



# London Local Authorities Act 2004

## CHAPTER i

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# London Local Authorities Act 2004

## CHAPTER i

An Act to confer further powers upon local authorities in London; and for related purposes. [13th May 2004]

**W**HEREAS—

- (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:
- (2) It is expedient that provision be made in relation to abandoned vehicles in London:
- (3) It is expedient that further provision be made in relation to matters relating to public health and the environment in Greater London:
- (4) It is expedient that the other provisions contained in this Act should be enacted:
- (5) The purposes of this Act cannot be effected without the authority of Parliament:
- (6) 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):
- (7) 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:

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:—

## PART 1

### PRELIMINARY

#### 1 Citation and commencement

- (1) This Act may be cited as the London Local Authorities Act 2004 and shall come into operation at the end of the period of two months beginning with the date on which it is passed.
- (2) This Act and the London Local Authorities Acts 1990 to 2003 may be cited together as the London Local Authorities Acts 1990 to 2004.

#### 2 Interpretation

In this Act—

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

“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;

“operational land” has the same meaning as in the Town and Country Planning Act 1990 (c. 8).

## PART 2

### ABANDONED VEHICLES

#### 3 Disposal of vehicles

- (1) Section 4 (Disposal of removed vehicles) of the 1978 Act shall have effect in the area of a borough council in accordance with this section.
- (2) For subsection (1) there are substituted the following subsections—
  - “(1) Subject to subsections (5) and (6) below, a local authority may, in such manner as they think fit, dispose of any vehicle which is in their custody in pursuance of section 3 above—
    - (a) in the case of a vehicle—
      - (i) on which no licence is displayed;
      - (ii) to which no G.B. or N.I. registration mark is fixed;
      - (iii) to which an illegible registration mark is fixed; or
      - (iv) in respect of which there is no registered keeper, at any time after its removal;

- (b) in the case of a vehicle on which a licence is displayed and to which paragraph (a)(ii), (iii) and (iv) above does not apply, at any time after the expiry of the period of 28 days beginning with the date on which the licence expires;
  - (c) in any other case, at any time after the local authority has, for the purpose of ascertaining the owner of the vehicle, taken such of the steps specified in subsection (1B) below as are applicable to the vehicle and either—
    - (i) the authority have failed to ascertain the name and address of the owner; or
    - (ii) the owner has failed to comply with a notice under subsection (1A) below served on him by post.
- (1A) A notice under subsection (1)(b) above shall be a notice addressed to the owner of the vehicle which—
- (a) states—
    - (i) the registration mark and make of the vehicle;
    - (ii) the place where the vehicle was found before it was removed;
    - (iii) the place to which the vehicle has been removed;
    - (iv) that unless the vehicle is removed by the owner on or before the date specified under paragraph (b) below, the local authority intends to dispose of it; and
  - (b) requires the owner to remove the vehicle from the custody of the local authority within 7 days of the date on which the notice was served.
- (1B) The steps to be taken by a local authority before serving a notice under subsection (1)(b) are—
- (a) if the vehicle carries a G.B. or N.I. registration mark, the local authority shall ascertain from the G.B. or, as the case may be, the N.I. records the name and address of the registered keeper;
  - (b) if the vehicle does not carry such a registration mark, the local authority shall make such inquiries as appear to them to be practicable to ascertain the identity of the owner of the vehicle.”.
- (3) Subsection (2) is omitted.
- (4) After subsection (7), the following subsection is inserted—
- “(7A) The Secretary of State may by regulations alter the period of notice provided under subsection (1A)(b) above.”.
- (5) In subsection (8) at the end the following definitions are inserted—
- “G.B. records” means the records kept under the Vehicle Excise and Registration Act 1994 (c. 22) by the Driver and Vehicle Licensing Agency on behalf of the Secretary of State and “G.B. registration mark” means a registration mark assigned to a vehicle registered in those records;
- “N.I. records” means the records kept under that Act by Driver and Vehicle Licensing Northern Ireland on behalf of the Secretary of State and “N.I. registration mark” means a registration mark assigned to a vehicle registered in those records;

“registered keeper” in respect of a vehicle means the person in whose name the vehicle is registered in G.B. or N.I. records;”.

- (6) At the end, the following subsection is inserted—
- “(9) References in this section to such sums in respect of the removal, storage or disposal of a vehicle as may be prescribed shall be sums of the same level as the level of charges set by London authorities for the removal, storage and disposal of vehicles under section 74 (Fixing of certain parking and other charges for London) of the Road Traffic Act 1991 (c. 40).”.

#### **4 Recovery of expenses connected with removed vehicles**

Section 5 (Recovery of expenses connected with removed vehicles) of the 1978 Act shall have effect in the area of a borough council as if—

- (a) for paragraphs (a) to (c) of subsection (1) there were substituted “charges in respect of the removal, storage and disposal of the vehicle”; and
- (b) after that subsection there were inserted—
- “(1A) The level of charges made by the appropriate authority for the removal, storage and disposal of vehicles under this section shall be the same as the level of charges set by London authorities for the removal, storage and disposal of vehicles under section 74 (Fixing of certain parking and other charges for London) of the Road Traffic Act 1991.”.

#### **5 Meaning of “owner” under the 1978 Act**

- (1) Section 11 (Interpretation) of the 1978 Act shall have effect in the area of a borough council as if after subsection (2) the following subsection were inserted—
- “(2A) References in this Part of this Act to the “owner” of a vehicle at a particular time are to the person by whom it was then kept and the registered keeper at a particular time shall be taken, unless the contrary is shown, to be the person by whom the vehicle was kept at that time.”.
- (2) In section 11 of the 1978 Act the definition of “owner” shall cease to have effect in the area of a borough council.

#### **6 Powers of entry**

- (1) This section applies where a vehicle is to be or has been removed from a road by a borough council under section 3 (Removal of abandoned vehicles) of the 1978 Act.
- (2) An authorised officer may, at any time before the vehicle is lawfully removed from the custody of the council or is disposed of by the council under section 4 (Disposal of abandoned vehicles) of the 1978 Act, enter the vehicle for the purpose of—
- (a) removing anything from it in the interests of the safety of persons or property; or
- (b) preventing damage to or loss of the vehicle or any of its contents.

- (3) Subject to subsections (4) and (5) below, the council shall retain and keep safe anything removed under subsection (2) above and shall deliver it to any person claiming it who satisfies the council that he is the owner of it or of the vehicle in question.
- (4) The council may, in such manner as they think fit and at any time, dispose of any perishable item removed under subsection (2) above.
- (5) Where the vehicle from which anything is removed under subsection (2) above is disposed of under the said section 4 the council may—
  - (a) no sooner than the date on which the period of 14 days beginning with the date on which the vehicle was removed expires; and
  - (b) in any manner they think fit,dispose of the thing removed if it has not been claimed by any person who satisfies the council that he is its owner.
- (6) If any person, no later than the date on which the period of five months beginning with the date on which the vehicle was removed expires satisfies the council that they were, at the time the vehicle was removed, the owner of anything disposed of under subsection (4) or (5) above, the council shall pay to that person the proceeds (if any) obtained on the disposal of the thing.

## 7 Disclosure of information

- (1) Any person who, apart from this section, would not have power to disclose information obtained in identifying the owner of a vehicle under section 4 (Disposal of abandoned vehicles) of the 1978 Act (in the application of that section in the area of a borough council) to—
  - (a) a borough council;
  - (b) Transport for London; or
  - (c) a person acting on behalf of a borough council or Transport for London,shall have power to do so in any case where the disclosure is necessary for the purposes of enforcing any provision of the enactments specified in subsection (2) below.
- (2) The enactments are—
  - (a) sections 3 to 5 (Abandoned vehicles) of the 1978 Act;
  - (b) Part II (Traffic in London) of the Road Traffic Act 1991 (c. 40);
  - (c) Part II (Bus lanes) of the London Local Authorities Act 1996 (c. ix); and
  - (d) sections 4 (Penalty charges for road traffic contraventions) and 5 (Contraventions of lorry ban order: supplementary) of the London Local Authorities and Transport for London Act 2003 (c. iii).

## 8 Transitional provision

If, before this Part of this Act comes into force, a vehicle has been removed under section 3 (Removal of abandoned vehicles) of the 1978 Act, the vehicle shall be dealt with under that Act as if this Act had not come into force.

## PART 3

### PUBLIC HEALTH AND THE ENVIRONMENT

#### 9 Nuisance from birds

- (1) If in the opinion of a borough council the habitual nesting, roosting or alighting of birds on any part of a building or structure (including a bridge) fronting upon, crossing or overhanging a highway in the area of the council is a source of nuisance to pedestrians using that highway, the council may serve a notice under this section upon the owner or occupier of the building or structure.

This subsection is subject to the provisions of the Wildlife and Countryside Act 1981 (c. 69) and to subsection (4) below.

- (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 building or structure.
- (3) A notice under this section 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 building or structure to take measures for the purpose of preventing or minimising the habitual nesting, roosting or alighting of birds on the part of the building or structure concerned and the council may specify such measures in the notice.
- (4) The measures which may be specified in a notice under this section may include the erection of baffles, nets or wires or the laying of gel on the building or structure or other measures of a like nature but shall not include any method prohibited by the said Act of 1981.
- (5) 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.
- (6) 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.
- (7) Subsections (8) to (10) below apply where a borough council serve a notice under this section on—
  - (a) the British Railways Board, in respect of any bridge owned by the Board; or
  - (b) any protected party in respect of its operational land,

and the notice specifies measures to be taken for the purpose mentioned in subsection (3) above.

- (8) The party on whom a notice under this section is served may, within a period of 28 days beginning with the day on which the notice is served, serve a counter-notice on the borough council specifying alternative measures which will in their reasonable opinion have the effect of preventing or minimising the

habitual nesting, roosting or alighting of birds on the part of the building or structure concerned to the same or greater extent than the measures specified in the notice.

- (9) Where a counter-notice is served under subsection (8) above, the notice served under subsection (1) above shall be deemed to specify the alternative measures specified in the counter-notice and shall be deemed to have been served on the date the counter-notice was served.
- (10) Where a counter-notice is served under subsection (8) above and, before the expiry of the period of 28 days beginning with the date on which the counter-notice is served, the council serves a further notice requiring further measures to be taken, the protected party shall comply with the further notice within such period as may be specified in the further notice.
- (11) The measures specified in any such further notice shall complement the measures specified in the counter-notice to which it relates.
- (12) The period within which—
  - (a) an owner or occupier must comply with the requirements of a notice served under subsection (1) above; or
  - (b) a protected party must comply with the requirements of—
    - (i) a counter-notice served under subsection (8) above; or
    - (ii) a further notice under subsection (10) above,may be extended with the agreement of the council.
- (13) In this section “protected party” means—
  - (a) Network Rail Infrastructure Limited;
  - (b) Transport for London;
  - (c) the British Waterways Board;
  - (d) the Port of London Authority,

and their subsidiaries (within the meaning given by section 736 of the Companies Act 1985 (c. 6)), servants, agents and contractors.

## 10 Dangerous structures and demolitions

- (1) Section 81(1)(b) (Local Authority’s power to serve notice about demolition) of the Act of 1984 shall have effect in the area of a borough council as if—
  - (a) for the reference to an order made under section 77 (Dangerous building) of the Act of 1984 there were substituted a reference to an order made under section 64 (Proceedings to enforce compliance with notice) of the Act of 1939; and
  - (b) for the reference to a notice given under section 79 (Ruinous and dilapidated buildings and neglected sites) of the Act of 1984 there were substituted a reference to an order under section 69 (Removal of dilapidated and neglected structures) of the Act of 1939.
- (2) Section 45 of the London Local Authorities Act 2000 (c. vii) is amended as follows—
  - (a) in subsection (4), after “dangerous buildings)” the words “, section 78 (Dangerous building – emergency measures)” are inserted;

- (b) in subsection (5), the figures “77 to 80, 82, 83” are replaced by the figures “77 to 79”; and
  - (c) in subsection (6), in the definition of “the London Building Acts”, the words “as amended” to the end are omitted.
- (3) A borough council may recover from a person on whom a notice is served under section 81 of the Act of 1984 any expenses reasonably incurred by them under that section, in addition to any expenses recoverable under section 99 of that Act.
  - (4) Sections 107 to 110 of the Act of 1984 shall apply in respect of expenses recoverable under subsection (3) above as they apply in respect of expenses to which those sections apply.
  - (5) In its application under subsection (4) above, for the reference in the said section 107 to the person who is the owner of the premises at the date on which the works were completed there shall be substituted a reference to the person on whom the notice under the said section 81 was served.
  - (6) In this section—
    - “the Act of 1939” means the London Building Acts (Amendment) Act 1939 (c. xcvi);
    - “the Act of 1984” means the Building Act 1984 (c. 55).

## 11 Repair, etc., of vehicles on highways

- (1) Subsection (2)(b) of section 5 (Repair, etc., of vehicles on highways) of the Greater London Council (General Powers) Act 1982 (c. i) is repealed.
- (2) After subsection (4) of that section, the following subsection is inserted—
  - “(4A) A person shall not be convicted of an offence under this section if he proves to the satisfaction of the court that the works were carried out otherwise than—
    - (a) in the course of, or for the purposes of, a business; or
    - (b) for gain or reward.”.

## 12 Defacement of buildings

- (1) Section 12 (Defacement of buildings) of the London Local Authorities Act 1995 (c. x) is amended in accordance with this section.
- (2) In subsections (1)(a), (1)(b), (3) and (7) the words “, apparatus or plant” are inserted after “premises”.
- (3) In subsection (6), at the end, the words “and, subject to subsection (6A) below, they may recover from the said person the expenses reasonably incurred by them in so doing” are inserted.
- (4) After subsection (6) the following subsections are inserted—
  - “(6A) The council may not recover their expenses under subsection (6) above in respect of a sign on a surface to which this section applies if the surface—
    - (a) forms part of a flat or a dwellinghouse; or

- (b) is within the curtilage of or forms part of the boundary of the curtilage of a dwellinghouse.
- (6B) In proceedings by the council against the person served with the notice for the recovery of any expenses which the council are entitled to recover from that person, it shall not be open to that person to raise any question which could have been raised on an appeal under this section.
- (6C) Sections 291 and 293 of the Public Health Act 1936 (c. 49) shall have effect as if references therein to that Act included references to this section.
- (6D) No council shall exercise their powers to recover expenses from any person under subsection (6) above until a code of practice dealing with the exercise of those powers has been published by a joint committee.”.
- (5) In subsection (9), the words “premises, apparatus or plant” are substituted for “building, wall, fence or other structure or erection”.
- (6) After subsection (9) the following subsection is inserted—
  - “(10) In this section—
    - “dwellinghouse” does not include a building containing one or more flats, or a flat contained within such a building;
    - “flat” means a separate and self-contained set of premises constructed or adapted for use for the purpose of a dwelling and forming part of a building from some other part of which it is divided horizontally;
    - “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.”.

### **13 Defacement of buildings: protection of universal postal service providers**

- (1) For the purposes of section 12(1) (Defacement of buildings) of the London Local Authorities Act 1995 (c. x), a universal service provider shall be deemed to be the occupier of any plant or apparatus comprising a universal postal service letter box or universal postal service pouch-box belonging to it.
- (2) Before serving any notice under section 12(1)(a) of that Act in respect of a universal postal service letter box or universal postal service pouch-box a council shall serve not less than 28 days’ notice of their intention to do so on the universal service provider to which the letter box or pouch-box belongs.
- (3) In this section—
  - “universal service provider” means any universal service provider for the purposes of the Postal Services Act 2000 (c. 26);
  - “universal postal service letter box” has the meaning given in section 86(4) of that Act;
  - “universal postal service pouch-box” has the meaning given in paragraph 1(10) of Schedule 6 to that Act.

**14 Defacement of buildings: further protection of railway and waterway undertakers**

- (1) Section 12 (Defacement of buildings) of the London Local Authorities Act 1995 shall not apply to any surface which forms part of the operational land of a protected party unless it is a surface to which this section applies.
- (2) This section applies to any surface which abuts on or to which access is given directly from—
  - (a) a street; or
  - (b) any place other than a street to which the public have access as of right.
- (3) In this section—

“protected party” has the same meaning as in section 13 of the said Act of 1995;

“street” includes any highway, any bridge carrying a highway and any road, lane, mews, footway, square, court, alley or passage, whether a thoroughfare or not.

**PART 4**

FIXED PENALTIES

**15 Fixed penalty offences**

- (1) Where on any occasion an authorised officer of a borough council finds a person who he has reason to believe has on that occasion committed, in the area of that council, an offence under—
  - (a) any of the enactments mentioned in columns (1) and (2) of the table set out in Schedule 2 to this Act and described in column (3) of that table; or
  - (b) any byelaws made by the borough council under any enactment,the officer may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.
- (2) Sections 16 (Fixed penalty notices), 17 (Levels of fixed penalties) and 18 (Fixed penalties: reserve powers of Secretary of State) of this Act shall apply in respect of fixed penalty notices under this section.
- (3) The Secretary of State may, by regulations, amend Schedule 2 to this Act by the addition of further offences to the list of offences therein described.
- (4) An authorised officer may not exercise the powers under subsection (1) above, and the said section 16 shall have no effect, until the levels of fixed penalties set by the councils in accordance with the said section 17 have come into force for the first time in accordance with the said section 18.

## 16 Fixed penalty notices

- (1) The provisions of this section shall have effect in relation to notices (in this section referred to as “fixed penalty notices”) which may be given under section 15 (Fixed penalty offences) of this Act by an authorised officer in respect of an offence.
- (2) Where a person is given a fixed penalty notice in respect of an offence—
  - (a) no proceedings shall be instituted for that offence before the expiration of 14 days following the date of the notice; and
  - (b) he shall not be convicted of that offence if he pays the fixed penalty before the expiration of that period.
- (3) A notice under this section shall give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence and shall state—
  - (a) the period during which, by virtue of subsection (2) above, proceedings will not be taken for the offence;
  - (b) the amount of the fixed penalty; and
  - (c) the name of the person to whom and the address at which the fixed penalty may be paid,and without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of the penalty (in cash or otherwise).
- (4) Where a letter is sent in accordance with subsection (3) above, payment shall be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
- (5) The form of notices under this section shall be such as the Secretary of State may by order prescribe.
- (6) The fixed penalty payable in pursuance of a fixed penalty notice under this section shall be paid to the borough council.
- (7) Schedule 3 to this Act shall have effect with respect to financial provisions relating to fixed penalties payable in pursuance of a fixed penalty notice under this section.
- (8) In any proceedings a certificate which—
  - (a) purports to be signed by or on behalf of the chief finance officer of the borough council; and
  - (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,shall be evidence of the facts stated.
- (9) In this section, “chief finance officer”, in relation to a borough council, means the person having responsibility for the financial affairs of the council.

## 17 Levels of fixed penalties

- (1) It shall be the duty of the borough councils to set the levels of fixed penalties payable to them under section 16 (Fixed penalty notices) of this Act.
- (2) Different levels may be set for different areas in Greater London and for different cases or classes of case.
- (3) In setting the level of fixed penalty 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 fixed penalty offence is created; and
  - (b) the cost or expected cost of enforcing the provisions of the relevant enactment.
- (4) Levels of fixed penalties set by the councils in accordance with this section may only come into force in accordance with section 18 (Fixed penalties: reserve powers of Secretary of State) of this Act.
- (5) The councils shall publish, in such manner as the Secretary of State may determine, the levels of fixed penalties which have been set by the councils in accordance with this section.
- (6) The functions conferred on councils by subsections (1) and (5) above shall be discharged by the joint committee.
- (7) In this section, and the said section 18, “the 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.

The joint committee is to be formed before the end of the period of six months commencing on the date on which this Act is passed.

## 18 Fixed penalties: reserve powers of Secretary of State

- (1) Where the borough councils set any levels of fixed penalties under subsection (1) of section 17 (Levels of fixed penalties) 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 17; 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.

## PART 5

### MISCELLANEOUS

#### 19 Night café licensing

- (1) In section 4 (Interpretation of Part II) of the London Local Authorities Act 1990 (c. vii), in the definition of “night café”, for paragraphs (a) and (b) there shall be substituted—
  - “(a) any premises in a borough which are kept open, for public refreshments, at any time between 11pm and 5am; or
  - (aa) any premises in a borough which—
    - (i) are kept open, for public refreshment on the premises, at any time between 5am and 11pm; and
    - (ii) are also open, but not for that purpose, at any time between 11pm and 5am; or
  - (b) any premises in a borough where meals or refreshments are supplied, for consumption exclusively off the premises, at any time between midnight and 5am; or”.
- (2) The said section 4 as so amended shall be renumbered as subsection (1) of that section and after that provision as so renumbered there shall be inserted—

“(2) Paragraph (aa) of the definition of “night café” in subsection (1) above does not apply to any premises solely because persons are allowed to remain in the premises in order to finish the consumption of refreshment provided to them before 11pm, at any time between 11pm and 11.20pm.”.
- (3) Section 17 (which makes provision about powers of entry in respect of night cafés) of the said Act of 1990 applies in the area of a borough council as if, after subsection (1)(b), the following paragraph were inserted—

“(c) An authorised officer may at all reasonable times enter upon, inspect and examine premises which are licensed under this Part of this Act to ascertain whether conditions attached to the licence by virtue of section 6 (Licensing) of this Act are being complied with.”.

## 20 Street trading

- (1) Part III (Street trading) of the London Local Authorities Act 1990 (c. vii) is amended in accordance with Schedule 4 to this Act.
- (2) The definition of “street trading” in section 2 (Interpretation) of the City of Westminster Act 1999 (c. i) is amended by the insertion, after paragraph (a), of the following paragraph—
  - “(aa) the purchasing of or offering to purchase any ticket for gain or reward; and”.

## 21 Licensing: powers of entry

- (1) Paragraph 12(1) of Schedule 12 (Licensing of public entertainment in Greater London) of the London Government Act 1963 (c. 33) applies in the area of a borough council as if the words from “at which he has reason to believe” to “about to be given” were omitted.
- (2) Section 15 of the London Local Authorities Act 1991 (c. xiii) (which makes provision about powers of entry in respect of special treatment premises), is amended by the insertion after subsection (1) of the following subsection—
  - “(1A) An authorised officer may at all reasonable times enter upon, inspect and examine premises which are licensed under this Part of this Act to ascertain whether conditions attached to the licence by virtue of section 6 (Licensing under Part II) of this Act are being complied with.”.

## 22 Soliciting for custom

- (1) Subject to the following provisions, it is an offence, in a public place in the area of a borough council, to solicit persons, or to permit the soliciting of persons, to attend—
  - (a) premises which the council are satisfied are being, or within the last 7 days have been, used for the unlicensed sale of intoxicating liquor for consumption on, or in the vicinity of, the premises;
  - (b) premises which the council are satisfied are being, or within the last 7 days have been, used for the purposes of public dancing or music and any other public entertainment of the like kind, but which are not licensed under paragraph 12 of Schedule 12 to the London Government Act 1963 (c. 33);
  - (c) premises which the council are satisfied are being, or within the last 7 days have been, used for the provision of—
    - (i) entertainment of a description falling within paragraph 2(e), (f) or (g) of Schedule 1 to the Licensing Act 2003 (c. 17); or
    - (ii) entertainment facilities falling within paragraph 3(1) of that Schedule,and in respect of which a premises licence under Part 3 of that Act is required but not held; or
  - (d) near beer premises within the meaning of section 14 of the London Local Authorities Act 1995 (c. x) in respect of which no near beer licence under section 16 (Licensing) of that Act is held.

- (2) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (3) This section shall not apply in respect of the operational land of a person authorised by any enactment to carry on any railway, light railway or tramway undertaking.
- (4) In this section “public place” includes any highway and any other premises or place in the open to which at the material time the public have or are permitted to have access (whether on payment or otherwise).

### **23 Greater London Magistrates’ Courts Authority**

Regulations under section 59B(3) of the Justices of the Peace Act 1997 (c. 25) may provide that the amount to be paid by each London local authority to the Greater London Magistrates’ Courts Authority under that subsection may be determined by reference to the council tax base for each London local authority, calculated in accordance with regulations made under section 33 of the Local Government Finance Act 1992 (c. 14).

### **24 Hotel Proprietors Act 1956**

- (1) The Hotel Proprietors Act 1956 (c. 62) (which makes provision for the making good of loss or damage to a guest’s property by hotel proprietors) shall have effect in the area of a borough council as if—
  - (a) in section 2(3) for “fifty pounds” there were substituted “£750” and for “one hundred pounds” there were substituted “£1,500”; and
  - (b) in paragraph (b) of the Schedule for “£50” there were substituted “£750” and for “£100” there were substituted “£1,500”.
- (2) The Secretary of State may, by regulations, alter the amounts mentioned in the said section 2(3) and paragraph (b) as amended by subsection (1) above.
- (3) Regulations under this section may have effect only in relation to the area of a borough council.

### **25 Enforcement of control as to advertisements**

Section 224 (Enforcement of control as to advertisements) of the Town and Country Planning Act 1990 (c. 8) shall apply in the area of a borough council as if—

- (a) in subsection (5) for the words “if he proves that it was displayed without his knowledge or consent” there were substituted “if he proves either of the matters specified in subsection (6) below”; and
- (b) after that subsection there were inserted—
  - “(6) The matters are—
    - (a) that the advertisement was displayed or, as the case may be, continued to be displayed without his knowledge; or
    - (b) that he took all reasonable steps and exercised all due diligence to prevent the display or, as the case may be, to secure that the display was discontinued.”.

## 26 Provision of information to authorised officer

- (1) This section applies where an authorised officer of a borough council has reasonable grounds for suspecting that any offence in respect of which the council may prosecute legal proceedings has been committed or attempted, or is being committed or attempted.
- (2) If, on being requested by the authorised officer to furnish his name and address for service of a summons or fixed penalty notice, the relevant person—
  - (a) fails to furnish a name; or
  - (b) furnishes a false name; or
  - (c) furnishes a false address,

the relevant person shall, unless the authorised officer failed to produce his authorisation on making the request, be guilty of an offence punishable on summary conviction by a fine not exceeding level 5 on the standard scale.

- (3) In this section “the relevant person” means any person whom the authorised officer has reasonable grounds to suspect of having committed or having attempted to commit the offence or being in the course of committing or attempting to commit it.

## 27 Application of London Local Authorities Act 2000

- (1) In the definition of “participating council” in section 2 (Interpretation) of the London Local Authorities Act 2000 (c. vii), the words “other than Barnet” are repealed and the provisions of that Act shall apply in the area of the London Borough of Barnet.
- (2) In the definition of “outer London borough” in subsection (6) of section 45 (Dangerous structures) of that Act, the words “but does not include the London Borough of Barnet” are repealed.
- (3) Subsection (1) of section 4 (Service of penalty charge notice on the basis of information provided by camera, etc.) of that Act is repealed.

## PART 6

### SUPPLEMENTAL

## 28 Authorised officers

- (1) In this Act “authorised officer”, in relation to a borough council, means—
  - (a) any employee of the council;
  - (b) any 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.

- (2) In each of the scheduled Acts “authorised officer”, in relation to a borough council, shall have the same meaning as in subsection (1) above save that—
  - (a) the reference to the relevant provision of this Act shall include a reference to the relevant provision of the Act as so mentioned; and
  - (b) where appropriate, the reference to the participating council includes a reference to the borough council under the Act so mentioned.
- (3) The Environmental Protection Act 1990 (c. 43) shall have effect in the area of a borough council as if—
  - (a) in subsection (10) of section 88, for the definition of “authorised officer” there were substituted the following definition—

““authorised officer” means—

    - (a) any employee of the litter authority;
    - (b) any person by whom, in pursuance of arrangements made with the litter authority, any functions under this Act fall to be discharged; or
    - (c) any employee of any such person, who is authorised in writing by the litter authority to act in relation to the relevant provision of this Act.”.
- (4) The definition of “authorised officer” in section 2 of each of the scheduled Acts is hereby repealed.
- (5) In this section the “scheduled Acts” means the Acts specified in Schedule 5 to this Act.

## **29 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.

## **30 Defence of due diligence**

- (1) In proceedings for an offence under this Act it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (2) If in any case the defence provided under subsection (1) above involves the allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, no later than 7 clear days before the hearing, he has served on the prosecutor a notice in writing giving such information as was then in his possession identifying or assisting in the identification of that other person.

**31 Liability of directors, etc.**

- (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of the offence.
- (2) Where the affairs of 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.

**32 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 conferred by this Act shall be exercised by statutory instrument.
- (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 9

#### SECTIONS OF PUBLIC HEALTH ACT 1936 (c. 49) APPLIED TO SECTION 9 (NUISANCE FROM BIRDS) OF THIS ACT

Section	Marginal Note
275	Power of local authority to execute certain works on behalf of owners and occupiers.
278	Power of local authority to execute certain works on behalf of owners and occupiers.
283(1)	Power of local authority to execute certain works on behalf of owners and occupiers.
285	Service of notices, &c.
287	Power to enter premises.
289	Power to require occupier to permit works to be executed by owner.
290	Provisions as to appeals against, and enforcement of, notices requiring execution of works.
291	Certain expenses recoverable from owners to be a charge on the premises: power to order payment by instalments.
297	Continuing offences and penalties.
300	Appeals and applications to courts of summary jurisdiction.
341	Power to apply provisions of Act to Crown property.

SCHEDULE 2

Section 15

OFFENCES IN RESPECT OF WHICH FIXED PENALTY NOTICES MAY BE GIVEN UNDER  
SECTION 15 (FIXED PENALTY OFFENCES) OF THIS ACT

	(1) Act	(2) Section	(3) Description of Offence
1	Environmental Protection Act 1990 (c. 43)	80(4)	Contravention or failure to comply with requirement or prohibition imposed by abatement notice
2	Town and Country Planning Act 1990 (c. 8)	224(3)	Displaying advertisement in contravention of regulations
3	London Local Authorities Act 1990 (c. vii)	34(1)	Contravention of condition of street trading licence or temporary licence
4		34(2)	Making false statement in connection with application for street trading licence or temporary licence
5		34(3)	Resisting or obstructing authorised officer
6		34(4)	Failure to produce street trading licence on demand
7		38(1)	Unlicensed street trading
8	City of Westminster Act 1999 (c. i)	24(a)	Contravention of condition of street trading licence or temporary licence
9		24(b)	Making false statement in connection with application for street trading licence or temporary licence
10		24(c)	Resisting or obstructing authorised officer
11		24(d)	Failure to produce street trading licence on demand
12		27(1)	Unlicensed street trading
13		27(2)	Street trading by holder of licence on a day or in a place not specified in his licence

SCHEDULE 3

Section 16

FINANCIAL PROVISIONS RELATING TO SECTION 16 (FIXED PENALTY NOTICES) OF  
THIS ACT

- 1 A borough council shall keep an account of their income and expenditure in respect of the administration and enforcement of sections 15 (Fixed penalty offences) and 16 (Fixed penalty notices) of this Act in relation to each of the enactments mentioned in paragraphs (a) and (b) of subsection (1) of the said section 15.
- 2 At the end of each financial year any deficit in the account shall be made good out of the general rate fund, and (subject to paragraph 3 below) any surplus shall be applied to purposes connected with the improvement of the amenity of the area of the council or any part of that area.
- 3 If the council so determine, any amount not applied in any financial year, instead of being or remaining so appropriated, may be carried forward in the account kept under paragraph 1 above to the next financial year.
- 4 Each council shall, after each financial year, report to the Secretary of State on any action taken by them, pursuant to paragraph 2 or 3 above, in respect of any deficit or surplus in their account for the year.
- 5 The report under paragraph 4 above shall be made as soon after the end of the financial year to which it relates as possible.
- 6 In any proceedings a certificate which—
  - (a) purports to be signed by or on behalf of, the chief finance officer of the council; and
  - (b) states that payment of a fixed penalty 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.

SCHEDULE 4

Section 20

AMENDMENTS TO PART III (STREET TRADING) OF THE LONDON LOCAL AUTHORITIES  
ACT 1990 (c. vii)

*Section 21 (Interpretation of Part III)*

- 1 In subsection (1) of section 21 for the definition of “street trading” the following definition is substituted—

““street trading” means subject to subsection (2) below—

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

- (b) the purchasing of or offering to purchase any ticket; and
- (c) the supplying of or offering to supply any service,  
in a street for gain or reward;”.

2 In subsection (2) of section 21—

- (a) in paragraph (a), at the end, the words “, if the trading is carried out only by means of visits from house to house” are inserted;
- (b) in paragraph (d), before “newspapers”, the word “current” is inserted;
- (c) in paragraph (h), at the end, the words “or by permit or order made under Part III of the Charities Act 1992 (c. 41)” are inserted;
- (d) for paragraph (j) there is substituted the following paragraph—
  - “(j) the selling or the exposure or offer for sale of articles or the provision of services on private land adjacent to a shop provided that the selling or the exposure or offer for sale of the articles or the provision of the services—
    - (i) forms part of the business of the owner of the shop or a person assessed for uniform business rate in respect of the shop; and
    - (ii) takes place during the period during which the shop is open to the public for business.”.

#### *Section 24 (Designation of licence streets)*

3 In subsection (6) of section 24—

- (a) the word “and” at the end of paragraph (b) is omitted;
- (b) paragraph (c) is omitted;
- (c) at the end, the following is inserted—
  - “(d) Network Rail Infrastructure Limited; and
  - (e) Transport for London.”.

#### *Section 25 (Application for street trading licences)*

4 For subsection (3) of section 25 there is substituted the following subsections—

- “(3) In the case of an application by an individual the applicant shall, with his application, hand to an authorised officer three identical clear full face photographs of himself—
  - (a) without sunglasses; and
  - (b) unless on religious grounds the applicant permanently wears headgear, without headgear,
 taken within the preceding 12 months, each photograph being signed by the applicant on the reverse.  
 But the borough council may, at their discretion, accept a lesser number of photographs.

- (3A) If a standard condition prescribed under regulations made under subsection (3) of section 27 (Conditions of street trading licences) of this Act requires third party insurance cover the applicant shall produce to an authorised officer proof of such third party insurance cover before a licence is granted.
- (3B) A borough council may make regulations prescribing the procedure for determining applications.
- (3C) Before making or amending such regulations the borough council shall—
  - (a) consult any body which appears to the borough council to represent licence holders; and
  - (b) give consideration to any representations received within 28 days of the date on which the borough council's proposals were notified to the body concerned.”.

### Section 38 (Unlicensed street trading)

- 5 In section 38—
- (a) in subsection (1)(a), at the end the words “whether or not from a stationary position” are inserted;
  - (b) in subsection (1)(b)—
    - (i) before “a temporary licence”, the words “a street trading licence or” are inserted;
    - (ii) before “engages” the words “, without the borough council’s specific permission in writing” are inserted;
    - (iii) for “that temporary licence” there is substituted “that licence”;
  - (c) in subsection (2)—
    - (i) for the words “the article or thing shall be presumed” there is substituted “the article, thing, receptacle or equipment concerned shall be presumed”;
    - (ii) for the words “presumed to have been available” to “it is shown” there is substituted “deemed to have been used for the purposes for which a street trading licence was required unless it can be proved”;
    - (iii) for the words “for the purpose” to the end of the subsection there is substituted “street trading”;
  - (d) for subsection (4) there is substituted the following subsections—
    - “(4) If an authorised officer or a constable has reasonable grounds for suspecting that a person has committed an offence under this section he may seize—
      - (a) any article or thing being offered for sale, displayed or exposed for sale; or
      - (b) any other article or thing of a similar nature to that being offered or exposed for sale which is in the possession of or under the control of any person who is displaying an article or thing; or

- (c) any receptacle or equipment being used by that person,

which may be required to be used in evidence in any proceedings in respect of that offence, or may be the subject of forfeiture under subsection (5) below, provided that no article or thing which is of a perishable nature shall be seized under the provisions of this subsection.

- (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.
- (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.”;
- (e) subsection (4A) is renumbered as (4C);
- (f) in subsection (4C) as renumbered under paragraph (e) above—
- (i) in paragraph (a), the words “or equipment” are inserted after “receptacle”;
  - (ii) in paragraph (a), the words “or is seized and retained because it is required for evidential purposes under subsection (4A) above” are inserted after “subsection (4) above”;
  - (iii) in paragraph (b) for the words “at the conclusion” there is substituted “following the conclusion”;
  - (iv) in paragraph (b), for the words “unless the court orders it to be forfeited under subsection (5) below” there is substituted—
 

“unless—

    - (i) the court orders it to be forfeited under subsection (5) below; or
    - (ii) any award of costs to the council by the court, which may include removal, return and storage costs, have not been paid within 28 days of the making of the order.
- (ba) Where after 28 days any costs awarded by the court to the council have not been paid to the council in full—
- (i) the article or thing may be disposed of in any way the council thinks fit; and
  - (ii) any sum obtained by the council in excess of the costs awarded by the court shall be returned to the person to whom the article or thing belongs.

- (bb) When any article or thing is disposed of by the council under this subsection the council shall have a duty to secure the best possible price which can reasonably be obtained for that article or thing.”;
- (v) in paragraph (d)(i) the words “or under the City of Westminster Act 1999” are inserted after “this Part of this Act”;
- (vi) in paragraph (d)(ii) the words “or the said Act of 1999” are inserted after “this Part of this Act”;
- (vii) in paragraph (f), at the end, the words “and in the case of a sum referred to in paragraph (ba) above the council shall apply to the court for an order directing the disposal of the proceeds.” are inserted;
- (g) after subsection (6) the following subsection is inserted—
  - “(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.”;
- (h) after subsection (8)(a)(i), the words “or (4A)” are inserted after “subsection (4)”;
- (i) in subsection (8)(b) the words “and any such compensation shall not be included in the computation for calculating charges under section 22 (Fees and charges) of this Act” are inserted at the end; and
- (j) in subsection (8)(c) the words “or (4A)” are inserted after “subsection (4)”.

## SCHEDULE 5

Section 28

### ENACTMENTS IN WHICH DEFINITION OF AUTHORISED OFFICER IS REPEALED

The London Local Authorities Act 1990 (c. vii)  
The London Local Authorities Act 1991 (c. xiii)  
The London Local Authorities Act 1994 (c. xii)  
The London Local Authorities Act 1995 (c. x)  
The City of Westminster Act 1996 (c. vii)  
The London Local Authorities Act 1996 (c. ix)  
The City of Westminster Act 1999 (c. i)  
The London Local Authorities Act 2000 (c. vii)