



# Medway Council Act 2004

## CHAPTER v

An Act to confer powers on Medway Council for the better control of street trading in the borough of Medway. [28th October 2004]

**W**HEREAS—

- (1) The borough of Medway (hereinafter called “the borough”) is a district under the management and local government of Medway Council (hereinafter called “the council”):
- (2) Certain powers relating to street trading in the borough are exercisable by the council under the Local Government (Miscellaneous Provisions) Act 1982 (c. 30) and for their better enforcement it is expedient to amend that Act in its application to Medway and supplement those powers:
- (3) The objects of this Act cannot be attained without the authority of Parliament:
- (4) In relation to the promotion of the Bill for this Act the requirements of section 239 of the Local Government Act 1972 (c. 70) have been observed:

May it therefore please your Majesty that it may be enacted, and be it enacted, by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 Citation**

This Act may be cited as the Medway Council Act 2004.

### **2 Interpretation**

In this Act, except where the context otherwise requires—

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

- “authorised officer” means an officer of the council authorised by the council in writing to act for the purposes of this Act;
- “the chief constable” means the Chief Constable of the Kent police force;
- “the borough” means the borough of Medway;
- “the council” means the Medway Council;
- “equipment” means equipment used for the purposes of street trading;
- “proper officer” shall have the same meaning as in section 270(3) of the Local Government Act 1972 (c. 70);
- “receptacle” includes—
- (a) any vehicle, trailer or barrow; and
  - (b) any basket, bag, box, vessel, stall, 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;
- “a relevant offence” means an offence—
- (a) under paragraph 10 of Schedule 4 to the Act of 1982; or
  - (b) of aiding, abetting, counselling or procuring the commission of an offence under that paragraph,
- committed on or after the appointed day fixed for the purpose of the application of section 5 (Street trading: seizure) of this Act.

### 3 Appointed day

- (1) In this Act “the appointed day” means such day as may be fixed by resolution of the council, subject to and in accordance with the provisions of this section.
- (2) Different days may be fixed under this section for the purpose of the application of different provisions of this Act.
- (3) The council shall cause to be published in at least two newspapers circulating in the borough 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,

and 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 a proper officer of the council to be a true reproduction of a page or part of a page of any such newspaper—
  - (a) bearing the date of its publication; and
  - (b) containing any such notice,

shall be evidence of the publication of the notice and of the date of publication.

### 4 Pedlars

In their application to the borough pursuant to a resolution by the council under section 3 of the Act of 1982, the provisions of Schedule 4 to that Act shall on and from the appointed day apply as if in paragraph 1(2)(a) of that Schedule

there were inserted, after the reference to the Pedlars Act 1871 (c. 96), the words “, if the trading is carried out only by means of visits from house to house”.

## 5 Street trading: seizure

- (1) If on or after the appointed day an authorised officer or a constable has reasonable grounds for suspecting that a person has committed a relevant offence and the conditions of subsection (2) below apply, the authorised officer or constable may seize—
  - (a) any article being offered or exposed for sale or displayed; or
  - (b) any other article which—
    - (i) is in the possession of or under the control of any person who is offering or exposing for sale or displaying an article; and
    - (ii) which is of a similar nature to the article being offered or exposed for sale or displayed, as the case may be; or
  - (c) any receptacle or equipment being used by that person.
- (2) The conditions are that the article, receptacle or equipment—
  - (a) may be required to be used in evidence in any proceedings in respect of the suspected offence; or
  - (b) may be the subject of forfeiture under section 7 (Forfeiture of seized items) of this Act; and
  - (c) in the case of an article is not of a perishable nature.
- (3) An authorised officer shall produce his authority if required to do so by the person having care or control of anything seized in pursuance of the powers in subsection (1) above.
- (4) An authorised officer or a constable shall, forthwith after seizing any article, receptacle or equipment under subsection (1) above, give to the person from whom the article, receptacle or equipment 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;
  - (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 article, receptacle or equipment;
  - (c) the type of article, receptacle or equipment seized; and
  - (d) information about subsection (2) of section 7 (Forfeiture of seized items) of this Act.
- (5) If an authorised officer or constable is unable, after reasonable inquiry of the person who he suspects has committed the suspected offence, to ascertain the name or address of—
  - (a) that person; or
  - (b) the owner of the article, receptacle or equipment,or 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 authorised officer or constable shall, before the end of the period of 14 days beginning with the date of seizure, give or serve a copy of the certificate to or

on any person who is named on the certificate under paragraph (b) of subsection (4) above at the address shown on the certificate.

## **6 Return and disposal of seized items**

- (1) The following provisions of this section shall have effect where any article, receptacle or equipment is seized under subsection (1) of section 5 (Street trading: 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 article, receptacle or equipment is seized.
- (2) Subject to subsections (3) to (6) below, following the conclusion of the proceedings the article, receptacle or equipment shall be returned to the person from whom it was seized unless—
  - (a) the court orders it to be forfeited under section 7 (Forfeiture of seized items) of this Act; or
  - (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—
    - (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,the article, receptacle or equipment 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;
  - (b) in the case of paragraph (b), the time when proceedings are discontinued.
- (5) Where the article, receptacle or equipment is not returned because it has not proved possible to identify the person from whom it was seized and ascertain his address, the council or the chief constable (whether the article or thing was seized by an authorised officer or a constable) may apply to a magistrates’ court for an order as to the manner in which it should be dealt with.
- (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 article, receptacle or equipment may be disposed of in any way the council thinks fit; and
  - (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 article, receptacle or equipment belongs.

- (7) When any article, receptacle or equipment 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.

## **7 Forfeiture of seized items**

- (1) Subject to subsection (2) below, the court by or before which a person is convicted of a relevant offence may on or after the appointed day order any article, receptacle or equipment—
- (a) produced to the court; and
  - (b) shown to the satisfaction of the court to relate to the offence, to be forfeited and dealt with in such a manner as the court may order.
- (2) The court shall not order any article, receptacle or equipment 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 him to show cause why the order should not be made.
- (3) In considering whether to make an order under subsection (1) above a court shall have regard—
- (a) to the value of the article, receptacle or equipment; and
  - (b) to the likely financial and other effects on—
    - (i) the offender; or
    - (ii) the owner of the article, receptacle or equipment, of the making of the order (taken together with any other order that the court contemplates making).

## **8 Compensation where seizure unlawful**

- (1) Subsection (2) below shall have effect where—
- (a) any article, receptacle or equipment is seized under subsection (1) of section 5 (Street trading: 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 a relevant offence in respect of the act or circumstances which occasioned the seizure;
    - (ii) proceedings for a relevant 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;
    - (iii) proceedings for a relevant 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 article, receptacle or equipment seized may recover compensation from the council or (where it is seized by a constable) the chief constable by civil action in the county court in respect of any loss suffered by him as a result of the seizure.
- (3) The court may only make an order for compensation under subsection (2) above if satisfied that seizure was not lawful under section 5 (Street trading: seizure) of this Act.