



## 2001 CHAPTER 8

### *Enforcement*

#### **Identification of street traders**

**16.—(1)** A licence holder—

- (a) shall, at all times while engaged in street trading, carry with him his street trading licence or temporary licence; and
- (b) shall, on demand by an authorised officer or a constable, produce the licence for examination.

(2) Where any person appears to an authorised officer or a constable to be, or to have been, engaged in street trading, the authorised officer or the constable may require that person to state his name and address.

#### **Unlicensed street trading**

**17.—(1)** A person who—

- (a) engages in street trading in a district and is not the holder of a street trading licence or a temporary licence granted by the council for the district;
- (b) is the holder of a street trading licence and contravenes a condition of a kind specified in paragraph (a) or (c) of section 7(1); or
- (c) is the holder of a temporary licence and engages in street trading on a day or in a place not specified in that temporary licence;

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

(2) Where, in any proceedings for an offence under this section, it is shown that any article or thing was displayed (whether or not in or on any receptacle) in any street, the article or thing shall be presumed to have been exposed for sale by

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the person having, or appearing to have, possession or control of it at such time and in such position as it was displayed, unless it is shown to the satisfaction of the court that the article or thing was brought into the street for some purpose other than that of selling it in the street.

(3) Where, in any proceedings for an offence under this section, it is shown that any receptacle or equipment used in the supply of any service was available in any street in such circumstances that an offer to supply the service was being made, the person having, or appearing to have, possession or control of the receptacle or equipment shall be presumed to have offered to supply the service at such time and in such position as the receptacle or equipment was available, unless it is shown to the satisfaction of the court that the receptacle or equipment was brought into the street for some purpose other than that of offering to supply the service in the street.

### **Powers of seizure**

**18.—**(1) If an authorised officer or a constable has reasonable grounds for suspecting that a person has committed an offence under section 17, he may seize—

- (a) any article or thing being offered or exposed for sale by that person;
- (b) any other article or thing of a similar nature to that being offered or exposed for sale which is in the possession or under the control of that person; and
- (c) any receptacle or equipment being used by that person;

which may be required to be used as evidence in any proceedings or may be the subject of an application for a forfeiture order under section 19.

(2) Where an authorised officer or a constable seizes any article or thing which is a living creature or is, in his opinion, of a perishable nature, he may produce the article or thing to a justice of the peace.

(3) A justice of the peace to whom any article or thing is produced under subsection (2)—

- (a) may give to the authorised officer or constable a certificate in writing, describing the article or thing produced and containing such other particulars concerning the article or thing as the authorised officer or constable brings to his attention; and
- (b) may order that the article or thing be dealt with (whether by disposing of it or otherwise) in such manner as appears appropriate to him.

(4) A certificate given by a justice of the peace under subsection (3)(a) shall be sufficient evidence of the facts stated unless the contrary is proven.

(5) Subject to subsection (6), if—

- (a) before the expiration of the period of 28 days from the date of the seizure of an article, thing, receptacle or equipment under subsection (1), no

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complaint has been made to institute proceedings against the person from whom it was seized; or

- (b) such a complaint has been made within that period, but the proceedings are discontinued;

the article, thing, receptacle or equipment shall be returned to the person from whom it was seized.

- (6) Subsection (5) does not apply—

- (a) where an article or thing has been disposed of in pursuance of an order under subsection (3)(b); or
- (b) where it has not proved possible to identify the person from whom an article, thing, receptacle or equipment was seized, and ascertain his address.

(7) Where, for the reason mentioned in subsection (6)(b), an article, thing, receptacle or equipment has not been returned to the person from whom it was seized, the council (whether the article, thing, receptacle or equipment was seized by an authorised officer or by a constable) may apply to a court of summary jurisdiction for an order as to the manner in which it should be dealt with.

(8) In this section and sections 19 and 20, “proceedings” means proceedings for an offence under section 17 in respect of the activities that gave rise to the seizure of the article, thing, receptacle or equipment.

### **Forfeiture**

- 19.—**(1) This section applies where in any proceedings—

- (a) a court convicts a person of an offence under section 17, and
- (b) an application is made to the court for the forfeiture under this section of any article, thing, receptacle or equipment seized under section 18.

(2) The court may order that any such article, thing, receptacle or equipment produced to the court shall be forfeited under this section and dealt with in such manner as appears appropriate to the court.

(3) Subsections (4) and (5) shall have effect where an order has been made under subsection (3)(b) of section 18 with respect to any article or thing.

(4) If the order made under that subsection did not require the article or thing to be disposed of, the court may order that the article or thing shall be forfeited under this section and dealt with in such manner as appears appropriate to the court.

(5) If the order made under that subsection did require the article or thing to be disposed of, the court may order that the article or thing shall be treated as forfeited under this section and, if the article or thing was disposed of by selling

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it, that the proceeds of the sale shall be dealt with in such manner as appears appropriate to the court.

(6) The court shall not make an order under this section unless it affords to any person—

- (a) claiming to be the owner of, or otherwise legally interested in, the article, thing, receptacle or equipment, and
- (b) applying to the court in that behalf,

an opportunity to show cause why the order should not be made.

(7) If, at the conclusion of the proceedings the court does not order the article, thing, receptacle or equipment to be forfeited under this section, it shall be returned to the person from whom it was seized.

### **Compensation**

**20.—**(1) Subject to the provisions of this section, where any article, thing, receptacle or equipment is seized under section 18 and—

- (a) not less than 6 months have passed since the date of the seizure and no complaint has been made to institute proceedings against any person; or
- (b) proceedings have been brought and—
  - (i) 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
  - (ii) proceedings (including any appeal) have been withdrawn by, or failed for want of prosecution by, the person by whom the original proceedings were brought;

the person who is, or at the time of the seizure was, the owner of or otherwise legally interested in the article, thing, receptacle or equipment seized, may recover in any court of competent jurisdiction, compensation in respect of any loss suffered by him as a result of the seizure.

(2) Where—

- (a) any article or thing seized under section 18 has been dealt with in accordance with an order under subsection (3)(b) of that section; and
- (b) proceedings have been brought, and—
  - (i) the person charged has been convicted, but the court has refused to make a forfeiture order under section 19, and
  - (ii) the time for appealing against or challenging that refusal has expired without an appeal or challenge being brought,

the person who is, or at the time of the seizure was, the owner of or otherwise legally interested in the article or thing seized, may recover in

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any court of competent jurisdiction, compensation in respect of the loss of, or any deterioration in the condition of, the article or thing seized.

(3) Compensation under subsection (1) or (2) shall be recoverable from—

- (a) the council, if the seizure was carried out by an authorised officer;
- (b) the Chief Constable, if the seizure was carried out by a constable.

(4) The court shall not make an order for compensation under this section unless it is satisfied that the seizure was not lawful under section 18.

### **Other offences**

**21.** Any person who—

- (a) without reasonable excuse contravenes any condition of a street trading licence, which is a condition of a kind specified in paragraph (b), (d), (e), (f) or (g) of section 7(1);
- (b) fails on demand and without reasonable excuse to produce his street trading licence or temporary licence to an authorised officer or a constable;
- (c) fails, on being required to do so under section 16(2), to state his name and address or states a name or an address that is incorrect;
- (d) in connection with an application for the grant, renewal or variation of a street trading licence or the grant of a temporary licence makes a statement which he knows to be false in a material particular;
- (e) resists or intentionally obstructs an authorised officer in the execution of his duties under this Act,

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

### **Fixed penalty offences**

**22.** Schedule 1, which makes provision for the discharge of any liability to conviction of an offence under paragraph (a) or (b) of section 21 by payment of a fixed penalty, shall have effect.

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