

# Street Trading Policy

## Edition 4

July 2017



<b>Issue and version :</b>	Issue 4 Version A
<b>Officer/Panel Controlling Procedure:</b>	Licensing Manager
<b>Authorisation Level:</b>	Full Council
<b>Authorisation Date:</b>	20 <sup>th</sup> July 2017
<b>Review date:</b>	July 2022

<b>Section</b>	<b>Contents</b>	<b>Page(s)</b>
1	Purpose of the Policy	3
2	What is Street Trading?	3
3	Exemptions from the need to obtain a Consent	4
4	Nature of Goods, Activities and Trading Hours	6
5	Application for and Issue of a Consent	6
5	Who can apply?	6
5	Receipt of Application	7
5	Insurance	7
5	Determination of the Application for Consent	7
5	Issue of a Consent etc.	9
5	Revocation or Surrender of a Consent	10
5	Consultation & Notice	11
6	Established and Proposed Pitches	11
7	Fees for Street Trading Consents	12
8	Conditions which may be applied to the Consent	13
9	Enforcement Action	13
10	Equality Impact of the Policy	14
11	Feedback and Review of the Policy	15
Appendix 1	Information about other legislative requirements	16
Appendix 2	Examples of Conditions which may be added to Consent	20
Appendix 3	Extracts from Schedule 4 of the Act	23
Appendix 4	The Council's Complaints' Policy	27

## **1 Purpose of the Policy**

The purpose of the Council's street trading policy is to create a street trading environment, within the District of South Somerset which: -

- complements premises-based trading establishments;
- promotes appropriate street trading activities, which provide diversity and consumer choice;
- supports community cohesion and equalities
- enhances the character, ambience and safety of local environments;
- is sensitive to the needs and concerns of residents;
- will complement and inform other Council initiatives including those on street entertainment and encouraging entertainment diversity
- highlights the requirements and standards expected of street traders
- is fairly, appropriately and proportionately controlled, in line with the Council's Enforcement Policy;
- provides clear guidance to the Council officers who will administer the street trading service under it.

## **2 What is Street Trading?**

The purpose of the Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (the Act) is to ensure that Councils can properly regulate those who sell without the use of ordinary business premises and, particularly, traders who move from place to place. It is concerned, primarily, with commercial activities, excluding the provision of services, but there are grey areas and each case needs to be considered on its facts.

South Somerset District Council (SSDC) has adopted Schedule 4 of the Act for the whole of its area and has designated all streets in the District as 'consent streets' for street trading purposes.

The effect of this designation is that trading in any street is prohibited by law (subject to legal and other exemptions set out in Section 3 below), without first obtaining a Street Trading Consent (a Consent) from the Council.

Street trading means 'selling, exposing or offering for sale any article (including a living thing) in a street'. From this definition, any person offering purely a service e.g. a shoeshine (where there is no tangible good such as a picture or sketch) will not be caught by the street trading legislation.

The term 'street' includes 'any road, footway, beach or other area to which the public have access without payment'. Any person street trading without a valid Consent commits a criminal offence.

The courts have held that the definition of a 'street' does not depend upon the area of land in question being in public ownership and private land may be classified as 'a street' too if it meets the definition in the Act and the precise circumstances of the trading indicate that it amounts to street trading.

The matters that the Council is likely to consider relevant when deciding whether an area is a 'street' include: -.

- whether the trading outlet is built on solid foundations;
- whether the trading takes place within a building including areas where the one or more sides are open to the elements e.g. the area known as the "undercroft" at Castle Cary would not be considered a 'street';
- the nature of construction of the trading outlet e.g. of brick/block
- which of the mains services are connected (if any)?
- whether permanent planning permission has been gained
- would the trading outlet be difficult to move? i.e. is a crane required to move it onto or off of a site?
- whether it comes and goes onto the site e.g. it is removed each day?
- is the trading outlet moved to a different site(s) each day?
- distance from the nearest highway. If you are trading within 15 metres of a street, road or car park, there is a presumption that you will need a street trading consent subject to the other exemptions applying. If you trade from a position of more than 15 metres from a street, road or car park, please contact the Licensing Service to see whether a Consent is required as each case is judged on its own set of circumstances.
- the original purpose/nature of the item for sale e.g. whether it is a wholly charitable or domestic purposes or is the sale of a service rather than goods.

The fact that a trader has a lease or licence i.e. a right to occupy the land, or has some other form of consent e.g. planning consent or a licence under the Licensing Act 2003, will not override the requirement to obtain a Consent where the trading amounts to street trading. Similarly, holding a Consent for street trading will not remove the obligation, on the trader, to comply with any other legal requirements e.g. holding a current food business registration nor override the duty to comply with the general law concerning e.g. trespass (the landowner's permission to occupy the land must be obtained), highways, planning, licensing, health and safety, nuisance, waste disposal requirements etc. Appendix 1 provides some information about other legislative requirements, however, this is not intended to be a comprehensive guide and does not for example cover planning or highways matters.

The requirement to obtain an Consent for any street trading is wide-ranging and would include, for example, all hot and cold food vendors selling burgers, kebabs, doughnuts, ice cream etc., and all vendors of non-food products from any vehicle, stall, barrow, trailer, or any other moveable or static structure. Mobile artists who sketch or paint, or similar artisans who sell their own work are also likely to be caught by the Act.

Advice should be sought from the Licensing Service on the proposed activity/location to see if a Consent is required before starting to trade: Telephone 01935 462462 or email [licensing@southsomerset.gov.uk](mailto:licensing@southsomerset.gov.uk)

### **3 Exemptions from the need to obtain a Consent**

Some types of trading are legally exempt from the need to obtain a Consent; these include:

- a person trading as a Pedlar under certificate (currently issued by the Police);
- a market trader operating at a market venue which acquired this status by virtue of a grant, enactment or order.

- a news vendor selling only newspapers and periodicals. This exemption is subject to restrictions which are set out in Appendix 3
- trade which is carried on at premises used a petrol station
- shops do not require a Consent even if they operate outside the actual building providing it is, essentially, an extension of the shop etc. e.g. where a shoe shop has rails of shoes on display outside the shop; again this does not negate the need to comply with other legislation such as the requirement for a pavement licence (obtainable from Somerset County Council), if appropriate:
- trade carried out by 'roundsmen'. A 'roundsman' has been defined as one who visits a 'round' of customers delivering the orders of those customers". e.g. milkmen.
- charitable collection e.g. selling poppies in aid of the Royal British Legion (although a collection permit, under the Charities Act 1992 may be needed)

The Council has decided that the following trading activities do not require a Consent:

- goods from working farms sold at the premises where they were produced
- goods sold at Local Farmers'/Producers' Markets etc. providing such markets meet the Code drawn up by the Somerset Farmers' Markets organisation (basically, this term means that the food is being sold within 30 miles of where it was produced. Advice should be sought from the Licensing Service to see if the market, in question, meets the required criteria before trading commences. These outlets are seen as part of the Council's rural investment and regeneration work, in supporting local producers, and, hence, are seen as extensions of the farms rather than street trading.
- Business premises are allowed, normally, the same exemption as shops in terms of goods displayed outside of the premises because their position is analogous to shops but the items displayed must be, still be, essentially, an extension of the business.
- sales of articles by householders on land within the boundary of their home providing that this is not a commercial concern e.g. selling home grown fruit and vegetables, homemade jams etc. Such sales are seen as disposal of surplus domestic produce rather than trading
- Trading at an illuminated carnival provided an exemption certificate has been applied for and granted.
- an event that is community-based and run, for non-commercial purposes, such as a fete or school fund raising activity, again, this is seen as non-commercial fund raising. Where **any** of the profit of the trading is retained by the trader for private gain, and not passed to the organisers of the event for use in, or by, the community concerned then the trader will not benefit from the fee exemption (unless a fee is charged to those entering the event);
- Events run by charities or political or educational activities providing the profits from such events are wholly passed to the charity or political or educational organisation concerned because such activities are not commercial trading;
- Traders that are part of an established travelling fair.
- Trading in the "Undercroft" area of the Market House, Castle Cary.
- Mobile Ice Cream vans and mobile sandwich/hot food vendors.<sup>1</sup>

---

<sup>1</sup> Mobile traders would not stay in any one street or location for longer than 15 minutes and would not return to the same location on the same day.

Please contact the Licensing Service should you wish to discuss this further:  
Telephone 01935 462462 or email [licensing@southsomerset.gov.uk](mailto:licensing@southsomerset.gov.uk)

#### **4 Nature of Goods, Activities and Trading Hours**

The Council would not normally grant, a Consent for the sale of goods which conflict with those provided by nearby shops or markets because it could provide an unfair economic advantage to the holder of the Consent.

The type of goods allowed to be sold will be considered on a pitch-by-pitch basis having particular regard to local needs, product diversity and specialism e.g. artisan breads, and appropriateness of the proposed location in terms of space and balance.

Street trading hours will mirror, normally, those of the shops or businesses in the immediate vicinity except for hot food takeaways where trading hours will be determined on a pitch-by-pitch basis.

The design and appearance of the Trading Unit e.g. stall, barrow, van or cart etc. used must be agreed by the Council's Licensing Manager before a Consent would be granted.

#### **5. Application for and Issue of a Consent**

A Consent is needed before any person can trade in a street within South Somerset. Details of the application procedure, whom to contact and the current fees payable for a Consent is set out in the Application Form.

Where the proposed site for trading concerns land owned by this Council or Somerset County Council, as Highway Authority, then permission from the relevant Council must be obtained before an application for Consent is made. A separate charge may be payable for this permission.

For land in the ownership of the SSDC you need to contact the Senior Land and Property Officer, The Council Offices, Brympton Way, Yeovil, BA20 2HT or telephone on 01935 462462. .

Where the proposed site for trading concerns land in private ownership then permission from the relevant landowner must be obtained before a Consent will be granted. The relevant permission should be included with the application for a Consent.

#### ***Who can apply?***

To apply for a Consent a person must be: -

- an individual (although 2 people can apply jointly) but not a company or other legal entity
- over 17 years of age
- legally entitled to live and work in the UK

- of good character (see below under Determination of the Application for Consent)

### ***Receipt of Applications and Fees***

An application will be treated as being received, only, when a correctly completed relevant application form and all the necessary supporting evidence has been received at the Brympton Way Council Office and the relevant fee has been paid.

The application can only be checked by a member of the Licensing Service, and only where a prior appointment has been made. Should an application be left at any other South Somerset District Council office or without an appointment, it will be treated as a postal application.

As a concession, if the applicant is applying for a yearly Consent then an instalment plan for the fee is available at the Council's sole discretion. The first monthly instalment must be paid in full when the application form is submitted and for the remaining instalments a Direct Debit mandate will be required.

If the fee is being paid by instalments, then, where the direct debit is dishonoured or stopped, the Council, will revoke any Consent issued, immediately, unless payment of the outstanding fee is made in cash, within 5 working days, at the Council office that issued the Consent. In such cases, an administration charge may also be added to the fee payable to cover any additional costs incurred by the Council.

Cheques are to be made payable to 'South Somerset District Council' -. Post-dated cheques will not be accepted.

Card payments can be made at one of the Council's offices or a member of the Council will contact the applicant where they have indicated they wish a card payment to be taken.

### ***Insurance***

The Council will accept no liability for the street trading activities undertaken by the Consent Holder(s). Evidence of suitable public liability insurance (minimum value of £5 million) will be required from the Consent Holder(s). National Market Traders Federation (NMTF) membership cards can be used as proof of public liability insurance.

The Insurance once accepted by a relevant Officer, must be maintain throughout the period of the Consent and the Consent will be revoked should the insurance be cancelled or breached or its terms altered so as to provide less than the level of cover required. Once the Consent is revoked the trading becomes illegal and the trader(s) may then be subject to enforcement action.

If the insurance is due for renewal during the period covered by the Consent, it is the responsibility of the Consent holder(s) to provide to the Council an original public liability insurance certificate to show that the insurance is continuous for the period of the Consent. Any breaks in the period of insurance may be grounds for revocation of the Consent.

## ***Determination of the Application for Consent***

Applications for a Street Trading consent will be determined by the relevant Licensing Officer, under delegated powers, using such of the criteria listed below or such other factors as are relevant and appropriate to the application in question. Each case will be assessed on its own merits and individual circumstances, where appropriate, may be taken into consideration. The criteria include whether the application:

- is at an appropriate site or pitch. The location of the proposed street trading activity should not present a substantial risk to the public in terms of road safety, obstruction and fire hazard. The term “public” refers to both customers frequenting the street trading activity, and other members of the public using the street. In particular, reference will be made to the matters referred to in Section 7 below
- creates more trading opportunities for small businesses or otherwise contributes to the economic vitality of the area. The existence of shops and businesses operating in the area will be considered if appropriate to avoid, amongst other things, unfair economic advantage,
- satisfies an unmet need for such goods in the immediate locality of the proposed activity e.g. fast food outlets on trading estates bearing in mind the presence of existing like outlets
- supports appropriate special events such as community, educational or charitable events (but see Section 3 – Exemptions - where the event is wholly charitable etc.)
- places an unreasonable burden on other agencies or bodies. The street trading activity should not present a significant risk to good public order in the locality in which it takes place.
- presents a significant risk of nuisance from noise, smells or fumes to households and businesses in the vicinity of the proposed street trading.
- supports community cohesion and the needs of under-represented groups
- is environmentally sustainable (including the applicant’s proposals for generating such power as is needed by the trading unit; dealing with any waste and litter arising from the activities)

The decision on whether to grant the consent may also take account of the suitability of the applicant to hold such a consent including relevant unspent convictions etc., levels of complaints received about the applicant(s) and whether and how such matters were resolved; whether any earlier Consent to the applicant(s) has been surrendered or revoked. The decision may take into account the attitude of the applicant and/or their staff etc. to dealing with concerns and queries raised by the Council Officers. It may also take account of the appearance of the trading outlet, quality of the goods to be sold and the hours and days for which it is intended to trade.

Where an application for a Consent is not acceptable, in some regard, e.g. the proposed hours of operation are too long; a Consent may be offered on terms which would be acceptable to the Council. Similarly, if after issue, problems or matters of concern arise, the Consent may be modified including adding, removing or substituting conditions, so as to take account of or deal with the concern or problem and ultimately, a Consent may be revoked.

The Act does not provide for a formal route of appeal to the Court where a Consent is not granted, nor does it limit the Council’s power to impose conditions; however, the Council has granted the power to the Licensing Manager to hear any appeal; the applicant must set out their case in writing and provide reasons why it should have



been granted or conditions should not have been imposed. If the appeal is not successful, the applicant will be given full reasons for not granting the Consent in writing (this includes e-mail or other electronic means etc.). The applicant may, also, be able to seek judicial review of the decision through the courts

### ***Issue of a Consent etc.***

Consents shall only be issued to persons who have the legal right to work in the UK. Applicants applying for a 3 month consent or longer shall provide proof of this right to the Council where requested. If the applicant is assisted by any persons at their pitch, they shall also supply proof that their assistants have the right to work in the UK. The applicant is required to supply a current photograph of themselves and any assistants; the Council will upon successful application, issue a badge and lanyard to the holder (and any assistants) which bears their photograph. Badges must be visibly displayed upon their person during the period of trading.

The holder of the Consent shall ensure that any persons joining their employ - whether paid or unpaid has received their badge prior to assisting at the pitch and shall return their badge(s) to the Council when they have left this employment within one month of leaving.

The applicant and any assistants shall provide evidence of a suitable background check in the form a basic disclosure to the Council before any consents and/or badges are granted. The disclosure shall not be any older than three months at the time of submission to the Council.

In exceptional short term circumstances such as illness, injury etc. then the Licensing Manager shall have the discretion to waive this requirement.

If the application is accepted, a Consent will be issued by the Council in the name of an individual person or jointly to two persons; the Consent is not transferable. Exceptionally, where the Consent was held jointly, the Council may at its sole discretion, allow the transfer from the joint holders to a sole holder.

The Consent will contain the specific terms under which it is granted such as the specific location(s) or area(s) where the street trading may take place, the days and hours permitted, the goods that may be sold together with any conditions that must be met.

The conditions attached to the Consent form part of the Consent and MUST be complied with at all times. Failure to meet the terms of the Consent could lead to the Consent being revoked or not renewed. The Council may vary the conditions, at any time, where it feels it is necessary or desirable and the holder of the Consent shall then comply with the Consent as amended.

Unit Identification document (known as the 'Plate') will be issued with the Consent. The Plate remains the property of the Council and must be returned to the Council if the Consent is revoked or surrendered e.g. because the holder ceases to trade. The form of the Plate will depend on the type of Consent issued.

The Consent and the Plates will be issued only at the Main Council Offices. The applicant (or one of them if joint applicants) will be required to attend in person to collect the Consent and/or Plate(s) including for any replacements. A charge will be made for replacement Consent(s)/Plate(s) unless the circumstances are exceptional, in the opinion of the Licensing Service,

All vehicles, stall, carts or other type of unit used for street trading must display, at all times whilst trading, a valid Plate. The Plate must be displayed in a prominent position on the trading unit so that it is clearly visible, to members of the public using the trading unit.

Under the current legislation, the maximum period for which a Consent may be issued is 12 months. A Consent may be issued, for block or individual bookings, for shorter periods where:

- the trading is at organised street markets, carnivals and similar events
- for mobile street artists/traders
- if officers feel that it is reasonable to allow, initially, a lesser period whilst the trader assesses if the site or pitch is viable

A Consent will state the date of its expiry and will lapse upon that date stated unless renewed; no reminder renewal notice will be issued advising of the imminent expiry of the Consent. The holder(s) of a Consent has full responsibility and liability for ensuring the renewal of the Consent in good time.

Where the existing holder(s) of a Consent wishes to renew it, that person(s) must ensure the application to renew, fee and other information is provided to the Council a minimum of 28 days prior to expiry for the renewal request to be processed.

Where a Consent has expired, and an application has not been submitted to the Council for renewal, a new application will have to be made. Where, exceptionally, the Licensing Manager agrees to waive this provision, the full fee will be charged for the whole period to ensure the continuity of the Consent whether or not the holder has actually traded during the period since the earlier Consent expired.

Where a Consent has expired but a valid application to renew and full fee was received before the expiry date but the applicant failed to allow sufficient time for the application to renew to be processed, the pitch would be re-offered, normally, to that applicant.

Payment by instalments may be available as set out above under 'Receipt of Applications and Fees'.

In other cases where a pitch becomes vacant, it may be offered to those person(s) who have expressed an interest either as a result of an advertisement placed by the Council or otherwise.

### ***Revocation or Surrender of a Consent***

A Consent may be revoked by the Council at any time after it has been granted, although, where possible, appropriate prior notice will be given to the Consent holder. The revocation may be for a variety of reasons including but not limited to non-compliance with conditions, because the Council or other agencies such as the utility companies require access to the location or because the Council wish to use the site for another purpose or where the landowner revokes his/her consent to use of the land for trading. Written reasons for the revocation will be given and a refund or remittance will be given of any sums paid in respect of any days which remain of the Consent period. The formula to be applied will be as set out below: -

*Number of complete days remaining x the daily fee paid.*

*This amount will be reduced to meet the costs of reinstatement/clearance etc. of site where such works have not been carried out to the Council's reasonable satisfaction.*

In addition, a Consent will automatically be revoked where the application is made by an individual (or both Consent holders if two people hold the Consent) who dies or who lacks capacity under the meaning of the Mental Capacity Act 2005.

The Consent will also be revoked where any public liability Insurance held by the Consent holder(s) is cancelled, not renewed or its terms are breached by the Consent holder(s) or varied so as to reduce the minimum cover stipulated in this Section.

A Consent holder has a duty, under the Consent, to notify the Council of any offences for which s/he is arrested, charged, convicted or cautioned since the grant of the Consent so that the Council can assess whether the Consent should be revoked or the Consent conditions modified.

No claim will lie against the Council where it revokes or varies a Consent and the Consent itself will make it clear that no liability attaches to the Council in respect of any revocation or variation or indeed any act or omission of the Consent Holder.

Where the holder of a Consent wishes to surrender that Consent, e.g. where s/he has stopped trading, then this must be confirmed in writing to the Council and the actual Consent and Plate returned to that Council.

Where a Consent is jointly held by 2 individuals, a surrender by either one of the holders may be accepted by the Council, (whether or not the other holder consents to the surrender) providing the actions mentioned in the last paragraph have been complied with in full. The Council may, at its sole discretion, transfer the Consent to the individual who was a joint Consent holder where they not wish to surrender the Consent

Upon receipt of the valid surrender, the Council may inspect the pitch to confirm that it has been vacated and check that the conditions of the Consent have been met in full. The Council will confirm the date upon which the surrender is accepted and will refund or remit any sum due to the Consent holder(s) for the remaining period of the Consent. The formula will be the same as that used for a revocation.

A deduction may be made by the Council, from any sums due to the holder of a Consent, following the revocation or surrender of that Consent to meet the reasonable costs incurred in ensuring compliance with the terms of the Consent where the Consent Holder(s) failed to do so e.g. the clearance of litter or other detritus from the site, the making good of damage etc. Where the sum expended by the Council on such matters exceeds the sum due to be refunded to the Consent holder(s) then no sum shall be payable to the Consent holder(s) and such sums in excess shall be recoverable by the Council from the Consent Holder(s) as a debt and interest may be added where payment is not made within 14 days of a demand being made.

If the Consent is surrendered and it was subject to a discounted rate, this discount will no longer apply; the holder must then pay the council any monies due in accordance with the nearest undiscounted fee payable for the period of trading.

### **Consultation and Notice**

Where the proposed pitch is situated in a lay-by outside a residential property the Council will consult with the resident(s) adjacent to the lay-by and will take their relevant representations into account when drafting the conditions to be attached to any Consent granted. No consultation with other persons or bodies will be undertaken, normally, before a Consent is granted or refused but, where Licensing Officers consider it appropriate, advice or comment may be sought from other bodies, such as the police or the highway agency.

The Council does not promise the holder(s) of the Consent peaceful enjoyment of the pitch/site and will accept no liability to the Consent holder(s) whatsoever and will pay no compensation, costs, damages, expenses etc. in relation to any loss, damage or interference that the holder may suffer from any cause whatsoever related to or connected with the Consent including, for example, because the streets are being cleaned or maintained, where an emergency arises or where strikes, riots etc. ensue.

## **6 Established and Proposed Pitches**

There are already certain established pitches at sites within the District where street trading is conducted. Any proposed new pitches will be subject to an assessment of the suitability of that site for the activity in question. The assessment will consider, amongst other matters, the suitability of the pitch for the street trading activities proposed, the implications upon nearby shops, businesses and markets and the accessibility of the pitch for those with disabilities.

Consents from static locations will not, normally, be granted where in the Council's view:

- A significant effect on road safety would arise either from the siting of the trading pitch/activity itself, or from customers visiting, parking or leaving the site; **or**
- There would be a significant loss of amenity caused by, noise, traffic or smell; **or**
- There is an already adequate like provision in the immediate vicinity of the pitch e.g. shops and markets; **or**
- There is a conflict with Traffic Orders e.g. waiting restrictions; **or**
- The pitch or trading unit obstructs either pedestrian or vehicular access, access to shops, traffic flows, or places the public or customers in danger; **or**
- The site does not allow the Consent Holder, staff and customers to park in a safe manner; **or**
- The street trading activity is carried out after dusk and the site is not adequately lit to ensure the reasonable safety of both customers and staff.

Where a Consent is surrendered or revoked, the Council will endeavour to advise the availability of that pitch on its website and should there be more than one applicant for that pitch, the Licensing Manager shall determine which applicant will be successful.

## **7 Fee for Street Trading Consents**

Fee levels and fee structure for a Consent will be set by the Licensing Committee and will be reviewed, normally, on an annual basis. Where a change in fees or fee structure arises the revised fee will apply: -

- from the next renewal following the Committee's decision for existing Consent Holders or
- immediately following the decision for new applications received after the decision date.

Please see our current scale of fees & charges

If the Consent is surrendered and it was subject to a discounted rate, this discount will no longer apply and the holder must pay the council any monies due in accordance with the nearest undiscounted fee payable for the period of trading.

## **8 Conditions which may be applied to the Consent**

Each Consent will set out the following information: -

- names and address(es) of the Consent holder(s)
- the day(s) and hours when street trading is permitted
- the range of goods which may be sold
- the precise details of the location, size and orientation of the pitch itself.

The Licensing Officer dealing with the application will attach such reasonable and proportionate conditions as in all the circumstances is considered to be necessary to maintain adequate public safety, avoid nuisance and anti-social behaviour and generally preserve the amenity of the specific locality. Examples of such conditions are set out in Appendix 2.

Suitable exclusions of liability will be included in the Consent too and the holder(s) will be required, both, to indemnify, fully, the Council against any claims and actions and to maintain appropriate insurance cover as set out under Section 5

In addition, the Consent holder(s) may be held liable for any damage caused to the verge, pavement, highway or any other item of street furniture as a result of the operation of his/her business. Any such damage must be reported to the relevant agency. It is probable that the Consent will be revoked unless the full reinstatement costs (including the Council's reasonable administration costs) are met forthwith and appropriate undertakings provided guaranteeing future good behaviour.

Where the consent is given for a food unit, the Council will normally add the following condition to a consent unless it believes there are extenuating or other significant reasons for not doing so:

The holder of a street trading consent shall hold a four or five star food hygiene rating for the food unit; should that rating fall below four star, and shall ensure that at least a four star rating is obtained within 3 months of

receiving a lower score; should this not be obtained; the consent shall be revoked.

## 9 Enforcement Action

Persons trading without a Consent and who are not exempt (see Section 3 for exemptions) will be the subject of enforcement action in accordance with the Council's Environmental Health Enforcement Policy, which can be found on our website at:

<http://www.southsomerset.gov.uk/environment/environmental-health/environmental-health-enforcement/>

This Policy will also apply to any person who holds a certificate granted under the Pedlars Act 1871, but who fails to operate in accordance with the Act and/or established case law.

The following principles will be followed when carrying out street trading enforcement activities:

**Openness:** The Council will be open about how it enforces the legislation in relation to street trading. Appropriate discussions on compliance failures or problems will normally be undertaken as part of the enforcement process.

**Helpfulness:** The Council will advise on and assist with compliance of the relevant legislation. It will also strive to provide a courteous and efficient service to its customers.

**Proportionality:** The Council will minimise the cost of compliance for businesses and individuals by ensuring that any action taken is proportionate to the risk or wider public benefit. Appropriate regard will be given to the human rights of all parties involved in its enforcement activities.

**Consistency:** The Council will carry out its duties in a fair, equitable and consistent manner having regard to its Enforcement Policy, any national codes of practice and guidelines and the contents of this document.

In addition, other agency may take enforcement action where breaches of the law are found e.g. trading standards

Consent Holder(s) must allow access to authorised Officers of the Council, and Police Officers, at all reasonable times. Council officers will carry with them and produce on request official identity cards.

## 10 Equality Impact of the Policy

This Policy will be assessed for its impact on equalities issues by the Steering Group for Equalities and changes will be made, where necessary and appropriate, to bring the Policy into line with the equality duties of the Council.

The Council will take all reasonable steps to ensure that it takes account of equality issues in determining applications for Consents and in its enforcement of the street trading regime. An appropriate monitoring system will be put in place to provide information on the future impact of the Policy on the different equalities strands.

## **11 Feedback and Review of the Policy**

The Policy will be reviewed, normally, every three years to assess its effectiveness in meeting the purposes set out above. In addition, the Assistant Director – Environment in consultation with the relevant Portfolio Holder, may make minor changes.

Feedback on the Policy for future reviews should be sent to Licensing Manager or can be made via the Council's website [www.southsomerset.gov.uk](http://www.southsomerset.gov.uk) or by e-mail to [licensing@southsomerset.gov.uk](mailto:licensing@southsomerset.gov.uk)

Where an applicant or any other person has a complaint about how this policy has been applied or the administration or enforcement of street trading by the Licensing Service then the Council's Complaints policy will apply. A copy is attached at Appendix 4.

## APPENDIX ONE

### *Other Legislative Requirements and Good Practice*

The following does not form part of the policy on street trading; its aim is to provide useful information to applicants so that they are aware of other legislative requirements, however the Council does not accept any responsibility for this information, as it is subject to amendment and/or repeal which is not within its remit or control. Please note that this is not an exhaustive list and does not cover, for example, highways or planning consents for which further advice may need to be sought.

### **FOOD HYGIENE**

As there are frequent changes to food legislation it is recommended that applicants and consent holders visit the website of the Food Standards Agency and view their latest publications such as “Food Hygiene – A Guide for Businesses”

<http://www.food.gov.uk/business-industry/food-hygiene>

### **HEALTH AND SAFETY**

All businesses are required to comply with the relevant statutory requirements of the Health and Safety at Work etc. Act 1974 and associated regulations. These regulations set out the requirements of the health, safety and welfare of staff and users. Further advice can be obtained from the Local Authority or the Health and Safety Executive website: [www.hse.gov.uk](http://www.hse.gov.uk)

### **Safety Policy**

If an employer employs 5 or more people, he/she is required by law to produce a written health and safety policy, which their staff must read, understand and follow.

The written policy must:

- i) state their general policy on health and safety.
- ii) state who is responsible for carrying out the policy.
- iii) be revised whenever appropriate detail the arrangements the business has for ensuring health and safety
- iv) be revised whenever appropriate



## Risk Assessment

An assessment of the health and safety risks associated with your business must be carried out. To do this look for the hazards (the things which can do harm) associated with your business. Then decide who might be harmed (you, your staff, customers or other members of the public) and how. The next step is to evaluate the risks (the chance, high or low that somebody will be harmed by the hazard) and decide whether the existing precautions are adequate or whether more should be done. If you employ 5 or more people you have to record your findings. Finally you need to review your assessment on a regular basis and revise it if necessary.

Further information is available in the HSE Booklet 'Five Steps to Risk Assessment'

Persons granted a street trading consent should also be aware of the Regulatory Reform (Fire Safety) Order (RRFSO), which came into force in England and Wales on 1<sup>st</sup> October 2006. Further information is available from the Council's Licensing Service or at:

[www.devonandsomersetfire.co.uk](http://www.devonandsomersetfire.co.uk) .

## First Aid

A proper first aid kit must be provided and all staff must know where to find it. The kit must contain plenty of waterproof dressings (blue if possible), bandages and protective fingerstalls. The level of first aid cover should be determined through the risk assessment process.

## Fire Fighting Equipment

Equipment must be provided appropriate to the types of fire that may be faced e.g. Cooking fat, LPG, electrical etc. This will normally consist of a fire blanket and a dry powder fire extinguisher, both of which should be located near to the door or entrance of the vehicle or stall.

A dry powder extinguisher conforming to BS 5423 1987 (for current extinguishers) or BSEN3 (for all new extinguishers) must be provided.

Extinguisher size to be determined using the following table:

Length of Vehicle	Extinguisher Capacity
Up to 3.5 metres long	1 x 2 kg
Between 3.5 and 4.5 metres long	1 x 4 kg
Over 4.5 metres long	1 x 6 kg

Extinguishers should be mounted on wall brackets approximately 1 metre from floor level and adjacent to the exit. A competent person must service extinguishers at least once per year.

## **Electrical safety**

If an electrical generator is used or a connection is made to a permanent electricity supply the consent holder must ensure that the electrical installation is safe. If there is any doubt as to the integrity of the supply or installation the council may ask for a safety certificate from a competent person or body. In most circumstances an inspection by an NICEIC or ECA approved electrician will be satisfactory.

At no time should electric cables be draped across roadway, public footpaths or any other area where the public have access.

## **Electricity Generators**

If a generator is to be used to supply electricity for any stall or vehicle it shall be maintained in good condition and operate without producing any visible smoke. The generator shall be suitably silenced so that it cannot be heard by anyone at the nearest premises.

## **Liquefied Petroleum Gas (LPG)**

All LPG installations must be in accordance with the following code of practice:

### **CODE OF PRACTICE FOR THE USE AND/OR OF STORAGE OF LIQUEFIED PETROLEUM GAS IN MOBILE SHOPS, SNACK BARS AND STALLS**

#### **Storage of L.P.G. Cylinders**

1. If stored *externally*, these should be:
  - (a) Sited on a firm standing.
  - (b) Fitted in an upright position with the valve uppermost in an upright stand or otherwise securely held.
  - (c) Protected from accidental damage or interference.
  - (d) *So sited that the top is below the level of the stall openings, or 1 metre away from such openings.*
  
2. If stored *internally*, these should be:
  - (a) Cylinder should be kept in a compartment that is gas-tight from the interior having half-hour fire resistance.
  - (b) The compartment should be sufficient to contain spare cylinders.
  - (c) The compartment should be positioned away from the service area.
  - (d) Access to the compartment must only be from the exterior of the vehicle and must be fitted with a lock.
  - (e) Compartment ventilation must be at both high and low levels.
  - (f) The compartment must be identified with a suitable sign conforming to BS 5378 11980, e.g. 'L.P.G. HIGHLY INFLAMMABLE'

3. The total quantity of L.P.G. available at a premises should not exceed 50kg

### **Gas Pipes and Fittings**

1. All ferrous pipe-work and fittings to be protected from corrosion. Non-ferrous pipes to be drawn copper or stainless steel with compression-type fittings.
2. No pipes to be run through box sections or cavities.
3. All joints and unions to be easily accessible.
4. Pipes to be securely fixed in position.
5. Flexible hoses to be as short as possible. Only hoses conforming to BS 3212 are to be used and should be changed every two years. All hoses should be secured with proper hose clips.
6. All valves and fittings to be tested with soapy water at regular intervals to ensure that they are tight.

### **Ventilation**

Ventilation in the vehicle or trailer must be sufficient to provide oxygen for gas burning appliances and to remove the products of combustion. This should be by means of permanent vents at high and low levels.

**WARNING – ALL L.P.G. EQUIPMENT IS DANGEROUS UNLESS INSTALLED PROPERLY AND REGULARLY MAINTAINED BY COMPETENT PERSONS. PROFESSIONALLY QUALIFIED PERSONNEL SHOULD CARRY OUT ALL INSTALLATIONS AND MAINTENANCE. THE USE OF L.P.G. SHOULD BE TREATED WITH RESPECT AT ALL TIMES. ALL STAFF MUST BE TRAINED WITH REGARD TO PROCEDURES IN CASE OF FIRE.**

## APPENDIX TWO

### EXAMPLES OF CONDITIONS THAT MAY BE ADDED TO THE CONSENT

#### General

1. The Council retains the right to alter the allocated sale area in the event of unforeseen circumstances.
2. Consent holders and their assistants must not trade under the influence of any illegal or intoxicating substance. Any traders found with illegal substances on their pitch will have their Consent revoked.
3. The Council reserves the right to exercise its powers under the Local Government (Miscellaneous Provisions) Act 1982 to prohibit any street trading for a maximum of six days in any one year where it is deemed necessary by the Council subject to notice in writing at least 14 days prior to removing the consent day(s).
4. Traders and their assistants employed by them shall ensure the public are treated fairly and with courtesy at all times.

#### Site Conditions

1. The trader will be responsible for cleansing the trading area and ensure that all refuse arising as a result of the activities of the trader shall be placed in suitable covered containers provided by the trader, unless otherwise provided by the Council, and shall be kept exclusively for that purpose. Such refuse containers shall be kept as clean as is reasonably possible and refuse is disposed of in an approved manner on a daily basis.
2. Street traders must not utilise public bins for their commercial waste.
3. No trader shall wholly own or possess exclusive rights to a pitch. Should the trader be absent from the pitch for whatever reason, any pitch may then be used by an authorised markets organiser or as part of an event; details to be agreed prior to said market or event.
4. The trader when operating on a static site shall have access to suitable and sufficient sanitary accommodation for both the consent holder, and any persons employed in the street trading activity.
5. Advertisements or other notices must not be placed outside of the area of the street trading site, without the written approval of the Councils' planning department. The trader shall not directly or indirectly hawk, tout or solicit custom for or advertise by way of flyer, public address system or otherwise without the express written consent of the Council.
6. The trader shall not place on the street or in a public place any furniture or equipment other than as permitted by the consent and he/she must maintain the same in a clean and tidy condition and not place them so as to obstruct the entrance or exit from any premises.

7. The trader shall trade only from the position, which is detailed on the consent, unless directed to or agreed to by the Licensing Authority.
8. The roof awning or any other projection shall be contained within the pitch area unless agreed by the Council.
9. All goods, containers or other articles shall be contained within the consented pitch area and shall not project beyond.
10. Trading may only take place on the days and during the times specified on the consent without special authorisation being given in writing from the Council.
11. The trader must not cause or allow to be caused any damage to the street surface, street furniture, lighting and landscaping within the permitted area and will be responsible for the making good of any such damage.
12. The street trading consent plate issued by the Council must be conspicuously displayed in a place where the public may view it.
13. Where a structure is not removed at the end of the trading day, no additional permanent or semi-permanent additions or paving shall be erected or constructed adjacent to the structure for which, consent has been granted.
14. No signage or objects shall be placed on the highway or area surrounding the vehicle/premises unless agreed by the Council. Fly posting within the South Somerset District Council area is not permitted.
15. Traders shall not allow any obstruction to fire hydrants, manholes or other street furniture etc., resulting from their business.
16. Where a casual trader has been given consent to use an electricity source owned by SSSDC a small charge will be applicable and instructions will be given on the proper use of the supply including health and safety measures.
17. No mobile generators shall be used without the express permission of the Council. Where permission is granted generators shall be so positioned that:
  - they do not present a danger to the public, do not present a fire or similar hazard to the stall, goods displayed thereon or adjoining premises and do not give rise to a nuisance by reasons of noise, vibration, smoke or smell.
18. No combustible materials are to be stored in the vicinity of a generator and suitable first aid and fire-fighting appliance(s) must be immediately available.
19. Wherever possible all generators must be fuelled by diesel oil.
20. No fuel may be stored in the vicinity of a generator.
21. Generators must not be filled up during the trading day. All generators should be filled up at the start of the day before trading.
22. The consent holder shall ensure that any equipment, such as a generator, is in a safe working condition and suitably cordoned off to ensure that the general public do not have access to the equipment.

23. All traders using any form of power must have a minimum of a one-litre fire extinguisher suitable for use on the type of equipment being used.

## **Food Trading**

1. Vans and stalls used for cooking must be adequately ventilated.
2. Staff who handle food must be supervised and instructed and/or trained in food hygiene in a way that is appropriate for the work they do.
3. The person or people responsible for developing and maintaining the business food safety management procedures, based on the principles of Hazard Analysis and Critical Control Points (HACCP), must have received adequate training to enable them to do this
4. A valid food registration certificate is in force for the business
5. The holder of a street trading consent shall hold a four or five star food hygiene rating for the food unit; should that rating fall below four star, and shall ensure that at least a four star rating is obtained within 3 months of receiving a lower score; should this not be obtained; the consent shall be revoked.

## APPENDIX THREE

**Extracts from Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 re Street Trading** (N.B the extracts are numbered as set out in the Act).

### ***Interpretation***

1.(1) In this Schedule

"consent street " means a street in which street trading is prohibited without the consent of the district council ;

" prohibited street " means a street in which street trading is prohibited ;

" street " includes-

- (a) any road, footway, beach or other area to which the public have access without payment; and
- (b) a service area as defined in section 329 of the Highways Act 1980, and also includes any part of a street.

" street trading " means, subject to sub-paragraph (2) below, the selling or exposing or offering for sale of any article (including a living thing) in a street;

(2) The following are not street trading for the purposes of this Schedule-

- (a) trading by a person acting as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871;
- (b) anything done in a market or fair the right to hold which was acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of an enactment or order.
- (c) trading in a trunk road picnic area provided by the Secretary of State under section 112 of the Highways Act 1980;
- (d) trading as a news vendor;
- (e) trading which-
  - (i) is carried on at premises used as a petrol filling station; or
  - (ii) is carried on at premises used as a shop or in a street adjoining premises so used and as part of the business of the shop;
- (f) selling things, or offering or exposing them for sale, as a roundsman;
- (g) the use for trading under Part VIIA of the Highways Act 1980 of an object or structure placed on, in or over a highway;
- (h) the operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980;
- (j) the doing of anything authorised by regulations made under section 5 of the Police, Factories, etc. (Miscellaneous Provisions) Act 1916.

- (3) The reference to trading as a news vendor in sub-paragraph (2)(d) above is a reference to trading where-
- (a) the only articles sold or exposed or offered for sale are newspapers or periodicals; and
  - (b) they are sold or exposed or offered for sale without a stall or receptacle for them or with a stall or receptacle for them which does not-
    - (i) exceed one metre in length or width or two metres in height;
    - (ii) occupy a ground area exceeding 0.25 square metres; or
    - (iii) stand on the carriageway of a street.

#### *Designation of streets*

- 2.(1) A district council may by resolution designate any street in their district as-
- a) a prohibited street;
  - b) a licence street; or
  - c) a consent street.

#### *Street trading consents*

- 7.(1) An application for a street trading consent or the renewal of such a consent shall be made in writing to the district council.
- (2) Subject to sub-paragraph (3) below, the council may grant a consent if they think fit.
- (3) A street trading consent shall not be granted -
- (a) to a person under the age of 17 years; or
  - (b) for any trading in a highway to which a control order under section 7 of the Local Government (Miscellaneous Provisions) Act 1976 is in force, other than trading to which the control order does not apply.
- (4) When granting or renewing a street trading consent the council may attach such conditions to it as they consider reasonably necessary.
- (5) Without prejudice to the generality of sub-paragraph (4) above, the conditions that may be attached to a street trading consent by virtue of that sub-paragraph include conditions to prevent -
- (a) obstruction of the street or danger to persons using it; or
  - (b) nuisance or annoyance (whether to persons using the street or otherwise).
- (6) The council may at any time vary the conditions of a street trading consent.
- (7) Subject to sub-paragraph (8) below, the holder of a street trading consent shall not trade in a consent street from a van or other vehicle or from a stall, barrow or cart.
- (8) The council may include in a street trading consent permission for its holder to trade in a consent street -



- (a) from a stationary van, cart, barrow or other vehicle; or
  - (b) from a portable stall.
- (9) If they include such a permission, they may make the consent subject to conditions -
- (a) as to where the holder of the street trading consent may trade by virtue of the permission;
  - (b) as to the times between which or periods for which he may so trade.
- (10) A street trading consent may be granted for any period not exceeding 12 months but may be revoked at any time.
- (11) The holder of a street trading consent may at any time surrender his consent to the council and it shall then cease to be valid.

### ***General***

8. The holder of ... a street trading consent may employ any other person to assist him in his trading without a further ... consent being required.
- 9.(1) A district council may charge such fees as they consider reasonable for the grant or renewal of a ... street trading consent.
- (2) A council may determine different fees for different types of ... consent and, in particular, but without prejudice to the generality of this sub-paragraph, may determine fees differing according -
- (a) to the duration of the ... consent ;
  - (b) to the street in which it authorises trading; and
  - (c) to the descriptions of articles in which the holder is authorised to trade.
- (3) A council may require that applications for the grant or renewal of ... consents shall be accompanied by so much of the fee as the council may require, by way of a deposit to be repaid by the council to the applicant if the application is refused.
- (4) A council may determine that fees may be paid by instalments.
- (5) Where a consent is surrendered or revoked, the council shall remit or refund, as they consider appropriate, the whole or a part of any fee paid for the grant or renewal of the consent.

### ***Offences***

- 10.(l) A person who-
- (a) engages in street trading in a prohibited street; or
  - (b) engages in street trading in ... a consent street without being authorised to do so under this Schedule; or
  - (d) being authorised by a street trading consent to trade in a consent street, trades in that street -

- (i) from a stationary van, cart, barrow or other vehicle; or
  - (ii) from a portable stall, without first having been granted permission to do so under paragraph 7(8) above; or
- (e) contravenes a condition imposed under paragraph 7(9) above shall be guilty of an offence.
- (2) It shall be a defence for a person charged with an offence under sub-paragraph (1) above to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence.
- (3) Any person who, in connection with an application for ... a street trading consent, makes a false statement which he knows to be false in any material respect, or which he does not believe to be true, shall be guilty of an offence.
- (4) A person guilty of an offence under this paragraph shall be liable on summary conviction to a fine not exceeding Level 3 on the standard scale.

### ***Savings***

11. Nothing in this Schedule shall affect -

- (a) section 13 of the Markets and Fairs Clauses Act 1847 (prohibition of sales elsewhere than in market or in shops etc.) as applied by any other Act;
- (b) section 56 of the Food Act 1984 (prohibition of certain sales during market hours).

## APPENDIX FOUR

### The Council's Complaints Policy

If you are dissatisfied about the standard of service received by us, please tell us

*You can make a complaint in writing to the Licensing Manager, South Somerset District Council, Council Offices, Brympton Way, Yeovil, Somerset BA20 2HT, or by phone to 01935 462462 or online through our website <http://www.southsomerset.gov.uk/contact-us/contact-us-online?type=complaint>.*

*Your comment will then be handled in accordance with our complaints procedure outlined below.*

#### **Complaints procedure**

We define a complaint as "an expression of dissatisfaction, however made, about the standard of our service, actions or lack of action by the Council or its staff affecting an individual customer or group of customers". They are dealt with in a series of escalating stages.

#### *Stage 1: Service Manager*

Any South Somerset District Council officer receiving a complaint will:

1. Establish the exact nature of your complaint (this may be recorded by our Customer Services team).
2. Forward your complaint to the responsible Service Manager.
3. The Service Manager will acknowledge your complaint in writing. A full reply will be posted to you within 10 working days; however if we are unable to reply to you within that period, we will acknowledge receipt of your letter within 5 working days and give you a realistic timescale.

#### *Stage 2: Director*

If you are not satisfied with the response, please ask for your complaint to be referred to the Strategic Director responsible for the Service. The Strategic Director will investigate the matter and respond to you in full within 10 working days or 5 working days for a holding reply (which will give you a realistic timescale to expect your response).

#### *Stage 3: Local Government Ombudsman*

If you feel your complaint has not been resolved after stage 3, you may wish to pursue your complaint through the Local Government Ombudsman. You will be forwarded the contact details for the Ombudsman after Stage 3. You can find out more about the Ombudsman by visiting their website at <http://www.lgo.org.uk/>

THIS PAGE IS INTENTIONALLY BLANK