



Local Government (Miscellaneous Provisions) Act 1982

**Milton Keynes Council
Statement of Street Trading Policy
2019 - 2022**

VERSION 8.0**Milton Keynes Council Draft statement of Street Trading Policy 2019 - 2022**

Date	Version	Author	Comments
06.07.15	1.0	K Evans	Initial draft
08.07.15	2.0	K Evans	Draft following changes by Regulatory Committee, approved for consultation.
09.02.16	3.0	K Evans	Draft following consultation
08.11.16	4.0	K Evans	Endorsed by cabinet
14.03.18	5.0	K Evans	Initial draft
10.07.18	6.0	K Evans	Endorsed by cabinet
05.02.19	7.0	K Evans	Endorsed by cabinet
11.09.19	8.0	K Evans / A Ward	Draft – Regulatory Committee minor amendments
01.10.19	8.1	K Evans / A Ward	Endorsed by cabinet

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1. EXECUTIVE SUMMARY

- 1.1 This document sets out the Council's policy on street trading. This document also sets out the legislative framework administered by the Council in respect of street trading consents, government guidance and the procedures for obtaining such consents and the conditions attached to them. This policy, however, is not a comprehensive statement of the law and applicants should, where necessary, obtain their own legal advice.
- 1.2 Appendices that form part of this policy may be updated from time to time by the Regulatory Committee and any revision to the appendices will be publicised on the Council's website at least 28 days prior to commencement. Any amendments to the policy itself shall be made by the Regulatory Committee, ratified by Cabinet and take effect immediately upon adoption unless a later date is specified.
- 1.3 The policy will be reviewed every 3 years but a review could also be triggered at any time by a change in legislation or other relevant factors.

2. INTRODUCTION SCOPE AND PURPOSE

- 2.1 The Borough of Milton Keynes adopted street trading provisions under The Local Government Miscellaneous (Provisions) Act 1982 Schedule 4 in October 1988 in response to members concerns that itinerant traders were having an adverse financial impact on other food businesses within the borough and there was also a concern of an increased risk of highway related injury due to roadside trading.
- 2.2 The council's ability to regulate street trading is set out in Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 referred to in this policy as "the Act".
- 2.3 Where controls are in place streets may be designated as either '**prohibited**', or '**consent streets**' for the purposes of street trading. However, community events may be exempted by the council from the requirements of the street trading controls for the duration of the event. Definitions of the different street trading classifications are set out in section 24.
 - 2.3.1 Community Events are considered as cultural functions that are free for the public to enter. Notice must be given in writing to the council's Licensing Department by the event organiser at least 28 days prior to the event requesting the exemption, providing information on the mobile operators attending, what they are intending to sell and their locations.
- 2.4 Milton Keynes Council (MKC) has implemented a '60 metre rule', which prevents street trading taking place on any highway land (verges, footways) or private forecourts that are adjacent to and within 60 metres of the centre line of a Prohibited or Consent street. For dual carriageways this is centre line of the central reservation. The 60 metre boundary of streets designated as Consent and Prohibited, does not apply to the internal areas of shopping malls, permanent structures with covered areas and the outdoor walkways within the

building structure; and are therefore not regulated by MKC Street Trading controls.

- 2.5 There was a consultation in 2013 on the street trading system in Milton Keynes. At this time only a small number of streets were classified as consent streets, the number of street traders on these streets were low and traders preferred to trade on streets not regulated by street trading controls.
- 2.6 Following a consultation in September 2013 the Regulatory Committee resolved to designate all Milton Keynes adopted highway streets and any future adopted highway streets as consent streets (unless they were designed as prohibited or exempted). At this time a number of 'unregulated streets became 'consent streets' and some streets became prohibited for the purposes of street trading.
- 2.7 The purpose of this policy is to provide guidance for the consideration of applications for street trading consents and to help create a street trading environment which is sensitive to the needs of residents and visitors. It will create a level playing field for traders encouraging higher service standards of food hygiene and providing a service which does not detract from the local neighbourhood scene.

3. PROHIBITED STREETS

- 3.1 If a street is designated as a "**prohibited street**" then a criminal offence is committed by any person engaging in street trading in that street. There could be a number of reasons to designate a street as prohibited. For example there may be road safety concerns, or the council may wish to restrict trading at a particular location because of business or resident concerns.
- 3.2 Certain trading pitches have been created in Central Milton Keynes to satisfy a need by the Late Night Trade. These pitches have been given consent status and are excluded from the prohibited street restrictions.

4. CONSENT STREETS

- 4.1 If a street is designated as a "**consent street**" then street trading without consent is a criminal offence. The council is required to act reasonably and be consistent with its general obligations (e.g. those under the Human Rights Act), but subject to that the council enjoys a wide discretion with regard to the granting or refusal of street trading consents. The council does not have to rely upon specific statutory grounds in order to refuse an application for grant or renewal.
- 4.2 There is no right of appeal against any decision made in respect of a street trading consent. A street trading consent can be granted for up to 12 months and can be revoked at any time following a hearing at a Regulatory Sub-Committee. When granting or renewing a consent the council may attach any reasonable condition. Furthermore the council can, at any time, vary the conditions attached to a consent. Any such variations will be notified in writing to the person/business named on the consent and will take effect immediately or on another date as specified.

5. PUBLIC SAFETY

- 5.1 The proposed location of street trading activity should not present a significant risk to the public in terms of highway safety or/and obstruction. This would

include consideration of factors such as: - interference with sight lines for road users and access to pedestrian crossings. Applications in respect of sites that have previously been the subject of a refusal due to the unsuitability of the location are unlikely to be accepted.

6. COMMERCIAL NEED

6.1 Any new application will include consideration of the number and type of existing traders and businesses in the vicinity. Consent is unlikely to be granted within 250 metres of an existing street trader.

7. PREVENTION OF CRIME AND DISORDER

7.1 The proposed activity should not present a risk to public order. This is likely to be an issue in respect of applicants wishing to trade during later hours. This is because in some circumstances a trading location can act as a focus point of anti-social behaviour.

8. PREVENTION OF PUBLIC NUISANCE

8.1 Consideration will be given to those measures to be taken by a trader to reduce and control the risk of nuisance from noise, litter, vermin, fumes, odours and the disposal of associated waste.

9. SUSTAINABILITY AND PRODUCT TYPE

9.1 A trader should set out measures to reduce the environmental impact of their proposed activity as part of their application. Typically this could include the use of recyclable products and energy efficient processes.

9.2 Consideration will also be given to the type of products sold and the suitability of the products at the location concerned. It should be noted that applications which propose to sell articles of firearms, replica firearms, tobacco or animals will not be accepted.

10. SUITABILITY OF TRADING UNIT

10.1 The vehicle, trailer or stall to be used will be of a good quality design/build and should not be of an appearance to the detriment of the quality of the street scene. The unit may be inspected by an authorised officer of Milton Keynes Council prior to any consent being issued. The unit shall comply with any legal requirement relating to the trading activity proposed and in particular with the following legislation and any subsequent revisions thereof:-

10.2 Legislation

Food Hygiene legislation

- (a) The Food Safety and Hygiene (England) Regulations 2013
- (b) Regulation (EC) 178/2002
- (c) Regulation (EC) 852/2004
- (d) Food Safety Act 1990
- (e) Food Standards Agency – Food Hygiene Rating Scheme. A 3 star minimum rating for “Satisfactory” is mandatory and failure to achieve this rating may lead to revocation or rejection of street trading consent.

Health and Safety legislation

(f) Health and Safety at Work etc. Act 1974 and any regulations made under this Act.

Noise control legislation

(g) Environmental Protection Act 1990

Licensing

(h) Licensing Act 2003 – Sale of hot food between 11.00 pm and 05.00 am and sale of alcohol.

11. SUITABILITY OF APPLICANT

11.1 When determining an application for the grant or renewal of a street trading consent the council will consider relevant information relating to the suitability of the applicant to hold such a permission including:

(a) whether the applicant has any relevant unspent convictions:

A Basic Disclosure from the Disclosure and Barring Service (DBS check) shall be submitted with each application (see 16.2 e). The certificate must not be older than three months at the time of its submission. Any unspent convictions or proven criminal behaviour shall be taken into account in assessing the suitability of the applicant, such as dishonesty, violence, sexual and indecency related offences, drugs, theft and deception (attached as Appendix C).

(b) refusal or neglect in paying fees due to the council for a street trading consent.

(c) previous failures of the applicant, without reasonable excuse, in respect of a previous street trading consent.

11.2 Under the Immigration Act, introduced in 2016, the Home Office granted new duties for local authorities to deal with illegal workers and those who employ them. Anyone employing illegal workers, (those without the right to be working in the UK) can be fined up to £20,000 per illegal worker. The wages of the illegal workers can also be seized as proceeds of crime. You are required to check the residency status and right to work of anyone who you employ to trade under your street trading consent before including their names on an application form. For more information on the Immigration Act, and the duties of employers to check the rights of their employees to work, please review the [Home Office guidance](#). Any trader found to allow an illegal worker to work as part of their trading activities is likely to have their street trading consent reviewed and/or revoked.

11.3 In addition to the suitability of an applicant for a consent the Council will also consider the suitability of any person employed to work in a customer service or customer facing role and require a DBS for every such person assessed in line with the provisions of Appendix C. Applicants are expected to name any person working for them in such a role and notify the Council of any changes. Any individual who deals with members of the public by taking orders, supplying goods or handling cash must be assessed by the Council following the provision of a DBS check. A consent permit holder who employs

someone in such a role without a DBS check or fails to notify the Council is likely to have their street trading consent reviewed and/or revoked.

12. LAND OWNER PERMISSION

- 12.1 A person may already need and have permission from another department in Milton Keynes Council enabling them to engage in street trading on council owned land.
- 12.2 In order to operate lawfully, such a person would also need to make a successful application for a street trading consent before they could trade.

13. PREMISES LICENCE – LICENSING ACT 2003

- 13.1 If a Premises Licence has been granted under the Licensing Act 2003 which permits licensable activities at a particular location, a street trading consent is still required before trading can commence.

14. MOBILE TRADERS AT MULTIPLE LOCATIONS

- 14.1 Many traders wish to operate from the same position every day but some businesses may wish to trade at a number of consent streets across the borough - for example ice cream vans or other similar operations may visit multiple locations each day. The council recognises that these traders will only be in one location for a short period of time and as a result such traders will be able to apply for a borough wide street trading consent, based on the maximum number of hours they wish to trade per day. Such consents will be granted on condition that they allow no more than 20 minutes trading in any 100 metre part of any one street on any one day. This reflects the transient nature of their operation. Trading in one place for longer than this will require a specific consent for the street concerned.
- 14.2 If an applicant proposes to trade on streets where there is already an existing street trading consent, commercial need will be a relevant consideration when considering the application. The council will also consider restricting borough wide consents if issues develop with multiple traders visiting the same location.
- 14.3 In some instances an individual or company may use several vehicles to engage in street trading across the Borough as part of a larger business operation. The Council seeks to balance the need to protect the public, whilst removing unnecessary regulatory and administrative burdens from traders. Where several vehicles are being operated, the administration of the street trading regime and its enforcement may be more efficient, if the person or company with overall control of several vehicles applies to hold a consent permit for each vehicle.
- 14.4 The Boroughwide Mobile Street Trading Operators Consent, will offer a reduction on the fees payable to the Council than if the applicant applied for separate consents for each vehicle.
- 14.5 In allowing such an application the Council will need to be satisfied of the following:
- a) The applicant intends to operate more than 3 vehicles;

- b) The vehicles are owned and insured by the applicant;
- c) Those working in a customer service role (i.e. street trading) are employees;
- d) All vehicles are recognisable as part of the same brand and the public can easily identify the vehicle as part of the applicant's business;
- e) All vehicles sell the same product(s);
- f) All vehicles are kept at the same location
- g) The applicant can produce employer's liability insurance as well as public liability insurance.

14.6 In some instances an applicant may not be able to meet all of the above, for example, someone in a customer service role may not be an "employee" but falls within the legal definition of a "partner" or "company director". Where the Council is satisfied that the majority of the above apply, it will consider the intention of allowing a Boroughwide Mobile Street Trading Operators Consent permit, namely that a reduced fee is acceptable where the Council's administration and enforcement costs will be less without compromising public safety. At all times the Council will consider the overriding need to protect the public.

14.7 The Council will not consider an applicant to be suitable for a Boroughwide Mobile Street Traders Operators Consent Permit if:

- a) The business operates as a franchise and those involved in the street selling activity merely purchase the product from the applicant to sell and retain their profit. In this instance, the street seller is self-employed and the applicant would not have sufficient 'legal' control over the seller.
- b) The applicant does not legally own all the vehicles or, if he or she does own all of the vehicles, he or she leases them to the street seller or another party;
- c) The applicant operates a business practice that is inconsistent with being an employer (i.e. individuals are required to have their own insurance, sales target, commission etc.) and indicates that the person engaged in the street selling activity is self-employed.
- d) The applicant is unable to collate and provide all the relevant documents him or herself and provide them to the Council.

15. SUBMITTING A NEW APPLICATION

15.1 Application forms and guidance are available from the Licensing section or can be downloaded from Milton Keynes Council's website www.milton-keynes.gov.uk/licensing and clicking on the Street Trading links via the food section.

15.2 The following documents will be required with the street trading consent application;

- a. A completed and signed application form.
- b. A copy of a valid certificate of insurance covering third party and public liability risks of up to £1,000,000.
- c. A current MOT certificate and insurance documents where a motorised vehicle will be used for street trading.
- d. A plan detailing exactly where street trading is to occur.

- e. A DBS check for the street trading applicant and any staff involved in customer service, dated within 3 months of the application.
- f. Photos of the street trading vehicle or unit.
- g. The relevant fees.

15.3 Where an applicant wishes to apply for a Boroughwide Mobile Street Traders Operators Consent permit the following will need to be submitted:

- a. A completed and signed application form.
- b. A copy of a valid certificate of insurance covering third party and public liability risks of up to £1,000,000.
- c. A copy of a valid certificate of employer's liability insurance indemnifying the applicant for a minimum £1,000,000
- c. A current MOT certificate for each vehicle
- d. Valid insurance document for each vehicle
- e. Evidence of the ownership of the vehicle (normally v5 log book)
- f. A plan, schedule or route identifying the areas in which trading will occur for each vehicle.
- g. The relevant personal details of each employee and the vehicle in which they will be employed in.
- e. A basic DBS check for each employee involved in customer service.
- f. Details of each vehicle as may be reasonably required by the Council, including the make, model, registration number and photos.
- h. The relevant fee(s).

16. SUBMITTING AN APPLICATION - RENEWAL

16.1 Application forms and guidance are available from the Licensing section or can be downloaded from Milton Keynes Council's website at www.milton-keynes.gov.uk/licensing and clicking on the Street Trading links in the food section.

16.2 To ensure continuity of an ability to trade, renewal applications should be made at least 28 days prior to the expiry of the consent and the following will be required to be submitted to the Licensing Section;

- a. A completed and signed renewal application form or declaration of no changes.
- b. A copy of a valid certificate of insurance covering third party and public liability risks of up to £1,000,000.
- c. A current MOT certificate and insurance documents where a motorised vehicle will be used for street trading.
- d. A plan detailing exactly where street trading is to occur (except for borough wide consent applications).
- e. A DBS certificate for the street trading applicant and any staff involved in customer service (if a period of 3 years has passed from when the last certificate was provided).
- f. Photos of the street trading vehicle or unit.
- g. The relevant fees.

16.3 If the holder of a Boroughwide Mobile Street Trading Operators Consent permit wishes to renew they must submit:

- a. A completed and signed application form.

- b. A copy of a valid certificate of insurance covering third party and public liability risks of up to £1,000,000.
- c. A copy of a valid certificate of employers liability insurance indemnifying the applicant for a minimum £1,000,000
- c. A current MOT certificate for each vehicle
- d. Valid insurance document for each vehicle
- e. Evidence of the ownership of the vehicle (normally v5 log book)
- f. A plan, schedule or route identifying the areas in which trading will occur for each vehicle.
- g. The relevant personal details of each employee involved in customer service and the vehicle in which they will be employed in.
- e. A basic DBS check for each employee involved in customer service (if a period of 3 years has passed from when the last certificate was provided)
- f. Details of each vehicle as may be reasonably required by the Council, including the make, model, registration number and photos.
- h. The relevant fees.

16.3 Failure to apply to renew the consent at least 28 days prior to expiry may lead to a delay in the consent being issued or the suspension of street trading consent. Refer to section 21 regarding fees.

16.4 The Council will aim to send renewal reminders to street traders 2 months prior to expiry date of consent.

16.5 An application to renew a consent that is submitted earlier than 28 days before the expiry of a consent will be accepted but may not be determined until closer to the expiry date of that consent and only if all relevant documents are provided to the satisfaction of the Council. Where a consent holder applies to renew a consent the existing consent shall continue until its expiry date. A renewed consent shall start the day following the expiry of the consent being renewed.

17. TRANSFERS OF STREET TRADING CONSENT/ ADDITIONAL VEHICLES AND EMPLOYEES

17.1 Street trading consents may be transferred to another operator subject to a **28** day consultation with:

- a. Thames Valley Police
- b. Environmental Health (Milton Keynes Council)
- c. Relevant Parish/Town councils

17.2 The following will be required to be submitted to the Licensing Section to transfer a street trading consent to another operator:

- a. A completed application form.
- b. A copy of a valid certificate of insurance covering third party and public liability risks of up to £1,000,000.
- c. A current MOT certificate and insurance documents where a motorised vehicle will be used for street trading.
- d. A DBS certificate for the street trading applicant and any staff involved in customer service. Existing consented traders may rely on certificates up to 3 years old.
- e. Photos of the street trading vehicle or unit if being changed from the original.
- f. The administration fee.

17.3 Street trading consent holders may apply for the permit to be updated with a new vehicle or food mobile. The following will be required to be submitted to the Licensing Section:

- a. A completed application form.
- b. A copy of a valid certificate of insurance covering third party and public liability risks of up to £1,000,000.
- c. A current MOT certificate and insurance documents where a motorised vehicle will be used for street trading.
- d. Photos of the street trading vehicle or unit.
- e. The administration fee.

17.4 The holder of a Boroughwide Mobile Operators Consent is permitted to add further vehicles to their consent in line with para 17.3 provided all other requirements of the initial grant of the consent remain fulfilled. A fee for this will be payable.

17.5 After a consent has been granted a consent holder may employ a person to work in a customer service role either as replacement for, or in addition to, a person previously named. A consent holder must notify the Council within 72 hours and either provide a valid DBS certificate for the relevant individual if already held or provide confirmation that a basic disclosure has been applied for and provide the relevant application form reference for the Council to check. The certificate itself must be provided within 72 hours of being despatched by the DBS. Provided that a consent holder takes full responsibility for the new employee and confirms that they are satisfied of the suitability of the new employee the Council will normally permit the new employee to work pending receipt of the DBS. The Council will, however, liaise with the Police where a DBS check is pending

17.6 Should the consent holder unreasonably delay provision of the DBS, is found to have not taken reasonable steps to safeguard the public or the Police provide information that a new employee may pose a risk to the public the consent holder is likely to have their street trading consent reviewed and/or revoked.

17.7 A fee may be charged by the Council for the notification of employment of a person by a Consent holder to cover the work involved in the Council's assessment that a new employee is suitable and poses no risk to the public

18 WHO WILL THE COUNCIL CONSULT?

18.1 Before any new consent is granted the council will normally consult with the following agencies or persons in respect of new applications. A period of 28 days will be allowed for comments to be received:

- a. Thames Valley Police
- b. Highways (Milton Keynes Council)
- c. Relevant Parish/Town Councils
- d. Environmental Health (Milton Keynes Council)
- e. Milton Keynes Council Ward Councillors
- f. Trading Standards (Milton Keynes Council)
- g. Estates (Milton Keynes Council)
- h. Public Health (Milton Keynes Council)
- i. Any schools within the local area of the trading location.

j. Any other consultee that officers consider appropriate.

18.2 The Council may choose not to consult with parties for applications for a site that has an existing consent (i.e. renewals) or where consent has recently expired, provided that no complaints or concerns have been received, and the same goods are to be sold and the application is similar to the existing or previous consent.

19 WHAT DO I NEED TO DO ONCE I HAVE SUBMITTED MY APPLICATION?

19.1 Once a valid application has been received the Licensing Department (with the environment permitting) shall display a site notice at the proposed site for 28 consecutive days. The notice shall state the application details of trading name, times applied for, consultation end date and where further details can be found. The notice requirement would not apply to borough wide street trading consent applications.

19.2 The Council will maintain a public register of applications including mobile traders on its website which will be updated regularly.

19.3 A link to or contact details of the Milton Keynes Street Traders Association will be provided on the council's website.

19.4 If there are no valid objections / adverse comments to an application then the applicant may trade for a maximum of 3 hours per day. After a period of 21 days of actual trading (meaning being operational and offering goods to customers) an application to vary the hours of trading can be made which again will have to be notified to the consultees listed above.

20 THE DECISION MAKING PROCESS

20.1 The Head of Service or other delegated officers have delegated responsibility for exercising the Council's functions in respect of determining a new application's suitability in whether to refuse or proceed with the application consultation process.

20.2 Where an application is accepted the consultation process begins and any representations will need to be made within 28 days from the date the application is accepted. Any representations must be 'relevant', in that the representation must not be considered by the licensing authority to be frivolous or vexatious. Where a valid representation is received the application will be referred to Regulatory Sub-Committee to be determined. Where no representations are made within the 28 days the decision will be made without referral to committee under the delegated powers.

20.3 If the application is decided by committee, the applicant, who will be expected to attend, will be advised in writing of the date, time and place when the application will be heard. The applicant can be represented by a legal representative or some other person.

20.4 The Regulatory Sub-Committee will deal with applications and disciplinary matters referred to it by Officers.

- 20.5 A Licensing Officer will prepare a report for the committee regarding relevant applications or other matters relating to traders. The report will be made available to the applicant/street trader at least five days before the date of the hearing. When considering the report and relevant documents the committee will ensure that all parties are heard. Unless otherwise stated fees for all General Licensing functions are payable *on application*. *A refund is payable for those applications that are refused following a hearing by the Committee.*
- 20.6 Where an application is refused and the applicant wishes to reapply for the same street, the application shall only be submitted after a minimum period of 12 months has passed from the date of refusal.
- 20.7 The Regulatory Committee or officers have delegated powers to grant or suspend, refuse or at Regulatory sub-committee, revoke street trading consents. Officers are also permitted to issue oral and written warnings, and cautions and may instigate prosecutions wherever appropriate.
- 20.8 An applicant has no right of appeal against the Council's decision to refuse to grant a consent or to impose any conditions.

21 DURATION OF CONSENTS AND FEES

- 21.1 Street trading consents will normally be granted for a maximum of 12 months unless a reduced period is considered appropriate.
- 21.2 No application to renew a consent will be determined until the appropriate fees have been paid (unless another arrangement has been made). This could mean the applicant is not permitted to engage in street trading once the previous consent has expired.
- 21.3 Failure to renew or to pay renewal fees may result in any subsequent application being treated as a new application.

22 CONDITIONS AND ENFORCEMENT

- 22.1 General conditions (attached at Appendix A) will be attached to every consent detailing the holder's responsibility to maintain public safety, prevent nuisance and generally preserve the amenity of the locality.
- 22.2 Additional conditions may also be attached which relate to the type of consent granted. Such additional conditions may include conditions in respect of motor vehicles (attached as Appendix B).
- 22.3 Persons engaging in street trading (as defined in the Act) without a consent or who fail to comply with the conditions will be liable to prosecution under paragraph 10 of Schedule 4 of the Act. Decisions regarding enforcement action will be made in accordance with the Milton Keynes Councils Enforcement Policy.
- 22.4 Where an application is to be determined at a Regulatory Sub-Committee, the committee are permitted to amend any conditions to be attached to the street trading consent as required.

22.5 Failure to comply with a street trading consent and conditions could trigger a review of a street trading consent at any time and this may result in change of hours/location, conditions being added, suspension or revocation of consent, following a hearing at Regulatory sub-committee.

23 COMPLAINTS

23.1 Legitimate complaints will be investigated and consent holders shall be expected to liaise with the *Council to resolve them. Substantiated complaints or any other reasonable grounds could trigger a review of a street trading consent.*

23.2 Complaints may be taken into account when considering an application to renew a street trading consent.

24 STREET TRADING DEFINITIONS

24.1 Street Trading is defined in paragraph 1 of Schedule 4 of the Act as: “the selling or exposing or offering for sale of any article (including a living thing) in a street”.

The Act defines the term “street” as including:

“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”.

24.2 Any part of a street is a “street” for the purposes of the Act.

24.3 The Act at paragraph 1(2) of Schedule 4 states that the following types of trade are not street trading:

- a. a pedlar trading under the authority of a pedlar’s certificate granted under the Pedlar’s Act 1871;
- b. anything done in a market or fair, the right to hold which was acquired by virtue of a grant, enactment or order;
- c. trading in a trunk road picnic area provided by the Secretary of State under section 112 of the Highways Act 1980;
- d. trading as a news vendor;
- e. trading carried on at premises used as a petrol filling station;
- f. trading carried on at premises used as a shop or in a street adjoining a shop where the trading carried on is part of the business of the shop;
- g. selling things, or offering or exposing them for sale, as a roundsman.

The Council expects that any trader relying on any of the above exemptions to be able to produce satisfactory evidence to the Council that the exemption applies to their trading activities.

24.4 The concept of a ‘roundsman’ was clarified in the cases *Stubbs v Torfaen County Borough Council* (2014) and *Kempin v Brighton and Hove Council* (2001). A roundsman conducts an activity of taking orders for goods or delivering goods previously ordered by “going the round of his customers” (for example, milkmen or coal men). Ancillary street sales made by a roundsman when acting in that capacity are exempt.

The “street trading” must be “ancillary” to the non-street trading activity of a roundsman. The mere fact that someone has set routes or rounds that they

travel, does not fulfil the definition of a roundsman and is therefore not exempted from Street Trading controls.

Persons conducting trading activities are expected to ensure that they comply with relevant legislation and where they seek to rely on the exemption of being a roundsman they shall be able to produce evidence of the number of pre-orders taken and fulfilled. Orders made and fulfilled on a designated street will be considered as street trading unless evidence to the contrary is provided. It is for an individual to evidence to the Council that the exemption above applies. When determining the evidence of whether someone is or is not a roundsman, the Council will give consideration as to the length of time between an order and the fulfilment of that order, the location of that order, the means used to make and fulfil that order and whether at the time of making the order, the goods were sold, exposed or offered for sale in a designated street.

- 24.4 All markets operated by a) Milton Keynes Council, b) a Parish or Town Council, c) English Partnerships, d) Milton Keynes business or Association, e) a person or body that has a legal interest in the site of an Historic Charter Market and f) Farmers Markets will be exempt under paragraph 1(2) (b) of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 from the implications of the Council's resolutions of designated Consent Streets and Prohibited Streets.
- 24.5 To satisfy the definition of a market under d) above there will normally need to be:
- 24.5.1 No less than five stalls.
 - 24.5.2 Suitable public liability in place.
 - 24.5.3 Be a Milton Keynes business or association.
 - 24.5.4 Proof that it is a genuine market, and not an extension of a premises.
 - 24.5.5 That there will be no more than 21 cumulative days of holding the market within a single calendar year (the 21 days include set-up and break down days).
- 24.6 A market stall is typically an immobile structure erected by merchants to display and shelter their merchandise. Stalls can be easily erected, taken down or moved on wheels. Some commercial marketplaces, including market squares or flea markets may erect (or allow merchants to erect) more permanent stalls. There are many types of stalls from carts pulled by hand or cycles, makeshift structure like tents or converted caravans and motor vehicles.
- 24.7 Table top and garage yard sales on a resident's driveway or garden shall not normally be considered as street trading.
- 24.8 Premises, such as cafes, that have a tables and chairs licence to use the public highway (pavement) outside, will normally be considered exempt from street trading requirements.
- 24.9 Charitable collections or the sale of lottery tickets under a small society lottery registration (where proceeds are applied to a charitable purpose) are not considered as street trading.
- 24.10 With exception of its use in paragraph 14.5(c), the terms "employ" or "employee" in relation to a street trading consent apply to an individual working for or on behalf of a consent holder, regardless of whether in fact that person falls under the legal definition of an employee or is self-employed, an agent, or other. The term "employee" in para 14.5(c) is intended to refer to the legal definition of employee only.

APPENDIX A

GENERAL CONDITIONS TO BE ATTACHED TO STREET TRADING CONSENTS

1. The consent holder shall only trade on the days and between the times stated on the consent. The consent holder shall only trade in the description of articles stated on the consent.
2. The consent holder shall not carry on business on any street so as to cause obstruction to road users or cause obvious danger to people using the street.
3. The consent holder shall not carry on business from any vehicle or erect or place any stall or other structure in any street except in the area mentioned in the consent.
4. The consent holder shall not sell, offer or expose for sale any goods or articles other than those described within the principle terms of this consent.
5. The consent holder shall on all occasions, when trading, conduct themselves in such a way to not cause nuisance to a person in charge of any shop, business, resident, or any person using the street.
6. The consent holder shall ensure that a copy of the consent is clearly visible to the public whilst trading.
7. A copy of the consent shall be made immediately available upon request to an authorised officer of the Council or the Police.
8. If during the term of any consent any material change occurs in the trading arrangements (namely new staff or trading vehicle), the consent holder must report such changes to the Licensing Authority within 72 hours of that change.
9. Neither the consent holder nor any assistant shall display merchandise which is likely to cause offence or distress to any other person or which would be deemed an offence under any other legislation.
10. Advertisements or other notices shall not be placed in the immediate area of the premises without the approval of the Council.
11. The Consent Holder shall not place any furniture or equipment in the immediate area of the premises other than as permitted by the consent.
12. The council reserves the right to alter or amend these conditions at any time.
13. The subletting of any consent is prohibited.
14. The consent holder shall be responsible for the temporary storage of refuse, liquid and other material accumulated or created whilst trading and its subsequent removal from the site. The removal and disposal must be to the satisfaction of the council and relevant legislation.
15. The consent holder shall not cause nuisance or annoyance to persons using the street or to the occupants of any properties in the vicinity.

16. No articles of firearms, replica firearms, knives, tobacco or fireworks shall be sold.
17. A valid third Party Public Liability Insurance certificate shall be held by the consent holder at all times to the satisfaction of the Council.
18. If the consent holder or customer facing staff are convicted of any relevant or foreign offence during the period between when the application is made and when the application is determined or withdrawn, the consent holder or customer facing staff must notify the Licensing Authority in writing within 14 days from the date of conviction. Failure to do so without reasonable excuse could lead to the revocation of the street trading consent.
19. Borough wide consents for traders visiting multiple locations are restricted to Trading of no more than 20 minutes in any one 100 metre part of any one street on any one day
20. Ice cream traders shall comply with the requirements of the Code of Practice on Noise from Ice-Cream Van Chimes Etc. 2013
21. Consent holder or customer facing staff convicted of any relevant or foreign offence during the period of the consent must notify the Licensing Authority in writing within 14 days from the date of conviction. Failure to do so without reasonable excuse could lead to revocation of street trading consent.
22. The street trading consent permit summary shall be displayed within the food mobile where it can be easily read by members of the public.

N.B A consent is issued without prejudice to any other statute, by-law or regulation. This consent does NOT over-ride any regulations regarding parking, food hygiene, obstruction, etc.

APPENDIX B

MOTOR VEHICLE CONDITIONS THAT MAY BE ATTACHED TO STREET TRADING CONSENTS

1. Any trailers used for the purposes of street trading shall be in a road worthy condition and removed from the highway when the consent is not in operation.
2. Any motor vehicle used for the purpose of street trading shall at all times be in a roadworthy condition and have the relevant documents i.e. insurance, tax and MOT to make the use of that vehicle on a road legal. These documents will be produced by the consent holder to any police officer or authorised officer of the Council.
3. Any food mobiles in residential areas shall be removed from the trading location site once trading has finished.

APPENDIX C

GUIDELINES ON THE RELEVANCE OF CONVICTIONS/CAUTIONS/WARNINGS

1. Milton Keynes Council has a duty to ensure that a person is deemed suitable to operate as a street trader. The applicant must declare all convictions and cautions at the time of application. Failure to do so may result in the application being refused.

General Principles:

2. Each case will be decided on its own merits. However, the Council may refuse to grant a street trading consent or trigger a review of a street trading consent at any time on any of the following grounds:
 - a. There has been a conviction/caution for an offence involving dishonesty, indecency, any sexual offences, violence or drugs;
 - b. There has been a conviction/caution for an offence under the relevant licensing legislation;
 - c. Applicant or any entity, or person associated with the applicant has been associated with, have or had any outstanding debts owed to the Borough Council; and
 - d. Any other reasonable grounds.
3. If a period of imprisonment, community sentence or Court Order is imposed, the applicant must show a minimum of 3 years has passed without further convictions from the end of imprisonment or sentence, not from the end of any reduced sentence.
4. A person with an unspent conviction as defined in The Rehabilitation of Offenders Act 1974, for serious crime need not be permanently barred from registration, but should be expected to remain free of conviction for 3 to 5 years, according to the circumstances, before an application will be considered.
5. Some discretion may be appropriate if the offence is isolated, and there are mitigating circumstances. However, the overriding consideration should be the protection of the public.
6. Where an individual's suitability is called into question, the Senior Licensing Officer will normally determine the matter. In exceptional cases, the matter may be referred to a Licensing Sub-Committee for determination, whose decision is final.

Offences involving violence:

7. The following examples afford a general guide on the action to be taken where convictions are disclosed, or admitted, but it does not form an exhaustive list.
8. It is imperative that applicants with convictions for offences involving violence are considered carefully. When applicants have convictions for causing grievous bodily harm, wounding or assault, or other more serious offences involving violence, at least five years should normally elapse before an application is considered.

Drug-related offences:

9. An isolated conviction for a drug offence, whether for unlawful possession - or involving the supply of controlled drugs, need not necessarily debar an individual from registration, usually the applicant will have at least three years free of convictions/cautions or five years since detoxification, if he/she was an addict.

Indecency offences:

10. Applicants with indecency or sexual offences would normally be debarred. However, this will depend upon the age and circumstances of the offence, along with any registration on the Sex Offenders Register.

Theft & Dishonesty:

11. Convictions for isolated minor offences would not normally debar an applicant, but in cases involving serious theft or fraud at least three years should elapse since the conviction or end of any prison sentence, whichever is the longer, before an application is considered. When offences of dishonesty have been accompanied by violence, normally it is considered that at least five years should elapse before an application may be submitted.