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HISTORIQUE DE LA LÉGISLATION ET DU DÉBAT PUBLIC SUR LA PORNOGRAPHIE ET L'OBSCÉNITÉ AU ROYAUME-UNI

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INTRODUCTION

Ce document traite de l'état actuel de la législation et du débat public sur la pornographie au Royaume-Uni. Pour des raisons pratiques, nous nous limiterons - comme les auteurs du récent Report of the Committee on Obscenity and Film Censorship du Secrétariat de l'Intérieur britannique[1] - à "la législation concernant l'obscénité, l'indécence et la violence dans les publications, aux étalages et dans les spectacles" et nous ne traiterons pas de la télédiffusion.[2]

Notre sujet comporte évidemment de nombreux problèmes politiques et moraux fort controversés, dont le moindre n'est pas le problème fondamental consistant à définir le domaine. Les conservateurs et les pragmatiques pensent que le sens commun suffit à cerner le sujet de la pornographie. Les libertaires nient le concept même de pornographie, tandis que les radicaux peuvent soutenir que la "véritable" pornographie dans la société moderne est la bombe nucléaire, le racisme, l'impérialisme, etc. Les écrits féministes contemporains, par ailleurs, sont divisés, non seulement sur l'attitude à adopter à l'égard de la répression juridique de la pornographie, mais également à l'égard de la définition du phénomène lui-même.[3]

On semble retrouver un dénominateur commun dans l'analyse libertaire, radicale et celle de certaines féministes, soit le rejet du concept de pornographie selon le sens commun, en raison de son caractère beaucoup trop général, permettant ainsi à l'État d'étendre dangereusement ses pouvoirs de censure; ceux-ci pourraient s'accroître indéfiniment et empiéter indûment sur les droits individuels ou collectifs.

Les autres approches retenues pour la définition de la pornographie semblent souvent pécher par l'excès contraire, en ce sens qu'elles sont trop spécifiques ou restrictives (et, par conséquent, n'ont pas un caractère global ou ne permettent pas de poser un principe moral ou juridique général). On ne retrouve pas, par exemple de définition précise de la pornographie, même dans la loi; les critères juridiques s'élaborent plutôt dans le cadre d'accusations très spécifiques "d'obscénité" et "d'indécence", et ce mouvement s'opère en grande partie en réponse à des plaintes publiques individuelles, sans aucun lien entre elles.4 Nous reviendrons plus tard sur ces questions juridiques. Le Shorter Oxford English Dictionary, qui fait remonter la première apparition du mot "pornographie" à 1864, le définit uniquement comme:

> "La description du mode de vie, des habitudes, etc. des prostituées et de leurs clients; expression ou suggestion de sujets obscènes ou impudiques dans la littérature ou dans l'art."

À une époque où l'on trouve dans les lieux publics des centaines de magazines et de vidéocassettes consacrés à la description de la sexualité sous diverses formes, une telle définition de la pornographie pourrait sembler beaucoup trop restrictive.

Pour les fins de ce rapport, nous pouvons seulement nous borner à reconnaître que la définition de notre sujet fait continuellement l'objet de contestations. Nous discutons d'un domaine où il n'existe pas de consensus moral, juridique ou social absolu.

Cette étude sera répartie en trois sections. Dans la première section, je me propose d'étudier l'historique du droit pénal portant sur les questions d'obscénité en Angleterre et au Pays de Galles jusqu'en 1978. Dans la deuxième section, j'ai l'intention d'étudier le débat public sur la pornographie et les mesures législatives adoptées en Angleterre et au Pays de Galles depuis la publication du Rapport Longford en 1972 et, en particulier, de commenter le contexte et le fond de quatre nouvelles lois que le gouvernement conservateur a adoptées afin d'accroître son contrôle sur la documentation et les activités sexuelles. Enfin, dans la section 3, je veux me pencher de façon plus approfondie sur la plus récente manifestation d'anxiété publique en cette matière, soit la "panique" suscitée par les "video nasties" (des vidéocassettes contenant exclusivement des scènes de violence et d'horreur gratuites).

Section 1 L'historique et l'état actuel du droit pénal[5]

Les tentatives de définition juridique et de réglementation de l'obscénité au Royaume-Uni ne sont pas un phénomène nouveau. Depuis le règne d'Henri VIII (1509-1547), la littérature était assujettie à un certain contrôle, sous une forme ou sous une autre, bien que cette censure fut surtout animée par des motifs politiques et religieux, plutôt que simplement moraux. Toutefois, durant la plus grande partie du XVIIe siècle, qui fut témoin d'une franchise croissante dans les domaines du théâtre et de la littérature, aucune mesure ne fut adoptée pour élaborer ou créer une infraction pénale particulière. En 1727 toutefois, un certain Edmund Curll fut poursuivi pour avoir publié un tract intitulé Venus in a Cloister or The Nun in Her Smock. Lors d'une affaire précédente, Read, en 1708, où il s'agissait de la publication d'un tract semblable, le tribunal avait rejeté l'action en statuant que l'affaire devait être tranchée par les tribunaux ecclésiastiques. Toutefois, après de longs débats juridiques, la Cour du banc du Roi décida dans l'affaire Curll, qu'il existait effectivement une infraction temporelle de libelle obscène.

Cette infraction de libelle obscène a survécu jusqu'en 1959 en Angleterre et au Pays de Galles, mais n'a été invoquée que rarement. L'application des lois, à cette époque tout comme de nos jours, semble avoir été fonction de l'existence de profonds sentiments populaires, ou d'organisations actives. Entre 1802 et 1817, un organisme connu sous le nom de Society for the Suppression of Vice a intenté avec succès environ 40

poursuites contre ce qu'il appelait "un flot pestilentiel de livres et de publications blasphématoires, licencieuses et obscènes". Quarante ans plus tard, en 1857, Lord Campbell, alors juge en chef, présenta un projet de loi visant à réprimer la prolifération de ces écrits. Les débats sur la Lord Campbell's Act (comme on est venu à la nommer) furent surtout marqués par les nombreuses critiques formulées au sujet de l'absence d'une définition du terme "obscénité"; de fait, la Lord Campbell's Act (ou la Obscene Publications Act de 1857) laissa aux tribunaux le soin de définir cette notion. L'inévitable cause type survint en 1868. Dans cette affaire, des juges siégeant à Wolverhampton avaient décidé qu'il fallait détruire les copies d'un pamphlet écrit par M. Henry Scott, un membre de la Protestant Electoral Union et intitulé The Confessional Unmasked; showing the depravity of the Romish priesthood, the iniquity of the Confessional and the questions put to females in confession. M. Scott interjeta appel du jugement du tribunal, sur lequel siégeait le juge Benjamin Hicklin, soutenant qu'il n'avait pas publié le pamphlet pour en retirer un bénéfice matériel, ni "pour porter atteinte à la moralité". Son appel fut rejeté par les juges de la Cour du Banc de la Reine en avril 1868, et le jugement de la cour d'appel dans ce qu'il est convenu d'appeler "l'affaire Hicklin", est resté fameux pour la formulation avancée par le juge en chef, Sir Alexander Cockburn:

> "Je pense que le critère de l'obscénité consiste ... à déterminer si le sujet qualifié d'obscène a tendance à dépraver et à corrompre les personnes dont l'esprit est ouvert à ces influences immorales et entre

les mains desquelles ce genre de publication est susceptible de tomber." ([1868] L.R. 3, Q.B. 360, p. 361)

Le "critère Hicklin" élargissait considérablement l'éventail des articles et publications passibles de poursuites en raison de leur caractère obscène". Dans les années 1870, des poursuites furent intentées avec succès contre des textes comme The Fruits of Philosophy: An Essay on the Population Problem (au motif qu'il encourageait le contrôle des naissances) et contre divers écrits de Zola, Flaubert, De Maupassant et Gautier (ces poursuites étant organisées par une organisation puritaine et xénophobe appelée la National Vigilance Association); durant la même période, les éditeurs, craignant l'impact de ce nouveau critère, refusèrent d'éditer des auteurs comme Havelock Ellis, George Moore et Edward Carpenter. Comme l'a observé Geoffrey Robertson, il subsistait une contradiction fondamentale:

"Pendant que les écrivains sérieux faisaient l'objet d'une surveillance étroite, la pornographie la plus laide continuait à prospérer ... la répression ne s'exerçait qu'en surface, et même la Vice Society en vint à déplorer que 'malheureusement, une longue expérience démontre que, même si l'on applique sévèrement la loi pendant une longue période avec de bons résultats, les infractions de cette nature ont toujours tendance à se manifester de nouveau'." (Robertson, 1979, p. 33)

M. Robertson souligne les effets contradictoires du critère Hicklin, en faisant remarquer que le jugement de la Cour du Banc de la Reine fut suivi par la publication des "grandes oeuvres de la lubricité victorienne", qui ne furent l'objet d'aucune poursuite, soit:

> "Lady Bumtickler Revels (1872); Colonel Spanker's Experimental Lecture (1879); The Story of a Dildoe (1880); My secret Life (1885); pour ne pas mentionner un classique intitulé: Raped on the Railway: A True Story of a Lady who was first ravished and then flagellated on the Scotch express (1894)." (Ibid.)

Le critère Hicklin est donc devenu le critère normal de l'obscénité en droit anglais et a été évidemment accepté comme la définition juridique de l'obscénité au Canada, ainsi qu'en Australie et aux États-Unis. Ce critère a également survécu pendant très longtemps en Angleterre et au Pays de Galles, restant intact jusqu'à l'adoption de la Obscene Publications Act de 1959 (qui ne l'a même pas abrogé complètement, mais l'a plutôt intégré à la nouvelle loi).

La Obscene Publications Act de 1959 est le résultat d'autres affaires où il fut jugé que des "écrits sérieux" contevenaient à la disposition relative au libelle obscène de la loi de 1857. Le processus s'engagea en 1954 en raison d'une affaire provoquée par la détermination du Procureur général à interdire la vente de romans de quatre sous, y compris ceux d'un certain Hank Jansen, qui avaient été identifiés comme une cause des

infractions sexuelles lors d'une conférence d'Interpol l'année précédente. L'éditeur accusé décida de se défendre en soutenant que la prose de M. Jansen n'était pas plus explicite que celle qu'on pouvait trouver dans les livres publiés par les éditeurs les plus réputés de Grande-Bretagne. Il présenta en preuve des passages de certains textes récents. Cette manoeuvre provoqua la mise en accusation, devant la Central Criminal Court, de trois importants éditeurs britanniques (Heinemann, Hutchinson et Secker et Warburg). Les procédures judiciaires qui s'ensuivirent laissèrent la législation sur l'obscénité d'Angleterre et du Pays de Galles dans un état de confusion totale.[6] La Society of Authors constitua presque immédiatement un comité, présidé par Sir Alan Herber, afin de réclamer une réforme de la loi.

Les propositions de la Society of Authors furent étudiées par des Comités choisis de la Chambre des communes en 1957-58, mais il fallut un projet de loi privé, présenté par M. Roy Jenkins, pour en accélérer l'adoption. Ce projet de loi, qui fut considérablement modifié lors de son adoption par le Parlement, devint la Obscene Publications Act de 1959.

Comme l'a fait remarquer l'auteur de la remarquable annexe du Rapport Williams, la Obscene Publications Act:

> "... représentait un compromis entre les parrains du projet de loi et le gouvernement. On réussit à protéger la littérature en prévoyant qu'il fallait considérer l'ensemble d'un ouvrage publié et le juger

par son effet sur les personnes susceptibles de le voir, plutôt que sur toutes personnes entre les mains desquelles l'ouvrage pouvait tomber; on stipula également qu'il était possible d'invoquer une défense dite de "bien public", en présentant des preuves du mérite artistique, littéraire ou scientifique de l'oeuvre. Afin de contrebalancer cette liberté accrue consentie à la littérature, la loi visait en même temps à réprimer plus efficacement la pornographie et particulièrement, en facilitant les procédures de saisie des articles obscènes et en élargissant les pouvoirs de la police. Cette loi ne se contentait donc pas de remplacer la common law relative à l'obscénité - bien qu'elle n'abolît pas l'infraction de libelle obscène - mais aussi la Lord Campbell's Act de 1857." (Williams, 1979, p. 170 S 11)

Bien qu'elle fût l'aboutissement d'un projet de loi privé, la première Obscene Publications Act fut adoptée par une Chambre des communes dominée par un Parti conservateur à caractère réformiste et par un Secrétaire de l'Intérieur réformateur, R.A. Butler (qui fut nommé Lord par la suite); par ailleurs, elle coïncida étroitement avec l'adoption de législations limitant l'imposition de la peine capitale (Homicide Act, 1957), décriminalisant le suicide (Suicide Act, 1961) et de lois relatives aux jeux et paris. L'ensemble de ces lois a donc été perçu par la suite comme la première phase d'une période de législation "permissive" dans la Grande-Bretagne d'après-guerre.

La deuxième phase de "permissivité" est identifiée avec le mandat de M. Roy Jenkins à titre de Secrétaire de l'Intérieur dans le gouvernement travailliste (de 1964 à 1970). Durant cette période, le Parlement adopta des lois abolissant définitivement la peine capitale (Murder (Abolition) Act, 1965); décriminalisant les actes d'homosexualité en privé entre personnes consentantes (Sexual Offences Act, 1967); légalisant la planification familiale, l'avortement et le divorce; abolissant la censure du théâtre exercée par le bureau médiéval de Lord Chamberlain; et légalisant les divertissements publics le dimanche. En 1964 toutefois, au début de cette phase de réforme "permissive", la Chambre des communes adopta une deuxième Obscene Publications Act qui visait deux principaux objectifs, aucun d'entre eux n'ayant un caractère particulièrement permissif. Le premier résultait des problèmes rencontrés pour obtenir la preuve d'une infraction. Dans les affaires décidées après 1959, les tribunaux avaient décidé que le fait de placer des articles dans une vitrine en y indiquant le prix ne constituait pas une "offre de vente", et ils avaient également statué que la vente d'articles à des policiers ne risquait pas "de les dépraver et de les corrompre", compte tenu de leur grande expérience. La Loi de 1964 essayait de remédier à ces problèmes de preuve en créant une nouvelle infraction: la possession d'un article obscène dans un but lucratif.

Le deuxième objectif de la Loi de 1964 consistait à permettre à la police de saisir des négatifs photographiques: les tribunaux avaient décidé que ces négatifs n'entraient pas dans la définition des "articles"

au sens de la Loi de 1959. La Loi de 1964 assujettit à la législation existante tout article destiné à être utilisé pour reproduire d'autres articles.

Nous mentionnons ces deux aspects plutôt techniques de la Loi de 1964 dans un but bien particulier. Il est assez évident que cette Loi ne constituait pas une législation "permissive", et il est également clair que la Loi initiale de 1959 ne visait aucunement à faciliter ou à consacrer la publication ou la consommation de pornographie au Royaume-Uni. Certains acteurs importants de la réforme de la législation sur l'obscénité au cours de cette période désiraient avant tout protéger la littérature sérieuse destinée aux adultes contre le harcèlement juridique qui avait suivi la Lord Campbell's Act de 1857, et qui s'était répété avec les poursuites intentées contre des maisons d'édition britanniques sérieuses au début des années 1950. L'intention secondaire des Secrétaires de l'Intérieur de 1959 et de 1964, MM. R.A. Butler et Roy Jenkins, semble avoir été d'aider la police dans ses poursuites, en particulier contre les magazines pornographiques. Ces intentions assez pragmatiques et délibérées ont toutefois été mises quelque peu à l'écart au profit d'une philosophie relativement nouvelle quant au rôle de l'État dans la réglementation de la moralité des citoyens. Cette philosophie avait été élaborée clairement et intentionnellement dans un rapport fameux, publié en 1957, suite aux délibérations d'un comité du Secrétariat de l'Intérieur, présidé par Lord Wolfenden.

Le comité Wolfenden avait été initialement mis sur pied en réponse à une anxiété croissante face à une croissance supposée de la prostitution et de l'homosexualité dans la capitale britannique;[7] mais le rapport publié par le comité a un caractère inhabituel pour un document gouvernemental produit dans de telles circonstances. Le rapport Wolfenden constitue un énoncé mesuré et relativement résolu de la stratégie gouvernementale en matière de réglementation morale: il ne s'agit d'aucune façon d'une réaction simpliste à la panique générale entourant sa création.[8] La stratégie du rapport Wolfenden est énoncée assez clairement dès le début du document:

> "Nous reconnaissons sans ambiguïté que les lois de toute société doivent être acceptables pour le sens moral général de la collectivité. Mais nous n'avons pas pour mandat de nous pencher sur les questions de conduite morale privée, sauf dans la mesure où elles ont des conséquences directes pour le bien public. En cette matière, la fonction (du droit) consiste selon nous à préserver la décence et l'ordre publics, à protéger les citoyens contre ce qui peut les offenser, et à ériger des mesures de sécurité suffisantes contre l'exploitation et la corruption d'autrui ... À notre avis, le droit ne doit pas s'immiscer dans la vie privée des citoyens, ou chercher à imposer un type de comportement particulier ... À moins que la société ne tente délibérément, par le biais de la législation, d'établir un parallélisme entre la criminalité et le péché, il faut conserver un domaine de moralité et d'immoralité privée dont, purement et

simplement, le droit ne devrait pas se mêler". (Wolfenden, 1957, pp. 9-10, 24).

La stratégie élaborée dans le Rapport Wolfenden établissait donc une très nette distinction entre les "péchés" privés et les infractions publiques. Dans une telle perspective, certains aspects choisis de l'activité sexuelle (comme les activités homosexuelles mâles, en privé, entre personnes consentantes, et la prostitution organisée hors du domaine public) ne devraient pas être criminelles: toutefois, si ces activités ont lieu en public, elles devraient être considérées comme des infractions contre l'ordre public, et non comme des infractions morales. Toutefois, on ne devrait pas confondre cette reformulation du caractère des infractions sexuelles commises en public avec de la "permissivité": l'une des principales recommandations du Rapport Wolfenden prévoyait l'augmentation substantielle des sanctions imposées pour la sollicitation persistante, des amendes croissant progressivement pour les récidivistes, et une peine maximale de trois mois d'emprisonnement. Il faut bien avouer que le fondement de ces propositions avait clairement un caractère sexiste:

"... c'est un fait pur et simple que les prostituées s'affichent plus souvent et de façon plus ouverte que leurs clients éventuels, et que leur présence continuelle constitue un affront à la décence des citoyens ordinaires." (Wolfenden, 1957, p. 87)9

Toutefois, comme les commentateurs l'ont fait remarquer par la suite, c'est surtout la visibilité de la prostitution qui offensait la décence, et le sujet qu'on estime être offensé par cette visibilité semble bien être le fameux homme "bien pensant de l'omnibus de Clapham" (qu'imagina par la suite Lord Devlin dans son ouvrage marquant, The Enforcement of Morals) dont le point de vue devrait être protégé par la force du droit (Devlin, 1965). L'intervention du droit dans le domaine public est donc fonction des comportements publics "respectables" que cet hypothétique "homme bien pensant" est disposé à tolérer. Les comportements "intolérables" (c.-à-d. non respectables) ne sont aucunement "permis". La respectabilité du domaine public exige que les manifestations individuelles de la sexualité aient toujours lieu en privé.

Un examen de la législation "permissive" des années 1957-59 et 1964-69 révèle d'ailleurs que la quasi-totalité de ces lois avaient un double caractère. D'une part, on assistait à une "privatisation sélective" (et partant "permissive") de certains aspects du comportement en question (les motifs de divorce ont perdu, par exemple, de leur caractère public et monolithique et l'on a fait place aux sentiments et aux besoins personnels); d'autre part, cependant, on a accru les pouvoirs de l'État dans la détermination des conditions de règlement des divorces (au sujet, par exemple, du partage des biens, de la garde des enfants, etc.). On retrouve cette même "double taxonomie" - "privatisation sélective" et rationalisation du rôle de l'État dans la défense du domaine public - dans les réformes adoptées au cours de ces périodes, et en particulier en ce qui

a trait à l'avortement, à la planification familiale et à l'homosexualité.10

Les adversaires des Secrétaires de l'Intérieur réformateurs, selon qui ces réformes étaient exagérément libertaires, ou équivalaient même à laisser une totale liberté aux pornographes, étaient donc largement déphasés. Un critique fameux de l'attitude "permissive" de M. Roy Jenkins durant son mandat de Secrétaire de l'intérieur, M. Cyril Black, député conservateur de Lauth dans le Lincolnshire, tenta à plusieurs reprises vers la fin des années soixante d'embarrasser le Secrétaire de l'intérieur; en 1967, il réussit finalement à convaincre un tribunal de décerner un mandat permettant à la police de saisir tous les exemplaires de Last Exit to Brooklyn. Le gouvernement réagit en incluant dans une Criminal Justice Act subséquente une modification empêchant les juges de paix de décerner des mandats sous l'autorité de l'article 3 de la Obscene Publications Act, sauf sur demande de la police, ou du Procureur général ou en son nom: le gouvernement put ainsi préserver la distinction cruciale du Rapport Wolfenden, laissant à l'État la seule responsabilité de la défense du domaine public, tout en limitant ses pouvoirs d'intervention (sous l'influence d'un groupe de pression quelconque ou à sa propre initiative) dans la moralité privée des citoyens (en l'occurrence, les goûts des adultes en matière de lecture).

La période s'étendant de l'adoption de la Obscene Publications Act en 1964 jusqu'à la fin des années 1970 au Royaume-Uni a été marquée par des débats moraux extrêmement animés et par plusieurs procès qui ont défrayé les manchettes,[11] mais l'évolution du droit n'a pas menacé (jusqu'à une date très récente) la prééminence générale de la stratégie élaborée dans le Rapport Wolfenden. La meilleure façon de décrire une grande partie de l'activité législative de cette période serait de la qualifier de rationalisation du droit existant. Ainsi, la Criminal Law Act de 1977 contenait par exemple certaines mesures visant à assujettir la projection des films aux Obscene Publications Acts, (ces films étant auparavant régis par les règles de common law relatives à l'indécence). Les films étaient évidemment soumis à la censure au Royaume-Uni, tout comme ils le sont au Canada (le Board of Censors étant cependant national, plutôt que provincial); mais l'utilisation, en 1975, de l'infraction d'indécence de common law contre un film projeté dans un cinéma public a convaincu l'industrie cinématographique qu'il valait mieux pour elle être régie par la Loi de 1959 que par la common law.

Avant d'analyser les diverses campagnes menées (avec un succès croissant) contre les formes existantes de "réglementation morale" au Royaume-Uni, il convient d'examiner l'évolution de certaines lois connexes. Deux des lois les plus pertinentes à cet égard ont été adoptées en réponse à des "paniques" suscitées par des problèmes particuliers.

La Childrens and Young Persons (Harmful Publications) Act de 1955, sur laquelle nous reviendrons dans la section 3 de ce rapport, est due à une hystérie assez vive provoquée par l'importation en Grande-Bretagne d'une nouvelle vague de bandes dessinées d'horreur, produites aux États-Unis, qui a atteint son point culminant en 1954.12 La Loi fut adoptée très rapidement, au motif qu'on sentait le besoin de prévenir une plus large diffusion de ces publications dépravantes. La Society of Authors (et d'autres organismes) protesta contre la rapidité avec laquelle la loi avait été adoptée, et se dit préoccupée du caractère fragmentaire de la Loi. Celle-ci était néanmoins destinée à faire partie en permanence de la législation sur l'obscénité au Royaume-Uni; elle reste en vigueur de nos jours, ayant été renouvelée par la Expiring Laws Act de 1969.

Plus récemment, en juillet 1978, la Chambre des communes a unanimement approuvé la Protection of Children Act, afin d'empêcher l'exploitation des enfants dans la production du matériel pornographique. La Loi résulte d'un projet de loi privé présenté par M. Cyril Townsend, mais elle a été rédigée en étroite collaboration avec un important groupe de pression, sur lequel nous reviendrons dans un moment, appelé la National Viewers and Listeners Association.

Avant de se pencher sur la NVALA et ses récentes victoires dans les luttes entreprises en vue d'une réforme législative, nous voudrions clairement souligner que l'éventail législatif à la disposition du gouvernement du Royaume-Uni avant 1978 n'était aucunement limité aux lois

que nous avons commentées: les Obscene Publications Acts, la Children and Young Persons (Harmful Publications) Act et la Protection of Children Act, ainsi que l'infraction de libelle obscène de common law. Les gouvernements pouvaient utiliser (et ils l'ont d'ailleurs fait) la législation régissant l'ordre public dans les matières relevant de la compétence locale (comme la City of London Police Act de 1839) afin de contrôler l'affichage des publications indécentes; les autorités avaient également le pouvoir (aux termes de la Customs Consolidation Act de 1876) d'intercepter le courrier qu'elles soupçonnaient de contenir des publications obscènes en voie d'importation au Royaume-Uni. La Post Office Act de 1953 permettait la saisie et la destruction des articles indécents ou obscènes trouvés dans le courrier, et ce pouvoir a été largement utilisé, bien que ces interventions n'aient pas entraîné de nombreuses poursuites. Les Vagrancy Acts de 1824 et de 1834 interdisaient l'affichage public de tout imprimé ou image obscènes, ou "toute autre exposition indécente"; ce pouvoir a également entraîné d'innombrables confiscations, mais peu de poursuites. Enfin, comme nous l'avons déjà mentionné, l'article 2 de la Theatres Acts de 1968 permet au Procureur général de porter des accusations d'obscénité contre un cinéma (il s'agit d'un pouvoir nouveau, puisque la réglementation morale de la scène était autrefois la prérogative du Lord Chamberlain).

Il ressort clairement des commentaires précédents que les gouvernements du Royaume-Uni avaient en 1978 un éventail de pouvoirs juridiques à leur disposition pour réglementer l'obscénité et la pornographie, et que la qualification "permissive" attribuée à la

législation existante semble plutôt inexacte. Comme nous le verrons dans la section 2, une grande partie des critiques exprimées à l'égard de la législation existante vise essentiellement la difficulté d'application des lois, plutôt que leur forme ou l'intention législative qui les anime.

Section 2 Le débat public et l'évolution législative au sujet de la pornographie, depuis le Rapport Williams

La substance et l'esprit des lois sur l'obscénité au Royaume-Uni ont été reformulées très rapidement au cours des cinq ou six dernières années. Aucun observateur sérieux ne saurait nier que ces modifications résultent en grande partie des activités de divers groupes de pression moralistes, dont le plus important est la National Viewers and Listeners Association. Nous devons discuter de cette organisation et de ses objectifs avant de rendre compte de son influence récente.[13]

La NVALA est née des efforts incessants de l'ancienne directrice d'une école secondaire pour jeunes filles de Madeley, Shropshire, Mme Mary Whitehouse. Ce qui n'était au début qu'un groupuscule, initialement préoccupé de la simple mention de la sexualité prémaritale (et appelé alors "Clean-Up TV"), est devenue depuis une association, présidée par Mme Whitehouse, regroupant plusieurs milliers de membres; elle est bien connue pour l'étroite surveillance "morale" qu'elle exerce sur les émissions de télévision (son principal objet de préoccupation) à l'égard des questions d'ordre sexuel en général, mais également de questions beaucoup plus nettement politiques (comme la censure de fait du Sinn Fein et de l'IRA à la télévision britannique, que la NVALA appuie sans réserves). Durant les dernières années, toutefois, Mme Whitehouse et certains de ses partisans ont envisagé la possibilité d'une censure plus efficace des théâtres et cinémas privés, et des magazines et vidéocassettes pornographiques. M. Raymond Blackburn a connu une certaine notoriété dans la deuxième moitié

des années 70, par exemple, en raison de ses fréquentes tentatives de poursuites privées pour étalages indécents et obscénité contre des compagnies de cinéma et des commerçants; la manifestation la plus connue, The Festival of Light[14] (auquel Mme Whitehouse a étroitement collaboré) a également permis, au début des années 1970, de persuader Lord Longford, un pair travailliste, de mener une importante "enquête publique" sur la pornographie. Les recherches menées par le comité Longford (qui ont d'ailleurs conduit un gentilhomme chrétien, plutôt conservateur, à assister en observateur à des "spectacles sexuels" sur scène, dans le quartier mal famé d'Amsterdam) ont fait l'objet de nombreux reportages dans la presse du Royaume-Uni. Le document rédigé à la suite de cette étude, simplement intitulé Pornography-the Longford Report, fut un succès de librairie et continuera à alimenter les débats publics pour quelque temps encore (cf. Longford 1972).

On peut distinguer trois principales cibles dans le Rapport Longford.[15]

L'une des principales cibles du comité Longford était les travaux sociaux scientifiques sur la pornographie qui étaient alors disponibles et en particulier, ceux de M. Berl Kutchinsky au Danemark. M. Kutchinsky avait récemment publié aux États-Unis des travaux visant à démontrer que des baisses sensibles de certaines infractions sexuelles à Copenhague (exhibitionisme, agressions sexuelles et infractions sexuelles mineures) pouvaient s'expliquer par l'abolition de toutes les restrictions juridiques sur la pornographie au Danemark en 1969[16] (cf. Kutchinsky, 1970). L'un

des thèmes essentiels des travaux de Kutchinsky était que la pornographie avait un effet cathartique sur les délinquants sexuels en puissance, puisqu'elle fournissait un exutoire à leurs pulsions sexuelles. Le rapport Longford consacre des efforts considérables à attaquer et à miner la crédibilité des recherches de M. Kutchinsky. Plus tard, dans les années 70, la NVALA a parrainé les recherches statistiques d'un psychologue australien, le Dr John Court, qui essayait d'établir une corrélation positive entre la quantité de matériel pornographique en circulation et le nombre de viols connus de la police dans certains pays (Court, 1976)17. Les travaux de M. Court suggèrent également fortement que la pornographie produit un effet d'accoutumance et que le consommateur - loin d'être "saturé" par un accès sans limite à la pornographie - développe constamment un désir de nouvelles satisfactions sexuelles, toujours plus élaborées. Selon M. Court, cela crée un marché de consommateurs de pornographie sado-masochiste, présentant des scènes de bestialité, mettant en scène des enfants ou exploitant les préjugés raciaux y compris, ultimement, les tristement célèbres "snuff movies". M. Court en tire la conclusion générale, formulée en termes mesurés dans ses écrits académiques, que:

> "... l'idéal de liberté pour les adultes doit être tempéré par le risque des préjudices causés à autrui (particulièrement ceux qui résultent de la présence d'adultes sexuellement perturbés dans la collectivité)... Des indications donnent à penser que ce risque est maintenant devenu un grave problème social."

Le comité Longford attachait une importance particulière aux critiques des travaux de Kutchinsky, parce qu'il y voyait un lien étroit avec l'échec des Obscene Publications Acts dans la répression de la pornographie au Royaume-Uni. Par exemple, la conclusion de M. Kutchinsky selon qui il pourrait exister un lien de causalité entre la disponibilité des magazines pornographiques et la diminution constatée du nombre d'agressions sexuelles contre les enfants, constituait un fondement solide (et apparemment "scientifique") à l'argument voulant que la pornographie ait des effets positifs "pour le bien public"; de telle sorte que les travaux de M. Kutchinsky furent fréquemment cités dans les affaires portées devant les tribunaux britanniques en application de la Loi de 1959, afin d'établir que:

> "... la publication de l'article en question est justifiée pour le bien public, puisqu'il est dans l'intérêt de la science, de la littérature, de l'art ou pour d'autres motifs d'intérêt général." (Obscene Publications Act, 1959, art. 4)

Par ailleurs, l'article 4 permettait aux défendeurs inculpés de possession ou de publication, d'articles obscènes de présenter "l'opinion d'experts sur la valeur littéraire, artistique, scientifique ou les autres mérites de l'article" (la poursuite était également autorisée à le faire). De 1960 à 1972, en particulier, on vit plusieurs spécialistes venir témoigner de la contribution de certains articles au "bien public", lors de nombreuses affaires importantes. Lors du fameux procès tenu en 1960 au sujet du livre de D.H. Lawrence, L'amant de Lady Chatterley - le premier procès où la défense de bien public fut invoquée - plus de 20 experts

vinrent témoigner des mérites littéraires du texte. La défense a également présenté des brochettes d'experts dans plusieurs autres affaires: Cain's Book d'Alexander Trocchi (un roman décrivant la vie d'un drogué new-yorkais, publié en 1965) (John Calder (Publications) Ltd. v. Powell 1965 2 Q.B. 327); Last Exit to Brooklyn de Hubert Selby Jr. (un roman décrivant la promiscuité homosexuelle et hétérosexuelle et la consommation de drogue) (R. v. Calder and Boyars 1968 52 C.A.R. 706); et l'affaire 'OZ' (le magazine marginal commenté ci-dessus) (R. v. Neville and Others (1972 56 C.A.R., p. 125). On a estimé (c'était au moins l'avis du comité Longford) que les arguments invoqués en défense par les experts dans ces affaires, ainsi que lors d'autres procès moins connus, avaient fortement influencé les jurys, et il était sans aucun doute devenu très difficile d'obtenir des condamnations aux termes de la Obscene Publications Act de 1959.[18]

Le rapport Longford a donc mené une attaque en règle contre la défense de bien public, soutenant que:

> "... bien que la défense de 'bien public' ait des antécédents honorables ... sa validité morale et intellectuelle est plus que douteuse. Elle n'est invoquée qu'à l'égard d'articles qui sont présumés avoir tendance à dépraver ou à corrompre, ce qui constitue l'essence même de l'obscénité au sens de la Loi de 1959. Ce moyen de défense revient en fait à affirmer que la valeur littéraire ou les autres mérites d'une oeuvre peuvent être tels qu'elle présente alors un intérêt 'pour le bien public', et que ses lecteurs devraient risquer de se laisser dépraver ou corrompre par elle. Cela n'a aucun

sens. M. John Montgomerie ... a fort justement déclaré 'qu'il est grotesque de mettre en opposition les mérites littéraires d'une oeuvre et la dépravation. Il y a tout lieu de penser que l'obscénité corrompt d'autant mieux qu'elle est bien écrite'." (Longford, 1972, pp. 368-9)

Le comité Longford s'est également élevé contre la définition de l'obscénité dans la Obscene Publications Act. Comme nous l'avons mentionné auparavant, le paragraphe 1(1) de cette Loi dispose que l'obscénité est assimilée à une "tendance à dépraver et à corrompre" l'auditoire entre les mains duquel ces publications sont susceptibles de tomber. Nous avons démontré que cette formulation présentait certaines difficultés juridiques fondamentales. Mais, selon le comité Longford, ces difficultés se sont manifestées en raison des tentatives faites pour excuser la pornographie dans certaines circonstances. Le comité estimait que ses objections avaient été "parfaitement résumées" dans une lettre écrite au Times par M. Nigel Nicholson (essayiste et historien anglais célèbre), qui est citée intégralement:

"L'affaire OZ jette de nouveaux doutes sur la définition légale de l'obscénité. L'expression 'tendance à dépraver et à corrompre' n'est pas suffisante; elle exprime le contraire de ce que l'on veut dire habituellement.

Si un exhibitionniste s'expose dans un parc à une fillette, cette vision scandaleuse risque plus de la mener au célibat que de l'entraîner vers la prostitution. L'expression 'dépraver et corrompre' pourrait excuser la vente de pornographie dans une maison

close, parce que ses clients ne peuvent être plus corrompus qu'ils ne le sont déjà. Une publication ou un spectacle peuvent être si répugnants que les défendeurs pourraient soutenir (ils l'ont d'ailleurs fait dans l'affaire Oz) que, loin d'encourager la perversion, ils contribuent à dégoûter les spectateurs de son idée même. La logique de la définition actuelle de l'obscénité revient donc à affirmer que plus la pornographie est dure, plus elle a un effet dissuasif et, partant, plus grande est sa valeur sociale.

La pornographie est un mal en soi, et le droit doit l'affirmer clairement." (The Times, 9 novembre 1971)

Afin que ce principe puisse être inscrit dans la loi, et que l'on abandonne la défense de bien public et la formulation restrictive exigeant la preuve "d'une tendance à dépraver et à corrompre", le Comité Longford a proposé une ébauche de projet de loi, destinée à remplacer la législation existante sur l'obscénité. Aux termes de ce projet de loi:

"un article ou une représentation est obscène s'ils ont pour effet général d'outrager les normes contemporaines de décence ou d'humanité acceptées par le grand public." (Longford, 1972, p. 371)

Selon cette définition, il ne serait plus nécessaire de prouver que la publication pourrait avoir pour effet de corrompre les moeurs; elle aurait également l'avantage de permettre un contrôle sur des questions autres que la sexualité. Les auteurs du rapport estimaient que cette définition

permettrait d'intenter des poursuites contre les publications qui dressent un "portrait flatteur" de la narcomanie; le rapport se poursuivait ainsi (sans plus élaborer):

> "Elle vise les descriptions horrifiantes et dégradantes de la violence, qui sont si courantes de nos jours."

Il existe une troisième préoccupation essentielle, qu'on retrouve en filigrane derrière les critiques du Rapport Longford au sujet de l'analyse sociale scientifique des effets cathartiques de la pornographie, et ses tentatives d'abolir les limitations juridiques aux poursuites intentées aux termes de la Loi de 1959. Exprimé simplement, cet objectif consiste à proposer une justification philosophique qui se substituerait à la notion de "réglementation morale" élaborée dans le Rapport Wolfenden.

Une grande partie des idées développées au sujet de la réglementation morale dans le Rapport Wolfenden épouse les arguments avancés par Mary Whitehouse et la National Viewers and Listeners Association. Les objections initiales de Mme Whitehouse concernaient l'acceptation croissante, au début des années soixante, de l'idée de couples faisant "l'expérience" de la sexualité prémaritale. Cette notion allait à l'encontre de sa croyance "chrétienne" fondamentale - pour reprendre sa propre expression - en la nécessité de réprimer les préoccupations sexuelles, même au sein du mariage: la sexualité n'est considérée en ce sens que comme un élément très mineur dans l'établissement et la poursuite d'une vie familiale. La "vie familiale" est fondamentalement perçue comme une responsabilité

(acceptée au nom de Dieu) en vue de la formation morale des enfants. Cette formation morale exalte les valeurs de la bonne littérature, de l'art et de la nature mais réprime soigneusement toute considération de la sexualité en ces matières. Pour Mme Whitehouse, les discussions franches sur la sexualité par des adultes ou par toute autre personne, en public, constituent un "empiètement sur l'innocence" de l'adolescence. On constate donc que sont ainsi réprimés certains aspects - que d'aucuns qualifieraient de naturels - de l'espèce humaine (soit ses dimensions érotique et sensuelle). Il est également intéressant de souligner, compte tenu des préoccupations abordées dans la section 3 de ce document, que la NVALA se préoccupe presque exclusivement de la censure de la violence et de l'horreur imaginaires à la télévision, au cinéma et sur les vidéocassettes, et qu'elle ne semble pas s'inquiéter outre mesure de la violence et de l'horreur présentes dans l'univers politique quotidien. La NVALA n'a pas de programme pour la recherche d'une paix réelle et de l'harmonie dans le monde, mais seulement un programme pour la supression de la violence déplaisante dans le monde de la fiction ou de l'imagination.

La justification de la vie familiale constamment évoquée dans les propos de Mary Whitehouse n'est pas utilitariste, en ce qu'elle ne prétend pas conditionnellement que son point de vue sur la primauté de la vie familiale, considérée comme source de l'apprentissage moral individuel, constitue le moyen de construire une société juste ou acceptable (pour les femmes et les hommes, les adultes et les enfants, etc.). Sa conception de la famille est fondée presque exclusivement sur l'enseignement de l'Église chrétienne et c'est vers cet idéal absolu de la famille, et de son rôle

moral - pour ne pas dire religieux, que tendent les efforts de Mary Whitehouse.

Dans cette conception du monde, la cause de l'insatisfaction dans les vies personnelle, morale, sexuelle et privée n'est pas due au développement d'un nouvel intérêt, sincère ou utile, envers la sexualité ou une plus grande indépendance chez l'être humain. Pas plus que cette insatisfaction ne résulte des nouvelles tensions au sein de la famille, voire même que les modifications de la cellule familiale ne soient dues à l'entrée d'un grand nombre de femmes sur le marché du travail, ou aux autres transformations profondes survenues après la guerre dans l'économie des sociétés occidentales. Selon cette conception, l'insatisfaction provient de l'effritement de la primauté absolue de l'institution familiale sur l'individu. Pour Mme Whitehouse, la NVALA et le comité Longford, l'une des principales raisons de cet effritement de la famille fut l'émergence de ce que Mary Whitehouse qualifie de "libéral humanisme". Des spécialistes "libéraux" ou "humanistes" se sont appropriés des postes influents de la vie britannique dans les domaines du théâtre, de l'art, de la littérature, du droit, de la politique et des mass-médias, et ont permis la diffusion de rhétoriques et d'idéologies laïques et relativistes. La "libéralisation" de l'avortement, de la législation sur le divorce, de la censure au cinéma et de la législation sur l'obscénité (dans son application) qui en est résultée constituait une menace permanente à la primauté de la famille (soutenue par l'État) en tant que source d'enseignement moral; la progression du libéralisme à la Wolfenden a d'ailleurs eu pour résultat, entre autres, de creuser l'écart entre l'idéal chrétien, selon lequel l'État soutient la famille dans son rôle de guide moral, et les tentatives

libérales-humanistes afin de créer des domaines de libre choix, où l'État ne pourrait s'immiscer.

Une grande partie des attaques menées au cours des années 70 contre "l'humanisme-libéral" et le réformisme de Wolfenden étaient fondées sur cet idéal chrétien fondamental de la famille. Toutefois, il est important de souligner l'existence d'un autre thème important dans de nombreux ouvrages critiques et particulièrement, dans les commentaires faits par Lord Longford lui-même et par le pédagogue de Cambridge, M. David Holbrook (Holbrook, 1972). Ce dernier s'élevait contre "l'objétisation" (la déshumanisation) des femmes dans la quasi-totalité des films et magazines pornographiques; il soulignait également la façon dont une grande partie de la pornographie moderne la plus explicite contribue à créer un idéal et des attentes "impossibles" et irréelles, non seulement à l'égard des femmes, mais aussi à l'égard des relations entre hommes et femmes en général. La pornographie aplanit les contradictions et les tragédies, ainsi que les véritables victoires de l'existence humaine qui, pour M. Holbrook, conditionnent toutes les grandes représentations littéraires et cinématographiques de la condition humaine. Cette objection d'esthète formulée par David Holbrook avait certainement un caractère élitiste (venant d'un universitaire très cultivé); sa critique visait l'effet grossier et désensibilisant de la pornographie, vue comme littérature. Il se pourrait fort bien, toutefois, que le plus grand attrait exercé par la pornographie n'ait pas grand'chose à voir avec ses qualités littéraires. Néanmoins, les arguments de M. Holbrook venaient renforcer les objections, en grande partie religieuses, de la NVALA.

Ces critiques de plus en plus virulentes et fréquentes contre la pornographie et contre l'insistance mise par Wolfenden sur la protection simultanée de l'ordre public et des libertés individuelles étaient le fait d'éléments influents sur la droite de l'échiquier politique britannique. Cela ne signifiait pas, toutefois, qu'aucune voix progressiste ou social-démocrate ne s'élevait contre la pornographie; mais la majorité au sein des partis libéral et travailliste britanniques, ainsi que dans les autres secteurs d'opinion organisés, appuyait généralement la stratégie Wolfenden, tandis qu'un groupe non négligeable de libertaires exprimait son scepticisme à l'égard des avantages de toute intervention étatique. Lors d'une série de conférences publiques sur le thème "criminalité, viol et gin", le professeur Bernard Crick a fait remarquer à juste titre, en termes élégants, que cette fixation sur la pornographie empêchait de s'occuper sérieusement d'autres problèmes relativement vitaux: l'amour, la réciprocité et la responsabilité dans les relations sexuelles "libérées"entre adultes. Le professeur Crick se rendait compte, étant social démocrate, que le défaut de régler ces problèmes laisserait de nombreuses personnes (surtout des femmes, probablement) dans le dénuement matériel; mais il n'était pas "matérialiste" au point de penser que les problèmes de l'amour de la société moderne (aussi déphasés soient-ils par rapport à la croyance traditionnelle en la permanence du mariage et en son caractère patriarcal) n'ont pas de qualités poétiques ou tragiques (cf. Crick, 1974).

C'est peut-être le mouvement féministe lui-même (mis à part la N.V.A.L.A.) qui s'est élevé avec le plus d'insistance contre la pornographie. Les accusations portées contre la pornographie dans certains journaux (les "pages féminines" du Guardian, de Spare Rib et autres) redoublèrent de vigueur lorsqu'il fut révélé que le "violeur de Cambridge" (un délinquant sexuel violent, qui avait terrorisé cette ville universitaire en 1976 et 1977) possédait une collection impressionnante de magazines pour adultes et, plus tard, par la longue série de meurtres de femmes commis par "l'éventreur du Yorkshire", Peter Sutcliffe, en 1980-81. Alors qu'elle était à la recherche de l'éventreur du Yorkshire, la police tenta d'imposer un couvre-feu aux femmes, ce qui provoqua l'indignation d'une grande partie de la population féminine (selon qui il s'agissait d'un problème de violence mâle contre les femmes) et de divers groupes féminins ("Angry Women", "Women against Violence against Women") alors engagés dans une série de campagnes politiques sous le thème "la pornographie est la théorie: le viol en est la pratique".

Les féministes organisèrent également des attaques directes contre les établissements consacrés au commerce du sexe" en divers endroits du pays, peignant des slogans sur leurs vitrines ou, à l'occasion, en vandalisant les lieux. À Londres, au moins deux importantes processions sous le thème "Take Back de Night" se déroulèrent dans Soho, les participants interpellant les propriétaires et les clients de ces établissements, d'autres manifestations furent tenues dans les bureaux du Sun, du Daily Star et du Daily Mail, afin de protester contre la publication - alors courante dans ces journaux - de photos de femmes à demi nues en page 3, et contre la

banalisation générale des problèmes féminins. (Voir, par exemple, l'article intitulé "Anti-Porn Arrests", dans le Guardian du 13 décembre 1980).19

Il est facile d'expliquer l'anxiété générale qui s'est développée à l'égard de la pornographie en Grande-Bretagne, durant cette période, particulièrement dans les milieux des intellectuels et des dirigeants religieux s'intéressant aux orientations générales de la société. On se plaignait généralement que la pornographie était de plus en plus envahissante et qu'il devenait impossible de s'y soustraire. Les protestataires signifiaient par là que l'on voyait de plus en plus de scènes de sexualité à la télévision; que la violence à la télévision devenait également plus courante (en particulier dans les émissions policières importées des États-Unis) et, en particulier que le nombre de magazines pornographiques en vente, même dans les magasins de quartier, dépassait tout ce qu'on avait vu jusqu'alors. On se plaignait, à cet égard, qu'il était devenu impossible pour le client "moyen" d'un magasin de quartier (de l'adolescent au retraité) d'éviter la vue de scènes vulgaires, troublantes ou violentes (ou possédant parfois ces trois caractéristiques à la fois) sur la couverture des magazines pornographiques. Certains observateurs mentionnaient également que les magazines pornographiques prenaient un caractère plus "extrême" et, en particulier, qu'ils étaient plus violents, montraient plus d'enfants et d'animaux et que l'exploitation y était généralement plus accentuée.

Les preuves empiriques apportées à l'appui de toutes ces allégations sont de valeur inégale. Aucune recherche longitudinale sérieuse n'a été

faite sur la progression de la représentation de la sexualité à la télévision britannique dans la période d'après guerre, et toutes les généralisations avancées à cet égard sont probablement fondées sur les relevés hebdomadaires que les membres de la NVALA présentent en guise d'analyse des émissions. Ces relevés ne nous apprennent strictement rien, par exemple, sur le contexte dans lequel une personne est apparue nue à l'écran, ni si la scène avait un caractère provoquant ou s'insérait "naturellement"dans l'émission. Ces rapports ont toujours tendance à faire état d'une détérioration des normes de la télévision en cette matière, mais on semble ignorer totalement les nombreuses émissions de télévision mettant en scène des blondes idiotes et des danseuses aux jambes effilées (émissions émaillées des blagues vulgaires de comédiens), qui étaient monnaie courante à la télévision britannique dans les années cinquante.

Les preuves d'une représentation accrue de la violence ne sont pas plus systématiques, et une bonne partie de la recherche sur les effets de cette violence est également assez embryonnaire.[20] Le nombre de feuilletons américains violents diffusés sur les diverses chaînes de télévision britanniques a certainement augmenté mais, étant donné qu'il existe maintenant quatre chaînes à la télévision britannique, qui diffuse toute la journée, la proportion des heures de télévision consacrées à ce genre d'émissions n'a peut-être pas augmenté. Par contre, le nombre de feuilletons policiers machistes, soi-disant "réalites" produits en Grande-Bretagne a indubitablement augmenté (The Sweeney, The Professionals, etc.);[21] on pourrait sans hésiter accuser ces émissions de glorifier la violence, et en particulier celle qui est exercée par les autorités elles-mêmes (des policiers "purs et durs").

La croissance de l'industrie des magazines pornographiques en Grande-Bretagne ne semble toutefois soulever aucun doute. Le comité Williams, sur lequel nous reviendrons dans un moment, a entrepris ses propres recherches sur "le tirage et le nombre de lecteurs des magazines pour adultes" au Royaume-Uni. En se fondant sur le volume réel des ventes de cinq magazines pour adultes (Club International, Mayfair, Men Only, Penthouse et Playboy (édition du Royaume-Uni)), les chercheurs ont estimé que ces magazines réunissaient au total 4 millions de lecteurs environ.[22] Ce chiffre pourrait s'élever à 6 millions, si l'on tient compte du grand nombre de magazines plus modestes disponibles en Grande-Bretagne (Williams, 1979, p. 256). La recherche a également démontré que le nombre de lecteurs de l'ensemble de ces magazines avait "considérablement" augmenté de 1970 à 1972, avait connu un léger déclin entre 1974 et 1976, puis une reprise en 1977 et était ensuite revenu à son niveau de 1976. Une enquête plus récente menée par M. Pratt révèle un déclin constant des ventes de ces magazines (ainsi que d'autres publications) consacrés au sexe, depuis 1978 (Pratt, 1984, tableau 1). Ce qui était de toute évidence une industrie en pleine expansion - la production de magazines pornographiques - pourrait maintenant avoir été sérieusement ralentie par les effets combinés de la récession économique et de la production massive de vidéocassettes pornographiques.

Il n'y aucun doute que le genre des magazines pornographiques communément répandus en Grande-Bretagne a évolué très rapidement durant cette période. Les éditeurs de magazines ont franchi de nouvelles limites afin de recruter un nouvel auditoire.[23] Le Rapport Williams fait état des initiatives de M. David Sullivan en 1973-74, en vue d'éditer des

magazines "plus scabreux et plus explicites", qu'il intitula Private et (fort effrontément) Whitehouse. Tout comme leur homologue américain (Hustler), ces magazines se spécialisent dans la publication de gros plans des organes génitaux féminins (et notamment de photos dites "tunnel shot") ainsi que par l'utilisation de mises en scène bizarres et "fantasques". L'augmentation du tirage de Whitehouse vers la fin des années 70 correspond au déclin du tirage de Playboy, qui avait systématiquement évité de s'orienter vers ce genre de photographies.

Le comité Williams fut donc mis sur pied dans une atmosphère de profonde anxiété à l'égard de la croissance de la littérature et des films pornographiques dans l'univers urbain britannique. Le comité fut en partie constitué en réponse aux préoccupations qui s'étaient fait jour en 1978 au sujet de l'exploitation d'enfants dont on soupçonnait certains producteurs de pornographie. Toutefois, on entendait aussi réaffirmer clairement qu'il ne devrait pas être aussi facile de se procurer ces magazines, qui avaient un tel pouvoir de corruption sur les mineurs. Bien que la police utilisât alors ses pouvoirs de saisie (que lui conféraient la Customs Consolidation Act et les Post Office Acts) avec une régularité croissante,[24] la croissance du marché légitime et la difficulté d'obtenir des condamnations sur des accusations d'obscénité menaçaient de saper la crédibilité de la Obscene Publications Act. Les éditorialistes et d'autres commentateurs évoquaient de plus en plus l'atteinte aux libertés individuelles que constitue le fait de ne pouvoir entrer dans un magasin de quartier, ou de passer devant un kiosque à journaux, sans être assailli par une image pornographique.

La meilleure façon de comprendre ce rapport consiste peut-être à le qualifier de tentative de sauvetage de la stratégie fondamentale du Rapport Wolfenden. Le comité réfute expressément l'argumentation, alors fort populaire, consistant à discerner un "rapport de cause à effet" dans le problème de la pornographie. Le comité recommande plutôt que le principal objet de la loi devrait consister à empêcher que certains types de publications n'offensent les "gens raisonnables", et aussi que les jeunes gens ne puissent se les procurer. Une autre préoccupation vient renforcer cet objectif, soit que la loi devrait intervenir en fonction du "préjudice causé ou occasionné par l'existence de ce matériel." (Williams, 1979, p. 153) Mais le Rapport entend également protéger le droit des adultes d'acheter la plupart des articles pornographiques disponibles, pour leur usage privé, puisqu'une "évaluation objective du préjudice probable ne permet pas d'imposer d'interdictions plus sévères." (Williams, op. cit., p. 160) Le résultat en est la principale recommandation du rapport Williams, soit la "restriction" apportée à l'étalage, à la vente, à la location, etc." des articles, de telle sorte qu'on ne puisse se les procurer que par la poste, ou les voir que "lors de représentations devant un auditoire restreint", ou dans des établissements spécialement désignés pour la vente de ces articles. Le Rapport Williams suggère que ces établissements:

a) devraient refuser l'admission aux personnes âgées de moins de 18 ans,

b) devraient installer un avertissement très visible près de toutes les voies d'accès à l'édifice, et

c) ne devraient afficher aucun signe visible par les personnes qui restent en-deçà des enseignes d'avertissement, à part le nom de l'établissement et une indication de ses activités. (Williams, op. cit., p. 160)

Il est intéressant de remarquer que "l'industrie du sexe", comme on la dénommait de plus en plus en Grande-Bretagne, avait déjà prévu une grande partie des propositions du Rapport Williams. La British Adult Publications Association Ltd. (BAPAL), fondée en mai 1977, avait déjà défini ses propres lignes directrices afin d'essayer d'empêcher la distribution des articles ou publications, auxquels des comités d'enquête comme le comité Williams pourraient s'objecter. Le conseil d'administration de la BAPAL était d'ailleurs présidé par M. John Trevelyan, un membre célèbre du British Board of Film Censors, alors en retraite;

"les lignes directrices interdisent les photographies de rapports sexuels - y compris la sexualité orale -, de toutes les formes d'activités sexuelles illégales et potentiellement préjudiciables, l'asservissement, la flagellation ainsi que les gros plans extrêmes des zones anales ou vaginales." (Herbert, 1978)

Le Rapport Williams (commandé par un gouvernement travailliste, mais présenté plus de deux ans après, en novembre 1979, à un gouvernement conservateur déjà au pouvoir depuis six mois) fut en grande partie ignoré par le nouveau gouvernement. D'aucuns pensent que le nouveau Secrétaire de l'Intérieur voulait laisser à l'industrie le temps de se policer elle-même. Selon une opinion plus plausible, les profondes convictions du

nouveau gouvernement en faveur de l'idéologie de libre entreprise l'empêchait de légiférer dans le domaine d'activité de cette industrie florissante. (Pratt 1981) Quoi qu'il en soit, l'industrie du sexe a sans aucun doute réagi, pour un temps au moins, à la simple menace de poursuites judiciaires:25 les vitrines des sex shops furent couvertes dans la plupart des centres urbains et en particulier dans Soho (le quartier de Londres où sont concentrés les établissements spécialisés dans le commerce du sexe), et des enseignes semblables à celles que recommandait le Rapport Williams s'offrent à toute personne sur le point d'entrer dans un de ces établissements. La législation de 1981 (voir ci-dessous) a donné un caractère permanent à cette auto-réglementation des sex shops.

Durant les trois premières années du premier gouvernement Tatcher, aucune mesure formelle ne fut prise contre l'industrie du sexe en Grande-Bretagne. Un observateur politique suggère avec sagacité que la véritable raison de l'inaction du gouvernement était due au fait que celui-ci n'avait aucune envie d'adopter le Rapport Williams, somme toute libéral et utilitariste, mais ne savait pas vraiment comment dissiper la totale confusion où était tombée la législation sur l'obscénité. (Benton, 1982, p. 11).

La première initiative prise durant le premier gouvernement Thatcher en vue de réformer la législation en cette matière résulte d'ailleurs d'un projet de loi privé, plutôt que d'une décision de principe du gouvernement lui-même. La Indecent Displays (Control) Act, qui représentait l'aboutissement d'un projet de loi présenté par M. Timothy Sainsbury, interdisait d'exposer des articles indécents en public, cette infraction

rendant son auteur passible d'une amende de 1 000 livres (environ 1 750 $), d'un emprisonnement d'au plus deux ans, ou de ces deux peines à la fois. L'objectif de cette législation consistait clairement à remédier aux problèmes de preuve créés par la Obscene Publications Act de 1959, le simple "étalage" d'articles obscènes devenant - en soi - une infraction pénale. La Loi adoptait aussi la proposition du Rapport Williams imposant l'affichage d'un avertissement à l'entrée des lieux contenant du matériel indécent, consacrant ainsi dans la loi ce que la plupart des commerçants de l'industrie du sexe avaient déjà mis en pratique.

En juillet 1982, toutefois, une autre initiative fut prise dans le cadre d'un projet de loi gouvernemental, mais dans un contexte inattendu. Greffé à la Local Government (Miscellaneous Provisions) Act (un document qui a été qualifié à juste titre de "macédoine de lois classifiant certains pouvoirs des autorités locales, y compris la réglementation de l'acupuncture, des comptoirs de nourriture à emporter et des interrupteurs pour enseignes lumineuses, destinés aux pompiers"; Benton, 1982, p. 10), se trouvait un article donnant aux autorités locales du Royaume-Uni (l'équivalent des conseils municipaux et des communautés urbaines au Canada) le pouvoir de mettre en place un système d'octroi de permis pour les "établissements faisant le commerce du sexe". Bien que Mary Whitehouse de la NVALA ait réclamé le crédit de l'adoption de cette mesure, ajoutant que le "mouvement de libération de la femme" l'appuyait, les recherches menées par le New Statesman indiquent plutôt que cette proposition résultait des pressions exercées par le Conseil municipal de Westminster. Westminster est l'arondissement de Londres qui englobe le célèbre quartier de Soho et qui réalisa au début des années 80 que l'industrie du sexe avait fini par

déloger une bonne partie de ses vieux restaurants et boutiques typiques. Selon le Westminster City Council General Purpose Committee, il y avait en 1982, 186 établissements spécialisés dans le commerce du sexe dans Soho: 35 cinémas projetant des films érotiques; 15 bars vidéo; 33 établissements projetant des vidéocassettes; 7 "peepshows"; 6 "salons de rencontres érotiques"; 21 clubs de strip-tease; 7 salons de massage et de sauna; et 62 sex shops.[26] Le Conseil désirait encourager une offensive législative généralisée,[27] afin d'enrayer la croissance du commerce du sexe dans Soho,[28] mais il se préoccupait également du fait que "le commerce" s'étendait aux autres parties du territoire placées sous son autorité (et en particulier Paddington et Victoria). Les arguments du Conseil de Westminster trouvèrent un écho favorable auprès du gouvernement, lorsque d'autres autorités locales anglaises commencèrent à exercer des pressions sur lui, se plaignant de la croissance inexorable des sex shops dans leur circonscription.[29] La Loi permettait aux conseils locaux d'utiliser le système de permis pour exclure complètement les établissements faisant le commerce du sexe des endroits que la loi qualifiait "de localités appropriées".[30]

Plus tard en 1982, le gouvernement décida de poursuivre son action et adopta la Cinematograph (Amendment) Act. Cette législation "venait combler une lacune de la Cinematograph Act de 1952, qui permettait la projection de films dans des endroits ne détenant pas de permis à condition que les personnes présentes dans l'auditoire soient membres d'un ciné-club." (Kuhn, 1984b, p. 10). La nouvelle loi assujettissait à la censure toutes les projections de films et de vidéocassettes (pour la première fois spécifiquement mentionnées) "organisées par des intérêts privés dans un but

lucratif". Tous les cinémas locaux du Royaume-Uni (même s'ils se définissaient comme clubs privés) devaient dès lors obtenir un permis "pour exercer leurs activités". Les établissements qui se spécialisent dans la projection de films pornographiques peuvent obtenir un nouveau certificat "réservé aux plus de 18 ans", mais l'on ne connaît pas encore exactement les critères utilisés par le British Board of Censors pour accorder ou refuser ce certificat. La Cinematograph (Amendment) Act - un document contenant des mesures juridiques substantives malgré qu'il ne comporte que neuf pages - représente un changement d'orientation important dans l'évolution de la réglementation morale après-guerre au Royaume-Uni puisque, comme le fait observer Annette Kuhn:

> "... durant les trois dernières décennies, la censure cinématographique a consacré ses efforts à la classification des films pour les auditoires adultes. Cette nouvelle mesure réintroduit une censure sévère des films pour auditoires adultes. D'où la définition du "public" - assujetti à la réglementation en d'autres mots - étendue à tous les endroits où des films sont projetés afin d'en tirer un bénéfice!" (Kuhn, 1984b, p. 10)

Mad. Kuhn souligne avec une pointe d'amertume que:

> "Cette législation contraste avec l'exemption prévue dans la Sex Discrimination Act. Étant donné maintenant que les autorités locales, aux termes de la Local Authority (Miscellaneous Provisions) Act de 1982, peuvent obliger les propriétaires des "établissements faisant le commerce du sexe" à obtenir un permis, tous les établissements où se

déroulent des représentations à caractère sexuel sont en fait devenus des endroits publics. (Ibid.)

Ne serait-ce qu'à cet égard, ces deux lois constituent un rejet très net de la stratégie Wolfenden, consistant à légiférer de façon à préserver simultanément l'ordre public et les libertés individuelles. La Local Government (Miscellaneous Provisions) Act constitue également un outil efficace pour couper court à des années de débats sur l'interprétation des films, entre les avocats, le censeur et les autres spécialistes de la question. La Loi définit ainsi l'objet du contrôle:

"les films animés, par quelque moyen qu'ils soient produits, qui

a) dépeignent ou concernent principalement, ou sont destinés à simuler ou à encourager

   i) l'activité sexuelle; ou

   ii) l'utilisation de la force ou de la contrainte associées aux activités sexuelles;

   ou traitent principalement de ces sujets; ou

b) dépeignent ou concernent principalement les organes génitaux ou les fonctions urinaires ou excrétoires,

   ou traitent principalement de ces sujets." (Annexe 3, article 3, p. 68)

Comme l'a fait remarquer Annette Kuhn, il s'agit d'une tentative remarquable, sans précédent depuis la Lord Campbell's Act, de formuler une "définition préalable du contenu des représentations qui seront assujetties à un contrôle." (Kuhn, 1984b, p. 11). Le fait que les tribunaux (et non

pas le British Board of Censors) devront statuer dans chaque cas laisse entrevoir la possibilité que des procédures judiciaires soient intentées afin d'empêcher la projection de films montrant la forme humaine nue.

La plus récente mesure législative du gouvernement britannique, la Video Recordings Act, représente également un type d'interventionnisme très direct dans des domaines que le Rapport Wolfenden aurait clairement considéré du ressort "privé". La loi, qui sera adoptée plus tard au cours de cette année, après lecture finale à la Chambre des communes, vise directement et ostensiblement un produit bien identifié - les vidéocassettes dépeignant "à quelque degré que ce soit" certains actes (non précisés) "de la sexualité humaine", "la mutilation, la torture ou autres actes de violence", ou "les organes génitaux humains", dans le but de les éliminer complètement du marché. La loi établira un organisme (le British Board of Film Censors, dans la phase initiale) chargé de classifier les vidéocassettes "appropriées pour la projection à domicile", et de les censurer si elles ne le sont pas. L'expression "à domicile" est élargie de façon à signifier que:

> "... la vidéocassette peut être projetée à des enfants de tout âge (avec ou sans réserves quant à l'à-propos d'un avis parental sur la présentation de l'ouvrage à des enfants, ou quant au caractère approprié de l'ouvrage pour des enfants)..." (Paragraphe 5(2))[31]

Les commerçants ou distributeurs qui offriront au public des cassettes n'ayant pas reçu la classification du BBFC s'exposeront à des amendes de 20 000 livres; et, ce qui est le plus inquiétant du point de vue des

nombreux partisans des libertés civiles qui critiquent cette nouvelle législation:

> "Le Conseil sera agrandi, afin qu'il puisse s'acquitter de son nouveau rôle de censeur: il obtiendra de nouveaux locaux et aura deux vice-présidents approuvés par le Secrétaire de l'Intérieur - le premier lien directement politique dans ses soixante-dix ans d'histoire". (Robertson, 1984)

La quasi-totalité des 6 000 titres vidéo actuellement en vente ou en location au Royaume-Uni devront être approuvés par le nouveau Conseil (les seules exceptions étant les cassettes éducatives, ou celles qui traitent des sports, de la religion ou de la musique).[32]

Le projet de loi contient plusieurs contradictions et introduit d'autres complications dans l'écheveau déjà complexe de la législation sur l'obscénité au Royaume-Uni. L'un des aspects les plus étranges de cette loi est que les émissions qui ont déjà été diffusées à la télévision doivent être soumises au Conseil avant de pouvoir être commercialisées de nouveau en vidéocassette. Par ailleurs, les distributeurs et les commerçants font face à des poursuites sur deux fronts: le fait que le BBFC ait donné une classification à une vidéocassette n'empêche pas le Procureur général, les services de police locaux ou les poursuivants privés d'intenter des poursuites contre les distributeurs ou les commerçants aux termes de la Obscene Publications Act en les accusant de vendre ou de louer des articles qui peuvent "avoir tendance à dépraver ou à corrompre."[33] La

Obscene Publications Act prévoit une peine maximale de trois ans pour avoir vendu un film jugé obscène par la suite.

De nombreux commentateurs britanniques, y compris certains partisans d'un renforcement de la censure, ont exprimé de vives réserves au sujet des pouvoirs que le gouvernement britannique s'est arrogé aux termes de la Video Recording Act. Toutefois, mes recherches m'ont également permis de constater que les grands objectifs de la loi n'ont pas soulevé de protestation généralisée.[34] Pour comprendre ce phénomène, il faut revenir sur les préoccupations qui se sont récemment manifestées au sujet du contenu et des effets, en Grande-Bretagne, de cette nouvelle industrie florissante: la production et la consommation de films vidéo. C'est le sujet de la troisième et dernière section de cette étude.

Section 3 La vague de panique des "video nasties" 1981-84

Les manifestations collectives d'angoisse au sujet de la représentation visuelle de la violence et de ses effets sont loin d'être un phénomène nouveau en Grande-Bretagne (voir l'étude approfondie et pénétrante de M. Lusted, 1983, sur les exemples passés). Par exemple, le phénomène des Teddy Boy violents dans les années 50 a été attribué en grande partie par des observateurs influents à l'influence des films policiers américains et, plus tard, au rythme "violent" des films de Rock 'n Roll. La délinquance en général était fréquemment reliée aux bandes dessinées d'horreur, qui furent finalement interdites en 1955. Les bagarres et le vandalisme dans les stades de football dans les années 60 furent reliés à la télédiffusion fréquente de scènes de foules violentes et menaçantes. Divers commentateurs ont expliqué la violence politique de la contre-culture de la fin des années 60, puis la violence des jeunes noirs et des blancs défavorisés dans les années 70 et, bien entendu, les émeutes de l'été 1981 comme le résultat général des émissions de télévision, et la conséquence particulière d'un processus d'imitation. Ces explications de type "Clockwork Orange" ont été élevées depuis lors au rang scientifique de théorie behavioriste par MM. Hans Eysenck et D.K.B. Nias (1978) et William Belson (1978) dans leurs études distinctes, quoique semblables pour l'essentiel, au sujet de l'impact de la télévision sur le comportement.

La plus récente vague d'angoisse de ce genre en Grande-Bretagne s'est manifestée à l'égard de la diffusion de certains types de vidéocassettes, particulièrement auprès des très jeunes gens. Avant d'entrer dans les détails, il nous faut donner plus d'explications sur la pénétration de la

vidéo au Royaume-Uni. Selon Intermedia, la revue du International Institute of Communications, les Britanniques possèdent proportionnellement plus de magnétoscopes que toute autre nationalité au monde: Intermedia estimait qu'environ 30,1 pour cent de tous les propriétaires de postes de télévision posséderaient un magnétoscope en 1983. Par comparaison, le nombre de propriétaires de postes de télévision possédant un magnétoscope était évalué à 10,7 pour cent aux États-Unis et à 8,4 pour cent au Canada. Le nombre total de magnétoscopes dans le monde était évalué en 1983 à 36 millions, dont 6 millions dans les foyers britanniques (soit 17,9 pour cent du total mondial).[35] Selon le directeur de la British Videogram Association, M. Norman Abbott, en mars 1984, 32 pour cent des foyers propriétaires d'un poste de télévision possédaient un magnétoscope, et ce chiffre augmentait d'un pour cent par mois.

On peut avancer différentes raisons pour ce taux de pénétration très marqué des magnétoscopes chez les consommateurs britanniques, dont la plus évidente tient au fait que les divertissements télévisés et les choix de programmation ne sont offerts que sur quatre chaînes à l'heure actuelle. Par ailleurs, deux chroniqueurs judiciaires (qui ne sont pas réputés pour céder aux sensationnalisme) faisaient les commentaires suivants au début de 1980:

> "... l'existence d'un immense racket de la vidéo pornographique constitue la face cachée de cette invasion de la nouvelle technologie des loisirs. Les vidéocassettes qui se vendent le mieux sont, de loin, celles qu'on pourrait faire entrer sous le vocable général de divertissement érotique. Les cassettes ayant un certain contenu

sexuel pouvaient représenter à une date récente jusqu'à 70 pour cent du marché. Ce pourcentage est peut-être encore supérieur à 30 pour cent." (Parry et Jordan, 1981a)

Selon ces auteurs, la croissance du marché de la vidéo pornographique s'est produite en grande partie chez les consommateurs de la classe moyenne, où elle s'est substituée à la consommation de drogues douces comme le symbole du "modernisme".[36] Ils expliquent ensuite que les vidéo pornographiques étaient en grande partie produits sur le continent européen et qu'ils étaient introduits en contrebande dans des camions conteneurs, mais avancent que des raisons économiques ont récemment incité les producteurs de films vidéo à s'installer en Grande-Bretagne où les cachets des acteurs sont apparemment moins élevés.

Le développement de l'industrie de la vidéo pornographique en Grande-Bretagne a été évidemment facilité de façon importante par les ambiguïtés des Obscene Publications Acts. Nous avons mentionné précédemment que les films n'ont été assujettis complètement à la législation sur l'obscénité qu'en 1977. Mais la Criminal Law Act qui a permis cette mesure ne précisait pas si les vidéocassettes étaient un "enregistrement de film" ou un "article" aux termes de la Obscene Publications Act, ou une émission de télévision (que le paragraphe 1(3) de la Loi exclut spécifiquement). Cette confusion força la police à se rabattre sur le paragraphe 2(1) de la Obscene Publications Act, d'application notoirement difficile. (cf. Parry et Jordan, 1981b).

En Grande-Bretagne, les vidéocassettes sont vendues, louées, ou les deux, par des boutiques vidéo qui se sont ouvertes récemment à la place de boutiques ordinaires ou d'autres locaux commerciaux, et les propriétaires annoncent leurs cassettes dans les vitrines par la voie d'affiches voyantes dirigées vers la rue.

En 1981, des citoyens ordinaires et des membres de la British Videogram Association (l'organisme officiel représentant le point de vue de l'industrie de la vidéo) se plaignirent auprès de la Advertising Standards Authority du caractère "macabre" de la publicité affichée par certaines boutiques vidéo.37 Les autorités accueillirent les plaintes faites à l'endroit de films vidéo intitulés Cannibal Holocaust, Driller Killer et S.S. Experiment Camp. Il s'agissait de la première tentative publique de "poser le problème" des films d'horreur sur vidéocassette. L'inquiétude populaire fut mentionnée pour la deuxième fois par le Daily Mail, un journal national de droite, dont l'édition du 12 mai 1982 contenait un article de fond déclarant que les enfants pouvaient se procurer assez facilement les vidéocassettes (à l'époque, il n'y avait pas de limite d'âge pour louer des cassettes dans les boutiques vidéo, et les tarifs de location étaient suffisamment bas pour que des enfants se regroupent afin de louer des cassettes, qu'ils pouvaient alors projeter avec les magnétoscopes de leurs parents, en l'absence de ceux-ci). Un déluge d'articles parut alors dans le Sunday Times (23 mai 1982), le Daily Mail (28 mai) et une fois de plus dans le Sunday Times (30 mai 1982). M. Julian Petley fait les commentaires suivants:

"Ces trois articles révélaient essentiellement qu'un nouveau type de films d'horreur, extrêmement violents, étaient maintenant disponibles sur vidéocassettes, "des films se spécialisant dans le sadisme, la mutilation et le cannibalisme" (Sunday Times, 30 mai), des films montrant des scènes de "castration, des agressions sadiques sur des femmes, et des actes de violence comprenant notamment l'utilisation de scies à chaîne et de perceuses électriques"." (Petley, 1984, p. 68)

C'est dans l'un de ces articles que le journaliste du Sunday Times, Peter Clippingdale, créa de toutes pièces l'expression "video nasty", qui fut immédiatement adoptée par toute la presse. Le Sunday Times révéla également que l'escouade des publications obscènes de la police métropolitaine avait saisi un exemplaire du film "S.S. Experiment Camp". Entre-temps, il fut annoncé que la British Videogram Association mettait en place un système de classification semblable à celui qui était utilisé pour le cinéma, par l'entremise du British Board of Film Censors. Toutefois, Mad. Whitehouse de la NVALA critiqua immédiatement cette initiative: elle dénonça la présence de censeurs tels que Lord Harlech sur ce comité de classification, soutenant que celui-ci (ainsi que le BBFC) s'était montré beaucoup trop permissif dans la classification des films de cinéma par le passé. Comme le fait remarquer M. Petley, cela constituait:

"... la première indication que l'on cherchait à imposer une censure plus sévère à la vidéo qu'au cinéma". (Petley, op. cit., p. 70)

Au mois de juin, le Procureur général entama des poursuites à l'égard de trois films vidéo, S.S. Experiment Camp, I Spit on Your Grave et Driller

Killer) mais, au grand dam de la NVALA, il se prévalut de l'article 3 de la Obscene Publications Act (permettant une saisie sous l'autorité d'un mandat de magistrat) plutôt que de l'article 2 (qui prévoit une peine d'emprisonnement maximale de trois ans). Au mois de septembre, les poursuites intentées à l'égard des trois films vidéo (et contre "Death Trap", un film vidéo qui avait été projeté, légèrement coupé, dans les cinémas) furent entendus par divers tribunaux, qui prononcèrent un verdict de culpabilité et ordonnèrent leur confiscation. Sir Thomas Hetherington, le Procureur général (dont Mme Whitehouse avait demandé la démission, parce qu'il avait choisi de procéder aux termes de l'article 3 prévoyant une confiscation) fut avisé que l'on devrait à l'avenir utiliser l'article 2 dans ce genre de cas.

Le 15 décembre 1982, M. Gareth Waddell, député travailliste de Gower, présenta un projet de loi avec l'approbation de tous les partis "afin d'interdire la location aux enfants des vidéocassettes destinées aux adultes". La presse libérale critiqua ce projet de loi, au motif qu'il ne faisait pas la distinction entre les films d'horreur qui étaient l'objet des préoccupations, et les autres films vidéo pour adultes; quoi qu'il en soit, ce projet de loi n'obtint pas l'approbation du gouvernement. En février 1983, le Daily Mail publia un article de fond sur les "video nasties" intitulé "Nous devons protéger nos enfants maintenant" et lança une campagne sous le thème "Éliminons les films vidéo sadiques". M. William Whitelaw, Secrétaire de l'Intérieur à l'époque, fut vivement critiqué pour avoir refusé d'appuyer la mesure législative proposée par M. Waddell. En mars, le Daily Telegraph, un journal de droite "de bon ton"

révéla pour la première fois que Mad. Whitehouse avait reçu des lettres d'appui de Margaret Thatcher, l'encourageant à poursuivre la campagne de la NVALA.

Entre temps, la BVA avait institué le 14 avril son propre système de classification, indiquant que le gouvernement s'était déclaré disposé, lors de consultations, à donner "un délai raisonnable" au système volontaire pour faire ses preuves. Toutefois, Margaret Thatcher déclara le 30 juin durant la période des questions que:

> "... la réglementation volontaire ne suffit pas. Nous devons établir des interdictions afin de réglementer toute cette question."[38]

En juillet, on apprit que le Secrétariat de l'Intérieur (alors occupé par un nouveau titulaire, M. Leon Brittain) avait rédigé un avant-projet de loi et que le premier député conservateur d'arrière banc prêt à présenter un projet de loi privé aurait la chance ou l'honneur de déposer cet avant-projet. Il se trouva que ce député fut M. Graham Bright. Le Video Recordings Bill, que nous avons commenté à la fin de la section 2, fut donc présenté en juillet à la Chambre des Communes par M. Bright, adopté en seconde lecture en novembre 1983 et la Loi elle-même fut adoptée en avril 1984. Cette Loi a effectivement pour effet de rendre illégales la vente ou la location de toute vidéocassette non approuvée par un organisme de censure gouvernemental centralisé. Elle prévoit également que la vente ou la location à un enfant d'une vidéocassette classifiée "adulte" constitue une infraction.

Au moment de la seconde lecture de ce projet de loi devant le Parlement, une large publicité fut accordée à la publication d'un rapport intitulé: "Video Violence and Children: Children's Viewing Patterns in England and Wales.

Ce rapport fut présenté dans la presse sous des titres proclamant que "40% des enfants âgés de six ans regardent des "video nasties"", et que "les films sadiques ont pris la place des prestidigitateurs dans les réunions d'enfants, et ont remplacé la gardienne d'enfants". (Barker, 1984c, p. 1). La recherche qui avait permis d'en venir à ces conclusions avait été faite auprès d'environ 6 000 enfants âgés de 5 à 16 ans, choisis au hasard dans des écoles d'Angleterre et du Pays de Galles, et qui avaient rempli un questionnaire leur demandant s'ils avaient vu certains films vidéo identifiés. On leur demanda alors de donner la cote "extraordinaire", "bon" ou "affreux" aux films qu'ils avaient vus. La liste était composée des 100 films vidéo les plus populaires (d'après les commerçants en vidéo) plus 32 autres films qui avaient été jugés obscènes, ou à l'égard desquels le Procureur général envisageait d'intenter des poursuites.

Cette recherche avait été menée par un organisme qui s'était lui-même donné le nom, fort trompeur, de Groupe d'enquête parlementaire sur la vidéo. Ce groupe n'avait aucun lien direct avec le Parlement et n'y avait aucun statut officiel, mais se composait plutôt de représentants d'un certain nombre d'églises, du Order of Christian Unity et du groupe CARE (qui est en fait le nom du Festival of Light). Il s'agissait d'un

groupe constitué pour les besoins de la cause, où un certain docteur Clifford Hill, anciennement de la London School of Economics, avait une influence déterminante. Le projet de recherche lui-même avait été lancé à la suite d'une entente intervenue entre le Dr. Hill et la Television Research Unit de Oxford Polytechnic, présidée par M. Brian Brown (lui-même méthodiste convaincu).

Toutefois, le rapport qui fut publié en novembre 1983 fut rédigé par le Dr. Hill seul, sans l'accord de l'équipe de Oxford Polytechnic (qui avait fait la plus grande partie de la recherche), et il était basé sur l'analyse de 1 044 questionnaires seulement (les seuls qui avaient alors été analysés par ordinateur). Le rapport était également rédigé en termes tels qu'il prétendait démontrer l'existence d'un rapport de cause à effet entre le fait de regarder des scènes de violence à la télévision ou sur un magnétoscope, et les taux de criminalité "réelle" (et particulièrement les crimes violents) dans la société. À la suite de la publication du rapport, M. Brown (qui avait dès le début exprimé son scepticisme au sujet des recherches sur le "lien de causalité") démissionna de l'enquête, et la Television Research Unit d'Oxford se retira complètement du Groupe d'enquête parlementaire sur la vidéo.[39]

Il est clair que le Dr Hill a fait une erreur grossière en publiant si tôt le premier volume du PVGE, puisque cela ouvrait la porte aux critiques sur l'insuffisance de l'échantillon (1 044 répondants); par ailleurs, la crédibilité du groupe n'a pas été aidée par les affirmations contenues dans le rapport, selon lesquelles on avait établi l'existence d'un lien de

causalité. Il ressort clairement de mes entrevues avec le Secrétariat de l'Intérieur britannique que cette recherche n'est plus considérée comme un ouvrage scientifique qui pourrait justifier l'interventionnisme du nouveau Secrétaire de l'Intérieur.

Il est très net, toutefois, que ce problème constitue une préoccupation réelle, mais qui doit être abordé de façon sérieuse. Les enquêtes menées par le British Market Research Bureau en Grande-Bretagne entre novembre 1983 et janvier 1984 révèlent que, lorsqu'on a demandé à un échantillon de 1 059 personnes le thème du dernier film vidéo qu'elles avaient loué, 16 pour cent d'entre elles ont répondu qu'il s'agissait d'un film d'horreur. Les autres chiffres se répartissent comme suit:

Classique/Suspense	16 pour cent
Comédie	12 pour cent
Adulte	7 pour cent
Sujets généraux	7 pour cent
Enfants	5 pour cent
Science fiction	4 pour cent
Guerre	4 pour cent
Comédie musicale	2 pour cent
Sport	1 pour cent
Autres	1 pour cent

(Source: Forte/BMRB, 1984, Tableau F22)

Toutefois, la tendance à louer des films d'horreur lors de la dernière visite était beaucoup plus prononcée chez les clients âgés de 15 à 19 ans (25 pour cent). Si l'on exclut les films d'horreur, seuls les comédies et les films classiques ou de suspense s'approchent de ces pourcentages (20 et 11 pour cent respectivement). Dans certains cas, toutefois, il s'agissait de films vidéo comme Frankenstein, qu'on ne peut vraiment qualifier de "video nasties". Selon M. Robertson (1984), environ 30 pour cent seulement des films vidéo offerts dans les magasins britanniques entrent dans cette catégorie.

Ces données ne confirment ni n'infirment les conclusions du Groupe d'enquête parlementaire sur la vidéo au sujet des spectacles vidéo regardés par les enfants de moins de 15 ans. Étant donné la nature parcellaire des preuves recueillies, les libertaires et les sceptiques ont tendance à réfuter les affirmations du gouvernement, qui affirme vouloir protéger les enfants, qu'il est facile d'effrayer ou d'impressionner.

Le sociologue britannique Keith Roe a cependant effectué certaines recherches sur la question (à l'Université de Lund en Suède). Lund a analysé les renseignements contenus dans des questionnaires remplis par des adolescents de 15 ans, qu'on peut qualifier de grands utilisateurs de la vidéo, qui est maintenant très courante en Suède. Selon l'une de ses conclusions majeures, ce sont surtout les garçons qui regardent les "video nasties", les filles semblant préférer les films vidéo "romantiques". Toutefois, il est remarquable de constater:

"... que la plupart des garçons préfèrent les films vidéo d'aventures aux 'nasties', mais qu'ils consacraient en fait une bonne partie de leur temps à voir des films violents. Beaucoup d'entre eux jugeaient ces 'nasties' violents déplaisants; après les avoir visionnés, ils déclaraient avoir des maux de tête, et se sentir 'lourds' ou 'fatigués'. Dans l'entrevue enregistrée, un garçon a déclaré 'que l'on va aux toilettes et que l'on se sent malade'. Certains adolescents ont eu du mal à s'endormir après avoir vu les films, et ils se distrayaient afin d'oublier ce qu'ils avaient vu. Lorsqu'on leur demandait pourquoi ils regardaient ce genre de films, les garçons répondaient: 'c'est à cause de la pression du groupe; on ne veut pas reculer devant ses amis; sinon, ils vous traiteraient de peureux." (Patmore, 1983)

Il est question ici de films qui contribuent manifestement à reproduire un esprit de bravade mâle, ou à développer une insensibilité à la souffrance humaine. Selon la même logique, bien entendu, certaines descriptions de la sexualité dans les films vidéo dépeignent plus la brutalité mâle que des images ayant une connotation érotique pour les deux sexes. Mais les "video nasties" semblent avoir pour intention exclusive de mettre en scène, d'exploiter et même parfois de glorifier le caractère érotique de la violence pure et simple, et particulièrement de la violence contre les femmes. Les films vidéo mentionnés dans ce rapport sont du même type que certains films sortis aux États-Unis vers la fin des années 70, ayant pour sujet la vengeance exercée par des hommes contre des femmes "difficiles" des "mégères". Ces films (Friday the 13th, When a Stranger

Calls, Halloween, He Knows You're Alone, Dressed to Kill, etc.)[40] ont été très critiqués par le mouvement féminin qui soutient, fort plausiblement, qu'ils représentent une contre-réaction idéologique directe dirigée contre le féminisme en général, et contre les femmes déterminées et indépendantes en particulier.

Mais cela ne constitue qu'un aspect des "video nasties". La violence dans ce genre de films est parfois dirigée contre les hommes. "I Spit on Your Grave", par exemple, (l'un des pires "video nasties", produit aux États-Unis) relate avec force détails explicites la vengeance d'une femme qui tue quatre hommes qui l'ont brutalement violée (au début du film).[41] La violence dans Driller Killer est moins systématique (dans ce film, un jeune artiste est atteint d'aliénation mentale, croyant être possédé du diable et commence à assassiner 12 personnes, hommes et femmes, à l'aide d'une perceuse électrique). Dans un grand nombre de ces films, un accent constant est mis sur la violence brutale exercée contre les femmes (particulièrement prononcée dans S.S. Experiment Camp), mais on y retrouve également un souci généralisé des descriptions détaillées de la peine et de la souffrance humaines.

Toutefois, il nous semblerait assez naïf de faire un parallèle absolu entre cet intérêt populaire pour les "video nasties" en Grande-Bretagne et les vagues antérieures de panique morale au sujet de la sexualité et de la violence, sans replacer ces événements dans leur contexte historique. Les "nasties" ne sont pas simplement une manifestation moderne, plus explicite, des magazines dédiés à la criminalité au dix-neuvième siècle, ou des bandes

dessinées d'horreur des années 50,[42] puisque nous ne sommes plus au dix-neuvième siècle, ni dans les années 50.

Ce qu'on ne peut nier c'est le caractère apocalyptique des "video nasties" (et d'ailleurs, de nombreux autres films d'horreur qui pourraient fort bien ne pas être censurés, comme Friday the 13th). Nous voulons dire par là que ces films décrivent en détail et avec complaisance des actes d'extrême violence et la mort. L'auditoire peut-il y trouver autre chose qu'une description métaphorique de la possibilité d'une véritable annihilation?[43] Sinon, comment expliquer la consommation effrenée de ces films dans un pays comme la Grande-Bretagne, qui se perçoit très nettement comme une cible idéale en cas de conflit nucléaire en Europe?

Les tentatives faites en vue de légiférer à l'égard de la "pornographie" en général pourraient bientôt se heurter au mur de l'inégalité entre les sexes, qui existent à l'heure actuelle; cela ne justifie pas, bien sûr, de rester apathique devant la pornographie, ou de ne pas chercher à réduire l'inégalité entre les sexes. De la même façon, les tentatives faites en vue de légiférer à l'égard de la "violence" pourraient se heurter bientôt aux faits du militarisme, de la course aux armements nucléaires et de la tension est-ouest; mais cela ne justifie pas de rester inactif à tous ces égards. L'hypocrisie consisterait plutôt à se comporter comme s'il n'existait pas de lien entre un contexte global et ses manifestations concrètes.

NOTES

1. Report of the Committee on Obscenity and Film Censorship (Président: Bernard Williams) du Secrétariat de l'Intérieur; Londres: HMSO Cmnd. 7772 (novembre 1979); ci-après appelé "Le Rapport Williams", ou Williams, 1979).

2. Le Comité Williams n'a pas traité de la télédiffusion dans le cadre de ses travaux, puisque celle-ci avait récemment fait l'objet d'une étude (par le Comité sur l'avenir de la radiodiffusion, présidé par Lord Annan) (Cmnd. 6753, février 1977). Toutefois, comme le comité Williams en était bien conscient, on pourrait soutenir que le public se préoccupe beaucoup plus du contenu de certaines émissions à la télévision britannique, que du contrôle exercé sur les "publications ou les films obscènes". Le contenu des émissions de télévision en Grande-Bretagne n'est pas régi par la législation sur l'obscénité mais par les obligations légales imposées aux gouverneurs de la BBC et à la Independent Broadcasting Authority, qui doivent s'assurer que leurs émissions "restent dans les limites du bon goût". Des dispositions législatives sont actuellement prévues, dans le cadre du Cable and Broadcasting Bill, qui régira les compagnies privées de télédiffusion par câble, qui doivent commencer à fonctionner en Grande-Bretagne vers la fin des années 80. Ce projet de loi prévoit la création d'une "Cable Authority" qui sera chargée d'élaborer et de faire observer des codes de conduite au sujet de la sexualité et de la violence, et de s'assurer que les émissions ne contreviennent pas aux normes du bon goût et de la décence. Cette proposition n'est pas sans soulever une certaine opposition dans les secteurs de l'opinion qui estiment que l'avènement du câble en Grande-Bretagne "constitue une occasion de briser le carcan qui restreint considérablement les émissions diffusées à la télévision. L'intérêt (du câble) en sera restreint si des restrictions identiques lui sont imposées". (Éditorial: "Something Nasty on the Box", The Guardian, 30 janvier 1984).

3. Comparer, par exemple, le réquisitoire enflammé contre les magazines et les films "pornographiques" (définis de façon très vague et générale) dans les essais de la série Take Back the Night (1980) de Laura Lederer, ou de Kostash (1978) avec les tentatives faites en vue d'identifier un concept "autonome" du plaisir et du désir sexuels des femmes, qu'il faut soigneusement distinguer dès le départ des définitions puritaines et "patriarcales" de la sexualité, qu'on semble retrouver dans de nombreuses nouvelles approches de la pornographie, à caractère conservateur. (cf. entre autres, Brown 1981; Carter 1978 (Préface); Coward 1984; B. Taylor, 1981).

4. On trouvera des commentaires utiles sur cette contradiction, dans une perspective féministe, dans Kuhn, 1984 a et dans Ellis, 1980.

5. Une grande partie des commentaires de la première partie de la section 1 découlent de l'excellente "Annexe 1" dans Williams, 1979, et des propos plus complets, mais traités sur un mode plus discursif, de Robertson, 1979.

6. Durant leur adresse au jury lors des trois procès distincts, les juges ont exposé des interprétations relativement différentes de la législation existante. MM. Secker et Warburg furent acquittés, tandis que le jury n'a pu s'entendre sur un verdict dans le procès de M. Heinemann. Mais la déclaration de culpabilité prononcée contre M. Hutchinson (qui fut condamné à une amende totale de 1 000 livres) causa un choc dans le milieu de l'édition, tout comme les propos du juge selon qui il était:

> "important ... de protéger la jeunesse de ce pays, et que la fontaine de notre sang national ne devrait être polluée à sa source". (cité dans St. John Stevas, 1956, p. 116)

7. On trouvera une analyse détaillée des origines de la vague de panique morale à l'égard de la prostitution et d'autres sujets d'ordre sexuel, dans le milieu des années 50 en Angleterre, dans Smart (1981).

8. Cette analyse du Rapport Wolfenden et de ses conséquences s'inspire largement de l'essai magistral de Stuart Hall (1980).

9. Le contraste le plus marquant est peut-être celui qu'on peut faire entre les sentiments masculins qui sous-tendent cette déclaration et la récente prise de conscience par le public (due à l'avènement général d'une politique féminine depuis 1957) du harcèlement dont toute femme ou fille peut être victime, dans les quartiers de prostitution, de la part de ceux qu'il est convenu d'appeler les "kerb-crawlers".

10. On trouvera des commentaires sur les aspects spécifiques de la "double taxonomie" marquant chacun de ces domaines de réforme, dans Hall, op. cit., pp. 12 à 21 (à qui l'on doit également la notion de "privatisation sélective").

11. Les procès les plus (tristement) célèbres se sont peut-être déroulés à l'occasion de tentatives d'utilisation de la Obscene Publications Act, pour intenter des poursuites contre la presse dite "marginale" ou "contre-culturelle". En trois ans, les éditeurs des trois plus importants journaux marginaux britanniques furent mis en accusation devant la Central Criminal Court: I.T. en 1970, OZ en 1971 et Nasty Tales en 1973. Le procès dans l'affaire OZ, en particulier, a constitué un "événement culturel" important en Grande-Bretagne: les éditeurs furent envoyés, dans le but d'obtenir "des preuves médicales", à la prison de Wormwood Scrubs (où les gardiens rasèrent leur longue chevelure) avant que la Cour d'appel n'annule la condamnation. Selon Robertson, un plus grand nombre de lettres furent écrites au Times lors de ce procès qu'à l'occasion de la crise de Suez en 1956. (Robertson, 1979, p. 6).

12. M. Barker, 1984a, a fait un compte rendu fascinant sur le Comics Campaign Council, constitué en 1953 afin de "décourager la production, la vente et la diffusion de ces publications" et de son rôle dans l'interdiction des bandes dessinées. M. Barker a pu démontrer, entre autres, que le Parti communiste de Grande-Bretagne avait eu une influence primordiale au sein du CCC, certains de ses dirigeants importants voulant décourager la jeunesse britannique d'adopter inconsciemment les valeurs de l'américanisme.

13. Ce bref compte rendu de l'historique de la National Viewers and Listeners Association est tiré en partie de la biographie critique de Mme Mary Whitehouse rédigée par Michael Tracey et David Morrison (Tracey et Morrison, 1977).

14. La plus grande influence du Festival of Light au Royaume-Uni coïncide avec le début des années 70. Ce festival constituait une tentative en vue de transplanter en Grande-Bretagne un genre de religion fondamentaliste et populaire d'origine américaine, faisant largement appel à la publicité que lui apportait l'adhésion de personnalités (en particulier de la télévision et du cinéma), et qui organisait des défilés aux flambeaux pour se porter à la défense de "la famille" et des "valeurs chrétiennes traditionnelles". Tout comme dans le cas de la NVALA, on soupçonnait fortement que le Festival of Light avait des liens étroits avec le Mouvement du réarmement moral, violemment opposé aux idées communistes (Tracey et Morrison, 1977, pp. 57 à 69).

15. Le Rapport Longford est silencieux sur certains points essentiels. Par exemple, il ne traite aucunement du problème de la corruption de la police dans ses commentaires sur les difficultés rencontrées pour que des poursuites soient intentées aux termes de la Obscene Publications Act. Toutefois, au début des années 70, la rumeur persistante voulait que la police métropolitaine soit très impliquée dans la "protection" de l'industrie du sexe. Trois procès majeurs portant sur des affaires de corruption (en 1976-77) vinrent confirmer que des policiers subalternes et de rang supérieur de l'escouade des publications obscènes avaient reçu des sommes d'argent importantes et s'étaient faits offrir des vacances par des pornographes; en échange, ceux-ci obtenaient la "permission de se livrer à leurs activités" ou étaient avertis à l'avance des descentes. (cf. Williams, 1979, c. 4.14).

16. Une série de questionnaires et d'autres enquêtes ont permis à M. Kutchinsky de conclure que ce déclin très marqué des taux d'infractions ne résultait pas des modifications de l'attitude du public à l'égard de ces infractions sexuelles, ni des modifications de l'attitude ou des pratiques policières.

17. En juillet 1980, la NVALA invita M. Court à Londres afin que celui-ci demande au Secrétaire de l'Intérieur d'ignorer le rapport "malhonnête" du comité Williams (voir l'article intitulé "Campaign against 'dishonest' porn report" dans le Guardian du 2 juillet 1980, et un

éditorial dans la même veine, dans le Sunday Telegraph du 6 juillet 1980). L'importance des travaux de M. Court tient au fait qu'il soutenait que la conclusion selon laquelle la pornographie pourrait entraîner une réduction des infractions sexuelles est prématurée ou non fondée. Le Sunday Telegraph concluait dans son style populiste:

> "L'opinion des spécialistes étant partagée, le public devrait se sentir libre de former sa propre opinion ... grâce à son sens commun. Dans cette perspective, il est peu probable qu'on entendra encore beaucoup parler du Rapport Williams".

18. Il faut souligner, toutefois, le postulat douteux du comité Longford, selon qui la grande majorité du public britannique endosserait son propre rejet absolu de la pornographie (ainsi, d'ailleurs, que sa définition de la pornographie), si elle ne se laissait fourvoyer par les propos persuasifs des spécialistes libéraux. Les conclusions recueillies à partir d'un grand nombre de procès par jury en matière d'obscénité dans les années 70 donneraient à penser qu'il existait des écarts considérables dans les attitudes populaires à l'égard de l'affichage public de publications de nature sexuelle en Grande-Bretagne. Les recherches d'opinion publique faites par le Sunday Times, au moment de l'enquête de Lord Longford, au sujet des attitudes du public à l'égard de la sexualité à la télévision, dans les magazines, les journaux, les films et au théâtre, révèlent un niveau de préoccupation et un appui aux mesures restrictives beaucoup moins important que le Comité Longford ne l'aurait espéré. cf. Sunday Times, 25 février 1973 (résultats reproduits dans Crick, 1974, p. 51).

19. On trouvera des renseignements plus détaillés à cet égard dans le meilleur compte rendu général des développements récents et des dilemnes actuels du mouvement féministe en Grande-Bretagne, dans Coote et Campbell, 1982.

20. L'une des critiques les plus succinctes et incisives du caractère très conventionnel (et donc inutile) de la "recherche de liens de causalité" sur la violence à la télévision britannique a été faite par MM. Murdock et McCron (1979), qui commentaient des travaux publiés récemment en cette matière par le spécialiste des sondages d'opinion publique, le Dr. William Belson.

21. On trouvera une analyse de l'évolution des genres d'émissions policières à la télévision britannique depuis les années 50 dans Clarke, 1980.

22. On trouvera ci-dessous les derniers chiffres des ventes moyennes (par opposition au "nombre de lecteurs") des cinq magazines (déclarés au Audit Bureau of Circulations) pour la période 1977-78:

Club International	R.-U. et Irlande	142 923
(janvier-juin 1978)	outre-mer	188 609

Mayfair	R.-U. et Irlande	251 140
(janvier-juin 1978)	outre-mer	168 651
Men Only	R.-U. et Irlande	201 538
(janvier-juin 1978)	outre-mer	176 094
Penthouse		
(janvier-juin 1977)		253 436
Playboy (édition du R.-U.)		
(juillet 1976-juin 1977)		64 811

(Williams, 1979, p. 251)

23. Ce concept de "limite" dans les genres pornographiques est élaboré dans les travaux non publiés de Pratt (1981), dont certains seront reproduits dans Pratt, 1984. Selon M. Pratt, les principales étapes au R.-U. furent les suivantes:

(i) "la fin du silence", qu'il fait remonter au lancement de l'édition britannique de Playboy en 1954, deux ans après l'édition américaine.

(ii) l'avènement d'une "plus grande franchise". À partir du début des années 60, on a commencé à voir le corps féminin nu dans les magazines, les films et la publicité;

(iii) la "diversification". À partir de 1966 environ, la sexualité a été représentée de façon beaucoup plus spécifique au cinéma et dans les magazines (Blow Up ayant été le premier film britannique à montrer des poils pubiens), la nudité masculine est apparue (Women in Love) et on a commencé à discuter du lesbianisme (dans The Killing of Sister George);

(iv) le développement des genres sexuels "fantastiques". Au cinéma, à partir des années 70, un certain nombre de films ont commencé à faire le lien entre la sexualité et l'horreur (dans des scènes de sacrifice de corps nus, de vampirisme et d'orgie), tandis que d'autres films replaçaient la sexualité dans un contexte politique ou historique particulier (The Devils, Clockwork Orange). Mais on a également assisté à des tentatives de reprise de l'ancienne série des films intitulés Carry On des années 50 et 60, sous forme de pornographie douce moderne, comme dans la série des films intitulés Confessions (Confessions of a Window Cleaner, etc., etc.).

24. En 1978, par exemple, la police métropolitaine de Londres a saisi 1 229 111 "articles obscènes", par rapport à 35 390 en 1969. (Williams, 1979, p. 264).

25. Les preuves recueillies par Hugh Hebert, un journaliste du Guardian, qui a suivi de près l'évolution de l'industrie du sexe en Grande-Bretagne, laissent croire que les éditeurs de magazines pour adulte ont pris diverses mesures en prévision de l'adoption de la Indecent Displays Act. En particulier, le ton des couvertures de magazines a été "radouci" par rapport aux deux ou trois années précédentes, et l'on a rapporté les propos suivants du président de la British Adult Publishers Association Ltd.:

> "Les poses sont maintenant ordinaires, d'une certaine façon. Les gros plans et les prises de vue vaginales n'ont pas été éliminées; ces photos n'ont pas été aussi radoucies que je m'y attendais. Mais les photos anormales, l'utilisation de vibrateurs, tout cela est pratiquement disparu."

On a estimé que les ventes de magazines pour adultes déclinaient, mais M. Hebert fait remarquer qu'il s'agissait moins d'un effet de l'adoucissement des magazines pour adultes que de la progression de la vidéo. M. Bill Edwards, un éditeur de Figcrest (une compagnie de magazines pour adultes) a suggéré que cela constituait une indication pour l'avenir, puisque "les gens préfèrent les images qui bougent aux images de magazines." (Hebert 1981).

26. Cela représente 75 établissements de plus qu'en 1978 (les boutiques spécialisées dans la vidéo constituant la plus grande partie de cette augmentation). (Ville de Westminster, General Purposes Committee, 16 novembre 1982).

27. Le gouvernement a refusé la proposition du Conseil de Westminster, qui aurait permis aux autorités locales d'émettre des permis (c.-à-d. le contrôle) des "salons de rencontres érotiques" et des "studios de photographies de nus", soutenant que cela équivaudrait, en fait, à permettre les maisons de passe. (Benton, 1982, p. 11).

28. Il est intéressant de souligner que le Conseil de Westminster est conscient du rôle, maintenant "traditionnel", de Soho comme centre de divertissements sexuels. Un rapport conjoint du City Solicitor et du City Planning officer, souligne que:

> "Le nom de Soho a été associé à ce genre de divertissements depuis les années 1930, et avec la prostitution depuis des siècles."

Toutefois, il continue en ces termes:

> "... au cours des dernières années, ce secteur a considérablement changé, et les activités reliées à la sexualité ont maintenant une influence prédominante sur le caractère du secteur ..."

(Ville de 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). Voir également le rapport intitulé "Why Soho is Naughty, but not very Nice", The Guardian, édition du 20 décembre 1980.

29. En 1982, la ville de Westminster a décidé qu'elle ferait totalement disparaître les établissements voués au commerce du sexe de sept secteurs "résidentiels", de trois "secteurs de conservation" et d'un autre "quartier à caractère fortement résidentiel". Elle a ensuite établi un nombre maximum de permis qu'elle accorderait pour les quatre secteurs restants de la ville, la grande majorité d'entre eux étant réservés pour Soho. En 1984, le procureur de la ville était en mesure de faire rapport sur les effets de ce système de permis dans Soho.

Des 61 établissements qui étaient des "sex shops" avant l'introduction du système de permis, le 31 janvier 1984:

(i) 6 étaient des "sex shops" licenciés;
(ii) 13 s'étaient convertis dans d'autres domaines de l'industrie du sexe:

4 "peep shows";
1 cinéma spécialisé dans les films érotique;
2 bureaux de paris;
5 brasseries/topless;
1 salon de rencontres érotiques

(iii) 22 s'étaient convertis dans des domaines non reliés à l'industrie du sexe.

Des 41 locaux qui étaient auparavant d'autres types d'établissements reliés à l'industrie du sexe:

(i) 10 avaient fermé leurs portes
(ii) 16 étaient ou étaient devenus des brasseries/bars avec des serveuses aux seins nus;
(iii) 4 étaient ou étaient devenus des boîtes de strip-tease;
(iv) 3 étaient ou étaient devenus des cinémas projetant des films érotiques;
(v) 3 étaient ou étaient devenus des "peep shows";
(vi) 2 avaient été ou étaient devenus des "salons de rencontres érotiques"; et
(vii) 3 étaient devenus des cinémas ne projetant pas de films érotiques.

(Westminter City Council, Environment Committee, 22 mars 1984; Planning and Development Committee, 27 mars: Licensing of Sex-Industry Premises: Progress Report of the City Solicitor, p. 2).

30. Les documents fournis par le Conseil de Westminster ne contiennent pas de renseignements sur les effets du système de permis à l'extérieur de Soho.

31. Ce pouvoir va bien au-delà des recommandations faites auparavant par la British Videogram Association dans le cadre de ses propositions pour un système d'auto-réglementation, où le BBFC consentait à aider la BVA à classifier tous les films vidéo selon les mêmes catégories utilisées pour le cinéma (soit en Grande-Bretagne: "U", "PG", 15 ou 18 ans); cf. Abbott, 1983, ainsi que le Report of the Video Working Party, préparé par le BBFC à la demande de la BVA (janvier 1983).

32. L'une des craintes accessoires, mais néanmoins importante, des critiques du Video Recordings Bill est que les frais facturés pour chaque visionnement par le BBFC (au taux actuel de 400 livres) entraîneront la faillite de petites compagnies de production. Lors d'une entrevue avec le soussigné, M. Norman Abbott de la BVA a souligné que cette mesure pourrait être désastreuse pour les petites compagnies asiatiques basées en Grande-Bretagne, qui produisent des films vidéo en Gujerati et en d'autres langues asiatiques, à l'intention de ces communautés installées en Grande-Bretagne.

33. Lors de ma visite en Grande-Bretagne, le directeur gérant de la compagnie Thorn-EMI Industries fut accusé devant la High Court aux termes de la Obscene Publications Act, pour avoir produit une vidéocassette du film The Burning, qui avait pourtant un certificat du BBFC).

34. On trouvera un échantillon des critiques exprimées à l'égard du Video Recording Bill dans les essais journalistiques de M. John Mortimer c.r. (du centre gauche), de M. William Deedes (de la droite) et de MM. Derek Malcolm et Geoffrey Robertson, dans The Guardian, en 1984 (voir la bibliographie). Le point de vue purement libertaire est exposé par la National Association for the Reform of the Obscene Publications Acts (1984).

35. Toutes ces données sont reproduites dans Parliamentary Group Video Enquiry, vol. 1 (1983), paragraphes 1.14, 1.15.

36. L'affirmation selon laquelle c'est surtout la classe moyenne qui utilise les magnétoscopes peut être contestée: une enquête du British Market Research Bureau menée en 1984 a révélé que seulement 101 des 1 059 personnes qui avaient été interrogées après avoir loué des vidéocassettes faisaient partie des classes sociales supérieures "A" ou "B"; 260 étaient de la classe sociale C1, 406 de la classe C2 et 292 de la classe "DE" (ouvriers spécialisés, semi-spécialisés et manoeuvres). Certaines indications donnent à penser que le taux relativement élevé de propriété des magnétoscopes dans les classes "inférieures" de Grande-Bretagne pourrait s'expliquer par le fait qu'ils aient été achetés avec le produit des "indemnités de

licenciement" (une somme globale, représentant généralement une année de salaire, que les employeurs doivent donner à certains travailleurs en guise "d'indemnisation" pour la perte de leur emploi).

37. Je me suis largement inspiré des travaux de M. Petley, 1984, pour ces commentaires sur l'historique de la vague de panique des "video nasties", mais j'ai comparé ces renseignements avec les faits que M. Norman Abbott s'est remémorés lors d'une entrevue personnelle.

38. Plusieurs commentateurs ont évidemment souligné la contradiction existant entre les fermes prises de position de Mme Thatcher en faveur du libre marché et de la liberté de l'individu, et l'autoritarisme intransigeant dont elle a fait preuve en appuyant la censure étatique de la vidéo. Mme Thatcher a symboliquement souligné son appui indéfectible à ce projet durant le débat aux Communes par un geste sans précédent (lorsqu'elle a quitté son siège à la première rangée, pour venir s'asseoir auprès de M. Bright, lui offrant conseils et encouragements).

39. Voir les autres commentaires au sujet des problèmes politiques et méthodologiques rencontrés par le Groupe d'enquête parlementaire sur la vidéo: Hugo Davenport, "Report on Video Nasties is Hit by own Researchers", The Observer, 4 décembre 1983; Maureen O'Connor, "A Different Picture Altogether", The Guardian, 13 décembre 1983; et Martin Barker, 1984c.

40. Mais voir les commentaires intelligents et légèrement sceptiques de M. Wood au sujet des différences entre les films réactionnaires (1982).

41. Toutefois, il faut souligner que le thème de I Spit on Your Grave s'écarte des stéréotypes habituels du viol (suggérant, qu'au fond, les femmes aiment qu'on abuse d'elles, etc.). L'on pourrait soutenir à cet égard que I Spit on Your Grave a un motif artistique sérieux, soit d'analyser les craintes masculines sous-jacentes, c.-à-d. que les femmes violées se vengeront violemment.

42. Cela semble représenter la position adoptée par l'un des principaux critiques universitaires des "video nasties", M. Martin Barker. Il souligne que:

> "Chaque campagne contre les dangers d'un 'nouveau' medium trouve toujours des motifs de croire que son objet est particulièrement dangereux. Au 19e siècle, les "Penny Dreadfuls" corrompaient parce que c'était la seule lecture que les gens pouvaient se procurer. Au début du 20e siècle, les films étaient projetés sur écran et présentaient, de plus, le "danger moral de l'obscurité".
>
> On pouvait "s'absorber" dans la lecture des bandes dessinées pendant des heures en privé. La télévision est particulièrement mauvaise parce qu'elle peut être regardée dans l'atmosphère

relaxée du domicile. Les films vidéo présentent maintenant un risque grave, parce que les enfants ont un contrôle sur ce qu'ils regardent. Plus ça change." (Barker, 1984b, p. 233).

43. Cette interprétation des "video nasties" vus comme une "représentation" de l'annihilation est curieusement absente de nombreux commentaires, y compris ceux de M. Richard Hoggart (autrefois directeur du Centre for Contemporary Cultural Studies de l'Université de Bermingham) (Hoggart, 1984). Ses craintes à l'égard des "video nasties" sont importantes mais peut-être plus "conventionnelles". Premièrement, il prétend avoir entendu parler de groupes de chômeurs qui paient une livre pour voir des films vidéo obscènes et violents afin de passer le temps et, sans ressentir le besoin de plus élaborer sur ce point, il déclare que:

> "... la combinaison du drame du chômage et de la consommation de ce genre de spectacles vulgaires et dégoûtants est angoissante."

M. Hoggart estime également que les recherches existantes sur les effets de la violence dans les médias ne permettent pas d'en tirer des conclusions dans un sens ou dans l'autre mais, en particulier, que les méthodes de recherche orthodoxes ne permettent pas de répondre à la question fondamentale, qui consiste à se demander si la vision répétée de scènes de violence peut désensibiliser les spectateurs à la souffrance humaine, et aux sentiments humains en général.

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ANNEXES

Local Government (Miscellaneous Provisions) Act 1982

CHAPTER 30

LONDON
HER MAJESTY'S STATIONERY OFFICE
£6·05 net

Local Government (Miscellaneous Provisions) Act 1982

CHAPTER 30

ARRANGEMENT OF SECTIONS

PART VI

ABOLITION OF REGISTRATION OF THEATRICAL EMPLOYERS

PART VII

BYELAWS

PART VIII

ACUPUNCTURE, TATTOOING, EAR-PIERCING AND ELECTROLYSIS

PART IX

SALE OF FOOD BY HAWKERS

PART X

HIGHWAYS

PART XI

PUBLIC HEALTH, ETC.

PART XII

MISCELLANEOUS

PART XIII

SUPPLEMENTARY

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]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

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.

PART I

(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.

1963 c. 33.

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

(*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

Control of sex establishments.

2.—(1) A local authority may resolve that Schedule 3 to this Act is to apply to their area; and if a local authority do so resolve, that Schedule 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 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 ").

PART IV

(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.

(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,".

Closing orders etc.—procedure and appeals.

5.—(1) A district council shall take all relevant circumstances into consideration when determining whether to make—

(*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

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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 sub-committee 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.

PART IV

(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.

(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.

Contraventions of closing orders.

6.—(1) In the event of a contravention of any of the provisions of a closing order, whether as originally made or as varied by a variation order, the keeper of the premises to which the order relates shall be guilty of an offence.

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(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

Consultation between authorities

8.—(1) In the Public Health Act 1936— 1936 c. 49.

(*a*) in section 59 (exits, entrances &c, in the case of certain public and other buildings)—

(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— 1960 c. 62.

(*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

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(*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 the Fire Services Act 1947 ; ". PART V 1947 c. 41.

Firemen's switches

Application of section 10.

9.—(1) A fire authority may resolve that section 10 below is to apply to their area ; and if a fire 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 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.

Firemen's switches for luminous tube signs.

10.—(1) This section applies to apparatus consisting of luminous tube signs designed to work at a voltage normally exceeding 650 volts, or other equipment so designed, and references 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-

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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 cut-off 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 cut-off 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.

1936 c. 49.

(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

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

Repeal of Theatrical Employers Registration Acts 1925 and 1928.

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

(2) This section extends to Scotland.

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.

(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.

Acupuncture.

14.—(1) A person shall not in any area in which this section 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

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 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.

Power to enter premises (acupuncture etc.).

17.—(1) Subject to subsection (2) below, an authorised officer of a local authority may enter any premises in the authority's area if he has reason to suspect that an offence under section 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.

PART VIII

(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.

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

(*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 prepared or manufactured on such premises; or

1955 c. 16 (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;

1961 c. 64.

"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.

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HIGHWAYS

Highway amenities.

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

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(*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 institution of proceedings)— 1980 c. 66.

(*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.".

Control of construction under streets.

22.—(1) The following paragraph shall be substituted for the first paragraph of subsection (1) of section 179 of the Highways Act 1980 (by virtue of which no person may construct a vault, 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 road-side sales. 1980 c. 66.

23. The following section shall be inserted after section 147 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

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of which tolls, stallages or rents are payable; or

(*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.".

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PUBLIC HEALTH, ETC.

Paving of yards and passages. 1936 c. 49.

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

"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.".

Building regulations.

25.—(1) The following subsections shall be substituted for subsections (1) and (2) of section 64 of the Public Health Act 1936 (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.".

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(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".

(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 come into operation on such day as the Secretary of State may by order made by statutory instrument appoint. 1974 c. 37.

Statutory nuisances. 1936 c. 49.

26.—(1) In section 92(1)(*d*) of the Public Health Act 1936 (by virtue of which statutory nuisances include any dust or effluvia caused by any trade, business, manufacture or process, 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 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". 1956 c. 52.

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

27.—(1) The following section shall be substituted for sections 17 and 18 of the Public Health Act 1961— 1961 c. 64.

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

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

(*a*) is not sufficiently maintained and kept in 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

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(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 showrooms, 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 (which empowers a local authority to serve notices as regards defective drains).". 1936 c. 49.

(2) Section 24 of the Greater London Council (General Powers) Act 1967 (which makes certain modifications to sections 17 and 18 of the Public Health Act 1961 in their application to Greater London) is hereby repealed. 1967 c. xx. 1961 c. 64.

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Control of demolitions.

1961 c. 64.

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—

1957 c. 56.

(*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

1967 c. 9.

(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;

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(*b*) to the British Gas Corporation ; and

(*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 ; 1957 c. 56.

(*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 or a notice served under section 27 of this Act ; and 1936 c. 49.

(*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 ; 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. 1974 c. 37.

(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—

1971 c. 40.

" fire authority " has the meaning assigned to it by section 43(1) of the Fire Precautions Act 1971 ; and

1974 c. 37.

" 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.

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 ;

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(*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 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.

1936 c. 49.

(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—

(*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

1945 c. 42.

(*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).

1972 c. 60.

(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.

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.

1936 c. 49.

(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.

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(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.".

(2) Section 29 of the Public Health Act 1961 shall continue 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. 1961 c. 64.

Protection of buildings.

29.—(1) The section applies where it appears to a local authority—

(*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 the Housing Act 1980 ; or 1957 c. 56. 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

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1961 c. 65.
1980 c. 51.
1969 c. 33.
1974 c. 44.

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

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. PART XI

(12) Section 293 of the Public Health Act 1936 shall have 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. 1936 c. 49.

(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.

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

30.—(1) This section applies to operational land—

(*a*) of the British Railways Board (in this section referred to as " the Board ") ; or

(*b*) of persons (in this section referred to as " the statutory undertakers ") authorised by any enactment to carry on an undertaking for the generation or supply of electricity or the supply of gas or water.

(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

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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

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

(*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.

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MISCELLANEOUS

Enforceability by local authorities of certain covenants relating to land. 1972 c. 70.

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

(*a*) is executed for the purpose of securing the carrying out of works on or facilitating the development or regulating the use of land in the council's area in which 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

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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

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(*c*) section 291 of that Act (certain expenses recoverable 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 Provisions) 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. 1976 c. 57.

(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 subsection (6) above, section 233 of the Local Government Act 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. 1936 c. 49. 1972 c. 70.

(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 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 1971 c. 78.

(*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 superseded 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 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. 1974 c. 44. 1975 c. 76.

34. In the Local Land Charges Act 1975— Local land charges registers—computerisation etc.

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

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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; and

(*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."

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(*b*) in subsection (2), for the words "The Boards" there 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) 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).".

1976 c. 57.

Control of fly-posting. 1971 c. 78.

36. In the Town and Country Planning Act 1971—

(*a*) the following section shall be inserted after section 109—

"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

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(*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.

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(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.

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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.

1980 c. 65.

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 pursuance 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.

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Provisions supplementary to sections 140A and 140B.

1981 c. 31.

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—

(*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 authority.

(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 have the meanings assigned to them by that Act. 1944 c. 31.

(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.

Lost and uncollected property.

41.—(1) This section has effect where—

(*a*) property comes into the possession of a local authority after being found on buildings or premises owned or 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

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(*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.

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(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.

(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-constituted in pursuance of Schedule 17 to the Local Government Act 1972; and 1971 c. 78.

(*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.

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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)

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of the Public Health Act 1936, or under section 41 of the London Government Act 1963, before the passing of this Act; but the power conferred by section 9(2) of the said Act of 1936, or by 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.

1936 c. 49.
1963 c. 33.

Advances for acquisition of land, erection of buildings or carrying out of works.
1963 c. 29.

43. In section 3 of the Local Authorities (Land) Act 1963—

(*a*) the following subsection shall be substituted for subsection (1)—

" (1) Where a local authority are satisfied that it would be for the benefit or improvement of their area, they may, subject to the provisions of this 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.".

Definition of certain local authority expenditure etc.
1972 c. 70.

44. In section 137 of the Local Government Act 1972 (which gives local authorities power to incur expenditure for certain purposes not otherwise authorised, but limits the expenditure which it authorises)—

(*a*) the following subsections shall be inserted after subsection (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.

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(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—

1969 c. 2.

(*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

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(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".

Arrangements under Employment and Training Act 1973. 1973 c. 50.

45.—(1) A local authority to whom this section applies shall have power and shall be deemed always to have had power to enter into arrangements with the Manpower Services Commission or the Secretary of State under any provision of the Employment 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 in pursuance of Schedule 17 to the Local Government Act 1972; and 1971 c. 78.

(*c*) the Common Council of the City of London.

Extension of duration of local Act powers to assist industry etc.

46.—(1) In each of the enactments to which this subsection applies "1986" shall be substituted for "1984".

(2) The enactments to which subsection (1) above applies are—

(*a*) section 62A of the Isle of Wight County Council Act 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; 1976 c. xxxv.

(*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 Act 1980; 1980 c. xi.

(*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

Minor amendments and repeals.

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

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(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

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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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(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.

(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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1964 c. 26.

13. Where—

(*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

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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(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.

1961 c. 64.

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

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(*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.

(2) Where an appeal under any enactment mentioned in sub-paragraph (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 (Licensing) Act 1967 to any area in respect of which an adoption has been made under section 1 of that Act; or 1967 c. 19.

(*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 Air Force Acts (Transitional Provisions) Act 1955; 1955 c. 20.

(*d*) section 182(1) of the Licensing Act 1964; 1964 c. 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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"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;

1947 c. 41.

"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;

1914 c. 91.

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

1961 c. 64.

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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 1 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— SCH. 2

" 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 Protection of Children Act 1978 ; or 1959 c. 66. 1978 c. 37.

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

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(*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.

(*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

1952 c. 68.

(*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

(*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.

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(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

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observations submitted to them by the chief officer of police and any objections of which notice has been sent to them under sub-paragraph (15) above.

(19) The appropriate authority shall give an opportunity of appearing before and of being heard by a committee or sub-committee of the authority—

(*a*) before refusing to grant a licence, to the applicant ;

(*b*) before refusing to renew a licence, to the holder ; and

(*c*) before refusing to transfer a licence, to the holder and the person to whom he desires that it shall be transferred.

(20) Where the appropriate authority refuse to grant, renew or transfer a licence, they shall, if required to do so by the applicant or holder of the licence, give him a statement in writing of the reasons for their decision within 7 days of his requiring them to do so.

11.—(1) Where, before the date of expiry of a licence, an application has been made for its renewal, it shall be deemed to remain in force notwithstanding that the date has passed until the withdrawal of the application or its determination by the appropriate authority.

(2) Where, before the date of expiry of a licence, an application has been made for its transfer, it shall be deemed to remain in force with any necessary modifications until the withdrawal of the application or its determination, notwithstanding that the date has passed or that the person to whom the licence is to be transferred if the application is granted is carrying on the business of the sex establishment.

Refusal of licences

12.—(1) A licence under this Schedule shall not be granted—

(*a*) to a person under the age of 18 ; or

(*b*) to a person who is for the time being disqualified under paragraph 17(3) below ; or

(*c*) to a person, other than a body corporate, who is not resident in the United Kingdom or was not so resident throughout the period of six months immediately preceding the date when the application was made ; or

(*d*) to a body corporate which is not incorporated in the United Kingdom ; or

(*e*) to a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

(2) Subject to paragraph 27 below, the appropriate authority may refuse—

(*a*) an application for the grant or renewal of a licence on one or more of the grounds specified in sub-paragraph (3) below ;

(*b*) an application for the transfer of a licence on either or both of the grounds specified in paragraphs (*a*) and (*b*) of that sub-paragraph.

(3) The grounds mentioned in sub-paragraph (2) above are—

(*a*) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason ;

(*b*) that if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself ;

(*c*) that the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality ;

(*d*) that the grant or renewal of the licence would be inappropriate, having regard—

(i) to the character of the relevant locality ; or

(ii) to the use to which any premises in the vicinity are put ; or

(iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

(4) Nil may be an appropriate number for the purposes of sub-paragraph (3)(*c*) above.

(5) In this paragraph " the relevant locality " means—

(*a*) in relation to premises, the locality where they are situated ; and

(*b*) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.

Power to prescribe standard conditions

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

(2) Regulations under sub-paragraph (1) above may make different provision—

(*a*) for sex cinemas and sex shops ; and

(*b*) for different kinds of sex cinemas and sex shops.

(3) Without prejudice to the generality of sub-paragraphs (1) and (2) above, regulations under this paragraph may prescribe conditions regulating—

(*a*) the hours of opening and closing of sex establishments ;

(*b*) displays or advertisements on or in such establishments ;

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(*c*) the visibility of the interior of sex establishments to passers-by; and

(*d*) any change of a sex cinema to a sex shop or a sex shop to a sex cinema.

(4) Where the appropriate authority have made regulations under sub-paragraph (1) above, every such licence granted, renewed or transferred by them shall be presumed to have been so granted, renewed or transferred subject to any standard conditions applicable to it unless they have been expressly excluded or varied.

(5) Where the appropriate authority have made regulations under sub-paragraph (1) above, they shall, if so requested by any person, supply him with a copy of the regulations on payment of such reasonable fee as the authority may determine.

(6) In any legal proceedings the production of a copy of any regulations made by the appropriate authority under sub-paragraph (1) above purporting to be certified as a true copy by an officer of the authority authorised to give a certificate for the purposes of this paragraph shall be prima facie evidence of such regulations, and no proof shall be required of the handwriting or official position or authority of any person giving such certificate.

Copies of licences and standard conditions

14.—(1) The holder of a licence under this Schedule shall keep exhibited in a suitable place to be specified in the licence a copy of the licence and any regulations made under paragraph 13(1) above which prescribe standard conditions subject to which the licence is held.

(2) The appropriate authority shall send a copy of any licence granted under this Schedule to the chief officer of police for the area where the sex establishment is situated.

Transmission and cancellation of licences

15.—In the event of the death of the holder of a licence granted under this Schedule, that licence shall be deemed to have been granted to his personal representatives and shall, unless previously revoked, remain in force until the end of the period of 3 months beginning with the death and shall then expire; but the appropriate authority may from time to time, on the application of those representatives, extend or further extend the period of three months if the authority are satisfied that the extension is necessary for the purpose of winding up the deceased's estate and that no other circumstances make it undesirable.

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

Revocation of licences

17.—(1) The appropriate authority may, after giving the holder of a licence under this Schedule an opportunity of appearing before and being heard by them, at any time revoke the licence—

(*a*) on any ground specified in sub-paragraph (1) of paragraph 12 above; or

(*b*) on either of the grounds specified in sub-paragraph (3)(*a*) and (*b*) of that paragraph.

(2) Where a licence is revoked, the appropriate authority shall, if required to do so by the person who held it, give him a statement in writing of the reasons for their decision within 7 days of his requiring them to do so.

(3) Where a licence is revoked, its holder shall be disqualified from holding or obtaining a licence in the area of the appropriate authority for a period of 12 months beginning with the date of revocation.

Variation of licences

18.—(1) The holder of a licence under this Schedule may at any time apply to the appropriate authority for any such variation of the terms, conditions or restrictions on or subject to which the licence is held as may be specified in the application.

(2) The appropriate authority—

(*a*) may make the variation specified in the application ; or

(*b*) may make such variations as they think fit ; or

(*c*) may refuse the application.

(3) The variations that an authority may make by virtue of sub-paragraph (2)(*b*) above include, without prejudice to the generality of that sub-paragraph, variations involving the imposition of terms, conditions or restrictions other than those specified in the application.

Fees

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

Enforcement

20.—(1) A person who—

(*a*) knowingly uses, or knowingly causes or permits the use of, any premises, vehicle, vessel or stall contrary to paragraph 6 above ; or

(*b*) being the holder of a licence for a sex establishment, employs in the business of the establishment any person known to him to be disqualified from holding such a licence ; or

(*c*) being the holder of a licence under this Schedule, without reasonable excuse knowingly contravenes, or without reasonable excuse knowingly permits the contravention of, a term, condition or restriction specified in the licence ; or

(*d*) being the servant or agent of the holder of a licence under this Schedule, without reasonable excuse knowingly contravenes, or without reasonable excuse knowingly permits the contravention of, a term, condition or restriction specified in the licence,

shall be guilty of an offence.

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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.

(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 sub-paragraph (5) above, the decision of the Crown Court shall be final: and accordingly in section 28(2)(*b*) of the Supreme Court Act 1981 for the words "or the Gaming Act 1968" there shall be substituted the words ", the Gaming Act 1968 or the Local Government (Miscellaneous Provisions) Act 1982".

1981 c. 54.

(7) On an appeal to the magistrates' court or the Crown Court under this paragraph the court may make such order as it thinks fit.

(8) Subject to sub-paragraphs (9) to (12) below, it shall be the duty of the appropriate authority to give effect to an order of the magistrates' court or the Crown Court.

(9) The appropriate authority need not give effect to the order of the magistrates' court until the time for bringing an appeal under sub-paragraph (5) above has expired and, if such an appeal is duly brought, until the determination or abandonment of the appeal.

(10) Where a licence is revoked or an application for the renewal of a licence is refused, the licence shall be deemed to remain in force—

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

(*b*) where an appeal relating to the refusal of an application for such a renewal is successful and no further appeal is available, until the licence is renewed by the appropriate authority.

(11) Where—

(*a*) the holder of a licence makes an application under paragraph 18 above ; and

(*b*) the appropriate authority impose any term, condition or restriction other than one specified in the application,

the licence shall be deemed to be free of it until the time for bringing an appeal under this paragraph has expired.

(12) Where an appeal is brought under this paragraph against the imposition of any such term, condition or restriction, the licence shall be deemed to be free of it until the determination or abandonment of the appeal.

Provisions relating to existing premises

28.—(1) Without prejudice to any other enactment it shall be lawful for any person who—

(*a*) was using any premises, vehicle, vessel or stall as a sex establishment immediately before the date of the first publication under subsection (2) of section 2 above of a notice of the passing of a resolution under that section by the local authority for the area ; and

(*b*) had before the appointed day duly applied to the appropriate authority for a licence for the establishment,

to continue to use the premises, vehicle, vessel or stall as a sex establishment until the determination of his application.

(2) In this paragraph and paragraph 29 below "the appointed day", in relation to any area, means the day specified in the resolution passed under section 2 above as the date upon which this Schedule is to come into force in that area.

29.—(1) This paragraph applies to an application for the grant of a licence under this Schedule made before the appointed day.

(2) A local authority shall not consider any application to which this paragraph applies before the appointed day.

(3) A local authority shall not grant any application to which this paragraph applies until they have considered all such applications.

(4) In considering which of several applications to which this paragraph applies should be granted a local authority shall give preference over other applicants to any applicant who satisfies them—

(*a*) that he is using the premises, vehicle, vessel or stall to which the application relates as a sex establishment ; and

(*b*) that some person was using the premises, vehicle, vessel or stall as a sex establishment on 22nd December 1981 ; and

(*c*) that—

(i) he is that person ; or

(ii) he is a successor of that person in the business or activity which was being carried on there on that date.

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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 sub-paragraph (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.

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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

1980 c. 66.

(*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.

(2) The following are not street trading for the purposes of this Schedule— SCH. 4

(*a*) trading by a person acting as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871; 1871 c. 96.

(*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; 1980 c. 66.

(*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 Provisions) Act 1916. 1916 c. 31.

(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.

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(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

1980 c. 65.

(*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.

(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.

(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 (Miscellaneous Provisions) Act 1976 (road-side sales) is in force, other than trading to which the control order does not apply. 1976 c. 57.

(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.

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(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 licence-holder 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 licence-holder 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

(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

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(*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.

1976 c. 57

(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

(*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

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(*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).

SCHEDULE 5

Section 20.

HIGHWAY AMENITIES

PART I

ADDITION OF PART VIIA TO HIGHWAYS ACT 1980

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

"PART VIIA

PROVISION OF AMENITIES ON CERTAIN HIGHWAYS

Scope of 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 Planning Act 1971 ; and 1971 c. 78.

" traffic order " means an order made under section 1 or 6 of the Road Traffic Regulation Act 1967 (traffic regulation orders) or under section 9 of that Act (experimental traffic orders) ; and 1967 c. 76.

" 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

(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.

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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, for the area in which, as the case may be, they propose to exercise the power or to which the proposed permission would relate.

1971 c. 78.

(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; and

(*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 council seeking the consent.

SCH. 5

(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) above.

Failure to comply with terms of permission.

115K.—(1) If it appears to a council that a person to 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 (order extinguishing right to use vehicles on highway) the following subsection shall be inserted after subsection (8)— 1971 c. 78.

"(8A) An order under subsection (8) of this section may make provision requiring the removal of any obstruction of a highway 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 (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". 1936 c. 49.

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—

(*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

1972 c. 70.

(*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.

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TABLE

Provision of 1971 Act	*Text to be corrected*	*Corrected text*
Section 7(4)	(3)(*a*)	(1A)(*a*)
Section 15(3)	The words from the beginning 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 consent 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 (which exempts small direct labour organisations from the requirements of Part III of that Act)— 1980 c. 65.

"(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.

SCH. 7

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 1974.	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.

SCH. 7

Chapter	Short title	Extent of repeal
1980 c. x.	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 c. xi.	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.

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.

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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 (Amendment) 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.

PART V

REPEALS IN LOCAL ACTS IN CONSEQUENCE OF SECTION 12

Chapter	Short title	Extent of repeal
1980 c. x.	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.	East Sussex Act 1981.	Section 91.
1982 c. iii.	Humberside Act 1982.	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.	Greater London Council (General Powers) Act 1979.	Section 5. Section 9.

REPEALS IN LOCAL ACTS IN CONSEQUENCE OF SECTION 20—*cont.* SCH. 7

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 repeal
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.

PART IX

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.

PART X

REPEALS IN LOCAL ACTS IN CONSEQUENCE OF SECTION 27

Chapter	Short title	Extent of repeal
1967 c. xx.	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.

PART XI

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 c. x.	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.

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.	Isle of Wight Act 1980.	Section 17.
1981 c. xviii.	County of Kent Act 1981.	Section 4.
1982 c. iii.	Humberside Act 1982.	Section 50.
1982 c. iv.	County of Avon Act 1982.	Section 46.

PART XIII

REPEALS IN LOCAL ACTS IN CONSEQUENCE OF SECTION 34

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

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Cinematograph (Amendment) Act 1982

CHAPTER 33

ARRANGEMENT OF SECTIONS

ELIZABETH II

Cinematograph (Amendment) Act 1982

1982 CHAPTER 33

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

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Extension of 1909 Act to certain other exhibitions of moving pictures.

1. Subject to the provisions of—

(*a*) section 7 (application of Act to special premises) of the Cinematograph Act 1909 (in this Act referred to as " the 1909 Act "); and

(*b*) section 5 (exemption for non-commercial exhibitions) of the Cinematograph Act 1952 (in this Act referred to as " the 1952 Act "),

1909 c. 30.
1925 c. 68.

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 Office Act 1969.

1969 c. 48.

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.

Applications for grant, renewal or transfer of licence or consent.

3.—(1) An applicant for the grant, renewal or transfer of a licence shall give to—

(*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.

Appeals against decisions of licensing authority.

4.—(1) Any person aggrieved—

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

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

(*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

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, regulations 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.

Powers of arrest and seizure.

6.—(1) If a constable has reasonable cause to suspect 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 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—

(*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

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 mav 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.

Offences by bodies corporate.

8.—(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 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.

Interpretation.

9.—(1) In this Act—

"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.

"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 and";

(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*)"

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 ".

Short title, citation, commencement and extent.

11.—(1) This Act may be cited as the Cinematograph (Amendment) Act 1982.

(2) The Cinematograph Acts 1909 and 1952 and this Act may be cited together as the Cinematograph Acts 1909 to 1982.

(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—

"Provision against cinematograph exhibition except in licensed premises.

1952 c. 68.

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

1947 c. 41.

(*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".

SCH. 1

(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 shall be required by reason only of the giving of the exhibition; 1952 c. 68.

(*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.".

SCH. 1

Sunday Entertainments Act 1932

1932 c. 51.
1909 c. 30.

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 words from " means " to the end there shall be substituted the words " has the same meaning as in the Cinematograph Act 1909.". 1959 c. 66.

London Government Act 1963

10. In paragraph 19(5) of Schedule 12 to the London Government 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 ". 1963 c. 33.

Sunday Cinema Act 1972

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

Indecent Displays (Control) Act 1981

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

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 Cinematograph Act 1909.
1967 c. 80.	The Criminal Justice Act 1967.	In Schedule 3, in Part I, the entry relating to section 3 of the Cinematograph 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)(*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.	In Schedule 7D, paragraph 4.
	The Criminal Justice Act 1982.	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.

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

A

BILL

TO

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

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

5 *Preliminary*

1.—(1) The provisions of this section shall have effect for the interpretation of terms used in this Act. Interpretation of terms.

(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.

(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 the purposes of this Act an exempted work if, taken as a whole— 5

(*a*) it is designed to provide information, education or instruction; or

(*b*) it is concerned with sport, religion or music. 10

(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; 15

(*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 whether or not a supply of a video recording is an exempted supply for the purposes of this Act. 20

(2) The supply of a video recording by any person is an exempted supply if it is neither—

(*a*) a supply for reward, nor 25

(*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 supply in the course or furtherance of a business. 30

(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 United Kingdom other than those who, in the course of a business, make video works or supply video recordings. 35

(5) Where a video work—

(*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 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 (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 Ireland) 1959 (similar provision for Northern Ireland), 1952 c. 68. 1959 c. 20 (N.I.).

is an exempted supply.

(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 Broadcasting Authority or its distribution by a system licensed under section 89 of the Post Office Act 1969 (licensing of programme distribution systems) is an exempted supply. 1969 c. 48.

(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 or not video works are suitable for showing, 5

(*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, and 10

(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 designated under this section), including video recordings of the video works to which the determinations relate. 15

(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. 25

(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— 30

(*a*) is not suitable for showing, or

(*b*) is not suitable for showing to persons who have not attained a particular age,

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

(4) The Secretary of State may at any time designate another person in place of any person designated under this section and, 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. 40 45

(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.

Classification certificates.

5.—(1) In this Act " classification certificate " means a 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.

(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.

Requirements as to labelling etc.

6.—(1) The Secretary of State may, in relation to video works in respect of which classification certificates have been issued, by regulations require such indication as may be specified by the 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

Supplying video recording of unclassified work.

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 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 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.

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 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, each of those works was either an exempted work or a work in respect of which a classification certificate had been issued,

(*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.

Supplying video recording of classified work in breach of classification.

9.—(1) Where a classification certificate issued in respect of a video work states that no video recording containing that work is to be supplied to any person who has not attained the age specified in the certificate, a person who supplies or offers to supply a video recording containing that work to a person who 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

(*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.

Supply or possession of video recording on certain premises.

10.—(1) Where a classification certificate issued in respect of a video work states 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 the age specified in the certificate are admitted to those premises, a person who—

(*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 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 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 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 requirement 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 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 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 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.

Penalties.

13.—(1) A person guilty of an offence under section 7 or 8 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 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 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 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 constable 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 used in evidence in any proceedings for an offence under this Act.

(3) In subsection (1) above—

(*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.

Arrest.

16.—(1) If a constable has reasonable grounds for suspecting 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 arrest him without warrant.

(2) This section does not extend to Scotland.

Evidence by certificate.

17.—(1) 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 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,

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 that the video work concerned differs in those respects from the other video work. 5

(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 of State and stating— 10

(*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 15

(*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 and that a document identified by the certificate under this subsection is a copy of the classification certificate so issued, 20

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

(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. 30

(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— 35

(*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 40

(*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 (Scotland) Act 1980 there is added— Evidence by certificate in Scotland. 1980 c. 62.

"The Video Recordings Act 1984 ss. 7 to 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 authority; and (ii) a video work (or part of a video work) contained in a video 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 the proceedings.	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 specified 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 Act, the court may order any video recording— Forfeiture.

(*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.

(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.

(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 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, 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 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 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 an alteration made in pursuance of regulations under section 6 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 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

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B I L L

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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