



The Law Commission

(LAW COM. No. 139)

CINEMAS BILL

REPORT ON THE CONSOLIDATION OF THE
CINEMATOGRAPH ACTS 1909 TO 1982 AND
RELATED ENACTMENTS

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*To the Right Honourable the Lord Hailsham of St. Marylebone, C.H., Lord
High Chancellor of Great Britain.*

The Cinemas Bill which is the subject of this Report seeks to consolidate the Cinematograph Acts 1909 to 1982 and certain connected enactments relating to premises licensed under those Acts. In order to produce a satisfactory consolidation, it is necessary to make the recommendation set out in the Appendix to this Report.

The Bill as a whole extends to Scotland, but the recommendation relates to England and Wales only and is therefore made by the Law Commission alone.

The Home Office have been consulted in connection with the recommendation and agree with it. The following bodies have also been consulted and have raised no objection: the Association of District Councils, the Association of Metropolitan Authorities, the Greater London Council, the Cinematograph Exhibitors Association of Great Britain and Ireland, the British Board of Film Censors and the Association of Independent Cinematographers.

RALPH GIBSON
Chairman of the Law Commission

4th January 1985.

APPENDIX

RECOMMENDATION

Our recommendation relates to the definition of "cinematograph entertainment" in section 5 of the Sunday Entertainments Act 1932. In order that the Bill should include all the enactments primarily concerned with the regulation of premises used for the exhibition of films, it is desirable to consolidate those provisions of the Sunday Entertainments Act 1932 which relate to premises licensed under the Cinematograph Act 1909.

Section 1 of the Sunday Entertainments Act 1932 provides that, subject to certain conditions, the authority having power to grant licences under the Cinematograph Act 1909 may allow places in their area, which are licensed under that Act, to be used on Sundays for the purpose of "cinematograph entertainments". Section 4 of the 1932 Act then gives an exemption from the provisions of the Sunday Observance Act 1780 to persons concerned in a cinematograph entertainment which is allowed under section 1.

The Sunday opening provisions are closely related to the licensing provisions in the Cinematograph Acts 1909 to 1982. The conditions subject to which premises are allowed to be opened on Sundays are treated as conditions of the licence (by virtue of section 2 of the 1932 Act) for the purpose of powers of entry and (by virtue of section 1(2) of the Sunday Cinema Act 1972) in relation to the right of appeal. It is therefore desirable that, wherever possible, the wording of the Sunday opening provisions should be the same as that of the licensing provisions.

In section 5 of the 1932 Act, the definition of "cinematograph entertainment" (which has never been amended) is as follows:—

"'Cinematograph entertainment' means the exhibition of pictures or other optical effects by means of a cinematograph or other similar apparatus, with or without the mechanical reproduction of sound".

The wording of the 1932 definition is similar to the wording of section 1 of the Cinematograph Act 1909 as originally enacted, which applied to "an exhibition of pictures or other optical effects by means of a cinematograph, or other similar apparatus, for the purposes of which inflammable films are used": Section 1 of the 1909 Act was amended by the Cinematograph Act 1952 and by the Cinematograph (Amendment) Act 1982. Subsection (3) of that section now contains the following definition:—

"'cinematograph exhibition' means any exhibition of moving pictures which is produced otherwise than by the simultaneous reception and exhibition of television programmes broadcast by the British Broadcasting Corporation or the Independent Broadcasting Authority or programmes included in a cable programme service which is, or does not require to be, licensed."

The definition of "cinematograph entertainment" in the 1932 Act has never been identical with that of "cinematograph exhibition" in the 1909 Act. But since 1982 the discrepancy between the two definitions has become greater. The 1982 definition covers exhibitions produced by means of video, but not live television and cable programmes. The nature and effect of the discrepancy

between the two definitions depends on the construction of the words "a cinematograph or other similar apparatus" in the 1932 Act. The question is whether exhibitions produced by means of video, television and cable are, or are not, produced "by means of a cinematograph or other similar apparatus".

A cinematograph is defined in the Supplement to the Oxford English Dictionary as—

"a device (and the necessary apparatus) by which a series of instantaneous photographs of moving objects taken in rapid succession are projected on a screen in similarly rapid and intermittent succession so as to produce the illusion of a single moving scene".

One view is that exhibitions produced by video, television and cable are produced by apparatus similar to a cinematograph, since all are different means of producing a similar result. On this view, the 1932 definition (since it does not exclude live television and cable programmes) is wider than the 1982 definition. The licensing authority could, in theory, "allow" premises licensed under the 1909 Act to be used on Sundays for a "cinematograph entertainment" consisting of live television or cable programmes. Such an entertainment would then obtain the benefit of the exemption under section 4 of the 1932 Act from the offence under the Sunday Observance Act 1780. On this basis, any application to the 1932 Act of the 1982 definition of "cinematograph exhibition" would narrow the scope of the licensing authority's power to allow exhibitions on Sundays subject to conditions. The words in the definition excluding live television and cable programmes, which operate as an exemption from the licensing provisions of the Cinematograph Acts, would here restrict the scope of the exemption given by section 4.

A second view is that an exhibition is not produced by apparatus similar to a cinematograph unless, as with a cinematograph, the material exhibited is under the control of the person using the apparatus. So the 1932 definition would cover exhibitions requiring the use of film or of video tape or disc, but not live television or cable programmes. On this view, there is in practice no significant difference between the 1932 definition of "cinematograph entertainment" and the 1982 definition of "cinematograph exhibition".

A third view is that the use of video, television or cable is not covered by the 1932 definition of "cinematograph entertainment". The 1932 Act refers to the exhibition of pictures or other optical effects "by means of a cinematograph or other similar apparatus". So there must be a similarity in the means by which the exhibition is produced, not merely in the resulting pictures. An exhibition produced by video, television or cable is produced neither by a cinematograph nor by similar mechanical apparatus. This is probably the construction to be preferred. On this basis, exemption under section 4 of the 1932 Act from the provisions of the Sunday Observance Act 1780 does not apply in a case where the exhibition is produced by means of video, television or cable. The application to the 1932 Act of the 1982 definition of "cinematograph exhibition" would extend the exemption to video.

The inclusion of provisions of the Sunday Entertainments Act 1932 in the Bill without amendment would perpetuate the existing inconsistency between the definition of "cinematograph entertainment" in that Act and the definition of "cinematograph exhibition" in the Cinematograph Act 1909. The

problem of construction would be left unresolved and, indeed, new problems of construction would be created by the juxtaposition of the two contrasting definitions in a single Act. So it would, in any event, be doubtful whether the mere reproduction of the existing provisions without amendment would preserve the existing law.

We therefore conclude that an amendment is needed. The application of the definition of "cinematograph exhibition" for the purpose of the Sunday opening provisions would produce consistency of language and (on the construction of the definition of "cinematograph entertainment" which we prefer) would extend the exemption from the Sunday Observance Act 1780 to cover video. We consider that this is the most appropriate solution.

Accordingly, we recommend that in re-enacting the provisions of the Sunday Entertainments Act 1932 so far as relating to premises licensed under the Cinematograph Act 1909, "cinematograph entertainment" should be given the same meaning as "cinematograph exhibition" has in the 1909 Act. Effect is given to this recommendation in clause 9 of the Bill.

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