



Comhairle Ceantair
**an Iúir, Mhúrn
agus an Dúin**

**Newry, Mourne
and Down**
District Council

Street Trading Enforcement Policy

NEWRY, MOURNE AND DOWN DISTRICT COUNCIL

REGULATORY & TECHNICAL SERVICES DEPARTMENT

Dated: 02 March 2015

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1. Purpose

By virtue of Sections 16 to 22 (inclusive) of the Street Trading Act (Northern Ireland) 2001 the District Council may regulate street trading through enforcement powers in a street or part thereof in it's District.

The purpose of this Policy is to provide guidance on matters, which should be considered when deciding whether to take enforcement action against a person of whom there is reasonable grounds to suspect commission of an offence under this Act while involved in Street Trading. Its aim is to provide, in so far as is possible, consistent decision making so as to develop and thereafter maintain public confidence in Newry, Mourne and Down District Council's (here after called 'the District Council') performance of its duties.

2. Scope

This Policy is intended to ensure that the District Council Members and Officers and all other interested parties are aware of those matters to be taken into consideration when determining, what if any, enforcement action is to be taken.

3. References

- 3.1 Street Trading Act (Northern Ireland) 2001
- 3.2 Guide to the Street Trading Act (Northern Ireland) 2001.
- 3.3 Street Trading (Fixed Penalty) (Notice and Procedure) Regulations (Northern Ireland) 2001

4. Background

The Street Trading Act (Northern Ireland) 2001 (here after called 'the Act') enables District Councils to regulate Street Trading through designating, licensing and enforcement procedures. The Act received Royal Assent on the 5 April 2001, with a run in period of 6 months and became operative on 1 October 2001. The new Act repealed most of the provisions of the 1929 Street Trading (Regulation) Act, except Section 10, which contains the provisions whereby Market Rights can be acquired or extinguished.

Section 17 of the Act details those street trading activities which would be in contravention of the Street Trading Act (Northern Ireland) 2001 and which would be enforced by means of a fixed penalty, a prosecution or seizure by authorised officers of the District Council.

5. General Principles

- 5.1 Each case must be considered by its own merits, but there are general principles that apply in all cases. The duty of the District Council is to make sure that each trading situation is fairly and objectively assessed and that all relevant factors are considered.
- 5.2 Officers upon becoming aware of a contravention of a street trading licence may use their discretion and implement such steps as the Officer thinks fit to:-
- (a) Issue a verbal warning
 - (b) Issue a fixed penalty notice or
 - (c) Issue a formal caution with a recommendation to prosecute or
 - (d) Invoke the powers of seizure

6. Unlicensed Street Trading

- 6.1 Section 17(1) of the Street Trading Act (NI) 2001 states that a person who-
- (a) engages in street trading in a district and is not the holder of a street trading licence or a temporary licence granted by the Council for the district;
 - (b) is the holder of a street trading licence and contravenes a condition of a kind specified in paragraphs (a) or (c) of Section 7(1); or
 - (c) is the holder of a temporary licence and engages in street trading on a day or in a place not specified in that temporary licence,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 of the standard scale.

- 6.2 When an authorised Officer of the District Council or a Constable has reasonable grounds for suspecting that a person is engaged in unlicensed street trading, then the authorised Officer or a Constable may:
- (a) if the Officer/Constable knows or is satisfied with the identity given by the trader then he/she shall proceed with initiation of legal proceedings as outlined in section 5.2, against him/her and advise the trader to stop trading immediately.
 - (b) If the Officer/Constable is not satisfied with the identity given by that trader or cannot verify this identity then the authorised officer/constable may begin seizure powers immediately. All possible steps shall be taken by the District Council to ascertain the identity of alleged offender to initiate legal proceeding against him/her.

7. Contravention of Licensing Conditions

- 7.1 When an authorised Officer of the District Council or a Constable upon becoming aware of a contravention of conditions of a street trading licence they may record such contravention/s in a properly documented manner and the licensee may be cautioned in regard to the contravention. A report will be prepared, detailing the contravention and may be taken to Council with a view to recommending prosecution.
- 7.2 An authorised Officer of the Down District Council, upon becoming aware of contraventions of a Street Trading Licence as set out in Section 21 (a) and (b) (of the Act) will issue a verbal warning to the relevant Trader.
- 7.3 The Trader must desist from trading in breach of his/her Licence within a period of thirty minutes of the warning issued by the authorised Officer of the District Council. If the Trader refuses to desist from trading the Officer may issue a Fixed Penalty Notice offering the opportunity of discharging any liability to conviction for that offence (by payment of £50 or 5% of level 3 fine whichever is the greater) to the Clerk of Petty Sessions.
- 7.4 The authorised Officer of the District Council shall record details of the warning issued and particulars of the offence in his/her designated log book and a copy of this entry will be given to the Trader. The District Council will write to the relevant Trader within 14 days of the issuing of a verbal warning to confirm details of it and caution against further breaches of the Street Trading legislation.
- 7.5 Contraventions:
Any person who:
- (a) without reasonable excuse contravenes any condition of a street trading licence, which is a condition of a kind specified in paragraphs (b), (d), (e), (f) or (g) of Section 7 (1) of the Act;
 - (b) fails on demand and without reasonable excuse to produce his street trading licence or temporary licence to an authorised Officer or a Constable;
 - (c) fails, on being required to do so under section 16(2), to state his name and address or states a name or an address that is incorrect;
 - (d) in connection with an application for the grant, renewal or variation of a street trading licence or the grant of a temporary licence makes a statement which he knows to be false in a material particular;
 - (e) resists or intentionally obstructs an authorised Officer in the execution of his duties under this Act.

7.6 Enforcement against Licensed Traders-Fixed Penalty Fines

The Fixed Penalties Notice offers the opportunity of discharging (by payment of a fixed penalty to a Clerk of Petty Sessions by a given date) any liability to conviction of the offence under

paragraphs (a) or (b) of section 21 of the Act as specified in the Notice.

Paragraph (a) of section 21 relates to the contravention, without reasonable excuse, of certain conditions of a street trading licences by:

- **selling or supplying different articles, things or services to those specified;**
- **using receptacles of a different nature, size, type or number to those specified;**
- **failing to prominently display the name and licence number of the licence holder;**
- **failing to comply with the conditions governing the storage of articles, things or receptacles;**
- **failing to comply with the conditions governing the deposit and removal of refuse, including any containers used and their location.**

Paragraph (b) of section 21 relates to failing, on demand, to produce a street trading licence or temporary licence to an authorised Officer of the District Council or a Constable.

7.7 It is recommended that only one Fixed Penalty be issued to a person engaged in Street Trading activities for each separate contravention as listed above in any one period of 24 hours.

7.8 Once two Fixed Penalties have been issued for the same contravention against any individual within the term of a Licence, then the matter should be brought to the attention of the Head of Service at the earliest date for:

- a. The issuing of a formal caution.
- b. Rescind or revoking of a street trading licence
- c. Any other appropriate action.

8. Revocation of a Street Trading Licence

8.1 10 (1)A District Council may at any time revoke a street trading licence if it is satisfied that-

- (a) owing to circumstances which have arisen since the grant or renewal of the licence -
 - I. the location of the street trading pitch on which the licence holder trades as a stationary trader has become unsuitable, or
 - II. the space in the designated street in which the licence holder trades as a stationary trader has become inadequate for him to engage in the trading permitted by the licence without causing

undue interference or inconvenience to persons or vehicles using the street; or

III. the area or areas of the District in which the licence holder trades as a mobile trader have become unsuitable for the licence holder to do so without causing undue interference or inconvenience to persons or vehicles in the area or areas;

- (b) a designating resolution has been rescinded or varied with respect to the street in which the licence holder trades as a stationary trader;
- (c) the licence holder has, without reasonable excuse, failed to avail himself to a reasonable extent of his licence;
- (d) the licence holder has, in connection with an application under section 5 with respect to the licence, made a statement which he knows to be false in a material particular;
- (e) the licence holder is, on account of misconduct or some other reason relating to trading activities that has come to the attention of the District Council since the grant or renewal of the licence, unsuitable to hold the licence;
- (f) the licence holder has, without reasonable explanation, failed to pay any fees or charges due to the District Council under section 15;
- (g) the licence holder has persistently failed to remove to a place of storage the receptacles used by him for trading; or
- (h) the licence holder has persistently failed to comply with any condition of his licence.

8.2 Where the District Council proposes to revoke or impose a licence variation it shall give the street trading licence holder, "notice in writing of its intentions" and invite representations from him/her.

8.3 The notice of intention referred to in 8.2 shall state- "that representations relating to the proposal may be made in writing to the District Council within such period, being not less than 21 days from the date of the notice, as may be specified in the notice". When representations are made they will be presented to the District Council's Regulatory and Technical Services Committee for consideration.

8.4 (2)A District Council shall not take any steps to revoke a licence under paragraphs (g) or (h) of subsection (1) unless –

- (a) it has notified the licence holder in writing of the conduct on his part that it considers to constitute a failure of a kind mentioned in either of those paragraphs; and
- (b) the licence holder has thereafter continued or repeated that conduct.

8.5 (3)If the District Council considers that a licence could be revoked on any of the grounds mentioned in paragraphs (a) to (c) of subsection (1) the District Council may instead of revoking it, vary its conditions under section 11(1) by-

- (a) reducing the number of days in any week or the period in any one day during which the licence holder is permitted to trade; or

- (b) specifying –
 - I. in relation to a licence holder who trades as a stationary trader, a different street trading pitch in the designated street in which he trades, or a street trading pitch in another designated street, or
 - II. in relation to a licence holder who trades as a mobile trader, a different area or different areas, in which the licence holder may sell articles or things, or supply a service; or
- (c) restricting the description of articles, things or services in which the licence holder is permitted to trade.

8.6 The District Council may revoke a temporary street trading licence where the holder of a temporary licence has failed to comply with any of the conditions specified in the licence. The District Council will consider any representation made to the District Council by the holder of the temporary licence, before deciding to revoke a licence.

9. Powers of Seizure

9.1 When an authorised Officer of the District Council has reasonable grounds for suspecting that a person is engaged in street trading and is not the holder of a street trading licence, then the authorised Officer may :-

- (a) Request that the trader close up the stall/receptacle immediately and advise him/her that if the stall/receptacle and the trading articles are not removed within thirty minutes then the authorised Officer's seizure powers will be invoked.
- (b) The authorised Officer shall record details of the warning issued in his/her designated log book, and a copy of the entry will be given to the trader.
- (c) If the trader removes his stall/receptacle and the trading articles within the thirty minute period no further action shall be taken.
- (d) If the trader does not remove his stall/receptacle and articles within the prescribed thirty minutes then the authorised Officer should begin seizure procedures at this time as set out in the Enforcement Protocol.
- (e) If this is not the first occasion for such trading then the authorised Officer may immediately begin seizure procedures in relation to all articles or things being offered for sale and any receptacle/equipment being used in relation to such trading as set out in the Enforcement Protocol.

9.2 If an authorised Officer or Constable has reasonable grounds for suspecting that a person has committed an offence under section 17 of

the Act, he may seize –

- (a) any article or thing being offered or exposed for sale by that person.
- (b) Any other article or thing of a similar nature to that being offered or exposed for sale which is in the possession or under the control of that person; and
- (c) Any receptacle or equipment being used by that person.

Which may require to be used as evidence in any proceedings or may be the subject of an application for a Forfeiture Order under section 19 of the Act.

- 9.3 The District Council will stipulate the type of trading allowed for the event/events. It will also provide a list of items that are banned from sale. The powers of seizure apply to any goods included on the Council's banned list of items.
- 9.4 The relevant Officer shall ensure that the appropriate removal/seizure forms are fully completed and attached to the appropriate file.

10. Policy Owner

Mr Canice O'Rourke, Director of Regulatory and Technical Services

11. Contact details in regard of this policy are:

Mr Colum Jackson,
Assistant Director of Regulatory and Technical Services
(Building Control and Regulation)
Newry, Mourne and Down District Council
O'Hagan House
Monaghan Row
Newry
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Tel 028 3031 3000

12. Policy Authorisation

Development Committee Meeting Authorised on	24 March 2015
Council Authorised on	31 March 2015

13. Policy Effective Date – 1 April 2015

14. Policy Review Date – 1 April 2019

The policy will be reviewed in line with the Council's agreed policy review cycle i.e. every 4 years (as per Council's Equality Scheme commitment 4.31).

15. Procedures

Refer to the Enforcement Procedure

16. Equality Impact Assessment

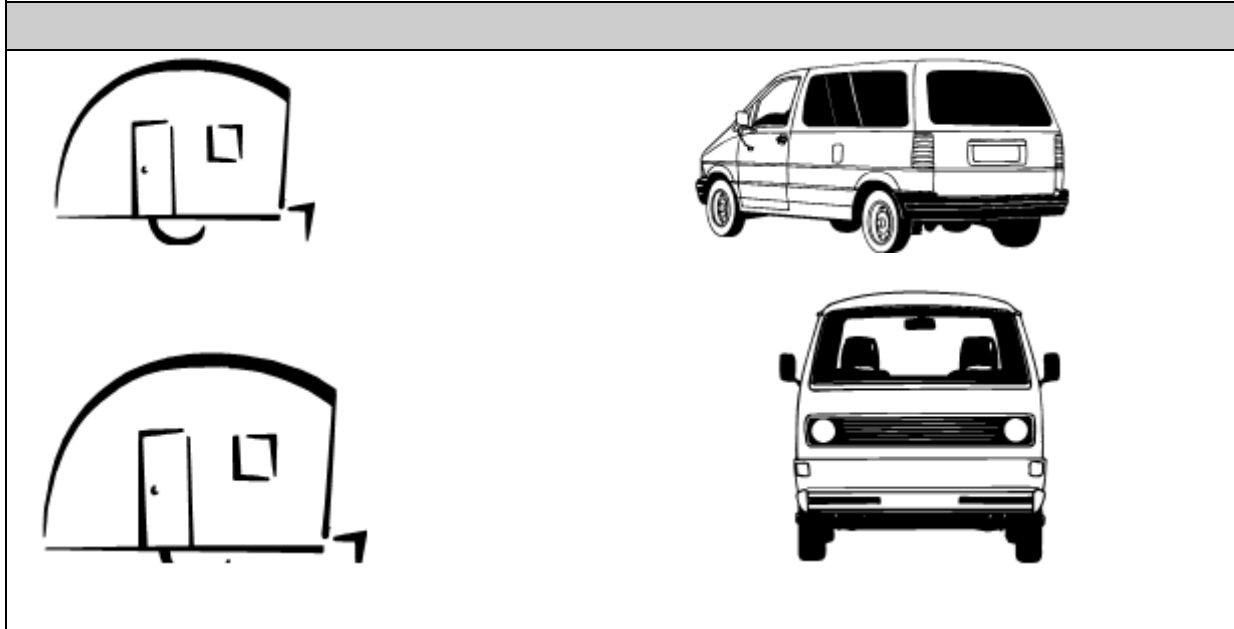
This policy has been screened in accordance with the provision of Section 75 of the Northern Ireland Act 1998.

Version 1.0

NEWRY, MOURNE AND DOWN DISTRICT COUNCIL
PROPERTY REMOVAL/RECEIPT FORM
FOR VEHICLES AND TRAILERS

Ref No: _____

Removal Officer's Name	Date	Time	Process Book No
Location of Property			
Trader's Name		Address	
Owner's Name		Address	
(if different from above)			
Reference Number of General Property Removal Form			



Damage Key- M-missing D-dent S-scrap C-chip H-hole

Comments / damage in

<p>I confirm that the above details are correct</p> <p>Traders Signature</p> <hr/> <p>Officer's Signature</p> <hr/> <p>Constable's Signature</p> <hr/> <p>Con. Number</p>	<p>Trader refused to sign</p> <p><input type="checkbox"/> Tick</p>	<p>Received at compound</p> <p>Time Date</p> <p>.....</p> <p>Property Officer</p> <p>.....</p> <p>Signature</p> <p>.....</p>
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**NEWRY, MOURNE AND DOWN DISTRICT COUNCIL
PROPERTY REMOVAL/RECEIPT FORM**

Ref No: _____

Use block capitals and black ink when completing this form							
Removal Officer's Name		Date		Time		Process Book No	
Location of Property							
Trader's Name				Address			
Owner's Name				Address			
(if different from above)							
SECTION A If a vehicle, complete this section, then move to Section C. If not, move to Section B.							
Vehicle Make		Model		Colour			
Registration		Distinguishing features (artwork/Logo)					
SECTION B If a hot dog stall, market stall or similar item, complete this section. If not, move to Section C.							
Description of receptacle/item					Serial No. (if any)		
Distinguishing features (colour/artwork/marks)					Tag No.		
SECTION C List any non-perishable property seized (with or without the above property).							
	Description	Quantity	Tag No.		Description	Quantity	Tag No.
1				1			
2				2			
3				3			
4				4			
5				5			
6				6			
7				7			
8				8			
9				9			
10				10			
I confirm that the above details are correct				Trader refused to sign <input type="checkbox"/> Tick		Received at compound	
Traders Signature						Time Date	
Officer's Signature						
Constable's Signature _____						Property Officer	
Con. Number _____						Signature	
						

**NEWRY, MOURNE AND DOWN DISTRICT COUNCIL
PROPERTY REMOVAL/RECEIPT FORM
FOR PERISHABLE GOODS**

Ref No: _____

Use block capitals and black ink when completing this form

Removal Officer's Name		Date		Time		Process Book No	
------------------------	--	------	--	------	--	-----------------	--

Location of Property	
----------------------	--

Trader's Name	Address
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--	--

Owner's Name	Address
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(if different from above)	
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Reference Number of General Property Removal Form
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List any Perishable Property Seized

	Description	Quantity	Tag No.		Description	Quantity	Tag No.
1				1			
2				2			
3				3			
4				4			
5				5			
6				6			
7				7			
8				8			
9				9			
10				10			

I confirm that the above details are correct Traders, Signature _____ Officer's Signature _____ Constable's Signature _____ Con. Number _____	Trader refused to sign <input type="checkbox"/> Tick	Received at compound Time Date Property Officer Signature
--	---	--

FOR OFFICE USE Disposal of Goods Request Name of the Justice of the Peace who approved Disposal Date of authorisation	Disposal Order Given, that the perishable goods be	Location of Disposal Disposal Officer Witness Date
--	---	--