
Report to: Licensing & Regulatory Committee **Date of Meeting:** 23rd September 2013

Subject: Estimated start up costs of implementing Street Trading legislation.

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/Summary

To advise Members of the estimated start up costs of implementing Street Trading legislation and the options available to them.

Recommendation(s)

That the Licensing & Regulatory Committee:

- i) Note the contents of the Report, and
- ii) Determine the preferred course of action.

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 estimated start up costs of implementing Street Trading legislation and request a policy steer.

What will it cost and how will it be financed?

(A) Revenue Costs

The costs of the Options contained in this report are designed to give an indication of the potential costs of implementation and are based on previous experience in implementing Licensing legislation.

Option 1

There are no additional financial costs arising from this option.

Option 2

Costs in the region of £2,300 are estimated which could be contained within existing resources by virtue of the fact that existing staff time would be utilised to develop this option.

Option 3

Costs in the region of £25,150 are estimated which could not be contained within existing resources. Members would need to consider the introduction of a fee charging regime, to offset some or all of these costs, if they wished to pursue this option further.

In addition, there are likely to be ongoing costs of enforcement connected to Option 3 (and to a lesser extent, Option 2) for which fees could not be charged and for which no budgetary provision exists. These costs are not estimated and would relate to the degree of offending and the level of proactive enforcement desired.

(B) Capital Costs

n/a

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 (LD1748/13) has been consulted and has no comments on the report.
Finance	The Head of Finance and ICT (FD2443/13) has been consulted and comments have been incorporated into the report.
Human Resources	None

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?

Yes – included in the Report.

Implementation Date for the Decision

N/A

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Background Papers:

- The Local Government (Miscellaneous Provisions) Act 1976 & 1982.
- The Highways Act 1980.
- The County of Merseyside Act 1980.
- R (Hemming & Others) v Westminster City Council, Court of Appeal, 24th May 2013.
- “Street Trading and Pedlary in Great Britain - A report of research into the application and perception of local authority controls and pedlar legislation” – 2009.
- Report to Licensing & Regulatory Committee - *Licensing controls relating to Street Trading and Pedlars* – 3rd June 2013.

1. Background

1.1 Members will recall the report entitled “*Licensing Controls Relating to Street Trading and Pedlars*” presented to the Committee on 3rd June 2013.

1.2 Members RESOLVED that:

The Director of Built Environment be requested to undertake and submit a report on a cost benefit analysis study into the feasibility of the Council’s adoption of street trading provisions to help deter rogue traders in the Borough, for consideration at the next meeting on 23 September 2013.

1.3 Three options have been considered and a cost breakdown for each option included in this report. In order to make the costing process more transparent an estimate of the officer time involved in completing each activity has been included in relevant paragraph (with further breakdowns to be found within the Annexes to this Report).

1.4 Costs are based on an hourly rate of about £53 and estimates are based on experience drawn from implementing the processes for the Licensing Act 2003. The potential financial impact is therefore only indicative, with actual costs being dependent on the extent to which a particular option was developed.

2. Option1 – The Status Quo

2.1 Members could decide to keep the status quo and not implement any form of street trading scheme.

2.2 The Department’s Civica database has been interrogated for the period 1st April 2009 to 30th April 2013 and no complaints have been recorded with regard to street trading type matters.

- 2.3 There is other legislation currently in place within Sefton to partially regulate street trading matters.
- 2.4 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.
- 2.5 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).
- 2.6 Under Section 115E of the Highways Act 1980, 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.
- 2.7 There are no additional costs associated with Option 1.
- 3. Option 2 – Designate Further Streets under the County Of Merseyside Act 1980.**
- 3.1 In 1981 the Council 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 was not allowed.
- 3.2 Members could decide to designate further streets within the Borough under this Act if they think that appropriate.
- 3.3 There will be a requirement for officers to identify and draw up a list of the new roads to be designated.
- 3.4 It is estimated that it would take officers *6 hours* to complete this early preparatory work with an indicative cost of about *£300*.
- 3.5 There will be a requirement for the Council to publish a Notice in a local newspaper, circulating within the area, advertising its intention to designate further places. At this stage there is also a requirement to post the Notice in the places to which it relates.
- 3.6 There will then be a further requirement, once the designations have been approved, for the Council to publish a further Notice in a local newspaper.
- 3.7 It is estimated that it would take *4 hours* for Legal to draft the appropriate Notices and *2 hours* for officers to place Notices on the new places designated, with the total indicative cost of this and of placing the Notice in a local newspaper being in the region of *£1,500*.

- 3.8 As a result of 3.5 above officers will need to consider any representations received and address any concerns raised prior to publishing Notice that further places have been designated. This would involve liaising with objectors, preparing further reports for Committee to consider as a result etc.
- 3.9 It is estimated that the costs in respect of considering / dealing with issues raised during the advertising phase would take officers *10 hours* to complete with an indicative cost of about £500.
- 3.10 Therefore, the total estimated officer time expended in designating further places under this Act would be *22 hours* therefore the total cost of this option including advertising will be in the region of **£2,300**. Again it is emphased that this cost gives an indication of the potential financial impact of this proposal. Given the relatively limited amount of time that would be needed to develop this option, it is considered that this work would be undertaken within the scope of existing staff resources and therefore with no additional budgetary implications.
- 3.11. Annex 1 contains a table showing the activity breakdown of how further streets could be designated.

4. Option 3 - Local Government (Miscellaneous Provisions) Act 1982

- 4.1 Officers will need to estimate the number of applications that may be received as a result of the scheme's implementation. This will involve drawing upon the Department's databases for food registration, highway licences etc. in order to produce a list of likely traders that would be caught by the Scheme.
- 4.2 Similarly officers will need to estimate how many applications would be received in the "first wave" from potential traders and how many would have to be subject to follow up enquiries. An assessment would also have to be made on those traders who would fail to apply and as a result be subject to enforcement action.
- 4.3 All of these matters will be critical in making the eventual fee calculations in order to try and enable actual cost recovery for the Authority.
- 4.4 It is estimated that this early preparatory work would take officers *36 hours* to complete with an indicative cost of £1,900.
- 4.5 The Council would need to determine policy in relation to street trading prior to making any resolution to adopt the street trading provisions.
- 4.6 The main purpose of such a policy would be to set out a transparent decision making framework (in respect of processing applications for street trading) for applicants and residents.
- 4.7 Any policy would need to include such matters as:
- The streets that were to be designated for licence.
 - The streets that were to be designated for consent.
 - The streets that were to be prohibited from any kind of street trading.

- An overview of the application process and what relevant information the Council would take into account in considering the suitability of the application (applicant photographs, details of trading unit to be utilised etc).
- An overview of who the Council would consult with in reaching a determination (Food Safety, Noise Control, Trading Standards etc).
- A description of the decision making process, including avenues of appeal for an applicant.
- An overview of the fee structure.
- An overview of the conditions that would be applicable in respect of a licence.
- An overview of the conditions that would be applicable in respect of consent.
- An overview of the enforcement policy.

4.8 There will be a requirement to consult on these proposals and any issues raised will have to be considered.

4.9 It is estimated that the preparatory work for producing the street trading policy, and the consultation to be undertaken in respect of it, would take officers *216 hours* to complete at an indicative cost of *£11,400*.

4.10 There will be a requirement to put a variety of administration and enforcement protocols in place to enable the Scheme to be properly run:

- Create the application forms for the various processes involved.
- Create the computer templates for the various processes involved (including the creation of the various “standard” correspondence letters linked to same).
- Create the procedure manual for the various processes involved.
- Create the standard Committee Report templates for appeal cases.
- Create the appropriate WebPages for the Sefton Website (and populate same).
- Create and develop enforcement protocols.

4.11 It is estimated that the preparatory work for putting in place the appropriate administration and enforcement protocols, would take officers *180 hours* to complete at an indicative cost of *£9,500*.

4.12 There will be a requirement for the Council to publish a Notice in a local newspaper, circulating within the area, advertising its intention to pass a resolution to bring in street trading provisions.

4.13 There will then be a requirement, once the resolution has been passed, for the Council to publish a Notice in a local newspaper that they have passed the resolution for two consecutive weeks.

4.14 It is estimated that it would take *4 hours* for Legal to draft the appropriate Notices, with the total cost of this, and the placing the Notices in a local newspaper, being approximately *£1,850*.

4.15 As a result of 4.12 above officers will need to consider any representations received and address any concerns raised prior to publishing Notice that the resolution has been passed. This would involve liaising with objectors, preparing further reports for Committee to consider as a result etc.

4.16 It is estimated that the costs in respect of considering / dealing with issues raised during the advertising phase would take officers *10 hours* to complete with an indicative cost of about *£500*.

4.17 Therefore, the total estimated officer time expended in implementing a street trading scheme would be *446 hours* (approximately 12 weeks in officer time), therefore the total cost of this option including advertising will be **£25,150**. When compared to Option 2, this represents a potentially more significant utilization of resources and at a cost which could not be contained within existing budgetary provision. Members would need to consider the introduction of a fee charging regime, to offset some or all of these costs, if they wished to pursue this option further.

4.18 Annex 2 contains a table showing the detailed activity breakdown of how a street trading scheme would be implemented.

5. Enforcement costs of a street trading regime

5.1 A street trading regime 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, it is expected that this would primarily be in evenings and weekends or during events. The two key areas of enforcement are:

- Preventing any unlicensed businesses from trading; and
- Dealing with complaints concerning unlicensed traders..

5.2 The Council currently does not offer such an out of hours service and therefore an ongoing cost for this provision, via overtime costs, shift allowance or time off in lieu, can be anticipated. These envisaged ongoing costs have not been included within this Report.

5.3 Any time off in lieu accrued by officers for out of hours working would have a knock on effect on their day to day duties, particularly those that involve statutory deadlines that have to be met.

5.4 Two recent cases have underlined the importance of adhering to these (namely *Mu Mu Enterprises v North Somerset DC*, June 2013 and *Tinseltown NW3 Ltd v London Borough of Camden*, October 2012). Both cases led to costs being awarded against the relevant Council for a failure to adhere to statutory timeframes or procedures correctly.

5.5 It is estimated that the ongoing duties of enforcing and administering a street trading scheme could not be absorbed within the existing Licensing Unit set up and would therefore have an extra ongoing resource implication.

5.6 Members should be aware that per *R (Hemming & Others) v Westminster City Council* (Court of Appeal on 24th May 2013) any fee charged under the regime cannot include the Council's enforcement costs of unlicensed traders.

5.7 The views and direction of the Committee are sought.

Annex 1**Designate Further Streets under the County Of Merseyside Act 1980.**

Activity	Time spent (hours)
Early preparatory work	
Obtain relevant maps	1
Identify and draw up list of streets to be designated	5
Total	6
Notice requirements	
Legal draft Notice	4
Place Notices on relevant designated street	2
Deal with queries over Notice	4
Deal with objections to Notice (including liaising with residents)	4
Complete follow up Reports to Committee	2
Total	16

Local Government (Miscellaneous Provisions) Act 1982

Activity	Time spent (hours)
Early preparatory work	
Scope potential existing numbers of traders who may be caught by scheme	10
Formulate estimated initial work flow	7
Formulate estimated initial enforcement work to ensure applications	7
Formulate fee structure	8
Prepare Report to HR re staffing issues	4
Total	36
Formulate Street Trading Policy	
Designate streets to be licensed / consents / prohibited	30
Create standard conditions for streets to licensed / consents	25
Set up protocols with other agencies	15
Design flowchart for application process	15
Design flowchart for decision making process	15
Write Draft policy for Committee	25
Write Committee Report for draft Policy / consultation proposals	10
Arrange and carry out consultation for Policy (incl Engagement Panel Report / presentation)	45
Deal with any queries re consultation	9
Deal with consultation responses	9
Final Report to Committee to sign off on Policy	8
Publish Policy on website and place copies in Libraries	5
Carry out communication strategy for Policy publication	5
Total	216
Admin / Enforcement protocols	
Design and create application forms	35
Create computer templates and create linked standard letters	35
Create procedure manual for officers (incl admin and enforcement)	30
Create notes of guidance for applicants	10
Create standard Committee Reports for appeals	15
Create webpages for Sefton.Gov.UK	20
Create enforcement policy / protocols	35
Total	180
Notice requirements	
Legal draft Notice	4
Deal with queries over Notice	4
Deal with objections to Notice (including liaising with residents)	4
Complete follow up Reports to Committee	2
Total	14