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## SCHEDULES

### SCHEDULE 1

Section 11

#### SECTIONS OF PUBLIC HEALTH ACT 1936 (C. 49) APPLIED TO SECTION 11 (ADVERTISING: MEASURES TO BE TAKEN ON SURFACES) OF THIS ACT

<i>Section</i>	<i>Marginal Note</i>
275	Power of local authority to execute certain works on behalf of owners and occupiers.
278	Compensation to individuals for damage resulting from exercise of powers under Act.
283(1)	Notices to be in writing; forms of notices, etc.
285	Service of notices, etc.
287	Power to enter premises.
289	Power to require occupier to permit works to be executed by owner.
290	Provisions as to appeals against, and enforcement of, notices requiring execution of works.
291	Certain expenses recoverable from owners to be a charge on the premises: power to order payment by instalments.
297	Continuing offences and penalties.
300	Appeals and applications to courts of summary jurisdiction.
341	Power to apply provisions of Act to Crown property.

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## SCHEDULE 2

Section 31

### MODIFICATION OF ENACTMENTS IN ENFORCEMENT ACTION ZONE

#### PART 1

##### MODIFICATION OF ENACTMENTS WITHIN ENFORCEMENT ACTION ZONE

<i>Enactment</i>	<i>Modification</i>
1 Section 224(3) Town and Country Planning Act 1990 (c. 8) (displaying advertisements in contravention of regulations)	For “level 4” substitute “level 5” where it appears in both places
2 Section 87 Environmental Protection Act 1990 (c. 43) (offence of leaving litter)	For “level 4” substitute “level 5”
3 Section 4(3) Noise Act 1996 (c. 37) (offence where noise exceeds permitted level after service of notice)	For “level 3” substitute “level 5”

#### PART 2

##### MODIFICATION OF ENACTMENTS: GENERAL

<i>Enactment</i>	<i>Modification</i>
4 Section 88 Environmental Protection Act 1990 (fixed penalty notices for leaving litter)	After subsection (7) insert— “(7A) The Secretary of State may, when making an order under subsection (7) above, substitute different penalties as regards enforcement action zones designated under section 29 (enforcement action zones) of the <a href="#">London Local Authorities Act 2007 (c. ii)</a> .”
5 Section 9 Noise Act 1996 (supplementary provisions about fixed penalties for noise offences)	After subsection (3) insert— “(3A) The Secretary of State may, when making an order under subsection (3) above, substitute different penalties as regards enforcement action zones designated under section 29 (enforcement action zones) of the <a href="#">London Local Authorities Act 2007 (c. ii)</a> .”

## SCHEDULE 3

Section 49

## PART III OF THE LONDON LOCAL AUTHORITIES ACT 1990 (C. VII) AS HAVING EFFECT AS AMENDED BY THE LONDON LOCAL AUTHORITIES ACT 1994 (C. XII), THE LONDON LOCAL AUTHORITIES ACT 2004 (C. I) AND THIS ACT

## “PART III

## STREET TRADING

**21 Interpretation of Part III**

(1) In this Part of this Act—

“grant”, unless the context otherwise requires, includes renew and renewal, and cognate words shall be construed accordingly;

“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 from a vehicle;

“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 periods of 15 minutes or less and not returning to that location or any other location in the same street on the same day;

“licence street” means a street designated under section 24 (designation of licence streets) of this Act;

“receptacle” includes a vehicle 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 (c. 68);

“street trading” means subject to subsections (1A) and (2) below—

- (a) the selling or the exposure or offer for sale of any article (including a living thing); and
- (b) the purchasing of or offering to purchase any ticket; and
- (c) the supplying of or offering to supply any service,

in a street for gain or reward (whether or not the gain or reward accrues to the person actually carrying out the trading);

“street trading licence” means a licence granted under this Part of this Act and valid for the period specified therein being not less than six months and not more than three years;

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“temporary licence” means a licence granted under this Part of this Act valid for a single day or for such period as may be specified in the licence not exceeding six months.

(1A) In determining whether activity amounts to street trading for the purposes of this Act, the fact that—

- (a) 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) either party to the transaction was not in a street at the time it was completed;
- (c) the articles actually sold or services actually supplied, as the case may be, were different from those offered,

shall be disregarded.

(2) The following are not street trading for the purposes of this Part of this Act:—

- (a) trading by a person acting as a pedlar under the authority of a Pedlar’s Certificate granted under the Pedlars Act 1871 (c. 96), if the trading is carried out only by means of visits from house to house;
- (b) anything done in a market or fair the right to hold which was acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of any enactment or order;
- (c) trading in a trunk road picnic area provided by the Secretary of State under section 112 of the Highways Act 1980 (c. 66);
- (d) trading as a news-vendor provided that the only articles sold or exposed or offered for sale are current newspapers or periodicals and they are sold or exposed or offered for sale without a receptacle for them or, if with a receptacle for them such receptacle does not—
  - (i) exceed 1 metre in length or width or 2 metres in height; or
  - (ii) occupy a ground area exceeding 0.25 square metre; or
  - (iii) stand on the carriageway of a street; or
  - (iv) cause undue interference or inconvenience to persons using the street;
 and
- (e) selling articles or things to occupiers of premises adjoining any street, or offering or exposing them for sale from a vehicle which is used only for the regular delivery of milk or other perishable goods to those persons;

\* \* \* \* \*

- (h) the doing of anything authorised by regulations made under section 5 of the Police, Factories, &c. (Miscellaneous Provisions) Act 1916 (c. 31) or by permit or order made under Part III of the Charities Act 1992 (c. 41);
- (i) trading in a highway in relation to which a control order under section 7 of the Local Government (Miscellaneous Provisions) Act 1976 (c. 57) is in force, other than trading to which the control order does not apply; and
- (j) the selling or the exposure or offer for sale of articles or the provision of services on private land adjacent to a shop provided that the selling or the 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 a person assessed for uniform business rate in respect of the shop; and
  - (ii) takes place during the period during which the shop is open to the public for business.

## 22 Application of Part III

This Part of this Act applies to the borough of a participating council as from the appointed day.

## 23 Licensing of street traders

- (1) Subject to the provisions of this Part of this Act it shall be unlawful for any person to engage in street trading (whether or not in or from a stationary position) in any licence street within a borough unless that person is authorised to do so by a street trading licence or a temporary licence.
- (2) For the purposes of this Part 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.

## 24 Designation of licence streets

- (1) If a borough council consider that street trading should be licensed in their area they may from time to time pass any of the following resolutions:—
  - (a) a resolution (in this Part of this Act referred to as a “designating resolution”) designating any street within the borough as a “licence street”;
  - (b) a resolution specifying in relation to any such street or any part of a street any class or classes of articles, things or services which they will, or other than which they will not, prescribe in any street trading licence granted by them in respect of that street;

and may from time to time by subsequent resolution rescind or vary any such resolution:

\* \* \* \* \*

Provided that a borough council shall—

- (a) before passing a designating resolution, consult with the Commissioner of Police of the Metropolis on their proposal; and
  - (b) before rescinding or varying a designating resolution, consult with the licence holders trading in the street in question, or a body or bodies representative of them, on their proposal.
- (2) At the appointed day for the purposes of this Part of this Act in a borough, the streets prescribed by any licences granted by the council of the borough in pursuance of powers contained in any of the enactments referred to in column (2) of Schedule 2 to this Act and then in force shall be deemed to have been designated as licence streets under a designating resolution.
- (3) If a borough council pass a designating resolution the designation of the street shall take effect on the day specified in the resolution (which must not be before the expiration of the period of one month beginning with the day on which the resolution is passed).
- (4) A borough council shall not pass a resolution or rescind or vary a resolution under this section unless—
  - (a) they have published notice of their intention to do so in a local newspaper circulating in their area;
  - (b) they have served a copy of the notice on the highway authority for that street (unless they are that highway authority); and
  - (c) where subsection (5) below applies, they have obtained the necessary consent.

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- (5) This subsection applies—
- (a) where the resolution relates to a street which is owned or maintainable by a relevant corporation; and
  - (b) where the resolution designates as a licence street any street maintained by a highway authority;
- and in subsection (4) above “necessary consent” means—
- (i) in the case mentioned in paragraph (a) above, the consent of the relevant corporation; and
  - (ii) in the case mentioned in paragraph (b) above, the consent of the highway authority.
- (6) The following are relevant corporations for the purposes of this section:—
- (a) British Railways Board;
  - (b) London Regional Transport;
- \* \* \* \* \*
- (d) Network Rail Infrastructure Limited; and
  - (e) Transport for London.
- (7) The notice referred to in subsection (4) above shall—
- (a) contain a draft of the resolution to which it relates; and
  - (b) state that representations relating to it may be made in writing to the borough council within such period, not less than 28 days after the publication of the notice, as may be specified in the notice.
- (8) As soon as practicable after the expiry of the period specified under subsection (7) above, the borough council shall consider any representations relating to the proposed resolution which they have received before the expiry of that period.
- (9) After the borough council have considered those representations, they may if they think fit, pass such a resolution relating to the street as is mentioned in subsection (1) above.
- (10) The borough council shall publish notice of the passing of such a resolution in a local newspaper circulating in their area on two consecutive weeks.
- (11) The first publication shall not be later than 28 days before the day specified in the resolution for the coming into force of the designation.

## **25 Application for street trading licences**

- (1) An application for a street trading licence or renewal of such a licence shall be made in writing to the borough council, and in the case of an application for the renewal of a licence shall be made not later than two months or earlier than three months before the date on which that licence unless revoked or surrendered will cease to be valid:

Provided that nothing in this section shall prevent a borough council from renewing a street trading licence, notwithstanding that application has been made for such renewal at a later date than aforesaid if they consider it reasonable in the circumstances so to do.

- (2) In the application, the applicant shall state—
- (a) in the case of an application by an individual, his full name and address and date of birth;
  - (b) in the case of an application for a licence to carry on ice cream trading—

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- (i) by a company incorporated under the Companies Acts, the name of the company and its registered office;
  - (ii) by a partnership, the names of its members and the address of its principal office;
  - (c) the licence street in which, the days on which and the times between 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 borough council may reasonably require;
- and may in the case of an individual specify the name and address of a relative of his who is associated with, or dependent upon, the business of street trading in respect of which the application is made and to whom he desires the licence to be granted in any of the events specified in subsection (1)(a) of section 26 (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 21 (interpretation of Part III) 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—
- (a) without sunglasses; and
  - (b) unless on religious grounds the applicant permanently wears headgear, without headgear,
- taken within the preceding 12 months, each photograph being signed by the applicant on the reverse. But the borough council may, at their discretion, accept a lesser number of photographs.
- (3A) If a standard condition prescribed under regulations made under subsection (3) of section 27 (conditions of street trading licences) 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.
- (3B) A borough council may make regulations prescribing the procedure for determining applications.
- (3C) Before making or amending such regulations the borough council shall—
- (a) consult any body which appears to the borough council to represent licence holders; and
  - (b) give consideration to any representations received within 28 days of the date on which the borough council’s proposals were notified to the body concerned.
- (4) A street trading licence—
- (a) shall not be granted—
    - (i) to a person under the age of 17 years; or
    - (ii) except where the application is made by a company incorporated under the Companies Acts, or by a partnership, for a licence to carry on ice cream trading to a person, on a corresponding day, days or time, who holds a street trading licence in any other licence street granted under

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- this Part of this Act but nothing in this paragraph shall prevent the renewal of such a licence; or
- (iii) except where the application is made by a company incorporated under the Companies Acts, or by a partnership, for a licence to carry on ice cream trading to a body corporate or to an unincorporated association; or
- (iv) in respect of an application for a street trading licence which, if granted, would authorise trading in a street which is not a licence street; or
- (v) where the street to which the application relates is a street in respect of which the borough council have by resolution passed under subsection (1)(b) of section 24 (designation of licence streets) of this Act specified a class of articles or things, or services which they will not prescribe in any street trading licence and the grant of the licence would be contrary to any of the terms of that resolution;
- (b) shall not be granted unless the borough council are satisfied that there is enough space in the street for the applicant to engage in the trading in which he desires to engage without causing undue interference or inconvenience to persons or vehicular traffic using the street;
- (c) shall not be granted 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 21 (interpretation of Part III) of this Act, unless the applicant has provided sufficient such evidence as is mentioned in subsection (2A) above to satisfy the council.
- (5) Subject to subsection (4) above, the borough council shall grant an application for a street trading licence unless they consider that the application ought to be refused on one or more of the grounds specified in subsection (6) below.
- (6) Subject to subsection (8) below the council may refuse an application on any of the following grounds:—
- (a) 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 the licence;
- (c) that the applicant is an individual who has without reasonable excuse failed personally to avail himself fully of a previous street trading licence;
- (d) that the applicant has at any time been granted a street trading licence by the borough 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;
- (e) 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;
- (f) that—
- (i) the application is for the grant (but not the renewal) of a street trading licence; and
- (ii) the only available position is in that part of the street which is contiguous with the frontage of a shop; and

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- (iii) the articles, things or services mentioned in the application are sold or provided at the shop;
- (g) that—
  - (i) the application is for the grant (but not the renewal) of a street trading licence; and
  - (ii) the only available position in the street is within the curtilage of a shop; and
  - (iii) the applicant is not the owner or occupier of the premises comprising the shop.
- (7) If the borough council consider that grounds for refusal exist under subsection (6)(a) or (c) 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 only in one or more of the descriptions of goods specified in the application.
- (8) Subject to subsection (4) above if—
  - (a) a person is at the appointed day licensed to trade in a street under the provisions of any local enactment; and
  - (b) the street becomes a licence street under this Part of this Act; and
  - (c) he was trading from a fixed position in the street immediately before it became a licence street; and
  - (d) within two months from the appointed day he applies for a street trading licence to trade in the street;
 his application shall not be refused.
- (9) Subject to subsections (4), (6) and (8) above a borough council when considering applications for licences to trade in licence streets under this Part of this Act shall give preference to applications from persons who immediately before the appointed day were under the provisions of any local enactment authorised to trade in a street in the borough which is not a licence street.
- (10) A borough council when considering applications for licences to carry on ice cream trading in a licence street shall treat all applicants, whether companies, partnerships or individuals, on an equal footing and in particular—
  - (a) shall not treat individuals less favourably than companies or partnerships; and
  - (b) as between applicants who are companies or partnerships, shall not treat any particular company or partnership more favourably than others.
- (11) A licence holder may at any time surrender his licence to the borough council and it shall then cease to be valid.

## 26 Succession

- (1) (a) When the holder of a licence who is an individual has specified the name and address of a relative to whom he desires the licence to be granted—
  - (i) dies; or
  - (ii) retires having reached the normal age for retirement; or
  - (iii) notifies the borough 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 borough council as to his ill-health;

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the borough council shall not (except as provided in paragraph (b) of this subsection) grant a licence in respect of the position or place in a street at which the former licensee was entitled to engage in street trading under the authority of his licence until the expiration of 28 days from the date of the death of the licensee or his retirement or receiving the notification, as the case may be;

- (b) If during the said period of 28 days the person specified by the holder of the licence, when making application for the licence, as the relative 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 position or place available in the street the borough council shall, save as provided by paragraphs (b) to (e) of subsection (6) of section 25 (application for street trading licences) of this Act grant a licence to that person.

- (2) For the purposes of this section a person shall be treated as being related to another if the latter is the wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother or half-sister of the former and shall be deemed to be so related notwithstanding that he is so related only through an illegitimacy or in consequence of an adoption.

## **27 Conditions of street trading licences**

- (1) A licence granted under section 25 (application for street trading licences) of this Act, shall—
- (a) unless it is revoked or surrendered, be valid for a period of three years from the date on which it is granted, or for such shorter period as the borough council may determine;
  - (b) specify the conditions; and
  - (c) in the case of an individual incorporate one of the photographs of the licence holder submitted under subsection (3) of the said section 25;
- and on any occasion of the renewal of a licence, or at 1 January in any year during the currency thereof, (whether on application by the licence holder or otherwise) or at any time on application by the licence holder, the borough council may vary the conditions.
- (2) Where a licence is granted to a company incorporated under the Companies Acts 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 a recent photograph of him authenticated by the company or on behalf of the partnership, as the case may be, which holds the licence.
- (3) The borough council may make regulations prescribing standard conditions which they may attach to the licence on the occasion of its grant or renewal.
- (4) Before making regulations under subsection (3) above, the borough council shall—
- (a) publish notice of their intention to do so in a local newspaper circulating in their area, and such notice shall—
    - (i) contain a draft of the resolution to which it relates; and
    - (ii) state that representations relating to it may be made in writing to the borough council within such period, not less than 28 days after the publication of the notice, as may be specified in the notice; and
  - (b) consult the licence holders or a body or bodies representative of them.

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- (5) As soon as practicable after the expiry of the period specified under subsection (4) above, the borough council shall consider any representations relating to the proposed regulations which they have received before the expiry of that period.
- (6) After the borough council have considered those representations they may if they think fit make regulations as mentioned in subsection (3) above and shall notify the licence holders or a body or bodies representative of them of the making of such regulations.
- (7) Without prejudice to the generality of subsection (3) above the standard conditions shall include such conditions as may be reasonable—
- (a) identifying the street or streets in which and the position or place in any such street at which the licence holder may sell or expose or offer for sale articles or things, or offer or provide services under the authority of the licence;
  - (b) identifying the class or classes of articles, things or services which the licence holder may so sell or expose or offer for sale or provide;
  - (c) identifying the day or days on which and the time during which the licence holder may sell or expose or offer for sale articles, things or services as aforesaid;
  - (d) identifying the nature and type of any receptacle which may be used by the licence holder or in connection with any sale or exposure or offer for sale or provision of services and the number of any such receptacles which may be so used;
  - (e) requiring that any receptacle so used shall carry the name of the licence holder and the number of his licence;
  - (f) regulating the storage of receptacles or perishable goods;
  - (g) regulating the deposit and removal of refuse and the containers to be used for the deposit of such refuse and their location pending its removal;
  - (h) requiring that the licence holder shall commence trading or exercising his rights under the licence by a certain time on any day or forfeit his right to trade or exercise his rights under the licence on that day from the fixed position to which his licence refers.
- (8) Without prejudice to the standard conditions, the borough council may in addition attach to a licence such further conditions as appear to them to be reasonable in any individual case.
- (9) When granting a licence a borough council shall give to the licence holder a copy of the licence which, in the case of an individual, shall bear his photograph.

## **28 Revocation or variation of licences under Part III**

- (1) Subject to the provisions of this Part of this Act a borough council may at any time revoke a street trading licence if they are satisfied that—
- (a) owing to circumstances which have arisen since the grant or renewal of the licence, there is not enough space in the street in which the licence holder trades for him to engage in the trading permitted by the licence without causing undue interference or inconvenience to persons or vehicular traffic using the street; or
  - (b) the licence holder is trading in a class of articles, things or services which the borough council have resolved under subsection (1) (b) of section 24 (designation of licence streets) of this Act not to prescribe in licences granted for the licence street in which the licence holder trades; or

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- (c) the licence holder is an individual who has without reasonable excuse personally failed fully to avail himself of his licence; or
  - (d) the licence holder is on account of misconduct or for any other sufficient reason unsuitable to hold the licence; or
  - (e) that since the grant or renewal of the licence, the licence holder has for a period of four weeks or more failed to pay fees or charges due to the borough 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 33 (receptacles and containers) of this Act; or
  - (f) that since the grant or renewal of the licence, the licence holder has failed to make provision for the suitable and adequate storage of the receptacles used by him for trading or for any perishable goods in which he trades when trading is not taking place; or
  - (g) that since the grant or renewal of the licence, the licence holder has persistently failed to remove to a place of storage the receptacles used by him for trading; or
  - (h) that the licence holder has persistently failed to comply with any condition of his licence.
- (2) If a borough council consider that a licence could be revoked on any of the grounds mentioned in paragraphs (a) to (c) 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 licence street or position or place in any such street at which the licence holder may sell or expose or offer for sale articles or things or offer or provide services; or
  - (c) restricting the description of articles, things or services in which the licence holder is permitted to trade.

## **29 Further provisions relating to grant, renewal or revocation of street trading licences**

- (1) A borough council shall not—
- (a) refuse to grant or renew a licence on any of the grounds mentioned in subsection (6) of section 25 (application for street trading licences) of this Act; or
  - (b) revoke or vary a licence under section 28 (revocation or variation of licences under Part III) of this Act; or
  - (c) vary a licence under subsection (1) of section 27 (conditions of street trading licences) of this Act;

unless they shall have given to the applicant or licence holder not less than 21 days' previous notice in writing that objection has been or will be taken to such grant or renewal or that such revocation or variation is proposed, specifying the ground or grounds on which their decision would be based and giving him an opportunity to appear before the committee, sub-committee or officer determining the matter.

- (2) A borough council shall not proceed to determine any of the matters referred to in subsection (1) above until after the expiry of the period specified in the notice given under that subsection; and in determining any of the matters referred to, they shall consider any representations made by an applicant or licence holder in respect of that matter.

- (3) A borough council shall not refuse to grant or renew and shall not revoke a licence on the ground only that the applicant or licensee, being an individual, does not reside in the borough.
- (4) If the borough council refuse to grant or renew a licence or decide to revoke or vary a licence—
- (a) they shall notify the applicant or licence holder in writing of their decision and of the ground or grounds for such refusal, revocation or variation; and
  - (b) they shall notify the applicant or licence holder of his rights of appeal (if any) specified in section 30 (Part III appeals) of this Act.

### 29A 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 21 (interpretation of Part III) 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.

### 30 Part III appeals

- (1) Any person aggrieved—
- (aa) by the refusal of a borough council to renew a licence because they are not satisfied as mentioned in subsection (4)(b) of section 25 (application for street trading licences) of this Act;
  - (a) by the refusal of a borough council to grant or renew a licence on any of the grounds mentioned in subsection (6)(a) to (e) of section 25 (application for street trading licences); or
  - (b) by a decision of a borough council under subsection (7) of the said section 25 to grant him a licence either on terms mentioned in that subsection different from those on the licence which he previously held or different from those for which he applied; or
  - (c) by any further condition attached by a borough council under subsection (8) of section 27 (conditions of street trading licences) of this Act in addition to the standard conditions; or
  - (d) by a decision of the borough council either—
    - (i) to vary the conditions of a licence under subsection (2) of section 28 (revocation or variation of licences under Part III) of this Act; or
    - (ii) to revoke a licence under subsection (1) of the said section 28;

\* \* \* \* \*; or
  - (e) by a resolution of a borough council under section 37 (ice cream trading) of this Act;
- may appeal to a magistrates' court acting for the area in which the licence street is situated.

- (2) An appeal under subsection (1) above may be brought—

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- (a) in the case of an appeal under paragraph (aa), (a), (b), (c) or (d) of that subsection, 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 refusal or 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 of the second publication of the notice required by subsection (10) of section 24 (designation of licence streets) as applied by the said section 37.
- (3) A person desiring to appeal against such refusal or decision as is mentioned in subsection (1) above shall give a written notice to the magistrates' court and to the borough council specifying the refusal or 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 brought 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.
- (6) Subject to subsections (7) to (9) below, it shall be the duty of the borough council to give effect to the order of the magistrates' court or the Crown Court.
- (7) A borough 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 a licence holder applies for renewal of his licence, his existing licence shall remain valid—
- (a) until the grant by the borough council of a new licence with the same conditions; or
  - (b) if the borough council refuse renewal of the licence or decide to grant a licence with conditions different from those of the existing licence and he has a right of appeal under this section, until the time for bringing an appeal has expired or where an appeal is duly brought, until the determination or abandonment of the appeal; or
  - (c) if he has no right of appeal under this section until the borough council either grant him a new licence with conditions different from those of the existing licence or notify him of their decision to refuse his application.
- (9) Where—
- (a) a borough council decide—
    - (i) to vary the conditions of a licence under subsection (2) of the said section 28; or
    - (ii) to revoke a licence under subsection (1) of the said section 28; and
  - (b) a right of appeal is available to the licence holder under this section;
- the variation or revocation shall not take effect until the time for bringing an appeal has expired or where an appeal is duly brought, until the determination or abandonment of the appeal.
- (10) For the avoidance of doubt, it is hereby declared that an application under section 31 of the Supreme Court Act 1981 (c. 54) (application for judicial review) or under the Rules of the Supreme Court 1965 in respect of any matter which is or could be the subject of

an appeal to the magistrates' court or to the Crown Court under this section shall not be treated as an appeal for the purposes of subsection (8) or (9) above.

- (11) Any person aggrieved—
- (a) by a resolution rescinding or varying a designating resolution;
  - (b) by a resolution under subsection (1)(b) of section 24 (designation of licence streets) of this Act;
  - (c) by a standard condition prescribed by regulations under subsection (3) of section 27 (conditions of street trading licences) of this Act; or
  - (d) by the amount of a fee or charge under section 32 (fees and charges) of this Act;
- may appeal to the Secretary of State whose decision shall be final.
- (12) An appeal under subsection (11) above may be brought—
- (a) in the case of an appeal under paragraph (a) or (b) of that subsection, at any time before the expiration of the period of three months beginning with the date on which notice of the passing of the resolution is published for the second time in accordance with subsection (10) of section 24 (designation of licence streets) of this Act;
  - (b) in the case of an appeal under paragraph (c) of that subsection, at any time before the expiration of the period of three months beginning with the date upon which the licence holders or a body or bodies representative of them were notified of the making of the regulations;
  - (c) in the case of an appeal under paragraph (d) of that subsection—
    - (i) if it relates to the amount of a fee payable under subsection (1) of section 32 (fees and charges) of this Act, at any time before the expiration of the period of three months beginning with the date on which the fee payable is notified to the licence holders or a body or bodies representative of them;
    - (ii) if it relates to the amount of a charge under subsection (2) of section 32 (fees and charges) of this Act, at any time before the expiration of the period of three months beginning with the date on which notice of the determination of the charge has been given to the licence holders or a body or bodies representative of them.

### 31 Temporary licences

- (1) A borough 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.
- (1A) A council may grant a temporary licence in any street, whether or not it is a licensed street.
- (1B) 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 21 (interpretation of Part III) 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.

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- (1C) 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 the applicant has provided sufficient evidence, as is mentioned in subsection (2A) of section 25 (application for street trading licence) of this Act, to satisfy the council.
- (1D) 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 permission 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 permission 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 or no longer has sufficient interest in the land to trade on the land without the permission of another person.
- (1E) 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.
- (1F) Where a temporary licence is revoked or suspended under subsection (1E) 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.
- (2) A temporary licence shall be valid only for the day or period specified in the licence and—
- (a) shall be in the like form as a street trading licence with such modifications therein as the circumstances require; and
  - (b) shall prescribe such conditions as the borough council deem appropriate.
- (3) Where the holder of a street trading licence is not for the time being exercising his rights under the licence, a temporary licence authorising street trading in the position or place prescribed by the street trading licence may be granted to any other person but shall be subject to the condition that it shall cease to be valid if during the currency thereof the holder of the licence desires to resume the exercise of his rights and gives the appropriate notice, and for the purposes of this subsection “the appropriate notice” means—
- (a) in the case of a holder of a licence who has not exercised his rights under the licence for a period of at least 14 days, 7 days' notice;
  - (b) in any other case, 24 hours' notice.
- (4) In this section “appropriate fee” means such fee as the borough council may have determined under section 32 (fees and charges) of this Act.

### **32 Fees and charges**

- (1) A borough council may charge such fees for the grant or renewal of a street trading licence under this Part of this Act, the grant of a temporary licence or for the variation at the request of the licence holder of the conditions of a street trading licence as they may determine and as may be sufficient in the aggregate to cover in whole or in part the reasonable administrative or other costs in connection with their functions under this Part of this Act, not otherwise recovered.

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- (2) A borough 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, not otherwise recovered, of—
- (a) the collection, removal and disposal of refuse or other services rendered by them to such 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 or other costs incurred in connection with the administration of this Part of this Act; and
  - (d) the cost of enforcing the provisions of this Part of this Act.
- (3) A borough council may determine—
- (a) that charges under subsection (2) above shall be included in a fee payable under subsection (1) above; or
  - (b) that they shall be separately recoverable.
- (4) A borough council may—
- (a) require that every application for a licence under this Part of this Act be accompanied by the whole or part of the fee determined under subsection (1) above; and
  - (b) determine that the fee may be paid by instalments.
- (5) Where a borough council refuse to \*\*\* renew a licence they shall repay to the person who made the application therefor the amount of any such fee paid by him \*\*\*.
- (6) A borough council may determine the fees to be charged on the grant of a temporary licence under section 31 (temporary licences) of this Act, and in doing so they shall have regard to the matters specified in subsection (2) above and such fees shall be included in the computation for the purposes of determining the fees and charges under subsections (1) and (2) above.
- (7) Before determining charges to be made under subsection (2) above \*\*\* (whether originally or by way of variation of charges previously determined) a borough council—
- (a) shall give notice of the proposed charges to licence holders or to a body or bodies representative of them; and
  - (b) shall publish notice of the proposed charges in a newspaper circulating in the area in which the licence street or streets in respect of which the charges will be applied is situated.
- (7A) A notice under subsection (7)(a) above shall be accompanied by a statement showing how the proposed charges have been computed; and any body representative of licence holders may request the borough council to supply such further information or explanation with regard to the proposed charges as the body may reasonably require in order to ascertain whether the proposed charges are reasonable and have been computed in accordance with the provisions of this section.
- (8) A notice under subsection (7)(a) above shall specify a reasonable period being not less than 28 days from the date of publication of the newspaper referred to in subsection (7) (b) above within which written representations concerning the proposed charges may be made to the borough council.
- (9) It shall be the duty of a borough council to—

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(a) consider any such representations which are made to them within the period specified in the notice; and

(b) comply with any request made under subsection (7A) above;

and where any such request is made the period so specified, if still current, shall be treated as extended by the number of days in the period beginning with the day on which the request is made and ending with that on which it is complied with.

\* \* \* \* \*

(10) When a borough council have determined fees under subsection (1) above or charges under subsection (2) above (whether originally or by way of variation of fees or charges previously determined) they shall give notice of the fees or charges so determined and of the date on which those fees or charges are to be brought into effect, in the manner prescribed in subsection (7) above.

(11) Where a licence is revoked under subsection (1)(a) or (b) of section 28 (revocation or variation of licences under Part III) of this Act, the borough council shall refund the appropriate part of any fee paid for the grant or renewal of the licence.

(12) Where a licence is revoked otherwise than under subsection (1)(a) or (b) of section 28 (revocation or variation of licences under Part III) or is surrendered, the borough council may remit or refund, as they consider appropriate, the whole or a part—

(a) of any fee paid for the grant or renewal of the licence; or

(b) of any charges recoverable under subsection (2) above.

### **33 Receptacles and containers**

(1) A borough council may sell or let on hire or otherwise provide to any person holding a street trading licence or a temporary licence under this Part of this Act receptacles for use by him in street trading.

(2) A borough 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 charges as they think fit for the use of such accommodation.

### **34 Offences**

Any person who—

(1) without reasonable excuse contravenes any of the conditions of a street trading licence or a temporary licence; or

(2) in connection with an application for a street trading licence or a temporary licence makes a statement which he knows to be false in a material particular; or

(3) resists or intentionally obstructs any authorised officer of a borough council in the execution of his duties under this Part of this Act; or

(4) fails on demand without reasonable excuse in the case of an individual licence holder to produce his licence \*\*\* bearing his photograph, and, 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, to produce the photograph required by

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subsection (2) of section 27 (conditions of street trading licences) of this Act to an authorised officer of the borough council or to a constable;

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

### **35 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 borough council to cause it to be removed to a place of storage and to recover from the licence holder the costs incurred by them in removing and storing the receptacle.
- (2) Such charges as the borough council may fix as the cost of removing and storing 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 borough council to prosecute the licence holder for any breach of the conditions of his licence arising from the failure to remove the receptacle.

### **36 Employment of assistants**

Subject to the provisions of this section 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 during the temporary absence of the licence holder 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.

### **37 Ice cream trading**

- (1) Nothing in this Part of 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 area of a borough council which is not a licence street in the interests of preventing obstruction to traffic, or undue interference or inconvenience to persons using that street, the borough council may by resolution designate the street as a prohibited street and in the case of any London borough except the City of Westminster and the Royal Borough of Kensington and Chelsea may so designate it for such days or for such parts of days as are specified in the resolution, and may from time to time by subsequent resolution rescind or vary any such resolution.
- (3) Before passing a resolution under this section, a borough council shall consult the Commissioner of Police of the Metropolis and such bodies as appear to them to be representative of persons carrying on ice cream trading in the area of the borough council.
- (4) Subsections (3) to (11) of section 24 (designation of licence streets) of this Act shall apply to a resolution under this section as they apply to a resolution under that section.

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### 38 Unlicensed street trading

(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 whether or not from a stationary position; or
- (b) is the holder of a street trading licence or a temporary licence and who, without the borough council's specific permission in writing, engages in street trading in a borough on a day or in a place not specified in that \*\*\* 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, thing, receptacle or equipment concerned shall be presumed to have been exposed or offered for sale and the receptacle or equipment shall be deemed to have been used for the purposes for which a street trading licence was required unless it can be proved 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 street trading.

(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) Subject to section 38A (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 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 (5) below \*\*\*.

(4A) 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 24 (designation of licence streets) of this Act. 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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- (4B) 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 (4) and (4A) above.
- (4C) (a) Subject to section 38B (motor vehicles) of this Act the following provisions of this subsection shall have effect where any article or thing (including any receptacle or equipment) is seized under subsection (4) above or is seized and retained because it is required for evidential purposes under subsection (4A) 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, 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 (5) 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.
- (ba) Where after 28 days any costs awarded by the court to the council have not been paid to the council in full—
- (i) the article or thing may be disposed of in any way the council thinks fit; and
  - (ii) 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.
- (bb) 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.
- (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 under the [City of Westminster Act 1999 \(c. i\)](#); 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 the said Act of 1999; 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 or ascertain his address.

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- (f) Paragraph (g) below applies where the article, thing, receptacle or equipment is not returned because—
    - (i) it has not proved possible to identify the person from whom it was seized or ascertain his address; or
    - (ii) the person from whom it was seized and the owner (if different) have disclaimed or refused to accept it.
  - (g) Where this paragraph applies, the council may make a complaint to the magistrates' court for a disposal order under section 38C (disposal orders) of this Act (whether or not proceedings for an offence under this section have been commenced).
- (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).
- (6A) 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.
- (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.
- (8) (a) This subsection shall have effect where—
- (i) an article, thing or receptacle is seized under subsection (4) or (4A) 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

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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 not make an order for compensation under paragraph (b) above unless it is satisfied that seizure was not lawful under subsection (4) or (4A) above.

### **38A 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 (4) of section 38 (unlicensed street trading) of this Act unless the authorised officer or constable 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 section 38, the person from whom it is seized must be given a certificate—
  - (a) stating the effect of subsection (4) below and subsection (6) of the said section 38;
  - (b) giving the address from which the item may be collected;
  - (c) informing the recipient that if he is not the owner of the item, then he should give the owner the information referred to in paragraphs (a) and (b) above.
- (3) The council or the police shall store any perishable item seized under the said section 38 at an appropriate temperature.
- (4) If the person from whom a perishable item was so seized fails to collect it within 48 hours of the seizure the council or the police may dispose of it.
- (5) When any perishable item is disposed of by the council under subsection (4) above, the council shall have a duty to secure the best possible price which can reasonably be obtained for it.
- (6) Paragraphs (a) to (d) of subsection (4C), and subsections (5) and (6) of the said section 38 shall apply to perishable items seized under that section 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.
- (7) Paragraphs (e) and (f) of subsection (4C) of the said section 38 shall apply to perishable items seized under that section 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 paragraph (e); otherwise subsections (10) to (13) below shall apply.
- (8) Subsection (8) of the said section 38 shall apply with the omission of paragraph (c) in respect of perishable items seized under that section only in cases where the item concerned has not been disposed of by the council by the time the circumstances mentioned in paragraph (a)(ii)(A) or (B) arise; otherwise subsections (10) to (12) below shall apply.
- (9) Subsection (12) below shall have effect where the council have disposed of a perishable item under subsection (4) above and any of the following conditions apply.
- (10) The first condition is that no proceedings in respect of the alleged offence in relation to which the item was seized are instituted before the expiration of a period of 28 days beginning with the date of seizure of the item, or any such proceedings instituted within that period are discontinued.

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- (11) 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 the said section 38 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.
- (12) 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 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 and any such compensation shall not be included in the computation for calculating charges under section 32 (fees and charges) of this Act.

### **38B 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 the vehicle was seized under subsection (4) or (4A) of section 38 (unlicensed street trading) of this Act, a borough 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 that council would, but for this section, have to return the vehicle in accordance with subsection (4C)(e) of that section.
- (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 (4C)(e) or subsection (4), 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 38C (disposal orders) of this Act.
- (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.

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- (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.

### **38C Disposal orders**

- (1) This section applies in respect of a complaint made by a borough council for a disposal order in respect of—
- (a) an article or thing under subsection (4C)(f)(ii) of section 38 (unlicensed street trading) of this Act; or
  - (b) a motor vehicle under subsection (5) of section 38B (motor vehicles) of this Act,
- and such articles, things and motor vehicles are together referred to as “seized items” in this section.
- (2) In respect of a complaint to which this section applies, a magistrates' court may, if it is 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, it may make an order authorising the complainant 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 32 (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 in question 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.
- (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

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- (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 38B.

### 39 Savings

- (1) Nothing in this Part of this Act shall affect—
- (a) section 13 of the Markets and Fairs Clauses Act 1847 (c. 14) (prohibition of sales elsewhere than in a market or in shops etc.) as applied by any other Acts;
  - (b) section 56 of the Food Act 1984 (c. 30) (prohibition of certain sales during market hours);
  - (c) the sale or exposure or offer for sale by London Regional Transport or (as the case may be) a designated company (within the meaning of the Transport (London) Act 1969 (c. 35)) 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 (c. xcii).
- (2) Nothing in this Part of this Act shall afford a defence to a charge in respect of any offence at common law or under an enactment other than this Part of this Act.

### 40 Local enactments relating to street trading repealed

- (1) Subject to subsection (2) below, the enactments specified in column (2) of Schedule 2 to this Act, so far as they relate to any part of Greater London, shall cease to have effect in a borough as from the appointed day for that borough to the extent specified in column (3) of that Schedule.
- (2) Notwithstanding the repeal of the enactments specified in column (2) of Schedule 2 to this Act, any licence granted by a borough council under any of those enactments which authorises street trading in the borough and which was in force immediately before the appointed day shall continue in force until three months after the appointed day or until the determination of any application made by the holder of the licence under section 25 (application for street trading licences) of this Act, whichever is the later.

### 41 Saving for sales in legal markets or fairs

In the case of any market or fair held in pursuance of any statute, royal licence, royal charter or letters patent, or as of right from time immemorial, nothing in this Part of this Act shall affect the sale or exposure or offer for sale of goods in any such market or fair by any person who has paid a toll to, or is acting under the written authority of, a person holding or entitled to hold such market or fair or entitled to receive tolls in respect of sales made or stalls or stands occupied in such market or fair.”

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## SCHEDULE 4

Section 61

## FINANCIAL PROVISIONS RELATING TO SECTION 61 (PENALTY CHARGES) OF THIS ACT

- 1 A borough council shall keep an account of their income and expenditure in respect of the administration and enforcement of section 61 (penalty charges) of this Act.
- 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 paragraph 3 below) any surplus shall be applied to purposes connected with the improvement of the amenity of the area of the council or any part of that area.
- 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 paragraph 1 above to the next financial year.
- 4 Each council shall, after each financial year, report to the Secretary of State on any action taken by them, pursuant to paragraph 2 or 3 above, in respect of any deficit or surplus in their account for the year.
- 5 The report under paragraph 4 above shall be made as soon after the end of the financial year to which it relates as possible.
- 6 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 penalty charge was or was not received by a date specified in the certificate,shall be evidence of the facts stated.
- 7 In this Schedule, “chief finance officer”, in relation to a council, means the person having responsibility for the financial affairs of the council.