
Street Trading Policy



Council of the
ISLES OF SCILLY

Revised March 2023

Responsible officer

Senior Officer: Licensing

VERSION HISTORY			
Date	Version	Author/Editor	Comments
2017	1	Pritchard	
15/06/21	1.1	L. Banfield M. Coates	Amendments
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13/12/21	1.3	M. Coates	Final Amendments
07/02/22	2	M. Coates	Policy 2022
18/12/22	2.1	M. Coates	Legal Updates
March 2023	2.2	Andy Thomas	Administrative changes only.

DOCUMENT RETENTION	
Document retention period	Until superseded

Overview

The Council of the Isles of Scilly is a small unitary authority delivering a broad range of services to a unique island community, located 45km south-west from mainland Britain. The main industry over the summer months is tourism; the population on the Islands grows considerably with an influx of tourists and seasonal workers.

Scope and Purpose

The Council controls and maintains 14.5km of highway on St. Mary's, including the A3110. All local authorities have a legal discretion to regulate street trading in their area. Street trading is governed by the Local Government (Miscellaneous Provisions) Act 1982 Schedule 4 (as amended).

The purpose of this street trading policy is to provide a framework for consistent decision-making and to provide guidance to applicants.

Street trading supports economic growth and future diversity, aligning with one of the councils' key strategic priorities in 'promoting economic vitality.'

This policy aims to create a street trading environment which complements premises-based trading, is sensitive to the needs of residents and businesses, provides diversity and consumer choice.

It seeks to enhance the character, ambience, and safety of the local environment, enabling businesses to grow and attract investment that supports a year-round economy, and creates rewarding and well-paid employment, creating a strong, sustainable and dynamic Island Community.

Objectives

Central to the Council's policy are a number of objectives;

- **Public Safety** – The proposed location of the activity should not present a significant risk to the public in terms of highway safety and obstruction.
- **Crime and Disorder** – The proposed activity should not present a risk to crime, disorder or give rise to anti-social behaviour and related nuisance
- **Public nuisance** – Measures taken to reduce the risk of nuisance from noise, refuse, vermin, fumes and smells

Policy details

What is Street Trading?

Street trading means the selling or exposing or offering for sale of any article (including a living thing) in a street. An 'article' can be a particular item or object. The term 'street' includes any road, footway, beach or other area to which the public have access. without payment and a service area as defined in section 329 of the Highways Act 1980.

Exemptions from the need to obtain Street Trading Consent

1. Under current legislation some types of trade are legally exempt from the need to obtain a street trading consent. These include:
 - a person trading under the authority of a pedlars' certificate granted under the Pedlars Act 1871
 - trade carried out by roundsmen e.g., milkmen
 - a person trading in association with an adjoining shop premises
 - trade carried on at a petrol filling station
 - trading in a trunk road picnic area provided under Section 112 of the Highways Act 1980
 - trading as a news vendor, where the only articles sold or offered for sale are newspapers and periodicals
 - 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

Street Trading Consents for which Fees are not payable

2. The Council of the Isles of Scilly will not require the payment of fees for the following street trading activities which the Licensing Department deem to be;

- non-commercial or charitable events
- sales of articles by householders on land contiguous with their homes

Procedure for Applicants

3. An application for the grant or renewal of a Street Trading Consent shall be made in writing to the Licensing Department.
4. The Licensing Department shall determine the form of the application and supporting documents for a Street Trading Consent or the renewal of such consent and shall from time-to-time, review and amend the form of application and supporting documents as is considered necessary.
5. An application for the grant or renewal of a Street Trading Consent should be
 - accompanied by a completed statutory declaration of convictions
 - an applicant who must be over 17 years of age (as set in the 1982 Act)
 - any person or persons who is/are to assist the applicant in the course of street trading must be over 17 years of age
6. An application for the grant, variation or renewal of a Street Trading Consent shall be accompanied by;
 - a passport sized photo (for the ID Card) for each person.
 - evidence of Public Liability insurance to the amount of £5,000,000. The production of this may be deferred until provisional permission is given, but sight of the actual policy will be required before documentation is issued confirming the permission
 - photograph/scale drawing of the proposed vehicle/hitched trailer/stand to be used for the purpose of sales
7. An application for the grant of a Street Trading Consent shall be;
 - advertised by way of a notice in such form as the Licensing Department may determine. That notice shall be displayed for a period of not less than 28 days from the date on which the application is made to the Council at or near to the location for which the application

is made or advertised on the Council's website www.scilly.gov.uk and the front window of the council chambers or council noticeboard for 28 days.

- consulted upon with the Isles of Scilly Fire and Rescue Service, Devon and Cornwall Police, the Council's Highway section, Planning and Environmental Health or any other agency or partner the Licensing Department deem necessary.
 - The Licensing Department will seek comments from all consultees on behalf of the applicant.
8. An application for a variation to an existing street trading consent will not need to be advertised by public notice ordinarily unless the Licensing Dept deem it to be so different in nature to the original consent granted. In such unusual cases the Licensing Department may insist on a new grant being used instead of a variation.
9. Any person who wishes to make a representation in respect of a grant application must do so no later than 28 days from the date on which the application is made to the Council.
10. The Licensing Department may;
- Grant, vary or renew a Street Trading Consent either unconditionally or subject to one or more of the conditions as set out at Appendix A
 - Inform the applicant that they intend to place the application before the Council's Licensing Committee with a recommendation for refusal and the reasons for that recommendation
11. Where an application is placed before the Committee by the Licensing Department with a recommendation for refusal, an applicant may make representations orally and/or in writing to the Licensing Committee.
12. The Licensing Department may grant, vary or renew a Street Trading Consent for a period not exceeding twelve months (1 April to 31 March is the maximum period for any single trading year).

13. The Licensing Department shall not ordinarily grant a Street Trading Consent for the sale of motor vehicles subject to each application being considered on its own merits.

Grounds for Refusal

14. The European Union Services Directive 2006/123/EC (EUSD) is intended to make it easier for street traders to set up anywhere in the European Union. This Directive still applies to the United Kingdom (UK).
15. In order to comply with the EUSD any prohibition on street trading authorisation must be justified by an “*overriding reason relating to the public interest*” (ORRPI). Examples of ORRPI are public policy, public security, public safety, public health, protection of consumers, recipients of services and workers, combating fraud and the protection of the environment and the urban environment.
16. The refusal of a Street Trading Consent on the grounds that there are already enough traders in the street, trading from other shops, or that there are other traders selling similar products, is not compatible with the EUSD and should no longer be used as a ground for refusal.
17. Applicants should be aware that applications may be refused, without the requirement for a Hearing, if the granting of a Street Trading Consent would constitute an offence under the Highways Act.
18. Other examples of grounds for refusal include:-
 - Road safety concerns (e.g. consideration should be given to the length of laybys, access for vehicles pulling in and out)
 - Not enough space in the street you wish to trade in, without causing interference or inconvenience to other street users
 - Applicant previously failed to comply with conditions on a Street Trading Consent
 - The Consent, if granted, will result in nuisance to members of the public, residents and local businesses due to the likely noise, smell,

litter, disturbance or other problems which will be caused by granting the consent, particularly in residential areas or areas of specific interest/ outstanding natural beauty

19. Applicants who are refused Consent will be given a formal notice of refusal, giving reasons for the decision. There is no right of appeal but the decision can be challenged by way of a Judicial Review to the High Court.

Consent Streets and Prohibited Streets

20. All streets which are maintained at public expense by the Council on the Isles of Scilly are 'consent streets' and will require consent from the Council before trading may commence. The list attached to this policy in Appendix B is not exhaustive and if further clarification is needed, the Licensing Department are contactable for this information.

Vehicles

21. All vehicles must be road worthy, fully taxed and insured. No trailer can be unhitched from a licensed, taxed towing vehicle on the highway in accordance with the Highways Act 1980 (as amended) clause 143, which states that the Council has the power to remove structures from the highway. "Structure" includes any machine, pump, post or other object of such a nature as to be capable of causing obstruction, and a structure may be treated for the purposes of this section as having been erected or set up notwithstanding that it is on wheels. Trailers must also comply with the Road Vehicles Lighting Regulations 1989 which outlines the legal requirements for lights, indicators and reflectors.

Waste Management

22. All street traders will ensure that the area surrounding the consent site is kept free of litter, and in the case of food businesses, waste food, food spillage and grease staining originating from the business by the following means:
 - cleaning the area as often as is necessary and at the end of each day

- removing from the site at the end of trading on each day all litter contained in the waste containers provided by you and collected from the area of the site and dispose of it in a lawful manner, by way of a trade waste collection
- providing the Operational Services department with an address from which collections will be made

23. All street traders are encouraged to refer to the Council's waste reduction strategy in line with the government's 2030 zero carbon target, when managing the waste produced by their business. This can be found on the Council's website. [Waste Reduction Strategy | Council of the ISLES OF SCILLY](#)

Utilities

24. Any vehicle used for the purposes of street trading must be completely self-contained; the use of an external free-standing generator is not permissible; any energy providing utilities must be kept within the vehicle. The Council cannot provide electricity from an outside source. Any wastewater or sewerage must be collected and lawfully disposed of after trading and must not be allowed to run into the public highway.

Food Handlers

25. Street traders selling food must have the relevant certification and registration documents, including food hygiene training commensurate with the food handling undertaken. These include;

- a Basic Food Hygiene Level 2 Certificate, or similar
- registration with the Council as a food business
- evidence of a food safety management system

Fees and Charges

26. Fees and charges for street trading will be set by Full Council in February of each year. They will then be applied from 1st April – 31st March in the following financial year for applicants. A charging structure is attached to this policy at Appendix C.

Public Safety

27. Any indication that a vehicle is interfering with public safety will have to cease trading immediately; this includes blocking sight lines on the highway for other road users, endangering the safety of pedestrians and creating a risk to other road users, as deemed by the Council or the emergency services.

Nuisance

28. No unlawful noise or odour shall interfere with a neighbouring property or be prejudicial to public health or be a public nuisance or be detrimental to the amenity of the area as defined under the Local Government (Miscellaneous Provisions) Act 1982, Schedule 4, Reg 7(5) (b), and as deemed a legitimate nuisance by the Environmental Health Officer of the local authority.

Public Liability Insurance

29. The applicant must have public liability insurance to at least the value of £5,000,000 to indemnify the Council of any claims. A copy of the certificate must be submitted with the street trading application.
30. Public liability insurance: -
- should indemnify the Council in relation to all costs, claims, demands, actions, fines, penalties and liabilities howsoever arising from the exercise of a street trading consent
 - should be held with a reputable insurer and accepted to the Council's satisfaction
 - must be maintained for the duration of the consent and produced on demand during such time as approved
 - will continue in relation to any acts, omissions or failures of the applicant, their agents, contractors or employees in the exercise of the street trading consent, notwithstanding the consent having lapsed

Control of Advertisements

31. The Council reserves the right to control the advertisements placed on the public highway and no structures can be erected on the highway according to legislation in the Highways Act 1980 clause 143 and will be removed without notice.
32. Any advertisement the applicant places on their vehicle must be approved by the Council in advance of trading and any subsequent changes to advertisements must be approved in advance by the Council by submitting copies for approval to the Licensing Department.

Misconduct, Offences and Convictions

33. Misconduct involving drugs, anti-social behaviour, violence, dishonesty and other convictions may lead to revocation of a license.
34. The following guidelines relate to the relevance of convictions for applicants and their assistants, and that each must have the right to work in the UK:

Each case will be decided on its own merits. In each case the Licensing Department will assess whether an applicant for the grant, variation or renewal of a street trading consent is a suitable person to hold or to continue to hold a street trading consent or be an assistant to an existing or potential license holder, and that previous convictions will be considered. This decision may be sent to the Licensing Hearing Committee for a decision if the Licensing Dept deem it necessary.

35. In considering the previous convictions the Licensing Department will consider the following:
 - (a) whether the conviction is relevant.
 - (b) the seriousness of the offence.
 - (c) the length of time since the offence occurred.
 - (d) whether there is a pattern of offending behaviour.
 - (e) whether that person's circumstances have changed since the offence occurred.

- (f) the circumstances surrounding the offence and the explanation offered by that person.
36. The following is a description of the Licensing Department's general approach to certain categories of offences;

Dishonesty

37. The holders of a street trading consent and their assistants have to be persons who can be trusted. It is easy for a dishonest trader or assistant to take advantage of the public. Members of the public using a street trading outlet expect the holder and their assistant to be honest and trustworthy.
38. For these reasons a serious view will be taken of any conviction involving dishonesty.
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Violence

39. As street traders and their assistants have close contact with the public, a firm line will be taken with applicants who have convictions for violence. In cases where the commission of an offence involves violence, a street trading consent or registration as an assistant to the holder of a street trading consent will normally be refused.

Drugs

40. Where an applicant has a conviction for an offence that relates to the supply or importation of drugs, an application will generally not be granted until 5 years after the completion of any sentence imposed. Consideration will be given to the circumstances of the offence and any evidence which shows that a person is now a fit and proper person to hold a street trading consent or to be registered as an assistant to the holder of a street trading consent.

Sexual and Indecency Offences

41. As the holders of street trading consents and their assistants, and in particular those who sell ice cream, have access to children, applicants who have convictions for rape, indecent assault, any sexual offence involving children and any conviction for an offence under the Sexual Offences Act 2003 will normally be refused a street trading consent or registration as an assistant to the holder of a street trading consent.
42. When considering applications, the Licensing Department may take into account any information which does not amount to a criminal offence that is brought to its attention where that information may indicate that an applicant may not be a suitable person to hold a street trading consent or to be registered as an assistant to the holder of a street trading consent.
43. In cases where the Licensing Department considers that information shows an applicant is not a suitable person, it will normally require a period of not less than 5 years free of such incidents from the date on which the incident occurred or, if more than one from the date of the last incident.

Monitoring convictions

44. In respect of applications where motoring offences are disclosed , an applicant for a street trading consent or to be registered as an assistant to the holder of a street trading consent would be expected to show a period of between 3 and 5 years free of conviction for serious convictions from the date of conviction or the date of completion of any sentence imposed , where a custodial sentence has been imposed.

Formal Cautions and Fixed Penalty Notices

45. For the purposes of these guidelines, the Licensing Department will treat Formal Cautions issued in accordance with Home Office guidance and fixed penalty notices as though they were a conviction before the courts.

Trading Times

46. Any street trading must be between the times specified in the Consent. After the trading time has elapsed, the vehicle must be removed from the public highway to a safe location under the trader's control. Street trading hours will normally mirror those of shops in the immediate vicinity. In the case of hot food takeaways trading hours will be determined on a case-by-case basis but will generally not exceed a maximum of six hours per day with the last sale being no later than 8pm and the site cleared by 8:30pm.

Restrictions on Street Trading

47. Full details of insurance requirements can be found in the Public Liability Insurance section of this policy and the charging structure is set out at Appendix C.

Breaches and non-compliance

Unauthorised Street Trading

48. Unauthorised street trading is prohibited; all prospective street traders must complete the most recent application form for approval to trade. Any persons found to be trading illegally will be liable to prosecution under paragraph 10 of schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.

Right to withdraw or amend consent

49. The Licensing Department may at any time reduce the number of days or the period in any day during which the consent holder is permitted to trade or restrict the description of goods in which he is permitted to trade or revoke a consent to trade on any of the following grounds;

- that owing to circumstances which have arisen since the grant of the Street Trading Consent there is not enough space in the street for the consent holder to engage in trading permitted by the consent without causing undue interference or inconvenience to persons using that street
- that the consent holder is unsuitable to hold a Street Trading Consent by reason of having been convicted of an offence, caution or fixed penalty which falls within this policy
- that since the grant or renewal of the Street Trading Consent, the consent holder has failed to pay their fees due to the Council for the grant of the consent within the allocated timescale
- that the consent holder has, since the grant or renewal of the consent, failed without reasonable excuse to make use of the Street Trading Consent
- that, where the consent authorises the sale of food in a street the consent holder or any person who assists the consent holder has been convicted of an offence under food safety or health and safety legislation
- any other reasonable cause

50. Where consent to trade is revoked, amended or surrendered, the Licensing Department shall not ordinarily remit any part of the consent fee subject to each application being considered on its own merits.

Policy management

51. The Licensing Department may, at any time, undertake amendments of an administrative nature as are necessary, or to secure continuing compliance with the law. Any amendments will be communicated to the Licensing Committee.

Evaluation and review

52. This Policy will be reviewed by the Licensing Department on an annual basis in consultation with the Licensing Committee.

LIST OF APPENDIXES

Appendix A - Pool of Standard Conditions that may be imposed on a Street Licence

Appendix B - Consent Streets and Prohibited Streets

Appendix C - Charging Structure for Street Trading License Applications

We want to ensure that your needs are met.

If you would like this information in an audio format, Braille, large print, any other format or interpreted in a language other than English, please contact:

Council of the Isles of Scilly
Town Hall
St Mary's
Isles of Scilly TR21 0LW

Telephone: 01720 424524

E-mail: diversity@scilly.gov.uk

APPENDIX A

Pool of Standard Conditions that may be imposed on a street Licence

In these conditions:

"The Council" means The Council of the Isles of Scilly.

"You" means the holder of the consent to trade.

"Your Assistant" means any person or persons who assists the holder of a street trading license whilst trading under that consent and who has been notified to and approved by the Council.

- (1) You shall display the Street Trading Consent issued by the Council in a position where it can be clearly seen and read by a member of the public when you or your assistant are street trading.
- (2) You shall ensure that any identification badge issued by the Council shall be worn by you and your assistant (if any) in a position where it can be clearly seen by a member of the public.
- (3) Street trading consent is not transferable.
- (4) If you or your assistant moves home or registered office, you shall write to the Council giving details of the new home address or new address of the registered office within seven days of moving.
- (5) If you or your assistant are convicted of any offence(s), given a formal caution(s) for any offence or have any fixed penalty notice(s) imposed, you shall write to the Council giving full details of the offence(s), caution(s) or fixed penalty notice(s) within seven days of the imposition of the offence(s), caution(s) or fixed penalty notice(s).
- (6) If there is any change in any of the circumstances on which the consent was granted, you shall write to the Council giving details of the change within seven days of it taking place.
- (7) You shall not trade under this consent unless you are registered in accordance with Regulation (EC) 852/2004 (Hygiene of foodstuffs) (where appropriate).

- (8) You shall not cause any avoidable nuisance which affects any member of the general public or their right to the use and enjoyment of their homes or businesses in the vicinity of the trading site.
- (9) You shall, where applicable at all times when trading comply with all "Codes of Practice" relating to noise in particular the "Codes of Practice on Noise from Ice Cream Vans Chimes etc. 1982", which states it is an offence to sound chimes 'so as to cause annoyance'. Chimes should be sounded for no longer than 4 second bursts at a time – an automatic cut out device should be used.
- (10) You shall provide sufficient and suitable waste containers to enable customers to dispose of any litter generated by the business carried out under the consent.
- (11) You shall not place any table, chair or similar item on any highway.
- (12) You shall not display any signs, posters or similar other than those approved by the Council in writing.
- (13) No animal shall be present on any stall or vehicle.
- (14) No goods other than those set out in the consent shall be sold.
- (15) You shall obtain insurance up to the sum of £5,000,000 depending on the type of street trading license applied for to insure against third party liability claims and to indemnify the Council against all claims, actions, demands and expenses arising in respect of the grant of this consent and shall produce evidence of that insurance on demand to the Council.
- (16) You shall ensure that, where applicable, you have the written permission of the landholder from whose land you are trading before you trade.
- (17) You shall not trade at any location other than that specified in the consent.
- (18) You shall not trade at any time or on any day other than those times and days specified in the consent.
- (19) The vehicle/hitched trailer/stand will be removed to a site off the highway immediately after permitted trading hours are ended.

In addition to these conditions it may be considered necessary for the Licensing Department to also impose additional conditions which are specific to individual consents to trade, and these shall be listed on those consents.

APPENDIX B

Consent Streets and Prohibited Streets

All streets which are maintained at public expense by the Council on the Isles of Scilly are considered to be consent streets by the Council as outlined in the policy. However, some streets are classified as prohibited streets due to public safety factors that have been taken into consideration.

Prohibited Streets

The following list of prohibited streets are to have their boundaries interpreted by the Licensing Department. Further advice regarding the classification of a specific street can be sought from the Operational Services Department;

Hugh St
Old Town Road
Church Road
High Cross Lane
Old Town Lane
Jerusalem Terrace

APPENDIX C

Charging Structure for Street Trading License Applications 2023/24

ISLES OF SCILLY Local Authority		
License New	Renewal	Variation
£182	£102	£102
Trading Fees		
Occasional		£ 5 per day
1 day a week		£21 per month
2 days a week		£43 per month
3 days a week		£64 per month
4 days a week		£86 per month
5 days a week		£107 per month
6 days a week		£129 per month
7 days a week		£150 per month