



City of Westminster Licensing Committee

Date: Wednesday 30 November 2016

Classification: For General Release

Title: Revision of Standard Conditions for Street Trading Licences and Penalty Point Scheme

Report of: Director of Public Protection and Licensing

Wards Involved: All

Policy Context: City of Westminster Act 1999

Financial Summary: Any costs associated with the decision will be covered by existing street trading licence fees.

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1. Executive Summary

- 1.1 On 21 September 2016, the Licensing Committee agreed for all holders of street trading licences and their associations to be consulted on a proposal to revise the standard conditions that apply to their licences and also the penalty point scheme that is used to enforce the standard conditions.
- 1.2 The consultation process has been undertaken and a set of revised standard conditions that incorporate the consultation responses has been drafted. This report seeks to have the revised standard conditions prescribed. Additionally, the report seeks for a recommendation to be given to the Cabinet Member for Housing, Regeneration, Business and Economic Development that the penalty point scheme should be amended to reflect the revised conditions.

2. Recommendation

- 2.1 That:
 - 2.1.1 The Committee prescribe the standard conditions set out in **Annex A** that will apply to all street trading licences pursuant to section 10(1) of the City of Westminster Act 1999 and that will replace the existing standard conditions that have applied to all street trading licences since 15 March 1999, once they come in to force.

2.1.2 The Committee recommend to the Cabinet Member for Housing, Regeneration, Business and Economic Development that the schedule to the penalty point scheme is replaced with the table set out in **Annex E** as and from the date that the revised standard conditions come in to force.

3. Standard Conditions

- 3.1 Street trading activities in the City of Westminster are regulated under the City of Westminster Act 1999 ('the Act'). A street trading licence may be granted subject to such reasonable terms and conditions relevant to street trading as the Council specifies. The Council may also prescribe standard conditions that are applicable to all street trading licences. The current standard conditions have applied since 15 March 1999.
- 3.2 Prior to prescribing any condition or varying an existing condition, the Act requires that the Council give notice in writing to all holders of street trading licences whom the council could reasonably expect would be affected by the proposed conditions or changes to the conditions, and also to any body that represents such licence holders.
- 3.3 On 21 September 2016, the Licensing Committee considered a revised set of standard conditions that incorporated the policies contained within the Council's Street Trading Policy and also a number of recommendations from Environmental Health, Trading Standards, the City Inspectors and the Fire Service. The Committee resolved:
 - 3.3.1 To give their approval for notice of consultation to be given to all holders of street trading licences of the proposed standard conditions and of the right for representations to be made in accordance with the statutory procedure set out in the City of Westminster Act 1999.
- 3.4 Notices were provided to all holders of street trading licences and their associations and representations were received from the West End Street Trading Association (WESTA), the Bayswater Road Artists' Association (BRAA) and the Green Park Arts & Crafts Association (GPACA). Discussions have taken place with the associations to provide an explanation of the conditions and to advise where it is proposed to amend the conditions in light of their concerns. The conditions that have been amended and the reasons for the amendments are set out in **Annex B**.
- 3.5 The associations have amended their representations as a result of the discussions that have taken place and are largely in support of the proposals. However, there are several conditions that remain a concern to the associations. These are set out in the table attached to the report as **Annex C** with the representation and the reason that it is not proposed to amend the condition.
- 3.6 The proposed standard conditions that were considered by the Committee on 21 September 2016 have been revised in view of the representations received to and are attached to the report as **Annex A**.

- 3.7 If the Committee are minded to prescribe any new or varied standard conditions, notice will be given of the changes to all street trading licence holders and the conditions will become effective 35 days after the date on which they are prescribed.

4. Street Trading Penalty Point Scheme

- 4.1 On 01 August 1996, following agreement with all street trading associations, the Council introduced a penalty point scheme to deal with breaches of street trading and temporary licence conditions. It sets out the Council's staged approach to enforcement in an open and transparent way and is applied where other engagement activities to achieve compliance have failed.
- 4.2 Under the scheme, each street trading licence standard condition has a prescribed number of points that will be allocated to a licence holder by the City Inspectors (Markets) if they breach that condition. These are set out in the schedule to the penalty point scheme.
- 4.3 On 21 September 2016, the Committee considered a revised schedule to the penalty point scheme that reflected the proposed changes to the standard conditions. In addition the number of points that were allocated to each condition was changed to either 3 or 5 points, instead of a range of 1 to 5 points. The Committee resolved:
- 4.3.1 To give their approval for consultation to be undertaken with relevant stakeholders on the amended schedule to the street trading penalty point scheme to reflect the proposed changes to the standard conditions.
- 4.4 Consultation has now been undertaken with all holders of street trading licences and their associations on the proposed schedule to the penalty point scheme. The only representation about the proposed changes to the schedule was from the West End Street Trading Association (WESTA) who queried why condition 3 (the restriction on the maximum number of registered assistants) wasn't included in the schedule and therefore didn't have any points allocated to it. This was intentional, rather than an omission, as a licence holder would be stopped from registering more than three assistants if they attempted to do so. Penalty points therefore wouldn't be allocated. However, to avoid future confusion, it is proposed to include a statement to that effect in the schedule.
- 4.5 WESTA made further representations about the operation of the scheme but this was not subject to consultation. Their representation is set out in **Annex D** for completeness.
- 4.6 The proposed schedule to the penalty point scheme incorporating the consultation responses is attached to the report as **Annex E** for the Committee's information. The decision to modify the penalty point scheme will need to be made by the Cabinet Member for Housing, Regeneration, Business and Economic Development.

5. Financial Implications

5.1 Any costs associated with the giving of notices of any changes to the standard conditions or penalty point scheme and the enforcement of the revised conditions will be covered by the existing licence fees.

5.2 There are therefore no financial implications associated with the report.

6. Legal Implications

6.1 The City of Westminster Act 1999 sets out the statutory process that must be followed if the Council wishes to prescribe standard conditions. The statutory consultation process has been followed and full and proper consideration has been given to the representations received. If the Committee are minded to prescribe the revised standard conditions, notice will be given to all holders of street trading licences in accordance with the statutory procedure. This will avoid any judicial challenges to the implementation of the conditions.

6.2 Similarly, consultation on the proposed schedule to the penalty point scheme has been undertaken and all comments received have been taken in to consideration to avoid any judicial challenges.

7. Staffing Implications

7.1 There are no staffing implications resulting from this report.

8. Reason for Decision

8.1 The Council adopted its street trading policy in 2013. Certain provisions of the policy cannot be applied to street trading activities unless they are incorporated in to the conditions of the licence. The decision will allow the policy to be fully implemented and applied to all street trading licence activities. The proposed conditions will also ensure that street trading activities are conducted safely and without any negative impact on the surrounding areas.

8.2 The penalty point scheme will need to be updated to reflect any changes to the standard conditions. The recommendation will be taken in to consideration by the Cabinet Member for Housing, Regeneration, Business and Economic Development when considering the revised penalty point scheme.

If you have any queries about this report or wish to inspect one of the background papers please contact Mr Robin Grey on 020 7641 4605 or via email rgrey@westminster.gov.uk.

Annexes

- Annex A - Proposed street trading standard conditions
- Annex B - Conditions that have been amended in view of the consultation responses
- Annex C - Representations from the West End Street Trading Association (WESTA), the Bayswater Road Artists' Association (BRAA) and the Green Park Arts & Crafts Association
- Annex D - Representation from the West End Street Trading Association about the penalty point scheme
- Annex E - Proposed Schedule to the Penalty Point Scheme

Background Papers

- City of Westminster Act 1999
- Westminster City Council's Street Trading Policy 2013
- Standard conditions applicable to Street Trading Licences with effect from 15 March 1999
- Licensing Committee Report of 21 September 2016 entitled "Revision of Standard Conditions for Street Trading Licences and Penalty Point Scheme"
- Minutes of the Licensing Committee Meeting of 21 September 2016
- Representation from WESTA received on 10 November 2016 and amendment to representation received on 21 November 2016
- Representation from BRAA received on 16 November 2016 and the amendment to representation received on 21 November 2016.
- Representation from GPACA received on 18 November 2016.

Proposed Street Trading Standard Conditions



City of Westminster

STANDARD CONDITIONS PRESCRIBED BY THE WESTMINSTER CITY COUNCIL PURSUANT TO SECTION 10(1) OF THE CITY OF WESTMINSTER ACT 1999 THAT ARE APPLICABLE TO STREET TRADING LICENCES AS AND FROM 04 JANUARY 2016

Definitions

In the conditions unless the context otherwise requires the following expressions shall have the following meanings:

- (i) “Street Trading” shall have the meaning ascribed in Section 2 of the City of Westminster Act 1999
- (ii) “The Council” means the Westminster City Council.
- (iii) “Licence holder” means the person who is licensed under Section 9 of the City of Westminster Act 1999 to carry-on street trading.
- (iv) “Advertisement” means any word, letter, model, sign, placard, board, notice, whether illuminated or not, in the nature, and employed wholly or partly for the purposes of advertisement, announcement or direction and includes any hoarding or similar structure or any balloon used, or adapted for use for the display of advertisements, and references to the display of advertisement shall be constructed accordingly.
- (v) “Awning” means a sheet of canvas or other material, used as a protection against the weather, which projects as an extension of the roof beyond the structure of the stall.
- (vi) “Counterfeit” means any goods bearing a mark identical to or likely to be mistaken for a registered name, mark or logo which has been produced without the authorisation of the registered trade mark holder.
- (vii) “Electrical Supply” means either an electrical supply in the vicinity of a licensed pitch that is accessible through an electricity supply point provided by the Council or an electrical supply of a nearby premises.

- (viii) “Goods” means any goods, wares, merchandise or other articles that are offered, displayed or exposed or possessed for sale or supply on a stall.
- (ix) “Licensed street trading pitch” means a pitch in any street authorised as a place at which a licence holder may engage in street trading, and includes any temporary alternative place approved by the Council or a duly authorised officer of the Council.
- (x) “Pitch Limits” means the authorised ground markings defining the area within which a street trading stall is to be contained.
- (xi) “Premises” means any business, residential or vacant premises immediately behind the licensed pitch.
- (xii) “Receptacle” or “Stall” means any structure occupying a licensed street trading pitch that is used by the licence holder for the display of goods or in connection with his or her business and includes all goods offered or to be offered for sale and any additional structure or equipment used as part of the stall or business. On “isolated pitches” this also includes all refuse created as a result of the business except when it is left outside of the pitch in accordance with the waste collection scheme for the pitch.
- (xiii) “Refuse” includes any waste material.
- (xiv) “Registered Assistant” or “Assistant” means a person who the licence holder has registered with the Council as an assistant to assist them in the business of the stall.
- (xv) “Service” means a service offered for gain or reward.

Change of Details

- 1 The licence holder shall notify the Council in writing of any permanent change of their name, address, telephone number and/or e-mail address within 7 days of the change occurring.

Storage

- 2 The licence holder shall provide suitable and adequate premises for the storage of their receptacle when trading is not taking place.

The licence holder shall provide suitable and adequate provision for the storage of any perishable goods whilst at the licensed pitch, transporting the goods to/from the licensed pitch and away from the licensed pitch when trading is not taking place.

		The licence holder shall notify the Council in writing of any change of address or addresses at which the stall and perishable goods are stored when trading is not taking place within 7 days of the change occurring.
Registered Assistants	3	At any one time, the licence holder shall have no more than three assistants registered with the Council per licensed pitch.
	4	The licence holder shall provide the Council with written notification of any change in the name, address and/or telephone number of any of their registered assistants within 7 days of the change occurring.
	5	The licence holder shall notify the Council in writing if a registered assistant ceases to work for them within 7 days of them ceasing.
Supervision of Stall	6	No trading shall take place unless the licence holder or a registered assistant is present on the stall.
	7	All registered assistants shall carry photographic identification, such as their Passport, Photo-card Driving Licence or National Identity Card, when working under this licence. The assistant shall produce their photographic identification for inspection by a Council Officer on request.
Days and Times	8	Trading shall only take place on the days and during the times specified on the licence.
Trading Location	9	Trading shall only take place at the location stated on the licence or other such temporary location agreed with the Council.
Commodities	10	Only those goods specified on the licence shall be sold, offered for sale, displayed or exposed for sale, and only those services specified on the licence shall be supplied or offered for supply on the licensed street trading pitch.
	11	The licence holder shall ensure that there are no counterfeit goods present on the pitch or in any associated storage facilities.
	12	The licence holder shall keep a record of the name, address and contact number of the suppliers of their goods so that for any item on their pitch, the supplier can be contacted if required. The suppliers' contact details shall be provided to a Council Officer on reasonable request.

Nature and Type of Receptacle

- 13 The licence holder shall only trade from a receptacle that has been approved by the Licensing Service and that is set-up in accordance with the approved design and layout. The licence holder shall maintain their receptacle to minimise any deterioration in its appearance following the approval by the Licensing Service and shall remove any defacement from their receptacle as soon as is reasonably practicable.
- 14 Receptacles used for the sale of food shall be maintained and regularly cleaned to ensure that food is protected from risk of contamination.

Insurance

- 15 The licence holder shall have third party public liability insurance cover that is effective throughout the time that the licence is in effect that covers the licence holder and all registered assistants whilst working on the stall. The insurance cover shall have a minimum liability of £2,000,000 or to the cover mutually agreed between the Council and the relevant licence holder’s Association.
- 16 No trading shall take place unless a copy of the current public liability insurance certificate or other similar evidence that proves the existence of the effective policy is available on the stall. The copy of the insurance policy certificate, or similar evidence, shall be made immediately available for inspection by a Council Officer on request.

Commencement Times

- 17 **Bayswater Road and Green Park Exhibitions**
Licensed exhibitors shall not begin setting up their pitches before 7am but shall have their exhibits in place no later than 10.30am on the days that they are licensed to trade.

All Other Pitches

The licence holder shall not commence setting up their pitch before 7am on weekdays & Saturdays or before 8am on Sundays.

When trading at the following location, the licence holder shall have arrived at their pitch, put their stall in position and started setting up by the following times:

- Bell Street : 09.00am
- Church Street : 09.00am
- Berwick Street : 10.00am
- Maida Hill : 10.00am
- Rupert Street : 10.00am
- Strutton Ground : 11.00am
- Tachbrook Street : 10.00am

The licence holder shall have commenced trading with all goods contained within the pitch area within one hour of the times set out above.

Size and Set-up of Stall

18 The trading area shall not exceed the dimensions specified on the licence and where applicable, any pitch limits marked on the ground, except during immediate re-stocking of the stall. The width of the pitch at the Bayswater Road and Green Park Exhibition shall be eighteen inches from the back edge of the footway.

All goods, containers and other articles shall be contained within the licensed pitch area and height and shall not project beyond.

19 The licence holder shall not connect any part of their stall, advertisements or goods for sale to any other stall or to any electricity bollard, socket pillar, lamp post or other street furniture, except for an electric cable connected to an electrical supply point.

20 No barriers shall be used on or around a licensed pitch unless specific consent for their use has been obtained from the Council

Head Room

21 **At the Bayswater Road and Green Park Exhibitions** awnings with a minimum height of 6 feet 6 inches and a maximum height of 9 feet shall be permitted provided they are made of soft materials. The maximum forward projection of such awnings over the footway shall be 3 feet 6 inches at the Green Park Exhibition and 3 feet at the Bayswater Road Exhibition. No awning shall come within 3 feet of the kerb.

Display of Licence Plate etc.

22 The licence holder shall keep the licence and a copy of the conditions on the stall at all times that they are trading. Where the licence holder leaves a registered assistant in charge of the stall, the assistant shall keep the licence and a copy of the conditions on the stall whilst trading. The licence and conditions shall be made available for inspection by a Council Officer on request.

23 The licence holder shall, at all times that they are trading, display a plate supplied by the Council indicating the licensed pitch number of the stall. This plate shall be kept prominently exhibited on the stall together with the name or business name of the licence holder.

Pricing

24 The licence holder shall ensure that all goods displayed on the pitch, save for works of art or antiques, are priced in such a manner that customers can determine their price without assistance from the licence holder.

Notices & Advertisements

25 All advertisements shall be located within the licensed pitch and shall occupy no more than 10% of the surface area of each side of the stall. Advertisements on low screens, aprons or valances below table top level shall occupy no more than 10% of each panel.

26 The name of the stall and goods or services on offer shall only be displayed:

(i) In the case of a kiosk or mobile stall, on a frieze or similar designed high-level place that is equivalent to a fascia sign on a shop front.

(ii) In the case of a gazebo, tensioned stall roof or umbrella with a valance, on the valance or on a board inside the stall.

27 No advertisement shall be displayed on the licensed pitch that relates to any goods, commodities or services other than those offered for sale or provided on that pitch.

28 No advertisements comprising of three-dimensional representations of products (such as, but not limited to, replica ice cream cones, coffee cups or chocolate bars), shall be displayed on the stall.

29 No free-standing advertisements shall be located outside of the pitch area.

30 No A-board or other free-standing advertisement shall be located within the licensed pitch unless it is part of the stall design that has been approved by the Council.

31 No notices shall be displayed in the licensed pitch that would restrict a consumer's statutory rights, such as "No refunds" or "No returns".

32 **Bayswater Road Exhibition only – Own Work**

Subject to any personal dispensation which may have been granted to individual licence holder, the licence holder shall display a notice indicating that all works of art and craft on display or for sale are entirely the original works of the licence holder for that pitch. This notice shall be displayed in a prominent position so that it may easily be read by potential customers at all times that the licence holder is trading.

For avoidance of doubt, the reference to original work shall not include copies or prints or reproductions of any kind.

**Licence Holders'
Vehicle**

33

Markets

When trading on the Berwick Street, Maida Hill, Rupert Street, Strutton Ground and Tachbrook Street markets, the licence holder shall remove their vehicles, unless they are the licensed receptacles, and all other items used for the setup of the stall by the time prescribed in any relevant traffic management order for the pedestrianisation of the street.

When trading on the Church Street market, the licence holder shall remove their vehicles, unless they are the licensed receptacles, and all other items used for the setup of the stall by 10 am.

Prior to the time prescribed in the relevant traffic management order for the pedestrianisation of the street or 10am in the case of the Church Street market, the licence holder shall not leave their vehicle in the street in which they trade unless the vehicle is:

- i) the licensed receptacle;
- ii) parked in approved parking spaces such as meter bays; or
- iii) temporarily parked for the purpose of loading and unloading goods during the set-up of the stall.

Loading and unloading shall be carried out as quickly as possible and the vehicle shall be removed immediately on completion.

The licence holder shall not return their vehicle to the market until 4pm or the time period prescribed in the relevant traffic management order for the pedestrianisation of the street has ended, whichever is later.

Other Licence Holders

When parking restrictions are in force, the licence holder shall not leave his vehicle in the street in which he trades unless the vehicle is:

- (i) the licensed receptacle;
- (ii) temporarily parked for the purpose of loading and unloading goods during the set-up of the stall; or
- (iii) parked in approved parking spaces such as meter bays.

Loading and unloading shall be carried out as quickly as possible and the vehicle shall be removed immediately on completion.

Sale of Food

34 No trading shall take place that involves the sale of food unless the licence holder is complying with all current food safety and food standards legislation.

35 If authorised to sell food, the licence holder shall provide a First Aid box on their stall that is readily available for use at all times that they are trading.

Health & Safety

36 The licence holder must ensure the safety of themselves and other users of the market and must comply with all relevant and current legal requirements for health and safety (including, but not limited to, those relating to electrical, gas and fire safety).

Safety of Equipment

37 Heat producing equipment (e.g. braziers) shall be so placed within the trading area as to offer maximum safety to the public. The position of such equipment in relation to other goods or materials shall be agreed with the Council's officers.

Services and Amenities

38 Where an electrical supply has been provided by the Council for use by the licence holder:

- (i) No electrical supply other than that provided by the Council shall be used by the licence holder on the stall;
- (ii) The licence holder shall ensure that all electrical equipment in use on the stall is compatible with the electrical supply and does not either individually or in combination, exceed the rating (maximum amperage) of the supply;
- (iii) The licence holder shall be liable for the fees incurred in their use of the electrical supply and shall pay all such fees within 4 weeks of them becoming due;
- (iv) The licence holder and their assistant(s) shall take care when using or working nearby any electrical supply point. The licence holder shall be liable for any costs incurred in repairing electrical supply points due to their or their assistants' reckless behaviour or deliberate misuse of the electrical supply.

- 39 The licence holder shall only use the electrical supply of a premises where no electrical supply point is provided by the Council. In such cases:
- (i) the licence holder shall obtain the written consent of the bill payer and the Council in advance of connecting to the supply;
 - (ii) all supply lines shall be overhead with clearance of at least 2.6m and no cables shall be trailed along the ground;
 - (iii) the licence holder shall ensure that their supply lines are securely installed and suitably protected from damage and water ingress.

40 A generator shall only be used where no electricity supply has been provided by the Council and the Council has given consent for the use of a generator by the licence holder. In such cases, no petrol-powered generator shall be used. The generator shall be located within the licensed pitch and so positioned that:

- (i) it is not accessible by the public and does not present a danger to the passing public;
- (ii) It is kept away from combustible materials and is provided with adequate ventilation;
- (iii) it does not present a fire or similar hazard risk to the stall or goods displayed thereon; and
- (iv) it does not cause any noise or fume nuisance.

When refuelling fuel tanks, the generator shall be switched off, all persons shall be moved away from the generator and a fire extinguisher shall be positioned near to the generator.

Only one fuel-can with a capacity of no more than 5 litres shall be stored in the licensed pitch at any one time. It shall be of an approved type for carrying fuel oil. The can shall be stored away from any possible heat source.

Electrical Safety

- 41 All electrical connections shall comply with the current edition of the Institute of Engineering & Technology (IET) Wiring Regulations. The equipment shall be constructed and maintained to prevent danger in compliance with the Electricity at Work Regulations 1989, or any Act/Regulations amending or replacing the same. Appropriate safety devices such as 30mA Residual Current Devices shall be used where necessary, particularly where the electrical equipment will be exposed to adverse conditions or will be used in association with hand held devices.

The licence holder shall arrange for all electrical equipment to be inspected by a competent person at appropriate intervals and shall retain the most recent certificate of inspection on the stall at all times that they are trading. The certificate shall be made available for inspection by a Council Officer on request.

Gas Safety

- 42 The licence holder shall ensure through a system of checks and testing that all gas appliances, flues, pipe work and safety devices are maintained in a safe condition and shall make a visual inspection of these prior to them commencing trading on any day.

The licence holder shall arrange for all gas appliances, flues, pipe work and safety devices to be inspected by a competent person at appropriate intervals and shall retain the most recent certificate of inspection on the stall at all times that they are trading. The certificate shall be made available for inspection by a Council Officer on request.

- 43 All LPG cylinders, regulators and change-over devices shall be located in the open air or housed in a separate well ventilated, fire-resistance compartment. Any such compartment shall be ventilated at low level to the external air and shall have an exclusive access from outside the receptacle to enable safe access to shut off the cylinders in case of fire. The compartment shall be clearly marked "LPG – Highly Flammable – No Smoking".

Cylinders shall be stored well away from drains, waste water pits and soak-a-ways and shall be protected from tampering and/or accidental damage. Pipes, fittings and fixtures shall be provided with appropriate compression crimped joints. No slip-on rubber hosing shall be used without means of securing them and no hosing secured by work-drive "jubilee clip" type fittings shall be used.

Fire Safety

- 44 No trading shall take place unless adequate fire fighting equipment is provided on the stall that is appropriate for the goods on sale, equipment in use and size of the stall. The licence holder shall provide as a minimum:
- (i) a Class A fire extinguisher of at least 4.5ltrs if they are authorised to sell non-food commodities;
 - (ii) a fire blanket and a Class B extinguisher (Foam or Dry Powder, as appropriate) of at least 4kg/4lt size if they are authorised to use cooking facilities;

- (iii) a class F type fire extinguisher if they are authorised to use a deep fat fryer;
- (iv) a dry powder or carbon dioxide fire extinguisher with a capacity of 4kg if they have received consent from the Council to use a generator.

The licence holder shall ensure that all fire fighting equipment has been adequately tested by a competent person and is in good working order.

45 The licence holder shall be familiar with the operation of their fire safety equipment and shall position it on the stall so that it is readily available for use at all times that they are trading.

46 The licence holder shall ensure that their assistants are all aware of what to do in the event of a fire.

47 The licence holder shall keep the pitch clean and tidy and shall avoid a build-up of combustible materials.

Conduct

48 The licence holder and their assistants shall treat the public and Council Officers fairly and with courtesy.

49 The licence holder and their assistants shall not engage in any criminal activity or anti-social behaviour and, in particular, shall ensure that the following do not take place at the pitch:

- (i) Indecent behaviour towards the public or other licence holders;
- (ii) Acts of violence against any person (including other licence holders) or property and/or the attempt or threat of such acts;
- (iii) Verbal abuse and/or aggression displayed towards any person;
- (iv) Intimidation of any other licence holder;
- (v) Touching, moving or interfering with another licence holder's stall.

Assistance to Council Officers

50 The licence holder and their assistants shall give every assistance to Council Officers in carrying out their duties.

Radios, Etc.

51 The licence holder shall not use or permit to be used on the licensed area or within the immediate vicinity any radio or other equipment or apparatus to produce music or other amplified sound except at a reasonable level within a closed vehicle or where specific consent has been provided by the Council for the use of such equipment in prescribed circumstances and the equipment is used in those circumstances.

- Damage** 52 The licence holder shall not intentionally permit their stall or accessories to cause damage to the carriageway or footway and shall leave the trading pitch in a clean condition at the end of each trading period.
- Refuse** 53 The licence holder shall ensure that all refuse arising as a result of their activities, including waste water and oil, is placed in suitable covered containers that are kept exclusively for that purpose and that approved by the Council. Such refuse containers shall be provided by the licence holder, unless otherwise provided by the Council, and shall be kept as clean as is reasonably possible.
- NOTE:** This condition shall not apply to licence holders at the Bayswater Road Exhibition and Green Park Exhibition unless the Council requires it in any particular case.
- 54 Refuse containers for any non-liquid waste shall be emptied whenever necessary into any vehicle, container or compactor provided by the Council for that purpose. Refuse containers for waste water and oil shall be removed by the licence holder at the end of their trading period for disposal.
- Removal** 55 The licence holder or their assistants shall remove the stall and goods for so long as may be necessary in the event of an emergency or in exercise of the Council's powers and duties when reasonably required to do so by a duly authorised officer of the Council, a police officer or an officer of any other emergency service.
- 56 When trading on the Church Street, Berwick Street, Maida Hill, Rupert Street, Strutton Ground or Tachbrook Street markets, the licence holder shall not remove their receptacle from the licensed pitch until 4pm on any day that they are trading, unless they are required to do so by a Council Officer or an Officer of an emergency service.
- 57 Unless trading on Rupert Street, the licence holder shall remove their stall and goods from the public highway to the place of storage, as stated on the application form or such other alternative place subsequently agreed by the Council in writing, within one and a half hours of either the time prescribed on the licence for the end of trading on that day or the time trading actually ceases (whichever is the earlier) unless prior consent has been granted by the Council for a later removal time or for the receptacle to remain in situ between consecutive trading periods.

If trading on Rupert Street, the licence holder shall remove their stall and goods from the public highway to the place of storage, as stated on the application form or such other alternative place subsequently agreed by the Council in writing, no later than 6.30pm.

Informatives

General

- 1 The grant of a temporary street trading licence shall not be deemed to give any approval or consent which may be needed under any By-law, enactment or regulation other than Section 21 of the City of Westminster Act 1999.

For the avoidance of doubt this includes the requirement to seek and obtain planning permission and/or advertisement consent.

- 2 The marginal subtitles inserted in these conditions are for the purpose of convenience only and shall not in any way affect the meaning or construction thereof.
- 3 These conditions may be dispensed with or modified by the Council in any individual case by means of a licence variation in accordance with the statutory requirements.
- 4 Where in these conditions there is reference to the consent or agreement of the Council, a licence holder may make a request in writing for such consent or agreement. Where any such consent or agreement is given, it may on such terms and conditions and subject to such restrictions as may be so specified.
- 5 If a licence holder wishes any of the terms of a licence to be varied or the Council's agreement under these rules application must be made in writing to the Council in accordance with the statutory requirements.

Supervision of Stall

- 6 It is the obligation of the licence holder to make full personal use of the street trading licence which means that the licence holder must personally attend at the stall during the hours and on the days that the licence authorises street trading to be carried on. A registered assistant can be present when the licence holder is temporarily unable to attend at the stall or if the licence holder can provide exceptional reasons

as to why he or she was unable to be present for a longer period but a failure to make full personal use of the licence is a ground for revoking the street trading licence in its own right.

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| Advertisements | 7 | No illuminated advertisement shall be displayed on the outside of the stall or kiosk without an express consent under the Town and Country Planning (Control of Advertisements)(England) Regulations 2007 |
| Re-letting of Pitches | 8 | <p>If the pitch is not utilised by the licence holder by the times set out in the standard conditions without the prior approval of the Council or its representative, the Council may at its discretion re-let the pitch for that day.</p> <p>Note: It is the Council's policy normally to only re-let pitches in its street markets.</p> |
| Bayswater Road Exhibition - Display of 'Own Work' Notice | 9(a) | <p>The licence holders trading on the Bayswater Road Exhibition Site should be aware that the display of such an 'Own Work' notice would constitute an offence contrary to Section 1 of the Trade Descriptions Act 1968 if the indication given is false. Such a notice must not be displayed unless the works on display or for sale conform to the indication given in the notice.</p> |
| | (b) | <p>A failure to display the notice as required by the condition will be taken into account by the Council if allegations are made to the effect that the works on display or for sale are not the original works of the licence holder concerned.</p> |
| | (c) | <p>Inspection will be carried out on a regular basis by consumer protection officers so as to ensure compliance with the Trade Descriptions Act 1968. The display of a notice in breach of the terms of that Act is likely to result in the institution of prosecution proceedings and may lead to revocation of the licence.</p> |
| Services and Amenities | 10 | <p>All electrical supply points provided by the Council for use by the licence holder shall remain the property and responsibility of the Council or its representatives.</p> |

Conditions that have been amended in view of the consultation responses

Condition	Association that Representation came from	Representation	WCC Response	Further Comments from the Association	Outcome
"Licensed Street Trader" or "Trader" means the person who is licensed under Section 9 of the City of Westminster Act 1999 to carry-on street trading.	WESTA	(iii) – In order to be more in line with the wording of the 1999 Act, change 'trader' to 'licence holder'.	The proposed conditions will be revised to replace trader with licence holder.	Agreed - Objection withdrawn	Proposed conditions amended
3 Registered Assistants - At any one time, the licence holder shall have no more than three assistants registered with the Council per licensed pitch.	WESTA	Members have no objection to the requirement to register assistants with the Council, however to limit the number to 3 is not acceptable. Traders on isolated pitches can be licensed to trade for more than 12 hours. During this time there can be a changeover of 2/3 staff over 3/4 hour shifts. In addition, traders offer temporary employment to students studying to supplement their income whilst in London. In respect of isolated pitches it is considered reasonable to ask for no more than ten registered assistants.	The policy stipulates that a licence holder can have up to three registered assistants. Any increase in the number would be contrary to the policy. The proposed conditions would not require that all persons who work on the stall are registered with the Council. Instead, condition 6 would require that the licence holder and/or one of the 3 registered assistants would have to be present at the pitch when trading takes place but other employees who are not registered with the Council may also be present. The marginal title will be changed from "Attendance" to "Supervision" however.	Officers agreed this explanation would be outlined in the committee report. However, if not in the report then we would be happy to see it included in the explanatory note at the end of the conditions document.	Marginal title of condition amended to "Supervision of Stall"

<p>6 Attendance - No trading shall take place unless the trader or a registered assistant is present on the stall. NOTE: It is the obligation of the trader to make full personal use of the street trading licence which means that the licensed trader must personally attend at the stall during the hours and on the days that the licence authorises street trading to be carried on. A registered assistant can be present when the trader is temporarily unable to attend at the stall or if the trader can provide exceptional reasons as to why he or she was unable to be present for a longer period but a failure to make full personal use of the licence is a ground for revoking the street trading licence in its own right.</p>	<p>WESTA</p>	<p>Members object to this condition. The 1999 Act provides a specific ground of revocation of a street trading licence. Furthermore, a scheme is in place, which as far as we know has not been withdrawn. Why is the scheme not being reviewed in light of the implementation of the street trading policy? Members would like to know the council's definition for 'temporarily unable to attend' – what reasons and for how long? There is a separate Informative section at the end of the document and it is suggested this note along with other grounds for a revoking a licence be moved there.</p>	<p>As per our discussion, this condition only requires that the licence holder or a registered assistant is present on the stall when trading is taking place. It doesn't prevent other people working on the stall provided that the licence holder or one of the registered assistants is present.</p> <p>The attendance policy was not incorporated in to the street trading policy. Instead, non-attendance is dealt with on a case-by-case basis in accordance with policy ST10.</p> <p>The "Note" will be removed from the condition and included in the informatives.</p>	<p>Proposed condition explained and objection withdrawn.</p>	<p>Proposed condition amended.</p>
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<p>12 Commodities - The trader shall keep a record of the name, address and contact number of the suppliers of their goods, such that the supplier of any item on the pitch can be contacted if required. The suppliers' contact details shall be provided to a Council Officer on request.</p>	<p>WESTA</p>	<p>If members understand this condition correctly, the Council is requiring a trader to keep on the pitch, the details of suppliers of their goods. Traders strongly object to this requirement. If there is a case for investigation then a trader should be notified in writing and requested to provide such details. Members do not have means for secure lock up of documents, and space is very limited within the inside of a kiosk. The condition should be revised so as to remove the requirement to keep documents on the pitch.</p>	<p>The intention of the condition was not to require records to be kept on the stall but to avoid confusion, it will be reworded as follows: "The licence holder shall keep a record of the name, address and contact number of the suppliers of their goods so that for any item on their pitch, the supplier can be contacted if required. The suppliers' contact details shall be provided to a Council Officer on reasonable request."</p>	<p>Objection withdrawn.</p>	<p>Proposed condition amended.</p>
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<p>13 Nature and Type of Receptacle - The trader shall only trade from a receptacle that has been approved by an authorised officer of the Licensing Service and that is set-up in accordance with the approved design and layout. The trader shall maintain their receptacle to minimize any deterioration in its appearance following the approval by the Licensing Service and shall remove any defacement from their receptacle as soon as is reasonably practicable.</p>	<p>WESTA</p>	<p>From experience for seeking receptacle approval for isolated pitches, the Licensing Service does not exercise its powers. Approval is required from the Planning Service who seems to have the final decision on stall design. Furthermore some cases for approval have been referred to the Licensing Sub-Committee, therefore the condition be amended to give approval 'by an authorised officer of the Council'.</p>	<p>When considering a new receptacle, the Licensing Service may consult with a number of partners, including the Planning Service, Environmental Health etc. However, it would be the Licensing Service that would consider the responses and make the decision to approve a receptacle. The comment that it may be a Licensing Sub-Committee who make a decision to approve a receptacle is accepted so the proposed condition will be changed from "<i>The trader shall only trade from a receptacle that has been approved by an authorised officer of the Licensing Service</i>" to "<i>The licence holder shall only trade from a receptacle that has been approved by the Licensing Service</i>".</p>	<p>Objection withdrawn.</p>	<p>Proposed condition amended.</p>
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<p>24. The trader shall ensure that all goods displayed on the pitch or services offered on the pitch are priced in such a manner that customers can determine their price without assistance from the trader.</p>	<p>BRAA</p>	<p>IMPORTANT. This is not an appropriate stipulation for Exhibitions and it is vital that this paragraph be revised and an exception made as such. Artists are not exhibiting and selling similar/identical commodities as in the case of fruit/vegetable, kitchenware, hardware or other products. Artwork varies enormously according to its style, size, materials used, complexity, whether framed or unframed etc.. In the large majority of cases, pricing etiquette has always been maintained discreetly as a matter for discussion only between Artist and Client. We would vigorously oppose prices being mandatorily displayed, as this would detract from the elegance and simplicity of individual displays, and lead to undercutting. This paragraph should apply to Markets only, not to Exhibitions.</p>	<p>Agree - following discussions with Trading Standards regarding the intention of the condition, it is proposed to revise the wording of the condition: "<i>The licence holder shall ensure that all goods displayed on the pitch, save for works of art or antiques, are priced in such a manner that customers can determine their price without assistance from the licence holder.</i>"</p>	<p>-</p>	<p>Proposed condition amended.</p>
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<p>32. Bayswater Road Exhibition only – Own Work Subject to any personal dispensation which may have been granted to individual traders, the exhibitor shall display a notice indicating that all works of art and craft on display or for sale are entirely the original works of the trader licensed for that pitch. This notice shall be displayed in a prominent position so that it may easily be read by potential customers at all times that the trader is trading. For avoidance of doubt, the reference to original work shall not include copies or prints or reproductions of any kind.</p>	<p>BRAA</p>	<p>This is essential and was present in the original Conditions (37) but went much further with a large deterrent spelled out in the Notes. We would like this Deterrent retained, though possibly abbreviated if necessary.</p>	<p>Agree - The former notes will be added to the informatives - NOTES:(i) Licensees should also be aware that the display of such a notice would constitute an offence contrary to Section 1 of the Trade Descriptions Act 1968 if the indication given is false. Such a notice must not be displayed unless the works on display or for sale conform to the indication given in the notice.(ii) A failure to display the notice as required by the condition will be taken into account by the Council if allegations are made to the effect that the works on display or for sale are not the original works of the licence holder concerned.(iii) Inspection will be carried out on a regular basis by consumer protection officers so as to ensure compliance with the Trade Descriptions Act 1968. The display of a notice in breach of the terms of that Act is likely to result in the institution of prosecution proceedings and may lead to revocation of the licence.</p>	<p>-</p>	<p>Proposed informatives amended.</p>
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<p>33.Other traders The trader shall not leave his vehicle in the street in which he trades unless the vehicle is: (i) the licensed receptacle; (ii) temporarily parked for the purpose of loading and unloading goods during the set-up of the stall; or (iii) parked in approved parking spaces such as meter bays. Loading and unloading shall be carried out as quickly as possible and the vehicle shall be removed immediately on completion.</p>	<p>BRAA</p>	<p>Most of this paragraph is not relevant to BWR. However, 33 'Other Traders' is, and we are not in agreement with this point. It is essential that the original last sentence from the existing Conditions (29) be restored, stating that "This condition shall not apply when waiting restrictions are not in force". Artists must have their vehicles close by as the vehicle serves to house packing materials, personal effects etc. The packaging of large paintings requires the above, plus the stability of a car-boot or van-floor for careful packing (often for Export). Additionally, Artists do not have the security of a trestle or stand behind which they operate, thus cash-boxes, card-payment devices etc. cannot be safeguarded without the proximity of a locked vehicle. Please modify this Condition above as a matter of urgency.</p>	<p>Agree - The proposed condition shall be amended to add "<i>When parking restrictions are in force, the licence holder shall not leave his vehicle in the street in which he trades unless....</i>" to the Other Traders section of the condition</p>	<p>-</p>	<p>Proposed condition amended</p>
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<p>51 Radios etc. - The trader shall not use or permit to be used on the licensed area or within the immediate vicinity any radio or other equipment or apparatus to produce music or other amplified sound except within a closed vehicle and at a reasonable level.</p>	<p>WESTA</p>	<p>Members trading on isolated pitches consider the prohibition of playing of a radio as background music unreasonable. The level of such noise cannot be considered to be a nuisance. Furthermore, in recent times there has been known to be high levels of 'music' noise from business outlets, special events and new busker sites.</p>	<p>A condition prohibiting the use of any radio, cassette playing or other equipment/apparatus to produce music or other sound, except in a closed vehicle and at a reasonable volume, has been in place since 1999 to prevent nuisance. However, it is accepted that there may be certain situations and trading locations where music played at an appropriate level may not cause a nuisance. It is therefore proposed to amend the condition: "<i>The licence holder shall not use or permit to be used on the licensed area or within the immediate vicinity any radio or other equipment or apparatus to produce music or other amplified sound except at a reasonable level within a closed vehicle or where specific consent has been provided by the Council for the use of such equipment in prescribed circumstances and the equipment is used in those circumstances.</i>" Each request would be considered on its individual merits and permission, if given, may vary from location to location.</p>	<p>Objection withdrawn but must be acknowledged in document that application can be made.</p>	<p>Proposed condition amended. Proposed informatives replaced with: "<i>Where in these conditions there is reference to the consent or agreement of the Council, a licence holder may make a request in writing for such consent or agreement. Where any such consent or agreement is given, it may on such terms and conditions and subject to such restrictions as may be so specified.</i>"</p>
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Representations from the West End Street Trading Association (WESTA), the Bayswater Road Artists' Association (BRAA) and the Green Park Arts & Crafts Association

Condition	Association that Representation came from	Representation	WCC Response	Further Comments from the Association	Outcome
-	WESTA	The Association is aware that the council is currently undertaking a review of the street trading policy. In part, the changes to the standard conditions are to reflect this policy. In the circumstances, we consider the review of conditions is premature and suggest it would make more sense to revise the conditions upon completion of the policy review.	The policy was adopted in December 2013 and the policies contained therein need to be converted in to the standard conditions so that they can be applied to existing street trading activities. If any future review of the policy has an impact on the standard conditions, they will again be reviewed.	During discussions it was acknowledged that there were parts of the policy that required review in order to establish a clear approach to enforcement, In particular, advertising and attendance. We hope future discussion on these matters will take place as indicated by officers.	Should any proposed condition be prescribed that impacts an existing operation, the City Inspectors will work with licence holders to achieve compliance prior to taking enforcement action. Officers will discuss the implementation of the attendance section of the street trading policy with WESTA and how that fits with the Council's powers to revoke a licence.

-	WESTA	Members feel the increase in the number of conditions from 37 to 57 is excessive.	The conditions haven't been reviewed since 1999 and street trading activities have changed since that time. The additional conditions have been proposed to implement sections of the policy and also recommendations from Environmental Health, Trading Standards, the Fire Service and the City Inspectors as a result of recent issues surrounding street trading activities. Any particular condition that is suggested as unnecessary is discussed below.	As stated in our representation discussed at the meeting, licence holders are concerned about the approach to enforcement where officers have duplicate statute to use for non-compliance. We would ask officers to produce an enforcement protocol outlining their approach. It is suggested this protocol could form part of the penalty point scheme.	The proposed conditions set the standards for street trading activities across the City. The City Inspectors will work closely with partners when enforcing licence conditions. The Council's enforcement concordat is currently under review and the comments about the enforcement protocol will be fed in to that review.
-	WESTA	Why has it been necessary to propose conditions that duplicate other legislation?	See conditions 24 & 31 below	Comments above apply to duplicate conditions. Licence holders still object to all pricing being displayed on stalls due to available space.	As above.

<p>(xii) - Receptacle” or “Stall” means any structure occupying a licensed street trading pitch that is used by the trader for the display of goods or in connection with his or her business and includes all goods offered or to be offered for sale and any additional structure or equipment used as part of the stall or business. On “isolated pitches” this also includes all rubbish created as a result of the business.</p>	<p>WESTA</p>	<p>Members do not agree with the additional requirement for isolated pitches that rubbish must be kept within the trading pitch. If you look at Condition 18 there is a specific exemption for refuse containers to be contained within the pitch. Surely this is a contradiction? Also, traders have experienced delay with the collection of waste, and cannot be expected to keep build-up of rubbish inside the receptacle.</p>	<p>The contradiction will be remedied by removing reference to refuse containers in condition 18. We consider that all refuse should be placed in suitable covered containers (in accordance with condition 53) that are located within the pitch until such time as it is due to be collected under the relevant waste collection scheme. It is therefore proposed to reflect this in the definition: <i>“.....On “isolated pitches” this also includes all refuse created as a result of the business, except when it is left outside of the pitch in accordance with the waste collection scheme for that pitch.”</i> Waste collections are paid for as part of the pitch fees. If the number of waste collections per day or the times of waste collections are insufficient / inappropriate for any particular pitch, it is an operational issue that can be reviewed. Leaving refuse outside of the pitch other than when it is due to be collected is inconsistent with other businesses in Westminster.</p>	<p>The Association continues to strongly object. As explained there is insufficient space for refuse and containers to be stored within the pitch, and submit the reference to containers in condition to 18 remains.</p>	<p>Proposed definition amended to exclude waste that is left outside of the pitch for collection in accordance with the waste collection scheme.</p>
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<p>15. The trader shall have third party public liability insurance cover that is effective throughout the time that the licence is in effect that covers the trader and all registered assistants whilst working on the stall. The insurance cover shall have a minimum liability of £2,000,000 or to the cover mutually agreed between the Council and the relevant street traders' or exhibitors' Association.</p>	<p>BRAA</p>	<p>This should not apply to BWR as we don't have assistants (as in 3,4,5). BWR needs to have written exemption for this, at least by email.</p>	<p>Disagree - even if the artist did not have any assistants, they would still need to have insurance in place. The proposed condition would therefore need to apply.</p>	<p>BRAA Can only insure Artists, not Assistants. This is because SAA (the Society for All Artists) who underwrite our Policy will only insure Artists. The result of your stipulation would be that once again, BRAA will lose members to other bodies offering 'Market Trading Insurance'. The cost of such Insurance is much higher (around £60 pa. as opposed to our £25) and may not be as comprehensive as it will not be tailored to Artists. Yet again, Artists will leave the Exhibition, as costs will become too high in a socio-economic climate when sales are depressed anyway.</p>	<p>The concern about losing members is noted but uninsured trading activities couldn't be allowed. If an artist left a registered assistant in charge of their stall, we would still need public liability insurance to cover the operation. The proposed condition therefore hasn't been amended.</p>
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<p>18. The trading area shall not exceed the dimensions specified on the licence and where applicable, any pitch limits marked on the ground, except during immediate restocking of the stall. The width of the pitch at the Bayswater Road and Green Park Exhibition shall be eighteen inches from the back edge of the footway. All goods, containers (except refuse containers used solely for the purpose) and other articles shall be contained within the licensed pitch area and height and shall not project beyond.</p>	<p>WESTA</p>	<p>Please see comment above under Definitions heading regarding this condition regarding refuse.</p>	<p>We shall remove the exception for refuse containers in the proposed condition to avoid contradicting the definition of stall: <i>"....All goods, containers and other articles shall be contained within the licensed pitch area and height and shall not project beyond."</i></p>	<p>See comment above. Strongly object. - <i>The Association continues to strongly object. As explained there is insufficient space for refuse and containers to be stored within the pitch, and submit the reference to containers in condition to 18 remains.</i></p>	<p>Proposed condition amended to remove reference to refuse containers.</p>
<p>23 The trader shall, at all times that they are trading, display a plate supplied by the Council indicating the licensed pitch number of the stall. This plate shall be kept prominently exhibited on the stall together with the name or business name of the trader.</p>	<p>GPACA</p>	<p>For exhibitors, security and their safety are paramount. We have always opposed openly displaying name and address and simultaneously exhibitor's photo image on the 'licence plates' (which are meant to identify the pitch and not the licence holder.</p> <p>For the unwary exhibitor, there are many</p>	<p>We acknowledge the concerns of the association but the licence plates are intended to demonstrate to the public that the trader is licensed and has been approved by Westminster City Council to operate at the location. A photograph is required to do this.</p> <p>Furthermore, should any member of the public wish to make a complaint about a licence holder, they need to be able to identify the trader by</p>	<p>Objection to displaying name and photograph remains.</p>	<p>Proposed condition not amended.</p>

		<p>opportunists intent on criminal activities to be alert to. For the most part, licence holders are alone and feel vulnerable at times.</p>	<p>their name. This is the reason for including the licence holder's name on the licence plate.</p>		
<p>(24)The trader shall ensure that all goods displayed on the pitch or services offered on the pitch are priced in such a manner that customers can determine their price without assistance from the trader. (31)No notices shall be displayed in the licensed pitch that would restrict a consumer's statutory rights, such as "No refunds" or "No returns".</p>	WESTA	<p>Members object to these additional conditions because they are duplicated by other legislation. Furthermore, the council has made it very clear they will not permit 'placards/boards and other such items' to be attached to the outside of stalls, and for majority of traders there is not enough space.</p>	<p>These conditions set the standard for all street trading activities. Inclusion within the conditions will enable penalty points to be applied for non-compliance. Trading Standards proposed the conditions and will work with the City Inspectors if enforcement action is required. This will be undertaken in accordance with the penalty point scheme.</p>	<p>As stated in our representation and discussed at the meeting, licence holders are concerned about the approach to enforcement where officers have duplicate statute to use for non-compliance. We would ask officers to produce an enforcement protocol outlining their approach. It is suggested this protocol could form part of the penalty point scheme. Insufficient space to display notices.</p>	<p>The City Inspectors will work with Trading Standards Officers to ensure that standards across street trading activities are maintained. It is unlikely that a prosecution would be taken for only failing to display prices or for displaying notices that would restrict a consumer's statutory rights. However, legal proceedings may be instigated for such offences if there are other issues on the stall.</p>

<p>40 A generator shall only be used where no electricity supply has been provided by the Council and the Council has given consent for the use of a generator by the trader. In such cases, only a diesel-powered generator shall be used. The generator shall be located within the licensed pitch and so positioned that:</p> <p>.....</p>	<p>WESTA</p>	<p>Traders on isolated pitches have been waiting for electricity installation for a long time, even years. By the nature of their receptacles, traders may not be able to position a generator within the licensed pitch – the receptacle takes up the pitch dimensions. In these cases it seems only fair that traders be allowed to have a generator, and dispensation to place the generator in a safe place outside the dimensions of the pitch.</p> <p>Member would like to know why the council would only allow diesel-powered generators?</p>	<p>Allowing the siting of any equipment outside of the stall would increase the size of the pitch and in the case of an isolated pitch, may breach the planning permission. If a trader wishes to use a generator to provide power to their stall, it should be incorporated in to their stall design and should be located inside the pitch.</p> <p>The limitation on diesel-powered generators will be revised to allow generators other than petrol-powered generators: <i>"...In such cases, no petrol-powered generators shall be used."</i> instead of <i>"In such cases, only a diesel-powered generator shall be used."</i></p>	<p>Not agree with Council comment. It must be recognised that existing stall designs cannot accommodate a generator within the pitch, and surely this would not be safe. For isolated pitches there must be an exemption.</p>	<p>Proposed condition only amended to allow alternative generators but not to allow the positioning of generators outside of the pitch.</p>
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<p>55 Removal -The trader or their assistants shall remove the stall and goods for so long as may be necessary in the event of an emergency or in exercise of the Council's powers and duties when reasonably required to do so by a duly authorised officer of the Council, a police officer or an officer of any other emergency service.</p>	<p>WESTA</p>	<p>Members understand at times there will be a necessity to make arrangements for removal of receptacles at short notice. However, traders would be interested to know the statute etc. under which the Council exercises its powers and duties. It is suggested this information be contained within the Informative section at the end of the document.</p>	<p>The powers/duties that the Council is using should be explained when a trader is asked to remove their stall. Where a pitch becomes temporarily unsuitable for street trading purposes, the Council will facilitate a temporary relocation, where possible, in accordance with the street trading policy. Where a trader considers that any request is not reasonable and therefore contrary to the condition, they should challenge the request.</p>	<p>WESTA will approach Special Events & Filming to explain powers etc.</p>	<p>Proposed condition not amended.</p>
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Representation from the West End Street Trading Association about the penalty point scheme

Comments	Response		
There is no allocation of points for proposed Standard Condition 3. Why is this?	This would be dealt with when a trader wishes to register more than 3 assistants, rather than points being allocated. Reference to this will be included in the schedule to the penalty points scheme.	Noted	-
1. Effective date of the Scheme will need to be updated so as to remove confusion as to which Scheme will be in force once any changes are approved.	Agree that the effective date of the revised scheme should be updated.	Noted	-
2. Change licensee to licence holder, and change worker to assistant. This would be more in line with the wording of the 1999 Act, and in addition consider changing the proposed Standard Conditions to the same. For example, change trader to licence holder.	Reference to licensee or trader will be replaced with licence holder and any reference to worker will be replaced with assistant or registered assistant.	Noted	-
3. Review Council officer titles within the document to reflect change in the operational structure of Public Protection & Licensing.	Agree these should be updated.	Noted	-
4. Review and clarify who will be the senior officer to deal with appeals on receipt of mitigation in respect of points issued. Members are very concerned about the way in which past appeals have been dealt with, and in particular the time taken for a decision to be made. It is suggested a timeframe be incorporated into the scheme, and if not met the notice is cancelled. In addition, on request of either party, an interview convened with relevant parties present.	We note your concerns about who will review alleged offences where letters of mitigation are provided by a trader and also timescales for considering such appeals but we are not proposing to change how the scheme is operated at present. This will be reviewed at a future date.	At the time the new conditions come in to force, licence holders must be informed of procedure and who to write to to submit an appeal.	The contact and address for submitting appeals will be included in the scheme.
5. The scheme makes provision for a penalty point notice to be sent by post if neither licence holder or assistant is present, or refusal to accept/sign notice. In the past, delay of posting by the council and period of time elapsed before licence holder is in receipt has led to confusion about number of points issued, It is suggested a timeframe be incorporated into the scheme, and if not met the notice is cancelled. All notices sent by post should be by Recorded Delivery.	We note your suggestion that a more rigid timeframe for the allocation of points should be stipulated but we are not proposing to change how the scheme is operated at present. This will be reviewed this at a future date.	Noted	-

<p>6. Proposed standard conditions 1, 2, 4 and 5 require the licence holder to notify council of any changes within 7 days. It would be interesting to know how the council will prove non-compliance, and also award the penalty points.</p>	<p>The 7 day notification period is a more realistic expectation than requiring notification as soon as a change occurs. Where the Council becomes aware that the condition has been breached, penalty points will be allocated.</p>	<p>Noted</p>	<p>-</p>
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Proposed Schedule to the Penalty Point Scheme

Proposed Condition No.	Breach of Condition	Proposed Points
1	The licence holder fails to notify Council of change of name, address, telephone number or e-mail address within 7 days.	3
2	The licence holder fails to provide adequate storage and/or fails to notify the Council of change in storage address within 7 days of the change.	5
3	The licence holder attempts to have more than three assistants registered with the Council at any one time.	Dealt with administratively rather than through enforcement
4	The licence holder fails to notify Council of change of name or contact details of their assistant(s).	3
5	The licence holder fails to notify Council that assistant has ceased working for them.	3
6	Licence holder allows trading without licence holder or registered assistant on stall.	5
7	Registered assistant not carrying photographic ID	5
8	Trading takes place outside times authorised by the licence.	5
9	Trading takes place other than on the licensed pitch or other location agreed by WCC.	5
10	The licence holder selling commodities or providing services not listed on licence.	5
11	The licence holder selling or in possession of counterfeit goods.	5
12	No record of suppliers kept and/or made available to Council Officer.	5
13	The licence holder using a receptacle not approved by the Council or appropriately maintained.	5
14	Receptacle for sale of food is not maintained or regularly cleaned.	5
15	The licence holder does not have public liability insurance covering them and assistants.	5
16	Copy of public liability insurance or similar evidence not available on stall.	5
17	The licence holder sets up pitch before their specified start time, does not have stall in position by the prescribed time or doesn't commence trading within one hour of the prescribed set-up time.	5
18	The licence holder operates stall outside dimensions indicated on licence and/or goods are not contained in the licensed area.	5

19	The licence holder connects to the electrical supply of a premises without consent of bill payer & Council. Supply lines lower than 2.6m and/or cables trailed along the ground. Supply lines not securely installed or suitably protected from damage and water ingress.	5
20	Barriers used without consent from Council	3
21	Bayswater Road & Green Park awning exceeds permitted dimensions.	3
22	Licence and conditions not available on stall.	5
23	Licence plate not on display	5
24	Goods/services not appropriately priced such that the price can be determined without assistance from the licence holder.	3
25	Advertisements not in pitch and/or exceed 10% of surface area of stall/panel.	3
26	Name of the stall & goods or services on offer displayed other than: (i) Kiosks or mobile stall - on a frieze or similar designed high-level place equivalent to a shop front. (ii) Gazebo, tensioned stall roof or umbrella with a valance - on the valance or board inside the stall.	3
27	Advertising goods etc. other than those offered for sale on pitch.	3
28	Advertisements comprising of 3D representations of products on stall.	3
29	Free-standing advertisements outside pitch area	3
30	A-board or other free-standing advertisement in pitch that does not have Council approval.	3
31	Notices displayed that restrict a customer's statutory rights, e.g. "no refund" or "no returns"	5
32	The licence holder at Bayswater Road does not have "Own work notice" displayed	3
33	Vehicles left in market after permitted time, whilst not being used as the licensed receptacle, not in approved parking spaces or for loading/unloading. Vehicle returned to the market after the permitted time.	5
34	The licence holder not complying with all current food safety and food standards legislation.	5
35	No first aid box	3
36	The licence holder not complying with all relevant and current legal requirements for health and safety (including, but not limited to, those relating to electrical, gas and fire safety).	5

37	Heat producing equipment not placed safely within trading area.	5
38	Electrical supply provided by the Council but other electrical supply used by licence holder. Electrical equipment not compatible with the electrical supply or exceeds the supply's rating.	5
39	The licence holder using electrical supply of premises without consent of bill payer and Council, supply lines less than 2.6m above ground and/or supply line not securely protected from damage and water ingress.	5
40	Generator used without consent of Council. Generator is (i) accessible by the public and presents a danger to the passing public; (ii) a fire or similar hazard risk (iii) causes noise or fume nuisance. Petroleum powered generators incorrectly refuelled or with inappropriate fuel cans.	5
41	Electrical connections do not comply with the current edition of the IET Wiring Regulations and/or equipment is not safe. Certificate of testing by a competent person not available on stall and/or made available for inspection.	5
42	Gas appliances, flues, pipe work and safety devices not maintained. Certificate of testing by a competent person not available on stall and/or made available for inspection.	5
43	LPG cylinders, regulators and change-over devices not appropriately positioned, ventilated and secured. Pipework etc. used without appropriate joints.	5
44	Trading without adequate fire safety equipment. Equipment not tested or in good working order.	5
45	The licence holder not familiar with the operation of their fire safety equipment and/or equipment not readily available for use on the stall.	5
46	The licence holder's assistants not aware of what to do in the event of a fire.	5
47	Pitch not clean and tidy. Build-up of combustible materials on stall.	5
48	The licence holder and/or assistants do not treat the public and Council Officers fairly and with courtesy.	5
49	The licence holder and/or assistants engage in criminal activity or anti-social behaviour at the pitch.	5
50	The licence holder and assistants not assisting Council Officers in carrying out their duties.	5
51	The licence holder uses equipment to produce music/sound on their pitch.	5

52	The licence holder intentionally causes damage to the carriageway/footway or pitch left in unclean condition.	5
53	Refuse not placed in containers or not kept as clean as possible	5
54	Refuse containers not emptied when necessary. Waste water and oil not removed by the licence holder.	5
55	Stall not removed in event of an emergency.	5
56	Receptacle on Church Street, Berwick Street, Maida Hill, Rupert Street, Strutton Ground or Tachbrook Street Markets removed before 4pm	5
57	Stall and goods not removed to place of storage after trading.	5