

# **POLICING AND CRIME ACT 2009**

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## **EXPLANATORY NOTES**

### **TERRITORIAL EXTENT AND APPLICATION**

#### **Part 2 – Sexual Offences and Sex Establishments**

##### **Prostitution**

##### ***Section 14 Paying for sexual services of a prostitute subjected to force etc: England and Wales***

71. This section inserts a new section 53A into the Sexual Offences Act 2003. The new section creates a strict liability offence which is committed if someone pays or promises payment for the sexual services of a prostitute who has been subject to exploitative conduct of a kind likely to induce or encourage the provision of sexual services for which the payer has made or promised payment. The person responsible for the exploitative conduct must have been acting for or in the expectation of gain for himself or herself or another person, other than the payer or the prostitute.
72. Subsection (2) of the new section provides that it does not matter where in the world the sexual services are to be provided. An offence is committed regardless of whether the person paying or promising payment for sexual services knows or ought to know or be aware that the prostitute has been subject to exploitative conduct. In other words the offence is one of strict liability and no mental element is required in respect of the offender's knowledge that the prostitute was forced, threatened, coerced or deceived.
73. Subsection (3) states that a person engages in exploitative conduct if he or she uses force, threats (whether or not relating to violence) or any other form of coercion, or if he or she practices any form of deception.
74. Subsection (4) provides that the maximum penalty for this offence is a fine not exceeding level 3 on the standard scale, currently £1000.
75. The terms of "prostitute", "prostitution" and "payment" as used in this section are defined in section 51 of the Sexual Offences Act 2003.

##### ***Section 15 Paying for sexual services of a prostitute subject to force etc: Northern Ireland***

76. **Section 15** amends the Sexual Offences (Northern Ireland) Order 2008 so as to create an offence in Northern Ireland which mirrors the offence created in England and Wales by section 14.

##### ***Section 16 Amendment to offence of loitering etc for the purposes of prostitution***

77. This section amends the offence of loitering or soliciting for the purposes of prostitution, as set out in section 1 of the Street Offences Act 1959 ("the 1959 Act"). Under section 1 of the 1959 Act it was an offence for a "common prostitute" (whether male or female) to loiter or solicit in a street or public place for the purpose of prostitution.

*These notes refer to the Policing and Crime Act 2009  
(c.26) which received Royal Assent on 12 November 2009*

78. Subsection (2) removes the term “common prostitute” from section 1 of the 1959 Act, but inserts the word “persistently” so that the offence is committed only if the person acts persistently.
79. Persistent conduct is defined by the amendments made by subsection (3) as conduct which takes place on two or more occasions in any three month period.
80. The amendments made by subsection (3)(b) mean that this offence is committed only by those offering services as a prostitute, not by those receiving such services. (Those receiving services may however be committing offences under section 19 or 20 of the Act.)
81. Subsection (4) repeals section 2 of the 1959 Act, which allows a person cautioned for an offence under section 1 of that Act to apply to a magistrates’ court to have the caution removed from the police record.
82. Subsection (5) provides that in deciding whether a person’s conduct is persistent any conduct that took place before the commencement of this section will be disregarded.

***Section 17 Orders requiring attendance at meetings and Schedule 1 Schedule to the Street Offences Act 1959***

83. Subsections (1) and (2) amend section 1 of the 1959 Act to introduce a new penalty for those convicted of loitering or soliciting for the purpose of prostitution, allowing the court to make a rehabilitative order instead of imposing a fine or any other penalty.
84. The order will require the offender to attend a series of three meetings with a named supervisor or another person directed by the supervisor. The purpose of the order is to assist the offender, through attendance at those meetings, to address the causes of their involvement in street prostitution and to find ways of ending that involvement. The offender may be the subject of only one order at any time.
85. Subsection (3) inserts a new section 1A into the 1959 Act, and provides further details about the new order.
86. An order can only be made if a suitable person has agreed to act as ‘supervisor’. A person is only suitable to act as a supervisor if that person appears to the court to have the appropriate qualifications or experience for helping the offender to make the best use of the meetings.
87. The order must specify the local justice area in which the offender resides or will reside while the order is in force. The order must also specify a date by which the three meetings must take place. This must be no later than six months from the date the order is made.
88. Specific details about the time, location and duration of the three meetings will not be included in the order. These will be at the discretion of the supervisor, who is responsible for making arrangements necessary to enable the three meetings to take place and notifying the court that the order has been complied with.
89. Subsection (4) introduces Schedule 1 to the Act which inserts a new Schedule into the 1959 Act. This new Schedule makes further provision about the new order, including the consequences of breach and the mechanism for amending an order.
90. Paragraph 1 of the new Schedule to the 1959 Act defines ‘the offender’ and ‘the supervisor’ for the purposes of the Schedule and provides that a failure to attend any meeting at the time and place directed by the supervisor constitutes failure by the offender to comply with the order.
91. Paragraph 2 of the new Schedule states what will happen when it appears to the supervisor that the offender has breached the order. Sub-paragraph (1) requires the supervisor to notify a justice of the peace if the supervisor is of the opinion that the

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offender has failed to comply with the order without reasonable excuse. If it appears to the justice of the peace that the offender has failed to comply with the order, he may issue a summons, under sub-paragraph (2), requiring the offender to appear at a specified time at the appropriate court.

92. Paragraph 3 of the new Schedule deals with instances where the offender fails to appear in answer to a court summons issued under paragraph 2. In such cases, the magistrates' court may issue a warrant for the arrest of the offender, requiring the offender to be brought before the appropriate court.
93. Paragraph 4 of the new Schedule sets out the powers of a magistrates' court when an offender appears or is brought before it following a summons or warrant issued under paragraph 2 or 3, and it is proved to the court's satisfaction that the offender has failed to comply with the order without a reasonable excuse. In such cases, the court must revoke the order, if it is still in force, and may deal with the offender for the original offence, taking into account the extent to which the offender complied with the order. The court has the power to impose any penalty that would have been available to it if the offender had just been convicted by the court of the original offence. This includes making another order under new section 1(2A) of the 1959 Act. Breach of an order is not in itself a criminal offence.
94. Under paragraph 4(4) a person sentenced under paragraph 4 may appeal against the sentence to the Crown Court.
95. The procedure to be followed to change the supervisor specified in the order is set out in paragraphs 5 and 6 of the new Schedule. It is only possible for the supervisor to be changed if the current supervisor is unable to continue acting in that capacity.
96. The current supervisor, the offender, or a police officer may apply to the appropriate court to specify a different supervisor in the order. If the court is satisfied that the supervisor is unable to continue in his or her role, it must either amend the order to include a different supervisor, or, if no other supervisor is available, revoke the order. Any new supervisor must be a suitable person as defined in the new section 1A of the 1959 Act.
97. Paragraph 6 of the new Schedule provides that if the court revokes the order (because no other supervisor is available) it can deal with the offender for the original offence, imposing any penalty which would have been available to it if the offender had just been convicted by the court of that offence. It cannot, however, impose another order under new section 1(2A) of the 1959 Act and it must take into account the extent to which the offender complied with the original order.
98. Paragraph 7 of the new Schedule deals with a change of local justice area specified in the order. Both the offender and the supervisor are able to apply for the specified local justice area to be changed to the area in which the offender resides or will reside. The court must make the change following an application from the supervisor and may do so following an application from the offender.
99. Paragraph 8 of the new Schedule provides that if a court proposes to change the supervisor (or revoke the order) following an application under paragraph 5 made by a person other than the offender, it must summon the offender to appear. If the offender fails to attend in answer to the summons, the court may issue a warrant for the offender's arrest.
100. Paragraph 9 of the new Schedule provides for the detention of an offender when arrested under a warrant issued under the Schedule (for example, following a breach of an order and subsequent failure to answer a summons) if the offender cannot be brought immediately before the court named in the warrant.
101. In such cases, the offender must be brought before any youth court (if the offender is under 18) or any magistrates' court (if the offender is 18 or over) as soon as practicable

following arrest and in any event before the end of the period of 72 hours beginning with the time of the arrest.

102. If under 18, the offender must be detained in a place of safety within the meaning of the Children and Young Persons Act 1933. Section 107 of that Act defines “place of safety” as: a community home provided by a local authority or a controlled community home, any police station, or any hospital, surgery, or any other suitable place, the occupier of which is willing temporarily to receive a child or young person.
103. Paragraph 10 of the new Schedule specifies the procedure to be followed if the offender is brought before a court other than that named in the warrant. The alternative court is able either to order the release of the offender or to remand him to appear at a later date before the appropriate court so named. Section 128 of the Magistrates' Court Act 1980 will apply with minor amendments. This section deals with the powers of magistrates' courts to remand in custody or on bail.
104. An offender committed to custody under paragraph 10 will be committed to prison, unless he or she is aged under 18 at the time of committal, in which case he or she will be committed to accommodation provided by or on behalf of a local authority.
105. Paragraph 11 of the new Schedule states the procedure for adjourning a hearing relating to an offender held by either a youth court or other magistrates' court under the Schedule.
106. Paragraph 12 of the new Schedule deals with the process of notifying the offender, the supervisor and the relevant court(s), following any change to the terms of the order.

### ***Section 18 Rehabilitation of offenders: orders under section 1(2A) of the Street Offences Act 1959***

107. This section deals with rehabilitation periods for those given orders under the new section 1(2A) of the 1959 Act.
108. Subsection (2) amends section 5 of the Rehabilitation of Offenders Act 1974 (“the 1974 Act”) to apply a specific rehabilitation period for those sentenced to an order under section 1(2A) following conviction for loitering or soliciting. The rehabilitation period is six months from the date of conviction.
109. Subsection (3) inserts a new subsection (3A) into section 6 of the 1974 Act. This provides for a case in which an offender is dealt with again for the offence for which the order was made, the rehabilitation period for the original sentence has ended and the rehabilitation period for the new sentence ends later than that for the original order. The effect is that the offender is not treated as a rehabilitated person under the 1974 Act until the longer rehabilitation period has expired.

### ***Section 19 Soliciting: England and Wales***

110. This section creates a new single offence of soliciting. The section inserts a new section into the Sexual Offences Act 2003, which replaces both sections 1 and 2 of the Sexual Offences Act 1985. These two sections currently cover the offences of kerb-crawling in a street or public place (section 1) and persistent soliciting in a street or public place (section 2) for the purposes of prostitution. Both activities require an element of persistency in relation to the person kerb-crawling or soliciting in order for an offence to have been committed or, in the case of kerb-crawling, for the soliciting to be shown to be likely to cause nuisance or annoyance to the person solicited or nuisance to others in the neighbourhood.
111. Subsection (1) of the new section states that it is an offence for a person in a street or public place to solicit another person for the purpose of obtaining the person's sexual services as a prostitute. Subsection (2) makes it clear that a person in a street or public place includes a person in a vehicle in a street or public place. The new section removes the need for persistency making kerb-crawling or soliciting punishable on the first

occasion. In the case of kerb-crawling it also removes any requirement for the soliciting to be shown to cause nuisance or annoyance to others. Subsection (3) provides that the maximum penalty for this offence will be a fine not exceeding level 3 on the standard scale, currently £1000.

### ***Section 20 Soliciting: Northern Ireland***

112. **Section 20** amends the Sexual Offences (Northern Ireland) Order 2008 so as to create an offence in Northern Ireland which mirrors the offence created in England and Wales by section 19.

### **Closure orders: sexual offences**

#### ***Section 21 and Schedule 2 Closure orders***

113. **Section 21** and Schedule 2 insert a new Part into the Sexual Offences Act 2003 granting the courts the power to close, on a temporary basis, premises being used for activities related to certain sexual offences. Service of a closure notice by the police will prevent anyone from entering or remaining on the premises, unless they regularly reside in or own the premises, until a magistrates' court decides whether to make a closure order. If the court is satisfied that the relevant conditions are met, the court can make a closure order for a period of up to three months. An application can be made for the closure order to be extended but the total period for which a closure order has effect may not exceed six months. For the purposes of the new Part, it does not matter if the offence or offences were committed before, on or after the date that this section comes into force.
114. The provisions are very similar to those in Part 1 of the Anti-Social Behaviour Act 2003, which relate to closure orders in respect of premises where Class A drugs are used unlawfully and Part 1A of that Act inserted by section 118 of, and Schedule 20 to, the Criminal Justice and Immigration Act 2008, which relate to closure orders in respect of premises associated with persistent disorder or nuisance.
115. **Schedule 2** inserts new Part 2A into the Sexual Offences Act 2003; sections 136A-136R. New section 136A stipulates what offences under the Sexual Offences Act 2003 are included in the meaning of specified prostitution offences (subsection (2)) and specified pornography offences (subsection (3)).
116. Subsections (4) and (5) state at what point premises are being used for activities relating to specified prostitution and pornography offences.
117. Subsection (6) states that references in the new Part to offences under the Sexual Offences Act 2003 includes references to corresponding offences under the Army Act 1955, the Air Force Act 1955, the Naval Discipline Act 1957, and the Armed Forces Act 2006.

### **Closure Notices**

118. New section 136B stipulates who can authorise the issue of a closure notice and on what grounds the issuing of a closure notice can be authorised.
119. Subsection (1) states that a member of a police force not below the rank of police superintendent can authorise the issue of a closure notice if three conditions are met.
120. Subsections (2) to (5) state that the first condition is that the member of the police force must have reasonable grounds to believe that during the relevant period the premises were used for activities relating to one or more of the specified prostitution offences and/or specified pornography offences. The relevant period is three months ending with the day on which the officer is considering whether to authorise the issue of the notice. This condition will not be met if only one person obtains all of the sexual services in question.

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121. Subsection (6) provides that the second condition is that the officer has reasonable grounds for believing that the making of a closure order is necessary to prevent the premises being used for activities related to one or more specified prostitution or pornography offences.
122. Subsection (7) states that the third condition is that the local authority has been consulted and that reasonable steps have been taken to establish the identity of any person who resides on the premises or who has control of, responsibility for or an interest in the premises.
123. Subsection (8) ensures that an officer may authorise the issue of a closure notice for premises where he believes that a closure order is necessary to prevent activities relating to an offence from taking place, regardless of whether the officer believes the offence has already been committed or not.
124. Subsection (9) provides that the authorisation for the issue of a closure notice may be given orally or in writing, but should be confirmed in writing if given orally.
125. Subsection (10) provides that a closure notice can be authorised whether or not a person has been convicted of a prostitution or pornography offence that the authorising officer believes has been committed.
126. Subsection (11) enables the Secretary of State by regulations to exempt premises or descriptions of premises from the application of this section.
127. New section 136C specifies the required contents of a closure notice and how it should be served.
128. Subsection (1) stipulates what information the closure notice must contain. Subsections (2) to (5) state the requirements in relation to service of the notice. A constable must serve the notice by attaching a copy to at least one prominent place on the premises and any outbuildings, fixing it to each normal means of access to the premises and so far as is reasonably practicable giving it to people identified as residing in or having control of, responsibility for or an interest in the property. A constable must also serve the notice on any person who occupies any other part of the building in which the premises are located if their access will be impeded by a closure order unless it is not reasonably practicable to do so.
129. Subsection (6) states that an officer may use reasonable force to enter premises if necessary in order to effect service of the notice in accordance with subsection (3)(a) to (c).
130. Subsections (7) and (8) provide that a closure notice has effect until an application for a closure order is determined by the court, save that if an application for a closure order is adjourned, the closure notice ceases to have effect unless the court makes an order extending it until the end of the period of adjournment.
131. New section 136D provides the power to make closure orders.
132. Under subsection (1), once a closure notice has been issued, a constable must apply to the magistrates' court for the making of a closure order.
133. Subsection (2) states that the effect of the closure order is to close the premises altogether, including to owners and residents, for up to three months. New section 136E(3) enables the court to include provisions in the order relating to access to any other part of the building in which the premises are situated.
134. Subsection (3) provides that the court must hear the application within 48 hours after the notice was served.
135. Subsections (4) to (10) stipulate the test which must be met before the court makes a closure order. As well as being satisfied that the premises have been used for activities

relating to a specified prostitution and/or pornography offence(s) in the three months prior to the issue of the closure notice, the court must be satisfied that the making of the order is necessary to prevent the premises being used for activities relating to relevant offences in the future. The court must also be satisfied that before the issue of the closure notice was authorised, reasonable steps were taken to establish the identity of any person who resides on the premises or who has control of or responsibility for or an interest in the premises, and that any such persons have been given a copy of the closure notice if reasonably practicable to do so. Subsection 136D(6) excludes premises where only one person has obtained all the sexual services in question.

136. A closure order may be made whether or not the court is satisfied (for the purposes of the second condition) that the offence or offences have been committed or are yet to be committed. Either will suffice. It is also immaterial whether a person has been convicted of any specified prostitution or pornography offence where the court is satisfied that such an offence has been committed (subsections (11) and (12)).
137. New section 136E contains supplementary provisions relating to the making of closure orders.
138. Subsection (1) allows the court to adjourn the hearing for up to 14 days to allow the occupier or someone else with an interest in the property to show why an order should not be made, for example because the problems have ceased or the persons causing the problems have been evicted.
139. The court can order that the closure notice continues to have effect during this period (subsection (2)).
140. Subsection (4) means the closure order can be made in respect to the whole or any part of the premises for which the closure notice was issued.

### **Enforcement**

141. New section 136F applies when a closure order is made.
142. Subsection (2) allows a constable or any other person authorised by the chief officer of police to enter the property and secure it against entry by any other person.
143. Subsection (3) requires a constable or authorised person to produce evidence proving their identity and authority if asked to do so by either the owner, occupier or other person in charge of the premises.
144. Subsection (4) allows a constable or authorised person to enter the premises at any time to carry out essential maintenance or repairs. Subsection (5) provides a constable or authorised person with the power to use reasonable force for these purposes and for entering and securing the premises under subsection (2).
145. New section 136G creates the offences of remaining on or entering premises contrary to the terms of a closure notice (subsection (1)) or order (subsection (2)) without reasonable excuse (subsection (3)) or of obstructing a constable or authorised person carrying out certain functions under this Part (subsection (4)).
146. Subsection (5) provides that the maximum penalty for these offences is a level five fine, currently £5000, imprisonment for 51 weeks or both. For offences committed before the commencement of section 281(5) of the Criminal Justice Act 2003, or in Northern Ireland, the penalty should be read as six months rather than 51 weeks imprisonment.

### **Extension and discharge of closure order**

147. New section 136H allows the police to apply for an extension to a closure order.
148. Subsection (1) provides that an application for an extension may be made at any time before the end of the period for which the closure order is made.

149. Subsection (2) provides that such an application must be authorised by a superintendent (or police officer of higher rank) who can only authorise the application if two conditions are met (subsection (3)). These conditions are that the officer has reasonable grounds for believing that the extension of the order is necessary for the purpose of preventing the premises being used for activities related to any of the specified prostitution or pornography offences (subsection (4)), and is satisfied that the local authority has been consulted about the intention to make the application (subsection (5)).
150. Under subsection (6) if a complaint is made a justice of the peace (or, in Northern Ireland, a lay magistrate) may issue a summons requiring any person on whom the initial closure notice was served or any person who may have an interest but was not previously served with the closure order to appear before the magistrates' court.
151. Subsection (7) states the persons on whom a notice (stating the date, time and place of the hearing) must be served if a summons is issued.
152. New section 136I makes further provision regarding the extension of closure orders.
153. Subsection (2) provides that where an application is made by the police for an extension to a closure order, the court can grant an extension of no more than three months (subsection (3)) if it is satisfied that it is necessary to prevent the premises being used for activities related to any of the specified prostitution or pornography offences.
154. Subsection (4) provides that the total period for which a closure order has effect may not exceed six months. Therefore, if an initial closure order of three months is made, that order can be extended for a maximum of three more months.
155. Subsection (5) allows the court to include in the order such provision as it thinks appropriate relating to access to any other part of a building or other structure in which the premises are situated.
156. Under subsection (1) of new section 136J a constable, the local authority, persons on whom the closure notice was served or any other person with an interest in the closed premises may apply by way of complaint for the order to be discharged at any time.
157. Subsection (2) provides for a court to issue a summons to require a constable to appear before the magistrates' court where the application to discharge the order was not made by the police.
158. Subsection (3) provides that a court may not discharge a closure order unless it is satisfied that the order is no longer necessary to prevent the premises being used for activities related to any of the specified prostitution or pornography offences.
159. Subsection (4) specifies who must be served with a notice (stating the date, place and time at which the complaint will be heard) where a summons is issued by the court.

## **Appeals**

160. New section 136K allows for appeals to the Crown Court against a closure order being made or extended or against a refusal to make or discharge one.
161. Subsection (1) states who can appeal against the making, extension or refusal to discharge a closure order.
162. Subsection (2) states who can appeal against a decision not to make or extend an order or the discharge of a closure order.
163. Subsection (3) states that an appeal must be made before the end of the period of 21 days beginning with the day on which the order or decision is made.



### **Access to other premises**

164. New section 136L allows a court to make an order concerning access to any part of a building or structure in which closed premises are situated, where the part itself is not affected by a closure order (subsection (1)).
165. Subsection (2) allows a person who occupies or has an interest in such a part to apply to the court for an order enabling him, for example, to retain access to it (particularly if the closure order has rendered access to his part of the building or structure more difficult or impossible). Subsection (3) sets out who must be served with notice of the hearing.
166. Under subsection (4) the court may make such order as it thinks appropriate in relation to access to any other part of the building or structure in which the closed premises are situated.

### **Reimbursement of costs**

167. New section 136M allows the court to make an order that the owner of the premises must reimburse any costs incurred by the police or local authority in clearing, securing, repairing or maintaining the premises.

### **Exemption from liability for certain damages**

168. New section 136N creates a partial exemption from liability in damages for the police or any authorised person carrying out their functions under these provisions. Under subsection (3) it does not extend to any acts in bad faith or acts which are in breach of the duty of public authorities to exercise their functions compatibly with the Convention rights.

### **Compensation**

169. New section 136O allows for compensation payments to be made by the court out of central funds where the court is satisfied that a person has suffered financial loss in consequence of a closure notice or order.
170. Subsections (2) to (4) set out the procedure for applying for compensation and imposes a time limit for the making of such an application.
171. Subsection (5) allows the court to order the payment of compensation where it is satisfied that:
  - a person has suffered financial loss as a result of a closure notice being issued or a closure order having effect;
  - the person is not associated with the use of the premises for activities related to specified pornography or prostitution offences;
  - if the person is the owner or occupier, that the person took reasonable steps to prevent that use; and
  - it is appropriate in all the circumstances to compensate the person for that loss.

### **General**

172. Under new subsection (1) of section 136P, the Secretary of State may issue statutory guidance relating to the discharge of any functions under Part 2A by the police or a person authorised by the chief officer of police.
173. Subsection (2) requires a person discharging a function to which this guidance relates to have regard to such guidance.

174. New section 136Q allows the Secretary of State to amend these provisions by order to allow persons other than police officers (for example local authorities) to issue closure notices.
175. New section 136R defines the terms used in the new Part.

### **Orders imposed on sex offenders**

#### ***Section 22 Time limits***

176. Subsections (1) and (2) amend the Sexual Offences Act 2003 to expressly disapply section 127 of the Magistrates' Courts Act 1980 in relation to applications for civil orders made under Part 2 of the Sexual Offences Act 2003. Consequently, the provision confirms that the requirement imposed by section 127, that some evidence provided in support of an application for an order must relate to conduct that has occurred within the six months prior to the application being made, does not apply to these civil orders.
177. Subsection (3) makes an equivalent amendment to exclude Article 78 of the Magistrates' Court (Northern Ireland) Order 1981 from applying to applications made for these civil orders in Northern Ireland.

#### ***Section 23 Foreign travel orders: grounds***

178. Subsection (1) amends any reference to children under 16 in sections 115 and 116 of the Sexual Offences Act 2003 to children under 18. The effect of this is that it raises the age of a child that must be at risk in order for a foreign travel order to be made. It also alters the criteria determining which offenders qualify for a foreign travel order, to include those that have committed sexual offences against children under 18, not just those that have committed offences against children under 16.
179. Subsection (2) provides that these amendments apply in relation to the making, variation, renewal or discharge of foreign travel orders after the commencement of this section.

#### ***Section 24 Foreign travel orders: duration***

180. Subsection (1) amends section 117 the Sexual Offences Act 2003 to extend the maximum duration of a foreign travel order from six months to five years, in England and Wales, and Northern Ireland.
181. Subsection (2) provides that this amendment applies to the making, variation or renewal of a foreign travel order after this section has been commenced.

#### ***Section 25 Foreign travel orders: surrender of passports***

182. Subsection (2) inserts a new section 117A into the Sexual Offences Act 2003 to require offenders who are subject to a foreign travel order that prohibits them from travelling anywhere outside the UK to surrender their passports at a police station specified in the order.
183. This section also requires the police to return any passport as soon as reasonably practicable after the relevant Foreign Travel Order has ceased, unless that passport is a foreign passport or a passport issued by an international organisation and it has been returned to the authorities outside the United Kingdom which issued the passport.
184. Subsection (3) amends section 122 of the Sexual Offences Act 2003 to create a new offence of failing to comply with a requirement to surrender a passport.
185. Subsection (4) provides that this amendment made by subsection (2) applies to the making, variation or renewal of a foreign travel order after this section has been commenced.

## **Indecent photographs of children**

### ***Section 26 Penalty for contravening notice relating to encrypted information***

186. **Section 26** amends section 53 of the Regulation of Investigatory Powers Act 2000 (RIPA) (failure to comply with notice relating to encrypted information). Section 53 RIPA makes it an offence to knowingly fail to comply with a notice given under section 49 RIPA. Such notices impose disclosure requirements in relation to protected information. Under section 53(5A) the maximum sentence on indictment for failing to comply with a section 49 notice is five years in a national security case or two years in any other case.
187. **Section 26(2)** amends subsection (5A)(a) of section 53 of RIPA so that a maximum sentence of five years' imprisonment is available in relation to 'a child indecency case', as well as in relation to a national security case.
188. **Section 26(3)** adds new subsections (6) and (7) to section 53 of RIPA. New subsection (6) says that a 'child indecency case' is one in which the grounds for issuing a notice relating to encrypted information were or included a belief that the notice was necessary for the purpose of preventing or detecting an offence under any of the provisions listed in subsection (7). New subsection (7) specifies five offences relating to showing, taking or possessing an indecent photograph of a child.
189. **Section 26(4)** states that the amendments made by this section apply in relation to cases in which the section 49 notice was given after the commencement of this section.
190. **Schedule 7** paragraph 25 adds the offences in sections 53 and 54 RIPA (contravention of notice relating to encrypted information or tipping off in connection with such a notice) to Schedule 5 of the Sexual Offences Act 2003. This means that sexual offences prevention orders can be imposed on people convicted of these offences where a court is satisfied that it is necessary to make such an order for the purpose of protecting the public or any particular members of the public from serious sexual harm from the offender.

## **Sex establishments**

### ***Section 27 Regulation of lap dancing and other sexual entertainment venues etc***

191. This section inserts a new category of "sex establishment" called a "sexual entertainment venue" into Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (the "1982 Act"). This will bring the licensing of lap dancing and pole dancing clubs and other similar venues under the regime set out in the 1982 Act, which is currently used to regulate establishments such as sex shops and sex cinemas.
192. The section would insert a new paragraph 2A into Schedule 3 to the Local Government Act 1982.
193. Sub-paragraphs (1), (2), (12) and (14) of the new paragraph define a "sexual entertainment venue" as premises where relevant entertainment is provided, or permitted to be provided, by or on behalf of the organiser in front of a live audience for the financial gain of the organiser or entertainer. "Relevant entertainment" may take the form of a live performance or live display of nudity and must be of such a nature that, ignoring financial gain, it must reasonably be assumed to have been provided solely or principally for the purpose of sexually stimulating any member of the audience. Sub-paragraph (14) states that an audience can consist of just one person.
194. Sub-paragraph (3) specifies that the following are not sexual entertainment venues for the purpose of the Schedule:
- sex shops and sex cinemas;

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(c.26) which received Royal Assent on 12 November 2009*

- any premises that at the time in question:
    - has not provided relevant entertainment on more than 11 occasions within the previous 12 months;
    - no such occasion has begun within the period of one month beginning with the end of any previous occasion; and
    - no such occasion has lasted for more than 24 hours
  - other premises exempted by order of the Secretary of State, or in Wales the Welsh Ministers (sub-paragraph (3)(c)). In addition, under sub-paragraph (6) they may also make an order that certain types of performances or displays of nudity are not to be treated as relevant entertainment for the purposes of the Schedule.
195. Sub-paragraph (4) states that the Secretary of State, or in Wales the Welsh Ministers, may by order amend or repeal sub-paragraph (3)(b) which is the provision excluding premises which provide relevant entertainment infrequently (i.e. less than eleven times in 12 months etc). However, by sub-paragraph (5), the power cannot be used to increase the number or length of occasions in any period that relevant entertainment can be provided, or provide for shorter intervals between such occasions, than this provision as originally enacted will allow. For example, the order making power could not be used to allow premises to provide relevant entertainment 20 times a year.
196. Sub-paragraphs (7) to (11) make provision relating to the exercise of the order making powers described in sub-paragraphs (3), (4) and (6). In particular, the power to make an order under sub-paragraphs (3) and (6) are subject to the negative resolution procedure, while the power to make an order under sub-paragraph (4) regarding infrequent entertainment is subject to the affirmative resolution procedure.
197. Sub-paragraph (13) stipulates that it is the organiser that “uses” any premises as a sexual entertainment venue. It is therefore the organiser that must apply for a licence under the 1982 Act. “Organiser” is defined in sub-paragraph (14) as any person who is responsible for the organisation or management of the relevant entertainment or the premises.
198. Sub-paragraph (14) provides various definitions including the meaning of “nudity” in the cases of men and women. The definition of “premises” expressly excludes private dwellings to which the public are not admitted. Sub-paragraph (14) also states that it does not matter whether the financial gain arises directly or indirectly from the performance or display or whether it is the person providing the entertainment who receives the benefit or some other person. Therefore, for example, it should not matter whether those admitted to the premises pay for admission to, or membership of, the club.
199. Subsection (4) is consequential on subsection (10). Subsection (10) inserts a new paragraph 27A into Schedule 3 to the 1982 Act. It makes provision for certain premises to be deemed to be sexual entertainment venues. This is necessary due to the operation of paragraph 2A(3)(b), which stipulates circumstances when premises are not to be considered sexual entertainment venues for the purposes of this schedule, even though they may have a licence to operate as such (for example, if they have only just started operating as a lap dancing club). Paragraph 27A provides that if premises have a sexual entertainment venue licence and they would be categorised as a sexual entertainment venue but for the exemption in paragraph 2A(3)(b) for infrequent events, the premises are deemed to be a sexual entertainment venue for the duration of the licence irrespective of how frequently relevant entertainment is provided. Paragraph 27A(3) states that a local authority must cancel a licence held by someone using such premises if asked to so in writing by the licence holder.
200. Subsection (5) substitutes paragraph 12(3)(c) of Schedule 3 to the 1982 Act, which deals with refusal of licences, to allow local authorities to set a limit on the number

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of sex establishments of a particular type in a locality, as well as the number of sex establishments generally, and to refuse a licence on the basis that the number of establishments in the locality is equal to or exceeds the number which the authority considers appropriate.

201. Subsection (6) amends paragraph 13(2) and (3) of Schedule 3 to the 1982 Act which provides local authorities with the power to prescribe in regulations standard terms and conditions for sex establishment licences. The amendments allow local authorities to impose different standard conditions on a sexual entertainment venue compared with other kinds of sex establishment, such as a sex shop. Copies of any regulations made by a local authority under paragraph 13 of Schedule 3 must be supplied by the local authority upon request and payment of a reasonable fee.
202. Subsection (7) ensures that the local authority will be able to charge a fee for applications to vary a licence granted under the 1982 Act. Indeed, a reasonable fee set by the local authority is also payable for the grant, renewal or transfer of a licence under the 1982 Act.
203. Subsection (8) inserts a new paragraph 25A into Schedule 3 to the 1982 Act that stipulates the procedure by which the police and local authority officers can, when acting under the authority of a warrant issued under paragraph 25(4), seize property from premises. The court can then order that property be forfeited following a conviction for an offence under either paragraph 20 (enforcement) or 23 (offences relating to persons under 18) of the 1982 Act. The provisions largely replicate those inserted by the Greater London Council (General Powers) Act 1986 but are necessary as that Act is of limited application. Subsection (9) similarly replicates an amendment made by the 1986 Act.

***Schedule 3 Lap dancing and other sexual entertainment venues etc: transitional provision***

204. **Paragraph 1** deals with those local authorities that have not already resolved to adopt Schedule 3 of the 1982 Act and provides that the amendments made to the 1982 Act by section 27 will apply where such an authority resolves to adopt Schedule 3 on or after section 27 comes into force.
205. **Paragraph 2** deals with those local authorities that have already adopted Schedule 3 and any subsequent amendments made by local Acts. In these cases the amendments to Schedule 3 made by section 27 will not apply to a local authority area unless the relevant local authority resolves to adopt them.
206. **Paragraph 3** provides the appropriate national authority with the power to make, by statutory instrument, appropriate saving, transitional or transitory provisions as it considers appropriate in relation to the coming into force of Schedule 3 to the 1982 Act as amended by this Act.
207. **Paragraph 4** places a duty on a local authority, which has not resolved to adopt the new provisions for regulating lap dancing and other similar entertainment within one year of commencement, to consult local people as soon as reasonably practicable about whether it should make such a resolution.
208. **Paragraph 5** defines the terms used in the Schedule.