

**LICENSING AND APPEALS COMMITTEE  
28 NOVEMBER 2017**

**PART 1 – PUBLIC DOCUMENT**

**AGENDA ITEM No.**

**8**

**TITLE OF REPORT: CONSIDERATION OF AMENDMENTS TO THE STREET COLLECTIONS POLICY**

REPORT OF THE HEAD OF HOUSING AND PUBLIC PROTECTION  
EXECUTIVE MEMBER: HOUSING AND ENVIRONMENTAL HEALTH  
COUNCIL PRIORITY: PROSPER AND PROTECT

**1. EXECUTIVE SUMMARY**

- 1.1 Licensing of street collections, whilst governed by national legislation, provides for local discretion. Having a clear and transparent policy will assist applicants' understanding of the process and facilitate consistent decision-making by the Council.
- 1.2 Any Council Policy should be kept under review to ensure it remains fit for purpose therefore a public consultation was recently undertaken in respect of some minor amendments to the existing Policy.
- 1.3 This report seeks Members' approval of amendments to the existing Policy.

**2. RECOMMENDATIONS**

- 2.1 That the Committee:
  - (i) Consider the results of the public consultation and support the policy amendments;
  - (ii) Determine that the proposed amendments are minor in so far as they do not amend the licensing principles or main focus of the existing Policy;
  - (iii) Recommend that the Executive Member for Housing and Environmental Health approves the policy amendments under delegated powers;

**3. REASONS FOR RECOMMENDATIONS**

- 3.1 The existing policy has worked well since its adoption with effect from 2 April 2012 therefore no significant amendments were deemed necessary. The Executive Member for Housing and Environmental Health approved some previous minor amendments to the Policy on 2 November 2015.
- 3.2 No responses were received from the public consultation.

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 No alternative options were considered as the existing Policy, as previously amended by the Executive Member for Housing and Environmental Health, has worked well to date.

#### **5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS**

- 5.1 The proposed amendments to the existing policy were highlighted in red and publicised on a specific licensing consultation webpage on the Council's website.
- 5.2 The Executive Member for Housing and Environmental Health was consulted throughout the process.

#### **6. FORWARD PLAN**

- 6.1 This report contains a recommendation on a key decision that was first notified to the public in the Forward Plan on 22 August 2017.

#### **7. BACKGROUND**

- 7.1 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.
- 7.2 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"*.
- 7.3 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.
- 7.4 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.
- 7.5 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.
- 7.6 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.

- 7.7 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.
- 7.8 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.
- 7.9 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 15<sup>th</sup> 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.
- 7.10 On 21 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.
- 7.11 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.

## **8. RELEVANT CONSIDERATIONS**

- 8.1 To assist the Committee with their deliberations, every proposed amendment is highlighted in red in the proposed Policy attached as Appendix A.

### **Policy Duration**

- 8.2 In order to ensure that a policy is reviewed periodically, historically each policy has included the date by when it should be reviewed. If this date is passed, the Policy doesn't lapse but is at risk of challenge for not being kept under review.
- 8.3 A fixed term policy could be considered inappropriate particularly with ever-changing legislative or local requirements. A policy should be kept under regular review with the ability to amend or re-consult where necessary. As policy is a matter for Members, it is felt that the Executive Member for Housing and Environmental Health is best placed to determine when a policy should be amended or reviewed.
- 8.4 The Policy therefore has no fixed duration but will be kept under periodic review by the Executive Member who will have the authority to amend, approve for continuation or require a full consultation prior to a new policy being considered by Cabinet.

### **Period of Notice for Applications**

- 8.5 The existing Policy reflects the Model Street Collection Regulations and requires an application to be served with a minimum of twenty-eight days notice prior to the intended collection. In practice, this period of notice is in excess of that reasonably needed by the Council to process the application and has served to preclude some worthwhile collections within the district.

- 8.6 The proposed Policy includes an amendment reducing the period of notice from twenty-eight days to fourteen days which gives the Council sufficient time to process the application whilst allowing greater flexibility for applicants.
- 8.7 Additionally, there may be occasions such as a national emergency or an unforeseen urgent local charitable need where fourteen days notice may preclude much needed charitable assistance. The proposed Policy therefore includes a reduced notice period of seven days for exceptional circumstances at the discretion of the licensing manager so that genuine emergencies can be accommodated.

### **Clarification**

- 8.8 Since the adoption of the Street Collection Policy, a number of minor administrative issues have arisen whereby some clarification of the wording of the Policy was necessary. The main area for clarification has been the process for determining a departure from policy. This clarification has been included within the amended Policy.
- 8.9 Clarification has been included to make clear that departures from policy are not intended to circumvent the adopted requirements but are reserved for genuine circumstances that members may not have considered as part of the adoption of the Policy or any subsequent amendments.
- 8.10 Additionally, the Policy provides for minor departures from Policy to be granted by the licensing manager.

### **Definition of Minor Amendments**

- 8.11 The Council's Constitution reserves "*to prepare and agree to implement policies and strategies other than those reserved to Council*" for Cabinet and all new licensing policies, other than those reserved to Council, have been referred to Cabinet for adoption. Once a policy has been adopted by Cabinet, an Executive Member has the authority for "*making minor amendments to adopted strategies, policies and procedures*".
- 8.12 The Constitution is however silent on the definition of a minor amendment therefore a definition can be sought from the existing adopted Policy. The current Policy adopted by Cabinet included a section entitled "Amendments to Policy". Within that section, a *substantial amendment* was defined as one that is likely to have:
- (i) *a significant financial effect on permit holders; or*
  - (ii) *a significant procedural effect on permit holders; or*
  - (iii) *a significant effect on the community.*

The Policy then clarifies that a minor amendment is defined as any amendment that does not fall within the scope of a *substantial amendment* and:

*"Any minor amendments to this Policy may be authorised by the Executive Member for Housing and Environmental Health"*

In the absence of a definition of minor in the Constitution, the existing Policy can be considered an indication of Cabinet's interpretation of minor when considering the initial adoption of the Policy.

- 8.13 It is suggested that none of the proposed amendments fall within the scope of the *substantial amendment* definition therefore are classified as minor amendments that can be made by the Executive Member. This is further supported by the fact that the four licensing objectives of the Policy remain unchanged.
- 8.14 If the Committee support the contention that the amendments to the existing Policy are minor then the amendments can be authorised by the Executive Member. If however the Committee believe the amendments are not minor and, in effect, a new Policy should be adopted then the proposed Policy should be referred to Cabinet.

## **9. LEGAL IMPLICATIONS**

- 9.1 By virtue of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, adoption of a local policy in respect of street collection regulation is a matter for the Council's Executive.
- 9.2 The Licensing and Appeals Committee's terms of reference within the Council's Constitution includes at section 8.2.3:

*"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 of Planning, Housing and Enterprise."*

The Committee's role therefore is to consider the draft policy in light of the public consultation and decide whether to make a recommendation to the Executive in respect of adopting the proposed amendments.

As part of that consideration, the Committee should determine whether or not the proposed amendments should be considered 'minor amendments' that could be dealt with by the Executive Member under delegated powers.

In the absence of a definition of 'minor' within the Constitution, the Committee should have regard to the definition of 'minor amendment' within the existing adopted policy.

- 9.3 If the Committee determine that the proposed amendments are 'minor', section 14.8.1(l) of the Constitution states that an Executive Member has authority for:

*"making minor amendments to adopted strategies, policies and procedures."*

- 9.4 If the Committee determine that the proposed amendments are not 'minor' based on the definition included within the existing adopted policy then authority for adopting a new policy falls with Cabinet by virtue of section 5.6.1 of the Constitution that includes within the terms of reference for Cabinet:

*"to prepare and agree to implement policies and strategies other than those reserved to Council."*

## **10. FINANCIAL IMPLICATIONS**

- 10.1 The amended policy would have no additional financial implications for the Council. No fee can be charged for administering this process and the proposed amendments to the Policy place no additional financial burden on the Council.

## **11. RISK IMPLICATIONS**

- 11.1 The risk to the Council of not periodically reviewing and amending policy is that the Policy may become outdated and no longer fit for purpose. Given that the Policy is a fundamental element of consistent decision making, a policy that was not fit for purpose would increase the risk of judicial challenge.

## **12. EQUALITIES IMPLICATIONS**

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2 The proposed Policy does not place any barriers or unique requirements on any person on the grounds of ethnicity, gender, religion or any other protected characteristic. Officers work with all applicants and consent holders, where appropriate, to ensure that the Council's duty under the Equality Act 2010 is met, for example, guidance notes could be provided in other languages upon request.

## **13. SOCIAL VALUE IMPLICATIONS**

- 13.1 The Social Value Act and "go local" policy do not apply to this report.

## **14. HUMAN RESOURCE IMPLICATIONS**

- 14.1 The policy will not place any new human resource implications on the Council.

## **15. APPENDICES**

- 15.1 Appendix A - Proposed Street Collection Policy including amendments.

## **16. CONTACT OFFICERS**

### **Report Author**

- 16.1 Steve Cobb, Licensing Manager  
[steven.cobb@north-herts.gov.uk](mailto:steven.cobb@north-herts.gov.uk); ext 4833

### **Consultees**

- 16.2 Andy Godman, Head of Housing and Public Protection  
[andy.godman@north-herts.gov.uk](mailto:andy.godman@north-herts.gov.uk); ext 4293
- 16.3 James Ellis, Advisory & Litigation Solicitor  
[james.ellis@north-herts.gov.uk](mailto:james.ellis@north-herts.gov.uk); ext 4319
- 16.4 Jodie Penfold, Group Accountant  
[jodie.penfold@north-herts.gov.uk](mailto:jodie.penfold@north-herts.gov.uk); ext 4332
- 16.6 Reuben Ayavoo, Senior Policy Officer  
[reuben.ayavoo@north-herts.gov.uk](mailto:reuben.ayavoo@north-herts.gov.uk); ext 4212

16.7 Maggie Williams, Senior HR and Contracts Manager  
[maggie.williams@north-herts.gov.uk](mailto:maggie.williams@north-herts.gov.uk); ext 4506

**17. BACKGROUND PAPERS**

17.1 [The Police, Factories, etc. \(Miscellaneous Provisions\) Act 1916](#)

17.2 [Existing Street Collection Policy](#)