

5<sup>th</sup> February 2014**Notice of meeting:****Licensing & Regulatory Committee****Tuesday, 11<sup>th</sup> February 2014 at 9.30a.m.****Council Chamber, County Hall, The Rhadyr, Usk, NP15 1GA****AGENDA**

Item No	Item
1.	Apologies for absence.
2.	Declarations of Interest.
3.	To confirm for accuracy the minutes of the Licensing and Regulatory Committee held on Tuesday 22 <sup>nd</sup> October 2013 (copy attached).
4.	To consider reports from the Principal Licensing Officer (copies attached): <ul style="list-style-type: none"><li>i) Hackney Carriage and Private Hire Licensing Policy – Fitness Criteria for Drivers and Operators.</li><li>ii) Intended Use Policy for the Licensing of Hackney Carriages</li><li>iii) Scrap Metal Dealers Act 2013 – Statement of Licensing Policy</li></ul>
5.	To note the date and time of the next Licensing and Regulatory Committee: <ul style="list-style-type: none"><li>• Tuesday 11<sup>th</sup> March 2014 at 10.00am</li></ul>

Paul Matthews

Chief Executive

# MONMOUTHSHIRE COUNTY COUNCIL

## CYNGOR SIR FYNWY

### THE CONSTITUTION OF THE LICENSING & REGULATORY COMMITTEE IS AS FOLLOWS:

County Councillors:	R. Chapman
	R. Edwards
	D.J. Evans
	L. Guppy
	M. Hickman
	R.J. Higginson
	S.G.M. Howarth
	J.I. Marshall
	J. Prosser
	B. Strong
	P. Watts
	A.E. Webb

### *Connecting with people*

#### **Our outcomes**

The Council has agreed five whole population outcomes. These are *People in Monmouthshire will:*

- Live safely and are protected from harm
- Live healthy and fulfilled lives
- Benefit from education, training and skills development
- Benefit from an economy which is prosperous and supports enterprise and sustainable growth
- Benefit from an environment that is diverse, vibrant and sustainable

#### **Our priorities**

- Schools
- Protection of vulnerable people
- Supporting enterprise, job creation and entrepreneurship

#### **Values**

- \* **Openness:** we aspire to be open and honest to develop trusting relationships.
- \* **Fairness:** we aspire to provide fair choice, opportunities and experiences and become an organisation built on mutual respect.
- \* **Flexibility:** we aspire to be flexible in our thinking and action to become an effective and efficient organisation.
- \* **Teamwork:** we aspire to work together to share our successes and failures by building on our strengths and supporting one another to achieve our goals.

**Minutes of the meeting of the Licensing and Regulatory Committee held at County Hall, Usk on Tuesday 22<sup>nd</sup> October 2013 at 10.00 a.m.**

**PRESENT:** County Councillor: L. Guppy (Chairman)

County Councillors: R.F. Chapman, D.J. Evans, R.J. Higginson, J. Prosser, B. Strong and P. Watts.

County Councillor G. Howard also attended as the Cabinet Member with responsibility for Environment, Public Services and Housing

**OFFICERS IN ATTENDANCE:**

Mrs L. O' Gorman	-	Principal Licensing Officer
Mrs S Winn	-	Senior Licensing Officer
Mr G. Perry	-	Public Protection Manager
Mr G Walters	-	Team Leader, Trading Standards
Mrs P. Perkins	-	Legal Assistant
Mr. R. Williams	-	Democratic Services Officer

**APOLOGIES FOR ABSENCE**

1. Apologies for absence were received from County Councillors R. Edwards, M. Hickman, S.G.M. Howarth, J.I. Marshall and A. Webb.

**DECLARATIONS OF INTEREST**

2. There were no declarations of interest.

**CONFIRMATION OF MINUTES**

3. The minutes of the Licensing and Regulatory Committee meeting held on Tuesday 10<sup>th</sup> September 2013 were confirmed as a correct record and signed by the Chairman.

**APPLICATION FOR STREET TRADING CONSENT**

4. The Principal Licensing Officer introduced this report and confirmed that the Applicant was not present.

The Committee were informed that an application had been received for a Street Trading Consent to trade at the layby on the A4042 between Llanover and Llanellen (Green Court Farm layby). The applicant wished to trade from a mobile catering van. The application had been forward to the required consultees and their responses are noted below.

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In considering the application Members were asked to note that this particular layby did have a mobile trader until 2000 when Heddlu Gwent Police requested the removal of the trader due to the amount of road traffic incidents occurring on that particular stretch of road. Any callers who have requested to trade from this site have been advised that Heddlu Gwent Police would object to any application received on safety grounds and the applicant had been given this information.

Members were advised that an application for this site was refused by the Licensing and Regulatory Committee on 9<sup>th</sup> November 2010 and the following reason was given to the applicant:

*The overwhelming objections of those who have responsibility for the highways and safety of the public could not be ignored and they were of the opinion that a van would create a further distraction to motorists and for that reason regrettably they had no alternative other than to refuse the application.*

The applicants had been told of this previous decision but had decided to make a new application and if successful they were looking to trade from 6.00 hrs. to 18.00 hrs. The applicants had also been reminded that there is no right of appeal against a refusal to grant or renew a consent or against the revocation of variation of consent under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 Part III.

Following consultation objections had been received from the Local Ward Member, South Wales Trunk Road Agency and Heddlu Gwent Police.

The local ward member had also objected to this new application as follows:

*As a Member of the Licensing Committee (not when a similar application was refused) I cannot see who I could support this application individually. Nevertheless the Committee refused it previously and there has been no change to the road or layby since I can see no reason to grant the application.*

South Wales Trunk Road Agency had been asked for their views on this application and they had confirmed that their position has not changed since 2010 when they had commented:

*With reference to this application regarding a catering van to trade along the A4042 north of Llanover, the lay by is likely to fall into our responsibility. We would also take the view and follow the Police advice to reject the application on safety grounds.*

The original objection received from Heddlu Gwent Police was outlined to Members together with further up to date traffic management information, as follows:

- Between 1<sup>st</sup> January 1996 and 31<sup>st</sup> December 2000 eight personal injury road traffic collisions had occurred in the vicinity and all of them involved turning manoeuvres into or out from the Green Farm layby.
- From 1<sup>st</sup> September 2010 to 31<sup>st</sup> August 2013 there has only been one collision on this road and this involved a vehicle turning into Green Farm layby and Officers could not support any attraction in this layby that would see an increase to the earlier figures.

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Members received a copy of the current application, a site plan and a copy of a letter to David Davies MP for Monmouth from the Chief Constable.

Members then discussed the application and the following points were noted:

- Members who had been on the Committee at the time of the original application felt it would be difficult to take a different view today.
- It was felt that the number of accidents previously recorded and the danger to vehicles turning into the layby would still be an issue
- A Member not on the previous Committee advised that his decision would be on the basis on what was put to him with this application but he still felt that as there was no reduction in the speed limit proposed then he would have to reject the application.
- The Committee were advised that each application must be looked at on its own merits but history can be looked at with regard to the number of accidents as this helps Members to make an informed decision.

Members unanimously voted to refuse the application as the overwhelming objections of those who have responsibility for the highways and safety of the public could not be ignored and they were of the opinion that a van would create a further distraction to motorists.

### **SCRAP METAL DEALERS ACT 2013**

5. Members received an update on the Scrap Metal Dealers Act 2013 from the Public Protection Manager and were asked to consider the proposed approach of the authority in relation to the provisions of the Act.

Members were advised that:

- The Scrap Metal Dealers Act 2013 came into effect on 1<sup>st</sup> October 2013 following concerns from the UK Government with regard to the increasing problems being caused by metal thefts.
- UK Government had rushed through the legislation and Officers were still trying to understand some aspects of this evolving Act.
- The new Act sets out provision for restricting the sales and licensing of Scrap Metal Dealers and Motor Dismantlers.
- The main points of the legislation were that people who sell metal to dealers can no longer receive cash.
- The new licensing requirements aims to ensure that those licensed are suitable to hold a licence and guidance has been issued as to what can be taken into account but it is the Authority's decision on what they wish to have as their own criteria.
- Members were advised that draft legislation had been considered by Cabinet on 2<sup>nd</sup> October 2013 and it was felt that the Licensing & Regulatory Committee were best placed to understand the enforcement of the Act.
- There were 'Grandfather' rights for those currently registered but the Authority do have the power to examine their records in partnership with the Police.
- Guidance has been issued on fee setting and Officers will have regard for the fees set by neighbouring authorities when making any decisions

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- A 'light touch' will be operated until 1<sup>st</sup> December 2013 then full enforcement will apply
- Currently there have been 12 applications submitted to be scrap metal collectors – 8 renewals and 4 new ones. There have also been 2 applications for a site licence received.

During the debate the following points were raised:

- It was noted that some Scrap Metal Dealers have a good reputation but there were concerns over some who currently operate.
- Members were advised that it was planned to issue a badge with photo ID to all Collectors.
- Members questioned whether someone registered with another authority would be able to operate in Monmouthshire and it was confirmed that if they have a site licence then they would be able too but if they only hold a collectors licence then they would not be able too.
- The checks carried out on applicants would include basic DRB check and checks with the Environment Agency and Police. Previous offences were recorded on a register kept by NRW and this would also be included in any checks.
- Officers were trying to get a Gwent Wide policy for the licensing of Scrap Metal Dealers similar to the Whole Wales policy currently in place for Taxi Drivers.
- It was noted that the Licence would cover the site and any vehicles associated with the site although Members were concerned that an operator could use someone else's vehicle and this would only be discovered if the vehicle was stopped by the police
- It was noted that the procedure for appeals would need to be clarified in the policy and officers confirmed that they are currently working to finalise the policy and that this would be done by 1<sup>st</sup> December so that any decisions can be made when the Act comes into force
- Members were advised that a police operation in a neighbouring area uncovered many associated offences that come with this particular trade and it was also noted that the public are not always aware of their responsibilities with regard to the disposal of scrap
- Any applications from existing dealers received by 15<sup>th</sup> October would be able to continue trading but any received after that would be treated as a new applicant and would not be allowed to trade until the new Licence was issued.

Officers advised that it was felt that Members of the Licensing and Regulatory Committee were best placed to consider any applications for these Licences and Officers wanted to take Members decision back to Cabinet for approval to ensure that any decisions made in the future were legally sound.

Officers wanted to get their draft policy back before the Committee before 1<sup>st</sup> December although they did advise that this document would still evolve as the situation became clearer and they were able to obtain further information from neighbouring authorities and police as to the way they were dealing with the legislation.

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Members were advised that if there were no issues of concern on the 12 applications already received then these would not necessarily need to be reviewed by the Committee as Cabinet had agreed that these could be considered by the Principal Licensing Officer and if Members of this Committee agreed with this then it could be put into the Policy. The Committee could decide when they wanted to be called upon to review any applications and this would then be put in the Policy.

The Committee recommended that the Policy be developed at the earliest opportunity taking into account all the deliberations of today. The Committee also recommended that they want applicants to come for decision before the committee if there is an issue with the application – similar to the current system used for taxi drivers.

Members were advised that Licensing would do the processing of applications and Trading Standards would carry out any enforcement found to be required.

The Team Leader from Trading Standards confirmed that he felt the Committee were well placed to consider this subject and to have a role in both the policy and the applications and that this would now be the subject of legal advice to ensure any future applications can be considered on a legally sound basis.

Officers agreed to bring the draft Policy before the Committee before it goes to Cabinet.

The Cabinet Member for Environment, Public Services and Housing advised the Committee that it had been helpful to listen to the debate and that it had been unfortunate that time constraints had meant the item had gone to Cabinet before coming before the Committee in the first instance.

### **DELEGATION OF POWERS FOR THE REVOCATION OF TAXI DRIVERS LICENCES**

6. Members were asked by the Public Protection Manager to consider a proposed approach in relation to the revocation of Hackney Carriage / Private Hire Drivers' Licenses.

Members were advised that a recent case in Cardiff has given rise to the need to review the Authority's policy for dealing with suspensions and revocations of licensed taxi drivers, in particular in certain circumstances.

Members were reminded that a licence can be the suspended if something comes to light to question if the holder is a fit and proper person. Previously the power to suspend had been with the Head of Public Health & Culture but a recent report to Council had set out the key issues of the Court case and a proposed approach. At that meeting Members had raised particular concerns over the delegation of powers to officers and so Council had asked for a revised report and for it to come to the Licensing and Regulatory Committee first.

The Public Protection Manager asked the Committee to provide guidance on what Officers were to do if the need to revoke the licence was urgent. Previously Officers could suspend a licence and then the Committee would be asked to consider the revocation. The new process would be similar but the licence must be revoked in the

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first instance if the driver is unsuitable so Officers requested guidance on whether they could revoke the licence without coming to the Committee if they felt the evidence was clear cut.

During the discussion the following points were noted:

- Members felt that the initial report should have come to the Committee before it went to full Council
- Concern was raised over what an Officer might see as clear cut may be reconsidered and then could be the subject of an appeal and Members were advised that Officers would only make decision on convictions or if clear medical grounds for revoking the licence
- Members and Officers recognised the need for clarity on where the decision was to be made
- If a licence is revoked then an appeal can be made to the Committee but applicants do also have the right to appeal to the magistrates if they wish.
- Officers were considered that if a revocation had to come to Committee then by the time the meeting was called it would delay any immediate response
- Members asked if Officers would be comfortable making the decision and they were advised that Officers were happy to do this as they would only revoke the licence when there was enough evidence to do so.
- Members discussed the option of the Chair / Vice Chair and Member of the Committee being contacted to make the decision and it was noted that before a Member of the Committee was contacted the matter would have been considered by several senior Officers.
- Concern was raised over Members would be prepared to make these decisions when contacted and they were reminded that they had been put on the Committee to make decisions and all were capable and sensible to work with the Officers on these decisions

Following the discussion Members confirmed that they were in agreement with Officers making the decisions with consultation with Members and with a decision from the Chair or another Member of the Committee.

Members proposed to accept the recommendations of the report to Full Council as set out below and for the matter to then be returned to Full Council:

- 2.1 *To adopt the policy set out in appendix A*
- 2.2 *To delegate to the Head of Public Health & Culture the power to revoke a Hackney Carriage / Private Hire Drivers Licence. If for whatever reason the Head of Public Health & Culture is unable to act, this function may be carried out by the Public Protection Manager, in consultation with the Chair and/or the Vice Chair of the Licensing and Regulatory Committee.*
- 2.3 *To delegate to the Head of Public Health & Culture the power to accept an application, allowing an applicant to re-apply for a licence. If for whatever reason the Head of Public Health & Culture is unable to act, this function may be carried out by the Public Protection Manager in*



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*consultation with the Chair and/or Vice Chair of the Licensing and Regulatory Committee.*

- 2.4 *In their absolute discretion the Head of Public Health & Culture (and as appropriate the Public Protection Manager) may refer the discharge of this function (viz. the revocation and consideration of an application for a relevant licence) to the Licensing and Regulatory Committee.*

Following this a Member proposed that if the Chair or Vice Chair was unavailable that the recommendation should be that more than one member be contacted to make any decision. The Legal Assistant confirmed that if this was to be the case then it would have to be three members.

The proposed amendment was put to the vote and with the Chairs casting vote the decision was 4 against and 3 for.

It was therefore agreed to take the original recommendation back to full Council and that any clarification would be obtained before this.

**DATE OF NEXT MEETING**

7. We noted the date of the next Licensing and Regulatory Committee as Tuesday 3<sup>rd</sup> December 2013, 10am at County Hall, Usk.

Members requested that if a special meeting has to be called to discuss the Scrap Metal Dealers Policy then this is called for the convenience of all Members.

**The meeting ended at 11.50am.**



**MONMOUTHSHIRE COUNTY COUNCIL  
REPORT**

**Agenda Item 4i**

**SUBJECT:** Hackney Carriage and Private Hire Licensing Policy – Fitness Criteria for Drivers and Operators

**DIRECTORATE:** Legal and Regulatory Services

**MEETING:** Licensing and Regulatory Committee

**Date to be considered:** 11<sup>th</sup> February 2014

**DIVISION/WARDS AFFECTED:** All Wards

**1. PURPOSE:**

- 1.1 To consider the Hackney Carriages and Private Hire Licensing Policy – Fitness Criteria for Drivers and Operators (Attached to this report as Appendix A).

**2. RECOMMENDATION(S):**

- 2.1 To amend the Hackney Carriages and Private Hire Licensing Policy – as set out in Appendix A to this report (Fitness Criteria for Drivers and Operators).
- 2.2 That a period of 90 days consultation to those licensed under the remit of Private Hire and Hackney Carriage should take place.
- 2.3 That adverse responses be brought back to the Licensing and Regulatory Committee for consideration but should no adverse representation be made within that time period the policy be adopted.

**3. KEY ISSUES**

- 3.1 The Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002, allows the Council to take into account all convictions recorded against an applicant, or the holder of a hackney carriage/private hire driver's licence, whether spent or not.
- 3.2 Under the provisions of Sections 51 and 59, Local Government (Miscellaneous Provisions) Act 1976, the Licensing Authority is required to ensure that an applicant for the grant or renewal of a hackney carriage/private hire driver's licence and/or private hire vehicle operator's licence, is a 'fit and proper' person to hold such a licence. When processing the licence application the Licensing Authority will check the applicant's criminal record. If the applicant for a hackney carriage/private hire drivers licence and a private hire operator's licence has an offence against them, the Authority should look into:
- How relevant the offences are to the licence being applied for
  - How serious the offences were,
  - How recent they were, and

- Whether they form part of a pattern of offending.
- 3.3 On 30<sup>th</sup> March 2009, Monmouthshire County Council adopted the policy on the treatment of convictions, cautions and charges, which was the policy adopted by the Directors of Public Protection Wales (DPPW) – Technical Panel, which consists of Licensing Officers for each Welsh Authority. The Authority adopted this policy in order to have a consistent approach throughout Wales when dealing with offences that originated some time ago and/or offences, warnings, cautions or charges awaiting trial.
- 3.4 In September 2013, the DPPW – Technical Panel amended their policy on dealing with convictions and this report recommends the Council adopts this new policy.
- 3.5 The information set within the Policy is not exhaustive, nor is it in any order of priority. It is intended to guide the Licensing and Regulatory Committee in determining the degree of weight to give to a conviction, prior to reaching a conclusion about the case before them. As a general principle it is recommended that:
- i. each case will be determined on merit, and;
  - ii. the overriding consideration will be the protection of the public, and;
  - iii. Where there is evidence causing significant doubt about the fitness or appropriateness of an applicant or licence holder, the Licensing and Regulatory Committee should exercise the precautionary principle and refuse the application, or revoke the licence.
- The document is a policy document and is for guidance. It should be noted that it is not statutory.
- 3.6 A person aggrieved by a decision of the Licensing Authority to revoke, suspend or refuse to grant a licence or, by any conditions attached to the grant of a licence, may appeal to the Magistrates' Court within 21 days of the decision. By introducing a Policy that uses the Technical Panel recommendations, this would hopefully help to alleviate appeals being made against the Authority.

#### **4 REASONS**

- 4.1 The policy is necessary to guide consistent decisions and is intended to be used throughout Wales
- 4.2 The policy will assist to enforce the provisions of the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847.

#### **5. RESOURCE IMPLICATIONS:**

None.

**6. CONSULTEES:**

Director of Public Protection Wales – Technical Panel  
Private Hire and Hackney Carriage Licence Holders with Monmouthshire  
County Council.

**7. BACKGROUND PAPERS:**

DPPW – Licensing Technical Panel, Taxi and Private Hire Licensing Policy,  
Fitness Criteria for Drivers and Operators – Dated September 2013.  
Local Government (Miscellaneous Provisions) Act 1976.  
Town Police Clauses Act 1847.

**8. AUTHOR:**

Linda O’Gorman Principal Licensing Officer

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monmouthshire  
sir fynwy

*HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING POLICY  
FITNESS CRITERIA FOR DRIVERS AND OPERATORS*

**Licensing Section  
Monmouthshire County Council  
The Drama Centre  
Pen-y-Pound  
Abergavenny  
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**Further copies may be obtained from  
the above address or from the website  
[www.monmouthshire.gov.uk](http://www.monmouthshire.gov.uk)**

## 1. Introduction

1.1 The purpose of this policy is to provide guidance on the criteria taken into account by the Council when determining whether or not an applicant or an existing licence holder is a fit and proper person to hold a hackney carriage and/or private hire driver / operator licence. The policy was approved at a meeting of Monmouthshire County Council's **Licensing and Regulatory Committee** on **\*\*\*Date\*\*\***

1.2 The aim of this policy is to protect the safety of the public. The Licensing Authority is concerned to ensure:

- That a person is a fit and proper person;
- That the person does not pose a threat to the public;
- That the public are safeguarded from dishonest persons;
- The safeguarding of children and young persons;
- The safeguarding of vulnerable persons;
- That the public have confidence in their use of licensed vehicles.

1.3 This policy aims to provide guidance to any person with an interest in public and private hire licensing. In particular, but not exclusively:

- Applicants for driver / operator licences
- Existing licensed drivers / operators whose licences are being reviewed
- Licensing Officers and Police
- Members of the Licensing and Regulatory Committee / Panel (or other relevant decision making body)
- Magistrates and Crown Court hearing appeals against local authority decisions

1.4 Where licensing officers have delegated powers to grant licences, they will utilise these guidelines when making a decision to grant a licence. In all other cases applications for licences will be referred to the Licensing and Regulatory Committee/panel (or other relevant decision making body). Whilst officers and the Committee/panel will have regard to the guidelines contained in the policy, **each case will be considered on its individual merits** and, where the circumstances demand, the Committee / officer may depart from the guidelines.

1.5 Where applicants fail to disclose any previous convictions; cautions; warning; penalty notices, order or reprimands on their application form including any pending court proceedings or other matters they may be referred to the Licensing and Regulatory Committee for determination.

## 2.0 General Policy

2.1 Each case will be decided on its own merits

2.2 A person with a conviction for a serious offence need not be automatically barred from obtaining a licence, but would normally be expected to:

- a. Remain free of conviction for an appropriate period (as set out below); and
- b. Show evidence that he or she is a fit and proper person to hold a licence (the onus is on the applicant to produce such evidence).

2.3 For the purposes of this Policy, "other matters to be considered" may include but are not limited to the following:

- a) Criminal / motoring convictions;

- b) Court Martial;
- c) Cautions;
- d) Fixed penalty notices or other penalty notices;
- e) Anti-social behaviour orders or other similar orders;
- f) Breach of licensing conditions;
- g) Formal warnings or reprimands
- h) Charges or matters awaiting trial;
- i) Fitness and propriety.

2.4 Where an applicant has a conviction(s) or other matter(s) to be considered for a criminal offence, the council cannot review the merits of the conviction or other matter.

2.5 Where an applicant / licence holder has a conviction or other matter to be considered for an offence of aiding, abetting, attempting, conspiring, counselling, procuring, causing, permitting or inciting any of the criminal or motoring convictions / matters specified in this guidance, they will be considered relevant for the substantive matter.

### **3.0 Appeals**

3.1 Any applicant who has been refused a driver / operator licence, or a licensed driver / operator whose licence has been suspended or revoked has a right to appeal to the Magistrates Court within 21 days of receipt of the notice.

### **4.0 Powers**

4.1 Powers to grant driver / operator licences are contained within Section 51, Section 55 and Section 59 of the Local Government (Miscellaneous Provisions) Act 1976 (the Act).

4.2 Powers to suspend, revoke or refuse to renew a driver's licence are contained within Section 61 of the Act, where the applicant/licence holder has been convicted of an offence involving dishonesty, indecency, violence; failure to comply with the provisions of the Town Police Clauses Act 1847; failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976; or any other reasonable cause.

4.3 Section 61 (2b) allows the Licensing Authority, if it appears that in the interests of public safety, to suspend or revoke a drivers licence with immediate effect. A decision notice explaining why this decision has been taken will be issued to the driver and will have effect when the notice is given to the driver. The driver may appeal this decision but may not drive during the appeal period.

4.4 Section 62 of the Act allows the Licensing Authority to suspend, revoke or refuse to renew an operator's licence if the applicant/licence holder has been convicted of an offence under or non-compliance with the provisions of Part II of this Act; or grounds of any conduct on the part of the operator which appears to the Council to render him unfit, or due to any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted or any other reasonable cause.

4.5 The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002, allows the Licensing Authority to take into account all convictions recorded against an applicant or the holder of a private hire or hackney carriage driver's licence, whether spent or not. Therefore the Licensing Authority will have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending.

### **5.0 Consideration of disclosed criminal history**

5.1 Under the provisions of Sections 51, 55 and 59 of the Act, the Licensing Authority is required to ensure that an applicant for the grant or renewal of a driver / operator licence is a 'fit and proper' person to hold such a licence. However, if an applicant / licence holder has any matters to be considered, the Licensing Authority may take into account:



- How relevant the offence(s) are to the licence being applied for;
- How serious the offence (s) were;
- When the offence (s) were committed;
- The date of conviction and age of applicant at time of conviction;
- Sentence imposed by the court;
- Whether they form part of a pattern of offending;
- Any other factors that might be relevant.

## 6.0 Violence

6.1 Licensed drivers have close regular contact with the public. A serious view will be taken with those who have a conviction(s) or other matter(s) to be considered involving violence. An application will normally be refused or existing licence suspended or revoked if the applicant / licence holder has a conviction for an offence that involved the loss of life.

6.2 In other cases anyone of a violent disposition is unlikely to be licensed until at least 3 years free of such conviction(s) or other matter(s) to be considered. However, given the range of the offences that involve violence, consideration must be given to the nature of the offence.

6.3 Unless there are exceptional circumstances, an application will normally be refused or existing licence suspended or revoked where the applicant / licence holder has a conviction for an offence such as:

- Murder;
- Manslaughter;
- Manslaughter or culpable homicide while driving;
- Terrorism offences;
- Or any similar offences or offences which replace the above.

6.4 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matters(s) to be considered for an offence listed below and the conviction(s) or other matters(s) to be considered is **less than 10 years** prior to the date of the application:

- Actual bodily harm which is racially/religiously aggravated;
- Arson;
- Assault Police;
- Common assault which is racially/religiously aggravated;
- Criminal damage which is racially/religiously aggravated;
- Grievous bodily harm with intent;
- Malicious wounding or grievous bodily harm which is racially aggravated;
- Possession of firearm;
- Resisting arrest;
- Riot;
- Robbery;
- Violent disorder;
- Similar offences or offences which replace the above.

6.5 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matters(s) to be considered for an offence listed below and the conviction(s) or other matter(s) to be considered is **less than 3 years** prior to the date of the application:

- Affray
- Assault occasioning actual bodily harm;
- Common assault;
- Criminal damage;
- Obstruction;

- Possession of a weapon (or imitation weapon) or any other weapon related offence other than a firearm;
- S5 Public Order Act 1986 offence (harassment, alarm or distress);
- S.4 Public Order Act 1986 offence (fear of provocation of violence);
- S4A Public Order Act 1986 offence (intentional harassment, alarm or distress);
- Similar offences or offences which replace the above.

6.6 An application will normally be refused if an applicant has more than one conviction or other matter to be considered in the last 10 years for an offence of a violent nature.

## 7.0 Sex and indecency offences

7.1 As licensed drivers often carry unaccompanied and vulnerable passengers, a firm line is to be taken with those who have convictions or other matters to be considered for sexual offences. An application will normally be refused or existing licence suspended or revoked for convictions or other matters to be considered for the more serious sexual offences. For other offences, applicants will be expected to show a substantial period free of conviction or other matter to be considered for such offences before an application will be approved.

7.2 Unless there are exceptional circumstances, an application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matter(s) to be considered for an offence such as:

- Assault by penetration;
- Exploitation of prostitution;
- Indecent assault;
- Offences involving children or vulnerable adults;
- Possession of indecent photographs, child pornography etc;
- Rape;
- Sexual assault;
- Trafficking for sexual or other exploitation;
- Similar offences or offences that replace the above.

7.3 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matter(s) to be considered for an offence listed below and the conviction(s) or other matter(s) to be considered is **less than 7 years** prior to the date of application:

- Indecent exposure;
- Soliciting (kerb crawling);
- Similar offences or offences which replace the above.

7.4 In addition to the above the Licensing Authority is unlikely to grant a licence to any applicant who is currently on the Sex Offenders Register.

7.5 An application will normally be refused if an applicant has more than one conviction or other matter to be considered for a sexual offence.

## 8.0 Dishonesty

8.1 An applicant or existing licence holder is expected to be a trustworthy person. They deal with cash transactions and valuable property which may be left in their vehicles. Licence holders are required to deposit such property with police within 24 hours. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in licensed drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal or agreed fare, etc. Overseas visitors can be confused by our currency and maybe vulnerable to an unscrupulous driver. For all these reasons, a serious view is taken by any conviction involving dishonesty.

8.2 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matters(s) to be considered for an offence listed below and the conviction(s) or other matter(s) to be considered is **less than 3 years** prior to the date of the application:

- Benefit fraud;
- Burglary;
- Conspiracy to defraud;
- Forgery;
- Fraud;
- Handling or receiving stolen goods;
- Obtaining money or property by deception;
- Other deception;
- Taking a vehicle without consent;
- Theft;
- Similar offences or offences which replace the above.

## 9.0 Drugs

9.1 A serious view is taken of any drug related offence. The Licensing Authority will consider the nature and quantity of the drugs involved within the following offences:

- Cultivation of a controlled drug;
- Importation of a controlled drug;
- Production of a controlled drug;
- Supply of a controlled drug;
- Or similar offences.

9.2 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matters(s) to be considered for any of the above offences and has not been free of conviction(s) or other matters to be considered for **at least 5 years**.

9.3 An application will normally be refused or an existing licence suspended or revoked where the applicant has more than one conviction or other matter to be considered for offences related to the possession of drugs and has not been free of conviction or other matter to be considered for **at least 5 years**.

9.4 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has an isolated conviction or other matter to be considered for an offence related to the possession of drugs within **the last 3 years**. Consideration should be given to the nature and quantity of the drugs involved.

9.5 If there is evidence of persistent drugs use, misuse or dependency a specialist medical examination (in accordance with DVLA Group 2 medical standards) may be required. If the applicant was an addict then they would normally be required to show evidence of **3 years** free from drug taking.

## 10.0 Driving Offences involving the loss of life

10.1 A very serious view is to be taken of any applicant or existing licence holder who has a conviction or other matter to be considered for a driving offence that resulted in the loss of life.

10.2 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matters(s) to be considered for any of the offences listed below and has not been free of conviction(s) or other matters to be considered for **at least 7 years**.

- Causing death by careless driving whilst under the influence of drink or drugs;
- Causing death by dangerous driving;
- Or any similar offence.

10.3 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matters(s) to be considered for any offences listed below and has not been free of conviction(s) or other matters to be considered for **at least 5 years**.

- Causing death by careless driving;
- Causing death by driving: unlicensed, disqualified or uninsured drivers.

#### 11.0 Drink driving/driving under the influence of drugs

11.1 A serious view will be taken of a conviction(s) or other matter(s) to be considered for driving or being in charge of a vehicle while under the influence of alcohol / drugs. A single conviction or other matter to be considered may not result in an application being refused or an existing licence being suspended or revoked, provided that **at least 3 years** have elapsed since the ending of the disqualification. A conviction or other matter to be considered for 'refusing or failing to provide a specimen' will be treated in the same way.

11.2 Applicants with more than one conviction or other matter to be considered for driving or being in charge of a vehicle under the influence of alcohol / drugs or refusing or failing to provide a specimen are unlikely to be granted a licence unless a period of **10 years** has elapsed after the restoration of the driving licence following the last conviction or other matter to be considered.

#### 12.0 Motoring Convictions

12.1 Major Traffic Offences

12.2 For the purposes of this Policy the following motoring offences are classed as 'Major Traffic Offences':

AC10	Failing to stop after an accident
AC20	Failing to give particulars or to report an accident within 24 hours
AC30	Undefined accident offences
BA10	Driving whilst disqualified by order of the Court
BA30	Attempting to drive whilst disqualified by order of the Court
DD40	Dangerous Driving
DD90	Furious Driving
IN10	Using a vehicle uninsured against third party risks
LC20	Driving otherwise than in accordance with a licence
LC30	Driving after making a false declaration about fitness when applying for a licence
LC40	Driving a vehicle having failed to notify a disability
LC50	Driving after a licence has been revoked or refused on medical grounds
MS50	Motor racing on the highway

MS60	Offences not covered by other codes
MS90	Failure to give information as to identity of driver, etc.
UT50	Aggravated taking of a vehicle

12.3 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction or other matter to be considered for a major traffic offence and has not been free of conviction or other matter to be considered for **at least 6 months**.

12.4 An applicant with more than one Major Traffic Offence, within the last 5 years will normally be refused and no further application should be considered until a period of **at least 3 years** free from such convictions or other matters to be considered have elapsed.

12.5 If any conviction or other matter to be considered for a Major Traffic Offence results in a disqualification, applicants should refer to the section of these guidelines entitled 'disqualification'.

### 12.6 Disqualification from driving

12.7 The Licensing Authority will treat a period of disqualification as being that which a driver would have been eligible to serve, and may disregard the decision of a court to waive or reduce a disqualification period either on the grounds of exceptional hardship under S.35 of the Road Traffic Offenders Act 1988 or for "special reasons" under S.34 of the Road Traffic Offenders Act 1988.

12.8 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a recent conviction or other matter to be considered resulting in a period of disqualification of less than 56 days unless a period of **at least 6 months** has elapsed from the end of the disqualification period.

12.9 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a recent conviction or other matter to be considered resulting in a period of disqualification of up to 12 months unless a period of **at least 12 months** has elapsed from the end of the disqualification period.

12.10 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a recent conviction or other matter to be considered resulting in a period of disqualification of up to 12 months or more unless a period of **at least 18 months** has elapsed from the end of the disqualification period.

12.11 The Licensing Authority will not normally grant an application for a private hire or hackney carriage driver's licence from a person who has been disqualified from driving for a period of 5 years or more, unless a period of **at least 7 years** has elapsed from the end of the disqualification period.

### 13.0 Minor Traffic Offences

13.1 Other Traffic Offences not listed within this policy will be treated as 'Minor Traffic Offences'. A minor driving offence is one that incurs between 1 and 3 penalty points.

13.2 Where an applicant / licence holder has one conviction or other matter to be considered for a minor driving offence, this will not usually result in a refusal or suspension / revocation.

13.3 More than one minor traffic conviction or other matter to be considered may result in a refusal, particularly where there are several convictions or other matters to be considered for

the same offence e.g. speeding. A licensed driver may be referred to the Licensing and Regulatory Committee where there are more than two offences.

#### **14.0 Outstanding charges or summonses**

14.1 If the individual is the subject of an outstanding charge or summons their application can continue to be processed, but in the interest of public safety the matter will be considered and may be deferred for determination until proceedings are concluded.

#### **15.0 Non-conviction information**

15.1 If an applicant or existing licence holder has been arrested or charged, but not convicted, for a serious offence which suggests he/she could be a danger to the public, consideration should be given to refusing or suspending / revoking the application / licence.

#### **16.0 Repeat offending**

16.1 While it is possible that an applicant may have a number of convictions or other matters to be considered that individually meet the above guidelines, an application will normally be refused where an applicant has a record of repeat offending which shows a lack of regard for the well being of others or for property, unless a period of **at least 10 years** has elapsed since the most recent conviction or other matters to be considered.

#### **17.0 Breach of Legislation, Byelaw or Licence Condition**

17.1 An applicant who has a conviction or other matters to be considered for a breach of legislation, byelaw or licence condition is unlikely to be granted a licence unless a period of **at least 12 months** has elapsed since the most recent breach.

17.2 An existing licence holder found to be in breach of legislation, byelaw or licence condition is on the first occasion, likely to be warned in writing as to future conduct, provided that the breach did not compromise the safety of passengers or that the public were not put at risk.

17.3 Where an existing holder is found to have more than one breach of licensing legislation, byelaw or licence condition, or a single serious breach, the Licensing and Regulatory Committee may suspend or revoke the licence.

17.4 The above is irrespective of any legal proceedings which may be pending or have been taken.

**MONMOUTHSHIRE COUNTY COUNCIL  
REPORT**

**Agenda Item 4ii**

**SUBJECT:** Intended Use Policy For The Licensing Of Hackney Carriages

**DIRECTORATE:** Legal and Regulatory Services

**MEETING:** Licensing and Regulatory Committee

**Date to be considered:** 11<sup>th</sup> February 2014

**DIVISION/WARDS AFFECTED:** All Wards

**1. PURPOSE:**

- 1.1 To consider the Intended Use Policy for the Licensing of Hackney Carriages.

**2. RECOMMENDATION(S):**

- 2.1 Members consider the implementation of an intended use policy for hackney carriages (attached to this report as Appendix A).
- 2.2 That a period of 90 days consultation to those licensed under the remit of Hackney Carriages should take place.
- 2.3 That adverse responses be brought back to Committee for consideration but should no adverse representation be made within that time period the policy be adopted.

**3. KEY ISSUES**

- 3.1 It was recognised by members of the Director of Public Protection Wales (DPPW) Technical Panel which consists of Licensing Officers for each Welsh Authority that Authorities were receiving significant number of applications and enquiries from hackney carriage proprietors and drivers who reside outside the Council area.
- 3.2 It is entirely lawful for a hackney carriage licensed by one authority to undertake pre-booked hirings (private hire) outside of the authority area. This has led to a situation where a significant number of hackney carriages licensed by an authority in some cases undertaking private hire work entirely outside of that Council area.
- 3.3 Whilst the current situation is not unlawful, it is not ideal from an enforcement point of view for vehicles to be operating predominantly outside of the local authority area where they are licensed. Enforcement Officers are not able to carry out enforcement in other Local Authority areas. It also very difficult to monitor vehicles easily if they rarely operate within their area and this could have huge safety issues.

3.4 The DPPW Technical Panel recognised the safety implications of vehicles who operated in the manner stated above and referred to the High Court judgment in the case of Newcastle City Council v Berwick upon Tweed Council [2008] when drafting up a policy. The following statements were made in this judgement -

a) *“It was the intention behind the licensing system that it should operate in such a way that the authority licensing hackney carriages is the authority for the area in which those vehicles are generally used”*

b) *“A licensing authority, properly directing itself, is entitled and indeed obliged to have regard to whether in fact the applicant intends to use that hackney carriage predominantly, or entirely, remotely from the authority’s area”*

c) *“It must be desirable for an authority issuing licences to hackney carriages to be able to restrict the issuing of those licence to proprietors and drivers which are intending to ply for hire in that authority’s area”*

d) *“While I cannot at the moment conceive of it being rational to grant a licence to those who intend to operate their hackney carriages remotely from [the local authority’s area] I am not prepared to say that it is bound to be unlawful”*

e) *“There will be proprietors who wish to use their vehicles in a number of different authorities’ areas and in that case no doubt there will be flexibility in the exercising of the discretion. Matters such as where the proprietor is based and where most of the business comes from will be material matters to consider”*

3.5 Monmouthshire County Council following the Berwick Upon Tweed case issue to each Hackney Carriage Proprietor a form for each applicant to sign stating their intention of use, which is attached to this report as Appendix B. However, if it was found a hackney proprietor does not operate within the County even though they have a licence, there is no policy in place on how to deal with the licence holder. As such it is recommended that Monmouthshire County Council adopt the policy derived by the DPPW Technical Panel for Wales.

#### **4 REASONS**

4.1 The policy will provide a proportionate degree of public protection, guide consistent decisions throughout Wales and take account of Case Law.

#### **5. RESOURCE IMPLICATIONS:**

None.

#### **6. CONSULTEES:**



Director of Public Protection Wales – Technical Panel  
Hackney Carriage Licence holders with Monmouthshire County Council

**7. BACKGROUND PAPERS:**

Newcastle City Council v Berwick Upon Tweed Council [2008].  
DPPW – Licensing Technical Panel, Intended Use Policy For The Licensing  
Of Hackney Carriages – Dated March 2013.  
Local Government (Miscellaneous Provisions) Act 1976.  
Town Police Clauses Act 1847.

**8. AUTHOR:**

Linda O’Gorman Principal Licensing Officer

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monmouthshire  
sir fynwy

***INTENDED USE POLICY FOR THE LICENSING OF HACKNEY CARRIAGES***

Licensing Section  
Monmouthshire County Council  
The Drama Centre  
Pen-y-Pound  
Abergavenny  
NP7 5UD

Tel : 01873 735420  
Fax: 01633 644878  
Email: [licensing@monmouthshire.gov.uk](mailto:licensing@monmouthshire.gov.uk)

Further copies may be obtained from  
the above address or from the website  
[www.monmouthshire.gov.uk](http://www.monmouthshire.gov.uk)

## **1. Introduction**

- 1.1 The purpose of this policy is to set out how the Council will deal with the licensing, renewal and transfer of hackney carriage vehicles following the High Court Judgement – Newcastle City Council v Berwick upon Tweed [2008] EWHC 2369 (Admin). The council when considering new applications for hackney carriage proprietors licences will determine those applications in accordance with the principles contained within the judgement of the above case. The policy was approved at a meeting of Monmouthshire County Council's **Licensing and Regulatory Committee on \*\*\*Date\*\*\***
- 1.2 The Council will determine each application on its merits, but will place public safety above all other considerations.

## **2. Applications for the new grant of a hackney carriage licence**

- 2.1 Applicants for new licences will be expected to demonstrate a bona fide intention to operate predominantly within the County of Monmouthshire under the terms of the licence for which application is being made.
- 2.2 There will be a presumption that applicants who do not intend to predominantly operate within the County of Monmouthshire will not be granted a hackney carriage licence authorising them to do so. Each application will be decided on its merits.
- 2.3 Even where the applicant intends to operate predominantly in the County of Monmouthshire, if the intention is to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be compromised) then, subject to the merits of the particular application, there will be a presumption that the application will be refused.

## **3. Applications for the renewal of a hackney carriage licence**

- 3.1 Section 60 of Local Government Miscellaneous Provisions Act 1976 also gives the Council a broad discretion to refuse to renew a licence for any reasonable cause and this intended use policy will also apply for renewals in the same way as for the grant of the licence. Each application will be decided on its merits.

## **4. Applications for the transfer of a hackney carriage licence**

- 4.1 Should the hackney carriage licence be transferred to another proprietor during the term of the licence, the new proprietor will be asked to inform the Council whether he has a bona fide intention to use the vehicle to ply for hire within the County of Monmouthshire. New proprietors should note the obligation under section 73 of the Local Government (Miscellaneous Provisions) Act 1976 to give to an authorised officer information which may reasonably be required by him for the purpose of carrying out his functions under the legislation. Where there is a failure to provide the requested information; the Council will give serious consideration to exercising its powers of suspension of the licence under section 60 of the 1976 Act until such information is forthcoming, in addition to its powers under section 73.
- 4.2 New proprietors of licensed hackney carriages will be expected to have a bona fide intention to ply for hire within the County of Monmouthshire under the terms of the licence in respect of the vehicle being transferred.
- 4.3 If the new proprietor of a licensed hackney carriage is found to have a bona fide intention to ply for hire entirely or predominately within the County of Monmouthshire and/or intends to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be compromised) then, subject to the merits of the particular case, consideration will be given (either at renewal or earlier) to the suspension or revocation of the licence under section 60 of the Local Government (Miscellaneous Provisions) Act 1976. Where the new proprietor proposes to operate remotely from the

County of Monmouthshire there will be a presumption that his licence will be revoked. Each case will be decided on its merits.

## **5. Applications for the replacement of a hackney carriage licence**

- 5.1 When a proprietor replaces a licensed vehicle, applicants seeking the grant of a hackney carriage licence for a vehicle intended to replace another licensed vehicle will be asked to inform the Council of their intended use of the vehicle. There will be a presumption that applicants who no longer intend to ply for hire entirely or predominately within the County of Monmouthshire will not have the new hackney carriage licence granted. Even where the applicant intends to ply for hire entirely or predominantly in the County of Monmouthshire if the intention is to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be compromised) then, subject to the merits of the particular case, there will be a presumption that the application will be refused.
- 5.2 Where a licence has been granted under the terms that the applicant intends to ply for hire entirely or predominantly within the County of Monmouthshire but is subsequently found not to be plying for hire entirely or predominantly in the County of Monmouthshire and/or to be trading in another authority's area for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be compromised) there will be a presumption that the licence will be revoked.
- 5.3 Each application will be decided on its merits. However the presumptions that intended use is to ply for hire entirely or predominantly within the County of Monmouthshire will be rebuttable in exceptional circumstances. Whilst it is neither possible or prudent to draw up a list of what might amount to exceptional circumstances, an applicant who claims that exceptional circumstances exist will be expected to be able to satisfy the Council that it would not compromise the purposes of the legislation or compromise public safety if the licence were granted, renewed or if were not suspended or revoked as the case may be.

## **6. Reasons for Intended Use Policy**

- 6.1 The Council of Monmouthshire County Council wishes to ensure that applications for the grant of hackney carriage licences are determined in accordance with the guidance given by the High Court in its judgment in the case of Newcastle City Council v Berwick upon Tweed Council [2008].
- 6.2 The Council is required to register the name of the new proprietor of a vehicle. It seems to the Council also to open up an obvious route to circumvent the decision of the High Court, unless precautionary steps are taken. It is intended to put the Council in a position to respond responsibly to the transfer of a Monmouthshire County Council hackney carriage into the name of someone who operates outside the County of Monmouthshire or remotely from it.
- 6.3 Unless there has been a change in the proprietor's intentions with regard to plying for hire within a zone of the administrative area of Monmouthshire County Council, there should be no reason why he/she should not be granted a licence for a replacement vehicle. On the other hand, an applicant who obtained the first licence on the expressed intention of plying for hire entirely or predominantly within the administrative area of Monmouthshire County Council, and who on application to replace that vehicle with another discloses that he/she no longer so intends, effectively engages the presumption against grant that is mentioned earlier.



**Request for Information – Intended usage  
of a Hackney Carriage  
Local Government (Miscellaneous  
Provisions) Act 1976, section 57**

Surname of Applicant (BLOCK CAPITALS)(Mr/Mrs/Miss) \_\_\_\_\_

Forename(s): \_\_\_\_\_

Current Address : \_\_\_\_\_

\_\_\_\_\_ Email : \_\_\_\_\_

Tel No : \_\_\_\_\_

**PARTICULARS OF VEHICLE**

Make: \_\_\_\_\_ Model: \_\_\_\_\_

Registration No: \_\_\_\_\_

Licence No: \_\_\_\_\_ (if already licensed by the Council)

**DECLARATION OF INTENDED USE OF HACKNEY CARRIAGE**, if licensed

Please indicate your intended use of the hackney carriage, if licensed, by answering the following questions and /or by providing any other relevant information (please attach additional information, if necessary).

- 1) Do you intend to use the above vehicle, if licensed as a Hackney Carriage, to ply for hire within the area of the Council? **YES / NO**
- 2) Do you intend to use the above vehicle, if licensed as a Hackney Carriage, entirely or predominantly for Private Hire remotely from the area of the Council? **YES / NO**
- 3) Do you intend to use the above vehicle, if licensed as a Hackney Carriage, to carry fare paying passengers otherwise than as described in (1) and (2) above? **YES / NO**

**OTHER RELEVANT INFORMATION**

If you have answered "NO" to question (1) and / or "YES" to questions (2) and / or (3) overleaf, there is a presumption that your application will be refused, unless you satisfy the Council that it may grant you a hackney carriage proprietor's licence without undermining the purpose of the legislation. If you wish to seek to persuade the Council that it should grant a licence in these circumstances, please explain why you believe that to be the case in the space overleaf (please, if necessary, attach additional sheets):-

**My reason(s) is / are:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**Declaration**

- I declare that the contents of this form and any additional information are true.
- I know that if I have knowingly or recklessly made a false statement in connection with this application, I shall be liable to prosecution and / or any licence granted to me as a result of such a false statement may be suspended or revoked by the Council.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**FOR COUNCIL USE ONLY**

Record of decision

Date: \_\_\_\_\_ Officer: \_\_\_\_\_ Decision: \_\_\_\_\_

My reason(s) for the above decision is / are:

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**SUBJECT: Scrap Metal Dealers Act 2013 – Statement of Licensing Policy**

**DIRECTORATE: Legal and Regulatory Services**

**MEETING: Licensing and Regulatory Committee**

**Date to be considered: 11<sup>th</sup> February 2014**

**DIVISION/WARDS AFFECTED: All Wards**

**1. PURPOSE:**

- 1.1 To consider the Scrap Metal Dealers Act 2013 – Statement of Licensing Policy.

**2. RECOMMENDATION(S):**

- 2.1 To endorse the Scrap Metal Dealers Act 2013 – Statement of Licensing Policy (attached as Appendix A) prior to recommendation to Cabinet.
- 2.2 That a period of 90 days consultation to those licensed by Monmouthshire County Council under the remit of the Scrap Metal Dealers Act 2013, Heddlu Gwent Police, British Transport Police, National Resource Wales and Industry Associations.
- 2.3 That adverse responses be brought back to the Licensing and Regulatory Committee for consideration but should no adverse representation be made within that time period the policy will be deferred to Cabinet for a recommendation to adopt.

**3. KEY ISSUES**

- 3.1 At it's meeting of 2<sup>nd</sup> October 2013, Cabinet approved the application process along with delegation of powers and fees for those requiring a licence under the Scrap Metal Dealers Act 2013. The report further stated that a Gwent wide approach be considered for a scrap metal policy. The Cabinet report was further discussed at the Licensing and Regulatory Committee on 22<sup>nd</sup> October 2013.
- 3.2 The Gwent Licensing Forum, which consists of Licensing Officers, Police, Fire Service, Public Health, Security Industry Authority and the Gambling Commission, who deals with Policies and procedures for the Gwent area have drafted a policy to deal with scrap metal applicants.
- 3.3 This report recommends the adoption of the policy derived by the Gwent Licensing Forum, which is attached to this report as Appendix A as stated by Cabinet on 2<sup>nd</sup> October 2013.

3.4 The policy will give guidance to new applicants, existing licence holders, consulates and members of the public as to how the Council will administer and enforce the requirements of the Scrap Metal Dealers Act 2013. The introduction of this policy will give a consistent approach on how Authorities within Gwent will deal with applicants/licence holders under this Act.

#### **4 REASONS**

4.1 The policy is necessary to guide consistent decisions and is intended to be used throughout Gwent.

4.2 The policy will assist to enforce the provisions of the Scrap Metal Dealers Act 2013.

#### **5. RESOURCE IMPLICATIONS:**

None.

#### **6. CONSULTEES:**

Gwent Licensing Forum  
Scrap Metal Dealers licence holders with Monmouthshire County Council  
Heddlu Gwent Police  
British Transport Police  
National Resource Wales  
Industry Associations

#### **7. BACKGROUND PAPERS:**

Scrap Metal Dealers Act 2013

#### **8. AUTHOR:**

Linda O’Gorman Principal Licensing Officer

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**DRAFT SCRAP METAL DEALERS ACT 2013  
STATEMENT OF LICENSING POLICY**

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## APPENDICIES

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- Appendix 2 Relevant Offences & Penalties
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## 1. Introduction

1.1 This Policy which was approved at the meeting of Monmouthshire County Council's Cabinet on \*\*\*\* DATE \*\*\*\*, outlines the requirements of the Scrap Metal Dealers Act 2013 (the Act). It gives guidance to new applicants, existing licence holders, consultants and members of the public as to how the Council will administer and enforce the requirements of the Act.

Though the Act does not stipulate that the Council is required to publish a policy it felt good practice to do so, the Policy will reviewed if required to do so. Monmouthshire County Council (the licensing authority) may depart from its own policy if individual circumstances of any case warrant such a deviation. In such cases the Council will give full reasons for doing so.

Metal theft over recent years has had significant impact on communities, businesses and local authorities alike. Such thefts have seen communications and train networks disrupted, buildings, churches and historic monuments vandalised alongside drainage gully covers, road signage and house hold items being stolen. The Scrap Metal Act 2013 has been created to help prevent some of the previous issues surrounding the sale, collection, storage and disposal of scrap metal.

## The Law

1.2 The Scrap Metal Dealers Act 2013 ("the Act") received Royal Assent on 28 February 2013. The Act repeals the Scrap Metal Dealers Act 1964 (and linked legislation) and Part 1 of Vehicles (Crime) Act 2001 creating a revised regulatory regime for the scrap metal recycling and vehicle dismantling industries.

The Act maintains local authorities as the principal regulator, but replaces the old registration system with a full licensing regime. It grants power to refuse a licence to "unsuitable" applicants and a power to revoke licences if the dealer becomes "unsuitable".

The Act requires a scrap metal dealer to obtain a licence in order to carry on business as a scrap metal dealer.

## Definition of a Scrap Metal Dealer

1.3 A person carries on business as a scrap metal dealer if:

- a) they wholly or partly buy or sell scrap metal (whether or not sold in the form it was bought in)
- or;
- b) they carry on business as a motor salvage operator (see 1.10).

1.4 A person selling scrap metal as surplus materials or as a by-product of manufacturing articles is NOT regarded as a scrap metal dealer.

1.5 Motor salvage operation is defined in the Act as a business that consists wholly or mainly of:

- a) recovering salvageable parts from motor vehicles for re-use or sale and selling the remainder of the vehicle for scrap;
- b) buying written-off vehicles, repairing and reselling them;
- c) buying or selling motor vehicles which are to be the subject of any of the activities mentioned in (a) or (b);
- d) wholly or mainly in activities falling within paragraphs (b) and (c).

1.6 Scrap metal includes:

- a) any old, waste or discarded metal or metallic material, and
- b) any product, article or assembly which is made from or contains metal and is broken, worn out or regarded by its last holder as having reached the end of its useful life.

1.7 Scrap Metal does not include:

- a) Gold;
- b) Silver; or
- c) Any alloy of which 2% or more by weight is attributable to gold or silver.

## 2. Consultation

2.1 There is no requirement, in the Act, for a Council to have in place a formal policy for dealing with applications made under the Scrap Metal Dealers Act 2013. As a process of 'Best Practice' the Council has chosen to adopt a formal policy for this purpose.

2.2 In developing this policy statement, the Council will consult with existing scrap metal dealers/motor salvage operators, Gwent Police, British Transport Police, National Resource Wales and Industry Associations.

## 3. Types of Licences

3.1 Anyone wishing to operate a business will require a site licence or a collector's licence. The licence is valid for three years and permits the holder to operate within the boundaries of the issuing authority. These are:

- **Site Licence** – A licence will be issued by the Council in whose area a scrap metal site is situated. A site licence will require all of the sites at which the licensee carries on the business as a scrap metal dealer, within the local authority area, to be identified and a site manager to be named for each site. This will permit them to operate from those sites including transporting scrap metal to and from those sites from any local authority area.

- **Collectors Licence** – authorises a licence holder to operate as a 'mobile collector' in the area of the issuing local authority area. A mobile collector is a person who a) carries on business as a scrap metal dealer otherwise than at a site, and b) regularly engages, in the course of that business, in collecting waste materials and old, broken, worn out or defaced articles by means of visits from door to door. This permits them to collect any scrap metal as appropriate, including commercial and domestic scrap metal. It does not permit the collector to collect from any other local authority area, separate licences should be obtained from each local authority.

The licence does not permit a licensee to carry on a business at a site within any area. If a collector wishes to use a fixed site, they will need to obtain a site licence from the relevant local authority. There is no restriction as to the location where the collector can transport and sell their material.

3.2 A person may hold more than one licence issued by different authorities, but may NOT hold more than one licence issued by any one local authority.

## 4. Application Process

4.1 When the Council is considering an application, it will have regard to:

- The Scrap Metal Dealers Act 2013;

- Any supporting regulations
- Guidance issued by the Secretary of State
- This statement of licensing policy

4.2 This does not undermine the rights of any person to apply under the 2013 Act for a licence and have the application considered on its individual merits.

4.3 A person carrying on, or proposing to carry on, a business as a scrap metal dealer may apply to the Council to be licensed. The application must be in writing and contain the appropriate mandatory particulars, as set out in Appendix 1.

4.4 A local authority may request that an applicant provide such other information, as it considers relevant, for the purpose of considering the suitability of an applicant. The additional information that is required is set out in Appendix 1.

4.5 The application must be accompanied by the fee set by the Council, under guidance from the Secretary of State with the approval of the Treasury.

4.6 If the applicant fails to provide the information requested, including the additional supporting documentation, the Council may refuse the application as a valid application.

## **5. Suitability of Applicants**

5.1 A local authority must determine whether the applicant is a suitable person to carry on a business as a Scrap Metal Dealer.

5.2 In determining this, the Council may have regard to any information it considers to be relevant, including whether any relevant enforcement action has been taken against the applicant or whether the applicant has been convicted of a relevant offence. A list of relevant offences are set out in Appendix 2.

5.3 The Council must also have regard to any guidance on determining suitability which is issued by the Secretary of State.

5.4 The Council will consult with other agencies regarding the suitability of an applicant, including:

- Any other local authority;
- The Environment Agency;
- The Natural Resources Body for Wales;
- An officer of a police force;
- Local Authority Environmental Health; and
- Trading Standards

## **6. Determination of Application/Issue of Licence**

6.1 Where the Council is satisfied that an applicant is a 'suitable person' to hold a Scrap Metal Dealers Licence, it must issue a licence.

6.2 In reaching its decision the Council will have regard to:

- Whether the applicant or any site manager has been convicted of any unspent relevant offence;

- Whether the applicant or any site manager has been the subject of any relevant enforcement action;
- Any previous refusal to issue or renew a scrap metal licence;
- Any previous refusal for an environment permit or registration;
- Any previous revocation of a scrap metal licence; and
- Whether the applicant has demonstrated that there will be adequate procedures to comply with the Act.
- In exceptional circumstances the Authority may consider convictions for non-relevant offences. Each application will be taken on its own merit and appropriate weight to the information provided will be given.

All of the above will apply to any director, any secretary of a company or any shadow director of the company if the applicant is not an individual.

6.3 If an applicant or any site manager has been convicted of a relevant offence, the Council may include in the licence one or both of the following conditions:

- To limit the dealer to receiving any metal within the hours of 9.00am to 5.00pm;

and

- That any scrap metal must be kept in the form in which it is received for a specified period of time, not exceeding 72 hours.

6.4 Where the Council is not satisfied that an applicant is a 'suitable person' to hold a Scrap Metal Dealers Licence, or a licence holder is no longer considered 'suitable' to continue to hold a licence, the Council must consider refusing the application or revoking the licence where a licence has been issued.

### **Right to Make Representations**

6.5 If the Council proposes to refuse an application or to revoke/vary a licence a notice must be issued to the applicant/licensee setting out what the authority proposes to do and the reasons for this. The notice must also state that within the period specified the applicant/licensee can either:

- a) make representations about the proposal; or
- b) inform the authority that the applicant/licensee wishes to do so.

6.6 The period specified in the notice must be not less than 14 days beginning with the date on which the notice is given to the applicant/licensee. Within this time the applicant/licensee must notify the Council that they do not wish to make representations. Should this period expire the applicant/licensee has not made representations, or informed the authority of their wish to do so the authority may refuse the application, or revoke or vary the licence.

6.7 If, within the period specified, the applicant/licensee informs the authority that they wish to make representations, the authority must allow a reasonable period to make representations and may refuse the application or revoke or vary the licence if they fail to make representations within that period.

6.8 If the applicant/licensee notifies the authority that they wish to make oral representations, the authority must give them the opportunity of appearing before, and being heard by, a person appointed by the authority. In this instance, this will be before the Cabinet Member(s) and Licensing and Regulatory Committee.

It will be common practice for those agencies that have made representations regarding the application to also be in attendance at the hearing and will be able to present their case before the Cabinet Member(s) who will make a decision regarding the representation.

### **Notice of Decisions**

7.0 If the application is refused, or the licence is revoked or varied, the Council must give a notice to the applicant/licensee setting out the decision and the reasons for it. The notice must also state that the applicant/licensee may appeal against the decision, the time within which the appeal may be brought and, if revoked or varied, the date on which the revocation or variation is to take effect.

### **8. Variation of Licence**

8.1 An applicant can, on application, apply to the Council to vary licence by changing it from one type to another. The variation application must be made to reflect changes to:

- Site licence – name of licensee, the sites, site manager
- Collector's licence – name of licensee

The variation can amend the name of the licensee but not transfer the licence to another person.

8.2 Application is to be made to the issuing authority and contain particulars of the changes to be made to the licence.

### **9. Revocation of Licence**

9.1 The authority may revoke a scrap metal licence if it is satisfied that the licensee does not carry on the business of scrap metal dealing at any of the sites identified in the licence.

9.2 The authority may revoke a licence if it is satisfied that a site manager named in the licence does not act as site manager at any of the sites identified in the licence.

9.3 The authority may revoke a licence if it is no longer satisfied that the licensee is a suitable person to carry on a business as a scrap metal dealer.

9.4 A revocation or variation under this section comes into effect when no appeal under section 16.9 is possible in relation to the revocation or variation, or when any such appeal is finally determined or withdrawn.

9.5 If the authority considers that the licence should not continue in force without conditions, it may by notice provide:

a) that, until a revocation under this section comes into effect, the licence is subject to one or both of the conditions set out in section 7.2; or

b) that a variation under this section comes into effect immediately.

### **Appeals**

An applicant may appeal to the Magistrates' Court against the refusal of an application or a variation. The licensee may appeal to a Magistrates' Court against the inclusion in a licence of a condition under section 7.2 or the revocation or variation of a licence under section 9.

An appeal must be made within 21 days beginning on the day the notice to refuse the application, to include the condition or to revoke or vary the licence under section 7 was given.

The procedure on an appeal under this paragraph is to be by way of complaint for an order and in accordance with the Magistrates' Court Act 1980. For the purposes of the time limit for making an appeal, the making of the complaint is to be treated as the making of the appeal.

On appeal, the Magistrates' Court may confirm, vary or reverse the Council's decision, and give such directions as it considers appropriate having regard to the provisions of the Act

## **10. Register of Licences**

10.1 The **National Resource Wales** must maintain a register of scrap metal licences issued by authorities in Wales.

10.2 Each entry must record:

- a) the name of the authority which issued the licence;
- b) the name of the licensee;
- c) any trading name of the licensee;
- d) the address of the site identified in the licence;
- e) the type of licence; and
- f) the date on which the licence is due to expire.

10.3 The registers are to be open for inspection to the public.

## **11. Notification Requirements**

11.1 An applicant for a scrap metal licence, or for the renewal or variation of a licence, must notify the authority to which the application was made of any changes which materially affect the accuracy of the information which the applicant has provided in connection with the application.

11.2 A licensee who is not carrying on business as a scrap metal dealer in the area of the authority which issued the licence must notify the authority within 28 days.

11.3 If a licence is issued to a business under a trading name the licensee must notify the authority which issued the licence of any change to that name within 28 days.

11.4 An authority must notify the National Resource Wales, of –

- a) any notification given to the authority under section 11.2 or 11.3;
- b) any variation made by the authority under section 8 (variation of type of licence or matters set out in licence); and
- c) any revocation of the authority of a licence.

11.5 Notification under subsection 11.4 must be given within 28 days of the notification, variation or revocation in question.

11.6 Where the authority notifies the National Resource Wales under subsection 11.4, the body must amend the register under section 10 accordingly.

## **12. Display of Licence**

12.1 A copy of a site licence must be displayed at each site identified in the licence. The copy must be displayed in a prominent place in an area accessible to the public.

12.2 A copy of a collector's licence must be displayed on any vehicle that is being used in the course of the dealer's business. This must be displayed in a manner which enables it easily to be read by a person outside the vehicle.



### **13. Verification of Supplier's Identity**

13.1 Prior to receiving scrap metal the scrap metal dealer must verify the person's full name and address by reference to documents, data or other information obtained from a reliable and independent source.

13.2 Should verification not be gained then each of the following are guilty of an offence:

- a) the scrap metal dealer;
- b) if metal is received at the site, the site manager;
- c) any person who, under arrangements made by a person within paragraph (a) or (b), has responsibility for verifying the name and address.

### **14. Payment for Scrap Metal**

14.1 A scrap metal dealer must only pay for scrap metal by either:

- a) a cheque (which is not transferrable under Section 81A Bills of Exchange Act 1882); or
- b) electronic transfer of funds (authorised by a credit, debit card or otherwise).

14.2 Payment includes payment in kind – with goods or services.

### **15. Records: Receipt of Metal**

15.1 If any metal is received in the course of the dealer's business the dealer must record the following information:

- a) description of the metal, including its type (types if mixed), form, condition, weight and any marks identifying previous owners or other distinguishing features;
- b) date and time of receipt;
- c) the registration mark of the vehicle delivered by;
- d) full name and address of person delivering it;
- e) full name of the person making payment on behalf of the dealer.

15.2 The dealer must keep a copy of any documents used to verify the name and address of the person delivering the metal.

15.3 If payment is made via cheque, the dealer must retain a copy of the cheque.

15.4 If payment is made via electronic transfer, the dealer must keep a receipt identifying the transfer, or (if no receipt identifying the transfer) record particulars identifying the transfer.

### **16. Records: Disposal of Metal**

16.1 The Act regards the metal to be disposed of:

- a) whether or not in the same form it was purchased;
- b) whether or not the disposal is to another person;
- c) whether or not the metal is despatched from a site.

16.2 Where the disposal is in the course of business under a site licence, the following must be recorded:

- a) description of the metal, including its type (or types is mixed), form and weight;

- b) date and time of disposal;
- c) if to another person, their full name and address;
- d) if payment is received for the metal (by sale or exchange) the price or other consideration received.

16.3 If disposal is in the course of business under a collector's licence, the dealer must record the following information:

- a) the date and time of the disposal;
- b) if to another person, their full name and address.

## **17. Records: Supplementary**

17.1 The information in sections 15 and 16 must be recorded in a manner which allows the information and the scrap metal to which it relates to be readily identified by reference to each other.

17.2 The records mentioned in section 15 must be marked so as to identify the scrap metal to which they relate.

17.3 Records must be kept for a period of 3 years beginning with the day on which the metal is received or (as may be the case) disposed of

17.4 If a scrap metal dealer fails to fulfil a requirement under section 15 and 16 or this section each of the following is guilty of an offence:

- a) the scrap metal dealer;
- b) if the metal is received at or (as the case may be) despatched from a site, the site manager;
- c) any person who, under arrangements made by a person within paragraph (a) or d) has responsibility for fulfilling the requirement.

17.5 It is a defence for a person within subsection 17.4 (a) or (b) who is charged with an offence under this section to prove that the person

- a) made arrangements to ensure that the requirement was fulfilled,

and

- b) took all reasonable steps to ensure that those arrangements were complied with.

## **19. Compliance**

19.1 The Act provides a Police Constable and an Officer from the Council with a right to enter and inspect the premises of licensed and unlicensed scrap metal dealers. The full provisions of the powers are set out in Appendix 3.

19.2 The Act does not provide an Officer of the Council with the power to inspect premises of licensed and unlicensed scrap metal dealers outside the area of the authority.

19.3 The Council delivers a wide range of compliance services aimed at safeguarding the environment and the community and at providing a 'level playing field' on which businesses can fairly trade.

19.4 The administration and compliance of the licensing regime is one of these services.

19.5 Compliance will be based on the principles that businesses should:

- Receive clear explanations from regulators of what they need to do and by when;

- Have an opportunity to resolve differences before compliance action is taken, unless immediate action is needed;
- Receive an explanation of their right of appeal.

19.6 The council recognises the interest of both citizens and businesses and will work closely, with partners, to assist licence holders to comply with the law. However, proportionate but firm action will be taken against those who commit serious offences or consistently break the law.

## **20. Closure of Unlicensed Sites**

### **20.1 Interpretation**

A person with an interest in a premises is the owner, leaseholder or occupier of the premises. Local authority powers are exercisable only in relation to premises in the authority's area.

### **20.2 Closure Notice**

Not applicable if the premises are residential premises. A constable or the local authority must be satisfied that the premises are being used by a scrap metal dealer in the course of business and that the premises are not a licensed site.

A 'closure notice' may be issued by a constable or local authority which states they are satisfied of the above, the reasons for that, that the constable or local authority may apply to the court for a closure order and specifies the steps which may be taken to ensure that the alleged use of the premises ceases.

The notice must be given to the person who appears to be the site manager of the premises and any person who appears to be a director, manager or other officer of the business in question. The notice may also be given to any person who has an interest in the premises.

The notice must be given to a person who occupies another part of any building or structure of which the premises form part and the constable or local authority believes at the time of giving the notice, that the person's access to that other part would be impeded if a closure order were made in respect of the premises.

### **20.3 Cancellation of Closure Notice**

A 'cancellation notice' issued by a constable or local authority may cancel a closure notice. This takes effect when it is given to any one of the persons to whom the closure notice was given. This must also be given to any other person to whom the closure notice was given.

### **20.4 Application for Closure Order**

When a closure notice has been given, a constable or the local authority may make a complaint to the justices of the peace for a closure order. This may not be made less than 7 days after the date on which the closure notice was given or more than 6 months after that date.

A complaint under this paragraph may not be made if the constable or authority is satisfied that the premises are not (or are no longer) being used by a scrap metal dealer in the course of business and there is no reasonable likelihood that the premises will be so used in the future. The justice may issue a summons to answer to the complaint. This must be directed to anyone whom the closure notice was given and must include the date, time and place at which the complaint will be heard.

## **20.5 Closure Order**

A closure order requires that a premises be closed immediately to the public and remain closed until a constable or the local authority makes a termination of closure order by certificate. The use of the premises by a scrap metal dealer in the course of business be discontinued immediately and that any defendant pay into court such sum as the court determines and that the sum will not be released by the court to that person until the other requirements of the order are met.

The closure order may include a condition relating to the admission of persons into the premises, the access by persons to another part of any building or other structure of which the premises form part.

A closure order may include such provision as the court considers appropriate for dealing with the consequences if the order should cease to have effect. As soon as practicable after the closure order is made, the complainant must fix a copy of it in a conspicuous position on the premises in respect of which it was made.

A sum ordered to be paid into court under a closure order is to be paid to the designated officer for the court.

## **20.6 Termination of Closure Order by Certificate**

Once a closure order has been made and a constable or local authority is satisfied that the need for the order has ceased a certificate may be made. This ceases the closure order and any sum paid into a court is to be released by the court to the defendant.

As soon as is practicable after making a certificate, a constable or local authority must give a copy to any person against whom the closure order was made, give a copy to the designated officer for the court which made the order and fix a copy of it in a conspicuous position on the premises in respect of which the order was made.

A copy of the certificate must be given to any person who requests one.

## **20.7 Discharge of Closure Order by Court**

A closure order may be discharged by complaint to a justice of the peace. This can be done by any person to whom the relevant closure notice was given or any person who has an interest in the premises but to whom the closure notice was given.

The court will make a discharge order if it is satisfied that there is no longer a need for the closure order. The justice may issue a summons directed to a constable as the justice considers appropriate or the local authority, requiring that person appear before the magistrates' court to answer to the complaint.

If a summons is issued, notice of the date, time and place at which the complaint will be heard must be given to all persons to whom the closure notice was given (other than the complainant).

## **20.8 Appeal**

Appeal may be made to the Crown Court against:

- a) a closure order;
- b) a decision not to make a closure order;
- c) a discharge order;
- d) a decision not to make a discharge order.

The appeal must be made before the end of 21 days beginning with the day on which the order or decision in question was made.

An appeal under a) or b) may be made by any person to whom the relevant closure notice was given or any person who has an interest in the premises but to whom the closure notice was not given.

An appeal under b) and c) may be made by a constable or the local authority.

### **20.9 Enforcement of Closure Order**

A person is guilty of an offence, without reasonable excuse, if they permit a premises to be open in contravention of a closure order, or fails to comply with, or does an act in contravention of a closure order.

If the closure order has been made, a constable or a person authorised by the local authority may (if necessary using reasonable force) enter the premises at any reasonable time, and having entered the premises, do anything reasonably necessary for the purpose of securing compliance with the order.

If the owner, occupier or other person in charge of the premises requires the officer to produce evidence of identity or evidence of authority to exercise powers, the officer must produce that evidence.

### **21. Delegation of Authority**

21.1 Decisions on licensing matters will be taken in accordance with the approved scheme of delegation in Appendix 5 aimed at underlining the principles of timely, efficient and effective decision making.

21.2 This scheme will be subject to amendment from time to time as shown in the Council's Constitution.

## **APPENDIX 1**

### **1. APPLICATION PROCESS**

An application for a licence should be made to the following address:

Licensing Section  
Monmouthshire County Council,  
The Drama Centre,  
Pen-y-Pound,  
Abergavenny,  
Monmouthshire,  
NP7 5UD.

Full details regarding making application can be found on [www.monmouthshire.gov.uk](http://www.monmouthshire.gov.uk) or by contacting the Licensing Team on 01873 735420

## APPENDIX 2

### RELEVANT OFFENCES

The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013

The Secretary of State, in exercise of the powers conferred by sections 3(3)(b) and (c) and 20(4) of the Scrap Metal Dealers Act 2013(1) makes the following Regulations:

#### Citation, commencement and interpretation

1. (1) These Regulations may be cited as the Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013 and shall come into force on 1st October 2013.

(2) In these Regulations—

“environment-related offence” means an offence which relates to the transportation, shipment or transfer of waste, or to the prevention, minimisation or control of pollution of the air, water or land which may give rise to any harm;

“harm” means:

- (i) harm to the health of human beings or other living organisms;
- (ii) harm to the quality of the environment;
- (iii) offence to the senses of human beings;
- (iv) damage to property; or
- (v) impairment of, or interference with, amenities or other legitimate uses of the environment.

#### Relevant offences

2. For the purposes of section 3(3)(b) of the Scrap Metal Dealers Act 2013, “relevant offence” means any offence specified in the Schedule to these Regulations, and includes an offence of—

- (a) attempting or conspiring to commit any offence falling within the Schedule;
- (b) inciting or aiding, abetting, counselling or procuring the commission of any offence falling within the Schedule, and
- (c) an offence under Part 2 of the Serious Crime Act 2007(2) (encouraging or assisting crime) committed in relation to any offence falling within the Schedule.

#### Relevant enforcement action

3. For the purposes of section 3(3)(c) of the Scrap Metal Dealers Act 2013, a person is the subject of “relevant enforcement action” if—

- (a) the person has been charged with an offence specified in the Schedule to these Regulations, and criminal proceedings in respect of that offence have not yet concluded; or
- (b) an environmental permit granted in respect of the person under the Environmental Permitting (England and Wales) Regulations 2010 (3) has been revoked in whole, or partially revoked, to the extent that the permit no longer authorises the recovery of metal.

## SCHEDULE

### PART 1

#### Primary Legislation

- (a) An offence under section 1, 5, or 7 of the Control of Pollution (Amendment) Act 1989(4)
- (b) An offence under section 170 or 170B of the Customs and Excise Management Act 1979(5), where the specific offence concerned relates to scrap metal
- (c) An offence under section 110 of the Environment Act 1995(6)
- (d) An offence under sections 33, 34 or 34B of the Environmental Protection Act 1990(7)
- (e) An offence under section 9 of the Food and Environment Protection Act 1985(8)

- (f)An offence under section 1 of the Fraud Act 2006(9), where the specific offence concerned relates to scrap metal, or is an environment-related offence
- (g)An offence under section 146 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(10)
- (h)An offence under sections 327, 328 or 330 to 332 of the Proceeds of Crime Act 2002(11)
- (i)Any offence under the Scrap Metal Dealers Act 1964(12)
- (j)Any offence under the Scrap Metal Dealers Act 2013
- (k)An offence under sections 1, 8,9,10, 11, 17, 18, 22 or 25 of the Theft Act 1968(13), where the specific offence concerned relates to scrap metal, or is an environment-related offence
- (l)Any offence under Part 1 of the Vehicles (Crime) Act 2001(14)
- (m)An offence under sections 85, 202, or 206 of the Water Resources Act 1991(15).

## PART 2

### Secondary Legislation

- (a)An offence under regulation 38 of the Environmental Permitting (England and Wales) Regulations 2007(16)
- (b)An offence under regulation 38 of the Environmental Permitting (England and Wales) Regulations 2010(17)
- (c) Any offence under the Hazardous Waste (England and Wales) Regulations 2005(18)
- (d) Any offence under the Hazardous Waste (Wales) Regulations 2005(19)
- (e) An offence under regulation 17(1) of the Landfill (England and Wales) Regulations 2002(20)
- (f) Any offence under the Pollution Prevention and Control (England and Wales) Regulations 2000(21)
- (g)Any offence under the Producer Responsibility (Packaging Waste) Regulations 2007(22)
- (h) Any offence under the Transfrontier Shipment of Waste Regulations 1994(23)
- (i) Any offence under the Transfrontier Shipment of Waste Regulations 2007(24)
- (j) Any offence under the Waste (Electrical and Electronic Equipment) Regulations 2006(25)
- (k) An offence under regulation 42 of the Waste (England and Wales) Regulations 2011(26).

### Summary of Rehabilitation Periods Applicable to Certain Sentences (Section 5 Rehabilitation of Offenders Act 1974)

Sentence	Rehabilitation Period
<b>sentence of imprisonment, detention in a young offenders institution or youth custody or corrective training for a term exceeding six months but not exceeding thirty months.</b>	<b>Ten Years</b>
<b>A sentence of cashiering, discharge with ignominy or dismissal with disgrace from Her Majesty's service.</b>	<b>Ten Years</b>
<b>A sentence of imprisonment, detention in a young offender's institution or youth custody for a term not exceeding six months.</b>	<b>Seven Years</b>
<b>A sentence of dismissal from Her Majesty's service</b>	<b>Seven Years</b>
<b>Any sentence of detention in respect of a conviction in service disciplinary proceedings</b>	<b>Five Years</b>
<b>A fine or any other sentence subject to rehabilitation under this Act</b>	<b>Five Years</b>

Rehabilitation periods are subject to a reduction by half for persons under eighteen.



## **APPENDIX 3**

### **COMPLIANCE - RIGHT OF ENTRY**

1. A constable or an officer of the Council may enter and inspect a licensed site at any reasonable time on notice to the site manager.
2. A constable or an officer of the Council may enter and inspect a licensed site at any reasonable time, otherwise than on notice to the site manager, if
  - a) reasonable attempts to give notice have been made and failed,or
  - b) entry to the site is reasonably required for the purpose of ascertaining whether the provisions of this Act are being complied with or investigating offences under it and (in either case) the giving of the notice would defeat that purpose.
3. (1) and (2) above do not apply to residential premises.
4. A constable or an officer of the Council is not entitled to use force to enter a premises in the exercise of the powers under sections (1) and (2) above.
5. A justice of the peace may issue a warrant authorising entry to any premises within section 6 below if the justice is satisfied by information on oath that there are reasonable grounds for believing that entry to the premises is reasonably required for the purpose of:
  - a) securing compliance with the provisions of the Act, or
  - b) ascertaining whether those provisions are being complied with.
6. Premises are within this section if:
  - a) the premises are a licensed site, or
  - b) the premises are not a licensed site but there are reasonable grounds for believing that the premises are being used by a scrap metal dealer in the course of business
7. The warrant is a warrant signed by the justice which:
  - a) specifies the premises concerned, and
  - b) authorises a constable or an officer of a local authority to enter and inspect the premises at any time within one month from the date of the warrant.
8. A constable or an officer of the Council may, if necessary, use reasonable force in the exercise of the powers under a warrant under section 5.
9. A constable or an officer of the Council may:
  - a) require production of, and inspect, any scrap metal kept at any premises mentioned in section 1 or 2 or in a warrant under section 5;
  - b) require production of, and inspect, any records kept in accordance with section 15 or 16 and any other records relating to payment for scrap metal;
  - c) take copies of or extracts from any such records.
10. Section 11 below applies if a constable or an officer of the Council who seeks to exercise powers under this section in relation to any premises.
11. If the owner, occupier or other person in charge of the premises requires the officer to produce:

- a) evidence of the officer's identity, or
- b) evidence of the officer's authority to exercise those powers the officer must produce that evidence.

12. In the case of an officer of the Council, the powers under this section are exercisable only in relation to premises in the area of the authority.

## APPENDIX 4

### DELEGATION OF POWERS

Matter to be dealt with	Cabinet	Head of Regulatory Services	Officer	Cabinet Member
Determination of Fees	X	X	X	Yes
Application for Site licence or Collectors licence	X	If a relevant representation is made.	If no relevant representation is made	X
Application to vary Site licence	X	If a relevant representation is made.	If no relevant representation is made	X
Application to revoke site licence or collectors licence	X	Yes	X	X
The inclusion of conditions on a licence	X	Yes	X	X
Issue of a Closure Notice	X	X	Yes	X
Cancellation of a Closure Notice	X	X	Yes	X
Application for a Magistrates Closure Order	X	X	In conjunction with legal.	X