

STREET TRADING POLICY

1.0 Introduction

1 The Street Trading Act (Northern Ireland) 2001 enables district councils in Northern Ireland to regulate street trading in their districts, through the provisions of a licensing scheme, in order to prevent undue nuisance, interference and inconvenience to persons and vehicles. The licensing regime also facilitates the protection of public health and safety and the prevention of crime.

2 This policy sets out Derry City and Strabane District Council's approach to managing the licensing function in relation to street trading and, in particular, Council's approach to the issuing of stationary licences, mobile licences and temporary licences.

3 Our aim to promote street trading which:

- creates opportunities for small businesses to establish themselves and grow
- complements premises-based trading
- increases diversity and consumer choice
- is sensitive to the needs of local communities
- protects public safety and prevents nuisance and criminal activity
- enhances the character and ambience of the local environment

2.0 Purpose

4 This policy has been designed to increase consistency and transparency in the regulation of street trading by Council and to assist stakeholders in understanding their rights and responsibilities.

5 By providing a framework for the management of street trading applications, the policy will assist in ensuring fair and consistent decision-making.

6 By detailing the procedures that will be followed when determining applications for street trading activities, the policy will provide clarity and transparency in Council's decision-making process among all stakeholders.

7 While each application will be dealt with on its own merits, this policy will give prospective applicants an early indication as to whether their application is likely to be granted or not. It also provides prospective applicants with details of what is expected of them should an application be granted.

3.0 Background

8 The Street Trading Act (Northern Ireland) 2001, which replaced the Street Trading (Regulation) Act (NI) 1929, relates to the licensing of street trading and enables district councils to regulate street trading in their districts. A Guide to the provisions of the Act was prepared by the Department for Social Development for the information and advice of district councils, traders and other interested parties.

9 The legislation provides district councils with a degree of flexibility in how they regulate street trading, including the setting of fees, imposing local conditions on licences, and determining the duration of licences.

10 Council will actively enforce the provisions of the Street Trading Act (Northern Ireland) 2001 within its district in a proportionate, consistent, targeted and transparent manner, in accordance with Council's Enforcement Policy.

4.0 Scope

11 This policy will apply to all street trading applications within the district to ensure consistency of decision making. However, each application will be considered on its own merits so that individual circumstances, where appropriate, may be taken into consideration.

5.0 Definitions

12 "**Council**" means Derry City and Strabane District Council;

"**completed application**" means an application which provides all required information, documentation and payment

"**designated street**" means a street designated in a resolution by Council as a street in which it may allocate street trading pitches to holders of stationary street trading licences

"**mobile trader**" means a person authorised by a street trading licence to trade from a from a vehicle which goes from place to place, stopping for a time for the purpose of trading;

"**receptacle**" includes: a vehicle, trailer or stall; any basket, bag, box, vessel, stand, easel, board or tray; and anything which is used (whether or not constructed or adapted for such use) as a container for, or for the display of:

- any article or thing, or
- any equipment used in the supply of a service;

"**stationary trader**" means a person authorised by a street trading licence to trade from a stationary position in the street;

"**street trading**" means trading in a street (whether or not from a stationary position) by selling articles or things or supplying a service for gain or reward

"**street trading licence**" means a licence granted under this Act, but excludes a temporary licence;

"**supply**" means supplying a service for gain or reward and includes a reference to offering to supply a service;

"**temporary licence**" means a licence to permit street trading for a limited period, where a full-term licence may not be appropriate, for example, for special events such as festivals, fairs, etc.;

“street” includes: any road or footpath within the meaning of Article 2(2) of the Road Traffic (Northern Ireland) Order 1995; any “public place”; and any part of a street.

“public place” means a place in the open air within 10 metres of a road or footpath -

- to which the public has access without payment, but
- which is not within enclosed premises or the curtilage of a dwelling

6.0 Policy Statement

6.1 Who requires a street trading licence?

13 In general, anyone wishing to engage in street trading activities within the Derry City and Strabane District Council area will require a street trading licence or a temporary licence granted by Council.

14 However, some types of trading activities are exempt and only trading which takes place in a “street” will be regulated under the Act.

6.2 What is a street?

15 Whilst “street” will take its normal, everyday meaning of a road in a town or village usually with houses, etc., on either side, the definition in the Act extends this to include any road, footpath or public place.

16	Term	Meaning
	“road”	“a public road and any street, carriageway, highway or roadway to which the public have access” Article 2(2) of the Road Traffic (Northern Ireland) Order 1995 Note: the definition of “street” extends to include “any roadway to which the public have access”
	“footpath”	“a way over which the public have right of way on foot only, not being a footway* or part of a road” Article 2(2) of the Road Traffic (Northern Ireland) Order 1995 *“footway” means a way comprised in a road which also comprises a carriageway, being a way over which the public have a right of way on foot only
	“public place”	a place in the open air, within 10 metres of a road or footpath - to which the public has access without payment, but which is not within enclosed premises or the curtilage of a dwelling Section 25(4) of the Street Trading Act (Northern Ireland) 2001

17 Any reference to a street in the Act does not necessarily mean the entire street but can also mean any part of the street.

6.3 Factors that determine whether an area is a “public place”

18

A public place has the following characteristics:

Characteristic: A “public place” includes (with some exceptions) all **land within 10 metres of a road or footpath**

Implication: A “public place” may include what might normally be regarded as private land

Characteristic: A “public place” must be in the **open air**

Implication: Indoor public areas such as shopping malls, indoor markets, foyers of premises, etc. are exempt

Characteristic: A “public place” must be one to which the **public have access without payment**

Implication: Areas to which the public can only gain access on payment of an entry charge are exempt

Where a public park or other open space is being used as a venue for a concert or similar event (where public access is restricted to members of the public who have paid to access the site) a street trading licence is not required within the restricted area. Persons wishing to trade at such events should contact the event organiser or the owner of the land where the event is taking place.

Characteristic: A “public place” must **not** be within **enclosed premises**

Implication: “Enclosed premises”, surrounded by, for example, a fence, wall, etc., regardless of its make-up or height are exempt

In determining whether premises are “enclosed”, Council considers that the enclosure must be of a **permanent** nature and the premises must be enclosed / surrounded on **all** sides.

Note: if a receptacle is located within enclosed premises, but customers queue outside of the enclosed area, street trading will be deemed to be occurring

Characteristic: A “public place” must **not** be within the **curtilage of a dwelling**

Implication: The garden, yard, driveway, etc., of a dwelling would not be regarded as a “public place” (even if within 10m of the road or footpath).

Therefore, sales on driveways and gardens of, for example, a car or lawnmower, are exempt from street trading legislation. However, if a business is being conducted from the garden or driveway of a private residence there may be a breach of planning legislation since there would appear to be a change of use from domestic to business purposes.

What is street trading?

19 Street trading means selling (or offering or exposing for sale) any article or thing, or supplying (or offering to supply) a service for gain or reward, while in a street.

20 It is immaterial whether or not the trading activity is taking place in or from a stationary position and a person will be regarded as street trading even if the activities engaged in are only temporary or may not be that person's normal occupation.

21 The sale or offering for sale of "a thing" includes a "living thing", such as any animal, fish, etc.

22 "Service" is not defined in the Act, but will include things such as the activities of street photographers. However, street musicians, pavement artists, etc., are exempt under the Act, unless they are selling a specific item.

23 The display of goods for sale will constitute street trading even though no actual sale is made. It is presumed that **any** articles or things displayed in a street are there for the purpose of being sold or exposed for sale and the burden of proof to the contrary will fall on the person in charge of such items.

24 Similarly "supplying a service" includes the offer to supply that service even if no service was actually supplied. It is presumed that equipment for the supply of a service which is found in the street is there for the purpose of supplying that service for gain or reward.

Activities which are not street trading

25 A number of activities are exempted from the definition of street trading and may be carried on without a street trading licence. (Refer to Table 1)

26 The exempted trader is free to operate anywhere in the district and is not restricted to areas which have been designated by a council as suitable for trading. However, the trader is not exempted from all licensing requirements. For example, those engaged in charitable sales will still require the appropriate police permit, otherwise a street trading or temporary licence will be required.

Exempted trading activity	Example
Sale of items or supply of services to the occupiers of premises adjoining any street, on a door-to-door basis, by visiting private residences or places of business, whether by appointment or otherwise	Commercial travellers who visit homes or businesses to sell their products; door to door wheelie bin cleaning services, window cleaning
Sale of articles or things from a vehicle which is used only for the regular delivery of such articles or things to the occupiers of premises adjoining any street	Roundsmen, such as milkmen, bread servers and coalmen who are regarded as delivery persons rather than street traders. The exemption extends to any sales which may be made in addition to their deliveries, provided these are carried out during the normal course of their round
Trading in a “lawful” market or fair where the right to hold the market or fair has been formally created by grant or presumed grant or established by virtue of any statutory provision. Note: this exemption does not apply to informal markets, which are a gathering of buyers and sellers organised without the authority of such a grant or statute. Traders who operate within an “informal market” require street trading licences	Council organised markets within the district which are exempted by virtue of the Royal Charter of 1634 and the Londonderry Corporation Act (NI) 1931.
Sales and collections for charitable purposes, provided the activities have been authorised under the appropriate legislation: section 5 of the Police, Factories, & (Miscellaneous Provisions) Act 1916 , (which specify that no collection of money or sale of any article for charitable purposes can be made in any street or public place unless a permit is first obtained from the police); or the House to House Charitable Collections Act (Northern Ireland) 1952 (which specify that a licence must be obtained from the police to carry out a house to house collection for charitable purposes unless an exemption has been granted under section 3 of that Act)	Charitable sales where the appropriate permit has been obtained from the police.
Trading under the authority of a pedlar’s certificate, granted under the Pedlars Act 1871 , but only if the trading is carried out on a door-to-door basis Note: pedlars are not permitted to trade from a fixed spot or to wait for customers to come to them – persons trading in such a manner require a street trading licence	A pedlar travelling and trading on foot, going from house to house carrying goods to sell

Table 1

Exempted trading activity	Example
Trading carried out at or adjoining premises used as a petrol filling station, provided the trading in question is carried out by the owner or occupier of the premises during the normal course of business and during the hours when the business is open to the public	<p>Proprietors of petrol filling stations may offer a range of goods (including fuel) on their forecourts without a street trading licence</p> <p>However, other persons are not permitted to trade on a petrol station forecourt without a street trading licence</p>
Trading carried out at or adjoining premises used as a shop, provided the trading in question is carried out by the owner or occupier of the premises during the normal course of business and during the hours when the business is open to the public	<p>Trading is permitted to take place in a pavement or street immediately adjoining the shop, e.g. allowing stands placed on the street outside shops such as greengrocers, florists, shoe shops, etc.</p> <p>Persons other than the owner or occupier of the shop are not permitted to trade outside the premises, e.g. in the shop doorway, without a street trading licence</p>
Trading as a news vendor, provided that the only articles sold are newspapers or periodicals, and they are sold without a receptacle or from a receptacle which is carried by the vendor.	Paper boys selling newspapers from a bag that they are carrying.
<p>Trading carried out in an area where a pavement café licence is in force, provided that the trading:</p> <ul style="list-style-type: none"> • takes place at a time when that area has temporary furniture on it that under the terms of the licence is permitted to be there at that time; • is done in the course of a business which is carried on by the licence holder at the premises specified in the licence; • relates to the supply of food or drink in or from those premises for consumption on that area; and • does not involve a contravention of the conditions of the licence 	The supply of food and drink within a licensed pavement cafe area

Table 1 (continued)

Licensing of street traders – the application process

27 Anyone who engages in street trading activities within the Council area must be in possession of a valid street trading licence or temporary licence.

28 Applications for the grant of a licence

29 Anyone wishing to engage in street trading activities within the Council area may make an application to the Licensing Section for either:

- the grant of a street trading licence, or
- the grant of a temporary licence, which permits street trading for a limited period where a full-term licence would not be appropriate, for example, at special events.

30 Traders wishing to operate in more than one location in the district, must make a separate application for each location, unless that person is authorised to trade as a “mobile trader”.

31 Applicants must wait until they have received their licence before starting to trade

Applications for the renewal or variation of a street trading licence

32 The holder of a street trading licence can also apply to have their licence renewed or to have the conditions on their licence varied.

Application methods

33 Applications must be made in writing or submitted online.

34 The application form can be obtained by contacting the Licensing Section on 028 71253253 or by email licensing@derrystrabane.com or as a download from the Council web site <http://www.derrystrabane.com/Licensing/Street-Trading-Licence>.

35 Under the provisions of the European Union Services Directive it is a requirement that public authorities permit certain licensing applications to be made online. Street Trading come within the scope of this Directive and Council has duly made provision for this as at <http://www.derrystrabane.com/Licensing/Street-Trading-Licence>

36 Anyone requiring help in making an application is invited to contact the Council’s Licensing Section for assistance.

37 Deadline for receipt of applications

38 Applicants must allow sufficient time for their application to be processed and considered by Council before starting to trade.

39

The following deadlines for submission of applications will apply:

Type of application	Deadline for receipt of completed application
Grant of a street trading licence	8 weeks prior to the proposed date of trading
Grant of a temporary licence	4 weeks prior to the proposed date of trading
Renewal of licence	4 weeks prior to the expiry date of the current licence
Variation of licence	4 weeks prior to the expiry date of the desired date for the coming to effect of a variation

Table 2

40 Applications will be processed as quickly as possible following receipt; however the above deadlines should be adhered to in order to avoid any disappointment arising from the failure to obtain a licence within the required timeframe.

41 A renewal reminder letter will be sent to each holder of a street trading licence 8 weeks prior to the expiry date of his current licence.

42 A trader who has failed to renew their street trading licence prior to the expiry date of the previous licence will not be considered as being licensed, as tacit consent does not apply.

Completing applications

43 The application form must be completed fully, in order to ensure that Council has all information that it reasonably requires for determining the application.

44 Applications for a variation of a street trading licence must state the specific changes requested.

45 Applications will not be deemed to have been accepted until they are complete and all required information, documentation and payment has been received by Council.

Supporting documentation required

46 The application must be accompanied by:

- one recent, passport style colour photograph of the applicant
- an AccessNI Basic Disclosure Certificate, issued less than 12 months old prior to the date of application

Note: an applicant's criminal record may change over time.

Applicants from outside Northern Ireland are advised to contact the Licensing Section if they have difficulty in providing a criminal record check

- where the application relates to trading on private land, the written permission of the landowner or lessee to trade there

47 Applicants **may** also be requested to provide:

- colour photographs of any receptacle (vehicle / stall) to be used, showing the 4 elevations; front, rear and both sides
- an area plan, which clearly identifies the location of the requested trading site, showing the names of nearby streets or buildings;
- a site plan or sketch showing the space occupied by the receptacle, its orientation and proximity to features such as nearby buildings, street furniture, etc.
- evidence of public liability insurance

48 Licences are issued subject to conditions and additional documents / certificates, e.g. evidence of public liability insurance, may be required to be submitted prior to issue of a licence.

Determining applications

49 Council will aim to determine applications within the following time frames, following receipt of a completed application:

Type of application	Determination period
Grant of street trading licence	28 days
Grant of temporary licence	21 days
Renewal of street trading licence	14 days
Variation of street trading licence	14 days

Table 3

50 Following the determination, Council will inform the applicant of its decision in writing, within 3 working days.

Inspection of trading receptacles

51 The vehicle, van, trailer, stall or other receptacle to be used for the proposed street trading activity may, where reasonably practicable, be inspected by an Authorised Officer of the Council, prior to the issue of any licence.

Decisions on applications for the grant / renewal of street trading licences

52 Council will grant an application for a street trading licence / renewal of an existing licence unless there are sufficient grounds to refuse, i.e.

- one or more of the mandatory conditions for refusal; and / or
- one or more of the discretionary conditions for refusal.

Mandatory grounds for refusing an application

53 The Act sets out certain circumstances in which Council **must** refuse an application for a street trading licence.

54 Council **will**, therefore, refuse applications for a street trading licence in the following circumstances:

- the applicant is not an individual
- trading in the place specified on the application is specifically prohibited by other legislation, e.g. trading in off-street car parks is currently prohibited by virtue of Article 19 of the Off-Street Parking Order (Northern Ireland) 2000, i.e. a person shall not use a parking place in connection with the sale of anything to persons in or near the parking place or in connection with the selling or offering for hire of his skill or services

Note: parking places may be used for trading if the car park has been closed to traffic, e.g. when it is being used as an event space

- the application is to trade as a stationary trader in a street which has not been designated
- the goods or services the trader is proposing to sell or supply have been prohibited in that street by a designating resolution passed by the district council

Note: Council has “designated” specific streets within the district as being suitable for street trading from stationary positions and in some of these has designated, the classes of goods or services in which trading will be permitted or prohibited.

The streets currently designated for stationary street traders within the district are listed in **Appendix 1**

- the applicant is **under the legal school leaving age**, i.e. has not reached the upper limit of compulsory school age, within the meaning of Article 46 of the Education and Libraries (Northern Ireland) Order 1986.

Legal school leaving age

Children turning 16:	...can legally leave school on:
between 1 September - 1 July	30 June in that academic year
between 2 July - 31 August	30 June in the following year

Table 4

Discretionary grounds for refusing an application

- 55 The Act also sets out several discretionary grounds under which a district council **may** refuse to grant an application for a street trading licence. However, an applicant has a right of appeal against the refusal of an application on discretionary grounds.
- 56 Council may decide to refuse an application for the grant, renewal or variation of a street trading licence where:
- the location where a stationary trader wishes to trade is unsuitable, e.g. taking into account site specific issues which may have changed or were not evident at the time the street was designated as suitable for trading
 - the space in the designated street is not sufficient to permit trading by a stationary trader without causing undue interference or inconvenience to persons or vehicles, e.g. because there are already enough traders operating in an area
 - the area or areas in which a mobile trader wishes to trade are regarded as unsuitable for trading without causing undue interference or inconvenience to persons or vehicles
 - the nature of the articles, things or services in which the applicant wishes to trade would adversely affect the general amenity of the area, e.g. due to odours caused by the preparation and sale of hot foods
 - the applicant has deliberately made a false declaration relating to a matter relevant to the application
 - the applicant is considered to be an unsuitable person to hold a licence because of misconduct or some other reason relating to trading activities
 - the applicant was previously the holder of a licence which was revoked or could have been revoked because fees or charges had not been paid to the district council as required by the conditions of the licence
 - the applicant has not supplied information reasonably required by Council to enable it to deal with the application
 - the applicant has failed to provide or identify suitable or adequate arrangements for the storage of the goods and receptacles
 - the applicant has, without reasonable excuse, failed to use a previous licence to a reasonable extent
 - there are already sufficient traders trading in the street, or at premises adjoining it, in the articles, things or services in which the applicant wishes to trade, taking into account street traders as well as those trading in shops

Suitability of applicants

57 When determining the suitability of an applicant to hold a licence, the Council will have regards to all relevant information, including:

- relevant convictions – refer to **Appendix 5**
- persistent refusal or neglect to pay fees or charges
- persistent failure to comply with the conditions of an existing / previous licence
- any substantiated complaints, including those relating to verbal abuse, violence or aggression towards any member of the public, authorised officers or employee of the Council or Police Officers whilst in the course of their duty

Decisions on applications for the grant of temporary licences

58 The mandatory grounds for refusing an application 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.

59 Unlike the full-term licence, a temporary licence can permit trading in a street that is not a designated street and in goods which are normally prohibited in that street; however, temporary licences will not normally be issued for locations at which trading is expressly prohibited under a designating resolution.

60 Council has developed criteria it considers appropriate for use when deciding **each** application for a temporary licence.

61 These are detailed in **Appendix 2** and will be made available to any interested person on request.

62 Council may amend or replace these criteria at any time, without consulting those who may be affected; however, the new criteria will be made available to applicants and any applications decided on that basis.

63 Council cannot grant more than 5 temporary licences to any one applicant within a year (any period of 12 months)

Consultation with other bodies

64 On receipt of an application for a street trading licence or a temporary licence, Council **will** consult with:

The PSNI District Commander; and
The Department for Infrastructure (Roads)

65 Council **may** also consult such other persons, as it considers appropriate, depending on the circumstances, including:

- Street Trading Licence holders who may be affected.
- Council services, including the Planning Department, Business Support, Festivals and Events, Off Street Car Parking and Environmental Health
- The relevant Chamber of Commerce (Derry and/or Strabane)

- City Centre Initiative (Derry City Centre)
- BID in Strabane (Strabane Town Centre)
- Local residents
- Local Community Groups
- Business and Commercial premises in the vicinity of the site in respect of which the application has been received
- Department for Communities Historic Environment Division
- Visit Derry
- Retail NI
- National Market Traders Federation
- any other persons or bodies that may be deemed appropriate

Temporary licences to trade at civic festivals and events

66 Council organises a number of major civic festivals and events throughout the year, such as Halloween, St Patrick's Day and Christmas.

67 Many of these events are characterised by having market stalls within the event zone, offering a wide variety of goods. The application process that traders go through in order to gain access to these markets ensure a high quality offering, often themed to the particular event. In addition, the markets are included in the event's health and safety management arrangements, minimising any risk to public safety.

68 At civic festivals and events, therefore, a key criterion for use when deciding whether or not to grant a temporary licence, will be that the event organisers have identified a need for a particular category of street trading or believe that such trading would enhance the event.

69 If the organisers of a civic event believe that the level of provision being planned within the event zone is already adequate and that there is no requirement for additional street traders to service those attending the event then Council will not issue any temporary licences for the event.

70 If the event organisers identify a need for additional street traders of a particular type or category, temporary licences will be issued, limited to the number, type and location of traders identified as being necessary or desirable.

71 If the Council runs an event in a place where a stationary street trader has a licence to trade, the licence holder may continue trading throughout the Council event, unless the nature of the street trading conflicts with the nature of the Council run event, in which case the event organisers will be encouraged to discuss any potential conflicts with the trader to try to reach agreement and accommodate the trader.

Approval of licence applications

72 Officers with the appropriate delegated authority will determine each licence application.

73 When, having taking all relevant matters into consideration, it is decided to grant, renew or vary a street trading licence or to grant a temporary licence the applicant will be notified as quickly as possible and within 3 working days.

Duration of licences

74 Licences may be issued for the following durations:

Type of licence	Duration
Street trading licence	Minimum: 3 months Maximum: 3 years from the date on which the licence is granted (terminating on 31 March during the third year of the licence)
Temporary licence	Minimum: 1 day Maximum: 7 consecutive days

Table 5

Conditions relating to licences

75 Licences are granted subject to certain conditions. The conditions that will be specified on each street trading licence are detailed in **Appendix 3**.

Fees and charges

76 All necessary fees and charges will be payable before the licence is granted.

77 Council's current charges and fees detailed in **Appendix 4**

Permitted trading hours

78 The Council will determine each application on its individual merits but generally will only permit street trading between 9.00 am and 12.00 Midnight on any one day. Should an application be received for a street trading licence to sell hot food within the city centre, the licence will only permit trading until 9.00 pm.

79 Any trading outside these hours will have to be approved by Committee. Street Trading outside of the guideline hours, will be assessed in terms of public order impact and the potential for nuisance.

80 The Council will, however, retain the right to specify permitted hours of trading that are less, or more, than those specified above if local circumstances require it.

Conditions imposed by the owner or person in control of the land or ground on which trading takes place

81 The grant of a street trading licence or a temporary licence does not confer any right on the licence holder to occupy any ground or land.

82 It only provides permission to trade there, on the assumption that permission to be there has been sought and granted from the owner and / or person in control of the ground or land and that any conditions attached to the permission to be there are being adhered to by the licence holder.

Failed application process

83 Delegated authority does not extend to making decisions to refuse licences. Recommendations to refuse applications will be referred to Committee for decision.

Failed temporary licence applications

84 Any person who is unhappy with the decision to refuse an application for a temporary licence may appeal to a Magistrates' Court within 21 days from the date on which the decision of the council is given.

Failed street trading licence applications

85 Prior to carrying out any of the following actions, Council will inform the applicant or the licence holder in writing of its intentions to:

- refuse an application for a street trading licence other than on the mandatory grounds for which an application for a licence **must** be refused
- grant a licence, but with conditions other than those specified in the application
- revoke a licence
- vary the conditions on an existing street trading licence as an alternative to revoking it
- refuse to vary the conditions specified in a licence where the application to do so has been made by the licence holder

86 When writing to an applicant or a licence holder Council will:

- set out **all** the grounds on which the proposed decision is based
- set out the right of the person affected to make representations on the proposed course of action
- advise that representations must be made within 21 days from the date of the notice

Final decision

87 Council will consider any representations made to it within the 21 day period before reaching a final decision. It may, where appropriate in exceptional circumstances, consider representations made beyond the 21 day period.

88 Representations will be considered by Council Committee.

Notice of final decision

89 Within 2 working days of the decision, Council will write to the person affected giving the grounds on which its final decision is based and setting out the rights of appeal against that decision.

Appeals

90 Appeals must be made to a Magistrates' Court within 21 days from the date on which notice of the final decision of the council is given.

91 In the event of an appeal, Council will bring the decision of the Magistrates' Court into effect, unless it decides to appeal to the county court against the Magistrates' Court decision.

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

- until the end of the 21 day period within which an appeal may be made. If no appeal is made within that time, the existing licence will no longer be valid.
- where an appeal is lodged within 21 days, until the process of contesting the council's decision is completed, i.e. until a decision is given on that appeal or the appeal process is abandoned.
- where an appeal against the refusal to renew a street trading licence is successful, until the district council renews that licence.

93 Where variation of the conditions of a licence is being taken as an alternative to revocation, the variation cannot come into effect until after a period of 21 days within which an appeal may be lodged.

94 Where an appeal is lodged against the variation of the conditions of a licence, the 21-day period will be further extended until the completion or abandonment of that appeal.

7.0 References

95 Street Trading Act (Northern Ireland) 2001.
Guide to the Street Trading Act (Northern Ireland) 2001
The Street Trading (Form of Licence) Regulations (Northern Ireland) 2001
Street Trading (Fixed Penalty) (Notice and Procedure) Regulations (Northern Ireland) 2001

Appendix 1: Designated Streets

The current list of designated streets for the purposes of the licensing of stationary street traders under the Street Trading Act (Northern Ireland) 2001 within the district is set out in the table below:

Legacy Derry City Council area:

Street	Articles, things or services which may be sold or supplied	Restrictions
Shipquay Place (commonly called "Guildhall Square")	Any subject to the undernoted general restriction	Designation will not come into effect until details as to the conditions attaching to licences for this area have been formulated
Waterloo Place	Any subject to the undernoted general restriction	Designation will not come into effect until details as to the conditions attaching to licences for this area have been formulated
Magazine Street	Any subject to the undernoted general restriction	
Union Hall Place	Any subject to the undernoted general restriction	
Little James Street	Any subject to the undernoted general restriction	The number of licences will be strictly limited to allow 3 – 4 small stalls along the Sorting Office wall
William Street between Little James Street and Waterloo Place	Any subject to the undernoted general restriction	
30 William Street (vacant site)	Any subject to the undernoted general restriction	
Site adjacent to 20 William Street on the corner of Chamberlain Street	Any subject to the undernoted general restriction	
Area outside Ferryquay Gate on Carlisle Road	Jewellery and Fresh flowers only subject to the undernoted general restriction	
Site at Bracken Park adjacent to Fergleen Park and Moss Park	Hot food and drinks only subject to the undernoted general restriction	
Lay-by on Buncrana Road beside the border	Fruit and vegetables only subject to the undernoted general restriction	
Lay-by below Thornhill College	Hot food and drinks and Fruit and vegetables subject to the undernoted general restriction	

Street	Articles, things or services which may be sold or supplied	Restrictions
Lay-by at Faughan Bridge, Clooney Road	Hot food and drinks and Fruit and vegetables subject to the undernoted general restriction	
Area at the junction of Clonmeen Drive and Stradowen Drive, Strathfoyle	Hot food and drinks only subject to the undernoted general restriction	
Brackfield picnic area, Glenshane Road	Hot food and drinks only subject to the undernoted general restriction	
Lay-by at Foyle and Londonderry College, Northland Road	Hot food and drinks and Fruit and vegetables subject to the undernoted general restriction	Number of licences will be strictly limited to 1 – 2. Licences will not allow any trading during school hours or the period during which pupils are being collected
Site of former Customs Post, Letterkenny Road	Fruit and vegetables only subject to the undernoted general restriction	
Lay-by adjacent to vacant shop unit, Lettershandoney	Hot food and drinks and General groceries subject to the undernoted general restriction	
Rossville Street, at its junction with William Street	Any subject to the undernoted general restriction	Number of licences will be strictly limited to 1 – 2. No stall will be permitted within 30metres of the junction
Lay-by at Foyle Bridge (Madam's Bank Road end)	Hot food and drinks, Fruit and vegetables and Flowers subject to the undernoted general restriction	Number of licences will be strictly limited to 2 – 3
Lay-by at former Rosemount Factory, Rosemount Avenue	Hot food and drinks only subject to the undernoted general restriction	Number of licences will be strictly limited to 1 – 2

General restrictions:

1. The sale or supply of the following specified classes of articles or things is prohibited in the above locations –
 - fireworks
 - cigarettes or tobacco products
 - intoxicating liquor (i.e. any fermented, distilled or spirituous liquor with a concentration greater than 0.5% alcohol by volume)
 - any goods copied illegally, e.g. designer label clothing, sportswear, perfume and other toiletries, watches, audio or video recordings, computer games, textiles depicting copyrighted film or music promotional material or cartoon characters

2. The streets set out in the table below are **not** Designated Streets for the purposes of the licensing of stationary street traders under the Street Trading Act (Northern Ireland) 2001, i.e. trading is expressly prohibited at these locations:

Gateway of Victoria Market car park on Strand Road

Area of footpath adjacent to 1 Carlisle Road at the junction of Carlisle Road and Bridge Street

Area of footpath on Newmarket Street outside St. Columb's Hall

Area of footpath on Newmarket Street at its junction with Market Street

Lay-by at St. Peter's Church, Culmore Road

Brackfield lay-by, Glenshane Road

Lay-by on Glenshane Road opposite Faughan Valley High School

Lay-by at St. Eithne's School, Hazelbank

Area at entrance to Aberfoyle Medical Centre, Strand Road

Grassed area above public car park on William Street

Vacant site adjacent to the Strand Bar, Strand Road

Cemetery Gates, Iniscarn Crescent, Creggan

Abbey Street

Legacy Strabane District Council area:

Street	Articles, things or services which may be sold or supplied	Restrictions
Parking area adjacent to No. 229 and 318 Ballycolman Estate, Strabane	Hot / fast food only	
Score Site', Dock Street, Strabane		

Appendix 2: Criteria for deciding temporary licence applications

Background

- A2 1 Council will always determine applications by:
- considering each case on its merits
 - using this policy to assess applications
 - dealing with the applications in a balanced and impartial manner
- A2 2 Under the Act, Council is required to develop criteria for making decisions on applications for a temporary licence. Council is free to set the criteria it considers appropriate, for example, the types of occasions/events, the types of trading, the size/number of stalls, the positioning of stalls, etc. However, having developed the criteria, Council must make these available on request and must use them in deciding each application for a temporary licence, in order to ensure that applicants are aware of the grounds on which each application is decided and that the system is as transparent as possible.
- A2 3 Council has developed the following criteria which it will use when deciding each application for a temporary licence. These will be made available to any interested person on request.

A temporary licence may be granted in the following circumstances:

- A2 4 **Criterion 1: The occasion / event is one for which Council will issue temporary licences.**
- Council will consider issuing temporary licences for a wide variety of festivals, events and parades as well as special occasions, including seasonal periods such as Christmas and Easter.
 - Licences will **not**, however, be issued for civic events unless the event organisers have identified a need or desire for street trading, in addition to any traders that they have allocated spaces to within the event zone.
- A2 5 **Criterion 2: Trading at the proposed location must not contravene other legislation**
- Trading must not conflict with Control of Traffic Orders such as waiting restrictions or trading in car parks.
 - However, where a car park is closed to form part of an event zone, for the duration of the closure the area will not be regarded as being a car park, and consideration may be given to granting temporary licences.
- A2 6 **Criterion 3: The location must be suitable**
- The location must be suitable with respect to the safety of the public and any risks which may arise, including road safety. For example, where trading will be carried out after dusk, the site will need to be adequately lit to allow safe access and egress from the site for both customers and staff.
 - It must be remembered that during events and at seasonal periods increased crowd movement and other activities may make a site unsuitable. Consideration will be given to the conditions pertaining to the event, e.g. road closures,

- provision of marshals, off-street activities and venues, numbers of persons anticipated and age profile.
- Trading must not be located where it would obstruct access to or emergency egress from adjoining buildings.
 - The trading must not damage the structure or surface of the street, including by grease staining
- A2 7 **Criterion 4: There is sufficient space to permit trading without causing undue interference or inconvenience to persons or vehicles**
- An assessment as to whether there is sufficient space will take into consideration space taken up by other traders, street furniture, etc.
 - There must be sufficient space to ensure that pedestrian and vehicular access / flows is not obstructed, e.g. by forcing pedestrians off the footpath on to the road.
 - There must be sufficient space to permit vehicles to park in a safe manner.
 - There must be sufficient space to allow customers to queue safely off road and to visit and leave the site safely.
 - Trading must not interfere with sight lines for any road users, including at road junctions, or pedestrian crossing facilities
 - Emergency vehicle access must be maintained at all times
- A2 8 **Criterion 5: The nature of the articles, things or services being traded does not adversely affect the general amenity of the area**
- The type of trading must be appropriate to the location.
 - The sale or supply, or the preparation for sale or supply, of the product or service must not have a detrimental effect on the surrounding area, e.g. due to increased traffic, nuisances due to noise, odour and fumes (from generators) or litter
 - The potential for the proposed trading to have an adverse effect in terms of anti-social behaviour and public disorder.
 - Consideration will be given to 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.
 - The risk of nuisance may be particularly high in residential areas
 - The potential adverse impact that the trading may have upon the character and appearance of the area in question, e.g. public realm and historic walls.
- A2 9 **Criterion 6: Compliance with relevant statutory provisions**
- Traders will need to demonstrate satisfactory levels of compliance with all relevant legislation, including consumer safety legislation, food safety legislation, public health legislation and health and safety legislation.
- A2 10 **Criterion 7: Necessary permissions must be in place**
- Evidence that the trader has permission to trade from the owner and / or occupier of the land
- A2 11 Council may amend or replace these criteria at any time, without consulting those who may be affected. However, as with the original criteria, Council will make the new version available and decide any applications on that basis.

Appendix 3: Licence Conditions

Conditions relating to street trading licences

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

- **standard conditions** which a Council **must** specify on each licence
- **further conditions**, that are considered reasonable

Failure to comply with these conditions

If the licence holder fails to comply with any of the conditions attached to a street trading licence, the licence may be revoked.

In most cases, a breach of these standard conditions will constitute an offence under the Act and may result in prosecution.

Enforcement of the conditions of this licence will be in accordance with Council's enforcement policy and the Street Trading Act (NI) 2001.

Standard conditions:

- 1 The licence will specify the precise location where a stationary trader may operate.
- 2 The licence will specify the area or areas within the district where mobile trading is permitted or prohibited
- 3 The licence holder shall not carry out street trading activities other than those permitted by the licence
- 4 The licence will specify the classes of articles, things or services which may be sold or supplied or exposed or offered for sale or supply under the authority of a licence
- 5 The licence will detail the day or days and the times during which the licence holder is permitted to trade and the licence holder shall not trade outside these time and days.
- 6 The licence will specify the type, size and form of any receptacle (stall, table, vehicle, etc.) which may be used by a licence holder.
- 7 The licence will also specify the number of such stalls, tables, vehicles, etc., which may be used.
- 8 Street trading can only be carried out from the stall or vehicle authorised under the conditions of the licence
- 9 The licence holder shall display on any van, cart, barrow or other vehicle or stall, in a prominent position that is visible to members of the public, the street trading display notice that has been issued by the Council, which states the name of the licence holder and the number of the licence.
- 10 The licence will specify the requirements for the storage of goods and receptacles, before, during and after trading, including the arrangements to be made for storage of items to replenish stock during trading.
- 11 Stationary street trading stalls, vehicles or other equipment associated with the street trading activity shall be removed from the site at the cessation of trading each day.
- 12 The licence will include details of the trader's responsibilities in relation to rubbish, litter, etc. and the containers which are to be used to hold this pending its removal
- 13 The licence will require that the trader avails himself to a reasonable extent of his right to trade under this licence.
- 14 The licence will detail the applicable fees and any charges that are payable

Further conditions

- 15 The license holder must adhere to the conditions of this licence and the provisions of the Street Trading Act (NI) 2001.
- 16 The license holder must ensure that his employees / assistants adhere to the conditions of the licence
- 17 The licence holder must not sub-let, sell on or transfer the licence to another person
- 18 The licence holder and any person employed by him to assist him in his trading, shall produce his licence when requested to do so by an authorised officer of Council or a Police Officer
- 19 A copy of the licence will be kept available at the trading receptacle for inspection during permitted trading hours.
- 20 The licence holder shall observe and comply with any instructions from an authorised officer of the Council regarding the use of the street or public place and shall not hinder any such officer in the execution of his duty.
- 21 The licence holder must give notice in writing to the Council of any significant change to, or replacement of, the stall or vehicle authorised under the licence.
- 22 The licence holder shall give notice in writing to the Council of any change of his/her address during the period of the licence.
- 23 The licence holder will not engage in any criminal behaviour, including the use of threats, intimidation or assault
- 24 The licence holder will notify the Council in writing within 5 working days of being convicted for a criminal offence or caution
- 25 The Licence holder shall not cause any obstruction which would hinder access or egress by emergency services and shall, if requested by an authorised officer of Council or a Police Officer, remove the receptacle to an appointed location
- 26 The licence holder shall not trade in such a way that is likely to cause undue obstruction to any part of any street or public place, including obstruction of the entrance or exit from any premises.
- 27 The licence holder shall not trade in such a way that is likely to cause any injury to any person using the street or public place.
Without prejudice to the generality of this condition:
- Items sold or offered for sale must comply with all relevant consumer safety requirements.
 - All items of equipment, electrical generators and gas appliances and fittings shall be stored, used and maintained in accordance with health and safety and fire safety requirements and shall be located, where necessary, so as to avoid interference by any unauthorised person.
 - Food items must be stored in accordance with food hygiene requirements, including those relating to temperature control and protection against contamination.
- 28 The licence holder shall not trade in such a way that is likely to cause damage to any property in the street or public place including the structure or surface of the street
- 29 The licence holder will comply with any additional conditions imposed by the owner and/or occupier of the land on which they have been granted permission to trade
- 30 The licence holder shall not trade in such a way as to cause a nuisance, unreasonable disturbance or annoyance to persons using the street or public place, or occupiers of premises in the vicinity.

- 31 The licence holder shall make such provision as is necessary to prevent the deposit in any street or public place of solid or liquid refuse and shall not discharge any water or effluent from the street trading activity to street surface drainage or other watercourse.
- 32 The licence holder, when operating on a stationary trading site, shall make adequate arrangements for both the licence holder and any persons employed to assist in the street trading activity to access suitable and sufficient sanitary accommodation.
- 33 The licence holder will ensure that children are not employed in street trading activity permitted under this licence
- 34 The licence holder shall comply with all other relevant legislation.

Additional Conditions for mobile traders

- 35 The holder of a mobile licence must move from location to location within the area or areas where trading is authorised under the licence, otherwise they will be deemed to be operating as stationary traders.
- 36 This policy identifies three categories of mobile street trader:
- Mobile street traders using small hand carts and similar equipment, including bags
 - Mobile street traders using vehicles, e.g. mobile shops
 - Ice Cream Van operators
- 37 Mobile traders will be restricted to the following waiting times:

Permitted waiting times and locations:	Category of mobile trader	
	Small hand carts, etc.	Vehicles, including ice cream vans
Maximum waiting time in one location:	restricted to a maximum duration of 30 minutes*	restricted to a maximum duration of 30 minutes
Minimum time to have passed before returning to the same location:	return is prohibited within 3 hours	return is prohibited within 6 hours
Minimum distance to be travelled from previous location:	50m	50m
Minimum distance to another trader or premises selling the same or similar type of goods:	10 metres	20m

* Permitted waiting times for traders using small hand carts and similar equipment may be amended for those authorised to trade at festivals and events in order to meet the particular needs and circumstances.

Small hand carts and similar equipment

- 38 Amendments to these time restrictions may be considered with prior written approval from the Council, subject to individual circumstances and the nature of the trading / location.
- 39 Mobile traders must not at any time position any hand cart in such a position that it causes an obstruction or inconvenience to pedestrians or road users.

40 Sufficient access width must be maintained clear on the footway so as to avoid causing obstruction to pedestrians and wheelchair users.

41 Mobile traders are not permitted to trade in either Shipquay Place (the pedestrianised area between the Guildhall and the City Walls) or Waterloo Place.

Mobile street traders using vehicles:

42 The licence holder must ensure that any vehicle used as a receptacle is maintained in a road worthy condition, is insured and taxed and where applicable a current MOT Certificate

43 The licence holder must ensure that any stopping position does not infringe any parking or traffic requirements or cause obstruction of the highway, and does not present any danger to road users or pedestrians, including from overhead hatches.

Additional Conditions for Ice Cream Vans

44 Ice cream van operators must abide by the Code of Practice on Noise from Ice Cream Van Chimes etc. 1982

45 It is an Offence under the Pollution Control and Local Government (Northern Ireland) 1978 to sound chimes:

- before 12 noon and after 1900 hours (7:00pm)
- at any time in a way which gives reasonable cause of annoyance

46 The Code of Practice gives guidance on methods of minimising annoyance caused by your chimes. The main points of the code of practice are:

Do NOT sound chimes:

- For longer than 4 Seconds at a time – use an automatic cut out device.
- More often than once every 3 minutes.
- When the vehicle is stationary.
- Except on approach to a selling point.
- When in sight of another ice-cream van which is trading
- When within 50m of a school (during school hours), hospitals, and places of worship (on Sundays and any other recognized days of worship).
- More often than once every 2 hours in the same street.
- Louder than 80dB(A) at 7.5m (Contact the Environmental Protection Team for advice)
- As loudly in quiet areas or in narrow streets as elsewhere.

This is not an exhaustive list of Conditions and Council may vary the Conditions attached to a licence at any time.

Appendix 4: Current fees and charges

Fees and Charges

Type of licence	Fee for grant/renewal (Non-VAT)	Annual charge per day during which licence is in force (Inc. VAT)	Explanation
<p>Licence to trade as a stationary trader excluding hot food – Receptacle not exceeding 9 Sq. Metres in area</p> <p>Each additional Receptacle not greater than 9 Sq. Metres included in the licence for the trading pitch</p> <p>Each additional day of the week to be included in the licence (per stall)</p>	100	<p>150</p> <p>150</p> <p>150</p>	<p>The daily charges represent estimated costs for supervision, inspection, removal of refuse and street cleaning.</p> <p>It is expected that the volume of packing material and other refuse generated will increase with the size of stall</p>
<p>Licence to trade as a stationary trader in hot food items - Receptacle not exceeding 9 Sq. Metres in area</p> <p>Catering trailer not exceeding 6m x 2.5m – 15 Sq. Metres</p> <p>Receptacle exceeding 15 Sq. Metres</p>	100	<p>200</p> <p>250</p> <p>300</p>	<p>The higher charges applying to the sale of hot food are intended to reflect the greater amount of litter generated and the increased requirement for street cleaning arising from the sale of hot food</p>
<p>Licence to trade as a mobile trader excluding hot food</p>	100	Nil	<p>Mobile shops and ice cream vendors require little by way of inspection under the street trading legislation being inspected by environmental health periodically under food hygiene regulations.</p>

Temporary Licences etc.			
Type of Licence	Fee for grant (Non-VAT)	Charge per day during which licence is in force (Inc. VAT)	
Temporary licence to trade as a stationary trader excluding hot food – Receptacle not exceeding 9 Sq. Metres in area Each additional Receptacle not greater than 9 Sq. Metres included in the licence for the trading pitch	50	5 5	The daily charges represent estimated costs for supervision, inspection, removal of refuse and street cleaning. It is expected that the volume of packing material and other refuse generated will increase with the size of stall
Temporary licence to trade as a stationary trader in hot food items - Receptacle not exceeding 9 Sq. Metres in area Catering trailer not exceeding 6m x 2.5m – 15 Sq. Metres Receptacle exceeding 15 Sq. Metres	50	5 10 15	The higher charges applying to the sale of hot food are intended to reflect the greater amount of litter generated and the increased requirement for street cleaning arising from the sale of hot food
Temporary licence to trade as a stationary trader in hot food items at council stewarded events - Receptacle not exceeding 9 Sq. Metres in area Catering trailer not exceeding 6m x 2.5m – 15 Sq. Metres Receptacle exceeding 15 Sq. Metres	50	20 40 60	The increased charges applying to council stewarded events are intended to reflect the additional costs incurred in setting up crowd control measures and stewarding the large number of people expected in the vicinity of hot food vendors on the streets at such events
Charge for varying under section 11(1)(a) the conditions specified in a street trading licence	50	Nil	
Concessionary fee for temporary licence for charity fundraising	25	Nil	

Charges include VAT

Appendix 5 Policy on assessing the suitability of applicants

Background

A5 1 One of the discretionary grounds on which Council may refuse an application is that the applicant is, on account of misconduct or some other reason relating to trading activities, unsuitable to hold a street trading licence.

A5 2 It is important to note that the misconduct or other reason **must be related to trading activities**. An application cannot, therefore, be refused because of an unrelated offence, such as, parking misdemeanours, etc.

Criminal record checks

A5 3 When determining the suitability of an applicant to hold a street trading licence, Council will have regard, among other considerations, to criminal record checks.

A5 4 Applicants resident in Northern Ireland, applying for the grant or renewal of a street trading licence or a temporary licence, are required to provide a recent (not more than 12 months old) AccessNI Basic Disclosure Certificate, which contains details of all convictions considered to be unspent under the Rehabilitation of Offenders (Northern Ireland) Order 1978, or states that no such convictions were found.

A5 5 Applicants from overseas or who have spent six continuous months or more outside Northern Ireland will be asked to provide evidence of a criminal record check from the relevant country or countries, e.g. a letter from An Garda Síochána.

A5 6 The criminal records checks should cover the five years prior to the date of application.

A5 7 Only originals of criminal record checks / certificates will be accepted.

How long will the criminal record check remain valid?

A5 8 As any information revealed on a criminal record check only reflects information held on criminal records and by police at the time the check was issued, and an applicant's criminal record may have changed since its issue, checks will be considered to remain valid for 12 months, after which a fresh check will be required.

Return of criminal record check

A5 9 An applicant's criminal record check will only be retained as long as is necessary to confirm that Council has received the check, after which it will be returned to the applicant.

Data protection

A5 10 Information obtained from checks will be held in accordance with the General Data Protection Regulations.

Assessment of suitability

A5 11 When a check reveals that the applicant has a record of convictions and/ or cautions and warnings, Council will consider these carefully on the basis of:

- whether the conviction is relevant to street trading;
- the seriousness of the offence;
- the length of time since the offence occurred;
- whether there is a pattern of offending behaviour;
- whether that person's circumstances have changed since the offence occurred; and
- mitigating circumstances

A5 12 Each case will be decided on its own merits. Some discretion may be appropriate if an offence is isolated, and there are mitigating circumstances. However, the overriding consideration will be the protection of the public.

A5 13 Council reserves the right to consult with the police and other relevant agencies when assessing an applicant's suitability to hold a street trading licence.

Offences of particular relevance

A5 14 The following types of offences are considered to be of particular relevance to street trading activities:

- Dishonesty (including theft) – street traders are expected to be trustworthy
- Violence - as street traders will have close contact with the public, it is imperative that applicants with convictions for offences involving violence are considered carefully
- Drugs related (including supply of drugs)
- Sexual / indecency

Decisions regarding suitability

A5 15 If an individual's suitability is called into question, due to relevant offences or other reasonable cause for concern, the matter will be referred to Committee for determination.

Right of Appeal

A5 16 As with other discretionary grounds for refusal, anyone who is refused a street trading licence on the grounds that he is not suitable, on account of misconduct or some other reason relating to trading activities, has the same right of appeal.

Obligations on licence holders

A5 17 Any person holding a street trading licence will be required to notify the Council, in writing, within five working days of receiving a criminal conviction (including cautions).