



# City of Newcastle upon Tyne Act 2000

## 2000 CHAPTER viii

An Act to confer powers on the Council of the City of Newcastle upon Tyne for the better control of street trading in the city of Newcastle; for the registration of door supervisors and second-hand goods dealers in the city; for controlling the distribution of free literature in the city; and for other purposes. [21st December 2000]

### WHEREAS—

- (1) The City of Newcastle upon Tyne (hereinafter called “the city”) is a metropolitan district under the management and local government of the council of the city (hereinafter called “the council”):
- (2) Certain powers relating to street trading in the city are exercisable by the council under the Local Government (Miscellaneous Provisions) Act 1982 (c. 30) and for their better enforcement it is expedient to amend that Act in its application to the city and supplement those powers:
- (3) It is expedient that the council should have power to register and control door supervisors within the city:
- (4) It is expedient to authorise the registration of second-hand goods dealers within the city:
- (5) It is expedient to provide for the control of the distribution of free literature within the city:
- (6) It is expedient that the other provisions contained in this Act should be enacted:
- (7) The purposes of this Act cannot be effected without the authority of Parliament:
- (8) In relation to the promotion of the Bill for this Act the requirements of section 239 of the Local Government Act 1972 (c. 70) have been observed:

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:—

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## PART 1

### PRELIMINARY

#### 1 Short Title

This Act may be cited as the City of Newcastle upon Tyne Act 2000.

#### 2 Interpretation

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

“Act of 1982” means the Local Government (Miscellaneous Provisions) Act 1982 (c. 30);

“authorised officer” means an officer of the council authorised by it in writing to act for the purposes of this Act;

“the chief constable” means the Chief Constable of the Northumbria police force;

“the city” means the City of Newcastle upon Tyne;

“the council” means the Council of the City of Newcastle upon Tyne; and

“proper officer” shall have the same meaning as in section 270(3) of the Local Government Act 1972 (c. 70).

#### 3 Appointed Day

(1) In this Act the “appointed day” means such day as may be fixed by resolution of the council, subject to and in accordance with the provisions of this section.

(2) Different days may be fixed under this section for different Parts of this Act.

(3) The council shall cause to be published in a local newspaper circulating in the city 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 on that day;

and the day so fixed shall not be earlier than the expiration of one month from the publication of the said notice.

(4) Either a photostatic or other reproduction certified by a proper officer of the 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.

## PART 2

### STREET TRADING

#### 4 Pedlars

In their application to the city pursuant to a resolution by the council under section 3 of the Act of 1982 the provisions of Schedule 4 to that Act shall on and from the

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appointed day apply as if in paragraph 1(2)(a) of that Schedule there were inserted after the reference to the Pedlars Act 1871 (c. 96) the words “, if the trading is carried out only by means of visits from house to house”.

## 5 Powers of seizure and forfeiture

(1) In this section—

- (a) “receptacle” includes a stationary van, car, barrow or other vehicle or a portable 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; and
- (b) “an offence” means an offence under paragraph 10 of Schedule 4 to the Act of 1982 or an offence of aiding, abetting, counselling or procuring the commission of an offence under that paragraph.

(2) If on or after the appointed day an authorised officer or a constable has reasonable grounds for suspecting that a person has committed an offence 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 (6) below, provided that no article or thing which is of a perishable nature shall be seized under the provisions of this subsection.

(3) 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 (2) above.

- (4)
  - (a) The following provisions of this subsection shall have effect where any article or thing (including any receptacle or equipment) is seized under subsection (2) 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 (c) below, following 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) If no proceedings are instituted before the expiration of a period of 56 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;
  - (d) Where the article or thing is not returned because it has not proved possible to identify the person from whom it was seized and ascertain his address the council or the chief constable (whether the article or thing was seized by an authorised officer or a constable) may apply to a magistrates' court for an order as to the manner in which it should be dealt with.

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- (5) Subject to subsection (6) below the court by or before which a person is convicted of an offence may on or after the appointed day 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—
  - (a) to the value of the property; and
  - (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).
- (7) (a) This subsection shall have effect where—
  - (i) an article, thing, receptacle or equipment is seized under subsection (2) above; and
  - (ii) either—
    - (A) not less than six months have passed since the date of the seizure and no information has been laid against any person for an offence in respect of the act or circumstances which occasioned the seizure; or
    - (B) proceedings for an offence have been brought and either the person charged has been acquitted (whether or not on appeal) and the time for appealing against or challenging the acquittal (where applicable) has expired without an appeal or challenge being brought, or the proceedings (including any appeal) have been withdrawn by, or have failed for want of prosecution by, the person by whom the original proceedings were brought;
- (b) When this subsection has effect a person who has or at the time of seizure had a legal interest in the article, thing or receptacle seized may recover compensation from the council or (where it is seized by a constable) the chief constable 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 only make an order for compensation under paragraph (b) above if satisfied that seizure was not lawful under subsection (2) above.

### PART 3

#### REGISTRATION OF DOOR SUPERVISORS

## 6 Interpretation of Part 3

In this Part of this Act—

“door supervisor” means any person employed at or near the entrance to licensed premises to ascertain or satisfy himself as to the suitability of customers to be allowed on those premises or any person employed to maintain order on those premises but, in respect of premises in respect of which there is in

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force for the time being a justices' on-licence within the meaning of section 1(2) of the Licensing Act 1964 (c. 26), does not include the holder of that licence;

“licensed premises” means any premises in respect of which there is in force for the time being a justices' on-licence within the meaning of section 1(2) of the Licensing Act 1964 or an occasional licence within the meaning of section 180(1) of that Act or any premises in respect of which there is in force a licence under the Private Places of Entertainment (Licensing) Act 1967 (c. 19) or any premises in respect of which there is in force a licence under Schedule 1 to the Act of 1982 or an occasional permission granted under section 1 of the Licensing (Occasional Permissions) Act 1983 (c. 24) but does not include any such premises—

- (a) in respect of which there is in force a licence under the Cinemas Act 1985 (c. 13) provided that the premises to which such licence relates are in use wholly or mainly for the purpose authorised by such licence; or
- (b) in respect of which there is in force—
  - (i) a licence under the Theatres Act 1968 (c. 54); or
  - (ii) letters patent of the Crown by virtue of which it is lawful for those premises to be used for the public performance of plays without a licence under the Theatres Act 1968;

except when a play as defined in the said Act of 1968 is not being performed and the premises are being used for a purpose for which a licence is required under the Private Places of Entertainment (Licensing) Act 1967 or under Schedule 1 to the Act of 1982 other than a concert of classical music; or

- (c) in respect of which there is in force a licence under Part II of the Gaming Act 1968 (c. 65); or
- (d) which from time to time are by resolution of the council excluded from the operation of this Part of this Act; or
- (e) which are kept open wholly or mainly as a tenpin bowling establishment; and

“registration” means registration as a door supervisor under section 7 (Registration of door supervisors) of this Act.

## **7 Registration of door supervisors**

On and from the appointed day no person may be employed on licensed premises within the city as a door supervisor unless he holds a valid current registration from the council.

## **8 Power to register**

- (1) The council may register an applicant and from time to time renew a registration on such terms and conditions and subject to such restrictions as may be specified.
- (2) Without prejudice to the generality of subsection (1) above, such conditions may relate to—
  - (a) the wearing of an identification card whilst on duty;
  - (b) an obligation to notify the council of an arrest or prosecution for a relevant offence, or any caution by a police officer for such an offence during the period of registration; and
  - (c) training.

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- (3) In subsection (2) above “relevant offence” means—
- (a) any offence of violence or dishonesty;
  - (b) any public order offence;
  - (c) any sexual offence within the meaning of section 31 of the Criminal Justice Act 1991 (c. 53); or
  - (d) any offence under the Misuse of Drugs Act 1971 (c. 38).
- (4) Provided it has not been cancelled or revoked the registration shall remain in force for one year or such shorter period as the council may have specified at the time of registration.

## 9 Applications under Part 3

- (1) An applicant for registration as a door supervisor or for renewal of a registration shall not later than the day the application is made send a copy of any application document to the chief constable and, subject to subsection (2) below, no such application shall be considered by the council unless the applicant complies with this subsection and consents to the disclosure to the council by the police of the record of his criminal convictions, including any spent convictions (within the meaning of the Rehabilitation of Offenders Act 1974 (c. 53)) evidence in relation to which is capable of being admitted under section 7(3) of that Act.
- (2) The council may, in such cases as they think fit, after consulting with the chief constable consider an application for the grant or renewal of a registration notwithstanding that the applicant has failed to comply with subsection (1) above.
- (3) In considering an application for the grant or renewal of a registration the council shall have regard to any observations submitted to them by the chief constable within 28 days of the making of the application and may have regard to any observations submitted by him thereafter.
- (4) An applicant for the grant or renewal of registration shall furnish such particulars as the council may by regulation prescribe.
- (5) Regulations under subsection (4) above may, inter alia, prescribe the procedure for determining applications.
- (6) An applicant for the grant or renewal of a registration shall pay such reasonable fee as may be determined by the council which may, without prejudice to the generality of the foregoing, when taken together with other such fees charged by the council, be sufficient to cover the reasonable administrative costs of the council in operating the provisions of this Part of this Act and of training persons to be door supervisors.
- (7) Where, before the date of expiry of a registration, an application has been made for its renewal the registration shall be deemed to remain in force or, as the case may require, to have effect with any necessary modifications until the determination of the application by the council or the withdrawal of the application.

## 10 Refusal of registration

- (1) The council may refuse to grant or renew a registration on any of the following grounds:—

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- (a) the applicant could be reasonably regarded as not being a fit and proper person to hold a registration;
  - (b) the applicant has received insufficient training;
  - (c) the applicant has made a material statement which he knew to be false in a material particular in connection with his application;
  - (d) the applicant has failed to comply with the requirements of subsection (4) or (6) of section 9 (Applications under Part 3) of this Act;
  - (e) any other reasonable cause.
- (2) The council shall not refuse to grant or renew a registration without giving the applicant an opportunity to appear before the committee, sub-committee or officer determining the matter.
- (3) Where the council refuse to grant or renew a registration, they shall if required to do so by the applicant give the applicant a statement in writing of the reasons for their decision within 7 days of the applicant requiring them to do so.

## **11 Cancellation**

The council may, at the written request of the holder of a registration, cancel that registration.

## **12 Suspension and revocation**

- (1) The council may suspend or revoke a registration on any of the grounds included in section 10 (Refusal of registration) of this Act.
- (2) Where the council consider that a registration could be suspended or revoked under subsection (1) above they may instead of suspending or revoking it attach additional conditions to the registration.
- (3) The council shall not suspend, revoke, or attach additional conditions to, a registration without giving the holder of the registration an opportunity to appear before the committee, sub-committee or officer determining the matter.
- (4) Where the council suspend, revoke, or attach additional conditions to, a registration, they shall if required to do so by the holder of the registration give the holder a statement in writing of the reasons for their decision within 7 days of the holder requiring them to do so.

## **13 Power to prescribe standard terms, conditions and restrictions under Part 3**

- (1) The council may make regulations prescribing standard conditions applicable to all registrations.
- (2) Where the council have made regulations under this section every such registration granted or renewed by them shall be deemed to have been so granted or renewed subject to the standard conditions except so far as they are expressly excluded or amended in any particular case.

## **14 Appeals under Part 3**

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

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- (a) an applicant for the grant or renewal of a registration whose application is refused;
- (b) the holder of a registration who is aggrieved by any term, condition or restriction on or subject to which the registration is held; or
- (c) the holder of a registration whose registration is suspended or revoked under section 12 (Suspension and revocation) of this Act;

may at any time before the expiration of the period of 21 days beginning with the relevant date appeal to a magistrates' court acting for a petty sessions area which includes the city by way of complaint for an order.

- (2) In this section “the relevant date” means either the date on which the person in question or his representative is informed orally of the refusal of his application, the imposition of the terms, conditions or restrictions by which he is aggrieved or the suspension or revocation of his registration, as the case may be, or 7 days after the date when such notification was posted to him by first class pre-paid letter, whichever is the earlier.
- (3) An appeal by either party against the decision of the magistrates' court under this section may be brought to the Crown Court.
- (4) 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 and it shall be the duty of the council to give effect to such order.
- (5) Where a registration is suspended or revoked under section 12 (Suspension and revocation) of this Act or an application for the renewal of a registration is refused, the registration shall be deemed to remain in force—
  - (a) until the time for bringing an appeal under this section has expired and, if such an appeal is duly brought, until the determination or abandonment of the appeal; and
  - (b) where an appeal relating to the refusal of an application for such a renewal is successful until the licence is renewed by the council.
- (6) Where a registration is renewed under section 8 (Power to register) of this Act and the council specify a term, condition or restriction which was not previously specified in relation to that licence or such a condition or restriction is imposed under section 12(2) of this Act the registration shall be deemed to be free of it until the time for bringing an appeal under this section has expired and, if such an appeal is duly brought, until the determination or abandonment of the appeal.

## **15 Enforcement under Part 3**

- (1) If the holder of a licence in respect of licensed premises or any person concerned in the conduct or management of such premises employs a person as a door supervisor who is not currently registered with the council he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (2) Any person who is employed on licensed premises as a door supervisor without being currently registered with the council shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (3) Any person who—
  - (a) contravenes any of the conditions of his registration; or
  - (b) resists or intentionally obstructs any person in the execution of his duties under this Part of this Act; or



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(c) in connection with his application for registration makes a statement which he knows to be false in a material particular,  
shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## **16 Powers of entry under Part 3**

- (1) An authorised officer (on production, if so required, of a duly authenticated document of his authority) or any constable may at all reasonable times enter upon any premises where he has reasonable cause to believe—
- (a) persons are being employed or are acting as door supervisors who have not been registered by the council; or
  - (b) door supervisors are contravening any of the conditions of the registration, and may inspect the premises and anything in them for the purpose of ascertaining whether an offence has been committed.
- (2) The power of an authorised officer or constable under subsection (1) above to inspect anything on any premises includes power to require any information which is kept by means of a computer and is accessible from the premises to be made available for inspection in a visible and legible form.
- (3) Subsections (2), (3) and (4) of section 287 of the Public Health Act 1936 (c. 49) shall apply in respect of entry to premises for the purpose of this section as they apply to entry to premises for the purposes of subsection (1) of that section.

## **17 Confidentiality**

- (1) A person who discloses information which he has obtained by virtue of this Part of this Act and which relates to the affairs of a particular business shall be guilty of an offence unless he does so—
- (a) with the consent of the person for the time being carrying on the business; or
  - (b) in the exercise of functions under this Part of this Act.
- (2) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment, to imprisonment not exceeding two years or a fine or both.

## **18 Application to existing door supervisors**

Persons who are employed as door supervisors on the appointed day and who apply for registration within four weeks of that day or within such longer period as the council may determine with respect to any particular person may lawfully continue to be employed as door supervisors until the determination or withdrawal of their application and if an appeal is duly lodged until the determination or abandonment of the appeal.

## **19 Defence of due diligence**

- (1) In proceedings for an offence under any provision of this Part of this Act except subsections (2) and (3) of section 15 (Enforcement under Part 3) of this Act it shall be

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a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

- (2) If in any case the defence provided under subsection (1) above involves the allegation that the commission of the offence was due to the act or default of another person the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending 7 clear days before the hearing, he has served on the prosecutor a notice in writing giving such information as was then in his possession, identifying, or assisting in the identification of, that other person.

## PART 4

### REGISTRATION OF SECOND-HAND GOODS DEALERS

#### **20 Dealers in second-hand goods**

- (1) On and from the appointed day a person shall not in the city carry on the business of a dealer in second-hand goods without being registered by the council under this section or exempted from registration by subsection (9) below and, when he is not so exempted, he shall not carry on such a business in premises occupied by him when the premises are not so registered.
- (2) On application for registration under this section the council shall register the applicant and, if the application specifies premises, those premises and issue to the applicant a certificate of registration.
- (3)
  - (a) Every person registered under this section shall, as respects every transaction under which he acquires any articles in the course of his business, keep a record of the date of the transaction, the quantity and description of the articles and the name and address of the person from whom the articles were acquired.
  - (b) Any record kept in pursuance of paragraph (a) above shall be retained by him until the end of the period of one year beginning with the day on which the last transaction was or ought to have been recorded.
- (4) Registration under this section shall remain in force for 3 years from the date thereof.
- (5) If any person contravenes subsection (1) or (3) above, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) The occupier of any premises used by a person registered under this section for the purposes of the business in respect of which he is so registered shall keep a copy of the certificate of registration displayed in the premises, and, if without reasonable excuse he fails to do so, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (7)
  - (a) An authorised officer on producing if so required a duly authenticated document showing his authority, or a constable, may at all reasonable times, and subject to paragraph (b) below—
    - (i) enter and inspect any premises registered under this section and inspect any record kept in accordance with subsection (3) above and take a copy thereof and may do all such things as are reasonably necessary for the purpose of ascertaining whether there is, or has been, in, or in connection with, the premises, a contravention of the provisions of this section; or

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- (ii) enter and inspect any premises not registered under this section which he has reasonable cause to believe are being used for, or in connection with, the business of a dealer in second-hand goods, for the purposes of ascertaining whether in connection with such premises there is a contravention of subsection (1) above.
  - (b) Subsections (2), (3) and (4) of section 287 of the Public Health Act 1936 (c. 49) shall apply in respect of entry to premises for the purpose of this subsection as they apply to entry to premises for the purposes of subsection (1) of that section.
  - (c) Paragraph (a) above shall have effect in relation to any record which is kept by means of a computer and is accessible from the premises in question as if for the words “take a copy thereof” there were substituted the words “require it to be produced in a form in which it can be taken away and is both visible and legible”.
- (8) (a) If a person registered under this section acquires any second-hand goods from a person whom he knows to be under the age of 16, whether those goods are offered by that person on his own behalf or on behalf of another person, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (b) A person who, on selling second-hand goods to a person registered under this section, gives that person a false name or false address shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (9) This section shall not apply to—
- (a) a person engaged in a business carried on by a group, organisation or body registered as a charity under section 3 of the Charities Act 1993 (c. 10) or excepted from registration by virtue of subsection (5) of that section; or
  - (b) a person in respect of whom particulars are registered under the Scrap Metal Dealers Act 1964 (c. 69) in respect of his business as a scrap metal dealer; or
  - (c) a person engaged in a business of which the primary purpose is the supply of new unused goods and to which the supply of second-hand or used goods is merely incidental; or
  - (d) a person engaged in business as a dealer in wastepaper, cardboard, textiles, plastics in bulk or second-hand clothes in respect of his business as such; or
  - (e) a person whose sole or principal business is the sale or purchase of, or dealing in, motor vehicles as defined in sections 185(1) and 186(1) of the Road Traffic Act 1988 (c. 52); or
  - (f) a person by virtue only of his being engaged in the business of—
    - (i) financing the acquisition of goods by means of hire purchase agreements, conditional sale agreements or credit sale agreements (as defined in section 189(1) of the Consumer Credit Act 1974 (c. 39)); or
    - (ii) financing the use of goods by means of bailment agreements;and for the purposes of this section a person is not to be treated as carrying on the business of a dealer in second-hand goods merely because occasionally he enters into transactions belonging to a business of that sort.

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## PART 5

### DISTRIBUTION OF FREE LITERATURE

#### 21 Interpretation of Part 5

In this Part—

“designated place” means a place designated under subsection (1) of section 22 (Distribution of free literature) of this Act or any part thereof;

“distribute” means to offer or make available, and includes the placing of free literature on, or affixing it to, a vehicle;

“the Executive” means the Tyne and Wear Passenger Transport Executive;

“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; and

“public passenger transport service” has the same meaning as in section 63(10) of the Transport Act 1985 (c. 67).

#### 22 Distribution of free literature

- (1) On and from the appointed day the council may designate, in accordance with subsection (10) below, any of the following places, or any part of such places, in the city 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 space under the management or control of the council; or
  - (b) a street or way to which the public commonly have access, whether or not as of right.
- (2) A person who distributes free literature in a designated place without the consent of the 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 designated place shall be deemed to include a reference to a person who distributes free literature on or from the 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
    - (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.

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- (4) Where a person is distributing free literature in a designated place without the consent of the council an authorised officer or a constable 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 56 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 or the chief constable 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—
  - (a) conditions as to the times or period for which the consent is valid;
  - (b) conditions for the prevention of detriment to the amenities of the area;
  - (c) a condition requiring the person distributing free literature to produce on demand to an authorised officer or to a constable documentary evidence of the consent;
  - (d) conditions as to the place where the consent is to apply; and
  - (e) conditions as to the payment for the consent of such reasonable fee as may be determined by the council which may, without prejudice to the generality of the foregoing, when taken together with other such fees charged by the council, be sufficient to cover—
    - (i) the reasonable administrative and enforcement costs in operating the provisions of this Part of this Act; and
    - (ii) the costs of removing from, or from the vicinity of, designated places free literature which has been distributed in contravention of the provisions of this section and has been discarded.
- (7) The grounds upon which the council may withhold consent under subsection (2) above are that—
  - (a) the applicant is unsuitable by reason of misconduct;
  - (b) the applicant has within the previous 5 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 place where the consent is to apply the activity in respect of which the consent is requested;
  - (d) there would be a risk of danger or unreasonable inconvenience to users of the place if the consent is given;
  - (e) it is likely to be detrimental to the amenities of the place if the consent is given.

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*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

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- (8) A consent given under subsection (2) above may be revoked by notice to the person to whom the consent was given if that person—
- (a) is considered to be unsuitable by reason of misconduct after the consent was given;
  - (b) committed an offence under this section; or
  - (c) has failed to avail himself, or to avail himself to a reasonable extent, of the consent.
- (9) A person aggrieved by—
- (a) the withholding by the council of consent referred to in subsection (2) above;
  - (b) the conditions subject to which the council give such consent; or
  - (c) the revocation of such consent under subsection (8) above;
- may appeal to a magistrates' court acting for a petty sessions area which includes the city 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 council.
- (10) (a) Before designating any place under subsection (1) above the council shall give notice of their proposal by advertisement in a local newspaper circulating in the city and by posting a copy of the notice in the places to which it relates, stating that objections to the proposals may be made to the 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 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.
- (11) A resolution under subsection (10)(b) above shall come into force on such days as shall be specified by a notice given in the same manner as a notice given under subsection (10)(a) above, being a day not less than 28 days after the day on which a notice is given under this subsection.
- (12) Any resolution under subsection (10)(b) above may be rescinded, or varied by the deletion of any place or part of a place, by a subsequent resolution of the council.
- (13) This section does not apply to the distribution of free literature—
- (a) by a charity within the meaning of the Charities Act 1993 (c. 10) where that literature relates to or is for the benefit of that body;
  - (b) by or on behalf of a political organisation;
  - (c) by a person who distributes the literature by putting it into a building or letterbox;
  - (d) by the Executive or any of its subsidiaries where the literature relates wholly or mainly to a public passenger transport service; or
  - (e) by any other person who provides a public passenger transport service which is the subject of an agreement made with the Executive under any enactment where the literature relates wholly or mainly to that service.
- (14) The Council shall not for the purposes of this section designate—
- (a) any property in the ownership of Railtrack PLC and used for the purposes of its railway network or as a railway station; or
  - (b) any property in the ownership or under the control of the Executive and used by them for the purposes of the system of railways authorised by the Tyne and Wear Passenger Transport Acts and Orders 1973 to 1998.