
Report to: Licensing & Regulatory Committee **Date of Meeting:** 3rd June 2013

Subject: Licensing Controls relating to Street Trading and Pedlars

Report of: Director of Built Environment **Wards Affected:** All

Is this a Key Decision? No

Is it included in the Forward Plan?
No

Exempt/Confidential No

Purpose

To inform Members, as requested, of the licensing controls available in respect of Street Trading and Pedlars.

Recommendation(s)

That Members note this Report and its contents.

How does the decision contribute to the Council's Corporate Objectives?

	<u>Corporate Objective</u>	<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		√	
2	Jobs and Prosperity		√	
3	Environmental Sustainability		√	
4	Health and Well-Being		√	
5	Children and Young People		√	
6	Creating Safe Communities		√	
7	Creating Inclusive Communities		√	
8	Improving the Quality of Council Services and Strengthening Local Democracy		√	

Reasons for the Recommendation:

To give Members an overview of the licensing controls available in respect of Street Trading and Pedlars.

What will it cost and how will it be financed?

(A) Revenue Costs

None.

(B) Capital Costs

None.

Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

Legal	.The Head of Corporate Legal Services (LD 1568) has been consulted and has no comments on the report	
Finance	The Head of Corporate Finance and ICT (FD2253) has been consulted and notes there are no direct financial implications arising from the report	
Equality		
1.	No Equality Implication	<input checked="" type="checkbox"/>
2.	Equality Implications identified and mitigated	<input type="checkbox"/>
3.	Equality Implication identified and risk remains	<input type="checkbox"/>

Impact on Service Delivery:

None arising from this Report.

What consultations have taken place on the proposals and when?

None.

Are there any other options available for consideration?

N/A

Implementation Date for the Decision

N/A

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Background Papers:

- The Local Government (Miscellaneous Provisions) Act 1976 and 1982.
- The Pedlar's Act 1871 and 1881.
- The County of Merseyside Act 1980.
- The Highways Act 1980.
- "Street Trading and Pedlary in Great Britain - A report of research into the application and perception of local authority controls and pedlar legislation" – 2009.

1. Background

1.1 At their Meeting on 11th March 2013 Members RESOLVED that:

The Director of Built Environment be requested to submit a report on licensing controls relating to street traders and pedlars, to a future meeting.

2. Overview

2.1 In legislation street traders are treated differently to pedlars. In England and Wales, Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 ("the 1982 Act") requires that street traders apply for a licence to their local authority (where that authority has adopted the appropriate provisions) to trade in certain designated areas.

2.2 By contrast, Section 4 of the Pedlar's Act 1871 (as amended) ("the 1871 Act"), requires pedlars in England and Wales to apply for a certificate from the police in order to trade anywhere in the country.

3. Regulation of Street Trading

3.1 Street trading for the purposes of the 1982 Act is defined as "*the selling or exposing or offering for sale of any article (including a living thing) in a street.*" This means that the 1982 Act regulates street trading in respect of the sale of goods only and not services offered.

3.2 The 1982 Act contains an exemption so that trading by a certified pedlar acting as a pedlar does not constitute street trading. If pedlars move away from these trading activities into other methods of trading on the street (e.g. static trading from a stall) then they would be subject to any street trading controls the local authority has implemented under the 1982 Act (see 4. below for further information on pedlars).

- 3.3 Certain types of trading are exempt from control under Paragraph 1(2) of Schedule 4 of the 1982 Act, either because they are regulated in some other way, or because no controls over them are considered to be necessary.
- 3.4 The following, therefore, are not considered as street trading for the purpose of the 1982 Act:
- Trading by a person acting as a pedlar with a pedlar's certificate granted under the 1871 Act;
 - Anything done in a market or fair, the right of which was acquired by virtue of a grant or established by virtue of an enactment order;
 - Trading in a trunk road picnic area provided by the Secretary of State under section 112 of the Highways Act 1980;
 - Trading as a news vendor;
 - Trading which is (i) carried on at premises used as a petrol filling station; or (ii) is carried on at premises used as a shop adjoining premises so used and as part of the business of the shop;
 - Selling things, or offering, or exposing them for sale as a roundsman;
 - The use for trading, under Part VII(A) of the Highways Act 1980, of an object or structure placed on, in or over a highway;
 - The operation of facilities for recreation or refreshment under Part VII(A) of the Highways Act 1980;
 - The doing of anything authorised by regulations made under Section 5 of the Police, Factories etc (Miscellaneous Provisions) Act 1916.
- 3.5 The powers granted by the 1982 Act are adoptive – that is, a local authority must explicitly choose to adopt Schedule 4 in order to exercise these powers and must designate streets according to a stated rationale before licences and consents can be issued.
- 3.6 The resolution process, to formally adopt the street trading provisions, requires that consultation takes place with the police and the highway authorities, as well as advertising the notification of the intention to pass a resolution in the local press. Subsequently any responses to the notification must then be considered before any resolution to adopt the provisions is passed. Once passed that fact must be published for two weeks in a local newspaper at least 28 days before coming into force.
- 3.7 Those councils which formally adopt the powers can designate streets in their area as:
- Consent streets – where street trading is prohibited without prior local authority consent; such consent can be charged for and conditions related to locations, times and operating conditions can be attached. Consents are granted for a maximum of twelve months, and there is no right of appeal if revoked.
 - Licence streets – where trading is prohibited without a local authority licence. This category is similar to consent streets but with more conditions attached, and a greater presumption of renewal, as well as rights of appeal to magistrates in cases of refusal or revocation. As such, a licence can be seen as a more formal and ongoing permission to street trade than a consent.

- Prohibited streets - where no street trading may take place.
- 3.8 A street trading licence or a street trading consent may not be granted to a person under the age of 17 years.
- 3.9 The local authority may refuse an application for a street trading licence on any of the following grounds:
- (a) That there is not enough space in the street for the applicant to engage in the trading in which he desires to engage without causing undue interference or inconvenience to persons using the street;
 - (b) That there are already enough traders trading in the street from shops or otherwise in the goods in which the applicant desires to trade;
 - (c) That the applicant desires to trade on fewer days than the minimum number specified in any resolution made per paragraph 3.5 above;
 - (d) That the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
 - (e) That the applicant has at any time been granted a street trading licence by the council and has persistently refused or neglected to pay fees due to them for it or charges due to them for services rendered by them to him in his capacity as licence-holder;
 - (f) That the applicant has at any time been granted a street trading consent by the council and has persistently refused or neglected to pay fees due to them for it;
 - (g) That the applicant has without reasonable excuse failed to avail himself to a reasonable extent of a previous street trading licence.
- 3.10 Under the 1982 Act, it is an offence to:
- Engage in street trading in a prohibited street;
 - Engage in street trading in a licence or consent street without being authorised to do so; or,
 - Contravene any of the principal terms of the street trading licence
- 3.11 Trading in prohibited streets, or in consent or licence streets without the necessary permission, are offences under the 1982 Act, carrying a maximum penalty of a 'level three fine'.
- 3.12 The last in-depth research into these matters was conducted in 2009 and resulted in the Report "*Street Trading and Pedlary in Great Britain - A report of research into the application and perception of local authority controls and pedlar legislation*" ("the Report").
- 3.13 The Report found that at that time, from a sample of 157 Local Authorities, three quarters had adopted some sort of street trading legislation.
- 3.14 However the Report noted that the incidence of non-adoption may well have been higher than reported by their survey as authorities *who had not adopted the powers were the least inclined to reply*.
- 3.15 It goes on that *such authorities also tended to record few noticeable incidences of illegal street trading or pedlars, either genuine (i.e. with a certificate and behaving*

lawfully) or rogue (i.e. lacking a certificate and/or behaving illegally). One typical response was, 'It's not really a problem, if it was then we would have adopted the legislation already'.

4. Regulation of Pedlars

4.1 As indicated above, pedlars are exempt from street trading regulation. Police forces (rather than local authorities) are charged with vetting applications and issuing pedlars certificates. The 1871 Act originally enabled pedlars to trade only within the immediate area of the issuing police force; the Pedlars Act 1881 extended the right to trade to the whole of the Country.

4.2 Under Section 4 of the 1871 Act, no person may lawfully act as a pedlar without a pedlar's certificate granted by the police. Section 3 of the 1871 Act, which makes provision for the issue of certificates, defines a pedlar as:

...any hawker, pedlar, petty chapman, tinker, caster of metals, mender of chairs, or other person who, without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men's houses, carrying to sell or exposing for sale any goods, wares, or merchandise, or procuring orders for goods, wares, or merchandise immediately to be delivered, or selling or offering for sale his skill in handicraft.

4.3 The regulation of pedlars therefore differs significantly from that of street traders. Certified pedlars (under the provisions of the 1871 and 1881 Acts) are permitted to sell door-to-door and in the street anywhere in the Country, as long as they do not sell from a stall or other fixed location. A pedlar is therefore required to go to his customers.

4.4 Provided they are pedlaring in this way, they are exempt from local authority street trading controls and are able (and obliged) to roam around a town, in order to trade.

4.5 A person intending to trade as a pedlar must apply for a pedlar's certificate from the police and must meet the following criteria:

- He must have resided in the police area for the chief officer of police to whom he applies for the certificate for at least one month before his application;
- Be of good character (and in good faith intend to carry on the trade of a pedlar); and,
- Be above 17 years of age.

4.6 A person commits an offence if he acts as a pedlar without having obtained a certificate and is liable for on a first offence to a penalty not exceeding level 1 on the standard scale, and for any subsequent offence to a penalty not exceeding level 1 on the standard scale.

4.7 Any pedlar shall at all times, on demand, produce and show his certificate to any of the following persons:

- Any Justice of the Peace; or

- Any constable or Officer of Police; or
- Any person to whom such pedlar offers his goods for sale; or
- Any person in whose private grounds or premises such pedlar is found.

4.8 The Report on these matters from 2009 stated that the scale of pedlary in Great Britain was relatively modest, with an estimated 3,000-4,500 pedlars being granted certificates to trade by police forces. They stated that at that time there was little evidence that certificated pedlars presented problems in city centres, nor were they generally in direct competition with shops or street traders.

5. Current situation within Sefton

5.1 The street trading provisions have never been formally adopted within Sefton and therefore street trading can take place in any area of the Borough, unless controlled by the highways legislation (because of obstruction of the highway) or food legislation (which requires a food business to register under food safety legislation and as such there is control on them for their hygiene but not where they trade).

5.2 The Council have adopted provisions under The County of Merseyside Act 1980 to designate a number of town centre streets and holiday areas as prohibited streets where trading is not allowed however this is limited in scope.

5.3 Section 7 of the Local Government (Miscellaneous Provisions) Act 1976 allows a highway authority to make an order preventing persons selling anything on a highway (to prevent danger). This has been done within Sefton to control the parking of motor vehicles for sale on certain named streets within the Borough.

5.4 Section 147A of the Highways Act 1980 was brought in to prohibit hot food vans trading on or near trunk roads. It prohibits sales on or near a trunk road, typically in lay-bys. Councils do not need to do anything apart from enforcement. Section 137 can be used to prosecute a trader for obstruction of the highway (a person selling goods on the highway can be considered to be an obstruction). Under Section 115E, a Council can grant permission (i.e. highways amenity licence) to persons to use objects or structures in the highway, for the purpose of generating income. Within Sefton this procedure is used for events on the highway such as continental markets, Victorian festivals and Christmas events etc.

5.5 The Licensing Unit receives little or no complaints over either street trading matters or pedlars.

5.6 Any form of additional street trading control enacted would need enforcing to ensure that it was effective. That enforcement would need to be undertaken at the relevant times when trading was being undertaken i.e. evenings and weekends or during events. A system for the issue of licences or consents would have to be put in place which must include a policy and guidance on which areas and types of businesses including the number, which would be allowed. This would include a fee to be charged to the business for a licence or consent.

- 5.7 There would obviously be set up costs for the Council in passing a resolution to adopt the Schedule, then there would be the costs of enacting the legislation, which requires the Council to designate which streets are subject to licence or consent (or even prohibited from any kind of street trading) and to publish notices of these designations. The Council are then obliged to consider representations from the public regarding any street designations they have made before they can be enacted. It is difficult to estimate the cost of these matters, but when considering the staff input necessary for the Council to: consider and pass a resolution; do the preparatory work relating to designation of streets; publish public notices; consider representations and address any issues raised; undertake the preparatory work for the scheme itself; and consider and approve applications, it is estimated that this cost could run into thousands of pounds.
- 5.8 Any fee is unlikely to cover the full cost of the administration and the enforcement of the scheme as there would be a relatively small number of traders who would apply to be given these licences or consents and the main areas of enforcement would therefore likely to be in preventing any unauthorised traders from trading and dealing with complaints concerning them.