

Street Trading Policy

Policy Number	
Version Number	3
Author	

Date of Screening of Policy	17/05/2018
EQIA Recommended?	NO
Date Adopted by Council	13/08/2019
Date Policy Revised	20/9/2019

	Page no
Section 1	
1.1 Policy Statement	4
1.2 Policy Objective	4
Section 2	
2.1 Why do we have street trading?	5
2.2 What does successful street trading look like?	5
2.3 References	6
2.4 Legislative framework	6
Section 3	
3.1 What is street trading?	7
3.2 Exemptions	7
3.3 Types of street trading licences	7
3.4 Designated streets	8
3.5 Applications for grant, renewal or variation of a licence	8
3.6 Grant etc of street trading licences	9
3.7 Duration of a licence	11
3.8 Licence conditions	11
3.9 Revocation etc of Street Trading Licences	12
3.10 Variation of a licence	13
3.11 Notice and Representations	13
3.12 Appeals	14
3.13 Temporary Licences	15
3.14 Identification of street traders	16
3.15 Unlicensed street trading	16
3.16 Seizure, forfeiture and compensation	16
3.17 Employment of assistants	17
3.18 Removal of Receptacles	17
3.19 Licences per designated site	17
3.20 Making use of Licences	17
3.21 Transfer of Licences	17
3.22 Licence conditions and enforcement	17
3.23 Evaluation and review of the policy	18
3.24 Sec 75, Equality and Good Relations	18
Section 4	
4.1 Street trading fees	19
4.2 Fee structure	19
4.3 Application and licence fee refunds	20
Section 5	
Guide to Mobile Street Trading applicants	21
Section 6	
Guide to Stationary Street Trading applicants	25
Section 7	
Guide to Temporary Street Trading applicants	30

INDEX

SECTION 1

1.1 Policy Statement

This policy details how Mid and East Antrim Borough Council will regulate street trading activities within the Borough and how application of these provisions will be proportionate and fair.

Its aim is to provide, insofar as is possible, consistent decision making so as to develop and thereafter maintain public confidence in Mid and East Antrim Borough Council's performance of its duties.

1.2 Policy Objective

The purpose of this policy is to provide a single set of basic rules which will be used to inform the various decision making processes for street trading within Mid and East Antrim.

Mid and East Antrim Borough Council understands that street trading is important to both the local environment and the local economy. Street trading can bring vibrancy and interest to the local environment and an opportunity for small businesses to establish themselves and grow.

The Councils vision for Mid and East Antrim is to create a street trading environment which:

- Complements premises-based trading
- Is sensitive to the needs of residents
- Provides diversity and consumer choice
- Seeks to enhance the character, ambience and offering in connection with events and facilities
- Promotes healthy eating
- Improves access to local goods and locally produced products
- Supports local entrepreneurship
- Protects against illegal or unsafe activity

This is the first time the council, in consultation with street traders and major stakeholders, has produced a street trading policy document which consolidates and develops the raft of earlier decisions and resolutions that have been made to regulate and improve street trading.

This policy aims to give clarity and transparency to traders in explaining how ‘the rules’ will be applied, in order to minimise uncertainty and wasteful disputes. It will also enable Council to control and regulate street trading in the Borough in such a way as to prevent undue nuisance, interference and inconvenience to persons and vehicles.

SECTION 2

2.1 Why do we have street trading?

Street trading has always formed part of the fabric of urban life, and many historic towns throughout the world owe their very origins to the existence of open air markets. Thriving markets add to the variety and vibrancy of borough life, the diversity of shopping opportunities, and the character of the neighbourhoods in which they are located.

Street trading provides employment opportunities for local people as well as a seedbed of entrepreneurship, allowing new entrants to test their business skills and ideas in an environment which has low start-up costs, minimal overheads and existing customer footfall. Goods on sale in the street provide convenient access to hot and cold drinks, fresh fruit and vegetables, household goods and other services for local communities, those travelling to work, and visitors to Mid and East Antrim.

2.2 What does successful street trading look like?

Success in street trading is not to be judged solely in terms of the benefits which accrue to the traders and those who buy their goods.

Street trading ought to comply with the same rules that regulate other comparable economic activities, in terms of fair dealing and impact on the local environment and community. Street trading occupies public places and whether a mobile vehicle, an individual stall or a busy market, it should justify its privileged position by enhancing, rather than detracting from, the street in which it is located. It should not be unsightly, untidy or disorderly. Successful street trading is a good neighbour.

Historically, the question of whether street trading can ever be a good neighbour to conventional shops has been a vexed one. Shopkeepers can be wary of those traders who they perceive as poaching their custom, or ‘lowering the tone’ of the retail environment.

In the past Councils have adopted elaborate rules to govern the types of goods street traders are allowed to offer, in order to manage this tension between the interests of street traders and those of conventional retailing. Traditionally, such

regimes have sought both to limit the goods on offer and to limit direct competition between street traders and nearby shops.

However, rules of this sort are complicated and costly to administer, and their relevance to ‘success’, as described above, are not always obvious. Some very successful street traders trade in the very same types of goods as neighbouring shops, to their mutual benefit.

A ‘one size fits all’ approach to the regulation of goods is likely to be decreasingly relevant in the future, especially if innovation and/or greater specialisation are to be factors in street trading’s future success.

We should continue to work for ‘neighbourly’ street trading, and to protect those things that are of acknowledged and lasting value, such as the distinctive character of established and successful shopping streets, and the quality of the local environment.

But future regulation ought to be less prescriptive, and more open to innovation and imaginative new approaches, if it is to help secure true success.

2.3 References

- Street Trading Act (Northern Ireland) 2001
- Guide to the Street Trading Act (Northern Ireland) 2001
- Street Trading (Fixed Penalty) (Notice and Procedure) Regulations (Northern Ireland) 2001

2.4 Legislative Framework

The Street Trading Act (NI) 2001 came into operation on 1 October 2001. The Act (accompanied by the Departmental Guide to the Street Trading Act (Northern Ireland) 2001) provides the legislative framework for the regulation of street trading activities through the provisions of a licensing scheme administered by each Council.

Subject to the provisions of the Act, no person shall engage in street trading in any street, unless that person is authorised to do so by a Stationary Street Trading Licence or Mobile Street Trading Licence or a Temporary Licence granted by the Council.

The Act repeals most of the provisions of the 1929 Street Trading (Regulation) Act, except Section 10 which contains the provisions whereby Market Rights can be acquired or extinguished.

All legislative references such as section and sub section are to the Street Trading Act (Northern Ireland) 2001 (the Act) unless otherwise stated

SECTION 3

3.1 What is Street Trading?

The Act defines street trading as *“selling any article or thing, or supplying a service in a street, whether or not in, or from, a stationary position.”*

A street includes any road, footpath or public place (in the open air), and these terms take on their normal everyday meaning.

A public place is defined as all land (subject to several exceptions) within 10 metres of a road and may include what might normally be regarded as private land.

The legislation sets out a general prohibition on street trading unless the trader has a licence issued by the Council for the area in which he wishes to trade.

3.2 Exemptions

The Act lists a number of trading activities that are not ‘street trading’ and so are not regulated by the Act. These include:

- ✓ Lawful markets
- ✓ Roundsmen (eg milk, bread, coal)
- ✓ Door-to-door sales
- ✓ Sales and collections for charitable purposes

3.3 Types of street trading licences

There are three types of licence which may be issued by the Council namely, mobile and stationary licences (also known as full term licences) and temporary licences.

a) Mobile

The Council may issue a licence to a trader who from a vehicle moves from place to place stopping for a time for the purposes of trading, for example, an ice cream van. The Council will agree the areas in which the applicant may trade.

b) Stationary

The Council may pass a resolution designating a street or part of a street within the Borough as suitable for stationary street trading. A licence can then be issued to an applicant to trade from an allocated pitch within the designated street.

c) Temporary

The Council may issue a temporary licence where a full-term licence may not be appropriate, for example, for special events such as festivals, fairs etc. A

temporary licence can last up to 7 days and only 5 such licences can be issued to the same person in a 12 month period.

3.4 Designated streets

Section 3 of the Street Trading Act allows a district council to pass a resolution to designate specific streets in its area as being suitable for stationary street trading (special arrangements are provided for 'mobile traders' and those operating under a temporary licence).

The legislation prevents Council from granting a licence to permit street trading by stationary traders in any street which is not so designated. A designating resolution can also specify which goods or services may or may not be offered for sale in a designated street.

Council may rescind or vary any resolution (by passing further resolution) where Council regards that a street is no longer suitable for street trading. This requires notification of all affected existing licence holders and consider representations made.

3.5 Applications for grant, renewal or variation of a licence

Applications for the grant or a renewal of a street trading licence, or the variation of the conditions of a licence, must be made in writing using the application form provided by Council, with all sections fully completed.

The duty of Mid and East Antrim Borough Council is to make sure that each street trading licence application is fairly and objectively assessed and that all relevant factors are considered.

All applications will be determined as soon as reasonably practicable, and tacit consent will NOT apply. It is in the public interest that Council must process your application before it can be granted. PSNI, DfI (Roads), local residents, local shops and other street traders have a legitimate interest in the outcome of street trading applications.

This will also minimise the risk of a licence being granted inadvertently and subsequently resulting in public disorder, removal of protection to the public and/or a cumulative adverse environmental impact on the vicinity of the trader.

Whilst Tacit Consent does not apply, we will strive to notify all applicants of the outcome of their application, including issuing the licence, within 5 working days of the decision made in relation to the application.

Further guidance on the criteria to be used in the determination of applications can be found in the latter sections of this policy document.

3.6 Grant, etc of street trading licences

There is an onus on Council to grant, or renew, a street trading licence unless one of the mandatory or discretionary grounds for refusal applies.

A) Mandatory grounds for refusal (no right of appeal):

- The applicant is not an individual
- The applicant is under the legal school leaving age
- Trading is prohibited by means of other legislation;
- The application is for a licence to trade as a **stationary trader** in a street which has not been designated
- The application is for trading in goods which are excluded by a designating resolution.

B) Discretionary grounds for refusal:

Council may decide to refuse an application for the grant, renewal or variation of a licence within a designated street where:-

- The location where a stationary trader wishes to trade is unsuitable. This permits Council to take into account site specific issues which may have changes or were not evident at the time the street was designated as suitable for trading.
- The space in a designated street is not sufficient to permit trading by a stationary trader without causing undue interference or inconvenience to persons or vehicles eg where there are already enough traders operating in the area
- The area/areas where a **mobile trader** wishes to trade are regarded as unsuitable for trading without causing undue interference or inconvenience to persons or vehicles.
- There are already enough persons trading in the articles, things or services in which the applicant wants to trade (street traders as well as shop traders).
- The nature of the articles, things or services in which the applicant wishes to trade would adversely affect the general amenity of the area.
- The applicant has made a false declaration.
- The applicant is considered an unsuitable person because of misconduct or some other reason (related to trading activities only).
- The applicant failed to use a previous licence to a reasonable extent (normally applies where demand exceeds spaces available for trading)
- The applicant was previously the holder of a licence which was revoked or could have been revoked because fees/charges had not been paid.
- The applicant has not supplied information required by Council to enable it to process the application.
- The applicant has not made suitable arrangements for the storage of goods and receptacles.

When licence applications are received, Council may consult other persons/organisations, as it considers appropriate. Such Consultees may include the following:

- (i) PSNI
- (ii) DfI (Roads)
- (iii) Chamber of Trade and Commerce
- (iv) Town Centre Management
- (v) Nearby Street Trading Licence holders who may be affected
- (vi) Business and Commercial premises in the vicinity of the site in respect of which the application has been received
- (vii) Emergency Services

In respect of Designated site applications, Council *will* consult with

- (a) The District Commander of the PSNI in which the streets are situated;
- (b) The Department for Infrastructure as regards that Department's functions for roads and regulation of road traffic

Without prejudice to its right to take account of any relevant consideration in determining the suitability of each Street Trading Licence, the Council will take into account:

- (a) The safety of the public and any risks which may arise.
- (b) The number and size of vehicles/stalls/receptacles and their position in relation to the location
- (c) The appropriateness and suitability of the street or part thereof and commodities in relation to the location.
- (d) The potential adverse impact that Street Trading may have upon the character and appearance of the area in question
- (e) The extent to which the sale of the commodity will provide a useful service to the event or occasion not otherwise provided in the area;
- (f) The potential environmental effects such as additional litter, cleansing requirements, odour and noise.
- (g) The potential for the proposed said Street Trading Licence to have an adverse effect in terms of anti-social behaviour and public disorder
- (h) Previous complaints arising from any street trading activities in that street or part thereof
- (i) Any other Statutory provision which would be appropriate to consider

3.7 Duration of licence

Mid and East Antrim will issue full term licences (for stationary and mobile street trading) for the duration of one year, falling due for renewal on the 1st January of each year.

Applications for mobile licences will be accepted by Council at any point throughout the year, however consideration of new designated sites will normally be annually (or twice a year if significant demand). Successful applicants will be charged a fee on a pro rata basis for a part year if applicable. Annual renewal licences will be issued subsequently from 1st January for successful applicants.

A temporary licence can authorise trading in streets which have not been designated and can be granted for a period not exceeding 7 days. This provision means that a licence may only cover a consecutive period of days and not a number of separate days.

Council will only issue no more than 5 temporary licences to any one applicant in a calendar year.

3.8 Licence conditions

Street trading licences are granted subject to certain conditions which fall into two categories.

Firstly, there are standard conditions which specify the minimum which **must** be included on every licence.

In addition council may attach further conditions under its discretionary powers. A right of appeal is provided against **any** condition on a licence.

It is important to note that, in most cases, a breach of the **standard conditions** will constitute an offence but breaches of the **further conditions** will not. However, breaches of the further conditions may be regarded as grounds for revoking a licence.

a) Standard Conditions

The standard conditions which a council **must** include on each licence are:

- the location in a designated street where a trader may operate under the authority of the licence. In the case of a trader operating from a stationary position, this may be a precise location within that street. If the licence holder is permitted to operate as a mobile trader, a district council will specify the areas within its district where trading is permitted or prohibited;
- the type(s) of goods or services which the licence holder may sell or supply. These details may be as narrow or as broad as a council decides are appropriate in each case;
the days and the times during which a licence holder is permitted to trade;
- the type, size and form of any receptacle (stall, table, vehicle, etc.,) which may be used by a licence holder. A council should also specify the number of

such stalls, tables, vehicles, etc., which may be used. The purpose of this provision is to permit a council to control the space being occupied by a trader on a particular site and to ensure that the trading is not causing undue nuisance, interference or inconvenience to persons or traffic;

- that any receptacle used in trading should bear the name of the licence holder and the licence number. In order to aid council officials in their work, the provision further requires these details to be displayed in a prominent position on the receptacle;
- the requirements for the storage of goods and receptacles. This condition applies during the period of trading and extends to the storage of goods, etc., after the close of trading. The conditions cover the arrangements to be made for storage of items to replenish stock during trading;
- details as to the trader's responsibilities in relation to rubbish, litter, etc., and the containers which are to be used to hold this until it is removed;
- the requirement that the trader avails of the licence to a reasonable extent. For example, where the number of requests for licences outweighs the available locations, it seems reasonable that traders who have been granted a licence should use it to as full an extent as possible; and
- the details regarding the payment of fees and charges.

b) Further conditions

The Act gives council a power to attach any further conditions it considers reasonable. The further conditions that have been agreed by Mid and East Antrim Borough Council (as of the date of this policy) are detailed for mobile, stationary and temporary licences in Sections 5, 6 and 7 of this document.

3.9 Revocation etc of Street Trading licences

Mid and East Antrim Borough Council may revoke a *stationary* or *mobile* licence at any time and not just at the date of renewal of the licence. In practice this is likely to happen when changes occur which may render an area no longer suitable for street trading or not suitable for trading in certain commodities.

Circumstances for revocation include:

- the location at which the stationary trader is trading has become unsuitable, for any reason
- the space in the street has become inadequate to permit trading without causing undue interference or inconvenience to persons or vehicles,
- the area/areas in which a *mobile trader* is trading are regarded as unsuitable for trading without causing undue interference or inconvenience to persons or vehicles,
- the licence holder is trading in a street which the Council subsequently decides by resolution should no longer be a designated street,
- the licence holder is failing to make use of the street trading licence to a reasonable extent and has offered no reasonable excuse for this,

- the licence holder made a statement which was determined to be false in a relevant detail
- because of misconduct or some other reason the licence holder is considered to be unsuitable to hold a licence,
- the licence holder has failed to pay fees or charges,
- the licence holder has persistently failed to meet the requirements set out for the storage of goods/equipment,
- the licence holder has persistently failed to comply with any of the conditions specified on the licence (ie failed to comply with two written warnings in respect of the same matter)

3.10 Variation of a licence (as an alternative to revocation)

The Act provides an alternative to revoking a street trading licence where a council decides the licence could be revoked because:

- the location of a street trading pitch of a stationary trader or the area in which a *mobile trader* is trading is no longer suitable or the space in which a stationary trader is trading has become inadequate;
- the council rescinded or varied a designating resolution to the effect that it is no longer appropriate for street trading to take place in that street or in the goods or services sold or supplied by that trader; or
- the licence holder is, without good reason, not using the licence to a reasonable extent

If any of the circumstances above apply, Council may, instead of revoking a licence, vary the conditions of that licence, at any time, by:

- reducing the number of days in a week or the number of hours in any day during which trading may take place,
- relocating the trader,
- restricting the range of goods or services supplied

3.11 Notice and Representations

Where Council proposes to refuse an application for a licence or intends to revoke or vary (or refuse to vary at the request of the licence holder), Council will give the applicant or licence holder advance notice of its intentions and invite representations.

Advance notice must be given where Council proposes to:-

- refuse an application for a licence other than on mandatory grounds,
- grant a licence but because the person did not make use of a previous licence to a reasonable extent, the grant of the licence is to be subject to certain other conditions,

- revoke a licence because it considers that any of the grounds specified above have been satisfied,
- vary the conditions on an existing licence,
- refuse to vary the conditions specified in a licence on application by licence holder.

Notification must be in writing and must set out all the grounds on which the proposed decision is based. It must also set out the right of the person affected to make representations on the proposed course of action, including the period during which representations should be made (this must be at least 21 days from the date of the notice). Representations must be considered before reaching a final decision. Council must write to the person affected giving the grounds on which its final decision is based, setting out the right of appeal against that decision.

3.12 Appeals

There is a right of appeal against:-

- any condition attached to the issue of a licence,
- the refusal of an application for Street Trading Licence other than where the refusal is based on mandatory grounds,
- the grant of a licence subject to certain other conditions because the person did not make use of a previous licence to a reasonable extent,
- the revocation of a licence,
- varying the conditions on an existing licence,
- refusing to vary the conditions specified on a licence.

Circumstances where there is no right of appeal

- Council's decision regarding the designation of streets in its borough,
- the rescinding or varying of a designating resolution regarding a street or the goods or services,
- the refusal of a licence application because of one of the mandatory grounds,
- the level of fees and charges determined by Council

Appeals must be lodged within 21 days from the date on which notice of the final decision of the Council is given. An appeal to a Magistrates' Court to be made by a notice under Part VII of the Magistrates' Court (NI) Order 1981. The appeal must be made to the Clerk of Petty Sessions for the district and copied to the Council.

A Magistrates' Court may come to any decision it considers appropriate and Council must bring that decision into effect. The Magistrates' Court Order allows an appeal to a County Court by any person affected by the decision of a Magistrates' Court and either the Council or the appellant may make use of this right.

Where the application for the renewal of a licence is refused or where an existing licence is to be revoked the existing licence must remain valid:

- until the end of a period of 21 days, wherein an appeal can be made,
- where an appeal is lodged within 21 days until a decision is given or the appeal is abandoned,
- where an appeal to renew a licence is successful, until the Council renews the licence.

3.13 Temporary Licences

Council may issue temporary licences where a full term licence is not appropriate eg to permit street trading for a limited period at special events such as festivals, fairs etc.

In granting a temporary licence, Council can authorise the holder to trade anywhere in the council borough or in any goods and services the council may choose.

A temporary licence can authorise trading in streets which have not been designated and can be granted for a period not exceeding 7 days. This provision means that a licence may only cover a consecutive period of days and not a number of separate days.

Council will only issue no more than 5 temporary licences to any one applicant in a year.

The restrictions on the frequency and duration of temporary licences represent a balance between the number of days when special events/occasions may occur and the need to prevent an unreasonable level of trading in an area which may not have been designated. Residents and business people in such areas will not be provided with an opportunity to make representations to the council about street trading being permitted in that area. It is considered, therefore, that the use of temporary licences in these areas should be restricted to a small number of events. It is also important that the holder of a temporary licence should not have an unfair advantage over the holder of a full-term licence who may only trade in designated streets.

Refusal of application for temporary licence

The mandatory grounds for refusing an application ie because the applicant is not an individual, because of the age of the applicant, or because trading would be unlawful, will apply equally to an application for a temporary licence. However, unlike a full term stationary licence, a temporary licence can permit trading in a street that is not a designated street or in goods or services not designated by Council.

Revocation of temporary licence

Council may revoke a temporary licence where the licence holder has failed to comply with any of the conditions on the licence following consideration of any representations made to it by the holder of the licence.

Appeal for refusal of temporary licence

Any person who is unhappy with the decision of Council to refuse an application for a temporary licence may appeal to a Magistrates' Court. The appeal must be lodged within 21 days from the date on which the decision of the council is given. The procedures for lodging the appeal and the action which is to be taken by the court and the council are the same as those applying to a full-term licence.

On hearing an appeal, a Magistrates' Court may come to any decision it considers appropriate and Council must, generally, bring that decision into effect. However, the Magistrates' Courts Order also allows an appeal to a county court by any person affected by the decision of a Magistrates' Court and either the district council or the appellant may make use of this right.

Seizure

It should be noted that, where trading is taking place under a temporary licence in a place or on a day not specified in that licence, any goods, stall, etc., may be seized by a council official or a police officer under the provisions of the Act.

3.14 Identification of street traders

All street traders are required to have their licences with them at all times when they are trading, and, on being asked by a council official or a police officer, to produce that licence for inspection.

3.15 Unlicensed street trading

The Acts provides that anyone engaging in street trading without a licence, trades at a different location, or on a day or time not specified in the licence or trades in a place or on a day not specified in a temporary licence is guilty of an offence which is punishable by a fine of to £1,000.

3.16 Seizure, forfeiture and compensation

Council officers may seize goods etc from persons where they suspect unlicensed trading has been taking place. Items seized will be returned to the owner unless action is taken to secure their forfeiture. The owner of the goods etc will be entitled to seek compensation if the goods were found to have been unlawfully seized.

3.17 Employment of assistants

Street traders may employ anyone to assist in the running of the business provided they are over the legal school leaving age. However if that employee fails to comply with the conditions of the trader's licence, the licence holder will also be held responsible.

3.18 Removal of receptacles

Council will remove any receptacle used by a street trader to a place of storage after trading has finished for the day if that trader has breached his obligation regarding the storage of receptacles. Where this occurs, council may charge the trader the cost of storage before the receptacle is returned, and if not claimed by the trader, may dispose of it as it wishes.

3.19 Licences per designated site

It shall be the policy of Council to issue one street trading licence for each designated street trading site.

3.20 Making use of licences

All sites will be monitored with a view of establishing occupancy of the site in regard to days/times as licensed. Such findings will be considered at the licence renewal stage with a view to allowing other traders to occupy the site on days/times not in use or to restrict trading days/times.

3.21 Transfer of licences

Street trading licences cannot be inherited, sub-let, sold on, or transferred.

3.22 Licence Conditions and Enforcement

Standard conditions will be attached to every street trading licence detailing the holder's responsibilities to maintain public safety, avoid nuisance and generally preserve the amenity of the locality.

Further conditions may also be attached such as the days and hours when street trading is permitted, etc.

It shall be the duty of the holder of mobile street trading licence to comply with all conditions attached to each licence, and all the provisions of the Act.

a) Breach of standard conditions

In most cases, a breach of the standard conditions specified in the legislation will constitute an offence subject to prosecution or fixed penalty notice and will be dealt with in accordance with the Council's Regulatory Generic Enforcement policy.

b) Breach of further conditions

Breaches of the further conditions created by Council, whilst not specific offences under the Act, may be regarded as grounds for revoking or non-renewal of a licence. Traders who breach any licencing condition will be provided with two written warnings after which a recommendation may be made to Council to revoke the licence for the remainder of the licenced period and/or refuse to renew a licence, having regard to the Council's Regulatory Generic Enforcement Policy.

Note: persons trading on the street without a licence will be subject of enforcement action in accordance with the Council's Regulatory Generic Enforcement policy. Under the Street Trading Act, our officers can also seize any property, goods, holders, equipment, stalls or vehicles if they have reasonable grounds to suspect that someone is trading illegally.

Illegal traders can be fined up to £1,000 and can have the seized goods destroyed.

3.23 Evaluation and Review of the Policy

This policy shall be reviewed on an annual basis by the Environmental Health Manager.

3.24 Section 75, Equality and Good Relations

Mid and East Antrim Borough Council is committed to meeting its obligations in relation to Equality and Good Relations under Section 75 of the Northern Ireland Act. In this regard this policy will be screened using section 75 guidelines and will be subject to Equality Impact Assessment if found necessary as a result of the screening process.

SECTION 4

4.1 Street Trading Fees

This section relates to the setting of discretionary level of fees under the Street Trading Act (NI) 2011.

The aim is to ensure that the setting of discretionary fees for street trading licences under The Street Trading Act (NI) 2001 is carried out in a consistent manner and includes all relevant factors.

The purpose of this section of the policy is to provide guidance on matters that should be considered when deciding fees for street trading licences.

Under Section 15 of the Street Trading (Northern Ireland) Act 2001, the Council may determine fees for the grant or renewal of a street trading licence; for the grant of a temporary licence; or for varying the conditions specified in a street trading Licence.

In determining such fees the Council may recover from the holders of licences such amounts as may be sufficient in the aggregate, taking one year with another, to recover any reasonable administrative or other costs in connection with its functions under the Act.

The Act restricts the maximum level of fee, to that required to cover the Council's costs in administering the scheme. Case Law ⁽¹⁾ has emphasised that Councils cannot charge for the cost of enforcing the requirements of the Act incurred against unlicensed activities.

The Application and Licence Fees will be reviewed as necessary or within a period of three years. In reviewing the scale of fees the Council will determine a fee which provides for cost recovery where possible.

(1) (R Hemming & others v Westminster Council)

4.2 Fee Structure

The following four elements have been included in the calculation of the proposed fee structure:

a) Designation/Rescinding of Streets

Costs associated with the review of the designation of streets which will be carried out every 3 years. The cost for designation process, including advertising, will be spread over 3 years and any additional costs accrued from intervening designations will be considered in the next 3 year review.

b) Review of Fees

The legislation sets out the administrative procedure for the review of fees which includes the publication of notices in newspapers.

c) Administration Costs

This factor includes costs for staff time for the administration and processing of a licence application.

d) Compliance Monitoring

Compliance monitoring costs consist of the cost of inspecting licensed traders throughout the term of their licence to ensure adherence to licence conditions. This cost does not include enforcement action taken against unlicensed activity.

4.3 Application and Licence fee refunds

In the event of an application for a street trading licence being refused or revoked, the applicant or licence holder will receive a partial refund (excluding all administration costs).

Refunds will be in accordance with the requirements of the Street Trading Act.

SECTION 5 GUIDE TO MOBILE STREET TRADING

Mobile Street Trading

Any mobile trader eg ice cream van or mobile shop, will require a street trading licence issued by Council in order to trade in Mid and East Antrim Borough.

Council may grant to a person a mobile street trading licence authorising him/her to go from place to place, **stopping for a maximum time 15 minutes**, for the purpose of trading in an area, or areas of the Borough.

The purpose of this section of the policy is to provide further guidance on matters which should be considered when deciding whether to grant or refuse an application for a Mobile Street Trading Licence within the borough of Mid and East Antrim.

Its aim is to provide, in so far as is possible, consistent decision making so as to develop and thereafter maintain public confidence in MEA Borough Council's performance of its duties.

Applications for a mobile trader's licence

MEA Borough Council will consider all applications for mobile trading within the borough on receipt of a completed prescribed application form. Applications for mobile licences will be accepted by Council at any point throughout the year. Successful applicants will be charged a fee on a pro rata basis for a part year if applicable. Annual renewal licences will be issued subsequently from 1st January for successful applicants.

Historically, mobile licences specified streets in which individual mobile vehicles could trade however, this process has been found to be unnecessarily prescriptive and costly to administer. Council no longer wishes to specify individual streets but rather open trading opportunities across the entire Borough, outside of town and village centres.

In order to ensure that mobile trading vehicles are safe, aesthetically appealing and add value within the Borough, Council require that the following minimum standards are met by applicants before a mobile street trading licence application can be processed, considered and issued.

An application will only be considered valid if the following minimum standards are met:

Minimum Standards for application
<p>1. All relevant Certification accompanies application</p> <p>All relevant certification has been provided along with the fully completed application form, and meets the required standards, namely;</p> <ul style="list-style-type: none"> • Gas safety certificate for all gas appliances, connections, flues etc associated with the vehicle/trailer dated within the last year (where applicable) • Public liability insurance (£5m) • Electrical safety certificate - periodic inspection certificate within the last 3 years for all vehicles/trailers which have an electrical system/electrically powered appliances including generators • Relevant MOT test certificate for any vehicle used in the trading activity. • Evidence that vehicle is in good repair and condition (ie submit photograph of Vehicle/trailer taken within the last year) • Must have a Food Hygiene Rating of at least 3 or above
<p>1. Access NI Basic Disclosure check for licence holder dated within the last year</p>
<p>2. Licence fee included with application</p>

Award criteria for a mobile licence

Council will consider all applications for mobile street trading (including renewals and variations) in accordance with the requirements of the Street Trading Act. The Act stipulates that Council is required to refuse an application under Section 8, Mandatory Grounds for refusing an application, and may refuse under Section 9 Discretionary grounds for refusing an application (see section 3.6 Mid and East Antrim Borough Council Street Trading Policy)

Each application will be considered on its own merits, and it is the duty of Mid and East Antrim Borough Council is to make sure that each mobile street trading licence application is fairly and objectively assessed and that all relevant factors are considered.

In addition to the mandatory and discretionary criteria, Council will also consider:-

- The safety of the public and any risks which may arise;
- The appropriateness and suitability of the street or part thereof and commodities in relation to the location;

- The potential adverse impact that Street Trading may have upon the character and appearance of the area in question;
- The extent to which the sale of the commodity will provide a useful service to the area;
- The potential environmental effects such as additional litter, cleansing requirements, odour and noise;
- The potential for the proposed said mobile Street Trading Licence to have an adverse effect in terms of anti-social behaviour and public disorder;
- Previous complaints arising from any street trading activities in the area or part thereof;
- Any previous history of illegal trading or breach of any licence condition by the applicant;
- Any other statutory provision or relevant guidance which would be appropriate to consider.

Council also reserve the right to consult with

- (a) The District Commander of the PSNI in which the streets are situated;
- (c) The Department for Infrastructure as regards that Department's functions with respect to roads and regulation of road traffic;

in relation to suitability of applications received.

Further conditions for Mobile Street Trading

The Act gives council a power to attach any further conditions to a mobile street trading licence it considers reasonable. The following further conditions will form part of all mobile licences issued by Mid and East Antrim Borough Council;

1. An application for mobile street trading will be deemed valid only if it is in the approved application form, fully completed and accompanied by all requested documentation and payment of fees (see minimum standards for application above).
2. A trader must obtain a separate licence for each vehicle used for the purpose of mobile trading.
3. Mobile licences cannot be inherited, sub-let, sold on, or transferred.
4. A mobile trader must give notice in writing to Council where trading has ceased. The licence fee may be reimbursed on a pro rata basis subject to the exclusion of the administrative fee.
5. Mobile traders will not be permitted to trade within the following areas:-
 - Any designated site
 - Any town and village centres - see maps on Council website
 - Council land, unless by prior agreement
6. Mobile licence holders must not stop to trade in one place for longer than 15 minutes. The vehicle shall not return to the same street within **4 hours**.

7. For the purpose of enforcement, a mobile trader will be deemed to be stationary trading if the vehicle remains at the same location for more than 15 minutes.
8. Council will give notice to all existing mobile traders of the licence renewal deadline. All licence renewals will be required to be lodged with Council not less than **6 weeks** prior to the expiry of the existing licence.
9. A trader will be deemed to be not licensed should they fail to renew their licence prior to the expiry date of the previous licence.
10. Licences will be issued annually and will permit trading seven days per week from 12noon until 10pm. These times may be altered providing approval by Council.
11. All mobile licence holders must comply with the DOE(NI) Code of Practice on Noise from Icecream Van chimes etc 1982
12. Mobile trading will be permitted throughout the Borough of Mid and East Antrim provided the conditions specified within the licence are met.
13. Mobile trading will not be permitted in commodities such as hot food, or offer for sale or supply of any product which would have a detrimental effect on the surrounding area.
14. All vehicles used for mobile trading will be required to be registered by a Council Environmental Health Department to trade in such commodities being offered for sale.
15. Mobile street traders supplying food must maintain a current Food Hygiene Rating Score of 3 or above, and this must be displayed on the vehicle.
16. Traders selling tobacco products must be registered with Tobacco Register NI
17. All mobile traders will be subject to the strict adherence to the Highway Code.
18. All licence administration fees are non refundable
19. An application for a mobile licence may be refused or revoked if the applicant is found to be unsuitable to hold a licence by reason of having been convicted of a relevant offence, or for any other reason.

SECTION 6 GUIDE TO STATIONARY STREET TRADING

Stationary Street Trading

Designation of stationary pitches

Section 3 of the Street Trading Act allows Council to pass a resolution to designate specific streets in its area as being suitable for stationary street trading (special arrangements are provided for 'mobile traders' and those operating under a temporary licence).

The legislation prevents Council from granting a licence to permit street trading by stationary traders in any street which is not so designated. A designating resolution can also specify which goods or services may or may not be offered for sale in a designated street.

Mid and East Antrim Borough Council has designated a number of streets within the borough for the purposes of stationary street trading. The effect of this designation is that street trading is prohibited, subject to legal exemptions, without first obtaining a street trading licence from the council. Licences are issued annually.

The Council will maintain a map showing the location of designated trading pitches.

This map will be available on the council's website.

Council may rescind or vary any resolution (by passing further resolution) where Council regards that a street is no longer suitable for street trading. This requires notification of all affected existing licence holders and consider representations made.

The Council will review all designated areas for stationary street trading every 3 years.

Applications for a stationary street trading licence

Licences for stationary trading at designated sites are issued by Council on an annual basis. Existing stationary licence holders may renew their licence each year. The licence permits the trader to set up daily in a designated pitch and trade for prescribed times during the day with the unit removed overnight.

There is one trading pitch per designated site, and where the pitch is awarded, the successful applicant may renew his application each year for the pitch.

When a stationary pitch becomes vacant, interested traders may submit an application and where more than one is received, the pitch is awarded on the basis of qualifying criteria (see below; application process for new or existing vacant stationary pitches).

Designation of New stationary pitches

The Council may, from time to time identify new pitches for street trading and will consider applications for new pitches. If at any time during a calendar year, a request is received for an area to be considered for designation as a stationary street trading location, this will be normally be considered at the next annual review, or twice a year where there is considerable demand.

In determining whether to create a street trading pitch the Council will have regard to:

- An overriding public interest
- Any effect on road safety, either arising from the siting of the pitch, or any loss of amenity caused by traffic, noise or smell,
- Any potential obstruction of pedestrian or vehicular access
- Any obstruction to the safe passage of pedestrians
- The safe access and egress of customers and staff from the pitch and immediate vicinity
- Any land owner's permission which may be required from a private landowner or a relevant Council service

The duty of the Council is to make sure that each location is fairly, independently and objectively assessed and that all relevant factors are considered with each case considered on its own merits.

The Council will carry out a public consultation in relation to the designation process. Council will seek also written observations from:

- Occupiers of premises immediately adjacent and opposite
- Existing holders of stationary licences in the immediate area
- PSNI
- DfI (Roads Service)
- Relevant Council services eg Property Services, Regulatory Services
- A relevant landowner
- Any other stakeholder considered by the Council's licencing team to be relevant

Award criteria for a new or existing vacant stationary pitch

When a new or existing pitch becomes available, the Council will publish details of the vacancy twice a year on 1st Monday in March and 1st Monday in September inviting applications for the pitch. The details will be published on the Council's website.

Selection criteria will then be used to determine the successful applicant where multiple applications are received. Where there is only one applicant, the pitch may be awarded provided the minimum standards (Stage 1) are achieved.

The following pre-set criteria have been developed to determine applications, where multiple applications for a particular site are received.

The selection process is a two stage process, and only those applicants who meet stage one will proceed to stage two.

Only applicants who meet stage one will proceed to stage two

Stage 1

Minimum Standards for application

1. All relevant Certification accompanies application
All relevant certification has been provided along with the fully completed application form, and meets the required standards, namely;

- Gas safety certificate for all gas appliances, connections, flues etc associated with the vehicle/trailer dated within the last year (where applicable)
- Public liability insurance (£5m)
- Electrical safety certificate - periodic inspection certificate within the last 3 years for all vehicles/trailers which have an electrical system/electrically powered appliances including generators
- Evidence that vehicle is in good repair and condition (ie submit photograph of Vehicle/trailer taken within the last year)
- Must have a Food Hygiene Rating for 3 or above if selling food

2. Access NI Basic Disclosure check for licence holder dated within the last year

3. Licence fee included with application

Stage 2

Additional criteria	Score weighting
Food Hygiene Rating Scheme <ul style="list-style-type: none"> • Score 5 • Score 4 	<ul style="list-style-type: none"> • +2 • +1
Applicant's residential address is within Mid and East Antrim Borough	+2
Any previous history of illegal trading or breach of any licence condition	-3
Substandard Vehicle appearance (cleanliness and repair of exterior not of the desired standard)	-2
Health related Added value Health related added value are those initiatives or activities which are consistent with the Council's Community Plan objective to "improve health, including the wider factors and causes of ill health"	+2

The applicant with the highest score will be awarded the pitch.

In the event of a tie in scores in stage 2 then a process of random selection will be used to choose successful applicant.

Further conditions for Stationary Street Trading

The Act gives council a power to attach any further conditions to a mobile street trading licence it considers reasonable. The following further conditions will form part of all stationary licences issued by Mid and East Antrim Borough Council;

It shall be the policy of Mid and East Antrim Borough Council that;

1. An application for stationary street trading will be deemed valid only if it is in the approved application form, fully completed and accompanied by all requested documentation and payment of fees (see minimum standards for application above).
2. A trader must obtain a separate licence for each vehicle used for the purpose of stationary trading.
3. Stationary licences cannot be inherited, sub-let, sold on, or transferred.
4. A stationary street trader must give notice in writing to Council where trading has ceased. The licence fee may be reimbursed on a pro rata basis subject to the exclusion of the administrative fee.
5. Council will give notice to all existing stationary street traders of the licence renewal deadline. All licence renewals will be required to be lodged with Council not less than **6 weeks** prior to the expiry of the existing licence.
6. A trader will be deemed to be not licensed should they fail to renew their licence prior to the expiry date of the previous licence.
7. Licences will be issued annually and will permit trading on dates and times deemed appropriate for the specific site.
8. All vehicles/trailers used for stationary street trading will be required to be registered by a Council Environmental Health Department to trade in such commodities being offered for sale.
9. Stationary street traders supplying food must maintain a current Food Hygiene Rating Score of 3 or above, and this must be displayed on the vehicle.
10. Traders selling tobacco products must be registered with Tobacco Register NI
11. All stationary street traders will be subject to the strict adherence to the Highway Code.
12. All licence administration fees are non refundable
13. An application for a mobile licence may be refused or revoked if the applicant is found to be unsuitable to hold a licence by reason of having been convicted of a relevant offence, or for any other reason.

SECTION 7 GUIDE TO TEMPORARY STREET TRADING

Temporary Street Trading Licence

The Council may issue a temporary licence for trading on the street where a full-term (mobile or stationary) licence may not be appropriate, for example, for at special events such as festivals, fairs etc.

Note: this is a separate activity to trading in council owned/controlled car parks for which a separate process exists; this is managed by Parks and Open Spaces department of Council along with Council's Procurement Services.

Council is given the discretion to allow temporary street trading at any place or any street within the Borough and in such manner as appears appropriate to the council.

The temporary licence may remain in force for 7 consecutive days and no more than 5 licences may be granted to an individual during any period of 12 months.

The restrictions on the frequency and duration of temporary licences represent a balance between the number of days when special events/occasions may occur and the need to prevent an unreasonable level of trading in an area which may not have been designated.

Residents and business people in such areas will not be provided with an opportunity to make representations to the council about street trading being permitted in that area. It is considered, therefore, that the use of temporary licences in these areas should be restricted to a small number of events. It is also important that the holder of a temporary licence should not have an unfair advantage over the holder of a full-term (stationary) licence who may only trade in designated streets.

Types of events

a) Repeat events

Within Mid and East Antrim there are a range of repeat events which have traditionally attracted requests to Council for temporary street trading licences. These include Christmas light switch-on events, cultural parades/events etc.

Mid and East Antrim Borough Council has now identified a number of pitches within the borough's towns and villages for the purposes of temporary street trading at repeat events. This has been done in consultation with PSNI and DfI roads to ensure appropriateness of same.

The effect of this process is that street trading is prohibited at festival, fairs etc other than at pre-identified pitches for which a street trading licence will be issued by Council.

The Council will maintain a map showing the location of identified trading pitches.

This map will be available on the council's website.

b) One-off events

Examples of these types of event include Armed Forces Day or a Freedom of the Borough Event. These sorts of events attract applications for street trading in a wide variety of commodities. It is difficult to identify in advance the arrangements that may be appropriate in relation to street trading.

When an event is proposed, licencing staff from Council will work closely with PSNI and DfI Roads where appropriate along with the event organiser to identify, in advance, suitable pitch locations and retail offerings for the purposes of temporary street trading at these one-off events.

As with repeat events, the effect of this process is that street trading is prohibited at one-off events other than at pre-identified pitches.

Note: all potential traders must apply for individual licences. It is not permissible for event organisers to apply on behalf of individual traders.

The Council will produce a map showing the location of identified trading pitches.

This map will be made available on the council's website.

Applications for a temporary licence at pre-identified pitches

Where there is competition for particular sites, it will be necessary to have a selection process to determine successful applicants. For some temporary events the Council can expect to get large numbers of applications for limited number of pitches.

When temporary pitches for an event become available, the Council will publish details of these on their website, inviting applications for the pitch.

In the first instance applicants will be limited to one application only for each event, with additional applications only invited where empty pitches remain.

Selection criteria will be used to determine the successful applicant where multiple applications are received. Where there is only one applicant for a particular pitch, the pitch may be awarded provided the minimum standards (Stage 1) are achieved.

The following pre-set criteria have been developed to determine applications for particular pitches, where multiple applications for a particular site are received.

The selection process is a two stage process, and only those applicants who meet stage one will proceed to stage two.

Only applicants who meet stage one will proceed to stage two

Stage 1

Minimum Standards for application
<p>1. All relevant Certification accompanies application</p> <p>All relevant certification has been provided along with the fully completed application form, and meets the required standards, namely;</p> <ul style="list-style-type: none">• Gas safety certificate for all gas appliances, connections, flues etc associated with the vehicle/trailer dated within the last year (where applicable)• Public liability insurance (£5m)• Electrical safety certificate - periodic inspection certificate within the last 3 years for all vehicles/trailers which have an electrical system/electrically powered appliances including generators• Evidence that vehicle is in good repair and condition (ie submit photograph of Vehicle/trailer taken within the last year)• Must have Food Hygiene Rating of at least 3 or above if selling food
<p>2. Access NI Basic Disclosure check for licence holder dated within the last year</p>
<p>3. Licence fee included with application</p>

Stage 2

In the event of more than one application for a particular pitch or more applicants than pitches available, the successful applicant(s) for each pitch will be chosen by a random selection process.

Further conditions for Temporary Street Trading

The Act gives council a power to attach any further conditions to a mobile street trading licence it considers reasonable. The following further conditions will form part of all temporary licences issued by Mid and East Antrim Borough Council;

1. Mid and East Antrim Borough Council will consider applications, in writing on the prescribed form, to permit temporary street trading at pre-identified pitches special events held within the Borough. Whilst no prescriptive definition of special event will be provided it is accepted that events such as the Mayors Parade, Christmas Light Switch-on Events, Festival and Civic Events, Community organised events and Cultural Parades/Events will be within this definition.
2. Without prejudice to its right to consider the broad definition of a special event, the Council (in consultation with interested parties) may consider applications to permit temporary street trading outside of this broad definition in order to add colour, ambience, novelty and/or tradition in particular locations and during seasonal periods.
3. Applications for temporary street trading licences must be received by Council not less than **6 weeks** before the date of the first day of the proposed special event/trading date.
4. A temporary licence shall remain in force for such period, not exceeding 7 days, as may be specified in the licence.
5. A temporary licence will be subject to such conditions as Council may specify in the licence and as set out in Temporary Street Trading Licence criteria.
6. Temporary trading will not be permitted outside of the allocated times specified in the licence.
7. Council will grant no more than five temporary licences to an applicant during any one year period.
8. All stalls/vehicles/trailers used for temporary street trading will be required to be registered by a Council Environmental Health Department to trade in such commodities being offered for sale.
9. It shall be the policy of MEA Borough Council that a trader must obtain a separate licence for each stall/vehicle/trailer used.
10. Council retains its right to amend or replace this policy at any given time.
11. All licence application administration fees are non-refundable
12. Temporary licences cannot be sold on, sub-let or transferred
13. An application for a temporary pitch may be refused or revoked if the applicant is found to be unsuitable to hold a licence by reason of having been convicted of a relevant offence, or for any other reason.