



City of Westminster Act 1999

1999 CHAPTER i

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.
- (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

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as the body corporate, shall be guilty of the offence and liable to the same maximum penalty as the body corporate.

- (5) 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—
- (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 subsection (9) below, provided that no article or thing which is of a perishable nature shall be seized under the provisions of this subsection.
- (6) 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.
- (7) 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 (5) and (6) above.
- (8) (a) The following provisions of this subsection shall have effect where any article or thing (including any receptacle or equipment) is seized under subsection (5) above or is seized and retained because it is required for evidential purposes under subsection (6) 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 (f) below, following the conclusion of the proceedings the article or thing shall be returned to the person from whom it was seized unless—
- (i) the court orders it to be forfeited under subsection (9) below; or
 - (ii) 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;
- (c) Where after 28 days any costs awarded by the court to the council have not been paid to the council in full, the article or thing 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 article or thing belongs and when any article or thing 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 article or thing;
- (d) Subject to sub-paragraph (e) below, where a receptacle seized under subsection (5) above 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 application in writing by the owner or registered keeper of the vehicle, permit him to remove it;
- (e) Sub-paragraph (d) above shall not apply where—

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- (i) 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
 - (ii) 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
 - (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;
 - (f) 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;
 - (g) 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 council (whether the article or thing was seized by an authorised officer or a constable) may apply to a magistrates' court for an order as to the manner in which it should be dealt with, and in the case of a sum referred to in subparagraph (c) above the council shall apply to the court for an order directing the disposal of the proceeds.
- (9) Subject to subsection (10) 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.
- (10) (a) The court shall not order anything to be forfeited under subsection (9) 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);
- (b) 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 this section.
- (11) (a) This subsection shall have effect where—
- (i) an article, thing, receptacle or equipment is seized under subsection (5) or (6) above; and
 - (ii) either—
 - (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 act or circumstances which occasioned the seizure; or

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- (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 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;
 - (c) The court may only make an order for compensation under paragraph (b) above if satisfied that seizure was not lawful under subsection (5) or (6) above.
- (12) 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.