

10th June 2014**Notice of meeting:****Licensing & Regulatory Committee****Tuesday, 17th June 2014 at 10.00a.m.****Council Chamber, County Hall, The Rhadyr, Usk, NP15 1GA****AGENDA**

The Council welcomes contributions from members of the public through the medium of Welsh or English. We respectfully ask that you provide us with adequate notice to accommodate your needs.

Item No	Item
1.	Election of Chairman.
2.	Appointment of Vice-Chairman.
3.	Apologies for absence.
4.	Declarations of Interest.
5.	To confirm for accuracy the minutes of the Licensing and Regulatory Committee held on Tuesday 6 th May 2014 (copy attached).
6.	To consider a report by the Public Protection Manager entitled 'Audit of Food Law Delivery Service' (copy attached).
7.	To consider a report by Senior Licensing Officer entitled 'Hackney Carriage and Private Hire Driver and Vehicle Conditions' (copy attached).
8.	To consider the following reports by the Principal Licensing Officer (copies attached): <ul style="list-style-type: none">(i) Intended use Policy for the Licensing of Hackney Carriages.(ii) Hackney Carriage and Private Hire Licensing Policy – Fitness Criteria for Drivers and Operators.(iii) Scrap Metal Dealers Act 2013 – Statement of Licensing Policy.(iv) Street Trading Consents – Amendment of Policy.

<p>9.</p> <p>10.</p> <p>11.</p> <p>12.</p>	<p>To consider whether to exclude the press and public from the meeting during consideration of the following item of business in accordance with Section 100A of the Local Government Act 1972 on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 12 of Part 4 of Schedule 12A to the Act, having regard to the certificates prepared under Schedule 12A of the Local Government Act 1972 – Exemption From Disclosure of Documents (Proper Officer’s view attached).</p> <p>To consider the following report presented on behalf of the Chief Officer Regeneration and Culture (copy attached):</p> <p>To consider the application in Respect of Private Hire Drivers Licence.</p> <p>To note the date and time of the next Licensing and Regulatory Committee:</p> <ul style="list-style-type: none">• Tuesday 29th July 2014 at 10.00am <p>To consider the timing of future Licensing and Regulatory Committee Meetings.</p>
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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. Prosser
- B. Strong
- F. Taylor
- P. Watts
- A.E. Webb

Aims and Values of Monmouthshire County Council

Building Sustainable and Resilient Communities

Outcomes we are working towards

Nobody Is Left Behind

- Older people are able to live their good life
- People have access to appropriate and affordable housing
- People have good access and mobility

People Are Confident, Capable and Involved

- People's lives are not affected by alcohol and drug misuse
- Families are supported
- People feel safe

Our County Thrives

- Business and enterprise
- People have access to practical and flexible learning
- People protect and enhance the environment

Our priorities

- Schools
- Protection of vulnerable people
- Supporting Business and Job Creation

Our 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.

MONMOUTHSHIRE COUNTY COUNCIL

**Minutes of the meeting of the Licensing and Regulatory Committee held at
County Hall, Usk on Tuesday 6th May 2014 at 10.00 a.m.**

PRESENT: County Councillor: L. Guppy (Chairman)

County Councillors: R. Edwards, D.J. Evans, R.J. Higginson, S. Howarth, J. Prosser, B. Strong and P. Watts.

OFFICERS IN ATTENDANCE:

Mr G. Perry	- Public Protection Manager
Mrs L. O' Gorman	- Principal Licensing Officer
Mr H. Owen	- Specialist Environmental Health Officer
Mrs P. Perkins	- Legal Assistant
Mrs S. King	- Senior Democratic Services Officer

APOLOGIES FOR ABSENCE

1. Apologies for absence were received from County Councillors R. Chapman, J. Marshall and A.E. 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 11th March 2014 were confirmed as a correct record and signed by the Chairman, subject to the following amendment:

- **Item 5, Page 4 – change to *'renewal rate of £364 which is fair and equitable.'***

SUB COMMITTEE MINUTES

4. The minutes of the Licensing Sub Committee meeting held on 28th October 2013 were confirmed as a correct record and signed by the Chairman, subject to the following amendment: .

- **Change to Header on page 2 onwards, meeting date Monday 28th October 2013.**

**Minutes of the meeting of the Licensing and Regulatory Committee held at
County Hall, Usk on Tuesday 6th May 2014 at 10.00 a.m.**

PRESENTATION – ‘GIVE DOG FOULING THE RED CARD’ PILOT SCHEME

5. The Public Protection Manager introduced the Specialist Environmental Health Officer and we received a presentation on ‘Give Dog Fouling the Red Card’ pilot scheme.

During the presentation we noted the following points:

- We were advised that information would be presented relating to the Dog Fouling and Littering Working Group in Severnside.
- There was a recognised problem in terms of dog fouling.
- The Officer was responsible for leading the public health team, public health covers wide range of issues, problems with living conditions, noise, smell, pest, a variety of issues.
- One problem where complaints had been received was dog fouling, 160-180 complaints received per year. Emotive subject and the problem was apparent in Monmouthshire, as well as other authorities.
- Monmouthshire County Council does not have a statutory duty to deal with dog fouling, however, Environmental Health have a power to act.
- There is statutory legislation in place which makes dog fouling an offence in certain designated areas, Monmouthshire County Council designated these in 1996.
- In 2011 PCSO’s were empowered to give fixed penalty notices of £75, which would be reduced to £50 if paid within 10 days. The problem identified was catching people, the majority of offences happen late at night or early morning, when there are no witnesses. Patrolling had not been an effective means of tackling the problem.
- Severnside Area Committee established a working group, as complaints had been received. Minimal resources had been used and there was a two prong attack to help improve situation and the 6 month pilot commenced 30th April, main focus:
 - Raise awareness, with dog owners so they’re aware of public health concerns.
 - Branding ‘give dog fouling the red card’ signs gone up in area with that information.
 - Most people associate with penalties (football link).
 - Funding received from tidy towns.
 - Spray paint received, and volunteers spraying dog faeces – to try to appeal to people’s social conscious.
 - Will only reduce incidents by raising awareness.
- There was a requirement to generate local peer pressure:
 - In the past, the public have contacted Environmental Health and a letter was sent to the offender, however, this does not have as much impact as the team would like.
 - In future, will go to community councils for them to contact individual (face to face or written).
 - Bags will also be provided by community councils to encourage.

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- Some concerns had been expressed from Community Councils, in relation to the amount of work involved. Complaints would be passed to the relevant Town/Community Council, the aim was to raise awareness and add to social conscious of problem.
- Need local solutions to local problems.
- Not dissolving all responsibilities, if someone is prepared to give witness statement then it would be possible or a fixed penalty notice to be issued. If the penalty is not paid then it would be followed with court action.

Members were invited to comment and ask questions, during discussion we noted the following:

- Statutory duties were linked with specified issues i.e. air pollution.
- The Legal Officer advised that an Act would specify that a local authority 'must', but if it was not a statutory duty it would state 'may'.
- The local authority would have a power to act as dog fouling would be an offence.
- The street cleansing section would be responsible for cleaning streets and litter picking, dog fouling would be considered within this remit. The dog fouling act enables the authority to designate zones that are covered and would be considered an offence i.e. residential area, parks, play areas, pavements, roads, however, not all locations would be covered.
- A query was raised regarding dog faeces being considered as contaminated waste and concerns were expressed that bins within the community were not collected weekly. We were advised that regulations were complicated and it was highlighted that waste can be disposed in bins and household refuse. Monmouthshire County Council would provide the opportunity i.e. waste bins and refuse collection. The position regarding contaminated waste would be clarified.
- Some complaints had been made to local members regarding dog fouling bins not being emptied. The role of Environmental Health would be enforcement, bins should be used more and should be emptied more. However, there would be an added cost.
- It was noted that Town/Community councils were using different contractors. It was suggested that by collaborating there may be savings achieved by using the same contractor. However, it was advised that one contractor should not cover the whole county.
- Officers do not have the capacity to patrol streets and it had been recognised that most offences occurred during the night.
- We were advised that waste collection was not the responsibility of Environmental Health department and clarification would be provided regarding the collection process.
- A member highlighted that dog fouling was a problem within their ward and identified two factors, 1) need to educate people and catch them and 2) fines should be issued.

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- The pilot would be operated for 6 months and it was agreed that feedback would be obtained from participating Town/Community Councils. It was anticipated that it would be rolled out across Monmouthshire County Council if a success. The focus was to have a single brand across Monmouthshire, to increase awareness and make people more aware of issues.
- Members endorsed the pilot scheme. It was suggested that the initiative could be scrutinised and monitored by the Strong Communities Select Committee.
- It was highlighted that areas were identified in 1996 and members requested detail of the specific areas that could be promoted.
- There were no dog control areas in Monmouthshire as certain areas would have to be specified and it could not apply to the whole County generally.
- Members were advised that few people were prepared to give witness statement, however, sufficient information could be obtained for officers to progress issue.

NOISE POLLUTION

5a. The Public Protection Manager invited the Specialist Environmental Officer to provide information to the committee in relation to noise pollution and during discussion we noted the following points:

- Noise is blight on people's lives and can be the narrow end of antisocial behavioural problems. The Environmental Health Team deal with issues well, particularly neighbour to neighbour issues which do not want to be escalated and cause further problems, to worsen the situation. Mediation would be the first action.
- Committee would be concerned with noise from licensed premises and should be aware of scale of workload in that area.
- There was a great deal of importance on liaising with licensing section, to deal effectively and efficiently with problems of premises.
- On average there were 350-450 noise complaints annually, of these 40% related to barking dogs, 13% related to commercial premises. The Licensing Section undertakes significant work in terms of controlling licenses conditions. It reflects fairly the low level of complaints, by following the robust conditions implemented when license issued.
- In relation to noise from isolated premises, the complaints policy is that anonymity of complainant is protected. Details would be taken and the licensee would be contacted and responsibilities would be highlighted. There is no definition of statutory nuisance, each case would be taken on its own merits but encourage owners to be responsible.
- Complaints made to the police are logged, which would be discussed at meetings with licensing section and would be subject to review.
- The team try to respond to the complainant within 3 working days. However, most offences occur out of hours. If complainants return as the problem is repeated, then the team would install noise monitoring equipment and officers would listen to evidence and the appropriate action would be progressed.

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- If there are a number of complaints that raise concern or situations where the licensee has not compromised, then a meeting would be arranged with Police, Environmental Health and Licensing section to clarify expectations.
- Fireworks would be an offence and the team have a role in investigating as a statutory nuisance, however, very few complaints are received.
- As offences often take place out of hours, the complainant should ring the police or County Hall emergency number. Designated officers could be contacted in an emergency, however, the majority of noise complaints would not be considered an emergency and the resources were not available for an out of hours line to be operated by the Environmental Health team.
- In most cases complainants would contact the police, and they would respond which is effective in most cases. A report would be received by Monmouthshire County Council, which would trigger officer involvement. Once the complaint is received, the team would do everything possible to resolve.
- It was noted that officers would attend various sites on bank holidays and during events to listen to noise, but resources were not available to attend frequently and operate an out of hours service.
- Planned out of hours visits are undertaken, to see if there is a basis for complaints, but it is not possible to visit one off incidents as complaints are made.
- Members were reminded of the process and the importance and impact regarding public health that noise issues can present.

We thanked the officer for attending and providing the information.

GAMBLING ACT 2005 – PREMISES LICENCE FEES

6. We received a report from the Principal Licensing Officer, which agreed the fees to set for the Authority in relation to Premises Licences under the Gambling Act 2005 for 21st May 2014 to 20th May 2015.

The Authority currently licence eleven premises under the Gambling Act 2005 consisting of nine betting premises, one track betting and one adult gaming centre all of whom will be required to pay an annual fee.

The European Services Directive, along with other regulations, statutory guidance and case law underline that fees must be set on a “reasonable” cost recovery basis only and cannot be set in such a manner as to generate a profit or act as an economic deterrent to traders. In determining reasonable costs the Authority may take account of costs averaged over a reasonable period (up to three years). However, The Regulations referred to in 3.4 above has stipulated a maximum figure a local authority is permitted to charge for the licensing of premises under the Gambling Act 2005.

An assessment of the cost and the maximum amount a local authority can charge for premises licenses had been undertaken and was presented as an appendix to the report. As a result of this assessment the report proposed that the fees commencing the 21st May 2014 be set as stipulated in Appendix A.

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We resolved to agree recommendations within the report as follows:

- (i) the fees and charges detailed in Appendix A of the report be approved and have effect from 21st May 2014; and
- (ii) The fees subsequently be reviewed annually.

DATE OF NEXT MEETING

7. We noted the date and time of the next Licensing and Regulatory Committee as Tuesday 17th June 2014 at 10.00am.

The meeting ended at 11.25am.

**MONMOUTHSHIRE COUNTY COUNCIL
REPORT**

SUBJECT:	Audit of Food Law Delivery Service
DIRECTORATE:	Chief Executives
MEETING:	Licensing and Regulatory Committee
Date to be considered:	17th June 2014
DIVISION/WARDS AFFECTED:	All Wards

1. PURPOSE:

1.1 To receive a report summarising an audit, by the Food Standards Agency, of the Council's Food Law delivery service.

2 BACKGROUND

2.1 Unitary authorities in Wales have responsibility, as Food Authorities, for enforcement of UK law relating to food safety, hygiene, composition, labelling, imported food and feeding stuffs. The Food Law (Wales) Code of Practice is issued under section 40 of the Food Safety Act 1990, regulation 24 of the Food Hygiene (Wales) Regulations 2006 and regulation 6 of the Official Feed and Food Controls (Wales) Regulations 2007. The code sets out the expectations upon local authorities in delivering these responsibilities. Food Authorities are required under the legislation referred to above to have regard to this Code when discharging their duties.

2.2 Functions of the Secretary of State were transferred to the National Assembly for Wales (under the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672)) and they are now exercisable by Welsh Ministers pursuant to paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

2.3 In the UK, the Central Competent Authority is the Food Standards Agency. The Agency has powers to set standards and monitor and audit local authority food and feed law enforcement services. The Agency's audits assess an authority's conformance against the Food Law Code of Practice and the Food Law Enforcement Standard ("The Standard").

3 Monmouthshire's Audit

3.1 Monmouthshire was audited as part of a three year programme (2013 – 2016) of full audits of the 22 local authorities in Wales and was the first Authority to be audited. The audit covered the Authority's food hygiene and food standards law enforcement services. The on-site element of the audit took place at the authority's offices at Magor and Abergavenny on 20 - 22 February and 4 - 5 March 2013 (sic), and included verification visits at food businesses to assess the effectiveness of official controls implemented by the authority, and more specifically, the checks carried out by the authority's officers, to verify food business operator (FBO) compliance with legislative requirements. The authority's animal feed law enforcement service was not included within the scope of the audit. The potential for delivering this service collaboratively in Wales was being considered at the time of the audit. Consequently, it was agreed, between the FSA and the Public Protection manager, that feeding stuffs would be audited later in the audit cycle.

4. The Report

4.1 The final report was received on 18th March 2014. The report (which includes an executive summary) sets out the auditors' findings in relation to systems and procedures in place for: inspections of food businesses, food sampling, internal management, investigation and control of outbreaks and food related infectious disease, advice to business, enforcement and food safety promotion. It identifies where the auditors consider the authority has particular strengths and also sets out what the auditors consider are key areas for improvement. It sets out the auditors recommendations for action to ensure conformance with "the Standard" and the Code of Practice.

4.2 The local authority is required to provide an action plan outlining how it intends to respond to the recommendations set out in the report.

4.3 The Executive Summary to the Audit Report, the auditors' recommendations and an Action Plan developed in response to these recommendations are appended to this report. The Public Protection Manager had received a draft of the Report some time previous to receiving the final version and therefore feedback had also been given verbally by auditors at the close of the audit process in 2013. Therefore by the time the final version of the Report was received, much of the action plan had already been drafted and implemented.

3. AUTHOR:

Graham Perry, Public Protection Manager

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Appendices:

Appendix A: Executive Summary of the FSA Audit report.

Appendix B: Recommendations and Action Plan in response.

Executive Summary of FSA Audit Report

2 Executive Summary

2.1 The authority was delivering a food law enforcement service that worked closely with businesses to assist them in complying with food hygiene and food standards legislation. The authority had accessed FSA funding to provide coaching visits and seminars for local businesses to assist them in developing their food safety management systems.

2.2 In 2011/12, 99.8% of programmed food hygiene interventions that were due to be carried out were carried out. 100% of high risk food hygiene interventions were achieved and 82.65% of food establishments were broadly compliant with food hygiene legislation. 100% of new businesses which registered during the year had been subject to a food hygiene inspection. 100% of food standards interventions that were due were achieved. At the time of the audit there were a small number of overdue interventions, however the Head of Service advised auditors that these would be addressed by year end.

2.3 The authority had embraced the Primary Authority Scheme and had formal, signed Primary Authority Agreements with a number of businesses.

2.4 The audit identified shortcomings in the consistency and quality of information captured during food law interventions. Although the authority's premises database appeared robust and capable of performing effectively, the shortcomings in capturing and recording information on the database in a timely manner meant that it was not consistently accurate. The management of an effective food law enforcement service is dependent on the availability of accurate and up to date information.

2.5 At the time of the audit, auditors were informed that the authority was in a state of 'transition' moving from hard copy information towards a paperless office. Problems with the retrievability of key information impacted upon most aspects of the audit. The authority acknowledged this and is working to achieve improvements.

2.6 The Authority's Strengths

Quantitative Internal Monitoring

Quantitative internal monitoring of the food hygiene intervention programme had been facilitated by the development of a colour coded spreadsheet of the annual inspection programme. This was a 'live' database accessed by all officers and managers to identify those premises due for inspection. Risk ratings were tracked and the facility for officers to input details of their actions to secure compliance was available. This had assisted the authority in improving its performance in inspecting premises when they were due. This was identified as an area of good practice.

Advice to Business

The authority was actively working with businesses to assist them in complying with food hygiene and food standards legislation. This included providing advice in its capacity as Primary Authority to a number of businesses, and the provision of information on the authority's website. Officers were also proactive in providing advice during food interventions.

2.7 The Authority's Key Areas for Improvement

Food Interventions and Inspections

Whilst interventions were generally being carried out in accordance with the programme, it was not possible, in some cases, to confirm or assess that appropriate inspections were being carried out. This was due to the lack of sufficiently detailed records maintained by officers on inspection forms, in their notebooks or on the database. The absence of detailed records reduces confidence in the quality of interventions.

A number of anomalies were identified in the food standards risk ratings of businesses. Further, as food standards inspections were being driven by food hygiene inspection frequencies, premises with a food standards risk rating which required more frequent interventions than the food hygiene risk rating required, were not always subject to food standards interventions within the prescribed minimum interval. It was noted that this applied to a small number of cases.

Records and Interventions/Inspections Reports

The content and detail captured in records of food establishments and intervention activities was variable. It was not always possible to establish the scope of interventions and the accuracy of risk scores as insufficient information was captured. Inspection forms were not always available. Detailed records are fundamental as they assist in informing a historical perspective of business compliance and, where appropriate, a graduated approach to enforcement.

Officer Authorisations

The authority had authorised officers under the Food Safety Act 1990 who did not have the appropriate qualifications, specifically in relation to food standards interventions. Further, officers had not been properly authorised to enforce imported food legislation.

Food Sampling

The audit identified shortcomings in the processing and recording of action taken in response to unsatisfactory food samples.

Internal Monitoring

Whilst there were limited records of qualitative internal monitoring for food hygiene, qualitative internal monitoring of food standards had not been carried out. The authority had yet to fully implement the recently developed internal monitoring procedure.

ACTION PLAN

Improvements planned	By (date)	Action Taken (as at 31 May 2014)	To address (recommendation including Standard Paragraph)
<p><u>Organisation and Management</u> 1 Future service plans (from 2014-15) will include:</p> <ul style="list-style-type: none"> • A description of the Authority's approach to ensuring that Food Standards interventions are undertaken at least at minimum frequencies required by their risk ratings. • An estimate of the resources required to deliver all aspects of the service set out in the plan. • We will consult other authorities through DPPW and WWhoEHG and Food safety technical panel and liaise with FSAW in an effort to identify good practice methodology and promote consistency in approach in estimating the resources required. 	<p>In 14-15 service plan</p>	<p>Completed. 14-15 Service plan completed including improvements at paras 3.1 and 4.1</p>	<p>3.16The authority should: (i) Ensure that future Food Law Enforcement Service Plans are developed in full accordance with the Service Planning Guidance in the Framework Agreement. In particular, an analysis of the resources required against those available should be included. [The Standard – 3.1]</p>
<p><u>Reviewing Documents</u> Any procedures that have not been reviewed within the past 12 months will be reviewed.</p> <p>Relevant Primary authority considerations will be added to appropriate procedures.</p>	<p>By Mar 2014 On target</p>	<p>Completed. All documents reviewed as target and updated in line with doc control protocols.</p> <p>Note: some to be uploaded onto RIAMS (FS/RIAMS uploads/team review of POL and PRO)</p>	<p>4.7 The authority should: (i) Review all documented work procedures at regular intervals to ensure they accurately reflect how the food law enforcement service is delivered in practice, including the primary authority considerations. [The Standard – 4.1]</p>
<p><u>Authorised officers</u> Auditors advise that the authority's scheme of delegation should be updated to cover the detention of imported foods. However, The Chief Officer R&C has delegated authority "to exercise the Council's functions under legislation relating to food and drugs, food hygiene,...". Specific references can be updated when the council scheme is next revised. Food Law Enforcement Officers are authorised under Official Feed and Food Controls (Wales) Regulations 2009.</p> <p>The service's central training records and records of qualifications have already been updated and all officer competencies will continue to be assessed on an annual basis and that assessment recorded.</p>	<p>NFA until authority-wide review of scheme.</p> <p>Jan 14 and annual thereafter completed</p>	<p>Currently under corporate review</p> <p>Completed. All recorded centrally on data base (in misc activities and can be reported on</p>	<p>5.16 The authority should: (i) Review the Scheme of Delegation to include the power to detain imported foods. [The Standard – 5.1] (ii) (iii) Review and update officer authorisations as necessary to ensure all officers are appropriately authorised under current legislation in accordance with their qualifications, training and competencies. [The Standard - 5.1 and 5.3] Maintain records of relevant academic or other qualifications, training and experience of each authorised officer and appropriate support staff in accordance with the Food Law Code of Practice. [The Standard – 5.5]</p>

<p>The one officer not authorised under FEPA has now been authorised.</p> <p>Since the audit was completed, our three Commercial Services Officers have been awarded the Food Standards Module of the Higher Certificate in Food premises Inspection from the University of Birmingham.</p> <p>The officer involved in routine (proactive) sampling will continue to be restricted to situations where no formal action would be taken following sampling.</p>	<p>Completed</p> <p>Completed</p> <p>Completed</p> <p>NFA</p>	<p>through flare. Certificates scanned into each officers folders ad PDF)</p> <p>Completed. (authorised by FSA)</p> <p>Completed. (Certificates in personal officer folders)</p> <p>No action required</p>	
<p><u>Interventions and inspections</u></p> <p>We have undertaken extensive work to ensure that food hygiene interventions are undertaken at the frequencies required by the COP. We employ management tools to ensure that happens and for some time have had targets (monitored fortnightly and reported quarterly) to ensure inspections take place within 28 days of their scheduled date (98% achieved in 2012-13). We will continue to aim for these high standards of service delivery. (We identify additional actions in relation to Standards inspections elsewhere.)</p> <p>We will continue to seek to meet the requirements of the COP in relation to inspections, interventions, enforcement and recording of information: in particular to strengthen this we will:</p> <ul style="list-style-type: none"> Undertake a review of files via a random sample and utilise the findings of the audit to identify and implement any necessary improvements to current delivery. Bring the findings of the audit and this action plan to the attention of all staff; We will review, with officers, our policies and procedures with a view to ensuring compliance with the Standard in relation to matters such as capturing information during inspections, undertaking revisits, taking action in relation to non-compliances. <p>As part of our on-going transition to a totally paperless recording system, we will utilise the findings of the audit to inform our recording and retrieval arrangements, including updating</p>	<p>On-going</p> <p>On-going</p> <p>Review and implement By end Feb 2014</p> <p>By end of Nov 13</p> <p>In part by Nov 13 complete by end of Mar 14 completed</p> <p>Bring audit</p>	<p>100% of programmed inspections delivered in 13-14</p> <p>95% achieved within 28 days of scheduled date.</p> <p>Completed and ongoing (Review of files recorded in Misc activities in GD monitoring. Any action required is recorded in this Misc activity record)</p> <p>Completed and (ongoing (Inspection form reviewed and changes made to aid memoire and information recorded)</p>	<p>7.23</p> <p>(i) Ensure that food premises interventions/inspections are carried out at the minimum frequency specified by the Food Law Code of Practice. [The Standard -7.1]</p> <p>(</p> <p>:</p> <p>(ii) Carry out interventions / inspections, and approve establishments in accordance with the relevant legislation, the Food Law Code of Practice and centrally issued guidance. [The Standard -7.2]</p> <p>(iii) Take appropriate action on any non-compliance found, in accordance with the authority's Enforcement Policy. [The Standard -7.3]</p> <p>(iv) Set up, maintain and implement documented procedures for the range of interventions/inspections it carries out. [The Standard – 7.4]</p> <p>(v) Store contemporaneous records of interventions in such a way that they are retrievable. [The Standard – 7.5]</p>

<p>procedures and staff guidance where appropriate.</p> <p>We will review files for all approved establishments against the COP.</p>	<p>findings to attention of all staff by Nov 2013 and review storage and retrieval procedures by end Jan 14</p> <p>Review by Mar 14</p>	<p>(Audit findings reported to staff at meetings – e.g. 19/11/13 with follow up e.g. on 12.3.14.)</p> <p>(Additional procedure written to assist with storage of information – i.e. new business procedure – also reviewed to include other dept of Pub protection. Document in FS/RIAMS uploads/team review of POL and PRO)</p> <p>Completed (see record of audit)</p>	
<p><u>Standards</u> We will develop a procedure for food standards alternative enforcement.</p> <p>We will review our approach to ensure that Food Standards interventions are undertaken at least at minimum frequencies required by their risk ratings (not only food hygiene intervals)</p> <p>We will review our application of food standards risk ratings to include benchmarking and peer review with the Greater Gwent Food Group.</p>	<p>By end Feb 14</p> <p>Immediate but also for next year's programme</p> <p>By Mar 2014 On target</p>	<p>Completed. (interventions and internal monitoring procedure - has been included se in FS/RIAMS uploada/team review of POL and PRO)</p> <p>Completed. (Officers are now risk rating inspections fully for food standards, rather than the risk rating to follow the food hygiene rating. Risk Rating for manufacturers is discussed at the Gwent Group. Also,</p>	<p>7.36 Recommendations The authority should:</p> <p>(i) Ensure that food premises interventions and inspections are carried out at the frequency specified by the Food Law Code of Practice. [The Standard -7.1]</p> <p>(ii) Carry out inspections/interventions at food establishments in accordance with relevant legislation, the Food Law Code of Practice and Practice Guidance, including the use of appropriate inspection forms. [The Standard -7.2]</p> <p>(iii) Set up, maintain and implement documented procedures for the range of interventions/inspections it carries out. [The Standard -7.4]</p> <p>(iv) Record observations and data obtained from interventions in a timely manner to prevent its loss and ensure contemporaneous records are legible and retrievable. [The Standard – 7.5]</p>

<p>We will establish documented monitoring arrangements for food standards risk ratings.</p> <p>We will review procedures and issue further guidance for staff on the recording and storage of details required by the Standard along with advice on enforcement and revisit approaches and the use of aide memoirs and product specific inspection forms.</p> <p>We will review all policies and procedures not reviewed within the past 12 months</p>	<p>By Dec 2013</p> <p>By Mar 2014</p> <p>By Mar 14.</p>	<p>reports are being run on low risk F inspections which may be medium Q rated.)</p> <p>Completed. (Monitoring procedure established and implemented. (lead officer))</p> <p>Completed and ongoing. (Product Specific Aide memoir forms have been used for manufacturers since the audit. The dairy inspection form was used at the recent visit to Abergavenny Fine Food and the butcher aide memoir forms are also used. We don't have many. Trealy, Aber Fine Foods and 2 x ice cream)</p> <p>Completed. See doc control.</p>	
<p><u>Food and Food establishment Complaints</u></p> <p>We have corporate policies in relation to standard response times. In relation to communicable disease control matters, officers follow the national guidance issued under Notification Guidance for Laboratories <i>Health Protection (Notification) (Wales) Regulations 2010</i> (formerly expert Rules). In other cases we expect officers to use professional judgement in determining the urgency of any particular matter that comes to their attention. We will review guidance.</p> <p>We will review our policies and procedures in relation to complaints to check that guidance is clear on matters having wider food safety</p>	<p>By Nov 13</p> <p>BY Nov 13</p>	<p>All policies and procedures have been reviewed as mentioned above No action required.</p> <p>Completed. No action required.</p>	<p>8.11</p> <p>(i) The authority should: Review and update the documented policy and procedure to include guidance for officers on target response times. [The Standard – 8.1]</p> <p>(ii) Investigate complaints received in accordance with the Food Law Code of Practice, centrally issued guidance and its own policy and procedures. [The Standard – 8.2]</p>

<p>considerations.</p>			
<p><u>Food Inspection and Sampling</u> Future service plans will make specific reference to the FSA's national priorities with regards sampling.</p> <p>We note the observations of FSA auditors on this point and will remind all officers of the requirements of the Standard.</p>	<p>Next service plan 14-15</p> <p>By end of Nov 13</p>	<p>Completed. See 3.5 in the 2014-2015 Service plan</p> <p>Completed. At meeting held with team on 19/11/13</p>	<p>12.12</p> <p>The authority should:</p> <p>(i) Ensure its documented sampling programme includes reference to national sampling priorities. [The Standard - 12.4]</p> <p>(ii) Maintain up to date, accurate sampling records in a retrievable form. [The Standard - 16.1]</p> <p>(iii) Ensure appropriate action is taken on unsatisfactory food sampling results. [The Standard - 12.7]</p>
<p><u>Control of ID</u> The authority has one procedure – the same out of hours as in hours which we will clarify.</p> <p>We will review our procedures and guidelines covering these matters including updating contact details and the inspection of implicated premises.</p>	<p>Dec 13 completed</p>	<p>Completed. This is referenced in MCC outbreak plan page 36 – we adopted the All Wales outbreak plan.</p> <p>here</p> <p>MCC Environmental Health Team provide a voluntary but assured out of hours service in line with good standard practice in Best Practice Standards.</p> <p>Sporadic plan updated in by Dec 2013 herex additional info on page 8 re implicated premises. Contact details updated at same time</p>	<p>13.6 The authority should: Ensure the procedure for dealing with sporadic cases of food-related infections out of office hours is properly documented and that the procedure accounts for the inspection of implicated food premises. [The Standard – 13.2]</p>

<p>Enforcement The Authority's Food Law Enforcement Policy will be amended to take account of new powers in relation to Remedial Action Notices and to reflect Primary Authority matters.</p> <p>All procedures are being reviewed on an ongoing basis, as described elsewhere, and will be amended as appropriate to reflect Primary Authority considerations.</p> <p>We will review our prosecution procedure to ensure greater clarity and document the approach.</p> <p>We will bring the findings of the audit to the attention of all officers to ensure that we are able to learn any appropriate lessons emerging from the audit. We will continue to undertake regular internal monitoring;</p>	<p>By May 14</p> <p>By Mar 14</p> <p>By Dec 13.</p> <p>Nov 13</p>	<p>Completed (see review of policies and procedures and to be uploaded to RIAMS)</p> <p>See above</p> <p>Completed. (see Procedure)</p> <p>Completed. Done at meeting on 19/11/13</p>	<p>15.11 The authority should: Ensure its Enforcement Policy is suitably maintained. [The Standard- 15.1] Set up, maintain and implement documented procedures for follow up and enforcement actions in accordance with the Food Law Code of Practice and official guidance. [The Standard- 15.2]</p> <p>Ensure that food law enforcement is carried out in accordance with the Food Law Code of Practice, centrally issued guidance and the authority's own documented procedures and Enforcement Policy. [The Standard -15.2, 15.3 and 15.4]</p>
<p>Records of interventions and inspections The detailed findings of the audit will be brought to the attention of all officers.</p> <p>As stated elsewhere we will review guidance on recording and storage of information.</p> <p>Building on existing monitoring, a random sample of files and associated records will be undertaken at least once annually to monitor conformance.</p> <p>We currently keep and will continue to keep intervention/ inspection records for 6 years.</p>	<p>By Nov 13 As per timetable for guidance & procedure reviews.</p> <p>By May 14 and annually</p>	<p>Completed. At meeting on 19/11/13</p> <p>All reviewed see above</p> <p>Completed and record stored on misc activity of GD monitoring and any actions required recorded on there</p>	<p>16.11 (i) The authority should: Maintain up to date, accurate records in a retrievable form on all relevant food establishments and imported food in accordance with the Food Law Code of Practice and centrally issued guidance. These records should include reports of all interventions/inspections, the determination of compliance with legal requirements made by the officer and details of action taken. [The Standard – 16.1] (ii) Ensure records and interventions/inspection reports are kept for at least 6 years. [The Standard - 16.2]</p>
<p>Complaints about the service We will review the Authority's approach to actioning and recording complaints, to include clarity on the distinction between "service requests" and "complaints".</p>	<p>By end of March 14</p>	<p>Completed. New flare code made to record any complaints about the department.</p>	<p>17.3 The authority should: (I) Retain records of all complaints received and of the actions taken by the authority in response. [The Standard – 17.3]</p>
<p>Internal Monitoring We will review (and revise as appropriate) our monitoring of food standards activities in light of the findings of the audit.</p> <p>We note the comments of the auditors in relation to our monitoring of food hygiene activities. We also note that auditors suggest that increased details be kept of the qualitative monitoring already undertaken;</p>	<p>By Dec 2013</p> <p>Immediate</p>	<p>Completed. (Internal monitoring procedure updated with all other procedures)</p> <p>Completed. Internal monitoring stored in misc activity in GD monitoring and any</p>	<p>19.8 The authority should: (i) Fully implement the internal monitoring procedure across all food hygiene and food standards activities. [The Standard – 19.1] (ii) Ensure records of all internal monitoring activities are made and kept for at least two years. [The Standard - 19.3]</p>

		actions required recorded in that activity record	
<u>Promotion</u> Records are kept and we will maintain more comprehensive records in future, stored at a central point, electronically.	Immediate	Ongoing. Any actives will be recorded on flare as X01 codes in Misc activities record	21.4 The authority should: (l) Maintain records of its food safety and standards promotions. [The Standard – 21.2]

**MONMOUTHSHIRE COUNTY COUNCIL
REPORT**

SUBJECT: Hackney Carriage and Private Hire Driver and Vehicle Conditions
DIRECTORATE: Regeneration, Environment and Resources
MEETING: Licensing and Regulatory Committee
Date to be considered: 17th June 2014
DIVISIONS/WARDS AFFECTED: All Wards

1. PURPOSE

- 1.1 To consider the current licensing requirements for vehicles with 5 - 8 seats.

2. RECOMMENDATION

- 2.1 Members consider a request from the trade to amend the existing licensing policy for vehicles with 5-8 seats.
- 2.2 In the event of any proposed change, that a period of 90 days consultation to those licensed under the remit of Hackney Carriage and Private Hire takes 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 In the interest of passenger safety a report was submitted to the Licensing and Regulatory Committee in July 2002 recommending that Members approve conditions relating to the carrying of 7-8 passengers. The condition required all licensed hackney carriage and private hire vehicles to provide direct access and egress to a door for all passengers. This condition was approved and then updated on the 15th March 2010 to include vehicles carrying more than 4 passengers.
- 3.2 A condition was introduced requiring any vehicle that accommodated more than 4 passengers to be assessed by an authorised officer before an application was submitted. If a seat needed to be moved in order for a passenger to access or egress from the vehicle then it would not be considered suitable for Licensing.
- 3.3 The condition currently reads: *“The vehicle shall be suitable in type and design for use as a private hire vehicle. In the case of a vehicle that carries more than 4 passengers no seat should be required to be moved to allow any passenger to enter or egress the vehicle.”*
- 3.4 This condition particularly effects the licensing of MPV (Multi purpose vehicle) type vehicles that have two rows of passenger seats in the rear. In order to meet the authority’s conditions, this sometimes requires the permanent removal of a seat from the middle row to enable access to the rear row of seats.
- 3.5 When the condition was introduced in 2002, vehicles that were licensed for 8 seats and didn’t comply with the condition were given “grandfather rights” and allowed to continue to be licensed until the proprietor surrendered the licence. To date we still have 8 vehicles that do not comply with the current licence conditions.
- 3.6 A request has been received from the trade asking the Authority to reconsider its current policy (attached as Appendix one), specifically to remove the condition that requires access and egress without the need to move another seat. In particular, this would enable MPV taxis to make full use of all the seats provided at manufacture.

- 3.7 The advice of ROSPA is “ambivalent” whilst the Department of Transport encourage “flexibility”. Both responses are appended in Appendix Two.
- 3.8 The approach taken by other authorities in Gwent is summarised in Appendix three, with Torfaen and Blaenau Gwent currently requiring access and egress without the need to move another seat whilst Newport and Caerphilly have not adopted this condition.

4. REASONS

5. RESOURCE IMPLICATIONS

No resource implications for the authority

6. CONSULTEES

RoSPA

7. BACKGROUND PAPERS

Department of Transport, Taxi and Private Hire vehicle licensing, Best Practice Guide, March 2010

8. AUTHOR:

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Senior Licensing Officer

9. CONTACT DETAILS:

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Appendix One

Monmouthshire Taxi Association

11th April 2014

Licensing Department
Monmouthshire County Council
Licensing Section,
One Stop Shop
Manor way
Chepstow
NP16 5HZ

Dear Linda

We have discussed at the taxi association the rule in the terms and conditions to no longer being able to use a vehicle where there is a need to fold a seat to get into or out of a vehicle.

In the opinion of the trade we see a few arguments to this condition.

- MPV's are specially adapted vehicles to enable up to 7 passengers to be carried, they obviously go through vigorous checks by the manufacturers to ensure safety.
- Other authorities allow licensing of these vehicles.
- There is a much higher cost to the public for instance if we have to use two vehicles or a minibus to convey 5 passengers – 5 passengers is a very common booking especially for families.
- An MPV is a lot cheaper to purchase than a minibus, therefore keeping costs down once again.
- Minibuses are now manufactured with folding seats in the middle row for example the most common (Ford Transit Tourneo), vehicle proprietors who purchase a new minibus would be forced to remove a seat and have a 7 passenger seat minibus not the standard 8 seats the public expect.
- To prevent the loss of a seat from a minibus or MPV, proprietors are purchasing older minibuses with a clear walkway (no folding seats) and keeping old MPV's originally licensed for 6 passengers on the road as long as possible. Overall this is ageing the Monmouthshire fleet of vehicles and lowering the standard of vehicles.
- Most importantly are the vehicles safe for purpose when a seat is cut from the vehicle? What tests are done over and above the standard taxi test to ensure the bench of seats, airbags and flooring

where the seat used to sit is safe for passengers?

- These vehicles have passed the Encap test so they are fit for purpose.
- It is not always possible to remove or move seats because of design.
- Many operators still have vehicles licensed that are pre 2002 that have been running safely with no issues.

Yours sincerely

The Taxi Association

Monmouthshire

Appendix Two:

Advice of ROSPA and the Dept of Transport.

- 1 The Department for Transport issues guidance to local authorities on Hackney Carriage and Private Hire Licensing, the most recent guidance issued in March 2010 states:

“It may be too restrictive to automatically rule out considering Multi-Purpose Vehicles, or to licence them for a fewer passengers than their seating capacity (provided of course that the capacity of the vehicle is not more than eight passengers).”

“The Department encourages local licensing authorities, as a matter of best practice, to play their part in promoting flexible services, so as to increase the availability of transport to the travelling public. This can be done partly by drawing the possibilities to the attention of taxi and PHV trade. It also should be borne in mind that vehicles with a higher seating capacity than the vehicles typically licensed as taxis (for example those with 6, 7 or 8 passenger seats) may be used.”

- 2 Powys County Council have recently reviewed their conditions during their review they sought the opinion of RoSPA (Royal Society for Prevention of Accidents). Their response is as follows:

While the guidelines state that people carriers can be licensed as taxis, they do not specifically address the issue of whether or not a passenger seat should be removed as part of the licensing conditions.

Last year Warrington Borough Council reviewed their policy to require the nearside centre row seat to be permanently removed, so that passengers in the rearmost seats can reach the door without the need for another passenger to move, or another seat to be folded out of the way, because (they said) other Local Authorities had lost legal challenges to this policy. We have not seen the grounds on which the legal challenges to this policy were successful, and it remains RoSPA’s view that passengers should be able to exit a taxi or private hire vehicle without having to climb over or move a seat. Although it is true that passengers in the very rear of a private people carrier have to move a seat in order to exit, we believe that greater safety standards should apply to taxis and private hire vehicles because members of the public are paying for the service.

Having said that, we do not think it is possible to estimate the additional risk to passengers who need to move a seat in order to exit a vehicle. As far as we are aware, the data to do this does not exist. Therefore, it is difficult to estimate the potential effects of changing the policy to allow people carriers with the extra row of seats to be licensed as taxis or private hire vehicles without requiring the nearside centre row seat to be removed. It may be that the benefits of enabling people carriers being used as taxis or private hire to carry one extra passenger outweigh the risk of passengers in the rearmost row struggling to exit the vehicle quickly in an emergency. With the current level of data and knowledge, it does not seem possible to be certain which option is best.

This leaves us in the somewhat ambivalent position of supporting the policy of requiring passengers to be able to exit a taxi or private hire vehicle without having to climb over or move a seat, but not opposing local authorities who decide that the benefits of enabling people carriers to be used as taxis or private hire to carry one extra passenger outweigh the risk of passengers in the rearmost row struggling to exit the vehicle quickly in an emergency.

I hope this response will give some insight to this difficult scenario.

Having seen sight of the response issued to Powys County Council from RoSPA above we then contacted them to further enquire about the safety with regards to removing seats. Their email responding to our request is detailed below:

With regards to the safe removal of seats it is very unlikely that a vehicle manufacturer would provide the ability to remove seats if doing so would have a detrimental effect on any safety feature within the vehicle.

Appendix Three

Our neighbouring authorities have been consulted with regards to this condition, below are the conditions each authority have in relation to 5-8 passenger vehicles:-

Blaenau Gwent County Borough Council

No seat should be required to be moved to allow any passenger to enter or exit the vehicle. All seats must face forward or backwards to the direction of travel. There must be a clear passageway to each row of seats.

Torfaen County Borough Council

In the case of a vehicle that carries more than 4 passengers no seat should be required to be moved to allow any passenger to enter or egress the vehicle.

Vehicles that have 3 rows of seats, e.g. people carriers where seats have to be tilted or moved to give access to the rear row of seats will not be licensed unless one of the seats in the middle row is removed to allow unimpeded access to the rear seats. The seat removed to facilitate entry as described must have the mounting secured to prevent the seat from being easily re-fitted into the vehicle.

Where access to the rear seats is made through a gap between the seats in the middle row the gap must be a minimum of 30 cm to allow clear access to the rear seats

Newport City Council

Each passenger shall have direct access to a door without the need to remove or completely fold flat other seating. Where passengers do not have direct access to an adjacent door, vehicles that have seats that “tilt” forward by a single operation will be permitted by the Council. A clear sign within the vehicle should clearly indicate the location of the handle that operates the tilt forward seat.

Caerphilly County Borough Council

A vehicle presented for licensing for the carriage of more than four passengers, either structurally constructed or permanently adapted to the satisfaction of the Council's Approved Examiner and authorised officers, for which an assessment fee may be payable;

**MONMOUTHSHIRE COUNTY COUNCIL
REPORT**

SUBJECT: Intended Use Policy For The Licensing Of Hackney Carriages
DIRECTORATE: Chief Executive
MEETING: Licensing and Regulatory Committee
Date to be considered: 17 th June 2014
DIVISION/WARDS AFFECTED: All Wards

1. PURPOSE:

- 1.1 To update the Licensing and Regulatory Committee following consultation of the Intended Use Policy for the Licensing of Hackney Carriages. (Attached to this report as Appendix A).

2. RECOMMENDATION(S):

- 2.1 Members note that no responses were received and in accordance with the decision of Committee on 11th February 2104 the Intended Use Policy for the Licensing of Hackney Carriages is now effective.

3. KEY ISSUES

- 3.1 At a previous Licensing and Regulatory Committee held on 11th February 2014, members agreed an Intended Use Policy for the Licensing of Hackney Carriages – as set out in Appendix A to this report.
- 3.2 Before determining this policy it was agreed that a period of 90 days consultation should take place with those licensed under the remit of Hackney Carriage and the Passenger and Transport Unit of Monmouthshire County Council.
- 3.3 It was also agreed that should no representation be made the policy be adopted. This consultation has been conducted with an invitation for comments to be received by 31st May 2014. No comments were received by the Authority and this report confirms the adoption of the Policy (attached as Appendix A) with effect from 1st June 2014.
- 3.4 It was noted at this meeting that a pro-forma is completed by the applicant who signs a declaration that they intend to use Hackney Vehicles within the County of Monmouthshire. A request was made by Members to clarify on this form where the vehicle is stored when not in

use in order to ensure the likelihood the vehicle is being used in the County. This has been added to the form and is attached to this report as Appendix B.

4. REASONS

4.1 No consultation responses were received.

5. RESOURCE IMPLICATIONS:

None.

6. CONSULTEES:

Hackney Carriage Licence holders with Monmouthshire County Council
MCC Passenger and Transport Unit

7. BACKGROUND PAPERS:

None

8. AUTHOR:

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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

Further copies may be obtained from
the above address or from the website
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: HV _____

Address where the vehicle is to be stored when not in use if different from above:

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) above, there is a presumption that your application will be refused, unless you satisfy the Council that it may grant you a hackney carriage proprietors 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:

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: Granted / Refused

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

**MONMOUTHSHIRE COUNTY COUNCIL
REPORT**

SUBJECT:	Hackney Carriage and Private Hire Licensing Policy – Fitness Criteria for Drivers and Operators
DIRECTORATE:	Chief Executive
MEETING:	Licensing and Regulatory Committee
Date to be considered:	17th June 2014
DIVISION/WARDS AFFECTED:	All Wards

1. PURPOSE:

- 1.1 To update the Licensing and Regulatory Committee following consultation on of the adoption of 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 Members note that no consultation responses were received and in accordance with the decision of Committee on 11th February 2014, the Hackney Carriages and Private Hire Licensing Policy is now effective – as set out in Appendix A to this report (Fitness Criteria for Drivers and Operators).

3. KEY ISSUES

- 3.1 At a previous Licensing and Regulatory Committee held on 11th February 2014, members agreed 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).
- 3.2 It was further agreed that a period of 90 days consultation should take place with those licensed under the remit of Private Hire and Hackney Carriage and the Passenger and Transport Unit of Monmouthshire County Council and that should no representation be made the policy be adopted.
- 3.3 This consultation has been conducted with an invitation for comments to be received by 31st May 2014. No comments were received by the Authority and this report confirms the adoption of the Policy (attached as Appendix A) with effect from 1st June 2014.

4 REASONS

4.1 No consultation responses were received.

5. RESOURCE IMPLICATIONS:

None.

6. CONSULTEES:

MCC Passenger & Transport Unit
Private Hire and Hackney Carriage Licence Holders with Monmouthshire
County Council.

7. BACKGROUND PAPERS:

None

8. AUTHOR:

Linda O’Gorman Principal Licensing Officer

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

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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 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**

SUBJECT: Scrap Metal Dealers Act 2013 – Statement of Licensing Policy
DIRECTORATE: Chief Executive
MEETING: Licensing and Regulatory Committee
Date to be considered: 17 th June 2014
DIVISION/WARDS AFFECTED: All Wards

1. PURPOSE:

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

2. RECOMMENDATION(S):

- 2.1 To endorse the proposed Statement of Licensing Policy under the Scrap Metal Dealers Act 2013 (attached as Appendix A) prior to recommendation to Cabinet.

3. KEY ISSUES

- 3.1 At the meeting of Licensing and Regulatory Committee held on 11th February 2014, members were informed of the proposal to introduce a Scrap Metal Dealers Act 2013 Statement of Licensing Policy.
- 3.2 Before endorsing this policy to be put before Cabinet it was agreed that a period of 90 days consultation should take place with those licensed under the remit of Scrap Metal, Heddlu Gwent Police, British Transport Police, Natural Resource Wales and Industry Associations.
- 3.3 It was also agreed that adverse responses be brought 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.
- 3.4 This consultation was duly carried out and two responses were received as follows:-

Consultation Response 1 – British Metals Recycling Association

- **Inspection of licensed premises.** Section 16(1) of the Act provides for a constable **or** an officer of a local authority to enter and inspect licensed premises, whereas your para 19(1) says

“and”. The correct construction is used in your Appendix 3, but to avoid confusion it may be appropriate to amend the wording of the main text.

Consultation Response 2 – Vehicle Salvage Industry

I represent the Vehicle Salvage Industry which is a completely different business to the scrap metal industry although we have somehow been included in this legislation.

On page 8, 13.1...it is stated that a scrap metal dealer must verify the persons name and address by reference to documents, data or other information from a reliable source and independent source, sadly as salvage buyers we have been given a particular list to work from which I would ask you to mention to resolve any potential problems in this regard.

On page 9, 15.1...it is my belief that if the company is receiving an end of life vehicle then the registration number and potentially VIN number should also be recorded.

on page 9, 16...It should be made very clear that parts removed from an end of life vehicle which are deemed to be re-usable and are tested to confirm this are NOT considered to be "Scrap"...this is a problem that we have had to resolve in another part of the country.

- 3.5 The Consultation response has been circulated to Torfaen County Borough Council, Blaenau Gwent County Borough Council, Newport City Council and Caerphilly County Council as the policy is intended to be Gwent wide which encompasses those Authorities along with Monmouthshire County Council. The Principal Licensing Officer for Torfaen stated by Email; ‘They seem to be reasonable comments which we should take account of.’ In light of the above recommendations, 15.1, 16.1 and 19.1 of the policy has been amended accordingly. 13.1 has remained unchanged as the wording is in line with the wording of the Scrap Metal Dealers Act 2013.
- 3.6 Furthermore, an amendment to the Rehabilitation of Offenders Act 1974 came into force on 10th March 2014 under the provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and as such the policy has been amended in Appendix 2 to accommodate the changes introduced by this Act.

3 REASONS

- 3.1 The proposed changes are appropriate and will be consistent across Gwent region.

5. RESOURCE IMPLICATIONS:

None.

6. CONSULTEES:

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

7. BACKGROUND PAPERS:

Scrap Metal Dealers Act 2013

8. AUTHOR:

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monmouthshire
sir fynwy

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

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APPENDICIES

Appendix 1 Application Process

Appendix 2 Relevant Offences & Penalties

Appendix 3 Compliance

Appendix 4 Delegation of Power

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 **Natural 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.
- f) If the metal received is in the form of a vehicle the registration number and VIN number should be recorded.

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.
- d) An assessment on whether metal in the form of a vehicle is regarded as scrap the dealer should refer to the Scrap Metal Dealers Act 2013 and guidance documents issued by the Home Office.

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 (b) 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 **or** 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 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 as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012)

For Custodial Sentences	
Sentence	Rehabilitation Period (Period of sentence plus the 'buffer' period below which applies from end of sentence)
0-6 months	2 Years
6-30 months	4 Years
30 months – 4 years	7 Years
Over 4 years	Never Spent

For Non - Custodial Sentences	
Sentence	'Buffer' period will apply from end of sentence
Community order (& Youth Rehabilitation Order)	2 Year
Sentence	Period
Fine	1 Year (from date of conviction)
Absolute discharge	None
Conditional discharge, referral order, reparation order, action plan order, supervision order, bind over order, hospital order	Period of Order

The above periods are halved for persons under 18 years at date of conviction (except for custodial sentences of up to 6 months where the buffer period will be 18 months for persons under 18 years at the date of conviction).

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

**MONMOUTHSHIRE COUNTY COUNCIL
REPORT**

SUBJECT: Street Trading Consents – amendment of policy

DIRECTORATE: Chief Executive

MEETING: Licensing and Regulatory Committee

Date to be considered: 17th June 2014

DIVISION/WARDS AFFECTED: All Wards

1. PURPOSE:

- 1.1 To consider amending the current Street Trading Policy to include a wider range of consents.

2. RECOMMENDATIONS:

- 2.1 Amend the Council's Street Trading Policy (as proposed and attached at Appendix One, entitled Draft Street Trading Policy June 2014) to include:
- i) Day Street Trading Consents
 - ii) Block Day Street Trading Consents and
 - iii) Block Annual Street Trading Consents.
- 2.3 Approve the fees for the new block consents as follows:
- i) Day Street Trading Consents: £41.00 per day
 - ii) Block Day Street Trading Consents: £119.00 per day
 - ii) Block Annual Street Trading Consents: new £688.00 and renewal £458.00 per annum.

3. KEY ISSUES

- 3.1 The current conditions for street trading were adopted at the Licensing and Regulatory Committee on 14th September 2009 and the current Policy was adopted on 4th December 2006.
- 3.2 In order to promote the vibrancy of Monmouthshire it has been recognised that there is a value in introducing a wider range of consents for street traders and for organisers of events. Town and Community Councils, for example, frequently seek to promote local traditional markets and would benefit from the flexibility that a greater range of consents would provide.

3.3 Monmouthshire Council has adopted the whole of the County as a Consent area for Street Trading purposes. This means that any person exposing or offering items for sale in any street, road, footway or other area which the public have access without payment (including private land) is required to obtain a Street Trading Consent from the Authority. This report proposes the introduction of a wider range of consents, aimed primarily at two key objectives:

- To enable street traders to apply for a “day consent” as an alternative to an “annual consent” (e.g. for a one-off attendance at an organised event)
- To enable organisers of events (such as traditional markets) to apply for a “block consent” (either day or annual) to cover one off or regular events which will be held at a fixed location, providing greater flexibility to attract traders.

Block consents

3.4 The philosophy of block consent is to encourage, for example, traditional markets, enabling suitable organisers to attract stall holders / traders (subject to conditions) to attend without the need for each of these to apply for an individual consent. This will reduce the financial disincentive associated with the related license application fees.

3.4. The proposed approach for block consents is that the applicant (organiser) accepts a degree of control over street traders on the site. The attached policy sets out conditions that would need to be met before a block consent is approved. The conditions are intended to ensure that reasonable safeguards are put in place by the consent holder to ensure that the Authority’s licensing objectives are met.

3.5 Block consents would therefore only be given to organisations that would be in a position to exercise an appropriate degree of control to the wider benefit of local communities. As such the attached policy proposes that such consents are restricted to Town and Community Councils and suitable not for profit organisations.

3.6 This report was stimulated by an enquiry from Clerk of Chepstow Town Council, which is being consulted on the proposed conditions, in advance of Committee.

Day consents:

3.7 As a separate issue, this report also proposes that the range of consents be extended to allow applicants to apply for a “day consent”, the fee for which is proposed as £41 (as an alternative to the existing annual consent). This would be ideally suited to a street trader that wishes to attend a one-off event.

4. REASONS

4.1 To provide greater flexibility to both street traders and organisers of appropriate events in the interests of diversity and economic prosperity whilst retaining an appropriate level of safeguard in meeting the Authority's licensing objectives.

5. RESOURCE IMPLICATIONS:

None. Fees have been calculated to recover the reasonable costs of administering the application.

6. CONSULTEES:

Chepstow Town Council

Consultation responses to be confirmed

7. BACKGROUND PAPERS:

None

8. AUTHOR:

Graham Perry, Public Protection Manager
Linda O'Gorman, Principal Licensing Officer

CONTACT DETAILS:

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The “Equality Initial Challenge”

Name: G Perry		Please give a brief description of what you are aiming to do.	
Service area: Public Protection		Amend street trading policy to include wider range of consents.	
Date completed: 9.6.14			
Protected characteristic	Potential Negative impact Please give details	Potential Neutral impact Please give details	Potential Positive Impact Please give details
Age		X	
Disability		X	
Marriage + Civil Partnership		X	
Pregnancy and maternity		X	
Race		X	
Religion or Belief		X	
Sex (was Gender)		X	
Sexual Orientation		X	
Transgender		X	
Welsh Language		X	

Please give details about any potential negative Impacts .	How do you propose to MITIGATE these negative impacts
➤	➤
➤	➤
➤	➤
➤	➤

Signed G Perry

Designation PPM

Dated 8.4.14

EQUALITY IMPACT ASSESSMENT FORM

What are you impact assessing	Service area
Impact of setting licence fees under the Gambling Act	Public Protection
Policy author / service lead	Name of assessor and date
Linda O'Gormon	G Perry. 9.6.14

1. What are you proposing to do?

Amend street trading policy to include wider range of consents.

2. Are your proposals going to affect any people or groups of people with protected characteristics in a **negative** way? If **YES** please tick appropriate boxes below.

Age		Race	
Disability		Religion or Belief	
Gender reassignment		Sex	
Marriage or civil partnership		Sexual Orientation	
Pregnancy and maternity		Welsh Language	

Note: If the fees are set at a level that is **less** than cost recovery others areas of council service will have to subsidise the cost - which could have negative consequences. It would be unlawful to set the fees at a level **higher** than cost recovery.

3. Please give details of the negative impact

4. Did you take any actions to mitigate your proposal? Please give details below including any consultation or engagement.

Chepstow Town Council

5. Please list the data that has been used to develop this proposal? eg Household survey data, Welsh Govt data, ONS data, MCC service user data, Staff personnel data etc..

Financial data from supplied by MCC accountants.

Signed.....G Perry.....**Designation**.....**PPM**.....**Dated**.....9.6.14.....

The “Sustainability Challenge”

Name of the Officer completing “the Sustainability challenge” G Perry		Please give a brief description of the aims proposed policy or service reconfiguration Set fees for licences under the Gambling Act	
Name of the Division or service area Public Protection		Date “Challenge” form completed 9.6.14	
Aspect of sustainability affected	Negative impact Please give details	Neutral impact Please give details	Positive Impact Please give details
PEOPLE			
Ensure that more people have access to healthy food		X	
Improve housing quality and provision		X	
Reduce ill health and improve healthcare provision		X	
Promote independence		X	
Encourage community participation/action and			X To encourage local markets and similar traditional events.

voluntary work			
Targets socially excluded		X	
Help reduce crime and fear of crime			X licensing conditions will ensure that the licensing objectives are met.
Improve access to education and training		X	
Have a positive impact on people and places in other countries		X	
PLANET			
Reduce, reuse and recycle waste and water		X	
Reduce carbon dioxide emissions		X	
Prevent or reduce pollution of the air, land and water		X	
Protect or enhance wildlife habitats (e.g. trees, hedgerows, open spaces)		X	
Protect or enhance visual appearance of environment			X through licensing conditions
PROFIT			

Protect local shops and services			X attracting visitors to the local area whilst protecting existing trade through licensing conditions.
Link local production with local consumption			X promoting local traditional markets.
Improve environmental awareness of local businesses		X	
Increase employment for local people		X	
Preserve and enhance local identity and culture			X see above
Consider ethical purchasing issues, such as Fairtrade, sustainable timber (FSC logo) etc		X	
Increase and improve access to leisure, recreation or cultural facilities			X see above

What are the potential negative Impacts	Ideas as to how we can look to MITIGATE the negative impacts (include any reasonable adjustments)
➤ <i>Potential impact on local trade and environment if street traders compete with existing businesses and fail to comply with license conditions</i>	➤ Licensing conditions to protect existing local trade, enforcement of conditions through checks by officers.

➤	➤
➤	➤
➤	➤

The next steps

- If you have assessed the proposal/s as having a **positive impact** please give full details below

- If you have assessed the proposal/s as having a **Negative Impact** could you please provide us with details of what you propose to do to mitigate the negative impact:

Signed

G Perry

Dated 9.6.14



monmouthshire
sir fynwy

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

MONMOUTHSHIRE COUNTY COUNCIL

DRAFT STREET TRADING POLICY
June 2014

STREET TRADING POLICY

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Introduction

This Policy has been adopted to control street trading and sets out the Council's standards for determining applications for, and enforcement of, street trading activities in Monmouthshire County Council.

Under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, Monmouthshire County Council has resolved to control street trading within its boundaries.

As such Monmouthshire County Council has designated all streets as consent streets, i.e. consent is required prior to trading taking place.

Any person convicted of trading on a consent street without consent will be guilty of an offence and liable upon conviction to a fine of up to £1,000.

Monmouthshire County Council will apply this Policy to street trading activities in its area to ensure consistency of decision-making. However each application or contravention will be considered on its own merits so that individual circumstances, where appropriate, are taken into consideration.

This Policy takes effect on xxxxxx

1. Definitions

The council. Means Monmouthshire County Council

The applicant. The trader who has submitted an application for Street Trading Consent.

Consent holder. An individual that holds a Street Trading Consent.

Street trading. Means the selling or exposing or offering for sale of any article (including a living thing) in any street.

Street. Includes any roadway, footway, pavement, precinct, other area to which the public have access without payment, e.g. lay-by or car park whether on private land or not.

Consent street. A street in which street trading is prohibited without the consent of the council.

Street Trading Consent. A permission to trade, which is granted by a council subject to conditions and the payment of a fee.

Block Street Trading Consent. One Street Trading Consent issued to an individual to cover the organised street trading of two or more traders in line with block street trading conditions. The holder of a Block Street Trading Consent is responsible for ensuring that individual traders comply with the Council's consent conditions.

Static Street Trader. Means trader granted permission by Monmouthshire County Council to trade from a specified position.

Mobile Trader. Means a trader who moves from street to street.

A roundsman. An individual who visits a 'round' of customers and delivers the orders of those customers, for example a milkman. Ice-cream vans are not classed as rounds men.

A pedlar. To operate legally as a pedlar you must; (i) keep moving, stopping only to serve customers at their request. (ii) move from place to place and not circulate within the same area. (iii) carry all goods for sale. (iv) hold a valid pedlar's certificate, issued by a Chief Constable of Police.

Authorised Officer. Means an officer employed by Monmouthshire County Council and authorised by the Council to act in accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1982.

2. Purpose

Monmouthshire Council's street trading policy aims to:

- Create a trading environment that compliments premises based trading.
- Promote fairness and consistency across the county
- Improve the local environment
- Be sensitive to the needs and concerns of residents
- Involve local communities in street trading decisions
- Control street trading through a fair and proportionate enforcement procedure

3. Objectives

The Council will carry out its functions in respect of controlling street trading activities in its area, to protect the public, by promoting the following licensing objectives (each of which is of equal importance);

- Public order
- Prevention of public nuisance
- Public safety
- Prevention of crime and disorder

4. Exemptions

The following street trading activities are legally exempt from the requirement to obtain a prior consent from the Council:

- (a) Trading by a person acting as a pedlar, i.e. going on foot from house to house selling goods directly, under the authority of a pedlar's certificate granted under the Pedlars Act 1871.

- (b) Anything done in a market or fair to hold which was acquired by virtue of a grant (including presumed grant) or acquired or established by an enactment or order.
- (c) Trading in a trunk road picnic area provided by the Secretary of State under section 112 of the Highways Act 1980.
- (d) Trading as a newsvendor, selling newspapers or periodicals.
- (e) Trading which is:
 - (i) Carried on at a premises used as a petrol filling station; or
 - (ii) Carried on at a premises used as a shop or in a street premises so used and as part of the business or shop.
- (f) Selling things, or offering or exposing them for sale, as a roundsman.
- (g) The use for trading under Part VIIA of the Highways Act 1980 of an object or structure placed on, or in or over a highway.
- (h) The operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980.
- (i) The doing of anything authorised by regulations made under section 5 of the Police, Factories, etc (Miscellaneous Provisions) Act 1916.

5. Block Street Trading Consents

A Block Street Trading Consent will permit two or more traders to trade at an organised event or market, subject to the terms and conditions of the consent. The event organiser in receipt of a Block Street Trading Consent is responsible for all individual trading activities and must ensure that street traders at their event comply with the standard consent conditions and any additional conditions attached to the license.

Block Street Trading Consents will normally only be issued to the following:-

- A market approved by the Council.
- Charitable, local authority organised and community type events (where an admission charge is not made for entry)

Commercial vendors will not normally be permitted to obtain a Block Street Trading Consents, however each application will be assessed on its own merit.

6. Day Street Trading Consents

A Day Street Trading Consent will permit a person to trade on one specified date at a specified location.

7. Guidelines for an application

In order to deal with applications quickly and to allow an applicant at an early stage whether the application is likely to be supported, the council has adopted the following guidelines:-

- The trader shall provide a service which is of a benefit to the public
- The use shall not be in direct competition, in terms of goods primarily sold, with that provided by a nearby retail shop, restaurant or hot food take-away and market place (which includes block consents)
- The use shall not be located within 100 metres of an existing shop, restaurant or hot food take-away which primarily sells the same goods and market (which includes block consents) – This may be relaxed for one-off or short-term applications.
- The use shall not be located within 250 metres of the boundary of any hospital, nursing or residential care home.
- The use shall not be permitted within 500 metres of the boundary of any school or college.
- The use shall not be permitted within 30 metres of any roundabout, road junction or pedestrian crossing.
- The use shall not be permitted on any Council owned pay and display car parks.
- The number of traders in any one street shall be limited so as not to cause undue concentration.
- The siting and operation of any trader shall be such that it does not cause any problems of highway safety, obstruction to users of the highway, or conflict with the requirement of emergency vehicles.
- Uses involving the sale of food and noise emissions shall meet the requirements of Environmental Health and these should be identified before a consent is considered.
- The appearance and use of associated equipment or structures shall be of good quality and the precise appearance of the facility shall be identified before a consent is granted.
- The use shall be compatible with the character of the area in which it is proposed to be situated.
- The safety and suitability of goods may require a further report from Trading Standards before a consent is considered.
- The use shall not be likely to cause problems of noise, smell, litter or late night disturbance, especially in residential streets.

8. Prohibited Goods

A Street Trading Consent will **not** normally be granted for the sale of the following items:-

- Alcohol except:

- Sales of mulled wine and similar at street fairs or community events. No sale will be permitted to anyone under the age of 18. (The sale of alcohol will require a separate permission under the Licensing Act 2003)
- Firearms and replica firearms
- Knives
- Offensive weapons and replica weapons
- Tobacco products
- Fireworks
- Articles that would typically be sold in sex shops
- Animals
- Legal Highs

The above list is not exhaustive and the Authority has the right to refuse any item for sale it deems necessary.

9. Application Process

Applicants must submit the following to the Licensing Section, Monmouthshire County Council, The Drama Centre, Pen-y-Pound, Abergavenny NP7 5UD.:-

- Application Form
- 10% of the consent fee, which is non-refundable. Upon grant of the consent, before it is issued, the balance of the fee must be paid, or an invoice will be arranged to enable direct debit payments.
- Copy of Ordnance survey map of at least 1:1250 scale, clearly showing the proposed site position by marking the site boundary line with a red line.
- Written permission from the land owner (if applicable)
- Proof of Food Registration (if applicable)
- Licence under the Licensing Act 2003 (if applicable)
- Two passport type photographs of the applicant and each assistant.
- Copy of the certificate of insurance covering the street trading activity for third party and public liability risks up to £5million
- Copies of gas, electrical safety certificates for each equipment and recent records of periodic inspection reports (if applicable)

A Street Trading Consent is not transferrable. Any proposed change to the type of vehicle or stall to be used, the goods to be sold, the times and days of operation, or the exact location of the trading site, requires an application for variation of the street consent. No person under the age of 17 years can apply for a Street Trading Consent.

For a block street trading consent, the applicant will be required to identify the arrangements that they will put in place to ensure that the Council's conditions are met by all traders attending all events covered by the consent.

An applicant can apply on-line at www.monmouthshire.gov.uk

10. Consultation on applications

Officers will carry out a consultation process with relevant interested persons and groups before a street trading application is considered.

This may include:

- Planning and Economic Development for Monmouthshire County Council
- Highways Department for Monmouthshire County Council
- Environmental Health for Monmouthshire County Council
- Town/Community Councils for the County of Monmouthshire
- One Stop Shops for Monmouthshire County Council
- Heddlu Gwent Police
- Welsh Assembly Government
- Gwent Consultancy

11. Inspection of the Street Trading Unit

The vehicle, van, trailer, stall or other device to be used for the proposed street trading activity will be inspected by an Authorised Officer of the Council, prior to the issue of any Street Trading Consent and shall comply in all respects to the relevant legislation and conditions.

12. Determination of applications

The Authorised officer will assess applications for Street Trading Consents against the following criteria:

- **Site safety.** The location should not present a substantial risk to the public in terms of road safety, obstruction or fire hazard. Observations from Council Officers will be taken into consideration.
- **Public order.** The street trading activity should not present a risk to public order in the locality in which it is situated. Observations from Heddlu Gwent Police and Council Officers will be taken into consideration.
- **Avoidance of nuisance.** The street trading activity should not present a substantial risk of nuisance from noise, smells, fumes, litter or the discharge of fluids to households or businesses in the vicinity of the proposed street trading site. Observations from Council Officers, residents and businesses will be taken into consideration.
- **Consultees' observations.** Consideration will be given to written observations and recommendations will be assessed by the Authorised

Officer for reasonableness and appropriateness before they are taken into consideration.

- **Permitted trading hours.** The Council will consider each application on its merits before agreeing permitted trading times. The Council retains the right to specify permitted trading hours that are less than that applied for. Any trading involving hot food and drink between 11p.m. and 5a.m. will also require a separate application under the Licensing Act 2003.
- **Suitability of the applicant.** The council may take any relevant unspent convictions, complaints received about the applicant's previous street trading activity and any previous revocation or surrender of a Street Trading Consent into account.
- **Proximity to schools and college.** No Street Trading Consents will be granted for trading at locations within 500 metres of its boundary, unless otherwise agreed in writing by Monmouthshire County Council.
- **Proximity to existing consent holders.** Consideration will be given to the number of existing consent holders in the area.

13. Objections

An Authorised Officer will approve the application if it:-

- Meets the criteria and
- There are no reasonable and appropriate objections.

If the application:

- Does not meet the criteria, or
- There are reasonable and appropriate objections.

The Authorised Officer may contact the applicant and objectors to attempt to resolve the potential reasons for refusal. The Officer, applicant and objectors may discuss (i) changes that could be made to the proposed locations, goods or trading hours and (ii) additional conditions that could be introduced. If the objections and failure to meet scheme criteria can be resolved by changing the application and/or introducing additional conditions the Authorised Officer will approve the application.

If the applicant refuses an offer of a meeting following objections or failing to meet the criteria or if matters cannot be resolved the matter will be deferred to the Licensing and Regulatory Committee to be determined. Except where objections are received for safety reasons the Head of Community and Environmental Protection can determine the application or defer the matter to the Licensing and Regulatory Committee.

14. Approval of applications.

The applicant will be advised by letter that their application has been successful and they need to accept the off of a Street Trading Consent and make full payment within 21 days or make arrangements for an invoice to be arranged to enable direct debit payments.

After that time a letter will be sent to the applicant reminding them of the need to make a full payment.

If the fee is still not received within five working days the offer will lapse and the applicant will need to make a new application to the council and pay another ten percent of the consent fee.

A street trading consent will not be issued until the street trading fee has been paid in full.

Applications may be approved subject to additional conditions. These additional conditions form part of the Street Trading Consent and must be complied with at all times.

15. Refusal of applications

Where the council refuses an application the applicant will be informed in writing of the reasons for not granting the application.

There is no right of appeal to the Magistrates Court.

A person aggrieved by a decision of the Licensing and Regulatory Committee may make an application to the High Court for judicial review of the decision. For further information on potential grounds for judicial review applicants should seek advice from an independent solicitor as soon as they receive notice of the decision.

16. Issue of Street Trading Consents

Where approved, before the Street Trading Consent is issued the applicant will need to provide.

- An original copy of a certificate of insurance covering the street trading activity for third party and public liability risks up to £5 million.
- Copies of Gas, Electrical Safety Certificates and recent records Periodic Inspections Reports.

The Street Trading Consent will specify the location, times and days for which it is valid and the type of goods to be sold. Consent holders must follow the terms of their Street Trading Consent. Failure to do so may result in the Street Trading Consent being revoked or renewed, or may be subject to prosecutions proceedings.

All Street Trading Consents are issued subject to a set of standard conditions. The Council may attach additional conditions to the standard conditions.

All conditions attached to the Street Trading Consent must be complied with at all times. Failure to comply with either standards conditions or additional conditions may lead to the consent being revoked or not renewed. Consent holders are requested to familiarise themselves and their employees with the conditions attached to their Street Trading Consent.

The granting of a Street Trading Consent does not in any circumstance exempt the Consent holder from the need to obtain any other licence or permission that may be

required or from obligation to comply with all other general or local legislation. There may be additional costs involved in obtaining these additional licences or complying with other legal requirements.

It is the obligation of the Consent holder to familiarise themselves and their employees with this legislation. The Council may revoke a Street Trading Consent for any failure to comply with any other general or local legislation.

A Consent holder shall not assign, underlet or part with this interest or possession of a Street Trading Consent, but it may be surrendered to the Council at any time.

The Council reserves the right to revoke the Street Trading Consent at any time without compensation.

17. Renewals

All Street Trading Consents will be renewed automatically if no objections are received from Heddlu Gwent Police and Highways Department for Monmouthshire County Council following consultation. This automatic renewal will be made unless:

- There have been any complaints from members of the public, or
- Concerns raised by consultees or Council Officers, or
- Consent conditions have been breached.

In these circumstances a full or revised application process may be used at the discretion of the Authorised Officer.

18. Reimbursement of Fees

Fees will be reimbursed to Consent Holders where they cease to trade and surrender their Consent to the Council. Any fee reimbursement will be strictly on the basis:-

- From the date the Consent is surrendered to Monmouthshire County Council, or
- From the date that the Consent is revoked by Monmouthshire County Council.

Any refunds of a fee paid in connection with the granting of Street Trading Consent will be non-refundable. Refunds will be based on the number of complete days remaining.

19. Enforcement

The Council may revoke a Street Trading Consent at any time and shall not be liable to pay compensation to the Consent Holder, although some fees will be reimbursed.

The following principles will be applied to all enforcement action:

- **Openness and transparency.** Council officers will discuss all problems, including failure to comply with conditions, clearly and in plain language. The

council will be open about how it enforces street trading legislation and will inform interested parties of what they can expect from the enforcement procedure.

- **Consistency.** Council officers will seek to take a similar approach in similar circumstances and will carry out their duties in a fair and equitable manner.
- **Proportionality.** The Council will ensure that the action taken is proportionate to the risks involved or the seriousness of the breach of conditions.
- **Helpfulness.** The Council will provide advice on the relevant legislation and assist with compliance. Council Officers will provide a courteous and efficient service.

The Local Government (Miscellaneous Provisions) Act 1982 offences are as follows:-

‘A person who engages in street trading in a consent street without being authorised to do so, or being authorised by a consent, trades in that street.

- (i) From a van, cart, barrow or other vehicle, or
- (ii) From a portable stall,

Without first having been granted permission to do so contravenes a condition imposed shall be guilty of an offence.

It shall be a defence for a person charged with such an offence to prove that he took all reasonable precautions and exercised due diligence to avoid commission of the offence.

Any person who in connection with an application for a consent makes a false statement which he knows to be false in any material respect, or which he does not have reason to believe to be true, shall be guilty of an offence.

A person guilty of an offence shall be liable on summary conviction to a fine. The maximum fine is level 3 on the standard scale, currently £1,000.’

20. Standard Conditions for all Consent Holders

General Conditions

1. The holder of this Consent (hereinafter referred to as ‘the holder’, which expression where appropriate, includes joint holders of this Consent) and any person employed by him to assist him in his trading shall produce it or a photocopy of it on demand when so required by a Police Officer or a duly authorised officer of Monmouthshire County Council (hereinafter referred to as ‘the Council’)
2. A Street Trading Consent does not relieve the Consent Holder, or any person employed to work on the stall, of any obligation to comply with all other general or local legislation and conditions.

3. A consent holder shall not assign, underlet or part with his interest or possession of a Street Trading Consent.
4. In accordance with Monmouthshire County Council's byelaws adopted on 11th February 1999 for the employment of children made under Sections 18(2) and 20(2) of the Children and Young Persons Act 1933
 - No child under the age of 14 may engage in street trading and a child aged 14 or over may not engage in street trading unless (i) he is employed to do so by his parents, in connection with their retail business and under their direct supervision; and (ii) he has been granted a licence to do so ('a street trader's licence') by the authority and is acting in compliance with the terms of that licence.
 - The Authority shall not grant a street trader's licence to any child if it has reason to believe that the employment of the child in street trading would be prejudicial to his health, welfare or ability to take full advantage of his education or the child's street trader's licence has been revoked.
 - A street trader's licence granted to a child shall prohibit the holder from engaging in street trading on a Sunday and shall (i) be valid for not more than 12 months and shall expire on 31 December, (ii) prohibit the holder from touting or importuning to the annoyance or obstruction of any member of the public in any street or public place, and (iii) require that the child notify the authority within one week of any change of address.
 - The Authority may suspend or revoke a street trader's licence granted to a child if it has reason to believe that the holder's continued employment in street trading would be prejudicial to his health, welfare, or ability to take full advantage of his education, or if the holder is (i) found guilty of an offence connected with street trading, (ii) commits any breach of these Byelaws or the terms of his street trader's licence, (iii) uses the licence as a means for begging, immorality or any other improper purpose; or (iv) fails to notify the authority within one week of any change of address.
5. Trading may only take place on the days and during the times specified on the Street Trading Consent, unless special authorisation has been given by Monmouthshire County Council.
6. Consent Holders shall not trade outside the designated trading area.
7. The Consent Holder shall pay the street trading fee.
8. The Consent Holder shall at all times maintain a valid insurance policy covering the street trading activity for third party and public liability risks up to £5 million. The Consent Holder must produce a valid certificate for this insurance at any time on the request of an authorised council officer.
9. The Consent Holder shall have written permission from the owner of the land to trade on private land which is not part of the highway.

10. The sale of the following goods are not permitted Alcohol-except sales of mulled wine and similar at streets fairs or community events, firearms and replica firearms, knives, offensive weapons and replica weapons, tobacco products, fireworks, articles that would typically be sold in sex shops, animals and legal highs. This list is not exhaustive and the Council has to right to refuse the sale of any goods.
11. The holder shall not cause any obstruction of the street or nuisance or danger to persons using it and shall not permit persons to gather around him or any vehicle, stall or other mode used in connection with the trading so as to cause a nuisance, or danger to any persons lawfully using the street.
12. The holder shall not do or suffer anything to be done in or on the street which in the opinion of the Council may be or become a danger, nuisance or annoyance to or cause damage or inconvenience to the Council or to the owners or occupiers of any adjacent or neighbouring premises or to members of the public.
13. The holder shall indemnify and save harmless the Council and their agents, servants, contractors and workmen from and against all proceedings, damages, claims or expenses in respect of an injury to a third party or damage to property which may be sustained by the Council or any person or persons body or company whatever arising out of or in any way connected with his trading and the provision of facilities under this consent.
14. The holder shall not make any excavations or indentations of any description whatsoever in the surface of the street or places or fix any equipment of any description in the said surface.
15. The holder shall not place on the street any advertisement, furniture or equipment other than as permitted by this Consent and he must maintain the same in a clean and tidy condition and not place them so as to obstruct the entrance to or exit from any premises.
16. If a stationery vehicle is used in connection with the street trading, any exhaust fumes therefrom shall be discharged vertically into the atmosphere, and oil drip trays shall be placed thereunder so as to protect the surface of the street.
17. Other than street trading primarily involving the sale of ice cream, no electronic amplifying equipment shall be used.
18. The holder of a consent for trading in hot foods shall at all times carry on the vehicle 4.5 kilo Dry Powder Fire Extinguisher.
19. Where the holder trades from a stationery vehicle, that vehicle shall in all respects, comply with the Motor Vehicle Construction and Use

Regulations. Motor vehicles shall be capable of their own propulsion and shall not be towed into trading positions.

20. The Consent Holder will vacate the pitch upon request, and for as long as necessary to enable highways inspections, repairs to street works and highway improvements to be undertaken, or if the pitch is required to facilitate temporary traffic and/or pedestrian management arrangements. No compensation will be paid to the Consent Holder for lost trading days as a result of the above or for any loss of business as a result of unforeseen occurrences on the highway network.
21. The siting of the street trading vehicle or stall shall not impede the access of emergency vehicles. The street trading activity shall not obstruct any street furniture, signs or lighting.
22. Where the mode of trading is from a stall, the construction and size thereof shall be subject to the approval of the Council.
23. The holder shall keep his vehicle or stall or other mode used for trading, and trading location and the immediately area in a clean and tidy condition during the permitted hours and also leave the same in a clean and tidy condition and unobstructed at the end of each period of trading each day of such trading.
24. The holder shall provide at his own cost and expense, litter bins or similar receptacles for the deposit of litter resulting from his street trading activities and remove them and their contents at the end of each period of trading on each day of such trading.
25. The holder shall retain with his vehicle or stall or other mode used for trading, any water used or waste produced until the end of each period of trading on each day of such trading and then remove it or dispose of it elsewhere, and in particular shall not deposit any such waste near or into the street, drain or channel.
26. The Consent holder shall comply with all requirements of the Council in respect of street trading.
27. No street trading shall be undertaken in breach of food hygiene, health and safety, public health or planning legislation and the requirements of Monmouthshire County Council shall be complied with in respect of such matters.
28. The use of generators is not permitted, unless permission has been specifically granted by an Authorised Officer.
29. The holder shall not assign, underlet or part with his interest or possession under this Consent or any part thereof, but he may surrender it to the Council at any time.

30. This Consent may be revoked by the Council at any time and the Council shall not in any circumstances whatsoever be liable to pay compensation to the holder in respect of such revocation.
31. The Council may vary, amend or add to the conditions of this Consent at any time.
32. Where however, planning permission is required in respect of the trading activities covered by this Consent, and such permission has not been obtained, this Consent shall not operate to entitle the Consent holder to carry out such trading activities during any period required to be covered by such planning permission (to carry out such trading activities in such circumstances will be a criminal offence).
33. The Consent holder must obtain planning permission, where it is required, in respect of the trading activities covered by this Consent. Failure to do so will result in the Consent being revoked.
34. Consent Holders and their employees should have access to suitable and sufficient sanitary accommodation at all trading times.
35. Consent Holders and their employees shall not trade under the influence of any illegal or intoxicating substance.

Mobile Traders

36. The consent holder must comply with Section 62 of the Control of Pollution Act 1974 which relates to noise in streets and the Code of Practice on Noise from Ice-Cream Van Chimes 1982. Attention is drawn particularly to the requirement that no loud speaker is to be used to advertise the sale of any perishable goods for human consumption before 12 noon or after 7.00pm, on any day.
37. In addition to the above statutory requirements, it is a condition of this consent that no audible form of advertising (including hand bells) is to be used by the consent holder before 9am or after 9pm, on any day.
38. Any form of advertising device, whether a loudspeaker or otherwise, must not be used at any time so as to cause nuisance to persons in the vicinity.
39. Mobile vehicle consent holders are permitted to trade in any one place for a continuous period of no more than 30 minutes and the consent holder must not then again trade at that location within a period of 5 hours.
40. No street trading may be carried on at any location on any bus route for any continuous period of more than 10 minutes.

**SCHEDULE 12A LOCAL GOVERNMENT ACT 1972
EXEMPTION FROM DISCLOSURE OF DOCUMENTS**

REPORT: Hackney Carriage/Private Hire Driver Licence D075

AUTHOR: Samantha Winn

MEETING AND DATE OF MEETING: Licensing and Regulatory Committee
17th June 2014

I have considered grounds for exemption of information contained in the report referred to above and make the following recommendation to the Proper Officer:-

Exemptions applying to the report:

Information relating to a particular individual as described in Paragraph 12 of part 4 of Schedule 12A to the Local Government Act 1972

Factors in favour of disclosure:

Openness and transparency in matters concerned with the public

Not applicable at this time (see below)

Prejudice which would result if the information were disclosed:

Applicable The applicant will be attending the Committee meeting on the 17th June 2014 and any information disclosed prior to this date may jeopardise the applicant's right to a fair hearing

My view on the public interest test is as follows:

Factors in favour of **not disclosing** outweigh those against.

Recommended decision on exemption from disclosure:

Maintain exemption from publication in relation to report.

Date: 2nd June 2014

Signed:



Post: Senior Licensing Officer

I accept/~~do not accept~~ the recommendation made above.



Proper Officer

Date:

21/6/2014