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## 2001 CHAPTER 8

### *Licensing of street traders*

#### **Applications for the grant, renewal or variation of street trading licences**

**5.—(1)** An application for the grant, renewal or variation of a street trading licence—

- (a) shall be made under this section in writing, and in such form and at such time as the council to which the application is made may specify; and
- (b) shall, if the council so requires, be accompanied by any fee (or such part as the council may determine of any fee) payable under section 15(1).

(2) An application for the grant of a street trading licence shall be made to the council for the district in which the applicant wishes to trade.

(3) An application for the renewal or variation of a street trading licence shall be made to the council that granted the licence.

(4) An application for the grant or renewal of a street trading licence shall state—

- (a) the full name, address and date of birth of the applicant;
- (b) whether the applicant wishes to trade as a stationary trader or as a mobile trader, and—
  - (i) where the applicant wishes to trade as a stationary trader, the street in which he wishes to trade and the location at which he wishes to have his street trading pitch; or
  - (ii) where the applicant wishes to trade as a mobile trader, the area or areas of the district in which he wishes to trade;
- (c) the days on which and the times between which the applicant wishes to trade;

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(d) the description of articles, things or services in which the applicant wishes to trade and the description of any receptacle he wishes to use in connection with his trading;

(e) the arrangements the applicant has made, or proposes to make, for storing such articles, things or receptacles.

(5) An application for the grant or renewal of a street trading licence shall, if the council so requires, be accompanied by 2 photographs of the applicant which are acceptable to the council.

(6) An application for a council to vary a street trading licence under section 11 shall state the manner in which the licence holder wishes the council to vary the conditions specified in the licence.

(7) An application under this section shall contain such further particulars, relevant to street trading, as the council may reasonably require.

(8) Where a council receives an application under this section, it shall within a reasonable time give notice in writing to the applicant of its decision with respect to the application.

#### **Grant, etc. of street trading licences**

6.—(1) Subject to the provisions of this Act, a council shall grant an application under section 5 unless—

(a) it is required to refuse the application under section 8; or

(b) it considers that it ought to refuse the application on any of the grounds set out in section 9.

(2) The Department may by regulations, subject to negative resolution, prescribe the form of a street trading licence.

(3) In granting an application for a street trading licence, the council shall authorise the applicant to trade either as a stationary trader or as a mobile trader.

(4) A street trading licence shall, unless it is revoked or surrendered, remain valid for such period or until such date as the council may determine; but that period or date shall not exceed 3 years from the date on which the licence is granted.

(5) A licence holder may at any time surrender his street trading licence to the council and the licence shall then cease to be valid.

#### **Conditions relating to street trading licences**

7.—(1) A council shall specify in a street trading licence conditions—

(a) requiring—

(i) a licence holder who is a stationary trader to trade only on the street trading pitch allocated to him by the council;

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- (ii) a licence holder who is a mobile trader to trade only in the area or areas within the district specified by the council;
  - (b) identifying the class or classes of articles, things or services which the licence holder may sell or supply under the authority of the licence;
  - (c) identifying the day or days on which, and the time during which, the licence holder may sell or supply articles, things or services;
  - (d) identifying the nature, size and type of any receptacle which may be used by the licence holder in connection with any sale or supply of articles, things or services and the number of any such receptacles which may be so used;
  - (e) requiring that any receptacle so used shall display in a prominent position the name of the licence holder and the number of his licence;
  - (f) regulating the storage of articles, things or receptacles;
  - (g) regulating the deposit and removal of refuse, and the containers to be used for the deposit of such refuse and their location pending its removal;
  - (h) requiring that the licence holder shall avail himself to a reasonable extent of his right to trade under the licence;
  - (i) regulating the arrangements for payment to the council of fees and other charges imposed under section 15.
- (2) A council may, when granting or renewing a street trading licence, specify in the licence such further conditions as it considers reasonable.

### **Mandatory grounds for refusing an application**

- 8.—**(1) A council shall refuse an application under section 5 if the applicant—
- (a) is not an individual; or
  - (b) has not reached the upper limit of compulsory school age, within the meaning of Article 46 of the Education and Libraries (Northern Ireland) Order 1986 (NI 3).
- (2) A council shall refuse an application under section 5 if the applicant wishes to trade at a place where trading would contravene any statutory provision or rule of law.
- (3) A council shall refuse an application under section 5 if the applicant wishes to trade as a stationary trader—
- (a) in a street which is not a designated street; or
  - (b) in any article, thing or service the sale or supply of which would be contrary to the terms of any designating resolution having effect in relation to the designated street in which the applicant wishes to trade.

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### **Discretionary grounds for refusing an application**

**9.—(1)** A council may refuse an application under section 5 on any of the following grounds—

- (a) that—
  - (i) the location at which the applicant wishes to trade as a stationary trader is unsuitable;
  - (ii) the space in the designated street in which the applicant wishes to trade as a stationary trader is inadequate for the applicant to do so without causing undue interference or inconvenience to persons or vehicles using the street;
  - (iii) the area or areas of the district in which the applicant wishes to trade as a mobile trader are unsuitable for the applicant to do so without causing undue interference or inconvenience to persons or vehicles in the area or areas;
  - (iv) there are sufficient traders trading in the street, or at premises adjoining it, in the articles, things or services in which the applicant wishes to trade; or
  - (v) the nature of the articles, things or services in which the applicant wishes to trade is such that their sale or supply, or their preparation for sale or supply, would adversely affect the general amenity of the area in which the applicant wishes to trade;
- (b) that the applicant has, in connection with the application, made a statement which he knows to be false in a material particular;
- (c) that the applicant is, on account of misconduct or some other reason relating to trading activities, unsuitable to hold a street trading licence;
- (d) that the applicant has, without reasonable excuse, failed to avail himself to a reasonable extent of a previous street trading licence;
- (e) that the applicant has at any time been granted a street trading licence by the council, which was revoked or could have been revoked on the grounds that he had refused or neglected to pay fees or other charges due to the council in respect of the licence;
- (f) that the applicant has failed to provide the particulars required by the council to deal with the application;
- (g) that the applicant has failed to provide or identify suitable or adequate arrangements for storing any articles, things or receptacles in or with which he proposes to trade.

(2) If the council considers that grounds for refusal exist under subsection (1) (d), it may grant the applicant a licence subject to conditions which permit him—

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- (a) to trade on fewer days or during a shorter period in each day than is specified in the application; or
- (b) to trade in a different designated street or in a different area from that specified in the application.

### **Revocation, etc. of street trading licences**

**10.—(1)** A council may at any time revoke a street trading licence if it is satisfied that—

- (a) owing to circumstances which have arisen since the grant or renewal of the licence—
  - (i) the location of the street trading pitch on which the licence holder trades as a stationary trader has become unsuitable, or
  - (ii) the space in the designated street in which the licence holder trades as a stationary trader has become inadequate for him to engage in the trading permitted by the licence without causing undue interference or inconvenience to persons or vehicles using the street; or
  - (iii) the area or areas of the district in which the licence holder trades as a mobile trader have become unsuitable for the licence holder to do so without causing undue interference or inconvenience to persons or vehicles in the area or areas;
- (b) a designating resolution has been rescinded or varied with respect to the street in which the licence holder trades as a stationary trader;
- (c) the licence holder has, without reasonable excuse, failed to avail himself to a reasonable extent of his licence;
- (d) the licence holder has, in connection with an application under section 5 with respect to the licence, made a statement which he knows to be false in a material particular;
- (e) the licence holder is, on account of misconduct or some other reason relating to trading activities that has come to the attention of the council since the grant or renewal of the licence, unsuitable to hold the licence;
- (f) the licence holder has, without reasonable explanation, failed to pay any fees or charges due to the council under section 15;
- (g) the licence holder has persistently failed to remove to a place of storage the receptacles used by him for trading; or
- (h) the licence holder has persistently failed to comply with any condition of his licence.

(2) A council shall not take any steps to revoke a licence under paragraph (g) or (h) of subsection (1) unless—

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- (a) it has notified the licence holder in writing of the conduct on his part that it considers to constitute a failure of a kind mentioned in either of those paragraphs; and
  - (b) the licence holder has thereafter continued or repeated that conduct.
- (3) If the council considers that a licence could be revoked on any of the grounds mentioned in paragraphs (a) to (c) of subsection (1) the council may instead of revoking it, vary its conditions under section 11(1) by—
- (a) reducing the number of days in any week or the period in any one day during which the licence holder is permitted to trade; or
  - (b) specifying—
    - (i) in relation to a licence holder who trades as a stationary trader, a different street trading pitch in the designated street in which he trades, or a street trading pitch in another designated street, or
    - (ii) in relation to a licence holder who trades as a mobile trader, a different area or different areasin which the licence holder may sell articles or things, or supply a service; or
  - (c) restricting the description of articles, things or services in which the licence holder is permitted to trade.

### **Variation of street trading licences**

**11.—**(1) Subject to the provisions of this Act, a council may at any time vary the conditions specified in a street trading licence where—

- (a) an application is made under section 5 by the licence holder; or
- (b) the variation is for the purposes of section 10(3).

(2) A council may vary the conditions specified in a street trading licence otherwise than as mentioned in subsection (1), but may do so only at a time when the council is renewing the licence.

### **Notice and representations**

**12.—**(1) Where a council proposes—

- (a) to refuse, other than on any of the grounds specified in section 8, an application for a street trading licence;
- (b) to grant an application for a street trading licence subject to any condition of a kind mentioned in subsection (2) of section 9;
- (c) to revoke a street trading licence under section 10;
- (d) to vary under subsection (1)(b) or (2) of section 11 the conditions specified in a street trading licence; or

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- (e) to refuse to vary under subsection (1)(a) of that section the conditions specified in a street trading licence;

it shall give notice in writing of its proposal to the applicant or licence holder.

- (2) The notice referred to in subsection (1) shall state—

- (a) the grounds on which the proposed refusal, grant, revocation or variation would be based; and
- (b) that representations relating to the proposal may be made in writing to the council within such period, being not less than 21 days from the date of the notice, as may be specified in the notice.

- (3) A council—

- (a) shall not proceed to decide any of the matters referred to in subsection (1) until after the expiry of the period specified in the notice given under subsection (2); and
- (b) shall, in deciding any of those matters, consider any representations made by an applicant or licence holder.

(4) The council shall give notice in writing to the applicant or licence holder of its decision and of—

- (a) the grounds for that decision; and
- (b) his right to appeal against that decision.

## **Appeals**

**13.—**(1) A person aggrieved by a decision of a council—

- (a) with respect to any condition specified in a street trading licence;
- (b) to refuse, other than on any of the grounds specified in section 8, an application for a street trading licence;
- (c) to grant an application for a street trading licence subject to any condition of a kind mentioned in subsection (2) of section 9;
- (d) to revoke a street trading licence under section 10;
- (e) to vary under subsection (1)(b) or (2) of section 11 the conditions specified in a street trading licence; or
- (f) to refuse to vary under subsection (1)(a) of that section the conditions specified in a street trading licence;

may, at any time before the expiration of the period of 21 days from the date on which notice of the decision is given, appeal to a court of summary jurisdiction by notice under Part VII of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26).

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(2) On an appeal under subsection (1), a court of summary jurisdiction may make such order as it considers appropriate and, subject to subsections (3) to (5), the council shall give effect to that order.

(3) Where a street trading licence is revoked under section 10(1) or an application for the renewal of such a licence is refused, the licence shall be deemed to remain in force—

- (a) until the time for bringing an appeal under this section has expired;
- (b) where an appeal is duly brought, until the determination or abandonment of the appeal;
- (c) where an appeal relating to the refusal of an application for such a renewal is successful, until the licence is renewed by the council.

(4) Where the conditions of a licence are varied under section 11(1)(b), the variation shall be deemed not to have effect until the time for bringing an appeal under this section has expired.

(5) Where an appeal is brought under this section against such a variation, the variation shall be deemed not to have effect until the determination or abandonment of the appeal.

### **Temporary licences**

**14.—**(1) Subject to the provisions of this section, a council may, if it considers it appropriate to do so on receipt from any person of an application under subsection (2), grant to that person a temporary licence authorising him to engage in street trading in its district.

(2) An application for the grant of a temporary licence—

- (a) shall be made—
  - (i) in writing to the council for the district in which the applicant wishes to trade, and
  - (ii) in such form and at such time as the council may specify;
- (b) shall contain such particulars relevant to street trading as the council may reasonably require;
- (c) shall, if the council so requires, be accompanied by 2 photographs of the applicant which are acceptable to the council; and
- (d) shall be accompanied by such fee as the council may require under section 15.

(3) Where a council receives an application under subsection (2), it shall within a reasonable time give notice in writing to the applicant of its decision with respect to the application.

(4) Subsections (1) and (2) of section 8 shall apply to an application under subsection (2) in like manner as they apply to an application under section 5.



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(5) A council shall formulate, and make available to any person on request, criteria with respect to the granting of temporary licences by it under this section and shall have regard to those criteria when considering whether to grant a temporary licence.

(6) A council may at any time amend or replace the criteria it has formulated under subsection (5).

(7) In granting a temporary licence, a council may authorise the applicant—

- (a) to trade at such places and in such manner as appears appropriate to the council; and
- (b) to sell such articles or things or to supply such services as the council may specify in the licence.

(8) A temporary licence—

- (a) shall be in such form as appears to the council to be appropriate;
- (b) shall remain in force for such period, not exceeding 7 days, as is specified in the licence; and
- (c) shall be subject to such conditions as the council may specify in the licence.

(9) A council shall grant no more than 5 temporary licences to an applicant during any year.

(10) Where it appears to a council—

- (a) that the holder of a temporary licence has failed to comply with any condition specified in the licence, and
- (b) that, having considered any representations made to it by the holder of the temporary licence, it is appropriate in the circumstances to do so,

the council may revoke the licence.

(11) A person aggrieved by a decision of a council to refuse an application for a temporary licence may, at any time before the expiration of the period of 21 days from the date on which notice of the decision is given under subsection (3), appeal to a court of summary jurisdiction by notice under Part VII of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26).

(12) On an appeal under subsection (11), a court of summary jurisdiction may make such order as it considers appropriate and the council shall give effect to that order.

### **Fees and charges**

**15.—**(1) A council may charge—

- (a) for the grant or renewal of a street trading licence;
- (b) for the grant of a temporary licence; or

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- (c) for varying under section 11(1)(a) the conditions specified in a street trading licence,

such fees as the council may determine and as may be sufficient in the aggregate, taking one year with another, to cover any reasonable administrative or other costs (excluding the costs mentioned in subsection (2)(c)) in connection with its functions under this Act, not otherwise recoverable.

(2) A council may recover from holders of street trading licences or temporary licences such charges as may be sufficient in the aggregate, taking one year with another, to cover the reasonable costs, not otherwise recovered, of—

- (a) the collection, removal and disposal of refuse or other services rendered by the council to such licence holders;
- (b) the cleansing of streets in which street trading takes place in so far as that cleansing is attributable to such trading;
- (c) any reasonable administrative or other costs not otherwise recovered under this Act in connection with the services mentioned in paragraphs (a) and (b).

(3) Before determining or varying any fees or charges under subsection (1) or (2), the council shall—

- (a) give notice of the proposed fees or charges to licence holders affected by the proposal; and
- (b) publish notice of the proposed fees or charges in 2 or more newspapers circulating in the district of the council.

(4) The notice shall indicate—

- (a) that a statement has been prepared showing how the proposed fees or charges have been calculated; and
- (b) the location at which the statement is available for inspection.

(5) The notice shall specify a period, being not less than 28 days from the date of its first publication in accordance with subsection (3)(b), within which written representations concerning the proposed fees or charges may be made to the council.

(6) The council shall, in reaching a decision regarding the determination or variation of any fees or charges, consider any representations made to it within the period specified under subsection (5).

(7) Where the council has reached such a decision, it shall—

- (a) give notice of the decision to licence holders affected by the decision; and
- (b) publish notice of the decision in 2 or more newspapers circulating in the district of the council.

(8) The council may determine the time and manner in which fees or charges are to be paid.

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(9) Where a council refuses an application under section 5 or 14(2), it shall refund any fee paid less any costs necessarily incurred by the council in deciding the application.

(10) Where a street trading licence is revoked under subsection (1)(a) or (b) of section 10, the council shall refund such part of any fee paid for the grant or renewal of the licence as appears to the council appropriate, having regard to—

- (a) the period for which the licence had been in force at the date of its revocation, and
- (b) any costs necessarily incurred by the council in deciding the application to grant or renew the licence.

(11) The council may refund, in such other circumstances as it considers appropriate, the whole or a part of any fee or charge.

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