



# Street Trading Act (Northern Ireland) 2001

CHAPTER 8

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## Street Trading Act (Northern Ireland) 2001

### 2001 CHAPTER 8

An Act to make provision for the regulation by district councils of street trading in their districts. [5th April 2001]

**B**E IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

#### *Street traders to be licensed*

#### **Licensing of street traders**

**1.**—(1) Subject to the provisions of this Act, no person shall engage in street trading in any street within a district, unless that person is authorised to do so by a street trading licence or a temporary licence granted under this Act by the council for the district.

(2) Subject to section 2, in this Act “street trading” means—

- (a) selling any article or thing, or
- (b) supplying a service,

in a street, whether or not in or from a stationary position.

(3) In this Act—

- (a) any reference to selling an article or thing includes a reference to offering or exposing an article or thing for sale; and
- (b) any reference to supplying a service is a reference to supplying a service for gain or reward and includes a reference to offering to supply a service.

(4) For the purposes of this Act a person engages in street trading whether or not he regularly carries on the business of street trading.

**Activities which are not street trading**

**2.**—(1) The following activities are not street trading for the purposes of this Act—

- (a) trading by—
  - (i) selling articles or things, or
  - (ii) supplying a service,
    - to the occupiers of premises adjoining any street, if the trading is carried out by means only of visiting those premises, whether by appointment or otherwise;
- (b) selling articles or things from a vehicle which is used only for the regular delivery of such articles or things to the occupiers of premises adjoining any street;
- (c) anything done in a market or fair the right to hold which was acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of any statutory provision;
- (d) doing anything—
  - (i) authorised by regulations made under section 5 of the Police, Factories, &c (Miscellaneous Provisions) Act 1916 (c. 31), or
  - (ii) authorised by a licence granted under the House to House Charitable Collections Act (Northern Ireland) 1952 (c. 6) or exempted by an order made under section 3 of that Act;
- (e) trading by a person acting as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871 (c. 96), if the trading is carried out only by means of visits from house to house.

(2) Trading which is carried out—

- (a) at or adjoining premises used as a petrol filling station; or
- (b) at or adjoining premises used as a shop,

is not street trading for the purposes of this Act if—

- (i) it forms part of the business of the owner or the occupier of the premises, and
- (ii) takes place during the period when the premises are open to the public for business.

(3) Trading as a news vendor is not street trading for the purposes of this Act if—

- (a) the only articles sold are newspapers or periodicals, and
- (b) they are sold without a receptacle or from a receptacle which is carried by the vendor.

(4) The Department may by order subject to affirmative resolution—

- (a) vary (whether by addition, omission or alteration) the activities which are not street trading for the purposes of this Act, and
- (b) amend subsections (1) to (3), as they have effect for the time being, in such manner as appears necessary or expedient in consequence of such variation.

*Designation of streets*

**Designated streets**

**3.**—(1) A council may pass a resolution designating a street in its district as a street in which it may allocate street trading pitches to holders of street trading licences who are authorised to trade as stationary traders.

(2) In this Act—

- (a) a resolution passed under subsection (1) is referred to as a “designating resolution”; and
- (b) a street designated by such a resolution is referred to as a “designated street”.

(3) A designating resolution may specify that, in relation to a designated street, either—

- (a) only specified articles, things or services, or classes of specified articles, things or services may be sold or supplied from street trading pitches in that street, or
- (b) the sale or supply from street trading pitches of specified articles, things or services or classes of specified articles, things or services, is prohibited in that street.

(4) A council may, by subsequent resolution, rescind or vary a designating resolution.

**Designating resolutions**

**4.**—(1) Where, in relation to any street, a council proposes to pass a designating resolution, or a resolution to rescind or vary a designating resolution, the council shall—

- (a) publish notice of its intention to do so in 2 or more newspapers circulating in its district;
- (b) consult—
  - (i) the sub-divisional commander of the police sub-division in which the street is situated, and
  - (ii) the Department for Regional Development as regards that department’s functions with respect to roads and the regulation of road traffic.

(2) The council may consult such other persons as it considers appropriate.

(3) Where a council proposes to pass a resolution to rescind or vary a designating resolution, it shall also consult licence holders who trade from street trading pitches in the street to which the proposed resolution would apply, and any body representative of those traders.

(4) The notice referred to in subsection (1)(a)—

- (a) shall contain a draft of the proposed resolution; and
- (b) shall state that representations relating to it may be made in writing to the council within such period, being not less than 28 days from the date of first publication of the notice, as may be specified in the notice.

(5) As soon as practicable after the expiry of the period mentioned in subsection (4)(b), the council shall consider any representations relating to the proposed resolution which it has received before the expiry of that period.

(6) After the council has considered those representations, it may if it thinks fit pass the designating resolution, or the resolution to rescind or vary the designating resolution.

(7) Where a council passes a designating resolution, or a resolution to rescind or vary a designating resolution, the resolution shall specify a date, being not less than one month from the date of its passing, on which it is to take effect.

(8) Where a council—

(a) has passed a designating resolution, or a resolution to rescind or vary a designating resolution, or

(b) has determined not to pass such a resolution,

it shall publish notice to that effect in 2 consecutive weeks in 2 or more newspapers circulating in its district and send a copy of the notice to any person who made representations relating to the proposed resolution.

(9) For the purposes of paragraph (a) of subsection (8), the first publication shall be not less than 28 days before the date specified in the resolution for it to take effect.

#### *Licensing of street traders*

#### **Applications for the grant, renewal or variation of street trading licences**

**5.—**(1) An application for the grant, renewal or variation of a street trading licence—

(a) shall be made under this section in writing, and in such form and at such time as the council to which the application is made may specify; and

(b) shall, if the council so requires, be accompanied by any fee (or such part as the council may determine of any fee) payable under section 15(1).

(2) An application for the grant of a street trading licence shall be made to the council for the district in which the applicant wishes to trade.

(3) An application for the renewal or variation of a street trading licence shall be made to the council that granted the licence.

(4) An application for the grant or renewal of a street trading licence shall state—

(a) the full name, address and date of birth of the applicant;

(b) whether the applicant wishes to trade as a stationary trader or as a mobile trader, and—

(i) where the applicant wishes to trade as a stationary trader, the street in which he wishes to trade and the location at which he wishes to have his street trading pitch; or

(ii) where the applicant wishes to trade as a mobile trader, the area or areas of the district in which he wishes to trade;



- (c) the days on which and the times between which the applicant wishes to trade;
- (d) the description of articles, things or services in which the applicant wishes to trade and the description of any receptacle he wishes to use in connection with his trading;
- (e) the arrangements the applicant has made, or proposes to make, for storing such articles, things or receptacles.

(5) An application for the grant or renewal of a street trading licence shall, if the council so requires, be accompanied by 2 photographs of the applicant which are acceptable to the council.

(6) An application for a council to vary a street trading licence under section 11 shall state the manner in which the licence holder wishes the council to vary the conditions specified in the licence.

(7) An application under this section shall contain such further particulars, relevant to street trading, as the council may reasonably require.

(8) Where a council receives an application under this section, it shall within a reasonable time give notice in writing to the applicant of its decision with respect to the application.

#### **Grant, etc. of street trading licences**

6.—(1) Subject to the provisions of this Act, a council shall grant an application under section 5 unless—

- (a) it is required to refuse the application under section 8; or
- (b) it considers that it ought to refuse the application on any of the grounds set out in section 9.

(2) The Department may by regulations, subject to negative resolution, prescribe the form of a street trading licence.

(3) In granting an application for a street trading licence, the council shall authorise the applicant to trade either as a stationary trader or as a mobile trader.

(4) A street trading licence shall, unless it is revoked or surrendered, remain valid for such period or until such date as the council may determine; but that period or date shall not exceed 3 years from the date on which the licence is granted.

(5) A licence holder may at any time surrender his street trading licence to the council and the licence shall then cease to be valid.

#### **Conditions relating to street trading licences**

7.—(1) A council shall specify in a street trading licence conditions—

- (a) requiring—
  - (i) a licence holder who is a stationary trader to trade only on the street trading pitch allocated to him by the council;
  - (ii) a licence holder who is a mobile trader to trade only in the area or areas within the district specified by the council;

- (b) identifying the class or classes of articles, things or services which the licence holder may sell or supply under the authority of the licence;
- (c) identifying the day or days on which, and the time during which, the licence holder may sell or supply articles, things or services;
- (d) identifying the nature, size and type of any receptacle which may be used by the licence holder in connection with any sale or supply of articles, things or services and the number of any such receptacles which may be so used;
- (e) requiring that any receptacle so used shall display in a prominent position the name of the licence holder and the number of his licence;
- (f) regulating the storage of articles, things or receptacles;
- (g) regulating the deposit and removal of refuse, and the containers to be used for the deposit of such refuse and their location pending its removal;
- (h) requiring that the licence holder shall avail himself to a reasonable extent of his right to trade under the licence;
- (i) regulating the arrangements for payment to the council of fees and other charges imposed under section 15.

(2) A council may, when granting or renewing a street trading licence, specify in the licence such further conditions as it considers reasonable.

#### **Mandatory grounds for refusing an application**

**8.**—(1) A council shall refuse an application under section 5 if the applicant—

- (a) is not an individual; or
- (b) has not reached the upper limit of compulsory school age, within the meaning of Article 46 of the Education and Libraries (Northern Ireland) Order 1986 (NI 3).

(2) A council shall refuse an application under section 5 if the applicant wishes to trade at a place where trading would contravene any statutory provision or rule of law.

(3) A council shall refuse an application under section 5 if the applicant wishes to trade as a stationary trader—

- (a) in a street which is not a designated street; or
- (b) in any article, thing or service the sale or supply of which would be contrary to the terms of any designating resolution having effect in relation to the designated street in which the applicant wishes to trade.

#### **Discretionary grounds for refusing an application**

**9.**—(1) A council may refuse an application under section 5 on any of the following grounds—

- (a) that—
  - (i) the location at which the applicant wishes to trade as a stationary trader is unsuitable;
  - (ii) the space in the designated street in which the applicant wishes to trade as a stationary trader is inadequate for the applicant to do so without

- causing undue interference or inconvenience to persons or vehicles using the street;
- (iii) the area or areas of the district in which the applicant wishes to trade as a mobile trader are unsuitable for the applicant to do so without causing undue interference or inconvenience to persons or vehicles in the area or areas;
  - (iv) there are sufficient traders trading in the street, or at premises adjoining it, in the articles, things or services in which the applicant wishes to trade; or
  - (v) the nature of the articles, things or services in which the applicant wishes to trade is such that their sale or supply, or their preparation for sale or supply, would adversely affect the general amenity of the area in which the applicant wishes to trade;
- (b) that the applicant has, in connection with the application, made a statement which he knows to be false in a material particular;
  - (c) that the applicant is, on account of misconduct or some other reason relating to trading activities, unsuitable to hold a street trading licence;
  - (d) that the applicant has, without reasonable excuse, failed to avail himself to a reasonable extent of a previous street trading licence;
  - (e) that the applicant has at any time been granted a street trading licence by the council, which was revoked or could have been revoked on the grounds that he had refused or neglected to pay fees or other charges due to the council in respect of the licence;
  - (f) that the applicant has failed to provide the particulars required by the council to deal with the application;
  - (g) that the applicant has failed to provide or identify suitable or adequate arrangements for storing any articles, things or receptacles in or with which he proposes to trade.
- (2) If the council considers that grounds for refusal exist under subsection (1)(d), it may grant the applicant a licence subject to conditions which permit him—
- (a) to trade on fewer days or during a shorter period in each day than is specified in the application; or
  - (b) to trade in a different designated street or in a different area from that specified in the application.

### **Revocation, etc. of street trading licences**

**10.**—(1) A council may at any time revoke a street trading licence if it is satisfied that—

- (a) owing to circumstances which have arisen since the grant or renewal of the licence—
  - (i) the location of the street trading pitch on which the licence holder trades as a stationary trader has become unsuitable, or
  - (ii) the space in the designated street in which the licence holder trades as a stationary trader has become inadequate for him to engage in the

trading permitted by the licence without causing undue interference or inconvenience to persons or vehicles using the street; or

- (iii) the area or areas of the district in which the licence holder trades as a mobile trader have become unsuitable for the licence holder to do so without causing undue interference or inconvenience to persons or vehicles in the area or areas;
  - (b) a designating resolution has been rescinded or varied with respect to the street in which the licence holder trades as a stationary trader;
  - (c) the licence holder has, without reasonable excuse, failed to avail himself to a reasonable extent of his licence;
  - (d) the licence holder has, in connection with an application under section 5 with respect to the licence, made a statement which he knows to be false in a material particular;
  - (e) the licence holder is, on account of misconduct or some other reason relating to trading activities that has come to the attention of the council since the grant or renewal of the licence, unsuitable to hold the licence;
  - (f) the licence holder has, without reasonable explanation, failed to pay any fees or charges due to the council under section 15;
  - (g) the licence holder has persistently failed to remove to a place of storage the receptacles used by him for trading; or
  - (h) the licence holder has persistently failed to comply with any condition of his licence.
- (2) A council shall not take any steps to revoke a licence under paragraph (g) or (h) of subsection (1) unless—
- (a) it has notified the licence holder in writing of the conduct on his part that it considers to constitute a failure of a kind mentioned in either of those paragraphs; and
  - (b) the licence holder has thereafter continued or repeated that conduct.
- (3) If the council considers that a licence could be revoked on any of the grounds mentioned in paragraphs (a) to (c) of subsection (1) the council may instead of revoking it, vary its conditions under section 11(1) by—
- (a) reducing the number of days in any week or the period in any one day during which the licence holder is permitted to trade; or
  - (b) specifying—
    - (i) in relation to a licence holder who trades as a stationary trader, a different street trading pitch in the designated street in which he trades, or a street trading pitch in another designated street, or
    - (ii) in relation to a licence holder who trades as a mobile trader, a different area or different areas
 in which the licence holder may sell articles or things, or supply a service; or
  - (c) restricting the description of articles, things or services in which the licence holder is permitted to trade.

### **Variation of street trading licences**

**11.**—(1) Subject to the provisions of this Act, a council may at any time vary the conditions specified in a street trading licence where—

- (a) an application is made under section 5 by the licence holder; or
- (b) the variation is for the purposes of section 10(3).

(2) A council may vary the conditions specified in a street trading licence otherwise than as mentioned in subsection (1), but may do so only at a time when the council is renewing the licence.

### **Notice and representations**

**12.**—(1) Where a council proposes—

- (a) to refuse, other than on any of the grounds specified in section 8, an application for a street trading licence;
- (b) to grant an application for a street trading licence subject to any condition of a kind mentioned in subsection (2) of section 9;
- (c) to revoke a street trading licence under section 10;
- (d) to vary under subsection (1)(b) or (2) of section 11 the conditions specified in a street trading licence; or
- (e) to refuse to vary under subsection (1)(a) of that section the conditions specified in a street trading licence;

it shall give notice in writing of its proposal to the applicant or licence holder.

(2) The notice referred to in subsection (1) shall state—

- (a) the grounds on which the proposed refusal, grant, revocation or variation would be based; and
- (b) that representations relating to the proposal may be made in writing to the council within such period, being not less than 21 days from the date of the notice, as may be specified in the notice.

(3) A council—

- (a) shall not proceed to decide any of the matters referred to in subsection (1) until after the expiry of the period specified in the notice given under subsection (2); and
- (b) shall, in deciding any of those matters, consider any representations made by an applicant or licence holder.

(4) The council shall give notice in writing to the applicant or licence holder of its decision and of—

- (a) the grounds for that decision; and
- (b) his right to appeal against that decision.

### **Appeals**

**13.**—(1) A person aggrieved by a decision of a council—

- (a) with respect to any condition specified in a street trading licence;
- (b) to refuse, other than on any of the grounds specified in section 8, an application for a street trading licence;

- (c) to grant an application for a street trading licence subject to any condition of a kind mentioned in subsection (2) of section 9;
- (d) to revoke a street trading licence under section 10;
- (e) to vary under subsection (1)(b) or (2) of section 11 the conditions specified in a street trading licence; or
- (f) to refuse to vary under subsection (1)(a) of that section the conditions specified in a street trading licence;

may, at any time before the expiration of the period of 21 days from the date on which notice of the decision is given, appeal to a court of summary jurisdiction by notice under Part VII of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26).

(2) On an appeal under subsection (1), a court of summary jurisdiction may make such order as it considers appropriate and, subject to subsections (3) to (5), the council shall give effect to that order.

(3) Where a street trading licence is revoked under section 10(1) or an application for the renewal of such a licence is refused, the licence shall be deemed to remain in force—

- (a) until the time for bringing an appeal under this section has expired;
- (b) where an appeal is duly brought, until the determination or abandonment of the appeal;
- (c) where an appeal relating to the refusal of an application for such a renewal is successful, until the licence is renewed by the council.

(4) Where the conditions of a licence are varied under section 11(1)(b), the variation shall be deemed not to have effect until the time for bringing an appeal under this section has expired.

(5) Where an appeal is brought under this section against such a variation, the variation shall be deemed not to have effect until the determination or abandonment of the appeal.

### **Temporary licences**

**14.**—(1) Subject to the provisions of this section, a council may, if it considers it appropriate to do so on receipt from any person of an application under subsection (2), grant to that person a temporary licence authorising him to engage in street trading in its district.

(2) An application for the grant of a temporary licence—

- (a) shall be made—
  - (i) in writing to the council for the district in which the applicant wishes to trade, and
  - (ii) in such form and at such time as the council may specify;
- (b) shall contain such particulars relevant to street trading as the council may reasonably require;
- (c) shall, if the council so requires, be accompanied by 2 photographs of the applicant which are acceptable to the council; and

(d) shall be accompanied by such fee as the council may require under section 15.

(3) Where a council receives an application under subsection (2), it shall within a reasonable time give notice in writing to the applicant of its decision with respect to the application.

(4) Subsections (1) and (2) of section 8 shall apply to an application under subsection (2) in like manner as they apply to an application under section 5.

(5) A council shall formulate, and make available to any person on request, criteria with respect to the granting of temporary licences by it under this section and shall have regard to those criteria when considering whether to grant a temporary licence.

(6) A council may at any time amend or replace the criteria it has formulated under subsection (5).

(7) In granting a temporary licence, a council may authorise the applicant—

- (a) to trade at such places and in such manner as appears appropriate to the council; and
- (b) to sell such articles or things or to supply such services as the council may specify in the licence.

(8) A temporary licence—

- (a) shall be in such form as appears to the council to be appropriate;
- (b) shall remain in force for such period, not exceeding 7 days, as is specified in the licence; and
- (c) shall be subject to such conditions as the council may specify in the licence.

(9) A council shall grant no more than 5 temporary licences to an applicant during any year.

(10) Where it appears to a council—

- (a) that the holder of a temporary licence has failed to comply with any condition specified in the licence, and
- (b) that, having considered any representations made to it by the holder of the temporary licence, it is appropriate in the circumstances to do so,

the council may revoke the licence.

(11) A person aggrieved by a decision of a council to refuse an application for a temporary licence may, at any time before the expiration of the period of 21 days from the date on which notice of the decision is given under subsection (3), appeal to a court of summary jurisdiction by notice under Part VII of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26).

(12) On an appeal under subsection (11), a court of summary jurisdiction may make such order as it considers appropriate and the council shall give effect to that order.

### **Fees and charges**

**15.**—(1) A council may charge—

- (a) for the grant or renewal of a street trading licence;
- (b) for the grant of a temporary licence; or
- (c) for varying under section 11(1)(a) the conditions specified in a street trading licence,

such fees as the council may determine and as may be sufficient in the aggregate, taking one year with another, to cover any reasonable administrative or other costs (excluding the costs mentioned in subsection (2)(c)) in connection with its functions under this Act, not otherwise recoverable.

(2) A council may recover from holders of street trading licences or temporary licences such charges as may be sufficient in the aggregate, taking one year with another, to cover the reasonable costs, not otherwise recovered, of—

- (a) the collection, removal and disposal of refuse or other services rendered by the council to such licence holders;
- (b) the cleansing of streets in which street trading takes place in so far as that cleansing is attributable to such trading;
- (c) any reasonable administrative or other costs not otherwise recovered under this Act in connection with the services mentioned in paragraphs (a) and (b).

(3) Before determining or varying any fees or charges under subsection (1) or (2), the council shall—

- (a) give notice of the proposed fees or charges to licence holders affected by the proposal; and
- (b) publish notice of the proposed fees or charges in 2 or more newspapers circulating in the district of the council.

(4) The notice shall indicate—

- (a) that a statement has been prepared showing how the proposed fees or charges have been calculated; and
- (b) the location at which the statement is available for inspection.

(5) The notice shall specify a period, being not less than 28 days from the date of its first publication in accordance with subsection (3)(b), within which written representations concerning the proposed fees or charges may be made to the council.

(6) The council shall, in reaching a decision regarding the determination or variation of any fees or charges, consider any representations made to it within the period specified under subsection (5).

(7) Where the council has reached such a decision, it shall—

- (a) give notice of the decision to licence holders affected by the decision; and
- (b) publish notice of the decision in 2 or more newspapers circulating in the district of the council.

(8) The council may determine the time and manner in which fees or charges are to be paid.

(9) Where a council refuses an application under section 5 or 14(2), it shall refund any fee paid less any costs necessarily incurred by the council in deciding the application.



(10) Where a street trading licence is revoked under subsection (1)(a) or (b) of section 10, the council shall refund such part of any fee paid for the grant or renewal of the licence as appears to the council appropriate, having regard to—

- (a) the period for which the licence had been in force at the date of its revocation, and
- (b) any costs necessarily incurred by the council in deciding the application to grant or renew the licence.

(11) The council may refund, in such other circumstances as it considers appropriate, the whole or a part of any fee or charge.

### *Enforcement*

#### **Identification of street traders**

**16.**—(1) A licence holder—

- (a) shall, at all times while engaged in street trading, carry with him his street trading licence or temporary licence; and
- (b) shall, on demand by an authorised officer or a constable, produce the licence for examination.

(2) Where any person appears to an authorised officer or a constable to be, or to have been, engaged in street trading, the authorised officer or the constable may require that person to state his name and address.

#### **Unlicensed street trading**

**17.**—(1) A person who—

- (a) engages in street trading in a district and is not the holder of a street trading licence or a temporary licence granted by the council for the district;
- (b) is the holder of a street trading licence and contravenes a condition of a kind specified in paragraph (a) or (c) of section 7(1); or
- (c) is the holder of a temporary licence and engages in street trading on a day or in a place not specified in that temporary licence;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where, in any proceedings for an offence under this section, it is shown that any article or thing was displayed (whether or not in or on any receptacle) in any street, the article or thing shall be presumed to have been exposed for sale by the person having, or appearing to have, possession or control of it at such time and in such position as it was displayed, unless it is shown to the satisfaction of the court that the article or thing was brought into the street for some purpose other than that of selling it in the street.

(3) Where, in any proceedings for an offence under this section, it is shown that any receptacle or equipment used in the supply of any service was available in any street in such circumstances that an offer to supply the service was being made, the person having, or appearing to have, possession or control of the receptacle or equipment shall be presumed to have offered to supply the service at such time and in such position as the receptacle or equipment was available,

unless it is shown to the satisfaction of the court that the receptacle or equipment was brought into the street for some purpose other than that of offering to supply the service in the street.

### **Powers of seizure**

**18.**—(1) If an authorised officer or a constable has reasonable grounds for suspecting that a person has committed an offence under section 17, he may seize—

- (a) any article or thing being offered or exposed for sale by that person;
- (b) any other article or thing of a similar nature to that being offered or exposed for sale which is in the possession or under the control of that person; and
- (c) any receptacle or equipment being used by that person;

which may be required to be used as evidence in any proceedings or may be the subject of an application for a forfeiture order under section 19.

(2) Where an authorised officer or a constable seizes any article or thing which is a living creature or is, in his opinion, of a perishable nature, he may produce the article or thing to a justice of the peace.

(3) A justice of the peace to whom any article or thing is produced under subsection (2)—

- (a) may give to the authorised officer or constable a certificate in writing, describing the article or thing produced and containing such other particulars concerning the article or thing as the authorised officer or constable brings to his attention; and
- (b) may order that the article or thing be dealt with (whether by disposing of it or otherwise) in such manner as appears appropriate to him.

(4) A certificate given by a justice of the peace under subsection (3)(a) shall be sufficient evidence of the facts stated unless the contrary is proven.

(5) Subject to subsection (6), if—

- (a) before the expiration of the period of 28 days from the date of the seizure of an article, thing, receptacle or equipment under subsection (1), no complaint has been made to institute proceedings against the person from whom it was seized; or
- (b) such a complaint has been made within that period, but the proceedings are discontinued;

the article, thing, receptacle or equipment shall be returned to the person from whom it was seized.

(6) Subsection (5) does not apply—

- (a) where an article or thing has been disposed of in pursuance of an order under subsection (3)(b); or
- (b) where it has not proved possible to identify the person from whom an article, thing, receptacle or equipment was seized, and ascertain his address.

(7) Where, for the reason mentioned in subsection (6)(b), an article, thing, receptacle or equipment has not been returned to the person from whom it was seized, the council (whether the article, thing, receptacle or equipment was seized by an authorised officer or by a constable) may apply to a court of summary jurisdiction for an order as to the manner in which it should be dealt with.

(8) In this section and sections 19 and 20, “proceedings” means proceedings for an offence under section 17 in respect of the activities that gave rise to the seizure of the article, thing, receptacle or equipment.

### **Forfeiture**

**19.**—(1) This section applies where in any proceedings—

- (a) a court convicts a person of an offence under section 17, and
- (b) an application is made to the court for the forfeiture under this section of any article, thing, receptacle or equipment seized under section 18.

(2) The court may order that any such article, thing, receptacle or equipment produced to the court shall be forfeited under this section and dealt with in such manner as appears appropriate to the court.

(3) Subsections (4) and (5) shall have effect where an order has been made under subsection (3)(b) of section 18 with respect to any article or thing.

(4) If the order made under that subsection did not require the article or thing to be disposed of, the court may order that the article or thing shall be forfeited under this section and dealt with in such manner as appears appropriate to the court.

(5) If the order made under that subsection did require the article or thing to be disposed of, the court may order that the article or thing shall be treated as forfeited under this section and, if the article or thing was disposed of by selling it, that the proceeds of the sale shall be dealt with in such manner as appears appropriate to the court.

(6) The court shall not make an order under this section unless it affords to any person—

- (a) claiming to be the owner of, or otherwise legally interested in, the article, thing, receptacle or equipment, and
- (b) applying to the court in that behalf,

an opportunity to show cause why the order should not be made.

(7) If, at the conclusion of the proceedings the court does not order the article, thing, receptacle or equipment to be forfeited under this section, it shall be returned to the person from whom it was seized.

### **Compensation**

**20.**—(1) Subject to the provisions of this section, where any article, thing, receptacle or equipment is seized under section 18 and—

- (a) not less than 6 months have passed since the date of the seizure and no complaint has been made to institute proceedings against any person; or
- (b) proceedings have been brought and—

- (i) either the person charged has been acquitted (whether or not on appeal) and the time for appealing against or challenging the acquittal (where applicable) has expired without an appeal or challenge being brought; or
- (ii) proceedings (including any appeal) have been withdrawn by, or failed for want of prosecution by, the person by whom the original proceedings were brought;

the person who is, or at the time of the seizure was, the owner of or otherwise legally interested in the article, thing, receptacle or equipment seized, may recover in any court of competent jurisdiction, compensation in respect of any loss suffered by him as a result of the seizure.

(2) Where—

- (a) any article or thing seized under section 18 has been dealt with in accordance with an order under subsection (3)(b) of that section; and
- (b) proceedings have been brought, and—
  - (i) the person charged has been convicted, but the court has refused to make a forfeiture order under section 19, and
  - (ii) the time for appealing against or challenging that refusal has expired without an appeal or challenge being brought,

the person who is, or at the time of the seizure was, the owner of or otherwise legally interested in the article or thing seized, may recover in any court of competent jurisdiction, compensation in respect of the loss of, or any deterioration in the condition of, the article or thing seized.

(3) Compensation under subsection (1) or (2) shall be recoverable from—

- (a) the council, if the seizure was carried out by an authorised officer;
- (b) the Chief Constable, if the seizure was carried out by a constable.

(4) The court shall not make an order for compensation under this section unless it is satisfied that the seizure was not lawful under section 18.

### **Other offences**

**21.** Any person who—

- (a) without reasonable excuse contravenes any condition of a street trading licence, which is a condition of a kind specified in paragraph (b), (d), (e), (f) or (g) of section 7(1);
- (b) fails on demand and without reasonable excuse to produce his street trading licence or temporary licence to an authorised officer or a constable;
- (c) fails, on being required to do so under section 16(2), to state his name and address or states a name or an address that is incorrect;
- (d) in connection with an application for the grant, renewal or variation of a street trading licence or the grant of a temporary licence makes a statement which he knows to be false in a material particular;
- (e) resists or intentionally obstructs an authorised officer in the execution of his duties 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.

### **Fixed penalty offences**

22. Schedule 1, which makes provision for the discharge of any liability to conviction of an offence under paragraph (a) or (b) of section 21 by payment of a fixed penalty, shall have effect.

### *Miscellaneous*

### **Power to remove receptacles**

23.—(1) Where any receptacle used by the holder of a street trading licence or a temporary licence is not removed to a place of storage on the cessation of trading on any day, a council may cause it to be so removed and recover from the licence holder the costs reasonably incurred by the council in removing and storing the receptacle.

(2) Any charges incurred by a council in pursuance of subsection (1) shall be payable by the licence holder before the return of the receptacle to him.

(3) The provisions of subsection (1) are without prejudice to the power of the council to take other enforcement action against the licence holder for any breach of the conditions of his licence arising from the failure to remove the receptacle.

(4) Where—

- (a) a receptacle has been removed by a council under subsection (1), and
- (b) the licence holder has not recovered it within 3 months from the date of its removal,

the council may take such steps as are reasonable to sell it or to dispose of it in such other manner as the council thinks fit.

### **Employment of assistants**

24.—(1) Subject to subsection (2), the holder of a street trading licence or a temporary licence may employ any other person to assist him in the conduct of his business without a further licence being required.

(2) Nothing in subsection (1) shall prejudice Article 135(4) of the Children (Northern Ireland) Order 1995 (NI 2) (children not to engage in or be employed in street trading).

(3) If any person employed by a licence holder fails to comply with the conditions specified in the street trading licence or temporary licence held by his employer, such failure shall also be deemed to be a failure by the licence holder.

(4) Subsection (3) shall have effect whether or not the licence holder is present at the time of the failure.

### *Supplementary*

### **General interpretation**

25.—(1) In this Act—

“authorised officer” means a person authorised by a council for the purposes of this Act;

“conditions”, in relation to a street trading licence, means conditions specified under section 7;

“council” means a district council;

“the Department” means the Department for Social Development;

“designated street” has the meaning given in section 3(2);

“designating resolution” has the meaning given in section 3(2);

“district” has the meaning given in section 148(1) of the Local Government Act (Northern Ireland) 1972 (c. 9);

“mobile trader” means a person authorised by a street trading licence to trade from a vehicle which goes from place to place, stopping for a time for the purpose of trading;

“receptacle” includes—

- (a) a vehicle, trailer or stall;
- (b) any basket, bag, box, vessel, stand, easel, board or tray; and
- (c) anything which is used (whether or not constructed or adapted for such use) as a container for, or for the display of—
  - (i) any article or thing, or
  - (ii) any equipment used in the supply of a service;

“sell” shall be construed in accordance with section 1(3);

“stationary trader” means a person authorised by a street trading licence to trade from a street trading pitch;

“statutory provision” has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33);

“street trading” has the meaning given in section 1(2);

“street trading licence” means a licence granted under this Act, but excludes a temporary licence;

“street trading pitch” means the location at which a stationary trader is authorised by a street trading licence to engage in street trading;

“supply” shall be construed in accordance with section 1(3);

“temporary licence” means a licence granted under section 14;

“thing” includes a living thing.

(2) References in this Act to premises include references to their curtilages.

(3) In this Act “street” includes—

- (a) any road or footpath within the meaning of Article 2(2) of the Road Traffic (Northern Ireland) Order 1995 (NI 18);
- (b) any public place within the meaning of subsection (4); and
- (c) any part of a street.

(4) In subsection (3) “public place” means a place in the open air within 10 metres of a road or footpath—

- (a) to which the public has access without payment, but

- (b) which is not within enclosed premises or the curtilage of a dwelling.

#### **Minor and consequential amendments**

**26.** The minor and consequential amendments specified in Schedule 2 shall have effect.

#### **Transitional provisions and saving**

**27.—**(1) Any existing licence in force immediately before the day appointed for the coming into operation of this Act—

- (a) shall on and after that day be deemed to be a street trading licence granted by the council for the district in which the holder of the existing licence is authorised to trade, and
- (b) shall remain in force, unless revoked, until 31st December next following that day.

(2) In subsection (1) “existing licence” means a licence under the Street Trading (Regulation) Act (Northern Ireland) 1929 (c. 9).

(3) Nothing in this Act shall affect section 13 of the Markets and Fairs Clauses Act 1847 (c. 14) (sales elsewhere than in markets or in shops, &c., prohibited) as applied by any other statutory provision.

#### **Repeals**

**28.** The statutory provisions specified in Schedule 3 are repealed to the extent there specified.

#### **Commencement**

**29.—**(1) This Act, except this section and section 30, shall come into operation on such day as the Department may by order appoint.

(2) An order under subsection (1) may make such transitional provision as appears to the Department to be necessary or expedient in connection with the provisions brought into operation by the order.

#### **Short title**

**30.** This Act may be cited as the Street Trading Act (Northern Ireland) 2001.

## SCHEDULES

Section 22.

## SCHEDULE 1

## FIXED PENALTY OFFENCES

## 1. In this Schedule—

“fixed penalty” shall be construed in accordance with paragraph 4;

“fixed penalty notice” means a notice offering an opportunity to discharge any liability to conviction of the offence to which the notice relates by payment of a fixed penalty in accordance with this Schedule;

“fixed penalty offence” means an offence under paragraph (a) or (b) of section 21;

“prescribe” means prescribe by regulations subject to negative resolution.

2.—(1) Where an authorised officer finds a person on any occasion and has reason to believe that on that occasion he is committing or has committed a fixed penalty offence, he may give that person a fixed penalty notice in respect of that offence.

(2) A person to whom a fixed penalty notice is given under this paragraph in respect of an offence shall not be liable to be convicted of that offence if the fixed penalty is paid in accordance with paragraph 3 before the expiration of the period of 14 days from the date of the notice or such longer period, if any, as may be specified in the notice.

(3) Where a person is given a fixed penalty notice under this paragraph in respect of an offence, proceedings shall not be taken against any person for that offence until the expiration of the period of 14 days from the date of the notice or such longer period, if any, as may have been specified in the notice.

## (4) A notice under this paragraph—

(a) shall be in such form as the Department may prescribe; and

(b) shall give such particulars of the circumstances alleged to constitute the offence as are necessary for providing reasonable information of the offence.

## (5) A notice under this paragraph shall state—

(a) the period during which, by virtue of sub-paragraph (3), proceedings will not be taken for the offence;

(b) the amount of the fixed penalty; and

(c) the person to whom and the address at which the fixed penalty may be paid.

(6) In this paragraph “proceedings” means any criminal proceedings in respect of the act constituting the offence specified in the notice under this paragraph, and “convicted” shall be construed in like manner.



3.—(1) Payment of a fixed penalty shall be made to or at the office of the clerk of petty sessions specified in the fixed penalty notice, or to such other person or to or at such other office as the Department may by order, subject to negative resolution, direct.

(2) Sums paid by way of a fixed penalty for any fixed penalty offence shall be treated as if they were fines imposed on summary conviction of that offence.

(3) In any proceedings a certificate that payment of a fixed penalty was or was not made by a date specified in the certificate to or at the office of the appropriate clerk of petty sessions, or to such other person or to or at such other office as the Department has directed under sub-paragraph (1), shall, if the certificate purports to be signed by the clerk of petty sessions or such other person as the Department has directed under sub-paragraph (1), be sufficient evidence of the facts stated unless the contrary is proved.

(4) The Department may prescribe—

- (a) the duties under this Schedule of persons or offices specified by an order made under sub-paragraph (1); and
- (b) the information to be supplied to clerks of petty sessions and to such other persons or offices.

4.—(1) Subject to sub-paragraph (2), the fixed penalty for an offence shall be—

- (a) £50, or
- (b) if greater, a sum equal to the amount which is for the time being 5% of level 3 on the standard scale.

(2) The Department may by order, subject to affirmative resolution, amend sub-paragraph (1) by substituting for the percentage specified in paragraph (b) of that sub-paragraph such other percentage, not exceeding 20%, as the Department considers appropriate.

5. In any proceedings for an offence which is a fixed penalty offence, no reference shall be made to the giving of any notice under this Schedule, or to the payment or non-payment of a fixed penalty under this Schedule, unless in the course of the proceedings, or in some document which is before the court in connection with the proceedings, reference has been made by or on behalf of the accused to the giving of such notice or, as the case may be, to such payment or non-payment.

## SCHEDULE 2

Section 26.

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### *The Street Trading (Regulation) Act (Northern Ireland) 1929 (c. 9 (N.I.))*

1. In section 10 (power of district council to acquire or extinguish market rights for purposes of Act) in subsection (1) for the words “this Act” substitute “the Street Trading Act (Northern Ireland) 2001”.

#### *The Roads (Northern Ireland) Order 1993 (NI 15)*

2. In Article 71 (erection of a structure on a road), in paragraph (2) for sub-paragraph (c) substitute—

SCH. 2

“(c) in pursuance of a street trading licence or a temporary licence under the Street Trading Act (Northern Ireland) 2001 or in circumstances where, by virtue of section 2 of that Act, he would not be required to obtain a licence under that Act.”.

3. In Article 90 (pitching stalls or offering things for sale on a road) in paragraph (2) for the words from “the proviso” to “that section” substitute “section 2 of the Street Trading Act (Northern Ireland) 2001, he would not be required to obtain a street trading licence or a temporary licence under that Act”.

Section 28.

## SCHEDULE 3

## REPEALS

Short Title	Extent of repeal
The Street Trading (Regulation) Act (Northern Ireland) 1929 (c. 9).	Sections 1 to 9. In section 13, the words from “Nothing” to the end.
The Financial Provisions Act (Northern Ireland) 1968 (c. 25).	In Schedule 1, the entry relating to the Street Trading (Regulation) Act (Northern Ireland) 1929.

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