



A Modern Markets Rights Policy

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HOW ARE MARKETS RIGHTS VIEWED?

- By the Judiciary
- By the Government
- By Europe

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BY THE JUDICIARY

“The reasons given for this ruling are quite inadequate”

Lord Parker of Waddington in *Hammerton V Earl of Dysart* (1916)



BY THE GOVERNMENT

“The government remain of the view that the common law on market franchise rights is antiquated”

Government response on proposals in Deregulation and Contracting Bill proposals to remove market rights from local authorities (Oct 1994)

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BY EUROPE

The European Services Directive was adopted in 2006 and became part of UK law in 2009

“Member states have to “clean their houses” and have a critical look at their regulatory framework”

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WHAT ARE MARKET RIGHTS?

- Give the right to hold markets
- Give the right to operate markets
- Give the right to license markets
- Give the right to control markets



WHAT ARE MARKET RIGHTS?

They are “incorporeal hereditaments” and are called “franchises”

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HOW ARE MARKET RIGHTS CREATED?

- Royal Charter/Letters Patent
- Lost modern grant
- Prescription/custom and practice
- Local legislation
- General legislation – Part III Food Act 1984

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ARE ALL MARKET RIGHTS OF EQUAL VALUE?

The Court of Appeal accepted that a market created under legislation enjoys all the same benefits as a market created under charter unless there is specific provisions within the legislation to the contrary.

- East Lindsey DC V Hamilton (1984)

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NOTE SECTION 50(3) OF FOOD ACT 1984

“A local authority shall not be regarded as enjoying any rights.....in another local authority’s area.....(in respect of) a market which has been established under this section or earlier enactment.

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THE ELEMENTS OF A MODERN MARKETS RIGHTS POLICY

- Know the origins of your market rights
- Have a vision/strategy for markets with policy considerations
- Determine the extent, if any, for controlling other markets
- The process for granting a market licence
- What conditions will be applied
- Enforcement



Have a statement on your markets setting out locations/days. Identify the powers under which the markets are held.

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Royal Charter/Letters Patent are an asset but.....
No reason why cannot be used alongside Part III
of Food Act 1984

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Keep the statement of your market rights under regular review

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WHAT ROLE DO MARKETS PLAY?

- Regeneration
- Creating jobs
- Promoting local produce
- Attracting tourists

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If you want to maintain a markets rights policy you have to be able to justify its existence and maintain the same standards as applied to your own market

Leeds Council V Watkins and Whiteley (2004)

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POSSIBLE POLICY CONSIDERATIONS

- Maintaining the quality of the markets offer
- Ensuring that relevant standards are applied
- Maintaining consumer confidence
- Protecting public safety



WHAT MARKETS DO YOU WANT TO CONTROL?

- Car boot sales
- General markets
- One day fairs
- Shopping centres

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“A market is a concourse of buyers and sellers”

Scottish Co-operative Wholesale Society Ltd V
Ulster Farmers Mart Co. Ltd (1960)



BY WAY OF SHOPPING CLUBS

In *Bassetlaw DC V Zaccaria* (1980) a shopping club was described as a “camouflage incapable of concealing the true nature of the transaction”



COMMERCIAL V CHARITABLE

Whether a different approach is required depending on circumstances with a lighter touch in respect of charitable events

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HOW DO OTHER MARKET OPERATORS KNOW A MARKETS LICENCE IS REQUIRED?

- Monitor press/radio
- Provide information packs
- Online application process
- Use information centres



WHAT DO YOU NEED FROM MARKET OPERATORS?

- Details of location, frequency, size of market
- Confirmation that all other approvals obtained – planning, highway etc.
- Confirmation of liability cover
- Arrangements for waste disposal
- Traffic management



WHAT CHARGES WILL BE APPLIED?

A market operator is not restricted in fixing changes in respect of a markets licence.
Contrast with street trading.

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AMOUNT PER STALL V GENERAL AMOUNT

Take into account application process,
monitoring and potential enforcement action in
considering the level of charges to be applied

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It is important that there is a clear timescale for processing an application – 14/28 days

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It is not necessary to have an appeal procedure
but...

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Remember you cannot impose on another market operator higher standards than are applied in respect of your own market



APPLYING CONDITIONS

- Maintaining adequate records – traders
- Risk assessment
- Food hygiene approvals
- Liability cover
- Waste disposal
- Traffic

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REAL DEAL

Partnership between market operators, brand owners and trading standards

Helping to control distribution/sale of fake/counterfeit goods

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THE ESSENTIALS OF A MODERN MARKETS RIGHTS POLICY

“Reasonableness and Proportionality” but what does these words mean in real terms.

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But how does this relate to the current same day/different day rules in respect of taking enforcement action which has been the basis of market rights for many years

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SAME DAY RULE

Automatic right of relief if “rival” market is held on the same day as the market held by the legitimate market operator



DIFFERENT DAY RULE

Relief will be granted if it can be shown that damage has been caused to the market held by the legitimate market operator or there is a sufficient likelihood of damage

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WHAT IS MEANT BY DAMAGE OR LIKELIHOOD OF DAMAGE?

- Fall in trade
- Decrease in turn over
- Loss of income to individual stall holders
- Fall in footfall

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Likelihood might be shown by location/size of the “rival” market and its anticipated impact on the market operated by the legitimate market operator

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Reasonableness and proportionality emanate from the European Services Directive and the potential challenge from the requirements of the Directive



Make sure there is authority for enforcement action to be taken.

Section 222 (i) of the Local Government Act 1972

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Normal relief in respect of enforcement action is an injunction but remember that an injunction is a discretionary remedy

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This means the court may refuse an application if there has been a delay and/or inequality in the process.

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There have been various challenges to market rights using the European dimensions.

Birmingham V In Shops (1992)

South Pembrokeshire V Wendy Fairs (1994)

Leeds V Watkins and Whiteley (2004)

All have failed



But these challenges took place before the introduction of the European Services Directive so what now?

We await a further legal challenge!



S37 of Local Government (Miscellaneous) Provisions Act 1982

Notice of holding of temporary market