

# Street Trading Policy

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## Edition 3

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## **1 Purpose of the Policy**

The purpose of the Council's street trading policy is to create a street trading environment, within the District of South Somerset which: -

- complements premises-based trading establishments;
- promotes appropriate street trading activities, which provide diversity and consumer choice;
- supports community cohesion and equalities
- enhances the character, ambience and safety of local environments;
- is sensitive to the needs and concerns of residents;
- will complement and inform other Council initiatives including those on street entertainment and encouraging entertainment diversity
- highlights the requirements and standards expected of street traders;
- is fairly, appropriately and proportionately controlled, in line with the Council's Enforcement Policy;
- provides clear guidance to the Council officers who will administer the street trading service under it.

## **2 What is Street Trading?**

The purpose of the Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (the Act) is to ensure that Councils can properly regulate those who sell without the use of ordinary business premises and, particularly, traders who move from place to place. It is concerned, primarily, with commercial activities, excluding the provision of services, but there are grey areas and each case needs to be considered on its facts.

South Somerset District Council (SSDC) has adopted Schedule 4 of the Act for the whole of its area and has designated all streets in the District as 'consent streets' for street trading purposes.

The effect of this designation is that trading in any street is prohibited by law (subject to legal and other exemptions set out in Section 3 below), without first obtaining a Street Trading Consent (a Consent) from the Council.

Although, street trading is a District Council function, the Council has delegated to Yeovil Town Council (YTC) the responsibility for dealing with applications for Consents (and some enforcement activity) for some areas within Yeovil Town's administrative boundary. The precise areas and division of responsibilities between the Council and YTC are set out in the relevant delegation agreement between the authorities and a map is attached, as Appendix 1A, to show the areas administered by YTC. Application must be made to the appropriate Council but where the site of the trading straddles the area of both councils then the application must be made to SSDC.

Street trading means 'selling, exposing or offering for sale any article (including a living thing) in a street'. From this definition, any person offering purely a service e.g. a shoeshine (where there is no tangible good such as a picture or sketch) will not be caught by the street trading legislation.

The term 'street' includes 'any road, footway, beach or other area to which the public have access without payment'. Any person street trading without a valid Consent commits a criminal offence.

The courts have held that the definition of a 'street' does not depend upon the area of land in question being in public ownership and private land may be classified as 'a street' too if it meets the definition in the Act and the precise circumstances of the trading indicate that it amounts to street trading.

The matters that the Council is likely to consider relevant when deciding whether an area is a 'street' include: -.

- whether the trading outlet is built on solid foundations;
- whether the trading takes place within a building including areas where the one or more sides are open to the elements e.g. the area known as the "undercroft" at Castle Cary would not be considered a 'street';
- the nature of construction of the trading outlet e.g. of brick/block
- which of the mains services are connected (if any)?
- whether permanent planning permission has been gained
- would the trading outlet be difficult to move? i.e. is a crane required to move it onto or off of a site?
- whether it comes and goes onto the site e.g. it is removed each day?
- is the trading outlet moved to a different site(s) each day?
- distance from the nearest highway. If you are trading within 15 metres of a street, road or car park, there is a presumption that you will need a street trading consent subject to the other exemptions applying. If you trade from a position of more than 15 metres from a street, road or car park, please contact the Licensing Service to see whether a Consent is required as each case is judged on its own set of circumstances.
- the original purpose/nature of the item for sale e.g. whether it is a wholly charitable or domestic purposes or is the sale of a service rather than goods.

The fact that a trader has a lease or licence i.e. a right to occupy the land, or has some other form of consent e.g. planning consent or a licence under the Licensing Act 2003, will not override the requirement to obtain a Consent where the trading amounts to street trading. Similarly, holding a Consent for street trading will not remove the obligation, on the trader, to comply with any other legal requirements e.g. holding a current food hygiene certificates nor override the duty to comply with the general law concerning e.g. trespass (the landowner's permission to occupy the land must be obtained), highways, planning, licensing, health and safety, nuisance, waste disposal requirements etc. Appendix 3 provides some information about other legislative requirements, however, this is not intended to be a comprehensive guide and does not cover planning or highways matters, for example..

The requirement to obtain an Consent for any street trading is wide-ranging and would include, for example, all hot and cold food vendors selling burgers, kebabs, doughnuts, ice cream etc., and all vendors of non-food products from any vehicle, stall, barrow, trailer, or any other moveable or static structure. Mobile artists who sketch or paint, or similar artisans who sell their own work are also likely to be caught by the Act.

Advice should be sought from the Licensing Service on the proposed activity/location to see if a Consent is required before starting to trade – see Section 12 for contact details.

### 3 Exemptions from the need to obtain a Consent

Some types of trading are legally exempt from the need to obtain a Consent; these include:

- a person trading as a Pedlar under certificate (currently issued by the Police);
- a market trader operating at a market venue which acquired this status by virtue of a grant, enactment or order.
- a news vendor selling only newspapers and periodicals. This exemption is subject to restrictions which are set out in Appendix 5
- trade which is carried on at premises used a petrol station
- shops do not require a Consent even if they operate outside the actual building providing it is, essentially, an extension of the shop etc e.g. where a shoe shop has rails of shoes on display outside the shop; again this does not negate the need to comply with other legislation such as the requirement for a pavement licence (obtainable from Somerset County Council), if appropriate:
- trade carried out by 'roundsmen.' A 'roundsman' has been defined as one who visits a 'round' of customers delivering the orders of those customers". e.g. milkmen. N.B An operators of an ice cream unit is not a roundsman.
- charitable collection e.g. selling poppies in aid of the Royal British Legion (although a collection permit, under the Charities Act 1992 may be needed)

The Council has decided that the following trading activities do not require a Consent:

- goods from working farms sold at the premises where they were produced
- goods sold at Local Farmers'/Producers' Markets etc providing such markets meet the Code drawn up by the Somerset Farmers' Markets organisation (basically, this term means that the food is being sold within 30 miles of where it was produced. Advice should be sought from the Licensing Service to see if the market, in question, meets the required criteria before trading commences. These outlets are seen as part of the Council's rural investment and regeneration work, in supporting local producers, and, hence, are seen as extensions of the farms rather than street trading.
- offices and other business premises are allowed, normally, the same exemption as shops in terms of goods displayed outside of the premises because their position is analogous to shops but the items displayed must be, still be, essentially, an extension of the business.
- sales of articles by householders on land within the boundary of their home providing that this is not a commercial concern e.g. selling home grown fruit and vegetables, homemade jams etc. Such sales are seen as disposal of surplus domestic produce rather than trading
- an event that is community-based and run, for non-commercial purposes, such as a fete or school fund raising activity, again, this is seen as non-commercial fund raising. Where **any** of the profit of the trading is retained by the trader for private gain, and not passed to the organisers of the event for use in, or by, the community concerned then the trader will not benefit from the fee exemption (unless a fee is charged to those entering the event);
- Events run by charities or political or educational activities providing the profits from such events are wholly passed to the charity or political or educational organisation concerned because such activities are not commercial trading;
- Traders that are part of an established travelling fair.
- Trading in the "Undercroft" area of the Market House, Castle Cary.

Please contact the relevant Licensing Service should you wish to discuss this further; see Section 12 for details.

#### **4 Nature of Goods, Activities and Trading Hours**

The Council would not normally grant, a Consent for the sale of goods which conflict with those provided by nearby shops or markets because it could provide an unfair economic advantage to the holder of the Consent.

The type of goods allowed to be sold will be considered on a pitch-by-pitch basis having particular regard to local needs, product diversity and specialism e.g. artisan breads, and appropriateness of the proposed location in terms of space and balance.

Street trading hours will mirror, normally, those of the shops or businesses in the immediate vicinity except for hot food takeaways where trading hours will be determined on a pitch-by-pitch basis.

The design and appearance of the Trading Unit e.g. stall, barrow, van or cart etc used must be agreed by the Council's Licensing Manager before a Consent would be granted.

#### **5. Application for and Issue of a Consent**

A Consent is needed before any person can trade in a street within South Somerset. Details of the application procedure, whom to contact and the current fees payable for a Consent will be set out in the Application Form. A copy is attached as Appendix 2.

Where the proposed site for trading concerns land owned by this Council or Somerset County Council, as Highway Authority, then permission from the relevant Council must be obtained before an application for Consent is made. A separate charge may be payable for this permission.

For land in the ownership of the SSDC you need to contact the Senior Land and Property Officer, The Council Offices, Brympton Way, Yeovil, BA20 2HT or telephone on 01935 462462. For land owned by Yeovil Town Council, contact the Town Clerk at The Town House, 19 Union Street, Yeovil, Somerset, BA20 1PQ. Telephone 01935 382424; fax 01935 382429; e-mail [alan.tawse@yeovil.gov.uk](mailto:alan.tawse@yeovil.gov.uk).

Where the proposed site for trading concerns land in private ownership then permission from the relevant landowner must be obtained before a Consent will be granted. The relevant permission should be included with the application for a Consent. Where a Consent is required or a stall in, for example, a street fair then the permission of the Event Organizer, rather than the land owner will be required.

#### ***Who can apply?***

To apply for a Consent a person must be: -

- an individual (although 2 people can apply jointly) but not a company or other legal entity
- over 18 years of age

- legally entitled to live and work in the UK
- of good character (see below under Determination of the Application for Consent)

### ***Receipt of Applications and Fees***

An application will be treated as being received, only, when the relevant application form (see Appendix 2) and the necessary supporting evidence has been received at the relevant Council Office – see Section 2 - and the relevant fee has been paid (and if paid by cheque etc the payment has cleared).

As a concession, if the applicant is applying for a yearly Consent then an instalment plan for the fee is available at the Council's sole discretion. The first monthly instalment must be paid in full when the application form is submitted and for the remaining instalments a Direct Debit mandate will be required.

If the fee is being paid by instalments, then, where the direct debit is dishonoured or stopped, the Council, will revoke any Consent issued, immediately, unless payment of the outstanding fee is made in cash, within 5 working days, at the Council office that issued the Consent. In such cases, an administration charge may also be added to the fee payable to cover any additional costs incurred by the Council.

Cheques are to be made payable to 'South Somerset District Council' or 'Yeovil Town Council' as appropriate - see Section 2. Post-dated cheques will not be accepted.

### ***Insurance***

The Council will accept no liability for the street trading activities undertaken by the Consent Holder(s). Evidence of suitable public liability insurance (minimum value of £5 million) will be required from the Consent Holder(s), in all cases, and this insurance must include an indemnity in case any claim is made against the Council.

The Insurance once approved by a relevant Officer must be maintain throughout the period of the Consent and the Consent will be revoked should the insurance be cancelled or breached or its terms altered so as to provide less than the level of cover required. Once the Consent is revoked the trading becomes illegal and the trader(s) may then be subject to enforcement action.

If the insurance is due for renewal during the period covered by the Consent, it is the responsibility of the Consent holder(s) to provide to the relevant Council an original public liability insurance certificate to show that the insurance is continuous for the period of the Consent. Any breaks in the period of insurance may be grounds for revocation of the Consent.

### ***Determination of the Application for Consent***

Applications for a Street Trading consent will be determined by the relevant Licensing Officer, under delegated powers, using such of the criteria listed below or such other factors as are relevant and appropriate to the application in question. Each case will be assessed on its own merits and individual circumstances, where appropriate, may be taken into consideration. The criteria include whether the application:

- is at an appropriate site or pitch. The location of the proposed street trading activity should not present a substantial risk to the public in terms of road safety,

obstruction and fire hazard. The term “public” refers to both customers frequenting the street trading activity, and other members of the public using the street. In particular, reference will be made to the matters referred to in Section 7 below

- creates more trading opportunities for small businesses or otherwise contributes to the economic vitality of the area. The existence of shops and businesses operating in the area will be considered if appropriate to avoid, amongst other things, unfair economic advantage,
- satisfies an unmet need for such goods in the immediate locality of the proposed activity e.g. fast food outlets on trading estates bearing in mind the presence of existing like outlets
- supports appropriate special events such as community, educational or charitable events (but see Section – Exemptions - where the event is wholly charitable etc)
- places an unreasonable burden on other agencies or bodies. The street trading activity should not present a significant risk to good public order in the locality in which it takes place.
- presents a significant risk of nuisance from noise, smells or fumes to households and businesses in the vicinity of the proposed street trading.
- supports community cohesion and the needs of under represented groups
- is environmentally sustainable (including the applicant's proposals for generating such power as is needed by the trading unit; dealing with any waste and litter arising from the activities)

The decision on whether to grant the consent may also take account of the suitability of the applicant to hold such a consent including relevant unspent convictions etc, levels of complaints received about the applicant(s) and whether and how such matters were resolved; whether any earlier Consent to the applicant(s) has been surrendered or revoked. The decision may take into account the attitude of the applicant and/or their staff etc to dealing with concerns and queries raised by the Council Officers. It may also take account of the appearance of the trading outlet, quality of the goods to be sold and the hours and days for which it is intended to trade.

Where an application for a Consent is not acceptable, in some regard, e.g. the proposed hours of operation are too long; a Consent may be offered on terms which would be acceptable to the Council. Similarly, if after issue, problems or matters of concern arise, the Consent may be modified including adding, removing or substituting conditions, so as to take account of or deal with the concern or problem and ultimately, a Consent may be revoked.

Where an application is refused, in its entirety, full reasons for not granting the Consent will be given in writing (this includes e-mail or fax etc). The Act does not provide for an appeal where a Consent is not granted, nor limit the Council's power to impose conditions; however, the Council complaints' procedure will apply and be followed should the applicant be dissatisfied. The applicant may, also, be able to seek judicial review of the decision through the courts.

### ***Issue of a Consent etc***

If the application is approved, a Consent will be issued by the relevant Council. in the name of an individual person or jointly to two persons; the Consent is not transferable. Exceptionally, where the Consent was held jointly, the Council may at its sole discretion, allow the transfer from the joint holders to a sole holder.



The Consent will contain the specific terms under which it is granted such as the specific location(s) or area(s) where the street trading may take place, the days and hours permitted, the goods that may be sold together with any conditions that must be met.

The conditions attached to the Consent form part of the Consent and MUST be complied with at all times. Failure to meet the terms of the Consent could lead to the Consent being revoked or not renewed. The Council may vary the conditions, at any time, where it feels it is necessary or desirable and the holder of the Consent shall then comply with the Consent as amended.

Unit Identification document (known as the 'Plate') will be issued with the Consent. The Plate remains the property of the Council and must be returned to the Council if the Consent is revoked or surrendered e.g. because the holder ceases to trade. The form of the Plate will depend on the type of Consent issued.

The Consent and the Plates will be issued only at the appropriate Council Offices—i.e. SSDC or YTC as appropriate – see Section 2. The applicant (or one of them if joint applicants) will be required to attend in person to collect the Consent and/or Plate(s) including for any replacements. A charge will be made for replacement Consent(s)/Plate(s) unless the circumstances are exceptional, in the opinion of the Licensing Service,

All vehicles, stall, carts or other type of unit used for street trading must display, at all times whilst trading, a valid Plate. The Plate must be displayed in a prominent position on the trading unit so that it is visible, clearly, to members of the public using the trading unit.

Under the current legislation, the maximum period for which a Consent may be issued is 12 months. A Consent may be issued, for block or individual bookings, for shorter periods where:

- the trading is at organised street markets, carnivals and similar events
- for mobile street artists/traders
- if officers feel that is reasonable to allow, initially, a lesser period whilst the trader assesses if the site or pitch is viable

A Consent will state the date of its expiry and will lapse upon that date stated unless renewed; no reminder renewal notice will be issued advising of the imminent expiry of the Consent. The holder(s) of a Consent has full responsibility and liability for ensuring the renewal of the Consent in good time.

Where the existing holder(s) of a Consent wishes to renew it, that person(s) must ensure the application to renew, fee and other information is provided to the Council in sufficient time for the renewal request to be processed.

Where a Consent has expired, and an application has not been submitted to the Council for renewal, a new application will have to be made. Where, exceptionally, the relevant Licensing Manager agrees to waive this provision, the full fee will be charged for the whole period to ensure the continuity of the Consent whether or not the holder has actually traded during the period since the earlier Consent expired.

Where a Consent has expired but a valid application to renew and full fee was received before the expiry date but the applicant failed to allow sufficient time for the application to renew to be processed, the pitch would be re-offered, normally, to that applicant.

Payment by instalments may be available as set out above under 'Receipt of Applications and Fees'.

In other cases where a pitch becomes vacant, it may be offered to those person(s) who have expressed an interest either as a result of an advertisement placed by the Council or otherwise.

### ***Revocation or Surrender of a Consent***

A Consent may be revoked by the Council at any time after it has been granted, although, where possible, appropriate prior notice will be given to the Consent holder. The revocation may be for a variety of reasons including but not limited to non-compliance with conditions because the Council or other agencies such as the utility companies require access to the location or because the Council wish to use the site for another purpose or where the landowner revokes his/her consent to use of the land for trading. Written reasons for the revocation will be given and a refund or remittance will be given of any sums paid in respect of any days which remain of the Consent period. The formula to be applied will be as set out below: -

*Number of complete days remaining x the daily fee paid.*

*This amount will be reduced to meet the costs of reinstatement/clearance etc of site where such works have not been carried out to the Council's reasonable satisfaction.*

In addition, a Consent will automatically be revoked where the application is made by an individual (or both Consent holders if two people hold the Consent) who dies or who lacks capacity under the meaning of the Mental Capacity Act 2005

The Consent will also be revoked where any public liability Insurance held by the Consent holder(s) is cancelled, not renewed or its terms are breached by the Consent holder(s) or varied so as to reduce the minimum cover stipulated in this Section.

A Consent holder has a duty, under the Consent, to notify the Council of any offences for which s/he is arrested, charged, convicted or cautioned since the grant of the Consent so that the Council can assess whether the Consent should be revoked or the Consent conditions modified.

No claim will lie against the Council where it revokes or varies a Consent and the Consent itself will make it clear that no liability attaches to the Council in respect of any revocation or variation or indeed any act or omission of the Consent Holder.

Where the holder of a Consent wishes to surrender that Consent, e.g. where s/he has stopped trading, then this must be confirmed in writing to the relevant Council who issued the Consent and the actual Consent and Plate returned to that Council.

Where a Consent is jointly held by 2 individuals, a surrender by either one of the holders may be accepted by the Council, (whether or not the other holder consents to the surrender) providing the actions mentioned in the last paragraph have been complied with in full. The Council may, at its sole discretion, transfer the Consent to the individual who was a joint Consent holder where they not wish to surrender the Consent

Upon receipt of the valid surrender, the Council may inspect the pitch to confirm that it has been vacated and check that the conditions of the Consent have been met in full. The Council will confirm the date upon which the surrender is accepted and will refund or remit any sum due to the Consent holder(s) for the remaining period of the Consent. The formula will be the same as that used for a revocation.

A deduction may be made by the Council, from any sums due to the holder of a Consent, following the revocation or surrender of that Consent to meet the reasonable costs incurred in ensuring compliance with the terms of the Consent where the Consent Holder(s) failed to do so e.g. the clearance of litter or other detritus from the site, the making good of damage etc. Where the sum expended by the Council on such matters exceeds the sum due to be refunded to the Consent holder(s) then no sum shall be payable to the Consent holder(s) and such sums in excess shall be recoverable by the Council from the Consent Holder(s) as a debt and interest may be added where payment is not made within 14 days of a demand being made.

### ***Consultation and Notice***

Where the proposed pitch is situated in a lay-by outside a residential property the Council will consult with the resident(s) adjacent to the lay-by and will take their relevant representations into account when drafting the conditions to be attached to any Consent granted. No consultation with other persons or bodies will be undertaken, normally, before a Consent is granted or refused but, where Licensing Officers consider it appropriate, advice or comment may be sought from other bodies, such as the police or the highway agency.

The Council does not promise the holder(s) of the Consent peaceful enjoyment of the pitch/site and will accept no liability to the Consent holder(s) whatsoever and will pay no compensation, costs, damages, expenses etc in relation to any loss, damage or interference that the holder may suffer from any cause whatsoever related to or connected with the Consent including, for example, because the streets are being cleaned or maintained, where an emergency arises or where strikes, riots etc ensue.

## **6 Established and Proposed Pitches**

There are already certain established pitches at sites within the District where street trading is conducted. Any proposed new pitches will be subject to an assessment of the suitability of that site for the activity in question. The assessment will consider, amongst other matters, the suitability of the pitch for the street trading activities proposed, the implications upon nearby shops, businesses and markets and the accessibility of the pitch for those with disabilities.

Consents from static locations will not, normally, be granted where in the Council's view:

- A significant effect on road safety would arise either from the siting of the trading pitch/activity itself, or from customers visiting, parking or leaving the site ; **or**
- There would be a significant loss of amenity caused by, noise, traffic or smell; **or**

- There is an already adequate like provision in the immediate vicinity of the pitch e.g. shops and markets; **or**
- There is a conflict with Traffic Orders e.g. waiting restrictions; **or**
- The pitch or trading unit obstructs either pedestrian or vehicular access, access to shops, traffic flows, or places the public or customers in danger; **or**
- The site does not allow the Consent Holder, staff and customers to park in a safe manner; **or**
- The street trading activity is carried out after dusk and the site is not adequately lit to ensure the reasonable safety of both customers and staff.

## **7 Fee for Street Trading Consents**

Fee levels and fee structure for a Consent will be set by the Licensing Committee and will be reviewed, normally, on an annual basis. Where a change in fees or fee structure arises the revised fee will apply: -

- from the next renewal following the Committee's decision for existing Consent Holders or
- immediately following the decision for new applications received after the decision date.

The fee structure for currently consists of two charging zones across South Somerset. These are:

- the 'Inner Zone' which is that land lying within the boundaries of the following roads: Brunswick Street, Park Street, Summer House Terrace, Old Station Road, Reckleford and Queensway – a map defining this area is attached as Appendix 1B
- the 'Outer Zone' which cover the rest of South Somerset.

The Inner Zone will pay a higher fee to reflect the fact that pitches in this part of the District are subject to a higher footfall and trading mainly takes place on the street rather than on private land, thereby not incurring additional charges for ground rent.

The Outer Zone pays a lower fee to recognise that the pitches in these areas are less lucrative and may face additional costs compared to the Inner Zone traders.

In both Zones a discount is given to those paying for longer periods and/or booking for 3 or more days per week. Further details are shown on the application form.

## **8 Conditions which may be applied to the Consent**

Each Consent will set out the following information: -

- names and address(es) of the Consent holder(s)
- the day(s) and hours when street trading is permitted
- the range of goods which may be sold

- the precise details of the location, size and orientation of the pitch itself.

The Licensing Officer dealing with the application will attach such reasonable and proportionate conditions as in all the circumstances is considered to be necessary to maintain adequate public safety, avoid nuisance and anti-social behaviour and generally preserve the amenity of the specific locality. Examples of such conditions are set out in Appendix 4

Suitable exclusions of liability will be included in the Consent too and the holder(s) will be required, both, to indemnify, fully, the Council against any claims and actions and to maintain appropriate insurance cover as set out under Section 5

In addition, the Consent holder(s) may be held liable for any damage caused to the verge, pavement, highway or any other item of street furniture as a result of the operation of his/her business. Any such damage must be reported to the relevant agency. It is probable that the Consent will be revoked unless the full reinstatement costs (including the Council's reasonable administration costs) are met forthwith and appropriate undertakings provided guaranteeing future good behaviour.

## 9 Enforcement Action

Persons trading without a Consent and who are not exempt (see Section 3 for exemptions) will be the subject of enforcement action in accordance with the Council's Environmental Health Enforcement Policy, which can be found at Appendix 6. This Policy will also apply to any person who holds a certificate granted under the Pedlars Act 1871, but who fails to operate in accordance with the Act and/or established case law.

The following principles will be followed when carrying out street trading enforcement activities:

- |                         |   |
|-------------------------|---|
| <b>Openness:</b>        | The Council will be open about how it enforces the legislation in relation to street trading. Appropriate discussions on compliance failures or problems will normally be undertaken as part of the enforcement process.  |
| <b>Helpfulness:</b>     | The Council will advise on and assist with compliance of the relevant legislation. It will also strive to provide a courteous and efficient service to its customers.   |
| <b>Proportionality:</b> | The Council will minimise the cost of compliance for businesses and individuals by ensuring that any action taken is proportionate to the risk or wider public benefit. Appropriate regard will be given to the human rights of all parties involved in its enforcement activities. |
| <b>Consistency:</b>     | The Council will carry out its duties in a fair, equitable and consistent manner having regard to its Enforcement Policy, any national codes of practice and guidelines and the contents of this document.  |

In addition, other agency may take enforcement action where breaches of the law are found e.g. trading standards

Consent Holder(s) must allow access to authorised Officers of the relevant Council, and Police Officers, at all reasonable times. Council officers will carry with them and produce on request official identity cards.

## **10 Equality Impact of the Policy**

This Policy will be assessed for its impact on equalities issues by the Steering Group for Equalities and changes will be made, where necessary and appropriate, to bring the Policy into line with the equality duties of the Council.

The Council will take all reasonable steps to ensure that it takes account of equality issues in determining applications for Consents and in its enforcement of the street trading regime. An appropriate monitoring system will be put in place to provide information on the future impact of the Policy on the different equalities strands.

## **11 Feedback and Review of the Policy**

The Policy will be reviewed, normally, every three years to assess its effectiveness in meeting the purposes set out above. In addition, the Assistant Director – Environment in consultation with the relevant Portfolio Holder, may make minor changes.

Feedback on the Policy for future reviews should be sent to Licensing Manager or can be made via the Council's website [www.southsomerset.gov.uk](http://www.southsomerset.gov.uk) or by e-mail to [licensing@southsomerset.gov.uk](mailto:licensing@southsomerset.gov.uk)

Where an applicant or any other person has a complaint about how this policy has been applied or the administration or enforcement of street trading by the Licensing Service then the Council's Complaints policy will apply. A copy is attached at Appendix 7.

**YEOVIL PARISH BOUNDARY MAP**



# YEOVIL PARISH

BRYMPTON CP

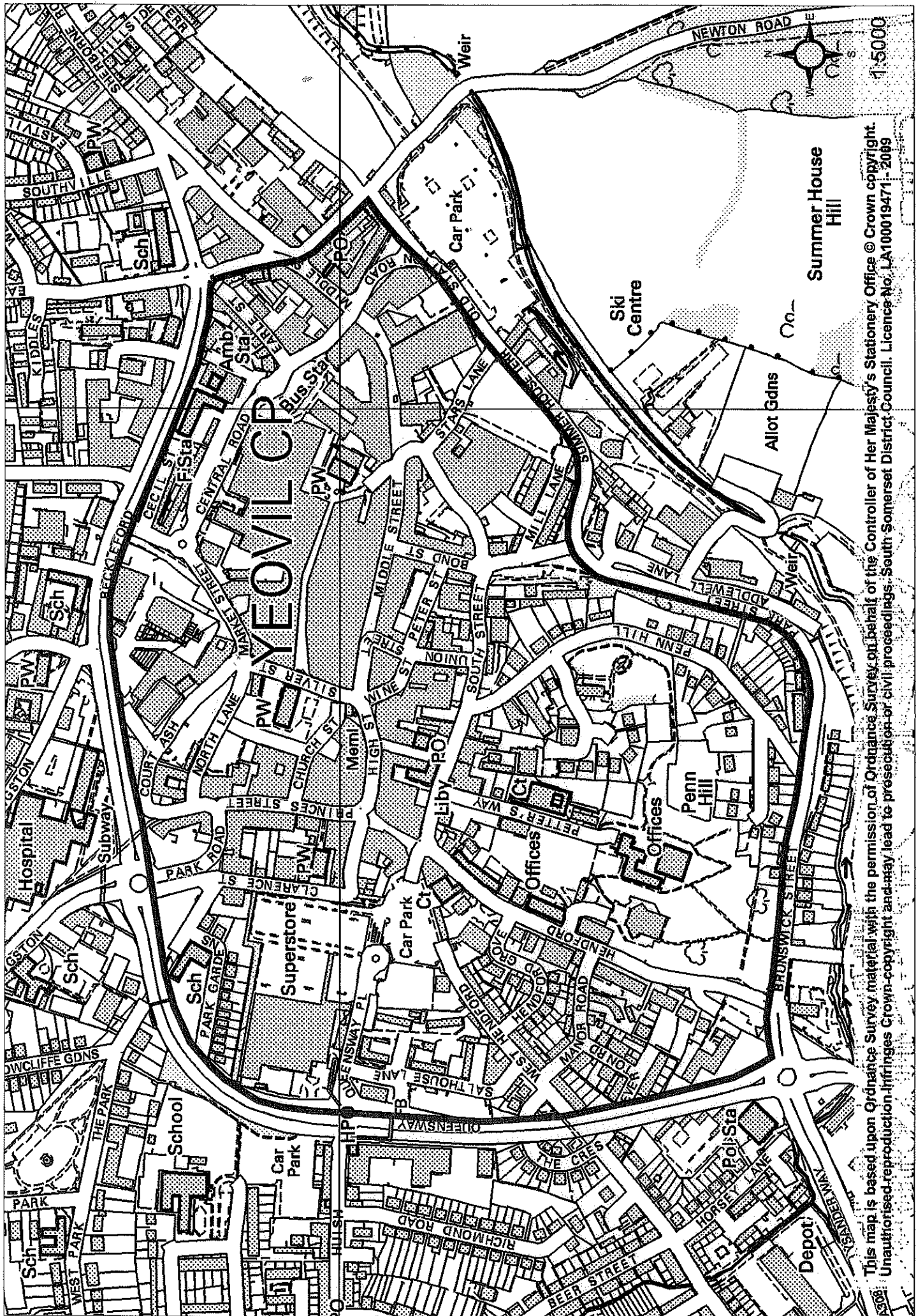
YEOVIL

YEOVIL CP

BARWICK CP



**MAP SHOWING WHERE INNER ZONE FEES APPLY**



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## Local Government (Miscellaneous Provisions) Act 1982

### Application For A Street Trading Consent

(Please see map to ensure you send this form to the correct authority)

Please read the Council's Street Trading Policy before completing and submitting this form. The Policy will apply to you whether you have read it or not.

This form will not be processed unless accompanied by the relevant fee and all the required documents.

	1 <sup>st</sup> APPLICANT	2 <sup>nd</sup> APPLICANT (if applicable)
<b>TITLE</b>		
<b>FORENAME</b>		
<b>SURNAME</b>		
<b>ADDRESS</b>		
<b>POSTCODE</b>		
<b>DATE OF BIRTH</b>		
<b>TELEPHONE NO.</b>		
<b>MOBILE NO:</b>		
<b>E-MAIL ADDRESS</b>		
<b>WHAT IS YOUR NATIONALITY?</b>		
<b>DO YOU HAVE THE LEGAL RIGHT TO LIVE AND WORK IN THE UK?</b>  Please answer Yes/No and if No please provide details  <b>N.B you may be asked to provide evidence of your right to live and work in this country.</b>		
<b>HAS A CONSENT BEEN ISSUED TO YOU PREVIOUSLY?</b>  Please answer Yes/No and if No please provide details and state date of issue and reference number		
<b>HAS A CONSENT ISSUED TO YOU BEEN REVOKED?</b>  Please answer Yes/No if Yes please state date and reason for revocation		

## Street Trading – Appendix 2

<p><b>HAS A CONSENT ISSUED TO YOU BEEN SURRENDERED?</b></p> <p>Please answer Yes/No and if Yes please state date and reason for surrender</p>		
<p><b>HAVE YOU EVER BEEN CONVICTED OF ANY CRIMINAL OFFENCE?</b></p> <p>Please answer Yes/No and if Yes please state particulars in box opposite (if more than 1 offence please set the details required out on a separate sheet and attach it to your application)</p> <p>Date:</p> <p>Court:</p> <p>Offence:</p> <p>Result:</p> <p><b>N.B Spent convictions, as defined in the Rehabilitation of Offenders Act 1974, should not be listed</b></p>		
<p><b>HAVE YOU BEEN CAUTIONED IN CONNECTION WITH ANY CRIMINAL OFFENCE?</b></p> <p>Please answer Yes/No and if Yes please provide details of the offence(s) for which the caution(s) were issued</p>		
<p><b>ARE YOU THE SUBJECT OF ANY PENDING CRIMINAL INVESTIGATION?</b></p> <p>Please answer Yes/No and if Yes please provide details of this investigation including the probable date of outcome</p>		
<p><b>TRADING NAME (IF APPLICABLE)</b></p>		
<p><b>DATE TRADING IS TO COMMENCE (or dates of trading if Daily Consent Required days)</b></p>		

## Street Trading – Appendix 2

<b>PERIOD OF CONSENT REQUIRED</b>  Daily Consent (up to 2 consecutive days) Daily Consent (3 or more days) Quarterly Consent Half-yearly Consent Annual Consent			Please select one  <input type="checkbox"/> please state number of days required <input type="checkbox"/>  <input type="checkbox"/> please state number of days required <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Please complete this table for the location or route from which you will trade N.B. A separate Consent will be required for each pitch or route traded			
<b>NORMAL TRADING TIMES</b>  Please note if you intend to trade in hot food and drinks between 11:00pm and 05:00am or alcohol at any time, you will probably need a licence/authorisation under The Licensing Act 2003 – please contact the Licensing Service for advice on obtaining one			
<b>Day</b>	<b>Start</b>	<b>Finish</b>	
<b>Mon</b>			If trading is to take place over a route e.g. balloon seller then please give route
<b>Tue</b>			
<b>Wed</b>			State any seasonal variation to standard times (if there is no entry here then the standard times apply throughout the period of the consent)
<b>Thur</b>			
<b>Fri</b>			Non standard timings e.g. Bank Holidays.
<b>Sat</b>			
<b>Sun</b>			

## Street Trading – Appendix 2

<p><b>TYPE AND SIZE OF TRADING UNIT</b>  <b>e.g. stall, wagon, van (if any)</b></p> <p>Please state the exact type and construction of the Trading Unit and its dimensions.</p> <p>Is the Trading Unit fitted with wheels, i.e. is it mobile?</p> <p>If yes, is it to be moved at the end of each trading day?</p>	<p>(Insert details)</p> <p>YES/NO</p> <p>YES/NO</p>
<p><b>LOCATION OF TRADING:</b></p> <p>State the exact site (or sites if more than one) required, e.g. what part of St Mary's Street, Chard and the approximate distance from nearest road for each site</p> <p>If the Trading Unit is mobile, is it intended that trading will take place at more than one location?</p>	<p>(Insert details)</p> <p>YES/NO (if yes please complete the location timetable which follows for each location)</p>
<p><b>TYPE OF TRADING PROPOSED</b></p> <p>e.g. craftwork, flowers, fruit and vegetables, hot food, cold food</p> <p>If you intend to operate a food trading business please state with which local authority you are registered? Please provide full contact details at the authority and your registration number</p> <p>If none then you will need to be registered with the local authority before your application for Street Trading can be processed</p>	<p>Please insert the details for this section</p>
<p><b>CONSENT FEE PAYABLE (INNER ZONE)</b></p> <p>Daily Rate - £13 per day (casual rate)</p> <p>Daily *Discounted Rate - (full week trading only) - £11 per day</p>	<p>For daily rate please enter the number of days and multiply by the relevant rate</p> <p>Multiplied by <input type="checkbox"/> days required equals £</p> <p>Multiplied by <input type="checkbox"/> days required equals £</p>

## Street Trading – Appendix 2

<p><b>CONSENT FEE PAYABLE (OUTER ZONE) - see guidance for advice and ready reckoner for fees)</b></p> <p>Daily (undiscounted) Rate - £13 per day (casual rate)</p> <p>Daily *Discounted Rate - (3 or more days per week) - £11 per day</p> <p>Quarterly *Discounted Rate - £500</p> <p>Half yearly *Discounted Rate - £900</p> <p>Annual *Discounted Rate - £1600</p> <p>Instalment Option (for the Annual Discounted Rate only and at the Council's discretion)</p> <p>Direct Debit mandate enclosed (Please ensure you complete and sign in full)</p> <p>The first month instalment must be paid by cheque or cash and accompany this application.</p> <p>* contact the relevant Council's Licensing Service for further information on discounted rates</p>	<p>For daily rate please enter the number of days and multiply by the relevant rate</p> <p>Multiplied by <input type="text"/> days required equals £</p> <p>Multiplied by <input type="text"/> days required equals £</p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/> the first month's instalment (£ ) enclosed</p>
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**DECLARATION**

I/We declare that the information supplied above and that accompanies this application for a Street Trading Consent, is to the best of my/our knowledge accurate, true, and up-to date and I/we undertake to notify you, immediately, if any of the above matters change. In particular, I/we will inform you, forthwith, if arrested, cautioned, charged or convicted of any offence.

I/We agree to pay the relevant fees for the period of the Consent. If the Consent is surrendered and it was subject to a discounted rate, this discount will no longer apply and I/we agree to pay the council any monies due in accordance with the nearest undiscounted fee payable for the period of trading.

I/We understand that any grant of Consent, under the above mentioned Act, will not remove my/our responsibility to obtain all other permissions, consents, licences, etc that may be necessary before undertaking the proposed street trading activity; to pay any other fee, expense, fine, charge etc required in connection with the Consent and/or the trading and to meet the full requirements of the law in general.

I/We understand that any Consent granted may be revoked at any time and that any Conditions attached to the Consent when granted may, subsequently, be added, removed or varied as the Council considers necessary.


I/We agree to indemnify the Council against any costs, losses or damages etc arising howsoever caused, as a consequence (either directly or indirectly) of the grant or use of the Consent including any costs, losses or damages caused by my/our employees or anyone else assisting with my/our business.

**Signature 1<sup>st</sup> Applicant.....Date.....**

**Signature 2<sup>nd</sup> Applicant.....Date.....**  
(where joint application is being made)



## Street Trading – Appendix 2

<b>CHECKLIST OF DOCUMENTS TO BE INCLUDED WITH THIS FORM</b> Please tick box if the document is enclosed or answer N/A if it is not applicable	
<b>Public Liability Insurance – minimum cover of £5 million</b>	<input type="checkbox"/>
 <b>Pitch plan</b> - must be at least scale 1:1250 and show the full extent of the pitch, the positioning of the Trading Unit etc together with a site map showing the location of the pitch. <b>N.B not required for one day Consent e.g. for street fair</b>	<input type="checkbox"/>
<b>A colour photograph of Trading Unit etc</b> <b>N.B not required for one day Consent e.g. for street fair</b>	<input type="checkbox"/>
<b>A colour photograph of each Applicant</b> - For each photograph, the reverse must contain a declaration, endorsed as a true likeness of the applicant, by a solicitor/lawyer or notary, a person of standing in the community (e.g. vicar) or any individual with a professional qualification. <b>N.B. not required for one day Consent e.g. for street fair</b>	<input type="checkbox"/> for 1 <sup>st</sup> applicant  <input type="checkbox"/> for 2 <sup>nd</sup> applicant (if applicable)
<b>Written permission from landowner(s) enclosed or the event organizer where a one day consent only is required</b> Please state the name of the landowner(s)/event organizer opposite	<input type="checkbox"/>
<b>Consent Fee Enclosed</b> - The application will not be processed unless the required fee is enclosed and, where the payment is by cheque, then such cheque(s) must clear before the Consent will be issued unless the Council otherwise agree.  Cheques to be made payable to South Somerset District Council or Yeovil Town Council depending on the relevant application area (please see Appendix 1 of the Street Trading Policy for the relevant map).	<input type="checkbox"/>
<b>Instalment Option</b> – Direct Debit Mandate and first month's instalment enclosed <b>N.B. for the Annual Discounted Rate only and at the Council's discretion</b>	<input type="checkbox"/>
<b>Equalities Form</b> – Please complete and return this form so that the Council can monitor the impact of its Street Trading Policy on equalities issues	<input type="checkbox"/>

## **Other Legislative Requirements and Good Practice**

The following does not form part of the policy on street trading; its aim is to provide useful information to applicants so that they are aware of other legislative requirements. Please note that this is not an exhaustive list and does not cover, for example, highways or planning consents for which further advice may need to be sought so please contact the Licensing Team for further advice.

### **FOOD PREMISES REGISTRATION**

All food businesses, which trade in the street for more than 5 days in any 5-week period, are required to register with the Local Authority where the business operates or in the case of a mobile vehicle the Local Authority where the vehicle is kept. Registration must take place at least 28 days before the business starts trading. Registration is free and simply informs the Council that a business will be starting up. It does not mean that the Council has approved the business as complying with the law nor does it give the business any special rights to trade.

This legislation requires that any food (including drink and water), which is put on the market, is safe for consumption. Also covered by this law is food that may be given away or offered as a prize. In addition to the above legislative requirements, food business operators are also required to carry out food safety management. This is a system for ensuring the safety of food and the keeping of monitoring records. This needs to be done by food business operators to show compliance with the hazard analysis principles of the food operation.

### **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 Consents, where this is reasonably practicable. The unit to be used for the street trading activity shall comply in all respects with the legal requirements relating to the type of street trading activity proposed. In particular the unit to be used shall comply with the following legislation:

- Food Safety Act 1990 as amended
- General Food Regulations 2004
- Regulations (EC) No. 178/2002, 852/2004, 853/2004 of the European Parliament and of the Council and the Food Hygiene (England) Regulations 2006.
- Health and Safety at Work etc Act 1974 and any regulations made under this Act
- Environmental Protection Act 1990

Further advice on any of the above requirements can be obtained by telephoning the Environmental Health Department on 01935 462462

### FOOD SAFETY REQUIREMENTS

#### Food Safety Act 1990

The Food Safety Act requires that the food you handle and sell is safe for consumption. The detailed requirements, which you must meet to ensure that food is safe, are laid out in the various hygiene regulations. The following information gives a summary of the key requirements of these regulations.

#### Hazard Analysis

In addition to complying with the detailed food safety requirements, which are laid out in the regulations, you as the proprietor of a food business must carry out what is known as a hazard analysis of the food operation.

You must therefore:

- Ensure that all food is sold in a hygienic manner;
- Identify food safety hazards;
- Understand which steps in your operation are critical for food safety;
- Make sure that safety controls are in place at these points and that they are maintained and reviewed.

A hazard is anything, which may cause harm to your customers through illness and injury. This includes the potential to cause food poisoning, the presence in food of foreign material, such as glass or metal, and chemical contamination.

The controls for these hazards do not have to be complex and there are a number of systems that can be used by food businesses to ensure that hazards are identified and ways found to control the risk. We strongly recommend that you adopt the Safer Food Better Business Pack available free of charge from the Food Standards Agency by calling 0845 606 0667 or email [foodstandards@ecgroup.co.uk](mailto:foodstandards@ecgroup.co.uk) or a recognised industry pack such as offered by [www.ncass.org.uk](http://www.ncass.org.uk).

#### Training

Everyone engaged in the handling of food must be suitably trained so that they know how to deal with food safely. For persons handling open high risk food (e.g. food which will support the growth of food poisoning bacteria) the minimum level of training that will be acceptable under the street consent scheme, will be successful completion of a 'Level 1' food hygiene course, including the exam, within the last 5 years.

Suitable food hygiene courses are accredited and run by several organisations. These include:

- The Chartered Institute of Environmental Health
- The Royal Institute of Public Health and Hygiene
- The Royal Society of Health
- The Royal Environmental Health Institute of Scotland
- The Society of Food Hygiene Technology

### **Water Supply**

An adequate supply is essential to food safety whether the water is to be used for the preparation of food and drinks or for washing and cleaning purposes. In most instances, the vehicle will not be connected to a mains water supply. You must ensure that plenty of clean and wholesome water is always available at your food stall or vehicle. You must be able to demonstrate that the water containers are adequate in size and number for the activities carried out and that they are cleaned both inside and out on a regular basis. A chlorine-based sterilant should be used. You must be able to demonstrate that they can carry, or have access to, sufficient water to enable you to carry out all of your functions during the hours you are open and trading.

### **Hand Washing Facilities**

All food businesses handling open food will need to provide adequate hand washing facilities so that food handlers can ensure that their hands are free from contamination. The wash hand basin should only be used for washing hands and should always be provided with:-

- (a) adequate supplies of hot and cold water via taps over the basin.
- (b) soap, preferably liquid soap from a fixed dispenser. Soaps should not be strongly perfumed to avoid tainting the food.
- (c) an effective and hygienic way of hand drying. Disposable paper towels are the preferred option. Individual cotton towels are not acceptable; if they become contaminated then they will re-contaminate the hands of anyone who uses them subsequently.
- (d) a sign stating that the basin is ONLY to be used for hand washing.

Just providing a plastic bowl or bowls for hand washing will not be sufficient to meet this requirement under the scheme. A wash hand basin IS required.

### **Sinks and Washing Facilities**

You must have adequate facilities for washing up and cleaning utensils and equipment. This means that you will need a proper sink, which is big enough to accommodate the largest item that you will wash during your catering activity and sufficient hot water. Washing up bowls alone are not sufficient. Draining board facilities should be provided where necessary but these should not be made of bare wood. If you intend to wash up at another location, you will need to demonstrate that suitable and sufficient facilities are available there.

If you intend to wash and prepare food on the stall or vehicle then separate food preparation sinks will be needed in addition to washing up sinks. If this is not practicable, large clean plastic bowls may be used for vegetable washing only. These must be kept clean.

You must always have plenty of clean hot water available for washing up and cleaning surfaces. Sufficiently large hot water heaters or boilers must be provided for this purpose and sited so that they are level and stable. Hot water should be available prior to the commencement of trading.

### **Food Storage and Refrigeration**

Poor temperature control and cross contamination of bacteria from raw to ready to eat foods are the most common causes of food poisoning. To comply with the temperature control regulations you must have enough refrigeration to ensure that all high-risk foods are stored at temperatures below 8°C (preferably below 5°C). All stalls must therefore have a refrigerator. You must not use freezer units as refrigerators by turning them on and off. If you require a freezer on your stall or vehicle it should be capable of keeping food below -12°C.

Ensuring correct food temperatures at the critical steps in the operation are vital controls. Food temperatures, both during storage and cooking/reheating should be monitored regularly using an accurate and reliable thermometer. The legal requirements relate to the food temperature and you should therefore have a probe thermometer so that you can monitor this as necessary.

A record of the temperatures you monitor should be kept in a log book so that you can demonstrate that you have the correct controls in place and that they are working as required. A record also enables you to spot problems before they become serious so that you can take action to ensure food safety and prevent stock loss. If food is stored in fridges or freezers at your home or other address these must also comply with the above requirements. These refrigerators and freezers may also be inspected at any time (even at domestic premises).

### **Protection from Contamination**

All open foods in storage or on display must be kept covered or protected with screens to minimise the contamination risks. Food awaiting cooking must also be covered wherever possible to discourage flies and wasps, which would contaminate the food or carry contamination onto your ready to eat products. Raw and cooked food must be kept apart at all times and separate utensils such as chopping boards, knives, etc. used for each.

Food handlers must wear appropriate clean overclothing including a hat or hair covering to prevent food being contaminated. All external clothing should be covered. In cold weather, outdoor wear should not be worn over clean protective clothing. T-shirts, uniforms etc. used solely for the food business are acceptable.

Staff who handle or prepare open high-risk food should not travel to work in their protective clothing. They should remove their protective clothing if they leave the vehicle.

### **Design and Construction**

The stall or vehicle must be large enough for the type of operation carried on. There should be sufficient working surfaces for the separate preparation of raw and cooked products so that cross contamination cannot occur. It should also be of sufficient size to enable the number of employees intended to operate the stall to move around without any health and safety hazards.

The vehicle or stall should be designed to avoid the risk of harbouring pests.

## Street Trading Policy - Appendix 3

All internal surfaces must be in a sound condition and be easy to clean and disinfect. Stainless steel or plastic laminate cladding for walls and cupboards would be acceptable. It is recommended that all work surfaces be of stainless steel.

### Cleaning

It is a legal requirement that food premises are kept clean. Stalls and vehicles used for street trading tend to have very limited space. Effective and regular cleaning is therefore an even more important control to prevent contamination than in a normal kitchen.

For cleaning to be efficient it must be managed, checked where necessary and done to a set routine. The following points may help in setting up an effective cleaning system.

- Select appropriate chemicals and cleaning techniques for the tasks required.
- 'Clean as you go' is the best policy. It prevents dirt and debris from building up which make cleaning easier and it helps to ensure that when you want to use a utensil or piece of equipment or work surface then it is ready to use. If staff are employed they should also 'clean as they go' particularly after using utensils, work tops, chopping boards, etc. and especially before handling ready to eat products after raw.

You should:-

- Set aside times in the day when cleaning can be performed and decide how much time should be devoted to cleaning.
- Separate the cleaning tasks into daily, weekly and less frequent.
- Daily tasks should include all working surfaces, floors, sinks, wash basins, draining boards, handles and items of equipment used during the day.
- Weekly tasks might include walls, doors, windows, ovens, refrigerators, storage units etc.
- Less frequent tasks – clean items or areas not covered by the daily or weekly cleaning such as ceilings, ventilation units, upper wall surfaces etc. In addition, although floors and items of cooking equipment receive daily cleaning, they occasionally need an extra in-depth clean and this should be incorporated into your cleaning routine.
- Depending on the number of staff working in your business and the level of supervision it may be appropriate to produce a written cleaning schedule. This should allocate responsibilities and bear in mind how much time each person can devote to cleaning and when it will be done. Each individual should be given specific daily and weekly tasks based on the following principles.
- Prepare a chart or rota, detailing each individual's cleaning duties, the time to be spent on them and when to do them. This needs to be linked to what cleaning product and cleaning method is to be used.

## **Street Trading Policy - Appendix 3**

- Ensure that staff know what their duties are and the standards expected.
- Supervision is essential to keep up standards. If staff are aware that regular hygiene checks will be made then they are more likely to do the job properly.
- If an area is found to be dirty then an effective rota will show when it should have been cleaned and who was given that task.
- Cleaning should be a habit. A set routine will make this easier.

### **Personal Hygiene**

It is good practice for the proprietor to instruct all staff on appointment that they have a legal duty to notify their manager or supervisor, as soon as possible, if they ever suffer from, or are likely to have become a carrier of a disease, which might be transmitted through food.

In addition, staff should be made aware of the staff sickness policy with regard to medical conditions, which are likely to affect food safety. It is recommended that new staff are given this information in writing.

Each stall holder will be expected to provide a written statement setting out their sickness policy for the exclusion of a food handler suffering from diarrhoea, sickness, sore throat, infected wounds, etc. and when they will be allowed to return to work.

### **Sanitary Accommodation**

Suitable and sufficient sanitary accommodation must be available for use by the food handlers. This may be:-

- i) provided on the vehicle, in which case it must be completely separated from and must not open directly on to the food preparation or storage areas.
- ii) provided adjacent to the vehicle e.g. a purpose designed unit or trailer
- iii) suitable facilities nearby may be accepted. If you intend to use such sanitary accommodation, e.g. in a public house or restaurant, the sanitary accommodation must be available for use when the stall is trading, although the stall holder may continue to trade for up to one hour after the availability of the sanitary accommodation has ceased. Written permission to use such sanitary accommodation must be provided.

Whichever arrangements are made, the sanitary accommodation must be kept in a clean and satisfactory condition and maintained in working order and be available for use at all appropriate times when that stall is in use. Where the accommodation is provided by the proprietor access may be restricted for the sole use of the proprietor or employees of the food business.

### **Waste Disposal**

The consent holder must comply with the Environmental Protection Act 1990 (as amended) and dispose of waste lawfully.

## **Street Trading Policy - Appendix 3**

You must have adequate arrangements and facilities for the hygienic storage and disposal of solid and liquid waste. This is a very important legal requirement because you are unlikely to have the same access to the kind of waste collection and disposal facilities which conventional premises take for granted.

You must be able to demonstrate that you have made suitable arrangements for the disposal of solid and liquid waste, including fats and oils.

This will normally be in the form of a “waste transfer note” from a registered waste disposal company.

Records showing the date and place of disposal must be kept for a minimum of 2 years and produced on demand to an authorised officer of the Council. (Environmental Protection Act, Section 34).

### **Refuse**

No waste material must be deposited on the public highway or any adjacent property. All waste material must be subject to proper commercial waste disposal controls and therefore waste arising from the business must not be disposed of in public litter-bins or the domestic waste collection, or deposited at an amenities site.

In addition to the waste bin provided for use by the food handler you must provide at least one refuse container placed on the pavement near to the stall or vehicle so that it is available for the use of customers. A clearly visible notice shall also be displayed requesting customers to deposit litter in a waste container.

The consent holder must ensure that the area in the vicinity of the vehicle or stall is kept clear at all times of all refuse originating from the trading activities and from customers. In particular, you must leave the site clear of such refuse at the completion of trading.

### **Drainage**

The majority of vehicles and stalls will not be connected to a drain. You, as stallholder, must therefore be able to demonstrate that a waste-water point is available or that sufficient capacity is available to contain and store all waste water generated during the catering activities. Under no circumstances must containers used to transport and/or store drinking water also be used to store waste-water.

Further advice can be obtained from the Local Authority and guidance can be found in the ‘Industry Guide to Good Hygiene Practice: Market and Fairs Guide’.

## **HEALTH AND SAFETY**

All businesses are required to comply with the relevant statutory requirements of the Health and Safety at Work etc. Act 1974 and associated regulations. These regulations set out the requirements of the health, safety and welfare of staff and users. Further advice can be obtained from the Local Authority or the Health and Safety Executive website: [www.hse.gov.uk](http://www.hse.gov.uk)



## Street Trading Policy - Appendix 3

### Safety Policy

If an employer employs 5 or more people, he/she is required by law to produce a written health and safety policy, which their staff must read, understand and follow.

The written policy must:

- i) state their general policy on health and safety.
- ii) state who is responsible for carrying out the policy.
- iii) be revised whenever appropriate detail the arrangements the business has for ensuring health and safety
- iv) be revised whenever appropriate

### Risk Assessment

An assessment of the health and safety risks associated with your business must be carried out. To do this look for the hazards (the things which can do harm) associated with your business. Then decide who might be harmed (you, your staff, customers or other members of the public) and how. The next step is to evaluate the risks (the chance, high or low that somebody will be harmed by the hazard) and decide whether the existing precautions are adequate or whether more should be done. If you employ 5 or more people you have to record your findings. Finally you need to review your assessment on a regular basis and revise it if necessary.

Further information is available in the HSE Booklet 'Five Steps to Risk Assessment'

Persons granted a street trading consent should also be aware of the Regulatory Reform (Fire Safety) Order (RRFSO), which came into force in England and Wales on 1<sup>st</sup> October 2006. Further information is available from the Council's Licensing Services section or at [www.devonandsomersetfire.co.uk](http://www.devonandsomersetfire.co.uk).

### First Aid

A proper first aid kit must be provided and all staff must know where to find it. The kit must contain plenty of waterproof dressings (blue if possible), bandages and protective fingerstalls. The level of first aid cover should be determined through the risk assessment process.

### Fire fighting equipment

Equipment must be provided appropriate to the types of fire that may be faced e.g. Cooking fat, LPG, electrical etc. This will normally consist of a fire blanket and a dry powder fire extinguisher, both of which should be located near to the door or entrance of the vehicle or stall.

A dry powder extinguisher conforming to BS 5423 1987 (for current extinguishers) or BSEN3 (for all new extinguishers) must be provided.

Extinguisher size to be determined using the following table:

Length of Vehicle	Extinguisher Capacity
Up to 3.5 metres long	1 x 2 kg

## Street Trading Policy - Appendix 3

Between 3.5 and 4.5 metres long	1 x 4 kg
Over 4.5 metres long	1 x 6 kg

Extinguishers should be mounted on wall brackets approximately 1 metre from floor level and adjacent to the exit. A competent person must service extinguishers at least once per year.

### Electrical safety

If an electrical generator is used or a connection is made to a permanent electricity supply the consent holder must ensure that the electrical installation is safe. If there is any doubt as to the integrity of the supply or installation the council may ask for a safety certificate from a competent person or body. In most circumstances an inspection by an NICEIC or ECA approved electrician will be satisfactory.

At no time should electric cables be draped across roadway, public footpaths or any other area where the public have access.

### Electricity Generators

If a generator is to be used to supply electricity for any stall or vehicle it shall be maintained in good condition and operate without producing any visible smoke. The generator shall be suitably silenced so that it cannot be heard by anyone at the nearest premises.

### Liquefied petroleum gas (LPG)

All LPG installations must be in accordance with the following code of practice:

## CODE OF PRACTICE FOR THE USE AND/OR OF STORAGE OF LIQUEFIED PETROLEUM GAS IN MOBILE SHOPS, SNACK BARS AND STALLS

### Storage of L.P.G. Cylinders

1. If stored *externally*, these should be:
  - (a) Sited on a firm standing.
  - (b) Fitted in an upright position with the valve uppermost in an upright stand or otherwise securely held.
  - (c) Protected from accidental damage or interference.
  - (d) So sited that the top is below the level of the stall openings, or 1 metre away from such openings.
2. If stored *internally*, these should be:
  - (a) Cylinder should be kept in a compartment that is gas-tight from the interior having half-hour fire resistance.
  - (b) The compartment should be sufficient to contain spare cylinders.
  - (c) The compartment should be positioned away from the service area.
  - (d) Access to the compartment must only be from the exterior of the vehicle and must be fitted with a lock.

## Street Trading Policy - Appendix 3

- (e) Compartment ventilation must be at both high and low levels.
- (f) The compartment must be identified with a suitable sign conforming to BS 5378 11980, e.g. 'L.P.G. HIGHLY INFLAMMABLE'

3. The total quantity of L.P.G. available at a premises should not exceed 50kg

### Gas Pipes and Fittings

1. All ferrous pipe-work and fittings to be protected from corrosion. Non-ferrous pipes to be drawn copper or stainless steel with compression-type fittings.
2. No pipes to be run through box sections or cavities.
3. All joints and unions to be easily accessible.
4. Pipes to be securely fixed in position.
5. Flexible hoses to be as short as possible. Only hoses conforming to BS 3212 are to be used and should be changed every two years. All hoses should be secured with proper hose clips.
6. All valves and fittings to be tested with soapy water at regular intervals to ensure that they are tight.

### Ventilation

Ventilation in the vehicle or trailer must be sufficient to provide oxygen for gas burning appliances and to remove the products of combustion. This should be by means of permanent vents at high and low levels.

**WARNING – ALL L.P.G. EQUIPMENT IS DANGEROUS UNLESS INSTALLED PROPERLY AND REGULARLY MAINTAINED BY COMPETENT PERSONS. PROFESSIONALLY QUALIFIED PERSONNEL SHOULD CARRY OUT ALL INSTALLATIONS AND MAINTENANCE. THE USE OF L.P.G. SHOULD BE TREATED WITH RESPECT AT ALL TIMES. ALL STAFF MUST BE TRAINED WITH REGARD TO PROCEDURES IN CASE OF FIRE.**

## **EXAMPLES OF CONDITIONS THAT MAY BE ADDED TO THE CONSENT**

### **General**

1. The Council retains the right to alter the allocated sale area in the event of unforeseen circumstances.
2. Consent holders and their assistants must not trade under the influence of any illegal or intoxicating substance. Any traders found with illegal substances on their pitch will have their Consent revoked.
3. The Council reserves the right to exercise its powers under the Local Government (Miscellaneous Provisions) Act 1982 to prohibit any street trading for a maximum of six days in any one year where it is deemed necessary by the Council subject to notice in writing at least 14 days prior to removing the consent day(s).
4. Traders and their assistants employed by them shall ensure the public are treated fairly and with courtesy at all times.

### **Site Conditions**

1. The trader will be responsible for cleansing the trading area and ensure that all refuse arising as a result of the activities of the trader shall be placed in suitable covered containers provided by the trader, unless otherwise provided by the Council, and shall be kept exclusively for that purpose. Such refuse containers shall be kept as clean as is reasonably possible and refuse is disposed of in an approved manner on a daily basis.
2. The trader when operating on a static site shall have access to suitable and sufficient sanitary accommodation for both the consent holder, and any persons employed in the street trading activity.
3. Advertisements or other notices must not be placed outside of the area of the street trading site, without the written approval of the Councils' planning department. The trader shall not directly or indirectly hawk, tout or solicit custom for or advertise by way of flyer, public address system or otherwise without the express written consent of the Council.
4. The trader shall not place on the street or in a public place any furniture or equipment other than as permitted by the consent and he/she must maintain the same in a clean and tidy condition and not place them so as to obstruct the entrance or exit from any premises.
5. The trader shall trade only from the position, which is detailed on the consent, unless directed to or agreed to by the Licensing Authority.
6. Trading may only take place on the days and during the times specified on the consent without special authorisation being given in writing from the Council.

## **Street Trading – Appendix 4**

7. The trader must not cause or allow to be caused any damage to the street surface, street furniture, lighting and landscaping within the permitted area and will be responsible for the making good of any such damage.
8. The street trading consent plate issued by the Council must be conspicuously displayed in a place where the public may view it.
9. Where a structure is not removed at the end of the trading day, no additional permanent or semi-permanent additions or paving shall be erected or constructed adjacent to the structure for which, consent has been granted.
10. No signage or objects shall be placed on the highway or area surrounding the vehicle/premises unless agreed by the Council. Fly posting within the South Somerset District Council area is not permitted.
11. Traders shall not allow any obstruction to fire hydrants, manholes or other street furniture etc, resulting from their business.
12. No mobile generators shall be used without the express permission of the Council. Where permission is granted generators shall be so positioned that:
  - they do not present a danger to the public, do not present a fire or similar hazard to the stall, goods displayed thereon or adjoining premises and do not give rise to a nuisance by reasons of noise, vibration, smoke or smell.
13. No combustible materials are to be stored in the vicinity of a generator and suitable first aid and fire fighting appliance(s) must be immediately available.
14. Wherever possible all generators must be fuelled by diesel oil.
15. No fuel may be stored in the vicinity of a generator.
16. Generators must not be filled up during the trading day. All generators should be filled up at the start of the day before trading.
17. The consent holder shall ensure that any equipment, such as a generator, is in a safe working condition and suitably cordoned off to ensure that the general public do not have access to the equipment.
18. All traders using any form of power must have a minimum of a one-litre fire extinguisher suitable for use on the type of equipment being used.

## **Food Trading**

1. Vans and stalls used for cooking must be adequately ventilated.
2. All staff must have attended, as a minimum. "level 1" Food Hygiene training within the past 5 years. Evidence of Food Hygiene training must be available for examination by an authorised officer of the Council at any time when the unit is trading.
3. A valid food registration certificate is in force for the business

## **Street Trading – Appendix 4**

### **Yeovil Town Centre Conditions**

(These are in addition to those specified above)

1. If a trader is not using a pitch for a period longer than seven days then the trader/consent holder must notify the Town Council.
2. Vehicles may only be used for delivery before 10.30am and after 5.30pm in the consented areas. Once any vehicles have been unloaded, they should be removed from the consented area immediately.
3. The roof awning or any other projection shall be contained within the pitch area unless agreed by the Council.
4. All goods, containers or other articles shall be contained within the consented pitch area and shall not project beyond.
5. Traders shall not use or permit to be used on the pitch area or within the immediate vicinity any radio, cassette, CD players, iPod or MP3s etc or other equipment or apparatus to produce music or other amplified sound.

## Street Trading – Appendix 5

### Extracts from Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 re Street Trading

N.B the extracts are numbered as set out in the Act.

#### *Interpretation*

1.(1) In this Schedule

"consent street " means a street in which street trading is prohibited without the consent of the district council ;

" prohibited street " means a street in which street trading is prohibited ;

" street " includes-

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

" street trading " means, subject to sub-paragraph (2) below, the selling or exposing or offering for sale of any article (including a living thing) in a street;

(2) The following are not street trading for the purposes of this Schedule-

- (a) trading by a person acting as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871;
- (b) anything done in a market or fair the right to hold which was acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of an enactment or order.
- (c) trading in a trunk road picnic area provided by the Secretary of State under section 112 of the Highways Act 1980;
- (d) trading as a news vendor;
- (e) trading which-
  - (i) is carried on at premises used as a petrol filling station; or
  - (ii) is carried on at premises used as a shop or in a street adjoining premises so used and as part of the business of the shop;
- (f) selling things, or offering or exposing them for sale, as a roundsman;
- (g) the use for trading under Part VIIA of the Highways Act 1980 of an object or structure placed on, in or over a highway;
- (h) the operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980;
- (j) the doing of anything authorised by regulations made under section 5 of the Police, Factories, etc. (Miscellaneous Provisions) Act 1916.

(3) The reference to trading as a news vendor in sub-paragraph (2)(d) above is a reference to trading where-

## **Street Trading – Appendix 5**

- (a) the only articles sold or exposed or offered for sale are newspapers or periodicals; and
- (b) they are sold or exposed or offered for sale without a stall or receptacle for them or with a stall or receptacle for them which does not-
  - (i) exceed one metre in length or width or two metres in height;
  - (ii) occupy a ground area exceeding 0.25 square metres; or
  - (iii) stand on the carriageway of a street.

### ***Designation of streets***

2.(1) A district council may by resolution designate any street in their district as-

- a) a prohibited street;
- b) a licence street; or
- c) a consent street.

### ***Street trading consents***

7.(1) An application for a street trading consent or the renewal of such a consent shall be made in writing to the district council.

(2) Subject to sub-paragraph (3) below, the council may grant a consent if they think fit.

(3) A street trading consent shall not be granted -

- (a) to a person under the age of 17 years; or
- (b) for any trading in a highway to which a control order under section 7 of the Local Government (Miscellaneous Provisions) Act 1976 is in force, other than trading to which the control order does not apply.

(4) When granting or renewing a street trading consent the council may attach such conditions to it as they consider reasonably necessary.

(5) Without prejudice to the generality of sub-paragraph (4) above, the conditions that may be attached to a street trading consent by virtue of that sub-paragraph include conditions to prevent -

- (a) obstruction of the street or danger to persons using it; or
- (b) nuisance or annoyance (whether to persons using the street or otherwise).

(6) The council may at any time vary the conditions of a street trading consent.

(7) Subject to sub-paragraph (8) below, the holder of a street trading consent shall not trade in a consent street from a van or other vehicle or from a stall, barrow or cart.

(8) The council may include in a street trading consent permission for its holder to trade in a consent street -

- (a) from a stationary van, cart, barrow or other vehicle; or
- (b) from a portable stall.



## **Street Trading – Appendix 5**

- (9) If they include such a permission, they may make the consent subject to conditions -
- (a) as to where the holder of the street trading consent may trade by virtue of the permission;
  - (b) as to the times between which or periods for which he may so trade.
- (10) A street trading consent may be granted for any period not exceeding 12 months but may be revoked at any time.
- (11) The holder of a street trading consent may at any time surrender his consent to the council and it shall then cease to be valid.

### ***General***

8. The holder of ... a street trading consent may employ any other person to assist him in his trading without a further ... consent being required.
- 9.(1) A district council may charge such fees as they consider reasonable for the grant or renewal of a ... street trading consent.
- (2) A council may determine different fees for different types of ... consent and, in particular, but without prejudice to the generality of this sub-paragraph, may determine fees differing according -
- (a) to the duration of the ... consent ;
  - (b) to the street in which it authorises trading; and
  - (c) to the descriptions of articles in which the holder is authorised to trade.
- (3) A council may require that applications for the grant or renewal of ... consents shall be accompanied by so much of the fee as the council may require, by way of a deposit to be repaid by the council to the applicant if the application is refused.
- (4) A council may determine that fees may be paid by instalments.
- (5) Where a consent is surrendered or revoked, the council shall remit or refund, as they consider appropriate, the whole or a part of any fee paid for the grant or renewal of the consent.

### ***Offences***

- 10.(l) A person who-
- (a) engages in street trading in a prohibited street; or
  - (b) engages in street trading in ... a consent street without being authorised to do so under this Schedule; or
  - (d) being authorised by a street trading consent to trade in a consent street, trades in that street -
    - (i) from a stationary van, cart, barrow or other vehicle; or
    - (ii) from a portable stall, without first having been granted permission to do so under paragraph 7(8) above; or
  - (e) contravenes a condition imposed under paragraph 7(9) above shall be guilty of an offence.

## **Street Trading – Appendix 5**

- (2) It shall be a defence for a person charged with an offence under subparagraph (1) above to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence.
- (3) Any person who, in connection with an application for ... a street trading consent, makes a false statement which he knows to be false in any material respect, or which he does not believe to be true, shall be guilty of an offence.
- (4) A person guilty of an offence under this paragraph shall be liable on summary conviction to a fine not exceeding Level 3 on the standard scale.

### ***Savings***

11. Nothing in this Schedule shall affect -

- (a) section 13 of the Markets and Fairs Clauses Act 1847 (prohibition of sales elsewhere than in market or in shops etc.) as applied by any other Act;
- (b) section 56 of the Food Act 1984 (prohibition of certain sales during market hours).

**ENFORCEMENT POLICY**

# Somerset Authorities Environmental Health Enforcement Policy

## Incorporating the Statutory Code of Practice for Regulators



## FOREWORD

***The Statutory Code of Practice for Regulators***, sometimes referred to as the *Regulators' Compliance Code*, which forms a major section of this Policy, is a central part of the Government's better regulation agenda. Its aim is to embed a risk-based, proportionate and targeted approach to regulatory inspection and enforcement.

Effective and well-targeted regulation is essential in promoting fairness and protection from harm. However, in achieving these objectives, regulation and its enforcement should be proportionate and flexible enough to allow or even encourage economic progress.

The Code is based on the recommendations of the Hampton Report, which is referred to in paragraph 2.2 and described in more detail in Appendix 1. The purpose of the Code is to promote efficient and effective regulatory inspection and enforcement, to improve required outcomes without imposing unnecessary burdens on regulated persons and businesses.

The Environmental Health Services of Somerset Authorities will make every effort to comply with the Code. However, in certain instances it may be decided that a provision in the Code is either not relevant or is outweighed by other factors. Any decision that is taken to depart from the Code in a material way will be properly reasoned, based on relevant evidence, and documented.

In having regard to the Code we will, in particular, adopt a positive and proactive approach towards ensuring compliance by:

- helping and encouraging regulated persons to understand and meet regulatory requirements more easily; and
- responding proportionately to regulatory breaches.

To that end, this document has been produced, representing joint policy. As such, it is to be adhered to by all Officers when considering their regulatory functions.

It is important that this document is viewed as a whole and within the intended context. For this reason, care is required when using individual parts or isolated text.

December 2008

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## 1.0 Introduction

1.1 It is the function of Environmental Health Services to regulate and ensure compliance with the law across broad subject areas, including:

- a) Environmental Protection
- b) Food Safety
- c) Health and Safety
- d) Licensing
- e) Housing Standards

1.2 To enable these statutory functions to be carried out, Officers are appointed and are duly authorised to act under specified legislation.

In some cases, an individual's authority may be limited in scope and in others, proof of Competence, in terms of relevant qualifications and/or experience may be a pre-requisite to Authorisation.

1.3 This document describes the principles upon which our joint enforcement approach is based, rather than the detailed internal Procedures through which regulatory functions are delivered, which will be different in each of the signatory Authorities.

1.4 The importance of complying with this Policy cannot be overstated, as Case Law (*R v Adaway*) has established that prosecutions may not succeed in cases where regulating authorities have failed to follow their own Enforcement Policies. Further details on *R v Adaway*, a Trading Standards case, are at Appendix 2.

## 2.0 Principles of Enforcement

2.1 As a guiding principle, all of our enforcement activities will be in accordance with the five "Principles of Good Regulation". Identified by the Better Regulation Executive, the Principles are that regulation should be:

- transparent
- accountable
- proportionate
- consistent
- targeted – only at cases where action is needed

2.2 Our regulatory functions are also fundamentally influenced by the Hampton Principles, which have shaped our Policy and to which Officers will have continuing regard.

The background to the Hampton Report and details of its Principles are at Appendix 1.

- 2.3 Wherever possible, officers will seek to find solutions that are arrived at by agreement and co-operation and will keep in mind the maxim that prevention is better than cure.

Officers are required to regulate activities across a wide range of businesses and this brings them into contact with individuals having varying abilities.

Full regard will be paid to the different abilities that are encountered and to the importance of the education and help which Officers themselves are able to give to assist in achieving compliance.

- 2.4 However, the aim behind much of our efforts is the protection of persons at work, the general public and the environment from harm caused by failure to comply with the safeguards provided for in law.

This being the case, there will be circumstances in which enforcement is unavoidable and we do not shrink from using our full legal powers, including prosecution, where it is necessary to do so.

- 2.5 There are two distinct facets to enforcement, which may be taken to mean either of the following:

a) Enforcement for Compliance. This ensures that each of the signatory Councils have programmes in place for monitoring compliance by businesses and individuals with the various legislation affecting them.

Such programmes are *pro-active* in nature and will include, for example, routine inspections of food premises, workplaces, licensed premises, private sector rented housing, and Permitted Processes.

Because of the diversity of requirements under the different legislation and Guidance, no attempt is made in this document to be prescriptive about the ways in which pro-active programmes are organised and monitored.

However, each Team/Section has in place the means to arrange programmes or visits which will satisfy the needs of their particular legislation **and** the administrative mechanisms for monitoring progress against such programmes.

b) Enforcement for **Non** Compliance In this aspect of enforcement, the options available for taking action against businesses or individuals for ignoring or otherwise failing to comply with their legal obligations are outlined in paragraph 2.6, below.

The need for enforcement for non-compliance may result either from the pro-active programmes outlined in a), above, or alternatively from a *reactive* response, for example, to a complaint or an event such as a workplace accident.



2.6 Options include the following:

- a) Prosecution
- b) Injunction
- c) ASBOs and CRASBOs
- d) Simple Cautions
- e) The service of Notices, including Fixed Penalty Notices
- f) Works in Default, including seizure of equipment
- g) Revocation, Suspension or Refusal to Renew (Permits or Licences)
- h) Written warnings (sometimes known as informal Notices)

Enforcement action may be taken as a result of an incident, a complaint or an inspection.

2.7 Each level of enforcement action is subject to individual internal Procedures. This being the case, this Policy document does not intend to provide operational detail, but some of the more important points that are covered by Procedures include:

- a) A decision to prosecute will be taken by a senior manager, in consultation with the Investigating Officer and, where appropriate, Legal Services.

During the decision making process, full consideration is given to lesser enforcement alternatives.

- b) Any proposed prosecution must satisfy two specific Tests, these being:

- i) Evidential Test: no case will be taken unless there is the realistic likelihood of conviction and,
- ii) Public Interest Test, by which the circumstances leading to consideration of prosecution are deemed to affect the public interest.

A number of factors, listed at Appendix 3, will determine whether or not a particular prosecution is in the public interest and a balance in favour or against will be made, between those factors that are present.

- c) Following a successful Prosecution, the Council will seek to recover the costs involved in the investigation and subsequent Court proceedings.

- d) A Simple Caution will be offered only if the evidence of the case is sufficient for Prosecution to have been considered as a viable option.

e) Unless there is extreme urgency, Formal Notices will be subject to a Peer Review process before being served, and will be accompanied by any information regarding Appeal Provisions that may apply.

- 2.8 A raft of legislation bears upon the conduct of investigations and of legal proceedings and these include, for example, the Police and Criminal Evidence Act, the Criminal Procedure and Investigations Act, the Regulation of Investigatory Powers Act, and many more.

All of the provisions of the above will be complied with at all times when they are relevant to a particular investigation or enforcement task.

- 2.9 Whenever possible, we will work in partnership with other agencies to achieve common goals on matters of mutual concern.

These Agencies may include, for example, the Environment Agency or the Health and Safety Executive.

### 3.0 **General Considerations**

- 3.1 Where it is necessary, enforcement will be undertaken without fear or favour and without consideration of the race, ethnic background, age, faith, social status, colour, gender or sexual orientation of any persons involved.
- 3.2 If any person exerts undue or improper pressure in an attempt to influence a decision concerning enforcement, it will be reported through line management without delay.
- 3.3 As a general rule and where there may be options, the level of enforcement contemplated will be the minimum at which a satisfactory solution is thought to be achievable.

### 4.0 **Team-Specific Considerations**

- 4.1 In considering their regulatory functions and enforcement, our specialist Teams will have due regard to other *statutory or authoritative* guidance and internal Policies/Procedures detailing local use and interpretation of such guidance, that may affect only their particular areas of work.

Further details can be found through the websites given at Appendix 2 on page 14 and they will include the following, or the relevant Council policy document:

a) Health and Safety Team:

- i) The HSC Enforcement Policy (2004)
- ii) The HSE publication "The Enforcement Management Model" (2005)
- iii) HSE Guidance on Section 18 HASAWA (Statutory)

- b) Food Safety Team: The Food Standards Agency Code of Practice
- c) Environmental Protection Team: “Environmental Permitting General Guidance Manual on Policy and Procedures for A2 and B Installations” (2008) A Defra document.
- d) Licensing Team DCMS Guidance on the Licensing Act and the Gambling Act
- e) Housing Standards Team
  - i) Housing Health and Safety Rating System: Operating Guidance (ODPM Feb 2006)
  - ii) Guidance on the Fire Safety Provisions for Certain Types of Existing Housing: LACORS Housing-Fire Safety
  - iii) Private Sector Housing Enforcement Procedures

## 5.0 **Statutory Code of Practice for Regulators**

- 5.1 This Code, sometimes referred to as the Regulators’ Compliance Code, is a Statutory document and includes the legal duty for Regulators to “.....*take into account the Code’s provisions and give them due weight in developing policies, principles, or in setting standards or giving evidence*”.

So far as our regulatory functions are concerned, the Code replaces the Enforcement Concordat.

## 6.0 **Compliance with the Code**

- 6.1 The Code imposes a number of specific Obligations on Regulators, each of which reflects one of the Hampton Principles.

The ways in which we will ensure compliance with each of the Obligations are shown in paragraphs 6.2 to 6.8.1, below.

- 6.2 Economic progress ~ Hampton Principle: “***Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection***”.

### 6.2.1 We will:

- a) consider the impact of our interventions on economic progress, including costs, effectiveness and perceptions of fairness.
- b) adopt a particular approach only if the benefits justify the costs and impose the minimum burden compatible with achieving the objectives.

c) review our regulatory activities and interventions to consider whether burdens could be removed or reduced.

d) consider the impact of our interventions on small businesses, and ensure that the burdens fall fairly and proportionately, by considering the size of the business and the nature of its activities.

e) when setting standards or giving guidance in relation to the exercise of our own or other regulatory functions, allow for reasonable variations to meet local government priorities.

6.3 Risk Assessment ~ Hampton Principle: ***“Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most”.***

6.3.1 We will:

a) ensure that the allocation of our efforts and resources is targeted where they would be most effective, by assessing the risks to regulatory outcomes.

We will also ensure that risk assessment precedes and informs all aspects of our approaches to regulatory activity, including data collection and other information requirements, inspection programmes, advice and support, enforcement and sanctions.

b) base our risk assessments on available relevant and good-quality data.

Assessments will include explicit consideration of the combined effect of the potential impact of non-compliance on regulatory outcomes, and the likelihood of non-compliance.

c) in evaluating the likelihood of non-compliance, consider all relevant factors including, past compliance records and potential future risks, the existence of good systems for managing risks, evidence of recognised external accreditation, and management competence and willingness to comply.

d) consult and involve businesses in designing our own risk methodologies.

e) review and, where appropriate, improve our risk methodologies, taking proper account of feedback from businesses.

6.3.2 Where national schemes or authoritative guidance for risk assessment exist we will base our assessments upon them where it is appropriate to do so.

A list of sources for such guidance is at Appendix 2.

6.4 Advice and Guidance ~ Hampton Principle: ***“Regulators should provide authoritative, accessible advice easily and cheaply”.***

#### 6.4.1 We will:

a) promptly communicate legal requirements relating to our regulatory activities, as well as changes to those legal requirements, to businesses.

b) provide information, advice and guidance to make it easier for businesses and the public to understand and meet their regulatory obligations.

Such information will be provided in clear, concise and accessible language, using appropriate formats and media.

Where possible, advice will be given free of charge, but it may be appropriate to charge a reasonable fee for services beyond any basic advice and guidance necessary to help ensure compliance.

Note: Businesses and the public will appreciate that the level of help that our Officers are able to give is limited in terms of the amount of detail, and that they must always have regard to avoiding conflict between advice that they give and their enforcement role.

c) involve businesses and the public, where appropriate, in developing the content and style of guidance, and assess the effectiveness of information given by monitoring businesses' awareness and understanding of legal requirements, including the extent to which additional costs may be incurred for obtaining external advice to comply with legal requirements.

d) provide targeted and practical advice that meets the needs of businesses and the public.

Such advice may be through face-to-face interactions, telephone helpline or online guidance.

We will also seek to maximise the reach, accessibility and effectiveness of advice.

e) distinguish clearly between statutory requirements and advice or guidance aimed at improvements above minimum standards, and confirm such advice in writing, if requested.

f) ensure that businesses and the public can, within reason, access our advice without directly triggering an enforcement action.

In responding to such an approach, our primary aim will be to provide the advice needed to help ensure compliance.

#### 6.5 Inspections and Other Visits ~ Hampton Principle: ***“No inspection should take place without a reason”***.

#### 6.5.1 We will:

a) ensure that inspections and other visits, such as compliance or advice visits, to regulated businesses, only occur in accordance with a risk assessment methodology, as set out in paragraph 6.3.1, above.

However, this will not apply where visits are requested by businesses, or when we are acting on relevant intelligence.

b) use only a small element of random inspection in our programme to test our risk methodologies or the effectiveness of interventions.

c) focus our greatest inspection effort on those businesses where risk assessment shows both:

i) a compliance breach or breaches would pose a serious risk to a required outcome; and

ii) there is high likelihood of non-compliance

d) give positive feedback to encourage and reinforce good practices, and we will share amongst regulated businesses, and with other regulators, information about good practice.

e) have arrangements for collaboration to minimise burdens on the regulated entity where two or more inspectors, whether from the same or different regulators, undertake planned inspections of the same business. Such arrangements may include joint or coordinated inspections, and data sharing.

#### 6.6 Information Requirements ~ Hampton Principle: ***“Businesses should not have to give unnecessary information, nor give the same piece of information twice”.***

##### 6.6.1 We will:

a) undertake an analysis of the costs and benefits of data requests to regulated businesses, when determining which data we may require

b) explicitly consider reducing costs to regulated businesses by:

i) varying data requests according to risk

ii) limiting collection to specific regulated areas

iii) reducing the frequency of data collection

iv) obtaining data from other sources, allowing electronic submission, and requesting only data that is justified by risk assessment.

v) share data with other regulators to avoid duplication of collection where it is practicable, beneficial and cost effective to do so.

We will have regard to rulings made by the Information Commissioner in applying the Data Protection Act 1998, to avoid unnecessarily restricting the sharing of data. Further guidance can be found at Appendix 2.

vi) involve regulated businesses in vetting data requirements and form design for clarity and simplification.

We will seek to collect data in a way that is compatible with the processes of regulated businesses and those of other regulators who collect similar data.

6.7 Compliance and Enforcement Actions ~ Hampton Principle: ***“The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions”.***

6.7.1 We will:

a) seek to reward those businesses that consistently achieve good levels of compliance through positive incentives, such as lighter inspections and reporting requirements, in cases where risk assessment justifies this.

We will provide information to businesses in cases where their performance has resulted in a change to their risk rating.

We will also take account of the circumstances of small regulated businesses, including any difficulties they may have in complying.

b) where appropriate, discuss the circumstances with those suspected of a breach and take these discussions into account when deciding on the best approach.

*This paragraph does not apply where immediate action is required to prevent or respond to a serious breach or where to do so is likely to defeat the purpose of the proposed enforcement action.*

c) ensure that our sanctions and penalties policies are consistent with the principles set out in the Macrory Review. A summary of the relevant principles is at Appendix 4.

d) ensure that clear reasons for any formal enforcement action are given to the person or entity against whom any enforcement action is being taken, at the time the action is taken.

We will seek to confirm the reasons in writing at the earliest opportunity. Complaints and relevant appeals procedures for redress will be explained at the same time.

e) enable inspectors and enforcement officers to interpret and apply relevant legal requirements and enforcement policies fairly and consistently between similarly regulated businesses in comparable situations.

We will ensure that our inspectors and enforcement staff interpret and apply their legal requirements and enforcement policies consistently and fairly.

As an aid to consistency, enforcement staff will refer to Home Authority or Lead Authority schemes, where these exist.

6.8 Accountability ~ Hampton Principle: ***“Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take”.***

6.8.1 We will:

a) create effective consultation and feedback opportunities to enable continuing cooperative relationships with regulated businesses and other interested parties.

In this regard, we will continue to monitor satisfaction levels notified by regulated businesses and we will comply in all respects with relevant National Performance Indicators.

b) ensure that our employees provide courteous and efficient services, and take due account of comments from regulated businesses and other interested parties regarding the behaviour and activity of inspectors and other enforcement staff.

c) provide effective and timely complaints procedures, including for matters in this Policy, that are easily accessible to businesses.

We will publish our complaints procedures, with details of the process and likely timescale for resolution.

d) Follow a complaints procedures that includes a final stage to an independent, external, person. Where there is a relevant Ombudsman or Tribunal with powers to decide on matters in this Policy, the final stage may allow referral to that body.

Where no such person exists, we may, in consultation with interested parties, provide for further complaint or appeal to another independent person, for example, an independent professional body.



## **The Hampton Principles**

Sir Philip Hampton, Chairman of Sainsburys, led the “Hampton Review” into regulatory inspection and enforcement commissioned by HM Treasury as part of the 2004 Budget. His Final Report, published in March 2005, “*Reducing Administrative Burdens: effective inspection and enforcement*”, recommended a risk-based approach to enforcement and included the so-called Hampton Principles.

The Report can be found at: [www.berr.gov.uk/files/file22988.pdf](http://www.berr.gov.uk/files/file22988.pdf)

The Report’s findings were accepted in full by the Government and now form the basis of current enforcement protocols.

The Hampton Principles are:

- Regulators and the regulatory system as a whole should use comprehensive risk assessment to concentrate on the areas that need them most.
- Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.
- All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all interested parties should be consulted when they are being drafted.
- No inspection should take place without a reason.
- Businesses should not have to give unnecessary information, nor give the same piece of information twice.
- The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions.
- Regulators should provide authoritative, accessible advice easily and cheaply.
- When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to recognize the administrative burden imposed.
- Regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work.

- Regulators should recognize that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

## **APPENDIX 2**

### **Additional Sources of Guidance**

The following website addresses contain authoritative guidance relevant to the work areas noted. Where appropriate, the guidance contained in each is to be followed and enforcement staff should ensure that they check regularly for updated or new sources of guidance.

**LACORS:** (Local Authorities Coordinators of Regulatory Services) LACORS is an advisory body to Local Authorities, whose web homepage is at [www.lacors.gov.uk](http://www.lacors.gov.uk) Note that subscription is required to access some elements.

**Environmental Protection:**

[www.defra.gov.uk/environment/ppc/localauth/pubs/guidance/pdf/ggmanual-2008-parta.pdf](http://www.defra.gov.uk/environment/ppc/localauth/pubs/guidance/pdf/ggmanual-2008-parta.pdf)

**Food Safety:** [www.food.gov.uk/multimedia/pdfs/codeofpractice.pdf](http://www.food.gov.uk/multimedia/pdfs/codeofpractice.pdf)

**Health and Safety:**

<http://www.hse.gov.uk/pubns/hsc15.pdf> (HSC Enforcement Policy Statement)

<http://www.hse.gov.uk/lau/lacs/23-17.htm> (Section 18 Guidance)

and the **Enforcement Management Model** at [www.hse.gov.uk/enforce/emm.pdf](http://www.hse.gov.uk/enforce/emm.pdf)

**Licensing:**

<http://www.culture.gov.uk/images/publications/RevisedGuidanceJune2007.pdf>

**Gambling:** LACORS is producing a note which sets out the need for Licensing Authorities to utilise Risk Assessments for premises licensed under the Gambling Act 2005 and the criteria upon which such assessments should be based. The Licensing Team is to have due regard to this document when it is published.

**Data Protection** The Information Commissioner's Statement of good practice on the use and disclosure of information about business people can be found at:

[www.bre.berr.gov.uk/regulation/documents/data/pdf/letter.pdf](http://www.bre.berr.gov.uk/regulation/documents/data/pdf/letter.pdf)

**Case Law** The case of *R v Adaway* emphasises the importance of adhering closely to Enforcement Policies. In the case, the Judge concluded that:

*“If they (the prosecuting authority) fail to (consider with care the terms of their own Prosecution Policy) or if they reach a conclusion which is wholly unsupported..... by material establishing the criteria for prosecution, it is unlikely that the Courts will be sympathetic.”*

Further details of the case can be found at the LACORS website, given above.

### **APPENDIX 3**

#### **The Public Interest Test for Prosecution**

Those factors that will tend to indicate the need for prosecution include the following, which may not be an exhaustive list:

- a) the number of people affected by the offence
- b) the degree to which people are/were affected (seriousness of the offence)
- c) evidence that the offence was committed deliberately or maliciously
- d) evidence that the defendant intimidated or harassed those affected
- e) evidence of previous or on-going offences of a similar type
- f) the likelihood of repeated offences
- g) the defendant was in a position of authority
- h) a lack of co-operation on the part of the defendant
- i) the offence is widespread, at least in the general area in which it was committed

Factors that might argue against a prosecution will include:

- a) the Court is likely to impose a very small penalty on conviction
- b) the offence appears to have been the result of a genuine misunderstanding or mistake
- c) harm done was minor and was the result of a single incident, particularly if it was caused by a misjudgement
- d) willingness on the part of the defendant to co-operate and to ensure that no future offences of a similar nature are committed
- e) a long delay between offence and trial, unless
  - i) the offence is serious
  - ii) the delay has been caused, at least in part, by the defendant
  - iii) the Offence has only recently come to light
  - iv) the complexity of the investigation results in unavoidable delays.

f) the defendant is elderly, in poor health or confused (unless there is a real possibility that the offence will be repeated).

g) the defendant has, so far as possible, put right the harm caused

h) a key witness has refused to testify or to provide a Witness Statement or, if they are the only victim, they have strongly indicated opposition to a prosecution

## **APPENDIX 4**

### **Improving Compliance among Businesses (Macrory Review)**

In 2006, Richard Macrory, a barrister and professor of economics, was asked to look at what could be done to improve compliance among UK businesses.

His Final Report was published in November 2006. The relevant principles from the McCrory Review are reproduced below. The full Report can be found through: <http://bre.berr.gov.uk/>

#### **Sanctions and penalties policies should:**

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by regulatory non-compliance, where appropriate; and
- aim to deter future non-compliance.

#### **Regulators should also:**

- publish an enforcement policy;
- measure outcomes not just outputs;
- justify their choice of enforcement actions year on year to interested parties;
- follow-up enforcement actions where appropriate;
- enforce in a transparent manner;
- be transparent in the way in which they apply and determine penalties; and

- avoid perverse incentives that might influence the choice of sanctioning response.

## **The Council's Complaints Policy**

If you are dissatisfied about the standard of service received by us, please tell us.

You can make a complaint in writing to the Licensing Manager, South Somerset District Council, Council Offices, Brympton Way, Yeovil, Somerset BA20 2HT, or by phone to 01935 462462 or online through our website

<http://www.southsomerset.gov.uk/contact-us/contact-us-online?type=complaint>.

Your comment will then be handled in accordance with our complaints procedure outlined below.

### **Complaints procedure**

We define a complaint as "an expression of dissatisfaction, however made, about the standard of our service, actions or lack of action by the Council or its staff affecting an individual customer or group of customers". They are dealt with in a series of escalating stages.

#### ***Stage 1:***

Any South Somerset District Council officer receiving a complaint will:

1. Establish the exact nature of your complaint (this may be recorded by our Customer Services team).
2. Forward your complaint to the Assistant Director responsible for the relevant Service.
3. The Assistant Director will acknowledge your complaint in writing. A full reply will be posted to you within 10 working days; however if we are unable to reply to you within that period, we will acknowledge receipt of your letter within 5 working days and give you a realistic timescale.

#### ***Stage 2:***

If you are not satisfied with the response, please ask for your complaint to be referred to the Strategic Director responsible for the Service. The Strategic Director will investigate the matter and respond to you in full within 10 working days or 5 working days for a holding reply (which will give you a realistic timescale to expect your response).

#### ***Stage 3:***

If you feel your complaint has not been resolved by stage 2, you may wish to appeal to the Chief Executive of South Somerset District Council. The Chief Executive will ask a senior officer unconnected with the complaint to review the case. This stage of the procedure will be completed within 20 working days.

#### ***Stage 4:***

If you feel your complaint has not been resolved after stage 3, you may wish to pursue your complaint through the Local Government Ombudsman. You will be forwarded the contact details for the Ombudsman after Stage 3. You can find out more about the Ombudsman by visiting their website at <http://www.lgo.org.uk/>