

Status: Point in time view as at 01/02/1991.

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SCHEDULES

SCHEDULE 2

CONTROL OF SEX SHOPS

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 any enactment other than this Schedule;
 - (b) shall be taken into account in any way—
 - (i) at a trial for such an offence; or
 - (ii) in proceedings for condemnation under Schedule 3 to the ^{M1}Customs and Excise Management Act 1979 of goods which section 42 of the ^{M2}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.

Marginal Citations

- M1** 1979 c. 2.
M2 1876 c. 36.

Meaning of “sex shop” and “sex article”

- 2 (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 sex articles.
- (2) No premises, vehicle, vessel or stall shall be treated as a sex shop by reason only of its use for the exhibition of moving pictures by whatever means produced.
- (3) In this Schedule “sex article” means—
- (a) anything 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; and
 - (b) anything to which sub-paragraph (4) below applies, but does not include any articles which are manufactured for use primarily for the purposes of birth control or which primarily relate to birth control.
- (4) This sub-paragraph applies—

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- (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

- 3 In this Schedule—
- “chief constable”, in relation to the area of a district or islands council, means the chief constable for the area which includes the area of the council;
- “fire authority” in relation to the area of a district or islands council, means the authority discharging in that area the functions of fire authority under the Fire Services Acts 1947 to 1959;
- “relevant objection or representation” means—
- (a) in paragraphs 1 to 8, an objection or representation which, under paragraph 8 below, the district or islands council are obliged to or intend to entertain; and
 - (b) in the other paragraphs, an objection or representation which, under the said paragraph 8, they were obliged to or intended to entertain.

Requirement for licences for sex shops

- 4 Subject to the provision of this Schedule, no person shall in any area in which this Schedule is in effect use any premises, vehicle, vessel or stall as a sex shop except under and in accordance with the terms of a licence granted under this Schedule by the district or islands council for the area.

Waivers

- 5 (1) Any person who—
- (a) uses in any area any premises, vehicle, vessel or stall as a sex shop; or
 - (b) proposes to do so,
- may apply to the district or islands council for the area 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 6(2) to (6) below and such particulars as the district or islands council may reasonably require in addition.

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- (4) The district or islands council 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 district or islands council think fit.
- (6) Where the district or islands council grant a waiver, they shall notify the chief constable and the applicant for the waiver that they have granted the application.
- (7) The district or islands council 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 gave the notice, as may be specified in the notice.
- (8) The district or islands council shall give the chief constable a copy of any notice given by them under sub-paragraph (7) above.

Applications for the grant and renewal of licences

- 6 (1) An application for the grant or renewal of a licence under this Schedule shall be made in writing to the district or islands council.
- (2) An application made by a natural person shall state—
 - (a) the full name and address of the applicant;
 - (b) his age; and
 - (c) where the applicant himself is not to be carrying on the day to day management of the sex shop, the full name, address and age of the person who is,and shall be signed by the applicant or his agent.
- (3) An application made by or on behalf of a person other than a natural person shall state—
 - (a) the full name of the person;
 - (b) the address of its registered or principal office;
 - (c) the full names and private addresses of its directors, partners or other persons responsible for its management; and
 - (d) the full name, private address and age of any person who is to carry on the day to day management of the sex shopand shall be executed by the applicant or signed by its agent.
- (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 shop.
- (6) Every application shall contain such particulars as the islands or district council may reasonably require in addition to any particulars required under sub-paragraphs (2) to (5) above.

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Notification of applications

- 7 (1) An applicant for the grant or renewal of a licence under this Schedule shall give notice of the application.
- (2) Notice shall in all cases be given by publishing an advertisement in a newspaper specified by the district or islands council, being a newspaper circulating in their area and the applicant shall supply a copy of that advertisement to the district or islands council.
- (3) Publication under sub-paragraph (2) above shall be not later than 7 days after the date of the application.
- (4) 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 in a place where the notice can conveniently be read by the public.
- (5) Every notice under this paragraph which relates to premises shall identify the premises.
- (6) Every notice under this paragraph which relates to a vehicle, vessel or stall shall specify where it is to be used as a sex shop.
- (7) Subject to sub-paragraphs (5) and (6) above, a notice under this paragraph shall be in such form as the district or islands council may prescribe.
- (8) An applicant for a licence under this Schedule which is to relate to premises shall, as soon as possible after the expiry of the period of 21 days referred to in sub-paragraph (4) above, submit to the district or islands council a certificate stating that he has complied with sub-paragraphs (4), (5) and (7) above.
- (9) An applicant shall not be treated as having failed to comply with sub-paragraph (4) above if the notice was, without any fault or intention of his, removed, obscured or defaced before the 21 days referred to in that sub-paragraph have elapsed, so long as he has taken reasonable steps for its protection and if need be, replacement; and if he has cause to rely on this sub-paragraph, his certificate under sub-paragraph (8) above shall state the relevant circumstances.
- (10) Where—
- (a) an applicant for a licence under this Schedule—
 - (i) fails to submit the certificate required by sub-paragraph (8) above;
 - (ii) in the circumstances referred to in sub-paragraph (9) above, has not, in the opinion of the district or islands council, taken reasonable steps for the protection or, as the case may require, replacement of the notice; or
 - (b) the district or islands council is, at any time before they reach a final decision on an application which is in respect of premises, satisfied that the notice was not displayed in accordance with sub-paragraphs (4), (5) and (7) above, they may require the applicant to display the notice again for a period of 21 days beginning with such date as they may specify and the provisions of this paragraph shall apply in respect of such display as they apply in respect of display under sub-paragraph (4) above.

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Objections and representations

- 8 (1) The district or islands council shall, as soon as an application for the grant or renewal of a licence under this Schedule is made to them, send a copy of the application to the chief constable and to the fire authority.
- (2) Any objection or representation relating to an application for the grant or renewal of a licence under this Schedule shall, subject to sub-paragraph (3) below, be entertained by the district or islands council if, but only if, the objection or representation—
- (a) is in writing;
 - (b) specifies the grounds of the objection or, as the case may be, the nature of the representation;
 - (c) specifies the name and address of the person making it;
 - (d) is signed by him or on his behalf;
 - (e) was made to them within 28 days of whichever is the later or, as the case may be, latest of the following dates—
 - (i) the date of submission to them of the application;
 - (ii) the date when public advertisement was first given under paragraph 7(2) above;
 - (iii) the date, if any, specified by the district or islands council under paragraph 7(10) above.
- (3) Notwithstanding sub-paragraph (2)(e) above, it shall be competent for a district or islands council to entertain an objection or representation received by them before they take a final decision upon the application to which it relates if they are satisfied that there is sufficient reason why it was not made in the time required under that sub-paragraph.
- (4) An objection or representation shall be made for the purposes of sub-paragraph (2) above if it is delivered by hand within the time there specified to the district or islands council or posted (by registered or recorded delivery post) so that in the normal course of post it might be expected to be delivered to them within that time.
- (5) Where the district or islands council receive notice of a relevant objection or representation they shall, before considering the application, give notice in writing of the general terms of the objection or representation to the applicant but they shall not without the consent of the person making the objection or representation reveal his name or address to the applicant.
- (6) In considering an application for the grant or renewal of a licence under this Schedule, a district or islands council may make such reasonable inquiries as they think fit and include the results of these inquiries in matters they take into account, but where they intend so to include any of these results they shall notify the applicant of that intention.
- (7) A district or islands council may, before reaching a final decision upon such an application, give the applicant and any person who has made a relevant objection or representation an opportunity to be heard by them.
- (8) A district or islands council shall not reach a final decision upon such an application—

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- (a) in relation to which a relevant objection or representation has been made to them, or in relation to which they intend to take into account any result of their inquiries under sub-paragraph (6) above; and
- (b) in respect of which they have not, under this paragraph, given the applicant and any person who has made such objection or representation an opportunity to be heard,

unless they have given the applicant an opportunity to notify them in writing of his views on such objection or representation or, as the case may be, result within such reasonable period (not being less than 7 days) as they may specify.

Disposal of applications for licences

- 9 (1) Where an application for the grant or renewal of a licence under this Schedule has been made to a district or islands council they shall, in accordance with this paragraph—
- (a) grant or renew the licence unconditionally;
 - (b) grant or renew the licence subject to conditions; or
 - (c) refuse to grant or renew the licence.
- (2) The conditions referred to in sub-paragraph (1) above shall be such reasonable conditions as the district or islands council think fit and, without prejudice to that generality, may include conditions regulating—
- (a) the hours of opening and closing of sex shops;
 - (b) displays or advertisements on or in such shops;
 - (c) the visibility of the interior of sex shops to passers by.
- (3) A licence under this Schedule shall not be granted—
- (a) to a person under the age of 18;
 - (b) to a person who is for the time being disqualified under paragraph 13(10) or 19(5) below;
 - (c) to a person other than a natural person if any director of it or partner in it or any other person responsible for its management is disqualified under paragraph 13(10) or 19(5) below;
 - (f) to a person who has been convicted of an offence under paragraphs 19 to 21 below;
 - (e) to a person 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;
 - (f) to a body corporate which is not incorporated in the United Kingdom;
 - (g) to a person who has, within the period of 12 months immediately preceding the date when the application was made, been refused by the same council the grant or renewal of a licence under this Schedule for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal; or
 - (h) to a person other than a natural person if any director of it or partner in it or any other person responsible for its management has, within that period, been refused by the same council the grant or renewal of such a licence, unless the refusal has been reversed on appeal.

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- (4) But without prejudice to sub-paragraph (3) above, the district or islands council shall refuse an application for the grant or renewal of a licence if, in their opinion, one or more of the grounds specified in sub-paragraph (5) below apply.
- (5) The grounds mentioned in sub-paragraph (4) above are—
- (a) that the applicant or, where the applicant is a person other than a natural person, any director of it or any partner in it or any person responsible for its management, 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 or renewed, 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 or renewal of such a licence if he made the application himself;
 - (c) that the number of sex shops in the relevant locality at the time the application is made is equal to or exceeds the number which the district or islands council 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.
- (6) Nil may be an appropriate number for the purposes of sub-paragraph (5)(c) above.
- (7) 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 shop.

Notification of decisions and reasons

- 10 (1) The district or islands council shall, in accordance with sub-paragraph (2) below, notify their decision under paragraph 9(1) above to—
- (a) the applicant;
 - (b) the chief constable;
 - (c) any person who made a relevant objection or representation in relation to the application; and
 - (d) the fire authority.
- (2) Notification shall be made under sub-paragraph (1)(a), (b) or (d) above within 7 days of the decision to be notified by sending to the person concerned written notice of the decision and under sub-paragraph (1)(c) above either by so doing or by publishing within that time, in a newspaper circulating in the area of the district or islands council, notice of the decision.
- (3) The district or islands council shall make out and deliver a licence to every person to whom a licence is granted or whose licence is renewed by the council, and shall, when requested by any such person and on payment of such fee as they may charge under paragraph 18 below, make out a duplicate of any licence issued under this sub-

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paragraph and certify such duplicate to be a true copy of that original licence; and any document purporting to be so certified by the proper officer of the council shall be sufficient evidence of the terms of that licence.

Display of licences in sex shops

- 11 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.

Duration of licences

- 12 (1) Subject to and in accordance with the provisions of this paragraph, a licence shall come into force on being granted by the district or islands council or on such later date as they may specify as a condition of the licence and shall continue in force on being renewed by them.
- (2) Subject to the provisions of this paragraph, a licence shall have effect—
- (a) for a period of one year from the date when it comes into force; or
 - (b) for such shorter period as the district or islands council may decide at the time when they grant or renew the licence.
- (3) If an application for the renewal of a licence is made before its expiry the existing licence shall continue to have effect until a final decision on the application is taken by the district or islands council.
- (4) In the event of the death of the holder of a licence granted under this Schedule, the licence shall be deemed to have been granted to his executor and shall, unless previously revoked or surrendered, remain in force until the end of the period of 3 months beginning with the death and shall then expire; but the district or islands council may from time to time, on the application of the executor, extend or further extend that period if they 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.
- (5) Where a relevant objection or representation has been made in relation to an application for the grant of a licence, that licence shall not come into force until—
- (a) the time within which an appeal under paragraph 24 below against the grant of the licence may be made has elapsed; or
 - (b) where such an appeal has been lodged, it has been abandoned or determined in favour of the applicant.
- (6) Notwithstanding that an application for renewal of a licence has been refused by a district or islands council, the existing licence shall continue in force until—
- (a) the time within which an appeal under paragraph 24 below against the refusal to renew may be made has elapsed; or
 - (b) where such an appeal has been lodged, it has been abandoned or determined against the applicant or, if determined in favour of the applicant, the time when the licence is renewed.
- (7) This paragraph is subject to paragraphs 13, 15 and 16 below.

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Revocation of licences

- 13 (1) The district or islands council may at any time revoke a licence under this Schedule—
- (a) if, at any time of revocation, it could not, under sub-paragraph (3) of paragraph 9 above, be granted;
 - (b) if, in their opinion, any of the grounds specified in sub-paragraph (5)(a) or (b) of that paragraph apply; or
 - (c) if a condition of the licence has been contravened.
- (2) A district or islands council may revoke a licence under sub-paragraph (1)(c) above in respect of a contravention of a condition of a licence notwithstanding that there has been no conviction in that respect.
- (3) In considering whether to revoke a licence the appropriate authority may make such reasonable inquiries as they think fit and, subject to sub-paragraph (4) below, include the results of their inquiries in the matters to which they have regard in such consideration.
- (4) Where a district or islands council intend to include any of the results of their inquiries under sub-paragraph (3) above in the matters to which they have regard for the purposes of this paragraph, they shall notify the holder of the licence of that intention.
- (5) A district or islands council, in considering whether or not to revoke a licence, may, but before deciding to revoke it shall, give—
- (a) the holder of the licence;
 - (b) any person who has made a complaint relevant to the matters to be considered at the hearing;
 - (c) the chief constable; and
 - (d) the fire authority,
- an opportunity to be heard by them.
- (6) The district or islands council shall have complied with their duty under sub-paragraph (5) above if they have caused to be sent to the persons entitled under that sub-paragraph to an opportunity to be heard, not later than 21 days before the hearing, notice in writing that the council propose to hold a hearing, together with written notice of the general terms of the complaint and a note of the grounds upon which the revocation of the licence is to be considered and, where they decide to exercise their power under that sub-paragraph, they shall cause such notices and note to be sent to those persons not later than that time.
- (7) Where a district or islands council decide to revoke a licence under this Schedule, the revocation shall not, subject to sub-paragraph (8) below, take effect until the expiry of the time within which the holder of the licence may appeal under paragraph 24 below against the revocation or, if such an appeal has been lodged, until it has been abandoned or determined in favour of the revocation.
- (8) If, in deciding to revoke a licence under this Schedule, a district or islands council determine that the circumstances of the case justify immediate revocation, they may, without prejudice to their other powers under this paragraph, order that the licence shall be revoked immediately.

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- (9) A district or islands council shall, within 7 days of their decision under sub-paragraph (1) above, send written notice of their decision to the persons referred to in sub-paragraph (5)(a), (c) and (d) above in relation to the licence and to any person who, in pursuance of sub-paragraph (5)(b) above, was heard by the council before they reached that decision.
- (10) Where a licence under this Schedule is revoked, its holder shall be disqualified from holding or obtaining such a licence in the area of the district or islands council which revoked it for a period of 12 months beginning with the date of revocation unless the revocation has been reversed on appeal.

Notification of changes of circumstances

- 14 (1) Where there is a material change of circumstances affecting a holder of a licence under this Schedule or the business to which it relates, he shall, in accordance with this paragraph, notify the islands or district council of the change as soon as reasonably practicable after it has taken place.
- (2) The holder of a licence under this Schedule shall not, unless in accordance with a requirement imposed by or in pursuance of any enactment other than this Schedule, make or cause to be made or permit there to be made any material change in the premises or, as the case may be, the vehicle, vessel or stall without the prior consent of the district or islands council.
- (3) A notification under sub-paragraph (1) above or application for consent under sub-paragraph (2) above shall be accompanied by such fee as the district or islands council may charge under paragraph 18 below.
- (4) A district or islands council, before considering whether or not to give their consent under sub-paragraph (2) above, shall be entitled to require the holder of the licence to furnish them with specifications, including plans, of the proposed changes.
- (5) A district or islands council, before deciding whether or not to give their consent under sub-paragraph (2) above, shall consult the chief constable and, in the case of a change in premises, vehicle, vessel or stall, with the fire authority.
- (6) Where the district or islands council have given their consent under sub-paragraph (2) above to a change in premises or a vehicle, vessel or stall it shall not be necessary for the holder of the licence relating to those premises or that vehicle, vessel or stall to notify the district or islands council of that change under sub-paragraph (1) above.
- (7) A district or islands council shall, within 7 days of their decision under sub-paragraph (2) above, send written notice of their decision to the holder of the licence, the chief constable and the fire authority.
- (8) In this paragraph, a “material change” includes any material change in the particulars given or referred to in the application for the grant, or, where the licence has been renewed, the most recent application for the renewal, of the licence.

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Variation of licences

- 15 (1) A district or islands council may, at any time, whether or not upon an application made to them by the holder of the licence, vary the terms of a licence on any grounds they think fit and such variation shall come into force on such date as they may specify.
- (2) A district or islands council, before proceeding to vary the terms of a licence under sub-paragraph (1) above—
- (a) shall, not later than 7 days before the day on which the proposed variation is to be considered, notify the holder of the licence, the chief constable and the fire authority of the proposed variation; and
 - (b) shall give each of the persons mentioned in sub-paragraph (a) above an opportunity to be heard by the council on that day.
- (3) A district or islands council shall have complied with sub-paragraph (2)(b) above if they have invited each of the persons whom they must notify under that sub-paragraph to attend and to be heard by the council when the variation of the licence is to be considered.
- (4) A variation in the terms of a licence shall come into force—
- (a) when the time within which an appeal under paragraph 24 below may be made has elapsed; or
 - (b) where such an appeal has been lodged, when the appeal has been abandoned or determined in favour of the variation.
- (5) A district or islands council shall, within 7 days of their decision under sub-paragraph (1) above, send written notice of their decision to the holder of the licence, the chief constable and the fire authority.

Surrender of licence

- 16 (1) A holder of a licence may at any time surrender the licence to the district or islands council and it shall thereupon cease to have effect.
- (2) A holder of a licence shall deliver the licence to the district or islands council—
- (a) within 7 days after the coming into effect of a decision of a district or islands council, under paragraph 13 above, to revoke or, under paragraph 15 above, to vary the terms of the licence or the decision of a court, under paragraph 19(5) below, to revoke it;
 - (b) where the licence relates to a sex shop which he has ceased to use as such, within 7 days of such cessation.
- (3) A district or islands council shall, on revoking or varying the terms of a licence, cause notice in writing to be given to the holder of the licence of his duty to deliver it up under sub-paragraph (2) above.
- (4) Where a licence has been surrendered under this paragraph on its revocation under paragraph 13 or 19(5)(a) of this Schedule and the revocation is quashed or recalled, the district or islands council shall re-issue the licence.

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Register of Applications

- 17 (1) A district or islands council shall cause to be kept a register of applications under this Section (in this paragraph referred to as “the register”) and shall, as soon as reasonably practicable after—
- (a) the receipt of each application, cause details of such receipt; and
 - (b) their final decision on each application, cause details of that decision
- to be entered in the register.
- (2) The register shall include—
- (a) a note of the terms of each licence granted by the district or islands council;
 - (b) a note of any revocation or variation of the terms or surrender of a licence.
- (3) The register shall be open to the inspection of any member of the public at such reasonable times and places as may be determined by the authority and any member of the public may make a copy thereof or an extract therefrom.
- (4) A district or islands council may, on payment of such fee as they may charge under paragraph 18 below, issue a certified true copy of any entry in the register; and any document purporting to be certified by the proper officer of the council as a true copy of an entry shall be sufficient evidence of the terms of the original entry.

Fees

- 18 (1) A district or islands council shall, subject to sub-paragraph (2) below—
- (a) in respect of applications made to them for the grant or renewal of a licence under this Schedule;
 - (b) in respect of their consideration of a material change in circumstances under paragraph 14 above and their disposal of the matter;
 - (c) in respect of applications made to them for the variation of a licence under this Schedule;
 - (d) in respect of the issue of certified duplicate licences under paragraph 10(3) above;
 - (e) in respect of the issue under paragraph 17 above of certified true copies;
- charge such reasonable fees as they may, in accordance with sub-paragraph (2) below, determine; and the council may under this sub-paragraph determine different fees for the different matters specified in this sub-paragraph.
- (2) In determining the amount of the different fees under sub-paragraph (1) above, the district or islands council shall seek to ensure that from time to time the total amount of fees receivable by the council is sufficient to meet the expenses of the council in exercising their functions under this Schedule.

Enforcement

- 19 (1) A person who—
- (a) without reasonable excuse uses any premises, vehicle, vessel or stall as a sex shop without having a licence under this Schedule for that use or there

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being in force a waiver under paragraph 5 above for that use or knowingly causes or permits the use of any premises, vehicle, vessel or stall as a sex shop without there being a licence for that use or there being in force a waiver under paragraph 5 above for that use; or

- (b) being the holder of a licence for a sex shop, employs in the business of the sex shop any person known to him to be a person to whom under paragraph 9(3) above a licence could not be granted; 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 or condition specified in the licence; or
- (d) being the servant, employee 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 or condition specified in the licence; or
- (e) being the holder of a licence under this Schedule or the servant, employee or agent of such person, without reasonable excuse knowingly permits any person under the age of 18 to enter the sex shop;

shall be guilty of an offence.

- (2) Any person who, in connection with an application for the grant or renewal of a licence under this Schedule, makes any statement which he knows to be false or recklessly makes any statement which is false in a material particular shall be guilty of an offence.
- (3) A person guilty of an offence under sub-paragraph (1) or (2) above shall be liable, on summary conviction, to a fine not exceeding [^{F1}£20,000].
- (4) A person who, being the holder of a licence under this Schedule, fails without reasonable excuse to comply with—
 - (a) paragraph 11 or 16(2) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [^{F2}level 3 on the standard scale].
 - (b) paragraph 14 above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [^{F2}level 5 on the standard scale].
- (5) Where a holder of a licence under this Schedule is convicted of an offence under this paragraph or paragraph 20 or 21 below the court by which he is convicted may, in addition to any other penalty which the court may impose, make an order in accordance with one or both of the following paragraphs—
 - (a) that the licence shall be revoked;
 - (b) that the holder of the licence shall be disqualified from holding such a licence in Scotland for a period not exceeding 5 years.
- (6) A person may appeal against an order under sub-paragraph (5) above in the same manner as against sentence and the court which made the order may, pending the appeal, suspend the effect of the order.
- (7) A person may, at any time after the expiry of the first year of his disqualification under sub-paragraph (5) above, apply to the court which ordered the disqualification to remove it, and, on such application, the court may by order remove the disqualification as from such date as may be specified in the order or refuse the application, and, in either case, may order the applicant to pay the whole or any part of the expenses of such application.

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- (8) Where the holder of a licence under this Schedule is convicted of an offence under this paragraph or paragraph 20 or 21 below, an extract of such conviction and sentence (if any) shall, within 6 days after the date of the conviction, be transmitted by the clerk of the court to the district or islands council which granted the licence.

Textual Amendments

- F1** “£20,000” substituted by [S.I. 1984/526, art. 9](#)
F2 Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\), s. 289G](#)

Rights of entry and inspection

- 20 (1) Without prejudice to any other provision of this Schedule an authorised officer of the district or islands council or the fire authority or a constable may, for the purposes specified in sub-paragraph (2) below, at any reasonable time enter and inspect any premises, vehicle, vessel or stall in relation to which a licence under this Schedule is in force or has been applied for.
- (2) The purposes referred to in sub-paragraph (1) above are—
- (a) where a licence is in force—
 - (i) seeing whether the terms of the licence are being complied with and, if they are not, obtaining information in respect of such non-compliance;
 - (ii) obtaining information relevant to the question whether the licence should be renewed;
 - (iii) seeing whether paragraph 11 above is being complied with;
 - (iv) ascertaining whether any person is being employed contrary to paragraph 19(1) above or whether any person under the age of 18 has been permitted to enter the sex shop contrary to that paragraph; or
 - (b) where the grant of a licence has been applied for, obtaining information relevant to the question whether the application should be granted.
- (3) An authorised officer of a district or islands council or the fire authority shall not be entitled to exercise the powers which he may exercise under sub-paragraph (1) above until he has produced his authorisation to the person for the time being in charge of the premises, vehicle, vessel or stall.
- (4) A constable who is not in uniform shall not be entitled to exercise the powers which he may exercise under sub-paragraph (1) above until he has produced his identification to the person for the time being in charge of the premises, vehicle, vessel or stall.
- (5) Any person in charge of any premises, vehicle, vessel or stall who fails without reasonable excuse to permit a constable or an authorised officer of the district or islands council or the fire authority who, in pursuance of this paragraph, demands to do so to enter or inspect the premises, vehicle, vessel or stall or obstructs the entry thereto of a constable or such officer in pursuance of this paragraph shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [^{F3}level 3 on the standard scale].

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Textual Amendments

F3 Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G

Powers of entry and search

- 21 (1) If a justice of the peace or sheriff is satisfied by evidence on oath that there is reasonable ground for suspecting that—
- (a) any premises, vehicle, vessel or stall is being used as a sex shop; and
 - (b) no licence or waiver under this Schedule is in force in relation to the sex shop,
- he may grant a warrant authorising any constable to enter and search the premises, vehicle, vessel or stall specified in the warrant.
- (2) A constable may use reasonable force in executing a warrant granted under sub-paragraph (1) above.
- (3) A constable who is not in uniform shall produce his identification if required to do so by any person in or upon any premises, vehicle, vessel or stall which the constable is about to enter, is entering or has entered under the powers conferred under sub-paragraph (1) above, and if he has been so required to produce his identification, he shall not be entitled to enter or search the premises, vehicle, vessel or stall or, as the case may be, remain there or continue to search the premises, vehicle, vessel or stall until he has produced it.
- (4) Any person who fails without reasonable excuse to permit a constable, in pursuance of this paragraph, to enter and search any premises, vehicle, vessel or stall or who obstructs the entry thereto or search thereof in pursuance of this paragraph by a constable shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [^{F4}level 3 on the standard scale].

Textual Amendments

F4 Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), s. 289G

Sending of notice by post

- 22 When a district or islands council sends by post, for the purposes of paragraph 10(2), 13(9), 14(7) or 15(5), written notice of its decision, it shall be treated as having been sent within the time required if it was posted so that in the normal course of post it might be expected to be delivered to the person concerned within that time.

Notification of decisions and giving of reasons

- 23 (1) A district or islands council shall, within 10 days of being required to do so under sub-paragraph (2) below, give reasons in writing for arriving at any decision of theirs under this Schedule—
- (a) to grant or renew a licence under this Schedule or to refuse to do so;
 - (b) to revoke a licence under this Schedule or not to revoke it;

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- (c) to consent or to refuse to consent to a material change in any premises, vehicle, vessel or stall;
 - (d) to vary or to refuse to vary the terms of a licence under this Schedule.
- (2) Reasons for a decision referred to in sub-paragraph (1) above shall be given by the district or islands council on a request being made to the council by a relevant person within 28 days of the date of the decision.
- (3) Nothing in this paragraph affects the power of the sheriff under paragraph 24 below to require a district or islands council to give reasons for a decision of the council—
- (a) which is being appealed to the sheriff under that paragraph; and
 - (b) for which reasons have not been given under this paragraph.
- (4) In this paragraph, “relevant person” means—
- (a) in respect of a decision specified in sub-paragraph (1)(a) above, the applicant or any person who made a relevant objection or representation (within the meaning of paragraph 3 above) in relation to the application to which the decision relates;
 - (b) in respect of a decision specified in sub-paragraph (1)(b) to (d) above, the holder of the licence, the chief constable or the fire authority; and
 - (c) in respect of a decision specified in sub-paragraph (1)(b) above, any person who in pursuance of paragraph 13(5)(b) above was heard by the council.

Appeals

- 24 (1) Subject to sub-paragraph (2) below, a person who may, under this Schedule, require a district or islands council to give him reasons for their decision may appeal to the sheriff against that decision.
- (2) A person—
- (a) shall be entitled to appeal under this paragraph only if he has followed all such procedures under this Schedule for stating his case to the district or islands council as have been made available to him;
 - (b) shall not be entitled to appeal under this paragraph if his application for the grant or renewal of a licence under this Schedule has been refused on either of the grounds specified in paragraph 9(5)(c) or (d) above.
- (3) A district or islands council may be a party to an appeal under this paragraph.
- (4) An appeal under this paragraph shall be made by way of summary application and shall be lodged with the sheriff clerk within 28 days from the date of the decision appealed against.
- (5) On good cause being shown, the sheriff may hear an appeal under this paragraph notwithstanding that it was not lodged within the time mentioned in sub-paragraph (4) above.
- (6) For the purposes of an appeal under this paragraph, the sheriff may, in the case of a decision of a district or islands council for which reasons have not been given by the council under paragraph 23 above, require the council to give reasons for that decision, and the council shall comply with such a requirement.

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- (7) The sheriff may uphold an appeal under this paragraph only if he considers that the district or islands council, in arriving at their decision—
- (a) erred in law;
 - (b) based their decision on any incorrect material fact;
 - (c) acted contrary to natural justice; or
 - (d) exercised their discretion in an unreasonable manner.
- (8) In considering an appeal under this paragraph, the sheriff may hear evidence by or on behalf of any party to the appeal.
- (9) On upholding an appeal under this paragraph, the sheriff may—
- (a) remit the case with the reasons for his decision to the district or islands council for reconsideration of their decision; or
 - (b) reverse or modify the decision of the council,
- and on remitting a case under sub-paragraph (a) above, the sheriff may—
- (i) specify a date by which the reconsideration by the council must take place;
 - (ii) modify any procedural steps which otherwise would be required in relation to the matter by or under any enactment (including this Act).
- (10) In considering an appeal under this paragraph against revocation under paragraph 13(8) above of a licence the sheriff may, pending his decision on the appeal, postpone the taking effect of that revocation but he shall not so postpone unless he is satisfied that all steps which in the circumstances were reasonable have been taken with a view to securing that notice of the appeal and an opportunity of being heard with respect to it have been given to the council.
- (11) The sheriff may include in his decision on an appeal under this paragraph such order as to the expenses of the appeal as he thinks proper.
- (12) Any party to an appeal to the sheriff under this paragraph may appeal on a point of law from the sheriff's decision to the Court of Session within 28 days from the date of that decision.

Provisions relating to existing premises

- 25 (1) Without prejudice to any enactment other than this Schedule it shall be lawful for any person who—
- (a) immediately before the date of publication as required by section 45 of this Act was using any premises, vehicle, vessel or stall as a sex shop; and
 - (b) had before the appointed day duly applied to the district or islands council for a licence for the premises, vehicle, vessel or stall under this Schedule
- to continue to use the premises, vehicle, vessel or stall as a sex shop until
- (i) the time within which an appeal under paragraph 24 above against any refusal by the district or islands council of his application has elapsed; or
 - (ii) where such an appeal has been lodged, it has been abandoned or determined against him.
- (2) In this paragraph “the appointed day”, in relation to any area, means the day specified in the resolution passed under section 45 of this Act as the date upon which this Schedule comes into effect in that area.

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- (3) A district or islands council shall not, before the appointed day, consider any application for the grant of a licence under this Schedule made before the appointed day and shall not grant any such application until they have considered all such applications.

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