

London Local Authorities Bill [HL]

[AS AMENDED IN COMMITTEE]

EXPLANATORY MEMORANDUM

PART 1

PRELIMINARY

Clause 1 deals with citation and commencement, and *Clause 2* with definitions of certain expressions used in the Bill.

Clause 3 provides for the provisions of the Bill to come into operation on a day or on days to be appointed by the London borough councils (“the councils”).

PART 2

PUBLIC HEALTH AND THE ENVIRONMENT

Interpretation

Clause 4 deals with interpretation of terms used in *Part 2* of the Act and in particular provides definitions of “advertising offence”, “fly posting offence” and “relevant objects” which may be seized under provisions in relation to fly tipping offences.

Advertising

Clause 5 deals with portable advertisements. The display of advertisements is controlled under sections 224 and 225 of the Town and Country Planning Act 1990. Regulations under section 224 set out in detail the types of advertisement which require the consent of the local planning authority.

Clause 5(1) provides for a prohibition on the display of portable advertisements within a “designated area” (see *Clause 6* below) unless they are displayed in accordance with subsection (2).

Subsection (2) lists the types of display which are outside the scope of subsection (1), namely the display of an advertisement for which express or deemed consent has been given under the existing advertisement regulations.

The existing regulations set out a list of advertisements which enjoy deemed consent, such as functional advertisements of local authorities and statutory undertakers, estate agents’ advertisements and certain types of advertisement on business premises.

Anyone who displays an advertisement in contravention of subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4. The clause follows section 224 of the 1990 Act by providing that the person whose goods, trade, business or other concerns are given publicity by the advertisement is deemed to display the advertisement if certain conditions apply.

Clause 6 makes provision about the designation of areas within which the prohibition in *Clause 5* applies. It sets out the types of area to which the designation may apply (including streets) and it also provides, in subsection (2), that the council may only designate an area if it is in the interests of amenity and public safety, taking account of any material factors, some of which are listed. Provision is made for publicity for the making of designations under *Clause 6*.

Clause 7 amends section 11 of the London Local Authorities Act 1995 which makes provision about unauthorised advertisement hoardings. Section 11 enables a borough council to serve notices requiring the removal of unauthorised hoardings used for the display of advertisements in contravention of the advertisement regulations made under Section 224 of the Town and Country Planning Act 1990. Such notices can be served where no consent has been granted for the hoarding, or where no such consent is required by virtue of the regulations.

An exception to the power is contained in subsection (1) of Section 11, namely for hoardings which were erected before 1 April 1990.

Clause 7 modifies that exception by providing that it will not apply in cases where the council has served, in relation to the hoarding, a discontinuance notice under Section 220 of the 1990 Act, and either no appeal has been made against the discontinuance notice, or an appeal has been made and is unsuccessful.

Clause 8 makes provision about automatic minimum fines on a third conviction for fly posting and shroud advertisement offences. The clause provides that where a person is convicted for a third such offence, the court must impose a fine between level 4 on the standard scale and £20,000. The existing maximum punishment for such an offence is a fine of level 4 on the standard scale. The provisions would not apply if the court were of the opinion that there are particular circumstances which relate to any of the offences or to the offender, and which would make it unjust for the provisions to apply in all the circumstances.

For the clause to apply, the person has to have been convicted of no fewer than three offences during the five years ending with the date of the conviction in question, and each of the three convictions has to have been in relation to offences committed one after the other.

Clause 9 makes provision about the certifying of convictions for fly posting and shroud advertisement offences committed after *Clause 8* comes into force.

Clause 10 makes provision about the determination of the day on which offences which have been committed over a period of two or more days are to have been committed for the purposes of *Clause 8*. For those purposes, the offences are taken to have been committed on the last of those days.

Clause 11 enables councils to serve a notice on the owner or occupier of land in which there is situated a surface in regard to which the council has reason to believe that there is a persistent problem with the display of unauthorised advertisements. The notice would require the owner or occupier of the land to carry out such reasonable measures as may be required to prevent or reduce the frequency of display of unauthorised advertisements on the surface. By incorporating certain sections of the Public Health Act 1936 (set out in *Schedule 1*), the recipient of the notice is given a right of appeal against the notice, and the council is given powers to carry out works in default and claim their costs in doing so. The councils must publish a code of practice about the implementation of the clause.

Clause 12 provides protective provisions for railway undertakers in relation to the exercise of the powers under *Clause 11*.

Clauses 13 to 17 relate to the seizure and forfeiture of certain items related to fly posting offences.

Clause 13 provides that an authorised officer of the council or a constable may seize any relevant object, if he or she has reasonable grounds for suspecting that a person has committed a fly posting offence. The terms “fly posting offence” and “relevant object” are defined in *Clause 4*.

Nothing may be seized under *Clause 13* unless the relevant object is required to be used in evidence in any proceedings in respect of the suspected offence, or if it may be the subject of forfeiture under *Clause 16*. The clause provides that an authorised officer must provide evidence of his authority if he seizes goods, and the authorised officer or a constable must provide the person from whom items are seized with a certificate containing certain information, including information about his rights to apply to the court for the return of seized items.

Clause 14 provides that objects which have been seized must be returned to the person from whom they were seized unless the court orders them to be forfeited, or if an award of costs to the council made by the court has not been satisfied within 28 days of the order, or that within 56 days of the seizure, no proceedings have been instituted by the council or the police, or that any such proceedings which have been issued have been discontinued.

Clause 15 sets out the procedure to be followed in cases where the council apply for a disposal order in cases where items have been seized under *Clause 14*, but they have been unable to identify the person from whom they were seized or that person has disclaimed or refused to accept them. In such cases, a magistrates’ court, on a complaint for the disposal order, may make an order authorising the council to dispose of the item seized and retain the balance of the proceeds, if any.

Clause 16 enables the court by whom a person is convicted of a fly posting offence to order relevant objects to be forfeited. The clause enables the person claiming to be the owner of the object to be heard by the court and given an opportunity to show cause why the order should not be made. The court must have regard to the value of the object and the likely financial and other effects on the offender or the owner of the object of the making of the forfeiture order.

Clause 17 makes provision enabling compensation to be paid to any person who has a legal interest in a seized object, if no information for an offence has been laid within six months of the seizure, or the person from whom the objects were seized is acquitted, or proceedings for an offence have been withdrawn or failed for want of prosecution.

Graffiti

Clause 18 makes provision about graffiti by making amendments to the London Local Authorities Act 1995. The main amendment introduces a new section 12A, providing an indemnity for a council, persons authorised by the council and their employees in respect of damages arising out of the lawful exercise of their powers to affix graffiti notices to structures and carry out graffiti removal.

Waste and litter

Clause 19 relates to the placing of receptacles for household waste. Section 46 of the Environmental Protection Act 1990 makes provision enabling waste collection authorities to serve notices on occupiers of premises setting out requirements relating to the placing of waste for collection. Section 46 (4) sets out a number of different requirements that can be made in the notice. They include matters such as the size, construction and maintenance of receptacles for the containment of waste and the placing of receptacles for the purpose of facilitating the emptying of them, including placing them on the highway.

Clause 20 introduces a new type of requirement to that list, namely the placing of the receptacles for the purpose of avoiding nuisance or detriment to the amenity of the area.

Clause 20 provides for the making of regulations relating to receptacles for household waste. Section 46 of the 1990 Act, as mentioned above, enables the waste collection authority to make requirements of occupiers of premises as regards the use of receptacles for household waste and the placement of those receptacles for collection. Notices under section 46 may only be served on the existing occupier and the requirements do not run with the land. *Clause 20* will enable borough councils, in their capacity as waste collection authorities, to make standard regulations about the use of receptacles for household waste, and the manner in which they should be placed for collection. Such regulations would, by reference to the requirements which may be made by section 46, also be able to make general provision about the division of recyclables into the correct containers. Enforcement of the regulations is dealt with in *Clause 23*. There are exemptions for transport undertakers' land.

Provision is made in *Clause 20* for the advertisement of the making of regulations by publication in at least two newspapers circulating in the borough.

Clauses 21 and *22* makes similar provision as regards commercial and industrial waste as *Clauses 19* and *20* do as regards household waste.

Clause 23 deals with enforcement as regards the regulations which may be made under *Clauses 20* and *22*. Contravention of the regulations does not result in a criminal offence, but would mean that the occupier is liable to pay a penalty charge to the council if he fails to comply with the regulations without reasonable excuse. General provision about penalty charges is made in *Part 5* of the Bill and includes provision for representations and appeals. The clause sets out the grounds on which representations may be made against the penalty charge.

Clause 24 makes provision about littering from vehicles. The clause enables the council to serve a penalty charge notice on the owner of a vehicle in cases where the council has reason to believe that a littering offence under section 87 of the Environmental Protection Act 1989 has been committed by a person inside the vehicle when he is in the vehicle. *Clause 24* decriminalises such offences, and provides that the owner of the vehicle (who is presumed to be the person registered as its keeper by DVLA) is liable for the charge. *Part 5* of the Bill makes general provision about representations against penalty charge notices and appeals to adjudicators. Owners of public service vehicles, taxis and private hire vehicles are all exempt from penalty charges under the clause. Grounds on which representations can be made in respect of the penalty charge notice are set out in subsection (6), and include the grounds that the person who received the notice was not the owner of the vehicle, that there was no contravention of section 87 and that the recipient was a vehicle hire firm.

Clause 25 alters section 59 of the Environmental Protection Act 1990 in its application to the area of a borough council. Section 59 enables waste collection authorities and waste regulation authorities to require that unlawfully deposited waste be removed from land by the owner or occupier of the land. Where an owner or occupier receives a notice requiring him to remove such waste, he may appeal to the magistrates' court and by virtue of section 59(3)(a), the court must quash the requirement if satisfied that the appellant neither deposited nor knowingly caused nor knowingly permitted the deposit of the waste.

Clause 25 replaces section 59(3)(a) with a due diligence ground and a new subsection (3A) is inserted which provides that where the due diligence ground is relied upon and it is alleged that the depositing of the waste was due to the act or default of another person, the appellant must give seven days notice before the hearing of the appeal to the waste regulation authority, or waste collection authority, giving information about the identity of that other person. Land in the ownership or occupation of transport undertakers is exempt from the clause.

Clause 26 makes provision about civic amenity sites which London borough councils are under a duty to provide under section 1 of the Refuse Disposal (Amenity) Act 1978. The duty under section 1 (which is prospectively repealed by the Environmental Protection Act 1990) is to provide places where refuse (other than refuse falling to be disposed of in the course of a business) may be deposited at all reasonable times free of charge by persons resident in the area of the authority and, on payment of such charges (if any) as the authority thinks fit by other persons.

Subsection (1) of *Clause 26* would enable the borough council to require proof from persons intending to use the site that they reside in the area of the council or an adjoining council. If insufficient proof or no proof is provided, the council may require the person not to enter the site, deposit waste or refuse at the site or to discontinue depositing waste or refuse at the site, or retrieve any waste or refuse which has been deposited.

The council may also make similar requirements in the case where they suspect that waste is being disposed of in the course of business, or that waste is being deposited in incorrect receptacles.

It would be an offence to fail to comply with one of the requirements mentioned above. There is also an offence of giving false information in response to a query from the council. These offences, by virtue of *Clause 84* are to be fixed penalty offences under the London Local Authorities Act 2004.

Abandoned vehicles

Clause 27 makes provision about the removal of abandoned vehicles. London borough councils already have power to deal with abandoned vehicles under the Refuse Disposal (Amenity) Act 1978. Councils have a duty to remove vehicles from certain land in the open air, if it appears to them that they are abandoned.

Clause 27 would partially disapply subsection (2) of section 3 of the 1978 Act. That subsection requires the local authority to give notice to the occupier of land from which they intend to remove abandoned vehicles under section 3(1). The clause makes it clear that notice would still be required in the case of vehicles to be removed from land in the curtilage of a dwelling.

Clause 28 deals with the disposal of removed vehicles. It adds further conditions which have to be satisfied before a local authority (which includes a waste disposal authority) are required to release a vehicle which has been delivered to them after having been removed under section 3 of the 1978 Act. In addition to proving that he is the owner of the vehicle, the claimant would have to satisfy the authority that he has paid a fixed penalty for the offence under section 2(1)(a) of the 1978 Act (offence of abandoning a vehicle) if he has been offered the opportunity to do so and he must also satisfy the authority that he is insured to drive the vehicle. In cases where there is no current licence displayed on the vehicle or there is no MOT test certificate in respect of the vehicle, he must also give the authority a bond. The bond will only be repaid to him once he produces evidence of insurance or MOT certification.

Enforcement action zones

Clause 29 introduces the concept of enforcement action zones. Under subsection (1), a borough council (or two or more borough councils acting jointly) may with the approval of the Secretary of State designate areas of land in which in their opinion it is expedient that enhanced environmental crime enforcement should be enabled.

Designating such an area, the council has to have regard to the level of environmental crime in the area, the nature of use of land in the area, the location of schools and open spaces in the area and the living conditions of those who live in the area and the social conditions in general environment to the area.

Clause 30 sets out the procedure which must be followed by the local authority when designating an enforcement action zone. The authority must publish its proposals in a local newspaper and make the proposals available for inspection. Objections can be made to the proposals and the authority must take such objections into account. Further notice of the designation of the area once it is made must be published in a local newspaper and in the London Gazette.

Clause 31 contains the main operative provisions relating to enforcement action zones. Once the zone is established, a number of existing enactments are applied with modifications in accordance with a table which is introduced in *Schedule 2*. All of those modifications are increases in the level of fines which may be imposed in respect of a number of crimes relating to the environment, including the unauthorised display of advertisements, littering, graffiti and noise.

Town and Country Planning

Clause 32 makes provision about vegetation, where it is in such a state that the local authority believe it to be detrimental to the amenity of the area. Local planning authorities are able to serve notices under section 215 of the Town and Country Planning Act 1990 requiring owners and occupiers of land to remedy the condition of land where it adversely affects the amenity of a part of the authority's area. It is doubtful that section 215 extends to enable notices to be served where the cause of detriment is vegetation growing on the land. *Clause 32* will allow notices under section 215 to be served in such cases. The 1990 Act contains provisions enabling appeals to be made to the Magistrates' Court against section 215 notices.

PART 3

LICENSING

CHAPTER 1

HOSTESS BARS AND NEAR BEER PREMISES

Clause 33 introduces, in London, a new class of establishment, known as hostess bars, which will become subject to licensing as a sex establishment under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.

The introduction of the new class of sex establishment is effected by the introduction of a new paragraph 3A into Schedule 3, which sets out a definition of a "hostess bar". "Hostess bar" is defined as meaning—

- (a) any premises used for a business which consists, whether in whole or in part, of the offering, expressly or by implication, whether on payment of a fee or not, of the provision of companions for customers on the premises,
- (b) any premises in respect of which any impression by whatever means, is given to customers, or potential customers, that a performance, entertainment, service, exhibition or other experience of a sexual nature is available on the said premises,

- (c) any premises in respect of which any impression, by whatever means, is given to customers, or potential customers, that alcoholic refreshments are available on the said premises despite the premises not being licensed to provide alcohol.

A list of exemptions is provided in subsection (2), including premises which are licensed under a number of different existing licensing regimes. The clause makes a number of consequential amendments to Schedule 3.

Clause 34 provides transitional provisions for existing premises which fall within the new category of sex establishments, enabling them to operate without a licence for a limited period after the new definition comes into force so long as an application for a licence is made within a certain time.

Clause 35 provides for the repeal of Part IV of the London Local Authorities Act 1995, which makes provision for the licensing of near beer premises. The repeal would take place on the introduction of the licensing of hostess bars under the Local Government (Miscellaneous Provisions) Act 1982 as provided for in *Clause 33*.

CHAPTER 2

STREET TRADING

Introductory

Clause 36 sets out the definitions of “the Act of 1990” (The London Local Authorities Act 1990) and “the Act of 1999” (The City of Westminster Act 1999). Street trading is subject to the licensing regime under Part III of the Act of 1990 in every London borough except for the City of Westminster and the City of London, and the Act of 1999 provides for a separate street trading licensing regime in the City of Westminster.

Clause 37 makes provision about street trading on the bridges which connect Westminster and Lambeth. It enables Westminster City Council and Lambeth Borough Council to enter into agreements which would provide that either the Act of 1990 or the Act of 1999 applied on the bridges. Street trading in Westminster is governed by the City of Westminster Act 1999, and in Lambeth by the London Local Authorities Act 1990. A provision is included to ensure that any street trading licence granted under either the Act of 1990 or the 1999 shall continue in force with the same conditions applied to the licence, if an agreement has the effect of changing the licensing regime while the licence is in force.

Clauses 38 to 50 set out a number of amendments to the Act of 1990. *Clause 38* amends section 21, which deals with interpretation. In particular, the following amendments are included—

- (a) a new definition of “itinerant ice cream trading” (which is exempted from the street trading regime), which makes reference to a specific time limit of 15 mins within which a trader may be positioned in a street in order to enjoy the exemption.

- (b) an alteration of the definition of “street”. The existing definition includes areas within 7 metres of any road or footway. The alteration provides that the definition extends to such land, whether or not the public have access without payment as of right, whether or not the consent of the owner of the premises is required, and whether or not such consent has been obtained, if so required.
- (c) the definition of “street trading” is altered so as to make clear that a person can be street trading whether or not any gain or reward accrues to the person actually carrying out the trading.
- (d) a new subsection (1A) is added in order to clarify that transactions completed away from a street count as street trading where the initial offer or display of articles, or offer of services took place in a street.

Clause 39 alters one and removes two of the existing exemptions from the street trading regime under the Act of 1990. Section 21(2)(d) provides an exemption for persons trading as a news vendor under certain circumstances. *Clause 39* would remove that exemption in the case of the vending of newspapers from receptacles, if the receptacle is located within 25 metres of any public access or egress to or from the railway station or London underground station.

Clause 39 would also remove exemptions currently provided in section 21(2)(f) and (g) of the 1990 Act. Those exemptions cover the use for trading under Part VIIA of the Highways Act 1980 of any object or structure placed on, in or over a highway, and the operation of facilities for recreation or refreshments under Part VIIA.

Clause 40 contains a number of amendments to section 25 of the Act of 1990, which deals with applications for street trading licences. The most significant amendment is to make provision for applicants to provide evidence of consent to trade on land within 7 metres of a road or footway (see *Clause 38*), or proof of ownership of such land. Where the council is not satisfied that sufficient evidence of consent or ownership has been provided, they must refuse the application for the licence. Minor amendments are also made in relation to applications for temporary licences.

Clause 41 inserts a new section 29A into the Act of 1990, providing for automatic lapsing of licences where permission to use land within 7 metres of a road or footway for street trading by a licence holder is discontinued, and notice of the discontinuation of the permission is given to the council. The licence would also lapse in the case where the holder of the licence was the owner of the premises, and ceased to be its owner.

Clause 42 makes a number of amendments to section 31 of the Act of 1990, which deals with temporary licences. In particular, it makes provision about the need for permission of the owner of land within 7 metres of a road or footway to be required, and evidence of that permission to be provided to the council, in any application for a temporary licence in respect of such land. Similar provisions are made in relation to the lapsing of licences, as are made in respect of street trading licences in the new section 29A inserted by *Clause 41*. The clause also introduces a new provision in section 31 (subsection (1E)) enabling the council to revoke or suspend the operation of a temporary licence in certain circumstances on the grounds of safety.

Clause 43 makes a minor amendment to section 34(4) of the Act of 1990. That section provides for an offence of failure to produce a licence “duly signed” to an authorised office or to a constable. The obligation for the licence to be “duly signed” is removed.

Clause 44 amends section 36 of the Act of 1990 which deals with employment of assistants. It extends the provisions of section 36 to cover temporary licences as well as street trading licences.

Clause 45 makes a number of amendments, some consequential, to section 38 of the Act of 1990, which deals with unlicensed street trading.

Subsection (3) introduces a replacement subsection (4C)(f), which deals with cases where articles or things have been seized by a constable or an authorised officer of the council but where the article or thing is not returned to the person from whom it was seized because it has not proved possible to identify the person and ascertain his address, or because that person has disclaimed or refused to accept it. New paragraph (f) would enable the magistrates’ court to make an order as to the manner in which the article or thing should be dealt with, and it also enables the council to make a complaint to a magistrates’ court for a disposal order under the new section 38C introduced by *Clause 48*.

Clause 46 deals with the seizure of perishable items. Under section 38 of the Act of 1990, an authorised officer of the council or a constable may seize articles or things where he has reasonable cause to suspect that a street trading offence has been committed, and where the article or thing may be required for evidence in any prosecution, or may be liable to forfeiture under section 38. Section 38 does not apply to perishable items. *Clause 46* introduces a new section 38A enabling the seizure of perishable items. The new section 38A provides for the giving of a certificate to the person from whom the items were seized, provides that perishable items must be stored at an appropriate temperature, and that perishable items which are seized may be disposed of within 48 hours of seizure. The clause applies, with amendments, procedural provisions of section 38, which deal with the seizure and forfeiture of non-perishable items.

Clause 47 introduces a new section 38B into the Act of 1990 and deals with motor vehicles. First, the clause extends the time within which summary proceedings for a street trading offence may be instituted, if the offence relates to a motor vehicle. The extension of the time limit applies where the borough council has requested the Secretary of State (through the DVLA) for details of ownership of a vehicle, and those details have not been provided by the time the usual six month period for the commencement of summary proceedings has expired. Secondly, the clause makes provision for cases where, for whatever reason, the council have seized a vehicle, and wish to return the vehicle to its owner, but the owner of the vehicle cannot be found or disclaims or refuses to accept the vehicle. In such circumstances, the council would be able to make a complaint for a disposal order under section 38C, as inserted by *Clause 48*.

Clause 48 introduces a new section 38C into the Act of 1990, making provision for disposal orders. It sets out the procedure for the application for a disposal order in cases where a council has attempted to return seized items but the person from whom the items were seized cannot be found or identified, or has disclaimed or refused to accept them. In such cases, the council may make a complaint to the magistrates' court for a disposal order and the magistrates' court is empowered to make a disposal order if satisfied that the council has made reasonable efforts to identify the person from whom the item was seized (or its owner) or has made reasonable efforts to return it. A disposal order may authorise the council to dispose of the items and keep the balance of any proceeds. The court may also order that the recipient of a complaint may also be required to pay any deficit from the proceeds of the disposal, taking into account storage and disposal costs.

Clause 49 provides for transitional provisions as regards street trading previously carried out under the two exemptions relating to Part VIIA of the Highways Act 1980, which are proposed to be repealed under *Clause 39*. The clause provides that persons who enjoyed that exception may continue carrying on street trading despite the repeal, so long as they make an application for street trading licence within a certain time period.

Clause 50 introduces *Schedule 3* which is a Keeling Schedule setting out Part III of the Act of 1990 as amended by the Bill and by previous enactments.

City of Westminster Act 1999

Clauses 51 to 61 deal with street trading in the City of Westminster, and make a number of amendments to the City of Westminster Act 1999.

Clause 51 amends section 2 of the Act of 1999, which deals with interpretation. In particular, the following amendments are included—

- (a) an alteration of the definition of “street”. The existing definition includes areas within 7 metres of any road or footway. The alteration provides that the definition extends to such land, whether or not the consent of the owner or occupier of the premises is required, and whether or not such consent has been obtained, if so required,
- (b) the definition of “street trading” is altered so as to make clear that a person can be street trading whether or not any gain or reward accrues to the person actually carrying out the trading,
- (c) a new subsection (2) is added in order to clarify that transactions completed away from a street count as street trading where the initial offer or display of articles, or offer of services took place in a street.

Clause 52 alters an existing exemption from the street trading regime under the Act of 1999. Section 3(a) provides an exemption for persons trading as a news vendor under certain circumstances. *Clause 52* would remove that exemption in the case of the vending of newspapers from receptacles, if the receptacle is located within 25 metres of any public access or egress to or from the railway station or London underground station.

Clause 53 contains a number of amendments to section 11 of the Act of 1999, which deals with applications for street trading licences. The most significant amendment is to make provision for applicants to provide evidence of consent to trade on land within 7 metres of a road or footway (see *Clause 51*), or proof of ownership of such land.

Clause 54 provides, by amending section 12 of the Act of 1999 (which sets out mandatory grounds of refusal of a licence), that where the council is not satisfied that sufficient evidence of consent or ownership has been provided, they must refuse the application for the licence. Minor amendments are also made in relation to applications for temporary licences.

Clause 55 inserts a new section 17A into the Act of 1999, providing for automatic lapsing of licences where consent to use land within 7 metres of a road or footway for street trading by a licence holder is discontinued, and notice of the discontinuation of the permission is given to the council. The licence would also lapse in the case where the holder of the licence was the owner of the premises, and ceased to be its owner.

Clause 56 makes a number of amendments to section 21 of the Act of 1999, which deals with temporary licences. In particular, it makes provision about the need for consent of the owner of land within 7 metres of a road or footway to be required, and evidence of that permission to be provided to the council, in any application for a temporary licence in respect of such land. Similar provisions are made in relation to the lapsing of temporary licences, as are made in respect of street trading licences in the new section 17A inserted by *Clause 55*. The clause also introduces a new provision in section 21 (subsection (2D)) enabling the council to revoke or suspend the operation of a temporary licence in certain circumstances on the grounds of safety.

Clause 57 amends section 26 of the Act of 1999 which deals with employment of assistants. It extends the provisions of section 26 to cover temporary licences as well as permanent street trading licences.

Clause 58 makes a number of amendments, some consequential, to section 27 of the Act of 1999, which deals with unlicensed street trading.

Subsection (3) introduces a replacement subsection (8)(g), which deals with cases where articles or things have been seized by a constable or an authorised officer of the council but where the article or thing is not returned to the person from whom it was seized because it has not proved possible to identify the person and ascertain his address. New subsection (8)(g) would enable the magistrates' court to make an order as to the manner in which the article or thing should be dealt with, and it also enables the council to make a complaint to a magistrates' court for a disposal order under the new section 27C introduced by *Clause 61*.

Clause 59 deals with the seizure of perishable items. Under section 27 of the Act of 1999, an authorised officer of the council or a constable may seize articles or things where he has reasonable cause to suspect that a street trading offence has been committed, and where the article or thing may be required for evidence in any prosecution, or may be liable to forfeiture under section 27. Section 27 does not apply to perishable items. *Clause 59* introduces a new section 27A enabling the seizure of perishable items to take place. The new section 27A provides for the giving of a certificate to the person from whom the items were seized, provides that items must be stored at an appropriate temperature, and that items which are seized may be disposed of within 48 hours of seizure. The clause applies, with amendments, procedural provisions of section 27, which deal with the seizure and forfeiture of non-perishable items.

Clause 60 introduces a new section 27B into the Act of 1999, and deals with motor vehicles. First, the clause extends the time within which summary proceedings for a street trading offence may be instituted, if the offence relates to a motor vehicle. The extension of the time limit applies where the borough council has requested the Secretary of State (through the DVLA) for details of ownership of a vehicle, and those details have not been provided by the time the usual six month period for the commencement of summary proceedings has expired. Secondly, the clause makes provision for cases where, for whatever reason, the council who have seized a vehicle, wish to return the vehicle to its owner, but the owner of the vehicle cannot be found or disclaims or refuses to accept the vehicle. In such circumstances, the council would be able to make a complaint for a disposal order under section 27C, as inserted by *Clause 61*.

Clause 61 introduces a new section 27C into the Act of 1999, making provision for disposal orders. It sets out procedure for the application for a disposal order in cases where a council has attempted to return seized items but the person from whom the items were seized cannot be found or identified, or has disclaimed or refused to accept them. In such cases, the council may make a complaint to the magistrates' court for a disposal order and the magistrates' court is empowered to make a disposal order if satisfied that the council has made reasonable efforts to identify the person from whom the item was seized (or its owner) or has made reasonable efforts to return it. A disposal order may authorise the council to dispose of the item and keep the balance of any proceeds. The court may also order that the recipient of a complaint may also be required to pay any deficit from the proceeds of the disposal, taking into account storage and disposal costs.

CHAPTER 3

MISCELLANEOUS

Clause 62 disapplies, in Greater London, the provision in section 6(1) of the Licensing Act 2003 which provides an upper limit of 15 on the number of members who may sit on a council's licensing committee.

Clause 63 provides that principal litter authorities in Greater London are to be treated as responsible authorities within the meaning given to that term by sections 13(4) and 69(4) of the Licensing Act 2003. This would entitle the principal litter authority to make "relevant representations" against applications for premises licences and club certificates under the Licensing Act 2003.

PART 4

REGISTRATION OF DEALERS IN SECOND-HAND GOODS

Clause 64 provides that *Part 4* will apply in a borough as from the appointed day.

Clause 65 makes provision about the interpretation of *Part 4* and includes a definition of “dealer in second hand goods”, namely a person who carries on a trade or business, the whole or part of which consists of transactions in second hand goods.

Clause 66 provides that a person shall not carry on a trade or business the whole or part of which consists of transactions in second hand goods when he is not registered by the borough council, or exempted from registration. It also provides that a person may not carry on such a business in premises occupied by him when the premises are not registered. The clause provides that the council must register a person or premises when an application is made to them, and it sets out the information which must be contained in any application for registration. Registration remains in force for three years. The council may charge a reasonable fee for registration, calculated by reference to the cost of dealing with applications for registrations.

Clause 67 provides that persons registered as second hand dealers must keep records of transactions where they acquire an interest in or take charge of any second hand articles in the course of the business. The information must include the date of the transaction, a description of the articles and information about the persons from whom the articles were acquired. That information could be the name and address of the person, that person’s registration number (if he is registered under *Part 4*), or some other type of entry approved by the council. If the article is a motor vehicle then the entry must contain the registered number of the vehicle and the reading on the odometer at the time of the transaction, and in the case of certain other objects, the serial number or vehicle identification number.

The requirements for registration for transactions do not apply in the case where the person acquiring the article is of the reasonable opinion that it will be disposed of him for no value or for less than the relevant amount. The “relevant amount” is defined in the clause and may be altered by resolution of the council.

Clause 67 also provides that in cases where goods are sold at a price higher than the relevant amount, the dealer must enter into his records information about the identity of the person who purchases the article. The “relevant amount” for sales is different from that for acquisitions.

All entries made in records kept under *Clause 67* must be kept for a period of 2 years, and records must be produced to authorised officers or constables if required.

Clause 68 sets out offences under *Part 4*. Failure to register or keep the necessary records as required under *Clause 67* is an offence liable on summary conviction to a fine not exceeding level 3.

Anyone who fails to inform the council of an alteration in the particulars of his registration is liable to a fine not exceeding level 2, and anyone who makes false entries in his records is liable to a fine not exceeding level 4.

A person who fails to display his certificate of registration is liable to a fine not exceeding level 2 and a person who sells second hand goods to or acquires them from a registered second hand dealer, and who intentionally gives the dealer false information about his identity, is liable to a fine not exceeding level 4.

Finally, there is an offence where registered persons acquire second hand goods from persons under 16 years of age, with a liability to a fine not exceeding level 4.

Clause 69 sets out a list of exemptions from registration, including charities, scrap metal dealers, dealers in waste or textiles, pawnbrokers, animal dealers and persons whose business in supplying second hand or used goods is merely incidental to his main business.

Clause 70 makes transitional provisions for persons who are acting as dealers when the provisions come into force, enabling them to carry on doing so for a limited period without being registered.

Clause 71 enables persons who have applied for renewal of a registration to carry on their business while the application for renewal is pending.

Clause 72 enables authorised officers and police constables to enter premises for a number of reasons relating to enforcement, and entitles them to seize and detain goods for evidential purposes. The power may not be exercised in relation to dwellings unless a warrant is first obtained, and there are provisions enabling authorised officers or constables to enter premises by force, but only if a warrant is first obtained. *Clause 72* contains other miscellaneous provisions relating to entry, search and seizure.

Clause 73 makes provision about the service of notices and *Clause 74* makes provision about the procedure for passing resolutions.

PART 5

PENALTY CHARGES AND FIXED PENALTIES

Introductory

Clause 75 provides a definition of “joint committee” and that functions of the councils in setting the levels of penalty charge under *Part 5* are to be carried out by a joint committee.

Penalty charges

Clauses 76 to 82 make provision about penalty charges. Borough councils are already enabled under other legislation to serve penalty charge notices in respect of certain offences which have been decriminalised. These include penalty charges for parking contraventions (by virtue of the Road Traffic Act 1991), bus lane contraventions (by virtue of the Local Authorities Act 1996) and certain moving traffic contraventions (by virtue of the London Local Authorities and Transport for London Act 2003). Each of those Acts sets out detailed provisions about the form of penalty charge notices, the ability to make representations against them, rights of appeal to adjudicators, enforcement provisions where penalty charges are not paid, financial provisions about how penalty charge income is to be dealt with and the fixing of the level of penalty charges.

The Bill contains two new provisions enabling the making of penalty charges (relating to receptacles for waste and littering from vehicles), and in anticipation of future legislation providing more opportunities for enforcement by way of penalty charge notice, *Clauses 76 to 82* set out a general penalty charge notice procedure for penalty charge contraventions under the Bill, and in future legislation.

Clause 76 sets out the procedure to be followed when penalty charge notices are payable. Where a borough council has reason to believe that a penalty charge is payable by virtue of a penalty charge provision, they may serve a penalty charge notice on the person appearing to them to be the appropriate recipient. "Penalty charge provision" is defined as any enactment which is by the enactment itself or by another enactment designated as a penalty charge provision for the purposes of *Clause 76* and "appropriate recipient" is defined as the appropriate recipient for the purposes of *Clause 76*, designated as such by the penalty charge provision.

Clause 76 also sets out details which must be included in the penalty charge notice and enables the Secretary of State to prescribe additional matters which must be included. Subsection (6) introduces *Schedule 4* which deals with financial provisions and in particular the application of penalty charge income.

Clause 77 enables the Lord Chancellor to make regulations entitling persons to make representations to Councils and appeals to adjudicators in respect of penalty charges under *Clause 76*. The regulations may make provision about the procedure in relation to such representations and appeals and provide for offences in relation to the making of false representations. The regulations may also make provision about the payment of costs and expenses by parties to an appeal.

Clause 78 makes provision about the appointment of adjudicators to hear appeals in relation to penalty charges. It also sets out the requirements which must be met by adjudicators appointed under the clause. It provides that the Councils must make accommodation and administration provision for adjudicators, and it provides that regulations must provide for adjudicators and borough councils to make annual reports in respect of their functions under the clause. Provision is also made enabling regulations to provide that adjudicators appointed under the Road Traffic Act 1991, or regulations under the Transport Act 2000 or the Traffic Management Act 2004 may act as adjudicators as if they were appointed under *Clause 78*.

Clause 79 enables the Lord Chancellor to make regulations for or in connection with the enforcement of penalty charges. Such regulations may make provision for offences and may also make provision in relation to warrants of execution to be executed by certificated bailiffs.

Clause 80 makes provision about certificated bailiffs, and in particular about their authorisation, and the conditions which must be met before bailiffs are certificated under *Clause 80*.

Clause 81 makes provision for the setting of the levels of penalty charges payable under *Part 5*. Penalty charge levels are to be set by a joint committee consisting of members all the borough councils. Different levels may be set for different areas in Greater London and for different cases or classes or case, and in setting the level of penalty charges the councils may take account of costs in connection with the administration of the provisions of the relevant penalty charge provision and the cost of enforcing those provisions.

Clause 82 sets out reserve powers of the Secretary of State in cases where he believes the levels of penalty charges have been set too high by the Council. In such cases, he may make an objection, and the levels of fixed penalties may not come into force unless or until his objection has been withdrawn.

Fixed penalties

Clauses 83 and 84 deal with fixed penalty offences. Officers of borough councils are already entitled to serve fixed penalty notices in respect of certain offences under a number of provisions, including Part 4 of the London Local Authorities Act 2004. Where an offence is a fixed penalty offence and the council believe that such an offence has been committed, they are entitled to serve a fixed penalty notice on the alleged offender, entitling him to discharge liability by way of payment of a fixed penalty to the council. If such payment is received, the council may not institute court proceedings.

Clause 83 amends Part 4 of the London Local Authorities Act 2004, so as to enable the recipient of a fixed penalty notice to discharge his liability for a lower amount, if he does so promptly. Part 4 requires the fixed penalty to be paid within a period of 14 days. The amendments in *Clause 83* would extend that period to 28 days, with the early payment period expiring after 14 days.

Clause 84 amends Schedule 2 to the London Local Authorities Act 2004, which sets out a table of fixed penalty offences. *Clause 84* adds offences relating to civic amenity sites under *Clause 26(5)* of the Bill.

PART 6

MISCELLANEOUS

Clause 85 makes provision about the display of certain video recordings. Under the Video Recordings Act 1984, it is an offence to sell or offer to sell a video recording otherwise than in compliance with a classification certificate which states that no video recording containing the work is to be supplied other than in a licensed sex shop.

The offence is currently limited only to the sale of, or offer to sell such video recordings. The effect of *Clause 85* will be to extend the offence to the display of such video recordings, or the display of packaging for such video recordings.

Clause 86 deals with temporary sleeping accommodation. Under the Greater London Council (General Powers) Act 1973, the change of use of premises to use for temporary sleeping accommodation is classified as a material change of use for the purposes of the Town and Country Planning Act 1990. *Clause 86* will provide authorised officers of the council with new powers of entry, search and seizure to enable them to investigate offences or suspected offences relating to breaches of an enforcement notices. The powers only relate to enforcement notices which the council has made in relation to premises used as temporary sleeping accommodation. The powers of entry and inspection do not extend to premises used only as a dwelling. There are powers to require the production of documents from persons carrying on a trade or business, and to seize such books and documents. Entry by force is allowed, on the authority of a warrant from the magistrates' court.

Clause 87 amends section 22 of the London Local Authorities Act 2004 which makes provision about soliciting for custom. Under that section, soliciting for custom for certain types of premises is prohibited. *Clause 87* introduces a new subsection (1) which provides that the prohibition applies as regards soliciting persons to premises if the impression is given that alcohol is available at the premises or that the premises are a sex establishment. There is an exception as regards premises where alcohol actually is available under the authority of the Licensing Act 2003.

Clause 88 makes provision for councils to charge telecommunications companies for the use of pipe subways provided by council and also extends existing powers to make such charges in respect of other apparatus so that they apply to pipe subways for which the Common Council is responsible. These objects are achieved by altering the application of, repealing and revoking various local enactments including section 27 of the London County Council (General Powers) Act 1958 and section 40 of the City of London (Various Powers) Act 1900, and byelaws made under section 40.

Clause 89 enables the disturbance of human remains in certain graves, in cases where a burial authority wishes to deepen the grave to enable more burials to take place. Under the City of London (Various Powers) Act 1969 and the Greater London Council (General Powers) Act 1976, burial authorities are already able, if conditions are met, to carry out burials in existing graves without disturbing human remains. They may only do so in respect of graves in respect of which they have extinguished a registered right of burial. The 1969 and 1976 Acts provide that the burial authority is not entitled to extinguish any rights of burial until at least 75 years after the last burial in the grave, and after having made efforts to notify the holder of the right of burial, and allow objections to be made.

Clause 89 will only apply in relation to a grave where a registered right of burial or interment has been extinguished by the burial authority under either the 1969 Act or the 1976 Act. The burial authority would be able to disturb human remains for the purpose of deepening the grave to allow further burials to take place. No human remains may be disturbed under the clause if they have been interred for a period of less than 75 years. Any remains disturbed must be reinterred in the same grave.

Subsection (4) of *Clause 89* sets out the procedure which the burial authority must follow before disturbing any human remains, and that includes publication of notices of their intention to do so, and serving notice of their intention to do so on the registered owner of the right of burial (if the right has not yet been extinguished).

If objections are made by the registered owner of the right of burial, or the registered owner of a tombstone which is to be removed, or by a relative of the person whose remains are proposed to be disturbed, then the burial authority is not able to exercise its powers under the clause for a period of 25 years.

Subsection (8) provides that the burial authority must comply with any directions given by the Secretary of State with the respect to the removal and reinterment of human remains.

Subsections (9) and (10) make special provision about graves in consecrated land.

Clause 90 deals with mail forwarding businesses. Until the Postal Services Act 2000 came into force, there was limited control of mail forwarding businesses under section 5 of the Official Secrets Act 1920. *Clause 90* provides, by subsection (1) that any person who carries on the business of mail forwarding in Greater London must be registered to do so with the council. It provides in subsection (4) that records must be kept by mail forwarding businesses of the name, address and telephone number of persons for whom post is received or who has requested that post may be held or forwarded to him, together with other particulars about such persons.

The clause provides for offences of contravening or failing to comply with the clause or furnishing false information or making false entries. In all cases the penalty for offences is a maximum level 5 fine.

Powers of entry, inspection and seizure are provided, by the application of section 28 of the Trade Descriptions Act 1968.

Clause 91 makes further provision in Greater London about measures which can be taken by borough councils in relation to crime prevention. Section 5 of the London Local Authorities (No.2) Act 1990 lists a number of steps which may be taken by councils for the purpose of crime prevention. *Clause 91* adds a further measure, namely the carrying out of works on land held by the council for the purpose of Part II of the Housing Act 1985, consisting of fences, gates, locking devices or other works to prevent persons (other than the residents of premises situated on the land) gaining access to any part of the land, other than a highway.

Clause 92 makes provision in relation to the recovery of expenses by a borough council under section 35 of the Local Government (Miscellaneous Provisions) Act 1976. That section enables borough councils to serve notices on owners and occupiers of properties served by a private sewer which is obstructed, and requiring the recipients of notices to remove the obstruction. Councils are entitled to carry out works in default under section 35(2) and recover their expenses in cases where the owner or occupier has not appealed against the notice, or has appealed against the notice unsuccessfully or with limited success. *Clause 92* provides that sums recoverable by the council shall be a charge on the premises served by the sewer.

Clause 93 makes provision about the powers of authorised officers. Under section 26 of the London Local Authorities Act 2004, provision is made for offences of failing to furnish a name, furnishing a false name or furnishing a false address to an authorised officer of a borough council, if requested to do so for the service of a summons or fixed penalty notice. "Authorised officer" is defined in section 28 of the 2004 Act so as to include employees of the council and others who are authorised in writing by the council to act in relation to the relevant provision of the 2004 Act. *Clause 93* amends section 26 so as to extend its application to persons who are authorised officers under any other enactment and who are entitled by virtue of their authorisation to enforce any enactment which gives rise to a criminal offence.

PART 7

SUPPLEMENTAL

Clause 94 makes provision for an offence of intentionally obstructing an authorised officer acting in the exercise of his powers under the Bill. An offender would be liable to a fine not exceeding level 3.

Clause 95 makes provision about proof of the passing of resolutions under the Bill. It provides that in any proceedings which require proof of the passing of a resolution, it shall be presumed, unless the contrary is proved that the resolution was passed and that any requirement relating to the passing of the resolution were complied with.

Clause 96 makes provision about the liability of directors and other officers for offences under the Bill. It provides that where an offence under the Bill is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of the director or other officer of the body, then that person will be guilty of the offence as well as the body.

Clause 97 makes provision about the procedure for the making of regulations under the Bill.

EUROPEAN CONVENTION ON HUMAN RIGHTS

In the view of Westminster City Council the provisions of the London Local Authorities Bill are compatible with the Convention rights.

London Local Authorities Bill [HL]

[AS AMENDED IN COMMITTEE]

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A

B I L L
[AS AMENDED IN COMMITTEE]

To confer further powers upon local authorities in London; and for related purposes.

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 and the Common Council of the City of London (hereinafter referred to as “London borough councils”) should be extended and amended as provided in this Act: 5
- (2) It is expedient that further provision be made in London in relation to advertising, graffiti, waste, litter, abandoned and nuisance vehicles and other matters related to public health and the environment: 10
- (3) It is expedient that provision be made in London for the licensing of hostess bars:
- (4) It is expedient that the law relating to street trading be amended in London:
- (5) It is expedient that provision be made in London for the registration of dealers in second hand goods: 15
- (6) It is expedient that further provision be made in London about penalty charges and fixed penalties for certain offences:
- (7) It is expedient that provision be made in London about the display of certain video recordings:
- (8) It is expedient that provision be made in London about the disturbance of human remains to enable further interments: 20

- (9) It is expedient that provision be made in London about the registration of mail forwarding businesses:
- (10) It is expedient that further provision be made in London about temporary sleeping accommodation, the control of soliciting for custom, the making of charges for the use of pipe subways and crime prevention measures on council housing estates: 5
- (11) It is expedient that the other provisions contained in this Act should be enacted:
- (12) The objects of this Act cannot be attained without the authority of Parliament:
- (13) 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 (c. 70) and the other London borough councils have complied with the requirements of section 87 of the Local Government Act 1985 (c. 51): 10
- (14) In relation to the promotion of the Bill the London borough councils have acted through their representation in the Association of London Government, a statutory joint committee whose membership is made up from members of all the London borough councils: 15

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:— 20

PART 1

PRELIMINARY

1 Citation and commencement

- (1) This Act may be cited as the London Local Authorities Act 2006.
- (2) This Act and the London Local Authorities Acts 1990 to 2004 may be cited together as the London Local Authorities Acts 1990 to 2006. 25
- (3) This Act, except—
- (a) subsections (2) to (7) of **section 33** (Hostess bars) (as it applies otherwise than as regards the City of Westminster),
 - (b) **Part 4** (registration of dealers in second-hand goods), and 30
 - (c) **section 88** (charges for pipe subways),
- shall come into operation at the end of the period of two months beginning with the date on which it is passed.
- (4) Subsections (2) to (7) of the said **section 33** shall come into operation in accordance with subsection (1) of that section. 35
- (5) **Part 4** and **section 88** of this Act shall come into operation on the appointed day.

2 General interpretation

In this Act, except where the context otherwise requires—

“authorised officer”, in relation to a borough council, means—

- (a) any employee of the council;
- (b) any other person by whom, in pursuance of arrangements made with the council, any functions under this Act fall to be discharged; or
- (c) any employee of any such person, who is authorised in writing by the council to act in relation to the relevant provision of this Act;

“borough council” means London borough council and includes the Common Council of the City of London in its capacity as a local authority and “borough” and “council” shall be construed accordingly.

3 Appointed day

- (1) For the purposes of subsections (4) and (5) of **section 1** (citation and commencement) of this Act, including the purposes of subsection (1) of **section 33** (hostess bars) of 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. 15
- (2) Different days may be fixed under this section for the purpose of the application of different provisions of this Act to a borough. 20
- (3) The borough council shall cause to be published in a local newspaper circulating in the borough and in the London Gazette notice—
 - (a) of the passing of any such resolution and of a day fixed by them; and
 - (b) of the general effect of the provisions of this Act coming into operation on that day, 25and the day so fixed shall not be earlier than the expiration of one month from the publication of the said notice.
- (4) A photostatic or any 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 or London Gazette—
 - (a) bearing the date of its publication; and
 - (b) containing any such notice, 30shall be evidence of the publication of the notice and of the date of publication.

PART 2 35

PUBLIC HEALTH AND THE ENVIRONMENT

Interpretation

4 Interpretation of Part 2

In this Part of this Act—

“the 1978 Act” means the Refuse Disposal (Amenity) Act 1978 (c. 3); 40

- “the 1990 Act” means the Environmental Protection Act 1990 (c. 43);
- “an advertising offence” means an offence—
- (a) under section 132 of the Highways Act 1980 (c. 66) (unauthorised marks on highways);
 - (b) under section 224(3) of the Planning Act (enforcement of control as to advertisements); 5
 - (c) under subsection (4) of **section 5** (portable advertisements, etc.) of this Act; or
 - (d) of aiding, abetting, counselling or procuring the commission of an offence mentioned in paragraphs (a) to (c) above, 10
committed after the day on which **section 13** (advertising: seizure) of this Act comes into effect;
- “fly posting offence” means an offence—
- (a) under section 224(3) of the Planning Act;
 - (b) committed in Greater London by a person who is deemed to display an advertisement for the purposes of that subsection by virtue of section 224(4)(b) of the Planning Act; and 15
 - (c) which relates to an advertisement affixed to any surface without the authorisation of the owner of that surface; 20
- “the Planning Act” means the Town and Country Planning Act 1990 (c. 8); 20
- “the Police Commissioner” means the Commissioner of Police of the Metropolis or, in the City of London, the Commissioner of Police for the City of London;
- “relevant object” means—
- (a) any advertisement (whether displayed or not); 25
 - (b) any vehicle (including its fuel); or
 - (c) any equipment or materials which may be used for the purpose of fixing advertisements to surfaces or placing advertisements on surfaces;
- “shroud advertisement” means an advertisement— 30
- (a) which is made of a flexible material;
 - (b) which is not affixed to any hoarding or similar structure used, or designed or adapted for use, for the display of advertisements; and
 - (c) which is attached to a building or to scaffolding; 35
- “shroud advertisement offence” means an offence—
- (a) under section 224(3) of the Planning Act;
 - (b) committed in Greater London by a person who is deemed to display an advertisement for the purposes of that subsection by virtue of section 224(3)(b) of the Planning Act; and 40
 - (c) which is committed in respect of the display of a shroud advertisement.

Advertising

5 Portable advertisements, etc.

- (1) No portable advertisement may be displayed within a designated area, except in accordance with subsection (2) below.
- (2) The display of an advertisement— 5
 - (a) for which express consent has been given; or
 - (b) for which deemed consent has been given,is in accordance with this subsection.
- (3) Subsection (1) above is without prejudice to any advertising regulations or any other enactment or rule of law relating to the display of advertisements. 10
- (4) Any person who—
 - (a) displays a portable advertisement in contravention of subsection (1) above; or
 - (b) 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 4 on the standard scale. 15
- (5) Without prejudice to the generality of subsection (4) above, a person shall be deemed to display a portable advertisement for the purposes of that subsection if the advertisement gives publicity to his goods, trade, business or other concerns. 20
- (6) A person shall not be guilty of an offence under subsection (4) above by reason only of his goods, trade, business or other concerns being given publicity by the portable advertisement if he proves either of the matters specified in subsection (7) below.
- (7) The matters are— 25
 - (a) that the portable advertisement was displayed without his knowledge; or
 - (b) that he took all reasonable steps and exercised all due diligence to prevent the display.
- (8) The reference in subsection (4) above to a person who displays a portable advertisement in contravention of subsection (1) above shall be deemed to include a reference to a person who displays a portable advertisement on or from land within 7 metres of any street or way designated under subsection (1)(c) of **section 6** (advertisements: designation of areas) of this Act and who is not— 30
 - (a) the owner of that land;
 - (b) the person liable to be assessed to the uniform business rate in respect of that land; or
 - (c) on that land with the consent in writing of either of the persons mentioned in paragraphs (a) and (b) above. 35
- (9) In any proceedings for an offence under this section, it shall be presumed, unless the contrary is shown, that the area in which the alleged offence took place was designated in accordance with the said **section 6**. 40

- (10) In this section—
- “advertising regulations” means regulations made under section 220 of the Planning Act (regulations controlling display of advertisements);
 - “designated area” means an area designated in accordance with the said **section 6**; 5
 - “display” means display in the course of a business;
 - “express consent” and “deemed consent” mean express consent and deemed consent for the purposes of any advertising regulations;
 - “portable advertisement” means any thing which is capable of being held or carried and which is an advertisement as defined in section 336(1) of the Planning Act but as if for “wholly or partly” there were substituted “wholly or mainly”. 10
- (11) A portable advertisement shall, for the purposes of this section, be deemed to be displayed as a portable advertisement notwithstanding that it is attached to apparatus, street furniture or any other structure or object situated— 15
- (a) in a designated area; or
 - (b) on any land within 7 metres of any street or way designated under subsection (1)(c) of the said **section 6**.

6 Advertisements: designation of areas

- (1) A borough council may designate, in accordance with the following provisions of this section, areas comprising any of the following places or any part of such places in the borough as designated areas to which this section applies— 20
- (a) a public off-street car park;
 - (b) a recreation ground, garden, park, pleasure ground or open place under the management or control of a borough council; 25
 - (c) a street or way to which the public commonly have access, whether or not as of right.
- (2) The council shall exercise their powers under this section only in the interests of amenity and public safety, taking account of any material factors, and in particular— 30
- (a) in the case of amenity—
 - (i) the general characteristics of the locality, including the presence of any features of historic, architectural, cultural or similar interest;
 - (ii) the desirability of preserving or enhancing the character or appearance of a conservation area, where appropriate, disregarding, if they think fit, any advertisement being displayed there; 35
 - (b) in the case of public safety—
 - (i) the safety of any person who may use any road, railway, dock, harbour or aerodrome; 40
 - (ii) whether any display of advertisements is likely to obscure, or hinder the ready interpretation of, any road traffic sign, railway signal or aid to navigation by water or air.

- (3) Before designating any area under this section, the council shall publish, or cause to be published, in at least one newspaper circulating in the locality, and on the same or a subsequent date in the London Gazette, a notice that such a proposal has been made, naming a place or places in the locality where a map or maps defining the area concerned may be inspected at all reasonable hours. 5
- (4) Any notice under subsection (3) above shall state that any objection to the proposal may be made to the proper officer of the borough council in writing within such period (not being less than 21 days from the date when the notice was published) as is specified in the notice.
- (5) The council shall not designate an area under this section until after the expiry of the specified period. 10
- (6) In determining whether to designate an area under this section, the council—
- (a) shall take into account any objections made in accordance with subsection (4) above;
 - (b) may modify the proposal if— 15
 - (i) they have notified, in writing, any person who has made an objection or representation to them of their intention and their reasons for it and has given them a reasonable opportunity to respond; and
 - (ii) the intended modification does not extend the area of land specified in the proposal. 20
- (7) Where the council designates an area under this section, they shall notify any person who has made an objection in accordance with subsection (4) above.
- (8) Notice of the designation of a particular area shall be published by the council in at least one newspaper circulating in the locality and on the same or a subsequent date in the London Gazette, and such notice shall— 25
- (a) contain a full statement of the effect of the designation;
 - (b) name a place or places in the locality where a copy of the designation and of a map defining the area concerned may be seen at all reasonable hours; and 30
 - (c) specify a date when the designation shall come into force, being at least 14 and not more than 28 days after the publication of the notice in the London Gazette.
- (9) A designation shall come into force on the date specified in the notice given under subsection (8) above. 35
- (10) In this section, “conservation area” means a conservation area designated under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9) (designation of conservation areas).

7 Unauthorised advertisement hoardings

- (1) Section 11 (unauthorised advertisement hoardings, etc.) of the London Local Authorities Act 1995 (c. x) is amended as follows. 40

- (2) In subsection (1)—
- (a) at the beginning, the words “Subject to subsection (1A) below” are inserted;
 - (b) the words “or which was erected before 1 April 1990” are omitted.
- (3) After subsection (1), the following subsection is inserted— 5
- “(1A) This section does not apply to a hoarding or other structure which was erected before 1 April 1990, unless—
- (a) a discontinuance notice has been served in relation to it under regulations made under section 220 of the 1990 Act; and
 - (b) either— 10
 - (i) the time for making an appeal in relation to the discontinuance notice under section 78 of the 1990 Act (right to appeal against planning decisions and failure to take such decisions) has expired with no such appeal having been made; or 15
 - (ii) an appeal in relation to the discontinuance notice under the said section 78 has been made, and the appeal has been discontinued or dismissed.”.
- 8 Automatic minimum fine on third conviction for fly posting or shroud advertisement offence 20**
- (1) Where a person is convicted of a fly posting or shroud advertisement offence committed in Greater London, the court by which he is convicted shall, if the circumstances specified in subsection (4) below are present, impose a fine, the level of which shall be a minimum of level 4 on the standard scale and a maximum of £20,000. 25
- (2) Subsection (1) above shall not apply where the court is of the opinion that there are particular circumstances which—
- (a) relate to any of the offences or to the offender; and
 - (b) would make it unjust to do so in all the circumstances.
- (3) Section 224(3) of the Planning Act, insofar as it makes provision for the punishment of offenders shall not apply where subsection (1) above applies. 30
- (4) The circumstances mentioned in subsection (1) above are that, during the five years ending with the date of the conviction, the person has been convicted of, in total, no fewer than three fly posting or shroud advertisement offences, providing that the conditions in subsections (5), (6) and (7) below are satisfied. 35
- (5) The first condition is that the first of the three convictions was in respect of an offence which was committed after the date on which this section came into force.
- (6) The second condition is that the second of the three convictions was in respect of an offence which was committed after the date of the first conviction. 40
- (7) The third condition is that the third of the three convictions was in respect of an offence which was committed after the date of the second conviction.

- (8) The Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) shall apply in Greater London as if in section 112(1)(a) (appeals where previous convictions set aside), after “or 111 above” the words “or under section 8(1) of the London Local Authorities Act 2006 (Automatic minimum fine on third conviction for fly posting or shroud advertisement offence)” were inserted. 5

9 Certificates of conviction for purposes of section 8

- (1) Where—
- (a) on any date after **section 8** (automatic minimum fine on third conviction for fly posting or shroud advertisement offence) of this Act came into force a person is convicted of a fly posting or shroud advertisement offence; and 10
 - (b) the court by or before which he is so convicted states in open court that he has been convicted of such an offence on that date; and
 - (c) that court subsequently certifies that fact,

the certificate shall be evidence, for the purposes of the said **section 8**, that he was convicted of such an offence on that date. 15

- (2) Where—
- (a) on any date after the said **section 8** came into force a person is convicted of a fly posting or shroud advertisement offence; and
 - (b) the court by or before which he is so convicted states in open court that the offence was committed on a particular day or over, or at some time during, a particular period; and 20
 - (c) that court subsequently certifies that fact,

the certificate shall be evidence, for the purposes of the said **section 8**, that the offence was committed on that day or over, or at some time during, that period. 25

10 Determination of day when offence committed

Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of **section 8** (automatic minimum fine on third conviction for fly posting or shroud advertisement offence) of this Act to have been committed on the last of those days. 30

11 Advertising: measures to be taken on surfaces

- (1) If a borough council has reason to believe that there is a persistent problem with the display of unauthorised advertisements on a relevant surface, the council may serve a notice under subsection (3) below on the owner or occupier of the land in or on which the relevant surface is situated. 35
- (2) If after reasonable enquiry the council have been unable to ascertain the name and address of the owner or occupier, they may affix a notice to the relevant surface.
- (3) A notice under this subsection is a notice requiring, within such reasonable time (not being less than 28 days) as may be specified in the notice, the owner or occupier of the land in or on which the relevant surface is situated to carry out 40

such reasonable measures as may be required by the council to prevent or reduce the frequency of the display of unauthorised advertisements on the relevant surface.

- (4) The sections of the Public Health Act 1936 (c. 49) mentioned in **Schedule 1** to this Act shall have effect as if references therein to that Act included references to this section. 5
- (5) This section shall have effect as if it were an Act or Order to which section 42 of the Local Government (Miscellaneous Provisions) Act 1976 (c. 57) (which makes provision for certain local Acts and orders to be subject to the planning enactments) applies. 10
- (6) The period within which an owner or occupier must comply with the requirements of a notice under subsection (3) above may be extended with the agreement of the council.
- (7) No council shall exercise their powers under this section until a code of practice dealing with the exercise of those powers has been published by a joint committee, and a council shall have regard to the code of practice when exercising those powers. 15
- (8) In preparing a code of practice to be published under subsection (7) above, the joint committee shall consult—
- (a) persons appearing to them to be representative of interests likely to be substantially affected by the exercise of powers under this section; and 20
 - (b) such other persons as they consider appropriate.
- (9) A council may not recover their expenses under section 290(6) of the Public Health Act 1936 (provisions as to appeals against, and the enforcement of, notices requiring execution of works) in respect of a relevant surface, if the relevant surface— 25
- (a) forms part of a flat or a dwellinghouse; or
 - (b) is within the curtilage or forms part of the boundary of the curtilage of a dwellinghouse.
- (10) In this section and **section 12** (railway undertakers: provision for purposes of section 11) of this Act— 30
- “joint committee” means any joint committee established under section 101(5) of the Local Government Act 1972 (c. 70) and comprising at least one member from each borough council;
 - “premises” means building, wall, fence or other structure or erection; 35
 - “relevant surface” means the surface of any premises, apparatus or plant;
 - “unauthorised advertisements” means advertisements in respect of which advertising offences are committed.

12 Railway undertakers: provision for purposes of section 11

- (1) Subsections (2) to (4) below apply where a borough council serve a notice under subsection (3) of **section 11** (advertising: measures to be taken on surfaces) of this Act (a “section 11 notice”) requiring a protected party to carry out measures in respect of the display of unauthorised advertisements on a relevant surface situated on its operational land. 40

- (2) The protected party may, within a period of 28 days beginning with the day on which the notice is served, serve a counter-notice on the council specifying alternative measures which will in their reasonable opinion have the effect of preventing or reducing the frequency of the display of unauthorised advertisements on the relevant surface to the same or greater extent than the measures specified in the notice. 5
- (3) Where a counter-notice is served under subsection (2) above, the section 11 notice shall be deemed—
 - (a) to require the alternative measures specified in the counter-notice to be carried out (instead of the measures actually required by the notice); and 10
 - (b) to have been served on the date on which the counter-notice was served.
- (4) The period within which a protected party must carry out the measures specified in a counter-notice served under subsection (2) above may be extended by agreement of the council. 15
- (5) Subsections (6) to (9) below apply where a council propose to exercise a relevant power in respect of any operational land of a protected party.
- (6) Before exercising the relevant power the council shall serve not less than 28 days' notice in writing of their intention so to do on the protected party specifying the relevant surface concerned and its location. 20
- (7) The protected party on whom a notice under subsection (6) above is served may within the period of 28 days beginning with the day on which the notice is served serve a counter-notice on the council—
 - (a) specifying conditions subject to which the relevant power is to be exercised, being reasonable conditions which are necessary or expedient in the interests of safety or the efficient and economic operation of the protected party's undertaking; or 25
 - (b) requiring the council to refrain from exercising the relevant power, if the protected party has reasonable grounds to believe, for reasons connected with the operation of its undertaking, that the relevant power cannot be exercised under the circumstances in question— 30
 - (i) without risk to the safety of any person; or
 - (ii) without unreasonable risk to the efficient and economic operation of the protected party's undertaking.
- (8) Where a counter-notice is served under subsection (7)(a) above the relevant power may only be exercised subject to and in accordance with the conditions in the counter-notice. 35
- (9) Where a counter-notice is served under subsection (7)(b) above the relevant power may not be exercised.

- (10) In this section—
- “operational land” has the same meaning as in the Planning Act;
 - “protected party” means—
 - (a) Network Rail Infrastructure Limited; and
 - (b) Transport for London,
 and their subsidiaries (within the meaning given by section 736 of the Companies Act 1985 (c. 6)), servants, agents and contractors;
 - “relevant power” means a power to enter land conferred by section 287 (power to enter premises) of the Public Health Act 1936 (c. 49) as applied by subsection (4) of the said **section 11**.

Advertising: seizure and forfeiture

13 Advertising: seizure

- (1) If an authorised officer or a constable has reasonable grounds for suspecting that a person has committed an advertising offence in Greater London and the conditions of subsection (2) below apply, the authorised officer or constable may seize any relevant object if the relevant object is in the possession of or under the control of that person at the time of the alleged offence. 15
- (2) The conditions are that the relevant object—
- (a) may be required to be used in evidence in any proceedings in respect of the suspected offence; or 20
 - (b) may be the subject of forfeiture under **section 16** (forfeiture of seized items) of this Act.
- (3) An authorised officer shall produce his authority if required to do so by the person having possession or control of any relevant object seized in pursuance of the powers in subsection (1) above. 25
- (4) An authorised officer or a constable shall, forthwith after seizing any relevant object under subsection (1) above, give to the person from whom the object was seized a certificate containing the following information—
- (a) the name and address of the person who the authorised officer or constable suspects has committed the suspected offence; 30
 - (b) if different from the name and address of the person mentioned in paragraph (a) above, the name and address of the owner of the relevant object;
 - (c) the type of object seized (including, in the case of a vehicle, its make and registration number); and 35
 - (d) information about subsection (2) of the said **section 16**.
- (5) If an authorised officer or constable—
- (a) is unable, after reasonable inquiry of the person who he suspects has committed the suspected offence, to ascertain the name or address of—
 - (i) that person; or 40
 - (ii) the owner of the relevant object; or

- (b) has reasonable cause to suspect that a name or address provided to him is incorrect,

he need not comply with paragraph (a) or (b), as the case may be, of subsection (4) above.

- (6) The owner of a vehicle for the purposes of this section, shall be taken to be the person by whom the vehicle is kept. 5
- (7) In determining, for the purposes of this section, who was the owner of a vehicle at any time, it shall be presumed that the owner was the person in whose name the vehicle was at that time registered under the Vehicle Excise and Registration Act 1994 (c. 22). 10

14 Return and disposal of seized items

- (1) The following provisions of this section shall have effect where any relevant object is seized under subsection (1) of **section 13** (advertising: seizure) of this Act and references in those provisions to proceedings are to proceedings in respect of the alleged offence in relation to which the relevant object is seized. 15
- (2) Subject to subsections (3) to (6) below, following the conclusion of the proceedings the relevant object shall be returned to the person from whom it was seized unless—
 - (a) the court orders it to be forfeited under **section 16** (forfeiture of seized items) of this Act; or 20
 - (b) any award of costs to the council by the court, which may include removal, return and storage costs, have not been paid within 28 days of the making of the order.
- (3) If—
 - (a) at the end of the period of 56 days beginning with the date of seizure— 25
 - (i) no proceedings have been instituted; or
 - (ii) any proceedings instituted within that period have been discontinued; or
 - (b) at any time after the end of that period any such proceedings are discontinued, 30

the relevant object shall, at the appropriate time, 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.
- (4) In subsection (3) above, “the appropriate time” means—
 - (a) in the case of paragraph (a), the end of the period of 56 days mentioned in that paragraph; 35
 - (b) in the case of paragraph (b), the time when proceedings are discontinued.

- (5) Where the relevant object is not returned because it has not proved possible to identify the person from whom it was seized and ascertain his address or because the person from whom it was seized or the owner has disclaimed or refused to accept it—
- (a) a magistrates' court may make an order as to the manner in which it should be dealt with (in the case where proceedings for an offence under this section have been commenced in relation to the article or thing); or 5
 - (b) the council or the Police Commissioner may make a complaint to the magistrates' court for a disposal order under **section 15** (disposal orders) of this Act (whether or not such proceedings have been commenced). 10
- (6) Where after 28 days any costs awarded by the court to the council have not been paid to the council in full—
- (a) the relevant object may be disposed of in any way the council thinks fit; and 15
 - (b) any sum obtained by the council in excess of the costs awarded by the court shall be returned to the person to whom the relevant object belongs.
- (7) When any relevant object is disposed of by the council under subsection (6) above the council shall have a duty to secure the best possible price which can reasonably be obtained for it. 20

15 Disposal orders

- (1) This section applies in respect of a complaint made by a borough council or the Police Commissioner for a disposal order in respect of a relevant object under subsection (5) of **section 14** (return and disposal of seized items) of this Act. 25
- (2) In the case of a relevant object which the council or the Police Commissioner has attempted to return to the person who the council believes is the person from whom it was seized or is its owner, and that person disclaimed or refused to accept it, a copy of the complaint shall be served on that person. 30
- (3) In respect of a complaint to which this section applies, a magistrates' court may, if it is satisfied that the council or the Police Commissioner has made reasonable efforts to identify the person from whom the relevant object was seized or its owner, as the case may be, or has made reasonable efforts to return the relevant object it may make an order authorising the complainant council or the Police Commissioner— 35
- (a) to dispose of the relevant object 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 retain the balance, if any. 40

- (4) In the case where a copy of a complaint has been served under subsection (2) above, if the relevant object in question is not of sufficient value to defray the expenses of seizing and storing it, the magistrates' court may order that the recipient of the copy of the complaint pay the expenses, or the balance of the expenses, reasonably incurred by the council or the Police Commissioner in seizing and storing it, if it is satisfied that the recipient was the owner of the relevant object in question or was the person from whom it was seized, as the case may be. 5
- (5) For the purposes of this section, “owner” in respect of a vehicle, has the same meaning as it has for the purposes of **section 13** (advertising: seizure) of this Act. 10

16 Forfeiture of seized items

- (1) Subject to subsection (2) below, the court by or before which a person is convicted of an advertising offence may order any relevant object which the court is satisfied relates to the offence to be forfeited and dealt with in such a manner as the court may order. 15
- (2) The court shall not order a relevant object to be forfeited under subsection (1) 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 the owner or person interested in the object to show cause why the order should not be made. 20
- (3) In considering whether to make an order under subsection (1) above a court shall have regard—
- (a) to the value of the object; and
 - (b) to the likely financial and other effects on— 25
 - (i) the offender; or
 - (ii) the owner of the object,of the making of the order (taken together with any other order that the court contemplates making).

17 Compensation where seizure unlawful 30

- (1) Subsection (2) below shall have effect where—
- (a) any relevant object is seized under subsection (1) of **section 13** (advertising: seizure) of this Act; and
 - (b) any of the following applies—
 - (i) not less than six months have passed since the date of the seizure and no information has been laid against any person for an advertising offence in respect of the act or circumstances which occasioned the seizure; 35
 - (ii) proceedings for an advertising offence have been brought and 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; 40

- (iii) proceedings for an advertising offence have been brought and 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.
- (2) Where this subsection has effect a person who has or at the time of seizure had a legal interest in the object seized may recover compensation from the council or (where it is seized by a constable) the Police Commissioner by civil action in the county court in respect of any loss suffered by him as a result of the seizure. 5
- (3) The court may only make an order for compensation under subsection (2) above if satisfied that seizure was not lawful under the said **section 13**. 10

Graffiti

18 Defacement of buildings

- (1) Section 12 (defacement of buildings) of the London Local Authorities Act 1995 (c. x) is amended as follows.
- (2) In subsection (6) for “the council may themselves” there is substituted “the council, or a person authorised by the council may”. 15
- (3) After subsection (6D), the following subsection is inserted—
“(6E) In exercising the power under subsection (6) the council or any person authorised by the council may enter any land to the extent reasonably necessary for the purpose.”. 20
- (4) In subsection (7), for “the council may do so” there is substituted “the council (or a person authorised by the council) may do so”.
- (5) After section 12 (defacement of buildings), the following section is inserted—

“12A Indemnity

- (1) None of the persons mentioned in subsection (2) below is to have any liability to any person responsible for the relevant surface for damages or otherwise (whether at common law or otherwise) arising out of anything done or omitted to be done in the exercise or purported exercise of— 25
 - (a) the power under subsection (1)(b) of section 12 (defacement of buildings) of this Act; or 30
 - (b) the power under subsection (6) of that section (including as provided for in subsection (6A) of that section);
 - (c) the power under subsection (7) of that section.
- (2) Those persons are— 35
 - (a) in the case of the power mentioned in the said subsection 1(b), the council and any employee of the council; and

- (b) in the case of the power mentioned in the said subsections (6) and (7)—
 - (i) the council and any employee of the council;
 - (ii) any person authorised by the council under those said subsections and the employer or any employee of that person. 5
- (3) Subsection (1) above does not apply—
 - (a) if the act or omission is shown to have been in bad faith;
 - (b) to liability arising out of a failure to exercise due care and attention; 10
 - (c) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful by virtue of section 6(1) of the Human Rights Act 1998 (c. 42).
- (4) This section is without prejudice to any other exemption from liability (whether at common law or otherwise). 15
- (5) For the purposes of subsection (1) above a person is responsible for a relevant surface if—
 - (a) where it is the surface of any premises (including a street), he owns, leases, occupies, controls, operates or maintains the land, and 20
 - (b) where it is the surface of apparatus or plant, he owns, leases, occupies, controls, operates or maintains the apparatus or plant.”.
- (6) After subsection (5) of section 13 (Protective provisions for certain statutory undertakers) the following subsections are inserted— 25
 - “(5A) A notice under subsection (4) may, instead of specifying conditions as mentioned in that subsection, require the participating council to refrain from exercising the relevant power, if the protected party has reasonable grounds to believe, for reasons connected with the operation of its undertaking, that the relevant power cannot be exercised under the circumstances in question— 30
 - (a) without risk to the safety of any person; or
 - (b) without unreasonable risk to the efficient and economic operation of the protected party’s undertaking.
 - (5B) Where a counter notice served under subsection (4) above contains such a requirement as is mentioned in subsection (5A) above the relevant power may not be exercised.”. 35

Waste and litter

19 Placing of receptacles for household waste

Section 46 of the 1990 Act (receptacles for household waste) shall apply in the area of a borough council as if, in subsection (4), the following paragraph were inserted after paragraph (b)— 40

- “(ba) the placing of the receptacles for the purpose of avoiding nuisance or detriment to the amenities of the area;”.

20 Regulations relating to receptacles for household waste

- (1) A borough council who have a duty by virtue of section 45(1)(a) of the 1990 Act to arrange for the collection of household waste from any premises, may make regulations requiring occupiers of such premises to place household waste for collection in receptacles of a kind and number specified. 5
- (2) A council may amend or revoke any regulations made under subsection (1) above.
- (3) Section 46 (2) to (5) of the 1990 Act (receptacles for household waste) shall apply in relation to any requirements contained in regulations made under subsection (1) above as if those requirements were made under section 46 (1) of that Act. 10
- (4) Any requirement contained in such regulations which relate to the periods during which receptacles should be placed on the highway shall be unenforceable by the council as respects any side of a road if the requirements are not described in a sign displayed on that side of the road. 15
- (5) The council shall cause to be published in at least two newspapers circulating in the borough notice—
- (a) of the making, amendment or revocation of any regulations under subsection (1) above, the date on which the regulations are to come into force, or be amended or revoked, as the case may be, and the general effect of the regulations, the amendment or the revocation; and 20
 - (b) stating (except in the case of a revocation)—
 - (i) an address at which the regulations can be inspected during reasonable office hours and purchased for a reasonable amount; and 25
 - (ii) a website address at which the regulations can be viewed.
- (6) The date on which the regulations are to come into force, be amended or be revoked, as the case may be, shall not be earlier than the expiration of one month from the publication of the notice under subsection (5) above.
- (7) Sections 63(1) (waste other than controlled waste), 78 (radioactive substances) and 96 (application of Part II) of the 1990 Act shall apply to the provisions of this section as they apply to the provisions of Part II of that Act. 30
- (8) In this section—
 “receptacle” has the meaning given to it by section 46 of the 1990 Act;
 “waste” and “household waste” have the meanings given to them by section 75 of the 1990 Act. 35
- (9) In this section and section 46 (2) to (6) of the 1990 Act as applied by subsection (3) above, “specified” means specified in regulations made under subsection (1) above.
- (10) Nothing in this section affects the ability of a borough council to serve notices under section 46 of the 1990 Act (receptacles for household waste). 40

21 Placing of receptacles for commercial or industrial waste

- (1) Section 47 of the 1990 Act (receptacles for commercial or industrial waste) shall apply in the area of a borough council as if, in subsection (4), the following paragraph were inserted after paragraph (b)—
- “(ba) the placing of the receptacles for the purpose of avoiding nuisance or detriment to the amenities of the area;”.
- (2) Requirements making provision under section 47(4)(ba) of the 1990 Act (as inserted by subsection (1) above) shall not apply to—
- (a) a statutory undertaker in relation to any receptacle on its operational land; or
- (b) any other person who is an occupier of—
- (i) any part of an aerodrome within the meaning of the Aviation Security Act 1982 (c. 36);
- (ii) harbour premises within the meaning of Part III of the 1990 Act; or
- (iii) other land comprised in a port facility within the meaning of article 2 of Regulation (EC) No. 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security.
- (3) In subsection (2) above—
- “operational land” has the same meaning as in the Planning Act; and
- “statutory undertaker” has the same meaning as in section 262(1) of that Act.

22 Regulations relating to receptacles for commercial or industrial waste

- (1) A borough council who are a waste collection authority under Part II of the 1990 Act may, if satisfied that doing so would prevent nuisances or detriment to the amenities of their area, make regulations requiring occupiers of premises to place commercial or industrial waste for collection in receptacles of a kind and number specified.
- (2) A council may amend or revoke any regulations made under subsection (1) above.
- (3) Section 47 (3) to (6) of the 1990 Act (receptacles for commercial or industrial waste) shall apply in relation to any requirements contained in regulations made under subsection (1) above, as if those requirements were made under section 47 (1) of that Act.
- (4) Any requirement contained in such regulations which relate to the periods during which receptacles should be placed on the highway shall be unenforceable by the council as respects any side of a road if the requirements are not described in a sign displayed on that side of the road.

- (5) The council shall cause to be published in at least two newspapers circulating in the borough notice—
- (a) of the making, amendment or revocation of any regulations under subsection (1) above, the date on which the regulations are to come into force, or be amended or revoked, as the case may be, and the general effect of the regulations, the amendment or the revocation; and 5
 - (b) stating (except in the case of a revocation)—
 - (i) an address at which the regulations can be inspected during reasonable office hours and purchased for a reasonable amount; and 10
 - (ii) a website address at which the regulations can be viewed.
- (6) The date on which the regulations are to come into force, be amended or be revoked, as the case may be, shall not be earlier than the expiration of one month from the publication of the notice under subsection (5) above.
- (7) Sections 63(1) (waste other than controlled waste), 78 (radioactive substances) and 96 (application of Part II) of the 1990 Act shall apply to the provisions of this section as they apply to the provisions of Part II of that Act. 15
- (8) In this section—
 “receptacle” has the meaning given to it by section 46 of the 1990 Act;
 “waste”, “commercial waste” and “industrial waste” have the meanings given to them by section 75 of the 1990 Act. 20
- (9) In this section and section 47 (3) to (6) of the 1990 Act as applied by subsection (3) above, “specified” means specified in regulations made under subsection (1) above.
- (10) Nothing in this section affects the ability of a borough council to serve notices under section 47 of the 1990 Act (receptacles for commercial or industrial waste). 25
- (11) Regulations under this section shall not apply to—
- (a) a statutory undertaker in relation to any of its operational land; or
 - (b) any other person who is an occupier of— 30
 - (i) any part of an aerodrome within the meaning of the Aviation Security Act 1982 (c. 36);
 - (ii) harbour premises within the meaning of Part III of the 1990 Act; or
 - (iii) other land comprised in a port facility within the meaning of article 2 of Regulation (EC) No. 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security. 35
- (12) In subsection (11) above—
 “operational land” has the same meaning as in the Planning Act; and 40
 “statutory undertaker” has the same meaning as in section 262(1) of that Act.

23 Regulations relating to receptacles for waste: enforcement

- (1) This section is a penalty charge provision for the purposes of **section 76** (penalty charges) of this Act.
- (2) A penalty charge is payable to a borough council for the purposes of the said **section 76** by any occupier of premises in respect of which there has been a failure, without reasonable excuse, to comply with any requirements imposed by regulations made under subsection (1) of **section 20** (regulations relating to receptacles for household waste) or subsection (1) of **section 22** (regulations relating to receptacles for commercial or industrial waste) of this Act. 5
- (3) The occupier of premises in respect of which the failure to comply with the regulations occurred is the appropriate recipient for the purposes of the said **section 76**. 10
- (4) For the purposes of subsection (1) of **section 77** (representations and appeals) of this Act the grounds on which representations may be made against a penalty charge notice arising from a penalty charge payable by virtue of this section are— 15
 - (a) that the recipient—
 - (i) never was the occupier of the premises in question;
 - (ii) had ceased to be their occupier before the date on which the penalty charge was alleged to have become payable; 20
 - (iii) became the occupier after that date;
 - (b) that there was no failure to comply with the requirement in respect of which the penalty charge notice was issued;
 - (c) that there was a reasonable excuse for the failure to comply with the said requirement; 25
 - (d) that the said requirement is unreasonable;
 - (e) that the receptacles in which household waste is placed for collection from the premises are adequate;
 - (f) that, in the case of a failure to comply with any requirement relating to the periods during which receptacles should be placed on a highway, no sign relating to those requirements was displayed on the side of the road, as required by subsection (4) of the said **section 20** or subsection (4) of the said **section 22** as the case may be; 30
 - (g) that the penalty charge exceeded the amount applicable in the circumstances of the case. 35
- (5) Where any of the grounds mentioned in subsection (4)(a) above is relied on in any representations made under subsection (1) of the said **section 77**, those representations must include a statement of the name and address of the occupier (if that information is in his possession).

24 Littering from vehicles

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- (1) This section is a penalty charge provision for the purposes of **section 76** (penalty charges) of this Act.

- (2) Subject to subsection (3) below, a penalty charge is payable to a borough council for the purposes of the said **section 76** with respect to a motor vehicle or a pedicab by the owner of the vehicle or pedicab if a person inside or on board the vehicle or pedicab acts in contravention of section 87 of the 1990 Act (offence of leaving litter). 5
- (3) A penalty charge is not payable under subsection (2) above by the owner of a motor vehicle or pedicab if that vehicle or pedicab is—
- (a) a public service vehicle, within the meaning of the Public Passenger Vehicles Act 1981 (c. 14);
 - (b) a hackney carriage licensed under the Town Police Clauses Act 1847 (c. 89) or the Metropolitan Public Carriage Act 1869 (c. 115); 10
 - (c) a private hire vehicle licensed under the Private Hire Vehicles (London) Act 1998 (c. 34);
 - (d) a vehicle licensed under section 48 of the Local Government (Miscellaneous Provisions) Act 1976 (c. 57) (licensing of private hire vehicles); 15
- and the person acting in contravention of the said section 87 is a passenger in that vehicle.
- (4) The said section 87 shall apply in respect of a borough as if after paragraph (b) of subsection (2) there were inserted “or 20
- (c) done in circumstances where a penalty charge would be payable to a London borough council by virtue of **section 24(2)** (littering from vehicles) of the London Local Authorities Act 2006.”.
- (5) The owner of the vehicle is the appropriate recipient for the purposes of the said **section 76**. 25
- (6) For the purposes of subsection (1) of **section 77** (representations and appeals) of this Act the grounds on which representations may be made against a penalty charge notice arising from a penalty charge payable by virtue of this section are—
- (a) that the recipient— 30
 - (i) never was the owner of the vehicle in question;
 - (ii) had ceased to be its owner before the date on which the penalty charge was alleged to have become payable; or
 - (iii) became its owner after that date;
 - (b) that no person inside the vehicle acted in contravention of the said section 87; 35
 - (c) that at the time the alleged contravention took place the person who was in control of the vehicle was in control of the vehicle without the consent of the owner;
 - (d) (except in the case of a pedicab) that the recipient is a vehicle-hire firm and— 40
 - (i) the vehicle in question was at the material time hired from that firm under a vehicle hiring agreement; and

- (ii) the person hiring it had signed a statement of liability acknowledging his liability in respect of any penalty notice issued in respect of the vehicle during the currency of the hiring agreement; or
 - (e) that the penalty charge exceeded the amount applicable in the circumstances of the case. 5
 - (7) Where the ground mentioned in subsection (6)(a)(ii) above is relied on in any representations made under subsection (1) of the said **section 77**, those representations must include a statement of the name and address of the person to whom the vehicle was disposed of by the person making the representations (if that information is in his possession). 10
 - (8) Where the ground mentioned in subsection (6)(a)(iii) above is relied on in any representations made under the said subsection (1), those representations must include a statement of the name and address of the person from whom the vehicle was acquired by the person making the representations (if that information is in his possession). 15
 - (9) Where, after considering any representations under the said subsection (1) the ground that is accepted is that mentioned in subsection (6)(d) above, the person hiring the vehicle shall be deemed to be its owner for the purposes of this section. 20
 - (10) The owner of a vehicle for the purposes of this section shall be taken to be the person by whom the vehicle is kept, or in the case of an abandoned vehicle, the person by whom the vehicle was last kept.
 - (11) In determining, for the purposes of this section, who was the owner of a motor vehicle at any time, it shall be presumed that the owner was the person in whose name the vehicle was at that time registered under the Vehicle Excise and Registration Act 1994 (c. 22). 25
 - (12) In this section, “motor vehicle” means a mechanically propelled vehicle intended or adapted for use on roads.
- 25 Powers to require removal of waste unlawfully deposited** 30
- (1) Subject to subsections (4) and (8) below, section 59 of the 1990 Act shall have effect in the area of a borough council in accordance with this section.
 - (2) For paragraph (a) of subsection (3) there is substituted—
 - “(a) the appellant took all reasonable precautions and exercised all due diligence to avoid the deposit of the waste;” 35
 - (3) After subsection (3) the following subsection is inserted—
 - “(3A) If in any case the ground given by the appellant under subsection (3)(a) above involves the allegation that the depositing of the waste was due to the act or default of another person, the appellant shall not, without leave of the court, be entitled to rely on that ground unless, no later than 7 clear days before the hearing of the appeal, he has served on the waste regulation authority or waste control authority a notice in writing giving such information (if any) as was then in his possession identifying or assisting in the identification of that other person.” 40

- (4) The amendments made by this section shall not have effect until a code of practice dealing with the operation of section 59(3)(a) of the 1990 Act as substituted by subsection (2) above is published by a joint committee.
- (5) A council shall have regard to the code of practice when exercising their powers under section 59. 5
- (6) The joint committee shall cause to be published in the London Gazette notice of the date on which the amendments made by this section come into effect.
- (7) A photostatic or any other reproduction certified by the officer appointed for that purpose by a borough council to be a true reproduction of a page or part of a page of the London Gazette— 10
- (a) bearing the date of its publication; and
- (b) containing the notice,
- shall be evidence of the publication of the notice and of the date of publication.
- (8) This section shall not apply to notices served under section 59 of the 1990 Act in respect of— 15
- (a) the operational land of a protected party;
- (b) a highway or special road for which the Minister is the highway authority (see section 1 of the Highways Act 1980 (c. 66));
- (c) land forming any part of an aerodrome within the meaning of the Aviation Security Act 1982 (c. 36); 20
- (d) harbour premises within the meaning of Part 3 of the 1990 Act; or
- (e) other land comprised in a port facility within the meaning of article 2 of Regulation (EC) No. 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security.
- (9) In this section— 25
- “joint committee” means any joint committee established under section 101(5) of the Local Government Act 1972 (c. 70) and comprising at least one member from each borough council;
- “operational land” has the same meaning as in the Planning Act;
- “protected party” means— 30
- (a) Network Rail Infrastructure Limited; and
- (b) Transport for London,
- and their subsidiaries (within the meaning given by section 736 of the Companies Act 1985 (c. 6)), servants, agents and contractors.
- 26 Civic amenity sites** 35
- (1) A borough council may require proof from a person depositing, intending to deposit or attempting to deposit refuse or waste at an amenity site that the person is resident in the area of the council or in the area of an adjoining local authority (such proof to be in such reasonable form as the council may specify).
- (2) Any person who fails to prove to the council’s reasonable satisfaction that he is resident in an area in accordance with a requirement under subsection (1) above may be the subject of a requirement under subsection (4) below. 40

- (3) If a council—
- (a) are satisfied that a person is depositing, intending to deposit or attempting to deposit at an amenity site refuse which is refuse falling to be disposed of in the course of a business; or
 - (b) are satisfied that refuse or waste is being or has been deposited at an amenity site in contravention of any requirements made by them relating to the receptacles to be used for the deposit of refuse or waste, the person depositing, intending to deposit or attempting to deposit the refuse or waste may be the subject of a requirement under subsection (4) below. 5
- (4) A requirement under this subsection is a requirement— 10
- (a) not to enter the site;
 - (b) not to deposit waste or refuse at the site;
 - (c) to discontinue depositing waste or refuse at the site; or
 - (d) to retrieve any waste or refuse which has been deposited at the site and— 15
 - (i) remove it from the site; or
 - (ii) (in the case of waste or refuse which was placed in an incorrect receptacle) either place it in the correct receptacle or remove it from the site.
- (5) Any person who without reasonable excuse fails to comply with a requirement under subsection (4) above shall be guilty of an offence and liable on summary conviction— 20
- (a) in the case of an offence arising from an alleged failure to comply with a requirement under the said subsection (4) which was made as a result of the relevant authority being satisfied under subsection (3)(b) above, to a fine not exceeding level 1 on the standard scale; 25
 - (b) in any other case to a fine not exceeding level 3 on the standard scale.
- (6) Any person who, in response to a requirement to show proof in accordance with subsection (1) above gives information which is false in a material particular and does so recklessly or knowing it to be false in that particular, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale. 30
- (7) In any proceedings for an offence under subsection (5) above, it shall be a defence—
- (a) (in the case of an alleged failure to comply with a requirement under subsection (4) above which was made as a result of the council not being satisfied under subsection (2) above), that the council's requirements relating to the proof required by them were not made clear by the provision of signs at or near to the entrance to the amenity site; 35
 - (b) (in the case of an alleged failure to comply with a requirement under subsection (4) above which was made as a result of the relevant authority being satisfied under subsection (3)(b)), that the council's requirements relating to the receptacles to be used for the deposit of refuse or waste were not made clear by the provision of signs at the amenity site. 40 45

- (8) This subsection applies where a council have reasonable cause to believe that an offence under this section has been committed in their area by a person who was—
- (a) the driver of a vehicle in the amenity site;
 - (b) in charge of a vehicle in the amenity site; 5
 - (c) otherwise brought to the amenity site in a vehicle.
- (9) Where subsection (8) above applies, the council may by notice in writing, specifying the offence and the provision of this section to which the notice relates, require—
- (a) the registered keeper of the vehicle to give them such information as they may require as to the identity of the driver, the person in charge, or the person otherwise brought to the amenity site, as the case may be; 10
 - (b) any other person to give them any information which it is in that person's power to give and which may lead to the identification of the driver, the person in charge, or the person otherwise brought to the amenity site, as the case may be. 15
- (10) A person shall be guilty of an offence if he fails to comply with a requirement of a notice under subsection (9) above or knowingly or recklessly gives false information in relation to the notice.
- (11) In any proceedings for failing to comply with such a requirement brought against the registered keeper of the vehicle it shall be a defence if he shows to the satisfaction of the court that he did not know and could not with reasonable diligence have ascertained who was the driver, or person in charge of the vehicle or the person otherwise brought to the amenity site, as the case may be. 20
- (12) A person guilty of an offence under subsection (10) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale. 25
- (13) Where on summary trial of an information for an offence referred to in subsection (10) above—
- (a) it is proved to the satisfaction of the court, on oath or in manner prescribed by rules made under section 144 of the Magistrates' Court Act 1980 (c. 43), that a requirement under subsection (9) above to give information as to the identity of the driver or person in charge of a particular vehicle on the particular occasion to which the information relates has been served on the accused; and 30
 - (b) a statement in writing is produced to the court purporting to be signed by the accused that the accused was the driver or person in charge of that vehicle otherwise or was brought to the amenity site on that occasion, 35
- the court may accept that statements as evidence that the accused was the driver or person in charge of the vehicle or was otherwise brought to the amenity site on that occasion. 40
- (14) In this section—
- (a) an "amenity site" means a place provided by a council in compliance with a duty to provide places where refuse may be deposited, by virtue of section 1 of the 1978 Act; 45

- (b) “local authority” means a borough council, a district council, or (in the case of a county in which there are no district councils) a county council;
- (c) “registered keeper” in respect of a vehicle at any time means the person in whose name the vehicle was at that time registered under the Vehicle Excise and Registration Act 1994 (c. 22).

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Abandoned and nuisance vehicles

27 Removal of abandoned and nuisance vehicles

- (1) Section 3(2) (requirement to give notice to occupier) of the 1978 Act does not apply where the vehicle is abandoned on any relevant land in Greater London.
- (2) This section is without prejudice to section 3(2A) of the 1978 Act (no requirement to give notice to occupier in the case of vehicle abandoned on a road). 10
- (3) In this section, “relevant land” means land to which the public has access, and does not include—
 - (a) any land within the curtilage of a dwelling; 15
 - (b) any driveway giving access to a dwelling;
 - (c) fuel or field garden allotment within the meaning of section 19 of the Acquisition of Land Act 1981 (c. 67).

28 Disposal of removed vehicles

- (1) Section 4 (disposal of abandoned vehicles) of the 1978 Act shall have effect in the area of a borough council in accordance with this section. 20
- (2) For subsection (5), there is substituted—
 - “(5) The local authority shall permit a person to remove a vehicle from their custody before it is disposed of by the local authority in pursuance of this section, if that person— 25
 - (a) satisfies the authority that—
 - (i) he is its owner; and
 - (ii) either of subsections (5A) or (5B) below applies; and
 - (iii) he is insured to drive the vehicle; and
 - (b) gives a bond in the prescribed sum to the authority in the case— 30
 - (i) where no current licence is displayed on the vehicle; or
 - (ii) where no test certificate is shown to the authority, in the case where section 47 of the Road Traffic Act 1988 (c. 52) (obligatory test certificates) applies to the vehicle; and
 - (c) pays to the authority such sums in respect of its removal and storage as may be prescribed. 35
- (5A) This subsection applies if the person in question has not been offered the opportunity to pay a fixed penalty under section 2A above.

- (5B) This subsection applies if the person in question has been offered the opportunity to pay a fixed penalty under section 2A above and—
- (a) he has paid it; or
 - (b) he has not paid it and the period mentioned in section 2A(2)(a) above has not expired; or 5
 - (c) he has not paid it and the period within which proceedings may be instituted for the offence in question has expired and no such proceedings have been issued;
 - (d) he has not paid it and proceedings for the offence have been instituted but not determined. 10
- (5C) A bond under subsection (5)(b) above shall be repaid by the authority to the person who gave it once the authority is satisfied that a current licence has been obtained and can be displayed on the vehicle, or a test certificate has been issued in respect of the vehicle, as the case may be.
- (5D) In subsection (5)(b) “prescribed sum” means such sum as may be prescribed by a joint committee established under section 101(5) of the Local Government Act 1972 (c. 70) and consisting of at least one representative from each London borough council.”. 15

Enforcement action zones

- 29 Enforcement action zones** 20
- (1) Subject to **section 30** (Designation procedure for enforcement action zones) of this Act, a borough council (or two or more borough councils acting jointly) may designate an area of land in which, in their opinion, it is expedient that enhanced environmental crime enforcement action should be enabled.
- (2) An area designated under this section shall be known as an enforcement action zone and in this section and the said **section 30** the council or councils designating the zone shall be known as the “designating authority”. 25
- (3) The area designated under this section may comprise two or more parcels of land which—
- (a) need not be contiguous; and 30
 - (b) need not be in the area of the same borough council.
- (4) In deciding whether to designate any area of land, the designating authority shall have regard to such matters as they think fit.
- (5) Without prejudice to the generality of subsection (4) above, among the matters to which the designating authority may have regard in deciding whether to include a particular area of land in an order under this section, are— 35
- (a) the level of environmental crime in the area;
 - (b) the nature of use of land in the area;
 - (c) the location of schools, playgrounds, recreation grounds, parks and other open spaces in the area; 40
 - (d) the living conditions of those who live in the area and the social conditions and general environment of the area.

- (6) A designating authority may by resolution bring to an end a designation under this section.
- (7) In this section, “environmental crime” means criminal activity which is related to the degradation of the amenity of an area.

30 Designation procedure for enforcement action zones 5

- (1) Before designating any area under **section 29** (enforcement action zones) of this Act, the designating authority shall publish, or cause to be published, in at least one local newspaper circulating in the locality, a notice that such a proposal has been made, naming a place or places in the locality where a map or maps defining the area concerned may be inspected at all reasonable hours. 10
- (2) Any notice under subsection (1) above shall state that any objection to the proposal may be made to the proper officer of any one of the borough councils of whom the designating authority is comprised, in writing within such period (not being less than 21 days from the date when the notice was given), as is specified in the notice. 15
- (3) The designating authority shall not designate an area under this section until after the expiry of the specified period.
- (4) In determining whether to designate an area under this section, the authority—
 - (a) shall take into account any objections made in accordance with subsection (2) above; 20
 - (b) may modify the proposal if—
 - (i) they have notified, in writing, any person who has made an objection or representation to them of their intention and their reasons for it and has given them a reasonable opportunity to respond; and 25
 - (ii) the intended modification does not extend the area of land specified in the proposal.
- (5) Where the authority designates an area under this section, they shall notify any person who has made an objection in accordance with subsection (2) above.
- (6) The designation shall not come into effect until the approval of the Secretary of State has been obtained. 30
- (7) Any approval given by the Secretary of State under subsection (6) above—
 - (a) shall not be given until the designating authority has notified the Secretary of State that they have designated the area in accordance with this section; 35
 - (b) shall be given in writing to the designating authority; and
 - (c) may require the designating authority to make such modifications to the designation as he thinks appropriate.
- (8) The designating authority shall comply with any requirements made under subsection (7)(c) above. 40

- (9) Notice of the coming into effect of the designation of a particular area shall be published by the authority in at least one local newspaper circulating in the locality and on the same or a subsequent date in the London Gazette, and such notice shall—
- (a) contain a full statement of the effect of the designation; 5
 - (b) describe any modifications made in accordance with any requirements made under subsection (7)(c) above;
 - (c) name a place or places in the locality where a copy of the designation and of a map defining the area concerned may be seen at all reasonable hours; and 10
 - (d) specify a date when the designation shall come into effect, being at least 14 and not more than 28 days after the publication of the notice in the London Gazette.
- (10) A designation shall come into effect on the date specified in the notice given under subsection (9) above. 15

31 Enforcement action zones: modification of enactments

- (1) If an enforcement action zone is established in an area, the enactments set out in the first column in Part 1 of the table in **Schedule 2** to this Act shall as respects offences committed in the zone apply and have effect as if amended in accordance with the second column of that Part of that table. 20
- (2) The enactments set out in the first column in Part 2 of the table in the said **Schedule 2** shall apply and have effect in a borough as if amended in accordance with the second column of that Part of that table.

Town and country planning

- 32 Application of section 215 of the Town and Country Planning Act 1990 to vegetation** 25
- (1) In section 215 of the Planning Act (power to require proper maintenance of land) as it applies in Greater London, “the condition of land” includes the condition of vegetation which is growing on or overhanging the land in question. 30
- (2) In section 217 of the Planning Act (appeal to magistrates’ court against section 215 notice), subsection (1)(b) shall not apply in respect of a notice so far as it relates to the condition of vegetation which is growing on or overhanging land.

PART 3

LICENSING

CHAPTER 1

HOSTESS BARS AND NEAR BEER PREMISES

- 33 Hostess bars** 5
- (1) This section shall come into operation—
- (a) at the end of the period of two months beginning with the date on which this Act is passed, as regards the City of Westminster;
 - (b) as from the appointed day as regards any other borough, where the borough council have resolved in accordance with subsection (1) of section 12 (Amendment of law relating to sex establishments) of the Greater London Council (General Powers) Act 1986 (c. iv) that the amendments to Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (c. 30) set out in subsection (4) of that section shall apply in their area. 10 15
- (2) The said Schedule 3 shall apply in the area of the borough as follows.
- (3) In paragraph 2, after the words “sex encounter establishment” the words “, a hostess bar” are inserted.
- (4) Paragraph 3A (inserted, as far as that Schedule applies in Greater London, by section 12 of the Greater London Council (General Powers) Act 1986) is renumbered as sub-paragraph (1) and the following sub-paragraph is inserted after it— 20
- “(2) In sub-paragraph (1) above, “premises” includes any vehicle, vessel or stall.”.
- (5) After paragraph 3A, the following paragraph is inserted— 25
- “Meaning of ‘hostess bar’ ”*
- 3B.—(1) Subject to sub-paragraph (2) below, in this Schedule “hostess bar” means—
- (a) any premises used for a business which consists, whether in whole or in part, of the offering, expressly or by implication, whether on payment of a fee or not, of the provision of companions for customers on the premises; or 30
 - (b) any premises in respect of which any impression, by whatever means, is given to customers, or potential customers, that a performance, entertainment, service, exhibition or other experience of a sexual nature is available on the said premises; or 35
 - (c) any premises in respect of which any impression, by whatever means, is given to customers, or potential customers, that alcoholic refreshments are available on the said premises despite the premises not being the subject of a premises licence or a club certificate under the 2003 Act. 40

- (2) The following premises are not hostess bars for the purposes of this paragraph, namely—
- (a) premises in which the sale to customers for consumption of alcohol is not a licensable activity under or by virtue of the 2003 Act; 5
 - (b) premises in respect of which there is in force—
 - (i) a licence granted by the council under section 21 (licensing of public exhibitions, etc.) of the Greater London Council (General Powers) Act 1966 (c. xxviii);
 - (ii) a premises licence granted under Part 3 of the 2003 Act; 10
 - (iii) a club premises certificate granted under Part 4 of the 2003 Act;
 - (iv) a temporary event notice given under the 2003 Act, by virtue of which the premises may be used for the supply of alcohol (within the meaning of section 14 of that Act); 15
 - (v) a licence under Part II of the Gaming Act 1968 (c. 65),
- (3) Sub-paragraph (2)(b) applies—
- (a) only during the hours permitted by the licence or notice there mentioned, and
 - (b) only if provided that the premises are in use wholly or mainly and bona fide for the purpose authorised by the licence, notice or certificate. 20
- (4) In sub-paragraph (1) above, “premises” includes any vehicle, vessel or stall.
- (5) In this paragraph, “the 2003 Act” means the Licensing Act 2003 (c. 17).”. 25
- (6) In paragraphs 13(2) (a) and (b) after the words “sex establishments” there shall be inserted the words “, hostess bars”.
- (7) For paragraph 13(3)(d) there shall be substituted the following sub-paragraph—
- “(d) any change— 30
 - (i) of a sex cinema to a sex shop, a sex encounter establishment, or hostess bar;
 - (ii) of a sex shop to a sex encounter establishment, a sex cinema or a hostess bar;
 - (iii) of a sex encounter establishment to a sex cinema, a sex shop or a hostess bar; or 35
 - (iv) of a hostess bar to a sex cinema, a sex shop or a sex encounter establishment.”.

34 Application to existing premises

- (1) This section applies to premises falling within paragraph 3B of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (c. 30), inserted by **section 33** (hostess bars) of this Act, which exist on the date on which that section comes into force in the borough in which they are situated. 40

- (2) Until the period of four weeks commencing with that date has expired, paragraph 6(1) of that Schedule shall not apply to those premises by reason that they fall within the said paragraph 3B.
- (3) If an application for a licence under that Schedule is made in respect of those premises during that period, they may lawfully continue to be used for the purposes mentioned in the said paragraph 3B until the determination or withdrawal of that application, and if an appeal is lodged until the determination or abandonment of the appeal. 5

35 Near beer premises

On the day that **section 33** (hostess bars) of this Act comes into force in a borough, Part IV (near beer premises) of the London Local Authorities Act 1995 (c. x) shall cease to have effect as respects that borough. 10

CHAPTER 2

STREET TRADING

Introductory 15

36 Interpretation of Chapter 2

In this Chapter—

- “the Act of 1990” means the London Local Authorities Act 1990 (c. vii);
“the Act of 1999” means the City of Westminster Act 1999 (c. i).

Street trading on certain bridges 20

37 Bridges in the City of Westminster and London Borough of Lambeth

- (1) The city council and the borough council may enter into agreements to secure that—
 - (a) Part III (street trading) of the Act of 1990; or
 - (b) the Act of 1999,shall apply as respects the whole or part of any relevant bridge. 25
- (2) If an agreement is made under subsection (1) above, the Act of 1999 or Part III of the Act of 1990, as the case may be, shall apply to the part of the relevant bridge in question as though it was within the area of the city or, as the case may be, the borough. 30
- (3) Without prejudice to the generality of subsection (2) above, proceedings in relation to an alleged offence of unlicensed street trading on a relevant bridge shall be commenced in the magistrates’ court for the relevant petty sessions area.
- (4) Either council may rescind any agreement under subsection (1) above by giving three months’ written notice to the other. 35

- (5) Where, immediately before the date on which an agreement under this section comes into effect or is rescinded (the “relevant date”)—
- (a) a street trading licence is held under Part III of the Act of 1990 or the 1999 Act, as the case may be, in respect of an area which is the subject of the agreement; 5
 - (b) any proceedings in respect of an offence under Part II of the 1990 Act or under the 1999 Act, as the case may be, had been commenced; and
 - (c) by that agreement—
 - (i) the Act of 1999 applies to the area instead of Part III of the Act of 1990; or 10
 - (ii) Part III of the Act of 1990 applies to the area instead of the Act of 1999,
- subsection (6) or (7) below shall apply, as appropriate.
- (6) In the circumstances mentioned in subsection (5)(a) above, the licence in question shall continue in force subject to the same conditions as though it had been issued under whichever of Part III of the Act of 1990 or the Act of 1999 applies after the relevant date. 15
- (7) In the circumstances mentioned in subsection (5)(b) above, the proceedings in question shall continue until their conclusion under whichever of Part III of the Act of 1990 or the Act of 1999 applied before the relevant date, notwithstanding that Part III of the 1990 Act or the 1999 Act no longer applies to the part of the bridge in question. 20
- (8) In this section—
- “the borough” means the borough of Lambeth and “borough council” shall be construed accordingly; 25
 - “the city” means the City of Westminster and “city council” shall be construed accordingly;
 - “relevant bridge” means—
 - (a) Westminster Bridge, the Hungerford Footbridges, Lambeth Bridge and Vauxhall Bridge; and 30
 - (b) any other bridge carrying a street across the river Thames constructed after the date on which this Act was passed, if part of the bridge is in the city and part in the borough; and
 - (c) the approaches to any such bridge;
 - “relevant petty sessions area” means— 35
 - (a) a petty sessions area, the whole or part of which is in the city, if the effect of an agreement under this section is to apply the Act of 1999 to the bridge;
 - (b) a petty sessions area, the whole or part of which is in the borough, if the effect of an agreement under this section is to apply Part III of the Act of 1990 to the bridge; 40
 - “street” means any street to which Part III of the 1990 Act or the 1999 Act applies, as the case may be.

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 so, 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—
“(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.”.

39 Exemptions for news vendors and persons providing refreshments, etc. under Act of 1990

- (1) Section 21 (interpretation of Part III) of the Act of 1990 is further amended as follows.
- (2) In subsection (2)(d), after “such receptacle” there is inserted “is not located within 25 metres of any public access or egress to or from any railway station or London underground station; and”.
- (3) Paragraphs (f) and (g) of subsection (2) are omitted.

40 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.”.

41 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—
- “29A Lapsing of licence in certain cases**
- In the case of a street trading licence which authorises street trading on land which falls within paragraph (b) in the definition of “street” in subsection (1) of section 21 (interpretation of Part III) of this Act, the licence shall lapse if—
- (a) the consent is discontinued by the person who gave it, or a successor in title of that person, and the council is provided with written notice of the discontinuation of the consent by the person who discontinues it; or
- (b) the holder of the licence no longer is the owner of the land in question,
- as the case may be.”.

42 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. 5
- (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— 10
- (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. 15
- (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— 20
- (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. 25
- (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. 30
- (1F) Where a temporary licence is revoked or suspended under subsection (1E) above, the council shall return to the licensee such proportion of any fee paid for the granting of the licence as is appropriate, taking into account the period for which the licence was granted and the period remaining on the licence when it was revoked or the period for which the licence was suspended, as the case may be.”. 35

43 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. 40

44 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”. 5

45 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; 10
 - (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; 15
 - (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— 20
 - (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. 25
 - (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).” 30

46 Seizure of perishable items

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

- “38A Seizure of perishable items 35**
- (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. 40

- (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; 5
 - (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. 10
- (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. 15
- (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. 20
- (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. 25
- (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. 30
- (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. 35
- (11) The second condition is that— 40
 - (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. 5
- (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.”. 10 15

47 Motor vehicles

After section 38A (seizure of perishable items) of the Act of 1990 (inserted by section 46 (seizure of perishable items of this Act) the following section is inserted— 20

“38B Motor vehicles

- (1) Subsection (4) below applies where the following conditions are met.
- (2) The first condition is that where, in ascertaining the identity of the person from whom 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. 25
- (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. 30
- (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 35
- (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. 40

- (5) If the council seeks to return a vehicle in accordance with the said subsection (4C)(e) or subsection (4), but the person to whom the council seeks to return the vehicle cannot be found or disclaims or refuses to accept the vehicle, the council may make a complaint for a disposal order in respect of the vehicle under section 38C (disposal orders) of this Act. 5
- (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). 10
- (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.”. 15

48 Disposal orders

After section 38B (motor vehicles) of the Act of 1990 (inserted by **section 47** (motor vehicles) of this Act) the following section is inserted—

“38C Disposal orders 20

- (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, 25and 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. 35
- (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. 40

- (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 5
 - (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. 10
- (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— 15
- (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 20
 - (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. 25
- (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.”

49 Transitional provisions

- (1) Where— 30
- (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 **section 39** (exemptions for news vendors and persons providing refreshments, etc. under Act of 1990) of this Act comes into force in the borough; or 35
 - (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— 40
 - (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.

50 Keeling Schedule 5

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.

City of Westminster Act 1999

51 Interpretation of Act of 1999 10

- (1) Section 2 (interpretation) of the Act of 1999 is renumbered as subsection (1) and amended as follows.
- (2) 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 so, whether or not they have obtained it;”.
- (3) In the definition of “street trading”—
- (a) before “section 3” the words “subsection (2) below and” are inserted;
 - (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.
- (4) After subsection (1), the following subsection is inserted—
- “(2) In determining whether activity amounts to street trading for the purposes of this Act, the fact—
- (a) that 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; 25
 - (b) that either party to the transaction was not in a street at the time it was completed; 30
 - (c) that the articles actually sold or services actually supplied, as the case may be, were different from those offered,
- shall be disregarded.”.

52 Exemptions for news vendors under Act of 1999

In paragraph (a)(ii) of section 3 (exemptions) of the Act of 1999, after “receptacle which” insert “is not located within 25 metres of any public access or egress to or from any railway station or London underground station; and”. 35

53 Applications for street trading licences under Act of 1999

- (1) Section 11 (applications) of the Act of 1999 is amended as follows.
- (2) 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 2 (interpretation) 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.”.

54 Mandatory grounds of refusal of application under Act of 1999

- (1) Section 12 (mandatory grounds of refusal) of the Act of 1999 is amended as follows.
- (2) After paragraph (f) in subsection (1), the following paragraph is inserted—
 - “(g) where the application, if granted, would authorise street trading on land which falls within paragraph (b) in the definition of “street” in subsection (1) of section 2 (Interpretation) of this Act, unless the applicant has provided sufficient such evidence as is mentioned in subsection (2A) above to satisfy the council.”.

55 Lapsing of street trading licence under Act of 1999

After section 17 (further provisions relating to grant, renewal or revocation of street trading licences) of the Act of 1999, the following section is inserted—

“17A 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 2 (interpretation) 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.”.

56 Temporary licences

- (1) Section 21 (temporary licences) of the Act of 1999 is amended as follows.

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

- “(2A) 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 2 (interpretation) of this Act, the applicant shall provide evidence in writing— 5
- (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.
- (2B) 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 (3) of section 11 (applications) of this Act, to satisfy the council. 10
- (2C) 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— 15
- (a) the consent 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 consent or by a successor in title to that person; or 20
 - (b) the holder of the licence is no longer the owner of the land in question.
- (2D) 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. 25
- (2E) Where a temporary licence is revoked or suspended under subsection (2D) above, the council shall return to the licensee such proportion of any fee paid for the granting of the licence as is appropriate, taking into account the period for which the licence was granted and the period remaining on the licence when it was revoked or the period for which the licence was suspended, as the case may be.”. 30

57 Employment of assistants under Act of 1999

- (1) Section 26 (employment of assistants) of the Act of 1999 is amended as follows. 35
- (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”.

58 Unlicensed street trading under Act of 1999

- (1) Section 27 (unlicensed street trading) of the Act of 1999 is amended as follows. 40

- (2) In subsection (5)—
- (a) at the beginning, the words “Subject to section 27A (seizure of perishable items) of this Act,” are inserted;
 - (b) the proviso is omitted.
- (3) In subsection (8)— 5
- (a) in paragraph (f), for “identify that person and” the words “identify that person or” are substituted;
 - (b) paragraph (g) is substituted by the following paragraphs—
 - “(g) paragraph (h) below applies where the article, thing, receptacle or equipment is not returned because— 10
 - (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. 15
 - (h) where this paragraph applies, the council may make a complaint to the magistrates’ court for a disposal order under section 27C (Disposal orders) of this Act (whether or not proceedings for an offence under this section have been commenced).” 20

59 Seizure of perishable items

After section 27 (unlicensed street trading) of the Act of 1999, the following section is inserted—

- “27A Seizure of perishable items 25**
- (1) No article or thing which is of a perishable nature (in this section referred to as a “perishable item”) shall be seized under the provisions of subsection (5) of section 27 (Unlicensed street trading) of this Act unless the council gives a certificate under subsection (2) below to the person from whom the article or thing is seized. 30
 - (2) Where a perishable item is seized under the said subsection (5), the person from whom it is seized must be given a certificate—
 - (a) stating the effect of subsection (5) below and subsection (10) of the said section 27;
 - (b) giving the address from which the article or thing may be collected; 35
 - (c) informing the recipient that if he is not the owner of the article or thing, then he should give the owner the information referred to in paragraphs (a) and (b) above.
 - (3) If the person from whom a perishable item was so seized fails to collect it within 48 hours of the seizure the council may dispose of it. 40
 - (4) When any perishable item is disposed of by the council under subsection (3) above, the council shall have a duty to secure the best possible price which can reasonably be obtained for it.

- (5) Paragraphs (a) to (d) of subsection (8), and subsections (9) and (10) of the said section 27 shall apply to a perishable item seized under that section only in cases where the article or thing 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 article or thing was seized. 5
- (6) Paragraphs (f) and (g) of subsection (8) of the said section 27 shall apply to a perishable item seized under that section only in cases where the article or thing concerned has not been disposed of by the council at the expiration of the period mentioned in the said paragraph (f); otherwise subsections (8) to (11) below shall apply. 10
- (7) Subsection (11) of the said section 27 shall apply with the omission of paragraph (c) in respect of a perishable item seized under that section in cases where the article or thing 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 (8) to (11) below shall apply. 15
- (8) Subsection (11) below shall have effect where the council have disposed of a perishable article or thing under subsection (4) above and any of the following conditions apply.
- (9) The first condition is that no proceedings in respect of the alleged offence in relation to which the article or thing was seized are instituted before the expiration of a period of 28 days beginning with the date of seizure of the article or thing, or any such proceedings instituted within that period are discontinued. 20
- (10) The second condition is that— 25
- (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 27 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. 30 35
- (11) 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 22 (fees and charges) of this Act.”. 40

60 Motor vehicles

After section 27A (seizure of perishable items) of the Act of 1999, inserted by section 59 (seizure of perishable items) of this Act, the following section is inserted—

- “27B Motor vehicles** 5
- (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 (5) or (6) of section 27 (Unlicensed street trading) of this Act, the 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. 10
- (3) The second condition is that those particulars have not been supplied to the council before the date after which the council would, but for this section, have to return the vehicle in accordance with subsection (8)(f) of that section. 15
- (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 20
- (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. 25
- (5) If the council seeks to return a vehicle in accordance with the said subsection (5) or subsection (6), but the person to whom the council seeks to return the vehicle cannot be found or disclaims or refuses to accept the vehicle, the council may make a complaint for a disposal order in respect of the vehicle under section 27C (disposal orders) of this Act. 30
- (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). 35
- (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.”. 40

61 Disposal orders

- (1) After section 27B (motor vehicles) of the Act of 1999 (inserted by **section 60** (motor vehicles) of this Act) the following section is inserted—

“27C 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 (8)(h) of section 27 (unlicensed street trading) of this Act; or
 - (b) a motor vehicle under subsection (5) of section 27B (motor vehicles) of this Act,
- and such articles, things and motor vehicles are together referred to as “seized items” in this section.
- (2) On a complaint to which this section applies, a magistrates’ court may, if 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, 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 22 (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 article, thing, receptacle or equipment applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.
- (4) Subsection (5) below applies where—
- (a) a person appears before the court under subsection (3) above to show why the order should not be made; and
 - (b) the court makes an order under subsection (2) above authorising the council to dispose of the item; and
 - (c) the seized item in question is not of sufficient value to defray the expenses of seizing and storing it; and
 - (d) the court is satisfied that the person mentioned in paragraph (a) above was the owner of the seized item in question or was the person from whom it was seized, as the case may be.
- (5) Where this section applies, the court may order that the person mentioned in subsection (4)(a) above pay the expenses, or the balance of the expenses, reasonably incurred by the council in seizing and storing the seized item in question.
- (6) In considering whether to make an order under subsection (2) above a court shall have regard—
- (a) to the value of the seized item;

- (b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making); and
 - (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. 5
- (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 27B.”. 10

CHAPTER 3

MISCELLANEOUS

62 **Limit on number of members of licensing committees**

The upper limit of 15 members of which a licensing committee may consist under section 6(1) of the Licensing Act 2003 (c. 17) shall not apply as regards a licensing authority in Greater London. 15

63 **Responsible authorities under the Licensing Act 2003**

The principal litter authority for the purposes of Part IV (litter etc) of the Environmental Protection Act 1990 (c. 43) shall be treated, in Greater London, as a responsible authority within the meanings given to that term by sections 13(4) and 69(4) of the Licensing Act 2003 (authorised persons, interested parties and responsible authorities). 20

PART 4

REGISTRATION OF DEALERS IN SECOND-HAND GOODS 25

64 **Application of Part 4**

This Part of this Act applies in a borough as from the appointed day.

65 **Interpretation of Part 4**

In this Part of this Act—

“dealer in second-hand goods” means a person who carries on a trade or business, the whole or part of which consists of transactions in second-hand goods; 30

“motor vehicle” means a mechanically propelled vehicle;

“plant” includes any movable equipment used for building or construction purposes or in carrying on any industrial process;

“record” includes a computer record and references in this Part to the production of a record means, in the case of a computer record, the production of a record in printed form;

“registered number” in respect of a vehicle means the number indicated by the registration mark (within the meaning of section 23 (registration marks) of the Vehicle Excise and Registration Act 1994 (c. 22)) assigned to the vehicle under that section by the Secretary of State;

“registration number” means the number which appears on a certificate of registration issued under subsection (2) of **section 66** (registration of dealers in second-hand goods and premises) of this Act; and

“vehicle” means a vehicle intended or adapted for use on the road.

66 Registration of dealers in second-hand goods and premises

- (1) Subject to **sections 70** (application to existing dealers in second-hand goods, etc.) and **71** (renewal of registration) of this Act—
 - (a) a person shall not in a borough carry on a trade or business the whole or part of which consists of transactions in second-hand goods when he is not registered by the council under this section or exempted from registration by **section 69** (exemptions under Part 4) of this Act; and
 - (b) when he is not so exempted, he shall not carry on such a business in premises in a borough which are 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 applicant specifies premises, those premises and issue to the applicant a certificate of registration on which there shall appear a registration number.
- (3) An application for registration under this section shall be made in writing to the council and the applicant shall in the application state—
 - (a) his name and private address or, if the application is made by or on behalf of a body corporate or partnership, the registered or principal office of such body or partnership as the case may be and the names and private addresses of the directors, partners or other persons directly or indirectly responsible for the management thereof; and
 - (b) the address of each place in the borough which is occupied by the applicant for the purposes of the business.
- (4) Where there is any alteration in the particulars mentioned in subsection (3)(a) or (b) above, the person registered shall within 14 days notify the council of the fact, and the council shall thereupon amend their register.
- (5) Registration under this section shall remain in force for three years from the date of registration.
- (6) A council may charge a reasonable fee for a registration under this section, calculated by reference to the cost of dealing with applications for such registration.

67 Information to be kept by registered dealers in second-hand goods

- (1) Subject to subsections (2) and (8) below, every person registered under **section 66** (registration of dealers in second-hand goods and premises) of this Act shall, as respects every transaction under which he acquires an interest in, or takes charge of, any second-hand articles in the course of the business in respect of which he is registered, enter or cause to be entered forthwith, in a record kept by him— 5
- (a) the date of the transaction;
 - (b) a description sufficient where reasonably possible to identify the articles and their quantity; 10
 - (c) either—
 - (i) the name and address of the person from whom the articles were acquired; or
 - (ii) the person's registration number if he is registered under the said **section 66**; or 15
 - (iii) some other entry, of a type approved by resolution of the council, by means of which that person may be identified;
 - (d) in the case where the article concerned is a motor vehicle, the registered number (if any) of the vehicle and the reading on the odometer of the vehicle at the time of the transaction; and 20
 - (e) in the case where the article concerned is—
 - (i) plant; or
 - (ii) a motor vehicle which does not have a registered number; or
 - (iii) a vehicle other than a motor vehicle, 25
 any serial number or vehicle identification number, as the case may be, marked on the plant or vehicle.
- (2) Subject to subsection (3) below, subsection (1) above shall not apply in respect of any transaction in respect of which a person acquires an interest in, or takes charge of any second-hand article (or set of such articles) which will, in his reasonable opinion at the time of the transaction— 30
- (a) be disposed of by him for no value; or
 - (b) be sold or offered for sale by him for a price (which in the case of a set of articles means the total price of the articles, whether sold individually or as a set) less than the relevant amount.
- (3) Subsection (2) above shall not apply in relation to any electrically or battery powered goods or to any medium on or by which sound, images or other data are or may be stored or recorded. 35
- (4) For the purposes of subsection (2) above “the relevant amount” is—
- (a) £10 in the case of vehicle parts, jewellery, watches, photographic equipment, sports equipment, equestrian equipment, boating equipment, musical instruments, tools, bicycles, optical equipment, firearms and gardening equipment; and 40
 - (b) £50 in the case of all other articles to which that subsection applies, or in either case, such other amount (being no lower than the amount specified in the relevant paragraph) as the council may by resolution determine. 45

- (5) Subject to subsection (8) below, where a person registered under the said **section 66** sells in the course of his business any second-hand article (or set of such articles) for a price exceeding the relevant amount he shall enter in the record referred to in subsection (1) above—
- (a) the name and address of the person to whom the article (or set) was sold; 5
 - (b) the person’s registration number if he is registered under the said **section 66**; or
 - (c) some other entry, of a type approved by resolution of the council, by means of which that person may be identified. 10
- (6) For the purposes of subsection (5) above “the relevant amount” is—
- (a) £100 in the case of electrically or battery powered goods, vehicles and vehicle parts, plant, jewellery, watches, photographic equipment, sports equipment, equestrian equipment, building materials, boats and boating equipment, musical instruments and gardening equipment; and 15
 - (b) £500 in the case of all other articles,
- or, in either case, such other amount (being no lower than the existing amount) as the council may by resolution determine.
- (7) In the case of transactions under which a dealer in second-hand goods acquires an interest in, or takes charge of or sells articles at an auction the entry of the name and address of the auctioneer in the record referred to in subsection (1) above shall suffice for the purposes of subsection (1)(c)(i) above or, as the case may be, subsection (5)(a) above. 20
- (8) Subsections (1) and (5) above shall apply to transactions which take place outside the borough only if— 25
- (a) the person acquiring an interest in, taking charge of or selling the articles in question occupies premises registered under the said **section 66**; or
 - (b) the usual place of residence of the person acquiring an interest in, taking charge of or selling the articles in question is within the borough (except if that person carries on his business as a dealer in second-hand goods primarily in premises occupied by him and situated outside the borough). 30
- (9) Every entry made in every record kept by a person in pursuance of this section shall be retained by him until the end of the period of two years beginning with the day on which the entry was made in the record. 35
- (10) A person registered under the said **section 66** shall, on demand, unless he has a reasonable excuse not to do so, produce to an authorised officer or to a constable any record kept by him in pursuance of this section.
- 68 Offences under Part 4** 40
- (1) If any person contravenes subsection (1) of **section 66** (registration of dealers in second-hand goods and premises) or subsection (1), (5), (9) or (10) of **section 67** (information to be kept by registered dealers in second-hand goods) of this Act, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale. 45

- (2) If any person contravenes subsection (4) of the said **section 66** he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (3) A person registered under the said **section 66** shall be guilty of an offence if, in entering any information in a record kept by him pursuant to the said **section 67**— 5
- (a) he makes any statement which he knows is false in a material particular; or
 - (b) he recklessly makes a statement which is false in a material particular.
- (4) A person guilty of an offence under subsection (3) above shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale. 10
- (5) A person registered under the said **section 66** shall keep a copy of the certificate of registration displayed in a conspicuous position in or on any premises, vehicle, vessel or stall which— 15
- (a) is situated in the borough;
 - (b) is open to the public; and
 - (c) is used for the time being for the purposes of the business in respect of which he is so registered,
- 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. 20
- (6) Any person who, on selling second-hand goods to, or acquiring second-hand goods from, a person registered under the said **section 66**, intentionally gives that person— 25
- (a) (in the case of subsections (1)(c)(i) and (5)(a) of the said **section 67**) a false name or false address; or
 - (b) (in the case of sub-paragraphs (ii) and (iii) of subsection (1)(c) and paragraphs (b) and (c) of subsection (5) of the said **section 67**) false information where that information is required to enable an entry under any of those paragraphs to be made, 30
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (7) A person registered under the said **section 66** who acquires second-hand goods from a person under 16 years of age, whether those goods are offered by that person on his own behalf or on behalf of another person, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale. 35

69 Exemptions under Part 4

This Part of this Act shall not apply to—

- (a) any 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 40

- (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 under the Vehicles (Crime) Act 2001 (c. 3), in respect of his business as a motor salvage operator; or
 - (c) a person engaged in business as a dealer in waste paper, cardboard, textiles, plastics in bulk or second-hand clothes, in respect of his business as such; or 5
 - (d) a person engaged in the business of either 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 of financing the use of goods by means of bailment agreements, in respect of any such business or any transaction incidental thereto; or 10
 - (e) a pawnbroker, in respect of his business as such; or
 - (f) 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 15
 - (g) a person engaged in business as a dealer in second-hand books, in respect of his business as such; or
 - (h) a person engaged in business as a dealer in animals, in respect of his business as such; or 20
 - (i) a person of a class which is by resolution of the council excluded from the operation of this Part of this Act;
- and for the purposes of this Part of this Act 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 appropriate to a business of that sort. 25

70 Application to existing dealers in second-hand goods, etc.

- (1) Until the period of four weeks commencing with the appointed day has expired, it shall be lawful for any person to carry on the business of a dealer in second-hand goods in a borough, despite not being registered himself or his premises not being registered. 30
- (2) Where—
 - (a) a person is carrying on the business of a dealer in second-hand goods on the appointed day; and
 - (b) application for the registration of himself or, where he is carrying on that business in premises in the borough occupied by him, for the registration both of himself and of those premises is made within four weeks of that day, 35it shall be lawful for him to carry on that business, and, where he is carrying on that business in premises specified in his application, to carry it on in those premises, until the issue of his certificate of registration. 40

71 Renewal of registration

It shall be lawful for a person who—

- (a) has obtained or renewed such registrations as are required under this Part of this Act; and 45

(b) prior to the expiry of any such registration has applied for its renewal, to continue to carry on the business of a dealer in second-hand goods and to continue to use for that purpose any premises specified in his last certificate of registration, until he is issued with a new certificate.

72 Power to enter premises and inspect and seize goods and documents 5

- (1) Subject to subsection (2) below, an authorised officer, on production, if required, of his credentials, or a constable, may at all reasonable hours exercise the following powers—
- (a) he may, for the purpose of ascertaining whether any offence under this Part of this Act has been committed, inspect any goods and records and enter any premises; 10
 - (b) if he has reasonable cause to suspect that an offence under this Part of this Act has been committed, he may, for the purpose of ascertaining whether it has been committed, require any person carrying on a trade or business or employed in connection with a trade or business to produce any records relating to the trade or business and may take copies of, or of any entry in, any such record; 15
 - (c) if he has reasonable cause to believe that an offence under this Part of this Act has been committed, he may seize and detain any goods for the purpose of ascertaining whether the offence has been committed; 20
 - (d) he may seize and detain any goods or records which he has reason to believe may be required as evidence in proceedings for an offence under this Part of this Act;
 - (e) he may, for the purposes of exercising his powers under this subsection to seize goods, but only if and to the extent that it is reasonably necessary in order to secure that the provisions of this Part of this Act are duly observed, require any person having authority to do so to break open any container and, if that person does not comply with the requirement, he may do so himself. 25
- (2) An authorised officer or constable may not enter a dwelling in the exercise of his powers under this section without the consent of the occupier unless he has obtained a warrant under subsection (4) below. 30
- (3) An authorised officer or constable seizing any goods or documents in the exercise of his powers under this section shall inform the person from whom they are seized. 35
- (4) If a justice of the peace, on sworn information in writing—
- (a) is satisfied that there is reasonable ground to believe either—
 - (i) that any goods or records which a duly authorised officer has power under this section to inspect are on any premises; or
 - (ii) that any offence under this Part of this Act has been, is being or is about to be committed on any premises; and 40
 - (b) is also satisfied either—
 - (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this subsection has been given to the occupier; or 45

- (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,
the justice may by warrant under his hand, which shall continue in force for a period of one month, authorise an officer of the council or a constable to enter the premises, if need be by force. 5
- (5) An authorised officer or a constable entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him necessary; and on leaving any premises which he has entered by virtue of a warrant under the preceding subsection he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them. 10
- (6) If any person who is not a duly authorised officer of the council or a constable purports to act as such under this section he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale. 15
- (7) Nothing in this section shall be taken—
(a) to compel the production by any person of items subject to legal privilege, excluded material or special procedure material; or
(b) to authorise the taking of any such items or material in the possession of that person. 20
- (8) In this section, “items subject to legal privilege”, “excluded material” and “special procedure material” have the meaning given to them by Part II of the Police and Criminal Evidence Act 1984 (c. 60).
- 73 Service of notices, etc. under Part 4** 25
- (1) Any notice or other document required or authorised to be served or given in writing under this Part of this Act may be served or given either—
(a) by delivering it to the person on whom it is to be served or to whom it is to be given; or
(b) by leaving it at the usual or last known place of abode or business of that person, or, in a case where an address for service has been given by that person, at that address; or
(c) by sending it by ordinary post addressed to that person at his usual or last known place of abode or business, or, in a case where an address for service has been given by that person, at that address; or
(d) in the case of a company or body incorporated in England or Wales, by delivering it to the secretary or clerk of the company or body at their registered or principal office, or sending it by ordinary post addressed to the secretary or clerk of the company or body at that office. 30 35
- (2) If the name or address of any person on whom any notice or other document required or authorised to be served under the provisions of this Part of this Act cannot after reasonable enquiry be ascertained, the document may be given or served by either—
(a) leaving it in the hands of a person who appears to be the owner of, resident in or employed in; or 40 45

(b) leaving it conspicuously affixed to some part of, the premises being used or to be used for trading regulated under the provisions of this Part of this Act.

74 Resolutions

Where the council pass any resolution under this Part of this Act (other than a resolution bringing into effect **section 66** (registration of dealers in second-hand goods and premises) of this Act), they shall, no later than 28 days before the resolution comes into effect, either— 5

- (a) serve on every person registered under the said **section 66** and affected by the resolution; or 10
- (b) cause to be published in a local newspaper circulating in the borough, notice of the passing of any such resolution.

PART 5

PENALTY CHARGES AND FIXED PENALTIES

Introductory 15

75 Joint committees

- (1) In this Part of this Act, a “joint committee” means any joint committee established under section 101(5) of the Local Government Act 1972 (c. 70) and comprising at least one member from each borough council.
- (2) The functions conferred on the borough councils by subsections (1) and (5) of **section 81** (levels of penalty charges) of this Act shall be discharged by a joint committee. 20

Penalty Charges

76 Penalty charges

- (1) This section applies where a borough council have reason to believe that a penalty charge is payable to them by virtue of a penalty charge provision. 25
- (2) The borough council may serve a penalty charge notice on the person appearing to them to be the appropriate recipient.
- (3) A penalty charge notice under this section must—
 - (a) state— 30
 - (i) the grounds on which the council believe that the penalty charge is payable;
 - (ii) the amount of the penalty charge which is payable;
 - (iii) that the penalty charge must be paid before the end of the period of 28 days beginning with the date of the notice; 35
 - (iv) that if the penalty charge is paid before the end of the period of 14 days beginning with the date of the notice, the amount of the penalty charge will be reduced by the specified proportion;

- (v) that, if the penalty charge is not paid before the end of the 28 day period, an increased charge may be payable;
 - (vi) the amount of the increased charge;
 - (vii) the address to which payment of the penalty charge must be sent; and
 - (viii) that the person on whom the notice is served may be entitled to make representations under subsection (1) of **section 77** (representations and appeals) of this Act; and
 - (b) specify the form in which any such representations are to be made.
- (4) The Secretary of State may by regulations prescribe—
- (a) additional matters which must be dealt with in any penalty charge notice; and
 - (b) the time within which a penalty charge notice must be served.
- (5) In subsection (3)(a)(iv) above, “specified proportion” means such proportion, applicable in all cases, as may be determined for the purposes of this section by the borough councils acting through a joint committee.
- (6) **Schedule 4** to this Act shall have effect with respect to financial provisions relating to the provisions of this section.
- (7) In this section—
- “appropriate recipient” means the appropriate recipient for the purposes of this section designated as such by the relevant penalty charge provision;
 - “penalty charge provision” means any enactment which is by the enactment itself or by another enactment designated as a penalty charge provision for the purposes of this section.
- (8) In determining, for the purposes of any provision of this Part of this Act, whether a penalty charge has been paid before the end of a particular period, it shall be taken to be paid when it is received by the council.

77 Representations and appeals

- (1) Where it appears to a person on whom a penalty charge notice has been served under **section 76** (penalty charges) of this Act that one or other of the grounds mentioned in the penalty charge provision is satisfied, he may make representations to that effect to the borough council.
- (2) The Lord Chancellor may make provision by regulations relating to such representations to the borough council and to an appeal to an adjudicator if his representations are not accepted.
- (3) The regulations may make such provision in connection with the rights to make representations or to appeal as appears to the Lord Chancellor to be appropriate, and may in particular make provision—
- (a) requiring the council to give a person notice of the rights;
 - (b) as to the time within which representations may be made;
 - (c) requiring supporting evidence in such circumstances as may be specified;
 - (d) as to the duties of the council when representations are received;

- (e) as to the circumstances in which there is a right of appeal to an adjudicator;
 - (f) generally as to the making, determination and effect of, and procedure in connection with, appeals; and
 - (g) enabling an adjudicator to review any decision made on, or in the course of, an appeal. 5
- (4) The regulations may provide that, as respects a ground on which representations may be made, the adjudicator's function on an appeal is to decide whether to direct the council to consider or re-consider (as the case may be) any representations relating to that ground. 10
- (5) The regulations may include provision—
- (a) authorising an adjudicator to require a person—
 - (i) to attend to give evidence at the hearing of an appeal; and
 - (ii) to produce any documents in his custody or under his control relating to any matter relevant for the purposes of the appeal; and 15
 - (b) making it a criminal offence triable summarily and punishable with a fine not exceeding level 2 on the standard scale to fail to comply with such a requirement.
- (6) The regulations may provide that a person who makes a representation that is false in a material particular, and does so recklessly or knowing it to be false, commits an offence triable summarily and punishable with a fine not exceeding level 5 on the standard scale. 20
- (7) The regulations may include provision authorising an adjudicator to make an order for the payment of costs and expenses by a party to an appeal in such circumstances as may be specified. 25
- (8) Any regulations in force immediately before the commencement of this Part under section 80 of the Traffic Management Act 2004 (c. 18) shall, with any necessary modifications, have effect after that commencement as if made under the corresponding provisions of this section. 30

78 Adjudicators

- (1) The Lord Chancellor may make provision by regulations for and in connection with the appointment of adjudicators for the purposes of this Part.
- (2) The following provisions apply in relation to the office of adjudicator—
- (a) to be qualified for appointment as an adjudicator, a person must have a 5-year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990 (c.41)); 35
 - (b) an adjudicator is appointed for a term, not exceeding five years, specified in his instrument of appointment;
 - (c) on the expiry of a term of appointment an adjudicator is eligible for re-appointment; 40
 - (d) an adjudicator may be removed from office only for misconduct or on the ground that he is unable or unfit to discharge his functions, but otherwise holds and vacates office in accordance with the terms of his appointment. 45

- (3) The regulations shall provide—
- (a) for adjudicators to be appointed by the borough councils on such terms as those councils may decide; and
 - (b) for the consent of the Lord Chancellor to be required for any decision by those authorities— 5
 - (i) to appoint a person as an adjudicator;
 - (ii) not to re-appoint a person as an adjudicator; or
 - (iii) to remove a person from his office as adjudicator.
- (4) The borough councils shall—
- (a) provide, or make arrangements for the provision of, accommodation and administrative staff and facilities for adjudicators; and 10
 - (b) determine the places where adjudicators are to sit,
- and shall defray all the expenses of the adjudication process and, in particular, expenses in relation to the remuneration of adjudicators.
- (5) The regulations shall provide— 15
- (a) for each adjudicator to make an annual report to the councils in accordance with such requirements as may be imposed by the councils; and
 - (b) for the councils to make and publish an annual report to the Secretary of State on the discharge by the adjudicators of their functions. 20
- (6) The regulations shall provide for the functions of the borough councils under this section to be discharged by a joint committee.
- (7) The regulations may make provision—
- (a) for treating adjudicators appointed before the commencement of this Part under— 25
 - (i) section 73 of the Road Traffic Act 1991 (c. 40); or
 - (ii) regulations made under section 144 of the Transport Act 2000 (c. 38) or section 81 of the Traffic Management Act 2004 (c. 18), as if they had been appointed under this section;
 - (b) for continuing in force for the purposes of this section any arrangements in force immediately before the commencement of this Part for the discharge of functions corresponding to the functions of councils under this section. 30
- (8) The expenses of the councils under this section shall be defrayed by them in such proportions— 35
- (a) as they may decide; or
 - (b) in default of a decision by them, as may be determined in accordance with regulations made by the Secretary of State.
- (9) Regulations under subsection (8)(b) above may, in particular, provide—
- (a) for the matter to be determined by an arbitrator appointed by a body specified in the regulations; and 40
 - (b) for the giving of directions by the Secretary of State in order to secure that the matter is referred to arbitration.

- (10) Any regulations in force immediately before the commencement of this Part under section 81 of the Traffic Management Act 2004 (c. 18) shall, with any necessary modifications, have effect after that commencement as if made under the corresponding provisions of this section.

79 Enforcement of penalty charges 5

- (1) The Lord Chancellor may make regulations for or in connection with the enforcement of penalty charges.
- (2) The regulations may include provision—
- (a) creating criminal offences to be triable summarily and punishable with a fine not exceeding level 5 on the standard scale or such lower amount as may be specified; 10
 - (b) for amounts payable under or by virtue of any provision of this Part to be recoverable, if a county court so orders, as if they were payable under a county court order.
- (3) An amount to which subsection (2)(b) above applies that is so recoverable is referred to below as a “penalty charge debt”. 15
- (4) The Lord Chancellor may by order make provision—
- (a) for warrants of execution in respect of penalty charge debts, or such class or classes of penalty charge debts as may be specified in the order, to be executed by certificated bailiffs; 20
 - (b) as to the requirements that must be satisfied before a person takes any other step of a kind specified in the order, with a view to enforcing the payment of—
 - (i) a penalty charge debt; or
 - (ii) such class or classes of penalty charge debts as may be so specified. 25
- (5) Any such order may make such incidental and supplementary provision (including modifications of any enactment other than this Act) as the Lord Chancellor considers appropriate in consequence of the provision made by the order. 30
- (6) Any order in force immediately before the commencement of this Part of this Act under—
- (a) section 78(2) of the Road Traffic Act 1991 (c. 40); or
 - (b) section 82(3) of the Traffic Management Act 2004,
- shall, with any necessary modifications, have effect after that commencement as if made under the corresponding provisions of this section and shall apply in relation to the enforcement of any penalty charge debt. 35

80 Certificated bailiffs

- (1) For the purposes of **section 79** (enforcement of penalty charges) of this Act a person is a certificated bailiff if he is authorised to act as such by a certificate signed— 40
- (a) by a judge assigned to a county court district; or

- (b) in such circumstances as may be specified in regulations made by the Lord Chancellor, by a district judge.
- (2) The Lord Chancellor may by regulations make provision in connection with the certification of bailiffs under this section and the execution of warrants of execution by such bailiffs. 5
- (3) The regulations may, in particular, make provision—
 - (a) as to the security (if any) to be required from certificated bailiffs;
 - (b) as to the fees and expenses payable with respect to execution by certificated bailiffs; and
 - (c) for the suspension or cancellation of certificates issued under this section and with respect to the effect of any such suspension or cancellation. 10
- (4) Any regulations in force immediately before the commencement of this Part under—
 - (a) section 78(4) to (6) of the Road Traffic Act 1991 (c. 40); or 15
 - (b) section 83 of the Traffic Management Act 2004 (c. 18),shall, with any necessary modifications, have effect after that commencement as if made under the corresponding provisions of this section.
- (5) A person who is not a certificated bailiff but who purports to levy a distress as such a bailiff, and any person authorising him to levy it, shall be deemed to have committed a trespass. 20

81 Levels of penalty charges

- (1) It shall be the duty of the borough councils to set the levels of penalty charges payable to them under **section 76** (penalty charges) of this Act.
- (2) Different levels may be set for different areas in Greater London and for different cases or classes of case. 25
- (3) In setting the level of penalty charges under subsection (1) above the councils may take account of—
 - (a) any reasonable costs or expected costs incurred or to be incurred in connection with the administration of the provisions of the enactment under which the particular contravention giving rise to the penalty charge notice is created; and 30
 - (b) the cost or expected cost of enforcing the provisions of the relevant enactment.
- (4) Levels of penalty charges set by the councils in accordance with this section may only come into force in accordance with **section 82** (penalty charges: reserve powers of Secretary of State) of this Act. 35
- (5) The councils shall publish, in such manner as the Secretary of State may determine, the levels of penalty charges which have been set by the councils in accordance with this section. 40

82 Penalty charges: reserve powers of Secretary of State

- (1) Where the borough councils set any levels of penalty charges under subsection (1) of **section 81** (levels of penalty charges) of this Act, they shall notify the Secretary of State of the levels of fixed penalties so set.
- (2) Where notification of any levels of fixed penalties is required to be given under subsection (1) above, the levels of fixed penalties shall not come into force until after the expiration of—
- (a) the period of one month beginning with the day on which the notification is given; or
 - (b) such shorter period as the Secretary of State may allow.
- (3) If, before the expiration of that period, the Secretary of State gives notice to the joint committee that he objects to the levels of fixed penalties on the grounds that some or all of them are or may be excessive, those levels of fixed penalties shall not come into force unless and until the objection has been withdrawn.
- (4) If, at any time before the levels of fixed penalties required to be notified under subsection (1) above to the Secretary of State have come into force, the Secretary of State considers that some or all of them are excessive, he may make regulations setting the levels of fixed penalties.
- (5) Levels of fixed penalties set under subsection (4) above must be no higher than those notified under subsection (1) above.
- (6) Regulations under subsection (4) above are without prejudice to the duty imposed on borough councils by subsection (1) of the said **section 104** but where the Secretary of State makes any such regulations the councils must not set any further fixed penalties under the said subsection (1) until after the expiration of the period of 12 months beginning with the day on which the regulations are made.

*Fixed Penalties***83 Fixed penalties under the London Local Authorities Act 2004**

- (1) Part 4 (fixed penalties) of the London Local Authorities Act 2004 (c. i) is amended as follows.
- (2) In section 16 (fixed penalty notices)—
- (a) in subsection (2)(a), for “14 days” there is substituted “28 days”.
 - (b) in subsection (3), the following paragraph is inserted after paragraph (b)—
 - “(ba) that if the fixed penalty is paid before the end of the period of 14 days beginning with the date of the notice, the amount of the fixed penalty will be reduced by the specified proportion;”;
 - (c) in subsection (9), before ““chief finance officer”” there is inserted “—(a)” and at the end the following paragraph is inserted—
 - “(b) “specified proportion” means such proportion, applicable in all cases, as may be determined for the purposes of this section by the borough councils acting through the joint committee.”.

- (3) In section 17 (Levels of fixed penalties), in subsection (7), for “the said section 18” there is substituted “the said sections 16 and 18”.

84 Fixed penalty offences

Schedule 2 to the London Local Authorities Act 2004 (c. i) is amended by the insertion, in the appropriate place, of the following entry into the table of offences in respect of which a fixed penalty notice can be given under section 15 (Fixed penalty offences) of that Act—

“14	London Local Authorities Act 2006	26(5)	Failure to comply with requirement at civic amenity site”	10
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PART 6

MISCELLANEOUS

85 Display of certain video recordings

- (1) This section applies to a video work in respect of which a classification certificate has been issued stating that no video recording containing that work is to be supplied other than in a licensed sex shop. 15
- (2) A person who at any place in a borough other than in a sex shop for which a licence is in force under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (c. 30) displays in the course of a business—
- (a) a video recording containing a video work to which this section applies; or 20
 - (b) any packaging indicating that it contains such a video recording, is guilty of an offence unless he is displaying the video recording or packaging for the purpose only of a supply which, if it took place, would be an exempted supply by virtue of section 12(6) of the 1984 Act. 25
- (3) It is a defence to a charge of committing an offence under subsection (2) above to prove—
- (a) that the accused neither knew nor had reasonable grounds to believe that the classification certificate contained the statement concerned;
 - (b) that the accused believed on reasonable grounds that the place concerned was a sex shop for which a licence was in force under the said Schedule 3; 30
 - (c) that the accused believed on reasonable grounds that were the video recording to have been supplied or offered for supply by him in the place concerned the supply would if it had taken place been, an exempted supply by virtue of section 3(4) or 12(6) of the 1984 Act. 35
- (4) A person guilty of an offence under subsection (2) above shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.

- (5) In this section—
 “the 1984 Act” means the Video Recordings Act 1984 (c. 39);
 “classification certificate”, “video recording” and “video work” have the same meanings ascribed to them by the 1984 Act.

86 Temporary sleeping accommodation: powers of entry, search and seizure 5

- (1) An authorised officer may, at all reasonable hours and on production, if required, of his credentials, exercise the following powers, that is to say—
- (a) he may, for the purpose of ascertaining whether a relevant offence has been committed, inspect any relevant items and enter any premises other than premises used only as a dwelling; 10
 - (b) if he has reasonable cause to suspect that a relevant offence has been committed, he may, for the purpose of ascertaining whether it has been committed, require any person carrying on a trade or business or employed in connection with a trade or business to produce any books or documents relating to the trade or business and may take copies of, or of any entry in, any such book or document; 15
 - (c) if he has reasonable cause to believe that a relevant offence has been committed, he may seize and detain any goods for the purpose of ascertaining, by testing or otherwise, whether the offence has been committed; 20
 - (d) he may seize and detain any relevant items or documents which he has reason to believe may be required as evidence in proceedings for a relevant offence;
 - (e) he may, for the purpose of exercising his powers under this subsection to seize relevant items or documents, but only if and to the extent that it is reasonably necessary in order to obtain evidence in proceedings for a relevant offence, break open any container and, if that person does not comply with the requirement, he may do so himself. 25
- (2) An officer seizing any relevant items or documents in the exercise of his powers under this section shall inform the person from whom they are seized. 30
- (3) If a justice of the peace, on sworn information in writing—
- (a) is satisfied that there is reasonable ground to believe either—
 - (i) that any relevant items, books or documents which a duly authorised officer has power under this section to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of a relevant offence; or 35
 - (ii) that any relevant offence has been, is being or is about to be committed on any premises; and
 - (b) is also satisfied either—
 - (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this subsection has been given to the occupier; or 40

- (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,
the justice may by warrant under his hand, which shall continue in force for a period of one month, authorise an authorised officer to enter the premises, if need be by force. 5
- (4) An officer entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him necessary; and on leaving any premises which he has entered by virtue of a warrant under the preceding subsection he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them. 10
- (5) If any person who is not an authorised officer purports to act as such under this section he shall be guilty of an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. 15
- (6) Nothing in this section shall be taken to compel the production by a solicitor of a document containing a privileged communication made by or to him in that capacity or to authorise the taking of possession of any such document which is in his possession. 20
- (7) In this section—
“relevant enforcement notice” means an enforcement notice issued under section 172 of the Town and Country Planning Act 1990 (c. 8) (issue of enforcement notice) in respect of a material change of use of the type described in section 25 (provision of temporary sleeping accommodation to constitute material change of use) of the Greater London Council (General Powers) Act 1973 (c. xxx); 25
“relevant items” means computers, software and other items which may be used to store or record information;
“relevant offence” means an offence under section 179 of the Town and Country Planning Act 1990 in relation to a relevant enforcement notice. 30

87 Soliciting for custom

- (1) Section 22 (soliciting for custom) of the London Local Authorities Act 2004 (c. i) is amended as follows.
- (2) For subsection (1) substitute— 35
“(1) Subject to the following provisions of this section, it is an offence in the area of a borough council to solicit persons, or to permit the soliciting of persons, to attend premises—
(a) if the impression is given, by the soliciting, that licensable activities, within the meaning of section 1 of the Licensing Act 2003 (c. 17), are carried on or from the premises; 40

- (b) which are a sex establishment within the meaning of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (c. 30) (if that Schedule has effect in the borough).”.
- (3) After subsection (2), the following subsection is inserted—
 - “(2A) It shall be a defence in any proceedings for an offence under subsection (1)(a) if the premises concerned were licensed under Part 3 of the Licensing Act 2003 (c. 17) at the time of the alleged offence.”. 5
- (4) Subsection (4) is omitted.

88 Charges for pipe subways

- (1) On and after the appointed day, section 27 of the London County Council (General Powers) Act 1958 (c. xxi) (charges in respect of subways of council) shall apply in respect of— 10
 - (a) any public service work within the meaning of Part V of the City of London (Various Powers) Act 1900 (c. ccxxviii); or
 - (b) any subway in which the borough council has an interest by virtue of the London Government Reorganisation (Pipe Subways) Order 1989 (S.I. 1989 No. 335), 15

and references in that section to “the council” shall mean the borough council as respects such subways.
- (2) On and after the appointed day, in section 40 of the said Act of 1900, the words from “And the Corporation may” to the end of the section are repealed and any byelaws made by virtue of those words so repealed are revoked. 20
- (3) Subsection (6) of the said section 27 (which provides for an exemption from charges for operators of electronic communications code networks) is repealed.
- (4) Any person who by virtue of the said subsection (6) was exempt from paying charges under that section shall, from the date on which subsection (3) comes into force until the next review of charges due under subsection (5) of the said section 27, pay such reasonable charges as may be settled by agreement between the borough council and that person or failing such agreement by arbitration. 25
30
- (5) Subsections (3) and (4) of the said section 27 shall apply in relation to an arbitration under subsection (4) above as they apply in relation to an arbitration under subsection (2) of that section.

89 Power to disturb human remains

- (1) Where a burial authority has extinguished— 35
 - (a) a right of burial in a grave space under section 6 (power to extinguish rights of burial in cemetery lands) of the Act of 1969; or
 - (b) a right of interment in respect of a grave under section 9 of the Act of 1976,

the burial authority may disturb or authorise the disturbance of human remains interred in the grave for the purpose of increasing the space for interments in the grave. 40

- (2) No human remains may be disturbed under this section if they have been interred for a period of less than 75 years.
- (3) Any human remains disturbed under subsection (1) above must be reinterred in the grave.
- (4) Before disturbing any human remains under this section the burial authority shall— 5
- (a) publish a notice of their intention to do so once in each of two successive weeks in a newspaper circulating in Greater London with an interval between the dates of publication of not less than six clear days;
 - (b) display a like notice in a conspicuous position at every entrance to the cemetery; 10
 - (c) serve a notice thereof upon the registered owner of— 15
 - (i) the right of burial (if the right has not yet been extinguished),
 - (ii) the right of interment (if the right has not yet been extinguished);
 - (iii) any relevant tombstone,at that owner's registered address; and
 - (d) serve a notice thereof on the Commonwealth War Graves Commission.
- (5) Each of the notices referred to in subsection (4) above shall—
- (a) contain full particulars of the burial authority's proposals including a specification of the registered number or other description of all graves in which it is proposed that the human remains are to be disturbed; 20
 - (b) specify the date after which it is intended that the work should be undertaken, which shall not be earlier than six months after the date of the later of the two publications, the date on which the notice is first displayed, or the date on which the notice is served whichever is the last; and 25
 - (c) state the effect of subsection (7) below.
- (6) A single notice may be used for the purposes of this section and—
- (a) subsection (3) of section 6 of the Act of 1969; or
 - (b) subsection (4) of section 9 of the Act of 1976, 30
- (which provide for the giving of notice and making of objections in the case of the proposed extinguishment of rights of burial and interment and the proposed removal of tombstones), as the case may be.
- (7) If notice of objection to the proposed disturbance of human remains is given to the burial authority before the date specified in paragraph (b) of subsection (5) above by— 35
- (a) the registered owner of the right of burial or interment, as the case may be;
 - (b) the registered owner of a relevant tombstone;
 - (c) a relative of the person whose remains are proposed to be disturbed, 40
- and that objection is not withdrawn, the burial authority may not exercise its powers under this section for a period of 25 years, beginning with the date of the publication of the first notice under subsection (4)(a) above.

- (8) The burial authority shall comply with any directions given by the Secretary of State with respect to the removal and reinterment of any human remains in any case other than a case falling within subsection (10).
- (9) Nothing in this section shall in any way affect the jurisdiction of the consistory court of the diocese over consecrated land which is used, or is available for use, for the internment of human remains. 5
- (10) Where the burial authority proposes to disturb any human remains in consecrated land the burial authority may not exercise its powers under this section without first obtaining a faculty, with or without conditions attached to it, from the consistory court of the diocese in which the land is situated, and any objection to the proposed disturbance of human remains from consecrated land by any person under subsection (7) above shall be heard and determined by that consistory court. 10
- (11) The provisions of section 25 of the Burial Act 1857 (c. 81) (prohibition of removal of human remains without the licence of the Secretary of State except in certain cases) shall not apply to a removal carried out in accordance with the provisions of this section. 15
- (12) In this section—
- “the Act of 1969” means the City of London (Various Powers) Act 1969 (c. xxxix); 20
- “the Act of 1976” means the Greater London Council (General Powers) Act 1976 (c. xxvi);
- “burial authority” means—
- (a) a borough council;
- (b) the Court of Common Council of the City of London; 25
- (c) a joint committee appointed under section 102 of the Local Government Act 1972 (c. 70) and authorised to exercise powers under section 214 of and Schedule 26 to that Act, or under any other enactment relating to the provision and maintenance of cemeteries, being a joint committee any member of which is appointed by a borough council; or 30
- (d) a burial or cemetery board established under any enactment and—
- (i) authorised to exercise such powers as are mentioned in paragraph (c) above; and 35
- (ii) of which at least one of the constituent authorities is a borough council;
- “civil partner” has the same meaning as in the Civil Partnership Act 2004 (c. 33) and includes former civil partner;
- “registered owner”— 40
- (a) in relation to any right of burial or interment, means the person at the time in question named in the register of grants of rights of burial or interment, as the case may be, maintained by the burial authority under the Cemeteries Clauses Act 1847 (c. 65) or otherwise; 45

(b) in relation to any relevant tombstone means the person at the time in question named in the said register as the person to whom the right to erect or place that tombstone has been granted, or, if no such person is named, the registered owner of the right of interment or burial in the grave in or on which the tombstone is erected or placed; 5

“registered address” means any address of the registered owner contained in the said register;

“relative”, in relation to any person, means any of the following—

- (a) his spouse; 10
- (b) his civil partner;
- (c) any lineal ancestor, lineal descendant, brother, sister, aunt, uncle, nephew, niece or first cousin of his or his spouse or civil partner;

“relevant tombstone” means a tombstone erected or placed in or on a grave in respect of which the powers of this section are intended to be exercised, whether or not the tombstone is itself intended to be disturbed; 15

“spouse” includes former spouse.

90 Mail forwarding businesses 20

- (1) A person shall not in the area of a borough council carry on a mail forwarding business, whether alone or in conjunction with any other business when he is not registered by the council under this section.
- (2) On application for registration under this section the council shall register the applicant and issue to the applicant a certificate of registration on which there shall appear a registration number. 25
- (3) An application for registration under this section shall be made in writing to the council and the applicant shall in the application state—
 - (a) his name and private address or, if the application is made by or on behalf of a body corporate or partnership, the registered or principal office of such body or partnership as the case may be; and 30
 - (b) the address of each place in the borough which is occupied by the applicant for the purposes of the business.
- (4) Where there is any alteration in the particulars mentioned in subsection (3)(a) or (b) above, the person registered shall within 14 days notify the council of the fact, and the council shall thereupon amend their register. 35
- (5) A council may charge a reasonable fee for a registration under this section, calculated by reference to the cost of dealing with applications for such registration.
- (6) A person who carries on a mail forwarding business shall keep a record of the following particulars— 40
 - (a) the full name, address and telephone number of every person for whom any post is received, or who has requested that postal packets received may be held or forwarded to that person;
 - (b) the nature of the business (if any) carried out by that person; 45

- (c) any instructions that may have been received as to the delivery or forwarding of postal packets;
- (d) in the case of every postal packet forwarded, the name and address of the person to whom it is forwarded (if different from the name and address mentioned in paragraph (a) above); 5
- (e) copies of the originals of two documents of a type approved by the council for the purposes of identifying the persons and verifying the address mentioned in paragraph (a) above.
- (7) In subsection (6)(a) above, the name and address to be kept must not be the name and address of another mail forwarding business and is— 10
- (a) in the case of an individual, his private address;
- (b) in the case of a body corporate or partnership—
- (i) the registered or principal address of such body or partnership, as the case may be; and
- (ii) the names and private addresses of the directors, partners or another person directly or indirectly responsible for the management of the body or partnership; and 15
- (iii) the address of the principal place of business of the body or partnership, if different from any of the addresses mentioned in paragraphs (i) and (ii) above. 20
- (8) The records kept under this section by a person carrying on a mail forwarding business, shall, in respect of a person by whom he is requested to hold or forward postal packets, be kept for a period of at least a year after the end of the arrangement under which that request was made, and must be kept at all reasonable times open to inspection by any police constable and any authorised officer. 25
- (9) If any person—
- (a) without reasonable excuse contravenes or fails to comply with any of the provisions of this section; or
- (b) furnishes any false information— 30
- (i) in making an application for registration under this section or notifying the council of any alteration in the particulars mentioned in subsection (3)(a) or (b) above; or
- (ii) to a mail forwarding business which the business requires in order to comply with subsection (6) above; or 35
- (c) without reasonable excuse, makes a false entry in the record kept under subsection (6) above,
he shall be guilty of an offence.
- (10) A person guilty of an offence under subsection (9) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale. 40
- (11) Nothing in subsection (1) or (6) above shall apply to a person who holds a licence under Part 2 of the Postal Services Act 2000 (c. 26) (licences for postal services).

- (12) Section 28 of the Trade Descriptions Act 1968 (c. 29) (power to enter premises and seize goods and documents) applies in relation to the enforcement of this section by a borough council as in relation to the enforcement of that Act by a weights and measures authority.
- (13) In this section— 5
“mail forwarding business” means the business, carried out for reward, of making available to a person a postal address to which postal packets may be sent, and doing either or both of the following—
(a) holding postal packets so sent for collection by that person or his agent; 10
(b) forwarding, by whatever means, postal packets so sent to that person;
“postal packet” has the same meaning given to it by section 125 of the Postal Services Act 2000 (c. 26) (interpretation).
- (14) For the purposes of this section, a person carries on a mail forwarding business in the area of a borough council if, in respect of that mail forwarding business, the postal address made available and to which postal packets may be sent is in the area of the council. 15

91 Crime prevention on housing land

- (1) This section applies in a borough in respect of which the borough council has appointed a day in respect of section 5 (crime prevention) of the London Local Authorities (No. 2) Act 1990 (c. xxx). 20
- (2) Subsection (1) of the said section 5 is amended by the insertion, after paragraph (h), of the following paragraph—
“(ha) carrying out works consisting of fences, gates, locking devices or other works to prevent persons, other than residents of premises situated on the land, gaining access to any part of any land (other than a highway) held by them for the purposes of Part II of the Housing Act 1985 (c. 68);”. 25
- (3) After subsection (4) of the said section 5, the following subsection is inserted— 30
“(4A) The power under subsection (1)(ha) above may be exercised whether or not requested by residents of premises situated on the land.”.

92 Private sewers

- (1) The amount of—
(a) any sum specified in a notice served by a borough council under section 35(3) of the Local Government (Miscellaneous Provisions) Act 1976 (c. 57) and which the council are entitled to recover by virtue of subsection (6)(a) of that section; or 35
(b) any smaller sum which the council are entitled to recover by virtue of subsection (6)(b) of that section, 40
shall be a charge on the appropriate premises as from the date on which the council is entitled to recover that sum by virtue of the said subsection (6)(a) or (6)(b), as the case may be.

- (2) A borough council shall, for the purpose of enforcing a charge under this section, have all the same powers and remedies under the Law of Property Act 1925 (c. 20), and otherwise, as if they were a mortgagee by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.
- (3) In this section, “appropriate premises” means the premises of which the recipient of the notice mentioned in subsection (1)(a) above is or was the owner or occupier, and in respect of which the notice was served. 5

93 Provision of information to authorised officers

Section 26 (provision of information to authorised officers) of the London Local Authorities Act 2004 (c. i) is amended by the addition of the following subsection after subsection (3)— 10

“(4) In this section “authorised officer” includes any person who is authorised in writing by a borough council to enforce any enactment which gives rise to a criminal offence.

No such person shall require any further authorisation under this Act for the purposes of this section.”. 15

PART 7

SUPPLEMENTAL

94 Obstruction of authorised officer

Any person who intentionally obstructs any authorised officer acting in the exercise of his powers under this Act shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale. 20

95 Proof of resolution

In any proceedings which require proof of the passing of a resolution under this Act it shall be presumed, unless the contrary is proved, that the said resolution was duly passed and that any requirements relating to the passing of the resolution and the giving of any notices or information before or after the passing of the resolution were properly complied with. 25

96 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. 30
- (2) Where the affairs of the 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. 35

97 Regulations

- (1) Any power to make regulations conferred by this Act includes power to make provision in respect of such cases only as may be specified in the regulations and to make different provision for different circumstances.
- (2) Any power to make regulations or orders conferred on the Secretary of State or the Lord Chancellor by this Act shall be exercised by statutory instrument. 5
- (3) Any statutory instrument made under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

SCHEDULES

SCHEDULE 1

Section 11

SECTIONS OF PUBLIC HEALTH ACT 1936 (C. 49) APPLIED TO **section 11** (advertising: measures to be taken on surfaces) of this Act

<i>Section</i>	<i>Marginal Note</i>	
275	Power of local authority to execute certain works on behalf of owners and occupiers.	5
278	Compensation to individuals for damage resulting from exercise of powers under Act.	
283(1)	Notices to be in writing; forms of notices, etc.	
285	Service of notices, etc.	10
287	Power to enter premises.	
289	Power to require occupier to permit works to be executed by owner.	
290	Provisions as to appeals against, and enforcement of, notices requiring execution of works.	15
291	Certain expenses recoverable from owners to be a charge on the premises: power to order payment by instalments.	
297	Continuing offences and penalties.	20
300	Appeals and applications to courts of summary jurisdiction.	
341	Power to apply provisions of Act to Crown property.	

SCHEDULE 2

Section 31

MODIFICATION OF ENACTMENTS IN ENFORCEMENT ACTION ZONE

PART 1

MODIFICATION OF ENACTMENTS WITHIN ENFORCEMENT ACTION ZONE

<i>Enactment</i>	<i>Modification</i>	
1 Section 224(3) Town and Country Planning Act 1990 (c. 8) (displaying advertisements in contravention of regulations)	For “level 4” substitute “level 5” where it appears in both places	5
2 Section 87 Environmental Protection Act 1990 (c. 43) (offence of leaving litter)	For “level 4” substitute “level 5”	10
3 Section 4(3) Noise Act 1996 (c. 37) (offence where noise exceeds permitted level after service of notice)	For “level 3” substitute “level 5”	15

PART 2

MODIFICATION OF ENACTMENTS: GENERAL

20

<i>Enactment</i>	<i>Modification</i>	
4 Section 88 Environmental Protection Act 1990 (fixed penalty notices for leaving litter)	After subsection (7) insert— “(7A) The Secretary of State may, when making an order under subsection (7) above, substitute different penalties as regards enforcement action zones designated under section 29 (enforcement action zones) of the London Local Authorities Act 2006.”	25
5 Section 9 Noise Act 1996 (supplementary provisions about fixed penalties for noise offences)	After subsection (3) insert— “(3A) The Secretary of State may, when making an order under subsection (3) above, substitute different penalties as regards enforcement action zones designated under section 29 (enforcement action zones) of the London Local Authorities Act 2006.”	30
		35

SCHEDULE 3

Section 50

PART III OF THE LONDON LOCAL AUTHORITIES ACT 1990 (c. vii) AS HAVING EFFECT AS
 AMENDED BY THE LONDON LOCAL AUTHORITIES ACT 1994 (c. xii), THE LONDON LOCAL
 AUTHORITIES ACT 2004 (c. i) AND THIS ACT

PART III

5

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 confectionery or other similar commodities from a vehicle; 10

“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; 15

“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; 20

“street” includes— 25

(a) any road or footway;

(b) any other area, not being within permanently enclosed premises, within 7 metres of any road or footway to which the public obtain access without payment—

(i) whether or not they need the consent of the owner or occupier; and 30

(ii) if so, whether or not they have obtained it;

(c) any part of such road, footway or area;

(d) any part of any housing development provided or maintained by a local authority under Part II of the Housing Act 1985 (c. 68); 35

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

(a) the selling or the exposure or offer for sale of any article (including a living thing); and

(b) the purchasing of or offering to purchase any ticket; and 40

- (c) the supplying of or offering to supply any service,
in a street for gain or reward (whether or not the gain or reward
accrues to the person actually carrying out the trading);
“street trading licence” means a licence granted under this Part of this
Act and valid for the period specified therein being not less than 5
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.
- (1A) In determining whether activity amounts to street trading for the purposes 10
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 15
completed;
(c) the articles actually sold or services actually supplied, as the case may
be, were different from those offered,
shall be disregarded.
- (2) The following are not street trading for the purposes of this Part of this Act:— 20
(a) trading by a person acting as a pedlar under the authority of a
Pedlar’s Certificate granted under the Pedlars Act 1871 (c. 96), if the
trading is carried out only by means of visits from house to house;
(b) anything done in a market or fair the right to hold which was 25
acquired by virtue of a grant (including a presumed grant) or
acquired or established by virtue of any enactment or order;
(c) trading in a trunk road picnic area provided by the Secretary of State
under section 112 of the Highways Act 1980 (c. 66);
(d) trading as a news-vendor provided that the only articles sold or 30
exposed or offered for sale are current newspapers or periodicals and
they are sold or exposed or offered for sale without a receptacle for
them or, if with a receptacle for them such receptacle is not located
within 25 metres of any public access or egress to or from any railway
station or London underground station; and does not—
(i) exceed 1 metre in length or width or 2 metres in height; or 35
(ii) occupy a ground area exceeding 0.25 square metre; or
(iii) stand on the carriageway of a street; or
(iv) cause undue interference or inconvenience to persons using
the street; and
(e) selling articles or things to occupiers of premises adjoining any street, 40
or offering or exposing them for sale from a vehicle which is used
only for the regular delivery of milk or other perishable goods to
those persons;

* * * * *

- (h) the doing of anything authorised by regulations made under section 5 of the Police, Factories, &c. (Miscellaneous Provisions) Act 1916 (c. 31) or by permit or order made under Part III of the Charities Act 1992 (c. 41);
- (i) trading in a highway in relation to which a control order under section 7 of the Local Government (Miscellaneous Provisions) Act 1976 (c. 57) is in force, other than trading to which the control order does not apply; and 5
- (j) the selling or the exposure or offer for sale of articles or the provision of services on private land adjacent to a shop provided that the selling or the exposure or offer for sale of the articles or the provision of the services— 10
 - (i) forms part of the business of the owner of the shop or a person assessed for uniform business rate in respect of the shop; and
 - (ii) takes place during the period during which the shop is open to the public for business. 15

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 20

- 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. 25

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:— 30
- (a) a resolution (in this Part of this Act referred to as a “designating resolution”) designating any street within the borough as a “licence street”;
 - (b) a resolution specifying in relation to any such street or any part of a street any class or classes of articles, things or services which they will, or other than which they will not, prescribe in any street trading licence granted by them in respect of that street; 35

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. 5
- (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. 10
- (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). 15
- (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 20
 - (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 25
 - (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 30
 - (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; 35
 - (b) London Regional Transport;
- * * * * *
- (d) Network Rail Infrastructure Limited; and
 - (e) Transport for London.
- (7) The notice referred to in subsection (4) above shall— 40
- (a) contain a draft of the resolution to which it relates; and
 - (b) state that representations relating to it may be made in writing to the borough council within such period, not less than 28 days after the publication of the notice, as may be specified in the notice.

- (8) As soon as practicable after the expiry of the period specified under subsection (7) above, the borough council shall consider any representations relating to the proposed resolution which they have received before the expiry of that period.
- (9) After the borough council have considered those representations, they may if they think fit, pass such a resolution relating to the street as is mentioned in subsection (1) above. 5
- (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. 10

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: 15
- Provided that nothing in this section shall prevent a borough council from renewing a street trading licence, notwithstanding that application has been made for such renewal at a later date than aforesaid if they consider it reasonable in the circumstances so to do. 20
- (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— 25
- (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; 30
- (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; 35
- 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. 40

- (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 5
 - (b) that he is the owner of the land in question.
- (3) In the case of an application by an individual the applicant shall, with his application, hand to an authorised officer three identical clear full face photographs of himself— 10
- (a) without sunglasses; and
 - (b) unless on religious grounds the applicant permanently wears headgear, without headgear,
- taken within the preceding 12 months, each photograph being signed by the applicant on the reverse. But the borough council may, at their discretion, accept a lesser number of photographs. 15
- (3A) If a standard condition prescribed under regulations made under subsection (3) of section 27 (conditions of street trading licences) of this Act requires third party insurance cover the applicant shall produce to an authorised officer proof of such third party insurance cover before a licence is granted. 20
- (3B) A borough council may make regulations prescribing the procedure for determining applications.
- (3C) Before making or amending such regulations the borough council shall—
- (a) consult any body which appears to the borough council to represent licence holders; and 25
 - (b) give consideration to any representations received within 28 days of the date on which the borough council’s proposals were notified to the body concerned.
- (4) A street trading licence—
- (a) shall not be granted— 30
 - (i) to a person under the age of 17 years; or
 - (ii) except where the application is made by a company incorporated under the Companies Acts, or by a partnership, for a licence to carry on ice cream trading to a person, on a corresponding day, days or time, who holds a street trading licence in any other licence street granted under this Part of this Act but nothing in this paragraph shall prevent the renewal of such a licence; or 35
 - (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 40
 - (iv) in respect of an application for a street trading licence which, if granted, would authorise trading in a street which is not a licence street; or 45

- (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; 5
- (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; 10
- (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. 15
- (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. 20
- (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; 25
 - (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; 30
 - (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; 35
 - (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; 40
 - (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 45
 - (iii) the articles, things or services mentioned in the application are sold or provided at the shop;

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

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;
- 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 1 January in any year during the currency thereof, (whether on application by the licence holder or otherwise) or at any time on application by the licence holder, the borough council may vary the conditions.
- (2) Where a licence is granted to a company incorporated under the Companies Acts or to a partnership to carry on ice cream trading, any individual carrying on ice cream trading in accordance with that licence shall at all times while he is so trading carry with him a recent photograph of him authenticated by the company or on behalf of the partnership, as the case may be, which holds the licence.
- (3) The borough council may make regulations prescribing standard conditions which they may attach to the licence on the occasion of its grant or renewal.

- (4) Before making regulations under subsection (3) above, the borough council shall—
- (a) publish notice of their intention to do so in a local newspaper circulating in their area, and such notice shall—
 - (i) contain a draft of the resolution to which it relates; and 5
 - (ii) state that representations relating to it may be made in writing to the borough council within such period, not less than 28 days after the publication of the notice, as may be specified in the notice; and
 - (b) consult the licence holders or a body or bodies representative of them. 10
- (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. 15
- (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— 20
- (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; 25
 - (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; 30
 - (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; 35
 - (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; 40
 - (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. 45

- (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— 5
- (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 10
 - (b) the licence holder is trading in a class of articles, things or services which the borough council have resolved under subsection (1) (b) of section 24 (designation of licence streets) of this Act not to prescribe in licences granted for the licence street in which the licence holder trades; or 15
 - (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 20
 - (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 25
 - (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 30
 - (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. 35
- (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 40
 - (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. 45

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 5
 - (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. 10 15
- (2) A borough council shall not proceed to determine any of the matters referred to in subsection (1) above until after the expiry of the period specified in the notice given under that subsection; and in determining any of the matters referred to, they shall consider any representations made by an applicant or licence holder in respect of that matter. 20
- (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— 25
- (a) they shall notify the applicant or licence holder in writing of their decision and of the ground or grounds for such refusal, revocation or variation; and
 - (b) they shall notify the applicant or licence holder of his rights of appeal (if any) specified in section 30 (Part III appeals) of this Act. 30

Lapsing of licence in certain cases

- 29A 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 35
 - (b) the holder of the licence no longer is the owner of the land in question, 40
- as the case may be.

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; 5
 - (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 10
 - (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 15
 - (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; 20

* * * * *
 - (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. 25
- (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; 30
 - (b) in the case of an appeal under paragraph (e) of that subsection, at any time before the expiration of the period of 21 days beginning with the date of the second publication of the notice required by subsection (10) of section 24 (designation of licence streets) as applied by the said section 37. 35
- (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. 40
- (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. 5
- (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 10
 - (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 15
 - (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. 20
- (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 25
 - (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. 30
- (10) For the avoidance of doubt, it is hereby declared that an application under section 31 of the Supreme Court Act 1981 (c. 54) (application for judicial review) or under the Rules of the Supreme Court 1965 in respect of any matter which is or could be the subject of an appeal to the magistrates' court or to the Crown Court under this section shall not be treated as an appeal for the purposes of subsection (8) or (9) above. 35
- (11) Any person aggrieved—
- (a) by a resolution rescinding or varying a designating resolution;
 - (b) by a resolution under subsection (1)(b) of section 24 (designation of licence streets) of this Act; 40
 - (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. 45

- (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; 5
 - (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; 10
 - (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; 15
 - (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. 20

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. 25
- (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— 30
- (a) that he has the consent to trade on the land from the owner of the land in question; or 35
 - (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. 40
- (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 45

- (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. 5
- (1F) Where a temporary licence is revoked or suspended under subsection (1E) above, the council shall return to the licensee such proportion of any fee paid for the granting of the licence as is appropriate, taking into account the period for which the licence was granted and the period remaining on the licence when it was revoked or the period for which the licence was suspended, as the case may be. 10
- (2) A temporary licence shall be valid only for the day or period specified in the licence and— 15
- (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— 20
- (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; 25
- (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. 30

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. 35
- (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— 40
- (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. 5
- (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— 10
 - (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***. 15
- (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. 20
- (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— 25
 - (a) shall give notice of the proposed charges to licence holders or to a body or bodies representative of them; and
 - (b) shall publish notice of the proposed charges in a newspaper circulating in the area in which the licence street or streets in respect of which the charges will be applied is situated. 30
- (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. 35
- (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. 40
- (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.

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* * * * *

(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.

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(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.

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(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—

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- (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.

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(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—

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(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

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

- (4) fails on demand without reasonable excuse in the case of an individual licence holder to produce his licence *** bearing his photograph, and, in the case of an individual carrying on ice cream trading under a licence granted to a company incorporated under the Companies Acts or to a partnership, to produce the photograph required by 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; 5

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 10

- 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. 15
- (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. 20

Employment of assistants

- 36 Subject to the provisions of this section a person holding a street trading licence or a temporary licence may employ any other person to assist him in the conduct of street trading authorised by the licence but if any person employed by a licence holder during the temporary absence of the licence holder fails to comply with the conditions of the *** licence held by his employer such failure shall be deemed to be a failure by the licence holder. 25

Ice cream trading

- 37 (1) Nothing in this Part of this Act shall apply to itinerant ice cream trading in any street unless— 30
- (a) that street is a licence street; or
- (b) the street has been designated as a prohibited street under the following provisions of this section.
- (2) If at any time it is necessary to prohibit itinerant ice cream trading in any street in the area of a borough council which is not a licence street in the interests of preventing obstruction to traffic, or undue interference or inconvenience to persons using that street, the borough council may by resolution designate the street as a prohibited street and in the case of any London borough except the City of Westminster and the Royal Borough of Kensington and Chelsea may so designate it for such days or for such parts of days as are specified in the resolution, and may from time to time by subsequent resolution rescind or vary any such resolution. 35 40

- (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. 5

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 whether or not from a stationary position; or 10
 - (b) is the holder of a street trading licence or a temporary licence and who, without the borough council's specific permission in writing, engages in street trading in a borough on a day or in a place not specified in that *** licence; 15

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— 20
- (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; 25

the article, thing, receptacle or equipment concerned shall be presumed to have been exposed or offered for sale and the receptacle or equipment shall be deemed to have been used for the purposes for which a street trading licence was required unless it can be proved to the satisfaction of the court that the article or thing or receptacle or equipment was brought into that street for some purpose other than street trading. 30

- (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. 35 40
- (4) Subject to section 38A (seizure of perishable items) of this Act if an authorised officer or a constable has reasonable grounds for suspecting that a person has committed an offence under this section he may seize—
- (a) any article or thing being offered for sale, displayed or exposed for sale; or 45

- (b) any other article or thing of a similar nature to that being offered or exposed for sale which is in the possession of or under the control of any person who is displaying an article or thing; or
- (c) any receptacle or equipment being used by that person,
 which may be required to be used in evidence in any proceedings in respect of that offence, or may be the subject of forfeiture under subsection (5) below***. 5
- (4A) An authorised officer or constable may also seize, for examination purposes, any article or thing which he has reasonable cause to suspect may be an article or thing which is prohibited by a specifying resolution made under subsection (1)(b) of section 24 (designation of licence streets) of this Act. Unless the article or thing is required for evidential purposes it shall be returned as soon as possible to the person from whom it was seized. 10
- (4B) An authorised officer shall produce his authority if required to do so by the person having control or possession of anything seized in pursuance of the powers in subsections (4) and (4A) above. 15
- (4C) (a) Subject to section 38B (motor vehicles) of this Act the following provisions of this subsection shall have effect where any article or thing (including any receptacle or equipment) is seized under subsection (4) above or is seized and retained because it is required for evidential purposes under subsection (4A) above and references in those provisions to proceedings are to proceedings in respect of the alleged offence in relation to which the article or thing is seized. 20
- (b) Subject to paragraph (e) below, following the conclusion of the proceedings the article or thing shall be returned to the person from whom it was seized unless— 25
- (i) the court orders it to be forfeited under subsection (5) below; or
- (ii) any award of costs to the council by the court, which may include removal, return and storage costs, have not been paid within 28 days of the making of the order. 30
- (ba) Where after 28 days any costs awarded by the court to the council have not been paid to the council in full—
- (i) the article or thing may be disposed of in any way the council thinks fit; and 35
- (ii) any sum obtained by the council in excess of the costs awarded by the court shall be returned to the person to whom the article or thing belongs.
- (bb) When any article or thing is disposed of by the council under this subsection the council shall have a duty to secure the best possible price which can reasonably be obtained for that article or thing. 40
- (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. 45

- (d) Paragraph (c) above shall not apply where—
- (i) the owner or registered keeper of the vehicle has been convicted of an offence under this Part of this Act or under the City of Westminster Act 1999 (c. i); or
 - (ii) the owner or registered keeper of the vehicle is being prosecuted for a previous alleged offence under this Part of this Act or the said Act of 1999; or
 - (iii) the vehicle has been used in the commission of such an offence or previous alleged offence;
- if the offence or previous alleged offence was committed or is alleged to have been committed no more than three years before the seizure and (in the case of an alleged offence) the proceedings are continuing.
- (e) If no proceedings are instituted before the expiration of a period of 28 days beginning with the date of seizure, or any proceedings instituted within that period are discontinued, at the expiration of that period or, as the case may be, on the discontinuance of the proceedings, the article or thing shall be returned to the person from whom it was seized unless it has not proved possible, after diligent enquiry, to identify that person or ascertain his address.
- (f) Paragraph (g) below applies where the article, thing, receptacle or equipment is not returned because—
- (i) it has not proved possible to identify the person from whom it was seized or ascertain his address; or
 - (ii) the person from whom it was seized and the owner (if different) have disclaimed or refused to accept it.
- (g) Where this paragraph applies, the council may make a complaint to the magistrates' court for a disposal order under section 38C (disposal orders) of this Act (whether or not proceedings for an offence under this section have been commenced).
- (5) Subject to subsection (6) below the court by or before which a person is convicted of an offence under this section or for an offence of aiding, abetting, counselling or procuring the commission of an offence under this section may order anything produced to the court, and shown to the satisfaction of the court to relate to the offence, to be forfeited and dealt with in such manner as the court may order.
- (6) The court shall not order anything to be forfeited under subsection (5) above where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made and in considering whether to make such an order a court shall have regard—
- (i) to the value of the property; and
 - (ii) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).
- (6A) For the avoidance of doubt the court may order forfeiture notwithstanding that the value of the article, thing, receptacle or equipment exceeds the maximum penalties referred to in this section.

- (7) An authorised officer shall produce his authority if required to do so by the person having care or control of *** anything seized in pursuance of the powers in subsection (4) above.
- (8) (a) This subsection shall have effect where—
- (i) an article, thing or receptacle is seized under subsection (4) or (4A) above; and 5
 - (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 10
 (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. 15
- (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 and any such compensation shall not be included in the computation for calculating charges under section 22 (Fees and charges) of this Act. 20 25
- (c) The court may not make an order for compensation under paragraph (b) above unless it is satisfied that seizure was not lawful under subsection (4) or (4A) above.

Seizure of perishable items 30

- 38A(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. 35
- (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; 40
 - (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. 45

- (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. 5
- (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. 10
- (7) Paragraphs (e) and (f) of subsection (4C) of the said section 38 shall apply to perishable items seized under that section only in cases where the item concerned has not been disposed of by the council at the expiration of the period mentioned in the said paragraph (e); otherwise subsections (10) to (13) below shall apply. 15
- (8) Subsection (8) of the said section 38 shall apply with the omission of paragraph (c) in respect of perishable items seized under that section only in cases where the item concerned has not been disposed of by the council by the time the circumstances mentioned in paragraph (a)(ii)(A) or (B) arise; otherwise subsections (10) to (12) below shall apply. 20
- (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. 25
- (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 30
 - (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. 35
- (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. 40 45

Motor vehicles

- 38B (1) Subsection (4) below applies where the following conditions are met.
- (2) The first condition is that where, in ascertaining the identity of the person from whom the vehicle was seized under subsection (4) or (4A) of section 38 (unlicensed street trading) of this Act, a borough council has, before the expiry of 14 days from the date of the seizure, made a request to the Secretary of State for the supply of relevant particulars. 5
 - (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. 10
 - (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 15
 - (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. 20
 - (5) If the council seeks to return a vehicle in accordance with the said subsection (4C)(e) or subsection (4), but the person to whom the council seeks to return the vehicle cannot be found or disclaims or refuses to accept the vehicle, the council may make a complaint for a disposal order in respect of the vehicle under section 38C (disposal orders) of this Act. 25
 - (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. 30
 - (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.

Disposal orders

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- 38C (1) This section applies in respect of a complaint made by a borough council for a disposal order in respect of—
- (a) an article or thing under subsection (4C)(f)(ii) of section 38 (unlicensed street trading) of this Act; or

- (b) a motor vehicle under subsection (5) of section 38B (motor vehicles) of this Act,
- and such articles, things and motor vehicles are together referred to as “seized items” in this section.
- (2) In respect of a complaint to which this section applies, a magistrates’ court may, if it is satisfied that the council has made reasonable efforts to identify the person from whom the seized item was seized or its owner, as the case may be, or has made reasonable efforts to return the seized item, it may make an order authorising the complainant council—
- (a) to dispose of the seized item in question; and
- (b) after payment out of any proceeds arising from the disposal of the expenses incurred in the seizure, storage and disposal, to apply the balance, if any, towards the costs of the council as mentioned in paragraphs (a) to (d) of subsection (2) of section 32 (fees and charges) of this Act.
- (3) The court shall not make a disposal order under subsection (2) above where a person claiming to be the owner of or otherwise interested in the seized item in question applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.
- (4) Subsection (5) below applies where—
- (a) a person appears before the court under subsection (3) above to show why the order should not be made; and
- (b) the court makes an order under subsection (2) above authorising the council to dispose of the item; and
- (c) the seized item in question is not of sufficient value to defray the expenses of seizing and storing it; and
- (d) the court is satisfied that the person mentioned in paragraph (a) above was the owner of the seized item in question or was the person from whom it was seized, as the case may be.
- (5) Where this section applies, the court may order that the person mentioned in subsection (4)(a) above pay the expenses, or the balance of the expenses, reasonably incurred by the council in seizing and storing the seized item in question.
- (6) In considering whether to make an order under subsection (2) above a court shall have regard—
- (a) to the value of the seized item;
- (b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making); and
- (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.

Savings

- 39 (1) Nothing in this Part of this Act shall affect—
- (a) section 13 of the Markets and Fairs Clauses Act 1847 (c. 14) (prohibition of sales elsewhere than in a market or in shops etc.) as applied by any other Acts; 5
 - (b) section 56 of the Food Act 1984 (c. 30) (prohibition of certain sales during market hours);
 - (c) the sale or exposure or offer for sale by London Regional Transport or (as the case may be) a designated company (within the meaning of the Transport (London) Act 1969 (c. 35)) of refreshments at any shelter or other accommodation provided by either of them under section 65 (refreshment shelters etc.) of the London Passenger Transport Act 1938 (c. xcii). 10
- (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. 15

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 effect in a borough as from the appointed day for that borough to the extent specified in column (3) of that Schedule. 20
- (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. 25

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. 30
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SCHEDULE 4

Section 76

FINANCIAL PROVISIONS RELATING TO SECTION 76 (PENALTY CHARGES) OF THIS ACT

- 1 A borough council shall keep an account of their income and expenditure in respect of the administration and enforcement of section 76 (penalty charges) of this Act. 5
- 2 At the end of each financial year any deficit in the account shall be made good out of the general rate fund, and (subject to paragraph 3 below) any surplus shall be applied to purposes connected with the improvement of the amenity of the area of the council or any part of that area.
- 3 If the council so determine, any amount not applied in any financial year, instead of being or remaining so appropriated, may be carried forward in the account kept under paragraph 1 above to the next financial year. 10
- 4 Each council shall, after each financial year, report to the Secretary of State on any action taken by them, pursuant to paragraph 2 or 3 above, in respect of any deficit or surplus in their account for the year. 15
- 5 The report under paragraph 4 above shall be made as soon after the end of the financial year to which it relates as possible.
- 6 In any proceedings a certificate which—
 - (a) purports to be signed by or on behalf of, the chief finance officer of the council; and 20
 - (b) states that payment of a penalty charge was or was not received by a date specified in the certificate,shall be evidence of the facts stated.
- 7 In this Schedule, “chief finance officer”, in relation to a council, means the person having responsibility for the financial affairs of the council. 25