



# London Local Authorities Act 2007

## 2007 CHAPTER ii

### PART 3

#### LICENSING

### CHAPTER 2

#### STREET TRADING

#### *London Local Authorities Act 1990*

### 38 Interpretation of Part III of Act of 1990

- (1) Section 21 (interpretation of Part III) of the Act of 1990 is amended as follows.
- (2) For the definition of “itinerant ice cream trading” there is substituted—

“itinerant ice cream trading” means ice cream trading from a vehicle which goes from place to place remaining in any one location in the course of trading for periods of 15 minutes or less and not returning to that location or any other location in the same street on the same day;”.
- (3) In paragraph (b) of the definition of “street”, for “have access without payment”, there is substituted “obtain access without payment—
  - (i) whether or not they need the consent of the owner or occupier; and
  - (ii) if they do, whether or not they have obtained it;”.
- (4) In the definition of “street trading”—
  - (a) for “subsection (2)” substitute “subsections (1A) and (2)”;
  - (b) after “gain or reward”, the words “(whether or not the gain or reward accrues to the person actually carrying out the trading)” are inserted.
- (5) After subsection (1), the following subsection is inserted—

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

- (a) a transaction was completed elsewhere than in a street in the case where the initial offer or display of the articles in question or the offer of services, as the case may be, took place in a street;
- (b) either party to the transaction was not in a street at the time it was completed;
- (c) the articles actually sold or services actually supplied, as the case may be, were different from those offered,

shall be disregarded.”.

(6) Paragraphs (f) and (g) of subsection (2) are omitted.

### **39 Applications for street trading licences under Act of 1990**

(1) Section 25 (application for street trading licences) of the Act of 1990 is amended as follows.

(2) In subsection (1), for “renewing a licence, other than a temporary licence” substitute “renewing a street trading licence”.

(3) After subsection (2), the following subsection is inserted—

“(2A) In the case of an application for a street trading licence which, if granted, would authorise street trading on land which falls within paragraph (b) in the definition of “street” in subsection (1) of section 21 (interpretation of Part III) of this Act, the applicant shall provide evidence in writing—

- (a) that he has consent to trade on the land from the owner of the land in question; or
- (b) that he is the owner of the land in question.”.

(4) In paragraph (a)(iv) of subsection (4), for “a licence which is not a temporary licence to trade” substitute “a street trading licence which, if granted, would authorise trading”.

(5) After paragraph (b) in subsection (4), the following paragraph is inserted—

“(c) shall not be granted in the case of an application for a street trading licence which, if granted, would authorise street trading on land which falls within paragraph (b) in the definition of “street” in subsection (1) of section 21 (interpretation of Part III) of this Act, unless the applicant has provided sufficient such evidence as is mentioned in subsection (2A) above to satisfy the council.”.

### **40 Lapsing of street trading licence under Act of 1990**

(1) In subsection (4)(b) of section 29 (further provisions relating to grant, renewal or revocation of street trading licences) of the Act of 1990, for “the next following subsection” there is substituted “section 30 (Part III appeals) of this Act”.

(2) After the said section 29, the following section is inserted—

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### “Lapsing of licence in certain cases

In the case of a street trading licence which authorises street trading on land which falls within paragraph (b) in the definition of “street” in subsection (1) of section 21 (interpretation of Part III) of this Act, the licence shall lapse if—

- (a) the consent is discontinued by the person who gave it, or a successor in title of that person, and the council is provided with written notice of the discontinuation of the consent by the person who discontinues it; or
- (b) the holder of the licence no longer is the owner of the land in question, as the case may be.”.

## 41 Temporary licences

(1) Section 31 (temporary licences) of the Act of 1990 is amended as follows.

(2) After subsection (1), the following subsections are inserted—

“(1A) A council may grant a temporary licence in any street, whether or not it is a licensed street.

(1B) In the case of an application for a temporary licence which, if granted, would authorise street trading on land which falls within paragraph (b) in the definition of “street” in subsection (1) of section 21 (interpretation of Part III) of this Act, the applicant shall provide evidence in writing—

- (a) that he has the consent to trade on the land from the owner of the land in question; or
- (b) that he is the owner of the land in question.

(1C) An application for a temporary licence shall not be granted, if the licence would authorise street trading on land which falls within the said paragraph (b), unless the applicant has provided sufficient evidence, as is mentioned in subsection (2A) of section 25 (application for street trading licence) of this Act, to satisfy the council.

(1D) In the case of a temporary licence which authorises street trading on land which falls within the said paragraph (b), the licence shall lapse if—

- (a) the permission to trade on the land is discontinued, and the council is provided with written notice of the discontinuance of the permission by the person who gave the permission or by a successor in title to that person; or
- (b) the holder of the licence is no longer the owner of the land in question or no longer has sufficient interest in the land to trade on the land without the permission of another person.

(1E) The council may revoke or suspend the operation of a temporary licence held in respect of land which falls within the said paragraph (b) if circumstances have arisen since the grant of the licence or are about to arise which necessitate such revocation or suspension on the grounds of safety.

(1F) Where a temporary licence is revoked or suspended under subsection (1E) above, the council shall return to the licensee such proportion of any fee paid for the granting of the licence as is appropriate, taking into account the period

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for which the licence was granted and the period remaining on the licence when it was revoked or the period for which the licence was suspended, as the case may be.”.

#### **42 Offences under Act of 1990**

In subsection (4) of section 34 (offences) of the Act of 1990, the words “duly signed by him and” are omitted.

#### **43 Employment of assistants under Act of 1990**

- (1) Section 36 (employment of assistants) of the Act of 1990 is amended as follows.
- (2) After “street trading licence” (where those words first appear), the words “or a temporary licence” are inserted.
- (3) For “street trading licence” where those words appear for the second time, substitute “licence”.

#### **44 Unlicensed street trading under Act of 1990**

- (1) Section 38 (unlicensed street trading) of the Act of 1990 is amended as follows.
- (2) In subsection (4)—
  - (a) at the beginning, the words “Subject to section 38A (seizure of perishable items) of this Act”, are inserted;
  - (b) the proviso is omitted.
- (3) In subsection (4C)—
  - (a) in paragraph (a), at the beginning, the words “Subject to section 38B (motor vehicles) of this Act,” are inserted;
  - (b) in paragraph (e), for “identify that person and” substitute “identify that person or”;
  - (c) for paragraph (f) substitute—
    - “(f) paragraph (g) below applies where the article, thing, receptacle or equipment is not returned because—
      - (i) it has not proved possible to identify the person from whom it was seized or ascertain his address; or
      - (ii) the person from whom it was seized and the owner (if different) have disclaimed or refused to accept it.
    - (g) where this paragraph applies, the council may make a complaint to the magistrates' court for a disposal order under section 38C (disposal orders) of this Act (whether or not proceedings for an offence under this section have been commenced).”.

#### **45 Seizure of perishable items**

After section 38 (unlicensed street trading) of the Act of 1990, the following section is inserted—

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### “Seizure of perishable items

- (1) No item which is of a perishable nature (in this section referred to as a “perishable item”) shall be seized under the provisions of subsection (4) of section 38 (unlicensed street trading) of this Act unless the authorised officer or constable gives a certificate under subsection (2) below to the person from whom the item is seized.
- (2) Where a perishable item is seized under the said section 38, the person from whom it is seized must be given a certificate—
  - (a) stating the effect of subsection (4) below and subsection (6) of the said section 38;
  - (b) giving the address from which the item may be collected;
  - (c) informing the recipient that if he is not the owner of the item, then he should give the owner the information referred to in paragraphs (a) and (b) above.
- (3) The council or the police shall store any perishable item seized under the said section 38 at an appropriate temperature.
- (4) If the person from whom a perishable item was so seized fails to collect it within 48 hours of the seizure the council or the police may dispose of it.
- (5) When any perishable item is disposed of by the council under subsection (4) above, the council shall have a duty to secure the best possible price which can reasonably be obtained for it.
- (6) Paragraphs (a) to (d) of subsection (4C), and subsections (5) and (6) of the said section 38 shall apply to perishable items seized under that section only in cases where the item concerned has not been disposed of by the council at the conclusion of the proceedings in respect of the alleged offence in relation to which the item was seized.
- (7) Paragraphs (e) and (f) of subsection (4C) of the said section 38 shall apply to perishable items seized under that section only in cases where the item concerned has not been disposed of by the council at the expiration of the period mentioned in the said paragraph (e); otherwise subsections (9) to (12) below shall apply.
- (8) Subsection (8) of the said section 38 shall apply with the omission of paragraph (c) in respect of perishable items seized under that section only in cases where the item concerned has not been disposed of by the council by the time the circumstances mentioned in paragraph (a)(ii)(A) or (B) arise; otherwise subsections (9) to (12) below shall apply.
- (9) Subsection (12) below shall have effect where the council have disposed of a perishable item under subsection (4) above and any of the following conditions apply.
- (10) The first condition is that no proceedings in respect of the alleged offence in relation to which the item was seized are instituted before the expiration of a period of 28 days beginning with the date of seizure of the item, or any such proceedings instituted within that period are discontinued.

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- (11) The second condition is that—
- (a) not less than six months have passed since the date of the seizure and no information has been laid against any person for an offence under the said section 38 in respect of the acts or circumstances which occasioned the seizure; or
  - (b) proceedings for such an offence have been brought and either the person charged has been acquitted (whether or not on appeal) and the time for appealing against or challenging the acquittal (where applicable) has expired without an appeal or challenge being brought, or the proceedings (including any appeal) have been withdrawn by, or have failed for want of prosecution by, the person by whom the original proceedings were brought.
- (12) When this subsection has effect a person who has, or at the time of seizure had, a legal interest in the item seized may recover compensation from the borough council or (where it is seized by a constable) the Commissioner of Police of the Metropolis by civil action in the County Court in respect of any loss suffered by him as a result of the seizure and any such compensation shall not be included in the computation for calculating charges under section 32 (fees and charges) of this Act.”.

#### 46 Motor vehicles

After section 38A (seizure of perishable items) of the Act of 1990 (inserted by section 45 (seizure of perishable items of this Act) the following section is inserted—

**“Motor vehicles**

- (1) Subsection (4) below applies where the following conditions are met.
- (2) The first condition is that where, in ascertaining the identity of the person from whom a vehicle was seized under subsection (4) or (4A) of section 38 (unlicensed street trading) of this Act, a borough council has, before the expiry of 14 days from the date of the seizure, made a request to the Secretary of State for the supply of relevant particulars.
- (3) The second condition is that those particulars have not been supplied to the council before the date after which that council would, but for this section, have to return the vehicle in accordance with subsection (4C)(e) of that section.
- (4) Where this subsection applies, the council must return the vehicle to its owner if—
  - (a) no proceedings are instituted in respect of the alleged offence in respect of which the vehicle was seized before the expiry of the period of 14 days beginning with the date on which the relevant particulars are supplied; or
  - (b) any such proceedings instituted within that period are discontinued, at the expiry of that period or on the discontinuance of the proceedings, as the case may be.
- (5) If the council seeks to return a vehicle in accordance with the said subsection (4C)(e) or subsection (4), but the person to whom the council seeks to return the vehicle cannot be found or disclaims or refuses to accept the

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vehicle, the council may make a complaint for a disposal order in respect of the vehicle under section 38C (disposal orders) of this Act.

- (6) In this section, “relevant particulars” are particulars relating to the identity of the owner of the vehicle contained in the register of mechanically propelled vehicles maintained by the Secretary of State under the Vehicle Excise and Registration Act 1994 (c. 22).
- (7) The owner of a vehicle for the purposes of this section shall be taken to be the person by whom the vehicle is kept.
- (8) In determining who was the owner of a motor vehicle at any time, it shall be presumed that the owner is the person in whose name the vehicle is at that time registered under the Vehicle Excise and Registration Act 1994.”.

## 47 Disposal orders

After section 38B (motor vehicles) of the Act of 1990 (inserted by section 46 (motor vehicles) of this Act) the following section is inserted—

### “Disposal orders

- (1) This section applies in respect of a complaint made by a borough council for a disposal order in respect of—
  - (a) an article or thing under subsection (4C)(f)(ii) of section 38 (unlicensed street trading) of this Act; or
  - (b) a motor vehicle under subsection (5) of section 38B (motor vehicles) of this Act,
 and such articles, things and motor vehicles are together referred to as “seized items” in this section.
- (2) In respect of a complaint to which this section applies, a magistrates' court may, if it is satisfied that the council has made reasonable efforts to identify the person from whom the seized item was seized or its owner, as the case may be, or has made reasonable efforts to return the seized item, it may make an order authorising the complainant council—
  - (a) to dispose of the seized item in question; and
  - (b) after payment out of any proceeds arising from the disposal of the expenses incurred in the seizure, storage and disposal, to apply the balance, if any, towards the costs of the council as mentioned in paragraphs (a) to (d) of subsection (2) of section 32 (fees and charges) of this Act.
- (3) The court shall not make a disposal order under subsection (2) above where a person claiming to be the owner of or otherwise interested in the seized item in question applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.
- (4) Subsection (5) below applies where—
  - (a) a person appears before the court under subsection (3) above to show why the order should not be made; and
  - (b) the court makes an order under subsection (2) above authorising the council to dispose of the item; and

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- (c) the seized item in question is not of sufficient value to defray the expenses of seizing and storing it; and
  - (d) the court is satisfied that the person mentioned in paragraph (a) above was the owner of the seized item in question or was the person from whom it was seized, as the case may be.
- (5) Where this section applies, the court may order that the person mentioned in subsection (4)(a) above pay the expenses, or the balance of the expenses, reasonably incurred by the council in seizing and storing the seized item in question.
- (6) In considering whether to make an order under subsection (2) above a court shall have regard—
- (a) to the value of the seized item;
  - (b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making); and
  - (c) any other circumstances considered to be relevant.
- (7) The court may make a disposal order under this section notwithstanding that the value of the seized item would exceed the maximum penalty for the offence in respect of which the seized item had originally been seized had the said offence been prosecuted to conviction.
- (8) For the purposes of this section, “owner” in respect of a vehicle, has the same meaning as it has for the purposes of the said section 38B.”.

#### **48 Transitional provisions**

- (1) Where—
- (a) a person uses for trading under Part VIIA of the Highways Act 1980 (c. 66), any object or structure placed on, in or over a highway in a borough immediately before the date on which subsection (6) of section 38 (interpretation of Part III of Act of 1990) of this Act comes into force in the borough; or
  - (b) operates facilities in the borough for recreation or refreshment under the said Part VIIA immediately before that date on which this section comes into force in the borough; and
  - (c) application for—
    - (i) the grant of a street trading licence to authorise that activity; or
    - (ii) the variation of an existing street trading licence to authorise that activity,
 is made in respect of those premises within four weeks of that date, subsection (2) below applies to that activity.
- (2) Any activity to which this subsection applies may lawfully continue to be carried on until the determination or withdrawal of the application mentioned in subsection (1) above and if an appeal is lodged until the determination or abandonment of the appeal.



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## **49 Keeling Schedule**

Part III of the Act of 1990, as amended by the [London Local Authorities Act 1994 \(c. xii\)](#), the [London Local Authorities Act 2004 \(c. i\)](#) and this Act, is set out in Schedule 3 to this Act.