

SCHEDULES

SCHEDULE 2 **N.I.**

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.

[^{F1}(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.]

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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—

[^{F2}“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;
- (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.

F2 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.

[^{F3}(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—

- (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 [^{F4}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.

[^{F5}(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.]

- F3** 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)**
- F4** 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)**
- F5** 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 [^{F6}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 [^{F7}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—

Changes to legislation: There are currently no known outstanding effects for the The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985, SCHEDULE 2. (See end of Document for details)

- (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.

F6 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)

F7 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.

(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.

(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

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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^{F8}....

(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—

^{F9} ...

“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.

Changes to legislation: There are currently no known outstanding effects for the The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985, SCHEDULE 2. (See end of Document for details)

(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.

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| <p>F8 Words in Sch. 2 para. 26(1) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 93(2)(a), Sch. 9 Pt. 1 (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)</p> <p>F9 Words in Sch. 2 para. 26(4) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 93(2)(b), Sch. 9 Pt. 1 (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)</p> |
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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 [^{F10}district commander].

(2) The council shall notify the appropriate [^{F11}district commander] of the renewal, transfer, cancellation, revocation or variation of any licence under this Schedule granted by it.

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| <p>F10 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)</p> <p>F11 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)</p> |
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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, 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.

Changes to legislation:

There are currently no known outstanding effects for the The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985, SCHEDULE 2.