

# LONDON LOCAL AUTHORITIES ACT 2007

## EXPLANATORY MEMORANDUM

### PART 1

#### PRELIMINARY

*Section 1* deals with citation and commencement.

*Section 2* defines certain expressions used in the Act.

*Section 3* provides for some of the provisions of the Act 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*

*Section 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*

*Section 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.

*Section 5(1)* provides for a prohibition on the display of portable advertisements within a "designated area" (see *Section 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 Section 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.

*Section 6* makes provision about the designation of areas within which the prohibition in *Section 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 *Section 6*.

*Section 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.

*Section 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.

*Section 8* makes provision about automatic minimum fines on a third conviction for fly posting and shroud advertisement offences. The Section 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 Section 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.

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

*Section 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 *Section 8*. For those purposes, the offences are taken to have been committed on the last of those days.

*Section 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 Section.

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

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

*Section 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 *Section 4*.

Nothing may be seized under *Section 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 *Section 16*. The Section 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.

*Section 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.

*Section 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 *Section 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.

*Section 16* enables the court by whom a person is convicted of a fly posting offence to order relevant objects to be forfeited. The Section 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.

*Section 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*

*Section 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*

*Section 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.

*Section 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.

*Section 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. *Section 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 *Section 23*. There are exemptions for transport undertakers' land.

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

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

*Section 23* deals with enforcement as regards the regulations which may be made under *Sections 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 4* of the Act and includes provision for representations and appeals. The Section sets out the grounds on which representations may be made against the penalty charge.

*Section 24* makes provision about littering from vehicles. The Section 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. *Section 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 4* of the Act 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 Section. 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.

*Section 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.

*Section 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 Section.

*Section 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 *Section 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 *Section 72* are to be fixed penalty offences under the London Local Authorities Act 2004.

#### *Abandoned vehicles*

*Section 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.

*Section 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 Section 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.

*Section 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*

*Section 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.

*Section 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.

*Section 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*

*Section 32* makes provision about vegetation, where it is in such a state that the local authority believes 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.

*Section 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

*Section 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 Section makes a number of consequential amendments to Schedule 3.

*Section 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.

*Section 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 *Section 33*.

## CHAPTER 2

### STREET TRADING

#### *Introductory*

*Section 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.

*Section 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.

*Sections 38 to 49* set out a number of amendments to the Act of 1990. *Section 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.

*Section 38(6)* would 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.

*Section 39* 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 *Section 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.

*Section 40* 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.

*Section 41* 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 *Section 40*. The Section 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.

*Section 42* 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.

*Section 43* 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.

*Section 44* 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 *Section 47*.

*Section 45* 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. *Section 45* 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 Section applies, with amendments, procedural provisions of section 38, which deal with the seizure and forfeiture of non-perishable items.

*Section 46* introduces a new section 38B into the Act of 1990 and deals with motor vehicles. First, the Section 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 Section 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 *Section 47*.

*Section 47* 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.

*Section 48* 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 *Section 38*. The Section 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.

*Section 49* introduces *Schedule 3* which is a Keeling Schedule setting out Part III of the Act of 1990 as amended by the Act and by previous enactments.

#### *City of Westminster Act 1999*

*Sections 50* to *59* deal with street trading in the City of Westminster, and make a number of amendments to the City of Westminster Act 1999.

*Section 50* 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.

*Section 51* 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 *Section 50*), or proof of ownership of such land.

*Section 52* 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.

*Section 53* 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.

*Section 54* 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 *Section 53*. The Section 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.

*Section 55* 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.

*Section 56* 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 Section 59.

*Section 57* deals with the seizure of perishable items. Under section 27 of the Act of 1999 Act, 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. *Section 57* 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 Section applies, with amendments, procedural provisions of section 27, which deal with the seizure and forfeiture of non-perishable items.

*Section 58* introduces a new section 27B into the Act of 1999, and deals with motor vehicles. First, the Section 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 Section 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 Section 59.

*Section 59* 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.

#### PART 4

#### PENALTY CHARGES AND FIXED PENALTIES

##### *Introductory*

*Section 60* provides a definition of "joint committee" and that functions of the councils in setting the levels of penalty charge under *Part 4* are to be carried out by a joint committee.

##### *Penalty charges*

*Sections 61 to 67* 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 Act 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, *Sections 61 to 67* set out a general penalty charge notice procedure for penalty charge contraventions under the Act, and in future legislation.

*Section 61* 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 *Section 61* and "appropriate recipient" is defined as the appropriate recipient for the purposes of *Section 61*, designated as such by the penalty charge provision.

*Section 61* 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.

*Section 62* enables the Lord Chancellor to make regulations entitling persons to make representations to Councils and appeals to adjudicators in respect of penalty charges under *Section 61*. 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. Until such regulations are made, the Section will apply, with modifications, similar regulations in force under road traffic legislation.

*Section 63* 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 Section. 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 Section. 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 *Section 63*.

*Section 64* 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.

*Section 65* makes provision about certificated bailiffs, and in particular about their authorisation, and the conditions which must be met before bailiffs are certificated under *Section 65*.

*Section 66* makes provision for the setting of the levels of penalty charges payable under *Part 4*. Penalty charge levels are to be set by a joint committee consisting of members of 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.

*Section 67* 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*

*Sections 68* and *69* 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.

*Section 68* 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 *Section 68* would extend that period to 28 days, with the early payment period expiring after 14 days.

*Section 69* amends *Schedule 2* to the London Local Authorities Act 2004, which sets out a table of fixed penalty offences. *Section 69* adds offences relating to civic amenity sites under *Section 26(5)* of the Act.

## PART 5

### MISCELLANEOUS

*Section 70* 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 *Section 70* will be to extend the offence to the display of such video recordings, or the display of packaging for such video recordings.

*Section 71* 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. *Section 71* 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 notice. 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.

*Section 72* 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. *Section 72* 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.

*Section 73* 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.

*Section 74* 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.

*Section 74* 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 Section 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 *Section 74* 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 Section 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.

*Section 75* 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. *Section 75* 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 Section provides for offences of contravening or failing to comply with the Section 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.

*Section 76* 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. *Section 76* 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.

*Section 77* 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. *Section 77* provides that sums recoverable by the council shall be a charge on the premises served by the sewer.

*Section 78* 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. *Section 78* 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 6

### SUPPLEMENTAL

*Section 79* makes provision for an offence of intentionally obstructing an authorised officer acting in the exercise of his powers under the Act. An offender would be liable to a fine not exceeding level 3.

*Section 80* makes provision about proof of the passing of resolutions under the Act. 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.

*Section 81* makes provision about the liability of directors and other officers for offences under the Act. It provides that where an offence under the Act 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.

*Section 82* makes provision about the procedure for the making of regulations under the Act.