

SCHEDULE L9

LONDON LOCAL AUTHORITIES ACT 1990 PART III AS HAVING EFFECT IN ACCORDANCE WITH SECTION 6 (STREET TRADING) OF THIS ACT

PART III

STREET TRADING

Unlicensed street trading

- 38 (1) A person who—
- (a) is not the holder of a street trading licence or a temporary licence and who engages in street trading in a borough; or
 - (b) is the holder of a temporary licence and who engages in street trading in a borough on a day or in a place not specified in that temporary licence;
- shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) 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 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 or thing shall be presumed to have been exposed or offered for sale and the receptacle or equipment shall be presumed to have been available for the provision of a service at such time and in such position as it was displayed or available by the person having care or control or appearing to have care and control thereof unless in either case, it is shown to the satisfaction of the court that the article or thing or receptacle or equipment was brought into that street for some purpose other than for the purpose of selling it or exposing or offering it for sale or using it in the course of the provision of the service in a street.
- (3) 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.
- (4) If an authorised officer or a constable has reasonable grounds for suspecting that a person has committed an offence under this section he may seize any article or thing being offered or exposed for sale or receptacle being used by that person which may be required to be used in evidence in any proceedings in respect of that offence, or may be the subject of forfeiture under subsection (5) below, provided that no article or thing which is of a perishable nature shall be seized under the provisions of this subsection.
- (a) The following provisions of this subsection shall have effect where any article or thing (including any receptacle) is seized under subsection (4)

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- above and references in those provisions to proceedings are to proceedings in respect of the alleged offence in relation to which the article or thing is seized.
- (b) Subject to paragraph (e) below, at the conclusion of the proceedings the article or thing shall be returned to the person from whom it was seized unless the court orders it to be forfeited under subsection (5) below.
- (c) Subject to paragraph (d) below, where a receptacle seized under subsection (4) above is a motor vehicle used for ice cream trading, the borough council or the Commissioner of Police of the Metropolis (as the case may be) shall, within three days of the receipt of an application in writing by the owner or registered keeper of the vehicle, permit him to remove it.
- (d) Paragraph (c) above shall not apply where—
- (i) the owner or registered keeper of the vehicle has been convicted of an offence under this Part of this Act; or
 - (ii) the owner or registered keeper of the vehicle is being prosecuted for a previous alleged offence under this Part of this Act; or
 - (iii) 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.
- (e) 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 article or thing shall be returned to the person from whom it was seized unless it has not proved possible, after diligent enquiry, to identify that person and ascertain his address.
- (f) Where the article or thing is not returned because it has not proved possible to identify the person from whom it was seized and ascertain his address the borough council (whether the article or thing was seized by a constable or by an authorised officer) may apply to a magistrates' court for an order as to the manner in which it should be dealt with.
- (5) Subject to subsection (6) below the court by or before which a person is convicted of an offence under this section or for an offence of aiding, abetting, counselling or procuring the commission of an offence under this 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.
- (6) The court shall not order anything to be forfeited under subsection (5) 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—
- (i) to the value of the property; and
 - (ii) 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).
- (7) An authorised officer shall produce his authority if required to do so by the person having care or control of anything seized in pursuance of the powers in subsection (4) above.

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- (8) (a) This subsection shall have effect where—
- (i) an article, thing or receptacle is seized under subsection (4) above; and
 - (ii) (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 this section 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.
- (b) When this subsection has effect a person who has or at the time of seizure had a legal interest in the article, thing or receptacle seized may recover compensation from the borough 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.
- (c) The court may not make an order for compensation under paragraph (b) above unless it is satisfied that seizure was not lawful under subsection (4) above.