



# Bournemouth Borough Council Act 2010

## CHAPTER ii

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# Bournemouth Borough Council Act 2010

## CHAPTER ii

An Act to confer powers on Bournemouth Borough Council for the better control of street trading in the borough of Bournemouth. [8th April 2010]

**W**HEREAS—

- (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:
- (3) The objects of this Act cannot be attained without the authority of Parliament:
- (4) In relation to the promotion of the Bill for this Act the requirements of section 239 of the Local Government Act 1972 (c. 70) have been observed:

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

### *Introductory*

#### **1 Citation**

This Act may be cited as the Bournemouth Borough Council Act 2010.

## 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;

“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;

“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,

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

(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.

### *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.
- (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”.
- (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”.

## 5 Pedlars

- (1) Subject to subsection (2), in their application to the borough, the provisions of Schedule 4 to the 1982 Act shall apply as if—
- (a) 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—
    - (i) by means of visits from house to house,
    - (ii) with any goods or handicraft equipment carried on his person as a pedestrian, or
    - (iii) with any goods or handicraft equipment carried in a wheeled vehicle (with a carrying capacity no greater than one cubic metre) pushed or pulled by him,
 and (in so far as sub-paragraph (ii) or (iii) of this paragraph applies), he complies with the essential requirements referred to in sub-paragraph (2A) below, as read with sub-paragraphs (2B) and (2C) below”, and
  - (b) after paragraph 1(2) of that schedule there were inserted the following sub-paragraphs:
 

“(2A) Subject to sub-paragraph (2B) a person complies with the essential requirements as follows—

    - (a) he must leave any location that he is occupying with a view to trading no later than five minutes after arrival there, unless he begins trading on arrival there, in which case he must leave no later than—
      - (i) at the end of the five minute period, or
      - (ii) as soon as he is able after trading ceases,
 whichever comes later;
    - (b) each location he occupies with a view to trading must be at a minimum distance of 200 metres from his previous one;
    - (c) each location he occupies in any 12 hour period with a view to trading must be at a minimum distance of 5 metres away from any other one that he has so occupied at any time in that period;
    - (d) he must not begin so to occupy a location any part of which is nearer than a minimum distance of 50 metres from any part of a location for the time being so occupied by another person;
    - (e) at all times while—
      - (i) trading,
      - (ii) otherwise occupying any location with a view to trading, or
      - (iii) moving between locations occupied or to be occupied with a view to trading,
 he must display prominently his certificate granted under the Pedlars Act 1871.

- (2B) Nothing in sub-paragraph (2A)(b) to (d) above disqualifies any person from occupying a location within a minimum distance for the purpose of trading if—
- (a) he so occupies it on the request of a bona fide customer,
  - (b) he begins trading on arrival there, and
  - (c) he leaves as soon as he is able after trading ceases.
- (2C) For the purposes of sub-paragraphs (2A) and (2B) above—
- (a) a person is trading from such time as, while falling within sub-paragraph (2)(a)(ii) or (iii), he commences the transaction—
    - (i) of selling goods to a bona fide customer, or
    - (ii) of supplying a service for payment by a bona fide customer

up to the moment when the transaction is completed or aborted but, if another bona fide customer is waiting to trade with him at that moment, time shall not be treated as elapsing in any gap between that moment and the commencement of the transaction with the other customer; and
  - (b) measurement of minimum distance operates in a straight line except to the extent that—
    - (i) the ground is not level, or
    - (ii) passage along the line is obstructed by buildings, fixed structures or private property”.
- (2) Nothing in subsection (1) shall be taken to extend the range of activities that comprise acting as a pedlar.

*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 believing that a person has committed a relevant offence, the authorised officer or constable may seize—
- (a) any article in relation to which he believes an offence has been committed and which is being offered or exposed for sale or displayed; or
  - (b) any other article which—
    - (i) is in the possession of or under the control of any person who is offering or exposing for sale or displaying an article; and
    - (ii) 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.

- (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
    - (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).
- (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 believes has committed the offence;
  - (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
  - (d) information about section 8(2).
- (6) If an authorised officer or constable is unable, after reasonable enquiry of the person who he believes has committed the 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 believe 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).
- (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.

## **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.
- (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—
  - (a) the court orders it to be forfeited under section 8; or
  - (b) any award of costs to the council by the court have not been paid within 28 days of the making of the order.

- (3) If—
- (a) at the end of the period of 56 days beginning with the date of seizure—
    - (i) no proceedings have been instituted; or
    - (ii) any proceedings instituted within that period have been discontinued; or
  - (b) at any time after the end of that period any such proceedings are discontinued,
- the article, receptacle or equipment shall, at the appropriate time, be returned to the person from whom it was seized unless it has not proved possible, after reasonable enquiry, to identify that person and ascertain his address.
- (4) In subsection (3), “the appropriate time” means—
- (a) in the case of paragraph (a), the end of the period of 56 days mentioned in that paragraph;
  - (b) in the case of paragraph (b), the time when proceedings are discontinued.
- (5) Where the article, receptacle or equipment is not returned because it has not proved possible to identify the person from whom it was seized and ascertain his address, the council or the chief constable (whether the article or thing was seized by an authorised officer or a constable) may apply to a magistrates’ court for an order as to the manner in which it should be dealt with.
- (6) Where after 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
  - (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.

## **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
  - (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.
- (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—
    - (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 and no information has been laid against any person for a relevant offence in respect of the act or circumstances which occasioned the seizure;
    - (ii) proceedings for a relevant offence have been brought and the person charged has been acquitted (whether or not on appeal);
    - (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.
- (2) Where this subsection has effect a person who has or at the time of seizure had a legal interest in the article, receptacle or equipment seized may recover compensation from the council or (where it is seized by a constable) the chief constable by civil action in the county court in respect of any loss suffered by him as a result of the seizure.
- (3) The court may only make an order for compensation under subsection (2) if satisfied that seizure was not lawful under section 6.