

City of Westminster

EXPLANATORY MEMORANDUM

This Bill provides for street trading controls within the City of Westminster (“the City”). It replaces the street trading provisions in the City of Westminster Act 1999 (“the 1999 Act”). The Bill also contains a provision that deals with touting for certain premises in the City.

Clause 1 deals with citation and commencement. It provides that the provisions of the Bill should come into operation two months after Royal Assent.

Clause 2 sets out definitions of certain expressions used in the Bill. It defines Westminster City Council as the council, and that expression will be used in this Explanatory Memorandum. Certain expressions used in the 1999 Act are updated: “authorised officer” is replaced with the definition used in the London Local Authorities Act 2004, “items” replaces “article or thing”, “licensable area” replaces “licence street”, and “the Police Commissioner” replaces “the Commissioner.” The definition of “receptacle” is clarified, and the maximum duration of a “temporary licence” is increased from 6 months to 3 years; a definition of “shop” based on that set out in the Shops Act 1994 is introduced. Other important definitions include “ice cream trading”, “itinerant ice cream trading”, “receptacle”, “street”, “street trading”, and “temporary licence”. *Clause 2* also introduces “Specified Company”, which is a company authorised to carry out street trading in accordance with *clause 40*.

Clause 3 defines street trading. Under the 1999 Act, the definition includes the sale, offering for sale, display or exposure for sale of any item (including a living thing) in a street; the supply or offering to supply a service for gain or reward in a street; and the purchase or offer to purchase any ticket for gain or reward in a street. Whether any gain or reward would accrue to the person carrying out the trading is immaterial as to whether the activity is street trading. The 1999 Act also sets out certain matters which are to be disregarded when considering whether an activity amounts to street trading, namely: that the transaction was not completed in a street; that a party to the transaction was not in a street when it was completed; and that the items offered to be sold, or services offered to be supplied, were different from those actually sold or supplied.

Those provisions are re-enacted in *clause 3* and the definition of street trading is extended to include the sale or exposure or offer for sale of any motor vehicles on the internet, where the vehicle is kept on the street. It is also extended so as to include the provision of places in the street for the consumption of refreshments supplied from premises, and the provision, to order, of smoking facilities or equipment in a street.

Clause 4 defines activities which are not street trading for the purposes of the Bill. Certain of these are the same as or similar to exemptions contained in the 1999 Act, namely: selling items to occupiers of premises adjoining any street by the regular delivery of perishable goods; trading on private land adjoining the front or side wall of a shop; activities authorised by charities legislation; and trading by a pedlar under the authority of a pedlar's certificate, if the trading is carried out by means of visits from house to house only. The exemptions have been extended to include anything done in a market established under a statutory provision. This is similar to an exemption which applied in the City before the City of Westminster Act 1999 came into force.

Clause 5 provides that trading as a newsvendor is not street trading, provided that the conditions set out in subsections (2) to (5) are satisfied. Those conditions are mainly concerned with the prevention of interference with other users of the highway, for example by regulating the dimensions of receptacles from which papers are sold. *Clause 5* modifies the existing newsvendor exemption set out in the 1999 Act by providing that a newsvendor's receptacle is not to be used for any purpose other than the sale of current newspapers or periodicals and it also allows the council to make regulations about the design, type and use of umbrellas, canopies or other forms of shelter used by newsvendors.

In addition, *clause 5* introduces a new provision which would enable the council to pass a resolution which would allow it to designate an area as one in which the newsvendors' exemption would not apply. *Schedule 1* sets out the procedure to be followed by the council before it can pass, rescind or vary such a resolution. It provides that the council will take reasonable steps to give written notice to affected vendors and publishers and it specifies the contents of the notice. It also provides that written and oral representations should be considered by the council before it passes a resolution, and that the resolution may be passed with any modifications the council considers appropriate. After passing the resolution, the council must notify all those who were given notice of the proposed resolution.

Clause 6 re-enacts provisions of the 1999 Act relating to itinerant ice cream trading, with minor drafting modifications. It provides that itinerant ice cream trading in a street is not street trading for the purposes of the Bill, unless the street is a licensable area (see *clause 7*), or the street has been designated as a prohibited street under subsection (2). The council may designate a street as a prohibited street provided it is not in a licensable area, and it is necessary to prohibit itinerant ice cream trading in the street in the interests of preventing a safety hazard; obstruction to traffic; or undue interference or inconvenience to persons using the street. *Clause 6* introduces *Schedule 2*, which sets out the procedure for passing resolutions which designate streets as prohibited streets. It re-enacts with minor amendments the provisions of subsections (3) to (8) of section 4 (itinerant ice cream trading) of the 1999 Act. The procedure for designation is similar to that set out in of *Schedule 1* (see *clause 5* above).

Clause 7 provides that the council may pass a resolution, known as a designating resolution, in order to establish a licensable area. Subsection (2) provides that a street trading licence may not be granted for an area that is not a licensable area. *Clause 7* introduces *Schedule 3* which sets out the procedure that the council must follow before passing or varying a designating resolution. *Schedule 3* re-enacts with minor amendments the provisions of subsections (1) to (7) of section 6 (designating resolutions) of the 1999 Act. The procedure is similar to that set out in *Schedule 1* (see *clause 5*)

Clause 8 provides that the council may, on certain grounds, pass a resolution to rescind a designating resolution. As well as having the effect of rescinding the designation of the area in question as a licensable area, the resolution would also have the effect of revoking any street trading licences that operate in the licensable area.

Subsection (3) provides that instead of rescinding a designating resolution, the council may pass a resolution designating an alternative licensable area. If an alternative area is designated, any street trading licence that operates in the original licensable area may be transferred to apply to the new area, with any necessary modifications (subsection (4)).

When the council is considering rescinding a designating resolution, and there is a street trading licence in force in respect of the original licensable area, the council must consider whether there is an alternative licensable area in the vicinity of the original licensable area (subsection (5)).

Paragraphs (f) and (g) of *clause 29(1)* provide a right of appeal against a resolution to rescind a designating resolution and a resolution to designate an alternative licensable area.

Clause 8 also introduces *Schedule 4* which sets out the procedure for rescinding a designating resolution or providing an alternative licensable area. The procedure is similar to that set out in *Schedule 1* (see *clause 5* above).

Clause 9 provides that the council may pass a resolution to vary a designating resolution by altering the licensable area. *Clause 9* provides that the licensable area can be varied at the request of the licence holder, and the council can charge a fee for the administrative work in dealing with the request. The procedure for the variation of a designating resolution is set out in *Schedule 3* (see *clause 7* above).

Clause 10 provides that the council may suspend a designating resolution and temporarily designate an alternative location for a licensable area if the licensable area becomes temporarily unsuitable for street trading purposes.

Clause 10 also introduces *Schedule 5* which sets out the procedure in relation to, and the maximum duration of, the temporary variation and suspension of a designating resolution under *clause 10*. A designation or suspension under *clause 10* may remain in force for a maximum period of 5 years, and any street trading licence that operates in the licensable area may be transferred, with modifications if necessary, to the temporary designated licensed area. The council must consult the licence holder, the Commissioner of Police and the highway authority before designating an alternative location. In cases of urgency, or when works are being carried out in the street, or during special events, no consultation will be necessary. For special events, however, the council will, if practicable, have to notify the licence holder of any temporary designation or suspension. A temporary designation or temporary suspension for a special event shall not begin before the day on which the event begins and it shall not remain in force any later than the day after the day on which the event ends, unless the police require otherwise.

Clause 11 deals with specifying resolutions. It explains that a specifying resolution is a resolution which specifies the types of items or services which may or may not be traded in a licensable area. *Clause 11* introduces *Schedule 6* which sets out the procedure for passing, rescinding or varying a specifying resolution. It re-enacts with minor amendments the provisions of section 7 (specifying resolution) of the 1999 Act. Under *Schedule 6* the council must give notice of the proposed resolution to all licence holders whom the council could reasonably expect would be affected by the proposed resolution and to any body which appears to the council to represent such licence holders. The notice must also give details of the proposed resolution, explain the reasons for the proposal, and state that representations may be made to the council within no fewer than 28 days of the date of the notice. The procedure that must be followed before a specifying resolution is passed, rescinded or varied is similar to the procedure set out under *Schedule 1* (see *clause 5* above).

Clause 12 deals with the granting of street trading licences. It authorises the council to grant street trading licences on such reasonable terms and conditions relevant to street trading as the council may specify. A street trading licence must identify the licence holder and the area in which he may engage in street trading; it will remain in force until cancelled or revoked by the council; and it must bear the photograph of the licence holder, if he or she is an individual. *Clause 12* provides that the licence will only become effective once the applicant gives the council proof that he has adequate third party insurance cover. The licence will be extinguished if no such proof has been provided within 28 days of the council's decision to grant.

Clause 13 provides for the variation of street trading licences. Subsection (1) enables the council to vary street trading licences of its own accord. Under the 1999 Act, it is only allowed to do so on 1st January in any year. That restriction is removed. The 1999 Act also provides that the council may vary a street trading licence on application by the licence holder in accordance with the application. The Bill extends this power to enable the council to grant an application in whole or in part.

In addition to the powers set out in the 1999 Act, *clause 13* also allows the council to impose conditions on a licence where it has granted a variation to a licence on application by the licence holder. *Clause 13* prevents the council, unless it has the applicant's agreement, from imposing conditions that are unrelated to the application or which are more onerous than those sought in the application. Unless agreed by the Council, no application to vary the condition of a licence may be made within 6 months from the date on which the council imposed the condition, varied it or declined to vary it, or during any period where the imposition of the condition is subject to an appeal to the magistrates' court.

Clause 13 introduces *Schedule 7*, which sets out the procedure for varying a street trading licence. The procedure is similar to that set out in *Schedule 1* (see *clause 5* above).

Clause 14 describes the conditions that may be imposed on a street trading licence, and follows, with modifications, section 9 (street trading licences) of the 1999 Act. The types of condition described in subsections (1)(d) (requiring that the licence holder use receptacles provided under *clause 37(1)* (receptacles and containers) and (1)(k) (providing for the separation of the area in which activities authorised by the licence are carried on from other parts of the street) of *clause 14* were not in the 1999 Act.

Clause 15 provides that the council may prescribe standard conditions applicable to all street trading licences. It re-enacts section 10 (standard conditions) of the 1999 Act, and in addition provides that the council may prescribe conditions which are to apply to classes of street trading licences.

Clause 16 re-enacts, with minor modifications, the provisions of subsections (5) to (9) of section 9 (street trading licences) of the 1999 Act in respect of photographs which must be provided by licence applicants.

Clause 17 deals with the requirements for the making of applications for the grant or variation of a street trading licence. All applications must describe the proposed licensable area (or part of the licensable area) and the proposed trading days and trading times during which the applicant intends to trade. Other information must be provided, depending on whether the applicant is an individual or a company or partnership applying for a licence to carry on ice-cream trading. *Clause 17* re-enacts, with minor modifications the provisions of section 11 (applications) of the 1999 Act. *Clause 17* provides that the council may make regulations prescribing the procedure for determining applications.

Clause 18 sets out a number of grounds which if applicable, require the council to refuse an application for a licence under *clause 17*. In addition to the mandatory grounds for refusal set out in section 12 (mandatory grounds of refusal) in the 1999 Act, which are re-enacted with drafting amendments, *clause 18* introduces a new ground, enabling the council to refuse an application for a licence in the case where a licence for any part of a licensable area has been granted to another applicant and where, the trading times on the two licences would overlap if the application were granted.

Under section 12(1)(c) of the 1999 Act, the council must refuse an application made by a person who holds a street trading licence under the London Local Authorities Act 1990 and which enables him to trade elsewhere in London at the same time as the time requested in the application. Paragraph (d) of *clause 18* extends that to cover the street trading regimes operating in the City of London and outside London.

Clause 19 is a new provision that provides general discretionary grounds for refusal of an application for a licence made under *clause 17*. The grounds include the convenience or safety of people using the street; the prevention of crime or disorder; the amenity of the area; the applicant's suitability to hold a licence; the diversity of items on sale and services provided by street traders and other retailers in the area, and the prevention of public nuisance.

Clause 20 provides specific discretionary grounds for refusal of an application for a new licence made under *clause 17*. *Clause 20* re-enacts, with modification, subsections (1)(a)—(f) and (i) to (k) of section 13 (discretionary grounds of refusal) of the 1999 Act.

Clause 21 provides that if an application is made for a variation of a standard condition of a street trading licence the council may refuse the application.

Clause 22 provides further grounds on which the council may refuse an application for the grant of a new licence or for the variation of a licence. It re-enacts, with modification, the provisions of paragraphs (g) to (i) of section 13(1) (discretionary grounds of refusal) of the 1999 Act. It also provides that an application may be refused because the arrangements for the collection and disposal of refuse are inadequate, or that the application, if granted, would be in contravention of the council's written guidelines. *Clause 22* provides that the procedure set out in *Schedule 6* (see *clause 11* above) applies in respect of issuing and varying guidelines.

The council may refuse an application if it is in relation to a market (see *clause 28*), the application would authorise trading in a specified area or part of the market, and the council considers that only trading in the market generally should be authorised.

Clause 23 makes general provision about the refusal of licences under *clauses 19, 20, 21* and *22*. In addition to the provisions of subsection (2) of section 13 (refusal of applications: general) of the 1999 Act, which allowed the council to grant an application for a variation in part and which are re-enacted with modifications under subsection (3), *clause 23* gives the council a wider discretion to grant an application in part and allows the council to impose such conditions on the licence as it thinks fit. In the case of a variation, the council may not impose any conditions which are unrelated to the application or which are more onerous on the applicant than those that exist on the current licence.

Clause 24 permits the holder of a street trading licence or a temporary licence to request the cancellation of the licence. The cancellation shall take effect when the request is received by the council. It re-enacts, with slight modification, section 14 (cancellation of licences) of the 1999 Act and no longer requires the physical surrender of the licence.

Clause 25 authorises the council to revoke a street trading licence or temporary licence in any of the circumstances listed in subsection (1), all of which concern misconduct on the part of the licence holder. Subsection (1) re-enacts the provisions (apart from paragraph (a)) of subsection (1) of section 15 (revocation of licences) of the 1999 Act. It also introduces a new power which allows the council, when it revokes a licence under *clause 25*, to revoke any other street trading licence held in the area of the council by the licence holder.

Clause 25 also re-enacts the provisions of section 15(2) of the 1999 Act which allows the council to vary the conditions of a licence instead of revoking it. Section 15(2) is modified so as to enable the council to vary the conditions on any of the grounds set out in subsection (1). In addition, under paragraph (b) of subsection (3), the council may, as an alternative to revoking the licence, suspend its operation for no more than 3 months.

Clause 25 also empowers the council to revoke the street trading licence of a Specified Company when the council is satisfied that certain of the circumstances set out in subsection (1) apply.

Clause 26 makes general provision about refusals, revocations and variations of licences. Subsections (1) and (2) provide that the council must give an applicant for a licence or a licence holder 21 days' notice if it intends to refuse an application on grounds other than the mandatory grounds of refusal, if it proposes to revoke a street trading licence or temporary licence, it proposes to vary a street trading licence (other than by varying a standard condition) or if it intends to suspend a licence for a period not exceeding three months. Notice need not be given if the council intends to revoke a licence or temporary licence which is valid for a period of 28 days or less. These requirements re-enact, with minor modifications, the provisions of subsection (1) of section 17 (further provisions relating to refusal, revocation or variation of street trading licences) of the 1999 Act.

Subsections (3) to (6) of *clause 26* introduce new powers which allow the council to suspend a licence immediately if there has been a breach of the licence's conditions because of dangerous, abusive or violent behaviour, and the council thinks immediate suspension is necessary for the protection of persons. If the council decides to suspend a licence immediately, it has 14 days from the date the suspension takes effect to hold a hearing to decide whether the licence should be revoked. The decision to suspend will cease to have effect if at the hearing the council decides not to revoke the licence or a magistrates' court allows an appeal against the decision to suspend the licence, or the council decides the suspension should no longer have effect.

Subsection (8) of *clause 26* provides that the council shall inform the applicant in writing if an application is refused or a licence is revoked or varied (except where the licence is varied following an application by the licence holder). The notice will set out the grounds and reasons for the decision and any rights of appeal against the decision. This subsection re-enacts subsection (3) of 17 of the 1999 Act.

Clause 27 re-enacts the provisions of section 17A (lapsing of licence in certain cases) of the 1999 Act with minor drafting changes. It provides that where a street trading licence authorises street trading on land which is not a road or footway, and is not permanently enclosed premises, but is within 7 metres of any road or footway, and the public can obtain access to it without payment, (whether or not they need the consent of the owner or occupier and if they do need such consent, whether or not they have obtained it), then the licence will lapse if consent is discontinued, and the council is provided with written notice of the discontinuation by the person who has discontinued it. The licence will also lapse when the licence holder is no longer the owner of the land in question.

Clause 28 provides that a street trading licence that authorises street trading in a market may authorise street trading at a specified licensable area (or part of a licensable area) or in the general area of the market. It also allows the council (or others) to give directions and make arrangements about the place from which the licence holder should trade.

A "market" for the purposes of *clause 28* is an area consisting of a licensable area (or areas) that is or are designated by council resolution as such. *Clause 28* introduces *Schedule 8* which sets out the procedure for passing, rescinding or varying a resolution designating a market area. The procedure is similar to that set out in *Schedule 1* (see *clause 5* above).

Clause 29 deals with appeals. The Bill differs from the 1999 Act in that it does not provide any rights of appeal to the Crown Court or Secretary of State. All appeals under *clause 29* would be made to the magistrates' court. The decisions which can be the subject of an appeal are the refusal of an application on grounds other than mandatory grounds; the grant of a street trading licence on terms other than those sought; the revocation of a street trading licence; the variation of a street trading licence in certain circumstances; the attachment of additional conditions (other than standard conditions or condition to which the licence had hitherto been subject) to a street trading licence; the designation of an alternative licensable area and the variation or rescission of a designating resolution; the passing or varying of a specifying resolution and the designation of a street as a prohibited street for the purposes of itinerant ice cream trading.

Clause 29 also sets out the procedure for making an appeal to the magistrates' court. It provides that in relation to certain decisions of the council, the decisions will not take effect until the time for bringing an appeal to the magistrates' court has expired, or where an appeal is brought, until the determination or abandonment of the appeal, provided that the licence holder continues to pay fees and charges due to the council under the licence.

This right to continue trading pending an appeal does not apply where a designating resolution has been rescinded and the council believes that street trading in the licensable area should stop immediately if continuing it would present a safety hazard to users of the street, or in cases where the licence has been suspended because of violent, dangerous or abusive behavior.

The clause also provides that where a street trading licence is revoked for non-payment of fees and charges, the licence holder is only able to trade pending the decision of an appeal if all fees and charges due to the council have been paid and the licence holder continues to pay to the council the fees and charges due under the licence.

Clause 30 re-enacts with modifications the provisions of section 20 (succession) of the 1999 Act. It would allow the holder of a street trading licence to specify the name and address of a relative or employee to whom he would like the licence to be granted in the event of (i) his death (ii) his retirement or (iii) his notification to the council of his decision, owing to ill-health, to cease street trading.

Where the street trader has nominated a relative and one of the events outlined above occurs, the council is prohibited from granting a licence for the relevant licensable area for 28 days, during which time the nominated relative or employee may apply to the council for that licence. Unless certain grounds apply, the council must grant the licence to the nominated relative or employee.

Clause 30 would provide a "once only" right to exercise succession rights. The opening words of subsection (1) provide that the clause would only apply to street traders who have a licence at the time of the Bill's enactment; their successors would not benefit from the provisions. The clause effectively contains a sunset provision for succession rights.

Clause 31 makes provision for temporary licences, re-enacting with minor drafting amendments the provisions of section 21 (temporary licences) of the 1999 Act. It provides that a temporary licence will be in a form similar to that of a street trading licence and it will contain such terms and conditions as the council may specify. It also provides that the council may establish a register of persons to whom it would be prepared to grant temporary licences. In addition to the provisions of the 1999 Act, *clause 31* provides that the council may revoke or suspend the operation of a temporary licence on the grounds that undue interference, inconvenience or a safety hazard is caused to people using the street, or the temporary licence holder has failed to pay fees or has failed to comply with the conditions of the licence.

Under the 1999 Act, section 22 sets out provisions in respect of fees and charges. Under the Bill, fees and charges are dealt with in *clauses 32 to 36*.

Clause 32 authorises the council to charge fees to recover the costs of dealing with applications for the grant or variation of street trading licences, the variation of a designating resolution or specifying resolution.

Clause 33 introduces new provisions in respect of the payment of fees for a temporary licence granted for one year or more. The licence holder may be required to pay an annual fee to the council within a period determined by the council after the issue of a licence, and, where applicable, a further annual fee before each anniversary of the grant of the licence. *Clause 33* provides that the council may extinguish the licence if an annual fee is not paid by the date on which it falls due.

Clause 34 also authorises the council to make charges in order to recover certain reasonable costs in respect of street trading licences. These re-enact the provisions of subsections (2), (3) and (6) of section 22 (fees and charges) of the 1999 Act. The costs are in respect of refuse collection, street cleansing, reasonable administrative costs and other costs of enforcing the provisions of the Bill. *Clause 34* allows the council to make a lower charge to licence holders who pay charges in full in advance or in full by other means approved by the council. In addition to the provisions of the 1999 Act, *clause 34* provides that the costs incurred by the council in relation to the sale or exposure or offer for sale of any motor vehicle on the internet where the vehicle is kept on the street, will not be included in the calculation of the fees.

Clause 34 introduces *Schedule 9*, which makes provision about the procedure for the determination and variation of charges under *clause 34*. Before determining (or varying) a charge, notification of the proposal must be given by the council to all licence holders who would be affected and any body which appears to the council to represent licence holders. The notice must detail the proposed charges, state that representations may be made within a certain time, and provide a statement explaining how the charges have been calculated. As soon as practicable after the time for representations, the council must consider all representations received and those that make representations will have the opportunity to make oral representations. After making its decision, the council will give notice of the decision to all licence holders affected by the decision. The fees and charges as determined or varied will not come into force until at least 28 days from the decision date.

Clause 35 re-enacts the provisions of subsection (4) of section 22 (fees and charges) of the 1999 Act, which authorises the council to charge an annual fee in respect of administering the register of people to whom the council would be prepared to grant temporary licences.

Clause 36 re-enacts the provisions of subsection (5) of section 22 (fees and charges), which authorises the council to charge for providing additional services which have been requested by a majority of licence holders in a particular market or area. In addition, *clause 36* authorises the council to charge an individual licence holder for providing additional services to the licence holder.

Clause 37 re-enacts, with modifications, the provisions of section 23 (receptacles and containers) of the 1999 Act, which allows the council, for a reasonable amount, to provide street trading receptacles for the use of licence holders and to provide and maintain accommodation for the storage of receptacles and containers.

Clause 38 authorises the council to install and remove receptacles, and allows the council to charge for doing so. It expands on the power set out in section 25 (power to remove receptacles) of the 1999 Act. While it re-enacts the provision of subsection (1) of section 25, which allows the council to remove a receptacle to a place of storage when the receptacle has not been stored on the cessation of a trading day, *clause 38* also permits the removal and storage of a receptacle when certain conditions apply, namely when it is placed on a street in breach of the conditions of a street trading or temporary licence; when an authorised officer considers that it is an urgent case and that for the good or safe management of the street it should be removed; and when it is placed on the street at the time of a special event or when works are being carried out to the street and an authorised officer considers that for the good or safe management of the street, it should be removed. *Clause 38* provides that any items on the receptacle may also be removed and placed in storage.

Clause 39 makes provision for the employment of assistants, re-enacting with minor modifications the provisions of section 26 (employment of assistants) contained in the 1999 Act. *Clause 39* provides that an assistant may be employed by the holder of either a street trading licence or a temporary licence. If an assistant fails to comply with the conditions of the licence, that failure will be deemed to be a failure of the licence holder.

Clause 40 empowers the council to give permission to a licence holder who is an individual for a company to carry on street trading in accordance with the individual trader's licence. For permission to be granted the licence holder must be a director of the company and he must hold a majority shareholding in it. The licence holder must remain a director and majority shareholder of the company in order for the company to continue street trading in accordance with the terms and conditions of the licence. If a company fails to comply with the licence's conditions, both the company and the individual licence holder will be deemed responsible for the failure and the licence holder may be charged with an offence (and convicted of it) whether or not proceedings for the offence are taken against any other person. *Clause 40* is new.

Clause 41 sets out offences of unlicensed street trading. It re-enacts with modifications, the provisions of subsections (1) to (4) of section 27 (unlicensed street trading) of the 1999 Act, which prohibits street trading by a person without a street trading or temporary licence. In addition to the provisions of the 1999 Act, *clause 41* also makes it an offence for a person who is not a Specified Company to engage in street trading. It also prohibits street trading by a holder of a street trading or temporary licence on a day or place not specified in the licence without the council's permission or when the licence is suspended. The maximum penalty for an offence under *clause 41* is on summary conviction a fine not exceeding level 3 on the standard scale. By virtue of amendments made by *clause 56* to Schedule 2 to the London Local Authorities Act 2004, the offences would be fixed penalty offences for the purposes of Part 4 of that Act.

Clause 42 sets out other offences under the Bill, re-enacting and adding to section 24 (offences) of the 1999 Act. Paragraph (a) provides that contravening the conditions of a street trading or a temporary licence is an offence. Paragraph (b) provides for an offence of knowingly making a false statement in connection with an application for a street trading licence or temporary licence, and re-enacts the provisions of section 24(6) of the 1999 Act. It also provides that making a false statement when completing a seizure notice under subsection (5) of *clause 44* (seizure notices: receptacles for refreshments) is an offence. Resisting or intentionally obstructing an authorised officer in the execution of his or her duties is an offence under paragraph (c) and paragraph (d)(i) provides that it is an offence for an individual licence holder to fail to produce an approved form of identification when requested to do so by an authorised officer or constable. Paragraph (d)(ii) is new and provides that failure by a licence holder to provide proof of third party insurance on request is an offence. Paragraph (e) makes it an offence for an itinerant ice-cream trader to fail to produce a photograph if required to do so.

A new offence is introduced under paragraph (f), namely using a receptacle in contravention of a requirement imposed by a condition under *clause 14(1)(d)* (which requires that the licence holder uses receptacles provided under *clause 37(1)*).

A new offence is introduced under paragraph (g), namely the failure of the holder of a street trading licence to inform the council that the licence holder no longer holds a majority shareholding in a company, or is no longer a director of a company, in respect of which a permission was given under *clause 40*.

The offences are all summary offences punishable by a fine. In all cases except the offence under paragraph (b) of making false statements, etc. the maximum punishment is a level 3 fine. For offences under paragraph (b) the level of fine is level 5. By virtue of amendments made by *clause 56* to Schedule 2 to the London Local Authorities Act 2004, the offences would be fixed penalty offences for the purposes of Part 4 of that Act. Unlike under the 1999 Act, *clause 42* allows the council to bring proceedings in respect of an offence under paragraph (b) within 6 months of the date on which sufficient evidence to warrant commencing proceedings came to the knowledge of the prosecutor. No proceedings can be brought more than 3 years after the committal of a paragraph (b) offence.

Clause 43 deals with seizure of items. Subsection (1) empowers an authorised officer of the council or a constable to seize items, receptacles or equipment in cases where a person is reasonably suspected of committing a street trading offence. Seizure under subsection (1) is only permitted where the article may be required to be used in evidence in any proceedings in respect of the suspected offence or where it may be subject of forfeiture by the court under *clause 47*. Subsection (3) enables an authorised officer or constable to seize an item for examination purposes where there is reasonable cause to suspect the item is prohibited by a specifying resolution and subsection (4) enables seizure of receptacles or equipment (but not a motor vehicle) which the authorised officer or constable has reasonable cause to suspect is intended to be used in connection with an offence under the Bill relating to the sale of refreshments.

Clause 44 introduces a new procedure for dealing with receptacles used in unlawful street trading of refreshments, when they have been seized. Currently, where the council seize items under section 27 (unlicensed street traders) of the 1999 Act, they must either return them to the person from whom they were seized, if certain circumstances arise, or they can be disposed of if there is a conviction and the court orders the items to be forfeited. The council can also apply to the magistrates' court for a disposal order if the court is satisfied that the council have made reasonable efforts to ascertain the identity of the owner of the objects seized but failed.

The council seize large numbers of hot dog and other food trolleys in the West End and because of the procedures that they have to go through, they have to store the trolleys for long periods at considerable expense. In nearly all cases, the trolleys are eventually disposed of by the council because either the person from whom the trolley was seized does not contest the criminal proceedings, or the council is unable to find out who the owner of the trolley is.

The effect of *clause 44* will be to enable the council to dispose of hot dog trolleys and other receptacles for the sale of refreshments without the need to go to court either to secure a prosecution or obtain a disposal order. Safeguards are included in the clause to ensure that if the person from whom the receptacle is seized wishes there to be a court hearing, then he can secure it. This is achieved by including a requirement on the officer who seizes the item to give the person from whom it was seized a notice. The notice can be completed by the recipient and returned to the council, and if it is done within the time stated on the notice and it contains all the necessary information (including the name and address of the person from whom the item was seized) and states that the recipient requires the council to seek a disposal order from the magistrates' court, then the council would be under an obligation to seek such an order. At the magistrates' court hearing, the recipient of the notice would have the opportunity to contest the proceedings.

Clause 45 provides for the return or disposal of items seized under *clause 43*. Items must be returned to the person from whom they were seized following the conclusion of proceedings in respect of a suspected offence, unless the court orders them to be forfeited under *clause 47*, or any award of costs to the council by the court has not been paid within 28 days of the making of the order.

Seized items must be returned after 28 days beginning with the date of seizure if no proceedings have been instituted; where proceedings have been instituted and then discontinued, seized items would have to be returned on the discontinuance of the proceedings.

Seized items do not have to be returned where it is not possible to identify or ascertain the person from whom they were seized or that person's address. In such a case the council must apply to the magistrates' court for an order as to the manner in which the items should be dealt with.

Clause 46 makes provision about the disposal of "relevant receptacles", namely hot dog trolleys and other receptacles for refreshments which have been seized under *clause 43*. It provides that if a notice given under *clause 44* is not completed and returned to the council in the correct manner and within the specified time, then the council will be able to dispose of the receptacle in question and recover its costs of doing so from the recipient, if it is able to identify and find him. The powers of summary disposal would also be available to the council if when seizing the item they served a fixed penalty notice on the person from whom the item was seized. If the fixed penalty is paid within the required timescale, then the council would be able to dispose of the item.

Clause 47 re-enacts, with modifications, the provisions of section 27(9) to (10) of the 1999 Act. It permits a court before which a person is convicted of a street trading offence to order forfeiture of items. Items may only be forfeited if shown to the satisfaction of the court to relate to a street trading offence. Also, the court may not order the forfeiture of an item where a person claiming to be the owner of the item or to have an interest in it applies to be heard by the court, unless he has been given an opportunity to show cause why the order should not be made. In considering whether to make an order for forfeiture, the court must consider the value of the item and the likely financial and other effects on the offender of forfeiting the item.

Clause 48 re-enacts, with modifications, the provisions of section 27 (11) to (12) of the 1999 Act. It provides for compensation to be paid to anyone who at the time of seizure had a legal interest in the item, where the seizure was unlawful. Compensation is also payable where not less than six months have passed since the date of seizure and no proceedings have been brought against the person from whom the item was seized, or where proceedings have been brought but the person has been acquitted, or where the proceedings have been withdrawn or failed for want of prosecution. Compensation shall not be included in the computation for calculating charges under *clause 34* (charges: street trading licences).

Clause 49 re-enacts, with modifications, the provisions of section 27A (seizure of perishable items) of the 1999 Act. It makes special provision about what should happen when perishable items are seized. It provides for the giving of a certificate to the person from whom the items were seized and that perishable items which are seized may be disposed of within 48 hours of seizure. *Clause 49* applies, with modifications, the compensation provisions of *clause 48*.

Clause 50 re-enacts the provisions set out in section 27B (motor vehicles) of the 1999 Act. First, the clause extends the time within which summary proceedings for a street trading offence may be instituted, if the offence relates to a motor vehicle. The extension of time limit applies where the council have requested details of ownership of a vehicle from the Secretary of State (through the DVLA) and those particulars have not been provided by the time the usual six month period for the commencement of summary proceedings has expired. Secondly, the clause makes provision for cases where the council have seized a vehicle, and wish to return the vehicle to its owner, but the owner of the vehicle cannot be found or disclaims or refuses to accept the vehicle. In such circumstances, the council would be able to make a complaint for a disposal order under *clause 51*.

Clause 51 re-enacts with modifications the provisions set out in section 27C (disposal orders) of the 1999 Act, making provision for disposal orders. It sets out a procedure for an application to be made to a magistrates' court for a disposal order in certain cases. The council may make a complaint to the magistrates' court for a disposal order and the magistrates' court is empowered to make a disposal order if satisfied that the council have made reasonable efforts to identify the person from whom the item was seized (or its owner) or have made reasonable efforts to return it. A disposal order may authorise the council to dispose of the item and keep the balance of any proceeds. The court may also order that the recipient of a complaint may also be required to pay any deficit from the proceeds of the disposal, taking into account storage and disposal costs.

Clause 52 is unrelated to the street trading provisions and deals with touting for hotels, places of refreshment, shops, places of entertainment or recreation and other places and forms of transport. It empowers the council to designate parts of the city as areas where touting shall not be permitted. It would be a summary offence to tout in a designated area, punishable with a maximum level 3 fine. By virtue of amendments made by *clause 56* to Schedule 2 to the London Local Authorities Act 2004, the offence would be a fixed penalty offence for the purposes of Part 4 of that Act. The clause sets out the procedural steps that the council must take before designating an area as a place to which the clause applies.

Clause 53 provides savings for transport undertakers and *clause 54* provides that no provision in the Bill shall provide a defence to a charge in respect of a common law offence, or to an offence committed under any other enactment.

Clauses 55 and *56* are procedural provisions about the service of notices and proof of council resolutions and re-enact the provisions set out in sections 29 (provisions as to notices) and 30 (proof of resolution) of the 1999 Act.

Clause 57 provides that the powers of the council under the Bill may be exercised by a committee, a sub-committee, an officer or a panel of officers.

Clause 58 introduces *Schedule 10* and provides that the amendments to other legislation set out in the Schedule shall have effect.

Clause 59 makes provision for the repeal of the enactments listed in *Schedule 11*.

Clause 60 makes transitional provisions.

EUROPEAN CONVENTION ON HUMAN RIGHTS

In the view of Westminster City Council the provisions of the City of Westminster Bill are compatible with the Convention Rights.

CONTENTS

Introductory

- 1 Citation and commencement
- 2 Interpretation
- 3 Meaning of “street trading”
- 4 Exemptions

Newsvendors

- 5 Newsvendors

Ice cream trading

- 6 Itinerant ice cream trading

Licensable areas and designating resolutions

- 7 Establishment of licensable areas by designating resolution
- 8 Rescission of designating resolutions and designation of alternative sites
- 9 Variation of designating resolution
- 10 Temporary alternative designation and suspension of designating resolutions

Specifying resolutions

- 11 Specifying resolutions

Street trading licences

- 12 Grant of street trading licences
- 13 Variation of street trading licences
- 14 Conditions of street trading licences
- 15 Standard conditions
- 16 Photographs
- 17 Applications
- 18 Mandatory grounds for refusal
- 19 General discretionary grounds for refusal
- 20 Specific discretionary grounds for refusal: new licences
- 21 Specific discretionary grounds for refusal: variations
- 22 Specific discretionary grounds for refusal: new licences and variations
- 23 Refusal of applications: general
- 24 Cancellation of licences
- 25 Revocation of licences
- 26 Further provisions relating to refusal, revocation or variation of street trading licences
- 27 Lapsing of licence in certain cases
- 28 Markets

Appeals

- 29 Appeals

Succession

- 30 Succession

Temporary licences

- 31 Temporary licences

Fees and charges

- 32 Application fees

-
- 33 Annual fees for temporary licences
- 34 Charges: street trading licences
- 35 Charges: temporary licences
- 36 Charges and provision of additional services
- Receptacles and containers*
- 37 Receptacles and containers
- 38 Powers to install and remove receptacles
- Assistants and Companies*
- 39 Employment of assistants
- 40 Companies
- Enforcement*
- 41 Offence of unlicensed street trading
- 42 Other offences
- 43 Seizure
- 44 Seizure notices: receptacles for refreshments
- 45 Return of seized items
- 46 Disposal of seized objects by council
- 47 Forfeiture of seized items by court
- 48 Seizure: compensation
- 49 Seizure of perishable items
- 50 Motor vehicles
- 51 Disposal orders
- Touting*
- 52 Touting
- Miscellaneous*
- 53 Protection for transport undertakers

- 54 Saving for offences
 - 55 Provision as to notices
 - 56 Proof of resolution
 - 57 Exercise of powers
 - 58 Amendments
 - 59 Repeals
 - 60 Transitional provisions
-

- Schedule 1 — Procedure for passing, rescinding or varying a resolution under **section 5(6)** (newsvendors)
- Schedule 2 — Procedure for passing a resolution under **section 6(2)** (itinerant ice cream trading)
- Schedule 3 — Procedure for passing or varying a designating resolution
- Schedule 4 — Procedure for rescinding a designating resolution or providing an alternative licensable area
- Schedule 5 — Procedure in relation to, and duration of, temporary alternative designation and suspension of designating resolutions
- Schedule 6 — Procedure for passing, rescinding or varying a specifying resolution and the issuing of guidelines
- Schedule 7 — Procedure for varying a street trading licence
- Schedule 8 — Procedure for passing, rescinding or varying a resolution designating a market area under **section 28** (markets)
- Schedule 9 — Charges under **section 34** (charges: street trading licences): procedure for determination and variation
- Schedule 10 — Minor and consequential amendments
- Schedule 11 — Repeals

A

B I L L

To make provision for the control of street trading and touting in the City of Westminster.

WHEREAS—

- (1) The City of Westminster (hereinafter called “the city”) is a London borough under the management and local government of the lord mayor and citizens of the city:
- (2) Certain powers relating to street trading are exercisable by the Westminster City Council under the City of Westminster Act 1999 (c. i) and it is expedient to revise those powers in respect of street trading in the city: 5
- (3) It is expedient that provision be made about the control of touting in the city:
- (4) The purposes of this Act cannot be effected without the authority of Parliament:
- (5) In relation to the promotion of the Bill for this Act the requirements of section 239 of the Local Government Act 1972 (c. 70) have been observed: 10
- (6) May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:— 15

Introductory

1 Citation and commencement

- (1) This Act may be cited as the City of Westminster Act 2009.
- (2) This Act shall come into operation at the end of the period of two months beginning with the date on which it is passed. 20

2 Interpretation

In this Act—

“authorised officer”, in relation to the council, means—

- (a) any employee of the council;
- (b) any person by whom, in pursuance of arrangements made with the council, any functions under this Act fall to be discharged; or 5
- (c) any employee of any such person, who is authorised in writing by the council to act in relation to the relevant provision of this Act;

“the city” means the City of Westminster; 10

“the Companies Acts” has the same meaning as in section 2 of the Companies Act 2006 (c. 46);

“the council” means the Westminster City Council;

“designating resolution” means a resolution passed under **section 7** (establishment of licensable areas by designating resolution); 15

“footway” includes a footbridge;

“house” includes any part of a building constituting a separate dwelling;

“ice cream trading” means the selling, exposing or offering for sale of items consisting wholly or mainly of ice cream, frozen confectionery or other similar commodities; 20

“item” includes a living thing;

“itinerant ice cream trading” means ice cream trading from a vehicle which goes from place to place remaining in any one location in the course of trading for short periods only;

“licensable area” means a street or part (of any size) of a street designated by a resolution of the council in accordance with **section 7** (establishment of licensable areas by designating resolution); 25

“licence holder” means the holder of a street trading licence;

“the Police Commissioner” means the Commissioner of Police of the Metropolis; 30

“receptacle” includes—

- (a) a kiosk, vehicle, trailer or stall and any basket, bag, box, vessel, stand, easel, board, tray or thing which is used (whether or not constructed or adapted for such use) as a container for or for the display of any item; or 35
- (b) equipment used in the provision of any service;

“shop” means any premises where there is carried on a trade or business consisting wholly or mainly of the sale of goods, and for these purposes, “sale of goods” does not include the sale of meals, refreshments, smoking materials or alcohol prepared to order for immediate consumption or smoking in an area of the street provided for that purpose; 40

“Specified Company” in relation to a street trading licence means a company authorised to carry out street trading in accordance with **section 40** (companies) under that licence;

“specifying resolution” has the meaning given by **section 11** (specifying resolutions); 45

“street” includes—

- (a) any road or footway;
- (b) any other area, not being within permanently enclosed premises, within 7 metres of any road or footway, to which the public obtain access without payment— 5
 - (i) whether or not they need the consent of the owner or occupier; and
 - (ii) if they do, whether or not they have obtained it;
- (c) any part of such road, footway or area;
- (d) any part of any housing development provided or maintained by a local authority under Part II of the Housing Act 1985 (c. 68); 10

“street trading licence” means a licence granted under this Act but excludes a temporary licence;

“temporary licence” means a licence granted under this Act for any period not exceeding three years; 15

“temporary licence holder” means the holder of a temporary licence.

3 Meaning of “street trading”

- (1) In this Act “street trading” means—
 - (a) the selling, offering for sale, display or exposing for sale of any item in a street; 20
 - (b) the supplying or offering to supply a service for gain or reward in a street;
 - (c) the purchasing or offering to purchase any ticket for gain or reward in a street;
 - (d) the selling or exposure or offer for sale of any motor vehicle if the vehicle is— 25
 - (i) exposed or offered for sale on the internet; and
 - (ii) kept on a street during the period when it is so exposed or offered for sale.
- (2) The activities mentioned in paragraphs (a) to (d) of subsection (1) are street trading whether or not any gain or reward arising from them accrues to the person actually carrying out the trading. 30
- (3) The following counts as street trading for the purposes of this Act—
 - (a) the provision, in relation to premises, of a place in a street for the consumption of meals, refreshments or alcohol supplied on or from those premises; and 35
 - (b) the provision of facilities or equipment in a street for smoking (other than a receptacle for the disposal of smoking related litter).
- (4) In determining whether activity amounts to street trading for the purposes of this Act, the following shall be disregarded— 40
 - (a) the fact that a transaction was or was to be completed elsewhere than in a street in the case where the initial offer or display of the items in question or the offer of services, as the case may be, took place in a street;
 - (b) the fact that either party to the transaction was not in a street at the time it was completed; 45

- (c) the fact that items offered to be sold, or services offered to be supplied, as the case may be, were different from those actually sold or supplied.

4 Exemptions

- (1) The selling of items to occupiers of premises adjoining any street, or the offering or exposing of them for sale by a delivery person from a vehicle which is used only for the regular delivery of milk or other perishable items to those persons is not street trading for the purposes of this Act. 5
- (2) The selling, exposure or offer for sale of items or the provision of services on private land adjoining the front or side wall of a shop is not street trading for the purposes of this Act if the selling, exposure or offer for sale of the items or the provision of the services— 10
- (a) forms part of the business of the owner of the shop or person assessed for uniform business rate of the shop; and
- (b) takes place during the period during which the shop is open to the public for business. 15
- (3) The following are not street trading for the purposes of this Act—
- (a) the doing of anything authorised by regulations made under section 5 of the Police, Factories, &c. (Miscellaneous Provisions) Act 1916 (c. 31);
- (b) the doing of anything authorised by permit or order made under Part III of the Charities Act 1992 (c. 41); 20
- (c) conducting a public charitable collection that—
- (i) is conducted in accordance with section 48 or 49 of the Charities Act 2006 (c. 50); or
- (ii) is an exempt collection by virtue of section 50 of that Act.
- (4) Trading by a person acting as a pedlar under the authority of a pedlar's certificate under the Pedlars Act 1871 (c. 96) is not street trading for the purposes of this Act if the trading is carried out only by means of visits from house to house. 25
- (5) Anything done in a market the right to hold which was acquired or established by virtue of any enactment other than this Act is not street trading for the purposes of this Act. 30

Newsvendors

5 Newsvendors

- (1) Trading only as a newsvendor is not street trading for the purposes of this Act if the conditions of this section are satisfied. 35
- (2) The first condition is that no undue interference or inconvenience or safety hazard is caused by the trading to people using the street.
- (3) The second condition is that the only items sold, exposed or offered for sale are current newspapers or periodicals.

- (4) The third condition is that the items are being sold, offered or exposed for sale without a receptacle, or that they are being sold, offered or exposed for sale from a single receptacle which—
- (a) does not exceed 1 metre in length or width or 2 metres in height; or
 - (b) does not occupy a ground area exceeding 0.25 square metres; or
 - (c) does not stand on or overhang the carriageway of the street; and
 - (d) is not being used for any other purpose.
- (5) The fourth condition is that any regulations made by the council about the design, type and use of umbrellas, signage, advertisements, canopies or other items in relation to the trading are being complied with.
- (6) The exemption contained in this section shall not apply in an area which the council has by resolution designated as an area in which it should not apply.
- (7) The grounds on which the council may pass a resolution under subsection (6) are—
- (a) undue interference or inconvenience or a safety hazard is caused or is likely to be caused to people using the street by newsvendors trading in the area in question;
 - (b) trading as newsvendors in the area in question adversely affects or is likely to adversely affect the setting of a listed building or the character or appearance of a conservation area or otherwise adversely affect the amenity of the area in question;
 - (c) there are proposals for development at or near the licensable area or development is carried out in the area in question, and street trading in the area is incompatible with the development or proposed development;
 - (d) the council has carried out a review of street trading in the city or in a particular area of the city and wishes to implement the conclusions of the review by passing the proposed resolution.
- (8) **Schedule 1** makes provision about the procedure for the passing, varying and rescinding of a resolution under subsection (6).

Ice cream trading

6 Itinerant ice cream trading

- (1) Nothing in this Act shall apply to itinerant ice cream trading in any street unless—
- (a) that street is in a licensable area; or
 - (b) the street has been designated as a prohibited street under the following provisions of this section.
- (2) The council may by resolution designate a street which is not in a licensable area as a prohibited street if at any time it is necessary to prohibit itinerant ice cream trading in the street in the interests of preventing—
- (a) a safety hazard;
 - (b) obstruction to traffic; or
 - (c) undue interference or inconvenience to persons using the street.

- (3) The council may rescind or vary a resolution passed under subsection (2).
- (4) **Schedule 2** makes provision about the procedure for the passing of a resolution under subsection (2).

Licensable areas and designating resolutions

- 7 Establishment of licensable areas by designating resolution** 5
- (1) A licensable area may be established by the council—
 - (a) by the passing of a resolution known as a designating resolution; or
 - (b) by the designation of an alternative licensable area for an existing area under **section 8(3)** (rescission of designating resolutions and designation of alternative sites). 10
 - (2) No street trading licence shall be granted by the council for an area that is not a licensable area (see **section 18** (mandatory grounds for refusal)).
 - (3) **Schedule 3** makes provision about the procedure for the passing of a designating resolution.
- 8 Rescission of designating resolutions and designation of alternative sites** 15
- (1) The council may by further resolution rescind a designating resolution on any of the grounds mentioned in subsection (6).
 - (2) If a designating resolution is rescinded under this section, any street trading licence for the licensable area in question shall be deemed to have been extinguished. 20
 - (3) Instead of rescinding a designating resolution, the council may pass a resolution designating an alternative licensable area.
 - (4) If an alternative licensable area is designated, the original licensable area shall no longer be a licensable area and any street trading licence for the previous licensable area may be transferred to the alternative licensable area, with any necessary modification to that licence. 25
 - (5) In every case where the council is considering rescinding a designation under this section and there is a street trading licence in force in relation to the licensable area in question (“the original area”), the council shall (unless the licence holder in question agrees otherwise) consider whether there is an alternative licensable area in the vicinity of the original area. 30
 - (6) The grounds on which a designating resolution may be rescinded are that—
 - (a) undue interference or inconvenience or a safety hazard is caused to people using the street by street trading in the licensable area;
 - (b) doing so is necessary for the prevention or reduction of crime and disorder; 35
 - (c) there is a sufficient number of persons carrying on street trading in the vicinity of the licensable area;

- (d) street trading in the licensable area adversely affects the setting of a listed building or the character or appearance of a conservation area or otherwise adversely affects the amenity of the area in which the licensable area is located;
- (e) there are proposals for development at or near the licensable area or development is carried out in the area, and street trading in the licensable area is incompatible with the development or proposed development; 5
- (f) the council has carried out (in accordance with subsection (7)) a review of street trading in the city or in a particular area of the city and wishes to implement the conclusions of the review by rescinding the designating resolution. 10
- (7) A review is carried out in accordance with this subsection if in the process of doing so the council consults any body which appears to the council to represent licence holders who will be affected by the review. 15
- (8) **Schedule 4** makes provision about the procedure for the passing of a resolution to rescind a licensable area or to designate an alternative licensable area.
- 9 Variation of designating resolution**
- (1) The council may by resolution vary a designating resolution by altering the licensable area. 20
- (2) If a designating resolution is varied under this section, the council may also modify as necessary any street trading licence for the licensable area in question.
- (3) If the council varies a designating resolution under this section at the request of a licence holder, it may charge the licence holder such reasonable fee as it may determine calculated by reference to the cost of dealing with the request. 25
- (4) **Schedule 3** makes provision about the procedure for the variation of a designating resolution.
- 10 Temporary alternative designation and suspension of designating resolutions** 30
- (1) If a licensable area becomes temporarily unsuitable for street trading purposes the council may—
- (a) suspend the designating resolution; and
- (b) temporarily designate an alternative location (which may be of different dimensions from the original) for that licensable area. 35
- (2) If an alternative licensable area is temporarily designated under this section, any street trading licence for the original licensable area shall be transferred to the alternative licensable area with any necessary modifications to that licence.
- (3) **Schedule 5** makes provision about procedure in relation to temporary designations and suspensions under subsection (1) and their duration. 40

Specifying resolutions

11 Specifying resolutions

- (1) A specifying resolution is a resolution passed by the council specifying that in relation to a licensable area or areas either—
 - (a) only specified items or services or classes of items or services may be sold, offered or provided in that area or those areas; or 5
 - (b) the sale, offer or provision of specified items or services or classes of items or services are prohibited in that area or those areas.
- (2) The council may vary or rescind a specifying resolution.
- (3) **Schedule 6** makes provision about the procedure for the passing, variation and rescission of a specifying resolution. 10

Street trading licences

12 Grant of street trading licences

- (1) The council may grant a street trading licence on an application made under **section 17** (applications) and the licence may be granted on such reasonable terms and conditions relevant to street trading as the council may specify. 15
- (2) The licence shall identify—
 - (a) the area in which the licence holder may engage in street trading under the licence;
 - (b) the licence holder. 20
- (3) The licence shall remain in force until it is cancelled or revoked by the council.
- (4) A licence granted to an individual shall bear his or her photograph.
- (5) A licence shall not come into effect until the applicant has provided to the council adequate proof of any third party insurance cover required in accordance with any conditions of the licence and the licence shall be deemed to have been extinguished if within 28 days of the council's decision to grant it that proof has not been provided. 25

13 Variation of street trading licences

- (1) In addition to changes to any of the standard conditions which the council may make under **section 15** (standard conditions) the council may vary a street trading licence. 30
- (2) Subject to the provisions of this Act, the council may also at any time vary a street trading licence on application by the licence holder in accordance with his or her application. An application may be granted in whole or in part.
- (3) If the council grants an application under subsection (2) it may impose such conditions as it thinks fit on the licence to reflect its decision. 35

- (4) Unless it has the agreement of the licence holder, the council may not, under subsection (3), impose any conditions that are unrelated to the application or which are more onerous on the applicant than those that exist on the current licence.
- (5) Except with the agreement of the council, no application to vary a licence may be made under subsection (2)— 5
- (a) in the case of an application to vary a condition, within the period of six months beginning with the date on which—
 - (i) the council imposed the condition; or
 - (ii) the council refused a similar application to vary the condition; 10
 - (b) in the case of an application to vary a licence other than by a variation of a condition, within the period of six months beginning with the date on which—
 - (i) the council imposed the provision that is the subject of the purported application; or 15
 - (ii) the council refused a similar application to vary the provision;
 - (c) during any period when the imposition of the condition or provision in question or the refusal to vary the condition or provision in question is the subject of an appeal under **section 29** (appeals).
- (6) **Schedule 7** makes provision about the procedure for the variation of a licence under subsection (1). 20

14 Conditions of street trading licences

- (1) Without prejudice to the generality of **section 12(1)** (grant of street trading licences), the conditions of a street trading licence may include reasonable conditions— 25
- (a) identifying the items or services or the classes of items or services which the licence holder may sell or expose or offer for sale or provide;
 - (b) identifying the days and times during which the licence holder may engage in street trading;
 - (c) identifying the nature, type and number of any receptacle which may be used by the licence holder in connection with the sale or exposure or offer for sale of items or the provision of services; 30
 - (d) requiring that the licence holder use receptacles provided under **section 37(1)** (receptacles and containers);
 - (e) requiring that any receptacle shall carry in a conspicuous position the number of the licence in a form acceptable to the council; 35
 - (f) identifying any position in the licensable area, the street in which the licensable area is located or adjoining streets where items needed for restocking any such receptacle may be stored and the period during which they may be so stored; 40
 - (g) regulating the removal and storage of receptacles or perishable items (which may include a requirement that the licence holder uses accommodation provided under the said **section 37(2)**);

- (h) regulating the deposit and removal of refuse and the containers to be used for the deposit of refuse and their location pending its removal (which may include a requirement that the licence holder uses a container provided under the said **section 37(2)**);
 - (i) requiring that the licence holder shall commence trading by a certain time on any day or forfeit his or her right to trade under his or her street trading licence for that day; 5
 - (j) requiring third party insurance cover and producing proof of it on reasonable demand to an authorised officer; and
 - (k) making provision for the separation of the area in which the activities authorised by the licence are carried on from other parts of the street. 10
- (2) Conditions of a street trading licence may include—
- (a) conditions relating to the prevention of nuisance; and
 - (b) specific restrictions relating to the hours between—
 - (i) 10 p.m. on Sunday to Friday and 7 a.m. the day following; and 15
 - (ii) 10 p.m. on Saturday and 9 a.m. on Sunday.

15 Standard conditions

- (1) The council may prescribe standard conditions which are to apply to all street trading licences or to classes of street trading licence.
- (2) Before prescribing such conditions or changing any condition so prescribed, the council shall first give notice in writing to— 20
 - (a) 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
 - (b) any body which appears to the council to represent such licence holders. 25
- (3) The notice shall—
 - (a) give details of the proposed conditions or changes to the conditions; and
 - (b) state that representations may be made with regard to the proposal by the date specified in the notice as the due date (which shall be not less than 28 days after the notice has been given). 30
- (4) As soon as practicable after the due date the council shall consider all representations received by that date and may at their discretion consider representations received after that date.
- (5) The council shall give to any person who makes representations by the due date an opportunity to make oral representations to the council and may at their discretion give to other persons making representations a similar opportunity. 35
- (6) The council may prescribe the proposed conditions or changes to conditions with any modifications it considers appropriate as a result of any representations received under this section.
- (7) As soon as practicable and in any event no later than 7 days after prescribing such conditions or changes to conditions the council shall by notice in writing inform all the holders of street trading licences to whom previous notice was given under subsection (2) of the conditions or changes to conditions. 40

- (8) The conditions or changes to conditions shall come into force 35 days after the date on which the conditions or changes to conditions were prescribed.

16 Photographs

- (1) Subject to subsection (3), the photograph that must appear on a street trading licence by virtue of **section 12(4)** (grant of street trading licences) shall be one of the photographs provided under **section 17(7)** (applications). 5
- (2) Where a licence is granted to an individual the council may give him or her notice in writing, at intervals of not less than five years, requiring him or her to provide the council with three new signed photographs of the type prescribed by the said **section 17(7)**. The council may accept fewer photographs. 10
- (3) On each occasion when new photographs are provided by a licence holder under subsection (2), the council shall re-issue his or her licence and the re-issued licence shall bear one of the new photographs.
- (4) An individual carrying on ice cream trading in accordance with a licence granted to a company, an unincorporated association or a partnership shall at all times while he is so trading carry with him or her, and produce on request by an authorised officer or a constable, a recent photograph of himself or herself authenticated by the company or on behalf of the unincorporated association or partnership. 15
- (5) An individual who is a licence holder shall at all times while engaged in street trading carry with him or her and produce on request by an authorised officer or a constable, either the licence or an approved form of identity issued by the council for the purposes of this Act. 20

17 Applications

- (1) An application for the grant or variation of a street trading licence shall— 25
- (a) be made in writing to the council in the form and manner prescribed by the council; and
 - (b) be accompanied by the appropriate application fee (see **section 32** (application fees)).
- (2) In the case of an individual, the applicant shall state his or her full name and home address and date of birth. 30
- (3) In the case of a licence to carry on ice cream trading where the applicant is a company incorporated under the Companies Acts, the applicant shall state the name of the company and its registered office.
- (4) In the case of a licence to carry on ice cream trading by a partnership or unincorporated association the applicant shall state the names of its members and the address of its principal office. 35

- (5) In all cases, the applicant shall—
- (a) describe the licensable area or part of the licensable area in which, the days on which and times between which the applicant desires to trade;
 - (b) describe the items or services in which he desires to trade; and
 - (c) give such other particulars relevant to street trading as the council may reasonably require. 5
- (6) In the case of an application for a street trading licence which, if granted, would authorise street trading on land which falls within paragraph (b) in the definition of “street” in **section 2** (interpretation), the applicant shall provide evidence in writing— 10
- (a) that the applicant has consent to trade on the land from the owner of the land in question; or
 - (b) that the applicant is the owner of the land in question.
- (7) In the case of an application by an individual the applicant shall, with his or her application, hand to an authorised officer, or provide in such other manner as the council may prescribe, such number of identical clear full face photographs of himself or herself as the council may require and— 15
- (a) the applicant shall be shown—
 - (i) without headgear (unless on religious grounds the applicant wears headgear); and 20
 - (ii) without sunglasses;
 - (b) the photographs shall—
 - (i) have been taken within the preceding 12 months;
 - (ii) be signed by the applicant on the reverse.
- (8) The council may make regulations prescribing the procedure for determining applications. 25
- (9) Before making such regulations or changing them the council shall—
- (a) consult any body which appears to the council to represent licence holders; and
 - (b) give consideration to any representations received within 28 days of the date on which the council’s proposals were notified to the body concerned. 30

18 Mandatory grounds for refusal

- The council shall refuse to grant an application for a street trading licence or a variation of a street trading licence made under **section 17** (applications)— 35
- (a) where the application is not for a licence to carry on ice cream trading and the applicant is not an individual;
 - (b) where the applicant is under the age of 17 years;
 - (c) where the application is for a licence for any part of a licensable area in respect of which the council has decided to issue or has issued a licence to another person and that licence would allow trading during the same hours as specified in the application; 40

- (d) where the applicant is a licence holder under this Act for any other licensable area or under any other enactment relating to street trading which in either case enables the applicant to carry on street trading elsewhere during the period specified in his or her application;
- (e) where the council is satisfied that there is not enough space in the street for the applicant to engage in the trading in which he desires to trade without causing a safety hazard or undue interference or inconvenience to persons or vehicular traffic using the street; 5
- (f) where the street to which the application relates is a street in respect of which a specifying resolution is in force and the grant of the application would be contrary to any of the terms of that resolution; 10
- (g) to trade in an area which is not a licensable area;
- (h) where the application, if granted, would authorise street trading on land which falls within paragraph (b) in the definition of “street” in **section 2** (interpretation), unless the applicant has provided sufficient evidence as is mentioned in the said **section 17(6)** to satisfy the council. 15

19 General discretionary grounds for refusal

- (1) The council may refuse an application made under **section 17** (applications) on any reasonable grounds related to—
 - (a) the convenience or safety of people using the street; 20
 - (b) the prevention or reduction of crime or disorder;
 - (c) the amenity of the area, including the setting of listed buildings or the character or appearance of conservation areas;
 - (d) the suitability of the applicant to hold a licence;
 - (e) the diversity of items on sale and services provided by street traders and other retailers in the area; 25
 - (f) the prevention of public nuisance.
- (2) **Sections 20** (specific discretionary grounds for refusal: new licences), **21** (specific discretionary grounds for refusals: variations) and **22** (specific discretionary grounds for refusal: new licences and variations) are without prejudice to the generality of subsection (1). 30

20 Specific discretionary grounds for refusal: new licences

The grounds on which the council may refuse an application for the grant of a licence include, in particular—

- (a) that the council considers that there are enough traders trading in the street or in any street adjoining the street in respect of which the application is made in the items in which the applicant desires to trade (or similar items); 35
- (b) that the applicant is on account of misconduct or for any other sufficient reason unsuitable to hold a street trading licence; 40
- (c) that the applicant has persistently failed to comply with any condition of his or her street trading licence or a previous street trading licence held by the individual, member of the unincorporated association or partnership or company concerned;

- (d) that the applicant is an individual who has persistently without reasonable excuse failed to make full personal use of a previous street trading licence;
- (e) that the applicant is a partnership, unincorporated association or company which has without reasonable excuse persistently failed to avail itself fully of a previous street trading licence; 5
- (f) that the applicant has at any time been granted a street trading licence by the council which was revoked or could have been revoked on the grounds that he had refused or neglected to pay fees or other charges due to them in respect of the licence; 10
- (g) that—
 - (i) the only available position is in that part of the street which is in front of any part of the frontage of a shop or in front of the paved area of the frontage of that shop; and
 - (ii) the items, things or services mentioned in the application are sold or provided at the shop; 15
- (h) that—
 - (i) the only available position in the street is within the curtilage of a shop; and
 - (ii) the applicant is not the owner or occupier of the premises comprising the shop. 20

21 Specific discretionary grounds for refusal: variations

The grounds on which the council may refuse an application for a variation of a licence include, in particular, that the application is for a variation of a standard condition of a street trading licence. 25

22 Specific discretionary grounds for refusal: new licences and variations

- (1) The grounds on which the council may refuse an application for the grant of a licence or a variation of a licence include, in particular—
 - (a) that the applicant has failed to provide or to identify suitable or adequate premises for the storage of any receptacles or perishable items in which he proposes to trade when street trading is not taking place; 30
 - (b) that since the grant of a previous street trading licence the licence holder has persistently failed to remove to the place of storage the receptacles used by him or her for trading or any perishable items in which he trades; 35
 - (c) that in the vicinity of the licensable area in question undue disturbance is likely to be caused as a result of the proposed activities of the applicant;
 - (d) that the application would be in contravention of any written guidelines issued by the council in relation to— 40

- (i) the type of items that may be sold in respect of a street trading licence, a class of street trading licences, or a licensable area;
 - (ii) the type or design of receptacles that may be used in respect of street trading licences, classes of street trading licences or licensable areas or other areas; 5
 - (iii) the hours during which street trading may be carried on;
 - (iv) any other subject that is relevant to street trading;
 - (e) that inadequate arrangements for the collection or disposal of refuse are proposed or are in place;
 - (f) that the application is in relation to a market (within the meaning given by **section 28** (markets)) and the application if granted would authorise trading only in a specified licensable area or part of a licensable area, and the council is of the view that in the circumstances of the case only trading in the market generally should be authorised. 10
- (2) **Schedule 6** makes provision about the procedure for the issuing and variation of guidelines. 15

23 Refusal of applications: general

- (1) If the council considers that grounds for refusal exist under **sections 19** (general discretionary grounds for refusal), **20** (specific discretionary grounds for refusal: new licences), **21** (specific discretionary grounds for refusal: variations) or **22** (specific discretionary grounds for refusal: new licences and variations), it may grant the application in part and impose such conditions as it thinks fit on the licence to reflect its decision. 20
- (2) In relation to an application for a variation of a licence the council may not, under subsection (1), impose any conditions that are unrelated to the application or which are more onerous on the applicant than those that exist on the current licence. 25
- (3) If the council considers that grounds for refusal exist under the said **sections 20(a), (c), (d) or (e) or 22(1)(c)** it may grant the applicant a licence or a variation to a licence, as the case may be, which permits him or her— 30
- (a) to trade on fewer days or during a shorter period in each day than is specified in the application; or
 - (b) to trade in a different licensable area or different part of a licensable area from that specified in the application; or
 - (c) to trade in items other than those specified in the application or in only some of the items so specified. 35

24 Cancellation of licences

A licence holder or a temporary licence holder may at any time request the cancellation of the licence and the cancellation shall take effect when the request for its cancellation is received by the council. 40

25 Revocation of licences

- (1) The council may at any time revoke a street trading licence or a temporary licence if it is satisfied that—
- (a) the licence holder or a specified company is trading in breach of the terms of a specifying resolution; or 5
 - (b) the licence holder is an individual who has persistently without reasonable excuse failed to make full personal use of his or her licence; or
 - (c) the licence holder is a partnership, unincorporated association or company which has without reasonable excuse persistently failed to avail itself fully of the licence; or 10
 - (d) the licence holder is on account of misconduct or for any other sufficient reason unsuitable to hold the licence; or
 - (e) since the grant of the licence, the licence holder has for a period of four weeks or more failed to pay fees or charges due to the council in connection with the street trading licence or has failed to pay any charges due from the licence holder for accommodation provided under **section 37(2)** (receptacles and containers); or 15
 - (f) since the grant of the licence, the licence holder has persistently failed to pay fees or charges as they fall due to the council in connection with the street trading licence; or 20
 - (g) since the grant of the licence, the licence holder or a specified company has failed to make provision for the suitable and adequate storage, when trading is not taking place, of the receptacles used by the licence holder or the specified company for trading or of any perishable items in which he trades; or 25
 - (h) since the grant of the licence, the licence holder or a specified company has persistently failed to remove to the place of storage the receptacles used by the licence holder or the specified company for trading or any perishable items in which he trades; or 30
 - (i) the licence holder has persistently failed to comply with any condition of the licence in question; or
 - (j) in the vicinity of the licensable area in question undue disturbance has been caused by the activities of the licence holder, a specified company or an assistant employed under **section 39** (employment of assistants); or 35
 - (k) the licence holder has failed to provide the council with the photographs required in pursuance of a notice under **section 16(2)** (photographs).
- (2) If the council revokes a licence under this section, it may also revoke any other street trading licence held under this Act by the licence holder in question. 40

- (3) If the council considers that a licence could be revoked on any of the grounds mentioned in subsection (1) it may instead of revoking it—
- (a) vary the conditions of the licence by attaching further conditions, which may include—
 - (i) reducing the number of days in any week or the period in any one day during which the licence holder is permitted to trade; 5
 - (ii) restricting the description of items, things or services in which the licence holder is permitted to trade; or
 - (b) suspend the operation of the licence for a period not exceeding three months as the council thinks fit; 10
 - (c) vary the licence by specifying a different licensed area at which licensed street trading may take place.

26 Further provisions relating to refusal, revocation or variation of street trading licences

- (1) Subsection (2) applies in the case where the council proposes to— 15
- (a) refuse an application under **section 17** (applications), other than on the grounds specified in **section 18** (mandatory grounds for refusal);
 - (b) revoke a street trading licence or a temporary licence that is valid for a period exceeding 28 days (except in a case that falls within subsection (3)); 20
 - (c) vary a street trading licence other than a variation to a standard condition; or
 - (d) suspend a licence under **section 25(3)(b)** (revocation of licences).
- (2) If this subsection applies, the council must give to the applicant or licence holder at least 21 days' notice in writing of its proposal, setting out— 25
- (a) the grounds on which the proposed refusal, revocation or variation would be based; and
 - (b) notifying the applicant or licence holder of the opportunity to appear before the committee, sub-committee, authorised officer or panel of officers who will determine the matter. 30
- (3) A case falls within this subsection if the council proposes to revoke a licence for the reason that there has been a breach of the conditions of the licence relating to conduct involving violent, dangerous or abusive conduct.
- (4) In a case that falls within subsection (3), the council may decide to suspend the licence immediately if it thinks that it is necessary to do so for the protection of persons or property. 35
- (5) The council shall hold a hearing to decide whether the licence should be revoked within a period of 14 days beginning with the date on which a suspension under subsection (4) comes into effect.

- (6) The decision to suspend a licence under subsection (4) shall cease to have effect forthwith if—
- (a) at the hearing mentioned in subsection (5) the council decides not to revoke the licence; or
 - (b) a magistrates' court allows an appeal under **section 29** (appeals) against the council's decision to revoke the licence; or
 - (c) the council decides that the suspension should cease to have effect.
- (7) The council may consider and determine any of the matters set out in subsection (1) where a shorter period of notice than the 21 days required by subsection (2) has been given, provided the applicant or licence holder has consented in writing.
- (8) If an application is refused or a licence is revoked or varied (other than under **section 13**(2) (variation of street trading licences)) the council shall notify the applicant or licence holder in writing of the decision and of—
- (a) the grounds and reasons for that decision; and
 - (b) any rights of appeal against that decision.

27 Lapsing of licence in certain cases

In the case of a street trading licence which authorises street trading on land which falls within paragraph (b) in the definition of "street" in **section 2** (interpretation), the licence shall lapse if—

- (a) the consent is discontinued by the person who gave it, or a successor in title of that person, and the council is provided with written notice of the discontinuation of the consent by the person who discontinues it; or
- (b) the licence holder no longer is the owner of the land in question.

28 Markets

- (1) A street trading licence that authorises street trading in a market may authorise street trading—
- (a) at a specified licensable area or part of a licensable area in the market;
 - (b) in the market generally.
- (2) Where one or more licences have been granted in a market and the licence or licences authorise street trading in the market generally, the council may give directions, or make arrangements for the giving of directions by others as to the place at which the licence holder should trade.
- (3) **Section 22**(1)(f) (specific discretionary grounds for refusal: new licences and variations) makes particular provision about refusals of applications for licences in markets.
- (4) In this section, "market" means an area consisting of a licensable area or a number of separate licensable areas that is or are designated by resolution of the council as a market for the purposes of this section.
- (5) **Schedule 8** makes provision about the procedure for the passing of resolutions under subsection (4) and their variation and rescission.

Appeals

29 Appeals

- (1) A person may appeal to a magistrates' court if that person is aggrieved—
- (a) by a decision of the council to refuse an application under **section 17** (applications) other than on any of the grounds specified in **section 18** (mandatory grounds for refusal); 5
 - (b) by a decision of the council to grant a street trading licence on terms other than those sought;
 - (c) by a decision of the council to revoke a street trading licence;
 - (d) by a decision of the council to vary a street trading licence or the conditions of a street trading licence other than by a change to the standard conditions; 10
 - (e) by the attachment to a street trading licence of any condition other than—
 - (i) a condition to which the licence had hitherto been subject, or 15
 - (ii) a standard condition;
 - (f) by a resolution of the council to vary or rescind a designating resolution;
 - (g) by a resolution of the council to designate an alternative licensable area under **section 8(3)** (rescission of designating resolutions and designation of alternative sites); 20
 - (h) by a specifying resolution or a resolution varying such a resolution; or
 - (i) by a prohibition under **section 6(2)** (itinerant ice cream trading).
- (2) An appeal under this section must be made to the magistrates' court for the local justice area in which—
- (a) the licensable area in question is situated; or 25
 - (b) in which the street to which the prohibition under the said **section 6(2)** relates is situated.
- (3) An appeal under this section must be commenced by notice of appeal given by the appellant to the designated officer for the magistrates' court within the period of 21 days beginning with— 30
- (a) the date on which written notification is given of the decision, in the case of an appeal under subsection (1)(a) to (h);
 - (b) the date on which the person aggrieved is informed under paragraph 6 of **Schedule 2** of the council's resolution to make the prohibition, in the case of an appeal under paragraph (i) of subsection (1). 35
- (4) On an appeal to the magistrates' court, the court may make such order as it thinks fit, such order to be limited to the matter which is the subject of the appeal.
- (5) It shall be the duty of the council to give effect to the order of the magistrates' court. 40
- (6) Subsection (8) applies where the council—
- (a) revokes a street trading licence under **section 25(1)** (revocation of licences);
 - (b) suspends a street trading licence under the said **section 25(3)(b)**;

- (c) varies the conditions of a street trading licence under **section 13** (variation of street trading licences)(other than a standard condition) without the consent of the licence holder;
 - (d) rescinds a designating resolution under the said **section 8(1)**;
 - (e) designates an alternative licensable area under the said **section 8(3)**; or 5
 - (f) passes or varies a specifying resolution under **section 11** (specifying resolutions).
- (7) Subsection (6) is subject to subsections (9) to (11).
- (8) The revocation, suspension, variation, rescission, designation or resolution, as the case may be, shall not take effect until— 10
- (a) the time for bringing an appeal to the magistrates’ court under subsection (1) has expired; or
 - (b) where such an appeal is brought, until the determination or abandonment of the appeal.
- (9) Subsection (8) shall not apply in the case where— 15
- (a) a designating resolution has been rescinded and the council is of the opinion that street trading in the licensable area in question (or any part of it) should cease immediately on the grounds that continued street trading would present a safety hazard to people using the street; or
 - (b) a licence has been suspended under **section 26(4)**(further provisions relating to refusal, revocation or variation of street trading licences). 20
- (10) Where the council has revoked a street trading licence on the grounds that the licence holder has failed to pay fees and charges due to the council and the licence holder has appealed it shall only be lawful for the licence holder to trade under the authority of that licence, until any appeal has been determined or abandoned, if— 25
- (a) all fees and charges due to the council have been paid; and
 - (b) the licence holder continues to pay fees and charges due to the council under that licence.
- (11) Where the council has revoked a street trading licence on any other grounds and the licence holder has appealed, the licence holder may continue to trade under the authority of that licence by virtue of subsection (8) provided that he continues to pay fees and charges due to the council under that licence. 30

Succession

- 30 Succession** 35
- (1) The holder of a street trading licence (“A”) granted to A before this Act came into force and who is an individual may at any time by written notice to the council specify the name and address of a relative (or employee under subsection (8)(e)) to whom A would wish the licence to be granted if A— 40
- (a) dies; or
 - (b) retires having reached the age of 60; or
 - (c) notifies the council that owing to ill-health A is unable to continue to engage in the street trading permitted by the licence, and submits evidence to satisfy the council as to A’s ill-health.

- (2) A nomination under subsection (1) may be varied by A at any time by giving written notice to the council, specifying the name and address of another relative or employee to whom A would wish the licence to be granted and the notice shall revoke all previous nominations made by A.
- (3) When a licence holder has nominated a person in accordance with subsection (1), the council shall not (except as provided in subsection (4)) grant a licence in respect of the licensable area or part of the licensable area for which A was licensed until the expiration of 28 days from the date of A's death, retirement or receiving the notification under subsection (1)(c), as the case may be. 5
- (4) Subject to subsections (5) and (6), if during the period of 28 days mentioned in subsection (3) the person nominated under subsection (1) by A makes application for the grant of a licence in respect of the licensable area in respect of which the licence was held, the council shall grant a licence to that person on the same terms and conditions as were previously in force. 10
- (5) The council may refuse an application under subsection (4) on any of the grounds mentioned in **section 18**(a), (b), (d) and (h) (mandatory grounds for refusal), **section 20**(b), (c), (d), (e) and (f) (specific discretionary grounds for refusal: new licences) and **section 21** (specific discretionary grounds for refusal: variations). 15
- (6) The council shall not grant a street trading licence under subsection (4) if— 20
- (a) to do so would cause a breach of a specifying resolution; or
 - (b) if there are any fees or charges payable under this Act by A and which have not been paid.
- (7) Where a street trading licence cannot be granted under this section because of the application of the provisions of the said **section 18**(d) the council may at its discretion grant a licence to another relative of A or to a relative of the person who, but for the provisions of the said **section 18**(d) as so applied, would have been granted the licence under this section. 25
- (8) The council may—
- (a) grant the licence to a nominee where a licence holder has given up or proposes to give up his licence on grounds other than those specified in subsection (1)(b) or (c); 30
 - (b) extend the period of 28 days specified in subsection (3);
 - (c) grant the licence to a relative not mentioned in subsection (9);
 - (d) grant the licence to a relative where A failed to make a nomination under subsection (1); or 35
 - (e) grant the licence to an employee of at least five years standing of A where—
 - (i) A had previously notified the council of his employment of that person; and 40
 - (ii) A or the applicant has made available to the council all necessary tax and other records to prove that the person is or was a bona fide employee.

- (9) For the purposes of subsections (1) and (8)(d) a person (“B”) is a relative of another person (“C”) if C is the spouse, civil partner, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother or half-sister of B. 5

Temporary licences

31 Temporary licences

- (1) The council shall determine an application for a temporary licence on the receipt of an application from a person if the application is made in such form and manner as the council may prescribe and if it is accompanied by the appropriate fee. 10
- (2) A temporary licence shall remain in force only for the day or period specified in the licence and shall—
- (a) be in a similar form to a street trading licence with such modifications as the circumstances require; and 15
 - (b) contain such terms and conditions as the council may specify.
- (3) In the case of an application for a temporary licence which, if granted, would authorise street trading on land which falls within paragraph (b) in the definition of “street” in **section 2** (interpretation) (in this section referred to as “private land”), the applicant shall provide evidence in writing— 20
- (a) that he has the consent to trade on the land from the owner of the land in question; or
 - (b) that he is the owner of the land in question.
- (4) An application for a temporary licence shall not be granted, if the licence would authorise street trading on private land, unless the applicant has provided sufficient evidence, as is mentioned in **section 17(6)** (applications), to satisfy the council. 25
- (5) In the case of a temporary licence which authorises street trading on private land, the licence shall lapse if—
- (a) the consent to trade on the land is discontinued, and the council is provided with written notice of the discontinuance of the permission by the person who gave the consent or by a successor in title to that person; or 30
 - (b) the licence holder is no longer the owner of the land in question.
- (6) The council may revoke or suspend the operation of a temporary licence— 35
- (a) if circumstances have arisen since the grant of the licence or are about to arise which necessitate such revocation or suspension on the grounds that undue interference or inconvenience or a safety hazard is caused or is likely to be caused to people using the street by trading under the temporary licence; or 40
 - (b) the temporary licence holder has failed to pay any appropriate fee at the time it became due; or
 - (c) the temporary licence holder has failed to comply with the conditions of the licence.

- (7) Where a temporary licence is revoked or suspended under subsection (6), the council shall return to the licensee such proportion of any fee paid for the granting of the licence as is appropriate, taking into account the period for which the licence was granted and the period remaining on the licence when it was revoked or the period for which the licence was suspended, as the case may be. 5
- (8) Where a licence holder is not for the time being exercising his or her rights under the licence or has indicated in writing to the council his or her intention not to exercise those rights, a temporary licence authorising street trading from the same licensable area (or part of the licensable area) may be granted to any other person. 10
- (9) A temporary licence granted to another person under subsection (8) is subject to the condition that the temporary licence shall cease to be valid at the end of the day on which the appropriate notice expires, if the circumstances described in subsection (10) apply. 15
- (10) The circumstances are—
- (a) appropriate notice is given by the temporary licence holder, and either
 - (b) the temporary licence has been granted but has yet to come into effect; or
 - (c) the temporary licence is granted for longer than 24 hours and has come into effect. 20
- (11) Where a temporary licence ceases to be valid under subsection (8)—
- (a) if it ceases to be valid before it comes into effect, the application fee shall be returned to the applicant by the council;
 - (b) in any other case, the proportion of the application fee which is attributable to any period in respect of which the temporary licence ceases to be valid shall be returned to the applicant by the council. 25
- (12) The council may establish a register of persons to whom it would be prepared to grant temporary licences.
- (13) In this section— 30
- “appropriate fee” means such fee as the council may have determined under **section 32** (application fees); and
 - “appropriate notice” means 24 hours’ notice or 7 days’ notice where a temporary licence has been granted for longer than 24 hours.

Fees and charges 35

32 Application fees

- (1) The council may charge to applicants such fees as are sufficient in the aggregate, taking one year with another, to recover the reasonable costs of dealing with relevant applications.

- (2) The council may determine that a fee be charged on application for the grant of a temporary licence under **section 31** (temporary licences), and in determining the amount of such fees it shall have regard to the matters specified in—
- (a) subsection (1); and
 - (b) **section 34(1)** (charges: street trading licences); and 5
 - (c) where appropriate, **section 35** (charges: temporary licences).
- (3) The council may determine that a fee be charged for dealing with a request for the variation of a designating resolution or a specifying resolution.
- (4) Fees charged under subsections (2) and (3) shall be taken account of in the computation for the purposes of determining the fees and charges under subsection (1) and the said **section 34(1)**. 10
- (5) The council may require that an application for the grant or variation of a street trading licence be accompanied by the whole or part of the fee determined under subsection (1).
- (6) In this section, “relevant application” means an application for— 15
- (a) the grant or variation of street trading licences;
 - (b) the variation of designating resolutions;
 - (c) the variation of specifying resolutions.

33 Annual fees for temporary licences

- (1) This section applies in the case where an application is granted for a temporary licence for a duration of one year or more. 20
- (2) In addition to the application fee payable under **section 31(1)** (temporary licences), the holder of the licence—
- (a) shall pay a first annual fee to the council within the period of 28 days beginning with the date of the issue of the licence; and 25
 - (b) shall (where applicable) pay an annual fee to the council before each anniversary of the grant of the licence.
- (3) The licence shall not come into effect until the first annual fee has been paid to the council.
- (4) Subject to subsection (5), the licence shall be deemed to have been extinguished if an annual fee is not paid to the council by the date on which it falls due. 30
- (5) The council may agree that subsection (4) shall not apply in individual cases.
- (6) In this section “annual fee” means a fee of such amount as may be required by the council taking into account—
- (a) the remaining term of the licence; and 35
 - (b) the matters mentioned in **section 34(1)** (charges: street trading licences).
- (7) The council shall refund part of an annual fee paid under this section where a licence ceases to have effect otherwise than—
- (a) on the date on which it expires; or
 - (b) on or immediately before an anniversary of its issue. 40

- (8) The amount of any refund under subsection (7) shall be calculated by taking into consideration the time remaining before the expiry of the licence or the date of expiry of the licence, as the case may be.

34 Charges: street trading licences

- (1) The council may recover from licence holders such charges as may be sufficient in the aggregate, taking one year with another, to cover the reasonable costs of— 5
- (a) the collection, removal and disposal of refuse or other services rendered by them to licence holders; and
 - (b) the cleansing of streets in which street trading takes place so far as that cleansing is attributable to street trading; and 10
 - (c) any reasonable administrative costs or other costs not otherwise recovered under this Act incurred in connection with the administration of its provisions; and
 - (d) the cost of enforcing the provisions of this Act. 15
- (2) It shall be lawful for the council to make a lower charge under subsection (1) to licence holders who pay the charges in full in advance or in full by means of direct debit or other means approved for the purposes of this section by the council.
- (3) In calculating the levels of fees and charges under subsection (1) the council shall disregard costs incurred by them in relation to street trading of the type described in **section 3(1)(d)** (meaning of “street trading”). 20
- (4) The council may make a charge for the supply of an approved form of identity issued under **section 16(5)** (photographs) and for a plate identifying a licensable area or part of a licensable area. The charge shall not exceed the council’s reasonable costs of supplying those items. 25
- (5) **Schedule 9** makes provision about the procedure for the determination and variation of charges under this section.

35 Charges: temporary licences

The council may charge an annual fee for registration or renewal of registration in the register established under **section 31(12)** (temporary licences), sufficient in the aggregate, taking one year with another, to cover the council’s cost of administering the registration scheme. 30

36 Charges and provision of additional services

- (1) The council may— 35
- (a) at the written request of a majority of licence holders in a particular market or area provide additional services to licence holders in that market or area;
 - (b) at the written request of an individual licence holder provide additional services to that licence holder. 40

- (2) The cost of these services may be included in the charge referred to in **section 34(1)** (charges: street trading licences) provided that those costs are only included in the charges made to the licence holders in the market or area in question or to the individual licence holder, as the case may be.
- (3) At any time a majority of licence holders in a particular market or area or an individual may request in writing the council to cease to provide any of the services and the council shall, subject to any contractual arrangements, accede to such a request within three months of the request. 5

Receptacles and containers

37 Receptacles and containers 10

- (1) The council may, for a reasonable sum calculated by reference to the cost of doing so by the council, sell or let on hire or otherwise provide receptacles to any licence holder or temporary licence holder for use by him or her in street trading.
- (2) The council may provide and maintain accommodation for the storage of receptacles and containers for the deposit of refuse arising in the course of street trading and for that purpose may— 15
- (a) adapt any premises or erect any buildings on any land belonging to them but not already appropriated for such purpose; and
 - (b) make such reasonable charges as it thinks fit for the use of such accommodation. 20

38 Powers to install and remove receptacles

- (1) The council may make arrangements for the installation and removal of receptacles.
- (2) Where the council makes arrangements under subsection (1) it may make a charge for the installation and removal of receptacles to the licence holders and temporary licence holders in question. 25
- (3) Where any of the circumstances mentioned in subsection (4) apply in relation to a receptacle, it shall be lawful for the council to cause the receptacle and any items in or on it to be removed to a place of storage. 30
- (4) The circumstances are—
- (a) a receptacle used by a licence holder is not removed to a place of storage on the cessation of trading on any day;
 - (b) a receptacle is placed on a street in breach of the conditions of a street trading licence or temporary licence; 35
 - (c) a receptacle is placed on a street and an authorised officer considers that it is an urgent case and that for the good or safe management of the street the receptacle should be removed from the street; or
 - (d) a receptacle is placed on a street at the time of a special event or when works are being carried out in, over or under the street and an authorised officer considers that for the good or safe management of the street that the receptacle should be removed from the street. 40

- (5) The council may recover from the licence holder the reasonable costs incurred by the council in removing and storing the receptacle and any items in or on it if the circumstances mentioned in subsection (4)(a) or (b) apply.
- (6) Any costs recoverable under subsection (5) shall be payable by the licence holder before the return of the receptacle to him or her. 5
- (7) The provisions of subsection (1) are without prejudice to the power of the council to take other enforcement action against the licence holder for any breach of the conditions of his or her licence arising from the failure to remove the receptacle.
- (8) If a receptacle or any item in or on it is removed under subsection (1) and is not recovered by the licence holder by the expiry of the period of three months beginning with the date on which it was removed by the council it shall be lawful for the council to dispose of the receptacle or item in any way it thinks fit. The council shall take reasonable steps to sell the receptacle at the best possible price which can reasonably be obtained before disposing of it in any other manner. 10 15
- (9) In subsection (4)(d), “special event” means a sporting event, parade, demonstration, procession, carnival, or other similar event that takes place on the street.

Assistants and Companies 20

39 Employment of assistants

- (1) A licence holder or a temporary licence holder may employ any other person to assist him or her in the conduct of street trading authorised by the licence.
- (2) If any person employed by a licence holder or temporary licence holder, whether or not the licensed holder is present, fails to comply with the conditions of the licence in question, that failure shall be deemed for the purposes of this Act to be a failure by the licence holder. 25

40 Companies

- (1) The council may give permission in writing to a licence holder who is an individual for a company registered under the Companies Acts to carry on street trading in accordance with a street trading licence held by that licence holder. 30
- (2) Permission may only be given under subsection (1) if—
- (a) the licence holder holds a majority shareholding in the company; and
 - (b) the licence holder is a director of the company. 35
- (3) If the council gives permission under subsection (1) then the company specified in the permission may carry on street trading in accordance with the terms and conditions of the licence.
- (4) A company may only carry on street trading under subsection (3) while subsections (2)(a) and (b) apply in relation to it. 40

- (5) If a company carrying on street trading under subsection (3) fails to comply with the conditions of the licence, that failure shall be deemed to be for the purposes of this Act a failure by the licence holder as well as the Company and the licence holder may be charged with and convicted of an offence by virtue of this subsection whether or not proceedings for the offence are taken against any other person. 5
- (6) The council may require the licence holder to provide proof at any time that the provisions of subsection (2) apply in relation to the company.
- (7) The council may charge a licence holder such reasonable fee as it may determine for giving a permission under this section. 10

Enforcement

41 Offence of unlicensed street trading

- (1) A person who is not a licence holder, a specified company that is carrying on street trading under **section 40** (companies) or a temporary licence holder and who engages in street trading whether or not from a stationary position in the city shall be guilty of an offence. 15
- (2) Any person who is a licence holder, a specified company or a temporary licence holder shall be guilty of an offence if he or she engages in street trading, whether or not from a stationary position in the city—
- (a) on a day or in a place not specified in that licence without the council’s specific permission in writing; 20
 - (b) during any period when the licence is suspended.
- (3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) For the purposes of this Act a person who is carrying on the activities mentioned in **section 3(1)(a)** to (d) (meaning of “street trading”) in the city shall be deemed to engage in street trading in the city whether or not that person regularly carries on the business of street trading. 25
- (5) Subsection (6) shall apply in respect of any proceedings for an offence under this section or for an offence of aiding, abetting, counselling or procuring the commission of an offence under this section where it is shown that— 30
- (a) any item was displayed (whether or not in or on any receptacle) in any street;
 - (b) any other item of a similar kind to any item referred to in paragraph (a) was in the possession of or under the control of any person who was displaying an item; 35
 - (c) any receptacle or equipment was used in the display of any item in any street; or
 - (d) any receptacle or equipment used in the provision of any service was available in any street in such circumstances that a service was being offered. 40

- (6) Where this subsection applies, the item, receptacle or equipment in question shall be deemed to have been used for purposes for which a street trading licence was required unless it can be proved to the satisfaction of the court that it was brought into the street for some purpose other than street trading.
- (7) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of the offence and liable to the same maximum penalty as the body corporate. 5
10

42 Other offences

- (1) A person shall be guilty of an offence if he or she—
- (a) without reasonable excuse contravenes any of the conditions of a street trading licence or a temporary licence; or
- (b) makes a statement which he or she knows to be false in a material particular— 15
- (i) in connection with an application for a street trading licence; or
- (ii) in connection with an application for a temporary licence; or
- (iii) in completing a notice in accordance with **section 44(5)** (seizure notices: receptacles for refreshments); or 20
- (c) resists or intentionally obstructs an authorised officer in the execution of his or her duties under this Act; or
- (d) in the case of an individual licence holder, fails on demand without reasonable excuse to produce to an authorised officer or to a constable— 25
- (i) his or her licence or other approved form of identity issued by the council for the purposes of this Act; or
- (ii) proof of any third party insurance as may be required by the conditions of the licence; or
- (e) in the case of an individual carrying on ice cream trading under a licence granted to a company incorporated under the Companies Acts or to a partnership or unincorporated association, fails to produce the photograph required by **section 16(4)** (photographs) of this Act; or 30
- (f) uses a receptacle in contravention of a requirement imposed by a condition under **section 14(1)(d)** (conditions of street trading licences); or 35
- (g) is the holder of a street trading licence and without reasonable excuse fails to inform the council, before it takes place, of any change in circumstances that would result in a company in respect of which permission was given under **section 40** (companies) no longer complying with the provisions of subsection (2) of that section. 40
- (2) A person guilty of an offence under subsection (1)(a), (c), (d), (e), (f) or (g) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) A person guilty of an offence under subsection (1)(b) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale. 45

- (4) Proceedings for an offence under subsection (1)(b) may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge; but no such proceedings shall be brought by virtue of this subsection more than 3 years after the commission of the offence. 5

43 Seizure

- (1) Subject to subsection (2) and **section 49** (seizure of perishable items), if an authorised officer or a constable has reasonable grounds for suspecting that a person has committed an offence under **sections 41** (offence of unlicensed street trading) or **42(1)(a)** (other offences) he or she may seize— 10
- (a) any item being offered for sale, displayed or exposed for sale; or
 - (b) any other item of a similar nature to that being offered or exposed for sale which is in the possession of or under the control of any person who is displaying an item; or
 - (c) any receptacle or equipment being used by that person. 15
- (2) An item may only be seized under subsection (1) if it may be required to be used in evidence in any proceedings in respect of the offence in question, or may be the subject of forfeiture under **section 47** (forfeiture of seized items by court).
- (3) An authorised officer or constable may also seize, for examination purposes, any item which he or she has reasonable cause to suspect may be an item which is prohibited by a specifying resolution. Unless the item is required for evidential purposes it shall be returned as soon as possible to the person from whom it was seized. 20
- (4) An authorised officer or constable may also seize any receptacle or equipment (other than a motor vehicle) which— 25
- (a) is in a street; and
 - (b) the authorised officer or constable has reasonable cause to suspect is intended to be used in connection with an offence under the said **section 41** involving the sale, offer for sale, display, or exposing for sale of refreshments. 30
- (5) An authorised officer shall produce his or her authority if required to do so by the person having control or possession of anything seized in pursuance of the powers in subsections (1) to (4).

44 Seizure notices: receptacles for refreshments

- (1) This section applies in relation to any receptacle used in the sale, offer for sale, display, or exposing for sale of refreshments (in this section referred to as a “relevant receptacle”). 35
- (2) An authorised officer or a constable—
- (a) may give a notice under this section to the person from whom a relevant receptacle was seized under **section 43(1)** or (3) (seizure) (but no such notice may be given under this paragraph in respect of a motor vehicle); 40
 - (b) shall give a notice under this section to the person from whom a relevant receptacle was seized under the said **section 43(4)**.

- (3) Any notice under subsection (2) must be given as soon as reasonably practicable after the item was seized.
- (4) A notice under subsection (2) shall be in such form as the council may prescribe, and shall—
- (a) explain that unless the recipient of the notice completes it in accordance with subsection (5) and then returns it to the council in accordance with subsection (6), the council may dispose of the relevant receptacle in question in accordance with **section 46** (disposal of seized objects by council); and 5
 - (b) set out— 10
 - (i) the address to which the completed notice should be returned;
 - (ii) the date by which it must be returned (which must be no earlier than the date on which expires the period of 14 days beginning with the date on which the notice was given under subsection (2)). 15
- (5) A notice under this section is completed by writing, in the appropriate place on the notice—
- (a) the name and full postal address of the recipient of the notice under subsection (2); and
 - (b) (in the case of a notice given in accordance with subsection (2)(a)) confirmation that that person— 20
 - (i) intends to contest any criminal proceedings brought in respect of the alleged offence in respect of which the item in question was seized; or
 - (ii) if not, that he requires the council to make a complaint for a disposal order under **section 51** (disposal orders) in respect of the relevant receptacle in question; and 25
 - (c) (in the case of a notice given in accordance with subsection (2)(b)) confirmation that that person requires the council to make a complaint for a disposal order under the said **section 51** in respect of the relevant receptacle in question; and 30
 - (d) the signature of that person; and
 - (e) the date on which it was signed.
- (6) A notice under this section, once completed, is returned by delivering it or sending it by post to the address set out on the notice as mentioned in subsection (4)(b)(i) on or before the date as mentioned in that subsection. 35
- (7) If a notice given in accordance with subsection (2)(b) is completed and returned in accordance with subsections (5) and (6) the council must, no later than the date on which the period of 28 days beginning with the date on which the notice was received by them expires— 40
- (a) make a complaint to the magistrates' court for a disposal order under the said **section 51** in respect of the relevant receptacle in question; or
 - (b) return the relevant receptacle in question to the person whose name and address are written on the returned notice,
- unless, before the expiry of that period, an information has been laid and not withdrawn in respect of any alleged offence in respect of which the item was seized. 45

45 Return of seized items

- (1) The provisions of this section shall have effect where any item is seized under **section 43(1)** (seizure) or is seized and retained because it is required for evidential purposes under the said **section 43(3)**. References in the provisions of this section to proceedings are to proceedings in respect of the alleged offence in relation to which the item is seized. 5
- (2) Subject to subsection (7), following the conclusion of the proceedings the item shall be returned to the person from whom it was seized unless—
- (a) the court orders it to be forfeited under **section 47** (forfeiture of seized items by court); or 10
 - (b) any award of costs to the council by the court, which may include removal, return and storage costs, have not been paid within 28 days of the making of the order.
- (3) Where after 28 days any costs awarded by the court to the council have not been paid to the council in full— 15
- (a) the item may be disposed of in any way the council thinks fit; and
 - (b) any sum obtained by the council in excess of the costs awarded by the court shall be returned to the person to whom the item belongs; and
 - (c) when any item is disposed of by the council under this subsection the council shall have a duty to secure the best possible price which can reasonably be obtained for that item. 20
- (4) Subject to subsection (5), where a receptacle seized under the said **section 43(1)** is a motor vehicle used for ice cream trading, the council or the Police Commissioner (as the case may be) shall, within three days of the receipt of an application in writing by the owner or registered keeper of the vehicle, permit him or her to remove it. 25
- (5) Subsection (4) shall not apply where the circumstances mentioned in subsection (6) apply and—
- (a) the owner or registered keeper of the vehicle has been convicted of an offence under this Act or Part III of the London Local Authorities Act 1990 (c. vii); or 30
 - (b) the owner or registered keeper of the vehicle is being prosecuted for a previous alleged offence under this Act or Part III of the said Act of 1990; or
 - (c) the vehicle has been used in the commission of such an offence or previous alleged offence. 35
- (6) The circumstances are that the offence or previous alleged offence was committed or is alleged to have been committed no more than three years before the seizure and (in the case of an alleged offence) the proceedings are continuing. 40
- (7) Subject to subsection (10), the item shall be returned to the person from whom it was seized unless it has not proved possible, after diligent enquiry, to identify that person or ascertain his or her address and—
- (a) no proceedings are instituted before the expiry of the period of 28 days beginning with the date of seizure; or 45
 - (b) any proceedings instituted within that period are discontinued.

- (8) In a case falling within subsection (7)(a) the item shall be returned at the expiration of the period of 28 days mentioned in that subsection and in a case falling within subsection (7)(b) it shall be returned on the discontinuance of the proceedings.
- (9) Subsection (10) applies where the item is not returned because— 5
- (a) it has not proved possible to identify the person from whom it was seized or ascertain his or her address; or
 - (b) the person from whom it was seized and the owner (if different) have disclaimed or refused to accept it.
- (10) Where this subsection applies, the council may make a complaint to the magistrates' court for a disposal order under **section 51** (disposal orders) (whether or not proceedings for an offence under this section have been commenced). 10

46 Disposal of seized objects by council

- (1) The council may, in such manner as it thinks fit, dispose of— 15
- (a) any relevant receptacle (within the meaning of **section 44** (seizure notices: receptacles for refreshments)) seized under **section 43(1)** or (2) (seizure) if, in respect of the alleged offence in question—
 - (i) a fixed penalty is paid in accordance with section 16 of the London Local Authorities Act 2004 (c. i) before the expiry of the period mentioned in subsection (2) of that section; and 20
 - (ii) the fixed penalty notice contained or was accompanied by written notice that the recipient could require the council on or before the time when the fixed penalty was paid to make a complaint for a disposal order under **section 51** (disposal orders) in respect of the relevant receptacle in question; and 25
 - (iii) no such requirement was made of the council on or before that time; or
 - (b) any such relevant receptacle seized under the said **section 43(1)**, (3) or (4) if— 30
 - (i) a notice was given under the said **section 44** as soon as reasonably practicable after the item was seized; and
 - (ii) the notice was not completed and returned to the council in accordance with subsections (5) and (6) of that section.
- (2) The council may recover their costs of disposing of a relevant receptacle under subsection (1) from the person from whom the object was seized. 35
- (3) Where a requirement of the sort mentioned under subsection (1)(a)(ii) was made on or before the time when the fixed penalty was paid, the council must make a complaint for a disposal order under the said **section 51** in respect of the relevant receptacle in question. 40

47 Forfeiture of seized items by court

- (1) Subject to subsection (3), the court by or before which a person is convicted of any of the offences mentioned in subsection (2) may order anything produced to the court, and shown to the satisfaction of the court to relate to the offence, to be forfeited and dealt with in such manner as the court may order. 5
- (2) The offences are—
- (a) an offence under **section 41** (offence of unlicensed street trading);
 - (b) an offence under **section 42(1)(a)** (other offences); and
 - (c) an offence of aiding, abetting, counselling or procuring the commission of an offence under either of those sections. 10
- (3) The court shall not order anything to be forfeited under subsection (1) where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him or her to show cause why the order should not be made.
- (4) In considering whether to make an order under subsection (1) a court shall have regard— 15
- (a) to the value of the property; and
 - (b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making). 20
- (5) The court may order forfeiture notwithstanding that the value of the item exceeds the maximum penalties referred to in the said **sections 41** and **42**.

48 Seizure: compensation

- (1) This section shall have effect where— 25
- (a) an item is seized under **section 43** (seizure); and
 - (b) the circumstances in subsection (2) apply or either of the following applies—
 - (i) not less than six months have passed since the date of the seizure and no information has been laid against any person for an offence under **sections 41** (offence of unlicensed street trading) or **42(1)(a)** (other offences) in respect of the act or circumstances which occasioned the seizure; 30
 - (ii) in the case of a relevant receptacle (within the meaning of **section 44** (seizure notices: receptacle for refreshments)) seized under the said **section 43(4)**, the council has failed to comply with the said **section 44(7)**. 35
- (2) The circumstances mentioned in subsection (1)(b) are that proceedings for an offence under the said **sections 41** or **42(1)(a)** have been brought and either—
- (a) the person charged has been acquitted (whether or not on appeal) and the time for appealing against or challenging the acquittal (where applicable) has expired without an appeal or challenge being brought; or 40
 - (b) the proceedings (including any appeal) have been withdrawn by, or have failed for want of prosecution by, the person by whom the original proceedings were brought. 45

- (3) When this section has effect, a person who has or at the time of seizure had a legal interest in the item seized may recover compensation from the council or (where it is seized by a constable) the Police Commissioner by civil action in the County Court in respect of any loss suffered by him or her as a result of the seizure. Any such compensation shall not be included in the computation for calculating charges under **section 34** (charges: street trading licences); 5
- (4) The court may only make an order for compensation under subsection (3) if satisfied that seizure was not lawful under the said **section 43**.
- (5) Any sums accruing to the council arising out of this section shall be included in the computation for calculating charges under the said **section 34**. 10

49 Seizure of perishable items

- (1) No item which is of a perishable nature (in this section referred to as a “perishable item”) shall be seized under the provisions of **section 43** (seizure) unless the council gives a certificate under subsection (2) to the person from whom the item is seized. 15
- (2) Where a perishable item is seized under the said **section 43**(1), the person from whom it is seized must be given a certificate—
- (a) stating the effect of subsection (5) and **section 47**(3) (forfeiture of seized items by court);
 - (b) giving the address from which the item may be collected; 20
 - (c) informing the recipient that if he or she is not the owner of the item, then he or she should give the owner the information referred to in paragraphs (a) and (b).
- (3) If the person from whom a perishable item was so seized fails to collect it within 48 hours of the seizure the council may dispose of it. 25
- (4) When any perishable item is disposed of by the council under subsection (3), the council shall have a duty to secure the best possible price which can reasonably be obtained for it.
- (5) **Section 45**(1) to (4) (return of seized items) and the said **section 47**(1) and (3) shall apply to a perishable item seized under the said **section 43** only in cases where the item concerned has not been disposed of by the council at the conclusion of the proceedings in respect of the alleged offence in relation to which the item was seized. 30
- (6) The said **section 45**(7) and (9) shall apply to a perishable item seized under the said **section 43** only in cases where the item concerned has not been disposed of by the council at the expiration of the period mentioned in the said **section 45**(7); otherwise subsections (8) to (11) shall apply. 35
- (7) **Section 48** (seizure: compensation) shall apply with the omission of subsection (4) in respect of a perishable item seized under that section in cases where the item concerned has not been disposed of by the council by the time the circumstances mentioned in subsection (1)(a) of that section arise otherwise subsections (8) to (11) shall apply. 40

- (8) Subsection (11) shall have effect where the council have disposed of a perishable item under subsection (3) and any of the following conditions apply.
- (9) The first condition is that no proceedings in respect of the alleged offence in relation to which the item was seized are instituted before the expiration of a period of 28 days beginning with the date of seizure of the item, or any such proceedings instituted within that period are discontinued. 5
- (10) The second condition is that—
- (a) not less than six months have passed since the date of the seizure and no information has been laid against any person for an offence under **section 41** (offence of unlicensed street trading) or **section 42(1)(a)** (other offences) in respect of the acts or circumstances which occasioned the seizure; or 10
- (b) proceedings for such an offence have been brought and either the person charged has been acquitted (whether or not on appeal) and the time for appealing against or challenging the acquittal (where applicable) has expired without an appeal or challenge being brought, or the proceedings (including any appeal) have been withdrawn by, or have failed for want of prosecution by, the person by whom the original proceedings were brought. 15
- (11) When this subsection has effect a person who has or at the time of seizure had a legal interest in the item seized may recover compensation from the council or (where it is seized by a constable) the Police Commissioner by civil action in the County Court in respect of any loss suffered by him or her as a result of the seizure. Any such compensation shall not be included in the computation for calculating charges under **section 34** (charges: street trading licences). 20 25

50 Motor vehicles

- (1) Subsection (4) applies where the following conditions are met.
- (2) The first condition is that where, in ascertaining the identity of the person from whom a vehicle was seized under **section 43(1)** or (2) (seizure), the council has, before the expiry of 14 days from the date of the seizure, made a request to the Secretary of State for the supply of relevant particulars. 30
- (3) The second condition is that those particulars have not been supplied to the council before the date after which the council would, but for this section, have to return the vehicle in accordance with **section 45(7)** (return of seized items).
- (4) Where this subsection applies, the council must return the vehicle to its owner if— 35
- (a) no proceedings are instituted in respect of the alleged offence in respect of which the vehicle was seized before the expiry of the period of 14 days beginning with the date on which the relevant particulars are supplied; or 40
- (b) any such proceedings instituted within that period are discontinued, at the expiry of that period or on the discontinuance of the proceedings, as the case may be.

- (5) If the council seeks to return a vehicle in accordance with the said **section 45(1)** or (2), but the person to whom the council seeks to return the vehicle cannot be found or disclaims or refuses to accept the vehicle, the council may make a complaint for a disposal order in respect of the vehicle under **section 51** (disposal orders). 5
- (6) In this section, “relevant particulars” are particulars relating to the identity of the owner of the vehicle contained in the register of mechanically propelled vehicles maintained by the Secretary of State under the Vehicle Excise and Registration Act 1994 (c. 22).
- (7) The owner of a vehicle for the purposes of this section shall be taken to be the person by whom the vehicle is kept. 10
- (8) In determining who was the owner of a motor vehicle at any time, it shall be presumed that the owner is the person in whose name the vehicle is at that time registered under the said Act of 1994.
- 51 Disposal orders** 15
- (1) This section applies to a complaint made by the council for a disposal order under—
- (a) **section 44(7)(a)** (seizure notices: receptacles for refreshments);
 - (b) **section 45(10)** (return of seized items); or
 - (c) **section 46(3)** (disposal of seized objects by council); or 20
 - (d) **section 50(5)** (motor vehicles),
- and items that are the subject of the complaint are referred to as “seized items” in this section.
- (2) On a complaint to which this section applies, a magistrates’ court, if satisfied that the council has made reasonable efforts— 25
- (a) to identify the person from whom the seized item was seized or its owner, as the case may be, or
 - (b) to return the seized item,
- may make an order under this section.
- (3) An order under this section is an order authorising the council— 30
- (a) to dispose of the seized item in question; and
 - (b) after payment out of any proceeds arising from the disposal of the expenses incurred in the seizure, storage and disposal, to apply the balance, if any, towards the costs of the council as mentioned in **section 34(1)** (charges: street trading licences). 35
- (4) The court shall not make a disposal order under this section where a person claiming to be the owner of or otherwise interested in the seized item applies to be heard by the court, unless an opportunity has been given to him or her to show cause why the order should not be made.

- (5) Subsection (6) applies where—
- (a) a person appears before the court under subsection (4) to show why the order should not be made; and
 - (b) the court makes a disposal order under this section authorising the council to dispose of the item; and 5
 - (c) the seized item in question is not of sufficient value to defray the expenses of seizing and storing it; and
 - (d) the court is satisfied that the person mentioned in paragraph (a) was the owner of the seized item in question or was the person from whom it was seized, as the case may be. 10
- (6) Where this section applies, the court may order that the person mentioned in subsection (5)(a) pay the expenses, or the balance of the expenses, reasonably incurred by the council in seizing and storing the seized item in question.
- (7) In considering whether to make a disposal order under this section a court shall have regard— 15
- (a) to the value of the seized item;
 - (b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making); and
 - (c) any other circumstances considered to be relevant. 20
- (8) The court may make a disposal order under this section notwithstanding that the value of the seized item would exceed the maximum penalty for the offence in respect of which the seized item had originally been seized had the said offence been prosecuted to conviction.
- (9) For the purposes of this section, “owner” in respect of a vehicle, has the same meaning as it has for the purposes of the said **section 50**. 25

Touting

52 Touting

- (1) The council may designate, in accordance with subsection (3), any of the following places, or any part of such places, in the city as places to which this section applies for any of the purposes mentioned in subsection (2)— 30
- (a) a public off-street car park, recreation ground, garden or other park, pleasure ground or open space under the management and control of the council;
 - (b) a street or way to which the public commonly have access, whether or not as of right. 35
- (2) Any person who, in a place designated under this section importunes any person by touting for a hotel, lodging house, restaurant or other place of refreshment, for a shop, theatre or nightclub or other place of amusement, entertainment or recreation, or for a boat or other conveyance shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale. 40

- (3) Before designating any place for any of the purposes of subsection (2) the council shall give notice of its proposal by advertisement in a newspaper circulating in the city, and by posting it in the places to which it relates, stating that objections to the proposal may be made to the proper officer of the council within a time, not less than 28 days after the giving of the notice, specified in the notice. 5
- (4) After taking into consideration any objections made in accordance with subsection (3), the council may by resolution designate as places to which this section applies for any of the purposes of subsection (2) all or any, or any part, of the places specified in the notice given under that subsection. 10
- (5) A resolution under subsection (4) shall come into force on such day as shall be specified by a notice given in the same manner as a notice given under subsection (3), being a day not less than 28 days after the day on which notice is given under this subsection.
- (6) This section shall not prohibit the doing of anything on land by the owner or occupier of the land, or by any person with the consent of the owner or occupier, or the doing of anything on land forming part of a highway by the owner or occupier of land fronting that part. 15

Miscellaneous

53 Protection for transport undertakers 20

- (1) Nothing in this Act shall affect the sale or exposure or offer for sale of refreshments by Transport for London, London Underground Limited or (as the case may be) any of their subsidiaries at any shelter or other accommodation provided by either of them under section 65 (refreshment shelters etc.) of the London Passenger Transport Act 1938 (c. xcii). 25
- (2) This Act shall not apply in respect of any land owned by Network Rail (Infrastructure) Limited, Transport for London or London Underground Limited unless the land forms part of a highway for which the council or Transport for London is responsible as highway authority.

54 Saving for offences 30

Nothing in this Act shall afford a defence to a charge in respect of any offence at common law or under an enactment other than this Act.

55 Provision as to notices

- (1) Any notice, summons or other document required or authorised to be served or given in writing under this Act may be served or given either— 35
- (a) by delivering it to the person on whom it is to be served or to whom it is to be given; or

- (b) by leaving it at the usual or last known place of abode or business of that person, or, in a case where an address for service has been given by that person, at that address; or
 - (c) by sending it by ordinary post addressed to that person at his or her usual or last known place of abode or business, or, in a case where an address for service has been given by that person, at that address; or 5
 - (d) in the case of a company or body incorporated in England or Wales, by delivering it to the secretary or clerk of the company or body at their registered or principal office, or sending it by ordinary post addressed to the secretary or clerk of the company or body at that office. 10
- (2) The delivery, in the absence of a licence holder from the licensable area or part of the licensable area in which he or she is authorised to trade, of a document or notice to a person appearing to be an assistant employed by that licence holder shall be deemed to be delivery of that document or notice to the licence holder under subsection (1)(a). 15
- (3) A notice required by this Act to be given shall be deemed to be given on the date it is delivered, left, affixed, or posted in accordance with this section.

56 Proof of resolution

In any proceedings which require proof of the passing of a resolution under this Act it shall be presumed, unless the contrary is proved, that the said resolution was duly passed and that any requirements relating to the passing of the resolution and the giving of any notices or information before or after the passing of the resolution were properly complied with. 20

57 Exercise of powers

The council's powers under this Act may be exercised by a committee, sub-committee, officer or panel of officers. 25

58 Amendments

Schedule 10 (which sets out minor and consequential amendments) shall have effect.

59 Repeals

The enactments set out in **Schedule 11** are repealed to the extent specified. 30

60 Transitional provisions

On the date on which this Act comes into effect, all—

- (a) applications made;
- (b) licences issued;
- (c) standard conditions prescribed; 5
- (d) fees and charges set;
- (e) designating, specifying and prohibition resolutions passed;
- (f) regulations for determining applications made; and
- (g) appeals made,

under the City of Westminster Act 1999 (c. i) shall be deemed to have been 10
made, issued, prescribed, set or passed under this Act.

SCHEDULE 2

Section 6(4)

PROCEDURE FOR PASSING A RESOLUTION UNDER SECTION 6(2) (ITINERANT ICE CREAM TRADING)

- 1 Before passing a resolution under section 6(2) (itinerant ice cream trading) the council must give notice in writing of its intention to do so to— 5
 - (a) the Police Commissioner;
 - (b) the highway authority (except where the council is the highway authority); and
 - (c) any body which appears to the council to be representative of persons carrying on ice cream trading in the area affected by the proposed resolution. 10
- 2 The notice shall—
 - (a) give details of the proposed resolution and the reasons for it; and
 - (b) state that representations may be made regarding the proposed resolution by the date specified in the notice as the due date, which shall be not less than 42 days after the notice has been given. 15
- 3 As soon as practicable after the due date the council shall consider all representations received by that date and may at its discretion consider representations received after that date.
- 4 The council shall give an opportunity to any person who makes representations by the due date to make oral representations to the council and may at its discretion give to other persons making representations a similar opportunity. 20
- 5 The council may pass the proposed resolution with any modifications it considers appropriate as a result of any representations received under this Schedule. 25
- 6 If a resolution is passed with modifications in accordance with paragraph 5, the council shall inform by notice in writing all persons given notice of the proposed resolution.

SCHEDULE 3

Sections 7(3) and 9(4) 30

PROCEDURE FOR PASSING OR VARYING A DESIGNATING RESOLUTION

- 1 Before passing a designating resolution or varying such a resolution the council shall give notice in writing of its intention to do so—
 - (a) to the Police Commissioner;
 - (b) to the highway authority (except where the council is the highway authority); 35
 - (c) to any body which appears to the council to represent relevant street traders;

- (d) to all licence holders whom the council could reasonably expect would be affected by the proposed resolution; and
- (e) where the proposed resolution would designate private land, to the owner of that land or to the person assessed for the uniform business rate on it. 5
- 2 The council may, if it thinks fit, also give notice in writing to residents' associations or amenity societies representing residents living in the vicinity of the area which is the subject of a proposed designating resolution.
- 3 The notice shall—
- (a) give details of the proposed resolution; and 10
- (b) state that representations may be made regarding the proposed resolution by the date specified in the notice as the due date, which date shall be not less than 28 days after the notice has been given.
- 4 As soon as practicable after the due date the council shall consider all representations received by that date and may at its discretion consider representations received after that date. 15
- 5 The council shall give to any person who makes representations by the due date an opportunity to make oral representations to the council and may at its discretion give to other persons making representations a similar opportunity.
- 6 The council may pass the proposed resolution with any modifications it considers appropriate as a result of any representations received under this section but no designating resolution may be passed— 20
- (a) in respect of private land without the consent of the owner of that land or the person assessed for the uniform business rate on it; or
- (b) in respect of a highway in respect of which the council is not the highway authority, without the consent of the highway authority. 25
- 7 As soon as practicable after passing a resolution under paragraph 6 the council shall by notice in writing inform all persons who were given notice of the proposed resolution.

SCHEDULE 4

Section 8(8) 30

PROCEDURE FOR RESCINDING A DESIGNATING RESOLUTION OR PROVIDING AN ALTERNATIVE LICENSABLE AREA

- 1 Before rescinding a designating resolution or passing a resolution to designate an alternative licensable area the council shall give notice in writing of its intention to do so— 35
- (a) to any licence holder in the licensable area;
- (b) to the Police Commissioner;
- (c) to the highway authority (except where the council is the highway authority);

- (d) to all other licence holders whom the council could reasonably expect would be affected by the proposed resolution; and
 - (e) where a proposed resolution to designate an alternative licensable area would designate private land, to the owner of that land or to the person assessed for the uniform business rate on it. 5
- 2 The council may, if it thinks fit, also give notice in writing to residents' associations or amenity societies representing residents living in the vicinity of the area which is the subject of a proposed resolution to designate an alternative licensable area.
- 3 The notices mentioned in paragraphs 1 and 2 shall— 10
 - (a) give details of the proposed resolution or confirmatory resolution; and
 - (b) state that representations may be made regarding the proposed resolution or confirmatory by the date specified in the notice as the due date, which date shall be not less than 28 days after the notice has been given. 15
- 4 As soon as practicable after the due date the council shall consider all representations received by that date and may at its discretion consider representations received after that date.
- 5 The council shall give to any person who makes representations by the due date an opportunity to make oral representations to the council and may at its discretion give to other persons making representations a similar opportunity. 20
- 6 The council may pass or confirm the proposed resolution with any modifications it considers appropriate as a result of any representations received under this section or for any other reason that it thinks fit but no resolution designating an alternative licensable area may be passed or confirmed— 25
 - (a) in respect of private land without the consent of the owner of that land or the person assessed for the uniform business rate on it; or
 - (b) in respect of a highway in respect of which the council is not the highway authority, without the consent of the highway authority. 30
- 7 As soon as practicable after passing or confirming a resolution under paragraph 6 the council shall by notice in writing inform all persons who were given notice of the proposed resolution.

SCHEDULE 5

Section 10(3)

PROCEDURE IN RELATION TO, AND DURATION OF, TEMPORARY ALTERNATIVE DESIGNATION AND SUSPENSION OF DESIGNATING RESOLUTIONS

- | | | |
|---|---|----|
| 1 | <p>Subject to paragraphs 4, 6 and 7, a temporary designation or a suspension under section 10(1) (temporary alternative designation and suspension of designating resolutions) shall remain in force for a period of no longer than five years from the date of designation and any street trading licence for the licensable area may be transferred, with any necessary modification to that licence, to the temporarily designated licensable area.</p> | 5 |
| 2 | <p>Subject to paragraph 3, before temporarily designating an alternative location for a licensable area the council shall consult—</p> <ul style="list-style-type: none"> (a) any licence holder in the licensable area; (b) the Police Commissioner; and (c) the highway authority (if it is not the council). | 10 |
| 3 | <p>Paragraph 2 shall not apply in the case where the relocation is required—</p> <ul style="list-style-type: none"> (a) in a case of urgency; (b) to enable works to be carried out in, over or under the street; or (c) for a short term period for a relevant special event. | 15 |
| 4 | <p>Where a relocation is required for any of the reasons mentioned in paragraph 3, the council shall make efforts to notify the licence holder as far in advance of the relocation as is reasonably practicable in the circumstances.</p> | 20 |
| 5 | <p>Where an alternative location for a licensable area has been designated in a case of urgency the temporary designation shall not remain in force after the expiry of 28 days from the date of designation, unless before then the council has—</p> <ul style="list-style-type: none"> (a) commenced consultation with the persons mentioned in paragraph 2; or (b) given a notice to the licence holder of a proposal to rescind the designating resolution or pass a resolution to designate an alternative licensable area under paragraph 1 of Schedule 4. | 25 |
| 6 | <p>If the council consults under paragraph 2, the temporary designation may remain in force for a period of no longer than five years from the date of designation.</p> | 30 |
| 7 | <p>Where an alternative location for a licensable area has been designated to enable works to be carried out in, over or under a street, the temporary designation shall cease to have effect after the works have been completed.</p> | 35 |

- 8 In the case of a relevant special event—
- (a) the council shall, if practicable, give any licence holder in the licensable area in question reasonable notice of any temporary designation of an alternative site or a temporary suspension of a designating resolution;
 - (b) unless otherwise required by the Police Commissioner, a temporary designation or temporary suspension shall not—
 - (i) commence any earlier than the beginning of the day before the day on which the event begins; and
 - (ii) remain in force any later than the end of the day following the day on which the event ends.
- 9 In this Schedule—
- “relevant special event” means a sporting event, parade, demonstration, procession, carnival, or other event that takes place on the street and which in the opinion of the council would, if it took place, result in street trading in the licensable area in question being unsuitable on the grounds of undue interference or inconvenience or a safety hazard being caused to people using the street;
- “short term period” means a period of no longer than 7 days.

SCHEDULE 6

Sections 11(3) and 22(2)

- PROCEDURE FOR PASSING, RESCINDING OR VARYING A SPECIFYING RESOLUTION AND THE ISSUING OF GUIDELINES
- 1 Before passing a specifying resolution or rescinding or varying such a resolution or issuing or varying any guidelines the council shall give notice in writing—
- (a) to all licence holders whom the council could reasonably expect would be affected by the proposed resolution or guidelines; and
 - (b) to any body which appears to the council to represent such licence holders.
- 2 The notice shall—
- (a) give details of the proposed resolution or new or varied guidelines; and
 - (b) explain the reasons for the proposal; and
 - (c) state that representations may be made regarding the proposed resolution or new or varied guidelines by the date specified in the notice as the due date which date shall be not less than 28 days after the notice has been given.
- 3 As soon as practicable after the due date the council shall consider all representations received by that date and may at its discretion consider representations received after that date.

- 4 The council shall give to any person who makes representations by the due date an opportunity to make oral representations to the council and may at its discretion give to other persons making representations a similar opportunity.
- 5 The council may pass the resolution or issue new or varied guidelines with any modifications which it considers appropriate as a result of any representations received under this Schedule. 5
- 6 As soon as practicable after passing a resolution or issuing new or varied guidelines under paragraph 5 the council shall by notice in writing inform all parties given notice of the resolution or the issuing of the new or varied guidelines. 10

SCHEDULE 7

Section 13(6)

PROCEDURE FOR VARYING A STREET TRADING LICENCE

- 1 Before varying a street trading licence under **section 13(1)** (variation of street trading licences) the council shall give notice in writing to the licence holder.
- 2 The notice shall— 15
- (a) give details of the proposed variation; and
 - (b) explain the reasons for the proposal; and
 - (c) state that representations may be made regarding the proposed variation by the date specified in the notice as the due date which date shall be not less than 28 days after the notice has been given. 20
- 3 As soon as practicable after the due date the council shall consider any representations received by that date from the licence holder and may at its discretion consider representations received after that date.
- 4 The council shall give to a licence holder who makes representations by the due date an opportunity to make oral representations to the council. 25
- 5 The council may vary the licence with any modifications which it considers appropriate as a result of any representations received under this Schedule.
- 6 As soon as practicable after varying the licence under paragraph 5 the council shall by notice in writing inform the licence holder of the variation.

SCHEDULE 8

Section 28(5)

PROCEDURE FOR PASSING, RESCINDING OR VARYING A RESOLUTION DESIGNATING A MARKET AREA UNDER SECTION 28 (MARKETS)

- 1 Before passing a resolution under **section 28** (markets) or rescinding or varying such a resolution the council shall give notice in writing— 5
 - (a) to all licence holders whom the council could reasonably expect would be affected by the proposed resolution; and
 - (b) to any body which appears to the council to represent such licence holders.
- 2 The notice shall— 10
 - (a) give details of the proposed resolution; and
 - (b) state that representations may be made regarding the proposed resolution by the date specified in the notice as the due date which date shall be not less than 28 days after the notice has been given.
- 3 As soon as practicable after the due date the council shall consider all representations received by that date and may at its discretion consider representations received after that date. 15
- 4 The council shall give to any person who makes representations by the due date an opportunity to make oral representations to the council and may at its discretion give to other persons making representations a similar opportunity. 20
- 5 The council may pass the resolution with any modifications which it considers appropriate as a result of any representations received under this Schedule.
- 6 As soon as practicable after passing a resolution under paragraph 5 the council shall by notice in writing inform all parties given notice of the proposed resolution. 25

SCHEDULE 9

Section 34

CHARGES UNDER SECTION 34 (CHARGES: STREET TRADING LICENCES): PROCEDURE FOR DETERMINATION AND VARIATION

- 1 Before determining or varying charges made under **section 34** (charges: street trading licences) the council shall give notice in writing to— 30
 - (a) all licence holders who would be affected by the proposal; and
 - (b) any body which appears to the council to represent such licence holders.

- 2 The notice shall—
- (a) give details of proposed charges;
 - (b) state that representations may be made regarding the proposed charges by the date specified in the notice as the due date which date shall be not less than 28 days after the notice has been given; 5
 - (c) be accompanied by a statement showing how the proposed charges have been computed.
- 3 As soon as practicable after the due date, the council shall consider all representations received by that date and may at its discretion consider representations received after that date. 10
- 4 The council shall give to any person who made representations by the due date an opportunity to make oral representations to the council and may at its discretion give to other persons who made representations a similar opportunity.
- 5 As soon as practicable after making its decision, the council shall by written notice inform all licence holders affected by the council’s decision as to the determination or variation of fees or charges. 15
- 6 The fees and charges as determined or varied by the council shall come into force on a date set by the council which shall be not less than 28 days from the date on which the decision as to the determination or variation of fees or charges was made. 20

SCHEDULE 10

Section 58

MINOR AND CONSEQUENTIAL AMENDMENTS

London Local Authorities Act 1990 (c. vii)

- 1 In section 38(4C)(d)— 25
- (a) in paragraph (i) for “the City of Westminster Act 1999” substitute “the City of Westminster Act 2009”;
 - (b) in paragraph (ii) for “the said Act of 1999” substitute “the said Act of 2009”.

London Local Authorities Act 2004 (c. i) 30

- 2 In Schedule 2 (which lists offences in respect of which a fixed penalty notice can be given under section 15 (fixed penalty offences) of that Act) for entries numbered 8 to 13 (which relate to offences under the City of Westminster Act 1999 (c. i)) substitute the following—

“8	City of Westminster Act 2009	41(1)	Unlicensed street trading	
9		41(2)	Street trading by holder of licence on a day or in a place not specified in his licence	5
10		42(1)(a)	Contravention of condition of street trading licence or temporary licence	
11		42(1)(b)	Making false statement in connection with application for street trading licence or temporary licence	10
12		42(1)(c)	Resisting or obstructing authorised officer	
13		42(1)(d)	Failure to produce street trading licence or proof of insurance on demand	15
13A		52(2)	Touting”	

London Local Authorities Act 2007 (c. ii)

- 3 In section 36 (interpretation of Chapter 2), for the definition of “the Act of 1999” substitute ““the Act of 2009” means the City of Westminster Act 2009;”. 20
- 4 In section 37 (bridges in the City of Westminster and London Borough of Lambeth) for “the Act of 1999” substitute “the Act of 2009” in the following places— 25
- (a) subsection (1)(b);
 - (b) subsection (2);
 - (c) subsection (5)(a), (b), (c)(i), (c)(ii), (6), (7) (in both places) and in subsection (8) in the definitions of “relevant petty sessions area” and “street”.

SCHEDULE 11

Section 59

REPEALS

Title and reference	Extent of repeal	
City of Westminster Act 1999 (c. i)	The whole Act	
London Local Authorities Act 2004 (c. i)	In the table set out in Schedule 2, the entries referring to the City of Westminster Act 1999 In Schedule 5, the reference to the City of Westminster Act 1999	5
London Local Authorities Act 2007 (c. ii)	Sections 50 to 59	10

City of Westminster

A

B I L L

To make provision for the control of street trading and touting in the City of Westminster.

SESSION 2008–09

C.T. WILSON
Westminster City Council
Westminster City Hall
Victoria Street
London SW1E 6QP
Director of Legal and Administrative Services

SHARPE PRITCHARD
Elizabeth House
Fulwood Place
London WC1V 6HG
Parliamentary Agents

LONDON: THE STATIONERY OFFICE
Printed in the United Kingdom by
The Stationery Office Limited
19.11.2008.

(414655)