



# Nottingham City Council Act 2013

## 2013 CHAPTER iii

An Act to to confer powers on Nottingham City Council for the better control of street trading in the city of Nottingham. [28 February 2013]

WHEREAS—

- (1) The city of Nottingham (hereinafter called “the city”) is a district under the management and local government of Nottingham City Council (hereinafter called “the council”):
- (2) Certain powers relating to street trading in the city are exercisable by the council under the Local Government (Miscellaneous Provisions) Act 1982 and for their better enforcement it is expedient to amend that Act in its application to Nottingham and supplement those powers:
- (3) The objects of this Act cannot be attained without the authority of Parliament:
- (4) In relation to the promotion of the Bill for this Act the requirements of section 239 of the Local Government Act 1972 have been observed:

May it therefore please your Majesty that it may be enacted, and be it enacted, by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *Introductory*

#### **1 Citation**

This Act may be cited as the Nottingham City Council Act 2013.

#### **2 Interpretation**

In this Act—

“the 1982 Act” means the Local Government (Miscellaneous Provisions) Act 1982;

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“authorised officer” means an officer of the council authorised by the council in writing in compliance with section 13 to act for the purposes of this Act;

“the city” means the city of Nottingham;

“the council” means the Nottingham City Council;

“a relevant offence” means an offence—

- (a) under paragraph 10 of Schedule 4 to the 1982 Act; or
- (b) of aiding, abetting, counselling or procuring the commission of an offence under that paragraph, committed on or after the day on which this Act came into force.

### 3 Application

This Act applies so long as any resolution by the council under section 3 of the 1982 Act remains in force.

#### *Application of 1982 Act*

### 4 Meaning of “street trading”

- (1) In their application to the city, the provisions of Schedule 4 to the 1982 Act shall apply with the following modification.
- (2) In paragraph 1(1), for the definition of “street trading”, there is substituted—
  - ““street trading” means, subject to sub-paragraph (2) below—
  - (a) the selling or exposing or offering for sale of any article (including a living thing) in a street; or
  - (b) the purchasing of or offering to purchase any ticket for gain or reward”.

### 5 Pedlars

- (1) In their application to a designated area of the city, the provisions of Schedule 4 to the 1982 Act shall apply with the modifications set out in subsections (2) and (3).
- (2) In paragraph 1(2)(a), there are inserted, after the reference to the Pedlars Act 1871, the words “provided the trading is carried out in accordance with subparagraph (2A) below”.
- (3) After paragraph 1(2), the following sub-paragraphs are inserted—
  - “(2A) Trading is carried on in accordance with this sub-paragraph if—
  - (a) it is carried out only by means of visits from house to house; or
  - (b) it does not include the trading of tickets and all articles intended to be used for any purpose connected with the trading are carried in either or both of the following ways—
    - (i) they are carried, without any other means of support, by the holder of the pedlar’s certificate during the time in which the trading takes place; or
    - (ii) they are carried in a single, wheeled trolley which is pushed or pulled by the holder of the pedlar’s certificate and in relation to which the condition specified in

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subparagraph (2B) is fulfilled and, if applicable, the condition specified in sub-paragraph (2C) is fulfilled.

(2B) The condition of this sub-paragraph is that the trolley (excluding its handle and any display of articles on the trolley) does not at any point exceed—

- (a) a width of 0.75 metres;
- (b) a depth (front to back) of 0.5 metres;
- (c) a height of 1.25 metres.

(2C) The condition of this sub-paragraph is that if articles are displayed on the trolley, the trolley (including its handle) and the display together must not at any point exceed—

- (a) a width of 0.88 metres;
- (b) a depth (front to back) of 0.83 metres;
- (c) a height of 1.63 metres.

(2D) Dimensions for the purposes of sub-paragraphs (2B) and (2C) are those measured in a horizontal plane (for width and depth) and a vertical plane (for height) when the trolley is in its intended resting position.

(2E) In sub-paragraphs (2A) to (2D) “trolley” means any item designed or adapted for use as a container for articles and in sub-paragraph (2B) to (2D) “display” includes, as well as the articles displayed, any stand, board, structure or other thing attached to the trolley and used to display the articles.”.

- (4) Nothing in this section shall be taken to extend the range of activities that comprise acting as a pedlar.
- (5) In subsection (1) a “designated area” means an area of the city designated for the purposes of this section by resolution of the council in accordance with subsections (7) and (8).
- (6) A designation for the purposes of this section shall have effect at all times or during such periods as may be specified in the resolution.
- (7) The council may designate an area for the purposes of this section only if it has reason to believe that it is necessary to do so to ensure road safety or prevent obstruction of the highway.
- (8) The provisions of sub-paragraphs (2) to (10) and (13) of paragraph 2 of Schedule 4 to the 1982 Act shall apply to a resolution under this section as they apply to a resolution under that paragraph but as if—
  - (a) in sub-paragraph (2) for “street” there were substituted “area”;
  - (b) in sub-paragraph (3)(b) for “the street” there were substituted “the area” and for “that street” there were substituted “a street in that area”;
  - (c) in sub-paragraph (4) for “to a street” there were substituted “to an area containing a street” and for “designates as a licence street” there were substituted “relates to an area containing”;
  - (d) in sub-paragraph (8) for “such” to the end of the sub-paragraph there were substituted “a resolution for the purposes of section 5 of the Nottingham City Council Act 2013 which relates to the area or any part of it”.

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### *Fixed penalties*

#### **6 Fixed penalty offences**

- (1) Where on any occasion an authorised officer finds a person who he has reason to believe has on that occasion committed a relevant offence in the city, the officer may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.
- (2) Section 7 shall apply in respect of fixed penalty notices under this section.
- (3) An authorised officer may not exercise the powers under subsection (1) and section 7 shall have no effect until the levels of fixed penalties set by the council in accordance with section 8 have come into force for the first time in accordance with section 9.

#### **7 Fixed penalty notices**

- (1) The provisions of this section shall have effect in relation to notices (in this section referred to as “fixed penalty notices”) which may be given under section 6 by an authorised officer in respect of a relevant offence.
- (2) Where a person is given a fixed penalty notice in respect of a relevant offence—
  - (a) no proceedings shall be instituted for that offence before the expiration of 14 days following the date of the notice; and
  - (b) he shall not be convicted of that offence if he pays the fixed penalty before the expiration of that period.
- (3) A notice under this section shall give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information about the offence and shall state—
  - (a) the period during which, by virtue of subsection (2), proceedings will not be taken for the offence;
  - (b) the amount of the fixed penalty; and
  - (c) the name of the person to whom and the address at which the fixed penalty may be paid.
- (4) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of the penalty (in cash or otherwise).
- (5) Where a letter is sent in accordance with subsection (4), payment shall be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
- (6) The form of notices under this section shall—
  - (a) be such as the council shall prescribe; and
  - (b) be in substantially the same form as notices prescribed by the Secretary of State under section 88(5) of the Environmental Protection Act 1990 (fixed penalty notices for leaving litter).
- (7) The fixed penalty payable in pursuance of a fixed penalty notice under this section shall be paid to the council.

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- (8) Section 10 shall have effect with respect to financial provisions relating to fixed penalties payable in pursuance of a fixed penalty notice under this section.
- (9) In any proceedings a certificate which—
- (a) purports to be signed by or on behalf of the chief finance officer of the council; and
  - (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,
- shall be evidence of the facts stated.
- (10) In this section, “chief finance officer”, in relation to the council, means the person having responsibility for the financial affairs of the council.

## **8 Levels of fixed penalties**

- (1) It shall be the duty of the council to set the levels of fixed penalties payable to them under section 7.
- (2) Different levels may be set for different areas in the city and for different cases or classes of case.
- (3) In setting the level of fixed penalty under subsection (1) the council may take account of—
- (a) any reasonable costs or expected costs incurred or to be incurred in connection with the administration of the provisions of Schedule 4 to the 1982 Act; and
  - (b) the cost or expected cost of enforcing the provisions of that Schedule.
- (4) Levels of fixed penalties set by the council in accordance with this section may only come into force in accordance with section 9.
- (5) The council shall, in a notice in a local newspaper circulating in the city, publish the levels of fixed penalties which have been set by them in accordance with this section.

## **9 Fixed penalties: reserve powers of Secretary of State**

- (1) Where the council set any levels of fixed penalties under section 8(1), they shall notify the Secretary of State of the levels of fixed penalties so set.
- (2) Where notification of any levels of fixed penalties is required to be given under subsection (1), the levels of fixed penalties shall not come into force until after the expiration of—
- (a) the period of one month beginning with the day on which the notification is given; or
  - (b) such shorter period as the Secretary of State may allow.
- (3) If, before the expiration of that period, the Secretary of State gives notice to the council that he objects to the levels of fixed penalties on the grounds that some or all of them are or may be excessive, those levels of fixed penalties to which he objects shall not come into force unless and until the objection has been withdrawn.
- (4) If, at any time before the levels of fixed penalties required to be notified under subsection (1) to the Secretary of State have come into force, the Secretary of State considers that some or all of them are excessive, he may make regulations setting the levels of fixed penalties.

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- (5) Levels of fixed penalties set under subsection (4) must be no higher than those notified under subsection (1).
- (6) Regulations under subsection (4) are without prejudice to the duty imposed on the council by section 8(1); but where the Secretary of State makes any such regulations the council must not set any further fixed penalties under the said subsection (1) until after the expiration of the period of 12 months beginning with the day on which the regulations are made.
- (7) The power to make regulations conferred by subsection (4)—
  - (a) includes power to make provision in respect of such cases only as may be specified in the regulations and to make different provision for different circumstances; and
  - (b) shall be exercised by statutory instrument subject to annulment in pursuance of a resolution in either House of Parliament.

## **10 Financial provisions**

- (1) The council shall keep an account of their income and expenditure in respect of the administration and enforcement of sections 6 and 7.
- (2) At the end of each financial year any deficit in the account shall be made good out of the general rate fund, and (subject to subsection (3)) any surplus shall be applied to purposes connected with the improvement of the amenity of the city or any part of the city.
- (3) If the council so determine, any amount not applied in any financial year, instead of being or remaining so appropriated, may be carried forward in the account kept under subsection (1) to the next financial year.
- (4) The council shall, after each financial year, report to the Secretary of State on any action taken by them, pursuant to subsection (2) or (3), in respect of any deficit or surplus in their account for the year.
- (5) The report under subsection (4) shall be made as soon after the end of the financial year to which it relates as possible.

### *Provision of information*

## **11 Provision of information to authorised officer**

- (1) This section applies where an authorised officer has reasonable grounds for believing that a relevant offence has been committed or attempted, or is being committed or attempted.
- (2) It is an offence for the relevant person on being requested by the authorised officer to furnish his name and address for service of a summons or fixed penalty notice, to—
  - (a) fail to furnish a name; or
  - (b) furnish a false name; or
  - (c) furnish a false address.
- (3) A person guilty of an offence under subsection (2)(a) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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- (4) A person guilty of an offence under subsection (2)(b) or (c) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) An authorised officer shall produce his authority if required to do so by the relevant person.
- (6) In this section “the relevant person” means any person whom the authorised officer has reasonable grounds to believe has committed or has attempted to commit the offence or is in the course of committing or attempting to commit it.

## **12 Provision of information by the council**

- (1) The council shall publish on its internet website information about—
  - (a) the provisions of this Act and of the 1982 Act as amended by this Act; and
  - (b) its policies as to enforcement of those provisions.
- (2) The information published shall, in particular, be such as the council reasonably considers is sufficient to enable those wishing to trade in the city to understand the circumstances in which they may lawfully do so.

### *Training*

## **13 Training**

The council shall not authorise an officer to act for the purposes of this Act unless they are satisfied that the officer has received adequate training in acting for those purposes, with particular reference to ensuring that those trading lawfully in accordance with the 1982 Act are not prevented from doing so.