magazines were thought to be declining, but Hebert observed that this was less likely to be an effect of the toning-down of adult magazines than it was a function of the rise of video. Mr. Bill Edwards, a publisher with <u>Figcrest</u> (an adult magazine company), suggested it was an omen for the future, since "people like pictures that move more than pictures in a magazine." (Hebert 1981)

- 26. This represented an increase of 75 since 1978 (much of the increase being accounted for by the advent of video establishments). (City of Westminster, General Purposes Committee, 16 November 1982)
- 27. The Government actually refused the Westminster Council's proposal that local authorities should be able to licence (i.e. control) "nude encounter parlours" and "nude photography studios" on the grounds that this would, in effect, be to license brothels. (Benton, 1982, p. 11)

28. It is worth remarking that the Westminster Council is not unaware of Soho's now "traditional" role as the centre of sexual entertainment. A City Solicitor, City Planning officer, report remarks that

"Soho has been associated with such types of entertainment since the 1930's, and with prostitution for centuries."

However, he continues:

"in recent years, the area has undergone dramatic changes and sex related uses now have an overbearing influence on the character of the area..."

(City of Westminster, General Purposes Committee. Local Government (Miscellaneous Provisions) Act 1982-Licensing of Sex Establishments. Joint Report of the City Solicitor and City Planning officer, p. 7). See also the report "Why Soho is Naughty, but not very Nice" Guardian 20 December 1980.

29. The City of Westminster in 1982 decided that it would exclude sex establishments entirely from seven "residential" areas, three "Conservation Areas" and one other "strongly based residential community". It then set a maximum of the number of licenses it would grant for the four remaining areas of the City, with the vast proportion being designated for Soho. In 1984, the City Solicitor was able to report on the effects of this licensing system within Soho.

Of the 61 establishments which had been "sex shops" prior to the introduction of licenses, on 31 January 1984:

- (i) 6 were licensed sex shops
- (ii) 13 had changed to other sex-industry uses

(4 peep shows;

- 1 sex cinema;
- 2 booking offices;
- 5 near beer/topless bars;
- 1 nude encounter)

(iii)22 had changed to non-sex industry uses

of the 41 premises which had been other kinds of sex establishments:

- (i) 10 had closed
- (ii) 16 were or had become near beer/topless bars
- (iii) 4 were or had become strip shows
- (iv) 3 were or had become sex cinemas
- (v) 3 were or had become peep shows
- (vi) 2 had been or had become nude encounter studios
- and (vii) 3 had become cinemas outside the sex industry.

(Westminster City Council, Environment Committee 22 March 1984, Planning and Development Committee 27 March: <u>Licensing of Sex-Industry Premises: Progress Report of the City Solicitor</u>) p.2).

- 30. No information is available in documents made available by Westminister Council on the effects of the licensing system outside of Soho.
- 31. This power goes far beyond the recommendations made earlier by the British Videogram Association in its proposals for a self-regulatory plan in which the BBFC agreed to assist the BVA in classifying all videos according to the same categories applied to film in the cinema (in Britain 'U', 'PG', 15 or 18). cf. Abbott 1983 and also the Report of the Video Working Party, convened by the BBFC at the request of the BVA (January 1983)
- 32. One of the incidental, but important, anxieties of critics of the Video Recordings Bill is the fear that the fees which will be charged for each examination by the BBFC (400 pounds being the current rate) will bankrupt small production companies. In a personal interview with this researcher, Mr. Norman Abbott of

the BVA pointed out that this measure could be disastrous for the small Asian companies in Britain who produce videotape films in Gujerati and other Asian languages for the consumption of their communities in Britain.

- 33. At the time of my visit to Britain, the Managing Director of Thorn-EMI Industries was charged before the High Court under the Obscene Publications Act for production of a videocassette of The Burning (a film which has a BBFC certificate).
- 34. For a sample of the criticisms of the Video Recording Bill, see the journalistic essays by John Mortimer Q.C. (from the centre left), William Deedes, M.P. (from the right) and Derek Malcolm and Geoffrey Robertson in The Guardian, all in 1984. (see Bibliography) For the pure libertarian position, see National Association for the Reform of the Obscene Publications Acts (1984)
- 35. All these data are reproduced in Parliamentary Group Video Enquiry Vol. 1 (1983), paras. 1.14, 1.15.
- 36. The claim that VCR use is predominantly middle class is open to challenge: a British Market Research Bureau investigation for 1984 discovered that only 10l of 1,059 people who were interviewed after renting videos were in the higher social class 'A' or 'B'. 260 were social class Cl, 406 C2 and 292 'DE' (skilled, semi-skilled and unskilled workers). There is some suspicion that the relatively high ownership of VCR's in the "lower" classes in Britain may result from their purchase from so-called "redundancy payments" (lump sums usually a year's wages which employers have to give some workers as "compensation" for their loss of job).

- 37. The narrative presented here of the development of the "video nasties" panic draws heavily on Petley 1984, but I have cross-checked this with the recollections given me by Mr. Norman Abbott in personal interview.
- 38. Several commentators have, of course, pointed to the contradiction between the strong committment of Thatcherism to the free market and the freedom of the individual and the heavy-handed authoritarianism displayed in Thatcher's support for State censorhsip of video. The fervour of Thatcher's commitment is underlined by her unprecedented symbolic move during the Commons debate (when she moved from the Front Bench and sat next to Mr. Bright offering advice and encouragement).
- 39. For further discussion of the political and methodological problems encountered by the Parliamentary Video Group Enquiry, see Hugo Davenport "Report on Video Nasties is Hit by own Researchers" The Observer 4 December 1983, Maureen O'Connor "A Different Picture Altogether" Guardian 13 December 1983, and Martin Barker 1984c.
- 40 But for an intelligent and slightly sceptical discussion of the differences amongst the back-lash movies, see Wood (1982)
- 41. It is worth pointing out, however, that the plot of <u>I Spit on Your Grave</u> does represent a departure from the normalised mythology of rape (with its suggestion that women really enjoy being abused, etc.). In this respect, one could argue that <u>I Spit on Your Grave</u> has the serious artistic intention of exploring the residual male fear namely, that the abused women will violently retaliate.

42. This does seem to me the position adopted by one of the major academic commentators on the video-nasties, Martin Barker. He notes that

"Each campaign against the dangers of a 'new' medium always finds reasons to suppose its object is especially dangerous. In the 19th century, Penny Dreadfuls corrupted because they were the only literature people could afford. In the early 20th century, films had the big screen, plus the 'moral dangers of darkness'.

Comics could be 'pored over' for hours in private. Television is especially bad because it is viewed in the relaxation of one's own home. The videos now carry grave risk because the children can control how they watch. Plus ça change."

(Barker, 1984b, p. 233)

43. This version of the video nasty as a 'signifier' of annihilation is surprisingly absent from many commentories, including that of Richard Hoggart (erstwhile Director of the Centre for Contemporary Cultural Studies at the University of Birmingham). (Hoggart, 1984) His fears about video nasties are important but maybe more 'conventional'. He claims, first, to have heard of groups of unemployed workers paying 1 pound a time to see obscene and violent videos as a way of filling in time and, without needing to amplify the point, he reflects that:

"the combination of the dull misery of unemployment with the consumption of this kind of cheap-and-very-nasty-stuff is haunting."

Hoggart also thinks that existing research on the effects of violence in the media is inconclusive either way, but that, in particular, the orthodox research is inadequate to answer the key question as to whether repetitive viewing of violence might indeed desensitize viewers to human suffering and human sensibilities generally.

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APPENDICES



Local Government (Miscellaneous Provisions) Act 1982

CHAPTER 30

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Local Government (Miscellaneous Provisions) Act 1982

CHAPTER 30

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LICENSING OF PUBLIC ENTERTAINMENTS

Section

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PART II

CONTROL OF SEX ESTABLISHMENTS

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ELIZABETH II



Local Government (Miscellaneous Provisions) Act 1982

1982 CHAPTER 30

An Act to make amendments for England and Wales of provisions of that part of the law relating to local authorities or highways which is commonly amended by local Acts; to make provision for the control of sex establishments; to make further provision for the control of refreshment premises and for consultation between local authorities in England and Wales and fire authorities with regard to fire precautions for buildings and caravan sites; to repeal the Theatrical Employers Registration Acts 1925 and 1928; to make further provision as to the enforcement of section 8 of the Public Utilities Street Works Act 1950 and sections 171 and 174 of the Highways Act 1980; to make provision in connection with the computerisation of local land charges registers; to make further provision in connection with the acquisition of land and rights over land by boards constituted in pursuance of section 1 of the Town and Country Planning Act 1971 or reconstituted in pursuance of Schedule 17 to the Local Government Act 1972; to exclude from the definition of "construction or maintenance work" in section 20 of the Local Government, Planning and Land Act 1980 work undertaken by local authorities and development bodies pursuant to certain agreements with the Manpower Services Commission which specify the work to be undertaken and under which the

Commission agrees to pay the whole or part of the cost of the work so specified; to define "year" for the purposes of Part III of the said Act of 1980; to amend section 140 of the Local Government Act 1972 and to provide for the insurance by local authorities of persons voluntarily assisting probation committees; to make provision for controlling nuisance and disturbance on educational premises; to amend section 137 of the Local Government Act 1972; to make further provision as to arrangements made by local authorities under the Employment and Training Act 1973; to extend the duration of certain powers to assist industry or employment conferred by local Acts; to make corrections and minor improvements in certain enactments relating to the local administration of health and planning functions; and for connected purposes.

[13th July 1982]

E 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:—

PART I

LICENSING OF PUBLIC ENTERTAINMENTS

Licensing of public entertainments.

- 1.—(1) Subject to subsection (2) below, Schedule 1 to this Act shall have effect with respect to the licensing outside Greater London of the public entertainments referred to in that Schedule.
- (2) Paragraphs 3 and 4 of the Schedule shall not have effect in the area of a local authority unless the authority so resolve.
- (3) If a local authority do so resolve, those paragraphs shall come into force in their area on the day specified in that behalf in the resolution (which must not be before the expiration of the period of one month beginning with the day on which the resolution is passed).
- (4) A local authority shall publish notice that they have passed a resolution under this section in two consecutive weeks in a local newspaper circulating in their area.
- (5) The first publication shall not be later than 28 days before the day specified in the resolution for the coming into force of the paragraphs in the local authority's area.
- (6) The notice shall state the general effect of the paragraphs.

(7) The enactments specified in Schedule 2 to this Act shall have effect subject to the amendments specified in that Schedule, being amendments consequential on subsections (1) to (6) above.

PART I

(8) In Schedule 12 to the London Government Act 1963—

1963 c. 33.

- (a) in paragraph 10(3) (penalties for offences relating to entertainments held without licences or contravening licences) for "five hundred pounds" there shall be substituted "£1,000"; and
- (b) in paragraph 12(3) (penalty for refusal to permit entry to or inspection of premises) for "twenty pounds" there shall be substituted "£200".
- (9) Subsection (8) above has effect only in relation to offences committed after 1st January 1983.
- (10) So much of any local enactment passed before 1974 as relates to the regulation by means of licensing of public entertainments of any description referred to in Schedule 1 to this Act shall cease to have effect.
 - (11) In this section "local authority" means—
 - (a) the council of a district; and
 - (b) the Council of the Isles of Scilly.
 - (12) This section shall come into force on 1st January 1983.

PART II

CONTROL OF SEX ESTABLISHMENTS

- 2.—(1) A local authority may resolve that Schedule 3 to this Control of sex Act is to apply to their area; and if a local authority do so establishresolve, that Schedule shall come into force in their area on the ments. day specified in that behalf in the resolution (which must not be before the expiration of the period of one month beginning with the day on which the resolution is passed).
- (2) A local authority shall publish notice that they have passed a resolution under this section in two consecutive weeks in a local newspaper circulating in their area.
- (3) The first publication shall not be later than 28 days before the day specified in the resolution for the coming into force of Schedule 3 to this Act in the local authority's area.
 - (4) The notice shall state the general effect of that Schedule.
 - (5) In this Part of this Act "local authority" means-
 - (a) the council of a district:
 - (b) the council of a London borough; and
 - (c) the Common Council of the City of London.

PART III

STREET TRADING

Power of district council to adopt Schedule 4. 3. A district council may resolve that Schedule 4 to this Act shall apply to their district and, if a council so resolve, that Schedule shall come into force in their district on such day as may be specified in the resolution.

PART IV

CONTROL OF REFRESHMENT PREMISES

Take-away food shops

Closing hours for take-away food shops.

4.—(1) A district council may make an order under this subsection (in this Part of this Act referred to as a "closing order") with respect to any premises in their district where meals or refreshments are supplied for consumption off the premises, other than—

1969 c. 53.

- (a) any premises that are a late night refreshment house, as defined in section 1 of the Late Night Refreshment Houses Act 1969; and
- (b) any premises that are exempt licensed premises as defined in that section,

if they are satisfied that it is desirable to make such an order to prevent residents in the neighbourhood of the premises being unreasonably disturbed either by persons resorting to the premises or by the use of the premises for the supply of meals or refreshments.

- (2) A closing order shall be an order specifying individual premises and prohibiting the use of the premises for the supply of meals and refreshments to the public between such hours as may be specified in the order.
- (3) The hours specified in a closing order shall commence not earlier than midnight and finish not later than 5 o'clock in the morning.
- (4) A closing order may prohibit the use of the premises to which it relates for the supply of meals and refreshments to the public between different hours on different days of the week.
- (5) A district council may vary a closing order by an order under this subsection (in this Part of this Act referred to as a "variation order").
- (6) A district council may revoke a closing order by an order under this subsection (in this Part of this Act referred to as a "revocation order").

(7) A variation order or a revocation order may be made on the written application of the keeper of the premises to which the closing order relates, or without such an application. PART IV

- (8) Subject to subsection (9) below, a closing order shall cease to have effect 3 years from the date on which it was made, but without prejudice to the power of the district council to make a further closing order.
- (9) Subsection (8) above shall have effect in relation to a closing order which has been varied as if the reference to the date on which it was made were a reference to the date on which it was last varied.
- (10) In this Part of this Act "the keeper", in relation to any premises, means the person having the conduct or management of the premises.
- (11) Until section 7(1) and (2) below come into force this section shall have effect as if the following paragraph were substituted for subsection (1)(b) above—
 - "(b) a house, room, shop or building which is licensed for the sale of beer, cider, wine or spirits,".
- 5.—(1) A district council shall take all relevant circumstances Closing into consideration when determining whether to make—

orders etc. procedure and appeals.

- (a) a closing order; or
- (b) a variation order which varies a closing order or a previous variation order by specifying—
 - (i) an hour later than that specified in the order which it varies as the hour at which the use of the premises for the supply of meals and refreshments to the public may begin; or
 - (ii) an hour earlier than that so specified as the hour at which their use for that purpose is to end,

but a council may not make a closing order or such a variation order unless residents in the neighbourhood of the premises to which the order, if made, would relate have complained of disturbance such as is mentioned in section 4(1) above.

- (2) If a district council propose—
 - (a) to make a closing order; or
 - (b) to make such a variation order as is mentioned in subsection (1)(b) above,

they shall first serve a notice in accordance with subsections (12) to (15) below—

- (i) giving their reasons for seeking to make the order; and
- (ii) stating that within 28 days of service of the notice the

PART IV

keeper of the premises to which the order, if made, would relate may in writing require them to give him an opportunity to make representations to them concerning the matter.

- (3) Where a notice has been served under subsection (2) above, the district council shall not determine the matter until either—
 - (a) the keeper has made representations to them concerning it; or
 - (b) the period during which he could have required them to give him an opportunity to make representations has elapsed without his requiring them to give him such an opportunity; or
 - (c) the conditions specified in subsection (4) below are satisfied.
 - (4) The conditions mentioned in subsection (3) above are—
 - (a) that the keeper has required the district council to give him an opportunity to make representations to them;
 - (b) that the council have allowed him a reasonable period for making his representations; and
 - (c) that he has failed to make them within that period.
- (5) Representations may be made, at the keeper's option, either in writing or orally.
- (6) If the keeper informs the council that he desires to make oral representations, they shall give him an opportunity of appearing before and of being heard by a committee or subcommittee of the council.
- (7) The council shall not reveal to the keeper the name or address of any person who has made a complaint concerning the premises, unless they have first obtained the consent of the person who made the complaint.
- (8) Where the keeper of any premises has applied for a variation order or a revocation order, the council shall be deemed to have refused the application if they fail to determine the matter within 8 weeks from the date on which the application was made.
- (9) When a council make an order under section 4 above, they shall serve a copy in accordance with subsections (12) to (15) below.
- (10) A closing order and any such variation order as is mentioned in subsection (1)(b) above shall come into force 21 days after the date of service.
- (11) A variation order other than a variation order such as is mentioned in subsection (1)(b) above and a revocation order shall come into force on such date as may be specified in it.

(12) Any document required to be served under this section shall be served on the keeper of the premises to which it relates and, subject to subsection (13) below, may be served on him by post.

PART IV

- (13) Service of any such document by post may only be effected by sending it in a pre-paid registered letter or by the recorded delivery service.
- (14) For the purposes of service any such document may be addressed to the keeper at the premises to which it relates.
- (15) The keeper may be addressed either by name or by the description of "the keeper" of the premises (describing them).
 - (16) An appeal—
 - (a) against a closing order or a variation order; or
 - (b) against a refusal by the district council to make a variation order or a revocation order,

may be brought to a magistrates' court by the keeper of the premises to which the order relates or would relate.

- (17) No appeal against an order may be brought after it has come into force, and if an appeal is brought against an order, the order shall not come into force until the appeal has been determined or abandoned.
- (18) No appeal against a refusal to make a variation order or a revocation order may be brought after the expiry of the period of 21 days from the date on which the keeper was notified of the refusal.
- (19) An appeal against a decision of a magistrates' court under this section may be brought to the Crown Court.
- (20) On an appeal to the magistrates' court or the Crown Court under this section relating to any premises the court may confirm an order relating to the premises made under section 4 above or set it aside or give directions to the district council as to the making of such an order relating to the premises.
- (21) Subject to subsection (22) below, it shall be the duty of the district council to comply with any directions under subsection (20) above.
- (22) The district council need not comply with any directions given by the magistrates' court if they bring an appeal against the decision of the magistrates' court to the Crown Court under subsection (19) above within 21 days of the date of the decision.
- 6.—(1) In the event of a contravention of any of the provi-Contravensions of a closing order, whether as originally made or as varied tlons of closing orders. by a variation order, the keeper of the premises to which the order relates shall be guilty of an offence.

PART IV

- (2) It shall be a defence for a person charged with an offence under this section to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence by himself or by any person under his control.
- (3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding £500.
- (4) Where an offence under this section which has been 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 that offence and be liable to be proceeded against and punished accordingly.

Late night refreshment houses

Refreshments etc. on licensed premises. 1969 c. 53.

- 7.—(1) In section 1 of the Late Night Refreshment Houses Act 1969 (meaning of "late night refreshment house") for the words from "a house", in the second place where those words occur, to the end of the section there shall be substituted the words "exempt licensed premises".
- (2) The said section 1, as amended by subsection (1) above, shall be renumbered so as to become section 1(1) of the said Act; and at the end of the resulting subsection (1) there shall be added as subsections (2) and (3)—
 - "(2) In subsection (1) above "exempt licensed premises" means a house, room, shop or building which—
 - (i) is licensed for the sale of beer, cider, wine or spirits; and
 - (ii) is not kept open for public refreshment, resort and entertainment at any time between normal evening closing time and 5 o'clock of the following morning.
 - (3) In subsection (2) above "normal evening closing time" means—
 - (a) in relation to premises with permitted hours in the evening, a time thirty minutes after the end of those hours; and
 - (b) in relation to premises without permitted hours in the evening, 10 o'clock at night;

and in this subsection "permitted hours" means the hours specified in section 60 of the Licensing Act 1964 as modified by any other provision of that Act.".

1964 c. 26.

(3) Subsections (1) and (2) above shall come into force at the expiration of the period of three months beginning with the date on which this Act is passed.

PART IV

(4) Nothing in this section affects premises in Greater London.

PART V

FIRE PRECAUTIONS

Provisions as to consultation

- 8.—(1) In the Public Health Act 1936—
 - (a) in section 59 (exits, entrances &c, in the case of certain between public and other buildings)—

Consultation between authorities 1936 c. 49.

- (i) in subsections (1) and (2), the words ", after consultation with the fire authority, deem satisfactory, regard being had" shall be substituted for the words "deem satisfactory, regard being had by them"; and
 - (ii) in subsection (4), after the word "authority" there shall be inserted the words "after consultation with the fire authority.";
- (b) in subsection (1) of section 60 (means of escape from fire in the case of certain high buildings) after the word "authority"—
 - (i) in the first place where it occurs, there shall be inserted the words ", after consultation with the fire authority,"; and
 - (ii) in the second place where it occurs, there shall be inserted the words ", after such consultation"; and
- (c) in section 343 (interpretation) the following definition shall be inserted after the definition of "factory"—
 - ""fire authority" has the meaning assigned to it by section 43(1) of the Fire Precautions Act 1971." 1971 c. 40.
- (2) In the Caravan Sites and Control of Development Act 1960 c. 62. 1960—
 - (a) the following subsections shall be inserted after subsection (3) of section 5 (power of local authority to attach conditions to site licences)—
 - "(3A) The local authority shall consult the fire authority as to the extent to which any model standards relating to fire precautions which have been specified under subsection (6) of this section are appropriate to the land.
 - (3B) If--
 - (a) no such standards have been specified; or

PART V

(b) any standard that has been specified appears to the fire authority to be inappropriate to the land,

the local authority shall consult the fire authority as to what conditions relating to fire precautions ought to be attached to the site licence instead.";

- (b) the following subsections shall be added after subsection (6) of that section—
 - "(7) The duty imposed on a local authority by subsection (6) of this section to have regard to standards specified under that subsection is to be construed, as regards standards relating to fire precautions which are so specified, as a duty to have regard to them subject to any advice given by the fire authority under subsection (3A) or (3B) of this section.
 - (8) In this section "fire precautions" means precautions to be taken for any of the purposes specified in paragraph (e) of subsection (1) of this section for which conditions may be imposed by virtue of that subsection.";
- (c) the following subsection shall be added at the end of section 8 (powers of local authority to alter conditions attached to site licences)—
 - "(5) The local authority shall consult the fire authority before exercising the powers conferred upon them by subsection (1) of this section in relation to a condition attached to a site licence for the purposes set out in section 5(1)(e) of this Act.";
- (d) the following subsection shall be inserted after subsection (2) of section 24 (power of local authorities to provide sites for caravans)—
 - "(2A) Before exercising the power to provide a site conferred on them by subsection (1) of this section the local authority shall consult the fire authority, if they are not themselves the fire authority.—
 - (a) as to measures to be taken for preventing and detecting the outbreak of fire on the site; and
 - (b) as to the provision and maintenance of means of fighting fire on it."; and
- (e) the following definition shall be inserted in section 29 (interpretation of Part I) after the definition of "existing site"—
 - "" fire authority", in relation to any land, means the authority discharging in the area in which the

land is situated the functions of fire authority under PART V the Fire Services Act 1947:". 1947 c. 41.

Firemen's switches

- 9.—(1) A fire authority may resolve that section 10 below is Application to apply to their area; and if a fire authority do so resolve, of section 10. that section shall come into force in their area on the day specified in that behalf in the resolution (which must not be before the expiration of the period of 42 days beginning with the day on which the resolution is passed).
- (2) A fire authority shall publish notice that they have passed a resolution under this section in two consecutive weeks in a local newspaper circulating in their area.
- (3) Any such notice shall state the general effect of section 10 below.
- (4) In this section and section 10 below "fire authority" means an authority discharging the functions of fire authority under the Fire Services Act 1947.
- 10.—(1) This section applies to apparatus consisting of lumi-Firemen's nous tube signs designed to work at a voltage normally exceed-switches for luminous ing 650 volts, or other equipment so designed, and references tube signs. in this section to a cut-off switch are, in a case where a transformer is provided to raise the voltage to operate the apparatus, references to a cut-off switch on the low-voltage side of the transformer.

- (2) No apparatus to which this section applies shall be installed unless it is provided with a cut-off switch.
- (3) Subject to subsection (4) below, the cut-off switch shall be so placed, and coloured or marked, as to satisfy such reasonable requirements as the fire authority may impose to secure that it shall be readily recognisable by and accessible to firemen.
- (4) If a cut-off switch complies in position, colour and marking with the current regulations of the Institution of Electrical Engineers for a firemen's emergency switch, the fire authority may not impose any further requirements in respect of it under subsection (3) above.
- (5) Not less than 42 days before work is begun to install apparatus to which this section applies, the owner or occupier of the premises where the apparatus is to be installed shall give notice to the fire authority showing where the cut-off switch is to be placed and how it is to be coloured or marked.
- (6) Where notice has been given to the fire authority as required by subsection (5) above, the proposed position, colouring or marking of the switch shall be deemed to satisfy the require-

PART V ments of the fire authority unless, within 21 days from the date of the service of the notice, the fire authority have served on the owner or occupier a counter-notice stating that their requirements are not satisfied.

- (7) Where apparatus to which this section applies has been installed in premises before the day specified in a resolution under section 9(1) above as the day on which this section is to come into force in the area in which the premises are situated, the owner or occupier of the premises shall, not more than 21 days after that day, give notice to the fire authority stating whether the apparatus is already provided with a cut-off switch and, if so, where the switch is placed and how it is coloured or marked.
- (8) Subject to subsection (9) below, where apparatus to which this section applies has been installed in premises before the day specified in a resolution under section 9(1) above as the day on which this section is to come into force in the area in which the premises are situated, the fire authority may serve on the owner or occupier of the premises a notice—
 - (a) in the case of apparatus already provided with a cutoff switch, stating that they are not satisfied with the position, colouring or marking of the switch and requiring him, within such period as may be specified in the notice, to take such steps as will secure that the switch will be so placed and coloured or marked as to be readily recognisable by, and accessible to, firemen in accordance with the reasonable requirements of the fire authority; or
 - (b) in the case of apparatus not already provided with a cut-off switch, requiring him, within such period as may be specified in the notice, to provide such a cutoff switch in such a position and so coloured or marked as to be readily recognisable by, and accessible to, firemen in accordance with the reasonable requirements of the fire authority.
- (9) If a cut-off switch complies in position, colour and marking with the current regulations of the Institution of Electrical Engineers for a firemen's emergency switch, the fire authority may not serve a notice in respect of it under subsection (8) above.

(10) Section 290 of the Public Health Act 1936 shall apply to notices given by a fire authority under this section as it applies to the notices mentioned in subsection (1) of that section as if the references in that section to a local authority included references to a fire authority.

> (11) This section shall not apply to apparatus installed or proposed to be installed on or in premises in respect of which

1936 c. 49.

a licence under the Cinematograph Acts 1909 and 1952 is for the time being in force.

PART V

- (12) The following persons, namely—
 - (a) any owner and any occupier of premises where apparatus to which this section applies is installed who without reasonable excuse fails to ensure that it complies with subsection (2) above;
 - (b) any owner and any occupier of premises who without reasonable excuse fails to comply with subsection (3) above;

shall each be guilty of an offence and liable on summary conviction to a fine not exceeding £200 and to a daily fine not exceeding £20.

- (13) In proceedings for an offence under subsection (12) above, it shall be a defence for either the owner or the occupier to show that it would have been equitable for the prosecution to be brought only against the other.
- (14) A person charged shall not be entitled to rely on the defence set out in subsection (13) above unless within a period ending 7 clear days before the hearing he has served on the prosecutor notice in writing of his intention so to do.
- (15) Any person who without reasonable excuse fails to give a notice required by subsection (5) or (7) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding £200 unless he establishes that some other person duly gave the notice in question.
- (16) Any owner or occupier of premises who without reasonable excuse fails to comply with a notice served on him under subsection (8) above within the period specified in it for compliance with it shall be guilty of an offence and liable on summary conviction to a fine not exceeding £200 and to a daily fine not exceeding £20.
- (17) It shall be a defence for a person charged with an offence under this section to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence.

PART VI

Abolition of Registration of Theatrical Employers

11.—(1) The Theatrical Employers Registration Acts 1925 Repeal of and 1928 (which require theatrical employers to be registered Employers with certain local authorities) shall cease to have effect.

Registration

(2) This section extends to Scotland.

Repeal of Theatrical Employers Registration Acts 1925 and 1928.

PART VII BYELAWS

General provisions relating to byelaws. 1936 c. 49. 1875 c. 55.

- 12.—(1) Notwithstanding anything in section 298 of the Public Health Act 1936 or section 253 of the Public Health Act 1875 or any other enactment, a constable may take proceedings in respect of an offence against a byelaw made by a relevant local authority under any enactment without the consent of the Attorney General.
- (2) In subsection (1) above "relevant local authority" means—

1972 c. 70.

- (a) a local authority, as defined in section 270 of the Local Government Act 1972; and
- (b) any body that was the predecessor of a local authority as so defined.
- (3) It is immaterial for the purposes of this section that a byelaw was made after the passing of this Act.

PART VIII

ACUPUNCTURE, TATTOOING, EAR-PIERCING AND ELECTROLYSIS

Application of Part VIII.

- 13.—(1) The provisions of this Part of this Act, except this section, shall come into force in accordance with the following provisions of this section.
- (2) A local authority may resolve that the provisions of this Part of this Act which are mentioned in paragraph (a), (b) or (c) of subsection (3) below are to apply to their area; and if a local authority do so resolve, the provisions specified in the resolution shall come into force in their area on the day specified in that behalf in the resolution (which must not be before the expiration of the period of one month beginning with the day on which the resolution is passed).
- (3) The provisions that may be specified in a resolution under subsection (2) above are—
 - (a) sections 14, 16 and 17 below; or
 - (b) sections 15 to 17 below; or
 - (c) sections 14 to 17 below.
- (4) A resolution which provides that section 15 below is to apply to the area of a local authority need not provide that it shall apply to all the descriptions of persons specified in subsection (1) of that section; and if such a resolution does not provide that section 15 below is to apply to persons of all of those descriptions, the reference in subsection (2) above to the coming into force of provisions specified in the resolution shall be construed, in its application to section 15 below, and to

section 16 below so far as it has effect for the purposes of section 15 below, as a reference to the coming into force of those sections only in relation to persons of the description or descriptions specified in the resolution.

- PART VIII
- (5) If a resolution provides for the coming into force of section 15 below in relation to persons of more than one of the descriptions specified in subsection (1) of that section, it may provide that that section, and section 16 below so far as it has effect for the purposes of that section, shall come into force on different days in relation to persons of each of the descriptions specified in the resolution.
- (6) A local authority shall publish notice that they have passed a resolution under this section in two consecutive weeks in a local newspaper circulating in their area.
- (7) The first publication shall not be later than 28 days before the day specified in the resolution for the coming into force of the provisions specified in it in the local authority's area.
- (8) The notice shall state which provisions are to come into force in that area.
 - (9) The notice shall also-
 - (a) if the resolution provides for the coming into force of section 14 below, explain that that section applies to persons carrying on the practice of acupuncture; and
 - (b) if it provides for the coming into force of section 15 below, specify the descriptions of persons in relation to whom that section is to come into force.
- (10) Any such notice shall state the general effect, in relation to persons to whom the provisions specified in the resolution will apply, of the coming into force of those provisions.
 - (11) In this Part of this Act "local authority" means—
 - (a) the council of a district:
 - (b) the council of a London borough; and
 - (c) the Common Council of the City of London.
- 14.—(1) A person shall not in any area in which this section Acupuncture is in force carry on the practice of acupuncture unless he is registered by the local authority for the area under this section.
- (2) A person shall only carry on the practice of acupuncture in any area in which this section is in force in premises registered by the local authority for the area under this section; but a person who is registered under this section does not contravene this

Part VIII subsection merely because he sometimes visits people to give them treatment at their request.

- (3) Subject to section 16(8)(b) below, on application for registration under this section a local authority shall register the applicant and the premises where he desires to practise and shall issue to the applicant a certificate of registration.
- (4) An application for registration under this section shall be accompanied by such particulars as the local authority may reasonably require.
- (5) The particulars that the local authority may require include, without prejudice to the generality of subsection (4) above,—
 - (a) particulars as to the premises where the applicant desires to practise; and
 - (b) particulars of any conviction of the applicant under section 16 below,

but do not include information about individual people to whom the applicant has given treatment.

- (6) A local authority may charge such reasonable fees as they may determine for registration under this section.
- (7) A local authority may make byelaws for the purpose of securing—
 - (a) the cleanliness of premises registered under this section and fittings in such premises;
 - (b) the cleanliness of persons so registered and persons assisting persons so registered in their practice;
 - (c) the cleansing and, so far as is appropriate, the sterilisation of instruments, materials and equipment used in connection with the practice of acupuncture.
- (8) Nothing in this section shall extend to the practice of acupuncture by or under the supervision of a person who is registered as a medical practitioner or a dentist or to premises on which the practice of acupuncture is carried on by or under the supervision of such a person.

Tattooing, ear-piercing and electrolysis.

- 15.—(1) A person shall not in any area in which this section is in force carry on the business—
 - (a) of tattooing;
 - (b) of ear-piercing; or
 - (c) of electrolysis,

unless he is registered by the local authority for the area under this section.

- (2) A person shall only carry on a business mentioned in subsection (1) above in any area in which this section is in force in premises registered under this section for the carrying on of that business; but a person who carries on the business of tattooing, ear-piercing or electrolysis and is registered under this section as carrying on that business does not contravene this subsection merely because he sometimes visits people at their request to tattoo them or, as the case may be, to pierce their ears or give them electrolysis.
- (3) Subject to section 16(8)(b) below, on application for registration under this section a local authority shall register the applicant and the premises where he desires to carry on his business and shall issue to the applicant a certificate of registration.
- (4) An application for registration under this section shall be accompanied by such particulars as the local authority may reasonably require.
- (5) The particulars that the local authority may require include, without prejudice to the generality of subsection (4) above,—
 - (a) particulars as to the premises where the applicant desires to carry on his business; and
 - (b) particulars of any conviction of the applicant under section 16 below,

but do not include information about individual people whom the applicant has tattooed or given electrolysis or whose ears he has pierced.

- (6) A local authority may charge such reasonable fees as they may determine for registration under this section.
- (7) A local authority may make byelaws for the purposes of securing—
 - (a) the cleanliness of premises registered under this section and fittings in such premises;
 - (b) the cleanliness of persons so registered and persons assisting persons so registered in the business in respect of which they are registered;
 - (c) the cleansing and, so far as is appropriate, the sterilisation of instruments, materials and equipment used in connection with a business in respect of which a person is registered under this section.
- (8) Nothing in this section shall extend to the carrying on of a business such as is mentioned in subsection (1) above by or under the supervision of a person who is registered as a medical practitioner or to premises on which any such business is carried on by or under the supervision of such a person.

PART VIII

PART VIII Provisions supplementary to ss. 14 and 15. 16.—(1) Any person who contravenes—

- (a) section 14(1) or (2) above; or
- (b) section 15(1) or (2) above,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding £200.

- (2) Any person who contravenes a byelaw made—
 - (a) under section 14(7) above; or
 - (b) under section 15(7) above.

shall be guilty of an offence and liable on summary conviction to a fine not exceeding £200.

- (3) If a person registered under section 14 above is found guilty of an offence under subsection (2)(a) above, the court, instead of or in addition to imposing a fine under subsection (2) above, may order the suspension or cancellation of his registration.
- (4) If a person registered under section 15 above is found guilty of an offence under subsection (2)(b) above, the court, instead of or in addition to imposing a fine under subsection (2) above, may order the suspension or cancellation of his registration.
- (5) A court which orders the suspension or cancellation of a registration by virtue of subsection (3) or (4) above may also order the suspension or cancellation of any registration under section 14 or, as the case may be, 15 above of the premises in which the offence was committed, if they are occupied by the person found guilty of the offence.
- (6) Subject to subsection (7) below, a court ordering the suspension or cancellation of registration by virtue of subsection (3) or (4) above may suspend the operation of the order until the expiration of the period prescribed by Crown Court Rules for giving notice of appeal to the Crown Court.
- (7) If notice of appeal is given within the period so prescribed, an order under subsection (3) or (4) above shall be suspended until the appeal is finally determined or abandoned.
- (8) Where the registration of any person under section 14 or 15 above is cancelled by order of the court under this section—
 - (a) he shall within 7 days deliver up to the local authority the cancelled certificate of registration, and, if he fails to do so, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £50 and thereafter to a daily fine not exceeding £5; and
 - (b) he shall not again be registered by the local authority under section 14 or, as the case may be, 15 above except with the consent of the magistrates' court which convicted him.

- (9) A person registered under this Part of this Act shall keep PART VIII a copy—
 - (a) of any certificate of registration issued to him under this Part of this Act; and
 - (b) of any byelaws under this Part of this Act relating to the practice or business in respect of which he is so registered,

prominently displayed at the place where he carries on that practice or business.

- (10) A person who contravenes subsection (9) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding £50.
- (11) It shall be a defence for a person charged with an offence under subsection (1), (2), (8) or (10) above to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence.
- (12) Nothing in this Part of this Act applies to anything done to an animal.
- 17.—(1) Subject to subsection (2) below, an authorised officer Power to of a local authority may enter any premises in the authority's enter premises area if he has reason to suspect that an offence under section (acupuncture 16 above is being committed there.
- (2) The power conferred by this section may be exercised by an authorised officer of a local authority only if he has been granted a warrant by a justice of the peace.
- (3) A justice may grant a warrant under this section only if he is satisfied—
 - (a) that admission to any premises has been refused, or that refusal is apprehended, or that the case is one of urgency, or that an application for admission would defeat the object of the entry; and
 - (b) that there is reasonable ground for entry under this section.
- (4) A warrant shall not be granted unless the justice is satisfied either that notice of the intention to apply for a warrant has been given to the occupier, or that the case is one of urgency, or that the giving of such notice would defeat the object of the entry.
 - (5) A warrant shall continue in force—
 - (a) for seven days; or
 - (b) until the power conferred by this section has been exercised in accordance with the warrant,

whichever period is the shorter.

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- (6) Where an authorised officer of a local authority exercises the power conferred by this section, he shall produce his authority if required to do so by the occupier of the premises.
- (7) Any person who without reasonable excuse refuses to permit an authorised officer of a local authority to exercise the power conferred by this section shall be guilty of an offence and shall for every such refusal be liable on summary conviction to a fine not exceeding £200.

PART IX

SALE OF FOOD BY HAWKERS

Application of section 19.

- 18.—(1) A local authority may resolve that section 19 below is to apply to their area; and if a local authority do so resolve, that section shall come into force in their area on the day specified in that behalf in the resolution (which must not be before the expiration of the period of one month beginning with the day on which the resolution is passed).
- (2) A local authority shall publish notice that they have passed a resolution under this section in two consecutive weeks in a local newspaper circulating in their area.
- (3) The first publication shall not be later than 28 days before the day specified in the resolution for the coming into force of section 19 below in the local authority's area.
 - (4) The notice shall state the general effect of that section.
- (5) In this Part of this Act "local authority" has the meaning assigned to it by section 85 of the Food and Drugs Act 1955.

1955 c. 16 (4 & 5 Eliz. 2).

Registration of hawkers of food and premises.

- 19.—(1) Subject to subsection (11) below, in any area in which this section is in force—
 - (a) no person shall hawk food unless he is registered by the local authority for the area under this section; and
 - (b) no premises shall be used as storage accommodation for any food intended for hawking unless the premises are so registered.
- (2) For the purposes of this section a person hawks food if for private gain—
 - (a) he goes from place to place selling food or offering or exposing food for sale; or
 - (b) he sells food in the open air or offers or exposes food for sale in the open air,

unless he does so as part of, or as an activity ancillary to, a trade or business carried on by him or some other person on identifiable property.

(3) Subsection (1) above applies to a person who hawks food as an assistant to a person registered under this section unless—

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- (a) he is normally supervised when so doing; or
- (b) he assists only as a temporary replacement.
- (4) Any person who without reasonable excuse contravenes subsection (1) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding £200.
- (5) It shall be a defence for a person charged with an offence under subsection (4) above to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence.
- (6) An application for registration under this section shall be accompanied by such particulars as the local authority may reasonably require.
- (7) The particulars that the local authority may require include, without prejudice to the generality of subsection (6) above, particulars as to any vehicle to be used by the applicant in connection with food hawking.
- (8) A local authority may charge such reasonable fees as they may determine for registration under this section.
- (9) An application for premises to be registered under this section shall be made by the person intending to use them as storage accommodation.
- (10) On application for registration under this section the local authority shall register the applicant and, if the application is for the registration of premises, those premises, and shall issue to the applicant a certificate of registration.
 - (11) This section shall not apply—
 - (a) to the sale or offer or exposure for sale of food—
 - (i) at a market or fair the right to hold which was acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of an enactment or order;
 - (ii) at a notified temporary market; or
 - (iii) at a notified pleasure fair; or
 - (b) to the sale or offer or exposure for sale of food in or from premises exempt from registration by section 16(3A) of the Food and Drugs Act 1955 or of food 1955 c. 16 prepared or manufactured on such premises; or (4 & 5 Eliz. 2).
 - (c) to the sale or offer or exposure for sale of food by way of street trading at any place in the area of a local authority by a person whom the local authority

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- have authorised under any enactment to engage in such trading in their area (whether or not they have authorised him to trade at the place where the food was sold or offered or exposed for sale) or by a person acting as an assistant to a person so authorised; or
- (d) to premises used as storage accommodation for food prepared for sale as mentioned in paragraphs (a) to (c) above; or
- (e) to the sale or offer or exposure for sale of food in containers of such materials and so closed as to exclude all risks of contamination.

(12) In this section—

- "food" means food and ingredients of food for human consumption, including—
 - (a) drink (other than water);
 - (b) chewing gum and like products,

but does not include—

- (i) milk and cream:
- (ii) live animals or birds;
- (iii) articles or substances used only as drugs;
- "notified pleasure fair" means a pleasure fair, as defined in subsection (2)(a) of section 75 of the Public Health Act 1961, notice of which has been given to the local authority in accordance with byelaws under that section;
- "notified temporary market" means a temporary market notice of which has been given to the local authority in accordance with section 37(2) below or any other enactment regulating such markets.

PART X

HIGHWAYS

Highway amenities.

1961 c. 64.

20. The enactments specified in Schedule 5 to this Act shall have effect subject to the amendments there specified, being amendments concerning amenities for certain highways.

Prosecutions for offences, relating to works in street.

1950 c. 39.

- 21.—(1) In section 30 of the Public Utilities Street Works Act 1950 (enforcement)—
 - (a) in subsection (2), for the words "Proceedings for the enforcement of" there shall be substituted the words "Subject to subsection (2A) of this section, proceedings for an offence under"; and

- (b) the following subsection shall be inserted after that subsection—
 - "(2A) A constable may take proceedings for an offence under section 8 of this Act without the consent of the Attorney General.".
- (2) In section 312 of the Highways Act 1980 (restriction on 1980 c. 66. institution of proceedings)—
 - (a) in subsection (1), for the word "Proceedings" there shall be substituted the words "Subject to subsection (3) below, proceedings"; and
 - (b) the following subsection shall be inserted after subsection (2)—
 - "(3) A constable may take proceedings—
 - (a) for an offence under paragraph (b) of section 171(6) above; or
 - (b) for an offence under paragraph (c) of that subsection consisting of failure to perform a duty imposed by section 171(5)(a) above; or
 - (c) for an offence under section 174 above, without the consent of the Attorney General.".
- 22.—(1) The following paragraph shall be substituted for the Control of first paragraph of subsection (1) of section 179 of the Highways construction Act 1980 (by virtue of which no person may construct a vault, under streets. arch or cellar under any street in Greater London or the carriageway of any street outside Greater London without the consent of the appropriate authority)—
 - "No person shall construct works to which this section applies under any part of a street without the consent of the appropriate authority, and the authority may by notice served on a person who has constructed such works in contravention of this section require him to remove them, or to alter or deal with them in such a manner as may be specified in the notice.".
- (2) The words "works to which this section applies" shall be substituted for the words "a vault, arch or cellar" where occurring in subsections (3) and (4) of that section.
- (3) The following subsections shall be substituted for subsection (5) of that section—
 - "(5) As soon as may be after an authority consent to the construction of works to which this section applies under a street they shall give notice of their consent to

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any public utility undertakers having any apparatus under the street.

- (6) Subject to subsection (7) below, the works to which this section applies are—
 - (a) any part of a building; and
 - (b) without prejudice to the generality of paragraph (a) above, a vault, arch or cellar, whether forming part of a building or not.

1950 c. 39.

(7) This section does not apply to code-regulated works, as defined in section 1(5) of the Public Utilities Street Works Act 1950.".

Control of 1980 c. 66.

23. The following section shall be inserted after section 147 road-side sales. of the Highways Act 1980—

"Road-side sales.

147A.—(1) Subject to subsection (4) below, no person shall, for the purpose of selling anything, or offering or exposing anything for sale, use any stall or similar structure or any container or vehicle, kept or placed on-

- (a) the verge of a trunk road or a principal road;
- (b) a lay-by on any such road; or
- (c) unenclosed land within 15 metres of any part of any such road,

where its presence or its use for that purpose causes or is likely to cause danger on the road or interrupts or is likely to interrupt any user of the road.

- (2) Any person who contravenes this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding £200.
- (3) It shall be a defence for a person charged with an offence under this section to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence.
 - (4) This section does not apply—
 - (a) to the sale or offer or exposure for sale of things from or on a vehicle which is used only for the purposes of itinerant trading with the occupiers of premises, or is used only for that purpose and for purposes other than trading;
 - (b) to the sale or offer or exposure for sale of newspapers;
 - (c) to anything done at a market in respect

of which tolls, stallages or rents are payable; or

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(d) to the sale or offer or exposure for sale of anything by way of street trading which has been authorised under Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 or under any local enactment which makes provision similar to that made by that Schedule, either by the person so authorised or by a person acting as assistant to the person so authorised.".

PART XI

PUBLIC HEALTH, ETC.

24. The following section shall be substituted for section 56 Paving of of the Public Health Act 1936—

yards and passages.

"Yards and passages to be paved and drained.

- 56.—(1) If any court or yard appertaining to, or any passage giving access to, buildings to which this section applies is not so formed, flagged, asphalted or paved or is not provided with such works on, above, or below its surface, as to allow of the satisfactory drainage of its surface or subsoil to a proper outfall, the local authority may by notice require any person who is the owner of any of the buildings to execute all such works as may be necessary to remedy the defect.
- (2) The buildings to which this section applies are houses and industrial and commercial buildings.
- (3) The provisions of Part XII of this Act with respect to appeals against and the enforcement of notices requiring the execution of works shall apply in relation to any notice given under subsection (1) of this section.
- (4) This section shall apply in relation to any court, yard or passage which is used in common by the occupiers of two or more houses, or a house and a commercial or industrial building but which is not a highway maintainable at the public expense.".
- 25.—(1) The following subsections shall be substituted for sub-Building sections (1) and (2) of section 64 of the Public Health Act 1936 regulations. (passing or rejection of plans, and power to retain plans, etc.)—
 - "(1) Where plans of any proposed work are, in accordance with building regulations, deposited with a local authority, it shall be the duty of the local authority, subject

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to the provisions of any other section of this Act which expressly requires or authorises them in certain cases to reject plans, to pass the plans unless they either are defective or show that the proposed work would contravene any of the building regulations.

- (1A) If the plans—
 - (a) are defective; or
 - (b) show that the proposed work would contravene any of the building regulations,

the local authority—

- (i) may reject the plans; or
- (ii) subject to subsection (1C) below, may pass them subject to either or both of the conditions set out in subsection (1B) below.
- (1B) The conditions mentioned in subsection (1A) above are—
 - (a) that such modifications as the local authority may specify shall be made in the deposited plans; and
 - (b) that such further plans as they may specify shall be deposited.
- (1C) A local authority may only pass plans subject to a condition such as is specified in subsection (1B) above if the person by whom or on whose behalf they were deposited—
 - (a) has requested them to do so; or
 - (b) has consented to their doing so.
- (1D) A request or consent under subsection (1C) above must be in writing.
- (2) The authority shall within the prescribed period from the deposit of the plans give notice to the person by whom or on whose behalf they were deposited whether they have been passed or rejected.
- (2A) A notice that plans have been rejected shall specify the defects on account of which, or the regulation or section of this Act for non-conformity with which, or under the authority of which, they have been rejected.
 - (2B) A notice that plans have been passed—
 - (a) shall specify any condition subject to which they have been passed; and
 - (b) shall state that the passing of the plans operates as an approval of them only for the purposes of the requirements of the regulations and of any such section of this Act as is referred to in subsection (1) above.".

(2) In section 65(4) of that Act (by virtue of which, among other things, in any case where plans were deposited, a local authority may not give a notice requiring the pulling down, removal etc. of the work if the plans were passed by the authority) after the word "deposited" there shall be inserted the words "and the work was shown on them".

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- (3) This section, and section 47 below, so far as it relates to section 63 of the Health and Safety at Work etc. Act 1974, shall 1974 c. 37. come into operation on such day as the Secretary of State may by order made by statutory instrument appoint.
- 26.—(1) In section 92(1)(d) of the Public Health Act 1936 Statutory (by virtue of which statutory nuisances include any dust or nuisances. effluvia caused by any trade, business, manufacture or process, 1936 c. 49. being prejudicial to the health of, or a nuisance to, the inhabitants of the neighbourhood) for the words from "being" to "neighbourhood" there shall be substituted the words "injurious, or likely to cause injury, to the public health or a nuisance".
- (2) In section 16(1) of the Clean Air Act 1956 (by virtue of 1956 c. 52. which smoke of certain descriptions is deemed to be a statutory nuisance for the purposes of Part III of the Public Health Act 1936 if it is a nuisance to the inhabitants of the neighbourhood) for the words "a nuisance to the inhabitants of the neighbourhood" there shall be substituted the words "injurious, or likely to cause injury, to the public health or a nuisance".

27.—(1) The following section shall be substituted for sections Powers to 17 and 18 of the Public Health Act 1961—

repair drains drains etc.

" Powers to repair drains etc. and to remedy stopped-up drains etc.

17.—(1) If it appears to a local authority that a etc. and to remedy drain, private sewer, water-closet, waste pipe or soil stopped-up pipe-

- (a) is not sufficiently maintained and kept in 1961 c. 64. good repair, and
- (b) can be sufficiently repaired at a cost not exceeding £250,

the local authority may, after giving not less than seven days notice to the person or persons concerned, cause the drain, private sewer, water-closet or pipe to be repaired and, subject to subsections (7) and (8) below, recover the expenses reasonably incurred in so doing, so far as they do not exceed £250, from the person or persons concerned, in such proportions, if there is more than one such person, as the local authority may determine.

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- (2) In subsection (1) above "person concerned" means—
 - (a) in relation to a water-closet, waste pipe or soil pipe, the owner or occupier of the premises on which it is situated, and
 - (b) in relation to a drain or private sewer, any person owning any premises drained by means of it and also, in the case of a sewer, the owner of the sewer.
- (3) If it appears to a local authority that on any premises a drain, private sewer, water-closet, waste pipe or soil pipe is stopped up, they may by notice in writing require the owner or occupier of the premises to remedy the defect within forty-eight hours from the service of the notice.
- (4) If a notice under subsection (3) of this section is not complied with, the local authority may themselves carry out the work necessary to remedy the defect and, subject to subsections (7) and (8) below, may recover the expenses reasonably incurred in so doing from the person on whom the notice was served.
- (5) Where the expenses recoverable by a local authority under subsection (1) or (4) of this section do not exceed £10, the local authority may, if they think fit, remit the payment of the expenses.
- (6) In proceedings to recover expenses under this section—
 - (a) where the expenses were incurred under subsection (1) of this section, the court—
 - (i) shall inquire whether the local authority were justified in concluding that the drain, private sewer, water-closet, waste pipe or soil pipe was not sufficiently maintained and kept in good repair; and
 - (ii) may inquire whether any apportionment of expenses by the local authority under that subsection was fair;
 - (b) where the expenses were incurred under subsection (4) of this section, the court may inquire—
 - (i) whether any requirement contained in a notice served under subsection (3) of this section was reasonable; and

- (ii) whether the expenses ought to be borne wholly or in part by some person other than the defendant in the proceedings.
- (7) Subject to subsection (8) below, the court may make such order concerning the expenses or their apportionment as appears to the court to be just.
- (8) Where the court determines that the local authority were not justified in concluding that a drain, private sewer, water-closet, waste pipe or soil pipe was not sufficiently maintained and kept in good repair, the local authority shall not recover expenses incurred by them under subsection (1) of this section.
- (9) The court shall not revise an apportionment unless it is satisfied that all persons affected by the apportionment or by an order made by virtue of subsection (6)(b)(ii) above have had notice of the proceedings and an opportunity of being heard.
- (10) Subject to subsection (11) of this section, the provisions of subsection (1) of this section shall not authorise a local authority to carry out works on land which belongs to any statutory undertakers and is held or used by them for the purposes of their undertaking.
- (11) Subsection (10) of this section does not apply to houses, or to buildings used as offices or show-rooms, other than buildings so used which form part of a railway station.
- (12) The Secretary of State may by order made by statutory instrument increase any amount specified in this section.
- (13) Nothing in an order made under subsection (12) of this section shall apply to a notice given under this section before the commencement of the order.
- (14) A statutory instrument containing an order under subsection (12) of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (15) The provisions of this section shall be without prejudice to section 39 of the Public Health Act 1936 c. 49. 1936 (which empowers a local authority to serve notices as regards defective drains).".
- (2) Section 24 of the Greater London Council (General Powers) 1967 c. xx. Act 1967 (which makes certain modifications to sections 17 and 18 of the Public Health Act 1961 in their application to Greater 1961 c. 64. London) is hereby repealed.

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PART XI Control of demolitions. 1961 c. 64.

1957 c. 56.

28.—(1) The following sections shall be substituted for section 29 of the Public Health Act 1961 (powers of local authority in relation to demolitions)—

"Duty to give local authority notice of intended demolition. 29.—(1) This section applies to any demolition of the whole or part of a building except—

(a) a demolition in pursuance of a demolition order made under the Housing Act 1957; and

(b) a demolition—

(i) of an internal part of a building where the building is occupied, and it is intended that it should continue to be occupied; or

(ii) of a building which has a cubic content (as ascertained by external measurement) of not more than 1750 cubic feet, or, where a greenhouse, conservatory, shed or prefabricated garage forms part of a larger building, of that greenhouse, conservatory, shed or prefabricated garage; or

(iii) without prejudice to sub-paragraph (ii) above, of an agricultural building (as defined in section 26 of the General Rate Act 1967) unless it is contiguous to another building which is not itself an agricultural building or a building of a kind mentioned in that sub-paragraph.

- (2) No person shall begin a demolition to which this section applies unless—
 - (a) he has given the local authority notice of his intention to do so; and
 - (b) either—
 - (i) the local authority have served a notice on him under section 29A of this Act; or
 - (ii) the relevant period (as defined in that section) has expired.
- (3) A notice under this section shall be in writing and shall specify the building to which it relates and the works of demolition intended to be carried out, and it shall be the duty of a person giving such a notice to a local authority to send or give a copy of it—
 - (a) to the occupier of any building adjacent to the building;

1967 c. 9.

- (b) to the British Gas Corporation; and
- PART XI
- (c) to the Area Electricity Board in whose area the building is situated.
- (4) A person who contravenes subsection (2) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding £500.

Power of local authority to serve notice concerning demolition.

- 29A.—(1) A local authority may serve a notice under this section—
 - (a) on any person on whom a demolition order has been served under the Housing Act 1957 c. 56. 1957:
 - (b) on any person who appears to them not to be intending to comply with an order made under section 58 of the Public Health Act 1936 c. 49. 1936 or a notice served under section 27 of this Act; and
 - (c) on any person who appears to them to have begun or to be intending to begin a demolition to which section 29 above otherwise applies.
- (2) Nothing contained in a notice under this section shall prejudice or affect the operation of any of the relevant statutory provisions, as defined in section 53(1) of the Health and Safety at Work etc. Act 1974 c. 37. 1974; and accordingly, if any requirement of such a notice is inconsistent with any requirement imposed by or under the said Act of 1974, the latter requirement shall prevail.
 - (3) Where-
 - (a) a person has given a notice under section 29 of this Act; or
 - (b) the local authority have served a demolition order on a person under the Housing Act 1957.

a notice under this section may only be served on the person in question within the relevant period.

- (4) In this section and section 29 of this Act "the relevant period" means—
 - (a) in a case such as is mentioned in paragraph (a) of subsection (3) above, six weeks from the giving of the notice under section 29 of this Act, or such longer period as the person who gave that notice may in writing allow; and

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1957 c. 56

- (b) in a case such as is mentioned in paragraph (b) of that subsection, seven days after the local authority served a copy of the demolition order in accordance with the Housing Act 1957, or such longer period as the person on whom the copy was served may in writing allow.
- (5) It shall be the duty of the local authority to send or give a copy of a notice under this section to the owner and occupier of any building adjacent to the building to which the notice relates.
- (6) It shall also be the duty of the local authority to send or give a copy of a notice under this section—
 - (a) if it contains a requirement such as is specified in paragraph (h) of section 29B(1) of this Act, to the statutory undertakers concerned; and
 - (b) if it contains any such requirement as is specified in paragraph (j) of that section—

 (i) to the fire authority, if they are not themselves the fire authority; and
 (ii) to the Health and Safety Executive, if the premises are special premises.
 - (7) In this section and section 29B of this Act—
 "fire authority" has the meaning assigned to it
 by section 43(1) of the Fire Precautions Act
 1971; and
 - "special premises" means premises for which a fire certificate is required by virtue of regulations under the Health and Safety at Work etc. Act 1974.

1971 c. 40.

1974 c. 37.

Contents of notices under section 29A.

29B.—(1) A notice under section 29A(1) of this Act may require the person on whom it is served—

- (a) to shore up any building adjacent to the building to which the notice relates;
- (b) to weatherproof any surfaces of an adjacent building which are exposed by the demolition;
- (c) to repair and make good any damage to an adjacent building caused by the demolition or by the negligent act or omission of any person engaged in it;
- (d) to remove material or rubbish resulting from the demolition and clearance of the site;

- (e) to disconnect and seal, at such points as the local authority may reasonably require, any sewer or drain in or under the building;
- (f) to remove any such sewer or drain and seal any sewer or drain with which the sewer or drain to be removed is connected;
- (g) to make good to the satisfaction of the local authority the surface of the ground disturbed by anything done under paragraph (e) or paragraph (f) of this subsection;
- (h) to make arrangements with the relevant statutory undertakers for the disconnection of the supply of gas, electricity and water to the building;
- (j) to make such arrangements with regard to the burning of structures or materials on the site as may be reasonably required—
 - (i) if the building is or forms part of special premises, by the Health and Safety Executive and the fire authority; and
 - (ii) in any other case, by the fire authority; and
- (k) to take such steps relating to the conditions subject to which the demolition is to be undertaken and the condition in which the site is to be left on completion of the demolition as the local authority may consider reasonably necessary for the protection of the public and the preservation of public amenity.
- (2) No one shall be required under paragraph (c), (e) or (f) of subsection (1) of this section to carry out any work in land outside the premises on which the works of demolition are being carried out if he has no right to carry out that work, but, subject to the provisions of Part XII of the Public Health Act 1936 c. 49. 1936 with respect to the breaking open of streets, the person undertaking the demolition, or the local authority acting in his default, may break open any street for the purpose of complying with any such requirement.
- (3) Nothing in subsection (1) or (2) of this section shall be construed as authorising any interference with apparatus or works of statutory undertakers authorised by any enactment to carry on an undertaking for the supply of electricity, gas or water.

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(4) Without prejudice to the generality of subsection (3) of this section, nothing in subsection (1) or (2) of this section shall be construed as exempting any person—

1945 c. 42.

1972 c. 60.

- (a) from the obligation to obtain any consent required under section 67 of Schedule 3 to the Water Act 1945 (which relates to interference with valves and other apparatus) or section 68 of that Schedule (which relates to alterations to supply pipes and other apparatus); or
- (b) from criminal liability under any enactment relating to the supply of gas or electricity; or
- (c) from the requirements of regulations under section 31 of the Gas Act 1972 (public safety).
- (5) Before a person complies with any requirement under paragraph (e) or paragraph (f) of subsection (1) of this section he shall give at least 48 hours notice to the local authority, and before he complies with paragraph (g) of that subsection he shall give at least 24 hours notice to the local authority; and a person who fails to comply with this subsection shall be liable on summary conviction to a fine not exceeding £50.

Appeals.

1936 c. 49.

29C.—(1) The provisions of Part XII of the Public Health Act 1936 with respect to appeals against and the enforcement of notices requiring the execution of works shall apply in relation to any notice given under section 29A of this Act.

- (2) Among the grounds on which an appeal may be brought under section 290(3) of the Public Health Act 1936 against such a notice shall be—
 - (a) in the case of a notice requiring an adjacent building to be shored up, that the owner of the building is not entitled to the support of that building by the building which is being demolished, and ought to pay, or contribute towards, the expenses of shoring it up; and
 - (b) in the case of a notice requiring any surfaces of an adjacent building to be weatherproofed, that the owner of the adjacent building ought to pay, or contribute towards, the expenses of weatherproofing those surfaces.

(3) Where the grounds on which an appeal under the said section 290 is brought include any ground specified in subsection (2) of this section, the appellant shall serve a copy of his notice of appeal on the person or persons referred to in that ground of appeal, and on the hearing of the appeal the court may make such order as it thinks fit in respect of the payment of, or contribution towards, the cost of the works by any such person, or as to how any expenses which may be recoverable by the local authority are to be borne between the appellant and any such person.".

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- (2) Section 29 of the Public Health Act 1961 shall continue 1961 c. 64. to have effect as if this section had not been enacted in a case where a notice under subsection (1) of that section was served before the commencement of this section.
- 29.—(1) The section applies where it appears to a local autho-Protection of rity—
 - (a) that any building in their area is unoccupied; or
 - (b) that the occupier of a building in their area is temporarily absent from it.
- (2) Where this section applies and it appears to the local authority that the building—
 - (a) is not effectively secured against unauthorised entry; or
- (b) is likely to become a danger to public health, the local authority may undertake works in connection with the building for the purpose of preventing unauthorised entry to it, or, as the case may be, for the purpose of preventing it becoming a danger to public health.
- (3) In this section and sections 30 and 32 "building" includes structure.
- (4) Subject to subsection (5) below, in this section, the sections mentioned in subsection (3) above and section 31 below "local authority" means a district council, a London borough council and the Common Council of the City of London.
- (5) This section and the other sections mentioned in subsection (4) above shall have effect, in relation to a building in respect of which—
 - (a) an undertaking that it shall not be used for human habitation is in force by virtue of section 16(4) of the Housing Act 1957 or paragraph 5 of Schedule 24 to 1957 c. 56. the Housing Act 1980; or 1980 c. 51.
 - (b) a closing order is in force by virtue of section 17, 26 or 35 of the Housing Act 1957, section 26 of the

PART XI 1961 c. 65.

Housing Act 1961 or paragraph 6 of Schedule 24 to the Housing Act 1980,

1980 c. 51. 1969 c. 33, 1974 c. 44.

and which is situated in an area which in pursuance of section 40 of the Housing Act 1969 or section 49 of the Housing Act 1974 is for the time being declared by the Greater London Council to be a general improvement area or a housing action area, as if for the words "the local authority", in each place where they occur, there were substituted the words "the Greater London Council ".

- (6) Subject to subsection (8) below, before undertaking any works under subsection (2) above, other than works on land to which section 30 below applies, a local authority shall serve a notice that they propose to undertake works under this section in connection with the building on each owner or occupier of the building.
- (7) A notice under subsection (6) above shall specify the works in connection with the building which the local authority propose to undertake.
- (8) A local authority need not give any such notice where they consider—
 - (a) that it is necessary to undertake works immediately in order to secure the building against unauthorised entry or to prevent it from becoming a danger to public health: or
 - (b) that it is not reasonably practicable to ascertain the name and address of an owner or to trace the whereabouts of an occupier who is absent from the building.
- (9) A local authority shall not undertake works specified in a notice under subsection (6) above before the expiry of the period of 48 hours from the service of the notice.
- (10) For the purpose of exercising the power conferred on a local authority by this section any person duly authorised in writing by the authority may enter-
 - (a) the building in connection with which works are to be undertaken;
 - (b) any land that appears to the local authority to be appurtenant to the building; and
 - (c) any other land if—
 - (i) it appears to the local authority to be unoccupied; and
 - (ii) it would be impossible to undertake the works without entering it.
- (11) Where the local authority undertake any works under subsection (2) above, they may recover the expenses reasonably incurred in so doing from any person to whom notice was given

under subsection (6) above or subsection (2) of section 30 below or to whom notice would have been required to be given but for subsection (8) of this section or subsection (4) of that section.

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- (12) Section 293 of the Public Health Act 1936 shall have 1936 c. 49. effect in relation to the recovery of expenses under this section as it has effect in relation to the recovery of a sum which a council are entitled to recover under that Act and with respect to the recovery of which provision is not made by any other section of that Act.
- (13) In proceedings to recover expenses under this section the court may inquire whether the expenses ought to be borne wholly or in part by some person other than the defendant in the proceedings, and the court may make such order concerning the expenses of their apportionment as appears to the court to be just.
 - 30.—(1) This section applies to operational land—
 - (a) of the British Railways Board (in this section referred to operational land of British
 - (b) of persons (in this section referred to as "the statutory Railways undertakers") authorised by any enactment to carry on Board and an undertaking for the generation or supply of electricity certain statutory or the supply of gas or water.

Buildings on operational land of British Railways Board and certain statutory undertakers.

- (2) Subject to subsection (4) below, before undertaking any works under section 29(2) above on land to which this section applies a local authority shall serve notice that they propose to undertake works under that section in connection with the building—
 - (a) on the Board, if the works which they propose to undertake will be undertaken on operational land of the Board; and
 - (b) in any other case, on the statutory undertakers on whose operational land the works will be undertaken.
- (3) A notice under subsection (2) above shall specify the works which the local authority propose to undertake.
- (4) A local authority need not give any such notice where they consider that it is necessary to undertake works immediately in order to secure a building against unauthorised entry or to prevent it from becoming a danger to public health.
- (5) A local authority shall not undertake works specified in a notice under subsection (2) above before the expiry of the period of 48 hours from the service of the notice on the Board or the statutory undertakers.
- (6) In carrying out any works under section 29(2) above on land to which this section applies a local authority shall comply

with any reasonable requirement which the Board or, as the case may be, the statutory undertakers may impose for the protection or safety of their undertaking.

- (7) In this section "operational land" means, in relation to the Board or the statutory undertakers—
 - (a) land which is used for the purpose of carrying on their undertaking; and
- (b) land in which an interest is held for that purpose, not being land which, in respect of its nature and situation, is comparable rather with land in general than with land which is used, or in which interests are held, for the purpose of carrying on such undertakings.

Appeals against notices.

- 31. (1) A person on whom a notice is served under section 29 or 30 above may appeal against the notice to the county court.
- (2) No such appeal may be brought after the expiry of the period of 21 days from the date on which the notice was served.
 - (3) The ground of any such appeal may be—
 - (a) that the works specified in the notice were not authorised by section 29 above; or
 - (b) that they were unnecessary; or
 - (c) that it was otherwise unreasonable for the local authority to undertake them.
 - (4) If such an appeal is brought, the local authority—
 - (a) shall cease from any works specified in the notice which they have commenced; and
 - (b) shall not commence any further works so specified except as provided by subsection (7) below.
- (5) The court may make an order confirming or quashing the notice or varying it in such manner as it thinks fit.
- (6) An order under subsection (5) above may make such provision as to the recovery of expenses arising in connection with the works specified in the notice as the court thinks fit.
- (7) Upon the confirmation or variation of a notice the local authority may commence or recommence the works authorised by the notice as originally served or, as the case may be, as varied by the order of the court.

Applications to court in respect of expenses of works.

- 32.—(1) If a local authority seek to recover expenses incurred in undertaking works under section 29(2) above in connection with a building—
 - (a) where the building is on land to which section 30 above applies, from the Board or the statutory undertakers; or

(b) in any other case, from an occupier of the building; and

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(c) they did not serve notice of their proposal to undertake the works under section 29(6) or 30(2) above on the Board or, as the case may be, the statutory undertakers or that occupier,

the person from whom they seek to recover the expenses may apply to the county court for a declaration—

- (i) that the works undertaken in connection with the building were unnecessary; or
- (ii) that it was otherwise unreasonable for the local authority to undertake them.
- (2) No such application may be made after the expiry of the period of 21 days from the date on which the local authority first requested payment of the expenses.
- (3) If the court makes a declaration under subsection (1) above, it may make such order as it thinks fit in respect of the payment of the expenses incurred in connection with the works.

PART XII

MISCELLANEOUS

33.—(1) The provisions of this section shall apply if a princi-Enforceability pal council (in the exercise of their powers under section 111 of by local the Local Government Act 1972 or otherwise) and any other authorities of person are parties to an instrument under seal which—

covenants

(a) is executed for the purpose of securing the carrying out relating to of works on or facilitating the development or regulating the use of land in the council's area in which 1972 c. 70. the other person has an interest; or

- (b) is executed for the purpose of facilitating the development or regulating the use of land outside the council's area in which the other person has an interest; or
- (c) is otherwise connected with land in or outside the council's area in which the other person has an interest.
- (2) If, in a case where this section applies,—
 - (a) the instrument contains a covenant on the part of any person having an interest in land, being a covenant to carry out any works or do any other thing on or in relation to that land, and
 - (b) the instrument defines the land to which the covenant relates, being land in which that person has an interest at the time the instrument is executed, and

PART XII 1974 c. 44. (c) the covenant is expressed to be one to which this section or section 126 of the Housing Act 1974 (which is superseded by this section) applies,

the covenant shall be enforceable (without any limit of time) against any person deriving title from the original covenantor in respect of his interest in any of the land defined as mentioned in paragraph (b) above and any person deriving title under him in respect of any lesser interest in that land as if that person had also been an original covenanting party in respect of the interest for the time being held by him,

- (3) Without prejudice to any other method of enforcement of a covenant falling within subsection (2) above, if there is a breach of the covenant in relation to any of the land to which the covenant relates, then, subject to subsection (4) below, the principal council who are a party to the instrument in which the covenant is contained may—
 - (a) enter on the land concerned and carry out the works or do anything which the covenant requires to be carried out or done or remedy anything which has been done and which the covenant required not to be done; and
 - (b) recover from any person against whom the covenant is enforceable (whether by virtue of subsection (2) above or otherwise) any expenses incurred by the council in exercise of their powers under this subsection.
- (4) Before a principal council exercise their powers under subsection (3)(a) above they shall give not less than 21 days notice of their intention to do so to any person—
 - (a) who has for the time being an interest in the land on or in relation to which the works are to be carried out or other thing is to be done; and
 - (b) against whom the covenant is enforceable (whether by virtue of subsection (2) above or otherwise).
- (5) If a person against whom a covenant is enforceable by virtue of subsection (2) above requests the principal council to supply him with a copy of the covenant, it shall be their duty to do so free of charge.
- 1936 c. 49.
- (6) The Public Health Act 1936 shall have effect as if any reference to that Act in—
 - (a) section 283 of that Act (notices to be in writing; forms of notices, etc.),
 - (b) section 288 of that Act (penalty for obstructing execution of Act), and

(c) section 291 of that Act (certain expenses recoverable PARI XII from owners to be a charge on the premises; power to order payment by instalments),

included a reference to subsections (1) to (4) above and as if any reference in those sections of that Act—

- (i) to a local authority were a reference to a principal council; and
- (ii) to the owner of the premises were a reference to the holder of an interest in land.
- (7) Section 16 of the Local Government (Miscellaneous Pro-1976 c.57. visions) Act 1976 shall have effect as if references to a local authority and to functions conferred on a local authority by any enactment included respectively references to such a board as is mentioned in subsection (9) below and to functions of such a board under this section.
- (8) In its application to a notice or other document authorised to be given or served under subsection (4) above or by virtue of any provision of the Public Health Act 1936 specified in 1936 c. 49. subsection (6) above, section 233 of the Local Government Act 1972 c. 70. 1972 (service of notices by local authorities) shall have effect as if any reference in that section to a local authority included a reference to the Common Council of the City of London and such a board as is mentioned in the following subsection.
 - (9) In this section—
 - (a) "principal council" means the council of a county, district or London borough, a board constituted in pursuance of section 1 of the Town and Country 1971 c. 78. Planning Act 1971 or reconstituted in pursuance of Schedule 17 to the Local Government Act 1972, the Common Council of the City of London or the Greater London Council; and
 - (b) "area" in relation to such a board means the district for which the board is constituted or reconstituted.
- (10) Section 126 of the Housing Act 1974 (which is super-1974 c. 44. seded by this section) shall cease to have effect; but in relation to a covenant falling within subsection (2) of that section, section 1(1)(d) of the Local Land Charges Act 1975 shall continue to 1975 c. 76. have effect as if the reference to the commencement of that Act had been a reference to the coming into operation of the said section 126.
 - 34. In the Local Land Charges Act 1975—

 (a) the following subsection shall be substituted for subsection (3) of section 3 (which provides for the keeping computerisation etc.

- of local land charges registers and indexes of such registers)-
 - "(3) Neither a local land charges register nor an index such as is mentioned in subsection (2)(b) above need be kept in documentary form.";
- (b) the following subsection shall be inserted after subsection (1) of section 8 (personal searches)-
 - "(1A) If a local land charges register is kept otherwise than in documentary form, the entitlement of a person to search in it is satisfied if the registering authority makes the portion of it which he wishes to examine available for inspection in visible and legible form.";
- (c) in subsection (2) of that section, for the words "subsection (1)" there shall be substituted the words "subsections (1) and (1A)";
- (d) in section 10(1) (compensation)—
 - (i) the following paragraph shall be inserted after paragraph (a)—
 - " (aa) in a case where the appropriate local land charges register is kept otherwise than in documentary form and a material personal search of that register was made in respect of the land in question before the relevant time, if the entitlement to search in that register conferred by section 8 above was not satisfied as mentioned in subsection (1A) of that section; or "; and
 - (ii) the words "in consequence" shall be substituted for the words from "by reason" onwards;
- (e) the following subsection shall be inserted after subsection (1) of section 16 (interpretation)—
 - "(1A) Any reference in this Act to an office copy of an entry includes a reference to the reproduction of an entry in a register kept otherwise than in documentary form.".

Acquisition of land etc. by Planning Boards.

1980 c. 65.

1971 c. 78.

1972 c. 70.

35. In section 119 of the Local Government, Planning and Land Act 1980-

(a) in subsection (1), for the words "The Peak Park Joint Planning Board and the Lake District Special Planning Board" there shall be substituted the words "A board constituted in pursuance of section 1 of the Town and Country Planning Act 1971 or reconstituted in pursuance of Schedule 17 to the Local Government Act 1972."

- (b) in subsection (2), for the words "The Boards" there PART XII shall be substituted the words "Any such board";
- (c) in subsection (3), for the words "the Boards were local authorities" there shall be substituted the words "any such board were a local authority"; and
- (d) the following subsection shall be added after that subsection—
 - "(4) On being authorised to do so by the Secretary of State any such board shall have, for any purpose for which by virtue of this section they may acquire land compulsorily, the power to purchase compulsorily rights over land not in existence when their compulsory purchase is authorised which section 13 of the Local Government (Miscellaneous Provisions) 1976 c. 57. Act 1976 confers on the local authorities to whom subsection (1) of that section applies, and subsections (2) to (5) of that section shall accordingly apply to the purchase of rights under this subsection as they apply to the purchase of rights under the said subsection (1)."

36. In the Town and Country Planning Act 1971—
(a) the following section shall be inserted after section 109—

Control of fly-posting.

"Power to remove or obliterate placards and posters. 109A.—(1) Subject to subsections (2) and (3) of this section, the council of a district or a London borough may remove or obliterate any placard or poster—

- (a) which is displayed in their area; and
- (b) which, in their opinion, is so displayed in contravention of the advertisement regulations.
- (2) Subsection (1) of this section does not authorise the removal or obliteration of a placard or poster displayed within a building to which there is no public right of access.
- (3) Subject to subsection (4) of this section, a council shall not exercise any power conferred by subsection (1) of this section where a placard or poster identifies the person who displayed it or caused it to be displayed unless they have first given him notice in writing—
 - (a) that in their opinion it is displayed in contravention of the advertisement regulations; and

- (b) that they intend to remove or obliterate it on the expiry of a period specified in the notice.
- (4) A council may exercise a power conferred by subsection (1) of this section without giving the person who displayed the placard or poster notice under subsection (3) of this section if the placard or poster does not give his address and the council do not know it and are unable to ascertain it after reasonable inquiry.
- (5) The period to be specified in a notice under subsection (3) of this section shall be a period of not less than two days from the date of service of the notice.
- (6) In this section "the advertisement regulations" means regulations made or having effect as if made under section 63 of this Act.";
- (b) in section 269(2) (provisions specified in Part III of Schedule 21 to have effect as if the Isles of Scilly were a district and the Council of the Isles were its council) after the word "Schedule" there shall be inserted the words "and section 109A of this Act";
- (c) the following subsection shall be inserted after subsection (4) of section 280 (rights of entry)—
 - "(4A) Any person duly authorised in writing by the council of a district or a London borough may at any reasonable time enter any land for the purpose of exercising a power conferred on the council by section 109A above if—
 - (a) the land is unoccupied; and
 - (b) it would be impossible to exercise the power without entering the land."; and
- (d) in Part I of Schedule 21 (provisions that may be applied to the Isles of Scilly as if they were a separate county) for the words "Sections 104 to 111" there shall be substituted the words—

" Sections 104 to 109. Sections 110 and 111.".

Temporary markets.

37.—(1) The council of a district or a London borough may resolve that the following provisions of this section shall apply to their district or borough; and if a council so resolve and within 14 days of the passing of the resolution give notice of the resolution by advertising in a local newspaper circulating in their area, those provisions shall come into force in their district or borough on the day specified in the resolution.

- (2) Subject to subsection (3) below, any person intending to hold a temporary market in a district or London borough where the provisions of this section have come into force, and any occupier of land in such a district or borough who intends to permit the land to be used as the site of a temporary market or for purposes of that market, shall give the council of the district or the borough not less than one month before the date on which it is proposed to hold the market notice of his intention to hold it or to permit the land to be so used, as the case may be.
- (3) No notice is required under subsection (2) above if the proceeds of the temporary market are to be applied solely or principally for charitable, social, sporting or political purposes.
 - (4) Any notice given under subsection (2) above shall state—
 - (a) the full name and address of the person intending to hold the market;
 - (b) the day or days on which it is proposed that the market shall be held and its proposed opening and closing times;
 - (c) the site on which it is proposed that it shall be held;
 - (d) the full name and address of the occupier of that site, if he is not the person intending to hold the market.
- (5) A person who without giving the notice required by subsection (2) above holds a temporary market or permits land occupied by him to be used as the site of a temporary market shall be guilty of an offence and liable on summary conviction to a fine not exceeding £500.
- (6) In this section "temporary market" means a concourse of buyers and sellers of articles held otherwise than in a building or on a highway, and comprising not less than five stalls, stands, vehicles (whether movable or not) or pitches from which articles are sold, but does not include—
 - (a) a market or fair the right to hold which was acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of an enactment or order; or
 - (b) a sale by auction of farm livestock or deadstock.
- (7) A person holds a temporary market for the purposes of this section if—
 - (a) he is entitled to payment for any space or pitch hired or let on the site of the market to persons wishing to trade in the market; or
 - (b) he is entitled, as a person promoting the market, or as the agent, licensee or assignee of a person promoting the market, to payment for goods sold or services rendered to persons attending the market.

1971 c. 78.

(8) This section does not apply to a market held on any land in accordance with planning permission granted on an application made under Part III of the Town and Country Planning Act 1971.

Work undertaken by local authorities and development bodies under certain agreements with Manpower Services Commission.

- 38.—(1) The following subsection shall be added at the end of section 20 of the Local Government, Planning and Land Act 1980—
 - "(4) Notwithstanding anything in subsection (1) above, in this Act "construction or maintenance work" does not include work undertaken by a local authority or a development body pursuant to an agreement made with the Manpower Services Commission on or after 1st April 1982 which specifies the work to be undertaken by the authority or body and under which the Commission has agreed to pay the whole or part of the cost of the work so specified.".
- (2) The words "to (4)" shall accordingly be substituted for the words "and (3)" in the definition of "construction or maintenance work" in subsection (1) of that section.
 - (3) This section extends to Scotland.

Insurance etc. of local authority members and persons voluntarily assisting local authorities and probation committees.

1972 c. 70.

1981 c. 31.

- 39.—(1) In section 140 of the Local Government Act 1972 (insurance by local authorities against accidents to members)—
 - (a) the following subsection shall be substituted for subsection (1)—
 - "(1) A local authority may enter into a contract of insurance of Class 1 in Part I of Schedule 2 to the Insurance Companies Act 1981 against risks of any member of the authority meeting with a personal accident, whether fatal or not, while engaged on the business of the authority."; and
 - (b) the words in subsection (3) from "but" to the end shall cease to have effect.

(2) The following sections shall be inserted after that section—

"Insurance of voluntary assistants of local authorities.

140A.—(1) A local authority may enter into a contract of insurance of a relevant class against risks of any voluntary assistant of the authority meeting with a personal accident, whether fatal or not, while engaged as such, or suffering from any disease or sickness, whether fatal or not, as the result of being so engaged.

(2) In this section—

"local authority" includes-

(a) a board constituted in pursuance of section 1 of the Town and Country Plan-

ning Act 1971 or reconstituted in pur- PART XII suance of Schedule 17 to this Act;

- (b) the Common Council of the City of London; and
- (c) the Council of the Isles of Scilly; and
- "voluntary assistant" means a person who, at the request of the local authority or an authorised officer of the local authority, performs any service or does anything otherwise than for payment by the local authority (except by way of reimbursement of expenses), for the purposes of, or in connection with, the carrying out of any of the functions of the local authority.

Insurance of voluntary assistants of probation committees.

140B.—(1) A county council and the Greater London Council may enter into a contract of insurance of a relevant class against risks of any voluntary assistant of a relevant probation committee meeting with a personal accident, whether fatal or not, while engaged as such, or suffering from any disease or sickness, whether fatal or not, as the result of being so engaged.

(2) In this section—

- "relevant probation committee" means—
 - (a) in relation to a county council, a probation committee for a probation area wholly or partly within the county; and
 - (b) in relation to Greater London, a probation committee for a probation area wholly or partly within an outer London borough (within the meaning of section 1 of the 1963 Act); and
- "voluntary assistant" means a person who, at the request of an authorised officer of the probation committee, performs any service or does anything otherwise than for payment by the committee (except by way of reimbursement of expenses), for the purposes of, or in connection with, the carrying out of any of the functions of the committee.

1981 c. 31.

Provisions supplementary to sections 140A and 140B.

140C.—(1) The relevant classes of contracts of insurance for the purposes of sections 140A and 140B above are—

- (a) class IV in Schedule 1 to the Insurance Companies Act 1981 (permanent health insurance); and
- (b) class 1 in Part I of Schedule 2 to that Act (accident insurance).
- (2) Any sum received under a contract of insurance made by virtue of section 140A or 140B above shall, after deduction of any expenses incurred in the recovery thereof, be paid by the authority receiving it to, or to the personal representatives of, the voluntary assistant who suffered the accident, disease or sickness in respect of which the sum is received or to such other person as the authority consider appropriate having regard to the circumstances of the case; and a sum paid to any person other than the assistant or his personal representatives shall be applied by that person in accordance with any directions given by the authority for the benefit of any dependant of the voluntary assistant.

1774 c. 48.

- (3) The provisions of the Life Assurance Act 1774 shall not apply to any such contract.
- (4) Section 119 above shall apply to any sum which is due by virtue of subsection (2) above and does not exceed the amount for the time being specified in section 119(1) above.".
- (3) In the entry relating to Class 1 in Part I of Schedule 2 to the Insurance Companies Act 1981, after the words "the person insured" there shall be inserted the words "or, in the case of a contract made by virtue of section 140, 140A or 140B of the Local Government Act 1972, a person for whose benefit the contract is made".

1972 c. 70.

Nuisance and disturbance on educational premises.

- 40.—(1) Any person who without lawful authority is present on premises to which this section applies and causes or permits nuisance or disturbance to the annoyance of persons who lawfully use those premises (whether or not any such persons are present at the time) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50.
- (2) This section applies to premises, including playgrounds, playing fields and other premises for outdoor recreation—

(a) of a school maintained by a local education authority;

or

(b) of a further education establishment provided by such an authority.

(3) If—

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- (a) a police constable; or
- (b) subject to subsection (5) below, a person whom a local education authority have authorised to exercise the power conferred by this subsection,

has reasonable cause to suspect that any person is committing or has committed an offence under this section, he may remove him from the premises.

- (4) The power conferred by subsection (3) above may also be exercised, in relation to premises of an aided or special agreement school, by a person whom the school governors have authorised to exercise it.
- (5) A local education authority may not authorise a person to exercise the power conferred by subsection (3) above in relation to premises of a voluntary school without first obtaining the consent of the school governors.
- (6) Except as provided by subsection (7) below, no proceedings under this section shall be brought by any person other than-
 - (a) a police constable; or
 - (b) subject to subsection (8) below, a local education auth-
- (7) Proceedings under this section for an offence committed on premises of an aided or special agreement school may be brought by a person whom the school governors have authorised to bring such proceedings.
- (8) A local education authority may not bring proceedings under this section for an offence committed on premises of a voluntary school without first obtaining the consent of the school governors.
- (9) Expressions used in this section and in the Education Act 1944 c. 31. 1944 have the meanings assigned to them by that Act.
- (10) This section shall come into force on the expiry of the period of two months beginning with the date on which this Act is passed.
 - 41.—(1) This section has effect where—

Lost and

- (a) property comes into the possession of a local authority uncollected after being found on buildings or premises owned or property. managed by them; or
- (b) property which has been deposited with a local authority is not collected from them in accordance with the terms under which it was deposited.
- (2) Where-
 - (a) property is found on any building or premises owned or managed by a local authority; and

- (b) it is subsequently handed over to the authority, any right of possession of the property which was vested in a person by virtue of its having been found is extinguished.
 - (3) If—
 - (a) the local authority gives the owner or, as the case may be, the depositor of the property notice in writing—
 - (i) that they require him to collect the property by a date specified in the notice; and
 - (ii) that if he does not do so the property will vest in the local authority on that date; and
- (b) he fails to comply with the notice, the property shall vest in the local authority on the specified date.
- (4) The date to be specified in a notice under subsection (3) above shall be not less than one month from the date of the notice.
- (5) Where it appears to the local authority, on the date when property comes into their possession as mentioned in paragraph (a) of subsection (1) above, that it is impossible to serve a notice under subsection (3) above, the property shall vest in the authority one month from that date.
- (6) Where the local authority are satisfied after reasonable inquiry that it is impossible to serve a notice under subsection (3) above in relation to any property, it shall vest in them six months from the relevant date.
 - (7) Where—
 - (a) any property is of a perishable nature; or
 - (b) to look after it adequately would involve the local authority in unreasonable expense or inconvenience,

the authority may sell or otherwise dispose of it at such time and in such manner as they think fit.

- (8) Where property is sold or otherwise disposed of under subsection (7) above—
 - (a) any person to whom the property is transferred shall have a good title to it; and
 - (b) any proceeds of sale shall vest in the local authority on the day when the property would have vested in them under this section if it had not been sold.
- (9) Where any property which came into the possession of a local authority as mentioned in paragraph (a) of subsection (1) above vests in the authority under this section, the authority may give the whole or any part of the property to the person through whom it came into their possession.

(10) Where the proceeds of sale of property which came into the possession of a local authority as mentioned in the said paragraph (a) vest in the authority under this section, the authority may make a payment not exceeding the value of the property to the person through whom it came into their possession.

- PART XII
- (11) Where property is claimed by its owner or depositor before it vests in a local authority under this section, he may collect it on payment to the local authority of any sum which they require him to pay in respect of costs incurred by them—
 - (a) in making inquiries for the purposes of this section or serving any notice under subsection (3) above; and
 - (b) in looking after the property adequately.
- (12) This section shall not apply to any property which is found—
 - (a) on an aerodrome or in an aircraft on an aerodrome;
 - (b) in a public service vehicle; or
 - (c) on any premises belonging to the London Transport Executive or under the control of that Executive.
 - (13) In this section—
 - "aerodrome" has the meaning assigned to it by section 28(1) of the Civil Aviation Act 1968; 1968 c. 61.
 - "local authority" means-
 - (a) a local authority as defined in section 270(1) of the Local Government Act 1972; and 1972 c. 70.
 - (b) a board constituted in pursuance of section 1 of the Town and Country Planning Act 1971 or re-1971 c. 78. constituted in pursuance of Schedule 17 to the Local Government Act 1972; and
 - (c) the Common Council of the City of London;
 - "public service vehicle" has the meaning assigned to it by section 1 of the Public Passenger Vehicles Act 1981; 1981 c. 14.
 - "the relevant date" means-
 - (a) in relation to property which came into the possession of a local authority as mentioned in paragraph (a) of subsection (1) above, the date when it came into their possession; and
 - (b) in relation to uncollected property,—
 - (i) the date when the local authority accepted custody of it; or
 - (ii) the date when the period for which it was deposited with them expired, whichever is the later.

PART XII Port health districts and port health authorities. 1936 c. 49.

- 42.—(1) In section 2(2) of the Public Health Act 1936 (constitution of port health district under port health authority)—
 - (a) for the words "(i) constitute a port health district consisting of the whole or part of a port" there shall be substituted the words "constitute a port health district consisting of any area, being a port or part of a port, or of two or more such areas, or consisting of such an area or two or more such areas together with so much (being either the whole or any part or parts) of the district or districts of one or more riparian authorities as (not being comprised in that area or any of those areas, as the case may be) is specified in the order"; and
 - (b) paragraph (ii) shall be omitted.
- (2) In section 3(1)(a) of that Act (which specifies the waters and land over which a port health authority is to have jurisdiction) for the words from "waters" to "so specified" there shall be substituted the words "waters and land within the port health district".
- 1963 c. 33.
- (3) In section 41 of the London Government Act 1963 (port health authority for the Port of London)—
 - (a) in subsection (1), after the words "Port of London" there shall be inserted the words "together with so much (being either the whole or any part or parts) of the district or districts of one or more riparian authorities as (not being comprised in the Port of London) may be specified in an order made by the Secretary of State":
 - (b) in paragraph (a) of that subsection, for the words from "waters" to the end of the paragraph there shall be substituted the words "waters and land within that port health district";
 - (c) in paragraph (c) of that subsection, for the words from "mentioned in paragraph (a)" to "so mentioned" there shall be substituted the words "and land within that port health district"; and
 - (d) at the end of the section there shall be added the following subsection—
 - "(4) In this section "riparian authority" means a riparian authority within the meaning of Part I of the Public Health Act 1936 as amended by subsection (3) of this section.".
- (4) The amendments made by subsections (1) to (3) above shall not affect the validity of any order made under section 2(2)

of the Public Health Act 1936, or under section 41 of the London Government Act 1963, before the passing of this Act; but the 1936 c. 49. power conferred by section 9(2) of the said Act of 1936, or by 1963 c. 33. section 90 of the said Act of 1963, to amend or vary orders shall include power to amend or vary any order so made so as to have effect in accordance with the provisions of the Act in question as amended by this section.

erection of

- 43. In section 3 of the Local Authorities (Land) Act 1963—Advances for (a) the following subsection shall be substituted for sub- of land, section (1)—
 - "(1) Where a local authority are satisfied that it buildings or would be for the benefit or improvement of their of works. area, they may, subject to the provisions of this 1963 c. 29. section, advance money to any person for the purpose of enabling him-
 - (a) to acquire land; or
 - (b) to erect any building or carry out any work on land.": and
 - (b) the following subsections shall be substituted for subsection (3)—
 - "(3) The amount of the principal of an advance made under subsection (1)(a) of this section shall not exceed nine-tenths of the value of the land.
 - (3A) The amount of the principal of an advance made under subsection (1)(b) of this section shall not exceed nine-tenths of the value which it is estimated the mortgaged security will bear upon the completion of the building or other works in respect of which the advance is made.".
- 44. In section 137 of the Local Government Act 1972 (which Definition of gives local authorities power to incur expenditure for certain certain local purposes not otherwise authorised, but limits the expenditure authority which it authorises)—

- (a) the following subsections shall be inserted after sub-1972 c. 70. section (2)-
 - "(2A) Without prejudice to the generality of subsection (1) above, the power of a local authority to incur expenditure under that subsection includes power to incur expenditure in giving financial assistance to persons carrying on commercial or industrial undertakings.

- (2B) Financial assistance under subsection (2A) above may be given by lending or guarantee, or by making grants.";
- (b) the following subsections shall be inserted after subsection (4)—
 - "(4A) For the purpose of determining whether a local authority have exceeded the limit set out in subsection (4) above, their expenditure in any financial year under this section shall be taken to be the difference between their gross expenditure under this section for that year and the aggregate of the amounts specified in subsection (4B) below.
 - (4B) The amounts mentioned in subsection (4A) above are—
 - (a) any grant paid to the local authority for that year under the Local Government Grants (Social Need) Act 1969, in so far as the grant is in respect of an activity in relation to which the authority have incurred expenditure in that year under this section;
 - (b) the amount of any repayment in that year of the principal of a loan for the purpose of financing expenditure under this section in any year;
 - (c) so much of any amount raised by public subscription as is spent in that year for a purpose for which the authority are authorised by this section to incur expenditure;
 - (d) any grant received by the authority for that year out of the European Regional Development Fund or the Social Fund of the European Economic Community, in so far as the grant is in respect of an activity in relation to which the authority incurred expenditure in that year under this section;
 - (e) the amount of any repayment in that year of a loan under this section made by the authority in any year; and
 - (f) the amount of any expenditure—
 - (i) which is incurred by the authority in that year in circumstances specified in an order made by the Secretary of State; or
 - (ii) which is incurred by the authority in that year and is of a description so specified; or

1969 c. 2.

(iii) which is defrayed by any grant or other payment to the authority which is made in or in respect of that year and is of a description so specified."; and

(c) in subsection (5), for the words "subsection (4) above" there shall be substituted the words "this section".

- 45.—(1) A local authority to whom this section applies shall Arrangements have power and shall be deemed always to have had power to under enter into arrangements with the Manpower Services Commission and Training or the Secretary of State under any provision of the Employment Act 1973. and Training Act 1973.
 - (2) The local authorities to whom this section applies are—
 - (a) a local authority as defined in section 270(1) of the Local Government Act 1972; 1972 c. 70.
 - (b) a board constituted in pursuance of section 1 of the Town and Country Planning Act 1971 or reconstituted 1971 c. 78. in pursuance of Schedule 17 to the Local Government Act 1972; and
 - (c) the Common Council of the City of London.
- 46.—(1) In each of the enactments to which this subsection Extension of applies "1986" shall be substituted for "1984".

 duration of local Act
 - (2) The enactments to which subsection (1) above applies are—powers to
 - (a) section 62A of the Isle of Wight County Council Act industry etc. 1971, so far as it relates to sections 18 to 20 of that Act; 1971 c. lxxi.
 - (b) section 11(2) of the County of South Glamorgan Act 1976 c. xxxv. 1976;
 - (c) section 52 of the Tyne and Wear Act 1976; 1976 c. xxxvi.
 - (d) section 9 of the County of Merseyside Act 1980; 1980 c. x:
 - (e) section 122(2) of the West Midlands County Council 1980 c. xi. Act 1980;
 - (f) section 4 of the Cheshire County Council Act 1980; 1980 c. xiii.
 - (g) section 8 of the West Yorkshire Act 1980; and 1980 c. xiv.
 - (h) section 9 of the Greater Manchester Act 1981. 1981 c. ix.

PART XIII

SUPPLEMENTARY

47.—(1) The enactments specified in Schedule 6 to this Act Minor shall have effect subject to the amendments specified in that amendments Schedule.

- (2) The enactments specified in Schedule 7 to this Act are repealed to the extent specified in the third column of that Schedule.
- (3) So far as subsection (2) above relates to Parts I and II of Schedule 7 to this Act, it shall come into force on 1st January 1983.
- (4) Subsection (2) above extends to Scotland in so far as it relates to any enactment contained in Part IV of Schedule 7 to this Act which so extends.

Consequential repeal or amendment of local statutory provisions.

48.—(1) The Secretary of State may by order—

- (a) repeal any provision of a local Act passed before or in the same Session as this Act or of an order or other instrument made under or confirmed by any Act so passed if it appears to him that the provision is inconsistent with or has become unnecessary in consequence of any provision of this Act; and
- (b) amend any provision of such a local Act, order or instrument if it appears to him that the provision requires amendment in consequence of any provision contained in this Act or any repeal made by virtue of paragraph (a) above.
- (2) An order under subsection (1) above may contain such incidental or transitional provisions as the Secretary of State considers appropriate in connection with the order.
- (3) It shall be the duty of the Secretary of State, before he makes an order under subsection (1) above repealing or amending any provision of a local Act, to consult each local authority which he considers would be affected by the repeal or amendment of that provision.
- (4) A statutory instrument containing an order under subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Citation and extent.

- 49.—(1) This Act may be cited as the Local Government (Miscellaneous Provisions) Act 1982.
- (2) Subject to sections 11(2), 38(3) and 47(4) above, and to paragraph 8(2) of Schedule 6 to this Act, this Act extends to England and Wales only.

SCHEDULES

SCHEDULE 1

Section 1.

LICENSING OF PUBLIC ENTERTAINMENTS

Grant, renewal and transfer of entertainments licences

- 1.—(1) An entertainment to which this paragraph applies shall not be provided in any place except under and in accordance with the terms of a licence granted under this paragraph by the appropriate authority.
- (2) Subject to sub-paragraph (3) below, this paragraph applies to public dancing or music or any other public entertainment of a like kind.
 - (3) This paragraph does not apply—
 - (a) to any music—
 - (i) in a place of public religious worship; or
 - (ii) performed as an incident of a religious meeting or service;
 - (b) to an entertainment held in a pleasure fair; or
 - (c) to an entertainment which takes place wholly or mainly in the open air.
- (4) The appropriate authority may grant to any applicant, and from time to time renew, a licence for the use of any place specified in it for all or any of the entertainments to which this paragraph applies on such terms and conditions and subject to such restrictions as may be so specified.
- (5) The appropriate authority may grant a licence under this paragraph in respect of such one or more particular occasions only as may be specified in the licence.
- 2.—(1) An entertainment to which this paragraph applies shall not be provided in any place except under and in accordance with the terms of a licence granted under this paragraph by the appropriate authority.
- (2) Subject to sub-paragraph (3) below, this paragraph applies to any entertainment which consists of, or includes, any public contest, exhibition or display of boxing, wrestling, judo, karate or any similar sport.
 - (3) This paragraph does not apply—
 - (a) to an entertainment held in a pleasure fair; or
 - (b) to an entertainment which takes place wholly or mainly in the open air.
- (4) The appropriate authority may grant to any applicant, and from time to time renew, a licence for the use of any place specified in it for all or any of the entertainments to which this paragraph

- Sch. 1 applies on such terms and conditions and subject to such restrictions as may be so specified.
 - (5) The appropriate authority may grant a licence under this paragraph in respect of such one or more particular occasions only as may be specified in the licence.
 - 3.—(1) This paragraph applies to any public musical entertainment which is held—
 - (a) in an area in which this paragraph and paragraph 4 below have effect; and
 - (b) wholly or mainly in the open air; and
 - (c) at a place on private land.
 - (2) For the purposes of this paragraph and paragraph 4 below—
 - (a) an entertainment is musical if music is a substantial ingredient; and
 - (b) land is private if the public has access to it (whether on payment or otherwise) only by permission of the owner, occupier or lessee.
 - (3) This paragraph does not apply—
 - (a) to a garden fete, bazaar, sale of work, sporting or athletic event, exhibition, display or other function or event of a similar character, whether limited to one day or extending over two or more days; or
 - (b) to a religious meeting or service, merely because music is incidental to it.
 - (4) This paragraph does not apply to an entertainment held in a pleasure fair.
 - 4.—(1) An entertainment to which paragraph 3 above applies shall not be provided except under and in accordance with the terms of a licence granted under this paragraph by the appropriate authority.
 - (2) The appropriate authority may grant to any applicant, and from time to time renew, a licence for the use of any place specified in it for any entertainment to which paragraph 3 above applies.
 - (3) The appropriate authority may grant a licence under this paragraph in respect of such one or more particular occasions only as may be specified in the licence.
 - (4) A licence under this paragraph may be granted—
 - (a) on terms and conditions; and
 - (b) subject to restrictions,
 - imposed for all or any of the following purposes, but no others,-
 - (i) for securing the safety of performers at the entertainment for which the licence is granted and other persons present at the entertainment;

- (ii) without prejudice to the generality of paragraph (i) above, for securing adequate access for fire engines, ambulances, police cars or other vehicles that may be required in an emergency;
- (iii) for securing the provision of adequate sanitary appliances and things used in connection with such appliances;
- (iv) for preventing persons in the neighbourhood being unreasonably disturbed by noise.
- 5.—(1) Subject to paragraphs 8 and 17 below, any entertainments licence other than a licence in respect of one or more particular occasions only shall, unless previously cancelled under paragraph 10 or revoked under paragraph 12(4) 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 an entertainments licence 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 or the holder of the licence.
- 6.—(1) An applicant for the grant, renewal or transfer of an entertainments licence in respect of any place shall give not less than 28 days' notice of his intention to make the application to—
 - (a) the appropriate authority;
 - (b) the chief officer of police; and
 - (c) the fire authority.
- (2) The appropriate authority may in such cases as they think fit, after consulting with the chief officer of police and the fire authority, grant an application for the grant, renewal or transfer of an entertainments licence notwithstanding the fact that the applicant has failed to give notice in accordance with sub-paragraph (1) above.
- (3) An applicant for the grant, renewal or transfer of an entertainments licence shall furnish such particulars and give such other notices as the appropriate authority may by regulation prescribe.
- (4) In considering any application for the grant, renewal or transfer of an entertainments licence, the appropriate authority shall have regard to any observations submitted to them by the chief officer of police and by the fire authority.
- 7.—(1) Subject to sub-paragraphs (2) and (3) below, an applicant for the grant, renewal or transfer of an entertainments licence shall pay a reasonable fee determined by the appropriate authority.
- (2) No fee shall be payable if the application is for a licence for an entertainment—
 - (a) at a church hall, chapel hall or other similar building occupied in connection with a place of public religious worship; or
 - (b) at a village hall, parish or community hall or other similar building.

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- Sch. 1 (3) The appropriate authority may remit the whole or any part of the fee that would otherwise be payable for the grant, renewal or transfer of an entertainments licence, where in the opinion of the authority the entertainment in question—
 - (a) is of an educational or other like character; or
 - (b) is given for a charitable or other like purpose.
 - 8.—(1) Where, before the date of expiry of an entertainments 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 an entertainments 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 at the place in respect of which the licence was granted the functions to which it relates.

Transmission and cancellation of entertainments licences

- 9. In the event of the death of the holder of an entertainments licence, the person carrying on at the place in respect of which the licence was granted the functions to which the licence relates shall be deemed to be the holder of the licence unless and until—
 - (a) a legal personal representative of the deceased has been duly constituted; or
 - (b) the licence is transferred to some other person.
- 10. The appropriate authority may, at the written request of the holder of an entertainments licence, cancel the licence.

Power to prescribe standard terms, conditions and restrictions

- 11.—(1) The appropriate authority may make regulations prescribing standard conditions applicable to all, or any class of, entertainments licences, that is to say terms, conditions and restrictions on or subject to which such licences, or licences of that class, are in general to be granted, renewed or transferred by them.
- (2) Regulations relating to entertainments to which paragraph 3 above applies may only prescribe standard conditions for the purposes specified in paragraph 4(4) above.
- (3) 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.
- (4) 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.

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(5) 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 a certificate.

Enforcement

- 12.—(1) If any entertainment to which paragraph 1, 2 or 3 above applies is provided at any place in respect of which a licence under the relevant paragraph is not in force, then, subject to sub-paragraph (3) below—
 - (a) any person concerned in the organisation or management of that entertainment; and
 - (b) any other person who, knowing or having reasonable cause to suspect that such an entertainment would be so provided at the place,—
 - (i) allowed the place to be used for the provision of that entertainment; or
 - (ii) let the place, or otherwise made it available, to any person by whom an offence in connection with that use of the place has been committed.

shall be guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

- (2) If any place in respect of which a licence under paragraph 1, 2 or 4 above is in force is used for any entertainment otherwise than in accordance with the terms, conditions or restrictions on or subject to which the licence is held, then, subject to sub-paragraph (3) and to paragraph 13 below,—
 - (a) the holder of the licence; and
 - (b) any other person who, knowing or having reasonable cause to suspect that the place would be so used,—
 - (i) allowed the place to be so used; or
 - (ii) let the place, or otherwise made it available, to any person by whom an offence in connection with that use of the place has been committed,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

- (3) It shall be a defence for a person charged with an offence under this paragraph to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence.
- (4) Subject to paragraph 17 below, the authority by whom an entertainments licence was granted may revoke it if its holder is convicted of an offence under sub-paragraph (2)(a) above.

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13. Where-

1964 c. 26.

- (a) a special order of exemption has been granted in respect of premises under section 74(4) of the Licensing Act 1964; and
- (b) the premises form all or part of a place in respect of which a licence under paragraph 1 above is for the time being in force.

no person shall be guilty of an offence under paragraph 12(2) above by reason only of those premises being kept open on that special occasion for any of the purposes authorised by the licence after the latest hour so authorised but not later than the hour specified in that special order of exemption as the hour for closing.

14.--(1) Where---

- (a) a constable; or
- (b) an authorised officer of the appropriate authority; or
- (c) an authorised officer of the fire authority,

has reason to believe that an entertainment to which paragraph 1, 2 or 3 above applies is being, or is about to be, given in any place in respect of which an entertainments licence is for the time being in force, he may enter the place with a view to seeing whether the terms, conditions or restrictions on or subject to which the licence is held are complied with.

- (2) An authorised officer of the fire authority may, on giving not less than 24 hours' notice to the occupier of any place in respect of which an entertainments licence is for the time being in force, enter the place for the purpose of—
 - (a) inspecting the place to ensure that there are adequate fire precautions; and
 - (b) seeing whether the terms, conditions or restrictions relating to fire precautions on or subject to which the licence is held are being complied with.
- (3) A constable or authorised officer of the appropriate authority may enter any place in respect of which he has reason to suspect that an offence under paragraph 12 above is being committed if authorised to do so by a warrant granted by a justice of the peace.
- (4) Where an authorised officer of the appropriate authority or of the fire authority enters any place in exercise of any power under this paragraph he shall, if required to do so by the occupier, produce to him his authority.
- (5) Any person who without reasonable excuse refuses to permit a constable or officer to enter or inspect any place in accordance with the provisions of this paragraph shall be guilty of an offence and shall for every such refusal be liable on summary conviction to a fine not exceeding £200.

Provisional grant of licences

15.—(1) Where application is made to the appropriate authority for the grant of an entertainments licence in respect of premises

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which are to be, or are in the course of being, constructed, extended or altered and the authority are satisfied that the premises would, if completed in accordance with plans deposited in accordance with the requirements of the authority, be such that they would grant the licence, the authority may grant the licence subject to a condition that it shall be of no effect until confirmed by them.

(2) The authority shall confirm any licence granted by virtue of the foregoing sub-paragraph if and when they are satisfied that the premises have been completed in accordance with the plans referred to in sub-paragraph (1) above or in accordance with those plans as modified with the approval of the authority, and that the licence is held by a fit and proper person.

Variation of licences

- 16.—(1) The holder of an entertainments licence may at any time apply to the appropriate authority for such variations of the terms, conditions or restrictions on or subject to which the licence is held as may be specified in the application.
- (2) An authority to whom an application under sub-paragraph (1) above is made may—
 - (a) make the variations specified in the application;
 - (b) make such variations as they think fit, including, subject to paragraph 4(4) above, the imposition of terms, conditions or restrictions other than those so specified; or
 - (c) refuse the application.

Appeals

- 17.—(1) Any of the following persons, that is to say—
 - (a) an applicant for the grant, renewal or transfer of an entertainments licence in respect of any place 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; or
 - (d) a holder of any such licence whose licence is revoked under paragraph 12(4) above,

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 petty sessions area in which the place is situated.

- (2) In this paragraph "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.
- (3) An appeal against the decision of a magistrates' court under this paragraph may be brought to the Crown Court.

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- Sch. 1 (4) On an appeal to the magistrates' court or the Crown Court under this paragraph the court may make such order as it thinks fit.
 - (5) Subject to sub-paragraphs (6) to (9) below, it shall be the duty of the appropriate authority to give effect to an order of the magistrates' court or the Crown Court.
 - (6) The appropriate authority need not give effect to the order of the magistrates' court until the time for bringing an appeal under sub-paragraph (3) above has expired and, if such an appeal is duly brought, until the determination or abandonment of the appeal.
 - (7) Where any entertainments licence is revoked under paragraph 12(4) above 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 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.

(8) Where-

- (a) the holder of an entertainments licence makes an application under paragraph 16 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.
- (9) 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 the term, condition or restriction until the determination or abandonment of the appeal.

Miscellaneous

18. Where a place in respect of which an entertainments licence has been granted constitutes a roller skating rink within the meaning of section 75(2)(b) of the Public Health Act 1961, it shall not be subject to any byelaws made under section 75 for so long as the licence is in force.

Savings and transitional provisions

- 19.—(1) Any licence relating to public entertainments which was granted under an enactment repealed by this Act and which is in force immediately before the commencement date—
 - (a) shall have effect as from the commencement date as if granted under this Act by the appropriate authority on and subject to terms, conditions and restrictions corresponding to those on and subject to which it is held immediately before the commencement date; and

1961 c. 64.

(b) in the case of a licence granted or renewed for a specified period, shall remain in force, subject to paragraphs 10, 12(4) and 16(2) of this Schedule, for so much of that period as falls on or after the commencement date.

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- (2) Where an appeal under any enactment mentioned in subparagraph (1) above has been brought in respect of a licence before the commencement date but has not been determined or abandoned before that date, the provisions of paragraph 17 above shall apply to proceedings relating to the appeal as if the appeal had been brought under that paragraph.
 - 20.—(1) Nothing in this Schedule shall affect—
 - (a) the application of the Private Places of Entertainment (Licen- 1967 c. 19. sing) Act 1967 to any area in respect of which an adoption has been made under section 1 of that Act; or
 - (b) the validity of any licence granted under that Act before the commencement date.
- (2) Where by virtue of such an adoption made before the commencement date the Private Places of Entertainment (Licensing) Act 1967 applies to part only of a district, the district council may adopt that Act in respect of the remaining part of that district.
 - 21. Nothing in this Schedule shall affect-

(a)	section	3	of	the	Sunday	Entertainments.	Act	1932:	

1932 c. 51.

(b) section 7 of the Cinematograph Act 1952;

1952 c. 68.

- (c) paragraph 1 of Schedule 3 to the Revision of the Army and 1955 c. 20. Air Force Acts (Transitional Provisions) Act 1955;
- (d) section 182(1) of the Licensing Act 1964;

1964 с. 26.

(e) section 12 of the Theatres Act 1968; or

1968 c. 54.

(f) section 31 of the Fire Precautions Act 1971.

1971 c. 40.

Supplemental

22. In this Schedule—

- "the appropriate authority" means—
 - (i) in relation to any place in England and Wales, the district council for the area in which the place is situated; or
 - (ii) in relation to any place situated in the Isles of Scilly, the Council of the Isles of Scilly;
- "the chief officer of police", in relation to any place, means the chief officer of police for the police area in which the place is situated;
- "the commencement date" means 1st January 1983;
- "an entertainments licence" means a licence granted under this Schedule;

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1947 c. 41.

- "fire authority", in relation to any place, means the authority discharging in the area in which the place is situated the functions of fire authority under the Fire Services Act 1947;
- "place of public religious worship" means a place of public religious worship which belongs to the Church of England or to the Church in Wales (within the meaning of the Welsh Church Act 1914), or which is for the time being certified as required by law as a place of religious worship;

"pleasure fair" has the meaning assigned to it by section 75(2)(a) of the Public Health Act 1961.

1961 c. 64,

1914 c. 91,

Section 1.

SCHEDULE 2

AMENDMENTS CONSEQUENTIAL ON SECTION 1

Hypnotism Act 1952 (c. 46)

- 1. For section 2(4) of the Hypnotism Act 1952 (control of demonstrations of hypnotism at places not licensed for public entertainment) there shall be substituted the following subsection—
 - "(4) In this section, the expression "controlling authority" in relation to a place in any area means the authority having power to grant licences of the kind mentioned in section I above in that area.".

Private Places of Entertainment (Licensing) Act 1967 (c. 19)

- 2. In section 1(1) of the Private Places of Entertainment (Licensing) Act 1967 (power to adopt that Act in certain areas) for the words from "in which any" to the end there shall be substituted the words "specified in the first column of Part I of the Schedule to this Act.".
- 3. In section 2 of that Act (certain private places of entertainment to require licences)—
 - (a) in subsection (1)(a) for the words from "public" to "area" there shall be substituted the words "a public entertainment"; and
 - (b) in subsection (2)(a) for the words "any enactment mentioned in section 1(1) of this Act" there shall be substituted the words "paragraph 1 of Schedule 12 to the London Government Act 1963 (which provides for the licensing of premises used for public music or dancing in London) or paragraph 1 or 4 of Schedule 1 to the Local Government (Miscellaneous Provisions) Act 1982 (which taken together make similar provision for other areas in England and Wales)".

1963 c. 33.

4. For Part I of the Schedule to that Act there shall be substituted the following—

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"PART I ADOPTING AND LICENSING AUTHORITIES

Area	Authority which may adopt this Act	Licensing authority
A district.	The council of the district.	The council of the district.
A London borough.	The Greater London Council acting with the consent of the council of the borough.	The Greater London Council.
The City of London.	The Greater London Council acting with the consent of the Common Council.	The Greater London Council.
The Isles of Scilly.	The Council of the Isles of Scilly.	The Council of the Isles of Scilly".

Licensing Act 1964 (c. 26)

- 5. In section 79(1) of the Licensing Act 1964 (licensing authority's certificate of suitability of club premises for music and dancing) for the words from "and which are" to "those regulations" there shall be substituted the words ", the licensing authority under the statutory regulations for music and dancing".
- 6. In section 201(1) of that Act for the words after the word "means" in the definition of "statutory regulations for music and dancing" there shall be substituted—
 - "(i) Schedule 12 to the London Government Act 1963; or 1963 c. 33.
 - (ii) Schedule 1 to the Local Government (Miscellaneous Provisions) Act 1982;".

SCHEDULE 3

Section 2.

CONTROL OF SEX ESTABLISHMENTS

Saving for existing law

- 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

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 1959 c. 66. Protection of Children Act 1978; or 1978 c. 37.
- (iii) in proceedings for condemnation under Schedule 3 to the Customs and Excise Management Act 1979 of 1979 c. 2. goods which section 42 of the Customs Consolidation Act ¹⁸⁷⁶ c. 36. 1876 prohibits to be imported or brought into the United Kingdom as being indecent or obscene; or

Sch. 3 (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—

1909 c. 30.

1952 c. 68.

- (a) if they are licensed under the Cinematograph Act 1909, of their use for a purpose for which a licence under that Act is required; or
- (b) of their use for an exempted exhibition as defined in section 5 of the Cinematograph Act 1952 (which relates to exemptions from the requirements of that Act for non-commercial organisations) by an exempted organisation within the meaning of section 5(4) 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

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- (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.

- Sch. 3 (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

- Sch. 3 observations submitted to them by the chief officer of police and any objections of which notice has been sent to them under subparagraph (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.
- Sch. 3
- (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.
- Sch. 3
- (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.

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 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 £10,000.
 - (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 £200.

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 £10,000.

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.

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- (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 £1,000.

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; or
- (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.

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- (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 subparagraph (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.

1981 c. 54.

(11) Where-

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- (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.

Commencement of Schedule

- 30.—(1) So far as it relates to sex cinemas, this Schedule shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and accordingly, until the day so appointed, this Schedule shall have effect—
 - (a) with the omission—
 - (i) of paragraph 3 above; and
 - (ii) of paragraph 13(3)(d) above;
 - (b) as if any reference to a sex establishment were a reference only to a sex shop; and
 - (c) as if for paragraphs (a) and (b) of paragraph 13(2) above there were substituted the words "for different kinds of sex shops".
- (2) Subject to sub-paragraph (1) above, this Schedule shall come into force on the day on which this Act is passed.
- (3) Where, in relation to any area, the day appointed under subparagraph (1) above falls after the day specified in a resolution passed under section 2 above as the day upon which this Schedule is to come into force in that area, the day so appointed shall, for the purposes of paragraphs 28 and 29 above, be the appointed day in relation to sex cinemas in the area.

Section 3.

SCHEDULE 4

STREET TRADING

Interpretation

1.—(1) In this Schedule—

- "consent street" means a street in which street trading is prohibited without the consent of the district council;
- "licence street" means a street in which street trading is prohibited without a licence granted by the district council;
- "principal terms", in relation to a street trading licence, has the meaning assigned to it by paragraph 4(3) below;
- "prohibited street" means a street in which street trading is prohibited;
- "street" includes-
 - (a) any road, footway, beach or other area to which the public have access without payment; and
 - (b) a service area as defined in section 329 of the Highways Act 1980,

and also includes any part of a street;

- "street trading" means, subject to sub-paragraph (2) below, the selling or exposing or offering for sale of any article (including a living thing) in a street; and
- "subsidiary terms", in relation to a street trading licence, has the meaning assigned to it by paragraph 4(4) below.

1980 c. 66.

- (2) The following are not street trading for the purposes of this Schedule—
 - (a) trading by a person acting as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871 c. 96. 1871;
 - (b) anything done in a market or fair the right to hold which was acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of an enactment or order.
 - (c) trading in a trunk road picnic area provided by the Secretary of State under section 112 of the Highways Act 1980 c. 66. 1980:
 - (d) trading as a news vendor;
 - (e) trading which-
 - (i) is carried on at premises used as a petrol filling station; or
 - (ii) is carried on at premises used as a shop or in a street adjoining premises so used and as part of the business of the shop;
 - (f) selling things, or offering or exposing them for sale, as a roundsman;
 - (g) the use for trading under Part VIIA of the Highways Act 1980 of an object or structure placed on, in or over a highway;
 - (h) the operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980;
 - (j) the doing of anything authorised by regulations made under section 5 of the Police, Factories, etc. (Miscellaneous Pro- 1916 c. 31. visions) Act 1916.
- (3) The reference to trading as a news vendor in sub-paragraph (2)(d) above is a reference to trading where—
 - (a) the only articles sold or exposed or offered for sale are newspapers or periodicals; and
 - (b) they are sold or exposed or offered for sale without a stall or receptacle for them or with a stall or receptacle for them which does not—
 - (i) exceed one metre in length or width or two metres in height;
 - (ii) occupy a ground area exceeding 0.25 square metres; or
 - (iii) stand on the carriageway of a street.

Designation of streets

- 2.—(1) A district council may by resolution designate any street in their district as—
 - (a) a prohibited street;
 - (b) a licence street; or
 - (c) a consent street.

- Sch. 4 (2) If a district council pass such a resolution as is mentioned in sub-paragraph (1) above, the designation of the street shall take effect on the day specified in that behalf in the resolution (which must not be before the expiration of the period of one month beginning with the day on which the resolution is passed).
 - (3) A council shall not pass such a resolution unless—
 - (a) they have published notice of their intention to pass such a resolution in a local newspaper circulating in their area;
 - (b) they have served a copy of the notice—
 - (i) on the chief officer of police for the area in which the street to be designated by the resolution is situated; and
 - (ii) on any highway authority responsible for that street; and
 - (c) where sub-paragraph (4) below applies, they have obtained the necessary consent.
 - (4) This sub-paragraph applies-
 - (a) where the resolution relates to a street which is owned or maintainable by a relevant corporation; and
 - (b) where the resolution designates as a licence street any street maintained by a highway authority;

and in sub-paragraph (3) above "necessary consent" means-

- (i) in the case mentioned in paragraph (a) above, the consent of the relevant corporation; and
- (ii) in the case mentioned in paragraph (b) above, the consent of the highway authority.
- (5) The following are relevant corporations for the purposes of this paragraph—
 - (a) the British Railways Board;
 - (b) the Commission for the New Towns;
 - (c) a development corporation for a new town;
 - (d) an urban development corporation established under the Local Government, Planning and Land Act 1980; and
 - (e) the Development Board for Rural Wales.
 - (6) The notice referred to in sub-paragraph (3) above—
 - (a) shall contain a draft of the resolution; and
 - (b) shall state that representations relating to it may be made in writing to the council within such period, not less than 28 days after publication of the notice, as may be specified in the notice.
- (7) As soon as practicable after the expiry of the period specified under sub-paragraph (6) above, the council shall consider any representations relating to the proposed resolution which they have received before the expiry of that period.
- (8) After the council have considered those representations, they may, if they think fit, pass such a resolution relating to the street as is mentioned in sub-paragraph (1) above.

1980 c. 65.

- (9) The council shall publish notice that they have passed such a resolution in two consecutive weeks in a local newspaper circulating in their area.
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- (10) The first publication shall not be later than 28 days before the day specified in the resolution for the coming into force of the designation.
- (11) Where a street is designated as a licence street, the council may resolve—
 - (a) in the resolution which so designates the street; or
 - (b) subject to sub-paragraph (12) below, by a separate resolution at any time,

that a street trading licence is not to be granted to any person who proposes to trade in the street for a number of days in every week less than a number specified in the resolution.

- (12) Sub-paragraphs (3)(a) and (6) to (10) above shall apply in relation to a resolution under sub-paragraph (11)(b) above as they apply in relation to a resolution under sub-paragraph (1) above.
- (13) Any resolution passed under this paragraph may be varied or rescinded by a subsequent resolution so passed.

Street trading licences

- 3.—(1) An application for a street trading licence or the renewal of such a licence shall be made in writing to the district council.
 - (2) The applicant shall state—
 - (a) his full name and address;
 - (b) the street in which, days on which and times between which he desires to trade;
 - (c) the description of articles in which he desires to trade and the description of any stall or container which he desires to use in connection with his trade in those articles; and
 - (d) such other particulars as the council may reasonably require.
- (3) If the council so require, the applicant shall submit two photographs of himself with his application.
 - (4) A street trading licence shall not be granted-
 - (a) to a person under the age of 17 years; or
 - (b) for any trading in a highway in relation to which a control order under section 7 of the Local Government (Miscel-1976 c. 57. laneous Provisions) Act 1976 (road-side sales) is in force, other than trading to which the control order does not apply.
- (5) Subject to sub-paragraph (4) above, it shall be the duty of the council to grant an application for a street trading licence or the renewal of such a licence unless they consider that the application ought to be refused on one or more of the grounds specified in sub-paragraph (6) below.

- Sch. 4 (6) Subject to sub-paragraph (8) below, the council may refuse an application on any of the following grounds—
 - (a) that there is not enough space in the street for the applicant to engage in the trading in which he desires to engage without causing undue interference or inconvenience to persons using the street;
 - (b) that there are already enough traders trading in the street from shops or otherwise in the goods in which the applicant desires to trade;
 - (c) that the applicant desires to trade on fewer days than the minimum number specified in a resolution under paragraph 2(11) above;
 - (d) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
 - (e) that the applicant has at any time been granted a street trading licence by the council and has persistently refused or neglected to pay fees due to them for it or charges due to them under paragraph 9(6) below for services rendered by them to him in his capacity as licence-holder;
 - (f) that the applicant has at any time been granted a street trading consent by the council and has persistently refused or neglected to pay fees due to them for it;
 - (g) that the applicant has without reasonable excuse failed to avail himself to a reasonable extent of a previous street trading licence.
 - (7) If the council consider that grounds for refusal exist under sub-paragraph (6)(a), (b) or (g) above, they may grant the applicant a licence which permits him—
 - (a) to trade on fewer days or during a shorter period in each day than specified in the application; or
 - (b) to trade only in one or more of the descriptions of goods specified in the application.
 - (8) If—
 - (a) a person is licensed or otherwise authorised to trade in a street under the provisions of any local Act; and
 - (b) the street becomes a licence street; and
 - (c) he was trading from a fixed position in the street immediately before it became a licence street; and
 - (d) he applied for a street trading licence to trade in the street, his application shall not be refused on any of the grounds mentioned in sub-paragraph (6)(a) to (c) above.
 - 4.—(1) A street trading licence shall specify—
 - (a) the street in which, days on which and times between which the licence-holder is permitted to trade; and
 - (b) the description of articles in which he is permitted to trade.
 - (2) If the district council determine that a licence-holder is to confine his trading to a particular place in the street, his street trading licence shall specify that place.

- (3) Matters that fall to be specified in a street trading licence by virtue of sub-paragraph (1) or (2) above are referred to in this Schedule as the "principal terms" of the licence.
- (4) When granting or renewing a-street trading licence, the council may attach such further conditions (in this Schedule referred to as the "subsidiary terms" of the licence) as appear to them to be reasonable.
- (5) Without prejudice to the generality of sub-paragraph (4) above, the subsidiary terms of a licence may include conditions—
 - (a) specifying the size and type of any stall or container which the licence-holder may use for trading;
 - (b) requiring that any stall or container so used shall carry the name of the licence-holder or the number of his licence or both; and
 - (c) prohibiting the leaving of refuse by the licence-holder or restricting the amount of refuse which he may leave or the places in which he may leave it.
- (6) A street trading licence shall, unless previously revoked or surrendered, remain valid for a period of 12 months from the date on which it is granted or, if a shorter period is specified in the licence, for that period.
- (7) If a district council resolve that the whole or part of a licence street shall be designated a prohibited street, then, on the designation taking effect, any street trading licence issued for trading in that street shall cease to be valid so far as it relates to the prohibited street.
- 5.—(1) A district council may at any time revoke a street trading licence if they consider—
 - (a) that, owing to circumstances which have arisen since the grant or renewal of the licence, there is not enough space in the street for the licence-holder to engage in the trading permitted by the licence without causing undue interference or inconvenience to persons using the street;
 - (b) that the licence-holder is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason:
 - (c) that, since the grant or renewal of the licence, the licenceholder has persistently refused or neglected to pay fees due to the council for it or charges due to them under paragraph 9(6) below for services rendered by them to him in his capacity as licence-holder; or
 - (d) that, since the grant or renewal of the licence, the licenceholder has without reasonable excuse failed to avail himself of the licence to a reasonable extent.
- (2) If the council consider that they have ground for revoking a licence by virtue of sub-paragraph (1)(a) or (d) above, they may, instead of revoking it, vary its principal terms—
 - (a) by reducing the number of days or the period in any one day during which the licence-holder is permitted to trade; or

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- (b) by restricting the descriptions of goods in which he is permitted to trade.
- (3) A licence-holder may at any time surrender his licence to the council and it shall then cease to be valid.
- 6.—(1) When a district council receive an application for the grant or renewal of a street trading licence, they shall within a reasonable time—
 - (a) grant a licence in the terms applied for; or
 - (b) serve notice on the applicant under sub-paragraph (2) below.
 - (2) If the council propose-
 - (a) to refuse an application for the grant or renewal of a licence; or
 - (b) to grant a licence on principal terms different from those specified in the application; or
 - (c) to grant a licence confining the applicant's trading to a particular place in a street; or
 - (d) to vary the principal terms of a licence; or
 - (e) to revoke a licence,

they shall first serve a notice on the applicant or, as the case may be, the licence-holder—

- (i) specifying the ground or grounds on which their decision would be based; and
- (ii) stating that within 7 days of receiving the notice he may in writing require them to give him an opportunity to make representations to them concerning it.
- (3) Where a notice has been served under sub-paragraph (2) above, the council shall not determine the matter until either—
 - (a) the person on whom it was served has made representations to them concerning their decision; or
 - (b) the period during which he could have required them to give him an opportunity to make representations has elapsed without his requiring them to give him such an opportunity; or
 - (c) the conditions specified in sub-paragraph (4) below are satisfied.
 - (4) The conditions mentioned in sub-paragraph (3)(c) above are—
 - (a) that the person on whom the notice under sub-paragraph (2) above was served has required the council to give him an opportunity to make representations to them concerning it, as provided by sub-paragraph (2)(ii) above;
 - (b) that the council have allowed him a reasonable period for making his representations; and
 - (c) that he has failed to make them within that period.
 - (5) A person aggrieved—
 - (a) by the refusal of a council to grant or renew a licence, where—
 - (i) they specified in their notice under sub-paragraph (2) above one of the grounds mentioned in paragraph

3(6)(d) to (g) above as the only ground on which their decision would be based; or

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- (ii) they specified more than one ground in that notice but all the specified grounds were grounds mentioned in those paragraphs; or
- (b) by a decision of a council to grant him a licence with principal terms different from those of a licence which he previously held, where they specified in their notice under sub-paragraph (2) above the ground mentioned in paragraph 3(6)(g) above as the only ground on which their decision would be based; or
- (c) by a decision of a council—
 - (i) to vary the principal terms of a licence; or
 - (ii) to revoke a licence,

in a case where they specified in their notice under sub-paragraph (2) above one of the grounds mentioned in paragraph 5(1)(b) to (d) above as the only ground on which their decision would be based or they specified more than one ground in that notice but all the specified grounds were grounds mentioned in those paragraphs,

may, at any time before the expiration of the period of 21 days beginning with the date upon which he is notified of the refusal or decision, appeal to the magistrates' court acting for the petty sessions area in which the street is situated.

- (6) An appeal against the decisions of a magistrates' court under this paragraph may be brought to the Crown Court.
- (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 (11) below, it shall be the duty of the council to give effect to an order of the magistrates' court or the Crown Court.
- (9) The council need not give effect to the order of the magistrates' court until the time for bringing an appeal under sub-paragraph (6) above has expired and, if such an appeal is duly brought, until the determination or abandonment of the appeal.
- (10) If a licence-holder applies for renewal of his licence before the date of its expiry, it shall remain valid—
 - (a) until the grant by the council of a new licence with the same principal terms; or
 - (b) if—
 - (i) the council refuse renewal of the licence or decide to grant a licence with principal terms different from those of the existing licence, and
 - (ii) he has a right of appeal under this paragraph, until the time for bringing an appeal has expired or, where an appeal is duly brought, until the determination or abandonment of the appeal; or

- (c) if he has no right of appeal under this paragraph, until the council either grant him a new licence with principal terms different from those of the existing licence or notify him of their decision to refuse his application.
- (11) Where—
 - (a) a council decide—
 - (i) to vary the principal terms of a licence; or
 - (ii) to revoke a licence; and
 - (b) a right of appeal is available to the licence-holder under this paragraph,

the variation or revocation shall not take effect until the time for bringing an appeal has expired or, where an appeal is duly brought, until the determination or abandonment of the appeal.

Street trading consents

- 7.—(1) An application for a street trading consent or the renewal of such a consent shall be made in writing to the district council.
- (2) Subject to sub-paragraph (3) below, the council may grant a consent if they think fit.
 - (3) A street trading consent shall not be granted—
 - (a) to a person under the age of 17 years; or
 - (b) for any trading in a highway to which a control order under section 7 of the Local Government (Miscellaneous Provisions) Act 1976 is in force, other than trading to which the control order does not apply.
- (4) When granting or renewing a street trading consent the council may attach such conditions to it as they consider reasonably necessary.
- (5) Without prejudice to the generality of sub-paragraph (4) above, the conditions that may be attached to a street trading consent by virtue of that sub-paragraph include conditions to prevent—
 - (a) obstruction of the street or danger to persons using it; or
 - (b) nuisance or annoyance (whether to persons using the street or otherwise).
- (6) The council may at any time vary the conditions of a street trading consent.
- (7) Subject to sub-paragraph (8) below, the holder of a street trading consent shall not trade in a consent street from a van or other vehicle or from a stall, barrow or cart.
- (8) The council may include in a street trading consent permission for its holder to trade in a consent street—
 - (a) from a stationary van, cart, barrow or other vehicle; or
 - (b) from a portable stall.
- (9) If they include such a permission, they may make the consent subject to conditions—
 - (a) as to where the holder of the street trading consent may trade by virtue of the permission; and

1976 c. 57.

- (b) as to the times between which or periods for which he may so trade.
- (10) A street trading consent may be granted for any period not exceeding 12 months but may be revoked at any time.
- (11) The holder of a street trading consent may at any time surrender his consent to the council and it shall then cease to be valid.

General

- 8. The holder of a street trading licence or a street trading consent may employ any other person to assist him in his trading without a further licence or consent being required.
- 9.—(1) A district council may charge such fees as they consider reasonable for the grant or renewal of a street trading licence or a street trading consent.
- (2) A council may determine different fees for different types of licence or consent and, in particular, but without prejudice to the generality of this sub-paragraph, may determine fees differing according—
 - (a) to the duration of the licence or consent;
 - (b) to the street in which it authorises trading; and
 - (c) to the descriptions of articles in which the holder is authorised to trade.
- (3) A council may require that applications for the grant or renewal of licences or consents shall be accompanied by so much of the fee as the council may require, by way of a deposit to be repaid by the council to the applicant if the application is refused.
 - (4) A council may determine that fees may be paid by instalments.
- (5) Where a consent is surrendered or revoked, the council shall remit or refund, as they consider appropriate, the whole or a part of any fee paid for the grant or renewal of the consent.
- (6) A council may recover from a licence-holder such reasonable charges as they may determine for the collection of refuse, the cleansing of streets and other services rendered by them to him in his capacity as licence-holder.
 - (7) Where a licence—
 - (a) is surrendered or revoked; or
- (b) ceases to be valid by virtue of paragraph 4(7) above, the council may remit or refund, as they consider appropriate, the whole or a part—
 - (i) of any fee paid for the grant or renewal of the licence; or
 - (ii) of any charges recoverable under sub-paragraph (6) above.
 - (8) The council may determine-
 - (a) that charges under sub-paragraph (6) above shall be included in a fee payable under sub-paragraph (1) above; or

- (b) that they shall be separately recoverable.
- (9) Before determining charges to be made under sub-paragraph (6) above or varying the amount of such charges the council—
 - (a) shall give notice of the proposed charges to licence-holders; and
 - (b) shall publish notice of the proposed charges in a local newspaper circulating in their area.
- (10) A notice under sub-paragraph (9) above shall specify a reasonable period within which representations concerning the proposed charges may be made to the council.
- (11) It shall be the duty of a council to consider any such representations which are made to them within the period specified in the notice.

Offences

10.—(1) A person who—

- (a) engages in street trading in a prohibited street; or
- (b) engages in street trading in a licence street or a consent street without being authorised to do so under this Schedule; or
- (c) contravenes any of the principal terms of a street trading licence; or
- (d) being authorised by a street trading consent to trade in a consent street, trades in that street—
 - (i) from a stationary van, cart, barrow or other vehicle; or
 - (ii) from a portable stall,

without first having been granted permission to do so under paragraph 7(8) above; or

- (e) contravenes a condition imposed under paragraph 7(9) above, shall be guilty of an offence.
- (2) It shall be a defence for a person charged with an offence under sub-paragraph (1) above to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence.
- (3) Any person who, in connection with an application for a street trading licence or for a street trading consent, 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.
- (4) A person guilty of an offence under this paragraph shall be liable on summary conviction to a fine not exceeding £200.

Savings

11. Nothing in this Schedule shall affect-

1847 c. 14.

(a) section 13 of the Markets and Fairs Clauses Act 1847
 (prohibition of sales elsewhere than in market or in shops etc.) as applied by any other Act;

(b) section 55 of the Food and Drugs Act 1955 (prohibition of certain sales during market hours).

Sch. 4 1955 c. 16 (4 & 5 Eliz. 2).

Section 20.

SCHEDULE 5

HIGHWAY AMENITIES

PART I

ADDITION OF PART VIIA TO HIGHWAYS ACT 1980

1. The following shall be inserted after section 115 of the High-1980 c. 66. ways Act 1980—

"PART VIIA

PROVISION OF AMENITIES ON CERTAIN HIGHWAYS

Scopelof Part VIIA. 115A.—(1) This Part of this Act applies—

- (a) to a highway in relation to which a pedestrian planning order is in force;
- (b) to a bridleway;
- (c) to a footpath (including a walkway as defined in section 35(2) above);
- (d) to a footway;
- (e) to a subway constructed under section 69 above;
- (f) to a footbridge constructed under section 70 above;
- (g) to a highway of a description not mentioned in any of the preceding paragraphs of this definition whose use by vehicular traffic is prohibited by a traffic order but whose use by other traffic is not prohibited or restricted or regulated by such an order; and
- (h) to a local Act walkway.
- (2) In this Part of this Act-
 - "local Act walkway" means a way or place which is declared in pursuance of a local enactment to be a walkway, city walkway or pedestrian way;
 - "pedestrian planning order" means an order made under section 212(2) of the Town and Country 1971 c. 78. Planning Act 1971; and
 - "traffic order" means an order made under section 1 or 6 of the Road Traffic Regulation Act 1967 1967 c. 76. (traffic regulation orders) or under section 9 of that Act (experimental traffic orders); and
 - "walkway consent" means-
 - (a) in relation to a walkway as defined in section 35(2) above, the consent—
 - (i) of any person who is an occupier of the building in which the walkway subsists and to whom subsection (3) below applies; and

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- (ii) of the persons whose agreement would be needed for the creation of the walkway if it did not already subsist; and
- (b) in relation to a local Act walkway, the consent—
 - (i) of any person who is an owner or occupier of premises adjoining the walkway and to whom subsection (3) below applies; and
 - (ii) of the owner of the land on, under or above which the walkway subsists.
- (3) The persons to whom this subsection applies are persons who, in the opinion of a council, are likely to be materially affected—
 - (a) by the exercise of a power which the council may not exercise until they have first obtained walkway consent; or
 - (b) by a grant of permission which the council may not grant unless they have first obtained walkway consent.
- (4) In the following provisions of this Part of this Act "walkway" includes both a walkway as defined in section 35(2) above and a local Act walkway.
- (5) Any reference in this Part of this Act to a highway to which this Part of this Act applies includes a reference to a local Act walkway which but for this subsection—
 - (a) is not a highway; or
 - (b) is a highway only for certain purposes.
- (6) The use of a highway by vehicular traffic is to be taken as prohibited for the purposes of this Part of this Act where its use by such traffic is prohibited over the whole width of the highway even if the prohibition is contained in a traffic order which does not prohibit certain vehicles or certain classes of vehicle using the highway or part of it or using the highway or part of it at certain times or on certain days or during certain periods.
- (7) In this Part of this Act "frontagers" means the owners and occupiers of any premises adjoining the part of a highway on, in or over which an object or structure would be placed or on which facilities for recreation or refreshment or both have been, are being or would be provided; but frontagers have an interest under this Part of this Act only in proposals to place objects or structures or provide or operate facilities wholly or partly between their premises and the centre of the highway.
- (8) References to a council in this Part of this Act include references to the Council of the Isles of Scilly.

Provision etc. of services and amenities by councils.

- 115B.—(1) Subject to subsections (4), (5) and (7) below, a council shall have power—
 - (a) to carry out works on, in or over a highway to which this Part of this Act applies; and
 - (b) to place objects or structures on, in or over such a highway,

for the purpose-

- (i) of giving effect to a pedestrian planning order;
- (ii) of enhancing the amenity of the highway and its immediate surroundings; or
- (iii) of providing a service for the benefit of the public or a section of the public.
- (2) A council shall have power to maintain—
 - (a) any works carried out under paragraph (a) of subsection (1) above; and
 - (b) any objects or structures placed on, in or over a highway under paragraph (b) of that subsection.
- (3) Without prejudice to the generality of this section, the amenity of a highway may be enhanced by providing lawns, trees, shrubs or flowers.
- (4) A council may not exercise the powers conferred by this section on, in or over a walkway unless they have first obtained walkway consent.
- (5) Where subsection (6) below applies, a council may not, in the exercise of the power conferred by subsection (1)(b) above, place an object or structure on, in or over a highway—
 - (a) for a purpose which will result in the production of income; or
 - (b) for the purpose of providing a centre for advice or information,

unless they have first obtained the consent of the frontagers with an interest—

- (i) to the placing of the object or structure; and
- (ii) to the purpose for which it is to be placed.
- (6) This subsection applies where the object or structure would be placed—
 - (a) on, in or over a footpath;
 - (b) on, in or over a bridleway; or
 - (c) on, in or over a footway in relation to which no pedestrian planning order or traffic order is in force.

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- (7) Where a council propose—
 - (a) to place an object or structure on, in or over a highway to which this Part of this Act applies—
 - (i) for a purpose which will result in the production of income; or
 - (ii) for the purpose of providing a centre for advice or information; and
 - (b) to grant a person permission under section 115E below to use the object or structure,

they may not exercise the power conferred by subsection (1)(b) above unless they have first obtained the consent of the frontagers with an interest—

- (i) to the placing of the object or structure:
- (ii) to the purpose for which it would be placed; and
 - (iii) to the proposed grant of permission.

Provision of recreation and refreshment facilities by councils.

- 115C.—(1) Subject to subsections (2) and (3) below, a council shall have power to provide, maintain and operate facilities for recreation or refreshment or both on a highway to which this Part of this Act applies.
- (2) A council may not exercise the powers conferred by this section on a walkway unless they have first obtained walkway consent.
- (3) Where subsection (4) below applies, a council may not exercise the powers conferred by this section unless they have first obtained the consent of the frontagers with an interest.
- (4) This subsection applies where the facilities are to be provided—
 - (a) on a footpath; or
 - (b) on a bridleway; or
 - (c) on a footway in relation to which no pedestrian planning order or traffic order is in force.

Limits of powers under ss. 115B and 115C.

- 115D. A council may exercise their powers under section 115B or 115C above to restrict the access of the public to any part of a highway to which this Part of this Act applies, but shall not so exercise them—
 - (a) as to prevent traffic, other than vehicular traffic,—
 - (i) entering the highway at any place where such traffic could enter it before, as the case may be, the making of a pedestrian planning order or a traffic order in relation to it or the exercise in relation to it of a power conferred by this Part of this Act; or
 - (ii) passing along it; or

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- (iii) having normal access to premises adjoining it; or
- (b) as to prevent any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order; or
- (c) as to prevent statutory undertakers or sewerage authorities having access to any apparatus of theirs under, in, on or over the highway.

Execution of works and use of objects etc. by persons other than councils.

- 115E,—(1) Subject to subsections (2) to (4) below, a council may grant a person permission—
 - (a) to do on, in or over a highway to which this Part of this Act applies anything which the council could do on, in or over such a highway under section 115B(1) to (3) or 115C above; or
 - (b) to use objects or structures on, in or over a highway to which this Part of this Act applies—
 - (i) for a purpose which will result in the production of income;
 - (ii) for the purpose of providing a centre for advice or information; or
 - (iii) for the purpose of advertising.
- (2) A council may not grant a person permission under subsection (1)(a) above to place an object or structure on, in or over a highway to which this Part of this Act applies—
 - (a) for a purpose which will result in the production of income; or
 - (b) for the purpose of providing a centre for advice or information,

unless they have first obtained the consent of the frontagers with an interest—

- (i) to the placing of the object or structure;
- (ii) to the purpose for which it would be placed; and
 - (iii) to the proposed grant of permission.
- (3) A council may not grant a person permission to do anything which the council could only do under section 115C above unless they have first obtained the consent of the frontagers with an interest.
 - (4) A council may not grant a person permission—
 - (a) to carry out works on, in or over a walkway;
 - (b) to place an object or structure on, in or over a walkway; or
- (c) to provide, maintain or operate facilities for recreation or refreshment or both on a walkway, unless they have first obtained walkway consent.

Sch. 5 Power to impose conditions on permissions under section 115E.

- 115F.—(1) Subject to subsections (2) to (4) below, a council may grant a permission under section 115E above upon such conditions as they think fit, including conditions requiring the payment to the council of such reasonable charges as they may determine.
- (2) Except where the council are the owners of the subsoil beneath the part of the highway in relation to which the permission is granted, the charges may not exceed the standard amount.
- (3) In subsection (2) above, "the standard amount" means—
 - (a) in relation to permission to use an object or structure provided by a council, the aggregate—

(i) of the cost of providing it; and

- (ii) of such charges as will reimburse the council their reasonable expenses in connection with granting the permission;
- (b) in relation to permission to operate facilities provided by a council for recreation or refreshment or both, the aggregate—

(i) of the cost of providing them; and

- (ii) of such charges as will reimburse the council their reasonable expenses in connection with granting the permission; and
- (c) in any other case, such charges as will reimburse the council their reasonable expenses in connection with granting the permission.
- (4) Nothing in this section shall prejudice the right of a council to require an indemnity against any claim in respect of injury, damage or loss arising out of the grant of the permission; but this subsection is not to be taken as requiring any person to indemnify a council against any claim in respect of injury, damage or loss which is attributable to the negligence of the council.

Notices to be given before exercise of powers under Part VIIA.

- 115G.—(1) Subject to subsection (4) below, a council shall not—
 - (a) exercise any power conferred by section 115B or 115C above; or
- (b) grant any permission under section 115E above unless they have first published a notice under this section.
 - (2) A council shall publish a notice under this section—
 - (a) by affixing it in a conspicuous position at or near the place to which the proposal relates; and
 - (b) by serving a copy of the notice on the owner and occupier of any premises appearing to the council to be likely to be materially affected.

- (3) A notice under this section—
 - (a) shall give details of the proposal; and
 - (b) shall specify a period (being not less than 28 days after the publication of the notice) during which representations regarding the proposal may be made to the council.
- (4) No notice under this section is required where a council propose to exercise a power conferred by section 115B or 115C above in relation to a highway in relation to which a pedestrian planning order or a traffic order has been made.
- (5) Where a council have published a notice under this section, they shall not exercise the power or grant the permission to which the notice relates until they have taken into consideration all representations made to them in connection with the proposal within the period specified in the notice.

Duties to consult or obtain consent of other authorities.

- 115H.—(1) Subject to subsections (2) and (3) below, a council shall not—
 - (a) exercise any power conferred by section 115B or 115C above; or
- (b) grant any permission under section 115E above, in relation to a highway unless they have consulted—
 - (i) any authority other than themselves who are the highway authority for the highway; and
 - (ii) any authority other than themselves who are a local planning authority, as defined in the Town and Country Planning Act 1971, 1971 c. 78. for the area in which, as the case may be, they propose to exercise the power or to which the proposed permission would relate.
- (2) Where a highway to which this Part of this Act applies is situated in Greater London, subsection (1) above shall have effect in relation to the highway as if the requirement to consult the highway authority and the local planning authority were a requirement to obtain their consent to the exercise of the power or the granting of the permission.
 - (3) Where-
 - (a) a highway to which this Part of this Act applies is situated outside Greater London; and
 - (b) there is no pedestrian planning order in force in relation to it,

subsection (1) above shall have effect in relation to the highway as if the requirement to consult the highway authority were a requirement to obtain their consent to the exercise of the power or the granting of the permission.

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(4) Where a highway to which this Part of this Act applies is maintained by the British Railways Board or the London Transport Executive, a council shall not exercise any power conferred by section 115B or 115C above or grant a permission in relation to it under section 115E above except with the consent of the Board or, as the case may be, the Executive.

Consents not to be unreasonably withheld.

- 115J.—(1) Consent to which this section applies is not to be unreasonably withheld but may be given subject to any reasonable conditions.
- (2) Without prejudice to the generality of subsection (1) above, it may be reasonable for consent to which this section applies to be given for a specified period of time or subject to the payment of a reasonable sum.
- (3) Consent is to be treated as unreasonably withheld for the purposes of this section if—
 - (a) the council have served a notice asking for consent on the person whose consent is required;
 - (b) he fails within 28 days of the service of the notice to give the council notice of his consent or his refusal to give it.
- (4) Any question whether consent is unreasonably withheld or is given subject to reasonable conditions shall be referred to and determined by an arbitrator to be appointed, in default of agreement, by the President of the Chartered Institute of Arbitrators.

(5) If—

- (a) the arbitrator determines that consent has been unreasonably withheld; but
- (b) it appears to him that there are conditions subject to which it would be reasonable to give it,

he may direct that it shall be treated as having been given subject to those conditions.

(6) If—

- (a) the arbitrator determines that any condition subject to which consent has been given is unreasonable; but
- (b) it appears to him that there are conditions subject to which it would have been reasonable to give it,

he may direct that it shall be treated as having been given subject to those conditions.

(7) Subject to subsection (8) below, the expenses and remuneration of the arbitrator shall be paid by the courcil seeking the consent.

- (8) Where the arbitration concerns the consent of the British Railways Board or the London Transport Executive under section 115H(4) above, the arbitrator may give such directions as he thinks fit as to the payment of his expenses and remuneration.
- (9) This section applies to consent required under any provision of this Part of this Act except section 115H(1)

Failure to terms of permission.

- 115K.—(1) If it appears to a council that a person to comply with whom they have granted a permission under section 115E above has committed any breach of the terms of that permission, they may serve a notice on him requiring him to take such steps to remedy the breach as are specified in the notice within such time as is so specified.
 - (2) If a person on whom a notice is served under subsection (1) above fails to comply with the notice, the council may take the steps themselves.
 - (3) Where a council have incurred expenses in the exercise of the power conferred on them by subsection (2) above, those expenses, together with interest at such reasonable rate as the council may determine from the date of service of a notice of demand for the expenses. may be recovered by the council from the person on whom the notice under subsection (1) above was served.".

PART II

AMENDMENTS OF TOWN AND COUNTRY PLANNING ACT 1971

- 2. In section 212 of the Town and Country Planning Act 1971 1971 c. 78. (order extinguishing right to use vehicles on highway) the following subsection shall be inserted after subsection (8)-
 - "(8A) An order under subsection (8) of this section may make provision requiring the removal of any obstruction of a high-way resulting from the exercise of powers under Part VIIA of the Highways Act 1980.". 1980 c. 66.
- 3. Section 213 of that Act (provision of amenity for highway reserved to pedestrians) shall cease to have effect, and "212" shall accordingly be substituted for "213" in Part II of Schedule 21.

SCHEDULE 6

Section 47.

MINOR AMENDMENTS

Health

- 1. In subsection (1)(b) of section 3 of the Public Health Act 1936 1936 c. 49. (jurisdiction, powers, etc. of port health authority) for the words from contained "onwards there shall be substituted the words "relating to public health, waste disposal or the control of pollution, whether passed before or after, or contained in, this Act".
- 2. In subsection (1)(c) of section 169 of that Act (provision for removal to hospital of persons suffering from notifiable disease where

- Sch. 6 serious risk of infection) after the word "hospital" there shall be inserted the words "vested in the Secretary of State,".
 - 3. In section 160(3) of that Act (which provides in certain cases for the recovery of a sum in respect of disinfecting a public conveyance) for the words "in a summary manner" there shall be substituted the words "summarily as a civil debt".
 - 4. In section 267 of that Act (application to ships and boats of certain provisions of Act), in paragraph (a) of subsection (3), after the words "county, of the" there shall be inserted the words "port health authority or"; and at the end of that section there shall be added the following subsection—
 - "(6) In determining for the purposes of subsection (1) above what provisions of this Act specified in subsection (4) above are provisions for the execution of which local authorities are responsible, no account shall be taken of any enactment (whether contained in this Act or not) relating to port health authorities or joint boards or to any particular port health authority or joint board or of any instrument made under any such enactment".
 - 5. In section 346(1)(c) of that Act (by virtue of which, among other things, an order, rule or regulation which was made under any enactment repealed by that Act but which could have been made under a corresponding provision of that Act has effect as if it had been made under that corresponding provision) after the word "regulation," there shall be inserted the word "byelaw,".
- 1968 c. 46.
- 6. In section 48(2)(b)(iii) of the Health Services and Public Health Act 1968 (which requires a copy of a certificate to be sent in certain cases to the proper officer of the relevant port health authority constituted in pursuance of section 2 of the Public Health Act 1936) the words "constituted in pursuance of section 2 of the Public Health Act 1936" shall be omitted.

1936 c. 49.

Planning

1971 c. 78.

7. The Town and Country Planning Act 1971 shall be amended—

1972 c. 70.

- (a) by inserting the words "and paragraph 8 of Schedule 16 to the Local Government Act 1972" after the word "Act" in section 10(7); and
- (b) in the provisions specified in the first column of the Table below, by substituting the corrected text set out in the third column for the portion of the text indicated in the second column.

	TABLE		Sch. 6
Provision of 1971 Act	Text to be corrected	Corrected text	2221
Section 7(4)	(3)(a)	(1A)(a)	
Section 15(3)	The words from the begin- ning to "the provisions of"	Subject to subsection (4) of this section and to section 15A of this Act,	
Section 15A(6)	mentioned in subsection (4)	specified in subsection (7)	
Section 15A(7)	(3) above	(6) of this section	
Section 23(9)	served	issued	
Section 177(2)(a)	88(1)	88(2)	
Section 242(3)(f)	section 88(5)(a) of this Act	paragraph (a) of section 88B(1) of this Act or to discharge a condition or limitation under paragraph (b) of that subsection.	
Section 242(3)(h)	The words from "under subsection (5)(a)" onwards.	to grant listed building con- sent under paragraph (a) of section 97A(4) of this Act or to discharge a condition or limitation under paragraph (b) of that subsection.	
Schedule 4, paragraph 12(2)	15A(3)	15A(6)	

Direct labour

- 8.—(1) The following subsection shall be added at the end of section 21 of the Local Government, Planning and Land Act 1980 1980 c. 65. (which exempts small direct labour organisations from the requirements of Part III of that Act)—
 - "(8) In this section "year" means a financial year.".
 - (2) This paragraph extends to Scotland.

SCHEDULE 7

Section 47.

REPEALS

Part I

Repeals in Public General Acts in Consequence of Section 1

Chapter	Short title	Extent of repeal
53 & 54 Vict. c. 59.	Public Health Acts Amendment Act 1890.	Section 51.
16 & 17 Geo. 5. c. 31.	Home Counties (Music and Dancing) Licensing Act 1926.	The whole Act.

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Chapter	Short title	Extent of repeal
12, 13 & 14 Geo. 6. c. 101.	Justices of the Peace Act 1949.	In section 41, in subsection (1), the words "or music and dancing licence", in subsection (4) the words from "and the" to the end and subsection (5).
1964 c. 26.	Licensing Act 1964.	In section 77 the words from "in any area" to "dancing". In section 78 the words from "and which are" to "dancing". Section 79(7).
1966 c. 42.	Local Government Act 1966.	In Schedule 3, in Part II, paragraphs 10 and 27.
1967 c. 19.	Private Places of Entertainment (Licensing) Act 1967.	Section 6.
1967 c. 80.	Criminal Justice Act 1967.	In Schedule 3, in Part I, the entries relating to the Public Health Acts Amendment Act 1890 and the Home Counties (Music and Dancing) Licensing Act 1926.
1972 c. 70.	Local Government Act 1972.	Section 204(7). In Schedule 14, in Part II, paragraph 24(c), paragraph 25(2) (b) and paragraph 26(b). In Schedule 25, in Part II, paragraphs 10 to 12. In Schedule 29, paragraph 27.
1974 c. 7.	Local Government Act	In Schedule 6, paragraph 3.
1980 c. 43.	Magistrates' Courts Act 1980.	In Schedule 6, in Part III, paragraph 2.

PART II

REPEALS IN LOCAL ACTS IN CONSEQUENCE OF SECTION 1

Chapter	Short title	Extent of repeal
1976 c. xxxi.	Royal County of Berkshire (Public Entertainment) Provisional Order Confirmation Act 1976.	The whole Act.
1976 c. xxxv.	County of South Glamorgan Act 1976.	Sections 15 to 23. In section 24, the words "this Part of this Act or". In section 66(2)(b), the words "Part IV (Music and dancing licences in Cardiff);". In Schedule 3, in Part I, the words "Section 19 (Fines under Part IV of Act);".
1979 c. xxiii.	Greater London Council (General Powers) Act 1979.	Paragraph (b) of section 3.

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Chapter	Short title	Extent of repeal
1980 с. х.	County of Merseyside Act 1980.	Sections 73 to 80. In section 81(1) the words "of an entertainment licence, or". In section 137(2), the words "Section 76 (Offences under Part XI);".
1980 с. хі.	West Midlands County Council Act 1980.	Sections 59 to 66. In section 67(1), the words " of an entertainment licence or ". Section 93. In section 116(2), the words " Section 62 (Offences under Part VIII);".
1980 c. xiii.	Cheshire County Council Act 1980.	Sections 32 to 39. In section 40(1), the words "of an entertainment licence or". In section 108(2), the words "Section 35 (Offences under Part VII);".
1980 c. xiv.	West Yorkshire Act 1980.	Sections 25 to 32. In section 33(1), the words "of an entertainment licence or". In Schedule 3, the words "Section 28 (Offences under Part VII);".
1980 c. xxxvii.	South Yorkshire Act 1980.	Section 48.
1981 c. ix.	Greater Manchester Act 1981.	Sections 107 to 114. In section 115(1), the words " of an entertainment licence or ". In section 179(2), the words " Section 110 (Offences under Part XIII);".
1981 c. xviii.	County of Kent Act 1981.	Sections 63 to 70. In section 71(1), the words "of an entertainment licence or". In section 128(2) the words "Section 66 (Offences under Part X);".
1981 c. xxv.	East Sussex Act 1981.	Section 30.

 $\label{eq:Part III}$ Repeal in Local Act in Consequence of Section 8

Chapter	Short title	Extent of repeal
1980 c. xi.	West Midlands County Council Act 1980.	Section 51.

Sch. 7 Part IV

Repeals in Public General Acts in Consequence of Section 11

Chapter	Short title	Extent of repeal
15 & 16 Geo. 5. c. 50.	Theatrical Employers Registration Act 1925,	The whole Act.
18 & 19 Geo. 5. c. 46.	Theatrical Employers Registration (Amend- ment) Act 1928.	The whole Act,
1968 c. 54.	Theatres Act 1968.	In Schedule 2, the entry relating to the Theatrical Employers Registration Act 1925.
1971 c. 23.	Courts Act 1971.	In Schedule 9, the entry relating to the Theatrical Employers Registration Act 1925.
1972 c. 70.	Local Government Act 1972.	In section 204(6), the words from "and in the definition" to the end.
1972 c. 71.	Criminal Justice Act 1972.	In Schedule 5, the entry relating to the Theatrical Employers Registration Act 1925.
1973 c. 65.	Local Government (Scotland) Act 1973.	In Schedule 24, in Part III, paragraph 35.
1980 c. 65.	Local Government, Planning and Land Act 1980.	In Schedule 6, paragraphs 2 and 3.

 $\label{eq:Part V} \text{Repeals in Local Acts in Consequence of Section 12}$

Chapter	Short title	Extent of repeal
1980 с. х.	County of Merseyside Act 1980.	Section 29.
1980 c. xiii.	Cheshire County Council Act 1980.	Section 31.
1980 c. xxxvii,	South Yorkshire Act 1980.	Section 44.
1981 c. ix.	Greater Manchester Act 1981.	Section 57.
1981 c. xviii.	County of Kent Act 1981.	Section 26.
1981 c. xxv. 1982 c. iii.	East Sussex Act 1981. Humberside Act 1982.	Section 91. Section 46.

PART VI
REPEALS IN LOCAL ACTS IN CONSEQUENCE OF SECTION 20

Chapter	Short title	Extent of repeal
1976 c. xxxv.	County of South Glamorgan Act 1976.	Section 56.
1979 c. xxiii.	County of South Glamorgan Act 1976. Greater London Council (General Powers) Act 1979.	Section 5. Section 9.

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REPEALS IN LOCAL ACTS IN CONSEQUENCE OF SECTION 20—cont.

Chapter	Short title	Extent of repeal
1980 c. x.	County of Merseyside Act 1980.	Sections 11 and 12.
1980 c. xi.	West Midlands County Council Act 1980.	Sections 7 and 8.
1980 c. xiii.	Cheshire County Council Act 1980.	Section 10.
1980 c. xiv.	West Yorkshire Act 1980.	Sections 13 and 14.
1980 c. xv.	Isle of Wight Act 1980.	Sections 11 and 12.
1980 c. xxxvii.	South Yorkshire Act 1980.	Sections 11 and 12.
1980 c. xliii.	Tyne and Wear Act 1980.	Sections 7 to 9.
1981 c. ix.	Greater Manchester Act 1981.	Sections 17 to 19.
1981 c. xviii.	County of Kent Act 1981.	Sections 8 and 9.
1981 c. xxv.	East Sussex Act 1981.	Sections 4 and 5.
1982 c. iii.	Humberside Act 1982.	Sections 31 to 33.
1982 c. iv.	County of Avon Act 1982.	Sections 4 and 35.

PART VII

REPEALS IN LOCAL ACTS IN CONSEQUENCE OF SECTION 22

Chapter	Short title	Extent of repeal
1980 c. x.	County of Merseyside Act 1980.	Section 14.
1980 c. xi.	West Midlands County Council Act 1980.	Section 10.
1980 c. xiii.	Cheshire County Council Act 1980.	Section 9.
1980 c. xv.	Isle of Wight Act 1980.	Section 51.
1980 c. xxxvii.	South Yorkshire Act 1980.	Section 13.
1981 c. ix.	Greater Manchester Act 1981.	Section 20.
1981 c. xviii.	County of Kent Act 1981.	Section 11.
1981 c. xix.	South Yorkshire Act 1981.	In the Table, the entries relating to section 13(1) and (2) of the South Yorkshire Act 1980.
1981 c. xxv.	East Sussex Act 1981.	Section 6.

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PART VIII
REPEALS IN LOCAL ACTS IN CONSEQUENCE OF SECTION 24

Chapter	Short title	Extent of repea
1980 c. xi.	West Midlands County Council Act 1980.	Section 17.
1980 c. xiii.	Cheshire County Council Act 1980.	Section 24.
1980 c. xxxvii.	South Yorkshire Act 1980.	Section 35.
1981 c. xxxiv.	Derbyshire Act 1981.	Section 18.
1982 c. iii.	Humberside Act 1982.	Section 38.
1982 c. iv.	County of Avon Act 1982.	Section 24.

 $\label{eq:Part_IX} \text{Repeals in Local Acts in Consequence of Section 26}$

Chapter	Short title	Extent of repeal
1980 c. xiv.	West Yorkshire Act 1980.	Section 45.
1980 c. xxxvii.	South Yorkshire Act 1980.	Section 23.
1980 c. xliii.	Tyne and Wear Act 1980.	Section 14.
1981 c. ix.	Greater Manchester Act 1981.	Section 33.
1981 c. xxv.	East Sussex Act 1981.	Section 16.

Chapter	Short title	Extent of repeal
1967 с. хх.	Greater London Council (General Powers) Act 1967.	Section 24.
1980 c. xiv.	West Yorkshire Act 1980.	Section 10.
1980 c. xxxvii.	South Yorkshire Act 1980.	Section 40.
1980 c. xliii.	Tyne and Wear Act 1980,	Section 15.
1981 c. ix.	Greater Manchester Act 1981.	Section 46.
1981 c. xviii.	County of Kent Act 1981.	Sections 24 and 25.
1981 c. xxv.	East Sussex Act 1981.	Section 15.
1982 c. iv.	County of Avon Act 1982.	Section 26,

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 $\label{eq:part XI} \textbf{Repeals in Local Acts in Consequence of Section 28}$

Chapter	Short title	Extent of repeal
1976 c. xxxv.	County of South Glamorgan Act 1976.	Section 28.
1980 с. х.	County of Merseyside Act 1980.	Section 17.
1980 c. xiii.	Cheshire County Council Act 1980.	Section 26.
1980 c. xxxvii.	South Yorkshire Act 1980.	Section 30.
1980 c. xliii.	Tyne and Wear Act 1980.	Section 20.
1981 c. ix.	Greater Manchester Act 1981.	Section 39.
1981 c. xviii.	County of Kent Act 1981.	Section 27.
1981 c. xxxiv.	Derbyshire Act 1981.	Section 17.
1982 c. iii.	Humberside Act 1982.	Section 43.
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 $\label{eq:Part XII}$ Repeals in Local Acts in Consequence of Section 33

Chapter	Short title	Extent of repeal
1980 c. xiii.	Cheshire County Council Act 1980.	Section 94.
1980 c. xv. 1981 c. xviii. 1982 c. iii. 1982 c. iv.	Isle of Wight Act 1980. County of Kent Act 1981. Humberside Act 1982. County of Avon Act 1982.	Section 17. Section 4. Section 50. Section 46.

PART XIII

REPEALS IN LOCAL ACTS IN CONSEQUENCE OF SECTION 34

Chapter	Short title	Extent of repeal
1980 c. xiv. 1980 c. xxxvii.	West Yorkshire Act 1980. South Yorkshire Act 1980.	Section 82. Section 90.
1981 c. xxv.	East Sussex Act 1981.	Section 90.

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Cinematograph (Amendment) Act 1982

CHAPTER 33

ARRANGEMENT OF SECTIONS

Section

- 1. Extension of 1909 Act to certain other exhibitions of moving pictures.
- 2. Exclusion of exhibitions promoted for private gain from certain exemptions under the 1909 and 1952 Acts.
- 3. Applications for grant, renewal or transfer of licence or consent.
- 4. Appeals against decisions of licensing authority.
- 5. Powers of entry.
- 6. Powers of arrest and seizure.
- 7. Penalties and forfeitures.
- 8. Offences by bodies corporate.
- 9. Interpretation.
- 10. Amendments and repeals.
- 11. Short title, citation, commencement and extent.

SCHEDULES:

Schedule 1—Minor and consequential amendments.

Schedule 2-Repeals.



Cinematograph (Amendment) Act 1982

1982 CHAPTER 33

An Act to extend and amend the Cinematograph Acts 1909 and 1952. [13th July 1982]

E 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:-

1. Subject to the provisions of-

- (a) section 7 (application of Act to special premises) of the 1909 Act to Cinematograph Act 1909 (in this Act referred to as exhibitions "the 1909 Act"; and
- (b) section 5 (exemption for non-commercial exhibitions) pictures. of the Cinematograph Act 1952 (in this Act referred to 1909 c. 30. as "the 1952 Act"),

the 1909 Act and (except so far as they otherwise provide) any regulations made under it shall apply as respects all exhibitions of moving pictures which are produced otherwise than by the simultaneous reception and exhibition of television programmes broadcast by the British Broadcasting Corporation or the Independent Broadcasting Authority or distributed by a system licensed by the Secretary of State under section 89 of the Post 1969 c. 48. Office Act 1969.

Extension of of moving.

1925 c. 68.

Exclusion of exhibitions promoted for private gain from certain exemptions under the 1909 and 1952 Acts.

- 2.—(1) Subject to subsection (2) below, an exhibition which is promoted for private gain shall be excluded—
 - (a) from the exhibitions to which section 7(4) of the 1909 Act (exhibitions in private dwelling houses) applies; and
 - (b) from the exhibitions which are exempted exhibitions for the purposes of section 5 of the 1952 Act.
- (2) Subsection (1) above does not apply to an exhibition the sole or main purpose of which is to demonstrate any product, to advertise any goods or services or to provide information, education or instruction.
- (3) An exhibition is promoted for private gain if, and only if,—
 - (a) any proceeds of the exhibition, that is to say, any sums paid for admission to the exhibition; or
 - (b) any other sums (whenever paid) which, having regard to all the circumstances, can reasonably be regarded as paid wholly or partly for admission to the exhibition; or
 - (c) where the exhibition is advertised (whether to the public or otherwise), any sums not falling within paragraph (b) above which are paid for facilities or services provided for persons admitted to the exhibition,

are applied wholly or partly for purposes of private gain.

- (4) If in proceedings for an offence under section 7(1) below any question arises whether an exhibition was promoted for private gain and it is proved—
 - (a) that any sums were paid for admission to the exhibition or to the premises at which it was given and that the exhibition was advertised to the public; or
 - (b) that any sums were paid for facilities or services provided for persons admitted to the exhibition and that the exhibition was advertised (whether to the public or otherwise); or
 - (c) that the amount of any payment falling to be made in connection with the promotion of the exhibition was determined wholly or partly by reference to the proceeds of the exhibition or any facilities or services provided for persons admitted to it,

the exhibition shall be deemed to have been promoted for private gain unless the contrary is shown.

(5) Where an exhibition is promoted by a society which is established and conducted wholly for purposes other than purposes of any commercial undertaking and sums falling

within subsection (3) above are applied for any purpose calculated to benefit the society as a whole, the exhibition shall not be held to be promoted for private gain by reason only that the application of those sums for that purpose results in benefit to any person as an individual.

- (6) In subsection (5) above "society" includes any club, institution, organisation or association of persons, by whatever name called.
- 3.—(1) An applicant for the grant, renewal or transfer of a Applications licence shall give tofor grant, renewal or
 - (a) the licensing authority;
 - (b) the fire authority; and
 - (c) the chief officer of police,

not less than 28 days' notice of his intention to make the application.

- (2) The licensing authority may in such cases as they think fit, after consulting with the fire authority and the chief officer of police, grant an application for the grant, renewal or transfer of a licence notwithstanding the fact that the applicant has failed to give notice in accordance with subsection (1) above.
- (3) In considering any application for the grant, renewal or transfer of a licence, the licensing authority shall have regard to any observations submitted to them by the fire authority or by the chief officer of police.
- (4) Where, before the date of expiry of a licence, an application has been made for its renewal or transfer, the licence shall be deemed to remain in force or, as the case may require, to have effect with any necessary modifications until the determination of the application by the licensing authority or the withdrawal of the application.
- (5) In this Act, unless the contrary intention appears, "licence" means a licence under section 2 of the 1909 Act or a consent under section 4 of the 1952 Act, and references to a licence of either kind shall be construed accordingly.
 - 4.—(1) Any person aggrieved—

(a) by the refusal or revocation of a licence;

(b) by any terms, conditions or restrictions on or subject licensing to which a licence is granted; or authority.

(c) by the refusal of a renewal or transfer of a licence, may appeal to the Crown Court or, in Scotland, to the sheriff.

(2) Where the decision against which an appeal under this section is brought was given on an application of which (in

Appeals against.

transfer of

licence or consent.

decisions of

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accordance with section 3(1) above) notice was required to be given to a fire authority and a chief officer of police, any notice of appeal under this section against that decision shall be given to that authority and that officer as well as to any other person to whom it is required to be given apart from this subsection.

- (3) Where a licence is revoked it shall be deemed to remain in force during the period within which an appeal under this section may be brought and, if such an appeal is brought, until the determination or abandonment of the appeal.
- (4) Where an application for the renewal or transfer of a licence is refused, the licence shall be deemed to remain in force or, as the case may require, to have effect with any necessary modifications—
 - (a) during any period within which an appeal under this section may be brought and, if such an appeal is brought, until the determination or abandonment of the appeal; and
 - (b) where such an appeal is successful, until the licence is renewed or transferred by the licensing authority.

Powers of entry.

- 5.—(1) Where a constable or an authorised officer of the licensing authority or of the fire authority has reasonable cause to believe that—
 - (a) any premises in respect of which a licence of either kind is in force are being or are about to be used for an exhibition which requires a licence of that kind;
 - (b) any premises in respect of which a licence under section 2 of the 1909 Act is in force are being or are about to be used for an exempted exhibition; or
 - (c) any premises in respect of which notice has been given under subsection (2) (occasional exhibitions) or subsection (3) (exhibitions in moveable buildings or structures) of section 7 of that Act are being or are about to be used for an exhibition which, but for that subsection, would require a licence under section 2 of that Act,

he may enter and inspect the premises with a view to seeing whether the relevant provisions are being complied with.

- (2) An authorised officer of the fire authority may, on giving not less than 24 hours' notice—
 - (a) to the occupier of any premises in respect of which a licence is in force; or
 - (b) to the occupier of any premises in respect of which notice has been given under section 7(2) or (3) of the 1909 Act.

enter and inspect the premises for the purpose of ensuring that there are adequate fire precautions and of seeing whether the relevant provisions, so far as relating to fire precautions, are being complied with.

- (3) A constable or authorised officer of the licensing authority may enter and search any premises in respect of which he has reason to suspect that an offence under section 7(1) below has been, is being or is about to be committed if authorised to do so by a warrant granted by a justice of the peace or, in Scotland, by a sheriff, stipendiary magistrate or justice of the peace.
- (4) Where an authorised officer of the licensing authority or of the fire authority enters any premises in the exercise of any power under this section he shall, if required to do so by the occupier, produce to the occupier his authority.
- (5) Any person who intentionally obstructs the exercise of any power conferred by this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding £200.
 - (6) In this section "relevant provisions" means—
 - (a) in a case falling within subsection (1)(a) or (2)(a) above, regulations under the 1909 Act and the terms, conditions and restrictions on or subject to which the licence is held;
 - (b) in a case falling within subsection (1)(b) above, regulalations under the 1909 Act making such provision as is mentioned in paragraph (a) of section 2(1) of the 1952 Act and the conditions and restrictions on or subject to which the licence is held so far as relating to the matters specified in that paragraph;
 - (c) in a case falling within subsection (1)(c) or (2)(b) above, regulations under the 1909 Act and any conditions notified in writing by the licensing authority to the occupier of the premises;

and in relation to any premises in respect of which notice has been given under section 7(3) of the 1909 Act any reference to the occupier shall be construed as a reference to the owner.

6.—(1) If a constable has reasonable cause to suspect that a Powers of person has committed an offence under this Act he may require arrest and him to give his name and address, and if that person refuses or seizure. 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.

This subsection does not extend to Scotland.

(2) A constable or authorised officer of the licensing authority who enters and searches any premises under the authority of a warrant issued under section 5(3) above may seize and remove any apparatus or equipment or other thing whatsoever found on

the premises which he has reasonable cause to believe may be liable to be forfeited under section 7(5) below.

Penalties and forfeitures.

7.—(1) If—

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- (a) any premises in respect of which a licence under section 2 of the 1909 Act is not in force are used for an exhibition which requires such a licence;
- (b) any premises in respect of which a consent under section 4 of the 1952 Act is not in force are used for an exhibition which requires such a consent;
- (c) any premises in respect of which a licence of either kind is in force are used for an exhibition which requires a licence of that kind and are so used otherwise than in accordance with the terms, conditions or restrictions on or subject to which the licence is held;
- (d) any premises in respect of which a licence under section 2 of the 1909 Act is in force are used for an exempted exhibition and are so used otherwise than in accordance with the conditions or restrictions on or subject to which the licence is held, so far as relating to the matters specified in section 2(1)(a) of the 1952 Act; or
- (e) any premises are used for an exhibition to which regulations made under the 1909 Act apply and are so used in contravention of those regulations,

then, subject to subsection (3) below, each of the persons mentioned in subsection (2) below shall be guilty of an offence.

- (2) The persons referred to in subsection (1) above are—
 - (a) any person concerned in the organisation or management of the exhibition;
 - (b) where a licence of either kind is in force in respect of the premises and the exhibition requires a licence of that kind or a licence under section 2 of the 1909 Act is in force in respect of the premises and the exhibition is an exempted exhibition, the holder of the licence; and
 - (c) any other person who, knowing or having reasonable cause to suspect that the premises would be used as mentioned in that subsection—
 - (i) allowed the premises to be so used; or
 - (ii) let the premises, or otherwise made them available, to any person by whom an offence in connection with that use of the premises has been committed.
- (3) It shall be a defence for a person charged with an offence under subsection (1) above to prove that he took all reasonable

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precautions and exercised all due diligence to avoid the commission of the offence.

- (4) A person guilty of an offence under subsection (1) above shall be liable on summary conviction to a fine not exceeding—
 - (a) in the case of an offence under paragraph (a) of that subsection, £10,000;
 - (b) in any other case, £1,000.
- (5) Subject to subsection (6) below, the court by or before which a person is convicted of an offence under subsection (1)(a) above may order any thing produced to the court, and 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.
- (6) The court shall not order any thing to be forfeited under subsection (5) above, where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.
- (7) If the holder of a licence is convicted of an offence under subsection (1) above, the licensing authority may revoke the licence.
- 8.—(1) Where an offence under this Act committed by a body Offences by corporate is proved to have been committed with the consent bodies or connivance of, or to be attributable to any neglect on the corporate. part of, any director, manager, secretary or other 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 that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation 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.

9.—(1) In this Act—

Interpretation.

"the 1909 Act" means the Cinematograph Act 1909;

1909 c. 30.

"the 1952 Act" means the Cinematograph Act 1952;

1952 c. 68.

- "chief officer of police", in relation to any premises, means the chief officer of police for the police area in which the premises are situated;
- "exempted exhibition" means an exhibition which, by virtue only of section 5 of the 1952 Act, does not require a licence under section 2 of the 1909 Act;

"fire authority", in relation to any premises, means the authority discharging in the area in which the premises are situated the functions of fire authority under the Fire Services Act 1947;

1947 c. 41.

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- "licence" and references to a licence of either kind shall be construed in accordance with section 3(5) above;
- "licensing authority", in relation to any premises, means the authority having power to grant licences for the premises.
- (2) Any reference in this Act to an exhibition which requires a licence under section 2 of the 1909 Act is a reference to an exhibition to which section 1(1) of that Act (premises not to be used for certain exhibitions unless a licence is in force in respect of the premises) applies; and any reference in this Act to an exhibition which requires a consent under section 4 of the 1952 Act (premises not to be used for certain exhibitions unless a consent is in force in respect of the premises) is a reference to an exhibition to which that section applies.

Amendments and repeals.

- 10.—(1) The enactments mentioned in Schedule 1 to this Act shall have effect subject to the amendments specified in that Schedule, being minor amendments and amendments consequential on the foregoing provisions of this Act.
- (2) The enactments mentioned in Schedule 2 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

1971 c. 40.

- (3) On the coming into force of section 12(11) of the Fire Precautions Act 1971 (regulations relating to fire precautions to be made under that Act), there shall cease to have effect section 7(2)(b) and 3(b)(ii) of the 1909 Act and the following provisions of this Act, namely—
 - (a) in section 3—
 - (i) in subsection (1), paragraph (b);
 - (ii) in subsection (2) the words "the fire authority
 - (iii) in subsection (3) the words "by the fire authority or ";
 - (b) in section 4, in subsection (2), the words "a fire authority and" and the words "that authority and";
 - (c) in section 5—
 - (i) in subsections (1) and (4) the words "or of the fire authority";
 - (ii) subsection (1)(b) and (2);
 - (iii) in subsection (6), in the definition of "relevant provisions", in paragraph (a) the words "or (2)(a)",

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paragraph (b) and in paragraph (c) the words "or (2)(b)";

- (d) in section 7, subsection (1)(d) and, in subsection (2)(b), the words from "or" to "exempted exhibition"; and
- (e) in section 9, the definitions of "exempted exhibition" and "fire authority".
- 11.—(1) This Act may be cited as the Cinematograph (Amend-Short title, ment) Act 1982.
- (2) The Cinematograph Acts 1909 and 1952 and this Act ment and may be cited together as the Cinematograph Acts 1909 to 1982. extent.
- (3) This Act shall come into force on the expiry of the period of three months beginning with the day on which this Act is passed.
 - (4) This Act does not extend to Northern Ireland.

SCHEDULES

Section 10.

SCHEDULE 1

MINOR AND CONSEQUENTIAL AMENDMENTS

Cinematograph Act 1909

1. For section 1 of the 1909 Act there shall be substituted the following section—

1952 c. 68.

"Provision against cinematograph exhibition except in licensed premises.

- 1.—(1) Subject to the provisions of section 7 of this Act and of section 5 of the Cinematograph Act 1952, no premises shall be used for a cinematograph exhibition unless they are licensed for the purpose in accordance with this Act.
- (2) Subject to those provisions, no cinematograph exhibition shall be given unless the regulations made by the Secretary of State under this Act are complied with.
- (3) In this Act 'cinematograph exhibition' means any exhibition of moving pictures which is produced otherwise than by the simultaneous reception and exhibition of television programmes broadcast by the British Broadcasting Corporation or the Independent Broadcasting Authority or distributed by a system licensed by the Secretary of State under section 89 of the Post Office Act 1969."

1969 c. 48.

- 2.—(1) In subsection (1) of section 2 of that Act (grant of licences) for the words "the premises" there shall be substituted the words "any premises in their area".
- (2) In subsection (2) of that section (duration of licences) for the words "revoked as herein-after provided" there shall be substituted the words "revoked as provided by section 7(7) of the Cinematograph (Amendment) Act 1982".
- 3.—(1) In subsection (2) of section 7 of that Act (occasional exhibitions)—
 - (a) for the words "to the county council and to the chief officer of police of the police area" (as originally enacted) there shall be substituted the following paragraphs—
 - "(a) to the local authority in whose area the premises are situated;
 - (b) to the authority discharging in the area in which the premises are situated the functions of fire authority under the Fire Services Act 1947; and
 - (c) to the chief officer of police for the police area in which the premises are situated; "; and
 - (b) for the words "by the county council" (as originally enacted) there shall be substituted the words "by that local authority".

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1947 c. 41.

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- (2) In subsection (3) of that section (moveable buildings or structures—
 - (a) for the words "the council of the county in which" (as originally enacted) there shall be substituted the words "the local authority in whose area";
 - (b) in paragraph (a), for the words from "the council of the county" to "this Act" (as originally enacted) there shall be substituted the words "the local authority in whose area he ordinarily resides";
 - (c) in paragraph (b), for the words "to the council of the county and to the chief officer of police of the police area in which it is proposed to give the exhibition" (as originally enacted) there shall be substituted the following sub-paragraphs—
 - "(i) to the local authority in whose area it is proposed to give the exhibition;
 - (ii) to the authority discharging in the area in which it is proposed to give the exhibition the functions of fire authority under the Fire Services Act 1947; and

1947 c. 41.

- (iii) to the chief officer of police of the police area in which it is proposed to give the exhibition;"; and
- (d) in paragraph (c), for the words "the county council" (as originally enacted) there shall be substituted the words "the local authority in whose area it is proposed to give the exhibition".
- (3) For subsection (4) of that section (exhibitions in private dwelling-houses) there shall be substituted the following subsections—
 - "(4) The following exemptions shall have effect in relation to any cinematograph exhibition to which this subsection applies, that is to say—
 - (a) neither a licence under section 2 of this Act nor a consent under section 4 of the Cinematograph Act 1952 c. 68. 1952 shall be required by reason only of the giving of the exhibition;
 - (b) where the exhibition is given in premises in respect of which such a licence or consent is in force, no condition or restriction on or subject to which the licence or consent was granted shall apply to the exhibition;
 - (c) regulations under this Act shall not apply to the exhibition; and
 - (d) for the purposes of subsection (2) of this section the giving of the exhibition shall be disregarded.
 - (5) Subsection (4) of this section applies to any cinematograph exhibition which—
 - (a) is given in a private dwelling-house; and
 - (b) is one to which the public are not admitted.
 - (6) In this section 'local authority' means—
 - (a) in England and Wales, the Greater London Council or a district council;
 - (b) in Scotland, an islands or district council.".

Sunday Entertainments Act 1932

1932 c. 51. 1909 c. 30.

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4. In section 1(2) of the Sunday Entertainments Act 1932 for the words "section four of the Cinematograph Act, 1909" there shall be substituted the words "section 5 of the Cinematograph (Amendment) Act 1982" and for the words "that Act" there shall be substituted the words "the Cinematograph Act 1909".

Public Health Act 1936

1936 c. 49.

5. In section 226(3) of the Public Health Act 1936 after the words "cinematograph exhibitions" there shall be inserted the words "(within the meaning of the Cinematograph Act 1909)" and for the words "the Cinematograph Act, 1909," there shall be substituted the words "that Act".

Shops Act 1950

1950 c. 28.

6. In section 74(1) of the Shops Act 1950, in the definition of "theatre", for the words from "the exhibition" to "suitable apparatus" there shall be substituted the words "cinematograph exhibitions (within the meaning of the Cinematograph Act 1909)".

Cinematograph Act 1952

- 7.—(1) For subsection (4) of section 5 of the 1952 Act (exempted organisations) there shall be substituted the following subsections—
 - "(4) In the last foregoing subsection the expression 'exempted organisation' means a society, institution, committee or other organisation as respects which there is in force at the time of the exhibition in question a certificate given by the Secretary of State certifying that he is satisfied that the organisation is not conducted or established for profit; and there shall be paid to the Secretary of State in respect of the giving of such a certificate such reasonable fee as he may determine.
 - (5) The Secretary of State shall not give such a certificate with respect to any organisation—
 - (a) the activities of which appear to him to consist of or include the giving of cinematograph exhibitions promoted for private gain; or
 - (b) the objects of which do not appear to him to consist of or include the giving of cinematograph exhibitions to which the public are admitted;

and the Secretary of State may revoke such a certificate at any time if it appears to him that, since the certificate was given, the activities or the organisation have consisted of or included the giving of cinematograph exhibitions promoted for private gain.".

- (2) Any certificate given by the Commissioners of Customs and Excise under that subsection before the commencement of this Act shall have effect as if given by the Secretary of State.
- 8. In section 9(1) of that Act for the definition of "cinematograph exhibition" there shall be substituted—
 - "'cinematograph exhibition' has the same meaning as in the Act of 1909;".

Obscene Publications Act 1959

Sch. 1

9. In section 2(7) of the Obscene Publications Act 1959 for the 1959 c. 66. words from "means" to the end there shall be substituted the words "has the same meaning as in the Cinematograph Act 1909.".

London Government Act 1963

10. In paragraph 19(5) of Schedule 12 to the London Government 1963 c. 33. Act 1963 for the words "Section 6 of the Cinematograph Act 1952" there shall be substituted the words "Section 4 of the Cinematograph (Amendment) Act 1982".

Sunday Cinema Act 1972

11. In section 2 of the Sunday Cinema Act 1972 for the words 1972 c. 19. "section 6 of the Cinematograph Act 1952" there shall be substituted the words "section 4 of the Cinematograph (Amendment) Act 1982".

Indecent Displays (Control) Act 1981

12. In section 1(4) of the Indecent Displays (Control) Act 1981 for 1981 c. 42. the words "the Cinematograph Act 1952", in the first place where they occur, there shall be substituted the words "the Cinematograph Act 1909".

SCHEDULE 2

Section 10.

REPEALS

Chapter	Short title	Extent of repeal
9 Edw. 7. c. 30.	The Cinematograph Act 1909.	In section 2, in subsection (1) the words "(as defined in the Cinematograph Act 1952)" and subsection (4). Sections 3 and 4.
15 & 16 Geo. 6. & 1 Eliz. 2. c. 68.	The Cinematograph Act 1952.	Section 1. In section 4(3), the words from "and sections three and four" to the end. Section 6. In the Schedule, the entries relating to sections 1, 3 and 4 of the Cirematograph Act 1909.
1967 c. 80.	The Criminal Justice Act 1967.	In Schedule 3, in Part I, the entry relating to section 3 of the Cinemazograph Act 1909.
1971 c. 23.	The Courts Act 1971.	In Schedule 9, in Part I, the entry relating to section 6 of the Cinematograph Act 1952.
1972 c. 70.	The Local Government Act 1972.	Section 204(5)(\hat{b}).
1973 c. 65.	The Local Government (Scotland) Act 1973.	In Schedule 24, in paragraph 33, the words from "in section 7(3)" to "islands area or district".

Sch. 2

Chapter	Short title	Extent of repeal
1975 c. 21.	The Criminal Procedure (Scotland) Act 1975. The Criminal Justice Act 1982.	In Schedule 7D, paragraph 4. In Schedule 3, the entry relating to section 3 of the Cinematograph Act 1909.

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Video Recordings Bill

EXPLANATORY AND FINANCIAL MEMORANDUM

The Bill regulates, subject to certain exceptions, the supply of video recordings except in accordance with a classification by an authority designated by the Secretary of State and creates certain offences in connection therewith.

Clause 1 provides for the interpretation of the terms "video work", "video recording" and "supply".

Clause 2 specifies certain video works as exempted works for the purposes of the Bill.

Clause 3 specifies certain supplies of video recordings as exempted supplies for the purposes of the Bill.

Clause 4 empowers the Secretary of State to designate any person as the authority responsible for classifying video works it considers suitable for showing and for issuing classification certificates in respect of such works. The clause provides also that the Secretary of State shall not designate any authority unless he is satisfied that adequate arrangements for certain appeals will be made. The clause requires any fees recovered by the designated authority for the classification of video works and the issue of classification certificates to be in accordance with a tariff approved by the Secretary of State.

Clause 5 provides for the interpretation of the term "classification certificate". It specifies the contents of classification certificates.

Clause 6 empowers the Secretary of State by regulations, made by statutory instrument and subject to annulment in pursuance of a resolution of either House of Parliament, to require a video work, a video recording and the case or other container to show such indication as to the classification given to the video work as the regulations specify.

Clause 7 creates offences of supplying or offering to supply a video recording containing an unclassified video work.

Clause 8 creates the offence of possessing for the purposes of supply a video recording containing an unclassified video work.

[Bill 14—Reprint]

Clause 9 creates offences of supplying or offering to supply a video recording containing a video work classified as suitable only for persons above a certain age to persons below that age.

Clause 10 creates offences of supplying or offering to supply, on premises to which persons below a certain age are admitted, a video recording containing a video work classified as suitable for supply only on premises to which persons below that age are not admitted. It also makes it an offence to have on such premises, for the purpose of supplying it, such a video recording.

Clause 11 creates offences of supplying or offering to supply a video recording containing a classified video work which does not satisfy any requirement in regulations under clause 6 to show a specified indication as to the classification given to the work. It also makes it an offence to supply or to offer to supply a video recording or a container for such a recording which does not comply with any labelling requirement in such regulations.

Clause 12 creates offences of supplying or offering to supply a video recording which contains an unclassified video work if the recording itself or its container indicates that the work has been classified; and supplying or offering to supply a video recording which contains a classified video work if the work, recording or container contains a false indication as to its classification.

Clause 13 provides for penalties. Level 5 on the standard scale (referred to in clause 13(3)) is at present set at £1,000.

Clauses 14 to 16 deal with offences by bodies corporate, powers of entry, search and seizure and powers of arrest without warrant.

Clauses 17 and 18 provide for evidence as to the classification of a video work to be given by a certificate signed by a person authorised by the Secretary of State.

Clause 19 provides for forfeiture of video recordings following a conviction for an offence under the Bill.

Financial and manpower implications

The Bill is not expected to have any significant financial implications and will have no effect on public service manpower.

Video Recordings Bill

ARRANGEMENT OF CLAUSES

Preliminary

Clause

- 1. Interpretation of terms.
- 2. Exempted works.
- 3. Exempted supplies.

Classification, labelling, etc.

- Authority to determine suitability of video works for showing.
- Classification certificates.
- 6. Requirements as to labelling, etc.

Offences and penalties

- · 7**.** Supplying video recording of unclassified work.
- Possession of video recording of unclassified work for the purposes of supply.
- Supplying video recording of classified work in breach of 9. classification.
- Supply or possession of video recording on certain premises. 10.
- Supply of video recording not complying with requirements 11. as to labels, etc.
- Supply of video recording containing false indication as to classification.
- 13. Penalties.

Miscellaneous and supplementary

- 14. Offences by bodies corporate.
- 15. Entry, search and seizure.

- 16. Arrest.17. Evidence by certificate.18. Evidence by certificate in Scotland.
- 19. Forfeiture.
- 20. Other interpretation.
- 21. Short title, commencement and extent.

[Bill 14]

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BILL

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Make provision for regulating the distribution of video A.D. 1983 recordings and for connected purposes.

B 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:—

Preliminary

- 1.—(1) The provisions of this section shall have effect for the Interpretation interpretation of terms used in this Act.
- (2) "Video work" means, subject to subsection (3) below, any series of visual images (with or without sound)—
- 10 (a) produced electronically by the use of information contained on any disc or magnetic tape, and
 - (b) shown as a moving picture.
- (3) Where the main purpose of the information so contained is to enable the nature or sequence of the visual images to be varied 15 by operation of the device producing them, the series of visual images is not a video work.
 - (4) "Video recording" means any disc or magnetic tape containing information by the use of which the whole or a part of a video work may be produced.

[Bill 14]

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(5) "Supply" means supply in any manner, whether or not for reward, and, therefore, includes supply by way of sale, letting on hire, exchange or loan; and cognate expressions are to be interpreted accordingly.

Exempted works.

- 2.—(1) Subject to subsection (2) below, a video work is for 5 the purposes of this Act an exempted work if, taken as a whole—
 - (a) it is designed to provide information, education or instruction; or
 - (b) it is concerned with sport, religion or music.
- (2) A video work is not an exempted work for those purposes if, to any extent, it depicts or otherwise deals with—
 - (a) human sexual activity or acts of force or restraint associated with such activity;
 - (b) mutilation, torture or other acts of gross violence;
 - (c) human genital organs or human urinary or excretory functions:

or is designed, to any extent, to stimulate or encourage anything falling within paragraph (a) or (b).

Exempted supplies.

- 3.—(1) The provisions of this section apply to determine 20 whether or not a supply of a video recording is an exempted supply for the purposes of this Act.
- (2) The supply of a video recording by any person is an exempted supply if it is neither—
 - (a) a supply for reward, nor

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- (b) a supply in the course or furtherance of a business.
- (3) Where on any premises facilities are provided in the course or furtherance of a business for supplying video recordings, the supply by any person of a video recording on those premises is to be treated for the purposes of subsection (2) above as a 30 supply in the course or furtherance of a business.
- (4) The supply of a video recording to a person who, in the course of a business, makes video works or supplies video recordings is an exempted supply, unless the video recording is supplied with a view to its eventual supply to persons in the 35 United Kingdom other than those who, in the course of a business, make video works or supply video recordings.

(5) Where a video work—

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- (a) is designed to provide a record of an event or occasion for those who took part in the event or occasion or are connected with those who did so.
- (b) does not, to any extent, depict or otherwise deal with anything falling within paragraph (a), (b) or (c) of section 2(2) of this Act, and
- (c) is not designed, to any extent, to stimulate or encourage anything falling within paragraph (a) or (b) of that subsection

the supply of a video recording containing only that work to a person who took part in the event or occasion or is connected with someone who did so is an exempted supply.

- (6) The supply of a video recording for the purpose only of 5 the exhibition of any video work contained in the recording in premises other than a dwelling-house—
 - (a) being premises mentioned in subsection (7) below, or
- (b) being an exhibition which in England and Wales or Scotland would be an exempted exhibition within the meaning of section 5 of the Cinematograph Act 1952 1952 c. 68. (cinematograph exhibition to which public not admitted or are admitted without payment), or in Northern Ireland would be an exempted exhibition within the meaning of section 5 of the Cinematograph Act (Northern 1959 c. 20 Ireland) 1959 (similar provision for Northern Ireland), (N.I.).
 - (7) The premises referred to in subsection (6) above are—
 - (a) premises in respect of which a licence under section 2 of the Cinematograph Act 1909 is in force, 1909 c. 30.
 - (b) premises falling within section 7(2) of that Act (premises used only occasionally and exceptionally for cinematograph exhibitions), or
 - (c) premises falling within section 7(3) of that Act (building or structure of a movable character) in respect of which such a licence as is mentioned in paragraph (a) of that subsection has been granted.
- (8) The supply of a video recording for the purpose only of the broadcasting of any video work contained in the recording by the British Broadcasting Corporation or the Independent 40 Broadcasting Authority or its distribution by a system licensed under section 89 of the Post Office Act 1969 (licensing of pro- 1969 c. 48. gramme distribution systems) is an exempted supply.
 - (9) The supply of a video recording to the designated authority is an exempted supply.

Classification, labelling, etc.

Authority to determine suitability of video works for showing.

- 4.—(1) The Secretary of State may by notice under this section designate any person as the authority responsible for making arrangements—
 - (a) for determining for the purposes of this Act whether 5 or not video works are suitable for showing,
 - (b) in the case of works which are determined in accordance with the arrangements to be so suitable—
 - (i) for making such other determinations as are required for the issue of classification certificates, 10 and
 - (ii) for issuing such certificates, and
 - (c) for maintaining a record of such determinations (whether determinations made in pursuance of arrangements made by that person or by any person previously 15 designated under this section), including video recordings of the video works to which the determinations relate.
- (2) The power to designate any person by notice under this section includes power— 20
 - (a) to designate two or more persons jointly as the authority responsible for making those arrangements, and
 - (b) to provide that any person holding an office or employment specified in the notice is to be treated as designated while holding that office or employment.
- (3) The Secretary of State shall not make any designation under this section unless he is satisfied that adequate arrangements will be made for an appeal by any person against a determination that a video work submitted by him for the issue of a classification certificate—
 - (a) is not suitable for showing, or
 - (b) is not suitable for showing to persons who have not attained a particular age.

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or against a determination that no video recording containing the work is to be supplied on any premises on which video re-35 cordings are supplied in the course of furtherance of a business if persons who have not attained a particular age are admitted to the premises.

(4) The Secretary of State may at any time designate another person in place of any person designated under this section and, 40 if he does so, may give directions as to the transfer of any record kept in pursuance of the arrangements referred to in subsection (1) above; and it shall be the duty of any person having control of any such record or any part of it to comply with the directions.

- (5) No fee shall be recoverable by the designated authority in connection with any determination falling within subsection (1)(a) or (b) above or the issue of any classification certificate unless the fee is payable in accordance with a tariff approved by the Secretary of State.
- (6) The Secretary of State may for the purposes of subsection (5) above approve a tariff providing for different fees for different classes of video works and for different circumstances.
- (7) Any notice under this section shall be published in the London, Edinburgh and Belfast Gazettes.
- (8) In this Act, references to the designated authority, in relation to any transaction, are references to any person who at the time of that transaction, is designated under this section.
- 5.—(1) In this Act "classification certificate" means a certi-Classification certificate.
 - (a) issued in respect of a video work by or on behalf of the designated authority; and
 - (b) satisfying the requirements of subsection (2) below.

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- (2) Those requirements are that the certificate must contain—
- (a) a statement that the video work concerned is suitable for showing to persons of any age (with or without any qualification as to the desirability of parental guidance with regard to the showing of the work to children or as to the particular suitability of the work for showing to children); or
 - (b) a statement that the video work concerned is suitable for showing only to persons who have attained the age specified in the certificate and that no video recording containing that work is to be supplied to any person who has not attained that age; or
 - (c) the statement mentioned in paragraph (b) above together with a statement that no video recording containing that work is to be supplied on any premises on which video recordings are supplied in the course or furtherance of a business if persons who have not attained that age are admitted to the premises.
- 6.—(1) The Secretary of State may, in relation to video works Requirements in respect of which classification certificates have been issued, by as to labelling regulations require such indication as may be specified by the etc.

 O regulations of any such certificate or any of its contents to be shown in such a manner as may be so specified—
 - (a) at the beginning of the video work in respect of which the certificate was issued; and

- (b) on any video recording containing the work or any spool, case or other thing on or in which such a video recording is kept.
- (2) Regulations under this section may make different provision for different video works and for different circumstances.
- (3) The power to make regulations under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Offences and penalties

- 7.—(1) A person who supplies or offers to supply a video recording containing a video work in respect of which no classification certificate has been issued is guilty of an offence unless-
 - (a) the supply is, or would if it took place be, an exempted supply, or
 - (b) the video work is an exempted work.
- (2) It is a defence to a charge of committing an offence under this section to prove that the accused believed on reasonable grounds-
 - (a) that the video work concerned or, if the video recording 2 contained more than one work to which the charge relates, each of those works was either an exempted work or a work in respect of which a classification certificate had been issued, or
 - (b) that the supply was, or would if it took place be, an 2 exempted supply by virtue of section 3(4), (5) or (9) of this Act.

Possession of video recording of unclassified work for the purposes of supply.

Supplying

unclassified

video recording of

work.

- 8.—(1) Where a video recording contains a video work in respect of which no classification certificate has been issued, a person who has the recording in his possession for the purpose 30 of supplying it is guilty of an offence unless-
 - (a) he has it in his possession for the purpose only of a supply which, if it took place, would be an exempted supply, or
 - (b) the video work is an exempted work.

(2) It is a defence to a charge of committing an offence under this section to prove-

(a) that the accused believed on reasonable grounds that the video work concerned or, if the video recording contained more than one work to which the charge relates, 40 each of those works was either an exempted work or a work in respect of which a classification certificate had been issued.

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- (b) that the accused had the video recording in his possession for the purpose only of a supply which he believed on reasonable grounds would, if it took place, be an exempted supply by virtue of section 3(4), (5) or (9) of this Act, or
- (c) that the accused did not intend to supply the video recording until a classification certificate had been issued in respect of the video work concerned.
- 9.—(1) Where a classification certificate issued in respect of Supplying

 a video work states that no video recording containing that work video
 is to be supplied to any person who has not attained the age classified work
 specified in the certificate, a person who supplies or offers to in breach of
 supply a video recording containing that work to a person who classification.
 has not attained the age so specified is guilty of an offence
 unless the supply is, or would if it took place be, an exempted
 supply.
 - (2) It is a defence to a charge of committing an offence under this section to prove—
- (a) that the accused neither knew nor had reasonable grounds to believe that the classification certificate contained the statement concerned,
 - (b) that the accused neither knew nor had reasonable grounds to believe that the person concerned had not attained that age, or
- 15 (c) that the accused believed on reasonable grounds that the supply was, or would if it took place be, an exempted supply by virtue of section 3(4), (5) or (9) of this Act.
- 10.—(1) Where a classification certificate issued in respect of a Supply or 30 video work states that no video recording containing that work possession of is to be supplied on any premises on which video recordings recording on are supplied in the course or furtherance of a business if persons certain who have not attained the age specified in the certificate are premises. admitted to those premises, a person who—
- β5 (a) supplies or offers to supply a video recording containing the work on such premises, or
 - (b) has, for the purpose of supplying it, a video recording containing the work in his possession on such premises,
- being (in either case) premises to which persons who have not 40 attained the age so specified are admitted, is guilty of an offence.

- (2) It is a defence to a charge of committing an offence under this section to prove—
 - (a) that the accused neither knew nor had reasonable grounds to believe that the classification certificate contained the statement concerned, or
 - (b) that the accused neither knew nor had reasonable grounds to believe that persons who had not attained that age were admitted to the premises.

Supply of video recording not complying with requirements as to labels, etc.

11.—(1) A person who supplies or offers to supply—

- (a) a video recording containing a video work which does 1 not satisfy any requirement imposed by regulations under section 6 of this Act, or
- (b) a video recording or any spool, case or other thing on or in which the recording is kept, which does not satisfy any such requirement,

is guilty of an offence unless the supply is, or would if it took place be, an exempted supply.

- (2) It is a defence to a charge of committing an offence under this section to prove that the accused—
 - (a) believed on reasonable grounds that the supply was, or 2 would if it took place be, an exempted supply by virtue of section 3(4), (5) or (9) of this Act, or
 - (b) neither knew nor had reasonable grounds to believe that the video work or the recording, spool, case or other thing (as the case may be) did not satisfy the require-2: ment concerned.

Supply of video recording containing false indication as to classification.

- 12.—(1) A person who supplies or offers to supply a video recording containing a video work in respect of which no classification certificate has been issued is guilty of an offence if the video work, the video recording or any spool, case or other 30 thing on or in which the recording is kept contains any indication that a classification certificate has been issued in respect of that work unless the supply is, or would if it took place be, an exempted supply.
- (2) It is a defence to a charge of committing an offence under 35 subsection (1) above to prove—
 - (a) that the accused believed on reasonable grounds—
 - (i) that a classification certificate had been issued in respect of the video work concerned, or
 - (ii) that the supply was, or would if it took place 40 be, an exempted supply by virtue of section 3(4), (5) or (9) of this Act, or

- (b) that the accused neither knew nor had reasonable grounds to believe that the video work or the recording, spool, case or other thing (as the case may be) contained the indication concerned.
- (3) A person who supplies or offers to supply a video recording containing a video work in respect of which a classification certificate has been issued is guilty of an offence if the video work, the video recording or any spool, case or other thing on or in which the recording is kept contains any indication that is false in a material particular of any statement falling within section 5(2) of this Act (including any qualification falling within paragraph (a) of that subsection) contained in the certificate, unless the supply is, or would if it took place be, an exempted supply.
- (4) It is a defence to a charge of committing an offence under subsection (3) above to prove—
 - (a) that the accused believed on reasonable grounds—
 - (i) that the supply was, or would if it took place be, an exempted supply by virtue of section 3(4), (5) or (9) of this Act, or
 - (ii) that the certificate concerned contained the statement indicated, or
 - (b) that the accused neither knew nor had reasonable grounds to believe that the video work or the recording, spool, case or other thing (as the case may be) contained the indication concerned.
- (5) For the purposes of this section any indication at the beginning or end of a video work purporting to be an indication that a classification certificate has been issued in respect of the work or to be an indication of the contents of such a certificate is part of the video work.
- 13.—(1) A person guilty of an offence under section 7 or 8 Penalties. of this Act shall be liable, on summary conviction, to a fine not exceeding £10,000.
- (2) In relation to England and Wales, Scotland or Northern Ireland, the Secretary of State may by order amend subsection (1) above so as to substitute for the sum specified in that subsection (whether at the passing of this Act or by a previous order made under this subsection) such other sum as appears to him to be justified by a change in the value of money appearing to him to have taken place since the passing of this Act or the date of the previous order made under this subsection, as the case may be.

- (3) A person guilty of an offence under any other provision of this Act shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.
- (4) In subsection (3) above "the standard scale" has the meaning given by section 75 of the Criminal Justice Act 1982 and for the purposes of this Act—
 - (a) section 37 of that Act; and
 - (b) an order under section 143 of the Magistrates' Courts Act 1980 which alters the sum specified in subsection (2) of the said section 37,

shall extend to Northern Ireland and the said section 75 shall have effect as if after the words "England and Wales" there were inserted the words "or Northern Ireland".

- (5) The power to make an order under subsection (2) above shall be exercisable by statutory instrument which shall be 1: subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) An order under subsection (2) above shall not affect the punishment for an offence committed before that order comes into force.

Miscellaneous and supplementary

Offences by bodies corporate.

- 14.—(1) Where an offence 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, any director, manager, secretary or other similar 25 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 and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its 30 members, subsection (1) above shall apply in relation 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.

Entry, search and seizure.

- 15.—(1) If a justice of the peace is satisfied by information on oath that there are reasonable grounds for suspecting—
 - (a) that an offence under this Act has been or is being committed on any premises, and
 - (b) that evidence that the offence has been or is being committed is on those premises,

he may issue a warrant under his hand authorising any con-40 stable to enter and search the premises within one month from the date of issue of the warrant.

- (2) A constable entering or searching any premises in pursuance of a warrant under subsection (1) above may use reasonable force if necessary and may seize anything found there which he has reasonable grounds to believe may be required to be 5 used in evidence in any proceedings for an offence under this Act
 - (3) In subsection (1) above—

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- (a) the reference to a justice of the peace is, in Scotland, a reference to the sheriff or a justice of the peace and, in Northern Ireland, a reference to a resident magistrate, and
- (b) the reference to information is, in Scotland, a reference to evidence and, in Northern Ireland, a reference to a complaint.
- 5 16.—(1) If a constable has reasonable grounds for suspecting Arrest, that a person has committed an offence under this Act, he may require him to give his name and address and, if that person refuses or fails to do so or gives a name and address which the constable reasonably suspects to be false, the constable may 20 arrest him without warrant.
 - (2) This section does not extend to Scotland.
- 17.—(1) In any proceedings in England and Wales or North-Evidence by ern Ireland for an offence under this Act, a certificate purporting to be signed by a person authorised in that behalf by the Secrebs tary of State and stating—
 - (a) that he has examined—
 - (i) the record maintained in pursuance of arrangements made by the designated authority, and
 - (ii) a video work (or part of a video work) contained in a video recording identified by the certificate, and
 - (b) that the record shows that, on the date specified in the certificate, no classification certificate had been issued in respect of the video work concerned,
- B5 shall be admissible as evidence of the fact that, on that day, no classification certificate had been issued in respect of the video work concerned.
 - (2) A certificate under subsection (1) above may also state—
- (a) that the video work concerned differs in such respects as may be specified from another video work examined by the person so authorised and identified by the certificate, and

(b) that the record shows that, on a date specified in the certificate under subsection (1) above, a classification certificate was issued in respect of that other video work;

and, if it does so, shall be admissible as evidence of the fact 5 that the video work concerned differs in those respects from the other video work.

- (3) In any proceedings in England and Wales or Northern Ireland for an offence under this Act, a certificate purporting to be signed by a person authorised in that behalf by the Secretary 10 of State and stating—
 - (a) that he has examined—
 - (i) the record maintained in pursuance of arrangements made by the designated authority, and
 - (ii) a video work (or part of a video work) con-15 tained in a video recording identified by the certificate, and
 - (b) that the record shows that, on the date specified in the certificate under this subsection, a classification certificate was issued in respect of the video work concerned 20 and that a document identified by the certificate under this subsection is a copy of the classification certificate so issued,

shall be admissible as evidence of the fact that, on that date, a classification certificate in terms of the document so identified 25 was issued in respect of the video work concerned.

- (4) Any document or video recording identified in a certificate tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in court by the person signing the certificate.
- (5) This section does not make a certificate admissible as evidence in proceedings for an offence unless a copy of the certificate has, not less than seven days before the hearing, been served on the person charged with the offence in one of the following ways—
 - (a) by delivering it to him or to his solicitor, or
 - (b) by addressing it to him and leaving it at his usual or last known place of abode or place of business or by addressing it to his solicitor and leaving it at his office, or

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(c) by sending it in a registered letter or by the recorded delivery service addressed to him at his usual or last known place of abode or place of business or addressed to his solicitor at his office, or

(d) in the case of a body corporate, by delivering it to the secretary or clerk of the body at its registered or principal office or sending it in a registered letter or by the recorded delivery service addressed to the secretary or clerk of that body at that office.

18. At the end of Schedule 1 to the Criminal Justice (Scot-Evidence by land) Act 1980 there is added-

Scotland.

1980 c. 62.

"The Video Recordings Act 1984 ss. 7 to 0 12 (offences relating to the supply and possession of video recordings in contravention of that Act).	A person authorised to do so by the Secretary of State, and who has— (a) in relation to the matters certified in paragraph (a) or (c) of Column 3, examined— (i) the record maintained in pursuance of arrangements made by the designated auth-
<u>!</u> 0	ority; and (ii) a video work (or part of a video work) con- tained in a video
)5	recording identified by the certificate; (b) in relation to the matters
	certified in paragraph (b) of Column 3 examined a video work other than the video work concerned in

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In respect of a video work concerned in the proceedings-

- (a) that on the date specified in the certificate, no classification certificate had been issued;
- (b) where a certificate is given in respect of the matter referred to in paragraph (a) above, that the video work differs in such respects as may be specified from the other video work mentioned in paragraph (b) of Column 2; (c) that on the date speci-
- fied in the certificate a. classification certificate in terms of a document identified by the certificate as a copy of the classification certificate was issued."
- 19.—(1) Where a person is convicted of any offence under this Forfeiture. 35 Act, the court may order any video recording—
 - (a) produced to the court, and
 - (b) shown to the satisfaction of the court to relate to the offence,

to be forfeited.

(2) The court shall not order any video recording to be forfeited under subsection (1) above if a person claiming to be the owner of it or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.

the proceedings.

(3) References in this section to a video recording include a reference to any spool, case or other thing on or in which the recording is kept.

[14]

- (4) An order under subsection (1) above shall not take effect until the expiration of the ordinary time within which an appeal may be instituted or, where such an appeal is duly instituted, until the appeal is finally decided or abandoned; and for this purpose—
 - (a) an application for a case to be stated or for leave to appeal shall be treated as the institution of an appeal;
 and
 - (b) where a decision on appeal is subject to a further appeal, the appeal is not finally decided until the expiration of 1 the ordinary time within which a further appeal may be instituted or, where a further appeal is duly instituted, until the further appeal is finally decided or abandoned.
- (5) Subsections (1) and (4) above do not apply to Scotland, 1 and in the application to Scotland of subsection (2) above for the reference to subsection (1) there is substituted a reference to section 436 of the Criminal Procedure (Scotland) Act 1975.

1975 c. 21.

Other interpretation.

20.—(1) In this Act—

- "business", except in section 3(4), includes any activity 21 carried on by a club; and
- "premises" includes any vehicle, vessel or stall.
- (2) For the purposes of this Act, a video recording contains a video work if it contains information by the use of which the whole or a part of the work may be produced; but where a 2: video work includes any extract from another video work, that extract is not to be regarded for the purposes of this subsection as a part of that other work.
- (3) Where any alteration is made to a video work in respect of which a classification certificate has been issued, other than 300 an alteration made in pursuance of regulations under section 600 of this Act, the classification certificate is not to be treated for the purposes of this Act as issued in respect of the altered work.

In this subsection, "alteration" includes addition.

Short title, commencement and extent.

- 21.—(1) This Act may be cited as the Video Recordings Act 3: 1984.
- (2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be appointed for different provisions and for different purposes.
 - (3) This Act extends to Northern Ireland.

Video Recordings

Α

BILL

To make provision for regulating the distribution of video recordings and for connected purposes.

Presented by Mr. Graham Bright
supported by
Mr. Michael Colvin, Mr. David Atkinson,
Mr. Geoffrey Finsberg, Mr. Gareth Wardell,
Mrs. Jill Knight, Mr. John Carlisle,
Mr. Simon Hughes, Mr. Jerry Hayes,
Mr. Christopher Murphy,
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