

18 August 2008

PROPOSED CITY OF WESTMINSTER (STREET TRADING) BILL

CONSULTATION PAPER

Background

Westminster City Council is proposing to introduce a new Private Bill into Parliament dealing with the general issue of street trading. Standing Orders of Parliament require that Private Bills are deposited no later than 27 November in each session of Parliament. This means that if the City Council were to introduce a Private Bill in the next session of Parliament, it would be deposited on 27 November 2008.

The City Council is keen to hear the views of stakeholders on their proposals and the purpose of this document is to set out those proposals, and in some cases provide options, and invite the comments of those affected. The City Council will take into consideration any relevant responses received by them before **13 October 2008** but would particularly welcome responses before that deadline.

Existing legislation

Street trading in the City of Westminster is controlled under the City of Westminster Act 1999. Before then the relevant legislation was Part 3 of the London Local Authorities Act 1990, which remains applicable in other areas of London. The City of Westminster Act 1999 was promoted so as to recognise the distinctive nature of street trading in Westminster and came about as a result of discussions between the City Council and the representatives of street traders. The 1999 Act contained a number of novel provisions which have since been picked up by the other London boroughs in their own legislation. Examples include the partial disapplication of the exemption for those with pedlars' certificates. Another example of a major alteration from the previous regime was the removal of the requirement for three yearly renewals of street trading licences.

Since the enactment of the 1990 Act, it has been amended by later London Local Authorities Acts, in particular by section 20 of the London Local Authorities Act 2004 and Chapter 2 of Part 3 of the London Local Authorities Act 2007. The current London Local Authorities Bill which is before Parliament would introduce further amendments to the 1999 Act.

The 1999 Act, showing all of the amendments that have so far been made to it, and all the proposed amendments which are set out in the current London Local Authorities Bill can be found attached to that Bill as what is known as a "Keeling Schedule", a copy of which is appended to this document.

Form of consultation paper

The consultation paper takes the form of a section by section analysis of the 1999 Act, setting out where the City Council believes change is required, and then sets out a number of other suggestions for new provisions.

Depending on the number of changes which the City Council eventually decides to promote, the proposed Bill would either take the form of a new piece of legislation which would entirely replace the 1999 Act, or it would simply have the effect of making further textual amendments to the 1999 Act. A further option which the council has given some consideration to, but is not minded to proceed with is to repeal the 1999 Act altogether, therefore having the effect of taking the council back within Part 3 of the London Local Authorities Act 1990.

ANALYSIS OF CITY OF WESTMINSTER ACT 1999 AND SUGGESTIONS FOR CHANGE

1. Section 1 (Citation and commencement)

1.1 This section simply sets out the title of the 1999 Act, and provides that it came into operation two months after Royal Assent (Royal Assent was attained on 25 March 1999).

1.2 **Proposal:** No change

2. **Section 2 (Interpretation)**

- 2.1 This section sets out a number of important definitions used throughout the 1999 Act, including “ice cream trading”, “itinerant ice cream trading”, “licence street”, “receptacle”, “street”, “street trading”, “street trading pitch” and “temporary licence”.
- 2.2 The basic element of the definition of “**street**” is that it is any road or footway, or any other area, not being within permanently enclosed premises, within 7 metres of any road or footway.
- 2.3 Similarly, “**street trading**” means the selling, offering for sale, display or exposing for sale of any article or thing or the supplying or offering to supply a service for gain or reward. It does not include the handing out of free literature, which is controlled under the Clean Neighbourhoods and Environment Act 2003.
- 2.4 Since the 1999 Act, there have been some amendments to the definition of “street trading”. It now includes purchasing or offering to purchase a ticket for gain or reward (to deal with that side of the ticket tout’s behaviour). It has also been amended so as to provide that it does not matter whether the “gain or reward” element of the street trading accrues to the person actually carrying out the trading, and it also now provides that street trading includes cases where the transaction was not completed on the street.
- 2.5 The London Local Authorities Bill, currently before Parliament, contains a provision that would extend the definition of “street trading” further so that it included selling vehicles on the internet if the vehicles are on the street.
- 2.6 **Issue: Tables and Chairs:** The City Council regulates tables and chairs on the highway by granting temporary licences under the 1999 Act. Although the council has no doubt that this is a legitimate use of their powers, because goods and more particularly services are provided to customers, they are keen to make the issue more explicit in the legislation.
- 2.7 **Proposal 2a:** To alter the definition of “street trading” so that express reference is made to provision and consumption of refreshments on the street.
- 2.8 **Issue: Definition of Temporary Licence:** The term “**temporary licence**” means a licence granted under the Act for one or more days not exceeding six months. It is important to note that a temporary licence is a completely different type of licence from a street trading licence. Therefore many of the provisions of the Act do not apply

to temporary licences. The City Council authorises the placing of tables and chairs on the highway by restaurants, cafes and pubs by issuing temporary licences.

- 2.9 With the ever increasing number of tables and chairs on the highway, the six-monthly renewals cycle places an administrative burden on the council and on licence holders that might be seen as unnecessary. On the other hand, it provides a useful check to ensure that any breach of licence conditions and complaints from neighbours (for example about noise) can be dealt with relatively speedily if the council took the view that no further licence should be issued.
- 2.10 **Proposal 2b:** The City Council would welcome comments on whether the maximum duration of a temporary licence should be extended.
- 2.11 **Issue:** The term “licence street” is something of a misnomer because in Westminster there are no instances of a whole street having been designated as a licence street, or indeed any significant part of a street. The City Council generally only designates individual pitch areas as “licence streets” under the 1999 Act, even in the case of street markets.
- 2.12 **Proposal 2b:** The proposal is to leave the actual wording of the definition of “licence street” as it is, but alter the term “licence street” to “licence area”.
- 2.13 **Issue;** The definition of street includes footways, but to remove any doubt that that term includes footbridges, such as the Golden Jubilee Bridges, it is proposed that the definition be altered so as to include a specific reference to footbridges.

3. **Section 3 (Exemptions)**

3.1 Section 3 sets out a list of five types of exemption from the street trading regime. The exemptions are for –

3.1.1 trading only as a news vendor (subject to requirements about interference with and inconvenience to highway users, safety, and about the size of any receptacles used);

3.1.2 selling articles to occupiers of premises adjoining any street, or the regular delivery of perishable goods;

3.1.3 trading on private land adjacent to a shop (provided that the trading forms part of the business of the shop owner or business rate payer of the shop, and is carried on during when the shop is open);

3.1.4 activities authorised by charities legislation;

3.1.5 trading by a person acting as a pedlar under the authority of a pedlar's certificate if the trading is carried out only by means of visits from house to house.

3.2 **Issue: News Vendors:** The sale of newspapers from booths continues, along with the rising number of free newspaper distributors (which are not regulated by the 1999 Act). A clause was included in the Bill which eventually became the London Local Authorities Act 2007 that would have removed the exemption for newspaper vendors trading within a certain distance of London Underground and Network Rail Stations. The clause was dropped from the Bill during its progress through Parliament.

3.3 The council has some concerns about the number of receptacles stationed at certain locations in the city, including near London Underground stations. The council can take action if there is undue interference or inconvenience or a safety hazard caused to people using the street, but it is not clear under the Bill what the council should do in cases where there is more than one news vendor in the same location, and it is the cumulative impact of the vendors that is causing the problem.

3.4 The council are unable to control the activity on other grounds, such as amenity. The existing exemption is not applicable for trading where the news stand is higher than 2 metres, or exceeds 0.25 sq meters in ground area. But some doubt has arisen over whether the council has control over items such as umbrellas, which appear to

have proliferated recently, and there is also another issue whereby the news stands are being used to display advertisements for products unrelated to the newspaper.

- 3.5 **Proposal 3a:** The legislation should specify what the council could do in cases where there is a “cumulative” problem with news vendors. In such cases, if the vendors are all selling the same publication, then the council should be able to require the publication’s owners to remove one or more of the news stands
- 3.6 **Proposal 3b:** Views are welcomed on a possibility of introducing further restrictions on the exemption for news vendors, and in particular whether there should be restrictions on the numbers of vendors selling the same newspaper within a certain area, and whether there should be further restrictions on the size of news stands and the use of umbrellas and other devices.
- 3.7 **Proposal 3c:** Views are also sought on whether the exemption should be retained at all, and whether newspaper vendors should be licensed like other traders.
- 3.8 **Proposal 3d:** Views are requested on whether the exemption should apply when activities other than the sale of newspapers are being carried on at the news stand, including advertising.
- 3.9 **Proposal 3e:** An alternative would be to introduce a less formal permit procedure for newspaper vendors, with limited grounds for refusing the permits, but including powers to limit the size, design and type of news stands.
- 3.10 **Issue: Markets:** The 1999 Act had the effect of removing a previously existing exemption for activities carried out in a charter market or a market authorised by statute. There were and still are no such markets in the City. However, in deliberating how better to establish and manage markets in the City in the future, the council does not wish to be precluded from using statutory procedures, such as those under the Food Act 1984. Although the council could establish such a market, individual traders in it would be required to obtain street trading licences as well, because of the absence of the exemption.
- 3.11 **Proposal 3f:** to reintroduce the pre-existing exemption for activities carried on in a market established under a statutory provision. The council has no plans to reintroduce the exemption for charter markets.
- 3.12 **Issue: Charities:** There is an exemption under section 3(b) for trading carried out under the Police, Factories &c (Miscellaneous Provisions) Act 1916 or by permit or

order under Part III of the Charities Act 1992. The 1916 Act is subject to repeal by the Charities Act 1992 and to amendment by the Charities Act 2006. Part III of the Charities Act 1992 (which related to public charitable collections) has been repealed by the Charities Act 2006.

- 3.13 **Proposal 3g:** The amendments and repeals mentioned above will have to be taken into consideration in the drafting of the Bill (but the matter could be dealt with earlier by the Secretary of State, who can deal with the issue by regulations).

4. **Section 4 (Itinerant ice cream trading)**

4.1 This section makes provision for the exemption from the Act of itinerant ice cream trading in certain streets and the prohibition of it in others.

4.2 **Proposal:** No change.

5. **Section 5 (Designation of streets and specification of articles)**

5.1 This section enables the City Council to pass designating resolutions, that have the effect of designating streets or parts of streets as “licence streets”. They can also pass specifying resolutions, that have the effect of specifying what articles and services can be provided in particular licence streets. Proposal 2b, which suggests renaming “licence streets” as “licence areas” is relevant to this subject.

5.2 Whether or not a street or part of a street is a “licence street” is important because –

5.2.1 if it is, then a licence is required for itinerant ice cream trading (section 4(1)(a)); and

5.2.2 the council is unable to grant a street trading licence on any street that is not a licence street (section 12(1)(f)).

5.3 **Issue: Designating individual pitches as licence streets** Although the City Council has hitherto not encountered any difficulties with this particular aspect under the City of Westminster Act 1999, nor did it under the Local Authorities Act 1990, there is High Court authority that suggests, that the street trading regime that applies outside London (the Local Government (Miscellaneous Provisions) Act 1982) should not be used to designate individual pitches as licence streets.

5.4 **Proposal 5a:** The first proposal is to amend section 5 so that is clear that the council can designate small areas, in particular areas that are the size of a street trading pitch, as licence streets.

5.5 **Issue: Movement, alteration and rescission of existing pitches:** The council is of the view that it requires more flexibility in the way in which it can move, alter and rescind street trading pitches. Whilst the council recognises the importance to street traders in staying in the same location, it must be remembered that the ability to trade on the public highway should not be regarded as a right in perpetuity, but a privilege, and there may at any time be competing interests, quite often important public interests, relating to free passage over the highway, safety, amenity of the area and others which must take precedence.

5.6 **Proposal 5b:** Section 6(8) and (9) provide a simplified process whereby a street trading pitch can be moved temporarily in cases where the pitch has become temporarily unsuitable. The council takes the view that such an approach would be suitable in relation to permanent relocations of pitches. Section 6 could set out the

specific circumstances when the simplified approach should be able to be used – for example where there is a danger or interference with users of the highway, where there are amenity reasons, where there is a proposed redevelopment in the area or where the council carries out a review of street trading generally and wishes to relocate traders as a result. If there is no appropriate alternative location in the vicinity, then the street trading licence may need to be revoked. In such instances, the legislation would be likely to provide for the payment of compensation and/or a right of appeal. Except in cases of emergency, the legislation could allow the trader to continue trading pending the outcome of the appeal.

- 5.7 **Proposal 5c:** An alternative would be to allow for an entirely new approach to be taken in relation to the designation of areas in which street trading can be carried out. One of the difficulties with the current system is the lack of flexibility that is encountered by the city council when designating individual street trading pitches as “licence streets” and in altering and rescinding them.
- 5.8 **Proposal 5d:** A further alternative would be to adopt a licence review procedure, akin to the procedures for the review of premises licences under the Licensing Act 2003. Consideration will need to be given as to whom, if anyone, other than the council should be entitled to trigger a review.
- 5.9 **Proposal 5e:** The council would also like to take forward the concept of time limiting a designation of a licence street, enabling them to review the position on a periodic basis without the need to rescind the designation.

6. **Section 6 (Designating Resolution)**

- 6.1 This section sets out the procedures for passing a designating resolution, and in particular requires the City Council to consult the police, the highway authority, representative bodies of street traders, individual licensed street traders likely to be affected and landowners who own the land in question.
- 6.2 **Proposal:** See the remarks in **proposal 5b**, in relation to procedure and **proposal 19c** in relation to appeals.
- 6.3 **Issue:** When relocating a licence holder temporarily under section 6(6) and (7) because a pitch becomes unsuitable, the council must consult the police, highway authority and licence holder first. This requirement should not be allowed to prevent removal of a pitch at short notice in cases of urgency and where the reason for the removal is public safety.
- 6.4 **Proposal 6a:** The council is minded to alter the requirement to consult the police, highway authority and licence holder in cases of urgency and in cases where the police or highway or authority have asked that the pitch be removed for public safety reasons. The parties would still be consulted about the location of any alternative site for the pitch in the case of a long term relocation, but this should not hold up the actual removal of the stall.
- 6.5 **Issue:** When relocating a licence holder temporarily under section 6(6) and (7), there is no obligation to consult the local planning authority.
- 6.6 **Proposal 6b:** The local planning authority should be added to the list of consultees under section 6(6).

7. **Section 7 (Specifying Resolution)**

7.1 This section sets out the procedures for passing a specifying resolution, and in particular requires the City Council to consult representative bodies of street traders, and individual licensed street traders likely to be affected.

7.2 **Proposal:** No change, but see **proposal 19c** in relation to appeals.

8. **Section 8 (Licensing of Street Traders)**

8.1 This section provides that it is unlawful for any person to engage in street trading (whether or not in or from a stationary position) within the city unless authorised to do so by a street trading licence or a temporary licence.

8.2 **Proposal 8a:** This section sits uncomfortably in this part of the Act. It sets out a prohibition, but the offence of failing to comply with it does not follow until much later in the Act (section 27). In fact there is reason to question whether the section is necessary at all. The proposal is to remove this section and make any alterations necessary as a consequence in section 27.

9. **Section 9 (Street Trading Licences)**

9.1 This section enables the city council to grant street trading licences (not temporary licences, which are dealt with separately) on such reasonable terms and conditions relevant to street trading as the council may specify. It sets out a number of particular types of condition that may be imposed.

9.2 **Issue: the pitch is a condition of the licence:** One of the specific conditions (in subsection (2)(a)) that may be imposed is a condition “identifying the pitch at which the licence holder may engage in street trading under the licence”. Given that it is a condition of the licence, it is open to the licensee to apply to vary the condition. As will be seen later in this paper, the Act requires the council to refuse certain applications for variations of the conditions of a licence under certain circumstances, and allows them to refuse other applications under others, and in all other cases, it has no power to refuse the application. There is an argument to say that under certain circumstances there are no grounds on which the council could refuse to vary a condition that sets out the geographical extent of a street trading licence. An example is where the variation application would, if granted, allow for the pitch to be extended into or moved entirely to another licence street. This loss of control was not what was intended when the council promoted the Act and needs to be rectified.

9.3 **Proposal 9a:** The alternative proposals are separately (or where appropriate in combination) to:

9.3.1 delete section 9(2)(a) so that the location of the pitch itself is not a condition of the licence, and instead set out in terms in subsection (1) that the licence shall identify the pitch. This would tie in more suitably with the offence of unlicensed street trading currently set out in section 27(2) of the 1999 Act;

9.3.2 alter section 9(2)(a) so that instead of saying that the identity of a particular pitch is a condition of the licence, it should set out the dimensions of the area within which the trader is allowed to trade in the pitch;

9.3.3 9.3.1 or, if chosen, 9.3.2 would be combined with a new mandatory ground of refusal in cases where an application is made to vary the pitch so that it relocated to or extended into another existing designated pitch. This would need to be made subject to the council having a discretion to allow minor alterations to an existing pitch;

- 9.3.4 remove the concept of the pitch entirely from the bill as it might cause more confusion than it was intended to prevent.
- 9.4 **Issue: licences are open ended:** Subsection 9(4) introduced the concept of the open ended licence, not requiring any renewal.
- 9.5 **Proposal 9b:** The city council would be interested to hear views from consultees about whether this has been seen as improvement over the pre-existing triennial renewal arrangements. The council is considering a review procedure, similar to that for premises under the Licensing Act 2003. This would enable the council or other parties to trigger a review of the licence under certain circumstances, possibly as an alternative to revocation. The council would wish to consider the grounds on which a licence could be reviewed, and include reasons of safety and amenity as well as the conduct of the licence holder. The council will also take into consideration representations about whether the pre-existing regime of renewing licences should be reintroduced, with licences having a fixed duration of 3 or more years. See also the comments in relation to **proposal 5d** (review of designation) and **proposal 12d** (persons other than individuals holding licences).

10. **Section 10 (Standard conditions)**

- 10.1 This section enables the city council to prescribe standard conditions which are to apply to all street trading licences. It sets out a procedure which the council must follow when prescribing such conditions, including giving written notice to all licence holders who the council would reasonably expect to be affected, and to representative bodies of those licence holders.
- 10.2 **Issue: standard conditions must apply to all:** Technically, section 10 does not allow the council to prescribe standard conditions for certain classes of licence. They can only do so for every licence holder. There are obvious cases where it would be appropriate to impose conditions on a smaller group of licence holders, such as where there is a market, or where there are a number of licence holders on the same street, and the street has its own special circumstances. There may also be a case for imposing standard conditions on those who trade in certain specific articles.
- 10.3 **Proposal 10a:** to amend section 10(1) to enable standard conditions to be imposed in respect of classes of street trading licences.

11. **Section 11 (Applications)**

- 11.1 This section sets out the procedure for making applications for the grant or variation of a street trading licence (not temporary licences).
- 11.2 **Issue: inability to check all criminal convictions:** The city council is able to conduct a search of criminal convictions secured after prosecution by the council, but there is no power to require an applicant for a licence to disclose convictions secured by other street trading authorities or by the police. The council can ask other authorities for records but cannot claim the cost in doing so.
- 11.3 **Proposal:** To enable the cost of obtaining prosecution records from other authorities to be recoverable in the licence application fee. This may not require a change in the legislation.

12. **Section 12 (Mandatory grounds of refusal)**

- 12.1 This section sets out a number of grounds on which the council is obliged to refuse an application for the grant or variation of a street trading licence (not a temporary licence).
- 12.2 **Issue: No mandatory ground to refuse an application when an application for the same pitch has been granted to someone else:** When a street trading pitch becomes available, and it is in a good location, there will often be competition for it from a number of applicants on the city council's waiting list. The council can only grant one of the applications, and at present it has to use section 12(d) as the ground for refusing the others. Whilst the ground technically covers the issue, it is not suitably drafted. Also, there may be cases where the council might wish to allow two or more traders to trade from the same pitch but at different times of the day. That is not objectionable in principle, but the council is technically unable to refuse an application which would result in the trading times overlapping.
- 12.3 **Proposal 12a:** A new mandatory ground should be added, enabling the council to refuse an application for a licence in the case where a licence for the pitch has been granted to another applicant or where trading times would overlap, if granted.
- 12.4 **Issue: Refusal where the trader holds a licence outside London:** Section 12(1)(c) enables the council to refuse an application from a person who holds a street trading licence under the London Local Authorities Act 1990 that enables him to trade elsewhere in London at the same time as requested in the application. It makes no reference to the street trading regime that operates in the City of London, or to the regime that operates outside London.
- 12.5 **Proposal 12b:** Section 12(1)(c) should be amended to make reference to Part III of the City of London (Various Powers) Act 1987 and to Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982.
- 12.6 **Issue: Only individuals may hold street trading licences:** An issue that has been raised in the petition of the National Market Traders Federation in their petition against the London Local Authorities Bill is that of whether companies, partnerships and other bodies should be allowed to hold street trading licences. Under section 12(1)(a) the council must refuse to grant an application for a new licence if not made by an individual. The council has no plans to alter the position, but is prepared to listen to arguments to the contrary. The council recognises the importance not only

of having a single accountable individual as licence holder, but the diversity that individuals can provide, and which could potentially be lost were companies able to take up street trading licences. The implications for the whole street trading regime would be wide ranging, were companies allowed to hold licences. The subjects of succession, renewal and other matters would need careful consideration.

12.7 **Proposal 12d:** The council would be interested to hear consultees' views on the issue of whether companies and other bodies should be able to hold street trading licences.

12.8 **Issue: Drafting point** There is an error in section 12(1)(e), where the word "licence" should be replaced by the word "application".

13. **Section 13 (Discretionary grounds of refusal)**

13.1 This section sets out a number of grounds on which the council may refuse an application for the grant or variation of a street trading licence (not a temporary licence).

13.2 **Issue:** As indicated above in relation to section 12, a problem has arisen whereby the city council has found that it has no powers to refuse some applications, particularly applications for variations, in cases where it clearly should have that ability. One of the most striking examples is the inability to refuse a variation of the commodities, even if the variation would conflict with the council's own commodities guidelines. Another example includes the inability to refuse applications for a variation of a receptacle type or an application which would in some other way conflict with a standard condition. It is long established that the term "receptacle" includes street trading stalls, barrows and other objects used for displaying articles. The council has little control over the visual impact of the stalls, yet many of them are located in conservation areas and near listed buildings. There are cases where the council would wish to prescribe the type of stall that must be used at a particular location. This is currently achieved by imposing a standard condition which requires all receptacles to be approved by the council. The problem is that an application can be made to vary the conditions of the licence to allow for a different type of receptacle, and there are technically no specific grounds under which the council could refuse the application on grounds, for example, of amenity.

13.3 **Note:** Proposals 13a and 13b are to be regarded as alternatives.

13.4 **Proposal 13a:** A new general unfettered power to refuse an application for a grant or a variation of a licence on such grounds as the city council thinks fit, subject always to appeal. This could be left as a free standing power, or could be tied in with a licensing policy or with guidelines (i.e. the council could only refuse an application if it was in conflict with its policy or guidelines). Alternatively, it could be accompanied by an illustrative list of the type of grounds that might be utilised, expressed as being without prejudice to the general power to refuse.

13.5 **Proposal 13b:** Do away with some or all of the existing list of grounds for refusal under section 13 and give the council a power to refuse an application on one of a smaller number of general grounds, for example –

13.5.1 safety and convenience of users of the highway

13.5.2 amenity of the area

13.5.3 diversity of goods and services offered

13.5.4 competition with retailers and other street traders

13.5.5 the prevention of public nuisance

13.6 **Proposal 13c:** Because of the number of issues and potential issues that have been or could be raised in relation to the limited scope of the council's powers to refuse applications to vary licences, it might be preferable to list the grounds for refusal of a variation application separately from the grounds for refusal of an application for a new licence.

13.7 **Note:** The following issues arise if proposal 13a or 13b were not to be adopted.

13.8 **Issue: amenity of the area:** The city council is concerned to ensure that this important issue is at the heart of its licensing decisions, as well as safety and convenience of users of the highway. The city council's concerns stem from the fact that they have limited control over the appearance of street trading stalls.

13.9 **Proposal 13d:** A new discretionary ground for refusal of a new licence or variation where the application if granted would have an adverse effect on the amenity of the area, including impact on conservation areas or the setting of listed buildings.

13.10 **Issue: alterations of trading hours:** The hours during which trading may take place is an important issue, particularly as regards noise and other effects on neighbouring properties. The only ground on which the council can refuse an application that would vary the hours of a licence is if undue disturbance is likely to be caused as a result of the proposed activities of the licensee (section 13(1)(e) of the 1999 Act).

13.11 **Proposal 13e:** The proposal is to extend the ground for refusal of applications in relation to the hours of operation, so that matters other than nuisance can be taken into account, for example taking account of variable pedestrian flows and public safety.

13.12 **Issue: Inability to refuse applications for variations of commodities and receptacles** This issue is described in paragraph 13.2.

13.13 **Proposal 13f:** As an alternative to the proposal in paragraph 13.4, a new discretionary ground could be included enabling the council to refuse to grant a

variation to any condition of a licence which would have the effect of altering the commodities sold or the type or design of a receptacle.

- 13.14 **Issue: Granting variation applications in part:** Technically the council is unable to grant an application for a variation in part unless the circumstances in section 13(2) apply (namely where they can allow trading for a shorter period, trading on a different pitch or trading in other goods than as specified in the application).
- 13.15 **Proposal 13g:** to give a wider discretion to enable the council to refuse applications for variation in part.

14. **Section 14 (Cancellation of Licences)**

- 14.1 This section enables the holder of a street trading licence to surrender his licence at any time and apply for it to be cancelled.
- 14.2 **Issue:** Technically, the licence has to be surrendered in order for a request for cancellation to have been properly made.
- 14.3 **Proposal 14a:** The requirement for the surrender of the licence should be removed.

15. **Section 15 (Revocation of Licences)**

- 15.1 This section enables the city council to revoke a street trading licence or a temporary licence if they are satisfied that any of a number of specified conditions is met. For example, one ground of revocation is that there is not enough space for the trader to trade, owing to circumstances that have arisen since the licence was first granted. Section 15 also enables the council to vary the licence by imposing conditions as an alternative to revocation.
- 15.2 **Background:** There is very little flexibility in the 1999 Act for the council to alter the position of street trading pitches. There are four methods by which they can do so in the absence of the agreement of the licence holder.
- 15.3 The first method is by revoking the licence and either varying the conditions (so that trading can be carried out from a different pitch) or granting a new licence to trade elsewhere. By virtue of section 15(1)(a), in order for the council to be able to revoke the licence, circumstances must have arisen since the grant of the licence which give rise to there not being enough space in the street to enable the trading to continue without causing a safety hazard or undue interference or inconvenience to persons or vehicular traffic using the street. There are no other grounds for revocation that would be relevant, as they are all related to the conduct of the licence holder, rather than the impact of the stall on the area.
- 15.4 The second method is to pass a resolution to rescind the designation of the pitch in question as a licence street under section 6. It is arguable that this power should only be used in cases where a pitch is to be extinguished without a replacement.
- 15.5 The third method is to vary the designation of the pitch.
- 15.6 The fourth method is to vary the licence under section 16 (variation of licences).
- 15.7 **Issue: automatic revocation on rescission of street trading pitch:** Where the council resolves to rescind a designation of a licence street (which as mentioned earlier is more than likely to comprise the area of a single pitch) it does not automatically follow that any street licence in force in relation to that pitch is revoked automatically. This makes little sense in cases where the area in which the licence has effect is not varied so as to allow trading elsewhere, because the licence will be of no effect.

- 15.8 **Proposal 15a:** There should be either an automatic revocation, or if not, a right to revoke with no right of appeal in cases where the designation of the licence street is rescinded, and the licence is not varied so as to allow trading in a different location. There would be a separate right to appeal against the decision to rescind the designation and there may be a right to claim compensation, particularly if no alternative site is offered.
- 15.9 **Issue: revocation on grounds of amenity** The city council is continually looking for ways to improve the cityscape, and inevitably the character of areas changes over time. Just as the council have considerable flexibility in altering the appearance of streets in their area, they do not have the same flexibility when it comes to street trading. There is difficulty controlling the appearance of stalls, yet they are semi-permanent and significant structures often erected daily, which arguably have as much impact on the cityscape (not necessarily negative) as other less significant structures which do require planning permission, or at least some planning control.
- 15.10 **Proposal 15b:** The council seeks views on a proposal to enable the council to refuse to grant, to refuse to vary and most significantly to revoke a street trading licence on grounds of amenity and in particular visual impact on an area. If such a provision were to be included, the legislation could provide that the council should be under an obligation to offer an alternative site (including a pre-existing designated site) or to pay compensation if an alternative site is not offered.
- 15.11 **Issue: Revocation in all cases where there is a safety hazard or there is undue inconvenience or interference to persons or vehicular traffic using the street**
As mentioned above in paragraph 15.3, the council may only revoke a licence under section 15(1)(a) if circumstances have arisen since the grant of the licence. There may be cases where it is either difficult to prove when the circumstances have arisen, or where the licence should not have been granted in the first place, because there was insufficient room in the street. The council also has to bear in mind its responsibilities under the Disability Discrimination Act 2006, and must be able to alter the position of stalls in cases where those responsibilities are not met because of that.
- 15.12 **Proposal 15c:** Section 15(1)(a) should be amended to enable the council to revoke a licence in any case where there is a safety hazard or there is undue inconvenience or interference to persons or vehicular traffic using the street.

- 15.13 **Issue: Ability to vary licence, instead of revoke:** Under section 17(2) the council can vary a licence instead of revoking it if certain of the grounds for revocation apply. There is no such “middle ground” for cases where the other grounds for revocation apply, namely where there has been misconduct, a failure to pay fees or charges, persistent failure to store receptacles or comply with licence conditions, or where there has been a failure to provide photographs. In these situations the council is left with no choice but to revoke, which may be seen as too harsh, or to warn, which may be seen as too lenient.
- 15.14 **Proposal 15d:** That the council should be able to take alternative action in the cases mentioned above. This could include –
- 15.14.1 varying the conditions of the licence under section 17(2);
 - 15.14.2 suspending the licence.
- 15.15 **Issue:** A licence holder is able to hold two or more separate licences in the City so long as he trades from them at different times of the day. If the council has grounds to revoke one of the licences, it cannot revoke the other one, which seems wrong if the grounds are for misconduct.
- 15.16 **Proposal 15f:** For the avoidance of doubt, provisions should expressly state that the council should be able to revoke all the licences of a trader where in relation to one of his licences there are grounds to revoke based on misconduct.

16. **Section 16 (Variation of Licences)**

- 16.1 This section enables the council to vary a street trading licence either on the application of the licence holder or by their own decision. Where the council varies a licence without an application having been made, the licence holder has a right of appeal.
- 16.2 **Issue: Variations can only be made by the council on one day each year:** The licence holder can apply for variation of the licence at any time during the year, but the council may only vary the licence by their own decision on 1st January in any year.
- 16.3 **Proposal 16a:** The council sees no reason for this restriction and proposes that it should be lifted.
- 16.4 **Issue: Inability to impose conditions on the licence when an application for variation is made:** There are cases where an application is made for a variation of a licence, and it would be appropriate for the city council to impose new conditions if the application were granted. The Act is not clear on this issue.
- 16.5 **Proposal 16b:** The council should have a specific power to impose conditions on the licence when a variation application is made. Such conditions may not just be for the purpose of implementing directly the application, but could cover other related matters. The imposition of any such conditions would have to be subject to appeal.
- 16.6 **Issue: Variation applications can be made at any time:** A licence holder can make an application for a variation of his or her licence at any time and with no limit on the frequency. This means that a variation application could be made immediately after the council has altered standard or other conditions.
- 16.7 **Proposal 16c:** There should be a period after the making of an alteration of a condition by the council during which the licence holder should not be able to make an application for variation which would have the effect of reversing the change made by the council.
- 16.8 **Issue: No ability to vary licence itself, only conditions of licence:** This may arise as an issue if the proposal in paragraph 9.3.1 is followed, namely that the licence should identify the pitch, rather than it being a condition of the licence.
- 16.9 **Proposal 16d:** The council should be able to vary the licence in the case mentioned above.

17. **Section 17 (Further provisions relating to refusal, revocation or variation of street trading licences)**
- 17.1 This section ensures that an opportunity to appear before members or officers of the council is given in cases where the council proposes to refuse an application for a grant of a street trading licence, to revoke a street trading licence or to vary a street trading licence themselves and it ensures that any such decision is given in writing, with reasons, explaining any rights of appeal.
- 17.2 **Issue: Inability to revoke immediately on grounds of violent or abusive conduct:** The council can revoke a licence on the grounds of misconduct (section 15(1)(e)). This could include violent behaviour or abusive language, but the revocation cannot take effect until the expiry of 21 days' notice. Under those circumstances it is suggested that for the protection of the public, the revocation should take effect immediately and that the licence holder should not be able to continue trading pending an appeal.
- 17.3 **Proposal 17a:** Under the circumstances mentioned in paragraph 17.2, the council should be able either –
- 17.3.1 to revoke the licence with immediate effect. If an appeal were made and was successful, the council should have to compensate the trader if the council is found to have acted unreasonably; or
- 17.3.2 to suspend the licence immediately (by decision of an authorised officer) for a limited period, the suggestion being 3 months, which accords with similar provisions under the Licensing Act 2003. The council would have to review the suspension within a short space of time thereafter and decide whether to uphold the suspension or not, or to revoke it..
- 17.4 **Issue: Drafting point** A minor alteration to section 17(1)(a) is required, to ensure that it applies to refusals to grant applications for variations of street trading licences.

17A. **Section 17A (Lapsing of licence in certain cases)**

17A.1 This section was introduced by the London Local Authorities Act 2007. It provides that a street trading licence shall lapse in cases where it is authorised to take place on private land and the owner of the land no longer gives his consent for the trading to take place on it.

17A.2 **Proposal:** No change.

18. **Section 18 (Appeals against refusal, revocation or variation of licences)**

- 18.1 This section enables appeals to be made against decisions by the council to refuse applications for the grant or variation of a street trading licence, to grant a licence on terms other than those sought, to vary a street trading licence, to attach a new condition to a licence or to impose a prohibition on itinerant ice cream trading. Appeals are made to the magistrates' court and there is a further right of appeal to the Crown Court.
- 18.2 **Issue: Crown Court appeal:** The further right of appeal (which can be exercised by either party) to the Crown Court is now a much less common process generally, and may be seen as being an unnecessary additional tier. The general move in terms of licensing legislation has been away from the concept of the Crown Court appeal, and the most obvious example is the Licensing Act 2003, which contains no such appeal provision.
- 18.3 **Proposal 18a:** That the right of appeal to the Crown Court be removed. The council has no strong views either way.

19. **Section 19 (Appeals to Secretary of State)**

19.1 This section enables appeals to be made to the Secretary of State in respect of the variation or rescinding of a designating resolution, the passing or variation of a specifying resolution, the imposition of a standard condition or the amount of a fee or charge imposed under section 22.

19.2 **Issue: Secretary of State as appellate body:** A recent appeal under this section in relation to the amount of fees and charges has highlighted the need for change. The responsible department (DBERR) is understandably not geared up with the expertise or resources to be able to deal with these appeals, which are infrequent. During the passage of the current London Local Authorities Bill, DBERR asked that the promoters consider an alteration to the London wide street trading legislation, removing or altering all rights of appeal to the Secretary of State.

19.3 **Note:** The following are alternative proposals -

19.4 **Proposal 19a:** The first alternative is that some or all of the rights of appeal under section 19 are removed entirely. Careful consideration would need to be given to such a proposal in the terms of the Human Rights Act, but the council are attracted by the idea that some of the appeal rights could be left to judicial review, for example the setting of the level of the fees and charges and the setting of standard conditions. It is noteworthy that there is no right of appeal against the level of fees and charges that may be set for street trading licences in the equivalent legislation outside London.

19.5 **Proposal 19b:** The other alternative is that the rights of appeal under this section be preserved, but that the appellate body is altered or that the matter could be dealt with by arbitration. Comments are welcome on who the appellate body or the body that appoints the arbitrator might be.

19.6 **Issue: right to continue trading pending appeal:** This issue was raised in the petition of the National Market Traders Federation against the current London Local Authorities Bill. The Federation said that the existing legislation should be altered so as to enable a licensed trader –

19.6.1 to continue to trade pending any appeal against a decision to rescind or vary a designating resolution,

19.6.2 to be subject to the old fees and charges in the case where an appeal is made against an alteration in the fees and charges,

19.6.3 to continue to trade under the old conditions when a new standard condition is imposed.

19.7 **Proposal 19c:** The city council is not minded at present to make the alterations suggested. But they will no doubt form the subject of discussions with the Federation.

20. **Section 20 (Succession)**

- 20.1 This section sets out a procedure under which a street trading licence must, if certain conditions apply, be granted to a nominated relative or employee of the street trading licence holder in the event of his or her death, retirement or ill health. There are no similar provisions to this in legislation outside London.
- 20.2 **Issue: Is the right to succession appropriate?** This provision is understandably considered by holders of street trading licences as sacrosanct. It enables family street trading businesses to continue, in the same way that a family shop can. Nonetheless, the provision is not immune from consideration, and it may be seen as being anachronistic, unfair and possibly in conflict with the general law. The fact that street trading is largely carried out on the public highway under a statutory system of licensing means that general public law principles of equality and fairness must be taken into consideration. The council must be aware in particular of racial and gender equality. The keeping of street trading licences in the same family, with a right for the holder to appoint the individual who will succeed, without any consideration being given to these public law principles, must raise questions about these issues.
- 20.3 **Proposal 20a:** Comments are welcome on the issues raised in paragraph 20.2. Whilst the council recognises the sensitivity of the subject, it does not rule out a discussion on whether succession rights should continue, and they will be giving serious consideration as to whether such rights should be applied to new licences granted after the proposed Bill is enacted.
- 20.4 **Issue: Inability to refuse grant to nominee if he or she has a bad record of compliance:** The council does not have to grant the application made by the nominated family member or employee and can refuse it on a number of grounds. But the council is not entitled to refuse on the basis that the applicant has a bad record of complying with licence conditions.
- 20.5 **Proposal 20b:** If the right to nominate is retained, a new ground for refusal should be introduced, if the original licence holder or nominee has persistently failed to comply with street trading licence conditions.
- 20.6 **Issue: Inability to refuse grant if existing holder is in arrears:** Similarly, the council is not entitled to refuse an application if the existing licence holder has not paid any arrears of licence fees and charges.

- 20.7 **Proposal 20c:** If the right to nominate is retained, a new ground for refusal should be introduced, if the nominee has not paid any arrears owing to the council.
- 20.8 **Issue: Other drafting points:** If the succession rights are maintained, consideration needs to be given to amendments, bringing it more into line with more recent general legislation. For example, the reference to the age of retirement in subsection (1)(a)(ii) needs to be reconsidered, as does the long list of family members in subsection (2) who may qualify for nomination as successor. There is no need to mention adopted relatives specifically, and there should be a reference to civil partners.
- 20.9 **Proposal 20d:** The council proposes to amend this clause to meet the points raised under paragraph 20.8.
- 20.10 **Issue: Succession by employees:** Although employees are only able to succeed to a licence if they can show that they have been an employee for 5 years, there will be some who will no doubt question whether it is appropriate for an employee to succeed.
- 20.11 **Proposal 20e:** If the succession rights are maintained, the question arises as to whether they should apply to employees.
- 20.12 **Issue: Treatment of applications made by nominees:** Section 20(1)(c) provides that the council must grant a licence to a nominee unless the grounds set out in subsections (1)(a) to (c) of section 12 (mandatory grounds of refusal) or (1)(b) to (f) of section 13 (discretionary grounds of refusal) apply. There are two other grounds which are relevant and which should be taken into consideration by the council, namely the grounds in section 13(1)(g) and (h) relating to the failure of the licence holder to provide or identify a place for the storage of receptacles and to remove receptacles. This would be pertinent in particular where the nominee is an employee of the original licence holder.
- 20.13 **Proposal 20f:** If the succession rights are maintained, an additional ground for refusal of an application by a nominee should be added akin to section 13(1)(h).

21. **Section 21 (Temporary licences)**

21.1 This section enables the council to grant temporary licences to allow street trading to take place for periods up to 6 months.

21.2 **Proposal:** Comments are welcome on **proposal 2a** mentioned under section 2 (interpretation) to increase the maximum period of temporary licences either generally or just in the case of restaurants and other premises where food is served at tables and chairs on the street. The council has in mind a range of 12 to 36 months.

22. **Section 22 (Fees and charges)**

- 22.1 This section enables the council to set fees for applications for street trading licences and temporary licences, and for variations to them. There is no renewal fee, except in relation to temporary licences, where an annual fee may be charged for registration or renewal of registration as an approved temporary trader.
- 22.2 The section also enables the council to recover charges from licence holders, sufficient in the aggregate, taking one year with another, to cover the reasonable costs of carrying out a range of activities including street cleansing, refuse collection and removal, and administration and enforcement costs (which includes action taken against unlicensed street traders).
- 22.3 Provision is also made to enable the council to charge for additional services requested by traders in a market or other discrete area.
- 22.4 Charges may not be set or varied by the council unless the notification and representations procedure set out in the section is followed.
- 22.5 **Issue: Streamlining of procedure for setting fees and charges:** As mentioned in the comments relating to section 19 (appeals to the Secretary of State) there has been a recent appeal to the Secretary of State concerning the setting of fees and charges under the Act, and there has also been a judicial review. The city council is of the view that the fee setting provisions of section 22 should be streamlined. Whilst the licence holders should be consulted on the setting of the levels of fees and charges, it is not thought to be appropriate for there to be an appeal to the Secretary of State or any other body about the issue. The levels of fees and charges can be challenged by way of judicial review. It is normal in all legislation for fee levels to be set by the charging body without the complicated mechanism set out in section 22 or for there to be a right of appeal.
- 22.6 **Proposal 22a:** Section 22 should be simplified and subsections (11) and (12) which enable representative bodies to demand information and explanations about the levels of fees and charges) should be deleted. The basis on which fees and charges are calculated should remain unchanged. As mentioned under section 19, the right of appeal to the Secretary of State should be abolished.
- 22.7 **Issue: Charging for altering a designating or specifying resolution:** Occasionally the council is asked by traders to alter a designating or specifying resolution. The council is unable to charge a fee for doing so.

- 22.8 **Proposal 22b:** The council should be able to charge a fee for altering a designating or specifying resolution at the request of a trader.
- 22.9 **Issue: Whether all enforcement costs should be borne by licence holders in their fees in charges:** As mentioned in paragraph 22.2, the fees and charges take account of the council's unrecovered enforcement costs, which may include the costs of investigations, prosecutions and seizures. The rationale for this is that it is obviously beneficial to the licensed traders that the 1999 Act is enforced and enforced properly, so that they don't suffer from competition from unlicensed traders. Nonetheless, street trading organisations have expressed their concerns about the level of enforcement costs and whether they should be responsible for all of them.
- 22.10 **Proposal 22c:** The council will consider specific proposals for change from consultees. The council have no specific proposals for change themselves.
- 22.11 **Issue: Publication of information about the council's costs:** Street trading organisations have criticised the way in which the council publishes the details of the costs that it incurs and which are recoverable through fees and charges, and there has also been criticism of the level of detail provided. Although this may not be an issue suitable to be covered by legislation, again the council will consider the detailed concerns of consultees in this regard.

23. **Section 23 (Receptacles and containers)**

23.1 This section enables the council to provide receptacles to street trading and temporary licence holders and make and provide storage accommodation for receptacles and refuse containers.

23.2 **Proposal:** No specific proposals under this section. The issue of the standardisation of the type of receptacles to be used is dealt with under section 12.

24. **Section 24 (Offences)**

- 24.1 This section sets out some but not all of the offences that may be committed under the Act, namely contravention of licence conditions, making false statements in connection with applications, obstructing authorised officers and failing to produce the licence on request.
- 24.2 **Issue: Drafting change:** It would be sensible and in line with usual modern drafting practice to put all offences together in one section. This would mean moving the offences under section 27 into this section.

25. **Section 25 (Power to remove receptacles)**

25.1 This section enables the city council to remove receptacles (including stalls) to a place of storage on the cessation of trading on any day.

25.2 **Issue: Temporary removal of receptacles:** There may be other reasons why the council may wish a stall to be moved. Although it can be expected that licensed traders would always cooperate if their stall had to be moved in the case of an emergency, it would be useful to have the power to require such removal. Also, there may be major street events, such as the London marathon or the Notting Hill Carnival, where there may be reason to remove a stall temporarily. At the moment, the only way this could be done is under section 6(8), but the procedure for temporary removals under that subsection and subsection (9) is unwieldy and more suited for long term temporary removals. There is no power for the council to remove receptacles even if they are placed on the street in breach of the licence conditions.

25.3 **Proposal 25a:** To allow greater flexibility to enable receptacles to be moved on a short term basis, for example in cases of emergency, when they are placed in breach of the licence, during special events and cleansing and during highway inspections.

26. **Section 26 (Employment of Assistants)**

26.1 This section allows the holder of a street trading licence or a temporary licence to employ assistants in the conduct of trading authorised by the licence. The matter was raised in the petition of the National Market Traders Federation in their petition against the current London Local Authorities Bill.

26.2 **Proposal:** No change.

27. **Section 27 (Unlicensed street trading)**

27.1 **General Note:** As it stands, section 27 consists of 12 subsections and is a mixture of the primary offence of unlicensed street trading and enforcement tools such as seizure and forfeiture. Under the current London Local Authorities Bill, provisions are included that would have the effect of introducing new provisions about the seizure of receptacles to be used or which are being used for the unlicensed sale of refreshments. It would also break up section 27 into 7 separate sections, as follows –

27 Unlicensed street trading

27A Seizure

27B Seizure: notices

27C Return of seized items

27D Disposal of seized objects by council

27E Forfeiture of seized items by court

27F Compensation

27.2 Although these provisions have been reviewed very recently, it was in the context of dealing with an immediate problem relating to the seizure and storage of hot dog trolleys and similar articles.

27.3 **Issue: Drafting point:** to consider whether to combine what will be section 27 (unlicensed street trading) with section 24 (offences) so that all offences under the Act are in the same section.

27.4 **Issue: Inability to seize items that are sold in contravention of a licence condition:** The seizure provisions under the Act only apply in cases where there are grounds to suspect that there is an offence of trading without a licence, but not where a licensed trader is selling goods that he or she is not supposed to sell under the conditions of the licence.

27.5 **Proposal 27a:** Amend the section to enable council officers to seize items that are sold in contravention of the conditions of a street trading licence.

27A.0 Section 27A: Seizure of perishable items (to be renumbered 27G under current London Local Authorities Bill)

27A.1 This section was introduced by the London Local Authorities Act 2007. It allows the council to seize perishable items, subject to certain conditions. The provisions have only recently come into effect and there is no proposal for change.

27B.0 Section 27B: Seizure of perishable items (to be renumbered 27H under current London Local Authorities Bill)

27B.1 This section was introduced by the London Local Authorities Act 2007. It provides for a special procedure to be followed where the council has seized a motor vehicle under the seizure provisions of the Act. The provisions have only recently come into effect and there is no proposal for change.

27C.0 Section 27C: Seizure of perishable items (to be renumbered 27I under current London Local Authorities Bill)

27A.1 This section was introduced by the London Local Authorities Act 2007. It allows the council to apply for a disposal order from the magistrates' court in respect of articles seized under the Act. The provisions have only recently come into effect and there is no proposal for change.

28. **Section 28 (Savings)**

28.1 This section provides savings for London Regional Transport and their subsidiaries and for Railtrack PLC.

28.2 **Proposal 28a:** The opportunity could be taken to update the references to these two bodies so as to refer to Transport for London and Network Rail (Infrastructure) Limited.

29. **Section 29 (Provision as to notices)**

29.1 This section makes standard provision about the method of service of notices under the Act.

29.2 **Proposal:** No change.

30. **Section 30 (Proof of resolution)**

30.1 This section allows for a presumption to be made that the council properly passed any resolutions under the Act, in any proceedings which require proof of the passing of the resolution.

30.2 **Proposal:** No change.

31. **Section 31 (Exercise of powers)**

31.1 This section provides that the council's powers under the Act may be exercised by a committee, sub-committee or panel of officers.

31.2 **Proposal 31a:** This section will be reviewed in the light of the provisions of the Local Government Act 2000 relating to the carrying out of the functions of local authorities.

32. **Section 32 (Disapplication of Part III of London Local Authorities Act)**

32.1 This section ensured that when the 1999 Act came into force, the pre-existing legislation was disapplied.

32.2 **Proposal:** No change.

33. **Other Issues and Proposals**

- 33.1 **Issue: Complete replacement of the 1999 Act with a policy-centred regime:** As mentioned at the beginning of the document, the city council is considering a number of ways in which to implement changes to the street trading regime.
- 33.2 **Proposal 33a:** One of the more radical proposals would be to follow the basic principles of the Licensing Act 2003, and the regime that is in place for licensed premises, the sale of alcohol and provision of regulated entertainment. This could mean the production of a statutory street trading licence policy document akin to the council's licensing policy under the Licensing Act. This document would be subject to consultation, renewed regularly and could form the basis of all the council's decision making under the Act. The legislation could be framed in terms of a limited number of "licensing principles" such as good management of the highway, consumer protection, amenity and safety. This sort of idea is touched on in paragraph 13.4.
- 33.3 **Issue: The distinctive nature of the licensing of tables and chairs:** the licensing of tables and chairs throws up its own distinctive issues, and whilst the system of granting temporary licences works, it does have some drawbacks.
- 33.4 **Proposal 33b:** The council has no specific proposals, but it would welcome comments from stakeholders on the possibility of having a distinct regime for tables and chairs within the new Bill, and any suggestions on how it should be structured.
- 33.5 **Issue: Management, licensing and devolution of markets:** There are five street markets in Westminster, namely Church Street, Strutton Ground, Berwick Street, Rupert Street, and Tachbrook Street. In each case, the traders each have individual licences for specified pitches.
- 33.6 The council would like to have more flexibility in allocating market spaces to licence holders, particularly in Church Street. There are days when a significant number of the spaces in the market are not occupied by traders, leading to a disjointed and less attractive market atmosphere. The council would like to be able to manage the market better so that stallholders could be allocated different stalls on less busy days of the week or when special markets event (such as the popular French Market) are being held. This would require alterations to the Act, principally because the stall holder's pitch is a condition of the licence. That issue could be addressed by some of the other proposals earlier in this document (see paragraph 9.2 in particular).

33.7 **Proposal 33c:** The council wish to explore ways in which third parties could run the markets. There are a few alternative solutions –

33.7.1 the granting of one temporary licence on a regular basis for the whole market area. The licensee organises the market, with traders being allocated their places by the licensee;

33.7.2 pressing the Secretary of State to make an order under section 70 of the Deregulation and Contracting Out Act 1995 to allow local authorities to contract out street trading licensing functions;

33.7.3 redesignating the markets as markets under the Food Act 1984, which would enable the council to lease the market undertaking. This could be achieved either by the Bill itself (with protective transitional provisions to grandfather over the existing licences), or by revoking all the licences in the market and starting afresh. This would have the added benefit of giving the flexibility to be able to relocate the position of traders as and when necessary;

33.7.4 introducing a “market manager” provision of the sort that was dropped from the current London Local Authorities Bill.

33.8 **Issue: Scope of the activities caught by the Act:** A number of other commercial and other activities are carried out on the highway, some of them regulated or capable of being regulated by other legislation (for example the distribution of free literature, charity collections and busking) others not. The council is keen to explore the possibility of controlling activities which are not street trading and a new Bill could be the vehicle by which it could be done. In particular, the council is interested in regulating toutting, which is prevalent in the city. The council has noted that provisions in private bills currently being promoted by Canterbury City Council and Reading Borough Council deal with this issue.

33.9 **Proposal 33d:** The city council seeks views on the inclusion in a Bill of provisions regulating the activities of persons toutting on the street, and would also welcome views about whether the council should control other similar activities. The council has no intention of bringing such activities within the definition of “street trading” in the 1999 Act, so there would be no question of the cost of administration and enforcement of the proposals falling on licensed street traders.

33.10 **Issue: Provision of stalls by the council:** Earlier in this document it has been mentioned that the council has limited control over the appearance of street trading

stalls. The council can and does impose a condition that stalls have to be of a type and design approved by the council, but as the 1999 Act stands, an application can be made to vary that condition and the council has limited power to refuse such an application. The council can also provide the stalls themselves and make a charge for doing so. However, it is questionable whether the council can require a licensee to use a council-provided stall and pay for it.

33.11 **Proposal 33e:** to enable the council, perhaps in limited cases (for example where there is a street market) to require that council provided stalls be used and to make a charge for doing so.

33.12 **Issue: Removal and replacement of stalls:** There are cases where it would be appropriate for the council to be responsible for the removal of stalls at the end of the day, storing them overnight and replacing them the next day, and charging a fee for doing so. This can be done in a market but only at the request of a majority of the stall holders.

33.13 **Proposal 33f:** to enable the council, in a particular market or area, to be able to require that the council should be responsible for removal, storage and replacement and to be able to make a charge.

APPENDIX 1

LIST OF CONSULTEES

Associated Newspapers Ltd

Association of Licensed Multiple Retailers

Bayswater Road Artists' Association

Berwick Street Market Traders Association

British Beer & Pub Association

British Hospitality Association

Church Street LARP

Church Street Traders' Association

Department for Business, Enterprise & Regulatory Reform

Green Park Arts and Crafts Association

Guardian Media Group

Harrow Road Renewal Partnership

Heart of London Business Alliance

Institute of Licensing

LACORS

Mayor of London

Metropolitan Police

Ministry of Justice

National Market Traders Federation

News International Ltd

New West End Company

Paddington BID

South Westminster Renewal Partnership

Strutton Ground Market Traders' Association

The Ice Cream Alliance Limited

The Newspaper Society

Telegraph Media Group

Transport for London

Trinity Mirror plc

Victoria Partnership

Westbourne Neighbourhood Forum

West End Street Traders' Association

APPENDIX 2

CITY OF WESTMINSTER ACT 1999 SHOWING ALL AMENDMENTS TO DATE AND ALL AMENDMENTS PROPOSED IN CURRENT LONDON LOCAL AUTHORITIES BILL