

SCHEDULES

SCHEDULE 15

Section 162.

APPLICATION OF 1959 ACT TO TELEVISION AND SOUND PROGRAMMES

Interpretation

- 1 In this Schedule—
- “the 1959 Act” means the Obscene Publications Act 1959;
 - “relevant programme” means a programme included in a programme service;
- and other expressions used in this Schedule which are also used in the 1959 Act have the same meaning as in that Act.

Liability of person providing live programme material

- 2 Where—
- (a) any matter is included by any person in a relevant programme in circumstances falling within section 1(5) of the 1959 Act, and
 - (b) that matter has been provided, for inclusion in that programme, by some other person,
- the 1959 Act shall have effect as if that matter had been included in that programme by that other person (as well as by the person referred to in sub-paragraph (a)).

Obscene articles kept for inclusion in programmes

- 3 It is hereby declared that where a person has an obscene article in his ownership, possession or control with a view to the matter recorded on it being included in a relevant programme, the article shall be taken for the purposes of the 1959 Act to be an obscene article had or kept by that person for publication for gain.

Requirement for consent of Director of Public Prosecutions

- 4 (1) Proceedings for an offence under section 2 of the 1959 Act for publishing an obscene article shall not be instituted except by or with the consent of the Director of Public Prosecutions in any case where—
- (a) the relevant publication, or
 - (b) the only other publication which followed from the relevant publication, took place in the course of the inclusion of a programme in a programme service; and in this sub-paragraph “the relevant publication” means the publication in respect of which the defendant would be charged if the proceedings were brought.
- (2) Proceedings for an offence under section 2 of the 1959 Act for having an obscene article for publication for gain shall not be instituted except by or with the consent of the Director of Public Prosecutions in any case where—

Status: This is the original version (as it was originally enacted).

- (a) the relevant publication, or
- (b) the only other publication which could reasonably have been expected to follow from the relevant publication,

was to take place in the course of the inclusion of a programme in a programme service; and in this sub-paragraph “the relevant publication” means the publication which, if the proceedings were brought, the defendant would be alleged to have had in contemplation.

- (3) Without prejudice to the duty of a court to make an order for the forfeiture of an article under section 1(4) of the Obscene Publications Act 1964 (orders on conviction), in a case where by virtue of sub-paragraph (2) above proceedings under section 2 of the 1959 Act for having an article for publication for gain could not be instituted except by or with the consent of the Director of Public Prosecutions, no order for the forfeiture of the article shall be made under section 3 of the 1959 Act (power of search and seizure) unless the warrant under which the article was seized was issued on an information laid by or on behalf of the Director of Public Prosecutions.

Defences

- 5 (1) A person shall not be convicted of an offence under section 2 of the 1959 Act in respect of the inclusion of any matter in a relevant programme if he proves that he did not know and had no reason to suspect that the programme would include matter rendering him liable to be convicted of such an offence.
- (2) Where the publication in issue in any proceedings under that Act consists of the inclusion of any matter in a relevant programme, section 4(1) of that Act (general defence of public good) shall not apply; but—
- (a) a person shall not be convicted of an offence under section 2 of that Act, and
 - (b) an order for forfeiture shall not be made under section 3 of that Act,
- if it is proved that the inclusion of the matter in question in a relevant programme is justified as being for the public good on the ground that it is in the interests of—
- (i) drama, opera, ballet or any other art,
 - (ii) science, literature or learning, or
 - (iii) any other objects of general concern.
- (3) Section 4(2) of that Act (admissibility of opinions of experts) shall apply for the purposes of sub-paragraph (2) above as it applies for the purposes of section 4(1) and (1A) of that Act.

Exclusion of proceedings under common law

- 6 Without prejudice to section 2(4) of the 1959 Act, a person shall not be proceeded against for an offence at common law—
- (a) in respect of a relevant programme or anything said or done in the course of such a programme, where it is of the essence of the common law offence that the programme or (as the case may be) what was said or done was obscene, indecent, offensive, disgusting or injurious to morality; or
 - (b) in respect of an agreement to cause a programme to be included in a programme service or to cause anything to be said or done in the course of a programme which is to be so included, where the common law offence consists of conspiring to corrupt public morals or to do any act contrary to public morals or decency.