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## SCHEDULES

### SCHEDULE 1

Section 11

#### MINOR AND CONSEQUENTIAL AMENDMENTS TO CITY OF WESTMINSTER ACT 1999

##### *Offences*

- 1 In paragraph (b) of section 24 (offences) after "temporary licence" insert "or in completing a notice in accordance with subsection (4) of section 27B (seizure: notices) of this Act".

##### *Seizure*

- 2 In new section 27A (seizure)—
- (a) in subsection (1) (as numbered by section 26(6))—
    - (i) for "this section" substitute "section 27 (unlicensed street trading) of this Act";
    - (ii) for "subsection (9) below" substitute "section 27E (forfeiture of seized items by court) of this Act";
  - (b) in subsection (4) (as numbered by section 26(8)), for "subsections (5) and (6)" substitute "subsections (1) to (3)".
- 3 In new section 27C (return of seized items)—
- (a) in subsection (2) (as numbered by section 26(11))—
    - (i) for "paragraph (f)" substitute "subsection (6)";
    - (ii) for "article or thing" substitute "item";
    - (iii) for "subsection (9) below" substitute "section 27E (forfeiture of seized items by the court) of this Act";
  - (b) in subsection (3) (as so numbered), for "article or thing" in all four places substitute "item";
  - (c) in subsection (4) (as so numbered)—
    - (i) for "sub-paragraph (e)" substitute "subsection (5)";
    - (ii) for "subsection (5) above" substitute "subsection (1) of the said section 27A";
  - (d) in subsection (5) (as so numbered), for "Sub-paragraph (d)" substitute "Subsection (4)";
  - (e) in subsection (6) (as so numbered), at the beginning insert "Subject to subsection (8) below,";
  - (f) in subsection (7) (as so numbered)—
    - (i) for "Paragraph (h)" substitute "Subsection (8)";
    - (ii) for "article, thing, receptacle or equipment" substitute "item";
  - (g) in subsection (8) (as so numbered)—
    - (i) for "paragraph" substitute "subsection";

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(ii) for "section 27C" substitute "section 27I".

*Forfeiture*

- 4 In new section 27E (forfeiture of seized objects by court)—
- (a) in subsection (1) (as numbered by section 26(13)—
    - (i) for "subsection (10)" substitute "subsection (2)";
    - (ii) for "this section" where it appears the first time substitute "section 27 (unlicensed street trading) of this Act";
    - (iii) for "this section" where it appears the second time substitute "that section";
  - (b) in subsection (2) (as so numbered)—
    - (i) for "subsection (9)" substitute "subsection (1)"; and
    - (ii) renumber paragraphs (i) and (ii) as (a) and (b);
  - (c) in subsection (3) (as so numbered) for "this section" substitute "the said section 27".

*Compensation*

- 5 In new section 27F (compensation)—
- (a) in subsection (1) (as numbered by section 26(14)—
    - (i) for "This subsection" substitute "This section";
    - (ii) in paragraph (a) (as so numbered) for "article, thing, receptacle or equipment" substitute "item";
    - (iii) in paragraph (a) (as so numbered) for "subsection (5) or (6) above" substitute "subsections (1) to (3) of section 27A (seizure) of this Act";
    - (iv) in paragraph (b)(i) (as so numbered) for "this section" substitute "section 27 (unlicensed street trading)";
  - (b) in subsection (2) (as so numbered)—
    - (i) for "subsection" substitute "section";
    - (ii) for "article, thing, receptacle or equipment" substitute "item";
  - (c) in subsection (3) (as so numbered)—
    - (i) for "paragraph (b)" substitute "subsection (2)";
    - (ii) for "subsection (5) or (6)" substitute "subsections (1) to (4) of section 27A (seizure) of this Act".

*Seizure of perishable items*

- 6 In section 27G (as renumbered by section 26(16))—
- (a) in subsection (1)—
    - (i) for "article or thing" substitute "item" in both places where those words appear;
    - (ii) for "subsection (5) of section 27 (unlicensed street trading)" substitute "subsection (1) of section 27A (seizure)";
  - (b) in subsection (2)—
    - (i) for "subsection (5)" where it appears the first time substitute "subsection (1)";

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- (ii) for "subsection (5)" where it appears the second time substitute "subsection (3)";
- (iii) for "subsection (10) of the said section 27" substitute "subsection (2) of section 27E (forfeiture of seized items by court) of this Act";
- (c) in subsection (5)—
  - (i) for the words from the beginning to "section 27" substitute "Subsections (1) to (4) of section 27C (return of seized items) and subsections (1) to (3) of section 27E (forfeiture of seized items by court) of this Act";
  - (ii) for "that section" substitute "section 27A (seizure) of this Act";
  - (iii) for "article or thing" in both places substitute "item".
- (d) in subsection (6)—
  - (i) for the words from the beginning to "section 27" substitute "Subsections (6) to (8) of the said section 27C";
  - (ii) for "that section" substitute "the said section 27A";
  - (iii) for "article or thing" substitute "item";
  - (iv) for "paragraph (f)" substitute "subsection (6)";
- (e) in subsection (7)—
  - (i) for "Subsection (11) of the said section 27" substitute "Section 27F (compensation) of this Act";
  - (ii) for "paragraph (c)" substitute "subsection (3)";
  - (iii) for "that section" where it appears the first time substitute "the said section 27A";
  - (iv) for "paragraph (a)(ii)(A) or (B)" substitute "subsection (1)(b) of the said section 27F";
- (f) in subsection (8)—
  - (i) for "article or thing" substitute "item";
  - (ii) for "subsection (4)" substitute "subsection (3)";
- (g) in subsection (10) for "the said section 27" substitute "section 27 (unlawful street trading) of this Act";
- (h) in subsection (11) leave out "borough".

#### *Motor vehicles*

- 7 In section 27H (as renumbered by section 26(17))—
- (a) in subsection (2) for "subsection (5) or (6) of section 27 (unlicensed street trading)" substitute "subsection (1) or (2) of section 27A (seizure)";
  - (b) in subsection (3) for "subsection (8)(f) of that section" substitute "subsection (6) of section 27C (return of seized items) of this Act";
  - (c) in subsection (5) for "subsection (5) or subsection (6)" substitute "subsection (1) or subsection (2)".

#### *Disposal orders*

- 8 In section 27I (as renumbered by section 26(18))—
- (a) for subsection (1) substitute—

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- “(1) This section applies in respect of a complaint made by the council for a disposal order under—
- (a) subsection (6)(a) of section 27B (seizure: notices) of this Act;
  - (aa) subsection (8) of section 27C (return of seized items) of this Act; or
  - (ab) subsection (3) of section 27D (disposal of seized objects by the council) of this Act; or
  - (b) subsection (5) of section 27H (motor vehicles) of this Act, and items that are the subject of the complaint are referred to as "seized items" in this section.”;
- (b) in subsection (2) omit "complainant";
- (c) in subsection (3) for "article, thing, receptacle or equipment" substitute "seized item".

## SCHEDULE 2

Section 12

### CITY OF WESTMINSTER ACT 1999 AS HAVING EFFECT AS AMENDED BY SECTION 20(2) OF THE LONDON LOCAL AUTHORITIES ACT 2004 CHAPTER 2 OF PART 3 OF THE LONDON LOCAL AUTHORITIES ACT 2007 AND THIS ACT

#### “1 Citation and commencement

- (1) This Act may be cited as the City of Westminster Act 1999.
- (2) This Act shall come into operation at the end of the period of two months beginning with the date on which it is passed.

#### 2 Interpretation

- (1) In this Act, except as otherwise expressly provided or unless the context otherwise requires—
  - ”authorised officer" means a person authorised by the council to act in relation to the relevant provisions of this Act;
  - ”the city" means the City of Westminster;
  - ”the Commissioner" means the Commissioner of Police of the Metropolis;
  - ”the council" means the Westminster City Council;
  - ”house" includes any part of a building constituting a separate dwelling;
  - ”ice cream trading" means the selling, exposing or offering for sale of goods consisting wholly or mainly of ice cream, frozen confectionery or other similar commodities;
  - ”itinerant ice cream trading" means ice cream trading from a vehicle which goes from place to place remaining in any one location in the course of trading for short periods only;
  - ”licence street" means a street or part of a street designated under section 5 (designation of streets and specification of articles) and section 6 (designating resolution) of this Act;

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”receptacle” includes a vehicle, trailer or stall and any basket, bag, box, vessel, stand, easel, board, tray or thing which is used (whether or not constructed or adapted for such use) as a container for or for the display of any article or thing or equipment used in the provision of any service;

”street” includes—

- (a) any road or footway;
- (b) any other area, not being within permanently enclosed premises, within 7 metres of any road or footway, to which the public obtain access without payment—
  - (i) whether or not they need the consent of the owner or occupier; and
  - (ii) if they do, whether or not they have obtained it;
- (c) any part of such road, footway or area;
- (d) any part of any housing development provided or maintained by a local authority under Part II of the Housing Act 1985;

”street trading” means, subject to subsections (1A) and (2) below and section 3 (Exemptions) of this Act—

- (a) the selling, offering for sale, display or exposing for sale of any article (including a living thing); and
- (aa) the purchasing of or offering to purchase any ticket for gain or reward; and
- (b) the supplying or offering to supply a service for gain or reward (whether or not the gain or reward accrues to the person actually carrying out the trading),

in a street;

”street trading licence” means a licence granted under this Act but excludes a temporary licence;

”street trading pitch” means the area authorised by a street trading licence or a temporary licence for street trading purposes;

”temporary licence” means a licence granted under this Act for one or more days not exceeding six months.

- (1A) In this Act ”street trading” shall also include the selling or exposure or offer for sale of any motor vehicle in the course of business if the vehicle is—
  - (a) exposed or offered for sale on the internet; and
  - (b) kept on a street during the period when it is so exposed or offered for sale.
- (2) In determining whether activity amounts to street trading for the purposes of this Act, the fact—
  - (a) that a transaction was completed elsewhere than in a street in the case where the initial offer or display of the articles in question or the offer of services, as the case may be, took place in a street;
  - (b) that either party to the transaction was not in a street at the time it was completed;
  - (c) that the articles actually sold or services actually supplied, as the case may be, were different from those offered,
 shall be disregarded.

### 3 Exemptions

The following are not street trading for the purposes of this Act—

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- (a) trading only as a newsvendor provided that no undue interference or inconvenience or safety hazard is caused to people using the street and that the only articles sold, exposed or offered for sale are current newspapers or periodicals and that such articles are being sold, offered or exposed for sale—
  - (i) without a receptacle; or
  - (ii) from a single receptacle which does not—
    - (A) exceed 1 metre in length or width or 2 metres in height; or
    - (B) occupy a ground area exceeding 0.25 square metres; or
    - (C) stand on the carriageway of the street.
- (b) the selling of articles or things to occupiers of premises adjoining any street, or the offering or exposing of them for sale by a delivery person from a vehicle which is used only for the regular delivery of milk or other perishable goods to those persons.
- (c) the selling, exposure or offer for sale of articles or the provision of services on private land adjacent to a shop provided that the selling, exposure or offer for sale of the articles or the provision of the services—
  - (i) forms part of the business of the owner of the shop or person assessed for uniform business rate of the shop; and
  - (ii) takes place during the period during which the shop is open to the public for business.
- (d) the doing of anything authorised by regulations made under section 5 of the Police, Factories, &c. (Miscellaneous Provisions) Act 1916 or by permit or order made under Part III of the Charities Act 1992.
- (e) trading by a person acting as a pedlar under the authority of a pedlar's certificate under the Pedlars Act 1871, if the trading is carried out only by means of visits from house to house.

#### **4 Itinerant ice cream trading**

- (1) Nothing in this Act shall apply to itinerant ice cream trading in any street unless—
  - (a) that street is a licence street; or
  - (b) the street has been designated as a prohibited street under the following provisions of this section.
- (2) If at any time it is necessary to prohibit itinerant ice cream trading in any street in the city which is not a licence street in the interests of preventing a safety hazard, obstruction to traffic or undue interference or inconvenience to persons using that street, the council may by resolution designate the street as a prohibited street and may from time to time rescind or vary any such resolution.
- (3) The council shall not pass such a resolution unless they have first given notice in writing of their intention to do so—
  - (a) to the Commissioner;
  - (b) to the highway authority (except where the council is the highway authority); and
  - (c) to any body which appears to the council to be representative of persons carrying on ice cream trading in the area affected by the proposed resolution.
- (4) The notice shall—
  - (a) give details of the proposed resolution and the reasons for it; and

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- (b) state that representations may be made regarding the proposed resolution by the date specified in the notice as the due date which shall be not less than 42 days after the notice has been given.
- (5) As soon as practicable after the due date the council shall consider all representations received by that date and may at their discretion consider representations received after that date.
- (6) The council shall give to any person who makes representations by the due date an opportunity to make oral representations to the council and may at their discretion give to other persons making representations a similar opportunity.
- (7) The council may pass the proposed resolution, with any modifications they consider appropriate as a result of any representations received under this section.
- (8) As soon as practicable after passing a resolution under subsection (7) above, the council shall by notice in writing inform all persons given notice of the proposed resolution.

## **5 Designation of streets and specification of articles**

- (1) The council may pass any of the following resolutions—
  - (a) a resolution designating a street or part of a street in the city as a licence street (a "designating resolution");
  - (b) a resolution specifying that in relation to a licence street or streets either—
    - (i) only specified articles, things or services or classes of articles, things or services may be sold, offered or provided in that street; or
    - (ii) the sale, offer or provision of specified articles, things or services or classes of articles, things or services are prohibited in that street (a "specifying resolution").
- (2) The council may from time to time rescind or vary any such resolution.

## **6 Designating resolution**

- (1) The council shall not pass a designating resolution or rescind or vary such a resolution unless they have first given notice in writing of their intention to do so—
  - (a) to the Commissioner;
  - (b) to the highway authority (except where the council is the highway authority);
  - (c) to any body which appears to the council to represent the relevant street traders;
  - (d) to all licence holders whom the council could reasonably expect would be affected by the proposed resolution; and
  - (e) where the proposed resolution would designate private land, to the owner of that land or to the person assessed for the uniform business rate on it.
- (2) The council may, if they think fit, also give notice in writing to residents associations or amenity societies representing residents living in the vicinity of the area which is the subject of a proposed designating resolution.
- (3) The notice shall—
  - (a) give details of the proposed resolution; and
  - (b) state that representations may be made regarding the proposed resolution by the date specified in the notice as the due date, which date shall be not less than 28 days after the notice has been given.

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- (4) As soon as practicable after the due date the council shall consider all representations received by that date and may at their discretion consider representations received after that date.
- (5) The council shall give to any person who makes representations by the due date an opportunity to make oral representations to the council and may at their discretion give to other persons making representations a similar opportunity.
- (6) The council may pass the proposed resolution with any modifications they consider appropriate as a result of any representations received under this section except that no designating resolution may be passed—
  - (a) in respect of private land without the consent of the owner of that land or the person assessed for the uniform business rate on it; or
  - (b) in respect of a highway in respect of which the council is not the highway authority, without the consent of the highway authority.
- (7) As soon as practicable after passing a resolution under subsection (6) above the council shall by notice in writing inform all persons given notice of the proposed resolution.
- (8) If a street trading pitch becomes temporarily unsuitable for street trading purposes the council may after consulting the Commissioner, the highway authority, the licence holder and any other body or person they think fit, temporarily designate an alternative location for that pitch.
- (9) A temporary designation under subsection (8) above shall remain in force for a period of no longer than five years from the date of designation and the street trading licence for the temporarily unsuitable pitch may be transferred, with any necessary modification to that licence, to the temporarily designated pitch.

## **7 Specifying resolution**

- (1) The council shall not pass a specifying resolution or rescind or vary such a resolution unless they have first given notice in writing—
  - (a) to all licence holders whom the council could reasonably expect would be affected by the proposed resolution; and
  - (b) to any body which appears to the council to represent such licence holders.
- (2) The notice shall—
  - (a) give details of the proposed resolution; and
  - (b) state that representations may be made regarding the proposed resolution by the date specified in the notice as the due date which date shall be not less than 28 days after the notice has been given.
- (3) As soon as practicable after the due date the council shall consider all representations received by that date and may at their discretion consider representations received after that date.
- (4) The council shall give to any person who makes representations by the due date an opportunity to make oral representations to the council and may at their discretion give to other persons making representations a similar opportunity.
- (5) The council may pass the resolution with any modifications which they consider appropriate as a result of any representations received under this section.



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- (6) As soon as practicable after passing a resolution under subsection (5) above the council shall by notice in writing inform all parties given notice of the proposed resolution.

## **8 Licensing of street traders**

- (1) Subject to section 4 (itinerant ice cream trading) of this Act it shall be unlawful for any person to engage in street trading (whether or not in or from a stationary position) within the city unless that person is authorised to do so by a street trading licence or a temporary licence.
- (2) For the purposes of this Act a person shall be deemed to engage in street trading whether or not he regularly carries on the business of street trading.

## **9 Street trading licences**

- (1) The council may grant a street trading licence on such reasonable terms and conditions relevant to street trading as the council may specify.
- (2) Without prejudice to the generality of subsection (1) above such conditions may include conditions—
- (a) identifying the street trading pitch at which the licence holder may engage in street trading under the licence;
  - (b) identifying the articles, things or services or the classes of articles, things or services which the licence holder may sell or expose or offer for sale or provide;
  - (c) identifying the days and times during which the licence holder may engage in street trading;
  - (d) identifying the nature, type and number of any receptacle which may be used by the licence holder in connection with the sale or exposure or offer for sale of articles or things or the provision of services;
  - (e) requiring that any receptacle so used shall carry in a conspicuous position the name of the licence holder and the number of his licence in a form acceptable to the council;
  - (f) identifying any position in the licence street or adjoining streets where articles or things needed for re-stocking any such receptacle may be stored and the period during which they may be so stored;
  - (g) regulating the storage of receptacles or perishable goods;
  - (h) regulating the deposit and removal of refuse and the containers to be used for the deposit of refuse and their location pending its removal;
  - (i) requiring that the licence holder shall commence trading by a certain time on any day or forfeit his right to trade under his street trading licence for that day; and
  - (j) requiring third party insurance cover.
- (3) Such conditions may also include conditions relating to the prevention of nuisance and may include specific restrictions relating to the hours between 10 p.m. on Sunday to Friday and 7 a.m. the day following and 10 p.m. on Saturday and 9 a.m. on Sunday.
- (4) A street trading licence shall remain in force until it is cancelled or revoked by the council.

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- (5) A licence granted to an individual shall bear his photograph. The photograph, subject to subsection (7) below, shall be one of the photographs provided pursuant to subsection (3) of section 11 (applications) of this Act.
- (6) Where a licence is granted to an individual the council may give him notice in writing, at intervals of not less than five years, requiring him to provide the council with three new photographs of the type prescribed by subsection (3) of section 11 (applications) of this Act, signed as there provided, but the council may, at their discretion, accept a lesser number of photographs.
- (7) On each occasion when new photographs are provided by a licence holder pursuant to subsection (6) above the council shall re-issue his licence and the re-issued licence shall bear one of the new photographs.
- (8) Where a licence is granted to a company incorporated under the Companies Acts, to an unincorporated association or to a partnership to carry on ice cream trading, any individual carrying on ice cream trading in accordance with that licence shall at all times while he is so trading carry with him, and produce on request by an authorised officer or a constable, a recent photograph of himself authenticated by the company or on behalf of the unincorporated association or partnership, as the case may be, which holds the licence.
- (9) Where a licence is granted to an individual he shall at all times while engaged in street trading (other than street trading of the type described in subsection (1A) of **section 2** (interpretation) of this Act) carry with him, and produce on request by an authorised officer or a constable, either the licence or an approved form of identity issued by the council for the purposes of this Act.

## 10 Standard conditions

- (1) The council may prescribe standard conditions which are to apply to all street trading licences.
- (2) Before prescribing such conditions or changing any condition so prescribed, the council shall first give notice in writing to all holders of street trading licences whom the council could reasonably expect would be affected by the proposed conditions or changes to the conditions and to any body which appears to the council to represent such licence holders.
- (3) The notice shall—
  - (a) give details of the proposed conditions or changes to the conditions;
  - (b) state that representations may be made with regard to the proposal by the date specified in the notice as the due date, which date shall be not less than 28 days after the notice has been given.
- (4) As soon as practicable after the due date the council shall consider all representations received by that date and may at their discretion consider representations received after that date.
- (5) The council shall give to any person who makes representations by the due date an opportunity to make oral representations to the council and may at their discretion give to other persons making representations a similar opportunity.

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- (6) The council may prescribe the proposed conditions or changes to conditions with any modifications they consider appropriate as a result of any representations received under this section.
- (7) As soon as practicable and in any event no later than 7 days after prescribing such conditions or changes to conditions the council shall by notice in writing inform all the holders of street trading licences to whom previous notice was given under subsection (2) above of the conditions or changes to conditions and the conditions or changes to conditions shall come into force 35 days after the date on which the conditions or changes to conditions were prescribed.

## 11 Applications

- (1) An application for the grant or variation of a street trading licence shall be made in writing to the council in such form as the council may prescribe.
- (2) In the application the applicant shall state—
  - (a) in the case of an application by an individual, his full name and home address and date of birth;
  - (b) in the case of an application for a licence to carry on ice cream trading—
    - (i) by a company incorporated under the Companies Acts, the name of the company and its registered office;
    - (ii) by a partnership or unincorporated association, the names of its members and the address of its principal office;
  - (c) the licence street in which, the days on which and times between which he desires to trade and, if appropriate, the street trading pitches from which he desires to trade;
  - (d) the description of articles, things or services in which he desires to trade; and
  - (e) such other particulars, relevant to street trading, as the council may reasonably require:

and may in the case of an individual specify the name of the person to whom he would wish the licence to be granted in the circumstances of any of the events listed in section 20 (succession) of this Act.

- (2A) In the case of an application for a street trading licence which, if granted, would authorise street trading on land which falls within paragraph (b) in the definition of "street" in subsection (1) of section 2 (interpretation) of this Act, the applicant shall provide evidence in writing—
  - (a) that he has consent to trade on the land from the owner of the land in question; or
  - (b) that he is the owner of the land in question.
- (3) In the case of an application by an individual the applicant shall, with his application, hand to an authorised officer three identical clear full face photographs of himself, without headgear (unless on religious grounds the applicant permanently wears headgear) or sunglasses, taken within the preceding 12 months, each photograph being signed by the applicant on the reverse, but the council may, at their discretion, accept a lesser number of photographs.
- (4) If a standard condition prescribed under section 10 (standard conditions) of this Act requires third party insurance cover the applicant shall produce to an authorised officer proof of such third party insurance cover before a licence is granted.

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- (5) The council may make regulations prescribing the procedure for determining applications.
- (6) Before making such regulations or changing them the council shall consult with any body which appears to the council to represent licence holders and give consideration to any representations received within 28 days of the date the council's proposals were notified to the body concerned.

## **12 Mandatory grounds of refusal**

- (1) The council shall refuse to grant an application made under section 11 (applications) of this Act—
  - (a) where the applicant is not an individual;
  - (b) where the applicant is under the age of 17 years;
  - (c) where the applicant holds a street trading licence in any other licence street granted under this Act, or a street trading licence in the area of another local authority granted under the London Local Authorities Act 1990 which, in either case, enables him to carry on street trading during the period stated in his application;
  - (d) where the council are satisfied that there is not enough space in the street for the applicant to engage in the trading in which he desires to trade without causing a safety hazard or undue interference or inconvenience to persons or vehicular traffic using the street;
  - (e) where the street to which the application relates is a street in respect of which a specifying resolution is in force and the grant of the licence would be contrary to any of the terms of that resolution;
  - (f) to trade in a street which is not a licence street;
  - (g) where the application, if granted, would authorise street trading on land which falls within paragraph (b) in the definition of "street" in subsection (1) of section 2 (interpretation) of this Act, unless the applicant has provided sufficient such evidence as is mentioned in subsection (2A) above to satisfy the council.
- (2) Subsection (1)(a) above shall not apply where the application is to carry on ice cream trading.

## **13 Discretionary grounds of refusal**

- (1) The council may refuse to grant an application made under section 11 (applications) of this Act on any of the following grounds:—
  - (a) that, in the case of an application for the grant of a licence the council considers that there are enough traders trading in the street or in any street adjoining the street in respect of which the application is made in the goods in which the applicant desires to trade;
  - (b) that the applicant is on account of misconduct or for any other sufficient reason unsuitable to hold a street trading licence;
  - (c) that the applicant has persistently failed to comply with any condition of his street trading licence or a previous street trading licence held by the individual, member of the unincorporated association or partnership or company concerned;
  - (d) that the applicant is an individual who has persistently without reasonable excuse failed to make full personal use of a previous street trading licence;

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- (e) that the applicant is a partnership, unincorporated association or company which has without reasonable excuse persistently failed to avail itself fully of a previous street trading licence;
  - (f) that the applicant has at any time been granted a street trading licence by the council which was revoked or could have been revoked on the grounds that he had refused or neglected to pay fees or other charges due to them in respect of the licence;
  - (g) that the applicant has failed to provide or to identify suitable or adequate premises for the storage of any receptacles or perishable goods in which he proposes to trade when street trading is not taking place;
  - (h) that since the grant of a previous street trading licence the licence holder has persistently failed to remove to the place of storage the receptacles used by him for trading or any perishable goods in which he trades;
  - (i) that in the vicinity of the street trading pitch concerned undue disturbance is likely to be caused as a result of the proposed activities of the applicant;
  - (j) that in the case of an application for the grant of a street trading licence—
    - (i) the only available position is in that part of the street which is in front of any part of the frontage of a shop or in front of the paved area of the frontage of that shop; and
    - (ii) the articles, things or services mentioned in the application are sold or provided at the shop;
  - (k) that in the case of an application for the grant of a street trading licence—
    - (i) the only available position in the street is within the curtilage of a shop; and
    - (ii) the applicant is not the owner or occupier of the premises comprising the shop.
- (2) If the council consider that grounds for refusal exist under subsection (1) (a), (c), (d), (e) or (i) above they may grant the applicant a licence which permits him—
- (a) to trade on fewer days or during a shorter period in each day than is specified in the application; or
  - (b) to trade on a different street trading pitch from that specified in the application; or
  - (c) to trade in goods other than those specified in the application or in only some of the goods so specified.

#### 14 Cancellation of licences

A holder of a street trading licence or a temporary licence may at any time surrender his licence with a written and signed request for its cancellation and the cancellation shall take effect when the licence together with the request for its cancellation is received by the council.

#### 15 Revocation of licences

- (1) The council may at any time revoke a street trading licence or a temporary licence if they are satisfied that—
- (a) owing to circumstances which have arisen since the grant of the licence, there is not or will not be enough space in the street in which the licence holder trades for him to engage in the trading permitted by the licence without causing a

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- safety hazard or undue interference or inconvenience to persons or vehicular traffic using the street; or
- (b) the licence holder is trading in breach of the terms of a specifying resolution; or
  - (c) the licence holder is an individual who has persistently without reasonable excuse failed to make full personal use of his licence; or
  - (d) the licence holder is a partnership, unincorporated association or company which has without reasonable excuse persistently failed to avail itself fully of the licence; or
  - (e) the licence holder is on account of misconduct or for any other sufficient reason unsuitable to hold the licence; or
  - (f) since the grant of the licence, the licence holder has for a period of four weeks or more failed to pay fees or charges due to the council in connection with the street trading licence or has failed to pay any charges due from him for accommodation provided in pursuance of subsection (2) of section 23 (receptacles and containers) of this Act; or
  - (g) since the grant of the licence, the licence holder has persistently failed to pay fees or charges as they fall due to the council in connection with the street trading licence; or
  - (h) since the grant of the licence, the licence holder has failed to make provision for the suitable and adequate storage when trading is not taking place of the receptacles used by him for trading or of any perishable goods in which he trades; or
  - (i) since the grant of the licence, the licence holder has persistently failed to remove to the place of storage the receptacles used by him for trading or any perishable goods in which he trades; or
  - (j) the licence holder has persistently failed to comply with any condition of his licence; or
  - (k) in the vicinity of the street trading pitch concerned undue disturbance has been caused by the activities of the licence holder; or
  - (l) the licence holder has failed to provide the council with the photographs required in pursuance of a notice under subsection (6) of section 9 (street trading licences) of this Act.
- (2) If the council consider that a licence could be revoked on any of the grounds mentioned in paragraphs (a) to (d) and (k) of subsection (1) above they may instead of revoking it, vary its conditions by attaching further conditions—
- (a) reducing the number of days in any week or the period in any one day during which the licence holder is permitted to trade; or
  - (b) specifying a different street trading pitch at which licensed street trading may take place; or
  - (c) restricting the description of articles, things or services in which the licence holder is permitted to trade.

## **16 Variation of licences**

- (1) In addition to changes to any of the standard conditions which the council may make under section 10 (standard conditions) of this Act the council may vary a street trading licence on 1st January in any year during the currency of the licence.
- (2) Subject to the provisions of this Act, the council may also at any time vary a street trading licence on application by the licence holder in accordance with his application.

## **17 Further provisions relating to refusal, revocation or variation of street trading licences**

- (1) The council shall before—
- (a) refusing an application for the grant of a street trading licence, other than on the grounds specified in section 12 (mandatory grounds of refusal) of this Act;
  - (b) revoking a street trading licence or a temporary licence valid for a period exceeding 28 days; or
  - (c) varying a street trading licence other than a variation to a standard condition as set out in section 10 (standard conditions) of this Act;
- give to the applicant or licence holder at least 21 days notice in writing of their proposal and the grounds on which the proposed refusal, revocation or variation would be based and giving the applicant or licence holder the opportunity to appear before the committee, sub-committee, authorised officer or panel of officers determining the matter.
- (2) The council may consider and determine any of the matters set out in paragraph (a) to (c) of subsection (1) above where a shorter period of notice than the 21 days required by that subsection has been given, provided the applicant or licence holder has so consented in writing.
- (3) If an application is refused or a licence is revoked or varied (other than under subsection (2) of section 16 (variation of licences) of this Act) the council shall notify the applicant or licence holder in writing of—
- (a) the decision together with the grounds and reasons for that decision; and
  - (b) any rights of appeal against that decision.

### **17A Lapsing of licence in certain cases**

In the case of a street trading licence which authorises street trading on land which falls within paragraph (b) in the definition of "street" in subsection (1) of section 2 (interpretation) of this Act, the licence shall lapse if—

- (a) the consent is discontinued by the person who gave it, or a successor in title of that person, and the council is provided with written notice of the discontinuation of the consent by the person who discontinues it; or
- (b) the holder of the licence no longer is the owner of the land in question, as the case may be.

## **18 Appeals against refusal, revocation or variation of licences**

- (1) Any person aggrieved—
- (a) by a decision of the council to refuse an application under section 11 (applications) of this Act other than on any of the grounds specified in section 12 (mandatory grounds of refusal) of this Act or to revoke a street trading licence; or
  - (b) by a decision of the council to grant a street trading licence on terms other than those sought; or
  - (c) by a decision of the council to vary a street trading licence other than by a change to the standard conditions; or
  - (d) by the attachment to a street trading licence of any condition other than a condition to which the licence had hitherto been subject or a standard condition; or

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- (e) by a prohibition under subsection (2) of section 4 (itinerant ice cream trading) of this Act;
- may appeal to a magistrates' court acting for the area in which the street trading pitch is situated or in which is situated the street to which the prohibition relates.
- (2) An appeal under subsection (1) above may be brought—
- (a) in the case of an appeal under subsections (1)(a) to (d) above, at any time before the expiration of the period of 21 days beginning with the date upon which notification in writing is given of the decision;
  - (b) in the case of an appeal under paragraph (e) of that subsection, at any time before the expiration of the period of 21 days beginning with the date on which the person aggrieved is informed under subsection (8) of the said section 4 of this Act of the council's resolution to make the prohibition.
- (3) A person desiring to appeal against such a decision as is mentioned in subsection (1) above shall give written notice to the magistrates' court and to the council specifying the decision against which he wishes to appeal and the grounds upon which such appeal is made.
- (4) An appeal by either party against the decision of the magistrates' court under this section may be made to the Crown Court.
- (5) On an appeal to the magistrates' court or to the Crown Court under this section, the court may make such order as it thinks fit, such order to be limited to the matter which is the subject of the appeal.
- (6) Subject to subsection (7) below, it shall be the duty of the council to give effect to the order of the magistrates' court or the Crown Court.
- (7) The council need not give effect to the order of the magistrates' court until the time for bringing an appeal under subsection (4) above has expired and, if such an appeal is duly brought, until the determination or abandonment of the appeal.
- (8) Where the council decide to revoke a street trading licence, or to vary its conditions (other than a standard condition) without the consent of the licence holder the revocation or variation shall not take effect until the time for bringing an appeal to the magistrates' court or the Crown Court under subsection (1) or (4) above has expired or where such an appeal is duly brought, until the determination or abandonment of the appeal.
- (9) Notwithstanding the provisions of subsection (8) above where the council—
- (a) has revoked a street trading licence on the grounds that the licence holder has failed to pay fees and charges due to the council and the licence holder has appealed it shall only be lawful for the licence holder to trade under the authority of that licence, until any appeal has been determined or abandoned, if—
    - (i) all fees and charges due to the council have been paid; and
    - (ii) he continues to pay fees and charges due to the council under that licence;
  - (b) has revoked a street trading licence on any other grounds and the licence holder has appealed the licence holder may continue to trade under the authority of that licence by virtue of subsection (8) above only whilst he continues to pay fees and charges due to the council under that licence.



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## 19 Appeals to Secretary of State

- (1) Any person aggrieved—
- (a) by a resolution varying or rescinding a designating resolution;
  - (b) by a specifying resolution or a resolution varying such a resolution;
  - (c) by a standard condition; or
  - (d) by the amount of a fee or charge under section 22 (fees and charges) of this Act,
- may appeal to the Secretary of State whose decision shall be final.
- (2) An appeal under subsection (1) above may be brought at any time before the expiration of a period of three months commencing on the date on which notice has been given in writing to the person aggrieved under subsection (7) of section 6 (designating resolution), subsection (6) of section 7 (specifying resolution), subsection (7) of section 10 (standard conditions) or subsection (15) of the said section 22 of this Act as appropriate.

## 20 Succession

- (1) (a) The holder of a street trading licence who is an individual may at the time of making application under section 11 (applications) of this Act or at any time thereafter by written notice to the council specify the name and address of a relative (or employee under subsection (3)(e) below) to whom he would wish the licence to be granted if he—
- (i) dies; or
  - (ii) retires having reached the age of 60; or
  - (iii) notifies the council that owing to ill-health he is unable to continue to engage in the street trading permitted by the licence, and submits evidence to satisfy the council as to his ill-health,
- and he may vary his nomination at any time by giving written notice thereof to the council, specifying the name and address of such other person to whom he would wish the licence to be granted and such notice shall revoke all previous nominations made by the licence holder;
- (b) When a holder of a street trading licence has nominated a person in accordance with paragraph (a) above the council shall not (except as provided in paragraph (c) below) grant a licence in respect of the street trading pitch for which the former licence holder was licensed until the expiration of 28 days from the date of the death of the licence holder or his retirement or receiving the notification, as the case may be;
  - (c) If during the said period of 28 days the person previously nominated by the licence holder as the person to whom he desired the licence to be granted in any of the events mentioned in paragraph (a) above makes application for the grant of a licence in respect of the street trading pitch concerned the council shall save as provided by subsection (1)(a) to (c) of section 12 (mandatory grounds of refusal) and subsection (1)(b) to (f) of section 13 (discretionary grounds of refusal) of this Act grant a licence to that person on the same terms and conditions as were previously in force.
- (2) For the purposes of this section a person shall be treated as being related to another person if the latter is the wife, common law wife, husband, common law husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother or half-sister of the

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former and shall be deemed to be so related notwithstanding that he is so related only through an illegitimacy or in consequence of adoption.

- (3) The council may at their discretion—
- (a) grant the licence to a nominee where a licence holder has given up or proposes to give up his licence on grounds other than those specified in paragraph (a)(ii) or (a)(iii) of subsection (1) above; or
  - (b) extend the period of 28 days specified in subsection (1)(b) above; or
  - (c) grant the licence to a relative not mentioned in subsection (2) above; or
  - (d) grant the licence to a relative as defined by subsection (2) above where the former licence holder failed to make a nomination; or
  - (e) grant the licence to an employee of at least five years standing of the former licence holder where—
    - (i) the former licence holder had previously notified the council of his employment of that person; and
    - (ii) the former licence holder or the applicant has made available to the council all necessary tax and other records to prove that the person is or was a bona fide employee.
- (4) The council shall not grant a street trading licence under subsection (3) above if to do so—
- (a) would cause a breach of a specifying resolution; or
  - (b) would be contrary to the provisions of section 12 (mandatory grounds of refusal) of this Act.
- (5) Where a street trading licence cannot be granted under this section because of the provisions of subsection (1)(c) of the said section 12 of this Act the council may at their discretion grant a licence to another relative of the former licence holder or to a relative of the person who, but for the provisions of subsection (1)(c) of the said section 12 of this Act, would have been granted the licence.

## **21 Temporary licences**

- (1) The council may if they think fit on the receipt from any person of an application for that purpose and accompanied by the appropriate fee grant to that person a temporary licence.
- (2) A temporary licence shall remain in force only for the day or period specified in the licence and—
  - (a) shall be in a similar form to a street trading licence with such modifications therein as the circumstances require; and
  - (b) shall contain such terms and conditions as the council may specify.
- (2A) In the case of an application for a temporary licence which, if granted, would authorise street trading on land which falls within paragraph (b) in the definition of "street" in subsection (1) of section 2 (interpretation) of this Act, the applicant shall provide evidence in writing—
  - (a) that he has the consent to trade on the land from the owner of the land in question; or
  - (b) that he is the owner of the land in question.
- (2B) An application for a temporary licence shall not be granted, if the licence would authorise street trading on land which falls within the said paragraph (b), unless

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the applicant has provided sufficient evidence, as is mentioned in subsection (3) of section 11 (applications) of this Act, to satisfy the council.

- (2C) In the case of a temporary licence which authorises street trading on land which falls within the said paragraph (b), the licence shall lapse if—
- (a) the consent to trade on the land is discontinued, and the council is provided with written notice of the discontinuance of the permission by the person who gave the consent or by a successor in title to that person; or
  - (b) the holder of the licence is no longer the owner of the land in question.
- (2D) The council may revoke or suspend the operation of a temporary licence held in respect of land which falls within the said paragraph (b) if circumstances have arisen since the grant of the licence or are about to arise which necessitate such revocation or suspension on the grounds of safety.
- (2E) Where a temporary licence is revoked or suspended under subsection (2D) above, the council shall return to the licensee such proportion of any fee paid for the granting of the licence as is appropriate, taking into account the period for which the licence was granted and the period remaining on the licence when it was revoked or the period for which the licence was suspended, as the case may be.
- (3) Where the holder of a street trading licence is not for the time being exercising his rights under the licence or has indicated in writing to the council his intention not to exercise those rights, a temporary licence authorising street trading from the same street trading pitch may be granted to any other person but subject to the condition that—
- (a) in a case where a temporary licence has been granted but has yet to come into effect; or
  - (b) in a case where a temporary licence is granted for longer than 24 hours and has come into effect,
- the temporary licence shall, if the appropriate notice is given by the holder of the street trading licence, cease to be valid at the end of the day on which the appropriate notice expires.
- (4) Where a temporary licence ceases to be valid under subsection (3) above—
- (a) if it ceases to be valid before it comes into effect, the application fee shall be returned to the applicant by the council;
  - (b) in any other case, the proportion of the application fee which is attributable to any period in respect of which the temporary licence ceases to be valid shall be returned to the applicant by the council.
- (5) In this section "appropriate fee" means such fee as the council may have determined under section 22 (Fees and charges) of this Act and "appropriate notice" means 24 hours notice or 7 days notice where a temporary licence has been granted for longer than 24 hours.
- (6) The council may establish a register of persons to whom they would be prepared to grant temporary licences.

## 22 Fees and charges

- (1) The council may charge to applicants for the grant or variation of street trading licences such fees as are sufficient in the aggregate, taking one year with another, to recover the reasonable costs of dealing with such applications.

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- (2) The council may recover from licence holders such charges as may be sufficient in the aggregate, taking one year with another, to cover the reasonable costs of—
- (a) the collection, removal and disposal of refuse or other services rendered by them to such licence holders; and
  - (b) the cleansing of streets in which street trading takes place in so far as that cleansing is attributable to such trading; and
  - (c) any reasonable administrative costs or other costs not otherwise recovered under this Act incurred in connection with the administration of the provisions of this Act; and
  - (d) the cost of enforcing the provisions of this Act.
- (2A) In calculating the levels of fees and charges under subsections (1) and (2) above, the council shall disregard costs incurred by them in relation to street trading of the type described in subsection (1A) of section 2 (interpretation) of this Act.
- (3) The council may make a charge for the supply of an approved form of identity issued under subsection (9) of section 9 (street trading licences) of this Act and for a plate identifying a street trading pitch; any such charge shall not exceed the council's reasonable costs of supplying those items.
- (4) The council may charge an annual fee for registration or renewal of registration in the register established under subsection (6) of section 21 (temporary licences) of this Act, sufficient in the aggregate, taking one year with another, to cover the council's cost of administering the registration scheme.
- (5)
  - (a) The council may at the request of a majority of licence holders in a particular market or area provide other services to licence holders in that market or area;
  - (b) The cost of these services may be included in the charge referred to in subsection (2) above provided that those costs are only included in the charges made to the licence holders in that particular market or area;
  - (c) At any time a majority of licence holders in a particular market or area may request the council to cease to provide such services and the council shall, subject to any contractual arrangements, accede to such a request within three months of the request.
- (6) Without prejudice to the generality of subsection (2) above it shall be lawful for the council to make a lower charge to licence holders who pay charges in full in advance or in full by means of standing order or direct debit.
- (7) The council may require that an application for a licence or for variation of a licence under this Act be accompanied by the whole or part of the fee determined under subsection (1) above.
- (8) The council may determine that a fee be charged on application for the grant of a temporary licence under section 21 (temporary licences) of this Act, and in determining the amount of such fees they shall have regard to the matters specified in subsections (1), (2) and where appropriate (5) above and such fees shall be included in the computation for the purposes of determining the charges under subsections (1) and (2) above.
- (9) The council shall not determine or vary charges made under subsection (2) above unless they have first given notice in writing to—
- (a) all licence holders who would be affected by the proposal; and
  - (b) any body which appears to the council to represent such licence holders.

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- (10) The notice shall—
- (a) give details of proposed charges;
  - (b) state that representations may be made regarding the proposed charges by the date specified in the notice as the due date which date shall be not less than 28 days after the notice has been given;
  - (c) be accompanied by a statement showing how the proposed charges have been computed.
- (11) Within 21 days of the giving of the notice any body representative of licence holders may ask the council for such further information or explanations with regard to the proposed charges as the body concerned may reasonably require to ascertain whether the proposed charges are reasonable and in accordance with the provisions of this section and as soon as reasonably practicable the council shall comply with the request.
- (12) Where a request under subsection (11) above is made the period within which representations may be made shall be extended by the number of days in the period beginning with the date on which the request is made and ending on the date that it is complied with.
- (13) As soon as practicable after the expiry of the period specified in subsection (10) above, with any extension under subsection (12) above, the council shall consider all representations received by that date and may at their discretion consider representations received after that date.
- (14) The council shall give to any person who may make representations by the due date an opportunity to make oral representations to the council and may at their discretion give to other persons making representations a similar opportunity.
- (15) As soon as practicable the council shall by notice in writing inform all licence holders affected by the council's decision as to the determination or variation of fees or charges.
- (16) The fees and charges as determined or varied by the council shall come into force on a date set by the council which shall be not less than 14 days from the date on which the decision as to the determination or variation of fees or charges was made.

### **23 Receptacles and containers**

- (1) The council may sell or let on hire or otherwise provide to any person holding a street trading licence or a temporary licence under this Act receptacles for use by him in street trading.
- (2) The council may provide and maintain accommodation for the storage of receptacles and containers for the deposit of refuse arising in the course of street trading and for that purpose may—
  - (a) adapt any premises or erect any buildings on any land belonging to them but not already appropriated for such purpose; and
  - (b) make such reasonable charges as they think fit for the use of such accommodation.

### **24 Offences**

Any person who—

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- (a) without reasonable excuse contravenes any of the conditions of a street trading licence or a temporary licence; or
- (b) in connection with an application for a street trading licence or a temporary licence or in completing a notice in accordance with subsection (4) of section 27B (seizure: notices) of this Act makes a statement which he knows to be false in a material particular; or
- (c) resists or intentionally obstructs an authorised officer in the execution of his duties under this Act; or
- (d) fails on demand without reasonable excuse in the case of an individual licence holder to produce to an authorised officer or to a constable his licence or other approved form of identity issued by the council for the purposes of this Act, or, in the case of an individual carrying on ice cream trading under a licence granted to a company incorporated under the Companies Acts or to a partnership or unincorporated association, to produce the photograph required by subsection (8) of section 9 (Street trading licences) of this Act,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **25 Power to remove receptacles**

- (1) Where any receptacle used by a licence holder is not removed to a place of storage on the cessation of trading on any day it shall be lawful for the council to cause it to be removed to a place of storage and to recover from the licence holder the reasonable costs incurred by them in removing and storing the receptacle.
- (2) Such reasonable charges as the council may incur in respect of the cost of removal and storage of a receptacle in pursuance of subsection (1) above, shall be payable by the licence holder before the return of the receptacle to him.
- (3) The provisions of subsection (1) above are without prejudice to the power of the council to take other enforcement action against the licence holder for any breach of the conditions of his licence arising from the failure to remove the receptacle.
- (4) If a receptacle removed under subsection (1) above is not recovered by the licence holder within three months of the date it was removed by the council it shall be lawful for the council to dispose of the receptacle in any way they think fit; the council shall take reasonable steps to sell the receptacle at the best possible price which can reasonably be obtained before disposing of it in any other manner.

## **26 Employment of assistants**

A person holding a street trading licence or a temporary licence may employ any other person to assist him in the conduct of street trading authorised by the licence but if any person employed by a licence holder, whether or not the licensed holder is present, fails to comply with the conditions of the \*\* licence held by his employer such failure shall be deemed to be a failure by the licence holder.

## **27 Unlicensed street trading**

- (1) A person who is not the holder of a street trading licence or a temporary licence and who engages in street trading whether or not from a stationary position in the city shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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- (2) Any person who is the holder of a street trading licence or a temporary licence and who engages in street trading whether or not from a stationary position in the city on a day or in a place not specified in that licence without the council's specific permission in writing shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) In any proceedings for an offence under this section or for an offence of aiding, abetting, counselling or procuring the commission of an offence under this section where it is shown that—
- (a) any article or thing was displayed (whether or not in or on any receptacle) in any street; or
  - (b) any other article or thing of a similar kind to any article or thing referred to in sub-paragraph (a) above was in the possession of or under the control of any person who was displaying an article or thing; or
  - (c) any receptacle or equipment was used in the display of any article or thing in any street; or
  - (d) any receptacle or equipment used in the provision of any service was available in any street in such circumstances that a service was being offered;
- the article, thing, receptacle or equipment concerned shall be deemed to have been used for purposes for which a street trading licence was required unless it can be proved to the satisfaction of the court that the article, thing, receptacle or equipment was brought into the street for some purpose other than street trading.
- (4) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of the offence and liable to the same maximum penalty as the body corporate.

## 27A Seizure

- (1) Subject to section 27G (seizure of perishable items) of this Act, if an authorised officer or a constable has reasonable grounds for suspecting that a person has committed an offence under section 27 (unlicensed street trading) of this Act 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 section 27E (forfeiture of seized items by court) of this Act.
- (2) 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 5 (designation of streets and specification of articles) of this Act and 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.

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- (3) An authorised officer or constable may also seize any receptacle or equipment (other than a motor vehicle) which—
- (a) is in a street; and
  - (b) he has reasonable cause to believe is intended to be used in connection with an offence under the said section 27 involving the sale, offer for sale, display, or exposing for sale of refreshments.
- (4) 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 (1) to (3) above.

### **27B Seizure: notices**

- (1) In this section, "relevant item" means—
- (a) any receptacle used in the sale, offer for sale, display, or exposing for sale of refreshments which has been seized under section (1) or (2) of section 27A (seizure) of this act;
  - (b) any receptacle or equipment seized under subsection (3) of that section.
- (2) An authorised officer or a constable—
- (a) may give a notice under this section to the person from whom a relevant item falling within subsection (1)(a) above was seized (but no such notice may be given under this paragraph in respect of a motor vehicle);
  - (b) shall give a notice under this section to the person from whom a relevant item falling within subsection (1)(b) above was seized,
- and any such notice must be given as soon as reasonably practicable after the item was seized.
- (3) A notice under this section shall be in such form as the council may prescribe, and shall—
- (a) explain that unless the recipient of the notice completes it in accordance with subsection (4) below and then returns it to the council in accordance with subsection (5) below, the council may dispose of the relevant item in question in accordance with section 27D (disposal of seized objects by council) of this Act; and
  - (b) set out—
    - (i) the address to which the completed notice should be returned;
    - (ii) the date by which it must be returned (which must be no earlier than the date on which expires the period of 14 days beginning with the date on which the notice was given under subsection (2) above).
- (4) A notice under this section is completed by writing, in the appropriate place on the notice—
- (a) the name and full postal address of the recipient of the notice under subsection (2) above; and
  - (b) (in the case of a notice given in accordance with subsection (2)(a) above) confirmation that that person—
    - (i) intends to contest any criminal proceedings brought in respect of the alleged offence in respect of which the item in question was seized;



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- (ii) if not, that he requires the council to make a complaint for a disposal order under section 27I (disposal orders) of this Act in respect of the relevant item in question; and
  - (c) (in the case of a notice given in accordance with subsection (2)(b) above) confirmation that that person requires the council to make a complaint for a disposal order under the said section 27I in respect of the relevant item in question; and
  - (d) the signature of that person; and
  - (e) the date on which it was signed.
- (5) A notice under this section, once completed, is returned by delivering it or sending it by post to the address set out on the notice as mentioned in subsection (3)(b)(i) above on or before the date as mentioned in that subsection.
- (6) If a notice given in accordance with subsection (2) above is completed and returned in accordance with subsections (4) and (5) above the council must, no later than the date on which expires the period of 28 days beginning with the date on which the notice was received by them—
- (a) make a complaint to the magistrates' court for a disposal order under section 27I (disposal orders) of this Act in respect of the relevant item in question; or
  - (b) return the relevant item in question to the person whose name and address are written on the returned notice,
- unless, before the expiry of that period, an information has been laid and not withdrawn in respect of any alleged offence in respect of which the item was seized.

### **27C Return of seized items**

- (1) The provisions of this section shall have effect where any item is seized under subsection (1) of section 27A (seizure) of this Act (except where a notice is given under section 27B(2)(a) (seizure: notices) in respect of the item) or is seized and retained because it is required for evidential purposes under subsection (2) of the said section 27A and references in those provisions to proceedings are to proceedings in respect of the alleged offence in relation to which the item is seized.
- (2) Subject to subsection (6) below, following the conclusion of the proceedings the item shall be returned to the person from whom it was seized unless—
- (a) the court orders it to be forfeited under section 27E (forfeiture of seized items by the court) of this Act; or
  - (b) 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.
- (3) Where after 28 days any costs awarded by the court to the council have not been paid to the council in full, the item may be disposed of in any way the council thinks fit and any sum obtained by the council in excess of the costs awarded by the court shall be returned to the person to whom the item belongs and when any item 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 item.
- (4) Subject to subsection (5) below, where a receptacle seized under subsection (1) of the said section 27A is a motor vehicle used for ice cream trading the council or the Commissioner (as the case may be) shall, within three days of the receipt of an

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application in writing by the owner or registered keeper of the vehicle, permit him to remove it.

- (5) Subsection (4) above shall not apply where—
- (a) the owner or registered keeper of the vehicle has been convicted of an offence under this Act or Part III of the London Local Authorities Act 1990; or
  - (b) the owner or registered keeper of the vehicle is being prosecuted for a previous alleged offence under this Act or Part III of the said Act of 1990; or
  - (c) the vehicle has been used in the commission of such an offence or previous alleged offence,
- if the offence or previous alleged offence was committed or is alleged to have been committed no more than three years before the seizure and (in the case of an alleged offence) the proceedings are continuing.
- (6) Subject to subsection (8) below, if no proceedings are instituted before the expiration of a period of 28 days beginning with the date of seizure, or any proceedings instituted within that period are discontinued, at the expiration of that period or, as the case may be, on the discontinuance of the proceedings, the item shall be returned to the person from whom it was seized unless it has not proved possible, after diligent enquiry, to identify that person or ascertain his address.
- (7) Subsection (8) below applies where the item is not returned because—
- (a) it has not proved possible to identify the person from whom it was seized or ascertain his address; or
  - (b) the person from whom it was seized and the owner (if different) have disclaimed or refused to accept it.
- (8) Where this subsection applies, the council may make a complaint to the magistrates' court for a disposal order under section 27I (disposal orders) of this Act (whether or not proceedings for an offence under this section have been commenced).

### **27D Disposal of seized objects by council**

- (1) The council may, in such manner as they think fit, dispose of—
- (a) any relevant item (within the meaning of section 27B (seizure: notices) of this Act) seized under subsection (1) or (2) of section 27A (seizure) of this Act if, in respect of the alleged offence in question—
    - (i) a fixed penalty is paid in accordance with section 16 of the [London Local Authorities Act 2004 \(c. i\)](#) before the expiry of the period mentioned in subsection (2) of that section; and
    - (ii) the fixed penalty notice contained or was accompanied by written notice that the recipient could require the council on or before the time when the fixed penalty was paid to make a complaint for a disposal order under section 27I (disposal orders) of this Act in respect of the relevant item in question; and
    - (iii) no such requirement was made of the council on or before that time; or
  - (b) any such relevant item seized under subsection (1), (2) or (3) of the said section 27A if a notice was given under section 27B (seizure: notices) as soon as reasonably practicable after the article or thing was seized and the notice was not completed and returned to the council in accordance with subsections (4) and (5) of that section.

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- (2) The council may recover their costs of disposing of a relevant item under subsection (1) above from the person from whom the object was seized.
- (3) Where a requirement of the sort mentioned under subsection (1)(a)(ii) was made on or before the time when the fixed penalty was paid, the council must make a complaint for a disposal order under section 27I (disposal orders) of this Act in respect of the relevant item in question.

### **27E Forfeiture of seized items by court**

- (1) Subject to subsection (2) below the court by or before which a person is convicted of an offence under section 27 (unlicensed street trading) of this Act or for an offence of aiding, abetting, counselling or procuring the commission of an offence under that section may order anything produced to the court, and shown to the satisfaction of the court to relate to the offence, to be forfeited and dealt with in such manner as the court may order.
- (2) The court shall not order anything to be forfeited under subsection (1) above where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made and in considering whether to make such an order a court shall have regard—
  - (a) to the value of the property; and
  - (b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).
- (3) 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 the said section 27.

### **27F Compensation**

- (1) This section shall have effect where—
  - (a) an item is seized under subsections (1) to (3) of section 27A (seizure) of this Act; and
  - (b) either—
    - (i) not less than six months have passed since the date of the seizure and no information has been laid against any person for an offence under section 27 (unlicensed street trading) in respect of the act or circumstances which occasioned the seizure; or
    - (ii) proceedings for such an offence have been brought and either the person charged has been acquitted (whether or not on appeal) and the time for appealing against or challenging the acquittal (where applicable) has expired without an appeal or challenge being brought, or the proceedings (including any appeal) have been withdrawn by, or have failed for want of prosecution by, the person by whom the original proceedings were brought; or
    - (iii) (in the case of a relevant item (within the meaning of section 27B (seizure: notices) of this Act) seized under subsection (3) of section 27A (seizure) of this Act) the council has failed to comply with subsection (6) of section 27B (seizure: notices) of this Act.

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- (2) When this section has effect a person who has or at the time of seizure had a legal interest in the item seized may recover compensation from the council or (where it is seized by a constable) the Commissioner by civil action in the County Court in respect of any loss suffered by him as a result of the seizure and any such compensation shall not be included in the computation for calculating charges under section 22 (fees and charges) of this Act.
- (3) The court may only make an order for compensation under subsection (2) above if satisfied that seizure was not lawful under subsections (1) to (4) of section 27A (seizure) of this Act.
- (4) Any sums accruing to the council arising out of this section shall be included in the computation for calculating charges under the said section 22 of this Act.

### **27G Seizure of perishable items**

- (1) No item which is of a perishable nature (in this section referred to as a "perishable item") shall be seized under the provisions of subsection (1) of section 27A (seizure) of this Act unless the council gives a certificate under subsection (2) below to the person from whom the item is seized.
- (2) Where a perishable item is seized under the said subsection (1), the person from whom it is seized must be given a certificate—
  - (a) stating the effect of subsection (3) below and subsection (2) of section 27E (forfeiture of seized items by court) of this Act;
  - (b) giving the address from which the article or thing may be collected;
  - (c) informing the recipient that if he is not the owner of the article or thing, then he should give the owner the information referred to in paragraphs (a) and (b) above.
- (3) If the person from whom a perishable item was so seized fails to collect it within 48 hours of the seizure the council may dispose of it.
- (4) When any perishable item is disposed of by the council under subsection (3) above, the council shall have a duty to secure the best possible price which can reasonably be obtained for it.
- (5) Subsections (1) to (4) of section 27C (return of seized items) and subsections (1) to (3) of section 27E (forfeiture of seized items by court) of this Act shall apply to a perishable item seized under section 27A (seizure) of this Act only in cases where the item concerned has not been disposed of by the council at the conclusion of the proceedings in respect of the alleged offence in relation to which the item was seized.
- (6) Subsections (6) to (8) of the said section 27C apply to a perishable item seized under the said section 27A only in cases where the item concerned has not been disposed of by the council at the expiration of the period mentioned in the said subsection (6); otherwise subsections (8) to (11) below shall apply.
- (7) Section 27F (compensation) of this Act shall apply with the omission of subsection (3) in respect of a perishable item seized under the said section 27A in cases where the article or thing concerned has not been disposed of by the council by the time the circumstances mentioned in subsection (1)(b) of the said section 27F arise otherwise subsections (8) to (11) below shall apply.

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- (8) Subsection (11) below shall have effect where the council have disposed of a perishable item under subsection (3) above and any of the following conditions apply.
- (9) The first condition is that no proceedings in respect of the alleged offence in relation to which the article or thing was seized are instituted before the expiration of a period of 28 days beginning with the date of seizure of the article or thing, or any such proceedings instituted within that period are discontinued.
- (10) The second condition is that—
- (a) not less than six months have passed since the date of the seizure and no information has been laid against any person for an offence under section 27 (unlawful street trading) of this Act in respect of the acts or circumstances which occasioned the seizure; or
  - (b) proceedings for such an offence have been brought and either the person charged has been acquitted (whether or not on appeal) and the time for appealing against or challenging the acquittal (where applicable) has expired without an appeal or challenge being brought, or the proceedings (including any appeal) have been withdrawn by, or have failed for want of prosecution by, the person by whom the original proceedings were brought.
- (11) When this subsection has effect a person who has or at the time of seizure had a legal interest in the item seized may recover compensation from the council or (where it is seized by a constable) the Commissioner of Police of the Metropolis by civil action in the County Court in respect of any loss suffered by him as a result of the seizure and any such compensation shall not be included in the computation for calculating charges under section 22 (fees and charges) of this Act.

## **27H Motor vehicles**

- (1) Subsection (4) below applies where the following conditions are met.
- (2) The first condition is that where, in ascertaining the identity of the person from whom a vehicle was seized under subsection (1) or (2) of section 27A (seizure) of this Act, the council has, before the expiry of 14 days from the date of the seizure, made a request to the Secretary of State for the supply of relevant particulars.
- (3) The second condition is that those particulars have not been supplied to the council before the date after which the council would, but for this section, have to return the vehicle in accordance with subsection (6) of section 27C (return of seized items) of this Act.
- (4) Where this subsection applies, the council must return the vehicle to its owner if—
- (a) no proceedings are instituted in respect of the alleged offence in respect of which the vehicle was seized before the expiry of the period of 14 days beginning with the date on which the relevant particulars are supplied; or
  - (b) any such proceedings instituted within that period are discontinued,
- at the expiry of that period or on the discontinuance of the proceedings, as the case may be.
- (5) If the council seeks to return a vehicle in accordance with the said subsection (1) or subsection (2), but the person to whom the council seeks to return the vehicle cannot be found or disclaims or refuses to accept the vehicle, the council may make a complaint for a disposal order in respect of the vehicle under section 27I (disposal orders) of this Act.

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- (6) In this section, "relevant particulars" are particulars relating to the identity of the owner of the vehicle contained in the register of mechanically propelled vehicles maintained by the Secretary of State under the [Vehicle Excise and Registration Act 1994 \(c. 22\)](#).
- (7) The owner of a vehicle for the purposes of this section shall be taken to be the person by whom the vehicle is kept.
- (8) In determining who was the owner of a motor vehicle at any time, it shall be presumed that the owner is the person in whose name the vehicle is at that time registered under the Vehicle Excise and Registration Act 1994.

## **27I Disposal orders**

- (1) This section applies in respect of a complaint made by the council for a disposal order under—
  - (a) subsection (6)(a) of section 27B (seizure: notices) of this Act;
  - (aa) subsection (8) of section 27C (return of seized items) of this Act; or
  - (ab) subsection (3) of section 27D (disposal of seized objects by the council) of this Act; or
  - (b) subsection (5) of section 27H (motor vehicles) of this Act,
 and items that are the subject of the complaint are referred to as "seized items" in this section.
- (2) On a complaint to which this section applies, a magistrates' court if satisfied that the council has made reasonable efforts to identify the person from whom the seized item was seized or its owner, as the case may be, or has made reasonable efforts to return the seized item, may make an order authorising the council—
  - (a) to dispose of the seized item in question; and
  - (b) after payment out of any proceeds arising from the disposal of the expenses incurred in the seizure, storage and disposal, to apply the balance, if any, towards the costs of the council as mentioned in paragraphs (a) to (d) of subsection (2) of section 22 (fees and charges) of this Act.
- (3) The court shall not make a disposal order under subsection (2) above where a person claiming to be the owner of or otherwise interested in the seized item applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.
- (4) Subsection (5) below applies where—
  - (a) a person appears before the court under subsection (3) above to show why the order should not be made; and
  - (b) the court makes an order under subsection (2) above authorising the council to dispose of the item; and
  - (c) the seized item in question is not of sufficient value to defray the expenses of seizing and storing it; and
  - (d) the court is satisfied that the person mentioned in paragraph (a) above was the owner of the seized item in question or was the person from whom it was seized, as the case may be.
- (5) Where this section applies, the court may order that the person mentioned in subsection (4)(a) above pay the expenses, or the balance of the expenses, reasonably incurred by the council in seizing and storing the seized item in question.

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- (6) In considering whether to make an order under subsection (2) above a court shall have regard—
- (a) to the value of the seized item;
  - (b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making); and
  - (c) any other circumstances considered to be relevant.
- (7) The court may make a disposal order under this section notwithstanding that the value of the seized item would exceed the maximum penalty for the offence in respect of which the seized item had originally been seized had the said offence been prosecuted to conviction.
- (8) For the purposes of this section, "owner" in respect of a vehicle, has the same meaning as it has for the purposes of the said section 27H.

## 28 Savings

- (1) Nothing in this Act shall affect the sale or exposure or offer for sale by London Regional Transport or (as the case may be) any of its subsidiaries of refreshments at any shelter or other accommodation provided by either of them under section 65 (refreshment shelters etc.) of the London Passenger Transport Act 1938.
- (2) This Act shall not apply in respect of any land owned by Railtrack PLC or London Regional Transport unless the land forms part of a highway for which the council is responsible as highway authority.
- (3) Nothing in this Act shall afford a defence to a charge in respect of any offence at common law or under an enactment other than this Act.

## 29 Provision as to notices

- (1) Any notice, summons or other document required or authorised to be served or given in writing under this Act may be served or given either—
  - (a) by delivering it to the person on whom it is to be served or to whom it is to be given; or
  - (b) by leaving it at the usual or last known place of abode or business of that person, or, in a case where an address for service has been given by that person, at that address; or
  - (c) by sending it by ordinary post addressed to that person at his usual or last known place of abode or business, or, in a case where an address for service has been given by that person, at that address; or
  - (d) in the case of a company or body incorporated in England or Wales, by delivering it to the secretary or clerk of the company or body at their registered or principal office, or sending it by ordinary post addressed to the secretary or clerk of the company or body at that office.
- (2) The delivery, in the absence of a holder of a street trading licence from his street trading pitch, of a document or notice to a person appearing to be an assistant employed by that licence holder shall be deemed to be delivery of that document or notice to the licence holder under subsection (1)(a) above.

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- (3) A notice required by this Act to be given shall be deemed to be given on the date it is delivered, left, affixed, or posted in accordance with this section.

### **30 Proof of resolution**

In any proceedings which require proof of the passing of a resolution under this Act it shall be presumed, unless the contrary is proved, that the said resolution was duly passed and that any requirements relating to the passing of the resolution and the giving of any notices or information before or after the passing of the resolution were properly complied with.

### **31 Exercise of powers**

Notwithstanding the provisions of section 101 of the Local Government Act 1972 the council's powers under this Act may be exercised by a committee, sub-committee, officer or panel of officers.

### **32 Disapplication of Part III of London Local Authorities Act 1990**

- (1) Subject to subsection (2) below, on the date of commencement of this Act Part III (street trading) of the London Local Authorities Act 1990 shall cease to have effect in the city and on that date all—
- (a) applications made;
  - (b) licences issued;
  - (c) standard conditions prescribed;
  - (d) fees and charges set;
  - (e) designating, specifying and prohibition resolutions passed;
  - (f) regulations for determining applications made; and
  - (g) appeals made,
- under that Act shall be deemed to have been made, issued, prescribed, set or passed under this Act.
- (2) In any case where, before the date of commencement of this Act, an application has been made for the renewal of a street trading licence under Part III of the said Act of 1990, and—
- (a) no decision on the application has been notified to the applicant; or
  - (b) the council has refused renewal of the licence or granted a licence with conditions different from those of the existing licence,
- Part III of the Act of 1990 shall continue to apply to the application.”