

REGULATORY AND APPEALS COMMITTEE – 21 May 2018

Title of paper:	Nottingham City Act 2013 – Control of Street Trading	
Director:	Hugh White Director Sport & Culture	Wards affected: Bridge, St Ann's, Radford and Park
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Relevant Council Plan Key Theme:

Strategic Regeneration and Development	<input type="checkbox"/>
Schools	<input type="checkbox"/>
Planning and Housing	<input type="checkbox"/>
Community Services	<input type="checkbox"/>
Energy, Sustainability and Customer	<input type="checkbox"/>
Jobs, Growth and Transport	x
Adults, Health and Community Sector	<input type="checkbox"/>
Children, Early Intervention and Early Years	<input type="checkbox"/>
Leisure and Culture	x
Resources and Neighbourhood Regeneration	<input type="checkbox"/>

Summary of issues (including benefits to citizens/service users):

The Nottingham City Council Act 2013 ('the 2013 Act') received Royal Assent on 28 February 2013 and contains powers to allow the Council to better regulate street trading. Although the 2013 Act received Royal Assent, the powers conferred did not fully come into effect.

This report seeks authority to implement aspects of the 2013 Act to bring it fully into force so that illegal street trading can be managed, better providing an improved city centre environment for citizens and visitors alike by preventing obstruction of the highway and addressing road safety issues.

Recommendations:

- 1 Being satisfied that it is necessary to ensure road safety or prevent obstruction of the highway, the Director of Sports and Culture is authorised to serve all appropriate notices and advertise the Council's intention to pass the resolution below in accordance with paragraph 2 of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 5 of the 2013 Act, subject to consideration of any representations received in writing within the relevant period.

'with effect from 03 December 2018 to designate for the purposes of section 5(1) of the 2013 Act the area outlined with a bold red line on the plan attached , namely the area bounded by, and including, the following:

- (i) from a point at the junction of South Sherwood Street, the designated area runs east and is bounded by the back of the footway on the north side of Shakespeare Street, south along the back of the footway on the east side of Milton Street, then east and then south along the back of the footway on the north, east and south sides of Lower Parliament Street to the junction of Canal Street and London Road. It then runs south, then west, then north around the traffic roundabout on London Road (at its junction with Canal Street and Parliament Street), then west along the back of the footway on the south side of Canal Street, north along the back of the footway on the west side of Castle Road (including the whole of Lenton Road to the junction of the Nottingham Park Estate) then runs north west along the back of the footway on the north side of Friar Lane. It then runs north west and is bounded by the back of the footway on the west side of Main Marian Way, continuing over Wollaton Street to Talbot Street, east along the back of the footway on the north side of Talbot Street, north along the back of the footway on the west side of South Sherwood Street to the point at the junction of South Sherwood Street, such designation to have effect at all times. ('the Designated Area')

2	<p>To set the level of fixed penalty notice payable under section 8 of the 2013 Act at £150 for all relevant offences as defined in section 2 of the 2013 Act; and to authorise the Head of Markets and Fairs to:</p> <p>(a) in accordance with section 8 of the 2013 Act, publish in the local press the level of fixed penalty set, and</p> <p>(b) in accordance with section 9 of the 2013 Act, notify the Secretary of State of the level of fixed penalty set.</p>
3	<p>To approve the Enforcement Policy at appendix 2, such Enforcement Policy to come into force with immediate effect (other than the parts relating to the fixed penalty notice which will come into force when the level of the fixed penalty comes into force in accordance with section 9 of the 2013 Act).</p>
4	<p>To authorise the Head of Markets and Fairs to publish on the Nottingham City Council website any relevant information in accordance with section 12 of the 2013 Act.</p>
5	<p>To authorise the Head of City Centre Management and Regulation to comply with the duties in section 10 of the 2013 Act relating to Financial provisions.</p>

1 REASONS FOR RECOMMENDATIONS

- 1.1 The 2013 Act received Royal Assent on 28 February 2013, although the powers conferred on Nottingham City Council ('the Council') do not fully come into effect until certain actions are taken.

- 1.2 The 2013 Act amends the definition of 'a pedlar' within an area of Nottingham which has been designated in accordance with the requirements of the 2013 Act. The first recommendation identifies an area of Nottingham which it is proposed should be designated under the 2013 Act where the amended definition of pedlar should apply. A public consultation will first be required, and a further report to this Committee be required to confirm whether the resolution should be made after that consultation has concluded.
- 1.3 The 2013 Act also enables authorised officers to issue a fixed penalty notice if they have reason to believe a person has committed a relevant offence, as defined in section 2 of the 2013 Act, within the administrative area of Nottingham. However, the level of this fixed penalty notice must first be set by the Council and it must notify the Secretary of State of the level. Recommendation 2 above will enable the level of the fixed penalty to be set, although if the Secretary of State objects, it may make Regulations to set the fixed penalty amount.
- 1.4 There are requirements for the Council to publish the provisions of the 2013 Act and its enforcement policies in relation to the provision, comply with financial requirements and ensure that officers tasked with street trading enforcement under the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') and the 2013 Act are adequately trained.
- 1.5 It is anticipated that the above mentioned additional tools to regulate and enforce against unlicensed street trading will enhance the shopping environment, protect licensed traders, help to ensure road safety and prevent obstruction of the highway, in addition dealing with health and safety issues arising from congestion and trading activity near busy highway junctions.

2 BACKGROUND

- 2.1 The Council introduced a Bill to Parliament in 2007 to amend the 1982 Act to allow the Council to better regulate street trading, alter the exemptions for pedlars and to serve fixed penalty notices. Similar Bills were promoted by Canterbury City Council, Leeds City Council and Reading Borough Council. Pedlars had become a significant problem for a number of cities as the number of pedlars and illegal street traders increased.
- 2.2 This had a detrimental effect on the street scene, the experience of shoppers and importantly caused health and safety issues as highways and footpaths were blocked or congested due to the number and inappropriate placement of street trading or pedlars.
- 2.3 Fully enacting the 2013 Act will allow better management of pedlars and street trading.
- 2.4 The Bill was amended in 2013, and under the 2013 Act:
 - The definition of street trading is extended to include 'the purchasing of or offering to purchase any ticket for gain or reward' (ticket touts);
 - Pedlars still benefit from the exemption under paragraph 1(2)(a) of schedule 4 to the 1982 Act where they trade in accordance with the requirements of their pedlar's certificates, although in 'designated areas' of Nottingham there are additional provisions;

- The Council can only designate an area for the purpose of the 2013 Act if it has reason to believe that it is necessary to do so to ensure road safety or prevent obstruction of the highway;
- The designated areas under the 2013 Act will have to be advertised in a similar manner to the designation of streets for street trading purposes under the 1982 Act;
- An authorised officer of the Council may offer a person who he has reason to believe may have committed a relevant offence (any offence under paragraph 10 of Schedule 4 to the 1982 Act; or of aiding, abetting, counselling or procuring the commission of an offence under that paragraph) a fixed penalty notice in discharge of any liability to conviction for the offence;
- The level of fixed penalty notice must first be set by the Council, which may take account of reasonable costs incurred in connection with the administration and enforcement of the 1982 Act. The Council must notify the Secretary of State of the level of the fixed penalty notice who, if they object to the level, may make Regulations setting the level of the fixed penalty;
- There is an obligation on the Council to keep an account of income and expenditure in respect of the administration and enforcement of fixed penalties under the 2013 Act;
- The Council is required to publish on its website the provisions of the 1982 Act as amended by the 2013 Act and its policies as to enforcement of these provisions;
- The Council may only authorise an officer to act for the purposes of the 2013 Act if they have received adequate training, ensuring that those people trading lawfully in accordance with the 1982 Act are not prevented from doing so.

Definition of a pedlar

- 2.5 The 2013 Act does not prevent a pedlar from trading lawfully anywhere within the city provided they trade in accordance with the 1982 Act as amended. Pedlars may also continue to trade by means of visits from house to house.
- 2.6 However, the 2013 Act does enable the Council to designate areas of the city within which, to avoid falling within the definition of 'street trading' a pedlar is required to trade in accordance with section 5(2) and 5(3) of the 2013 Act within the designated area. In a designated area a pedlar may not trade in tickets, and all articles must be either carried without any means of support or carried in a single, wheeled trolley which is pushed or pulled by the holder of the pedlar's certificate.
- 2.7 The pedlar's trolley, excluding handle and display, is restricted to 0.75m width, 0.5m depth and 1.25m height. The trolley, including handle and display, is restricted to 0.88m width, 0.83m depth and 1.63m height.

The designated area

- 2.8 Since 2007 there has been a wealth of evidence about the proliferation of people trading on various streets in Nottingham city centre using large trolleys to display their goods for sale. Some of the trolleys used have been as large as 1m deep, 2m wide and up to 1.5m high. The trolleys themselves cause an obstruction, but this is made worse when you also take in to account shoppers browsing the goods and the traders themselves. It has also been common practice for groups of traders to gather in the same street.

- 2.9 Many of the traders hold pedlar's certificates and they attempt to claim an exemption from the definition of street trading within the 1982 Act. However, to claim the exemption there is also a requirement to act as a pedlar, including a requirement to travel as you trade.
- 2.10 The Council have been successful in prosecutions, demonstrating that many of the claimed pedlars are not entitled to the exemption in the 1982 Act by their own actions in that they often remain stationary for long periods of time and invite customers to their trolley or pitch rather than travel to them. However, enforcement is very labour intensive, requiring thorough observation time, drawing up of statements, preparing a case for prosecution and progressing to court. During this time the trader can continue to trade, causing an obstruction to other users of the streets. Even when a trader has been successfully prosecuted they may return to continue trading.
- 2.11 The main areas for illegal street trading activity has been around the central shopping area of the city centre including Clumber Street, Smithy Row, High Street, Bridlesmith Gate, Albert Street and Lister Gate. These streets are mainly pedestrianised but the trolleys still cause an obstruction, particularly when taking account of street furniture, and other users of the streets. Due to the high density of footfall in the central core area of the city centre there is a potential for obstruction on all the streets and there are road safety issues in streets that carry vehicular traffic.
- 2.12 It is therefore recommended that the central core area of the city centre be established as a designated area for the purposes of section 5 of the 2013 Act. It is recommended that the central core of the city centre be extended slightly to include the major entertainment venues that attract high footfall during performances and events; Nottingham Playhouse, the Albert Hall, Theatre Royal, Royal Concert Hall, Nottingham Arena/Ice Centre and Nottingham Castle.
- 2.13 The proposed area to be designated ("the Designated Area") under section 5 of the 2013 Act is shown outlined with a bold red continuous line on the plan attached at appendix 1 *and is detailed in recommendation 1 above.*
- 2.14 If Committee agree the recommendations, an advertisement will be placed in the local press by the Director of Sports and Culture stating that representations relating to the proposed resolution at recommendation 1 may be made in writing within 28 days of the notice. It is proposed that the cost of this notice will be met from the Markets and Fairs budget. The Police and the Highways Authority will also be notified. The matter will be reported back to this Committee to consider any representations that are received and to determine whether the resolution at recommendation 1 should be passed. Such Committee will need to be convened by 08 October 2018 to achieve the advertised effective date.
- 2.15 After consideration of the representations received, Committee may, if they think fit, pass such a resolution relating to the area or any part of it. The Council must then publish a further notice in accordance with the above legislation for two consecutive weeks in a local newspaper circulating in the area not later than 28 days before the day specified in the resolution for the coming into force of the designation.
- 2.16 If the resolution at recommendation 1 is subsequently passed, the designated area may need to be reviewed from time to time to address any emerging issues of illegal street trading that fall outside that designated area.

Fixed penalty notices

- 2.17 The 2013 Act enables the Council to give authority to officers to offer a person who they have reason to believe has committed a relevant offence the opportunity of discharging any liability to conviction for the offence on payment of a fixed penalty.
- 2.18 Section 7 of the 2013 Act contains criteria for the format, issue and payment of the notices. Sections 8 and 9 of the 2013 Act outline the duty to set the level of the fixed penalties and the requirement to notify the Secretary of State. The Secretary of State may object to the proposed level of fixed penalty if he considers them to be excessive, and has the ability to make Regulations.
- 2.19 There is also a requirement for the Council to keep an account of their income and expenditure in respect of the administration and enforcement of fixed penalties. This needs to be reported to the Secretary of State after each financial year, together with an explanation as to how any surpluses and deficits are being dealt with.
- 2.20 Under section 8 of the 2013 Act different levels of fixed penalty notice can be set for different areas of the City and for different cases or classes of cases.
- 2.21 As stated above, in setting the level of fixed penalty notice, the Council may take account of any reasonable costs or expected costs incurred in the provision of 1982 Act, and the cost of enforcing these provisions.
- 2.22 The Council has contacted Canterbury, Leeds and Reading who all have similar Local Acts to the 2013 Act. Canterbury has not used their local Act, but Leeds and Reading have implemented their Local Acts. Leeds is understood to have set their fixed penalty for 'relevant offences' at £150, with no discount for early payment, which must be made within 14 days of the date of the notice in order to avoid prosecution. Reading is believed to have also set their fixed penalty at £150.
- 2.23 After reviewing other authorities operating Fixed Penalty Notices, the amounts of other similar fixed penalty notices available to the Council for other offences, and the estimated cost of enforcing these provisions, it is proposed that under section 8 of the 2013 Act the fixed penalty notice is set at £150 per relevant offence. It is proposed that this fixed penalty notice is used for all relevant offences and in all areas of the city.
- 2.24 Once the fixed penalty notice level is set, the Council will need to advertise the amount in accordance with section 8 of the 2013 Act, and notify the Secretary of State, who may set the fixed penalty at a lower level through Regulations.
- 2.25 It is proposed that Community Protection Officers will receive training required by the 2013 Act, and will be authorised to issue fixed penalty notices under the 2013 Act.

3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

- 3.1 Not bringing the 2013 Act into effect. However, this would mean that a fixed penalty notice was not available, and the amended definition of pedlar would not apply if an area is not designated.
- 3.2 A Public Spaces Protection Order may be an option, however, the 2013 Act is primary legislation available to address the issues identified above. Guidance under

the Anti-social Behaviour, Crime and Policing Act 2014 confirms that it remains a principle of law that a specific power should be used in preference to a general one.

4 FINANCE COLLEAGUE COMMENTS

- 4.1 As a result of this decision, the expectation is that there will be minimal impact on the medium term financial plan based on the current levels of illegal street trading. The Council will be able to enforce against unlicensed street trading, and may impose fixed penalty notices for violations. The income received from the fixed penalty notices will be required to cover the expenditure incurred by the Council in enforcement measures. There is an obligation for the Council to an account of the income and expenditure in respect of the administration and enforcement of fixed penalties under the 2013 Act, with annual reporting to the Secretary of State each financial year. The Head of City Centre Management & Regulation will undertake this reporting.

Maria Balchin Senior Commercial Business Partner – 12 February 2018

5 LEGAL AND PROCUREMENT COLLEAGUE COMMENTS

- 5.1 Before the powers contained in the 2013 Act can be fully utilised, the Council must: (1) designate an area where the 2013 Act applies and (2) set the level of the fixed penalty notice ('FPN') amount for a 'relevant offence'.
- 5.2 A report was taken to Full Council on 14 April 2014, which delegated powers under the 2013 Act to this Committee. This also authorised amendment to the Council's Constitution to enable appropriate notices to be served and advertisements made of the Committee's intention to pass a resolution (if recommendation 1 is approved). The procedures for designating an area under the 2013 Act and setting the FPN level for relevant offences under the 2013 Act is prescribed by law and the recommendations appear to follow the required procedure.
- 5.3 It should be noted that pursuant to section 3 of the 2013 Act, the 2013 Act '...applies so long as any resolution by the Council under section 3 of the 1982 Act remains in force.' It was resolved by the Council in 1996 that Section 3 and Schedule 4 of the 1982 Act be brought in to force and this resolution remains in force to date.

Designation

- 5.4 As stated in the body of the report, the Council may only designate an area under section 5 of the 2013 Act if it has reason to believe that it is necessary to designate an area to ensure road safety or prevent obstruction of the highway. The proposed Designated Area is shown outlined with a bold red line on the plan at appendix 1 and is detailed in recommendation 1.
- 5.5 Across the Council's area, the definition of 'street trading' is amended by section 4(2) of the 2013 Act to include 'ticket touts'. However, the amended definition of 'pedlar' (restricting the size of trolley used and prohibiting the trading in tickets) contained in section 5(2) and (3) of the 2013 Act will only apply in an area which is a 'designated area' under the 2013 Act.
- 5.6 To designate an area pursuant to section 5 of the 2013 Act, the Council must follow the process for designation contained in sub-paragraphs (2) to (10) and (13) of

paragraph 2 of Schedule 4 to the 1982 Act (as amended by the 2013 Act). The process is outlined in paragraphs 2.14 – 2.15 above.

Fixed Penalty Notice (FPN)

5.7 An FPN under the 2013 Act is only available for a ‘relevant offence’ as defined in section 2 of the 2013 Act, which is ‘an offence under paragraph 10 of Schedule 4 to the 1982 Act; or of aiding, abetting, counselling or procuring the commission of an offence under that paragraph’.

5.8 Paragraph 10(1) of the 1982 Act creates the following offences (which are ‘relevant offences’):

A person who:

- (a) engages in street trading in a prohibited street; or
- (b) engages in street trading in a licence street or a consent street without being authorised to do so under. [Schedule 4 of the 1982 Act]; or
- (c) contravenes any of the principal terms of a street trading licence; or
- (d) being authorised by a street trading consent to trade in a consent street, trades in that street:
 - (i) from a stationary van, cart, barrow or other vehicle; or
 - (ii) from a portable stall,without first having been granted permission to do so under paragraph 7(8) [Schedule 4 of the 1982 Act]..., or
- (e) contravenes a condition imposed under paragraph 7(9)... [Schedule 4 of the 1982 Act]

5.9 It is understood that at present there are no licence streets in the Council’s area. Some streets are designated as ‘prohibited streets’ and some are designated as ‘consent streets’.

5.10 Given the background explained in paragraphs 2.8 – 2.11, the ‘relevant offences’ which are likely to be most relevant behaviour described under paragraph 10(1)(a) or (b) of the 1982 Act, will be ‘an individual who is not exempted from the definition of street trading who has engaged in street trading either in a prohibited street, or consent street without being authorised to do so’. In an area designated under section 5 of the 2013 Act, a pedlar will only be exempted in a prohibited street or consent street if they comply with the amended definition of peddling.

5.11 Section 8 of the 2013 Act specifies how fixed penalty amounts may be set, and publishing requirements. It should be noted that in setting the level of fixed penalty under subsection (1), the Council may take account of (a) any reasonable costs or expected costs incurred or to be incurred in connection with the administration of the provisions of Schedule 4 of the 1982 Act; and (b) the cost or expected cost of enforcing the provisions of that Schedule. Once the FPN level has been set, any FPN issued must comply with the requirements contained in section 7 of the 2013 Act. If the FPN is not paid in accordance with these requirements, proceedings may be instituted for that offence in the Magistrates Court.

5.12 As stated in the body of the report, the Secretary of State may set a different fixed penalty amount to that proposed by the Council by Regulation. If this happens, the amount set by the Secretary of State must be used, and it is suggested that this Committee should be so notified.

- 5.13 Where an authorised officer of the Council has reasonable grounds for believing that a 'relevant offence' has been committed, it is an offence under section 11 of the 2013 Act if the person does not provide the correct name and address on request. An authorised officer must, however, produce their authority if required.

General

- 5.14 The Council must ensure that enforcement officers are adequately trained, a policy is prepared and followed, financial requirements are adhered to and that it complies with the publishing requirements detailed in the 2013 Act. The adoption of a policy is potentially challengeable by way of judicial review. It is proposed that the Head of City Centre Management and Regulation will be responsible for the financial requirements contained within section 10 of the 2013 Act.
- 5.15 Crime and Disorder Act implications – the recommendations may provide an additional power to deal with the behaviour identified in the report.

Tamazin Wilson, Solicitor, 26 March 2018

6 STRATEGIC ASSETS & PROPERTY COLLEAGUE COMMENTS

- 6.1 *None.*

7 EQUALITY IMPACT ASSESSMENT

- 7.1 Attached at appendix 3, and due regard will be given to any implications identified in it.

8 LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION

- 8.1 *None.*

9 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT

- 9.1 The Nottingham City Council Act 2013
9.2 The Local Government (Miscellaneous Provisions) Act 1982
9.3 City Council, 14 April 2014: report - Nottingham City Council Act 2013