

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

REPORT OF THE EXECUTIVE MANAGEMENT TEAM TO COUNCIL

31 March 2010

1. COUNCIL'S STANDING ORDERS IN RELATION TO CONTRACTS – PART III

Submitted by: Procurement Officer

Portfolio: Customer Services & Transformation/Resources & Efficiency

Ward(s) affected: All

Purpose of the Report

To consider and recommend for approval by Council the revisions made to the Council's Standing Orders in Relation to Contracts Part III.

Recommendation

To approve the revisions made to Appendix 'B' - EU Tendering Procedures that exist as part of the authorities Standing Orders in Relation to Contracts – Part III.

Reasons

In December 2009 the EU Remedies Directives came into force which has resulted in changes to the 'standstill period' which forms part of the tendering procedures prior to the final award of a contract.

Following a two-yearly revision of the Public Procurement Directive thresholds by the EU Commission there has been an increase in the thresholds (effective from 1 January 2010) for advertising in the Official Journal of the European Union (OJEU).

1. Background

- 1.1 The implementation of the EU Remedies Directive; effective from 20. December.2009 has resulted in a number of changes which impact on public sector organisations. One such change affects the standstill period which forms part of the tendering procedures prior to the final award of a contract.
- 1.2 Following the two-yearly revision of the Public Procurement Directive thresholds by the EU Commission there has been an increase in the thresholds (effective from 1 January 2010) for advertising in the Official Journal of the European Union (OJEU).
- 1.3 The revisions made are limited to Appendix 'B' - EU Tendering procedures that exist as part of the authorities Standing Orders in Relation to Contracts – Part III.

2. **Issues**

- 2.1 Information linked to the 'Standstill Period' contained within the Council's Standing Orders in Relation to Contracts Part III, does not currently reflect the changes made as part of the Remedies Directive introduced in December 2010.
- 2.2 EU threshold figures reported as part of the Councils existing 'Standing Orders in Relation to Contracts Part III' are now out of date.

3. **Options Considered**

- 3.1 To leave the EU threshold values un-changed in the Councils 'Standing Orders in Relation to Contracts Part III' would lead to ambiguity, as updated threshold values have been circulated to managers and officers throughout the authority.

4. **Proposal**

- 4.1 That Members allow Officers to modify the Councils 'Standing Orders in Relation to Contracts Part III' accordingly, updating threshold values and modifying Appendix 'B' to reflect the changes linked to the delivery of a compliant standstill period that forms part of the EU Tendering process.
- 4.2 That Officers update and re-publish the amended document on the Council's inter/intranet.

5. **Reasons for Preferred Solution**

- 5.1 To maintain a consistent approach in delivering compliant tender processes.
- 5.2 To make available to officers the most recent and relevant information.
- 5.3 To ensure that the most up to date EU procurement threshold values are reported and do not lead to any ambiguity.

6. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

- 6.1 The modifications made to the Standing Orders in Relation to Contracts Part III supports in the main, the Council priority to transform our Council to achieve excellence. It also contributes to the priority 'Creating a Borough of Opportunity,' in terms of providing information to potential suppliers on how to do business with the Council and engaging with the voluntary sector for services.

7. **Legal and Statutory Implications**

- 7.1 The revisions made support compliance to EU Procurement Directives.

8. **Equality Impact Assessment**

- 8.1 All major procurement shall recognise the impact on the social, economic and environmental wellbeing within the Borough. We will strive to offer equality and diversity in all our procurement transactions.

9. **Financial and Resource Implications**

At this stage there are none.

10. **Major Risks**

10.1 Areas of high risk can be summarised as follows:

- Failure to address the possibilities of inappropriate behaviour as part of the tendering process.
- Failure to address the possibilities of fraud and corruption
- Failure to deliver a fair and consistent approach to tendering resulting in reputational damage and challenges.
- Failure to meet legislative requirements.
- Failure to provide efficient staff with skills, knowledge and capacity to support the delivery of appropriate procurement options.
- Business needs are ambiguous and not communicated.
- Council is unable to adapt processes, procedures, policies, and protocols to support business needs/ markets and opportunities or benefits are missed.

11. **Key Decision Information**

11.1 The revised Procurement Strategy which incorporates the need for ongoing reviews of the Councils 'Standing Orders in Relation to Contracts' is mentioned in the Forward Plan.

12. **Earlier Cabinet/Committee Resolutions**

No earlier Cabinet/Committee Resolutions apply.

13. **Background Papers**

Standing Orders in Relation to Contracts – Part III (Appendix 'B' EU Tendering Procedures.

2. **ADOPTION OF SCHEDULE 3 LOCAL GOVERNMENT [MISCELLANEOUS PROVISIONS] ACT 1982**

Submitted by: Head of Central Services - Paul Clisby

Portfolio: Culture and Active Communities

Ward(s) affected: All Wards

Purpose of the Report

To propose that the Council adopts Schedule 3 of The Local Government [Miscellaneous Provisions] Act 1982 ---The control of Sex Establishments within the boundaries of Newcastle under Lyme

Recommendations

That the Council adopts Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982

Reasons

In order to have control over Sex establishments.

1. Background

- 1.1 The forthcoming Policing and Crime Act 2009 will have the effect of inserting new paragraphs into Schedule 3 of The Local Government (Miscellaneous Provisions) Act 1982. This will provide for a new category of Sex Establishment – The New category is a “Sexual Entertainment Venue”. This type of entertainment provided at such a venue may take the form of a live performance or live display of nudity and must be of such a nature that, ignoring financial gain, it must reasonably be assumed to have been provided solely or principally for the purpose of sexually stimulating any member of the audience – in essence lap dancing and pole dancing.

2. Issues

- 2.1 Failure to adopt Schedule 3 of The Local Government (Miscellaneous Provisions) Act 1982 will have the effect that Section 27 of the Policing and Crime Act cannot be inserted to Schedule 3 and as a result the Council will have no control of “Sexual Entertainment Venues”. The Council will be unable to prevent this type of premise from operating and would not be able to impose any conditions on the operation of the Venue.

Should the Council adopt aforesaid Schedule 3, the Council would be in a position to set criteria it deems appropriate such as the setting of fees, having a Policy which restricts the locations of such Venues, and to impose a restriction on the numbers of such Venues.

3. Options Considered

- 3.1 The options are as above

4. Proposal

- 4.1 To adopt the act as shown in the recommendation above.

5. Reasons for Preferred Solution

As highlighted earlier in Issues

6. Outcomes Linked to Sustainable Community Strategy and Corporate Priorities

- 6.1 Indirectly relevant to:-

Creating a cleaner, safer and sustainable Borough

7. Legal and Statutory Implications

These have been shown in the report.

8. Equality Impact Assessment

There are no equality issues with the proposal.

9. **Financial and Resource Implications**

There are no implications

10. **Major Risks**

Failure to adopt the act may lead to unlicensed sex venues.

11. **Key Decision Information**

- 11.1 (Whether it is a decision involving significant expenditure or savings, or will impact on 2 or more wards and whether it has/has not been included in the Forward Plan)

12. **Earlier Cabinet/Committee Resolutions**

Not a key decision

13. **List of Appendices**

Appendix 'A' (cream paper) - Schedule 3 of the L.G.M.PA.1982)
Appendix 'B' (gold paper) - Section 27 of the Police and Crime Act 2009.

14. **Background Papers**

Refer to the appendices

3. **TRANSFER OF CHARITY FUNDS TO STAFFORDSHIRE COMMUNITY FOUNDATION**

Submitted by: Head of Finance

Portfolio: Resources and Efficiency

Ward(s) affected: All

A report on this matter will follow.

SUPPLEMENTARY REPORT OF THE EXECUTIVE MANAGEMENT TEAM TO COUNCIL

31 March 2010

4. TRANSFER OF CHARITY FUNDS TO STAFFORDSHIRE COMMUNITY FOUNDATION

Submitted by **Head of Finance**

Portfolio **Resources and Efficiency**

Wards Affected **All**

Purpose

To propose the transfer of funds relating to certain of the charities for which the Council acts as sole trustee to the Staffordshire Community Foundation, which will assume responsibility for administering them.

Recommendation

That the funds relating to the following charities be transferred, by 31 March 2010, to the Staffordshire Community Foundation: John Bentley Charity, William Meadon Charity, Mayor's Air Raid Distress Fund, Newcastle, Staffs, Services Entertainments (1940/45) Fund.

Reason

The Council will no longer need to devote resources to the administration of these charities and advantage can be taken of the availability of match funding to increase substantially the balance of each charity's funds.

1. Background

- 1.1 The Council administers a number of charities, either as sole trustee or as a result of historical association with the charity concerned. These are set out in Appendix 'C' (***) paper).
- 1.2 When it considered the accounts for 2008/09 the Audit and Risk Committee commented on the number of charities administered by the Council and the relatively small balances held by some of them and asked officers to explore the possibility of extinguishing or combining some of them.
- 1.3 Administration of these charities takes up officer time, in some cases a minimal amount; in others it can be significant. Services provided include financial (including making payments and production of accounts) legal, administration of meetings of trustees and property management and tenant relations (Almshouses). The fund balances (endowments) of the charities are either invested in external investments or with the Borough Council.
- 1.4 The Staffordshire Community Foundation (SCF) has been in discussions with the Council with a suggestion that some of these charities could be transferred to the SCF to be administered by them rather than by Council staff. Current governance arrangements can continue, i.e. each will retain trustees who will make the decisions, as now, in relation to each transferred charity. SCF is a registered charity (No. 1091628) and is one of a number of community foundations, many of them county based, which have been set up in the UK

under the umbrella of a national organisation. The government supports the creation of Community Foundations as a means of generating community involvement and maintenance of community cohesion.

- 1.5 A meeting has been held with the SCF Chief Executive, which was attended by both the Mayor and the Portfolio Holder for Resources and Efficiency, to discuss the issues involved. It was stated that several other councils in Staffordshire have transferred charities into the SCF. As a result, it appeared that the proposal was worth considering.

2. Issues

- 2.1 At present there is a government scheme, the Grassroots Endowment Initiative, which encourages the management of charities by community foundations, by match funding endowments transferred to community foundations by up to 100%. This initiative is due to end in 2011. The SCF trustees have recently met and decided that the rate of match funding for 2010/11 will be 50% instead of the current 100%. There is the possibility, therefore, of significantly increasing the funds of any charity transferred to SCF, and hence their likely income available for use, particularly if any charities can be transferred before 31 March 2010 when the higher rate of match funding can be achieved.
- 2.2 The funds of charities to be taken over by SCF would be transferred to them and would be invested, as part of a pool, covering all of the charities administered by SCF. Investment income would then be allocated to each charity administered by SCF, in proportion to the balance of their funds, and would be used to finance the activities of the charities. Profits or losses on investments would be similarly allocated. Investments are managed by an investment manager on behalf of SCF. Transferred charities can continue to have boards, with independent members, including Borough Council members, which will determine the use of their income and other matters in relation to their affairs.
- 2.3 The objectives of each charity will be established at the time of transfer, most likely being the same as the present ones. Where appropriate charities can be combined. SCF make a charge, currently of 1.5% of the charity's fund, to each charity to cover SCF administration costs. Charity Commission approval will be required for any transfers of registered charities, although this will be less complex than if the Council itself were to attempt to wind up or amalgamate charities.
- 2.4 Where the Council is sole trustee of a charity it can decide itself to transfer funds to SCF (subject to any necessary Charity Commission approval in relation to a registered charity). Where a charity is controlled by an independent board of trustees, however, those charities' funds can only be transferred by action of those trustees. If advantage is to be taken of the match funding opportunity, which is only available at the enhanced 100% level up to 31 March 2010, it will only be feasible to transfer, at this time, those charity funds where the Council is sole trustee.
- 2.5 Further consideration can be given to the possible transfer of the other independent charities to SCF. This can only progress following discussions with their trustees and only if they are in agreement to a transfer. An alternative would be to charge the independent charities for the services provided by the Council.

3. Proposal

- 3.1 It is proposed to transfer the funds relating to the following charities: John Bentley Charity, William Meadon Charity, Mayor's Air Raid Distress Fund, Newcastle, Staffs, Services Entertainments (1940/45) Fund, this transfer to take place before 31 March 2010. In order to achieve transfer by 31 March, it will be necessary to pay over the amounts concerned to

SCF before that date, on the understanding that should Full Council not give approval, then the funds will be returned by SCF. This has been agreed with the Portfolio Holder for Resources and Efficiency.

- 3.2 John Bentley and William Meadon charities would continue as separate Funds, whilst the other two would be combined into a "Newcastle Fund".
- 3.3 It is not proposed to transfer the balance relating to the original donation to the Museum Purchases Fund, as this is linked to the wider fund set up by the council to pay for museum purchases and improvements.
- 3.4 It is further proposed to discuss, with their trustees, the transfer of the independent charities to SCF and if this is acceptable to any of them, to facilitate the transfer during 2010/11. The question of charging for Council services will also be raised, particularly with regard to the Barracks Trust.
- 3.5 Consideration could be given to earmarking a part of the amount raised each year in relation to the Mayors Charities for transfer into the "Newcastle Fund" referred to above. A similar arrangement is operated by at least two other Staffordshire Councils.
- 3.6 No action is appropriate in relation to the Sports Advisory Council as this is merely a grants distribution body funded by the Council.

4. **Legal and Statutory Implications**

- 4.1 The approval of the Charity Commission will be required to transfer the funds of the William Meadon Charity to SCF. This can be obtained by SCF.

5. **Financial and Resource Implications**

- 5.1 There should be a saving in officer time which can henceforth be devoted to Borough Council activities rather than elsewhere. There is no cost to the Council as a result of transfers to SCF.

6. **Major Risks**

- 6.1 Administration by SCF of the charities transferred could be unsatisfactory, although there is nothing to suggest that this would be the case. Currently, if there was any maladministration or misappropriation of funds resulting from the action of Council officers, the Council would take responsibility and take corrective action or make good the loss. SCF is a registered charity and, as such, is subject to scrutiny by the Charity Commission. Its accounts and transactions are also subject to independent audit. There is also a risk that investment capital could be lost or that the returns on investment could be less than expected. There is no reason to believe that this is any greater than in relation to those charity funds which are currently externally invested, by the Council on behalf of charities. However, where charity funds are invested with the Council directly, this is, effectively, currently at no risk to the charities involved. It is likely that some or, in some cases possibly all, of the trustees of transferred charities would be Council members, so this would afford a degree of oversight.
- 6.2 From the Council's standpoint, it would be relieved of responsibility for and consequences arising from any risks relating to the transferred charities.

5. **STATEMENT OF THE LEADER OF THE COUNCIL TO FULL COUNCIL – 31 MARCH 2010**

Submitted by: Councillor Simon Tagg

Portfolio: All

Wards affected: All

Purpose of the Report

To provide an update to Members on the activities and decisions of Cabinet together with the Forward

Recommendation

That the statement of the Leader of the Council be received and noted.

Reasons

To update Council Members on the activities and decisions of the Cabinet and to allow questions and comments on the Statement to the relevant Portfolio Holders.

1. **Background**

- 1.1 Since the last Full Council meeting on 24 February 2010 Cabinet has met twice, on the 10th March (Special Cabinet) and 24 March 2010. Below is a summary of decisions and actions taken along with a link to the Forward Plan covering the next 3 month period. (For further background to the Cabinets Decisions please refer to the Cabinet agendas of 10th and 24 March 2010).

2. **Housing Capital Programme 2010/11**

- 2.1 The 2010/11 housing capital programme for Newcastle has now been approved by. A total of £2,591,000 will be spent, with £1,986,000 provided by Central Government and £605,000 contributed by the Borough Council. The money will be spent on creating affordable housing, improving existing properties and investing in adaptations for disabled residents.

3. **Development of Affordable Housing on Part of London Road, Car Park, Chesterton**

Plans to build affordable homes on part of Chesterton's London Road car park have been approved. Borough Council-owned land will be sold to Staffordshire Housing Association for a nominal sum of £1. This is on the understanding that the Housing Association gives £15,000 to the Council so that improvements can be made to the car park and that work starts before April 2011.

4. **Health and Wellbeing Centre**

Plans for Newcastle's Health and Well-being Centre are on target, with the Council's Planning Committee giving the green light to the project earlier this month. NHS North Staffordshire has now paid its first £500,000 towards the scheme and the interior design for the new building has been agreed.

5. **Energy Efficiency and Climate Change Strategy and Carbon Reduction Plan**

The Cabinet has adopted the Energy Efficiency and Climate Change Strategy and associated Project Plan. Work has commenced on the associated Project Plan. There will be regular progress meetings with updates to Cabinet.

The Cabinet has agreed to sign up to the Carbon Trust Management Programme, which will help the Council make cost savings in good housekeeping and invest to save measures.

It is considered appropriate now to implement the agreement made in principle at the December 2009 Full Council and to sign up to 10:10 for the current year 2010/11.

6. **Forward Plan**

The Forward Plan covering the period 1 April to 31 July 2010 can be found at:

http://www.newcastle-staffs.gov.uk/council_content.asp?id=SXA618-A780A454&cat=1400

APPENDIX A

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

Meaning of "sex establishment"

2. In this Schedule "sex establishment" means a sex cinema or 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
- (2) are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or secretory functions,

but does not include a dwelling-house in which the public is not admitted.

(3) No premises shall be treated as a sex cinema by reason only—

- (a) if they are licensed under section 1 of the Cinemas Act 1909, of their use for a purpose for which a licence under that section is required; or
- (b) of their use for an exhibition to which section 6 of that Act (concerning non-commercial exhibitions) applies given by an exempted organisation within the meaning of section 5(6) of that Act.

Meaning of "sex shop" and "sex stall"

4.- (1) In this Schedule, "sex shop" means any premises, vehicle, vessel or stall used for a purpose which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating—

- (a) sex articles; or
- (2) 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.

(3) 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.

(4) 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 in which sub-paragraph (4) below applies.

(5) 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 series for the representation or manufacture of any such article; and
- (b) to any recording of vision or sound.

which

- (a) 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
- (b) is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or secretory 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 that 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 buildings as it applies to vessels.

Requirements 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 purpose of birth control; or
- (b) are primarily for birth control.

7. (1) Any person who—

- (a) uses any premises, vehicle, vessel, or stall as a sex establishment; or
- (b) attempts to do so,

may apply to the appropriate authority for them to waive the requirement of a licence.

(2) An application under this paragraph may be made either as part of an application for a licence under this Schedule or without any such application.

(3) An application under this paragraph shall be made in writing and shall contain the particulars specified in paragraph 10(2) to (5) below and such particulars as the appropriate authority may reasonably require in addition.

(4) The appropriate authority may waive the requirement of a licence in any case where they consider that to require a licence would be unreasonable or inappropriate.

(5) A waiver may be for such period as the appropriate authority think fit.

(6) Where the appropriate authority grant an application for a waiver, they shall give the applicant for the waiver notice that they have granted his application.

(7) The appropriate authority may at any time give a person who would require a licence 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 21 below, any licence under this Schedule shall unless previously cancelled under paragraph 16 or revoked under paragraph 17(1) below, continue 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 duly constituted or 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 withhold the consent of the person making the objection nor 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 objections submitted to it 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 licensee; 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 until such time as the date has passed and 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 modification until the withdrawal of the application or its determination, notwithstanding that the date has passed on which 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 licence

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

- (c) if 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 that 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 referred to in sub-paragraph (2) above are—
 - (i) that the applicant is incapable to hold the licence by reason of having been convicted of an offence or for any other reason;
 - (ii) 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;
 - (iii) 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;
 - (iv) 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) It 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 Scheme, 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 Scheme are to be granted, renewed or transferred by them.

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

- (a) for sex cinemas and sex shops; and
- (b) for different kinds of sex cinemas and sex shops.

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

- (a) the hours of opening and closing of sex establishments;
- (b) displays or advertisements on or in such establishments;
- (c) the visibility of the interior of sex establishments to 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 (3) 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 (3) 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 licence 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 or conditions (as in 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.

Extension and revocation of licence

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 arrangements make it undesirable.

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

Revocation of licence

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 (2)(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 requesting 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 licence

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

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

shall be guilty of an offence.

21. Any person who, in connection with an application for the grant, renewal or transfer of a licence under this Schedule, makes a false statement which he knows or believes to be false, shall be guilty of an offence.

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

(2) A person who, being the holder of a licence under this Schedule, fails without reasonable excuse to comply with paragraph 1(4) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding [level 3 on the standard scale].

Offences relating to persons under 18

- 23.—(1) A person who, being the holder of a licence for a sex establishment, or—
- (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 £5,000.

Power 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 ascertaining—

- (a) whether the terms, conditions or restrictions set or subject to which the licence is held are complied with;
- (b) whether any person employed in the business of the establishment is disqualified from holding a licence under this Schedule;
- (c) whether any person under 18 years of age is in the establishment; and
- (d) whether any person under that age is employed in the business of the establishment.

(2) Subject to sub-paragraph (3) 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 power conferred by sub-paragraph (2) and (2) above in relation to a sex establishment in the local authority's area.

(4) No power conferred by sub-paragraph (3) 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 proprietor of the premises or the person in charge of the vehicle, vessel or stall in relation to which the power is exercised.

(6) Any person who without reasonable excuse refuses to permit a constable or an authorised officer of a local authority to exercise any such power shall be guilty of an offence and shall for every such refusal be liable on summary conviction to a fine not exceeding [level 5 on the standard scale].

Offences by bodies corporate

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

(2) Where the affairs of a body corporate are managed by its members sub-paragraph (1) above shall apply to the acts and defaults of a member in connection with his functions 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 31 days beginning with the relevant time appeal to the magistrates' court acting for the relevant area.

(2) An applicant whose application for the grant or renewal of a licence is refused, or whose licence is revoked, or any ground specified in paragraph 12(1) above shall not have a right to appeal under this paragraph unless the applicant wishes to show that the ground does not apply to him.

(3) An applicant whose application for the grant or renewal of a licence is refused or whose licence is revoked, or 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, at the time it may be, desired to be used as a sex establishment; and

"the relevant time" means the time on which the person in question is notified of the refusal of his application, the suspension of the licence, 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.

(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 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 the decision 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 the decision 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) When—

- (a) the holder of a licence makes an application under paragraph (1) 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 paragraph 12 expires.

(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.

Provision relating to sexing premises

22—(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) 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 23 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.

23—(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 and may have considered all such applications.

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

- (a) that he is using the premises, vehicle, vessel or stall to which the application relates as a sex establishment; and
- (b) that some person was using the premises, vehicle, vessel or stall as a sex establishment on 22nd December 1981; and
- (c) that

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

Commencement of Schedule

24—(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.

(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 23 and 25 above, be the appointed day in relation to sex cinemas in the area.

NOTES

Amendments

Para 3(7): words in square brackets substituted by the Criminal Justice Act 1988, s 24(1), Sch 2, para 16.
Para 27(1): words in square brackets substituted by the Criminal Justice etc. (Scotland) Order 1984 SI 1984/1447, art 2(1), Sch 1, in relation to offences committed after 1 May 1984.

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Para 22(2) reference to level 3 on the standard scale substituted by virtue of the Criminal Justice Act 1982, s 46, Vol 27, title Magistrates.

Para 23(7) now in square brackets substituted by the Criminal Penalties and (House) Order 1984, SI 1984/647, at 711, Sch 1, in relation to offences committed after 1 May 1984.

Para 22(2) reference to level 3 on the standard scale substituted by virtue of the Criminal Justice Act 1982, s 46, Vol 27, title Magistrates.

Para 22(2) words omitted amend the Supreme Court Act 1981, s 28(2)(b), Vol 11, title Courts and Legal Services.

Para 30(1) words omitted inserted 12 July 1982.

Prospective amendments

Para 3(2)(a) substituted as follows by the Licensing Act 1965, s 198(1), Sch 6, para 52, 85(2)(a), as from 1 July to be appointed under s 20(2) of that Act, Vol 24, title Licensing and Liquor Duties.

"(v) if they may be used for an exhibition of a film (within the meaning of paragraph 2 of Schedule 1 to the Cinemas Act 1909) by virtue of an exemption granted in the meaning of section 136 of that Act, in their use in accordance with that exemption";

Para 3(2)(b) words "in a cinema" substituted for words in italics by the Licensing Act 1965, s 198(1), Sch 6, para 52, 85(2)(b), as from 1 July to be appointed under s 20(2) of that Act, Vol 24, title Licensing and Liquor Duties.

General Note: The Schedule is a relevant instrument for the purposes of the Video Recordings Act 1984, s 12, para 6(1)-(3) of that Act.

The Schedule does not apply to the area of any local authority, as defined by s 2(5) (a), or if the local authority has resolved, see s 2(1) (a) and s 2(2)-(4) (a) and (b), s 2(1) also requires the date of the commencement of this Schedule to be a resolution.

Para 5: Chief officer of police; police area. See the notes to Section 1.

Para 6: Person. See the notes to Section 1.

Para 7: Waiting. See the corresponding note to Section 1.

Para 10: Registered office. As to the registered office of a company, see the Companies Act 1985, s 287, Vol 11, title Companies.

Para 12: Age of 18. A person attains a particular age expressed in years at the commencement of the relevant anniversary of the date of his birth; see the Family Law Reform Act 1969, s 5, Vol 5, title Children.

Para 12: United Kingdom. In Great Britain and Northern Ireland see the Interpretation Act 1979, s 5, Sch 1, Vol 41, title Statutes. "Great Britain" means England, Scotland and Wales by virtue of the Union with Scotland Act 1706, preamble, Act 1, Vol 10, title Constitutional Law (Pt 1), as amended by 22(1) of s 4 Sch 2, para 6(1) of the 1978 Act. Neither the Channel Islands nor the Isle of Man is within the United Kingdom.

Para 12: Minorities. This means ethnic minorities; see the Interpretation Act 1979, s 5, Sch 1, Vol 41, title Statutes.

Para 22: Summary conviction; standard scale. See the notes to Section 1.

Para 24: Conviction. See the notes to Section 1.

Para 24: May arrest him without warrant. As a 24-hour period to have effect in relation to employees a constable is a person without warrant by virtue of the Police and Criminal Evidence Act 1984, s 26(3), Vol 12, title Criminal Law, and has been replaced by s 27 of that Act, in the same title.

Para 25: Justice of the peace. See the notes to Section 1.

Para 27: Magistrates' court; Crown Court. See the notes to Section 1.

Para 30: Secretary of state. In case of the Ministry's Principal Secretaries of State, see the Interpretation Act 1979, s 5, Sch 1, Vol 41, title Statutes. All functions of a Minister of the Crown under this Act, or in its exercise, in relation to Wales, are transferred to the National Assembly for Wales; see further the Transferring of Functions in relation to Wales Act 1994, s 1. However, the power under which provision of this Act may be brought into force by order made by a Minister of the Crown is transferred.

Para 30: Summary instrument. For provisions as to summary instruments generally, see the Summary Instruments Act 1976, Vol 41, title Statutes.

Para 30: Day on which this Act is passed. This Act was passed, as ordered from Westminster, on 15 July 1982.

Modification as respects London. The Greater London Council (General Powers) Act 1985, s 2, 17(1), 30(1)-(3), Vol 24, title London, provides that where a London borough council (including the Greater London Council) resolves they may modify the Schedule as follows:

Para 2 is amended by the insertion of "sex education establishments" after "sex education".

Para 24 (which defines "sex education establishments") is inserted after para 5.

Para 12(3)(c) is amended by the substitution of "discriminated" for "not of".

Local Government (Miscellaneous Provisions) Act 1982 Sch 7 1651

Para 13(2)(a), (b) are amended by the insertion of "sex encounter establishments" after "sex cinema".

Para 13(3)(b) is amended as follows:

"(b) any change of a sex cinema to a sex shop or a sex encounter establishment, any change of a sex shop to a sex cinema or a sex encounter establishment, or any change of a sex encounter establishment to a sex cinema or a sex shop."

Para 19 is amended by the insertion of "variation" after "revoked".

Para 25(7)-(10) which allow the police and removal of equipment are inserted after para 25(6).

Para 27(10) is amended by the insertion of "except where the grounds for a final order set out in paragraph 12(5)(c) or 12(5)(d) of this Schedule are satisfied".

Para 26(1) is amended by the insertion of "by the appropriate authority" after "application".

Customs Act 1935, s. 4, 6. See also the 1935 Act.

Customs and Excise Management Act 1979, s. 3. See Vol 15, title Customs and Excise.

Customs Consolidation Act 1936, s. 42. See Vol 13, title Customs and Excise.

Obscene Publications Act 1959, s. 3. See Vol 12, title Criminal Law.

Protection of Children Act 1978, s. 3. See Vol 12, title Criminal Law.

Cases relating to this Schedule

Re Birmingham City Council, re: Shephard v. Ltd (1980) 1 All ER 1076 (1980) 87 LGR 970, CA (para 12(5)).

Regulations under this Schedule

Regulations made under this Schedule are local in nature, and accordingly are not provided in this work.

Orders under this Schedule

Local Government (Miscellaneous Provisions) Act 1982 (Commencement No. 1) Order 1982, SI 1982/1115, bringing this Schedule into force, so far as it relates to sex cinema, on 14 October 1982.

Repeals

(see also below) * 265

SCHEDULE 4 5

The provisions of this Act shall be in force in this part as amended in Vol 25, title Local Government.

SCHEDULE 7

Section 7

REPEALS

PART 1

REPEALS IN FULL OR GENERAL ACTS IN CONSEQUENCE OF SECTION 1

Chapter	Short title	Extent of repeal
53 & 54 Vict. c. 29	Public Health Act Amendment Act 1900	Section 5.
16 & 17 Geo 5 c. 31	Home Counties (Music and Dancing) Licensing Act 1926	The whole Act.
15, 13 & 14 Geo 6 c. 101	Justices of the Peace Act 1949	In section 41, subsection (2), the words "entertainment and dancing licence". In subsection (4), the words "from" and "the" in the end and subsection (5).
1964 c. 26	Licensing Act 1964	In section 77 the words from "as any area" to "dancing". In section 78 the words from "and which are" to "dancing". Section 79(7).

This section inserts a new category of sexual entertainment venue as follows:

Appendix B.

192.

The section would insert a new paragraph 2A into Schedule 3 to the Local Government Act 1982.

193.

Sub-paragraphs (1), (2), (12) and (14) of the new paragraph define a 'sexual entertainment venue' as premises where relevant entertainment is provided, or permitted to be provided, by or on behalf of the organiser in front of a live audience for the financial gain of the organiser or entertainer. "Relevant entertainment" may take the form of a live performance or live display of nudity and must be of such a nature that, ignoring financial gain, it must reasonably be assumed to have been provided solely or principally for the purpose of sexually stimulating any member of the audience. Sub-paragraph (14) states that an audience can consist of just one person.

194.

Sub-paragraph (3) specifies that the following are not sexual entertainment venues for the purpose of the Schedule:

- sex shops and sex cinemas;
- any premises that at the time in question:
 - has not provided relevant entertainment on more than 11 occasions within the previous 12 months;
 - no such occasion has begun within the period of one month beginning with the end of any previous occasion; and
 - no such occasion has lasted for more than 24 hours
- other premises exempted by order of the Secretary of State, or in Wales the Welsh Ministers (sub-paragraph (3)(c)). In addition, under sub-paragraph (6) they may also make an order that certain types of performances or displays of nudity are not to be treated as relevant entertainment for the purposes of the Schedule.

195.

Sub-paragraph (4) states that the Secretary of State, or in Wales the Welsh Ministers, may by order amend or repeal sub-paragraph (3)(b) which is the provision excluding premises which provide relevant entertainment infrequently (i.e. less than eleven times in 12 months etc). However, by sub-paragraph (5), the power cannot be used to increase the number or length of occasions in any period that relevant entertainment can be provided, or provide for shorter intervals between such occasions, than this provision as

196.

Sub-paragraphs (7) to (11) make provision relating to the exercise of the order making powers described in sub-paragraphs (3), (4) and (6). In particular, the power to make an order under sub-paragraphs (3) and (6) are subject to the negative resolution procedure, while the power to make an order under sub-paragraph (4) regarding infrequent entertainment is subject to the affirmative resolution procedure.

197.

Sub-paragraph (13) stipulates that it is the organiser that "uses" any premises as a sexual entertainment venue. It is therefore the organiser that must apply for a licence under the 1982 Act. "Organiser" is defined in sub-paragraph (14) as any person who is responsible for the organisation or management of the relevant entertainment or the premises.

198.

Sub-paragraph (14) provides various definitions including the meaning of 'nudity' in the cases of men and women. The definition of "premises" expressly excludes private dwellings to which the public are not admitted. Sub-paragraph (14) also states that it does not matter whether the financial gain arises directly or indirectly from the performance or display or whether it is the person providing the entertainment who receives the benefit or some other person. Therefore, for example, it should not matter whether those admitted to the premises pay for admission to, or membership of, the club.

199.

Subsection (4) is consequential on subsection (10). Subsection (10) inserts a new paragraph 27A into Schedule 3 to the 1982 Act. It makes provision for certain premises to be deemed to be sexual entertainment venues. This is necessary due to the operation of paragraph 2A(3)(b), which stipulates circumstances when premises are not to be considered sexual entertainment venues for the purposes of this schedule, even though they may have a licence to operate as such (for example, if they have only just started operating as a lap dancing club). Paragraph 27A provides that if premises have a sexual entertainment venue licence and they would be categorised as a sexual entertainment venue but for the exemption in paragraph 2A(3)(b) for infrequent events, the premises are deemed to be a sexual entertainment venue for the duration of the licence irrespective of how frequently relevant entertainment is provided. Paragraph 27A (3) states that a local authority must cancel a licence held by someone using such premises if asked to so in writing by the licence holder.

200.

Subsection (5) substitutes paragraph 12(3)(c) of Schedule 3 to the 1982 Act, which deals with refusal of licences, to allow local authorities to set a limit on the number of sex establishments of a particular type in a locality, as well as the number of sex establishments generally, and to refuse a licence on the basis that the number of establishments in the locality is equal to or exceeds the number which the authority considers appropriate.

201.

Subsection (6) amends paragraph 13(2) and (3) of Schedule 3 to the 1982 Act which provides local authorities with the power to prescribe in regulations standard terms and conditions for sex establishment licences. The amendments allow local authorities to impose different standard conditions on a sexual entertainment venue compared with other kinds of sex establishment, such as a sex shop. Copies of any regulations made by a local authority under paragraph 13 of Schedule 3 must be supplied by the local authority upon request and payment of a reasonable fee.

202.

Subsection (7) ensures that the local authority will be able to charge a fee for applications to vary a licence granted under the 1982 Act. Indeed, a reasonable fee set by the local authority is also payable for the grant, renewal or transfer of a licence under the 1982 Act.

203.

Subsection (8) inserts a new paragraph 25A into Schedule 3 to the 1982 Act that stipulates the procedure by which the police and local authority officers can, when acting under the authority of a warrant issued under paragraph 25(4), seize property from premises. The court can then order that property be forfeited following a conviction for an offence under either paragraph 20 (enforcement) or 23 (offences relating to persons under 18) of the 1982 Act. The provisions largely replicate those inserted by the Greater London Council (General Powers) Act 1986 but are necessary as that Act is of limited application. Subsection (9) similarly replicates an amendment made by the 1986 Act.

SCHEDULE 3 LAP DANCING AND OTHER SEXUAL ENTERTAINMENT VENUES ETC: TRANSITIONAL PROVISION

204.

Paragraph 1 deals with those local authorities that have not already resolved to adopt Schedule 3 of the 1982 Act and provides that the amendments made to the 1982 Act by section 27 will apply where such an authority resolves to adopt Schedule 3 on or after section 27 comes into force.

205.

Paragraph 2 deals with those local authorities that have already adopted Schedule 3 and any subsequent amendments made by local Acts. In these cases the amendments to Schedule 3 made by section 27 will not apply to a local authority area unless the relevant local authority resolves to adopt them.

206.

Paragraph 3 provides the appropriate national authority with the power to make, by statutory instrument, appropriate saving, transitional or transitory provisions as it considers appropriate in relation to the coming into force of Schedule 3 to the 1982 Act as amended by this Act.

207.

Paragraph 4 places a duty on a local authority, which has not resolved to adopt the new provisions for regulating lap dancing and other similar entertainment within one year of commencement, to consult local people as soon as reasonably practicable about whether it should make such a

APPENDIX 'C'

CHARITABLE BODIES

The purpose of each body is shown in brackets together with the balance relating to each one (as at 31/03/09, except United Charities which are at 30/09/09)

Council as Sole Trustee

John Bentley Gifts (provision of school prizes) (£7,511)
William Meadon Charity (provision of school, excursions) (£31,977)
Mayor's Air raid Distress, etc Fund (set up during war) (£649)
Newcastle, Staffs Services Entertainment Fund (set up during war) (£11)
Museum Purchases Fund (original donation) (£6,304)

Independent Charities with their own Board of Trustees

Newcastle -u- Lyme Almshouses Trust (provision of accommodation to poor widows)
(-£5,382)
Barracks Trust (management of Barracks and charitable disbursements) (£181,503)
United Charities - Eliza Hinds Charity (grave upkeep of E Hinds and R Mountford) (£2,767)
United Charities - Relief in Need charity (Christmas gifts for elderly) (£27,411)
United Charities - Relief in Sickness Charity (Christmas gifts for elderly) (£62,657)

Other

Mayors Charities (fundraising for charities chosen by the mayor)
Newcastle Sports Advisory Council (grant distributing body for grants to sportspersons and organisations)

(neither of these are in fact charities and there is no balance to show)