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STATUTORY INSTRUMENTS

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**1985 No. 1208 (N.I. 15)**

**The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985**

- - - - - 31st July 1985

**PART I**  
**INTRODUCTORY**

**Title and commencement**

1.—(1) This Order may be cited as the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985.

(2) Subject to paragraph (3), this Order shall come into operation on the expiration of two months from the day on which it is made.

(3) Article 40 shall come into operation on the seventh day after the day on which this Order is made.

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the Department” means the Department of the Environment;

“the principal Act” means the Local Government Act (Northern Ireland) 1972.

(3) Expressions used in this Order and in the principal Act have the same meaning in this Order as in that Act.

**PART II**  
**LICENSING BY DISTRICT COUNCILS**

**Licensing of places of entertainment**

3. Schedule 1 shall have effect with respect to the licensing by councils of the entertainments referred to in that Schedule.

### ***Licensing of sex establishments***

4.—(1) A council may resolve that Schedule 2 is to apply to its district; and if a council does so resolve, that Schedule shall come into force in its district on the day specified in that behalf in the resolution (which must not be before the expiration of the period of one month beginning with the day on which the resolution is passed).

(2) A council shall publish notice that it has passed a resolution under this Article in two consecutive weeks in one or more newspapers circulating in its district.

(3) The first publication shall not be later than 28 days before the day specified in the resolution for the coming into force of Schedule 2 in the council's district.

(4) The notice shall state the general effect of that Schedule.

## **PART III**

### **CONTROL BY DISTRICT COUNCILS OF PREMISES SUPPLYING MEALS OR REFRESHMENTS**

#### ***Closing orders with respect to premises supplying meals or refreshments***

5.—(1) A council may make an order under this paragraph (in this Part referred to as a “closing order”) with respect to any premises in its district to which this Article applies if it is satisfied that it is desirable to make such an order to prevent residents in the neighbourhood of the premises being unreasonably disturbed either by persons resorting to the premises or by the use of the premises for the supply of meals or refreshments.

(2) This Article applies to any premises where meals or refreshments are supplied whether for consumption on or off the premises, other than—

(a) licensed premises within the meaning of the<sup>F1</sup> Licensing (Northern Ireland) Order 1996] which are not kept open for the supply of meals or refreshments to the public at any time between a time thirty minutes after the end of the permitted hours for those premises (within the meaning of<sup>F2</sup> that Order]) and 5 o'clock of the following morning; and

(b) a hotel within the meaning of<sup>F2</sup> that Order].

(3) A closing order shall be an order specifying individual premises and prohibiting the use of the premises for the supply to or consumption by the public of meals and refreshments between such hours as may be specified in the order.

(4) The hours specified in a closing order shall commence not earlier than midnight and finish not later than 5 o'clock in the morning.

(5) A closing order may prohibit the use of the premises to which it relates for the supply to or consumption by the public of meals and refreshments between different hours on different days of the week.

(6) Nothing in a closing order shall prohibit the use of any premises in respect of which an entertainments licence is in force under Schedule 1 for the supply to or consumption by the public of meals and refreshments during any time when an entertainment to which paragraph 1 or 2 of that Schedule applies is being provided under and in accordance with the terms of that licence.

(7) A council may vary a closing order by an order under this paragraph (in this Part referred to as a “variation order”).

(8) A council may revoke a closing order by an order under this paragraph (in this Part referred to as a “revocation order”).

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

(10) Subject to paragraph (11), a closing order shall cease to have effect 3 years from the date on which it was made, but without prejudice to the power of the council to make a further closing order.

(11) Paragraph (10) shall have effect in relation to a closing order which has been varied as if the reference to the date on which it was made were a reference to the date on which it was last varied.

(12) In this Part “the keeper”, in relation to any premises, means the person having the conduct or management of the premises.

F1 1996 NI 22

F2 1990 NI 6

### **Closing orders—procedure and appeals**

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

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

but a council may not make a closing order or such a variation order unless residents in the neighbourhood of the premises to which the order, if made, would relate have complained of disturbance such as is mentioned in Article 5(1).

(2) If a council proposes—

- (a) to make a closing order; or
- (b) to make such a variation order as is mentioned in paragraph (1)(b), it shall first serve a notice in accordance with paragraphs (12) to (14)—
  - (i) giving its reasons for seeking to make the order; and
  - (ii) stating that within 28 days of service of the notice the keeper of the premises to which the order, if made, would relate may in writing require the council to give him an opportunity to make representations to it concerning the matter.

(3) Where a notice has been served under paragraph (2), the council shall not determine the matter, until either—

- (a) the keeper has made representations to the council concerning it; or
- (b) the period during which he could have required the council to give him an opportunity to make representations has elapsed without his requiring the council to give him such an opportunity; or
- (c) the conditions specified in paragraph (4) are satisfied.

(4) The conditions mentioned in paragraph (3) are—

- (a) that the keeper has required the council to give him an opportunity to make representations to it;
- (b) that the council has allowed him a reasonable period for making his representations; and

*Status: Point in time view as at 15/11/2010.*

*Changes to legislation: There are currently no known outstanding effects for the The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985. (See end of Document for details)*

- (c) that he has failed to make them within that period.
- (5) Representations may be made, at the keeper's option, either in writing or orally.
- (6) If the keeper informs the council that he desires to make oral representations, the council shall give him an opportunity of appearing before and of being heard by the council.
- (7) The council shall not reveal to the keeper the name or address of any person who has made a complaint concerning the premises, unless it has first obtained the consent of the person who made the complaint.
- (8) Where the keeper of any premises has applied for a variation order or a revocation order, the council shall be deemed to have refused the application if it fails to determine the matter within 8 weeks from the date on which the application was made.
- (9) When a council makes an order under Article 5, it shall serve a copy in accordance with paragraphs (12) to (14).
- (10) A closing order and any such variation order as is mentioned in paragraph (1)(b) shall come into force 21 days after the date of service.
- (11) A variation order other than a variation order such as is mentioned in paragraph (1)(b) and a revocation order shall come into force on such date as may be specified in it.
- (12) Any document required to be served under this Article shall be served on the keeper of the premises to which it relates and may be served on him by post.
- (13) For the purposes of service any such document may be addressed to the keeper at the premises to which it relates.
- (14) The keeper may be addressed either by name or by the description of “the keeper” of the premises (describing them).
- (15) An appeal—
- (a) against a closing order or a variation order; or
  - (b) against a refusal by the council to make a variation order or a revocation order,
- may be brought to the county court by the keeper of the premises to which the order relates or would relate.
- (16) No appeal against an order may be brought after it has come into force, and if an appeal is brought against an order, the order shall not come into force until the appeal has been determined or abandoned.
- (17) No appeal against a refusal to make a variation order or a revocation order may be brought after the expiry of the period of 21 days from—
- (a) the date on which the keeper was notified of the refusal; or
  - (b) in a case to which paragraph (8) applies, the end of the period referred to in that paragraph.
- (18) On an appeal to the county court under this Article relating to any premises the court may confirm an order relating to the premises made under Article 5 or set it aside or give directions to the council as to the making of such an order relating to the premises and the decision of the county court shall be final.
- (19) It shall be the duty of the council to comply with any directions under paragraph (18).

### ***Contravention of closing orders***

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

(2) It shall be a defence for a person charged with an offence under this Article to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence by himself or by any person under his control.

(3) A person guilty of an offence under this Article shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

*Part IV (Arts. 8-11) rep. by 2003 NI 2*

## PART V

### CONTROL BY DISTRICT COUNCILS OF ACUPUNCTURE, TATTOOING, EAR-PIERCING AND ELECTROLYSIS

#### *Application of Part V*

**12.**—(1) The provisions of this Part, except this Article, shall come into force in accordance with the following provisions of this Article.

(2) A council may resolve that the provisions of this Part which are mentioned in subparagraph (a), (b) or (c) of paragraph (3) are to apply to its district; and if a council does so resolve, the provisions specified in the resolution shall come into force in its district on the day specified in that behalf in the resolution (which must not be before the expiration of the period of one month beginning with the day on which the resolution is passed).

(3) The provisions that may be specified in a resolution under paragraph (2) are—

- (a) Articles 13, 15 and 16; or
- (b) Articles 14 to 16; or
- (c) Articles 13 to 16.

(4) A resolution which provides that Article 14 is to apply to the district of a council need not provide that it shall apply to all the descriptions of persons specified in paragraph (1) of that Article; and if such a resolution does not provide that Article 14 is to apply to persons of all of those descriptions, the reference in paragraph (2) to the coming into force of provisions specified in the resolution shall be construed, in its application to Article 14 and to Article 15 so far as it has effect for the purposes of Article 14, as a reference to the coming into force of those Articles only in relation to persons of the description or descriptions specified in the resolution.

(5) If a resolution provides for the coming into force of Article 14 in relation to persons of more than one of the descriptions specified in paragraph (1) of that Article, it may provide that that Article, and Article 15 so far as it has effect for the purposes of that Article, shall come into force on different days in relation to persons of each of the descriptions specified in the resolution.

(6) A council shall publish notice that it has passed a resolution under this Article in two consecutive weeks in one or more newspapers circulating in its district.

(7) The first publication shall not be later than 28 days before the day specified in the resolution for the coming into force of the provisions specified in it in the council's district.

(8) The notice shall state which provisions are to come into force in that district.

(9) The notice shall also—

- (a) if the resolution provides for the coming into force of Article 13, explain that that Article applies to persons carrying on the practice of acupuncture; and
- (b) if it provides for the coming into force of Article 14, specify the descriptions of persons in relation to whom that Article is to come into force.

*Status: Point in time view as at 15/11/2010.*

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(10) Any such notice shall state the general effect, in relation to persons to whom the provisions specified in the resolution will apply, of the coming into force of those provisions.

### **Acupuncture**

**13.—**(1) A person shall not in any district in which this Article is in force carry on the practice of acupuncture unless he is registered by the council for the district under this Article.

(2) A person shall only carry on the practice of acupuncture in any district in which this Article is in force in premises registered by the council for the district under this Article; but a person who is registered under this Article does not contravene this paragraph merely because he sometimes visits people to give them treatment at their request.

(3) Subject to Article 15(8)(b), on application for registration under this Article, a council shall register the applicant and the premises where he desires to practise and shall issue to the applicant a certificate of registration.

(4) An application for registration under this Article shall be accompanied by such particulars as the council may reasonably require.

(5) The particulars that the council may require include, without prejudice to the generality of paragraph (4),—

- (a) particulars as to the premises where the applicant desires to practise; and
- (b) particulars of any conviction of the applicant under Article 15,

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

(6) A council may charge such reasonable fees as it may determine for registration under this Article.

(7) A council may make byelaws for the purposes of securing—

- (a) the cleanliness of premises registered under this Article and fittings in such premises;
- (b) the cleanliness of persons so registered and persons assisting persons so registered in their practice;
- (c) the cleansing and, so far as is appropriate, the sterilisation of instruments, materials and equipment used in connection with the practice of acupuncture.

(8) Nothing in this Article shall extend to the practice of acupuncture by or under the supervision of a person who is registered as a medical practitioner or a dentist<sup>[F3]</sup> or a chartered physiotherapist or a state registered physiotherapist or a state registered chiropodist] or to premises on which the practice of acupuncture is carried on by or under the supervision of such a person.

[<sup>F3</sup>(9) In this Article—

“chartered physiotherapist” means a member of the Chartered Society of Physiotherapy;

“state registered physiotherapist” means a person registered as a physiotherapist under section 2 of the Professions Supplementary to Medicine Act 1960;

“state registered chiropodist” means a person registered as a chiropodist under section 2 of that Act of 1960.]

**F3** 1992 NI 6

### **Tattooing, [<sup>F4</sup>semi-permanent skin-colouring, cosmetic piercing] and electrolysis**

**14.—**(1) A person shall not in any district in which this Article is in force carry on the business—

- (a) of tattooing;

- [<sup>F4</sup>(aa) of semi-permanent skin-colouring;
- (b) of cosmetic piercing; or]
- (c) of electrolysis,

unless he is registered by the council for the district under this Article.

(2) A person shall only carry on a business mentioned in paragraph (1) in any district in which this Article is in force in premises registered under this Article for the carrying on of that business; but a person who carries on the business of tattooing, [<sup>F4</sup> semi-permanent skin-colouring, cosmetic piercing] or electrolysis and is registered under this Article as carrying on that business does not contravene this paragraph merely because he sometimes visits people at their request to tattoo them, or as the case may be, to [<sup>F4</sup> carry out semi-permanent skin-colouring on them, pierce their bodies] or give them electrolysis.

(3) Subject to Article 15(8)(b), on application for registration under this Article, a council shall register the applicant and the premises where he desires to carry on his business and shall issue to the applicant a certificate of registration.

(4) An application for registration under this Article shall be accompanied by such particulars as the council may reasonably require.

(5) The particulars that the council may require include, without prejudice to the generality of paragraph (4)—

- (a) particulars as to the premises where the applicant desires to carry on his business; and
- (b) particulars of any conviction of the applicant under Article 15,

but do not include information about individual people whom the applicant has tattooed or given electrolysis [<sup>F4</sup>, whose bodies he has pierced or on whom he has carried out semi-permanent skin-colouring].

(6) A council may charge such reasonable fees as it may determine for registration under this Article.

(7) A council may make byelaws for the purposes of securing—

- (a) the cleanliness of premises registered under this Article and fittings in such premises;
- (b) the cleanliness of persons so registered and persons assisting persons so registered in the business in respect of which they are registered;
- (c) the cleansing and, so far as is appropriate, the sterilisation of instruments, materials and equipment used in connection with a business in respect of which a person is registered under this Article.

(8) Nothing in this Article shall extend to the carrying on of a business such as is mentioned in paragraph (1) by or under the supervision of a person who is registered as a medical practitioner or to premises on which any such business is carried on by or under the supervision of such a person.

[<sup>F4</sup>(9) In this Article “semi-permanent skin-colouring” means the insertion of semi-permanent colouring into a person's skin.]

**F4** 2005 NI 18

### **Provisions supplementary to Articles 13 and 14**

**15.**—(1) Any persons who contravenes—

- (a) Article 13(1) or (2); or
- (b) Article 14(1) or (2),

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shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Any person who contravenes a byelaw made—

- (a) under Article 13(7); or
- (b) under Article 14(7),

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) If a person registered under Article 13 is found guilty of an offence under paragraph (2) (a), the court, instead of or in addition to imposing a fine under paragraph (2), may order the suspension or cancellation of his registration.

(4) If a person registered under Article 14 is found guilty of an offence under paragraph (2) (b), the court, instead of or in addition to imposing a fine under paragraph (2), may order the suspension or cancellation of his registration.

(5) A court which orders the suspension or cancellation of a registration by virtue of paragraph (3) or (4) may also order the suspension or cancellation of any registration under Article 13 or, as the case may be, Article 14 of the premises in which the offence was committed, if they are occupied by the person found guilty of the offence.

(6) Subject to paragraph (7), a court ordering the suspension or cancellation of registration by virtue of paragraph (3) or (4) may suspend the operation of the order until the expiration of the period for giving notice of appeal to the county court.

(7) If notice of appeal is given within the period referred to in paragraph (6), an order under paragraph (3) or (4) shall be suspended until the appeal is finally determined or abandoned.

(8) Where the registration of any person under Article 13 or 14 is cancelled by order of the court under this Article—

- (a) he shall within 7 days deliver up to the council the cancelled certificate of registration, and, if he fails to do so, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale and thereafter to a daily fine not exceeding £5; and
- (b) he shall not again be registered by the council under Article 13 or, as the case may be, Article 14 except with the consent of the court which convicted him.

(9) A person registered under this Part shall keep a copy—

- (a) of any certificate of registration issued to him under this Part; and
- (b) of any byelaws under this Part relating to the practice or business in respect of which he is so registered,

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

(10) A person who contravenes paragraph (9) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(11) It shall be a defence for a person charged with an offence under paragraph (1), (2), (8) or (10) to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence.

(12) Nothing in this Part applies to anything done to an animal.

### ***Power to enter premises***

**16.—**(1) Subject to paragraph (2), an authorised officer of a council may enter any premises in the council's district if he has reason to suspect that an offence under Article 15 is being committed there.



(2) The power conferred by this Article may be exercised by an authorised officer of a council only if he has been granted a warrant by a justice of the peace.

(3) A justice may grant a warrant under this Article only if he is satisfied—

(a) that admission to any premises has been refused, or that refusal is apprehended, or that the case is one of urgency, or that an application for admission would defeat the object of the entry; and

(b) that there is reasonable ground for entry under this Article.

(4) A warrant shall not be granted unless the justice is satisfied either that notice of the intention to apply for a warrant has been given to the occupier, or that the case is one of urgency, or that the giving of such notice would defeat the object of the entry.

(5) A warrant shall continue in force—

(a) for seven days; or

(b) until the power conferred by this Article has been exercised in accordance with the warrant, whichever period is the shorter.

(6) Where an authorised officer of a council exercises the power conferred by this Article, he shall produce his authority if required to do so by the occupier of the premises.

(7) Any person who without reasonable excuse refuses to permit an authorised officer of a council to exercise the power conferred by this Article shall be guilty of an offence and shall for every such refusal be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## PART VI

### MISCELLANEOUS FUNCTIONS OF DISTRICT COUNCILS

#### *Provision of crematorium by council*

17.—(1) A council may provide and maintain a crematorium.

(2) No cremation shall be carried out in any crematorium provided under this Article until the cremation has been certified to the Department by the council to be complete and to be properly equipped for the purposes of cremations.

(3) The Department may make regulations with respect to crematoria provided under this Article as to—

(a) their maintenance and inspection;

(b) the cases in and the conditions under which cremations may take place;

(c) the disposition or interment of the ashes resulting from cremations;

(d) the forms of the notices, certificates and applications to be given or made before any cremation is permitted to take place;

(e) the registration of cremations;

(f) the notification of cremations to the Registrar General or to registrars of births and deaths;

(g) the fees that may be charged in respect of the issue of any medical certificate required under the regulations.

(4) Regulations under paragraph (3) shall be subject to negative resolution.

(5) A certified copy of an entry in any register of cremations kept under paragraph (3) purporting to be signed by an officer of the council authorised by the council for that purpose or under the seal of the council shall in any legal proceedings be evidence of the cremation to which it relates.

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(6) A council may fix the charges or fees for or in connection with cremations in any crematorium provided by it and such charges or fees, and any other expenses properly incurred in or in connection with the cremation of a deceased person, shall be deemed to be part of the funeral expenses of that deceased person.

(7) Nothing in this Article shall authorise a council to create or permit a nuisance.

(8) Any person who—

- (a) contravenes any regulations made under paragraph (3); or
- (b) knowingly carries out or procures or takes part in the burning of any human remains otherwise than in accordance with such regulations and the provisions of this Article,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) Any person who wilfully makes a false representation, or signs or utters any false certificate, with a view to procuring the cremation of any human remains in a crematorium provided under this Article shall be guilty of an offence and liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine of any amount, or to both.

(10) Without prejudice to Article 10 of the Perjury (Northern Ireland) Order 1979, sections 36 and 37 of the Forgery Act 1861 (destruction, falsification, etc. of registers of burials or copies thereof) shall, with the necessary modifications, apply to any register of cremations kept under paragraph (3).

(11) This Article (except paragraph (2)) shall apply to any crematorium maintained by a council immediately before the coming into operation of this Order as if it had been provided by the council under this Article.

(12) In this Article “crematorium” means a building fitted with appliances for the purpose of burning human remains, and includes everything incidental or ancillary thereto.

### ***Removal of graffiti and fly posters***

**18.**—(1) Subject to paragraphs (7) and (8)(a), a council may remove or obliterate—

- (a) any graffiti which, in the opinion of the council, is detrimental to the amenity of any land in its district;
- (b) any placard or poster which is displayed in its district and which, in the opinion of the council, is so displayed in contravention of the advertisement regulations.

(2) Where—

- (a) any graffiti on any land in the district of a council is, in the opinion of the council, detrimental to the amenity of the land; or
- (b) any placard or poster displayed on any land in the district of a council is, in the opinion of the council, so displayed in contravention of the advertisement regulations,

the council may serve a notice under this Article on the responsible person.

(3) A notice under this Article shall—

- (a) require any graffiti, placard or poster specified in the notice to be removed or obliterated within the period of 14 days beginning with the date of service of the notice; and
- (b) where it specifies any graffiti, state the effect of paragraph (4) and where it specifies any placard or poster state the effect of paragraphs (4) to (6).

(4) If within the period of 14 days beginning with the date of service of a notice under this Article any graffiti, placard or poster specified in the notice has not been removed or obliterated, then—

- (a) subject to paragraph (5), any person duly authorised in writing by the council may remove or obliterate that graffiti, poster or placard; and
- (b) subject to paragraphs (5) and (6), the council may recover summarily as a civil debt from the responsible person any expenses reasonably incurred by it in that behalf.

(5) Paragraph (4) shall not apply where within the period of 14 days referred to in that paragraph the person on whom a notice under this Article specifying any placard or poster is served satisfies the council that on the date of service of the notice the placard or poster was displayed in accordance with the advertisement regulations.

(6) Paragraph (4)(b) shall not apply where within the period of 14 days referred to in paragraph (4) the person on whom a notice under this Article specifying any placard or poster is served satisfies the council that on the date of service of the notice the placard or poster was displayed without his knowledge or consent.

(7) Nothing in this Article authorises the removal or obliteration by a council of any graffiti, placard or poster which is—

- (a) within a building to which there is no public right of access; or
- (b) on land owned or occupied by a body established by or under a statutory provision.

(8) Any person duly authorised in writing by a council may at any reasonable time enter any land—

- (a) for the purpose of exercising a power conferred on the council by paragraph (1) if the land is unoccupied and it would be impossible to exercise the power without entering the land; and
- (b) for the purpose of exercising a power conferred on the council by paragraph (4)(a).

(9) In this Article “the advertisement regulations” means regulations made under<sup>[F5]</sup> Article 67 of the Planning (Northern Ireland) Order 1991].

(10) For the purposes of this Article a person is “the responsible person”

- (a) in relation to any graffiti, placard or poster, if it is displayed on land of which he is the owner or occupier; and
- (b) in relation to any placard or poster, if it gives publicity to his goods, trade, business or other concerns.

(11) This Article and Article 19 are without prejudice to<sup>[F5]</sup> Articles 67 and 84 of the Planning (Northern Ireland) Order 1991] (control of advertisements) and to any regulations made under that Order by virtue of those Articles.

**F5** 1991 NI 11

### ***Advertising on council property***

**19.** A council may enter into agreement with any person for the display of advertisements on or in—

- (a) any land vested in or maintained by the council;
- (b) any moveable property owned by the council;
- (c) any vehicle or machinery operated by the council.

*Status: Point in time view as at 15/11/2010.*

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### ***Use of spare capacity of computers of council***

**20.**—(1) If a council—

- (a) has provided a computer for the purpose of enabling the council to perform any of its functions other than functions under this Article; and
- (b) considers that the computer can, without detriment to its use for that purpose, be used for the benefit of the council in pursuance of the following provisions of this Article,

the council may enter into agreements with other persons for the provision by the council of facilities for using the computer or of services provided by means of the computer.

[<sup>F6</sup>(1A) If a council has developed software for the purpose mentioned in paragraph (1) the council may enter into agreements with other persons for the supply by the council of the software.]

(2) An agreement in pursuance of this Article may contain such terms as to payment or otherwise as the parties consider appropriate; and it shall be the duty of a council, in settling the terms of such an agreement, to ensure that they are terms on which the council considers that a person other than a council could reasonably be expected to provide the facilities or services[<sup>F6</sup> or supply the software] in question.

(3) In this Article “computer” means any device for storing and processing information[<sup>F6</sup> and “software” means instructions required by a computer to perform intended tasks].

(4) This Article is without prejudice to section 105 of the principal Act (arrangements for the supply of goods and services).

**F6** 1992 NI 6

*Art. 21 rep. by 1993 NI 15*

### ***Payment of sums due to deceased or mentally disordered officers of council***

**22.**—(1) If, on the death of any person who is or has been an officer of a council, there is due to him or his personal representatives from the council a sum not exceeding £5,000 and not being a pension, allowance or gratuity payable by virtue of Article 9 of the Superannuation (Northern Ireland) Order 1972 the council may, without requiring the production of probate or letters of administration of the estate of the officer, pay the whole or any part of that sum to the officer's personal representatives or to the person, or to or among any one or more of any persons, appearing to the council to be beneficially entitled to the estate of the officer, and any person to whom such a payment is made, and not the council, shall be liable to account for the sum paid to him under this paragraph.

(2) The council may, if it thinks fit, pay out of the said sum the funeral expenses of the officer or so much thereof as it considers reasonable having regard to any death grant which has been or is to be paid under section 32 of the Social Security (Northern Ireland) Act 1975.

(3) <sup>F7</sup> Paragraph (1) shall be included among the provisions with respect to which the Department of Finance and Personnel may make an order under section 6(1) of the Administration of Estates (Small Payments) Act (Northern Ireland) 1967, substituting for references to £5,000 references to such higher amount as may be specified in the order.

*Para. (4) rep. by 1986 NI 4*

**F7** mod. by SR 2004/68

## PART VII

### AMENDMENT AND REPEAL OF PROVISIONS RELATING TO DISTRICT COUNCILS

#### *Miscellaneous amendments of the principal Act*

*Art. 23 rep. by 1995 NI 5*

#### ***Payment of allowance to vice-chairman of council***

**24.** In section 13 of the principal Act (vice-chairman) after subsection (2) there shall be inserted the following subsection—

“(2A) A council may pay to the vice-chairman of the council such allowance as the council considers to be reasonable to meet the expenses of his office.”.

#### ***Loans to officers for purchase of motor cars or motor cycles***

**25.** After section 41A of the principal Act there shall be inserted the following section—

##### **“Loans to officers for purchase of motor cars or motor cycles.**

**41B.** A council may make loans to such of its officers and subject to such conditions as the Department, with the approval of the Department of Finance and Personnel, may determine to facilitate such officers in the purchase of motor cars or motor cycles essential to the efficient carrying out of their official duties.”

#### ***Delegation of functions to officers***

**26.—**(1) After section 47 of the principal Act there shall be inserted the following section—

##### **“Delegation of functions to officers.**

**47A.—**(1) A council may arrange for the discharge of any of its functions, except the power of making a rate, or of borrowing money or of acquiring, holding or disposing of land, by an officer of the council and any transferred provision regulating the exercise of a function by a council shall also apply to regulate the exercise of that function by an officer of the council.

(2) Where any functions of a council may be discharged by a committee of the council, then, unless the council otherwise directs, the committee may arrange for the discharge of any of those functions by an officer of the council.

(3) Where any functions of a council may be discharged by a sub-committee of the council, then, unless the council or the committee otherwise directs, the sub-committee may arrange for the discharge of any of those functions by an officer of the council.”.

(2) In Schedule 7 to the principal Act (provisions applied to joint committee) after the entry relating to section 47 of the principal Act there shall be inserted the following entry—

“**47A.** Delegation of functions to officers.”.

*Status: Point in time view as at 15/11/2010.*

*Changes to legislation: There are currently no known outstanding effects for the The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985. (See end of Document for details)*

***Custody and destruction of documents relating to securities created by a council***

27. In section 70 of the principal Act (regulations as to securities created by a council) in subsection (2) the following paragraph shall be inserted after paragraph (h)—

“(hh) the custody and, where appropriate, eventual destruction of documents relating to securities;” .

***Powers of auditor in relation to unlawful items of account, amounts not accounted for, etc.***

28. <sup>F8</sup> .....

**F8** Art. 28 repealed (1.4.2006) by [Local Government \(Northern Ireland\) Order 2005 \(S.I. 2005/1968 \(N.I. 18\)\)](#), arts. 1, 28(8), Sch. 1; S.R. 2006/151, **art. 2**, Sch. 1 (with art. 4)

***Regulations as to accounts and audit***

29. <sup>F9</sup> .....

**F9** Art. 29 repealed (1.4.2006) by [Local Government \(Northern Ireland\) Order 2005 \(S.I. 2005/1968 \(N.I. 18\)\)](#), arts. 1, 28(8), Sch. 1; S.R. 2006/151, **art. 2**, Sch. 1 (with art. 4)

***Studies for improving economy, etc. of services of councils***

30. <sup>F10</sup> .....

**F10** Art. 30 repealed (1.4.2006) by [Local Government \(Northern Ireland\) Order 2005 \(S.I. 2005/1968 \(N.I. 18\)\)](#), arts. 1, 28(8), Sch. 1; S.R. 2006/151, **art. 2**, Sch. 1 (with art. 4)

***Arrangements with specified bodies for supply of goods, services and staff***

31. In section 105 of the principal Act (arrangements for supply of goods and services and interchange of staff) in subsections (1), (2) and (6) after the words “public body” wherever they occur there shall be inserted the words “, specified body” and at the end there shall be added the following subsection—

- “(7) In this section “specified body” means a body which is specified, or is of a description specified, in regulations and any such regulations may contain provisions—
  - (a) for restricting the arrangements which may by virtue of the regulations be entered into by a specified body under subsection (1) or (2); and
  - (b) for securing the inclusion in any such arrangements made by virtue of the regulations of terms imposing restrictions.” .

***Mode of voting at council meeting***

32. In Schedule 2 to the principal Act for paragraph 8 there shall be substituted the following paragraph—

“8.—(1) The mode of voting at meetings of the council shall, except as otherwise resolved by the council, be by show of hands.

(2) On the requisition of any councillor the voting on any question shall be recorded so as to show whether each councillor present and voting gave his vote for or against that question.”.

### ***Requisitioning of meetings of a council***

**33.** In Schedule 2 to the principal Act in paragraph 2 for sub-paragraph (2) there shall be substituted the following sub-paragraphs—

“(2) If a requisition for a meeting of the council signed by five councillors or by one-fifth of the whole number of the councillors, whichever is the greater, is presented to the chairman of the council, he shall call a meeting of the council to be held within the period of fourteen days from the date of service of the requisition on him.

(2A) If the chairman—

(a) refuses to call a meeting of the council in accordance with sub-paragraph (2); or

(b) does not, within the period of seven days from the date of service of the requisition on him, call a meeting of the council in accordance with sub-paragraph (2),

any five councillors or one-fifth of the whole number of the councillors, whichever is the greater, may on that refusal or on the expiration of that period forthwith call a meeting of the council.” .

### *Miscellaneous amendments of other statutory provisions*

#### *Article 34—Amendments*

### ***Regulations as to burial grounds of councils***

**35.** For section 181 of the Public Health (Ireland) Act 1878 there shall be substituted the following section—

#### **“Regulations as to burial grounds, &c.**

**181.**—(1) The Department of the Environment may by regulations make provision with respect to the management, regulation and control of burial grounds of district councils and places of reception of bodies previous to interment and such regulations may—

(a) impose a fine for the contravention of any such regulations; and

(b) contain such provision amending or repealing any statutory provision (including a provision in this Part) as appears to the Department to be necessary or proper in consequence of the regulations.

(2) Regulations under subsection (1) containing any such provision as is referred to in paragraph (b) of that subsection shall be subject to affirmative resolution and regulations not containing any such provision shall be subject to negative resolution.

(3) Regulations under subsection (1) may only be made after consultation with the district councils and other bodies appearing to the Department to be concerned.”.

### ***Minor amendments relating to burial grounds of councils***

**36.**—(1) The following statutory provisions (which prohibit the appropriation of land within one hundred yards of a dwelling house as a burial ground without the written consent of the owner) shall cease to have effect, namely—

(a) section 10 of the Cemeteries Clauses Act 1847 (including that section as incorporated with any other Act);

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*Status: Point in time view as at 15/11/2010.*

*Changes to legislation: There are currently no known outstanding effects for the The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985. (See end of Document for details)*

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(b) in section 174 of the Public Health (Ireland) Act 1878 the words from “but no ground” to the end.

(2) At the end of Part III of the Public Health (Ireland) Act 1878 there shall be inserted the following section—

**“Interpretation of Part III.**

**199A.** In this Part—

“burial ground” means any place for the interment of the dead, including any part of any such place set aside for the interment of a dead person's ashes;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954.”.

(3) Sections 189 and 190 of the Public Health (Ireland) Act 1878 (which have been superseded by provisions of the principal Act) and section 29 of the Local Government (Ireland) Act 1898 (which is spent) are hereby repealed.

***Public health inspectors to be known as environmental health officers***

**37.** For any reference to a public health inspector in—

*Para. (a) rep. by 1989 NI 6*

(b) section 8(6) or 153(2) of the Factories Act (Northern Ireland) 1965;

or in any other statutory provision there shall be substituted a reference to an environmental health officer appointed by a council in the exercise of its powers under section 41 of the principal Act.

***Nuisances under the Public Health (Ireland) Act 1878***

**38.—**(1) In section 107(7) of the Public Health (Ireland) Act 1878 (nuisances for purposes of the Act include any grit, dust or effluvia which is a nuisance to, or injurious to the health of, any of the inhabitants of the neighbourhood) for the words from “a nuisance to” to “neighbourhood” there shall be substituted the words “injurious, or likely to cause injury, to the public health or a nuisance”.

(2) In Article 23(1) of the Clean Air (Northern Ireland) Order 1981 (smoke deemed to be nuisance for the purposes of section 107 of the Public Health (Ireland) Act 1878 if it is a nuisance to any of the inhabitants of the neighbourhood) for the words “a nuisance to any of the inhabitants of the neighbourhood” there shall be substituted the words “injurious, or likely to cause injury, to the public health or a nuisance”.

***Extension of licensing of knackers' yards by councils***

**39.—**(1) In section 2 of the Public Health (Ireland) Act 1878 for the definition of “knackers' yard” there shall be substituted the following definition—

““knacker's yard” means any place used for the purposes of, or in connection with,—

(a) the slaughtering of animals not slaughtered for the purpose of the flesh being used for human consumption; or

(b) the flaying, cutting up or processing of the carcasses of animals the flesh of which is not intended for human consumption;” .

(2) Section 106 of the Public Health (Ireland) Act 1878 (which requires the owner or occupier of any licensed or registered knacker's yard to affix a notice to the premises) shall cease to have effect.



**Filling of casual vacancy on council by co-option or election**

**40.**—(1) Section 11 of the Electoral Law Act (Northern Ireland)1962 (election and term of office of members of district councils) shall have effect subject to the following provisions of this Article.

(2) In subsection (4) for the words “shall be filled in accordance with the Local Election Rules” there shall be substituted the words “shall be filled in accordance with subsection (4A)”.

(3) After subsection (4) there shall be inserted the following subsections—

“(4A) A casual vacancy to which subsection (4)(c) applies shall be filled by a person elected at an election to fill the vacancy and any other casual vacancy shall be filled—

- (a) by a person chosen by the council in accordance with subsection (4B); or
- (b) if no person is chosen as mentioned in paragraph (a), by a person elected at an election to fill the vacancy.

(4B) Where a casual vacancy in a district council falls to be filled in accordance with this subsection—

- (a) a meeting of the council to choose a person to fill the vacancy shall be held not less than 14 days nor more than 42 days after the occurrence of the vacancy;
- (b) the clerk of the council shall give every member of the council not less than 7 days written notice of the meeting which notice shall state as the first business of the meeting the choice of a person to fill the vacancy;
- (c) the council may at that meeting choose to fill the vacancy any person who is qualified to be a member of the council and is not objected to by any member of the council present at the meeting; and
- (d) any person so chosen shall be deemed for all purposes to have been duly elected a member of the council.

(4C) Where a meeting of a district council held in accordance with subsection (4B) fails to choose a person to fill a casual vacancy, the clerk of the council shall, within 7 days of the meeting, notify the Chief Electoral Officer—

- (a) that a casual vacancy has arisen in the council and that a meeting held in accordance with subsection (4B) has failed to choose a person to fill that vacancy;
- (b) of any other matter concerning the casual vacancy which has come to the knowledge of the clerk of the council.”.

*Para. (4) rep. by 1992 NI 6*

*Art. 41 rep. by 2002 NI 3*

*Article 42—Amendments*

*Article 43—Repeals*

*Status: Point in time view as at 15/11/2010.*

*Changes to legislation: There are currently no known outstanding effects for the The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 1

Article 3

#### LICENSING OF PLACES OF ENTERTAINMENT

##### Licensing of indoor places of entertainment

1.—(1) An entertainment to which this paragraph applies shall not be provided at a place to which this paragraph applies except under and in accordance with the terms of a licence granted under paragraph 3 by the council for the district in which the place is situated.

(2) Subject to sub-paragraph (3), this paragraph applies to the following entertainments, namely—

- (a) a theatrical performance;
- (b) dancing, singing or music or any other entertainment of a like kind;
- (c) a circus;
- (d) any entertainment which consists of, or includes, any public contest, match, exhibition or display of—
  - (i) boxing, wrestling, judo, karate or any similar sport;
  - (ii) billiards, pool, snooker or any similar game;
  - (iii) darts;
  - (iv) any other sport or game prescribed for the purposes of this paragraph by an order made by the Department subject to affirmative resolution.

(3) This paragraph does not apply to—

- (a) any music or singing—
  - (i) in a place used wholly or mainly for public religious worship; or
  - (ii) performed as an incident of a religious meeting or service;
- (b) an entertainment which takes place wholly or mainly in the open air.

(4) Subject to sub-paragraph (5), machines for entertainment or amusement and equipment for the playing of billiards, pool, snooker or other similar games shall not be provided at a place to which this paragraph applies except under and in accordance with the terms of a licence granted under paragraph 3 by the council for the district in which the place is situated.

(5) Sub-paragraph (4) does not apply to—

- (a) machines or equipment provided incidentally to the main purpose or use of any place;
- (b) machines or equipment provided wholly or mainly in the open air;
- (c) gaming machines, that is to say machines which are constructed or adapted for playing games of chance by means of them and have slots or apertures for the insertion of money in the form of cash or tokens.

(6) Subject to sub-paragraph (7), this paragraph applies to—

- (a) any place where, on payment of a charge, persons are admitted for the purpose of entertainment or amusement;

(b) any place where, on payment of a charge, meals or refreshments are supplied to the public; and

(c) any place where, on payment of a charge, persons may use any machines or equipment referred to in sub-paragraph (4) for the purpose of entertainment or amusement,

and in this sub-paragraph “charge” includes any form of charge whenever paid and whether paid by money or money's worth.

(7) This paragraph does not apply to the following places, namely—

- (a) any premises licensed under<sup>F11</sup> Article 3 of the Cinemas (Northern Ireland) Order 1991]; or
- (b) an educational institution while being used as such.

(8) In the following provisions of this Schedule references to an entertainment to which this paragraph applies shall include references to any machine or equipment referred to in sub-paragraph (4).

**F11** 1991 NI 12

### Licensing of outdoor musical entertainments

**2.—(1)** An entertainment to which this paragraph applies shall not be provided at any place except under and in accordance with the terms of a licence granted under paragraph 3 by the council for the district in which the place is situated.

(2) This paragraph applies to any public musical entertainment which is held—

- (a) wholly or mainly in the open air; and
- (b) at a place on private land.

(3) For the purposes of this paragraph—

- (a) an entertainment is musical if music or singing is a substantial ingredient; and
- (b) land is private if the public has access to it (whether on payment or otherwise) only by permission of the owner, occupier or lessee.

(4) This paragraph does not apply—

- (a) to a garden fete, bazaar, sale of work, sporting or athletic event, exhibition, display or other function or event of a similar character, whether limited to one day or extending over two or more days; or
- (b) to a religious meeting or service,

merely because music or singing is incidental to it.

(5) This paragraph does not apply to an entertainment held in a pleasure fair.

### Grant, renewal and transfer of entertainments licences

**3.—(1)** The council may grant to any applicant, and from time to time renew, a licence for the use of any place specified in it for all or any of the entertainments to which paragraphs 1 and 2 apply.

(2) Subject to sub-paragraphs (3) to (5), a licence under this paragraph may be granted—

- (a) on such terms and conditions; and
- (b) subject to such restrictions,

as may be specified in it.

*Status: Point in time view as at 15/11/2010.*

*Changes to legislation: There are currently no known outstanding effects for the The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985. (See end of Document for details)*

(3) In specifying any terms, conditions or restrictions in a licence under this paragraph the council shall have regard to any model terms, conditions and restrictions published for the purposes of this paragraph by the Department.

(4) Without prejudice to the generality of sub-paragraph (2), terms, conditions and restrictions may be specified in a licence for the use of any place for an entertainment to which paragraph 1 applies for all or any of the following purposes, namely—

- (a) regulating the conduct, days and hours of use and general arrangement of the place;
- (b) securing adequate fire precautions;
- (c) securing the provision of facilities for the disabled;
- (d) securing the provision of adequate sanitary appliances and things used in connection with such appliances;
- (e) preventing persons in the neighbourhood being unreasonably disturbed by noise;
- (f) securing that there is in force a policy of insurance insuring the holder of the licence in respect of any liability which may be incurred by him in respect of the death of, or bodily injury to, any person while on or about the premises.

(5) No terms, conditions or restrictions shall be specified in a licence for the use of any place for an entertainment to which paragraph 2 applies unless they are so specified for all or any of the following purposes, namely—

- (a) for securing general safety at the entertainment for which the licence is granted;
- (b) without prejudice to the generality of head (a), for securing adequate access for fire engines, ambulances, police cars or other vehicles that may be required in an emergency;
- (c) for securing the provision and maintenance of adequate sanitary appliances and things used in connection with such appliances;
- (d) for preventing persons in the neighbourhood being unreasonably disturbed by noise;
- (e) for securing the provision and maintenance of receptacles for litter.

(6) Where a licence under this paragraph has been granted to any person, the council may, if it thinks fit, transfer that licence to any other person on the application of that other person or the holder of the licence.

(7) A licence under this paragraph is referred to in the following provisions of this Schedule as “an entertainments licence”.

#### Duration of licences

4.—(1) Subject to sub-paragraphs (3) and (4) and paragraph 13, any entertainments licence other than a licence mentioned in sub-paragraph (2) shall, unless previously cancelled under paragraph 9, revoked under paragraph 10(5) or suspended under paragraph 12(1), remain in force for one year or for such shorter period specified in the licence as the council may think fit.

(2) The council may grant an entertainments licence in respect—

- (a) of not more than fourteen particular days specified in the licence; or
- (b) of any fourteen unspecified days within the period of twelve months next following the grant of the licence.

(3) Where, before the date of expiry of an entertainments licence, an application has been made for its renewal, it shall be deemed to remain in force notwithstanding that the date has passed until the withdrawal of the application or its determination by the council.

(4) Where, before the date of expiry of an entertainments licence, an application has been made for its transfer, it shall be deemed to remain in force with any necessary modifications until the

withdrawal of the application or its determination notwithstanding that the date has passed or that the person to whom the licence is to be transferred if the application is granted is carrying on at the place in respect of which the licence was granted the functions to which it relates.

### Applications for the grant, renewal or transfer of licences

5.—(1) An application for the grant, renewal or transfer of an entertainments licence shall be made in writing to the council and the applicant shall supply the council with three copies of the application.

(2) Every application shall—

- (a) be in such form and contain such particulars as the council may reasonably require;
- (b) be accompanied by three copies of such plans, certificates or other documents as the council may reasonably require; and
- (c) be accompanied by such fee as the Department may from time to time determine.

(3) Subject to sub-paragraph (4), an applicant for the grant, renewal or transfer of an entertainments licence shall, not later than 7 days after the date of the application, give public notice of the application by publishing an advertisement in such newspapers circulating in the district of the council as the council may require.

(4) Sub-paragraph (3) does not apply to an applicant for the grant of an entertainments licence mentioned in paragraph 4(2) in respect of an educational institution or a church hall, chapel hall or other similar building occupied in connection with a place of public religious worship.

(5) Every advertisement published under sub-paragraph (3) shall state—

- (a) that application has been made for the grant, renewal or transfer of an entertainments licence (as the case may be);
- (b) the nature of the entertainment and the address or location of the place in respect of which the application has been made;
- (c) the name and address of the applicant;
- (d) that representations in relation to the application may be made to the council in accordance with sub-paragraph (6);

and the applicant shall supply a copy of every such advertisement to the council.

(6) Any person wishing to make any representation in relation to an application for the grant, renewal or transfer of an entertainments licence shall give notice to the council, stating in general terms the nature of the representation, not later than 28 days after the date of the application.

(7) The council shall, as soon as an application for the grant, renewal or transfer of an entertainments licence is made to it, send a copy of the application to the appropriate sub-divisional commander and to the Fire Authority.

(8) In considering any application for the grant, renewal or transfer of an entertainments licence the council shall—

- (a) have regard to any observations submitted to it by the appropriate sub-divisional commander and the [<sup>F12</sup>Fire and Rescue Service Board] ;
- [<sup>F13</sup>(aa) have regard to any conviction of the applicant of an offence under paragraph 10 within the period of 5 years immediately preceding the date when the application was made;]
- (b) give an opportunity of appearing before and of being heard by the council to the applicant;
- (c) have regard to any representation of which notice has been sent to it under sub-paragraph (6); and

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- (d) give an opportunity of appearing before and of being heard by the council to any person who has made any such representation.

[<sup>F13</sup>(9) Subject to paragraph 13 and without prejudice to its power to refuse an application on any other grounds, the council may refuse an application for the grant, renewal or transfer of an entertainments licence on the ground that the applicant has been convicted of an offence under paragraph 10 within the period of 5 years immediately preceding the date when the application was made.]

**F12** Words in Sch. 1 para. 5(8) substituted (1.7.2006) by [Fire and Rescue Services \(Northern Ireland\) Order 2006 \(S.I. 2006/1254 \(N.I. 9\)\)](#), arts. 1(3), 63(1), [Sch. 3 para. 15\(a\)](#) (with art. 62); S.R. 2006/257, [art. 2\(d\)](#)  
**F13** 1995 NI 5

### Provisional grant of licences

6.—(1) Where application is made to the council for the grant of an entertainments licence in respect of premises which are to be, or are in the course of being, constructed, extended or altered and the council is satisfied that the premises would, if completed in accordance with plans deposited in accordance with the requirements of the council, be such that it would grant the licence, the council may grant the licence subject to a condition that it shall be of no effect until confirmed by the council.

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

### Variation of licences

7.—(1) The holder of an entertainments licence may at any time apply to the council for any such variation of the terms, conditions or restrictions on or subject to which the licence is held as may be specified in the application.

(2) Sub-paragraphs (3) to (8) of paragraph 5 shall, with appropriate modifications, apply to an application under this paragraph as they apply to an application for the grant of an entertainments licence.

(3) The council may—

- (a) make the variation specified in the application;
- (b) make such variations as it thinks fit, including, subject to paragraph 3 (5), the imposition of terms, conditions or restrictions other than those so specified; or
- (c) refuse the application.

[<sup>F14</sup>7A. An applicant for the variation of the terms, conditions or restrictions on or subject to which an entertainments licence is held shall pay such fee as the Department may determine.]

**F14** 1992 NI 6

### Transmission of licences on death of holder

8. In the event of the death of the holder of an entertainments licence, the person carrying on at the place in respect of which the licence was granted the functions to which the licence relates shall, on giving notice of the death to the council, be deemed to be the holder of the licence unless and until—

- (a) a personal representative of the deceased has been duly constituted; or
- (b) the licence is transferred to some other person.

## Cancellation of licences

9. The council may, at the written request of the holder of an entertainments licence, cancel the licence.

## Enforcement

10.—(1) If—

- (a) any entertainment to which paragraph 1 applies is provided at any place to which that paragraph applies in respect of which an entertainments licence is not in force; or
- (b) any entertainment to which paragraph 2 applies is provided at any place in respect of which an entertainments licence is not in force,

then, subject to sub-paragraph (3)—

- (a) any person concerned in the organisation or management of that entertainment; and
- (b) any other person who, knowing or having reasonable cause to suspect that such an entertainment would be so provided at the place,—
  - (i) allowed the place to be used for the provision of that entertainment; or
  - (ii) let the place, or otherwise made it available, to any person by whom an offence in connection with that use of the place has been committed,

shall be guilty of an offence<sup>F15</sup>. . . .

(2) If any place in respect of which an entertainments licence is in force is used for any entertainment otherwise than in accordance with the terms, conditions or restrictions on or subject to which the licence is held, then, subject to sub-paragraphs (3) and (4)—

- (a) the holder of the licence; and
- (b) any other person who, knowing or having reasonable cause to suspect that the place would be so used,—
  - (i) allowed the place to be so used; or
  - (ii) let the place, or otherwise made it available, to any person by whom an offence in connection with that use of the place has been committed,

shall be guilty of an offence<sup>F15</sup>. . . .

[<sup>F15</sup>(2A) Any person guilty of an offence under sub-paragraph (1) or (2) shall be liable on summary conviction—

- (a) in the case of an offence to which sub-paragraph (2B) applies, to a fine not exceeding £20,000 or to imprisonment for a term not exceeding 6 months or to both;
- (b) in any other case, to a fine not exceeding level 5 on the standard scale.

(2B) This sub-paragraph applies to—

- (a) any offence under sub-paragraph (1) where the entertainment provided is—
  - (i) entertainment referred to in sub-paragraph (2)(b) of paragraph 1 and to which that paragraph applies; or
  - (ii) entertainment to which paragraph 2 applies; and
- (b) any offence under sub-paragraph (2) where the entertainment for which the place is used is—
  - (i) entertainment referred to in sub-paragraph (2)(b) of paragraph 1 and to which that paragraph applies; or
  - (ii) entertainment to which paragraph 2 applies,

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and the terms, conditions or restrictions which are contravened or not complied with include one which imposes a limit on the number of persons who may be present at the entertainment.]

(3) It shall be a defence for a person charged with an offence under this paragraph to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence.

(4) Where premises—

- (a) are licensed premises under the<sup>F16</sup> Licensing (Northern Ireland) Order 1996] or the premises of a club registered under the<sup>F17</sup> Registration of Clubs (Northern Ireland) Order 1987]; and
- (b) form all or part of a place in respect of which an entertainments licence is for the time being in force,

no person shall be guilty of an offence under sub-paragraph (2) by reason only of those premises being kept open for any of the purposes authorised by the entertainments licence after the latest hour so authorised but not later than the hour to which intoxicating liquor is authorised to be sold or supplied on those premises under either of the said Acts.

(5) Subject to paragraph 13, the council by which an entertainments licence was granted may revoke it if its holder is convicted of an offence under sub-paragraph (2)(a).

<b>F15</b>	1995 NI 5
<b>F16</b>	1996 NI 22
<b>F17</b>	1992 NI 6

## Powers of entry

11.—(1) Where—

- (a) a constable; or
- (b) an authorised officer of the council; or
- (c) an authorised officer of the <sup>F18</sup>Fire and Rescue Service Board] ,

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

(2) An authorised officer of the <sup>F18</sup>Fire and Rescue Service Board] may, on giving not less than 24 hours' notice to the occupier of any place in respect of which an entertainments licence is for the time being in force, enter the place for the purpose of—

- (a) inspecting the place to ensure that there are adequate fire precautions; and
- (b) seeing whether the terms, conditions or restrictions relating to fire precautions on or subject to which the licence is held are being complied with.

(3) A constable or authorised officer of the council may enter any place in respect of which he has reason to suspect that an offence under paragraph 10 is being committed if authorised to do so by a warrant granted by a justice of the peace.

(4) Where an authorised officer of the council or of the <sup>F18</sup>Fire and Rescue Service Board] enters any place in exercise of any power under this paragraph he shall, if required to do so by the occupier, produce to him his authority.

(5) Any person who without reasonable excuse refuses to permit a constable or officer to enter or inspect any place in accordance with the provisions of this paragraph shall be guilty of an offence



and shall for every such refusal be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**F18** Words in Sch. 1 para. 11 substituted (1.7.2006) by Fire and Rescue Services (Northern Ireland) Order 2006 (S.I. 2006/1254 (N.I. 9)), arts. 1(3), 63(1), Sch. 3 para. 15(a) (with art. 62); S.R. 2006/257, art. 2(d)

### Suspension of licences

**12.**—(1) If it appears to the council that the provision of any entertainment at any place in respect of which an entertainments licence is in force is causing or is likely to cause a serious threat to public order or public safety, the council may, subject to paragraph 13, order the suspension of that entertainments licence.

(2) The council may at any time revoke an order under this paragraph.

(3) Before making an order under this paragraph the council shall—

- (a) consult the appropriate sub-divisional commander and, where it appears to the council to be appropriate, the [<sup>F19</sup>Fire and Rescue Service Board] ; and
- (b) give an opportunity of appearing before and of being heard by the council to the holder of the entertainments licence and to any persons who have made representations to the council relating to the provision of any entertainment at the place to which the licence relates.

(4) An order under this paragraph suspending a licence shall have effect from the date on which it is made until whichever is the earlier of the following dates—

- (a) the date on which the order is revoked by the council;
- (b) the date of expiry of the entertainments licence to which the order relates,

and the licence shall be of no effect during that period.

**F19** Words in Sch. 1 para. 12(3)(a) substituted (1.7.2006) by Fire and Rescue Services (Northern Ireland) Order 2006 (S.I. 2006/1254 (N.I. 9)), arts. 1(3), 63(1), Sch. 3 para. 15(a) (with art. 62); S.R. 2006/257, art. 2(d)

### Appeals

**13.**—(1) Any of the following persons, that is to say—

- (a) an applicant for the grant, renewal or transfer of an entertainments licence in respect of any place whose application is refused;
- (b) an applicant for the variation of the terms, conditions or restrictions on or subject to which any such licence is held whose application is refused;
- (c) a holder of any such licence who is aggrieved by any term, condition or restriction on or subject to which the licence is held; or
- (d) a holder of any such licence whose licence is revoked under paragraph 10(5) or suspended under paragraph 12(1),

may at any time before the expiration of the period of 21 days beginning with the relevant date appeal to the county court for the county court division in which the place is situated.

(2) In this paragraph “the relevant date” means the date on which the person in question is notified of the refusal of his application, the imposition of the term, condition or restriction by which he is aggrieved or the revocation or suspension of his licence, as the case may be.

**Status:** Point in time view as at 15/11/2010.

**Changes to legislation:** There are currently no known outstanding effects for the The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985. (See end of Document for details)

(3) On an appeal to the county court under this paragraph the court may make such order as it thinks fit and the decision of the court shall be final.

(4) It shall be the duty of the council to give effect to an order of the county court.

(5) Where any entertainments licence is revoked under paragraph 10(5) or an application for the renewal of such a licence is refused, the licence shall be deemed to remain in force—

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

(b) where an appeal relating to the refusal of an application for such a renewal is successful until the licence is renewed by the council.

(6) Where—

(a) the holder of an entertainments licence makes an application under paragraph 7; and

(b) the council imposes any term, condition or restriction other than one specified in the application,

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

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

### Notification of police and Fire Authority

**14.—**(1) The council shall send a copy of any entertainments licence granted by it to the appropriate sub-divisional commander and to the [<sup>F20</sup>Fire and Rescue Service Board] .

(2) The council shall notify the appropriate sub-divisional commander and the [<sup>F20</sup>Fire and Rescue Service Board] of the renewal, transfer, variation, cancellation, revocation or suspension of an entertainments licence granted by it.

**F20** Words in Sch. 1 para. 14 substituted (1.7.2006) by Fire and Rescue Services (Northern Ireland) Order 2006 (S.I. 2006/1254 (N.I. 9)), arts. 1(3), 63(1), Sch. 3 para. 15(a) (with art. 62); S.R. 2006/257, art. 2(d)

### Transitional provisions

**15.—**(1) Any licence granted under section 31 of the Local Government Act (Northern Ireland) 1934 or Article 5 of the Theatres (Northern Ireland) Order 1980 and in force immediately before the date on which this Schedule comes into operation—

(a) shall have effect as from that date as if granted under this Schedule by the council on and subject to terms, conditions and restrictions corresponding to those on and subject to which it was held immediately before that date; and

(b) shall, if the council gives notice to that effect to the holder, remain in force until such date, not being a date later than six months after the date on which it would otherwise expire, as may be specified in the notice.

(2) Where an appeal under section 31(11) of the Local Government Act (Northern Ireland) 1934 has been brought in respect of a licence before the date on which this Schedule comes into operation but has not been determined or abandoned before that date, the provisions of paragraph 13 shall apply to proceedings relating to the appeal as if the appeal had been brought under that paragraph.

(3) In relation to—

- (a) an entertainment to which paragraph 1 applies but which is not an entertainment to which section 31 of the Local Government Act (Northern Ireland) 1934 or the Theatres (Northern Ireland) Order 1980 applied; and
  - (b) an entertainment to which paragraph 2 applies,
- paragraph 10(1) shall not apply—
- (i) during the period of two months from the date on which this Schedule comes into operation; and
  - (ii) where before the expiry of that period an application is made for an entertainments licence in respect of that entertainment, until the application is granted or refused by the council.

### Saving for other statutory provisions

16. Nothing in this Schedule shall affect—

- (a) paragraph 1 of Schedule 3 to the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955;
- (b) <sup>F21</sup> .....

**F21** Sch. 1 para. 16(b) repealed (15.11.2010) by Fire and Rescue Services (Northern Ireland) Order 2006 (S.I. 2006/1254 (N.I. 9)), arts. 1(3), 63(2), Sch. 4 (with art. 62); S.R. 2010/328, art. 2

### [<sup>F22</sup>Sex discrimination

**F22** 1988 NI 13

**16A.—**(1) [<sup>F23</sup>Without prejudice to the generality of Article 3(1) of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1990,] nothing in any licence granted under this Schedule (whether before or after the commencement of Article 13 of the Sex Discrimination (Northern Ireland) Order 1988) shall have effect at any time after the said commencement so as to require any person to do any act which, <sup>F23</sup> . . . is rendered unlawful by Part III of the 1976 Order (discrimination in relation to employment) or by so much of Part V of the 1976 Order as relates to acts rendered unlawful by Part III of the 1976 Order.

(2) In this paragraph—

“act” has the same meaning as in the 1976 Order; and

“the 1976 Order” means the Sex Discrimination (Northern Ireland) Order 1976.

**F23** 1990 NI 2

### Interpretation

17. In this Schedule—

(a) “the appropriate sub-divisional commander” in relation to an entertainments licence for any place, means the sub-divisional commander of the Royal Ulster Constabulary acting for the police sub-division in which that place is situated;

“educational institution” has the same meaning as in [<sup>F24</sup> Article 26 of the Planning (Northern Ireland) Order 1991];

“an entertainments licence” means a licence granted under paragraph 3;

*Status: Point in time view as at 15/11/2010.*

*Changes to legislation: There are currently no known outstanding effects for the The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985. (See end of Document for details)*

[<sup>F25</sup>“the Fire and Rescue Service Board” means the Northern Ireland Fire and Rescue Service Board;]

“pleasure fair” has the same meaning as in Article 67 of the Pollution Control and Local Government (Northern Ireland) Order 1978;

(b) references to an entertainment to which paragraph 1 applies shall be construed in accordance with paragraph 1(8).]

**F24** 1991 NI 11

**F25** Sch. 1 para. 17(a): definition of “the Fire Authority” substituted (1.7.2006) by Fire and Rescue Services (Northern Ireland) Order 2006 (S.I. 2006/1254 (N.I. 9)), arts. 1(3), 63(1), **Sch. 3 para. 15(b)** (with art. 62); S.R. 2006/257, **art. 2(d)**

## SCHEDULE 2

Article 4

### LICENSING 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 a statutory provision other than this Schedule; or
- (b) shall be taken into account in any way—
  - (i) at a trial for such an offence; or
  - (ii) in proceedings for forfeiture under the Obscene Publications Act 1857 or Article 5 of the Protection of Children (Northern Ireland) Order 1978; or
  - (iii) in proceedings for condemnation under Schedule 3 to the Customs and Exercise 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 statutory provisions.

#### Meaning of “sex establishment”

**2.** In this Schedule “sex establishment” means a sex cinema or a sex shop.

#### Meaning of “sex cinema”

**3.—(1)** In this Schedule, “sex cinema” means any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which—

- (a) are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage—
  - (i) sexual activity; or
  - (ii) acts of force or restraint which are associated with sexual activity; or
- (b) are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions,

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

[<sup>F26</sup>(2) No premises shall be treated as a sex cinema by reason only—

- (a) if they are licensed under Article 3 of the Cinemas (Northern Ireland) Order 1991, of their use for a purpose for which a licence under that Article is required; or
- (b) of their use for an exhibition to which Article 8 of that Order (certain non-commercial exhibitions) applies given by an exempted organisation within the meaning of Article 8(6) of that Order.]

**F26** 1991 NI 12

### Meaning of “sex shop” and “sex article”

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

- (a) sex articles; or
- (b) other things intended for use in connection with, or for the purpose of stimulating or encouraging—
  - (i) sexual activity; or
  - (ii) acts of force or restraint which are associated with sexual activity.

(2) No premises shall be treated as a sex shop by reason only of their use for the exhibition of moving pictures by whatever means produced.

(3) In this Schedule “sex article” means—

- (a) anything made for use in connection with, or for the purpose of stimulating or encouraging—
  - (i) sexual activity; or
  - (ii) acts of force or restraint which are associated with sexual activity; and
- (b) anything to which sub-paragraph (4) applies.

(4) This sub-paragraph applies—

- (a) to any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and
- (b) to any recording of vision or sound,

which,

- (i) is concerned primarily with the portrayal of, or primarily deals with or relates to, or is intended to stimulate or encourage, sexual activity or acts of force or restraint which are associated with sexual activity; or
- (ii) is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.

### Miscellaneous definitions

5.—(1) In this Schedule—

[<sup>F27</sup>“the appropriate district commander” in relation to an application or a licence under this Schedule means—

- (a) where the application or licence relates to premises, the district commander of the Police Service of Northern Ireland acting for the police district in which the premises are situated;

**Status:** Point in time view as at 15/11/2010.

**Changes to legislation:** There are currently no known outstanding effects for the The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985. (See end of Document for details)

- (b) where the application or licence relates to a vehicle, vessel or stall, the district commander of the Police Service of Northern Ireland acting for the police district in which the applicant or holder has his permanent address or (in the case of a body corporate or unincorporated body) its registered or principal office;]

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“vessel” includes a hovercraft and any ship, boat, raft or other apparatus constructed or adapted for floating on water.

**F27** Sch. 2 para. 5: definition of "the appropriate district commander" substituted (13.9.2010) by [Local Government \(Provision of Services\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/252\)](#), **reg. 2(2)**

### Requirement for licences for sex establishments

**6.—(1)** Subject to the provisions of this Schedule, no person shall in any district 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 council for the district.

(2) Sub-paragraph (1) above does not apply to the sale, supply or demonstration of articles which—

- (a) are manufactured for use primarily for the purposes of birth control;
- (b) primarily relate to birth control.

### Waiver of requirement for licence

**7.—(1)** Any person who—

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

may apply to the council for it 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) and such particulars as the council may reasonably require in addition.

(4) The council may waive the requirement of a licence in any case where it considers that to require a licence would be unreasonable or inappropriate.

(5) A waiver may be for such period as the council thinks fit.

(6) Where the council grants an application for a waiver, it shall give the applicant for the waiver notice that it has granted his application.

(7) The 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 it gives the notice as may be specified in the notice.

### Grant, renewal and transfer of licences for sex establishments

**8.—(1)** Subject to paragraph 12(1), the council 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.

(2) Where a licence under this Schedule has been granted to any person, the council may, if it thinks fit, transfer that licence to any other person on the application of that other person.

### Duration of licences

9. Subject to paragraphs 11 and 26, any licence under this Schedule shall, unless previously cancelled under paragraph 16 or revoked under paragraph 17(1), remain in force for one year or for such shorter period specified in the licence as the council may think fit.

### Applications for licences

10.—(1) An application for the grant, renewal or transfer of a licence under this Schedule shall be made in writing to the council and the applicant shall supply the council with two copies of the application.

(2) An application made otherwise than by or on behalf of a body corporate or an unincorporated body shall state—

- (a) the full name of the applicant;
- (b) his permanent address; and
- (c) his age.

(3) An application made by a body corporate or an unincorporated body shall state—

- (a) the full name of the body;
- (b) the address of its registered or principal office; and
- (c) the full names and private addresses of the directors or other persons responsible for its management.

(4) An application relating to premises shall state the full address of the premises.

(5) An application relating to a vehicle, vessel or stall shall state where it is to be used as a sex establishment.

(6) Every application shall contain such particulars as the council may reasonably require in addition to any particulars required under sub-paragraphs (2) to (5).

(7) An applicant for the grant, renewal or transfer of a licence under this Schedule shall give public notice of the application by publishing an advertisement in such newspapers circulating in the district of the council as the council may require.

(8) The applicant shall supply a copy of every advertisement published under sub-paragraph (7) to the council.

(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), a notice under this paragraph shall be in such form as the council may prescribe.

<sup>F28</sup>(14) The council shall, as soon as an application for the grant, renewal or transfer of a licence under this Schedule is made to it, whether by means of a relevant electronic facility or in any other case, send a copy of the application to the appropriate district commander.

(14A) In sub-paragraph (14) “relevant electronic facility” means—

*Status: Point in time view as at 15/11/2010.*

*Changes to legislation: There are currently no known outstanding effects for the The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985. (See end of Document for details)*

- (a) the electronic assistance facility referred to in regulation 38 of the Provision of Services Regulations 2009, or
- (b) any facility established and maintained by the council for the purpose of receiving applications under this Schedule electronically.]

(15) Any person wishing to make any representation in relation to an application for the grant, renewal or transfer of a licence under this Schedule shall give notice to the council, stating in general terms the nature of the representation not later than 28 days after the date of the application.

(16) Where the council receives notice of any representation under sub-paragraph (15), the council shall, before considering the application, give notice of the general terms of the representation to the applicant.

(17) The council shall not without the consent of the person making the representation reveal his name or address to the applicant.

(18) In considering any application for the grant, renewal or transfer of a licence the council shall have regard to any observations submitted to it by the appropriate [<sup>F29</sup>district commander] and to any representation of which notice has been sent to it under sub-paragraph (15).

(19) The council shall give an opportunity of appearing before and of being heard by the council—

- (a) before refusing to grant a licence, to the applicant;
- (b) before refusing to renew a licence, to the holder; and
- (c) before refusing to transfer a licence, to the holder and the person to whom he desires that it shall be transferred.

[<sup>F30</sup>(20) Where the council refuses to grant, renew or transfer a licence, it shall give the applicant or the holder of the licence a statement in writing of the reasons for its decision.]

- F28** Sch. 2 para. 10(14)(14A) substituted (13.9.2010) for Sch. 2 para. 10(14) by [Local Government \(Provision of Services\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/252\)](#), **reg. 2(3)(a)**
- F29** Words in Sch. 2 para. 10(18) substituted (13.9.2010) by [Local Government \(Provision of Services\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/252\)](#), **reg. 2(3)(b)**
- F30** Sch. 2 para. 10(20) substituted (13.9.2010) by [Local Government \(Provision of Services\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/252\)](#), **reg. 2(3)(c)**

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

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

### Refusal of licences

**12.—**(1) Subject to paragraph 26, the council shall refuse an application for the grant, renewal or transfer of a licence under this Schedule where the applicant is—

- (a) a person under the age of 18; or
- (b) a person who is for the time being disqualified under paragraph 17(3); or



- (c) a person, other than a body corporate, who is not resident in [<sup>F31</sup>an EEA state] or was not so resident throughout the period of six months immediately preceding the date when the application was made; or
  - (d) a body corporate which is not incorporated in [<sup>F32</sup>an EEA state]; or
  - (e) a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.
- (2) Subject to paragraph 26, the council 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);
  - (b) an application for the transfer of a licence on either or both of the grounds specified in heads (a) and (b) of that sub-paragraph.
- (3) The grounds mentioned in sub-paragraph (2) are—
- (a) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
  - (b) that if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such as licence if he made the application himself;
  - (c) that the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the council considers is appropriate for that locality;
  - (d) that the grant or renewal of the licence would be inappropriate, having regard—
    - (i) to the character of the relevant locality; or
    - (ii) to the use to which any premises in the vicinity are put; or
    - (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.
- (4) Nil may be an appropriate number for the purposes of sub-paragraph (3)(c).
- (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.

**F31** Words in Sch. 2 para. 12(1)(c) substituted (13.9.2010) by [Local Government \(Provision of Services\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/252\)](#), [reg. 2\(4\)](#)

**F32** Words in Sch. 2 para. 12(1)(d) substituted (13.9.2010) by [Local Government \(Provision of Services\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/252\)](#), [reg. 2\(4\)](#)

### Power to prescribe standard conditions

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

*Status: Point in time view as at 15/11/2010.*

*Changes to legislation: There are currently no known outstanding effects for the The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985. (See end of Document for details)*

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

- (a) the days and 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.

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

(4) Where the council has made regulations under sub-paragraph (1), it shall, if so requested by any person, supply him with a copy of the regulations on payment of such reasonable fee as the council may determine.

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

#### Copies of licences and standard conditions

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

#### Transmission of licences on death of holder

**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 council may from time to time, on the application of those representatives, extend or further extend the period of 3 months if the council is satisfied that the extension is necessary for the purpose of winding up the deceased's estate and that no other circumstances make it undesirable.

#### Cancellation of licences

**16.** The council may, at the written request of the holder of a licence, cancel the licence.

#### Revocation of licences

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

- (a) on any ground specified in sub-paragraph (1) of paragraph 12; or
- (b) on either of the grounds specified in sub-paragraph (3)(a) and (b) of that paragraph.

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

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

## Variation of licences

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

(2) The council may—

- (a) make the variation specified in the application; or
- (b) make such variations as it thinks fit including the imposition of terms, conditions or restrictions other than those specified in the application; or
- (c) refuse 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 council.

## Enforcement

**20.** A person who—

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

shall be guilty of an offence.

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

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

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

## Offences relating to persons under 18

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

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

shall be guilty of an offence.

**Status:** Point in time view as at 15/11/2010.

**Changes to legislation:** There are currently no known outstanding effects for the The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985. (See end of Document for details)

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

### Powers of constables and council officers

*Para. 24 rep. by 1989 NI 12*

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

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

(2) Subject to sub-paragraph (4), a constable may enter and inspect a sex establishment if he has reason to suspect that an offence under paragraph 20, 21 or 23 has been, is being, or is about to be committed in relation to it.

(3) An authorised officer of a council may exercise the powers conferred by sub-paragraphs (1) and (2) in relation to a sex establishment in the council's district.

(4) No power conferred by sub-paragraph (2) may be exercised by a constable or an authorised officer of a council 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 council exercises any such power, he shall produce his authority if required to do so by the occupier of the premises or the person in charge of the vehicle, vessel or stall in relation to which the power is exercised.

(6) Any person who without reasonable excuse refuses to permit a constable or an authorised officer of a council 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.

### Appeals

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

- (a) an applicant for the grant, renewal or transfer of a licence under this Schedule whose application is refused;
- (b) an applicant for the variation of the terms, conditions or restrictions on or subject to which any such licence is held whose application is refused;
- (c) a holder of any such licence who is aggrieved by any term, condition or restriction on or subject to which the licence is held; or
- (d) a holder of any such licence whose licence is revoked,

may at any time before the expiration of the period of 21 days beginning with the relevant date appeal to the county court for the relevant county court division.

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

(3) An applicant whose application for the grant or renewal of a licence is refused on either ground specified in paragraph 12(3)(c) or (d) shall not have the right to appeal under this paragraph.

(4) In this paragraph—

“the relevant county court division” means—

- (a) in relation to premises, the county court division in which they are situated; and
- (b) in relation to a vehicle, vessel or stall, the county court division in which it is used or, as the case may be, desired to be used as a sex establishment; and

“the relevant date” means the date on which the person in question is notified of the refusal of his application, the imposition of the term, condition or restriction by which he is aggrieved or the revocation of his licence, as the case may be.

(5) On an appeal to the county court under this paragraph the court may make such order as it thinks fit and the decision of the court shall be final.

(6) It shall be the duty of the council to give effect to an order of the county court.

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

- (a) until the time for bringing an appeal under this paragraph has expired and, if such an appeal is duly brought, until the determination or abandonment of the appeal; and
- (b) where an appeal relating to the refusal of an application for such a renewal is successful until the licence is renewed by the council.

(8) Where—

- (a) the holder of a licence makes an application under paragraph 18; and
- (b) the council imposes any term, condition or restriction other than one specified in the application,

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

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

### Notification of police and Fire Authority

27.—(1) The council shall send a copy of any licence granted by it under this Schedule to the appropriate [<sup>F33</sup>district commander].

(2) The council shall notify the appropriate [<sup>F34</sup>district commander] of the renewal, transfer, cancellation, revocation or variation of any licence under this Schedule granted by it.

**F33** Words in Sch. 2 para. 27(1) substituted (13.9.2010) by [Local Government \(Provision of Services\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/252\)](#), **reg. 2(5)**

**F34** Words in Sch. 2 para. 27(2) substituted (13.9.2010) by [Local Government \(Provision of Services\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/252\)](#), **reg. 2(5)**

### Provisions relating to existing premises

28.—(1) Without prejudice to any other statutory provision 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 paragraph (2) of Article 4 of a notice of the passing of a resolution under that Article by the council for the district; and
- (b) had before the appointed day duly applied to the council for a licence for the establishment,

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

(2) In this paragraph and paragraph 29 “the appointed day”, in relation to any district, means the day specified in the resolution passed under Article 4 as the date upon which this Schedule is to come into force in that district.

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

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

(3) A council shall not grant any application to which this paragraph applies until it has considered all such applications.

(4) In considering which of several applications to which this paragraph applies should be granted a council 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 1st August 1984; 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.

### *Schedule 3—Amendments*

### *Schedule 4—Amendments*

### *Schedule 5—Repeals*

**Status:**

Point in time view as at 15/11/2010.

**Changes to legislation:**

There are currently no known outstanding effects for the The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985.