

Title of Report:	New Street Trading Policy
Committee Report Submitted To:	Environmental Services Committee
Date of Meeting:	14th January 2025
For Decision or For Information	For Decision
To be discussed In Committee YES/NO	No

Linkage to Council Strategy (2021-25)	
Strategic Theme	Local Economy
Outcome	Implementation of statutory requirements
Lead Officer	Head of Health & Built Environment

Estimated Timescale for Completion	
Date to be Completed	

Budgetary Considerations	
Cost of Proposal	N/A
Included in Current Year Estimates	N/A
Capital/Revenue	N/A
Code	N/A
Staffing Costs	N/A

Legal Considerations	
Input of Legal Services Required	NO
Legal Opinion Obtained	NO

Screening Requirements	Required for new or revised Policies, Plans, Strategies or Service Delivery Proposals		
Section 75 Screening	Screening Completed:	Yes	Date: 29.08.24
	EQIA Required and Completed:	No	Date:
Rural Needs Assessment (RNA)	Screening Completed	Yes	Date: 29.08.24
	RNA Required and Completed:	No	Date:
Data Protection Impact Assessment (DPIA)	Screening Completed:	N/A	Date:
	DPIA Required and Completed:	N/A	Date:

1.0 Purpose of Paper

The purpose of this paper is to seek Council approval to adopt a new Street Trading Policy.

2.0 Background

- 2.1 The Street Trading (Northern Ireland) Act 2001 provides a legislative framework for District Councils in Northern Ireland to consider and process any application for a street trading licence within its Borough. The legislation also allows District Councils to effectively regulate any street trading activities including dealing with unlicensed street trading.
- 2.2 In May 2015 the Department for Communities published a Guide to the Street Trading Act 2001 which provided District Councils with practical advice on the implementation of the provisions within the legislation.
- 2.3 As with all significant areas of processing applications and enforcement of legislation, it is good practice for a District Council to have in place a policy that can be referred to by Council Officers, elected members and members of the public. The objective of such policies is to ensure consistency of approach, transparency and application of best practice.
- 2.4 Recent work on street trading highlighted areas for improvement in Council's current policy. Licensing Officers identified the need for additional guidance on certain matters and noted certain requirements which are now considered outdated. As a result, the policy has been reviewed and a new Street Trading Policy developed containing additional guidance and amendments reflecting best practices.
- 2.5 A copy of the new Street Trading Policy is attached as Appendix 1

3.0 Significant changes in new policy

3.1 Criminal records checks

The previous policy required all street trading applications to include a "criminal records" check. The intended purpose of this check was to allow Council access to relevant information in relation to the applicant as there is a discretionary provision in the legislation to refuse a street trading licence to an applicant if they are considered to be unsuitable to hold a street trading licence due to misconduct or other reason relating to street trading activities.

- 3.2 Section 9 of the Street Trading Act (NI) 2001 provides a number of discretionary grounds under which a district council may refuse to grant an application for a street trading licence including:

“that the applicant is on account of misconduct or some other reason relating to trading activities, unsuitable to hold a street trading licence”

- 3.3 It is important to note that the misconduct or other reason must be related to trading activities thus preventing a Council from refusing an application because of conviction for non-street trading offences, for example, driving offences, parking misdemeanours, etc.
- 3.4 This means that an applicant can be refused a licence if Council has sufficient evidence to demonstrate they have committed offences relating to street trading activities (such as street trading without a licence, trading in breach of existing licence conditions etc).
- 3.5 Criminal access checks do not include any information on Local Authority prosecutions for breaches of the Street Trading Act (Northern Ireland) 2001, therefore they have no value in determining if an applicant is unsuitable.
- 3.6 Using information on a criminal record check that does not relate to street trading activities as a basis to refuse a licence would be unlawful and subject to appeal. An applicant has a right of appeal to any refusal to grant a street trading licence on based on discretionary grounds.
- 3.7 The requirement for criminal records check was an additional expense for applicants and for events such as the Lammas Fair, caused considerable delays and increased administrative burdens on the Licensing Section.
- 3.8 In light of the above, the necessity for a criminal records check is no longer to be a requirement under the proposed new policy.

4.0 Consideration of relevant Street Trading convictions

- 4.1 As per the above Council may refuse a street trading application if it has information that the person can be considered unsuitable due to street trading related misconduct. The most obvious example of this is where an applicant has been successfully prosecuted by Council for relevant offences such as breaching the terms of a street trading license or committing the offence of trading without a licence.
- 4.2 In 2022, Council received an application from an applicant who had a prior conviction for trading without a licence. However, neither the legislation, the published Guide to Street Trading nor the previous Street Trading Policy provided guidance on how such matters should be considered.
- 4.3 During discussion at ES220913 members agreed that it would be prudent to have some form of policy guidance on relevant misconduct and convictions to assist the decision-making process for street trading applications.
- 4.4 The new Street Trading Policy contains guidance for Members and applicants to be aware of if such an application is received in the future.

4.5 In summary, the new policy includes the following provisions:

- Council may refuse a street trading licence if it considers the applicant unsuitable to hold such a licence due to misconduct related to trading activities.
- Misconduct may be understood to be any relevant breaches of the Street Trading Act, or any relevant misconduct related to trading activities. Council will only use this discretionary ground for refusal when it is considered reasonable and appropriate.
- For any application for an annual street trading licence Council shall refer to relevant licensing records held to establish if the applicant has any record of misconduct.
- For any provable misconduct relating to street trading that does not result in a prosecution under the Street Trading Act, Council may consider refusing a street trading licence to that individual for a period not exceeding 12 months after the commission of this misconduct
- For any misconduct that results in a successful prosecution by Council, Council may consider refusing a street trading licence for a period not exceeding 24 months after such a conviction.
- Where legal proceedings are instigated against an individual or licensed street trader, Council may refuse to renew or grant any application for a street trading licence until such legal proceedings have concluded.
- Following successful conviction of any individual for street trading offences, where any application to renew or grant a street trading licence has been refused while proceedings were pending, Council will take into account the duration of the initial refusal when considering whether a further period of refusal is warranted.

5.0 **Recommendation**

It is recommended that the Environmental Services Committee recommend to Council that the new Street Trading Policy is adopted by Council for immediate implementation.

STREET TRADING POLICY

Policy Number	CC&G/5/24
Version Number	1
Author	Environmental Health Manager

Date of S75 Screening	29.08.24
EQIA Recommended?	NO
Date of Rural Needs Assessment	29.08.24
Date Adopted by Council	
Date Policy Revised	

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1. INTRODUCTION

Causeway Coast and Glens Borough Council is responsible for implementing the provisions of the Street Trading (Northern Ireland) Act 2001

The Street Trading (Northern Ireland) Act 2001 provides the legislative framework for the regulation of street trading activities through the provisions of a licensing scheme administered by each district council. This Act provides the regulatory framework for Council to regulate annual stationary and mobile street trading licences and temporary street trading licences.

This policy will detail how Council will process applications for street trading licences and how Council will deal with any relevant offences under this Act.

This policy will provide transparency and openness in how we enforce this legislation and provide consistency of approach.

All decisions taken by Council in relation to this Act will have reference to this policy.

This policy is written with reference to –

- Street Trading Northern Ireland) Act 2001
- Street Trading (Fixed Penalty) (Notice and Procedure) Regulations (Northern Ireland) 2001
- Guide to the Street Trading Act 2001 (Published by Department of Communities 2019)

2. POLICY STATEMENT

The policy details how Causeway Coast and Glens Borough Council will regulate street trading activities within the Borough and how enforcement of these provisions will be proportionate and fair.

This policy is written for Officers within Council, Elected Members, the public and any business representatives who enquire about our policy and procedures. It applies to all contacts, whether formal or informal, between businesses, individuals and Council Officers.

This policy allows Council to follow specific requirements under the Street Trading (Northern Ireland) Act 2001 and guidance provided in “Guide to The Street Trading Act (Northern Ireland) 2001” published by the Department of Social Development.

All Council activities must comply with certain requirements provided in the Act.

All legislative references, such as Section and sub-section, are to the Street Trading (Northern Ireland) Act 2001 (the Act) unless otherwise stated.

Signed: _____ Date: _____
Mayor
Causeway Coast and Glens Borough Council

Signed: _____ Date: _____
Chief Executive
Causeway Coast and Glens Borough Council

3. DEFINITIONS

Street - only trading which takes place in a “street” will be regulated under the Act. Whilst “street” will take its normal, everyday meaning of a road in a town or village usually with houses but will include any road, footpath, or public place.

Public Place – all land within 10 metres of a road or street, including private land, to which the public have access but not within enclosed premises or the curtilage of a dwelling.

Street trading - selling any article or thing or supplying a service in a street for gain or reward.

Stationary Trader – authorizing an individual to trade in a stationary position on a designated street for a period of 12 months.

Mobile Trader – authorising an individual to go from place to place, stopping for a time for the purpose of trading in the Borough. Traders must leave any stopping point 15 minutes after serving the last customer.

Temporary Trader - authorising individual to engage in street trading in a street or part thereof in its district for special events e.g. festivals, fairs, cultural and community events.

4. ACCOUNTABILITY AND RESPONSIBILITIES

All Licensing Officers involved in street trading regulation are responsible for adhering to this policy to ensure fair and consistency of approach.

Risk Management

Any risk from not adhering to this policy will be addressed through management supervision of its implementation and by providing Council with the best advice (including legal advice where necessary) to allow Council to make the correct and lowest risk decisions.

Strategic Risk

Failure to adhere to this policy may adversely affect the strategic aim of healthy and engaged communities.

Failure to adhere to this policy may result in decisions being appealed through the Court process which may lead to decisions being overturned, compensation claims, unnecessary legal fees and reputational damage to Council.

Failure to adhere to this policy may cut across operational boundaries and affect the success of events organised by Leisure and Development and the licencing of concessionary traders (via Infrastructure) who also avail of a street trading licence.

5. IMPLEMENTATION ARRANGEMENTS

5.1 Designating resolutions

Section 3 allows a district council to designate specific streets in its area as being suitable for street trading. A council is not compelled to designate streets but may be called upon to justify its policy in this regard. However, if a street remains undesignated, a district council may not issue a licence under this Act to permit street trading from a stationary position in that street. Street trading may be permitted in undesignated streets under the authority of a temporary licence or where the trader has been authorised by a council to trade as a mobile trader.

Publish in 2 newspapers

Firstly, the Council must publish, in at least 2 newspapers circulating in its district, a notice regarding its intention to pass such a resolution. The notice in the newspapers must also advise that representations may be made in writing and set out the period within which those representations must be made. This period can be of any duration the council decides but must not be less than 28 days after the first publication of the notice.

Consultations

In considering designating a particular street, a council must consult with the police and the Department for Infrastructure (DFI). This consultation should ensure that those with responsibility for roads, traffic and any other factors have an opportunity to make their views known.

If the Council proposes to vary or rescind a designating resolution, it must consult with any existing licence holders trading in that street. Council is required to publish a copy of the proposed resolution which will specify the street and/or the categories of goods or services which are to be the subject of the proposed resolution.

Date of coming into effect

The council may specify a date of its own choosing as long as it is at least one month after the date of the passing of the resolution. Subsection (8) requires a Council to publish its decision even if it has decided the resolution, it originally proposed to make should not be made. The outcome must be published on two consecutive weeks in at least two newspapers circulating in the district. In addition, a notice setting out the council's decision must be sent to every person and every organisation which made representations about the proposed resolution.

Policy statement 5.1

Council will adhere to the procedures indicated above when considering designating or rescinding any streets for street trading.

During these processes all representations will be adequately considered and evaluated before any decision is reached

All decisions made under these provisions must be agreed through the Environmental Services Committee and ratified at full Council.

5.2 Applications for the grant, renewal or variation of a street trading licence

All applications for grant, renewal or variation must be made in writing on the Causeway Coast and Glens Street Trading Application form. All relevant sections of this form must be completed and be accompanied by the correct fee. The applicant should also provide 1 passport sized photograph of the applicant. One photograph will be attached to the issued licence and the other kept on Council records.

All applications for the variation of a licence must include what changes the trader is seeking in relation to the conditions of their street trading licence.

Public liability insurance. It should be noted that there is no legal requirement for a business to have public liability insurance and the Act does not allow a council to request such insurance before considering an application for a street trading licence. A council may, however, wish to advise potential licence holders that public liability insurance cover is recommended for the protection of the trader and the public.

The Act places an obligation on a district council to respond in writing to each application within a reasonable time.

Licence Fees

Licence Type
Stationary Street Trading Licence £290
Mobile Street Trading Licence £390
Temporary Street Trading Licence £100
Lammas Fair Temporary Stationary Street Trading Licence £175
Lammas Fair Temporary Mobile Street Trading Licence £90
Variation of Street Trading Licence £45

Refunds

Council will refund all application fees if the application is unsuccessful.

*see below

Policy position 5.2

Council will refuse any application unless the correct application form containing all relevant information, correct fee and photograph are supplied.

Council will endeavour to process any application within a reasonable period of time and be able to defend any unnecessary delay.

****Council will refund all application fees if the application is unsuccessful. However, if an application incurs an inordinate amount of administration and officer time a reasonable portion of the fee may be retained by Council. This amount will be decided on a case-by-case basis.***

Council will not seek Public Liability Insurance from a trader as a condition of obtaining a licence but will provide appropriate advice.

Council will review these fees annually and adjust/increase as required.

5.3 Decisions on applications

The Act places a statutory obligation on council to grant an application for a street trading licence unless there are sufficient grounds to refuse.

Duration of a street trading licence The Act gives Council discretion to decide how long a street trading licence is to remain current. No minimum duration is specified but the licence must not last more than 3 years.

Policy position 5.3

Council will issue Street Trading licences for no longer than a continuous 12-month period.

Unless there are reasonable justifiable grounds for refusing an application Council will grant any application for street trading

5.4 Mandatory Grounds for refusing a street trading application.

Any application for street trading must be refused if -

1. the applicant is not an individual.
2. the applicant is underage (must be 16 years old or over)

3. where trading in the place specified on the application would be contrary to other legislation, the application for a licence must be refused.

Applications for stationary street trading must be refused if -

1. The street is not designated for street trading.
2. The subsection also provides for a mandatory refusal where the goods or services the trader is proposing to sell, or supply have been prohibited in that street by a designating resolution passed by the district council.

Policy position 5.4

Council shall refuse any application for street trading where there are mandatory grounds for refusal.

Council will not grant mobile street trading licences to hot food traders as this would be potentially contrary to relevant health and safety legislation and may present an unacceptable risk.

Council currently has one mobile street trading licence issued to a hot food vendor. This anomaly is a legacy arrangement and when this licence ceases to be renewed no future mobile licences will be granted to hot food vendors.

5.5 Discretionary Grounds for refusal of a licence

The Act sets out the discretionary grounds under which a district council may refuse to grant an application for a street trading licence. Unlike the grounds in section 8, these are matters for a council's discretion and a right of appeal is provided against a refusal on any of these grounds.

Council may decide to refuse an application for the grant, renewal or variation of a street trading licence where:

- the location where a stationary trader wishes to trade is unsuitable. the space in the designated street is not sufficient to permit trading by a stationary trader without causing undue interference or inconvenience to persons or vehicles.
- the area or areas in which a mobile trader wishes to trade are regarded as unsuitable for trading without causing undue interference or inconvenience to persons or vehicles.
- there are already enough persons trading in the articles, things or services in which the applicant wishes to trade.

- the nature of the articles, things or services in which the applicant wishes to trade would adversely affect the general amenity of the area. This provision is primarily to avoid nuisance from odours due to hot food trading.
- in applying for a licence, the applicant made a false declaration.
- the applicant for a licence is considered to be an unsuitable person to hold a licence because of misconduct or some other reason. It is important to note, however, that the misconduct or other reason must be related to trading activities, thus preventing a council from refusing an application because of, for example, driving offences, parking misdemeanours, etc.
- the applicant has failed to use a previous licence to a reasonable extent.
- the applicant was previously the holder of a licence which was revoked or could have been revoked because fees or charges had not been paid to the district Council as required by the conditions of the licence.
- the applicant has not supplied information required by a district council to enable it to deal with the application. The details which must be provided on an application are set out in section 5 and that section also gives a district council the discretion to seek whatever additional information it considers reasonable.
- the prospective trader has not made suitable arrangements for the storage of the goods and receptacles.

Policy position 5.5

Council may refuse a street trading licence if it considers the applicant unsuitable to hold such a licence due to misconduct related to trading activities.

***Misconduct may be understood to be any relevant breaches of the Street Trading Act or any relevant misconduct related to trading activities
Council will only use this discretionary ground for refusal when it is considered reasonable and appropriate.***

For any application for an annual street trading licence Council shall refer to relevant licencing records held to establish if the applicant has any record of misconduct.

For any provable misconduct relating to street trading that does not result in a prosecution under the Street Trading Act Council may consider refusing a street trading to that individual for a period not exceeding 12 months after the commission of this misconduct.

For any misconduct that results in a successful prosecution by Council, Council may consider refusing a street trading licence for a period not exceeding 24 months after such a conviction.

Where legal proceedings are instigated against a licenced street trader Council may refuse to renew any application for a street trading licence until such legal proceedings have concluded.

Where legal proceedings are instigated against an individual for breaches of street trading legislation Council may refuse any application for a street trading licence until such legal proceedings have concluded.

Following any successful conviction of any individual for street trading offences where any application has been refused while such proceedings have been pending, Council will take into account the amount of time such applications have been refused when considering if further refusal of an application is warranted.

5.6 Licence Conditions

There are standard conditions which specify the absolute minimum which must be included on every licence. In addition, a district council may attach further conditions under its discretionary powers. A right of appeal is provided against any condition on a licence:

The conditions which a council must include on each licence are: -

- the location in a designated street where a trader may operate under the authority of the licence.
- In the case of a trader operating from a stationary position, this may be a precise location within that street.
- If the licence holder is permitted to operate as a mobile trader, a district council will specify the areas within its district where trading 25 is permitted or prohibited.
- the type(s) of goods or services which the licence holder may sell or supply.
- the days and the times during which a licence holder is permitted to trade.

- the type, size and form of any receptacle (stall, table, vehicle, etc.,) which may be used by a licence holder.
- that any receptacle used in trading should bear the name of the licence holder and the licence number.
- the requirements for the storage of goods and receptacles.
- details as to the trader's responsibilities in relation to rubbish, litter, etc., and the containers which are to be used to hold this until it is removed;
- the requirement that the trader avails of the licence to a reasonable extent.
- the details regarding the payment of fees and charges.

Further conditions 7.5 Subsection (2) gives a district council a power to attach any further conditions it considers reasonable. The only limiting feature here is the use of the word "reasonable" and a district council may be called upon to justify the attachment of such conditions.

Policy position 5.6

Council will ensure all licences contain the mandatory licence conditions specified in the Act and will only impose additional licence conditions if they are considered reasonable and justifiable.

5.7 Revocation of licences

Subsection (1) of the Act gives a district council a power to revoke a street trading licence in a number of circumstances. A council can exercise this power at any time and is not limited to the date of renewal of the licence. The power is a discretionary one and the circumstances in which a council may revoke a licence are, in most respects, similar to the discretionary grounds on which an application for a licence may be refused. These circumstances are where: -

- because of changes, for example, traffic volume, new buildings, activities of the traders themselves, etc., since the licence was granted or renewed:
- the location at which a stationary trader is trading has become unsuitable.
- the space in the street has become inadequate to permit trading by a stationary trader without causing undue interference or inconvenience to persons or vehicles.

- the area or areas in which a mobile trader is trading are regarded as unsuitable for trading without causing undue interference or inconvenience to persons or vehicles.
- the licence holder is trading in a street which the council subsequently decides by resolution, which varies or rescinds an existing resolution, should no longer be a designated street. This will similarly apply where a licence holder is trading in articles or services which a council subsequently resolves should be prohibited in a designated street. The effect of this is that the trader would, essentially, be trading contrary to the terms of a designating resolution and the existing licence must, therefore, be revoked.
- the licence holder is failing to make use of the street trading licence to a reasonable extent and has offered no reasonable excuse for this. The word “reasonable” is not separately defined and, consequently, it will be a matter for each council to decide what it regards as reasonable in each case. However, a council may be called upon to defend its action in any particular case: -
- in connection with the application for the licence, the licence holder made a statement which was known to be false in a relevant detail.
- because of misconduct or some other reason, the licence holder is considered to be unsuitable to hold a licence.
- the licence holder has, without good reason, failed to pay fees or charges to a district council contrary to the conditions specified on the licence.
- the licence holder has persistently failed to meet the requirements set out for the storage of goods and equipment. At least 1 written warning must be given before this reason for revoking a licence can be used.
- Once the written warning has been given and the failure which necessitated that warning has continued or been repeated, a council may take steps to revoke the licence. It is clear from the legislation that the licence holder must have repeated the same conduct that led to the warning.
- the location of a street trading pitch of a stationary trader or the area in which a mobile trader is trading is no longer suitable or the space in which a stationary trader is trading has become inadequate.

Policy Position 5.7

Council will only revoke a street trading licence if one or more of the above considerations are met and will only do so if it can be considered proportionate and fair.

Council will consider the revocation of any street trading licence should legal proceedings be instigated against the licence holder.

5.8 Variation of licences

The Act gives council the power to vary the conditions of a street trading licence where the request to vary the conditions of the licence has been made by the trader or where Council feels it is reasonable for it to vary the conditions of the licence.

Where the variation is carried out in these circumstances, the changes cannot come into effect until the licence is due for renewal.

Policy Position 5.8

Council will consider any request from a trader to vary the conditions of a licence with regard to Part 5.5 of this policy.

5.9 Notice, representations and appeals

Where a district council proposes to carry out certain actions, the Act requires it to give the applicant or, as the case may be, the licence holder, advance notice of its intentions and invite representations. Allowing representations before a final decision is taken provides for transparency in the decision-making process and ensures that a council is in full possession of the facts before a decision is finally made. This may prevent an appeal against a council's decision but, more importantly, it may mean that a person's means of earning a living is not affected without first being given an opportunity to make representations.

Where Council proposes

- to refuse an application for a street trading licence (except if the grounds for refusal are mandatory)
- to revoke a street trading licence
- to vary the conditions specified in a street trading licence.
- to refuse to vary the conditions specified in a street trading licence.

it shall give notice in writing of its proposal to the applicant or licence holder stating the grounds on which the proposed refusal, grant, revocation or variation would be based and that representations relating to the proposal may be made in writing to the council within such period, being not less than 21 days from the date of the notice, as may be specified in the notice.

Council shall not proceed to decide any of the matters until after the expiry of the period specified in the notice and shall, in deciding any of those matters, consider any representations made by an applicant or licence holder.

The council shall give notice in writing to the applicant or licence holder of its decision and of the grounds for that decision and his right to appeal against that decision.

A person aggrieved by a decision of council (including any specified licence condition) may, at any time before the expiration of the period of 21 days from the date on which notice of the decision is given, appeal to a court of summary jurisdiction by notice under Part VII of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26).

On an appeal a court of summary jurisdiction may make such order as it considers appropriate, and the council shall give effect to that order.

Policy Position 5.9

Council will adhere to the procedures required under this Part of the Policy

5.10 Offences and penalties under the Street Trading Act

- it is an offence for a person to engage in street trading without a licence or a temporary licence.
- contravene the conditions of a licence in relation to the trading location or the days or times during which trading may take place.
- engage in street trading on a day or in a place not specified on a temporary licence.

Penalties

The maximum penalty which may be imposed by a court on anyone who is convicted of an offence under this section is level 3 on the standard scale (£1000).

Fixed Penalty Notices

A Fixed Penalty Notice may be served upon any person who contravenes specified conditions of their street trading licence. A Fixed Penalty Notice is not available for the offence of trading without a street trading licence. The Fixed Penalty amount is £50.

The specified offences for which a Fixed Penalty Notice may be served are breaches of the following licence conditions:

- Identifying the class of articles, things or services which the licence holder may sell.
- Identifying the nature, type and size of receptacle used.
- Requiring the licence holder to display his name and licence number.
- Regulating the storage of articles, things or receptacles.
- Regulating the deposit and removal of waste and containers for storing waste.

Policy position 5.10

Council will take any enforcement action in relation to these offences with due regard to Councils Enforcement Policy

5.11 Seizure

General

Section 18 of The Street Trading Act (NI) 2001 allows for Council to seize goods and equipment from anyone who is or has committed a relevant offence under the Street Trading Act. It is anticipated these powers will be used to deal with illegal street traders as they trade and where seizing their goods, equipment and vehicles is appropriate. Officers will speak to such traders and advise them to cease trading within a reasonable time and explain that failure to do so will result in the use of seizure powers.

If seizure powers are used a prosecution should be instigated immediately in order to secure forfeiture of the goods and avoid liability for compensation

If officers, feel that the engagement with a trader is potentially hostile the officer should seek the assistance of PSNI.

Officers will carry out a dynamic risk assessment of the situation and if it is unsafe to proceed, they will withdraw from the risk.

What are the offences under which a seizure may be executed?

There are 3 specified offences that allow officers to use seizure powers: -

- Trading without a licence
- Trading contrary to licence conditions
- Trading in a place or on a day not specified in a temporary licence

Who may execute a seizure?

Seizure can be carried out by an authorised Council Officer or a Police Officer.

What can be seized?

The Officer can seize anything used by the trader in the course of trading and this includes goods displayed for sale, goods stored for sale, equipment, vehicles, scales, receipt books, containers, handcarts, handheld trays, bags.

Seized goods are evidence

The purpose of seizing such items is because they are evidence of the commission of an offence. Therefore, Officers should bag and reference all goods or equipment where possible. Such bags should be referenced with the type of goods or equipment seized, the date, time, location, identity of the trader, Identity of Authorized Officers. Where Officers are required to seize a substantial amount of goods equipment or vehicles then a relevant commercial company will be used to physically remove the items.

This evidence must be kept secure for 2 reasons

- it is evidence in the prosecution that should immediately follow such a seizure;
- if Council fail to successfully prosecute the trader all seized goods must be returned.

Seized Perishable goods

Officers may have to seize perishable goods or even live animals where it would not be reasonable for Council to keep such items until a prosecution has been heard. A separate process is in place whereby when animals are seized then evidence of their seizure is brought before a Justice of the Peace, or a District Judge and an order sought directing appropriate action to deal with the animals. The same process applies to perishable goods whereby an order will be sought for their disposal. The Justice of the Peace will also provide Council with a Certificate which will be taken as evidence that these goods were for sale in the pending prosecution against the trader. If the identity of the trader has not been then the animals or goods should still be dealt with by this process of obtaining an order directing disposal

Notice of Seizure

Officers should complete the Notice of seizure and schedule of goods/receptacles/vehicles/equipment seized and a copy given to the trader. This notice explains to the trader the powers under which the seizure is taking place and confirms the itinerary of goods and equipment seized.

Prosecution

Council must begin legal proceedings against the identified trader within 28 days following the seizure or all seized goods and equipment must be returned to the trader.

Items to be returned to the person from whom they were seized within 28 days of date of seizure if no formal action (legal proceedings) is instigated within that time.

Forfeiture

Once goods have been seized, they must either be returned to the trader, or a Court Order obtained for their forfeiture. Section 19 of The Street Trading Act (NI) 2001 allows for Council to take action to secure the forfeiture of seized goods.

Perishable goods

Once perishable goods or animals are seized then evidence of their seizure should be brought before a Justice of the Peace and an order obtained for their disposal. This must be followed up by an application to Court for a Forfeiture Order. This formalizes the disposal of these goods or animals. There is no need to secure a conviction before seeking a Forfeiture Order for perishable goods.

Non perishable goods

All seized goods and equipment must be kept secure until a conviction for the relevant offence is obtained in Court. Once a conviction is obtained Council should make an application to the Court for a Forfeiture Order indicating how such goods and equipment should be disposed of. The trader may make representation to the Court as to why such a Forfeiture Order should not be made.

Council should take a decision to instigate legal proceedings against the trader (make a complaint to Court) within 28 days of the seizure. Failure to instigate legal proceedings within this specified time will result in Council being obliged to return seized goods and equipment. A "complaint" is a legal term which means proceedings are set in motion in a Magistrates Court.

An unsuccessful prosecution or withdrawal of legal proceedings before they are heard also means Council must return all seized goods and equipment.

Compensation

If Council seizes goods and equipment unlawfully then the owner/trader is entitled to seek compensation. Section 20 of The Street Trading Act (NI) 2001 allows for the owner/person having a legal interest in seized items to claim compensation if seizure deemed to be unlawful.

A person may claim compensation if –

- 6 months have passed since date of goods seizure and legal proceedings have not been instigated.
- The person charged is acquitted and no appeal has been lodged by Council.
- Proceedings have been withdrawn/not pursued.
- The owner of the goods at the time of seizure or a person who had a legal interest in them can make a claim.
- Claim for compensation can only be in respect of any loss endured by a person as a result of the seizure.

A claim for compensation can be made for seized goods dealt with by a justice of the peace where:

- The person was acquitted or convicted but the court refused to make a forfeiture order.
- The time limit has passed for an appeal against the non-granting of a forfeiture order.
- Compensation will be paid for by Council or the Police depending on who carried out seizure.
- The scope of a court for making a compensation order is limited to instances in cases where seizure was unlawful in the first place.

Policy position 5.11

Council will only use powers of seizure when reasonable, proportionate and fair and usually only after other enforcement options have been exhausted.

6. EVALUATION AND REVIEW OF POLICY

This policy will be evaluated and reviewed every 2 years or whenever Council is made aware of a significant issue that requires a policy review.

The review will be conducted by the Environmental Health Manager responsible for Licensing within Council.

7. SECTION 75 EQUALITY AND GOOD RELATIONS

Causeway Coast and Glens Borough Council is fully committed to meeting its obligations in relation to Equality and Good Relations under Section 75 of the Northern Ireland Act. In this regard this policy will be screened using Section 75 guidelines and will be subject to an Equality Impact Assessment if found necessary as a result of the screening process

8. CONTACT DETAILS

Any issues or queries relating to this policy should be addressed to:

Environmental Health Manager
7 Connell Street
Limavady
BT49 0HA

environmentalhealth@causewaycoastandglens.gov.uk

CASTLEROCK

- Area adjacent to public toilets on the promenade. (Ice cream/confectionery only. One pitch with trader already in position).
- Bishops Gate lay-by on east side of A2 (Mussenden Road). (Ice cream, confectionary, minerals, tea/coffee and home baked sweet treats only.
(One pitch with trader already in position).
- Lay-by (picnic area) opposite Bishops Gate on west side of A2 (Mussenden Road). (Ice cream, confectionary, minerals, tea/coffee and home baked sweet treats only. One pitch with trader already in position).

COLERAINE

- Dunhill Road lay-by at Macosquin on South East side of A37. (Hot food only. One pitch with trader already in position).
- Newbridge Road lay-by North East side of A26. (Hot food only. One pitch with trader already in position).
- Harpurs Hill – lay-by at shops. (Hot food only. One pitch with trader already in position).
- Car park at shops at Daneshill Road, Ballysally. (Hot food only. One pitch with trader already in position).
- Loughanhill Industrial Estate. (Hot food only. One pitch with no trader in position).

LIMAVADY

- The North side of Main Street, Limavady between No. 10 and No. 16 Main Street. (One pitch with no traders in position).
- The South side of Catherine Street, Limavady between No. 28 and No. 38 Catherine Street. (Two traders in positions)

DUNGIVEN

- The South side of Main Street, Dungiven opposite its junction between Garvagh Road between No. 127 and No. 135 Main Street. (One pitch with traders in position on different days).