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# Isle of Wight Council

## STREET TRADING POLICY 2022

## Document Information

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## 1. Introduction

- 1.1 This policy will become effective on 13 January 2022.
- 1.2 On 7 April 2014, the Isle of Wight Council adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 which enables licensing authorities to regulate street trading activities.
- 1.3 On 30 June 2014 the Council's Licensing Committee resolved that all current and future:
  - Roads,
  - Streets,
  - Footways,
  - Beaches,
  - Service areas (as defined by section 329 of the Highways Act 1980), and
  - All other land to which the public have access without payment on the Isle of Wight are to be designated as "consent streets" for the purposes of Street Trading as defined by schedule 4 of the Local Government (Miscellaneous Provision) Act 1982.
- 1.4 This policy will therefore outline how consent can be obtained and the processes that will be followed.
- 1.5 Any departure from this policy must be justified in writing and approved by a member of the Regulatory Services' Management Team.
- 1.6 This policy will be reviewed every five years.
- 1.7 All legislative amendments will be made automatically; all other changes will be subject to a twenty-eight-day consultation period. Any representations will be determined by the Licensing Committee.
- 1.8 Street trading consent does not provide an outright permission for a trader to operate; they must still obtain permission from the relevant landowner and must still comply with all other relevant legislation.

## 2. Definitions

- 2.1 The following definitions will provide clarification for the purposes of this policy.
- 2.2 **The Act**  
This refers to the Local Government (Miscellaneous Provisions) Act 1982.
- 2.3 **Policy**  
This refers to the Isle of Wight Council's Street Trading Policy.
- 2.4 **The Council**  
This means the Isle of Wight Council.
- 2.5 **Street Trading**  
As defined in the Act, street trading refers to the selling or exposing or offering any article (including a living thing) for sale in a street.

## 2.6 Street

For the purposes of street trading a Street includes:

- a) any road, footway, beach or other area to which the public have access without payment; and
- b) a service area as defined in section 329 of the Highways Act 1980.

## 2.7 Prohibited Street

Means a street in which street trading is prohibited.

## 2.8 Consent Street

As defined in the Act, a consent street is a street in which street trading is prohibited without the consent of the Council.

## 2.9 Consent

A written document issued by the council, granting permission for street trading activities, which may be subject to conditions.

# 3. Exempt Trading Activities

## 3.1 The Act provides the following exemptions:

- a) trading by a person acting as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871
- b) anything done in a market or fair the right to hold which was acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of an 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 (as defined in paragraph 1(3) of the Schedule)
- e) trading which is carried on at premises used as a petrol filling station or is carried on at premises used as a shop or in a street adjoining premises so used and as part of the business of the shop
- f) selling things, or offering or exposing them for sale, as a roundsman
- g) the use for trading under Part VIIA of the Highways Act 1980 of an object or structure placed on, in or over a highway
- h) the operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980
- i) the doing of anything authorised by regulations made under section 5 of the Police, Factories, etc. (Miscellaneous Provisions) Act 1916.

## 3.2 The Act includes that a street is "land to which the public have access without payment", therefore, if an entrance fee is charged, street trading consent would not be required.

## 3.3 The licensing authority has also determined that consent will not be required for the following activities on the Isle of Wight:

- a) Car boot sales  
(A group of individuals who sell their own unwanted or used belongings from their own vehicle. Consent will not be required to carry on such an activity. The Car Boot sale organiser will have overall responsibility to ensure that no commercial stalls trade at their car boot sale.)
- b) Articles being sold from within the curtilage of residential premises, e.g., private garage/house sales.
- c) Articles being sold from within a car park intended for the customers of the business and only where the sale of goods takes place from within the curtilage of that premises, where the landowner has the right and ability to prohibit public access.

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- 3.4 In these circumstances street trading consent is not required, however permission must be obtained prior to trading from the landowner, which includes if the land is highway or any land owned by the council.
- 3.5 Permission may also be required for placing items on the highway (see the relevant street furniture/pavement licensing policies) and items may be removed by the Highways Authority if an obstruction is caused.
- 3.6 Consent also cannot be issued for any trading in a highway to which a control order under section 7 of the Local Government (Miscellaneous Provisions) Act 1976 is in force, other than trading to which the control order does not apply.

## 4. Council Owned Land

- 4.1 There are areas where the council will not normally give permission for street trading. A full list is available from the licensing department. These areas include:
- a) Council owned car parks
  - b) Council owned beaches and slipways
  - c) Council controlled Esplanades other than predetermined locations
  - d) Designated 'on street' parking spaces, unless a temporary road closure order and parking suspension order has been issued.
- 4.2 In some circumstances permission maybe granted for special events or new commercial opportunities.

## 5. Types of Street Trading

- 5.1 The licensing authority will issue three different kinds of consent for street trading activities.
- 5.2 A Market  
Three or more traders operating in the same location at the same time (including as part of an event). The person who organises the market and has overall control of who trades there will be the Market Organiser who would apply for consent and would request the maximum number of stalls they wish to propose. Each market trader will provide the relevant details to the organiser as part of the application process, which would be provided to the Council at least two weeks before the market is due to commence. If, when it comes to issuing consent there are less than the number of stalls originally proposed, the applicant will only need to pay the fees for the number required.
- 5.3 For these types of events the council will accept one application from the person organising the event. The application will list full details of each trader (for each trader a separate form will need to be completed) attending the event and the consent will be issued to the organiser of the event with each individual stall holder listed. The event organiser is responsible to ensure all traders are aware of all conditions attached to the consent and that these are being complied with.
- 5.4 Static Trader  
A trader who trades from one predefined location. Static trader applications can specify up to seven locations they wish to trade from; the application must be accompanied by a schedule of the trading pattern. Traders holding a static trading consent will only be permitted to trade on the sites applied for and at the times specified in their application.
- 5.5 Mobile Trader  
This refers to a trader who moves from street to street stopping for customers where necessary and where trading in any location, which would not normally exceed 60 minutes.

Traders will not normally be permitted to return to the same location within two hours from the departure time.

## 6. Car Sales

- 6.1 This refers to vehicles located on the highway and advertised for sale (this includes signs displayed that name an individual or business or any other notice designed to indicate the vehicle is for sale).
- 6.2 The licensing authority will not normally grant street trading consent to sell cars, however any application for consent submitted will be assessed on its individual merits.
- 6.3 If anyone sells, offers, or exposes a vehicle(s) for sale on the public highway and street trading consent has not been given, enforcement action may be taken against them under the Act and/or under the Highways Act 1980 as well as the Clean Neighborhoods and Environment Act 2005. For the purposes of this part of the policy, public highway includes footpaths and adjacent verges and public open land as well as the road itself; it does not include private driveways ~~and~~. Where any vehicle is offered for sale on the highway that is not taxed or insured, it may also be referred to the DVLA Enforcement Team.

## 7. New Applications

- 7.1 Under the Act, consent cannot be granted to anyone under 17 years old.
- 7.2 When traders are considering purchasing vehicles or equipment to use whilst trading, the council encourages them to consider using 100% electric or other green energy powered vehicles and equipment. By using these vehicles and equipment not only will this help reduce fuel and servicing costs, but it will also contribute towards both the national and local Climate Change agendas.
- 7.3 Traders should consider implementing incentives for refill products and where possible ensure that polystyrene and plastic product coverings, packaging and single use flatware are not used.
- 7.4 The licensing authority will not issue consent for another trader to trade in the exact same position at a time where consent has already been issued. More than one trader may be permitted in the same area.
- 7.5 The Council has not set a limit on the number of street traders of a particular kind.
- 7.6 Applications must be received by the licensing authority at least 2 months and not more than 6 months prior to the date on which the trader wishes to commence trading.
- 7.7 Completed application forms must be submitted to the licensing authority and accompanied by the following:
  - a) At least 25% of the application fee
  - b) Plan(s)/maps, drawn to scale and showing the exact location and the proximity to nearby retail premises and/or other street traders. If a map is not supplied, an inspection of the site may be carried out by the Highways Authority and the cost of which shall be paid by the applicant.
  - c) Photographs showing the front and side elevation of any trading vehicle/stall including all signage. In cases where the applicant has not yet purchased the vehicle/stall, sketches or pictures and the dimensions of the proposed vehicle, unit or stall will be sufficient.
  - d) A list/menu of items proposed to be sold.

- e) Details of any equipment which will be used in the proposed activity e.g., fryers, generators etc.
  - f) Confirmation from the Council's Development Control Department detailing whether planning permission is required or not.
  - g) Written permission from the landowner.
- 7.8 Applicants must also:
- a) Publish a notice in a local newspaper within ten working days of the street trading application being submitted to the licensing authority
  - b) Display an A4 notice at (or as near as possible to) the proposed street trading location(s) from the day after submission of the application to the licensing authority, which must remain in place for the duration of the consultation period [so far as is reasonably practicable]  
(item b is not applicable to Mobile Traders)
- 7.9 The notice referred to above must contain the following information:
- a) A title – New Street Trading Consent Application
  - b) Name of the Trader
  - c) Exact proposed trading location(s) or indication that the trader is proposing to be Mobile
  - d) The dates or days and times of the proposed street trading
  - e) Items proposed to be sold
  - f) Start and end date of the consultation period
  - g) Details of where any representations should be sent
  - h) A template for the notice is available from the Licensing Department or a fee will be charged for producing the notice.
- 7.10 The notice to be displayed at the proposed trading locations must be printed on pale green coloured paper with text of at least font size 16.
- 7.11 The following must also be submitted to the licensing authority before an application can be determined and consent issued:
- a) Public liability insurance certificate covering the trading activities for a minimum amount of £5 million (in relation to markets, this will be provided by individual traders via the market organiser unless there is a policy in place covering the whole market).
  - b) A Basic Criminal Record Disclosure Certificate from the Disclosure and Barring Service (DBS) that is not more than 1 calendar month old for the applicant and any person/s that will be assisting on a regular basis.
- 7.12 Failure to comply fully with the application requirements in this section may render the application invalid.

## **8. Renewal Applications**

- 8.1 A renewal application must be submitted to the licensing authority at least 7 calendar days prior to the renewal date.
- 8.2 The application must be accompanied by:
- a) At least 25% of the application fee
  - b) Public liability insurance certificate covering the trading activities for a minimum amount of £5 million (in relation to markets, this will be provided by individual traders via the market organiser unless there is a policy in place covering the whole market).
  - c) Written permission from the landowner.

### 8.3 Additional Requirements at Renewal Every 3 Years:

- a) A Basic Criminal Record Disclosure for the consent holder and any persons that assist on a regular basis from the Disclosure and Barring Service that is not more than 1 calendar month old.
- b) Up to date photograph of the trading unit. (Not required for Market Consents)

8.4 Failure to comply fully with the application requirements in this section may render the application invalid.

## 9. Consultation

9.1 Applications will be subject to a period of consultation regarding the proposed trading activities. The consultation period will be 21 calendar days for a new application and 7 calendar days for a renewal application. In some special circumstances the duration of the consultation period may be varied with the authorisation from a member of the Regulatory Services' Management Team.

9.2 All applications will usually be made available to view online at the Council's website for the duration of the consultation period.

9.3 The following organisations will be notified of applications and will be able to provide representations:

- Local Elected Member
- The relevant Parish or Town Council or any other entity operating in this capacity
- Fire Authority
- Hampshire Constabulary
- Planning Authority
- Environmental Health
- Licensing Authority
- Highways and Parking Services
- Isle of Wight Council Commercial Activities Department/Parks and Esplanades
- Local Business Association (where known)

9.4 The licensing authority will also accept relevant representations from any other party, which will be considered.

9.5 Representations must be made in writing and must include all of the following:

- a) The name, address and contact information of the person or organisation making the representations
- b) The name of the premises and/or application reference number to which the representations relate
- c) The likely impact of the proposed trading activities on the areas of consideration listed below

9.6 To be accepted as relevant and therefore taken into account as part of determining an application, representations must relate to at least one of the following areas of consideration:

- a) Public Safety
- b) Prevention of Crime and Disorder
- c) Prevention of Public Nuisance
- d) Protection of Children from Harm
- e) The Visual Impact

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- 9.7 The licensing authority will not consider representations that are believed to be frivolous, vexatious, or which relate to moral grounds.
- 9.8 A frivolous representation is generally taken to be one that is lacking in seriousness.
- 9.9 A vexatious representation is generally taken to be one which is repetitive, without foundation or made for some other reason such as malice.

## 10. Determination

- 10.1 Street trading consent will be granted for a maximum period of 12 months and may be revoked at any time.
- 10.2 If there are no relevant representations received during the consultation period, the application will be granted without the need for a hearing once the fee has been paid in full or arrangements made with the licensing authority to ensure payment is made.
- 10.3 Where relevant representations are received during the consultation period, applications will usually be determined within 20 working days following the last working day of the consultation period unless a longer period is agreed by all parties.
- 10.4 All relevant representations will be considered. The licensing authority will decide how much weight to give to each representation taking into account the evidence supplied along with any professional knowledge and/or experience of the person or organisation making the representation.
- 10.5 If relevant representations are received during the consultation period and cannot be resolved by an officer between the applicant and the person making the representation, the application will be determined by the Licensing Sub-Committee at a hearing.
- 10.6 The licensing authority has the discretion to consider any relevant representations received after the consultation period for applications where a hearing has been arranged.
- 10.7 The applicant and any persons who made representations may attend the hearing and will have the opportunity to address the Sub-Committee during the hearing.
- 10.8 In determining an application for the grant or renewal of street trading consent the licensing authority will consider the following:
- a) Public Safety
  - b) Prevention of Crime and Disorder
  - c) Prevention of Public Nuisance
  - d) Protection of Children from Harm
  - e) The Visual Impact

### Areas for Consideration

- 10.9 Public Safety  
Whether the street trading activity represents, or is likely to present:
- a) a substantial risk to the public from obstructing the highway or any other right of way
  - b) a conflict with traffic and pedestrian movements
  - c) a fire hazard
  - d) unhygienic conditions
  - e) a danger when a trader is accessing the site
  - f) any other matter presenting a risk to the public, nearby businesses, property or residential premises.

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- 10.10 Prevention of Crime and Disorder  
Whether the street trading activity represents, or is likely to present, an increased risk of crime order and disorder.
- 10.11 The Prevention of Nuisance  
Whether the street trading activity represents, or is likely to present, a substantial risk of nuisance to the public from litter, noise or odour, particularly in residential areas.
- 10.12 Protection of Children from Harm  
Whether the street trading activity represents, or is likely to present, a substantial risk to children. The results of a Criminal Record disclosure will also be relevant to this area of consideration.
- 10.13 The Visual Impact  
Consideration will be given to design and livery of the proposed vehicle or stall as to whether it is in-keeping with the amenity and character of the area.
- 10.14 When determining a renewal application, the licensing authority may also consider:  
a) Any adverse impact that has arisen from the trading activities and  
b) Whether appropriate measures have been agreed and put into effect by the applicant to mitigate any adverse impacts.
- 10.15 When determining an application for the grant or renewal of street trading consent the licensing authority will also consider the suitability of the applicant taking into account:  
a) Whether the applicant has any unspent convictions under the Rehabilitation of Offenders Act 1974.  
b) Refusal or neglect in paying fees relating to street trading consent.
- 10.16 Where the criminal record disclosure certificate provided by the applicant shows current offences (i.e., those that are unspent under the Rehabilitation of Offenders Act 1974, the licensing authority will consider the following:  
a) whether the conviction is relevant.  
b) the seriousness of the offence.  
c) the length of time since the offence occurred.  
d) whether there is a pattern of offending behaviour.  
e) whether that person's circumstances have changed since the offence occurred.  
f) the circumstances surrounding the offence and the explanation offered by that person.
- 10.17 Criminal Record disclosures will be considered in accordance with the licensing authority's policy relating to convictions.
- 10.18 Each application for consent will be determined on its individual merits.
- 10.19 Where the licensing authority refuse to grant or renew consent, a statement of the reasons for its decision will be provided in writing within 7 calendar days of the hearing.

## **11. Conditions**

- 11.1 The Council is permitted to attach conditions and restrictions on the consent that they consider reasonably necessary; these may also be changed at any time.
- 11.2 The standard conditions that would be attached to consent are available from the Licensing Department; additional conditions may be attached as and when deemed necessary.

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## **12. Variation of Consent**

- 12.1 Any proposed changes to the stall/vehicle, location, items to be sold, trading schedule or modification of conditions may be considered under the new application process.

## **13. Transfer of Consent**

- 13.1 Street trading consents are generally non-transferable but if someone takes over an existing business and the vehicle to be used, trading schedule and locations are to remain the same, the licensing authority may permit the new operator to apply for consent using the renewal process. In this instance, the proposed new operator must submit their application within 5 working days after the current consent holder surrenders their consent.

## **14. Surrender of consent**

- 14.1 The holder of the consent must confirm in writing to the licensing authority that they wish to surrender the consent and return the consent (and plate where relevant) to the Licensing Department.
- 14.2 In normal circumstances, fees will not be refunded if consent is surrendered.

## **15. Enforcement**

- 15.1 Failure of a consent holder to trade within the terms of the consent or trading activities taking place without consent will be investigated and enforcement action taken in accordance with the Neighbourhoods' Enforcement Policy. This could include modification of the trading schedule or conditions or even revocation of the consent as well as the prosecution of the holder and/or any individuals trading under their consent.

## **16. Appeals**

- 16.1 The regulations do not provide right of appeal against decisions to refuse the grant or renewal of consent, the revocation of consent, or against any restrictions or conditions imposed on consent.

## **17. Fees**

- 17.1 Under section 9 of the Act, the Council has set fees for different street trading activities. A full set of fees is available from the Licensing Department.
- 17.2 Applications will not be deemed as valid and will therefore not be processed until the fee has been received.
- 17.3 A minimum of 25% of the appropriate fee must be paid on application. If the application is not granted, 25% of the overall fee will be retained to cover the costs of the consultation process. The remaining balance of the fee must be paid in full before consent is issued.
- 17.4 The Council may agree to the balance of the fee being paid by instalments.