

DUNGANNON AND SOUTH TYRONE BOROUGH COUNCIL

ENVIRONMENTAL HEALTH DEPARTMENT

MOBILE STREET TRADING POLICY

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1 PURPOSE

The purpose of this policy is to provide guidance on matters that should be considered when deciding whether or not to grant to a person a Mobile Traders Licence. Its aim is to provide, insofar as is possible, consistent decision making so as to develop, and thereafter maintain, public confidence in Dungannon and South Tyrone Borough Council's performance of its duties.

2 SCOPE

By virtue of Section 6 of the Street Trading Act (Northern Ireland) 2001 the Council may grant to a person a Mobile Trader's Licence authorising them to engage in trading in an area or areas of the Borough.

This policy is intended to ensure that Dungannon and South Tyrone Borough Council Members and Officers are aware of those matters to be taken into consideration when determining whether or not to grant a Mobile Trader's Licence.

3 REFERENCES

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

4 BACKGROUND

The Street Trading Act (Northern Ireland) 2001 enables District Councils to regulate street trading through designating, licensing and enforcement procedures. The Act received Royal Assent on 5th April 2001, with a run in period of six months and became operative on 1st October 2001. The new Act repealed most of the provisions of the 1929 Street Trading (Regulation) Act, except Section 10 which contains the provision whereby Market Rights can be acquired or extinguished.

Section 6 of the Act empowers Dungannon and South Tyrone Borough Council to issue a Mobile Traders Licence to engage in trading in an area or areas of the district.

5 GENERAL PRINCIPLES

- 5.1 Dungannon and South Tyrone Borough Council will consider all applications received, in accordance with Section 5 of the Act, for Mobile Trading within its area. Each application will be considered on its own merits, but there are general principles that apply in all cases. The duty of Dungannon and South Tyrone Borough Council is to make sure that each Mobile Trader's licence application is fairly and objectively assessed and that all relevant factors are considered.
- 5.2 All applications will be treated in an equitable and fair manner regardless of the applicant's ability or disability, gender, age, religion, social, cultural and ethnic background, political persuasion or sexual orientation.
- 5.3 A Mobile Trader's Licence will be required in situations where it would be inappropriate to grant a Stationary Trader's Licence due to the nature of the trading.
- 5.4 It is envisaged that Mobile Licences will be required for traders who sell articles or things from a vehicle or receptacle that can be easily moved to another location once all customers in a certain area have been served. The most obvious example of such a trader is the ice-cream man who sells either from a van or other moveable receptacle.
- 5.5 A Mobile Trader must move to another location after all customers in his queue have been served. A waiting period of fifteen minutes will also be allowed after the last customer in that queue has been served. Once this period of time has elapsed the trader must move to another location. Any trader remaining for a longer period will be classified as a stationary trader and will require a Stationary Traders' Licence.
- 5.6 Mobile Licences can be issued for any area (subject to certain restrictions) in the Council area. It is not necessary for an area to be Designated before Mobile Trading can take place. A Mobile Trader can trade in as few or as many locations as they desire as specified in their licence, subject to any restrictions or conditions.

A Mobile Traders' Licence will **not** be required for:

- (i) Traders who sell items or provide services on a door-to-door basis by visiting private residences or places of business.
- (ii) Roundsmen such as milkmen, breadmen, coalmen etc. who are essentially delivery persons rather than traders.

6 THE APPLICATION PROCESS

6.1 Applications must be received by the Council on the appropriate application form/online form and with the appropriate fee and all other relevant documentation attached. Each applicant will be required to provide evidence of Public Liability Insurance before a licence can be issued.

6.2 The Council **will** consult with:

- (a) The Sub- Divisional Commander of the police sub- division in which the area or areas where trading is proposed is located;
- (b) The Department of Regional Development as regards that Department's functions with respect to roads and regulation of road traffic.

6.3 The Council **may** also consult with other persons, or bodies, as it considers appropriate.

6.4 Without prejudice to its right to take into account any relevant consideration in determining the suitability of each Mobile Trader's Licence the Council will take into account:

- a) The safety of the public and any risks which may arise;
- b) The appropriateness and suitability of the area or areas;
- c) The potential adverse impact that Street Trading may have upon the character and appearance of the area in question;
- d) The extent to which the sale of the commodity will provide a useful service in the area;
- e) Environmental effects such as additional litter, cleansing requirements, odour and noise;

- f) The potential for the proposed said Street Trading Licence to have an adverse effect in terms of anti- social behaviour and public disorder
- g) Any other Statutory Provision, Code or Standard as appears to the Council to be material
- h) Previous complaints arising from street trading activities in that area, street or part thereof
- i) The views, reports or opinions of such consultees as appear to the Council to be material
- j) The suitability of the applicant

6.5 The Council **will** refuse to grant or renew a Mobile Traders Licence on the following grounds:

- a) The applicant is not an individual, i.e. companies or partnerships cannot apply for a licence UNLESS there is a named individual on the application; or
- b) The applicant has not reached the upper limit of compulsory school age; or
- c) The applicant wishes to trade at a place where trading would contravene any statutory provision of law (e.g. Off Road Parking Orders).

6.6 The Council **may** refuse to grant or renew a Mobile Traders Licence on the following grounds:

- a) There are sufficient traders trading in the street, or at premises adjoining the street/ area trading in the articles, things or services that the trader proposes to offer; or
- b) The area or areas of the district in which the applicant wishes to trade are unsuitable for the applicant to do so without causing undue nuisance or interference to persons or vehicles in the area or areas; or
- c) The nature of the articles, things or services in which the applicant wishes to trade is such that their supply or sale, or their preparation for supply or sale, would adversely affect

the general amenity of the area in which the applicant wishes to trade; or

- d) The applicant has, in connection with the application, made a statement or provided information that he knows to be false in a material particular; or
 - e) The applicant is, on account of misconduct or some other reason relating to street trading activities, unsuitable to hold a Mobile Traders Licence. A record of complaints made relating to each individual trader will be kept. Any breach of licence conditions will also be recorded along with details of any verbal or written warnings issued, Fixed Penalty notices issued and any conviction for an offence under this Act;
 - f) The applicant has, without reasonable excuse, failed to avail himself to a reasonable extent of a previous Mobile Traders Licence;
 - g) The applicant has failed to provide the particulars required by the Council to deal with the application; or
 - h) The applicant has failed to provide or identify suitable or adequate arrangements for the storage of, both during and after the cessation of trading, the articles, things or receptacles with which he proposes to trade.
- 6.7 If the Council decides to refuse to grant a licence on any of the grounds listed in 6.6 above it is obliged, by virtue of Section 12 of the Act, to give advance notice of its intention to do so. The Council will invite representations to be made before a final decision is reached.
- 6.8 Notification of the Council's intention to refuse a licence will be made in writing to the applicant.
- 6.9 The notification will state:
- a) **all** the grounds on which the proposed refusal is based; and
 - b) the rights of the person affected to make representations on the proposed course of action. This information will include

the period during which representations should be made. This period will be at least 21 days from the date of the notice.

- 6.10 The Council will not refuse to grant the licence until the period for making representations has expired.
- 6.11 The Council will consider all representations made to it within this time period before reaching a final decision. If called upon to do so, the Council will confirm that all representations were fully considered and indicate the results of those considerations. The Council may, if it so decides, consider representations made outside the relevant period **but it is not bound to do so**.
- 6.12 The Council will write to the person affected by its final decision. This notice will set out every ground on which the final decision is based. It will also set out the rights of appeal against that decision.
- 6.13 Each Mobile Traders Licence will be valid for a period of one year.
- 6.14 A Mobile Traders Licence may authorise the holder to :
- a) trade at such places and in such a manner as appears appropriate to the Council; and
 - b) to sell such articles or things, or supply such services as the Council may specify.
- 6.15 A Mobile Traders Licence shall be subject to such conditions as the Council may specify in the licence.
- 6.16 Enforcement of traders operating under such a licence will be accordance with the Council's Enforcement Policy.

7 COMPETING APPLICATIONS

- 7.1 In the event that there is an application for the grant of a licence to operate as a mobile trader in a similar geographic area where there are already existing mobile traders licences issued, the new applicant will be invited to address the appropriate committee of the Council by making a short presentation which may be followed by questions from the committee members.
- 7.2 The presentation should include such matters as how the business will be operated, the design of the stall/ vehicle, how the

commodity which is proposed to be sold will add to the area etc. Where appropriate the applicant may also address any concerns or objections to their proposal.

- 7.3 In determining an application under this paragraph the Council may take into account any consideration which it deems appropriate and will take into account the discretionary grounds for refusal already mentioned in paragraph 6.6.
- 7.4 Without prejudice to the above, the Council may also take the following into account:
- a) The suitability of the application in the context of the area or street;
 - b) The suitability of allowing more than one application in the area or street;
 - c) The commodities or services which each applicant intends to sell or supply;
 - d) The merits of each application in the context of the character and appearance of the proposed area;
 - e) Whether a mobile trader/ a number of mobile traders will affect the character and appearance of the proposed area;
 - f) Any potential adverse impact caused to the character and appearance of the proposed location by the application, mobile trader or by a number of mobile traders;
 - g) The extent to which the sale of the commodity will provide a useful service not otherwise provided in the area.

8 APPEALS AGAINST DECISIONS

- 8.1 An applicant for Mobile Trader's Licence who has been refused a licence, or whose licence is subject to conditions of which he is aggrieved has the right to appeal the Council's decision.
- 8.2 The process of lodging an appeal should be made in accordance with Section 13 of the Act.

Policy amended and approved by Council 4th July 2011