

TITLE OF REPORT: PROPOSED STREET COLLECTIONS POLICY 2012-17

REPORT OF THE HEAD OF HOUSING AND PUBLIC PROTECTION

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to summarise the responses to the public consultation exercise undertaken in respect of the Council's proposed Street Collections Policy.
- 1.2 The Licensing and Appeals Committee, having considered this report, can make a recommendation to Cabinet in respect of a policy relating to the licensing of this activity.

2. FORWARD PLAN

- 2.1 This report does not contain a recommendation on a key decision and, therefore, it has not been referred to in the Forward Plan.

3. BACKGROUND

- 3.1 The Police, Factories, etc (Miscellaneous Provisions) Act 1916, as amended by the Local Government Act 1972, requires all collections of money, or sales of articles, in a street or public place, for the benefit of charitable or other purposes, to be regulated by local authorities. The legislation is not adoptive and applies automatically in each local authority area.
- 3.2 The Act defines a street as "*any highway and any public bridge, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not*".
- 3.3 Whilst not defined in the Act, case law has defined public place as "*a place where the public has access*". No right of access need apply, only the ability to obtain access.
- 3.4 It is often assumed that collections can be held in shop doorways or car parks without a permit because they are being held on privately owned land and so do not constitute a street or public place. This is not the case as the legislation does not mention the ownership of the land or treat collections on privately owned land as exempt from the regulations. Indeed a street or public place could be indoors in certain circumstances, for example the communal area of a shopping arcade or shopping centre. Equally, a public place could be a private supermarket car park.
- 3.5 For clarity, however, collections taking place within shop premises by means of a static collecting box do not fall within the remit of street collections.
- 3.6 In order to fall within the remit of this legislation, the collection of money or sale of articles must be for the benefit of 'charitable or other purposes'. In the absence of a definition of this term in the Act, it follows that the definition given in the House to House Collections Act 1939 would apply, that is "*any*

charitable, benevolent or philanthropic purpose, whether or not the purpose is charitable within the meaning of any rule of law". Any sale of articles in the street or a public place for private gain would fall within the remit of street trading legislation.

- 3.7 The purpose of the legislation is to ensure that collectors are properly authorised, that the collections do not cause a nuisance to the public, that donations are receipted and stored in a secure way, and that the total proceeds are properly accounted for and forwarded to the appropriate charitable organisation.
- 3.8 Unless persons who wish to undertake charitable street collections hold a permit from the local authority, it is an offence for any person to undertake such a collection. Equally, it is an offence if a collector undertakes a collection under a permit but fails to comply with the street collections regulations as prescribed.
- 3.9 Section 5 of the Act allows a local authority to prescribe regulations providing that it follows a set procedure and obtains approval from the Secretary of State. On 15th February 1974, the Secretary of State published The Charitable Collections (Transitional Provisions) Order 1974 which contained Model Street Collection Regulations that local authorities could choose to adopt which, if adopted, constituted approved regulations under Section 5 of the Act.
- 3.10 On 21st March 1974 the Council formally adopted the Model Street Collection Regulations which have applied to all street collection permits issued by the Council since their adoption.
- 3.11 There is no right of appeal through the courts against the refusal to grant, or revocation of, a permit. That said, any decision must be reasonable as any decision would be subject to a complaint to the Local Government Ombudsman or challenge through a judicial review.

4. APPROACH TO THE STREET COLLECTIONS POLICY

- 4.1 The development of the Street Collections Policy has been based upon a consultation process undertaken by the Licensing and Enforcement Team, with consideration to the existing legislative requirements and current case law.
- 4.2 The consultation process was undertaken between Monday 7th June 2010 and Monday 30th August 2010 inclusive. A policy consultation page was created on the Council's website including the proposed policy and an explanation of the process for making a representation.
- 4.3 A letter advising of the consultation process was sent to each of the following consultees:
- (ii) All existing street collection permit holders;
 - (ii) Hertfordshire Constabulary;
 - (iii) NHDC Councillors (via Members Information Service);
 - (iv) NHDC Legal Services;
 - (v) All existing licence holders as defined under the Licensing Act 2003;
 - (vi) All regular street collection permit holders;
 - (vii) Neighbouring Authorities in Hertfordshire;
 - (viii) Responsible Authorities as defined under the Licensing Act 2003;

- (ix) Hertfordshire Highways; and
- (x) Town Centre Managers

- 4.4 It was felt that in general terms the current procedures appeared to be working well, therefore, no significant changes were proposed in respect of policy content.
- 4.5 Historically, street collections have been administered largely based on convention and the model street collection regulations rather than under the control of a formally adopted policy.
- 4.6 Whilst the Council does not have the opportunity to prescribe regulations or attach licence conditions, clarification needs to be given as to how the Council will determine whether or not it believes a proposed collection is charitable, on what grounds an application will be refused, and any limitations that will be placed on permits.
- 4.7 The proposed policy reflects current practice and the prescribed regulations, however, gives further clarification on how the Council will administer applications.

5. CONSIDERATIONS

- 5.1 Whilst the regulations pertaining to street collection permits are prescribed by the Secretary of State, a local authority can amend the regulations subject to obtaining the Secretary of State's consent.
- 5.2 After careful consideration of the regulations, they are still relevant and proportionate to current street collections and, therefore, no amendments are proposed.
- 5.3 Local discretion exists in respect of limiting the number and location of collections; however, the existing informal arrangements have worked well and so no amendment is proposed.

6. LEGAL IMPLICATIONS

- 6.1 The Licensing and Appeals Committee's terms of reference include 'to consider all Licensing matters with the exception of the statements of licensing policy under the Licensing Act 2003 and the Gambling Act 2005 and those matters delegated to the Licensing Sub-Committee and the Strategic Director'. The Licensing and Appeals Committee will therefore consider the draft policy and decide whether to make a recommendation to Cabinet as to its implementation.
- 6.2 Cabinet's terms of reference include 'to prepare and agree to implement policies and strategies other than those reserved to Council',
- 6.3 The other legal implications, such as the relevant legislation, are set out within the body of the report.

7. FINANCIAL AND RISK IMPLICATIONS

- 7.1 The proposed policy formalises existing informal arrangements, therefore, will not place any new financial resource implications on the Council.

- 7.2 As the refusal to grant, or revocation of, permits has no appeal to the Magistrates Court it is essential that the Council exercises its discretion reasonably and consistently to avoid the risk of a judicial review or an Ombudsman complaint. The provision of a robust Policy will help mitigate this risk.
- 7.3 Street collections and its associated licensing/enforcement activity is not considered to represent a significant risk to the Council and, therefore, there is no corresponding entry on the Council's Risk Register.

8. HUMAN RESOURCE AND EQUALITY IMPLICATIONS

- 8.1 The processing of any additional permits arising from this Policy can be incorporated within the existing staffing resource. The number of additional permits required is likely to be minimal as the policy merely formalises existing procedures.
- 8.2 The Council incorporates the statutory equalities duties which apply to all its activities into policies and services as appropriate, as set out in the Council's Corporate Equality Strategy. The Council also recognise that in our society, groups and individuals continue to be unfairly discriminated against and we acknowledge our responsibilities to actively promote good community relations, equality of opportunity and combat discrimination in all its forms.

9. CONSULTATION WITH EXTERNAL AND INTERNAL STAKEHOLDERS

- 9.1 The full list of consultees is contained in paragraph 4.3 of this report.
- 9.2 The original Street Collections Policy, as used for the consultation, is available on the Council's website. A hard copy can be forwarded on request.
- 9.3 A schedule of comments received in response to the public consultation and the action taken in respect of these comments is attached as **Appendix A** of this report.
- 9.4 Given that the proposed policy is mainly formalising existing practices, comments during the consultation were understandably minimal.
- 9.5 The proposed Street Collections Policy is attached as **Appendix B** of this report.

10. RECOMMENDATIONS

- 10.1 That the proposed Street Collections Policy, as attached at **Appendix B** to the report, incorporating the results of the public consultation exercise, be supported by the Licensing and Appeals Committee.
- 10.2 That the Licensing and Appeals Committee recommend to Cabinet the formal adoption of the Street Collections Policy as contained within **Appendix B**.

11. REASONS FOR RECOMMENDATIONS

- 11.1 Whilst the regulations governing street collections are prescribed and can only be amended with Secretary of State approval, other aspects of the legislation allow for local discretion, for example, the decision as whether or not a proposed collector meets the charitable definition or any limit the Council wishes to place on the number of collections permitted.

11.2 A clear and transparent policy in respect of the Council's approach to this licensing function would be of benefit to charitable organisations, collectors and the public, as well as ensuring consistency of approach by officers.

12. ALTERNATIVE OPTIONS CONSIDERED

12.1 The regulation of street collections could continue without a formal policy, based on the historical approach of the Council.

12.2 That approach would not offer the public or collectors clear and transparent guidance as to the Council's approach to street collections licensing and could lead to inconsistency in decision making, potentially leaving the Council more at risk to challenge.

13. APPENDICES

13.1 Appendix A Schedule of comments received during the consultation, including recommendations

13.2 Appendix B Proposed Street Collections Policy

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15. BACKGROUND PAPERS

15.1 Police, Factories, etc (Miscellaneous Provisions) Act 1916

15.2 The Charitable Collections (Transitional Provisions) Order 1974

15.3 Council resolution of 21st March 1974 in respect of the adoption of the Model Street Collections Regulations