



ISLE OF WIGHT COUNCIL

STREET TRADING POLICY

1 Document Information

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Author:	Kevin Winchcombe Principal Licensing Officer Community Safety, Jubilee Stores, The Quay Newport ✉ Kevin.winchcombe@iow.gov.uk ☎ (01983) 823159
Sponsor:	Bill Murphy Head of Planning and Regulatory Services
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3 Introduction

- 3.1 This policy will become effective on 1 August 2014.
- 3.2 This document sets out the Isle of Wight Council's policy ("the Policy") regarding the regulation of street traders and the procedure relating to applications for street trading consents.
- 3.3 This Policy will be reviewed every three years.
- 3.4 All legislative amendments will be made automatically; all other changes will be subjected to a twenty eight day consultation period. Any representations will be determined by the Licensing Committee.
- 3.5 A street trading consent does not provide an outright permission for the trader to operate. They must still obtain permission from the land owner where they wish to trade and must still comply with all other relevant legislation.

4 Legislation and Current Provision

- 4.1 Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (the Act) provides the legislation to allow Local Authorities to regulate street trading.
- 4.2 On 7 April 2014 the council with immediate effect adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
- 4.3 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 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.

5 Definitions

The following definitions will provide clarity for the purposes of this policy.

- 5.1 The Act
This refers to the Local Government (Miscellaneous Provisions) Act 1982
- 5.2 The Policy
This refers to Isle of Wight Council's Street Trading Policy.
- 5.3 The Council
This means the Isle of Wight Council.

5.4 Street Trading

As defined in the Act, street trading refers to the selling or exposing or offering for sale of any article (including a living thing) in a street.

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.

5.5 Consent

A written document issued by the council, granting permission for street trading. It may include relevant conditions.

5.6 License Street

A street in which street trading is prohibited without a licence granted by the district council.

5.7 Prohibited Street

Means a street in which street trading is prohibited.

5.8 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.

5.9 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.

6 Areas for Consideration

6.2 Public Safety

Whether the street trading activity represents, or is likely to present,

- a substantial risk to the public from obstructing the highway or any other right of way;

- a conflict with traffic and pedestrian movements;
- a fire hazard,
- unhygienic conditions; or
- a danger when a trader is accessing the site;
- any other matter presenting a risk to the public, nearby businesses, property or residential premises.

6.3 Prevention of Crime and Disorder

Whether the street trading activity represents, or is likely to present, an increased risk of crime order and disorder.

6.4 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.

6.5 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.

7 Types of Traders

7.2 Market Organiser

The person who has organised a market and has the overall control of who trades at the market.

7.3 A Market

Where three or more traders operate in the same location at the same time.

7.4 Market Trader

A trader wishing to trade in a market, but is not the market organiser. Each market trader must submit their own application for consent.

7.5 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.

7.6 Static Trader

A trader who trades from one predefined location.

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.

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.

8 Trading Activities

8.2 Car Boot Sale

A group of individuals who sell their own unwanted or unused belongings from their own vehicle.

Consent will not be required to carry on such an activity, unless the trader is trading as a commercial business.

The Car Boot sale organiser will have overall responsibility to ensure that no commercial stalls trade at their car boot sale.

8.3 Cars Sales

The sale of a vehicle(s) in a street, either by a business or a private seller, where the vehicle is clearly being offered for sale, will require street trading consent.

8.4 Special Events

Events which do not normally take place on a regular basis. These may include: Cowes Week, carnivals, sport events and fayres.

8.5 Seasonal Periods

Traders who wish to sell items that are specific to a time of the year.

9 Council Owned Land

9.2 There are a number of areas where the council will not normally give permission for street trading. A full list is available from the licensing department. These areas include:

- Council owned car parks;
- Council owned beaches and slipways;
- Council controlled Esplanades other than pre-determined locations;
- In areas which have been designated as 'on street' parking, unless a temporary road closure order and parking suspension order has been issued.

10 Activities not Requiring Consent

10.2 The Isle of Wight Council has determined that the following activities do not require an application for Street Trading Consent:

- Car boot sales;
- Private garage/house sales where goods are exposed on the highway adjacent to the owners premises;
- Articles being sold from within the curtilage of a residential premises;
- 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.

In these circumstances street trading consent is not required, however permission must be obtained from the land owner (if applicable) including the highway and any other council owned land prior to trading.

11 Application Process

11.1 Street trading consent cannot be granted to a person who is under the age of 17 years.

11.2 New Applications

11.2.1 A new application for street trading consent must be submitted by completing the council's street trading application form to the Council's Licensing Department.

11.2.2 The application must be received by the council at least 2 months and not more than 6 months prior to the date on which the trader wishes to commence trading.

11.2.3 Application forms must be fully completed. The applicant must state:

- his full name and address;
- any alternative names used by him;
- his full contact details including an email address (if possible).

11.2.4 In addition, the applicant must provide the following:

- 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.
- Photographs showing the front and side elevation of the trading vehicle/stall depicting 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.
- Proof of the applicants public liability insurance to cover the activities of the trader, with a value insured up to £5 million (in relation to markets, proof of individual public liability insurance must be provided by the market organiser). A list/menu of items which will be sold.
- Details of any equipment which will be used in the proposed activity i.e. fryers, generators etc.
- Confirmation from the Council's Development Control Department detailing whether planning permission is required or not.
- Written permission from the land owner or market organiser.

11.2.4 The application must be accompanied by the relevant fee. A full list of fees is available from the Licensing Department.

11.2.5 Applicants are required to place a public notice in a local newspaper giving details of the application. The notice must be published within ten working days of the street trading application being submitted to the council and contain the following information:

- Name of the Trader;
- Exact Trading Location(s);
- The days and times of trading;
- Goods being sold;

- Start and end date of consultation period;
- Details of where any representations should be sent.

A standard template is available from the Licensing Department.

11.2.6 Applicants are required to fix an A4 poster at or as near as possible to the proposed location of the intended site of the street trading from the day after submission of the street trading application to the licensing authority.

If the application is for mobile trading with predetermined trading locations, a poster must be displayed at each location.

The applicant shall ensure that a poster remains at this/these location(s) for the duration of the consultation period [so far is reasonably practicable]

This requirement does not apply to mobile traders with no predetermined trading locations.

11.2.7 The poster must be printed on pale green coloured paper headed **New Street Trading Consent Application**. The text must be at least font size 16 and it must provide the following information:

- Name of the applicant;
- Exact Trading Location(s);
- The days and times of trading;
- Brief description of the goods to be sold;
- Start and end date of consultation period;
- Details of where representations should be sent to.

A standard template is available from the Licensing Department.

11.2.8 All applications must be accompanied by an application fee which is equal to at least 25% of the relevant street trading fee. If the application is approved, the remaining balance of the fee will be due before the consent is issued.

If the application is not successful 25% of the full fee will be retained to cover the cost incurred to process the application.

11.2.9 Failure to comply fully with the requirements outlined in section 11.2.1 to 11.2.9 may render the application invalid.

11.3 Renewal Applications

11.3.1 A renewal application must be made in writing at least **7 days** prior to the renewal date, to the Licensing Department.

11.3.2 The applicant must supply:

- Proof of the applicants public liability insurance to cover the activities of the trader, with a value insured up to £5 million (in relation to markets, proof of individual public liability insurance must be provided by the market organiser).

- Written permission from the land owner or market organiser.

11.3.3 All applications must be accompanied by an application fee which is equal to at least 25% of the relevant street trading fee. If the application is approved, the remaining balance of the fee will be due before consent is issued. If the application is not successful 25% of the full fee will be retained to cover the cost incurred to process the application.

11.3.4 Any changes to the previous consent will be considered and it could be determined that it should be treated as a new application.

11.3.5 Failure to comply fully with the requirements outline 1.3.1 to 11.3.4 may render the application invalid.

12 Fees

12.1 Under section 9 of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, the Council has set fees for different street trading activities. A full set of fees is available from The Council's Licensing Department.

12.2 A minimum of 25% of the appropriate fee will 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.

12.3 Applications submitted without the appropriate fee will be deemed invalid until the fee has been received.

12.4 The remaining balance of the fee must be paid in full before consent is issued.

12.5 The Council may agree to the balance of the fee being paid by instalments.

13 Consultation

13.1 To enable the council to determine if the application is fit it will carry out a consultation on each application.

13.2 The consultation period is **21 days** for a new application and **7 days** for a renewal.

13.3 In some special circumstances the consultation period may be varied with the authorisation of the Regulatory Services Manager.

13.4 The consultation will commence on the first working day after the date a valid application is received by the council's Licensing Department.

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

13.6 The following organisations will be notified by the Council and will be able to provide representations to all applications:

- Local Elected Member;

- The relevant Parish or Town council;
- Fire Authority;
- Hampshire Constabulary;
- Planning Authority;
- Environmental Health;
- Licensing Authority;
- Highways and Parking Services;
- Isle of Wight Amenity Land Hire/Parks and Esplanades
- Local Business Association (where known).

13.7 In addition the Council will also consider any relevant representation received from any other party.

13.8 All representations must relate to one of the following considerations:

- Public Safety;
- Prevention of Crime and Disorder;
- Prevention of Public Nuisance;
- The Visual Impact.

13.9 Representations must be made in writing and must include the following:

- The name and address of the person or organisation making the objection;
- The premises to which the objection relates;
- The reason and justification for making the objection.

13.10 The Licensing Department will not consider representations that are believed to be frivolous, vexatious, or which relate to moral grounds.

13.11 A vexatious representation is generally taken to be one which is repetitive, without foundation or made for some other reason such as malice.

13.12 A frivolous representation is generally taken to be one that is lacking in seriousness.

14 Determination

14.1 All applications will be determined within **20 working days** following the last working day of the consultation period unless a longer period is agreed by all parties.

14.2 Consent cannot be granted to persons who are under 17 years old, nor 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.

14.3 Street trading consent will be granted for a maximum period of 12 months and may be revoked at any time.

14.4 In considering whether it thinks fit to grant an application for street trading consent, or an application for renewal of street trading consent the council will give particular consideration to the following:

- Public Safety
- Prevention of Crime and Disorder
- Prevention of Public Nuisance
- The Visual Impact

- 14.5 All relevant representations will be considered.
- 14.6 It is up to the licensing authority to place an appropriate amount of weighting to each representation. The weighting will be based on the evidence supplied along the experience and professional knowledge of the person or organisation making the representation.
- 14.7 When considering a renewal application the Council may take into account:
- Any adverse impact arising from the operation of the trading; and
 - Whether appropriate measures have been agreed and put into effect by the applicant to mitigate any adverse impacts.
- 14.8 If there are no valid representations received, the application will be granted without the need for a hearing.
- 14.9 If valid 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.
- 14.10 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.
- 14.11 The Council has the discretion to consider any relevant representations received after the consultation period for applications where a hearing has been arranged.
- 14.12 Where the Council refuse to grant or renew a consent, it shall, provide in writing a statement of the reasons for its decision within seven days of the hearing.
- 14.13 The Council has not set a limit on the number of street traders of a particular kind. Each application for the grant of consent will be determined by the Council on its merits on a case by case basis.
- 14.14 The Council 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 locality.

15 Conditions

- 15.1 Under Schedule 4, paragraph 7(4) of the Act the Council is permitted to attach conditions and restrictions on the consent that they consider reasonably necessary.

16 Appeals

- 16.1 There is no right of appeal against the decision of the Licensing Sub Committee.

17 Enforcement & Revocation

- 17.1 Where street trading activities are conducted without consent, where conditions are breached or a complaint has been received the Council will look to gather evidence and take enforcement action in accordance with the Regulatory Services' Enforcement Policy.
- 17.2 Failure of a consent holder to trade within the terms of the consent may give rise to the modification or revocation of the consent and/or to the prosecution of a consent holder or individuals trading under their consent.
- 17.3 The Council can modify or revoke consent at any time. Any action taken will be in accordance with the Regulatory Services Enforcement Policy.

18 Surrender

- 18.1 The council will only deem that consent has been surrendered once the written consent has been handed back to the Licensing Department.
- 18.2 In normal circumstances, fees will not be refunded when consent is surrendered.