

ESSENTIAL REFERENCE PAPER 'D'

Street Trading v Food Act 1984

There are many different way of acquiring market powers. Many Markets are currently operated under Royal Charter or Letters Patent. Others operate by way of Lost Modern Grant, Prescription or Custom and Practice.

The current general legal framework for the creation and operation of Markets is found in Part 111 of the Food Act 1984.

Local authorities also have powers to give street trading consents under the Local Government (Miscellaneous Provisions) Act 1982.

This document sets out to clarify the differences between the two sets of legislation.

SUBJECT MATTER	FOOD ACT	STREET LEGISLATION
Power to operate a market	The Food Act gives specific powers to establish a market which carries with it certain rights and responsibilities.	The Legislation is essentially concerned with street trading and while the street trading can result in the appearance of a market, it does not provide the licensing authority with the same level of rights as under the Food Act.
Letting arrangements	The Food Act enables a local authority or other operator licensed by the local authority to determine its own letting arrangements which can be varied depending on local circumstances. This is normally written into markets policy / traders licence. At East Herts this includes specifying what types of items are for sale and ensuring a varied mix of stalls.	The street trading legislation largely prescribes the procedures to be followed in the various sections providing the way in which applications are dealt with, conditions in respect of consents and appeals procedures. The current policy only restricts dangerous or illegal items for sale; it doesn't take into account the existing stalls or limit the numbers of the same type of stall. The policy

		is currently being reviewed by officers.
Charges	The Food Act enables a local authority to fix its own charges and these can be determined depending on a range of different circumstances. The local authority is entitled to charge a commercial rate if appropriate.	The street trading legislation provides that charges must be justified to reflect the cost of providing the service with legislation and case law setting out what might be included in the charges implemented.
Location	The Food Act provides for the establishment of the market but it is necessary before the market can be set up for other legal requirements to be met. This means that any highway or planning issues need to be resolved before the market can be established. This can lead to difficulties particularly where there are likely to be objectors.	The street trading legislation enables streets to be designated where trading can take place. Once a street has been designated there is no need for any further action to be taken but individual consents will only be granted subject to agreement by Highways and the Police. Consents are annual so there is no guarantee that pitches would be granted from year to year if consultees changed their criteria. Currently street trading consent is only needed in the designated urban areas of Bishops Stortford, Ware, Sawbridgeworth and Hertford and several principal roads including the A10, A120 and A414.
Market Rights	The Food Act enables a local authority or other operator to control or license other markets held within $6^{2/3}$ miles of the local authority market. This is a very important issue for many market authorities	The street trading legislation does not carry with it any market rights as it is essentially concerned with street trading and therefore there would be no EHC control over car boot sales. Car boot sales would

	and has resulted in many authorities controlling the number and quality of car boot sales and markets in their area.	continue, but via arrangements between the organiser and the landowner.
Regulation of markets	The Food Act contains a series of provisions enabling the local authority to fix the dates of the market, the hours when the market will operate, and enables bye laws and regulations to be made. All these provisions are subject to local determination enabling the local authority to adapt to its own requirements.	The street trading legislation prescribes the way in which the regulation of street trading will be organised by providing specific provisions within the detailed legislation. Enforcement action would have to have sufficient evidence to enable a case for a court to consider the prosecution of unauthorised trader.
Traders' rights	The Food Act does not contain any specific provisions relating to traders' rights and these have to be introduced separately by the local authority. They are normally introduced through the Markets Policy.	The street trading legislation sets out specifically the rights of traders. The council may at any time vary the conditions of a street trading consent. The consent may be revoked at any time. The consent holder has no rights of appeal against a Council's decision to refuse, amend or revoke a consent.
Overall	The Food Act provides more local control and gives a market authority the right to control other markets and car boot sales within 6 ^{2/3} miles. Additionally, it enables a local authority to fix charges and make a profit and that profit can be used for any purpose. The Food Act also enables a local authority to pass control of	The street trading legislation is essentially concerned with street trading and not markets and has limitations with regard to the charging regime, and also limits licensing by preventing the responsibility being transferred to a private operator or third party. The benefits reside in designating streets for trading purposes and also having prescribed

	the market to a private operator or third party.	procedures in terms of how trading operates. It also has the benefit of not attracting business rates liability.
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