

**Westminster City Council****Response to the BIS Consultation “Street Trading and Pedlary Laws – Compliance with the European Services Directive” Dated November 2012****Introduction**

This is the response of Westminster City Council (“the City Council”) to the above consultation.

Street trading in the City of Westminster is controlled under the City of Westminster Act 1999 (“the 1999 Act”). Under the 1999 Act, the City Council became the first local authority to enjoy legislation that restricted the activities of pedlars so that they could only trade without a licence if they did so house to house. The City Council promoted the Act for good reason. The streets in the busiest parts of Westminster, where persons holding pedlars’ certificates congregated, and would congregate again if the legislation were watered down, are some of the busiest streets in the world in terms of footfall. For example, during the Christmas period in 2011, the City Council had to close certain streets to vehicles for safety reasons because of the sheer numbers of pedestrians. In the view of the City Council, it would plainly be unacceptable for those streets to be open to pedlars to trade their goods. But it is not just at Christmas that the streets are congested, it is all year round and at all times of the day and night. The problem would be self-perpetuating – higher footfall would attract greater numbers of pedlars.

It is not just safety that is an issue in the City. Westminster contains a very large number of listed buildings and much of the City is within conservation areas. It also contains the Parliament Square and Westminster Abbey world heritage site. The presence of uncontrolled pedlars, particularly with relatively large and wheeled stalls would detract from the amenity of the City.

To illustrate the point, the City Council has taken a number of photographs around the city, showing a mock-up of a wheeled stall that would comply with the dimensions set out in BIS’s draft regulations (see Appendix A). Some of the photographs are appended to this response, and the evidence is compelling. It would be entirely inappropriate to allow this kind of activity in the City. It is far removed from the idea of what a “genuine pedlar” would do. In the view of the City Council it is, put simply, street trading and as such must not be allowed through the back door.

But it is not just the size and nature of stalls that worries the Council. As mentioned above, the effect of potentially large numbers of pedlars adding to the congestion on the City’s streets is also of genuine concern. That is one of the reasons why the house to house restriction was promoted in the first place.

The City Council has taken the advice of leading counsel in formulating this response and drafting the amendments to the City of Westminster Act 1999 which accompany it (Appendix B). Counsel was asked to advise on the compatibility of the 1999 Act with the Directive and the Regulations. The Department has seen previous drafts of the amendments proposed by the City Council.

The City Council would like to meet representatives of the Department to explain these issues in more detail.

#### **Note on Street trading licences: duration**

The City Council have not put forward any amendments in relation to duration of street trading licences (as opposed to temporary licences) of the type suggested by BIS in its draft regulations.

The first reason for this is that street trading licences have an indefinite duration in Westminster and therefore the Directive is complied with in respect of them.

Section 21 allows the council to grant temporary licences. This it does in relation to licences for tables and chairs on the highway, for markets where traders trade on a single day, or for other special reasons. The length of the licence is at the discretion of the council and is currently limited to a maximum period of 6 months. As will be seen in the draft amendments, the council proposes to increase this maximum duration to 2 years.

It seems that in order to comply with regulation 16 of the 1999 Regulations, the Council can grant temporary licences, so long as certain conditions are met. It therefore seems that it is appropriate to retain section 21 in its current form. It would be odd to include a provision within section 21 which said that unless the council specified the term of the temporary licence, then it would remain valid indefinitely.

#### **Note on amendments**

In the consultation paper, there is a suggestion that any amendments put forward by the City Council will simply be “slotted in” to the draft regulations. A number of the Council’s proposed amendments are based upon the draft regulations. If, as a result of the responses to the consultation, the Department decides to amend the draft regulations, it is important that the council is given an opportunity to consider whether any changes to its amendments are required.

#### **Note on commencement**

As will be seen in the City Council’s proposed amendments, there is provision enabling the council to designate areas within which certain restrictions on pedlars will apply. The City Council will need time to follow the procedures for designation set out in the amendments. For that reason, the City Council would ask that commencement date of the regulations be set so that the City Council has that time. The council has made some suggestions at the end of its proposed amendments.

## **Responses to Consultation Questions**

### **Repeal of the Pedlars Acts:**

**Question 1:** Do you agree with the proposed repeal of the Pedlars Acts 1871 and 1881 UK-wide?

Answer: Yes, in the light of the fact that the council has received advice that its own existing provisions relating to pedlars require amendment.

The City Council wishes to take the opportunity, however, of stating its view that pedlars and the issues that they raise are, in principle, no different from static street traders, and ideally the Council would prefer that pedlars were subject to the same licensing controls.

The City Council also has concerns that the wholesale repeal of the Pedlars Acts, without any replacement registration provisions (at the very least) is undesirable. There will be instances where the City Council and the police, as enforcement authorities and customers, will wish to know the name of a person acting as a pedlar or purporting to do so. The Council would therefore be supportive of a national registration scheme without any residency or good character qualification.

The City Council would wish to make it clear that it does not have any desire to become (nor could it become) a registration authority for pedlars. Given the nature of pedlary, this should be established on a national basis. Therefore the Council has not put forward any amendments on the subject.

#### **Question 1.1**

Answer: N/A (only applies to police forces)

#### **Question 1.2:**

Answer N/A (only applies to pedlars)

**Question 1.3:** Do you consider that repeal would have an impact on any other organisation, individual or group? If so, please provide details of that organisation etc and what you consider the impacts on them would be.

There would clearly be an impact on local authorities, who have to administer the street trading regime. This includes the City Council, because the 1999 Act refers specifically to the Pedlars Acts, in setting out the pedlars' exemption for house to house sales. The 1999 Act would have to be amended (as is proposed by the City Council should happen) and prepare for and train its officers about the replacement regime and enforce it on the ground.

The change would also have an impact on licensed street traders, as would any change to street trading legislation.

It would also have an impact on business improvement districts. In Westminster, the New West End Company BID have a central role in looking after the streetscape of the West End, and have their own "street ambassadors".

Organisers of large scale events of the sort that will attract pedlars will also be affected. In Westminster, an example would be the premiere of a film in Leicester Square.

**Question 2:** Do you agree with our proposed new definition of a pedlar for the purposes of the pedlar exemption from the “national” street trading regime in England and Wales? Please fully explain your reasons for agreeing or disagreeing with any element of the proposed definition.

This question is not of direct relevance to the City Council, because the national legislation does not apply. However, it will be seen from later responses, and the City Council’s proposed draft amendments (and the footnotes to those amendments), that the City Council does not entirely agree with the new definition of pedlar, for reasons which should be self-explanatory, and which are touched on in the introduction to this response.

Counsel advised that the City’s Council’s “door to door only” exemption is incompatible with the Directive. However, the proposals set out in the amendments are, in counsel’s view, compatible.

In summary, the City Council’s amendments would:

- require pedlars to arrive to the place where they are trading on foot and then trade only on foot;
- require any trollies to be within certain dimensions
- enable the council to designate areas within which only house to house peddling would be allowed without a street trading licence. The grounds for designating are set out in the amendments;
- allow pedlars to trade without a licence outside a designated area if they follow rules about moving from place to place.

#### **Amendments to Schedule 4 to the LG(MP)A**

**Question 3:** If you are a local authority, do you envisage that there might be circumstances in which you would be able to designate a street as a licence/ consent street in relation to established traders but not in relation to temporary traders? (paragraphs 1.25 – 1.27)

This question is of no application in Westminster because the 1999 Act works the opposite way to the 1982 Act. Under the 1999 Act, street trading is prohibited in any area which is not a designated street. Under the 1982 Act, street trading is allowed unless the street is designated.

**Question 4:** Do you agree that only one photo needs to be submitted with street trading applications which are made electronically? (see paragraph 1.28 above)

Yes

**Question 5:** Do you agree with the proposal to replace the mandatory refusal ground? If not, please explain why you do not think that the 1933 Act provides adequate protection and why the minimum age requirement of 17 needs to be retained. (Paragraph 1.32).

Yes, the City Council agrees.

**Question 5.1:** If you are a local authority, can you indicate the approximate number of applications you would expect to be made from those under 17 years of age?

No, the City Council does not have data on which it can make a reasonable estimation.

**Question 6:** Would it be helpful for BIS to issue guidance on the circumstances in which the discretionary grounds in 3(6) (a), (d), (e) and (f) can be used? (see paragraphs 1.33 and 1.34 above).

The 1999 Act contains similar provisions to those mentioned above. They are:

- section 12 (1)(d) – the equivalent of paragraph 3(6)(a) (insufficient space). In the 1999 Act, this is a mandatory ground for refusal;
- section 13 (1)(b) – the equivalent of paragraph 3(6)(d) (applicant’s unsuitability);
- section 13 (1)(f) – the equivalent of paragraph 3(6)(f) (failure to pay charges).

The City Council has not struggled with these provisions but if BIS believes it necessary to issue guidance tailored to the provisions of the 1999 Act, the City Council would wish to be consulted on it.

**Question 7:** Do you think there are any circumstances in which the existing paragraph 3(6)(b) ground (that there are already enough street traders trading in the street from shops or otherwise in the goods in which the applicant desires to trade) could be used compatibly with the Directive and, if so, please give reasons. (see paragraphs 1.36 -1.37).

The City Council has been advised that the equivalent in the 1999 Act (section 13(1)(a)) is incompatible with the Directive on the face of it. However, counsel has also advised that a modified version of the ground would be acceptable. The modification is set out in the amendments, and it ensures that the Council would have to base their decision on an overriding reason of public interest, within the meaning given by the Services Directive. In addition, if the over-abundance of a certain type of trader would cause difficulties with, say, congestion, then it could be dealt with under other grounds.

The City Council were particularly concerned about losing this ground, for a number of reasons, not least the preservation of lively and vibrant markets, selling a range of goods. The council has been advised that the long term aim of preserving markets could be justifiable within the terms of the Directive.

**Question 7.1:** Do you consider that it is necessary to insert a new replacement “suitability” refusal ground into paragraph 3(6)? (see paragraph 1.38) (the ground being that the street is unsuitable for the trading in which the applicant desires to trade).

Yes, the City council believes that this would provide useful, but as an addition, not a replacement.

**Question 7.2:** In relation to this new ground, can you tell us:

*(i) In what circumstances you would use this ground and how often?*

The way that the City Council operates the regime under the 1999 Act is to designate small areas, each the size of a street trading pitch, as designated streets. Applications for licences are made in respect of each individual pitch. So the City Council regulates where street trading pitches are to go by designation, not by the granting of licences.

Nonetheless, there may be good reason to refuse a licence in a particular place on the grounds of what is intended to be sold, because of the nature of the street. For example, if the street were narrow or if it were busy, it might be unacceptable for there to be a hot food trader, because of safety concerns.

*(ii) Whether this ground would produce costs on you as a local authority, or on you as a business and what these costs are likely to be?*

It is unlikely that this ground would result in additional significant costs.

**Question 7.3:** Would it be helpful for BIS to issue guidance on the circumstances in which this replacement ground could be used?

The City Council would not anticipate struggling with this new ground but would wish to be consulted on the formulation of any guidance.

**Question 8:** Do you think there are any circumstances in which either of the grounds in paragraph 3(6)(c) or (g) could be used compatibly with the Directive in relation to temporary traders? (see paragraphs 1.39 -1.42) (The grounds are the applicant wants to trade for too few days each week and the applicant has failed to use previous licence sufficiently).

The “making full use” ground is found in section 13(1)(d) and (e) of the 1999 Act – there is no equivalent to the “too few days” ground.

The City Council does not think that there would be any circumstances in which the ground could be used compatibly in relation to temporary traders. It is also unlikely, however, that a temporary trader would have been in the position of holding a street trading licence in the City and not make full use of it, because it would be likely to be economically unviable to do so.

**Question 8:1:** Do you think it would be preferable to pursue our proposed approach of expressly preventing the grounds from being used in relation to temporary traders or to repeal the grounds completely?

It would be preferable to pursue the approach of expressly preventing the grounds from being used in relation to temporary traders.

**Question 8.2:** Will local authorities continue to use these grounds in relation to established traders?

Yes.

**Question 8.3:** Do you foresee any difficulties with our proposals to limit the circumstances in which these grounds could be used in relation to established traders?

The only potential difficulty that the City Council has is if the 1999 Act is amended (as proposed by the City Council) to allow corporate bodies to apply for street trading licences. Corporate bodies who are temporary traders are more likely to apply for a street trading licence than an individuals who are temporary traders, because they can employ UK residents to man a stall, whereas an individual temporary trader would have to continually enter and leave the UK to maintain his temporary status. A corporate body might find it economically acceptable not to avail itself fully of a street trading licence. For example, it could decide only to trade on certain busy days.

This illustrates, in the City Council's view an inherent unfairness in the Directive. BIS is right to say that the Council might feel that it would be difficult to treat permanent and temporary traders differently in this way, but this is an inherent defect in the Directive which allows for (and in fact actively promotes) such discrimination to take place.

**Question 9:** Do you foresee any problem resulting from the proposed repeal of paragraph 3(8) of Schedule 4 to the LG(MP)A? (see paragraph 1.43). Paragraph 3(8) in the 1982 Act deals with cases where a person was trading in a fixed position without a licence lawfully (because he didn't need one) in a street which then becomes a licence street, requiring him to have a licence.

N/A: There is no equivalent provision to paragraph 3(8) in the 1999 Act.

**Question 9.1:** Do you agree with our assumption that those who may benefit from this provision are more likely to be UK nationals than nationals of other Member States?

N/A: There is no equivalent provision to paragraph 3(8) in the 1999 Act.

**Question 10:** Do you foresee any problems with our proposal to give local authorities flexibility to grant licences for longer than 12 months or indefinitely? (see paragraphs 1.44 – 1.47)

N/A: The 1999 Act only allows street trading licences to be granted on an open ended basis. This has worked well.

If you are a local authority can you further tell us:

*Question 10.1:* Whether lengthening the duration of licences would have a positive, negative or neutral impact on the ability of new street traders to obtain licences to trade in your licence streets?

*Question 10.2:* (i) Whether you are likely to issue licences for more than a 12 month period of indefinitely?

(ii) If you are likely to issue licences for a defined period which is longer than 12 months, what period you are likely to choose?

N/A for the reasons mentioned above.

**Question 11:** Would it be helpful for BIS to issue guidance as to how the PSR may affect a local authority's ability to use some or all of the revocation grounds contained in paragraphs 5(1)(a) to (c) in relation to established traders/temporary traders? (see paragraphs 1.48 – 1.50) The grounds in 5(1)(a) to (c) relate to (a) there not being enough space in the street, (b) suitability of licence holder and (c) non-payment of fees.

Yes, and the City Council would wish to be consulted.

**Question 11.1:** Do you think there are circumstances in which the paragraph 5(1)(d) ground could be used compatibly with the Directive in relation to temporary traders? The 5(1)(d) ground is failure to avail of the licence to a reasonable extent.

**Question 11.2:** Do you think it would be preferable to pursue our proposed approach of expressly preventing that ground from being used in relation to temporary traders or to repeal the ground completely? Will local authorities continue to use that ground in relation to established traders?

The equivalent ground can be found in sections 15(1)(c) and (d) of the 1999 Act. 15(1)(c) relates to individuals, and 15(1)(d) to companies. The City Council's response is the same as for question 8: The City Council does not think that there would be any circumstances in which the ground could be used compatibly in relation to temporary traders. It is also unlikely, however, that a temporary trader would have been in the position of holding a street trading licence in the City and not make full use of it, because it would be likely to be economically unviable to do so.

**Question 11.3:** Do you foresee any difficulties with our proposals to limit the circumstances in which that ground can be used in relation to established traders?

The City Council's answer is the same as for question 8.3:

The only potential difficulty that the City Council has is if the 1999 Act is amended (as proposed by the City Council) to allow corporate bodies to apply for street trading licences. Corporate bodies who are temporary traders are more likely to apply for a street trading licence than an individual who is a temporary trader, because they can employ UK residents to man a stall, whereas an individual temporary trader would have to continually enter and leave the UK to maintain his temporary status. A corporate body might find it economically acceptable not to avail itself fully of a street trading licence. For example, it could decide only to trade on certain busy days.

This illustrates, in the City Council's view an inherent unfairness in the Directive. BIS is right to say that the Council might feel that it would be difficult to treat permanent and temporary traders differently in this way, but this is an inherent defect in the Directive which allows for (and in fact actively promotes) such discrimination to take place.

**Question 12:** Do you foresee any problems with our proposals –

(i) To disapply regulation 19(5) of the Provision of Services Regulations where a mandatory ground for refusal of the application exists (regulation 19(5) provides that where a licence application is not processed within the period required by regulation 19, it is deemed to be granted); or



(ii) To leave it to local authorities to decide whether to put arrangements in place to disapply the regulation in other circumstances, or to specify what conditions will automatically attach to a licence which is deemed to have been granted under regulation 19(5)? Please give reasons for your views (see paragraphs 1.51 – 1.53)

The City Council takes the view that a combination of (a) disapplication of regulation 19(5) in mandatory ground cases and (b) discretion to disapply it in other circumstances and (c) discretion to impose conditions on licences that are deemed to be granted would be the best solution. This would provide certainty in mandatory refusal cases along with the ability to deal with different cases as they arise. The ability to specify conditions is essential. **Note: In regard to the imposition of conditions where a licence is deemed to be granted, the City Council has not provided any drafting in its amendments. The City Council would welcome the opportunity to see BIS's drafting, and adopt it if appropriate.**

**Question 13:** Do you foresee any problems with our proposals to allow local authorities to relax the prohibition in paragraph 7(7) in its entirety where appropriate? (see paragraphs 1.54 -1.57) Paragraph 7(7) prohibits holders of street trading consents from using vehicles or stalls etc unless they have permission.

N/A: There is no equivalent to paragraph 7(7) in the 1999 Act.

**Question 14:** Do you foresee any problems with our proposals to amend paragraph 10(1)(d)? (See paragraph 1.59 above) Paragraph 1 10(1)(d) is related only to paragraph 7.7 (see question 13).

N/A: There is no equivalent to paragraph 7(7) (on which this proposal hangs) in the 1999 Act.

**Question 15:** Please can local authorities tell us about any other local Acts regulating street trading which are not listed at Annex B of this document (or any Acts listed in Annex B which have in fact been repealed).

Before the 1999 Act, street trading was regulated in Westminster by the London Local Authorities Act 1990. Before that it was the London County Council (General Powers) Act 1947. The 1947 Act was supplemented by Part VII of the London County Council (General Powers) Act 1957. The 1957 Act is not mentioned in Annex B.

Although all 3 Acts remain on the statute book, they are either repealed or disapplied in Westminster (see section 40 of the 1990 Act and section 32 of the 1999 Act).

**Question 15.1:** Please can local authorities tell us-

(i) whether having screened your local street trading Acts for compliance with the Directive, amendments /repeals need to be made to that legislation;

Yes they do.

(ii) if such amendments/ repeals are needed whether you wish us to include them in our regulations.

Yes, the City Council would like amendments/repeals of the City of Westminster Act 1999 to be contained in the regulations.

**Question 16:** Please can local authorities tell us-

(i) what consequential amendments are needed to the provisions listed in Annex C as a result of the repeal of the Pedlars Acts (and provide appropriately drafted provisions);

Rather than set them out in the body of this response, the amendments themselves are contained in Appendix B.

(ii) whether any consequential amendments are needed to other provisions of local Acts as a result of the repeal of the Pedlars Acts (and, if so, provide appropriately drafted provisions);

There are no other local Acts that are relevant to the City Council as far as it is aware.

(iii) if any of the provisions listed in Annex C are no longer in force.

Section 30(a) of the London County Council (General Powers) Act 1947 is no longer in force as regards the City of Westminster. The City Council cannot say whether it remains in force in relation to the other areas to which it applied (ie the areas of the former London metropolitan boroughs). That would depend on whether successor London Boroughs had brought into force section 40 of the London Local Authorities Act 1990 (local enactments relating to street trading repealed) in their areas, as the City Council did. Section 21 of the London Local Authorities Act 1990 is no longer in force as regards the City of Westminster. It was disappplied by section 32 of the 1999 Act.

Section 3 of the 1999 Act remains in force in Westminster.

**Question 17:** Can local authorities tell us-

(i) what consequential amendments are required to the provisions of local Acts listed above at paragraph 1.73 as a result of our proposed amendments to Schedule 4 to the LG(MP)A, and provide appropriately drafted provisions?

N/A

(ii) whether (and, if so, what) consequential amendments are required to any other provisions of local Acts as a result of our proposed amendments to Schedule 4 to the LG(MP)A (and again provide appropriately drafted provisions)?

Apart from the 1999 Act, there are no other local Acts that are relevant to the City Council as far as it is aware.

## Appendix A: Photographs



Oxford Circus



Westminster Bridge





Bridge Street/Houses of Parliament



Near Regent Street, with licensed trader in background



Outside Hamleys, Regent Street



Department of Business, Innovation and Skills

## **Appendix B - The Proposed Westminster Provisions to be inserted into the Regulations**

### **Part [\*]**

#### **Amendments to City of Westminster Act 1999**

##### **Amendments to the City of Westminster Act 1999**

1. The City of Westminster Act 1999<sup>(a)</sup> is amended as specified in regulations 2 to 9.

##### **Exemption for pedlars from street trading regime**

- 2.—(1) For paragraph (e) of section 3 substitute—

“(e) trading as a pedlar.”.

- (2) After section 3 insert—

##### **“3A Pedlars**

- (1) The reference to trading as a pedlar in section 3(e) of this Act is a reference to trading in accordance with—
  - (a) subsection (2) below (in relation to all cases);
  - (b) subsection (4) below (in relation to trading in a designated area);
  - (c) subsections (5) and (6) below (in relation to trading other than in a designated area).
- (2) Trading is in accordance with this subsection if—
  - (a) the trading is only on foot; and
  - (b) each article which the person is selling or exposing or offering for sale, and each article used or intended to be used for any purpose connected with the trading is carried in either or both of the following ways—
    - (i) on the trader’s person, without any other means of support; or
    - (ii) in or on a receptacle which is pushed or pulled only by that person and in relation to which the condition specified in subsection (7) is fulfilled and, if applicable, the condition specified in subsection (8) is fulfilled.

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(a) c. i.



- (c) the person trades only in articles which he brought only on foot from the place where the articles were kept overnight to the place where he first trades on the day in question.
- (3) For the purposes of subsection (2)(c) above, if the articles were kept overnight outside mainland England, Wales or Scotland, and were brought to the mainland by ship, boat or other similar vessel or by aircraft, the requirement to bring the articles only on foot shall be read as a requirement to bring the articles on foot from the place where the person disembarked from the ship, boat or other similar vessel or aircraft.

**Drafting note: Subsections (2)(b)(ii) and (3) are intended to ensure that provision is made for the judgment of the High Court in Jones v Bath and North East Somerset Council [2012] EWHC 1361 (Admin). Subsection (3) deliberately does not refer to trains because it is reasonable to assume that a trader from mainland Europe could arrive by train at St Pancras and walk to Westminster to trade. Specific advice was taken from counsel on whether these provisions are compatible with the Directive**

**See below for an explanation of the approach in subsection (2)(b)(ii)**

- (4) Trading is in accordance with this subsection if the person trades only by means of visits from house to house.
- (5) Trading is in accordance with this subsection—
  - (a) if the person trades only by means of visits from house to house; or
  - (b) if the person trades other than by means of visits from house to house, the person trades in accordance with subsection (6).
- (6) Trading is in accordance with this subsection if—
  - (a) the person trades in articles other than refreshments or tickets; and
  - (b) subject to subsection (11) below, the trader leaves any location that he is occupying with a view to trading no later than 10 minutes after he arrives there; and
  - (c) the trader does not occupy a location with a view to trading if, with a view to trading, he has during the previous 3 hours occupied—
    - (i) that location; or
    - (ii) a location within 50 metres of that location.

**Drafting notes:**

**Subsection (6)(a) is included to deal with specific concerns that the council has with respect to problems that may be caused by pedlars selling refreshments and tickets. The City**

Council's concerns are based mainly on safety grounds and congestion. The City Council has for a long time encountered serious difficulties with hot dog and burger vendors. They cause congestion, and are a safety hazard. Tickets are normally traded in areas of high congestion. Counsel's advice has been taken specifically on this issue as regards compatibility with the Directive.

**Subsection (6)(b) follows the BIS drafting**

**Subsection (6)(c) follows the BIS drafting**

- (7) The condition of this subsection is that the receptacle (excluding its handle and any display of articles on the receptacle) does not at any point exceed—
  - (a) a width of 0.75 metres;
  - (b) a depth (front to back) of 0.5 metres;
  - (c) a height of 1.25 metres.
- (8) The condition of this subsection is that if articles are displayed on the receptacle, the receptacle (including its handle) and the display together must not at any point exceed—
  - (a) a width of 0.88 metres;
  - (b) a depth (front to back) of 0.83 metres;
  - (c) a height of 1.63 metres.
- (9) Dimensions for the purposes of subsections (7) and (8) are those measured in a horizontal plane (for width and depth) and a vertical plane (for height) when the receptacle is in its intended resting position.
- (10) In subsections (7) to (9) "display" includes, as well as the articles displayed, any stand, board, structure or other thing attached to the trolley and used to display the articles.

**Drafting note: The City Council has been advised by counsel that in non-designated areas, there must be some allowance for receptacles. The Council thought the best approach would be to select from the options contained in existing private Acts and Bills promoted by others and the BIS draft regulations. Subsections (7) to (10) follow the drafting in the Leeds, Canterbury, Reading and Nottingham Bills. The City Council is aware that other authorities have expressed concerns about the proposals in the draft BIS regulations as to the size of receptacle allowed. If, as a result, BIS were to formulate proposals which provided for a maximum size that is smaller than that proposed in subsections (7) to (10), then the City Council would wish to adopt it.**

- (11) Subsection (6)(b) above does not prevent a trader from remaining in a location for longer than 10 minutes after his arrival there if—



- (a) he does so in consequence of a customer (or more than one customer) having approached him with a view to completing a transaction; and
  - (b) he leaves the location as soon as that transaction is (or those transactions are) completed (or aborted).
- (12) For the purpose of subsection (6)(c) above, distance is to be measured in a straight line except to the extent that—
  - (a) the ground is not level; or
  - (b) passage along the line is obstructed by buildings, fixed structures or private property.
- (13) The council may designate an area for the purposes of this section in accordance with the provisions of subsections (16) to (24).
- (14) A designation for the purposes of this section shall have effect at all times or during such periods as may be specified in the designation.
- (15) The council may rescind or vary a designation made under subsection (13).
- (16) The council may designate an area for the purposes of this section or vary such a resolution so as to increase a designated area only if it has reason to believe that it is necessary to do so for one or more of the following reasons—
  - (a) safeguarding public safety or security;
  - (b) safeguarding public health;
  - (c) protecting the environment (including the urban environment), which includes protecting the amenity of the area, including the setting of listed buildings or the character or appearance of conservation areas;
  - (d) ensuring road safety;
  - (e) preventing the obstruction of the highway or ensuring that no undue interference or inconvenience or safety hazard is caused to people using the street.
- (17) Before designating any area for the purposes of this section or varying or rescinding such a designation, the council shall publish, or cause to be published, in at least one newspaper circulating in the locality, and on the same or a subsequent date in the London Gazette, a notice that such a proposal has been made, naming a place or places in the locality where a map or maps defining the area concerned may be inspected at all reasonable hours and stating that the map can be viewed on the council's website.
- (18) Any notice under subsection (17) above shall state that any objection to the proposal may be made to the council in writing within such period (not being less than 21 days

from the date when the notice was published) and by such method as is specified in the notice.

- (19) The council shall not designate an area under this section or vary or rescind such a designation until after the expiry of the specified period.
- (20) In determining whether to designate an area under this section or to vary or rescind such a designation, the council—
  - (a) shall take into account any objections made in accordance with subsection (18) above;
  - (b) may modify the proposal if—
    - (i) they have notified, in writing, any person who has made an objection or representation to them of their intention and their reasons for it and has given them a reasonable opportunity to respond; and
    - (ii) the intended modification does not extend the area of land specified in the proposal.
- (21) Where the council designates an area under this section or varies or rescinds such a designation, they shall notify any person who has made an objection in accordance with subsection (18) above.
- (22) Notice of the designation of a particular area shall be published by the council in at least one newspaper circulating in the locality and on the same or a subsequent date in the London Gazette, and such notice shall—
  - (a) contain a full statement of the effect of the designation, variation or rescission;
  - (b) name a place or places in the locality where a copy of the designation or the varied designation and of a map defining the area concerned may be seen at all reasonable hours; and
  - (c) specify a date when the designation, variation or rescission shall come into force, being at least 14 and not more than 28 days after the publication of the notice in the London Gazette.
- (23) In the case of a proposed designation where the designation would have effect for a continuous period of no more than seven days—
  - (a) subsections (17) to (22) above shall not apply; and
  - (b) the designation shall take effect on the day specified in the designation.

(24) The council shall publish information on its website relating to any designation, including the geographical extent of the designation and the period during which it is to have effect.

(25) In this section a “designated area” means an area of the city designated for the purposes of this section by a designation under subsection (13).”.

### **Designation of streets**

3. In section 5, after subsection (1) insert—

“(1A) A designating resolution may provide that the designation is to take effect in relation to-

- (a) all persons; or
- (b) all persons other than a person who is the provider of a service within the meaning of Part 4 of the Provision of Services Regulations 2009(b) (providers of services provided in UK from another EEA state).”.

### **Street trading licences and photographs**

4.—(1) Section 9 is amended as follows—

- (a) In subsection (5), for “one of the photographs” substitute “a photograph”;
- (b) In subsection (6)—
  - (i) for “three new photographs” substitute “a new photograph”;
  - (ii) for “prescribed” substitute “required”;
  - (iii) omit the words after “of this Act” to the end of the subsection;
- (c) In subsection (7)—
  - (i) for “new photographs are” substitute “a new photograph is”;
  - (ii) for “one of the new photographs” substitute “the new photograph”;
- (d) In subsection (8), for “ice cream trading”, in both places where those words appear, substitute “street trading”.

(2) Section 11 is amended as follows—

- (a) in subsection (2)(b), for “ice cream trading” substitute “street trading”;
- (b) for subsection (3) substitute—

“(3) In the case of an application by an individual, the applicant shall comply with any requirement by the council to submit with his application—

(a) one photograph of himself, in the case of an application made by electronic means;

(b) two photographs of himself, in any other case.”.

(3) In section 15(1)(l), for “the photographs” substitute “a photograph”.

#### **Mandatory grounds of refusal**

5.—(1) Section 12 is amended as follows.

(2) Omit subsection (1)(a).

(3) For subsection (1)(b) substitute—

“(b) if, were the licence to be granted and the applicant to engage in the trading specified by the licence, the applicant or any other person would contravene any provision of Part 2 of the Children and Young Persons Act 1933(c) (employment) or of any byelaw made under any such provision;”.

#### **Street trading licences: disapplication of regulation 19(5) of the Provision of Services Regulations 2009 in certain cases**

6.—(1) In section 12, after subsection (2) insert—

“(3) Regulation 19(5) of the Provision of Services Regulations 2009 (deemed grant of authorisation where application not processed in time) does not apply in the case of an application for the grant of a street trading licence which the council would have refused under this section, had they processed the application within the period set or extended in accordance with regulation 19 of those regulations.”.

(2) In section 21, after subsection (2B) insert—

“(2BA) Regulation 19(5) of the Provision of Services Regulations 2009 (deemed grant of authorisation where application not processed in time) does not apply in the case of an application for the grant of a temporary licence which the council would have refused under subsection (2B) above, had they processed the application within the period set or extended in accordance with regulation 19 of those regulations.”.

**Drafting note: as mentioned in the response to question 12 of the consultation, the City regard it essential that they should be able to apply deemed conditions in cases where a licence is deemed to be granted under regulation 19(5). If BIS decide, as a result of the consultation exercise, that the 1982 Act should also include provision for**

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(c) 1933 c.12.

**conditions and come forward with further proposed amendments to the 1982 Act, then the City Council would like the opportunity to be able to decide whether to utilise similar drafting themselves. For that reason, no drafting is put forward at this stage**

### **Discretionary grounds of refusal**

7.—(1) Section 13 is amended as follows.

(2) For subsections (1)(j) and (k) substitute—

“(j) that the street is otherwise unsuitable for the trading in which the applicant desires to engage;

(k) that the council, for an overriding reason in the public interest within the meaning of Article 4 of Directive 2006/123/EC on services in the internal market, require applicants to be individuals and the applicant is not an individual.”

(3) In subsection (2)—

(i) omit “(a),”;

(ii) for “or (i)” substitute “, (i) or (j)”.

(6) After subsection (2) insert—

“(3) An application shall not be refused on the ground mentioned in subsection (1)(a) above unless there is also an overriding reason in the public interest for refusing the application within the meaning of Article 4 of Directive 2006/123/EC on services in the internal market;

(4) An application shall not be refused on either of the grounds mentioned in subsection (1)(d) or (e) above if the applicant is a provider of a service within the meaning of Part 4 of the Provision of Services Regulations 2009 (providers of services provided in UK from another EEA state).”.

### **Succession**

8.—(1) Section 20 is repealed.

(2) In section 11(2)(e), omit the words after “require” to the end of the subsection.

### **Offences**

9. In section 24(d) for “ice cream trading” substitute “street trading”.

### **Proposal for transitional provision**

Unless draft regulation 1(2) itself provides a staggered period of commencement, giving at least 3 months for designations to be made, the City Council would propose the following amendments to the draft regulations:

In draft regulation 1:

At the beginning of paragraph (2) insert “Subject to paragraph (3),”

After paragraph (2) insert

“(3) In relation to the City of Westminster—

- (a) Paragraphs (13) to (25) of Regulation [2] come into force on [21 days after making];
- (b) Part 2 and the remaining provisions of Part [the Westminster Part] come into force on [3 months and 21 days after making].”