



# London Local Authorities Act 1994

## 1994 CHAPTER xii

An Act to confer further powers upon local authorities in London; and for other purposes. [21st July 1994]

WHEREAS—

- (1) It is expedient that further and better provision should be made for the improvement and development of local government services in London and for the benefit of persons residing therein and that the powers of London borough councils should be extended and amended as provided in this Act:
- (2) In relation to the promotion of the Bill for this Act the Westminster City Council have complied with the requirements of section 239 of the Local Government Act 1972 and the other London borough councils, all of whom are participating in the promotion of the Bill, have complied with the requirements of section 87 of the Local Government Act 1985:
- (3) It is expedient that the other provisions contained in this Act should be enacted:
- (4) The purposes of this Act cannot be effected without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows, that is to say:—

### **1 Short title and commencement**

This Act may be cited as the London Local Authorities Act 1994 and except section 5 (Night café licensing) of this Act shall come into operation at the end of the period of two months beginning with the date on which it is passed.

### **2 Interpretation**

In this Act, except as otherwise expressly provided or unless the context otherwise requires—

“the Act of 1990” means the London Local Authorities Act 1990;

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“authorised officer” means an officer of a borough council authorised by the council in writing to act in relation to the relevant provision of this Act;

“borough council” means London borough council but does not include the Common Council of the City of London; and “borough” shall be construed accordingly.

### **3 Appointed day**

- (1) In this Act “the appointed day” means such day as may be fixed in relation to a borough by resolution of the borough council, subject to and in accordance with the provisions of this section.
- (2) Different days may be fixed under this section for the purpose of the application of different provisions of this Act to a borough.
- (3) The borough council shall cause to be published in a local newspaper circulating in the borough notice—
  - (a) of the passing of any such resolution and of the day fixed thereby; and
  - (b) of the general effect of the provisions of this Act coming into operation as from that day;and the day so fixed shall not be earlier than the expiration of three months from the publication of the said notice.
- (4) Either a photostatic or other reproduction certified by the officer appointed for that purpose by the borough council to be a true reproduction of a page or part of a page of any such newspaper bearing the date of its publication and containing any such notice shall be evidence of the publication of the notice, and of the date of publication.

### **4 Distribution of free literature**

- (1) A borough council may designate, in accordance with subsection (9) below, any of the following places, or any part of such places, in the borough as places to which this section applies:—
  - (a)
    - (i) a public off-street car park;
    - (ii) a recreation ground, garden, park, pleasure ground or open place under the management or control of a local authority;
  - (b) a street or way to which the public commonly have access, whether or not as of right.
- (2) Any person who distributes free literature in a place designated under subsection (1) above without the consent of the borough council or in breach of any condition subject to which the council’s consent is given or causes or permits any person so to do shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (3)
  - (a) The reference in subsection (2) above to a person who distributes free literature in a place designated under subsection (1) above shall be deemed to include a reference to a person who distributes free literature on or from land within 7 metres of any designated street who is not—
    - (i) the owner of that land; or
    - (ii) the person liable to be assessed to the uniform business rate in respect thereof; or

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- (iii) on that land with the consent in writing of either of the persons mentioned in sub-paragraphs (i) and (ii) above.
- (b) Where in any proceedings under this section it is shown that any free literature was distributed by a person on or from land within 7 metres of any street or designated street the burden of proof shall lie on that person to show to the satisfaction of the court that at the relevant time he was a person referred to in sub-paragraph (i) or (ii) of the foregoing paragraph or had the consent referred to in sub-paragraph (iii) thereof.
- (4) Where a person is distributing free literature in a place designated under subsection (1) above without the consent of the borough council an authorised officer may seize any supply of that literature which the person has at or near that place.
- (5) (a) The following provisions of this subsection shall have effect where any literature is seized under subsection (4) above and references in those provisions to proceedings are to proceedings in respect of the alleged offence in relation to which the literature is seized.
- (b) Subject to paragraph (c) below, at the conclusion of the proceedings the literature shall be returned to the person from whom it was seized unless the court orders it to be forfeited under any enactment.
- (c) 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 literature 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.
- (d) Where the literature is not returned because it has not proved possible to identify the person from whom it was seized and ascertain his address the council may apply to a magistrates' court for an order as to the manner in which they should deal with it.
- (6) The conditions of consent referred to in subsection (2) above include, without prejudice to the generality of the power to impose conditions, conditions as to the times or period for which the consent is valid, conditions for the prevention of detriment to the amenities of the area, a condition requiring the person distributing free literature to produce on demand to an authorised officer of the borough council or to a constable documentary evidence of the consent, conditions as to the part of the place designated under subsection (1) above where the consent is to apply and conditions as to the payment for the consent of such reasonable fee to cover the expense of the borough council in dealing with applications for such consents as the borough council may by resolution prescribe; and any such consent may be revoked by notice to the person to whom the consent was given.
- (7) The grounds upon which a borough council may withhold consent under subsection (2) above, and may revoke a consent under subsection (6) above are that—
- (a) the applicant is unsuitable by reason of misconduct;
- (b) the applicant has within the previous five years been convicted of an offence under this section;
- (c) there is already a sufficiency of persons to whom consent has been given under this section, carrying out in the designated place the activity in respect of which the consent is requested;
- (d) there would be a risk of danger or unreasonable inconvenience to users of any highway if the consent is given, or, as the case may be, not revoked;

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- (e) (in the case of a revocation) the applicant has failed to avail himself, or to avail himself to a reasonable extent, of his consent.
- (8) A person aggrieved by—
- (a) the withholding by the borough council of consent referred to in subsection (2) above;
  - (b) the conditions subject to which the borough council give such consent; or
  - (c) the revocation of such consent under subsection (6) above;
- may appeal to a magistrates' court by way of complaint for an order and on such an appeal the court may dismiss or allow the appeal or may vary any conditions imposed by the borough council.
- (9) (a) Before designating any place under subsection (1) above the borough council shall give notice of their proposal by advertisement in a local newspaper circulating in the borough, and by posting a copy of the notice in the places to which it relates, stating that objections to the proposal may be made to the proper officer of the borough council within a time, not less than 28 days after the giving of the notice, specified in the notice.
- (b) After taking into consideration any objections made in accordance with paragraph (a) above, the borough council may by resolution designate, as places to which this section applies for the purposes of subsection (2) above, all or any, or any part, of the places specified in the notice given under that paragraph.
- (10) A resolution under subsection (9) (b) above shall come into force on such day as shall be specified by a notice given in the same manner as a notice given under subsection (9) (a) above, being a day not less than 28 days after the day on which notice is given under this subsection.
- (11) Any resolution under subsection (9) (b) above may be rescinded, or varied by the deletion of any place or part of a place, by a subsequent resolution of the borough council.
- (12) In proceedings for an offence under section 9 of the Metropolitan Streets Act 1867, it shall be a defence for the accused to show that he was acting with the consent of a borough council under this section and in compliance with any conditions subject to which that consent was given.
- (13) This section does not apply to the distribution of free literature—
- (a) by a charity within the meaning of the Charities Act 1960 where that literature relates to or is for the benefit of that body;
  - (b) by or on behalf of a political organisation;
  - (c) where the person who distributes it does so by putting it into a building or letterbox; or
  - (d) by London Regional Transport, any of its subsidiaries or any other person who provides a service pursuant to an agreement made in accordance with section 3 of the London Regional Transport Act 1984 where that literature relates to services provided by any of those persons.
- (14) In this section—
- “distribute” means to offer or make available, and includes the placing of free literature on, or affixing it to, a vehicle;

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“free literature” means any newspaper, document, card or other literature for which no charge is made to the recipient and which advertises, or contains or comprises an advertisement, for commercial gain.

## 5 Night café licensing

As from the appointed day in a borough section 14 (Appeals) of the Act of 1990 is hereby amended—

(1) by the substitution for subsection (1) of—

“(1) Any of the following persons, that is to say:—

- (a) an applicant for the grant, renewal or transfer of a night café licence whose application is refused;
- (b) an applicant for the grant, renewal or transfer of a night café licence who is aggrieved by any term, condition or restriction on or subject to which the night café licence is granted, renewed or transferred;
- (c) an applicant for the variation of the terms, conditions or restrictions on or subject to which a night café licence is held whose application is refused;
- (d) an applicant for the variation of the terms, conditions or restrictions on or subject to which a night café licence is held who is aggrieved by any term, condition or restriction contained in a further variation made consequent on the variation applied for;
- (e) the holder of a night café licence which is revoked under section 15 (Enforcement) of this Act;

may at any time before the expiration of the period of 21 days beginning with the relevant date appeal to the magistrates' court acting for the petty sessions area in which the premises are situated by way of complaint for an order.”;

(2) by the substitution for subsections (7) and (8) of—

“(7) Where the holder of a night café licence makes an application under section 12 (Variation of night café licences) of this Act and the borough council make the variation applied for together with a further variation, then the night café licence shall continue as it was before the application—

- (a) until the time for bringing an appeal under this section against any term, condition or restriction contained in the further variation has expired; and
- (b) where any such appeal is brought, until the determination or abandonment of the appeal.”.

## 6 Street trading

(1) Section 21 (2) (j) (Interpretation of Part III) of the Act of 1990 is hereby amended by the insertion after “offer for sale”, of the words “of articles”.

(2) Section 24 (1) (Designation of licence streets) of the Act of 1990 is hereby amended by the substitution for the proviso of—

“Provided that a borough council shall—

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- (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.”
- (3) Section 27 (6) (Conditions of street trading licences) of the Act of 1990 is hereby amended by the addition, at the end of the subsection, of “and shall notify the licence holders or a body or bodies representative of them of the making of such regulations.”.
- (4) In section 30 (1) (Part III appeals) of the Act of 1990, the following paragraph shall be inserted after the words “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.”.
- (5) In section 30 (1) (d) (Part III appeals) of the Act of 1990, the words, “where that decision is based on any of the grounds mentioned in subsection (1) (d) to (h) of the said section 28” shall cease to have effect.
- (6) Section 30 (2) (a) (Part III appeals) of the Act of 1990 is hereby amended by the addition after “paragraph” of “(aa),”.
- (7) Section 30 (Part III appeals) of the Act of 1990 is hereby amended by the addition, after subsection (11) of the following subsection:—
- “(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.”.
- (8) Section 32 (Fees and charges) of the Act of 1990 is hereby amended—
- (a) (i) by the deletion in subsection (5), of “grant or” and “as aforesaid”; and
  - (ii) by the addition in that subsection after “any” of the word “such”;

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- (b) by the substitution, in subsection (7) for “or varying the amount of such charges” of the words “(whether originally or by way of variation of charges previously determined)”;
  - (c) by the addition after subsection (7) of the following subsection:—
    - “(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.”;
  - (d) by the addition in subsection (9)—
    - (i) after the first “to” of “(a)”; and
    - (ii) at the end, of the words “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.”;
  - (e) by the substitution for subsection (10) of—
    - “(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.”.
- (9) Section 34 (Offences) of the Act of 1990 is hereby amended by the addition, at the beginning of paragraph (1) of the words “without reasonable excuse”.
- (10) Section 37 (Ice cream trading) of the Act of 1990 is hereby amended by the addition, in subsection (2) after “prohibited street” of the words “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,”.
- (11) Section 38 (Unlicensed street trading) of the Act of 1990 is hereby amended—
- (a) by the substitution for subsection (1) of—
    - “(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.”;
  - (b) by the addition, in subsection (4) after “of that offence” of the words “or may be the subject of forfeiture under subsection (5) below”;

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- (c) by the addition, after subsection (4) of the following subsection:—
- “(4A) (a) The following provisions of this subsection shall have effect where any article or thing (including any receptacle) is seized under subsection (4) 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.”;
- (d) by the addition, in subsection (6) at the end, of—
- “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



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- with any other order that the court contemplates making).”;
- (e) by the substitution, in subsection (7) for “the article or thing” of the word “anything”;
- (f) by the addition, after subsection (7) of the following subsection:—
- “(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.”.

(12) Part III of the Act of 1990, as amended by this Act, is set out in the Schedule to this Act.

## **7 Fee for hypnotism authorisation**

- (1) The Hypnotism Act 1952 is hereby amended by the addition, after section 2, of the following section:—

### **“2A Fee**

The person making an application to a controlling authority, being the council of a London borough, for an authorisation under section 2 of this Act shall on making the application pay to the council such reasonable fee as the council may determine.”.

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- (2) If any regulations are made under section 150 of the Local Government and Housing Act 1989 whereby a borough council may impose a charge in connection with the granting of an authorisation under section 2 of the Hypnotism Act 1952, then upon the coming into force of those regulations this section shall cease to have effect.
- (3) For the purposes of subsection (1) (c) of the said section 150, the power conferred on a borough council by virtue of subsection (1) above shall be disregarded.

## **8 Dangerous structure fees**

- (1) A borough council to which the London Building Acts apply may make regulations with respect to the amount of the fees payable to them under the London Building Acts in connection with any dangerous or neglected structure.
- (2) Regulations made under this section may amend or repeal any of the provisions of the First Schedule to the Act of 1939 and may repeal any byelaws made under section 11 (Power to Council to make byelaws as to fees) of the London County Council (General Powers) Act 1955, and any references in the London Building Acts to any of those provisions shall be construed as references to those provisions as so amended and, where any such provisions are repealed by those regulations, to the provisions of those regulations corresponding to the provisions so repealed.
- (3) Any regulations made under this section shall be printed and a copy of any such regulations in force shall be kept at the principal office of the borough council and a copy shall be supplied at all reasonable hours without payment to any applicant for the same.
- (4) Section 11 of the London County Council (General Powers) Act 1955 shall cease to have effect except in the City of London, but any byelaws made thereunder shall continue in force until repealed under subsection (2) above.
- (5) In this section—“the Act of 1939” means the London Building Acts (Amendment) Act 1939; and “the London Building Acts” means the London Building Acts 1930 to 1939 as amended by the London County Council (General Powers) Act 1952 and by the London County Council (General Powers) Act 1954.

## **9 Application of Act of 1990 to Camden**

Schedule 1 (Participating councils) to the Act of 1990 shall be amended by the insertion, after “Bromley Borough Council” of “Camden Borough Council”.

## **10 Liability of directors, etc**

- (1) Where an offence under this Act 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, a 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.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

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## SCHEDULE L9

Section 6.

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

#### PART III

#### STREET TRADING

##### *Interpretation of Part III*

21 (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 confectionary 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 short periods only;

“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 have access without payment;
- (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;

“street trading” means subject to subsection (2) below the selling or exposing or the offering for sale of any article (including a living thing) or the supplying or offering to supply any service in a street for gain or reward;

“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;

“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.

(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;
- (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;

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- (c) trading in a trunk road picnic area provided by the Secretary of State under section 112 of the Highways Act 1980;
- (d) trading as a news-vendor provided that the only articles sold or exposed or offered for sale are 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;
- (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;
- (f) the use for trading under Part VIIA of the Highways Act 1980 of any object or structure placed on, in or over a highway;
- (g) the operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980;
- (h) the doing of anything authorised by regulations made under section 5 of the Police, Factories, &c. (Miscellaneous Provisions) Act 1916;
- (i) trading in a highway in relation to which a control order under section 7 of the Local Government (Miscellaneous Provisions) Act 1976 is in force, other than trading to which the control order does not apply; and
- (j) the sale, exposure or offer for sale of articles or offer or provision of services on any land comprised in a street (not being part of a highway) within the meaning of subsection (1) above by the owner or occupier of the land or by a bona fide employee of the owner or occupier of the land.

#### *Application of Part III*

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

#### *Licensing of street traders*

- 23 (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.

#### *Designation of licence streets*

- 24 (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

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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.
- (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; and
  - (c) an urban development corporation established under the Local Government, Planning and Land Act 1980.
- (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.

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- (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.

#### *Application for street trading licences*

- 25 (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 licence, other than a temporary 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—
    - (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.

- (3) No later than the date on which he submits his application, the applicant shall hand to an authorised officer two identical full-face photographs of himself, taken within the preceding 12 months, signed by the applicant on the reverse 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.
- (4) A street trading licence—
  - (a) shall not be granted—
    - (i) to a person under the age of 17 years; or

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- (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 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 licence which is not a temporary licence to trade 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.
- (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
    - (iii) the articles, things or services mentioned in the application are sold or provided at the shop;

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- (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.

### *Succession*

- 26 (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.

#### *Conditions of street trading licences*

- 27 (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 1st 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

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- (b) consult the licence holders or a body or bodies representative of them.
- (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.

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

- 28 (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

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- (Designation of licence streets) of this Act not to prescribe in licences granted for the licence street in which the licence holder trades; or
- (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.

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

- 29 (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

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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 the next following section.

### *Part III appeals*

- 30 (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—
- (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

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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 (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;

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- (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.

### *Temporary licences*

- 31 (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.
- (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—

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- (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.

### *Fees and charges*

- 32 (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.
- (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

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- (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—
- (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.

### *Receptacles and containers*

- 33 (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.



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### *Offences*

- 34 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 duly signed by him and 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 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.

### *Power to remove receptacles*

- 35
- (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.

### *Employment of assistants*

- 36 Subject to the provisions of this section a person holding a street trading 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 street trading licence held by his employer such failure shall be deemed to be a failure by the licence holder.

### *Ice cream trading*

- 37
- (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.

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- (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.

#### *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

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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) 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

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- (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.
- (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.

### *Savings*

- 39 (1) Nothing in this Part of this Act shall affect—
  - (a) section 13 of the Markets and Fairs Clauses Act 1847 (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 (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) 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.
- (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.

### *Local enactments relating to street trading repealed*

- 40 (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

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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.

*Saving for sales in legal markets or fairs*

- 41 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.