



STREET TRADING POLICY

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1.0 Foreword

This policy sets out Durham County Council's (the Council) requirements for street trading. It details and describes our roles and responsibilities in relation to the administration and regulation of street trading activities within the County of Durham.

The street trading legislation, Section 3 together with Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (often referred to as the Street Trading Code), was adopted by the Council in December 2011. The development of a single, countywide street trading policy and necessary administrative and regulatory processes and procedures took place, culminating in a public consultation exercise and the eventual adoption of the policy by the Council.

In April 2015 the Council approved this policy for the control of street trading in County Durham through the adoption of the street trading code under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982. This policy will apply to all street trading activities within controlled or designated areas of County Durham.

The aim of the policy is to ensure that we deal with applications, licences, consents and prohibitions in a consistent, fair and proportionate way and that we will consider each application on its own merits. Subject to this policy we will have regard to the individual circumstances of particular cases as is necessary for the proper exercise of our functions.

We recognise the valuable contribution that street trading can make to communities, culture and the local economy. We also understand the service that street traders can provide to residents of the County, some of whom are unable to travel to centralised shopping centres and districts. Street trading can also provide people with a flexible way of working, to meet the demands of the public where and when that demand arises. Street trading can also add to the richness of Durham County's vibrant street environment.

However, we recognise that problems may arise in situations where individual vendors don't pay proper regard to their location and street trading can create undesirable and unnecessary situations such as obstructions in the street, thereby compromising the safety of pedestrians. Furthermore, certain types of trading in the street may not complement the character of the surroundings.

Uncontrolled street trading activities can also result in unnecessary littering, unreasonable disturbance nuisance to persons in the vicinity and can have a detrimental effect on the amenity of town centres and other neighbourhoods. Excessive numbers of street traders in particular areas can also lead to elevated risks to public safety, in particular in relation to traffic and parking.

It is our intention that the application of this policy, together with the proper application of street trading laws in a consistent, fair and proportionate way, will benefit the people who live, work and visit areas of the County.

We will monitor and periodically review this policy and we will apply it in a manner which is consistent with other Council policies.

2.0 Purpose and objectives of the Policy

The purpose of this policy is to help to create and maintain a commercial setting in County Durham that

- complements trading from fixed premises
- supports the provision of business diversity and consumer choice; and
- is sensitive to the needs of both local residents and visitors alike.

Our policy seeks to defend and where possible improve the character, ambience and safety of the County's trading environments. It highlights the requirements and standards expected of street traders working and operating within County Durham.

2.1 The objectives of this street trading policy are as follows:

- To help protect public health and safety
- To help safeguard public places that may be adversely affected by undesirable or uncontrolled street trading activities
- To harmonize and unify the regulation and control of street trading within the County of Durham
- To help prevent unreasonable disturbance and public nuisance resulting from street trading activities.
- To promote fair trading practices and consumer choice.
- To support retail opportunity and economic growth and development.

2.2 In developing the policy, we considered the legal requirements of the Local Government (Miscellaneous Provisions) Act 1982 (the Act) and our duties under:

- (a) Section 17 of the Crime and Disorder Act 1998 to take all reasonable steps to reduce crime and disorder.
- (b) The Regulators' Code (set out under the Legislative and Regulatory Reform Act 2006) not to impede economic progress by the regulations set out and to particularly consider the impact of regulations on small businesses.
- (c) The Provision of Services Regulations 2009 to ensure requirements are non-discriminatory justified by an overriding reason relating to the public interest, proportionate to that public interest objective, clear and unambiguous, objective, made public in advance, transparent and accessible.

2.3 In relation to the internal and external exchange of Information, we will exercise our powers under section 115 of the Crime and Disorder Act 1998 to exchange data and information with the Police and other partners to fulfil our statutory objectives on reducing crime in the area.

Details of applications and objections referred to the Licensing Committee for determination will be published in reports that are made publicly available in accordance with the Local Government Act 1972 and the Freedom of Information Act 2000.

Names and addresses of objectors will not be disclosed or published in public reports in accordance with the 1982 Act although such details will be made available to Councillors on the Licensing Committee. We will not disclose the names and addresses of objectors to applicants without the consent of those who have made objections.

3.0 What is street trading?

Street trading means selling, exposing or offering for sale any article in a street. The term 'street' includes any road, footway, beach or other area to which the public have access without payment. Street trading activities may include hot and cold food vendors, vendors of non-food products who trade on static pitches or fixed locations from any vehicle, a stall, barrow, trailer, or any other moveable construction. The Council can issue 'mobile' consents to the owners of vehicles used as ice cream vans, mobile shops, sandwich vendors etc.

As the definition of "street" includes any land to which the public have access without payment, private land to which the public has free access may also be included. Street trading law and associated policy therefore can extend to events off the highway that are conducted on private premises.

4.0 Street trading activities exempt from street trading law

Certain forms of street trading are outside the legal controls. There are a number of lawful exemptions removing certain activities from the need to obtain a street trading licence or consent including the following:

- Trading by a person acting as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871 Pedlars are itinerant traders who travel and trade on foot. Certificated Pedlars are free to trade without consent or licence and may even trade in prohibited streets;
- Anything done in a market or fair the right to hold which was acquired by virtue of the grant (including a presumed grant) or acquired or established by virtue of an enactment or 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 newsvendor, including sellers of newspapers, magazines, periodicals etc. If such vendors trade in other items in addition to newspapers etc. the exemption is lost;
- Trading which is carried out at premises used as a petrol filling station; or is carried on at premises used as a shop or in a street adjoining premises so used and as part of the businesses of the shop;
- Selling things, or offering or exposing them for sale, as a roundsman. (Roundsman include milkmen, coalmen etc. who have established or recognized customers in the street);
- The use of trading under Part VIIA 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 VIIA of the Highways Act 1980;

- The doing of anything authorized by regulations made under section 5 of the Police, Factories, and etc. (Miscellaneous Provisions) Act 1916.
- Trading on private land may under certain circumstances not need consent for example, when the public do not have free access (where a fee for entry onto the land is demanded by the organizer).
- Trading in and around shops in a street adjoining premises used as a shop where the business is part of the business of the shop. This does not mean that a trader who positions a stall or display outside his or her shop on the highway is lawful as they may cause an obstruction. Permission to place such items on the highway should always be obtained from the Highways Authority in advance.
- Trading in a street which is not designated as a Licence, Consent or Prohibited Street by the Council. Such undesignated streets are not covered by this policy and the provisions of the street trading legislation, even if adopted by the Council do not apply unless and until a particular designation has been passed in the correct manner.

5.0 Street trading controls and authorisations

The Council is permitted to apply the measures contained within Section 3 and Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (often referred to as the Street Trading Code). Where the 'code' applies, it is an offence to engage in unlicensed street trading (trading without a licence, street trading consent or to trade in a prohibited street).

The law allows councils to 'zone' areas for street trading control purposes. For example, zoning permits a council to prohibit street trading or to confine it to certain designated areas. Under paragraph 2 of Schedule 4 of the 1982 Act, we may designate any street in the County according to the following categories:

- 5.1 Prohibited Streets** – if a street is designated as a prohibited street, all street trading within that street is prohibited.
- 5.2 Consent Streets** – designation of a street as a 'consent street' prohibits street trading in such a street without the consent of the Council. This system of control gives the Council more extensive, discretionary powers than is the case for street trading licences (see 5.3). the consent system was designed to regulate itinerant traders including those that operate from vehicles or barrows and in practice will most often apply to traders selling from vehicles. It is a more stringent system than the quasi-judicial one applicable to street trading licences.
- 5.3 Licence Streets** – The Council may alternatively designate a street as a 'licence street'. This has the effect of prohibiting street trading in that street unless the trader obtains a licence granted by the Council. The licensing system was intended to apply to those who trade from a fixed position including a stationary barrow, cart or stall.

It is important to note that a trader who disregards the designations and trades without permission commits an offence punishable by a fine.

6.0 The designation of streets for streets trading purposes

The designation of streets will be made by resolution of the full council following public consultation and advertising of the proposals in accordance with the provisions of the code. The process for the designation of streets is shown in Annex I.

7.0 Street trading application processes.

Anyone wishing to trade from a street in a designated area will be required to make an application to the Council. The process for applying for street trading authorisation is shown in Annex C.

7.1 Street trading Licences

A licence grants a conditional permission to trade. A licence will be valid for a maximum of 12 months.

Licences will be issued to specified individuals. Licence holders may employ trading assistants however, there is an obligation on all licence holders to trade in person and we may revoke a licence if the licence holder without reasonable excuse fails to trade personally to what the Council would consider a reasonable extent.

Licences will specify “**principal terms**” such as the street or streets in which we permit trading and the times at which this is so. Licences will also specify the class or classes of goods that traders are entitled to offer for sale. If we only permit trading in a particular place in a street, the licence will stipulate this and we will identify the permitted trading location.

In addition, we may also impose other ‘**subsidiary**’ conditions on the licence holder if it appears reasonable for us to do so. These subsidiary terms may include for example conditions relating to the size and type of stall, identification of the licence holder, the prohibition of the leaving of trade refuse and litter etc.

Traders should also be aware that there is a requirement to obtain a premises licence or a Temporary Event Notice under the Licensing Act 2003 should they be selling alcohol at any time or providing late night refreshment after 11.00 pm.

A licence does not confer an absolute or indisputable right to trade. If it is resolved by the Council that a licensed street becomes a prohibited street, the street trading licence will cease to be valid once the re-designation of the street takes effect.

We will grant an application for a street trading licence or the renewal of an existing licence unless we are satisfied that there are reasonable and satisfactory grounds for refusal. In some instances, even if such grounds for refusal do exist, we may still grant the licence but subject to special terms or conditions.

7.1.1 Appeals against the refusal of a street trading licence.

We will always serve a notice specifying the grounds on which the decision to refuse a street trading licence application might be based. We will make any applicant or licence holder aware of the reasons for refusal and we will give them the opportunity to make representations on this matter to us in advance of any statutory appeal.

If we refuse either to grant or to renew a street trading licence, any person aggrieved may appeal to the magistrates court against the decision so long as the reason for the decision falls within one of the categories designated under paragraph 3 (6) (d) – (g) of the Act.

There is no right of appeal where refusal is based on grounds in 3 (6) (a) – (c). of the Act. Proceedings by way of judicial review are the only means available by which refusal on these grounds may be challenged.

A right of appeal must be exercised within 21 days of the date when the decision to refuse a licence was notified to the applicant or licence holder.

7.1.2 Variation of the terms of a street trading licence

We may vary the terms of a licence when a trader applies to renew a licence. If the change affects one or more of the ‘principal’ terms of the licence the variation will only take place following the use of the notice procedure referred to above. We may vary a ‘subsidiary’ term at any time.

We will not reach a final decision on any variation of a principal term until a trader has actually made representations or has not exercised the right to do so within the permitted period. If a trader has replied asking to be heard on the matter, we will not proceed until representations have actually been made or, if they have not, until a reasonable period has expired without the trader exercising his or her right.

7.1.3 Appeals against variations of street trading licences

A right of appeal must be exercised within 21 days of the date when the decision to vary the street trading licence was notified to the applicant or licence holder.

7.1.4 Revocation of street trading licences

Subject to the statutory notice procedure, we may at any time revoke a street trading licence on one or more of the grounds listed in Para 5 (1) of the Act.

7.1.5 Appeals against the revocation of a street trading licence

A right of appeal to the magistrate’s court against the decision of a Council to revoke a street trading licence, provided the grounds for revocation are only those given in Para 5 (1) (b) to (d) of the Act. Judicial review provides the only means of challenging a revocation on the ground of insufficient space.

An appeal must be commenced within 21 days of the date on which the trader was notified of the Council's decision to revoke an existing licence.

7.2 Street trading consents

The grant of a street trading consent is a matter that falls within our discretion. Consent may be granted if we think it fit and proper to do so provided that:

- The applicant is not under 17 years of age, or
- The application does not relate to any trading on the highway in relation to which a control order has been made.

In contrast to the provisions of regulation the grant of licences, there are fewer limitations on the grounds on which we may refuse an application and we are entitled to have regard to matters that we consider relevant, subject only to the requirement that we must act reasonably.

We have prescribed the information that applicants must supply and which we will take into account.

We will notify applicants for street trading consents of the substance of any objections to the granting of consent and we will give them the opportunity to respond to those objections. We will fully consider such representations and in certain cases, this *may* be by way of an oral hearing but in most cases, written representations from the applicant will suffice.

We may attach such conditions to the street trading consent as we consider necessary and in particular, conditions designed to prevent obstruction of the street, danger to those using it, crime and disorder and nuisance or annoyance. In relation to the prevention of annoyance, conditions may address any effects of street trading on the neighbourhood that might fall short of a nuisance in law.

We may exercise the power to attach conditions to the consent when we grant the consent or when it is renewed and traders operating under consents issued by us may be subject to different terms on renewal in comparison to previous consents.

We may also vary the conditions of a street trading consent at any time but are bound by the general duty to act fairly and reasonably when exercising this power.

Unless the consent stipulates to the contrary, its holder cannot trade from a van or other vehicle or from a stall, barrow or cart. We will expressly permit such trading however, the consent may be conditional on the holder obeying restrictions as to the places in which he or she can trade and the times at which trading may take place.

7.2.1 Revocation of street trading consents

We may revoke a street trading consent. This may be for a variety of reasons such as non-compliance with conditions, non-payment or because other agencies such as the utility companies require access to the trading location.

Street traders do not benefit from any statutory procedural safeguards before we revoke consents. If consent is revoked, there is no statutory right of appeal against the decision other than judicial review. In the absence of statutory procedures, we will observe the rules of natural justice before we will impose a revocation and we will treat the consent on this basis as an existing privilege.

Following a revocation, the person or company issued with the street trading consent shall have no claim against the Council.

7.2.2 Appeals relating to consents

No right of appeal to the criminal courts exists in respect of a refusal, revocation or variation of a street trading consent. We will exercise discretion in these matters that are subject only to the principles exercised by the courts in judicial review proceedings.

8.0 Non-established markets

Markets that have not been established (see glossary) are not exempt from street trading law. By agreement with the organiser, the Council may issue trading consent to the person organising the non-established market. In the absence of such an agreement, each individual trader will be required to apply for consent. This policy is aimed at promoting the economy and encouraging more traders to attend.

When a single consent is issued to a market organiser to cover a number of traders, the following categories will apply:

- Category 1 – Up to 10 traders
- Category 2 – Between 11 and 30 traders
- Category 3 – Between 31 and 50 traders
- Category 4 – Between 51 and 70 trader
- Category 5 – Over 71 traders

The fees and charges associated with these categories are available on the Council's website.

In such cases it is expected that the organiser will have the necessary permissions from the landowner for the use of the land.

As there will be an identified organiser of the market, who will be considered responsible for its delivery, management and supervision of stall holders, the Council will not require DBS disclosure from each individual street trader. When this occurs it will be expected that the organiser has regard to the

requirements of this policy, in particular Annex H Guidelines on the Suitability of Applicants, and ensures that each trader is suitable based on these requirements.

9.0 General Presumptions

There will be a general presumption that we will normally refuse street trading consents for the following:

- Street trading in consent areas involving the sale of takeaway foods close to schools and other children's educational facilities
- Individual applications for street trading consents in Durham City Centre and some market town locations on non-market days unless the trading forms part of an organised event. Such locations have special historic, cultural and public interest and the Council considers that they require a greater level of protection and control
- A street trading authorisation (licence or consent) will normally be refused where an applicant indicates that they wish to sell New Psychoactive Substances (NSP) commonly referred to as "Legal Highs". With regard to an existing street trading authorisation, where evidence is received that NSP's are being sold the authorisation will be reviewed which may result in its revocation or the refusal of any future 'renewal' application by the Council.

9.1 Planning consent and street trading - In developing a uniform approach to the regulation of street trading, Licensing Services consult with DCC planning services on street trading applications. If the response is that planning permission is needed, this aspect will be brought to the attention of the applicant. It will be the applicant's responsibility to comply with any existing or future requirements under planning policy or legislation. Should a street trading permission be granted and subsequently, relevant planning permissions are refused by the Council, the street trading application fees and any associated charges will not be refunded to the applicant.

10.0 Fees and charges

Fees and charges will be set and reviewed annually. Such fees will be set as we reasonably consider will cover the total cost of operating the street trading scheme.

We may determine different fees for different types of licence or consent, having regard to such matters as:

- The duration of the licence or consent
- The street in which trading is authorised

We also have the power to impose 'charges' under paragraph 9 (6) of the Act. These are charges for any particular services provided to traders by the Council. The charging component of the fees is concerned with the recovery of reasonable costs associated with services to traders including the collection of refuse, the cleansing of streets and will be incorporated into the fees.

Enforcement costs associated with authorised traders are included within fees and charges. It should also be noted that the fee structure does not include any rates which may be payable. The onus/liability is on the consent holder for the payment of rates when/where applicable.

10.1 Non-fee paying Street trading activities

Fees will not ordinarily be required for the following events or activities:

- A. Sales of articles by householders on land within the curtilage of their homes (yard or garden sales);
- B. Non-commercial or charitable activities and events

Events that fall within category A for which fees are not payable will also be exempt from the application process.

10.2 The issuing of licences and consents and designated pitches

Where a designated “pitch” system is in operation and an existing or new pitch becomes available, we will normally publish a notice inviting applications for that pitch.

Authorisations may be granted for short periods for the purpose of organised street markets, events, promotions and for mobile street artists. Normally, authorisations will be issued for block periods and we will not normally permit traders to specify set days of the week that they wish to trade.

Existing traders and prospective traders will normally be required to pay all fees for authorisations in full in advance subject to exemptions (see 10.1). Failure to make payments may result in us revoking or refusing to renew an authorisation.

Any person granted a street trading authorisation should be aware that it might be necessary for the Council to clean and maintain pavements, verges or the highway within the area.

There may be times when a permitted area will be unavailable due to utility, maintenance or construction. This is a normal function of the Highway Authority and utility companies and therefore will not be subject to compensation although we will make reasonable efforts to identify an alternative trading site during such occasions.

A member of the Licensing Services team in consultation with other appropriate Council Officers will normally determine uncontested applications. Where the Licensing Manager or other designated officers decide that they are unable to determine an application, the Licensing Committee may determine it.

11.0 Offences

The adopted street trading legislation is statutory in nature. There are criminal sanctions available for street traders in breach of obligations imposed by the law.

The following are street trading offences:

- Engaging in street trading activities in a prohibited street
- Engaging in street trading in either a licence or a consent street without the appropriate authorisation granted by the Council
- Contravention of any of the principal terms of a street trading licence
- Breach of any of the conditions included in a consent in relation to the time and place in which trading is permitted
- Trading as a consent holder from a stationary van, cart, barrow or other vehicle unless permission has been granted
- Trading as a consent holder from a portable stall unless permission has been granted to do so
- Knowingly making a false statement in support of a licence application

11.1 Enforcement

All traders are required to take all reasonable precautions and exercise all due diligence to avoid the commission of any offences.

Licensing enforcement staff will act fairly and consistently when enforcing the provisions of the Street Trading Scheme. The Council's policy on enforcement is available on the Council's website.

A highway authority has the power to remove obstructions from the highway and so may remove stalls or trestles or any other structures used for trading which cause an unlawful obstruction.

Persons trading without authorisation and not subject to exemptions (see 4.0) will be the subject of pro-active enforcement action in accordance with our policy on enforcement.

In general, the Licensing Services Enforcement Team will take the lead role on the investigation and, where appropriate, the prosecution of unlawful street trading.

Licensing Services will work with the police and other enforcing authorities to provide for the targeting of agreed problem or high-risk areas and issues. A lighter touch will be applied to those Consent Holders that are shown to have well managed and maintained operations.

In cases where action of a more formal nature is considered appropriate, the key principles of consistency, transparency and proportionality will be applied.

11.2 Conditions attached to authorisations for street trading

The Council will normally apply standard conditions to street trading authorisations. The standard conditions listed in Annex G are not exhaustive and other conditions may be added to individual consents where appropriate. The standard conditions relate to public safety, public nuisance and amenity of localities.

It will be necessary for street traders and prospective street traders to provide us with evidence that they have obtained public liability insurance to the minimum value of £5 million and that they have registered their business with the Council if food sales are proposed. Applications will not be considered without this evidence.

Street traders may be liable for any damage caused to the verge, pavement, highway or any other item of street furniture caused through the operation of his/her business.

11.3 Street trading sites, locations and pitch assessments

If necessary potential 'pitch' locations may be identified and made available for street trading. In these circumstances, only applications for the designated pitches will be accepted. We will however be receptive to proposals wherever possible.

In determining whether to grant a particular street trading consent to the following will be considered:

- any adverse effects on road safety, either arising from the siting of the pitch/activity or from customers visiting or leaving
- any loss of amenity caused by noise, traffic or smell
- existing Traffic Orders e.g. waiting restrictions
- any potential obstruction of pedestrian or vehicular access and/or access to shops
- any obstruction to the safe passage of pedestrians
- the safe access and egress of customers and staff from the pitch and immediate vicinity (including adequacy of lighting)
- disabled access
- any relevant or significant implications and conflicts with nearby shops and/or businesses
- suitability for the particular varieties of street trading and activities

11.4 The nature and characteristics of trading activities and trading times.

Street trading hours will normally mirror those of shops in the immediate vicinity. In the case of hot food takeaways, trading hours will be determined on a pitch-by-pitch basis.

The design and appearance of the stall, barrow, van or cart etc. will be considered as part of the application process.

11.5 Other relevant legislation

In addition to conditions attached by us, applicants should always ensure that they comply with the requirements of any other relevant legislation, which may influence their business.

12.0 Changes to street trading policy

We reserve the right to amend this policy and its appendices from time to time, following proper consultation where appropriate. If you have a hard copy of this document, to ensure that it is current, please contact the Licensing Services section or refer to the Council's website. If you have any comments as regards this policy, please do not hesitate to contact us.

13.0 Glossary of Terms

“Authorised Officer”	An officer of the Council authorised by it to act in accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1982.
“Consent”	Consent to trade on a designated street granted by the Council pursuant to paragraph 7, schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
“Consent Holder”	The person, company or organisation to whom the consent to trade has been granted by the Council
“Consent Street”	A street in which street trading is prohibited without the consent of the Council
“Council”	Durham County Council
“Licence”	A licence to trade on a designated street granted by the Council pursuant to schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
“Markets”	A market is defined as a concourse of buyers and sellers.
“Non-established markets”	These are markets that have not been established in law either by charter, prescriptive rights or by statute. They are not exempt from street trading legislation.
“Street”	Any road, footway, beach or other area to which the public have access without payment.

Annex A Useful contacts

Contacts	Telephone	Email
Licensing Services	03000 261016	Licensing@durham.gov.uk
Highways	03000 261000	help@durham.gov.uk
Planning	03000 262830 03000 264891 03000 261060	DMCentralEast@durham.gov.uk dmnorth@durham.gov.uk dmsouthwest@durham.gov.uk
Food Hygiene	03000 261016	ehcp@durham.gov.uk
Pollution Control	03000 260995	pollution.control@durham.gov.uk
Police	0191 3752304 03000 261016	AHRU@durham.pnn.police.uk licensing@durham.gov.uk
City Centre Management	03000 261016	licensing@durham.gov.uk
Health and Safety	03000 261016	ehcp@durham.gov.uk

Annex B Equality, diversity and equal opportunities

This policy takes into account our Equal Opportunities Policy, which aims to achieve equality for all by removing direct and indirect discrimination and barriers on the following grounds:

- Age.
- Gender or transgender identity.
- Race, colour, national or ethnic origin.
- Disability including people with hearing or visual impairments, learning disabilities, mental illness and those living with HIV and AIDS.
- Religious belief, non-belief or other beliefs.
- Marital status, family circumstances or caring responsibilities.
- Sexual orientation.
- Income, employment status or housing circumstances.
- Membership or non-membership of trade unions or involvement in trade union activity
- Offending status
- Any other grounds not specified here, that are not justified. This is not an exhaustive list.

Annex C The application process – how to apply for a street trading consent or licence

Please refer to the flow chart on page 21. If you are applying for new street trading authorisation or you are wanting to renew an existing authorisation you must apply in writing, using the prescribed DCC application form. Application forms are available from the Council's website and from Licensing Services (see list of useful contacts in annex A).

Once you have completed and signed it, the application form should be returned to Licensing Services together with the following:

- The application/renewal fee (details of which can be obtained from the Licensing Section or from the Council's website), which will be amended from time to time.
- A location plan setting out any fixed location; or If mobile, a list of the streets/villages/areas where the proposed trading is to take place – the plan should meet the requirements set out in the application specifications.
- Three photographs of any van, other vehicle, cart, barrow, or stall from which street trading is intended to take place
- An endorsed passport sized photograph of the applicant and of any proposed assistants detailed in the application form
- A copy of the certificate of insurance covering third party and public liability risks to the level of £5 million
- Disclosure and Barring Certificate. All application forms must be accompanied by a basic disclosure as the Council must be satisfied that the applicant is a suitable person. Apply for a basic disclosure online via <http://www.disclosurescotland.co.uk>

The processing of street trading applications takes time as consultation with other interested parties and responsible authorities is required. It is anticipated that the application process will be completed within twenty-eight days of our receipt of any application but if it takes longer than this you will be advised of the delay.

Applicants will be notified of the outcome as soon as possible. It is important to note that you must not trade until and unless authorisation is granted. It would be an offence to trade in a consent street without the appropriate consent to do so.

Licensing Services personnel may refuse to accept any application that is not made in accordance with the above procedure or; which does not take into account the site assessment factors detailed in 9.4 or; is contrary to adopted street trading policy.

The following process shows how the Council determines applications for street trading consents:

- a) Copies of the application are sent by Licensing Services to the following consultees: Durham Constabulary including the Police Road Traffic Management section, Planning Department, Highways Department, Town and City Centre Management, Environment, Health and Consumer Protection (Food Safety, Health and Safety and Pollution Control Teams).
- b) Applications for fixed trading locations may require a site assessment to be undertaken. In such cases, following the site assessment a report and

accompanying recommendation is made, taking into account the factors set out at 9.4.

c) The application will then be assessed by the Licensing Services personnel having due regard to the DBS certificate and any consultation responses, which will take into account the criteria set out the annexes to this policy.

d) If the application is not opposed by any of the Consultees and is in accordance with all relevant policy requirements, Licensing Services will issue an authorisation to the applicant. The authorisation will include the standard and any other relevant conditions. The authorised trader will be required to take all reasonable and practicable steps to comply with all conditions.

e) Authorisation will normally be given in writing to the applicant within five working days of the determination of the application.

The consultation process

Within three working days of receipt, Licensing Services will send a copy of the completed application form and accompanying documentation to each of the consultees.

All consultees will be asked to provide representations in respect of street trading applications by written response to Licensing Services within 14 working days from their receipt of the application forms.

Following consultation Licensing Services will forward details of any responses to the applicant.

Representation to the Licensing Manager

If any of the consultees oppose an application or the application is not in accordance with the requirements of this policy, the applicant will be invited to respond in writing to the Licensing Manager. Further considerations and consultations with relevant parties will then take place. Following this, the Licensing Manager may then grant authorisation and impose any conditions as may be necessary.

As a result of further consultation, should opposition to the application remain, the applicant will be notified of the refusal. The Licensing Manager will notify the applicant of this decision within 10 working days.

Representation to the Licensing Committee

If an application is refused, upon the applicants request the Licensing Manager will arrange for the application together with any written representations received to be considered at a hearing before the General Licensing Committee.

The General Licensing Committee may grant consent and impose any conditions as may be necessary or refuse to grant consent. This process is set out in detail below.

The applicant will be notified of the committee's decision within fourteen-working days of the application being determined by the committee.

There is no statutory right of appeal against a decision made by the committee concerning street trading consents.

The application specifications

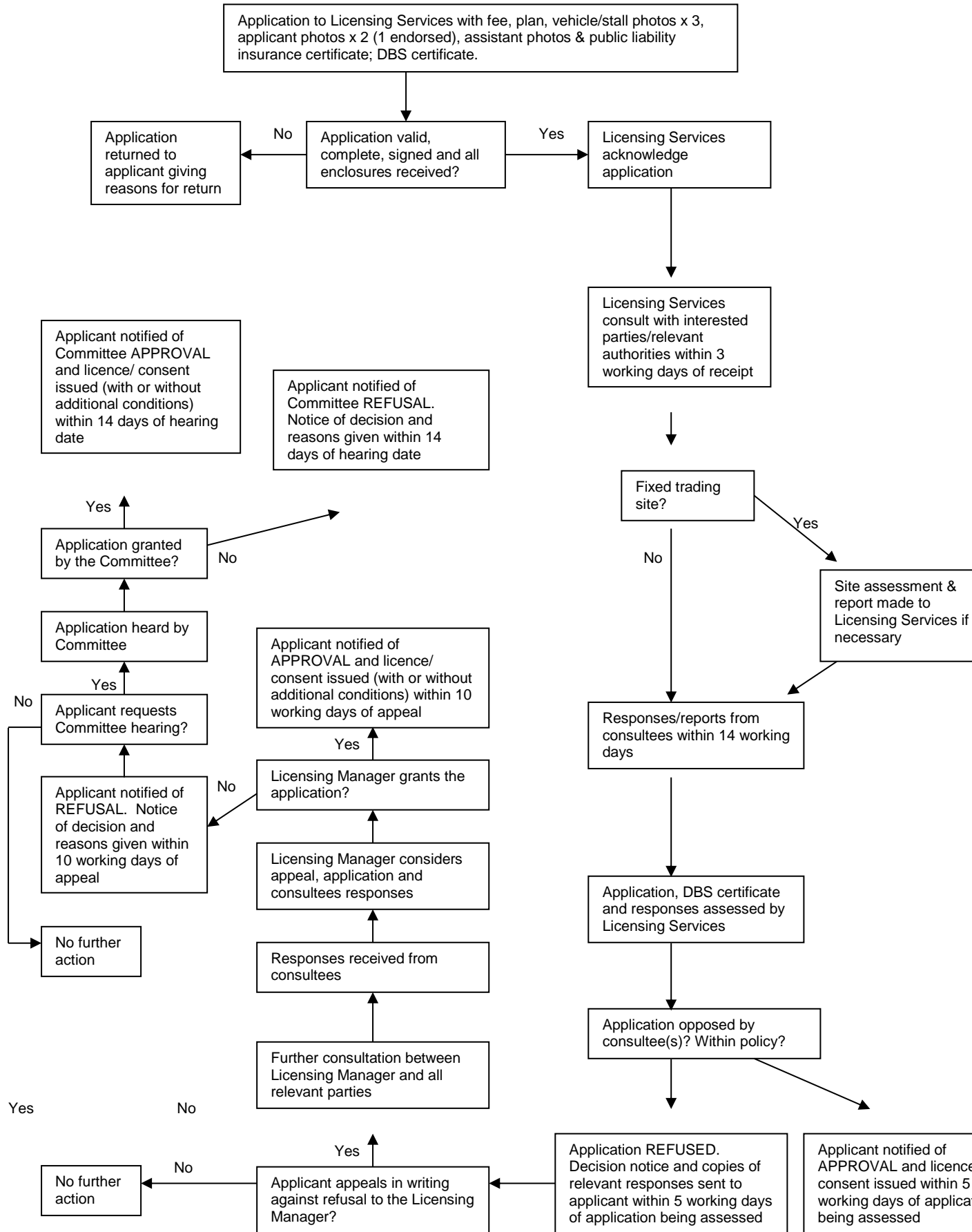
(i) The Plan

- The plan accompanying the application should be an appropriate scale (1:1250 suggested) and should show all residential and commercial premises in a 100m radius of the proposed site.
- The Council may require applicants to provide further plans detailing the exact position of vans, carts, barrows etc. on sites where this is considered necessary.

(ii) The Photographs

- The photographs accompanying the application should clearly show the nature of the van, cart, barrow, other vehicle or stall from which the trading is intended to take place, or similar vehicle.
- The photographs should show the front, side and rear views of the van, cart, etc.
- The photographs should be colour pictures.

Durham County Council – Street Trading Application Process



Annex D Site Assessment factors

Road safety	Is the siting of the street trading likely to have an adverse effect on road safety, either because of the siting itself or from customers arriving, attending and/or leaving the site?
Parking	Is there adequate parking available to staff and customers?
Obstruction	Will the siting cause an obstruction to pedestrians or road users?
Sight lines	Will the siting interfere with the lines of sight of pedestrians or road users?
Loss of amenity	Would there be a significant loss of amenity in the vicinity from the siting of the proposed street trading?
Lighting	If it is proposed that the activities will take place at night, is the siting adequately lit?
Local Orders	Are there any relevant restrictions that would prevent the Consent being exercised at certain times or on certain dates, e.g. parking or waiting restrictions?
Cart, barrow, etc	The adequacy of the cart, barrow, etc. to be used / being used to conduct the street trading activities, having regard to the siting, and the nature of the vehicle.
Other	There may be other issues relevant to the individual site

Annex E List of Consultees

(i) Consultees who will always be consulted

- Durham Constabulary Alcohol Harm Reduction Unit
- Durham Constabulary Traffic Section
- Durham County & Darlington Fire Safety
- Planning Authority
- Highways Authority

(ii) List of Consultees who may also be consulted

- DCC Trading Standards
- DCC Environmental Health – Food Safety
- DCC Environmental Health – Health & Safety
- DCC Environmental Health – Pollution Control
- DCC Public Health
- Town/City Centre Management
- DCC Legal Services
- DCC Children and Young People Service
- Health & Safety Executive
- Such other bodies as the Council deems appropriate in the circumstances.
- Business Improvement Districts

Consultees may have regard to the following criteria when considering whether to oppose the grant of an authorisation, or to review an existing authorisation. Consultees should specifically refer to the relevant criteria when setting out their grounds of opposition / review.

The applicant / authorisation Holder should normally satisfy all of these criteria.

Note: Licensing Services personnel and all consultees shall consider each application / authorisation on its own individual merits, and taking into account the individual circumstances.

Public safety - Applicants and authorisation holders should ensure that public safety is not compromised by their activities. The proposed street trading should not present a substantial risk to members of the public, including customers. Particular regard should be given to road safety, the potential for disorder, and to avoiding the possibility of creating an obstruction or fire risk.

Nuisance - Applicants and authorisation holders should ensure that their activities do not result in significant risk of nuisance, particularly to residents and businesses near their site. 'Nuisance' can include littering, noise, smells, etc.

Compliance with relevant legislation - Applicants and authorisation holders should be aware of relevant legislation, and should ensure that they comply with any requirements that affect their activities.

Trading hours - The permitted hours of trading are generally 06:00 – 18:00 hours. Persons wishing to carry on street trading outside these hours should ask us to consider amending the relevant standard condition.

The nature of the activity - Applicants and authorisation holders should ensure that the items being offered or exposed for sale are not of a nature that may cause offence; and that the manner of offering or exposing the things for sale is not of a nature that may cause offence.

Please note: The Council will keep a record of complaints received regarding authorisation holders and officers will investigate complaints as necessary. This may result in reviews being initiated by the Licensing Enforcement Team Leader or any by of the Consultees.

The character of the area - Applicants and authorisation holders should be sensitive to the character of the area in which they propose to operate.

Consideration will be given as to whether the area is appropriate for the proposed activities, in particular with regard to conservation areas and 'feature areas' of cultural and historical interest or sensitivity. Other issues may also be relevant in the individual circumstances of each application / authorisation.

Annex G Standard Conditions

These conditions will normally apply to all consents/licences unless there is good reason not to do so.

Street Trading Standard Conditions

1. The consent/licence holder and any other persons engaged in street trading shall at all times offer full co-operation to an authorised officer of the Council to ensure compliance with all conditions
2. Street trading will be permitted between 06.00 – 18:00 hours
3. The consent/licence holder will vacate the site within 15 minutes of the end of their permitted hours
4. Consent/licence holders must, at all times, have a copy of their consent/licence on display on their stall/van/cart/barrow or vehicle. **the home address of the holder may be “blanked out” on this display copy.*
5. Where a consent/licence holder is allocated a designated fixed location or “pitch”, trading is restricted to the location indicated on the consent/licence
6. Without prior written approval, mobile street trading within consent streets is restricted to a maximum period of 15 minutes, after which the van/cart/barrow or vehicle must be moved a minimum distance of 200 metres before trading can re-commence, return is prohibited within 2 hours.
7. Consent/licence holders must wear any identity “badge” issued by the Council, when street trading is taking place. The Council may also approve a maximum of 2 assistant. Identity “badges” issued to any assistants must be worn when Street Trading is taking place.
8. Only approved consent/licence holders and their authorised assistants may trade from the consent/licence site.
9. The consent/licence holder shall supply a copy of these street trading conditions to all authorised assistants engaged in street trading under their authorisation.
10. The consent/licence holder must ensure that the Council are informed immediately of any new assistants employed by them.
11. Where issued, a street trading consent/licence plate will be issued along with the consent/licence. The plate must be clearly displayed on stall/van/cart/barrow or vehicle in a way as to be clearly visible to the public.
12. The consent/licence holder must at all times have available for inspection a valid Certificate of Insurance with a level of public liability cover being a minimum of £5,000,000.

13. Consents/licences are personal to the holder. Holders must not assign, transfer or in any way permit anyone else to benefit from their consent/licence.
14. Consent/licence holders may not change their mode of trading or range of goods or articles as specified in the consent/licence without an application to vary the consent/licence being made by the holder and approved by the Council.
15. The holder of a consent/licence must comply with all reasonable directions of the Police, the Council or the Highway Authority whether verbal or in writing
16. The holder of a street trading consent/licence shall take all reasonable precautions to prevent obstruction of the street, danger to persons using it and nuisance or annoyance to other users and residents. Stalls or vehicles shall not be positioned in such a way so as to obstruct the view of drivers of other vehicles.
17. Consent/licence holders must not display or advertise their goods or articles on the surface of the carriageway or pavement.
18. The consent/licence holder must only trade from the size and type of vehicle, stall or trailer specified in their consent/licence.
19. Any change of vehicle or changes to vehicles must be authorised by the Council.
20. A consent/licence holder shall not permit any person under the age of 17 years to be left in charge of a street trading stall/van/cart/barrow or vehicle.
21. The consent/licence holder shall maintain the stall/van/cart/barrow or vehicle in a clean condition and its structure shall be kept in good repair. A consent/licence holder must present any van/cart/barrow or vehicle for inspection when reasonably requested to do so by an authorised officer of the Council.
22. The consent/licence holder is responsible for the collection, temporary storage and subsequent removal and disposal of all refuse and other waste generated by and within the immediate curtilage of their trading activity.
23. The use by any consent/licence holder or their authorised assistant, of loud speakers, horns, flashing lights or any other instruments used to attract customers' attention is forbidden.
24. The consent holder shall be responsible for and reimburse the Council in respect of, any damage they cause to the carriageway/pavement or any fittings or fixtures on it.
25. The consent/licence holder shall at all times obey all road traffic regulations in force in the consent/licence area.

26. The Council reserve the right, should the need arise, to direct that street trading is temporarily suspended and the consent/licence holder may not trade during any such period.
27. The consent/licence holder shall not place on the street any furniture or equipment or advertisement other than as specified in the consent/licence.
28. This consent/licence will expire on the date given. The Council are under no obligation to renew any consent/licence
29. The Council reserve the right to remove, add, alter or amend the standard conditions attached to street trading consents/licences

Conditions Specific to Food Traders

30. All consent/licence holders trading in food and/or drink must ensure that they comply with food safety requirements at all times and have their facility regularly inspected by the relevant 'food authority' A record of inspections should be kept by the consent/licence holder and must be produced to an authorised officer of the Council on request.
31. The consent holder must only employ persons who are suitably qualified in food hygiene.
32. Nothing from the stall, vehicle, barrow etc shall be allowed to discharge to the ground. The consent/licence holder must ensure that no waste liquids (including grease) of any description are deposited on to the site, highway or into rainwater gullies / drains serving the site. All liquids must be removed from the site and disposed of in a proper manner.
33. The consent/licence holder must provide at least one refuse container, which should be positioned near to the stall/van/cart/barrow or vehicle for use by customers. A notice must be displayed requesting customers to deposit litter in a waste container.
34. The consent/licence holder must ensure that adequate precautions are in place to prevent the risk of fire at their stall/van/cart/barrow or vehicle. Where an electrical generator or bottled gas is used, then current safety certificates must be in force and available for inspection by any authorised officer of the Council
35. The consent/licence holder must ensure that a current price list of articles sold is prominently displayed on the stall/van/cart/barrow or vehicle.

Where the holder of a street trading consent/licence fails to or refuses to comply with any of the conditions attached to their consent/licence it may be suspended, revoked and in certain circumstances they may be liable to prosecution.

Annex H Guidelines on the suitability of applicants

General Principles

The primary aim of this policy is public protection. To help in achieving that aim, the Council will consider the suitability of applicants to be authorised as street traders. Street traders and their commercial activities are often subject to minimum levels of supervision. They interact closely with members of the public and it is important that the public, especially vulnerable people are protected from harm and from those who may harm them, where ever possible.

The Council will determine whether the applicant is a suitable person to carry on business as a street trader and may not issue a licence unless satisfied that the applicant is suitable. In determining this, the authority may have regard to any information, which it considers to be relevant, in particular:

- (a) whether the applicant has been convicted of any relevant offence;
- (b) whether the applicant has been the subject of any relevant enforcement action;
- (c) any previous refusal of an application for the issue or renewal of a street trading consent or licence (and the reasons for the refusal);
- (d) any previous revocation of a street trading consent or licence (and the reasons for the revocation);

For the purposes of this policy, relevant offences include unspent convictions relating to dishonesty, the use and supply of controlled drugs, violence and offences of a sexual nature.

Therefore, having regard to the aims of this policy, the Council has determined that applicants with unspent convictions and cautions, for offences involving dishonesty, the use and supply of controlled drugs, violence and offences of a sexual nature, which are less than 3 years old from the date of application, will be included in the consideration of whether the applicant is a suitable person to hold a licence.

A person with a conviction for a relevant crime will be expected to have remained free of conviction for three years, according to the circumstances, before an application is granted. Some discretion may be exercised if the offence is isolated, minor in nature and there are mitigating circumstances. However, the overriding consideration will always be the protection of the public.

Notwithstanding the above, the Council is aware of its duty not to fetter its discretion and it shall permit representations from the applicant as to any exceptional circumstances indicating that it may nevertheless be appropriate to receive a licence.

The following examples afford a general guide on the action to be taken where relevant convictions and cautions are evident:

Offences involving violence

Applicants with convictions for offences involving violence will be considered carefully. When applicants have convictions for causing grievous bodily harm,

wounding or assault, or even more serious offences involving violence, at least three years free of convictions should elapse before an application will be granted.

Drug- related offences

An isolated conviction for a drug offence, whether for unlawful possession only or involving the supply of controlled drugs, will not necessarily prevent an applicant from obtaining a street trading consent or licence, provided the applicant has at least three years free of convictions.

Sexual offences

Applicants with any unspent sexual related offences will not normally be granted a street trading consent or licence.

Dishonesty

Convictions for isolated minor offences will not necessarily prevent an applicant from obtaining a street trading consent or licence but in cases involving serious theft or fraud, at least three years should elapse before an application is granted. When offences of dishonesty have been accompanied by violence, at least five years free of convictions should elapse before an application will be granted.

In all cases, each individual application will be decided on its own merits.

Disclosure and Barring

All application forms must be accompanied by a basic disclosure as the Council must be satisfied that the applicant is a suitable person. Apply for a basic disclosure online via <http://www.disclosurescotland.co.uk>

If any unspent convictions or cautions are declared, depending on their nature, then the Council *may* as part of the application process hold a hearing to determine whether the applicant is a suitable person to hold a street trading licence or consent. The application will not proceed until the suitability of the applicant has been determined.

Annex I Process for designation of streets

Before passing such a resolution various statutory consultation and notification requirements apply.

We will publish a notice in the statutory form of the proposals in a local newspaper. The notice will include a draft of the resolution and state that representations concerning it may be made in writing to the Council within a period of not less than 28 days from the date of the publication of the notice.

Notification will be made to the Chief Officer of Police, to the Planning Authority and to the Highway Authority responsible for the streets in question. If the street is to be a licensed street and is maintained by the Highway Authority, *consent* of the Highway Authority is required. If the street is owned by any other relevant 'corporation', their consent will also be required.

If, after having taken into account any representations it has received, Council pass a resolution, we will publish a notice to that effect in a local newspaper in two consecutive weeks. The first publication will be at least 28 days before the day specified in the resolution for the coming into force of the regulatory scheme.

Under paragraph 2 (11), we have further powers in relation to streets designated or to be designated as a licence street. We may stipulate the number of days on which we will expect traders to trade. We may also decide that we will not grant licences to those who intend to trade on fewer days.

We may impose these requirements either in an initial resolution or in any subsequent resolution. If we take this step in a subsequent resolution, we will apply the same procedures as those relating to the designation of streets regarding notification and the publication of notices.