



Derry City & Strabane
District Council

Comhairle
**Chathair Dhoire &
Cheantar an tSratha Báin**

Derry Cittie & Stràbane
Destrìck Cooncil

Street Trading Policy

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STREET TRADING POLICY

1.0 Introduction

The Street Trading Act (Northern Ireland) 2001 [“the Act”] makes provision for councils to regulate street trading within their districts, through a regime of licensing.

The objectives of the legislation are to enable district councils to control and regulate street trading in their districts in such a way as to prevent undue nuisance, interference and inconvenience to persons and vehicles.

This policy sets out the approach of Derry City and Strabane District Council [“the Council”] to the management of the street trading function within the district, in accordance with the provisions of the Act.

2.0 Purpose

This revised policy document has been produced to consolidate and develop earlier decisions and resolutions that have been made to regulate and improve regulation of street trading in our district.

While regulating street trading, our aim is to support street trading that:

- provides opportunities for small businesses and supports local entrepreneurship
- complements existing premises-based trading
- offers increased diversity and consumer choice
- is sensitive to the needs of local communities
- enhances the character and ambience of the local environment
- satisfies the demands of festivals, events and public gatherings

This policy will ensure that all staff involved in determining applications for licences under the Act are aware of the process to be followed. This will facilitate consistency in our approach to applications and ensure that all applications receive proper consideration.

It is designed to ensure a fair, transparent process that maximises efficiency and minimises unnecessary delays to the application process. It is based on best practice for similar types of application and adherence to the procedure will reduce the risk of challenges to our decisions, complaints to the ombudsman or judicial reviews on legal grounds.

While there is no statutory determination period, we aim to process applications as quickly as possible and targets have, therefore, been set for different stages of the process. These targets constitute performance indicators and may be utilised for reporting performance to Council on a quarterly and/or annual basis.

By providing a framework for the administration of street trading applications, which will be used to inform all decisions, the policy will:

- promote consistency in the decision-making process
- assist in ensuring that applications are dealt with as quickly and fairly as possible
- provide clarity and transparency in Council’s decision-making process and give prospective applicants an early indication as to whether their application is likely to be granted or not
- ensure that Council meets its legal obligations in relation to the administration of the licensing regime

- minimise the likelihood of negative impacts on the community
- complement and support other Council policies, including those relating to events and festivals

3.0 Background

The Act replaced the provisions of the Street Trading (Regulation) Act (Northern Ireland) 1929 (“the 1929 Act”) and was introduced to provide more effective controls in response to a growing problem of unlicensed trading.

Under the Act no person may engage in street trading, in any street within the district, unless authorised to do so by a licence issued by the Council in which he is trading.

The Act includes provisions covering the actual licensing of individual traders as well as the enforcement of the scheme and the penalties for breaches of the law.

The Act also places obligations on Councils with respect to determining licence applications.

The Act also contains provisions on the designation of streets where trading is to be permitted.

A Guide to the Street Trading Act (Northern Ireland) 2001 has been prepared by the Department for Social Development, for the information and advice of district councils, traders and other interested parties.

4.0 Scope

The policy clearly sets out the circumstances in which a licence will be required and where activities involving the sale of items and supply of services fall outside the scope of the policy.

This policy outlines the process for dealing with applications for licences the grant, renewal and variation of licences under the Act. The Act does not make provision for the transfer of a licence between persons.

Enforcement of the licensing provisions is outside the scope of this policy; however, Council will actively enforce the provisions of the Order within its district in a proportionate, consistent, targeted and transparent manner, in accordance with Council’s Enforcement Policy.

A programme of inspections based on risk assessment criteria will be implemented to ensure that street traders have licences and that licensing conditions are being adhered to.

5.0 Review

A full review of the policy’s content, implementation, communication and effectiveness will be carried out within 5 years from the effective date.

However, the policy is a living document, which means it will be kept under continuous scrutiny and where any significant amendments are considered necessary, e.g. due to changes in legal requirements or the need for improvements have been identified, these will be made by the Council after appropriate consultations have taken place.

Any proposed revision of the policy will be subject to a screening exercise, the purpose of which is to identify any changes that are likely to have an impact on equality of opportunity and/or good relations and so determine whether an Equality Impact Assessment (EQIA) is necessary. Screening will also consider other potential impacts, including those affecting rural needs.

6.0 Policy Statement

This policy sets out Derry City and Strabane District Council's approach to administering the street trading licensing function within its district.

Street trading licensing – the application process

The licensing process involves five key stages:

- Stage 1: Pre-application
- Stage 2: Validation and registration
- Stage 3: Consultation and information gathering.
- Stage 4: Consideration and determination
- Stage 5: Granting or refusing an application

Stage 1: Pre-application

1.1 Applicant considers if a licence is required.

Stage 1: Pre-application begins when the prospective applicant considers whether they require a licence for their activities, at which stage they may contact Council for advice and/or for an application pack.

1.2 Advice regarding when a licence will be required

In general, anyone wishing to engage in street trading activities within the district will require a street trading licence or a temporary licence granted by Council.

However:

- only trading which takes place in a “street” will be regulated under the Act; and
- some types of trading activities are exempt

What is a street?

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

Term	Meaning
“road”	means “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] A “public road” means a road which is maintainable by the Department for Infrastructure (Roads), and includes any part of such a road and any bridge or tunnel over or through which such a road passes Note: the definition of “street” extends to include “any roadway to which the public have access” This is a wide definition and by way of example it includes access roads through estates that are owned by the residents or by organisations such as housing associations. It covers both the carriageway and the footpath. [Guidance on Nuisance Parking and Abandoned Vehicles Legislation]

“footpath”

means “**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”

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**” [Section 25(4) of the Street Trading Act (Northern Ireland) 2001]

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

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

When considering whether trading is taking place within a public place and, therefore, subject to the provisions of the Act, Council will have regard to the following characteristics of the location:

Is the trading taking place in the open air?

A licence will only be required if the trading is taking place in the open air. Trading in areas such as shopping malls, indoor markets and foyers of premises is, therefore, exempt from the licensing requirements.

Do the public have access to the area without payment?

A licence will only be required if trading takes place in an area to which the public have access without payment.

This means that trading at an event to which access is restricted to persons who pay an entry fee does not require a licence. Persons wishing to trade, as a “concession”, at such events should approach the event organiser or the owner of the land where the event is taking place. This exemption will only apply to trading within the restricted event area and trading at other events, to which there is no entrance fee, is not exempt from the licensing requirements.

Is the location within 10 metres of a road or footpath?

When trading takes place on any land within 10 metres of a road or footpath, a licence will be required. This means that a “public place” may include what might normally be regarded as private land. There are, however, two exemptions to this:

Is the trading taking place on “enclosed premises”?

If land is surrounded by, for example, a hedge, fence, wall, etc., regardless of its make-up or height, the land is not considered to be a public place, and a licence is not required.

In determining whether premises are “enclosed”, Council considers that the enclosure must be of a permanent nature [i.e. designed to stay in one place for a long duration - not easily removed or changed - and not simply erected and dismantled on a daily basis]. In addition, the premises must be substantially surrounded on all sides.

When assessing whether this exemption applies, officers will use their discretion on a case-by-case basis, bearing in mind that the primary purpose of the legislation which is to prevent obstruction to pedestrians or vehicles and nuisances; however, if for example a stall is located within enclosed premises, but customers queue outside of the enclosed area, street trading will be deemed to be occurring

Is the trading taking place within the curtilage of a dwelling?

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, other legislation, including planning requirements, may apply.

What is meant by “street trading”?

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

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.

“Service” is not defined in the Act, but will include things such as the activities of street photographers. However, street musicians (“buskers”), pavement artists, etc., are exempt under the Act, unless they are selling a specific item, so if, for example, a busker is offering his own CD for sale in the street, he would require a licence.

The display of goods for sale will constitute street trading even though no actual sale is made and it will be 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.

Similarly “supplying a service” includes the offer to supply that service even if no service was actually supplied and it will be 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.

Exemptions - activities that are not street trading

A number of activities are exempted from the definition of street trading and may be carried on without a street trading licence.

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.

The exempted activities are summarised below and detailed in Appendix 1

- Selling articles, goods or services simply by virtue of visiting premises adjoining any street by appointment or otherwise
- Selling articles or goods from a vehicle used for regularly delivering goods to premises adjoining a street
- Pedlars holding a Pedlar’s Certificate issued under the Pedlar’s Act 1871 and going from house to house
- Trading in a market or fair where the market rights were acquired by virtue of a grant, enactment or order
- Trading carried out in an area where a pavement café licence is in force, provided the trading is in accordance with the conditions of the licence
- Sales and collections for charitable purposes, provided the activities have been authorised under the appropriate legislation
- Trading as a news vendor selling only newspapers or periodicals without a receptacle or from a receptacle carried by him
- Trading at a petrol filling station or as part of shop business (including on the street adjoining the shop) where it forms part of that business and while that shop or filling station is open

1.4 Applicant completes and submits application form

Where a licence is required, the prospective applicant must complete and submit the appropriate application form.

Applicants need to consider both the type of application that they need to make and the type of licence that they would like.

1.5 Types of application

There are three types of application that councils may receive – applications for:

- the grant of a new street trading licence or a temporary licence – if applying for a licence for the first time or if the previous licence has expired
- the renewal of an existing street trading licence – this does not apply to temporary licences
- variation of the conditions of a street trading licence

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”.

1.6 Types of licence

There are 3 types of licence that may be granted by the Council and it is important that the prospective trader applies for the correct type of licence for his activities.

Full term licences:

- Stationary street trading licence: applicable to a trader who wishes to trade from a stationary position in a designated street
- Mobile street trading licence: applicable to a trader who moves from place to place stopping for a limited time for the purposes of trading, for example, an ice cream van.

Short term licence:

- Temporary licence: 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 and events.

1.7 Completing applications

Applications must be made in writing, using the appropriate, current application form available from the Council. The latest versions of 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.

The application form must be completed in full, to ensure that Council has all information that it reasonably requires for determining the application. Failure to do so will result in the application form being returned for completion, which will delay the processing.

For each type of application, in addition to the completed application form, Council has developed a list of “required items” that must be submitted to complete the application. Details of the required items are attached to the application form.

Applications must also be accompanied by the appropriate application fee. Where charges also apply, these are only payable if Council is going to grant a licence, once the application has been determined.

An application is not complete until the fully completed application form, the appropriate fee and all required items have been received.

Anyone requiring help in making an application is invited to contact the Council's Licensing Section for pre application advice.

Good pre-application advice will increase the likelihood of a valid application being made, by ensuring that applicants are aware of everything that is required, thereby preventing difficulties for the applicants.

This advice may be given verbally; however, the pre-application advice is contained within the application packs prepared for each specific licence.

Encouraging good quality applications at this stage also:

- reduces delays in receiving responses from the statutory partners with whom we are required to consult; and
- assists officers in determining applications and deciding whether a licence should be granted or refused

Applications for variation of the conditions of a licence

When making an application for the variation of the conditions of a street trading licence, the trader must only indicate the changes being sought to the conditions of the licence. The detailed information appropriate to an application for the grant or renewal of a licence will not be required in these circumstances.

1.8 Supporting documentation required ("Required items")

For each type of application we have produced a list of "Required Items", which provides details of the essential application criteria, as well as serving as a "checkbox" checklist of the documents that must accompany the application.

This will offer clarity for applicants in setting out which information items are required for each type of application and is available on the web site and in electronic / hard copy format.

In preparing the list we have taken a proportionate approach so that applicants will only be asked to provide supporting documentation that is "relevant to street trading" and "reasonably required". We will not seek information on totally unrelated issues.

1.9 Fees

The appropriate application fee must be paid at time of application.

Fees are set by the Council, calculated on the basis of recovering the full costs of administering the street trading licence scheme.

Where officers reject an application as being invalid, any fee paid will be refunded in full.

However, where an application is refused or an applicant withdraws the application, the Council will retain that part of the fee covering costs that have already been necessarily incurred in processing the application.

Stage 2: Validation and registration

2.1 Council receives application

Stage 2: Validation begins when the council receives an application.

Deciding that an application is valid is the first step in determining an application.

The validation process is essentially an administrative process that involves checking that the applicant has met the essential criteria for a valid application, i.e. that the necessary application form, the appropriate fee and supporting documents have been submitted, to the satisfaction of Council.

The validation process is concerned with both the type of documents provided and their content or quality - issues with content or quality that means that a document is not satisfactory, e.g. because it is out of date at time of receipt, should be notified to the applicant at time of acknowledgement.

Note: It is important that the application form has been completed in full, so that we can consult with PSNI and DfI Roads – officers may use their discretion as to whether to request a new application form or to amend appropriately following discussion with the applicant, in which case any such amendment must be noted.

2.2 Determination period

The length of time required for deciding whether the application should be granted or refused is referred to as the “determination period”.

For street trading, the target timeframes are set as follows:

Type of application	Determination period (following receipt of a valid application)
Grant of street trading licence	8 weeks
Grant of temporary licence	3 weeks
Renewal of street trading licence	4 weeks
Variation of street trading licence	2 weeks

These timeframes are not statutory and are rather in place to provide efficiency targets for the team and some degree of certainty for applicants.

Where necessary, however, due to the complexities of a particular application, the target timeframe may be extended for a limited time; however, in such circumstances, the extension and its duration will be notified to the applicant, with reasons, before the original target completion period has expired.

The determination period, from valid application to decision, is calculated from the first working day after a valid application has been received (Day one)

If an apparently valid application is later found to be invalid following registration, the original start date for processing the application should be disregarded. The time from application to decision should start again on the date the application is made valid. This is the only circumstance in which the start date should be amended. For example, lodging a cheque or making an electronic payment for the correct fee amount is taken as payment; however, if a fee is paid by a cheque which is subsequently dishonoured or an electronic payment which is declined, the determination period is reset to begin the day immediately after the full fee has been received. If we request clarification or require additional information to determine the application, the ‘clock’ should not be stopped whilst waiting for this information, i.e. the determination period is unaffected.

Implications for applicants

Applicants should be advised to allow sufficient time for their application to be processed before starting to trade.

While in all cases applications will be processed as quickly as possible following receipt, applicants should be mindful of the target determination periods, to avoid any disappointment arising from the failure to obtain a licence within the desired timeframe.

On occasions, it may be possible for a temporary licence application to be determined for an event within a shorter timeframe; however, that would depend on variables such as the number of applications received for the event and existing work loads.

We will not, therefore, reject applications for temporary licences received less than 3 weeks before an event; however, applicants should be encouraged to apply at the earliest opportunity and no later than 3 weeks before an event, as there is no guarantee that an application would be determined within a lesser period.

For some events, for which large numbers of applications may be expected, Council will invite applications to be made by a specified date, at least 4 weeks in advance of the event itself.

2.3 Valid applications

On receipt of an application, officers will review the application to determine whether the applicant has:

- completed the application in the approved form and manner (i.e. using the current version of the specified application form)
- provided all the required information
- applied for the correct type of licence
- paid the appropriate fee for the type of licence and trading, and
- provided all the other supporting documents and certification, in accordance with the criteria set out in the “Required Items” list for that type of licence.

If the applicant has met the above criteria, the application is considered “valid” and will be registered.

2.4 Invalid applications

If the application does not meet all of the requirements, it is considered invalid and the applicant will be advised of what additional information is required, in the letter of acknowledgement.

Following application, the applicant will have 28 calendar days to satisfy all requirements.

The applicant may request an extension if required, which may be granted at the department’s discretion.

2.5 Rejection of applications that are not valid

Where an application has been made, but not all required items have been received within the requested (28 day) timeframe, the application will be rejected as incomplete and the applicant advised that they do not have a licence and must not engage in street trading.

In such circumstances, any fee paid will be refunded or held pending submission of a new application, as appropriate.

2.6 Resubmission

If an applicant updates and resubmits their previously declined application, we will process it as a new application.

2.7 Acknowledgement of applications

All applications will be acknowledged as quickly as possible (target: within 3 days).

For valid applications, applicants will be advised:

- whether they may continue to trade (renewal applications only) – applicants for the grant of a licence must not commence trading unless and until a licence has been granted [It is in the public interest, including for public health and road safety reasons, that Council processes an application fully before a trader commences trading]
- the time period within which they can expect the licence to be granted, i.e. the target completion date; and
- that they should contact the Licensing Section if they have not heard from Council by the target completion date of which they have been informed
- available means of redress

For invalid applications, applicants will be made aware of the following:

- whether they may continue to trade (renewal applications only);
- what additional information and/or items are required to complete the application
- the timeframe within which the outstanding items must be received (28 days); and
- the consequences of failing to provide the required items within the requested timeframe

Note:

Where, before the date of expiry of a licence, a valid application has been made for its renewal, it shall be deemed to remain in force until the determination by the council.

Applications to renew a licence that are received after the expiry date of the previous licence will be rejected. In such cases the application will be deemed to be an application for the grant of a licence. The trader will no longer have a licence and can no longer trade until a new licence has been granted.

In order to avoid such circumstances, licence holders will be reminded of the need to renew their licence 2 months before the expiry date of their licence.

Where, before the date of expiry of a licence, an application has been made for its variation, the trader may continue trading, but only on the terms and conditions of the existing licence, as the variation request will still have to be determined.

Stage 3: Consultation and information gathering

Stage 3: Consultation and information gathering involves carrying out consultation, collating any representations made in relation to the application and inspecting the premises to be licensed.

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)

Council **may** also consult such other persons, as it considers appropriate, depending on the circumstances, e.g. environmental health or City Centre Initiative.

While not a statutory requirement, Council will have regard to any observations received in response.

Consultation responses will be recorded for later consideration.

We will encourage early responses; however, we will allow up to 28 days for receipt of responses in relation to applications for street trading licences.

For temporary licence applications, consultees will be requested to respond within a shorter timeframe: 10 days.

Stage 4: Consideration and determination of the application

When considering whether to grant, renew or vary a street trading licence or temporary licence, officers will have regard to all material information collated in Stage 3, including consultation responses.

4.1 Delegated authority

Officers only have delegated authority to grant applications.

In the first place, officers will determine whether the applicant has satisfied the requirements that Council imposes on applicants for the grant of street trading licence or a temporary licence, including those relating to the provision of required documentation.

However, the Act places an obligation on Council to grant a street trading licence unless:

- it is required to refuse under the mandatory grounds for refusal as specified under section 8 of the Act; or
- it feels it ought to refuse based on the discretionary grounds for refusal as specified under section 9 of the Act.

Where there are grounds for refusing an application, which cannot be resolved by officers, the application must be determined by Council.

4.2 Grounds for refusing a street trading licence application

There are mandatory and discretionary grounds on which an application may be refused.

Mandatory grounds for refusing an application

Section 8 of the Act sets out certain circumstances in which Council **must** refuse an application for a street trading licence.

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 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 between 1 September - 1 July can legally leave school on 30 June in that academic year

Children turning 16 between 2 July - 31 August can legally leave school on 30 June in the following year

An applicant has no right of appeal against the refusal of an application on mandatory grounds.

Discretionary grounds for refusing an application

Section 9 the Act sets out 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.

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

Grounds related generally to the trading

- 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
- 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 other street traders as well as those trading in shops

Grounds related specifically to the applicant

- the applicant has deliberately made a false declaration relating to a matter relevant to the application
- 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
- the applicant is considered to be an unsuitable person to hold a licence because of misconduct or some other reason relating to trading activities

Assessing the suitability of applicants

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.

It is important to note that the misconduct or other reason must be related to trading activities, e.g. sale of fake or counterfeit goods, trading without a licence, etc.

An application cannot, therefore, be refused because of an unrelated offence, such as, parking misdemeanours, etc.

In addition to consulting with police, applicants for street trading licences are requested to provide a recent Basic AccessNI Disclosure Certificate, which will provide information on any unspent convictions.

For first-time applicants, the Certificate must be less than 3 months old at time of application.

For applicants who have previously been granted street trading licences, the Certificate must be less than 12 months old at time of application.

Where the information received raises concerns that an applicant may be unsuitable to hold a street trading licence, on account of misconduct or some other reason relating to trading activities, Council will give careful consideration to:

- 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

Each case will be decided on its own merits and Council reserves the right to consult with the police and other relevant agencies when assessing an applicant's suitability.

Where concerns remain, the application will be referred to Committee for decision.

As with other discretionary grounds for refusal, anyone who is refused a street trading licence on the grounds that he is deemed unsuitable, on account of misconduct or some other reason relating to trading activities, has the right of appeal to the Magistrates' Court, so the discretionary ground should only be exercised with caution and following legal advice.

Application to temporary licences

[Note: Basic AccessNI Disclosure Certificates will only be requested from applicants for a temporary licence if they are previously unknown to Council, i.e. first-time applicants. Due to the circumstances of trading at events and the short term nature of the licence (typically one day), the risk of misdemeanours during trading are considered to be lower. In addition, as the target completion period is only 3 weeks, the requirement for an applicant to obtain a certificate may jeopardise the application.]

4.3 Grounds for refusing a temporary licence application

Mandatory grounds for refusing an application

Most of the mandatory grounds for the refusal of a full-term licence will apply equally to applications for the grant of a temporary licence.

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 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.

It should be noted that 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 be issued for locations at which trading is expressly prohibited under a designating resolution.

4.4 Criteria for deciding temporary licence applications

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, a council must make these available on request and must use them in deciding each application for a temporary licence. This is to ensure that applicants are aware of the grounds on which each application is decided and provides for as transparent a system as possible.

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

These are detailed in Appendix 3 and are made available to all applicants for temporary licences.

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.

Temporary licences to trade at civic festivals and events

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

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.

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.

If the organisers of a civic event believe that the level of provision being planned within the event zone is already adequate, having regard to the existing businesses within the vicinity of the event space(s) and any market traders, 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.

The Licensing team will, however, engage with the organisers of civic events to determine the suitability of any areas outside of the designated event zone(s) for temporary trading.

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

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 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. Possession of a street trading licence does not, however, confer a right to trade during festivals and events.

Stage 5: Granting or refusing an application

5.1 Granting an application

Conditions

When, having taken all relevant matters into consideration, it is decided to grant, renew or vary a street trading licence or to grant a temporary licence the licence will be granted subject to certain conditions, which fall into two categories: standard conditions, which must be included on every licence; and further conditions which Council may impose at its discretion.

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

- the location in a designated street where a trader may operate under the authority of the licence. In the case of a trader operating from a stationary position, this may be a precise location within that street. If the licence holder is permitted to operate as a mobile trader, Council will specify the areas within its district where trading is permitted or prohibited;
- the type(s) of goods or services which the licence holder may sell or supply. These details may be as narrow or as broad as Council decides are appropriate in each case;
- the days and the times during which a licence holder is permitted to trade;
- the type, size and form of any receptacle (stall, table, vehicle, etc.,) which may be used by a licence holder. The purpose of this provision is to permit a council to control the space being occupied by a trader on a particular site and to ensure that the trading is not causing undue nuisance, interference or inconvenience to persons or traffic;
- that any receptacle used in trading should bear the name of the licence holder and the licence number, displayed in a prominent position on the receptacle;
- the requirements for the storage of goods and receptacles. This condition applies during the period of trading and extends to the storage of goods, etc., after the close of trading. Therefore, the conditions cover the arrangements to be made for storage of items to replenish stock during trading;
- details as to the trader's responsibilities in relation to rubbish, litter, etc., and the containers which are to be used to hold this until it is removed;
- the requirement that the trader avails of the licence to a reasonable extent. For example, where the number of requests for licences outweighs the available locations, it seems reasonable that traders who have been granted a licence should use it to as full an extent as possible; and
- the arrangements regarding the payment of fees and charges, in order that each trader is fully aware of them.

The only limit to Council's discretionary powers to attach further conditions is that the conditions must be considered "reasonable" and Council may be called upon to justify the attachment of such conditions.

A right of appeal is provided against any condition on a licence.

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

The conditions that are currently specified on each street trading licence are detailed in Appendix 2.

Variation of Street Trading Licences

Council may at any time vary the conditions of a street trading licence where an application is made to do so by the licence holder.

Duration of licences

The Act gives Council the discretion to decide the duration of street trading licences, up to a maximum duration of 3 years.

It is our policy that street trading licences may be issued for the following durations:

- Minimum duration: 3 months
- Maximum duration: 1 year

Licences will terminate on 31st March each year.

Temporary licences will, as required by law, have a maximum duration of 7 consecutive days.

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

Permitted trading hours

Stationary and mobile street trading licences

The Council will determine each application on its individual merits but will generally only permit street trading between 09:00 and 21:00 hours.

Should an application be received for a street trading licence to sell hot food within the town or city centre, the licence will only permit trading until 21:00 hours.

Any applications requesting trading outside these hours will have to be assessed in terms of public order impact and the potential for nuisance and will be referred to Committee for decision.

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 necessitate it.

Temporary licences

Where a temporary licence is issued for a particular event the permitted trading hours will be aligned to the times of the event, including the expected arrival and departure periods

5.2 Refusing an application

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

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
- refuse to vary the conditions specified in a licence where the application to do so has been made by the licence holder

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

Council will consider any representations that have been 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.

Representations will be considered by Council' Health and Community Committee.

Notice of final decision

Within 5 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, where necessary, the rights of appeal against that decision.

Appeals

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.

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.

Where the application for the renewal of a licence is refused, 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 Council renews that licence.

Failed temporary licence applications

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.

6.0 Procedure for passing, rescinding or varying of designating resolutions under the Street Trading Act (NI) 2001

6.1 Purpose

This section details the procedure that will be followed by Derry City and Strabane District Council when considering whether or not to pass, vary or rescind a designating resolution under the provisions of the Street Trading Act (NI) 2001.

6.2 Background

The Street Trading Act (Northern Ireland) 2001 permits a Council to pass a designating resolution to designate streets in which the Council can allocate street trading pitches to those persons who trade as stationary traders.

Under the legislation, Council must refuse any application for a street trading licence if the applicant wishes to trade as a stationary trader, either:

- in a street which is not a designated street; or
- in any article, thing or service, the sale or supply of which would be contrary to the terms of any designating resolution having effect in relation to the designated street in which the applicant wishes to trade.

For a street to become a “designated street”, Council must pass a resolution, known as a “designating resolution”, prescribing the streets, or parts of streets, in which trading from a stationary position may be permitted.

Additional streets may become designated at later stages by way of further designating resolutions.

Council may also decide to specify in a designating resolution, the classes of goods or services in which trading in a designated street will be either permitted or prohibited. These may be contained in the same resolution that designated the street or they may be the subject of a separate resolution.

Council may, by passing a subsequent resolution, rescind or vary a designating resolution in relation to either the street itself or the goods or services which are permitted or prohibited in the street. In practice, this may happen when changes occur which may render an area no longer suitable for street trading or not suitable for trading in certain commodities.

The procedures which Council must follow when considering passing, rescinding or varying a designating resolution in relation to any street, or the types of trading which may or may not take place in a designated street, are contained within Section 4 of the Act.

An underlying objective of the process of designating streets is that it must afford key stakeholders an opportunity to comment on a proposal to permit street trading in a particular area.

It should be noted, however, that the final decision in respect of a designating resolution rests with the council. Whilst other interests are consulted and a council must consider any representations made, these organisations or individuals do not hold a power of veto over any decision reached by Council.

There is no right of appeal against Council’s decision to pass or not to pass, rescind or vary a designating resolution. This will also apply to a designating resolution regarding the classes of goods or services which may or may not be offered for sale in a street.

6.3 Scope

This procedure will be followed at any time when it is proposed to pass, rescind or vary a designating resolution in relation to street trading.

6.4 Designating Resolution Procedure

All requests for a street, or part of a street, to be designated for the purposes of stationary street trading, or for an existing designating resolution to be rescinded or varied, must be made in writing and addressed to the Licensing Section, Derry City and Strabane District Council, 98 Strand Road, Derry BT48 7NN, using "Form ST1: Designated Streets", Appendix 4.

All requests received will be subject to an initial assessment to determine the suitability or otherwise of the street for stationary trading, having regard to the factors listed in Appendix 5, "Designated Street Suitability Considerations".

The Licensing Section will also regularly review the current list of designated streets and permitted goods and services and may make recommendations for the passing, rescinding or varying of a designating resolution.

On an annual basis, during September of each year, a report on all such requests received during the preceding 12 months and / or Licensing Section recommendations, together with accompanying Designated Street Suitability Assessments, will be submitted to Council for consideration.

Where Council subsequently proposes to pass a designating resolution, or a resolution to rescind or vary a designating resolution, it will publish its intention to do so by publishing a public notice in at least two newspapers circulating within the district.

The public notice:

- will contain a draft of the proposed resolution, specifying the street and/or the categories of goods or services which are to be the subject of the proposed resolution; and
- will state that representations relating to it may be made in writing to the Council within a period specified in the notice, not being less than 28 days from the date of first publication of the notice

At the same time as publishing the public notice, Council **will** consult with:

- The PSNI District Commander of Derry City and Strabane
- The Department for Infrastructure (DfI) Roads, as regards that Department's functions with respect to roads and regulation of road traffic

Council **may** also consult other persons, as it considers appropriate, for example:

- Council services, including the Planning Department, Business Support 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
- Any other persons or bodies that may be deemed appropriate
- Department for Communities Historic Environment Division
- Visit Derry
- Retail NI

Where Council proposes to pass a resolution to rescind or vary a designating resolution, it **will** also consult with any existing licence holders trading in the street to which the proposed resolution would apply, and any body representative of those traders.

Council will consider all written representations that have been received within the time limit specified for receipt of representations. This will be done as soon as is reasonably practicable after the expiry of the time limit.

Representations received beyond the specified time limit will not be considered.

After Council has considered all written representations it may, if it thinks fit, pass the designation resolution.

Where Council has either passed a designating resolution, or a resolution to rescind or vary a designating resolution, or has determined not to pass such a resolution, it will publish notice to that effect, in two consecutive weeks, in two or more newspapers circulating in the district.

When passing a resolution, Council must specify the date when the resolution takes effect. This date must be not less than one month from the date that the resolution is passed. The date chosen for the resolution to come into effect must also ensure that the required public notice can be first published at least 28 days before that date.

Council will also, as required in the legislation, send a copy of the public notice to any person who made written representation relating to the proposed resolution.

Appendix 1: Exempted trading

A number of activities are exempted from the definition of street trading and may be carried on without a street trading licence:

Exempted trading activity	Example
Sale of items or supply of services to the occupiers of private residences or places of business adjoining any street, on a door-to-door basis, if the trading is carried out by means only of visiting those premises, whether by appointment or otherwise	Commercial travellers who visit homes or businesses to sell their products Such activities are considered unlikely to cause undue nuisance, interference or inconvenience to persons or vehicles
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 foot, moving door to door, i.e. 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, who has obtained the appropriate pedlar’s certificate from the police, travelling and trading on foot, going from house to house, carrying goods to sell

Exempted trading activity	Example
Trading carried out <u>at or adjoining</u> 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	Proprietors of petrol filling stations may offer a range of goods (including fuel) on their forecourts without a street trading licence However, other persons are not permitted to trade on a petrol station forecourt without a street trading licence
Trading carried out <u>at or adjoining</u> 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 This does not negate the need to comply with other legislation such as the requirement not to cause an obstruction of the highway	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. 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. Note: if the items offered for sale are different to the day-to-day business, or the trade does not form part of the business then a street trading licence will be necessary.
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; "Big Issue" sellers selling from the hand
Trading carried out in an area where a pavement café licence is in force, provided that the trading: - 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

Appendix 2: 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 licence holder must adhere to the conditions of this licence and the provisions of the Street Trading Act (NI) 2001.
- 16 The licence 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.
- 34i The licence holder will maintain an adequate level of public liability insurance for his trading activities

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 and locations 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 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:

- Before 12 noon and after 1900 hours (7:00pm)
- At any time in a way which gives reasonable cause of annoyance
- 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 3: 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:

Criterion 1: The applicant is a fit and suitable person to hold a licence

- Temporary licences will not be issued to any applicant who is assessed to be an unsuitable person to hold a licence, because of misconduct or some other reason related to previous trading activities.
- In applying for a licence, the applicant must have supplied all information reasonably required by Council to determine the application and must not have knowingly made a false declaration, in relation to a matter relevant to the application.
- Where the demand for trading places exceeds the spaces available for trading consideration may be given as to whether the applicant has failed to use a previous licence to a reasonable extent, without a satisfactory explanation.
- The applicant must have paid all fees or charges required by the conditions of a previous licence.

Criterion 2: 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.

Criterion 3: 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.

Criterion 4: The location is suitable

- The location must be suitable with respect to the safety of the public and any risks which may arise, including those due to vehicle movements, on or off road. For example, where trading will be carried out after dusk, will the site 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/footfall 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

Criterion 5: There is insufficient provision of the goods or services already

- An assessment will be made to determine whether there are already enough persons trading in the goods or services in which the applicant wishes to trade.
- This assessment will take into account other licensed street traders as well as those trading in shops.
- 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.

Criterion 6: 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 a live 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

Criterion 7: The nature of the articles, things or services being traded is such that their sale or supply, or their preparation for sale or supply would 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. nuisances due to noise, odour and fumes, from cooking operations or use of generators, litter, etc.
- The risk of nuisance may be higher where trading takes places near 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

Criterion 8: The trading is not likely to give rise to reasonable offence or result in anti-social behaviour, public disorder or imminent breaches of the peace

The sale or supply of the following specified classes of articles or things will not be authorised:

- Age restricted products, including alcohol, fireworks and dangerous weapons, such as knives
- Merchandise that promotes, supports or glorifies hate crime or contravenes Council's "Section 75 duties", which require Council to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.
- Pornographic materials and items containing mature content
- Items that promote, support or glorify proscribed organisations
- Sale of items which, on the advice of the Police Service of Northern Ireland, may result in antisocial behaviour, public disorder or imminent breach of the peace

In circumstances in which there are more applicants than there are licences available, all other selection criteria being equal, the successful applicant(s) will be chosen by a random selection process.

These criteria will be made available to any interested person on request.

Council may amend or replace these criteria at any time, without consulting those who may be affected. However, whenever this happens, Council will make the new criteria available and decide any applications on the basis of those criteria.

Appendix 1: List of proscribed groups linked to the Northern Ireland conflict

Republican groups

- Continuity Army Council
- Cumann na mBan
- Fianna na hEireann
- Irish National Liberation Army
- Irish People's Liberation Organisation
- Irish Republican Army
- Saor Eire

Loyalist groups

- Loyalist Volunteer Force
- Orange Volunteers
- Red Hand Commando
- Red Hand Defenders
- Ulster Defence Association
- Ulster Freedom Fighters
- Ulster Volunteer Force

Appendix 4: Form ST1: Designated Streets

Contact details:

Name:	
Address:	
Tel.	e-mail:

Suggestions for streets to be designated

What location(s) would you like Council to consider designating as being suitable for stationary traders?	
Location address:	List any particular articles, things or services that you would like to see sold or supplied at this location

Comments on existing designated streets

In relation to the existing list of designated streets, what comments would you like to make, in relation to the current suitability of the designation and/or the goods or services which are permitted to be sold or supplied there?		
Designated street	Comments regarding the suitability of the street for trading	Comments regarding the goods or services permitted

This form should be:

- posted to The Licensing Section, Derry City and Strabane District Council, 98 Strand Road, Derry, BT48 7NN, **or**
- e-mailed to: licensing@derrystrabane.com

Thank you for taking the time to submit your comments and/or suggestions

Appendix 5: Designated Street Suitability Considerations

1. The following factors will be taken into consideration when deciding whether or not a street or part of a street is suitable for street trading at stationary pitches.
2. Where appropriate, expert advice will be sought from other parties, e.g. PSNI or DfI (Roads) in relation to road safety.
3. This list is not exhaustive and Council reserves the right to take into consideration any other relevant matters in determining the suitability of each location.
4. Each case will be considered on its own merits.

Key factors to be considered

In relation to a street, or part of a street:

- Is there any other legislation that specifically prohibits trading in that place?
- Would trading be incompatible with future development plans for that location?
- Would trading at that location give rise to unacceptable risks to the safety of the public?
- Is there sufficient space to ensure that trading will not cause any obstruction to pedestrians or vehicles, including emergency vehicles?
- Would trading interfere with sight lines for road users, including at road junctions, or pedestrian crossing facilities?
- Could trading have a detrimental effect on the general amenity of the surrounding area, e.g. due to increased traffic, nuisances due to noise, odour and fumes (from generators) or litter?
- Would trading adversely impact upon the character and appearance of the area?
- Might permitting trading provide a useful service to a local community?
- Could trading have an adverse effect in terms of anti-social behaviour and public disorder?

Note:

the fact that there may be the potential for adverse impacts arising from a street designation will not necessarily preclude the street, or part thereof, from being designated, if the adverse impacts may be avoided through restrictions on, for example:

- the number and/or size of pitches
- the type of goods and services sold there, or
- the hours of trading permitted.