

## Agenda item: 6

	<b>Assets and Services</b>
<b>Month</b>	October 2022
<b>Report Title</b>	Affirmation of Market Rights
<b>Report Author</b>	Terry Frostick Operations and Market Manager
<b>Purpose of Report</b>	As good practice the Assets and Services committee are asked to reaffirm the market rights which were last agreed in 2015.
<b>What is a Market</b>	Markets are a concourse <sup>1</sup> of buyers and sellers with 5 or more stalls. Any person who erects stalls on their land and takes rent in the nature of stallage from persons who have brought goods there to sell will be conducting a market, as will a person who uses their land to encourage and provide for a concourse of buyers and sellers. The term market includes both a fair and a car boot sale.
<b>There are various ways of establishing Market Rights<sup>2</sup>:</b>	<p><b>Saffron Walden Town Council Market rights are established by:</b></p> <ul style="list-style-type: none"> <li>• <i>By grant from the Crown in the form of Charters and Letters Patent;</i><sup>3</sup></li> <li>• <i>By Local Act of parliament passed for the express purpose of establishing and regulating a market or fair, which generally incorporates the whole or some part of the Markets and Fairs Clauses Act 1847.</i></li> <li>• <i>Under powers in Public Acts, i.e. The Food Act<sup>4</sup> 1984-part 111 section 50-53 (as amended). Min ref P&amp;S 547 15<sup>th</sup> Feb 2015</i></li> <li>• <i>Parliamentary statutory instrument no 1123 of 1979</i></li> </ul> <p>The Charter was further endorsed and legalised under Statutory Instrument No 1123 dated 4.9.1979 under the Local Authority Miscellaneous Provisions Order. This Statutory Instrument provides a variety of towns in the UK with powers to run markets, with clause (7) (7) noting: <i>“any powers to maintain markets exercisable immediately before 1<sup>st</sup> April 1974 by the corporation or council of the Borough of Saffron Walden under any franchise<sup>5</sup> or by virtue of prescription shall be exercisable by the Town Council of Saffron Walden”.</i></p>

<sup>1</sup> The definition of a market is a concourse of buyers and sellers. Viscount Simmonds in the case of *Scottish Co-operative Wholesale Society Limited-v-Ulster Farmers' Mart Co. Limited (1960) AC63; 57LGR275 (1959) 2ALL.E.R.486*, referred to a market as **“the provision of facilities for a concourse of buyers and sellers”**. In an earlier case the *Marquis of Downshire-v-O'Brien (1887) 3 L.R.19LR.380* Vice-Chancellor Chatterton said **“A market is, properly speaking, a franchise right of having a concourse of buyers and sellers to dispose of commodities in respect of which the franchise was given.”**

<sup>2</sup> In recent years probably one of the most important decisions on the relative strengths of markets created under different powers is *East Lindsey District Council v Hamilton (1984) The Times, 2<sup>nd</sup> April 1984*. It was accepted by the Court of Appeal that a market created under legislation enjoys all the same benefits as a market created under Charter unless there is some specific provision within the legislation to the contrary. The same point was considered in an earlier case of *Wakefield City Council v Box (1982) 3All.E.R.506*.

<sup>3</sup> Markets go back hundreds of years. Legislation relating to markets is of relatively modern origin. An interesting question has arisen in the past regarding the relative importance of markets created by Royal Charter/Letters Patent and those created by Statute. This issue arose in the case of *Mayor of Manchester v Lyons (1882) 22Ch.D.287* when in part of his judgement Lord Justice Bowen said **“Where there is a franchise created by Charter, and the legislation afterwards operates upon it, it is obvious that the legislation can do exactly what it pleases. It can either leave the old franchise standing, and place new parliamentary rights beside it, or it may leave the old franchise standing and incorporate certain statutory incidents into the old franchise, providing it makes its intention clear; or it may extinguish the old franchise, expressly or by implication, and substitute in its place, not a franchise properly so called, but parliamentary rights and obligations as distinct from a franchise...”**

<sup>4</sup> Under the provisions of the Food Act 1984, at Section 50(1)(b) a local authority is entitled, inter alia, to acquire by agreement, either by purchase or on lease, the whole of any part of an existing market undertaking within its area and any rights enjoyed by any person within its area in respect of a market and tolls. The provisions in Section 50(1)(b) are further extended by the provisions in Section 51 which provide additional powers to the owner of a market undertaking to sell to a local authority. Such a transfer will normally be undertaken by deed.

<sup>5</sup> [Practice guide 18: franchises - GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/282222/Practice-guide-18-franchises-GOV.UK.pdf)

**RECOMMENDATION:**

Option	Narrative	Risk(s)
	To affirm the current market rights as existing.	Not doing so may make market vulnerable to challenge.