**Cornwall Council - Street Trading Review**

**What is Street Trading?**

Street trading is the selling or exposing or offering for sale of any article (including a living thing) in a street.

Street trading does not include offering a service, for example, hair braiding, face painting, henna tattoos etc.

**What is the definition of Street?**

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

**How can Street Trading be regulated?**

Councils can choose to regulate street trading in their area by adopting Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982. The legislation can be found at:-

<http://www.legislation.gov.uk/ukpga/1982/30/schedule/4>

Cornwall Council adopted the legislation in 2010 and resolved that street trading in Cornwall would be regulated by way of ‘consent’ streets or ‘prohibited’ streets.

**Why does Cornwall Council choose to regulate street trading?**

The Council regulates street trading so that they can decide where to allow street trading and can properly manage the environmental and safety implications for example, obstructions, overcrowding in streets, escape from/access to premises causing public safety issues, nuisances such as smells, noise and litter.

**What does a ‘Consent’ street mean?**

A street in which street trading is prohibited without the consent of the Council.

**What does a ‘Prohibited’ street mean?**

A street in which street trading is prohibited at all times.

**What options for the regulation of street trading are being considered?**

There are two options being consulted on:-

1. *Designate the whole of Cornwall, being the area regulated by the Council, as a street trading* ***‘consent’*** *area.*

This option would provide a consistent approach as all street trading would require the Council’s consent apart from specified exemptions (see questions 4 to 8 below relating to exemptions).

or

1. *Designate the whole of Cornwall as a street trading* ***‘consent’*** *area, with specific* ***‘prohibited’*** *areas set within it.*

This option would require all street trading conducted within Cornwall to be licensed by the Council with the exception of those areas that are prohibited and apart from specified exemptions (see questions 4 to 8 below relating to exemptions).

This option would also provide a consistent approach, although any prohibited areas must be justified in order to comply with the EU Services Directive.

Although both options would mean the whole of Cornwall is designated as either ***‘consent’*** or a combination of ***‘consent and prohibited’*** streets, it is intended that the policy would specify exemptions for certain activities and/or specific areas (see questions 4 to 8 below).

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| Question 1  **Do you agree the whole of Cornwall should be designated as ‘consent’ with specified exemptions?** |

**Which ‘prohibited’ areas are being considered?**

Highways have indicated that, apart from some specified formal (larger) laybys which are suitable for trading, they would prefer, on the grounds of public safety, that street trading is *prohibited* from all A and B roads where the maximum speed limit exceeds 30mph.

The Licensing Act Committee, however, are concerned that a blanket policy ban on A and B roads would not be appropriate.

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| Question 2  **Do you agree the whole of Cornwall should be designated as ‘consent’ apart from A and B roads being ‘prohibited’ as suggested by Highways?** |

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| Question 3  **Are there any other streets where you think the Council should prohibit street trading and why?** |

**Are there any legal exemptions from requiring Street Trading Consent?**

Yes, these include the following which are exempt under the Act. Any designations the Council make will not affect these at all:-

* Pedlars
* Charter Markets
* Trunk road picnic areas
* News Vendors / selling periodicals
* Shops using their forecourt area as part of the business of the shop.
* Roundsmen
* Charity Stalls

**Are there any other exemptions from requiring Street Trading Consent?**

Whichever option is decided upon, the Council can also decide that other trading activities do not require consent. For example, the policy could exclude the following from requiring Street Trading Consent:-

* Fetes, carnivals or similar community based, organised and operated events
* Car boot sales
* Honesty boxes
* Goods from working farms sold at the premises where they were produced
* Sales of articles by residential occupiers within the curtilage of their properties or land contiguous with it
* Approved markets/events
* Trading on beaches

Although the Council may specify certain exemptions such as those listed above in its policy, if there were any concerns, for example, in relation to public safety, the Council would reserve the right to make the final decision at a hearing of the Licensing Act Committee or Street Trading Sub-Committee if appropriate.

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| Question 4  **Do you agree that all of the above activities should be exempt from requiring street trading consent?** |

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| Question 5  **Are there are any other activities which you consider should also be exempt from requiring street trading consent?** |

**Can certain streets/areas be excluded from Street Trading regulation?**

It is proposed that streets within the control of the following Cornwall Council Services be excluded as those services will regulate those areas themselves:-

* Environment Service
* Parking Services
* Harbour Authority

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| Question 6  **Do you agree that trading in areas within the control of the above services be exempt from requiring street trading consent?** |

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| Question 7  **Are there are any other areas which you consider should also be exempt from requiring street trading consent?** |

**What about trading on private land?**

Private land to which the public have access without payment is included within the definition of ‘street’ and can therefore be regulated by the Council.

However, it is not necessarily the Council’s intention to regulate street trading in all areas of private land.

The Council would suggest that private land which is immediately adjacent to controlled streets is regulated. For example, the Council may specify that designations will include “*all forecourts, roads, footways or other areas adjacent to the streets for a distance of ‘****x****’ metres.*” This would control a loophole for potential street traders to trade from private areas immediately adjacent to controlled streets.

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| Question 8  **Do you agree private land should be exempt apart from immediately adjacent to controlled streets?**  **If so, what distance do you consider would be appropriate, e.g. 5, 10 or 15 metres from the public highway?** |

**How does the European Union Services Directive (EUSD) impact on Street Trading?**

The EUSD is intended to make it easier for street traders to set up anywhere in the European Union. In order to comply with the EUSD any requirement for street trading authorisation must be justified by an “overriding reason relating to the public interest” (ORRPI).

The refusal of street trading consent on the grounds that there are already enough traders in the street from other shops or other traders selling similar products is not compatible with the EUSD and can no longer be used.

**What is meant by the term “overriding reason relating to the public interest” (ORRPI)?**

Examples given in the EUSD are public policy, public security, public safety, public health, protection of consumers, recipients of services and workers, combating fraud and the protection of the environment and the urban environment.

**Are conditions attached to Street Trading Consents?**

The Council may attach conditions as they consider reasonably necessary, including conditions to prevent any obstruction of the street or danger to persons using it, or any nuisance or annoyance to any person. The conditions may also stipulate what traders may sell, exactly where and when they may sell and the fee they must pay.

Street trading is controlled to avoid obstruction and protect public safety, for example overcrowding in streets affecting escape from and access to premises. It also prevents noise, smells and nuisance and ensures any litter from street trading is removed from site.

The Council’s proposed conditions are attached at Appendix 1.

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| Question 9  **Do you have any comments in relation to any of the conditions?** |

**What about one off local events and markets?**

Applications for street trading consents of a limited duration and for specific events and markets, for example Christmas Late Night Shopping, Farmers Markets, Made in Cornwall craft fairs etc, are currently considered independently from annual/seasonal applications and specific conditions apply to such consents.

This review could remove the requirement for ‘approved’ events/markets from requiring Street Trading Consent as these could be controlled by the event/market organiser.

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| Question 10  **Do you consider all approved markets and events should be exempt from requiring street trading consent?** |

**How much does a Street Trading Consent cost?**

It is proposed that the street trading fees are also reviewed as part of the overall review of street trading. Please click [here](http://www.cornwall.gov.uk/media/11589017/fees-charges-2015-2016.doc) to view current fees and charges.

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| Question 11  **Do you have any comments to make in relation to the fees?** |

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| Question 12  **Do you have any other comments or suggestions on the regulation of street trading in Cornwall?** |

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| Question 13  **Could you please indicate in what capacity are you responding to this consultation?**   1. **Street trader who holds or has previously held a Street Trading Consent** 2. **Street trader who does not currently require a Street Trading Consent** 3. **Cornwall Councillor** 4. **Town / Parish Council** 5. **Cornwall Council internal service** 6. **Member of the public** 7. **Other (please specify)** |

**Where can I find more information?**

Further information on the current arrangements and details of how to apply for street trading consent are available on the Council’s website at <http://www.cornwall.gov.uk/advice-and-benefits/licences-and-street-trading/street-trading-licence/>

**When does this consultation close?**

10 November 2015

**How do I respond to the consultation?**

Please respond by email to:- [**licensing@cornwall.gov.uk**](mailto:licensing@cornwall.gov.uk)

Alternatively by post to:-

Licensing Service

Public Protection & Business Support (S1)

Cornwall Council

Chy Trevail

Beacon Technology Park

Bodmin

PL31 2FR

Thank you for taking the time to respond to this consultation.

All responses received will be considered by the Licensing Act Committee prior to any decision.

**Appendix 1**

**STREET TRADING CONSENT CONDITIONS**

1. This consent shall not be assigned to any other person, firm or organisation.

2. A copy of the consent must be displayed on the stall/vehicle (NB the consent

holder's home address can be blanked out if required on the display copy).

3. \*Any motor vehicle from which trading is permitted to take place shall be in a roadworthy condition and shall at all times be taxed, tested and insured, and a driver holding a full driving licence for the class of vehicle being used must be available within a reasonable period in the event that the vehicle is required to be moved.

4. The consent holder shall not contravene any Order made under the Road Traffic Regulations Act or the Town & Country Planning Acts and shall also comply with the provisions of the Highways Acts.

5. \*The consent holder must at all times comply in full with the Food Hygiene (England) Regulations 2006, guidance is available in the “Industry Guide to Good Hygiene Practice Markets and Fairs Guide”, and any relevant legislation.

6. The consent holder must possess for the purposes of trading, sufficient public liability insurance cover.

7. The consent holder must keep any stall/vehicle from which trading takes place together with the immediate vicinity of the stall/vehicle, in a clean and tidy condition and where required, the consent holder must provide sufficient litter bin(s) for use by customers.

8. Advertisements must not cause any danger, obstruction or nuisance to customers or persons in the vicinity of the traders stall/vehicle.

9. This consent does not give any permission to any person or body to place posters, signs or any other advertising material within highway limits, or on street lighting columns, traffic signs and other street furniture.  Traders are advised that any material should not be sited or displayed in a manner which obscures any highway sign or creates a safety risk or hazard to the use of the highway.  Any material erected in contravention of these requirements is liable to be removed by the Highway Authority.

9. Any stall/vehicle used for the purposes of street trading shall not remain on site outside the hours as stated on the consent.

10. The consent holder shall not cause any obstruction to persons using the public highway or wishing to enter the site upon which they are trading.

11. The consent holder shall only use one mobile stall/vehicle for the purposes of street trading on each site, which must not exceed the size agreed in writing by the licensing authority.

12. The consent holder shall supply a copy of these street trading conditions to every person engaged in street trading.

13. The consent holder and any other persons engaged in street trading shall at all times offer full co-operation to an authorised officer of the council in their task of ensuring compliance with the above conditions.

\* where applicable

NOTE: IT IS MOST IMPORTANT THAT THE ABOVE CONDITIONS ARE STRICTLY COMPLIED WITH, AS ANY CONTRAVENTION MAY LEAD TO PROSECUTION AND/OR REVOCATION OR NON-RENEWAL OF THE CONSENT