

*These notes refer to the Royal Parks (Trading) Act 2000
(c.13) which received Royal Assent on 20th July 2000*

ROYAL PARKS (TRADING) ACT 2000

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Royal Parks (Trading) Act 2000 which received Royal Assent on 20 July 2000. They have been prepared by the Department for Culture, Media and Sport in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. These notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Act increases the maximum penalty for offences of illegal trading in the Royal Parks and certain other open spaces. It also provides for the seizure by park constables of things used in the commission of such offences, for the purpose of interrupting and preventing further illegal trading activity. Things so seized may be retained by the Secretary of State pending the outcome of proceedings for the offence and may be retained until costs are paid in the event that the court makes an order as to costs. Lastly, if a person is convicted of an offence of illegal trading, the Act gives the Court the discretion to order forfeiture of any items seized, subject to its consideration of the value of the items, the likely effects of forfeiture and subject to the right of the owner to make representations.

BACKGROUND

4. It is an offence, without the prior written permission of the Secretary of State, to carry on any trade or business, or to offer anything for sale or hire, or to possess or expose anything for sale or hire in any of the Royal Parks or in certain other open spaces (section 2(1) of the Parks Regulation (Amendment) Act 1926 ("the 1926 Act") and regulation 4(6) of the Royal Parks and Other Open Spaces Regulations 1997 [S.I. 1997/1639](#)). The maximum penalty for such an offence is a fine at level 1 on the standard scale (section 2(1) of the 1926 Act). At present, a level 1 fine is £200.
5. Prior to this Act there were no provisions empowering park constables to seize items used in connection with the offence, nor any provisions empowering a magistrates' court to order forfeiture of such items in the event of a conviction.
6. This absence of powers of seizure and forfeiture was in contrast to powers exercisable by local authorities in relation to illegal trading activities committed on the surrounding streets. The City of Westminster Act 1999, for example, gives Westminster City Council powers of seizure and the courts a power of forfeiture, with respect to items used in connection with street trading offences committed within the City of Westminster. The 1999 Act also provides for a higher maximum penalty in the event of a conviction for an offence, namely a fine at level 3 on the standard scale (currently £1,000).

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7. The intention of the Act is to bring powers in relation to the Royal Parks and other open spaces broadly into line with those possessed by local authorities when dealing with illegal traders.

OVERVIEW

8. The Act provides for:
 - an increase in the maximum penalty for offences of illegal trading in the Royal Parks and other open spaces;
 - a power of seizure of items used in connection with illegal trading, exercisable by a park constable;
 - a power of retention and disposal of things seized, exercisable by the Secretary of State in specified circumstances; and
 - a power of forfeiture of things seized, exercisable by a magistrates' court in the event of a conviction.
9. Provision is also made for:
 - designating specified provisions of any regulations made under section 2(1) of the 1926 Act as park trading regulations, any failure to comply with which will constitute a park trading offence; and
 - the liability of officers for offences committed by bodies corporate.

COMMENTARY ON SECTIONS

Section 1: Park trading offences

10. Subsection (1) expands the scope of the power to make regulations under section 2(1) of the 1926 Act so as to permit the Commissioners of Works (now the Secretary of State for Culture, Media and Sport) to designate particular provisions of such regulations as "park trading regulations".
11. Subsection (2) provides that a failure to comply with, or a contravention of, a park trading regulation is a "park trading offence" for the purposes of the Bill.

Section 2: Maximum penalty

12. **Section 2** provides that in the case of park trading offences, the maximum penalty under section 2(1) of the 1926 Act (failure to comply with, or contravention of, regulations made under section 2(1)) shall be a penalty not exceeding level 3 on the standard scale (at present £1,000).

Section 3: Offences by bodies corporate etc.

13. In a case where a park trading offence is committed by a body corporate, and a director, manager, secretary etc., or any person purporting to act in such capacity, is proved to have consented to, connived at or caused by neglect the commission of, the offence, that person will be guilty of the offence as well as the body corporate.

Section 4: Seizure of property

14. This section creates the power of seizure exercisable by a park constable.
15. *Subsection (1)* requires that a park constable must reasonably suspect that a person has committed a park trading offence before the power of seizure is exercisable. *Subsection (2)* adds that a constable may only exercise such a power in the park in which he has jurisdiction.

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16. If the above conditions are met, subsection (1) gives a park constable the discretion to seize anything which the person has in his possession or under his control *and* which the constable reasonably believes to have been used in the commission of a park trading offence.
17. The scope of the seizure power only extends to things of a non-perishable nature.

Section 5: Retention and disposal

18. *Subsection (1)* allows the Secretary of State to retain anything seized pursuant to clause 4 until the end of the period of 28 days beginning with the date of the seizure.
19. *Subsections (2) and (3)* specify the circumstances in which the Secretary of State may retain seized things beyond the 28 day period. This may only occur if proceedings for a park trading offence have been commenced against the person from whom the things were seized, in respect of his activities at the time of the seizure. If such proceedings have not been commenced within the 28 day period, the power of retention no longer applies. If proceedings have been commenced within 28 days, the Secretary of State may retain the things seized until the conclusion of the proceedings (including any appeal). Further, in the event that the court makes an award of costs to be paid by the accused to the Secretary of State, the Secretary of State may retain the items until those costs have been paid. These powers of retention are subject to any order for forfeiture of the things seized made under clause 6.
20. *Subsection (5)* provides that if the award of costs in the Secretary of State's favour is not paid in full within a further 28 days following the conclusion of court proceedings (including any appeal), the Secretary of State may sell the things at the best price that can reasonably be obtained to pay such costs and should pay any balance to the former owner.
21. *Subsection (6)* provides that things seized must be returned to their owner(s) if the Secretary of State ceases to be entitled to retain them, subject to any order for forfeiture that might be made under clause 6.
22. *Subsection (7)* sets out the procedure to be followed in the event that the owner cannot be identified.

Section 6: Forfeiture

23. This section applies when a person has been convicted of a park trading offence. In accordance with *subsections (1) and (2)*, the court by which he was convicted may order forfeiture of anything which was seized under section 4, is being retained by the Secretary of State under clause 5, *and* which the court believes to have been used in the commission of the offence. Before making such an order the court is required by *subsection (3)(a)* to permit anyone who claims to be its owner or to have an interest in it to make representations. The court must also consider the value of the thing in question and the likely consequences of forfeiture: *subsection (3)(b)*.

COMMENCEMENT

24. This Act came into force on 20 July 2000, the day it received Royal Assent.

HANSARD REFERENCES

The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

<i>Stage</i>	<i>Date</i>	<i>Hansard reference</i>
House of Commons		

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<i>Stage</i>	<i>Date</i>	<i>Hansard reference</i>
Introduction	3 February 2000	Vol Col 1221
Second Reading Committee	7 March 2000	
Second Reading	9 March 2000	Vol 345 Col 1203
Committee	21 March 2000	Hansard Standing Committee G
Report and Third Reading	22 May 2000	Vol 350 Cols 758 to 822
House of Lords		
Introduction	23 May 2000	Vol 613 Col 641
Second Reading	21 June 2000	Vol 614 Cols 348 to 356
Committee and Report	5 July 2000	Vol 614 Cols 1485 to 1489
Third Reading	13 July 2000	Vol Col 379
Royal Assent 20 July 2000		House of Lords Hansard Vol 615 Col 1262
		House of Commons