

## SCHEDULES

### SCHEDULE 4

#### AMENDMENTS TO PART III (STREET TRADING) OF THE LONDON LOCAL AUTHORITIES ACT 1990 (C. VII)

##### *Section 38 (Unlicensed street trading)*

- 5 In section 38—
- (a) in subsection (1)(a), at the end the words “whether or not from a stationary position” are inserted;
  - (b) in subsection (1)(b)—
    - (i) before “a temporary licence”, the words “a street trading licence or” are inserted;
    - (ii) before “engages” the words “, without the borough council’s specific permission in writing” are inserted;
    - (iii) for “that temporary licence” there is substituted “that licence”;
  - (c) in subsection (2)—
    - (i) for the words “the article or thing shall be presumed” there is substituted “the article, thing, receptacle or equipment concerned shall be presumed”;
    - (ii) for the words “presumed to have been available” to “it is shown” there is substituted “deemed to have been used for the purposes for which a street trading licence was required unless it can be proved”;
    - (iii) for the words “for the purpose” to the end of the subsection there is substituted “street trading”;
  - (d) for subsection (4) there is substituted the following subsections—
    - “(4) If an authorised officer or a constable has reasonable grounds for suspecting that a person has committed an offence under this section he may seize—
      - (a) any article or thing being offered for sale, displayed or exposed for sale; or
      - (b) any other article or thing of a similar nature to that being offered or exposed for sale which is in the possession of or under the control of any person who is displaying an article or thing; or
      - (c) any receptacle or equipment being used by that person, which may be required to be used in evidence in any proceedings in respect of that offence, or may be the subject of forfeiture under subsection (5) below, provided that no article or thing which is of a perishable nature shall be seized under the provisions of this subsection.

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(4A) An authorised officer or constable may also seize, for examination purposes, any article or thing which he has reasonable cause to suspect may be an article or thing which is prohibited by a specifying resolution made under subsection (1)(b) of section 24 (Designation of licence streets) of this Act.

Unless the article or thing is required for evidential purposes it shall be returned as soon as possible to the person from whom it was seized.

(4B) An authorised officer shall produce his authority if required to do so by the person having control or possession of anything seized in pursuance of the powers in subsections (4) and (4A) above.”;

- (e) subsection (4A) is renumbered as (4C);
  - (f) in subsection (4C) as renumbered under paragraph (e) above—
    - (i) in paragraph (a), the words “or equipment” are inserted after “receptacle”;
    - (ii) in paragraph (a), the words “or is seized and retained because it is required for evidential purposes under subsection (4A) above” are inserted after “subsection (4) above”;
    - (iii) in paragraph (b) for the words “at the conclusion” there is substituted “following the conclusion”;
    - (iv) in paragraph (b), for the words “unless the court orders it to be forfeited under subsection (5) below” there is substituted—
      - “unless—
        - (i) the court orders it to be forfeited under subsection (5) below; or
        - (ii) any award of costs to the council by the court, which may include removal, return and storage costs, have not been paid within 28 days of the making of the order.
- (ba) Where after 28 days any costs awarded by the court to the council have not been paid to the council in full—
    - (i) the article or thing may be disposed of in any way the council thinks fit; and
    - (ii) any sum obtained by the council in excess of the costs awarded by the court shall be returned to the person to whom the article or thing belongs.
  - (bb) When any article or thing is disposed of by the council under this subsection the council shall have a duty to secure the best possible price which can reasonably be obtained for that article or thing.”;
  - (v) in paragraph (d)(i) the words “or under the City of Westminster Act 1999” are inserted after “this Part of this Act”;
  - (vi) in paragraph (d)(ii) the words “or the said Act of 1999” are inserted after “this Part of this Act”;

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- (vii) in paragraph (f), at the end, the words “and in the case of a sum referred to in paragraph (ba) above the council shall apply to the court for an order directing the disposal of the proceeds.” are inserted;
- (g) after subsection (6) the following subsection is inserted—
  - “(6A) For the avoidance of doubt the court may order forfeiture notwithstanding that the value of the article, thing, receptacle or equipment exceeds the maximum penalties referred to in this section.”;
- (h) after subsection (8)(a)(i), the words “or (4A)” are inserted after “subsection (4)”;
- (i) in subsection (8)(b) the words “and any such compensation shall not be included in the computation for calculating charges under section 22 (Fees and charges) of this Act” are inserted at the end; and
- (j) in subsection (8)(c) the words “or (4A)” are inserted after “subsection (4)”.