

Bournemouth Borough Council Bill [HL]

EXPLANATORY MEMORANDUM

This Bill is promoted by Bournemouth Borough Council (“the Council”), which is the district council for the borough of Bournemouth.

The Bill relates to street trading, which for areas in England and Wales outside London is governed by section 3 of and Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 (“the 1982 Act”). Section 3 enables local authorities to adopt the licensing regime set out in Schedule 4. The Council has adopted the regime.

The Bill has five main purposes, namely—

- (1) to extend the scope of Schedule 4 to the 1982 Act so that it enables the Council to regulate the provision of services on the street as well as the sale of articles;
- (2) to alter the exemption enjoyed by the holders of a pedlar’s certificate from the street trading regime contained in the 1982 Act;
- (3) to empower council officers or police constables to seize articles, receptacles or equipment, in cases where they believe a street trading offence has been committed;
- (4) to allow the court to order the forfeiture of any article, receptacle or equipment which is shown to the satisfaction of the court to relate to the offence;
- (5) to enable council officers to serve fixed penalty notices in cases where they have reason to believe that street trading offences have been committed.

Clause 1 of the Bill deals with citation, and *Clause 2* with interpretation.

Clause 3 provides that the Bill shall apply for so long as any resolution of the Council under section 3 of the 1982 Act remains in force, in other words, for so long as the street trading regime of the 1982 Act applies in the area of the Council.

Clause 4 alters the effect of the 1982 Act as it applies in the area of the Council, by altering the definition of “street trading” and hence the type of activity which would be subject to regulation under Schedule 4 to the 1982 Act. Currently, the definition extends to the selling or exposing or offering for sale of any article (including a living thing) in a street. The alteration of the definition would bring within the scope of the Schedule the supplying of or offering to supply any service in a street.

Clause 5 alters the exemption from the street trading regime enjoyed by holders of a pedlar’s certificate. It limits the exemption to persons trading by house to house visits. They will continue to enjoy the protection of the 1982 Act. All other holders of pedlar’s certificates will, on the coming into force of the Bill, have to be licensed by or have the consent of the Council under Schedule 4 to the 1982 Act if they wish to carry on street trading, and will be subject to the controls that the schedule puts in place.

The existing exception is given to persons who trade and by doing so are acting as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871 ("the 1871 Act"). The 1871 Act itself defines a pedlar as "a person who, without any horse or other beast, travels and trades on foot from town to town carrying to sell or exposing for sale any goods, wares or merchandise or procuring orders for the same, or selling or offering for sale his skill and handicraft". The fees for pedlar's certificates are considerably lower than those for a street trading licence, and pedlars are not subject to the extensive controls placed on holders of street trading licences. Pedlar's certificates are granted by the police, and the conditions for the grant of a pedlar's certificate are that the applicant has lived in the police area for a month, is over 17 and is of good character. A pedlar's certificate, once granted, entitles the holder to act under its authority anywhere in England, Wales and Northern Ireland for a period of one year.

Clause 6 empowers an authorised officer of the Council or a constable to seize articles, receptacles or equipment in cases where a person is reasonably suspected of committing a street trading offence under paragraph 10 of Schedule 4 to the 1982 Act or an offence of aiding abetting, counselling or procuring the commission of such an offence. Seizure is only permitted where the article may be required to be used in evidence in any proceedings in respect of the suspected offence, or where it may be the subject of forfeiture by the Court under *Clause 8*, and (in the case of articles) where the article is not of a perishable nature. The clause provides that a certificate must be issued by the Council to the person from whom the article was seized.

Clause 7 provides for the return or disposal of items seized under *Clause 6*. Items must be returned to the person from whom they were seized following the conclusion of proceedings in respect of the suspected offence, unless the court orders them to be forfeited under *Clause 8*, or if any award of costs to the Council has not been paid within 28 days of the order being made. In that case, the Council may dispose of the items as they think fit, paying to the person to whom the items belonged any sum obtained on the sale of the items in excess of the costs awarded.

Seized items would also have to be returned at the end of the period of 56 days beginning with the date of seizure if no proceedings had been instituted, or any proceedings that had been instituted had been discontinued or were discontinued at any time during or after the end of that 56 day period.

Seized items do not have to be returned where it is not possible to identify or ascertain the address of the person from whom they were seized. In such a case the Council or Chief Constable must apply to the magistrates' court for an order as to the manner in which the items should be dealt with.

Clause 8 permits a court before which a person is convicted of a street trading offence to order forfeiture of items. Items may only be forfeited if shown to the satisfaction of the court to relate to a street trading offence. Also, the court may not order the forfeiture of an item where a person claiming to be the owner of the item or to have an interest in it applies to be heard by the court, unless he has been given an opportunity to show cause why the order should not be made. In considering whether to make an order for forfeiture, the court must consider the value of the item and the likely financial and other effects on the offender of forfeiting the item.

Clause 9 provides for compensation to be paid to anyone who at the time of seizure had a legal interest in the item, where the seizure was unlawful. Compensation is also payable where not less than six months have passed since the date of seizure and no proceedings have been brought against the person from whom the item was seized, or where proceedings have been brought but the person has been acquitted, or where the proceedings have been withdrawn or failed for want of prosecution.

Clause 10 empowers an authorised officer of the Council to serve a fixed penalty notice on a person who he has reason to believe has committed a street trading offence under paragraph 10 of Schedule 4 to the 1982 Act or an offence of aiding abetting, counselling or procuring the commission of such an offence. The fixed penalty notice gives the person on whom it is served the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty.

Clause 11 makes further provision about the procedure to be followed in relation to the giving of fixed penalty notices. It provides that no criminal proceedings may be instituted in respect of the offence in question until 14 days have expired after the giving of the fixed penalty notice, and that the recipient must not be convicted of the offence if he has paid the fixed penalty within that period. The clause also makes provision about the information which must be contained in the fixed penalty notice, the methods of payment allowed and the form of the fixed penalty notice. It also provides that fixed penalties are payable to the Council.

Clause 12 provides that the Council must fix the levels of fixed penalties. In doing so the Council must have regard to the reasonable costs incurred by them in administering the street trading regime under Schedule 4 to the 1982 Act and the costs of enforcing the provisions of Schedule 4. The Council must also publish the levels of fixed penalties in a local newspaper.

Clause 13 provides the Secretary of State with reserve powers in respect of the levels of fixed penalty which may be fixed by the Council under *Clause 12*. He may reduce such levels where he considers them to be excessive.

Clause 14 makes provision about the accounting and the application of fixed penalty receipts. Any surplus in the accounts may be applied to purposes connected with the improvement of the amenity of the area of the Council. The Council must report annually to the Secretary of State on any action taken by them in relation to any deficit or surplus in the account.

EUROPEAN CONVENTION ON HUMAN RIGHTS

In the view of Bournemouth Borough Council the provisions of the Bournemouth Borough Council Bill are compatible with the Convention rights.

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B I L L

To confer powers on Bournemouth Borough Council for the better control of street trading in the borough of Bournemouth.

WHEREAS—

- (1) The borough of Bournemouth (hereinafter called “the borough”) is a district under the management and local government of Bournemouth Borough Council (hereinafter called “the council”):
- (2) Certain powers relating to street trading in the borough are exercisable by the council under the Local Government (Miscellaneous Provisions) Act 1982 (c. 30) and for their better enforcement it is expedient to amend that Act in its application to Bournemouth and supplement those powers: 5
- (3) The objects of this Act cannot be attained without the authority of Parliament:
- (4) In relation to the promotion of the Bill for this Act the requirements of section 239 of the Local Government Act 1972 (c. 70) have been observed: 10

May it therefore please your Majesty that it may be enacted, and be it enacted, by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:— 15

Introductory

1 Citation

This Act may be cited as the Bournemouth Borough Council Act 2007.

2 Interpretation

In this Act—

“the 1982 Act” means the Local Government (Miscellaneous Provisions) Act 1982 (c. 30);

“authorised officer” means an officer of the council authorised by the council in writing to act for the purposes of this Act; 5

“the borough” means the borough of Bournemouth;

“the chief constable” means the Chief Constable of the Dorset police force;

“the council” means the Bournemouth Borough Council;

“equipment” means equipment used for the purposes of street trading; 10

“proper officer” has the same meaning as in section 270(3) of the Local Government Act 1972 (c. 70);

“receptacle” includes—

(a) any vehicle, trailer or barrow; and

(b) any basket, bag, box, vessel, stall, stand, easel, board, tray or other thing, 15

which is used (whether or not constructed or adapted for such use) as a container for or for the display of any article;

“a relevant offence” means an offence—

(a) under paragraph 10 of Schedule 4 to the 1982 Act; or 20

(b) of aiding, abetting, counselling or procuring the commission of an offence under that paragraph,

committed on or after the day on which this Act came into force.

3 Application

This Act applies so long as any resolution by the council under section 3 of the 1982 Act remains in force. 25

Application of 1982 Act

4 Provision of services

(1) In their application to the borough, the provisions of Schedule 4 to the 1982 Act shall apply with the following modifications. 30

(2) In paragraph 1(1), for the definition of “street trading”, there is substituted—
“street trading” means, subject to sub-paragraph (2) below—

(a) the selling or exposing or offering for sale of any article (including a living thing) in a street; or

(b) the supplying of or offering to supply any service in a street for gain or reward; and”. 35

(3) In paragraph 3(2)(c) after “articles” in both places where it appears there is inserted “or services”.

(4) In paragraph 3(6)(b) after “goods” there is inserted “or services”.

(5) In paragraph 4(1)(b), after “articles” there is inserted “or services”. 40

5 Pedlars

In their application to the borough, the provisions of Schedule 4 to the 1982 Act shall apply as if in paragraph 1(2)(a) of that schedule there were inserted, after the reference to the Pedlars Act 1871 (c. 96), the words “, if the trading is carried out only by means of visits from house to house”.

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Seizure and forfeiture

6 Seizure

- (1) Subject to the following provisions of this section, if an authorised officer or a constable has reasonable grounds for suspecting that a person has committed a relevant offence, the authorised officer or constable may seize— 10
 - (a) any article in relation to which he suspects an offence has been committed and which is being offered or exposed for sale or displayed; or
 - (b) any other article which— 15
 - (i) is in the possession of or under the control of any person who is offering or exposing for sale or displaying an article; and
 - (ii) is of a similar nature to the article being offered or exposed for sale or displayed, as the case may be; or
 - (c) any receptacle or equipment being used by that person.
- (2) No article, receptacle or equipment shall be seized under subsection (1) unless the conditions of subsection (3) apply. 20
- (3) The conditions are that the article, receptacle or equipment—
 - (a) may be—
 - (i) required to be used in evidence in any proceedings in respect of the suspected offence; or 25
 - (ii) the subject of forfeiture under **section 8**; and
 - (b) in the case of an article is not of a perishable nature.
- (4) An authorised officer shall produce his authority if required to do so by the person having care or control of anything seized in pursuance of the powers in subsection (1). 30
- (5) An authorised officer or a constable shall, forthwith after seizing any article, receptacle or equipment under subsection (1), give to the person from whom the article, receptacle or equipment was seized a document containing the following information—
 - (a) the name and address of the person who the authorised officer or constable suspects has committed the suspected offence; 35
 - (b) if different from the name and address of the person mentioned in paragraph (a), the name and address of the owner of the article, receptacle or equipment;
 - (c) the type of article, receptacle or equipment seized; and 40
 - (d) information about **section 8(2)**.

- (6) If an authorised officer or constable is unable, after reasonable inquiry of the person who he suspects has committed the suspected offence, to ascertain the name or address of—
- (a) that person; or
 - (b) the owner of the article, receptacle or equipment,
- or has reasonable cause to suspect that a name or address provided to him is incorrect, he need not comply with paragraph (a) or (b), as the case may be, of subsection (5). 5
- (7) The authorised officer or constable shall, before the end of the period of 14 days beginning with the date of seizure, give or serve a copy of the document to or on any person who is named on the document under subsection (5)(b) at the address shown on the document. 10

7 Return and disposal of seized items

- (1) The following provisions of this section shall have effect where any article, receptacle or equipment is seized under **section 6**(1) and references in those provisions to proceedings are to proceedings in respect of the alleged offence in relation to which the article, receptacle or equipment is seized. 15
- (2) Subject to subsections (3) to (6), following the conclusion of the proceedings the article, receptacle or equipment shall be returned to the person from whom it was seized unless— 20
- (a) the court orders it to be forfeited under **section 8**; or
 - (b) any award of costs to the council by the court, which may include removal, return and storage costs, have not been paid within 28 days of the making of the order.
- (3) If— 25
- (a) a fixed penalty notice has been given to a person under **section 10** in respect of the alleged offence and the fixed penalty is paid before the expiration of the period mentioned in **section 11**(2);
 - (b) at the end of the period of 56 days beginning with the date of seizure— 30
 - (i) no proceedings have been instituted; or
 - (ii) any proceedings instituted within that period have been discontinued; or
 - (c) at any time after the end of that period any such proceedings are discontinued,
- the article, receptacle or equipment shall, at the appropriate time, be returned to the person from whom it was seized unless it has not proved possible, after reasonable enquiry, to identify that person and ascertain his address. 35
- (4) In subsection (3), “the appropriate time” means— 40
- (a) in the case of paragraph (a), the date on which the fixed penalty is paid;
 - (b) in the case of paragraph (b), the end of the period of 56 days mentioned in that paragraph;
 - (c) in the case of paragraph (c), the time when proceedings are discontinued.

- (5) Where the article, receptacle or equipment is not returned because it has not proved possible to identify the person from whom it was seized and ascertain his address, the council or the chief constable (whether the article or thing was seized by an authorised officer or a constable) may apply to a magistrates' court for an order as to the manner in which it should be dealt with. 5
- (6) Where after the expiry of the period of 28 days mentioned in subsection (2)(b), any costs awarded by the court to the council have not been paid to the council in full—
- (a) the article, receptacle or equipment may be disposed of in any way the council thinks fit; and 10
 - (b) any sum obtained by the council in excess of the costs awarded by the court shall be paid to the person to whom the article, receptacle or equipment belongs.
- (7) When any article, receptacle or equipment is disposed of by the council under subsection (6) the council shall secure the best possible price which can reasonably be obtained for it. 15

8 Forfeiture of seized items

- (1) Subject to subsection (2), the court by or before which a person is convicted of a relevant offence may order any article, receptacle or equipment—
- (a) produced to the court; and 20
 - (b) shown to the satisfaction of the court to relate to the offence, to be forfeited and dealt with in such a manner as the court may order.
- (2) The court shall not order any article, receptacle or equipment to be forfeited under subsection (1) where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made. 25
- (3) In considering whether to make an order under subsection (1) a court shall have regard—
- (a) to the value of the article, receptacle or equipment; and
 - (b) to the likely financial and other effects on— 30
 - (i) the offender; or
 - (ii) the owner of the article, receptacle or equipment, of the making of the order (taken together with any other order that the court contemplates making).

9 Compensation where seizure unlawful

- (1) Subsection (2) shall have effect where—
- (a) any article, receptacle or equipment is seized under **section 6(1)**; and
 - (b) any of the following applies—
 - (i) not less than six months have passed since the date of the seizure, no information has been laid against any person for a relevant offence in respect of the act or circumstances which occasioned the seizure and, in the case where a fixed penalty notice was given under **section 10** in respect of such an offence, no fixed penalty has been paid in accordance with the notice; 5
 - (ii) proceedings for a relevant offence have been brought and the person charged has been acquitted (whether or not on appeal) and the time for appealing against or challenging the acquittal (where applicable) has expired without an appeal or challenge being brought; 10
 - (iii) proceedings for a relevant offence have been brought and the proceedings (including any appeal) have been withdrawn by, or have failed for want of prosecution by, the person by whom the proceedings were brought. 15
- (2) Where this subsection has effect a person who has or at the time of seizure had a legal interest in the article, receptacle or equipment seized may recover compensation from the council or (where it is seized by a constable) the chief constable by civil action in the county court in respect of any loss suffered by him as a result of the seizure. 20
- (3) The court may only make an order for compensation under subsection (2) if satisfied that seizure was not lawful under **section 6**. 25

Fixed penalties

10 Fixed penalty offences

- (1) Where on any occasion an authorised officer finds a person who he has reason to believe has on that occasion committed a relevant offence in the borough, the officer may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty. 30
- (2) **Section 11** shall apply in respect of fixed penalty notices under this section.
- (3) An authorised officer may not exercise the powers under subsection (1) and **section 11** shall have no effect until the levels of fixed penalties set by the council in accordance with **section 12** have come into force for the first time in accordance with **section 13**. 35

11 Fixed penalty notices

- (1) The provisions of this section shall have effect in relation to notices (in this section referred to as “fixed penalty notices”) which may be given under **section 10** by an authorised officer in respect of an offence.
- (2) Where a person is given a fixed penalty notice in respect of an offence— 5
 - (a) no proceedings shall be instituted for that offence before the expiration of 14 days following the date of the notice; and
 - (b) he shall not be convicted of that offence if he pays the fixed penalty before the expiration of that period.
- (3) A notice under this section shall give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information about the offence and shall state— 10
 - (a) the period during which, by virtue of subsection (2), proceedings will not be taken for the offence;
 - (b) the amount of the fixed penalty; and 15
 - (c) the name of the person to whom and the address at which the fixed penalty may be paid.
- (4) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of the penalty (in cash or otherwise). 20
- (5) Where a letter is sent in accordance with subsection (4), payment shall be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
- (6) The form of notices under this section shall—
 - (a) be such as the council shall prescribe; and 25
 - (b) be in substantially the same form as notices prescribed by the Secretary of State under section 88(5) of the Environmental Protection Act 1990 (c. 43) (fixed penalty notices for leaving litter).
- (7) The fixed penalty payable in pursuance of a fixed penalty notice under this section shall be paid to the council. 30
- (8) **Section 14** shall have effect with respect to financial provisions relating to fixed penalties payable in pursuance of a fixed penalty notice under this section.
- (9) In any proceedings a certificate which—
 - (a) purports to be signed by or on behalf of the chief finance officer of the council; and 35
 - (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,shall be evidence of the facts stated.
- (10) In this section, “chief finance officer”, in relation to the council, means the person having responsibility for the financial affairs of the council. 40

12 Levels of fixed penalties

- (1) It shall be the duty of the council to set the levels of fixed penalties payable to them under **section 11**.
- (2) Different levels may be set for different areas in the borough and for different cases or classes of case. 5
- (3) In setting the level of fixed penalty under subsection (1) the council may take account of—
 - (a) any reasonable costs or expected costs incurred or to be incurred in connection with the administration of the provisions of Schedule 4 to the 1982 Act; and 10
 - (b) the cost or expected cost of enforcing the provisions of that schedule.
- (4) Levels of fixed penalties set by the council in accordance with this section may only come into force in accordance with **section 13**.
- (5) The council shall, in a notice in a local newspaper circulating in the area of the council, publish the levels of fixed penalties which have been set by them in accordance with this section. 15

13 Fixed penalties: reserve powers of Secretary of State

- (1) Where the council set any levels of fixed penalties under **section 12(1)**, they shall notify the Secretary of State of the levels of fixed penalties so set.
- (2) Where notification of any levels of fixed penalties is required to be given under subsection (1), the levels of fixed penalties shall not come into force until after the expiration of— 20
 - (a) the period of one month beginning with the day on which the notification is given; or
 - (b) such shorter period as the Secretary of State may allow. 25
- (3) If, before the expiration of that period, the Secretary of State gives notice to the council that he objects to the levels of fixed penalties on the grounds that some or all of them are or may be excessive, those levels of fixed penalties shall not come into force unless and until the objection has been withdrawn.
- (4) If, at any time before the levels of fixed penalties required to be notified under subsection (1) to the Secretary of State have come into force, the Secretary of State considers that some or all of them are excessive, he may make regulations setting the levels of fixed penalties. 30
- (5) Levels of fixed penalties set under subsection (4) must be no higher than those notified under subsection (1). 35
- (6) Regulations under subsection (4) are without prejudice to the duty imposed on the council by **section 12(1)**; but where the Secretary of State makes any such regulations the council must not set any further fixed penalties under the said subsection (1) until after the expiration of the period of 12 months beginning with the day on which the regulations are made. 40

- (7) The power to make regulations conferred by subsection (4)—
- (a) includes power to make provision in respect of such cases only as may be specified in the regulations and to make different provision for different circumstances; and
 - (b) shall be exercised by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament. 5

14 Financial provisions

- (1) The council shall keep an account of their income and expenditure in respect of the administration and enforcement of **sections 10 and 11**.
- (2) At the end of each financial year any deficit in the account shall be made good out of the general rate fund, and (subject to subsection (3)) any surplus shall be applied to purposes connected with the improvement of the amenity of the borough or any part of the borough. 10
- (3) If the council so determine, any amount not applied in any financial year, instead of being or remaining so appropriated, may be carried forward in the account kept under subsection (1) to the next financial year. 15
- (4) The council shall, after each financial year, report to the Secretary of State on any action taken by them, pursuant to subsection (2) or (3), in respect of any deficit or surplus in their account for the year.
- (5) The report under subsection (4) shall be made as soon after the end of the financial year to which it relates as possible. 20
- (6) In any proceedings a certificate which—
- (a) purports to be signed by or on behalf of, the chief finance officer of the council; and
 - (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate, 25
- shall be evidence of the facts stated.
- (7) In this section, “chief finance officer”, in relation to the council, means the person having responsibility for the financial affairs of the council.

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BILL

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Brought from the Lords, 29 November 2007.

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