ELIZABETH II



1982 CHAPTER vii

An Act to confer powers on the East Lindsey District Council with respect to the registration of premises used for the sale of certain articles by way of competitive bidding; and for connected purposes.

[27th May 1982]

WHEREAS—

(1) The district of East Lindsey (in this Act called "the district") is under the management and local government of the East Lindsey District Council (in this Act called "the Council"):

(2) It is expedient that the Council should be empowered to register premises in the district used for the sale of certain articles by way of competitive bidding:

(3) It is expedient that the other provisions of this Act be enacted:

(4) The purposes of this Act cannot be effected without the authority of Parliament:

1972 c. 70.

(5) In relation to the promotion of the Bill for this Act the requirements of section 239 of the Local Government Act 1972 have been complied with:

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:—

Citation and commencement.

1. This Act may be cited as the East Lindsey District Council Act 1982 and shall come into operation at the expiration of a period of four weeks beginning with the date on which it is passed.

Interpretation.

2. In this Act unless the context otherwise requires—

1936 c. 49.

" the Act of 1936 " means the Public Health Act 1936;

" contravention " includes a failure to comply;

" the Council " means the East Lindsey District Council;

" the district " means the district of East Lindsey;

" premises " includes land;

" prescribed articles " means any plate, plated articles, linen, china, glass, books, prints, furniture, jewellery, articles of household or personal use or ornament or any musical or scientific instrument or apparatus;

" sale of goods by way of competitive bidding " means any sale of prescribed articles at which the persons present, or some of them, are invited to buy articles by way of competitive bidding, references to selling goods by way of competitive bidding shall be construed accordingly and " competitive bidding " includes any mode of sale whereby prospective purchasers may be enabled to compete for the purchase of articles, whether by way of increasing bids or by the offer of articles to be bid for at successively decreasing prices or otherwise.

Prohibition of unregistered premises.

3.—(1) It is an offence to sell or permit the sale of goods by way of competitive bidding—

(*a*) on premises in the district which are not registered under this Act;

(*b*) on premises in the district which are so registered, but in breach of a condition upon which they are so registered.

(2) A person is not guilty of an offence under subsection (1) (*a*) above—

(*a*) by virtue of section 44 of the Magistrates' Courts Act 1980 (aiders and abettors); or 1980 c. 43.

(*b*) consisting of permitting a sale;

unless at the time of the offence he knows that the premises are not registered under this Act.

(3) A person is not guilty of an offence under subsection (1)(*b*) above if he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(4) If in any case the defence provided under subsection (3) above involves the allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending 7 clear days before the hearing, he has served on the prosecutor a notice in writing giving such information as was then in his possession, identifying, or assisting in the identification of that other person.

Application for registration.

4.—(1) Application for registration of premises under this Act shall be made to the Council by the occupier of, or a person proposing to occupy, such premises, stating—

(*a*) the name and address of the applicant;

(*b*) the address or situation of the premises to which the application relates; and

(*c*) such other information regarding the premises, the persons concerned or intended to be concerned in the conduct or management of any sale of goods by way of competitive bidding thereon, and the manner in which the premises are to be used as the Council may reasonably require.

(2) With his application for registration under this Act, the applicant shall pay such reasonable fee to cover the expense of the Council in dealing with such applications as the Council may by resolution prescribe.

(3) If any person knowingly or recklessly makes a false statement or omits any material particular in giving information under this section he is guilty of an offence.

Penalties.

5. A person guilty of an offence under either of the last two foregoing sections of this Act is liable on summary conviction to a fine not exceeding £500.

Registration of premises.

6.—(1) The Council may, on registering premises under this Act, impose such conditions as may be reasonable.

(2) The Council may refuse to register premises under this Act if they are satisfied that it is reasonable to do so on any of the following grounds:—

(*a*) the premises are unsuitable for the sale of goods by way of competitive bidding;

(*b*) the intended use of the premises for that purpose is likely to cause nuisance;

(*c*) the premises have been used for the sale of goods by way of competitive bidding otherwise than in good faith;

(*d*) the applicant or the occupier for the time being of the premises is not a fit and proper person to be concerned in the conduct or management of any sale of goods by way of competitive bidding.

(3) The Council may at any time revoke a registration under this Act on any ground upon which, by subsection (2) above, they are authorised to refuse to register the premises, or if they are satisfied that a condition imposed under subsection (1) above has not been complied with.

(4) Before refusing to register premises under this Act, revoking a registration, or imposing any condition on a registration, the Council shall give to the person applying for registration, or, in the case of a revocation, the person in whose name the premises are registered, an opportunity of appearing before and of being heard by a committee or sub-committee of the Council and, if so required by him, the Council shall within 7 days after their decision give him notice thereof containing a statement of the grounds upon which it was based.

Appeals.

7.—(1) A person aggrieved by a refusal to register premises under this Act, or by the revocation thereof, or any condition imposed thereon, may, not later than 21 days after the day on which notice is given to him under subsection (4) of section 6 (Registration of premises) of this Act, appeal to a magistrates' court.

(2) On any such appeal the court may, by order—

(*a*) confirm or set aside such refusal or revocation and, on setting aside a refusal or revocation, impose any condition which the Council would have been entitled to impose; or

(*b*) confirm, vary or set aside any condition imposed on the registration;

and make directions for giving effect to its decision:

Provided that, where conditions have been imposed on a registration by the Council, the court shall not vary any such

condition, or impose any new condition, so as to make the conditions more onerous than those imposed by the Council.

(3) Sections 300 to 302 of the Act of 1936 shall apply in respect of appeals to a magistrates' court under this Act.

Cessation of occupation of registered premises.

8. In the event of the occupier of premises registered under this Act dying or ceasing to occupy the premises the registration of the premises then in force shall continue in force (unless previously revoked under this Act) for a period of three months from the date of death or cesser of occupation but shall upon the expiration of that period cease to have effect.

Exemptions.

9.—(1) Notwithstanding anything in section 3 (Prohibition of unregistered premises) of this Act sales by way of competitive bidding of the under-mentioned classes may be conducted on premises which are not registered under this Act—

(*a*) any sale of goods by way of competitive bidding so long as no substantial part of the prescribed articles was brought onto the premises for the purposes of the sale;

(*b*) any sale for the purpose of assisting the funds of any voluntary organisation if the whole, or substantially the whole, of the proceeds of sale are devoted to the funds of the organisation;

but the exemption provided by paragraph (*a*) above shall not be available where a sale by way of competitive bidding has taken place on those premises within the preceding six months.

(2) In this section "voluntary organisation" means a body the activities of which are carried on otherwise than for profit, but does not include any public or local authority.

Powers of entry, inspection and examination.

10.—(1) An authorised officer of the Council on producing if so required a duly authenticated document showing his authority, or any constable, may at all reasonable times enter upon, inspect and examine any premises which he has reasonable cause to believe are used, or intended to be used, for the sale of goods by way of competitive bidding for the purpose of ascertaining—

(*a*) whether there is, or has been, in or in connection with the premises, a contravention of the provisions of this Act or of any condition imposed on registration under this Act; or

(*b*) whether or not circumstances exist which would authorise the Council to take action under this Act.

(2) Subsections (2), (3) and (4) of section 287 of the Act of 1936 shall apply in respect of entry to premises for the purposes of this section as they apply to entry to premises for the purposes of subsection (1) of that section and as so applied shall have effect as if in subsections (2) and (3) after the words " authorised officer " there were inserted the words " or a constable ".

Restriction on right to prosecute.

11. The written consent of the Attorney-General is needed for the laying of an information of an offence created by or under this Act by any person other than the Council or a constable.

Liability of directors, etc.

12.—(1) Where an offence under this Act, committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of the offence.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Application of general provisions of Act of 1936.

13. The sections of the Act of 1936 mentioned in the Schedule to this Act shall have effect as if references therein to that Act included references to this Act.

SCHEDULE

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SCHEDULE—Sections of Act of 1936 applied.