



# Council Report

Date	<b>3 March 2021</b>
Title of report	<b>Busking and Street Entertainment Policy</b>
Report of	<b>Raj Mistry, Executive Director Environment and City Management</b>
Decision maker	<b>Full Council</b>
Wards involved	<b>All</b>
Report author	<b>Kirsty Munro, Principal Policy Officer</b>

## 1.0 Executive Summary

1.1 On 9<sup>th</sup> December 2020, Full Council debated a report and evidence that demonstrated the need for the Council to introduce a busking policy that does more to support busking and street entertainment, whilst at the same time reducing the undue interference or inconvenience for persons using the streets or nuisance to nearby residents and businesses. Full Council approved the adoption of the draft policy, and the resolution to adopt Part V (Licensing of Buskers) of the London Local Authorities Act 2000 to apply to the City of Westminster, and the draft designating resolution for designated streets.

1.2 Following the draft designating streets resolution the Council was required to seek representations on the draft designating order. The purpose of this report is to consider the representations received in response to the consultation held between 10<sup>th</sup> December 2020 and 31<sup>st</sup> January 2021, and to approve the Designating street resolution subject to the modifications specified below, which are considered appropriate as a result of the representations received. It is proposed that the following modifications are made:

- (1) Pitch 9 Leicester Square North East is relocated a short distance from its location towards the centre of the footway.
- (2) The terms and conditions of Pitch 9 Leicester Square North East terms are modified to include that any amplification, brass, wind, percussion or percussive instruments should be directed towards the gardens of Leicester Square.
- (3) Standard licence condition 9 as to duration shall be amended to specify that the Covent Garden pitches 10, 11, 12, 13, 14, 15 should permit performances between 11am – 9pm, as opposed to from 10am - 9pm as originally proposed.
- (4) The terms and conditions of Covent Garden Pitches 10, 11, 12, 13, 14, 15 as to duration shall be amended to specify that performances are permitted between 11am – 9pm, as opposed to from 10am - 9pm as originally proposed.
- (5) To decide whether Pitch 23 King Charles statue should either:
  - i. Stay in its current location under the existing pitch terms and conditions, or

- ii. Stay in its current location subject to modifications being made to the pitch terms and conditions and standard licence condition 9 (as to timings) so that performances shall only be permitted in this location on Sundays between 10am - 9pm only, as opposed to seven days a week; or
- iii. Be removed at this stage, on the understanding that the Council will commit to identify a suitable alternative location for an amplified pitch, and consult on a varying resolution within a period of two years from the date of implementation of the scheme.

1.3 Full Council are recommended to adopt the designating resolution as amended in light of the representations received during the consultation period as set out in paragraph 2 of this report. If Full Council resolves to adopt the resolution this will not come into effect before 5 April 2021.

## 2.0 Recommendations

2.1 The Council is asked to:

- (1) Adopt the modifications to the Designating Streets Resolution as specified in paragraphs 1.2(1), 1.2(2), 1.2(3) and 1.2(4) above.
- (2) Determine which option to adopt in relation to Pitch 23 King Charles statue as specified in paragraph 1.2(5) above by confirming whether options i, ii, or iii is approved.
- (3) Adopt the designating streets resolution, subject to the modifications specified in paragraph (4) below, to prohibit busking and street entertainment from all licensed streets save that busking and street entertainment will be permitted under and in accordance with (a) the terms and conditions of designated pitches and (b) the terms and conditions of a busking and street entertainment licence.
- (4) The designating resolution contains:
  - (4.1) the designated streets and areas where busking and street entertainment is to be prohibited – the licensed streets, namely:

Paddington	Soho	Embankment
Mayfair	Leicester Square	Trafalgar Square
Marylebone	Chinatown	Whitehall
Bayswater	Piccadilly	Parliament Square
Oxford Street	Covent Garden	Victoria
Regent Street	The Strand	Knightsbridge
New Bond Street	Charing Cross	Belgravia

- (4.2) the busking and street entertainment pitches where busking and street

entertainment will be permitted (under and in accordance with (a) the terms and conditions of designated pitches and (b) the terms and conditions of a busking and street entertainment licence – the busking pitches, namely:

Pitch 1: Marble Arch	Pitch 14: London Transport Museum
Pitch 2: Old Quebec Street	Pitch 15: St Pauls Church
Pitch 3: Vere Street	Pitch 16: St Martins
Pitch 4: Princes Street	Pitch 17: Trafalgar Square Charing Cross Rd
Pitch 5: Glasshouse Street	Pitch 18: Trafalgar Square North Terrace
Pitch 6: Eros Statue	Pitch 19: Trafalgar Square North Terrace
Pitch 7: Chinatown	Pitch 20: Trafalgar Square North Terrace
Pitch 8: Leicester Square North West	Pitch 21: Trafalgar Square North Terrace
Pitch 9: Leicester Square North East	Pitch 22: Trafalgar Square North Terrace
Pitch 10: Covent Garden James Street	Pitch 23 <sup>1</sup> : King Charles Statue
Pitch 11: Covent Garden James Street	Pitch 24 (23): Northumberland Avenue
Pitch 12: Market Square James Street	Pitch 25 (24): Charing Cross Station
Pitch 13: Royal Opera House	Pitch 26 (25): Northumberland/Hungerford Bridge

- (4.3) the modified terms and conditions that apply for each busking pitch;
  - (4.4) the modified terms and conditions for a busking and street entertainment licence; and
  - (4.5) the application process (and fee) for a busking and street entertainment licence, including the process for applying for a variation of the standard terms and conditions.
- (5) In the event of adoption, the designating streets resolution shall come into effect on the 5<sup>th</sup> April 2021.

### **Covid-19 Implications**

- 2.2 Due to the dynamic nature of the Covid19 pandemic, the council will continue to work with central government, take into account national and local guidance, and work with local stakeholders (including the busking and street entertainment community) to prepare an appropriate Covid19 response for buskers and street entertainers that protects buskers, their audiences and members of the general public.
- 2.3 At the time of writing, current Government guidance advises that all outdoor events are prohibited under the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 (SI 2020/1374) (as amended). The Council is aware that any national or local lockdown measures may continue to impact the ability for buskers

<sup>1</sup> subject to Full Council decision and which may impact on the subsequent numbering of pitches

to use their licence if the regime is adopted. It seems likely that as restrictions ease organisers of outdoor events (including buskers and street entertainers) will be required to have in place a risk assessment that would satisfy the requirements of regulation 3 of the management of Health and Safety at Work Regulations 1999 and take all reasonable measures to limit the risk of transmission of coronavirus taking into account the risk assessment and any relevant government guidance. Legislation and guidance will be kept under review by Officers and up-to-date guidance issued in the Busking and Street Entertainment Forum.

- 2.4 Section 35(1) of the London Local Authorities Act 2002 allows the Council to 'licence an applicant for one or more days or such period as may be specified in the licence on such terms and conditions and subject to such restrictions as may be so specified'. The Council can apply this power to impose additional Covid safe terms, conditions and restrictions as may be required. Generally, the Council will not impose terms, conditions or restrictions that duplicate duties and responsibilities under existing legislation. This will be kept under review given the dynamic and changing response to the coronavirus emergency.
- 2.5 The Council has also prescribed standard conditions which include the provision that pitches may be suspended in the event of an emergency, public disorder, planned events, or to prevent a public nuisance being caused. Buskers are to immediately comply with any requirement to cease busking that may be given by an authorised person of the Council or the Police.
- 2.6 The Council will use its power under s 35(1) to grant the licence for 6 or 1 month as applied plus such additional period as busking and street entertainment may be prohibited or suspended under any restrictions imposed locally or nationally by central government legislation to ensure that licence holders are able to make use of their licence for the period they have applied for.

### **3.0 Reason for Decision**

- 3.1 On 9<sup>th</sup> December 2020 a Busking and Street Entertainment Policy for the City was adopted including:
- the adoption of a city-wide Busking and Street Entertainment Code of Conduct;
  - the creation of a dedicated Buskers and Street Entertainers Forum;
  - ongoing seasonal (quarterly) monitoring and an annual review of the policy after one full year of operation; and
  - the resolution to adopt Part V (Licensing of Buskers) of the London Local Authorities Act 2000 to apply to the City of Westminster.
- 3.2 The decision outlined in this report is to approve the designation of licensed streets for the areas listed below so as to prohibit busking in those areas apart from busking that is carried on by licensed buskers within the twenty-six designated busking pitches (*or*

twenty-five depending on Full Council decision made on Pitch 23 King Charles Statue outlined in paragraph 6.0)

Paddington	Soho	Embankment
Mayfair	Leicester Square	Trafalgar Square
Marylebone	Chinatown	Whitehall
Bayswater	Piccadilly	Parliament Square
Oxford Street	Covent Garden	Victoria
Regent Street	The Strand	Knightsbridge
New Bond Street	Charing Cross	Belgravia

#### **4.0 December/January 2021 Consultation Results Consultation**

- 4.1 The consultation was held between 10<sup>th</sup> December to 31<sup>st</sup> January 2021. The Council invited responses to the proposals through an online survey and to our dedicated mailbox. No verbal representations were requested to be heard.
- 4.2 The full report is attached as Appendix A and the redacted consultation responses are also attached as Appendix B. A summary of the results is outlined below.

#### **Survey Results**

- 4.3 The consultation survey sought feedback on the areas to be regulated including the streets where busking and street entertainment would be prohibited, the pitch locations and terms and conditions where busking will be permitted, the licence terms and conditions, as well as the application process. An open question was also provided to enable respondents to provide any further comments.
- 4.4 189 survey responses were received, and the demographics of the survey responses included:
- 28 (14%) residents
  - 27 (14%) street entertainers
  - 18 (9%) affiliated with a business, amenity society or who work in Westminster
  - 126 (65%) visitors (37 from London, 65 from UK, 24 from abroad)
- 4.5 28 written responses were also received from several resident's, street performers, businesses, performers associations, BIDs, museums, neighbourhood organisations and housing providers.
- 4.6 The trends seen from the survey and written responses followed that seen in previous engagement and consultations, and centre around the varied views between stakeholders on whether the council should or should not introduce regulation.

4.7 17% agreed with the proposed regulated streets, 2% neither agreed nor disagreed, and most (81%) of survey respondents disagreed. The main citations of disagreement came from buskers and visitors who contend the regulation of buskers (38%) and some stating that the current regulations are sufficient to manage the issues which have been raised (38%). The general representative view of stakeholders is outlined below:

- **Buskers and Street Entertainers** oppose all proposals with common reference to the disagreement with regulation and control measures because they believe that the Council already has sufficient powers to intervene with problematic performers. Concerns were repeatedly raised that introducing the licensing scheme and the controls placed on pitches and amplification would ultimately end busking and street entertainment and damage livelihoods. Some stated the damage to livelihoods has been further exasperated by the current Covid-19 pandemic and economic climate.
- **Residents and Businesses** were more likely to support the proposals, and those who disagreed, did so for different reasons to buskers and street entertainers and were more likely to comment that the restrictions do not go far enough to effectively reduce nuisance. Other comments received included concerns around the interaction of highway use, as well as the location of pitches within evolving place shaping and licensing enablers to support the re-opening of the City as a result of the Covid-19 pandemic. Concerns were also raised about the absence of some streets not being included within the scheme, which they believed, created a risk for busking and street entertainment activities to be displaced.
- **Visitors** also oppose regulation, often citing that the streets should be open to anybody who wants to perform on them and that busking and street entertainment is a valued and popular activity that brings about a unique artistic vibrancy and spontaneity.

## 5.0 Considerations

5.1 Whilst the Council encourages the input and views of visitors as it supports our wider understanding of the value of street entertainment and help to inform that the Council must do more to support the promotion of this activity across the City, officers are also mindful that visitors experience is one that is very different to that of residents and businesses who experience significant adverse impacts as a result of being in fixed situ close to global busking hotspot areas. On balance, the Council is still of the view that busking and street entertainment is and continues to cause adverse impacts and it should be regulated. The Council continues to receive a high volume of complaints from residents and business and are challenged by the very low effective use of existing powers to tackle the undue interference, inconvenience and nuisance caused

by busking and street entertainment<sup>2</sup>. Appropriate regulation is therefore considered the only option.

5.2 The Council understands that a regulatory approach is one that is generally not supported by the busker and street entertainment community, however we are committed to balancing their interests by embedding this policy within a wider busking and street entertainment policy that ensures we continue to encourage and support talent that contributes to our City's lively and diverse street scene including:

- continuing to support busker and street entertainer self-regulatory approaches and associations to enable the Council to keep regulation light touch
- establishing a dedicated busker and street entertainment website that provides information and relevant updates to buskers and street entertainers as well as promoting the community.
- formalising an ongoing platform of engagement through the Forum to ensure that buskers and street entertainers have a voice in the decisions we and our wider community take, as well as considering changes to the policy as it embeds including the variation of pitch terms and conditions as well as the addition of any new pitches
- work with residents, businesses, buskers and street entertainers, as well as other music, art and theatre institutions to curate the performer spaces for collaborative and inspired performances, competitions and events.

5.3 The Council notes the requests for additional streets to be included in the Marylebone area, however has considered that the addition of any streets beyond those currently proposed will be based upon evidence that displacement has occurred once the policy is implemented. The impact of displacement will be closely monitored through the commitment within this policy to undertake quarterly monitoring following implementation.

5.4 The interaction of pitches and the changing landscape of the streets as Westminster continues to support the re-opening of businesses and national economy as a result of Covid-19 has also been considered. Currently there are no conflicts with place shaping developments and al fresco dining licensing provisions. The Council in any event will always consider and balance the interests of buskers and street entertainers, who alongside businesses have also been heavily impacted by the pandemic - both are users of the public space and play an integral role in the draw of visitors to our City.

5.5 This policy represents an entirely new approach to busking in our City and has been carefully designed to balance the needs of everyone that shares the public space, by

---

<sup>2</sup>typically we receive around 2,200 complaints each year relating to noise. Certain locations see a high number of loud or amplified performances daily, which means local residents and businesses get little or no respite for lengthy periods of time, which impacts significantly on their health and wellbeing. At busy times, we also witness risks to public safety where pedestrians spill out onto roads to get past street entertainers and their audience.

taking a targeted approach. However, the Council remains committed to ongoing quarterly monitoring to account for the seasonality changes, and an annual report of will be published after one full calendar year of operation that considers the policy impact and effectiveness.

## **6.0 Proposed Policy Modifications**

6.1 Following the consultation, the Council proposes that the following amendments to the policy should be made: The full policy for review is attached as Appendix C:

**(1) Pitch 9 Leicester Square North East is relocated a short distance from its location towards the centre of the footway**

**(2) The terms and conditions of Pitch 9 Leicester Square North East are modified to include that any amplification, brass, wind, percussion or percussive instruments should be directed towards the gardens of Leicester Square**

*The modifications proposed to Pitch 9 are recommended in response to alleviate concerns of business and residents in the area that amplification directed towards their residence will continue to cause adverse impacts. Officers consider that the slight movement of the pitch towards the centre of the footway and directing the sound towards the open space will aid in reducing noise nuisance whilst still enabling buskers to attract the same size in crowds as they do currently.*

**(3) Standard licence condition 9 to include that the Covent Garden Pitches 10, 11, 12, 13, 14 and 15 should permit performances between 11am – 9pm.**

*This modification is proposed following a representation heard that the Piazza and side streets of Covent Garden are used as a highway for freight services until 11am, therefore the start time for these pitches should be altered to prevent a potential clash in the use of the highway.*

**(4) The terms and conditions of Covent Garden Pitches 10, 11, 12, 13, 14 and 15 are modified to include that performances are permitted between 11am – 9pm.**

*This modification is proposed following a representation heard that the Piazza and side streets of Covent Garden are used as a highway for freight services until 11am, therefore the start time for these pitches should be altered to prevent a potential clash in the use of the highway.*

**(5) Pitch 23 King Charles statue is either:**

- i. Reserved in its current location and under the existing standard licence terms and conditions**

- ii. **Reserved in its current location with modifications made to the pitch terms and conditions and standard licence condition 9 to permit performances in this location on Sunday between 10am and 9pm only**
- iii. **Removed and a commitment made that the Council will identify a suitable alternative location for an amplified pitch, and consult on a varying resolution within a period of two years.**

*A modification to Pitch 23 is proposed following a recommendation from the Highways Authority that although crowding is not permitted under the current pitch licence terms, there is concern that any crowding as a result of busking may cause interference or inconvenience with pedestrian safety. The Highways Authority have therefore recommended that either the pitch is only operational on a Sunday when there is less road traffic, or to remove the pitch completely and find an alternative location. Full Council are asked to consider their preferred option.*

## **7.0 Equalities Implications**

7.1 The council must have regard to its public sector equality duty under section 149 of the Equality Act 2010. In summary section 149 provides that a Public Authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristics and persons who do not share it.

7.2 Section 149 (7) of the Equality Act 2010 defines the relevant protected characteristics as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

7.3 An Equalities Impact Assessment has been conducted and the council believes that the busking and street entertainment proposals, including the licensing regime, does not adversely impact or unlawfully discriminate against any protected characteristics.

## **8.0 Legal implications**

### *Application of Part V*

8.1 On 9 December 2020, the Council resolved to adopt Part V of the London Local Authorities Act 2000 (“the 2000 Act”) which allows the Council to regulate busking, either by prohibiting busking or licensing busking in its borough

- 8.2 The legislation was adopted because the Council believes that there has been, is being or is likely to be caused, as a result of the busking:
- a. Undue interference with or inconvenience to or risk to safety of persons using a street in that part of their area or other streets within the vicinity of that street; or
  - b. Nuisance to the occupiers of property in or in the vicinity of a street in that part of their area.

- 8.3 On 10 December 2020 the Council published a Notice of the resolution in a local newspaper confirming the passing of the adoption resolution and the date when Part V will apply to busking in the City and also of the general effect of the provisions of Part V coming into operation as from that day. The date when Part V is to apply is to be no earlier than the expiration of three months from the publication of the said notice.

*What busking will be regulated?*

- 8.4 Busking means the provision of entertainment in a street but does not include the provision of entertainment:
- a. of a class which from time to time is by resolution excluded from the operation of the 2000 Act;
  - b. under and in accordance with a premises licence or a temporary event notice having effect under the Licensing Act 2003 and which authorises the performance of music or dancing;
  - c. which is authorised specifically to take place in a street under any other enactment; or
  - d. consisting of music performed as an incident of a religious meeting, procession or service.
- 8.5 Subject to the above, busking and street entertainment is a form of evolving performance art consisting of entertainment in a street or areas where the public commonly have access. The phrase ‘busking and street entertainment’ should be given its ordinary meaning as commonly applied in everyday language which can include (but is not limited to) performances by musicians, magicians, comedians, artists, dancers, acrobats and mime artists.
- 8.6 For the purposes of this policy busking and street entertainment ***is not*** considered to be:
- Activities that incorporate the sale of goods and/or services, for example portrait artists, balloon sellers and tarot card reading. Such activities are regulated by the Street Trading regime and are subject to separate controls.
  - Entertainment that is performed as part of a street party, community festival, charitable fundraising event, protest or similar activities.

- Entertainment related to a religious meeting, procession or service (this includes performances of carol concerts by members of the Salvation Army)
- Entertainment organised as part of a wider authorised event by the council's City Promotions Events and Filming team, including (but not limited to) Chinese New Year, Gay Pride, other seasonal parades and festivals, and Film Premiers.

*What is the meaning of a street for the purposes of the busking scheme?*

- 8.7 A "street" includes any street or way to which the public commonly have access, whether or not as of right; any place, not being within permanently enclosed premises, within 7 metres of any such street or way, to which the public commonly have access and any area in the open air to which the public commonly have access.

*The designation of licence streets*

- 8.8 Section 34 of the 2000 Act states that, if the council considers that busking should be licensed in the area it may pass any of the following resolutions:
- a. A resolution designating any street or part of a street within the City as a licence street (a designating resolution); or
  - b. A resolution prescribing in relation to any licence street or any part of a licence street any hours during which busking may take place.
- 8.9 The Council passed a draft designating streets resolution on 9 December 2020. Under section 34 of the 2000 Act, that resolution shall take effect on the day specified in the resolution which must not be before the expiration of the period of one month beginning with the day on which the resolution is passed.
- 8.10 In accordance with Section 34 of the 2000 Act, the Council has published a notice of its intention designate streets for the purpose of busking and street entertainment in a local newspaper circulating in the area and has served a copy of that notice on the highway authority, the Metropolitan Police Commissioner, and anybody which appears to be representative of persons carrying on busking in the area affected by the proposed resolution. That notice confirmed that representations or a request to hear representations relating to it may be made in writing by no later than 31 January 2021, which period, was not less than 28 days after the publication of the notice on 10 December 2020.
- 8.11 The consultation period specified in paragraph 8.10 has given all persons who might be affected by the proposals the opportunity to comment on whether the proposed restrictions are appropriate, proportionate or needed at all.
- 8.12 The Council must then consider any written representations relating to the proposed resolution which they have received in the specified time and must hear oral representations if requested to do so. No requests for oral representations have been

received. Having considered the representations, the Council may, if it thinks fit, pass the proposed resolution with any modifications considered to be appropriate.

- 8.13 If the Council passes the resolution to designate streets on 3 March 2021, the Council must then publish notice of the passing of such a resolution in a local newspaper circulating in the area on two consecutive weeks, the first of which shall not be later than 28 days before the day specified in the resolution from the coming into force of the designation.
- 8.14 The Act makes provision for a resolution to adopt Part V, provision for a designating resolution, and provision for standard conditions and application procedures. As set out above there are different statutory notification requirements. In order to comply with these requirements and ensure compliance with time limits, the 5<sup>th</sup> April 2021 is the most appropriate date for the policy and regime to come into effect.

#### Application process

- 8.15 An applicant for the grant of a licence shall provide such information as the Council may by regulation prescribe. The Council may licence an applicant for one or more days or such period as may be specified in the licence on such terms and conditions and subject to such restrictions as may be so specified. Regulations may, inter alia, prescribe the procedure for determining applications. An applicant for a licence shall pay such a fee determined by the council as may be sufficient to cover in whole or in part the reasonable administrative or other costs incurred in connection with their functions under Part V of the 2000 Act.
- 8.16 The Council may refuse to grant a licence on any of the following grounds -
- a. that the applicant could be reasonably regarded as not being a fit and proper person to hold a licence;
  - b. that there is not enough space in the street in respect of which the application is made for busking to take place without causing undue interference with, or inconvenience to, or risk to the safety of persons using the street, or other streets within the vicinity of the street;
  - c. that there is a likelihood of nuisance being caused to the occupiers of premises in or in the vicinity of the street in respect of which the application is made.
- 8.17 The Council shall refuse to grant a licence in respect of an application which relates to any street other than a licence street.
- 8.18 The Council may revoke a licence on any of the following grounds -
- a. that there has been a breach of the conditions of the licence;
  - b. that undue interference with, or inconvenience to, or risk to the safety of persons using the street, or other streets within the vicinity of the street, has been caused as a result of the busking;

c. that nuisance has been caused as a result of the busking to occupiers of property in or in the vicinity of the street in respect of which the licence was granted.

8.19 The Council may make regulations prescribing standard conditions applicable to all licences. Where the council have made such regulations, every licence granted by the council shall be deemed to have been so granted subject to the standard conditions except so far as they are expressly excluded or amended in any particular case.

#### Human Rights implications

8.20 The powers need to be exercised appropriately so as to provide a proportionate response to the problems caused by busking. In deciding whether to prohibit or licence busking in any part of the City, the council is advised to have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the European Convention on Human Rights. The Human Rights Act 1998 incorporates the key articles of the European Convention on Human Rights into domestic law. It is unlawful for the council to carry out its functions in a way which is incompatible with rights set out in the European Convention of Human Rights.

8.21 Article 10 states that everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. However, the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

8.22 Article 11 states that everyone has the right to freedom of peaceful assembly and to freedom of association with others. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

8.23 These rights must be balanced against the protection of the rights and freedoms of others, including the right that everyone has under Article 8 to respect for their private and family life and their home. In some circumstances, public authorities must take positive steps to prevent intrusions into a person's private life by other people, including those who engage in anti-social busking and street entertainment.

- 8.24 Article 14 of the convention (prohibition of discrimination) states that the enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status. The council has undertaken an Equalities Impact Assessment (EIA) in accordance with its Public-Sector Equalities Duty under Section 149 of the Equality Act 2010 and found that there is not anticipated to be a negative impact on protected groups.
- 8.25 Concern has been expressed about the potential use of the 2000 Act to interfere with legitimate and reasonable activity such as peaceful protests and busking. The proposals in this report are intended to support responsible busking and to be a proportionate response to the irresponsible and anti-social busking that has been identified from complaints submitted by residents and businesses in the identified areas.
- 8.26 As indicated above, a balance must be struck between the rights of individuals who wish to engage in busking and street entertainment and the interests of the local residential and business community. Even if significant members of the public are enjoying the busking entertainment, the “right” of the public to enjoy that busking must be balanced against the detrimental effect that it might be causing if it is too loud or intense or too persistent etc. What might be acceptable in one public place might not be acceptable in a public place within a highly residential area or even an area with many commercial operators if the busking unreasonably interferes with their ability to work.

### Appeals and Challenge

- 8.27 Any of the following persons, that is to say:
- a. An applicant for the grant of a licence whose application is refused;
  - b. A licence holder who is aggrieved by any term, condition or restriction on or subject to which the licence is held; or
  - c. A licence holder whose licence has been refused;
- may at any time before the expiration of a period of 21 days appeal to the magistrates’ court acting for the area in which the licence street is situated. An appeal by either party against the decision of the magistrates’ court may be made to the Crown Court.
- 8.28 There is no means within the legislation to challenge either the implementation of Part V or the designation of licence streets. Any person who is aggrieved by the implementation of the legislation or the licensing scheme itself can potentially seek permission to appeal to the Administrative Court by way of Judicial Review proceedings. The grounds for such a review would typically have to be based on illegality and/or irrationality and/or procedural impropriety.

## Enforcement

8.29 Any person who:

- a. busks in any street to which Part V of the 2000 Act applies without the authority of a licence; or
- b. is concerned with the organisation or management of busking which is not authorised by a licence; or
- c. contravenes any condition of his or her licence; or
- d. in connection with his or her application for a licence makes a statement which he or she knows to be false in a material particular,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1000).

8.30 An authorised officer or a constable who has reasonable cause to believe that busking is taking place or is about to take place without a licence or in breach of the terms and conditions of a licence or in a street which is not a licence street to which Part V of the 2000 Act applies may require that busking either cease or not take place. If the busking continues or takes place despite the requirement for the busking to either cease or not take place, the authorised officer or constable may seize and remove any apparatus or equipment used in connection with the busking which may be required to be used in evidence in respect of an offence under section 42 (Enforcement under Part V) of the 2000 Act.

## **9.0 Appendices**

- Appendix A: Consultation Report
- Appendix B: Consultation Responses
- Appendix C: Draft Policy incorporating
  - Draft Code of Conduct
  - Plans of the designated areas where busking will be licensed
  - Draft regulations prescribing standard conditions
  - Draft regulations prescribing application process

## **11.0 Background Reports**

- Full Council 9<sup>th</sup> December 2020  
<https://committees.westminster.gov.uk/documents/s39939/Full%20Council%20Report%20Busking%20and%20Street%20Entertainment%202020.pdf>
- Licensing Committee 25<sup>th</sup> November 2020: Item 4

<https://committees.westminster.gov.uk/ieListDocuments.aspx?CId=129&MId=5490>

- Licensing Committee 23<sup>rd</sup> September 2020: Item 4  
<https://westminster.moderngov.co.uk/ieListDocuments.aspx?MId=5216>
- Licensing Committee 7<sup>th</sup> July 2020: Item 6  
<https://committees.westminster.gov.uk/ieListDocuments.aspx?MId=5215&EVT=105>
- Licensing Committee 10<sup>th</sup> January 2020: Item 6  
<https://committees.westminster.gov.uk/ieListDocuments.aspx?MId=4940>
- Licensing Committee 28<sup>th</sup> November 2018: Item 6  
<https://committees.westminster.gov.uk/ieListDocuments.aspx?MId=4578>