

## COMMUNITY SERVICES AND LICENSING COMMITTEE

30 MAY 2019

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<b>Report Title</b>	<b>STROUD DISTRICT COUNCIL'S STREET TRADING POLICY - CONSULTATION</b>
<b>Purpose of Report</b>	To provide information that will allow Committee to consider proposed changes to Stroud District Council's street trading policy prior to formal consultation.
<b>Decision(s)</b>	<b>To APPROVE a draft policy for formal consultation.</b>
<b>Consultation and Feedback</b>	There will be 10 week formal consultation period and feedback to Committee in September 2019
<b>Financial Implications and Risk Assessment</b>	<p>This report is for formal consultation only so there are no direct financial implications. Dependant on the outcome of the consultation and proposed changes, future reports may have minimal financial implications.</p> <p>Adele Rudkin, Accountant Tel: 01453 754109 Email: <a href="mailto:adele.rudkin@stroud.gov.uk">adele.rudkin@stroud.gov.uk</a></p> <p>Risk Assessments</p> <ol style="list-style-type: none"> <li>1 Failure to take account of legal advice could mean Stroud District Council's policy is unlawful and could be challenged.</li> <li>2 Some of the proposed changes may have financial impact on event organisers and informal market operators however the proposal aims to keep this to a minimum.</li> </ol>
<b>Legal Implications</b>	<p>All legal implications are set out in the report</p> <p>Patrick Arran, Interim Head of Legal &amp; Monitoring Officer Tel: 01453 754369 Email: <a href="mailto:patrick.arran@stroud.gov.uk">patrick.arran@stroud.gov.uk</a></p>
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<b>Performance Management Follow Up</b>	The Council must keep its policy under review and make such revisions to it at such times as it considers appropriate.
<b>Background Papers/ Appendices</b>	<p><b>Appendix 1</b> – Draft street trading policy for consultation</p> <p><b>Appendix 2</b> – Summary of proposed changes for consultation</p>

## **1 Background**

- 1.1 Stroud District Council has adopted powers under the Local Government (Miscellaneous Provisions) Act 1982 so that any person selling articles in the 'street' must obtain a street trading consent from the Council.
- 1.2 In the legislation 'street' is defined as any road, footway or other area to which the public have access without having to pay an entrance fee.
- 1.3 On 13<sup>th</sup> July 2000 the Council resolved to designate all streets and areas of land in the district as needing street trading consent. This includes any Council or private owned land that the public have access to.

## **2 Stroud District Council's Street Trading Policy**

- 2.1 Stroud District Council has a street trading policy which lays out the Council's approach for managing street trading and the process for applications and making decisions.
- 2.2 The policy was last updated in 2013. Licensing Officers have reviewed the policy and made some proposed changes to bring it up to date.
- 2.3 The Legal Section has also reviewed the policy. They have advised that there is not provision in the legislation to permit some aspects of the current policy. In their opinion advice provided by the Legal Team back in 2000 was flawed in relation to permitting waivers for Informal Markets and exempting community and charitable events.
- 2.4 Appendix 1 is the draft policy document for formal consultation. The changes from the current policy are shown in red.
- 2.5 Appendix 2 gives a summary of all the main changes in the draft policy document from the current policy.

## **3. Informal Markets**

- 3.1 Markets that operate under a charter or order are exempted in the legislation from needing street trading consent. All other markets are classed as Informal Markets and are not exempt.
- 3.2 The current policy gives discretion for the Council to give a waiver from needing street trading consent to Informal Markets provided certain criteria are met. Waivers were given by Cabinet to the Shambles Market and Stroud Farmers Market in 2000. Once a waiver was permitted it continued indefinitely so there was little ongoing resource implication. There was no charge made to the market operator.
- 3.3 Legal Officers have now advised that such waivers are not within the remit of the legislation and should cease immediately. This means that Informal Markets

must instead hold a street trading consent. Street trading consents must be renewed annually and there is an application process and a fee.

- 3.4 In addition to the Stroud Farmers Market and the Shambles Market there are potentially other Informal Markets in the district that will also need to apply for street trading consent if they do not operate under a charter or order. This will have a cost implication for such markets which may have run for many years without having to apply for a street trading consent or pay any fee.

#### **4 Charitable and Community Events**

- 4.1 The current street trading policy exempts charitable and community events from needing a street trading consent. This includes events such as village fetes, carnivals and Christmas goodwill evenings.
- 4.2 The legal advice now is that there is no provision in the legislation for the Council to give this 'blanket' exemption. The legislation does exempt an event if there is an entrance fee. However, in all other cases it means that, if there are stalls selling articles and there is general access to the public, the event will need a street trading consent.
- 4.3 To give clarification the draft policy proposes that Stroud District Council considers that an event held on land where entrance can be controlled does not fit in the definition of street trading because the public do not have absolute right of access. Therefore in these cases street trading legislation does not apply.
- 4.4 However, the draft policy states that organisers of events that do not meet the above criteria, for example Christmas goodwill evenings held in the street where entry cannot be controlled, will need to apply for street trading consent if there are stalls selling articles. It is proposed to have a short term 'blanket' event consent for such events.
- 4.5 To reduce the impact for charities and communities the draft policy proposes that the Head of Health and Wellbeing has the discretion to use a 'light touch' process if the event is for a community or charitable cause and is just once a year. The 'light touch' process will be minimal with no consultation or fee.

#### **5 Consultation on Draft Street Trading Policy**

- 5.1 The draft street trading policy, once approved by this Committee, will be put out for formal consultation between 3<sup>rd</sup> June 2019 and 12<sup>th</sup> August 2019.
- 5.2 Consultation will be with all Members, Town and Parish Councils, current traders, current market operators as well as all other interested parties.
- 5.3 All consultation comments will be considered after the end of the consultation period by a working party made up of the Head of Health and Wellbeing, Principal Licensing Officer, Licensing Officer, Council Solicitor and the Chair and Vice Chair of Community Services and Licensing Committee.

5.4 The final draft policy will go before Community Services and Licensing Committee for consideration and adoption on 5<sup>th</sup> September 2019.

5.5 It is proposed the new policy will commence on 1<sup>st</sup> October 2019.

## **6 Conclusion**

6.1 The Licensing Section has reviewed Stroud District Council's street trading policy and proposes amendments to bring it up to date and give clarification to applicants.

6.2 Some of the changes are the result of recent legal advice. The advice is that certain aspects of the current policy are not compliant with the legislation.

6.3 The two changes that could potentially have the most impact are:

- Removal of the discretion to issue waivers to Informal Markets meaning such markets will in future have to apply for a street trading consent.
- Removal of the exemption from needing a street trading consent for charitable and community events. The proposed policy aims to reduce unintended impact by giving clarification on interpretation and introducing a new short term event consent.

6.4 Once Committee approves a draft street trading policy it will be put out for formal consultation with the view it will brought back to Committee in September 2019 for final consideration.