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Date: 25th February 2015

Dear Sir/Madam,

A meeting of the **Cabinet** will be held in the **Sirhowy Room, Penallta House, Tredomen, Ystrad Mynach** on **Wednesday, 4th March, 2015** at **2.00 pm** to consider the matters contained in the following agenda.

Yours faithfully,

A handwritten signature in blue ink that reads 'Chris Burns'.

Chris Burns
INTERIM CHIEF EXECUTIVE

AGENDA

	Pages
1 To receive apologies for absence.	
2 Declarations of Interest. Councillors and Officers are reminded of their personal responsibility to declare any personal and/or prejudicial interest(s) in respect of any item of business on the agenda in accordance with the Local Government Act 2000, the Council's Constitution and the Code of Conduct for both Councillors and Officers.	
To approve and sign the following minutes: -	
3 Cabinet held on 18th February 2015.	1 - 2
To receive and consider the following report on which an executive decision is required: -	

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4 Public Protection Enforcement Policy.

3 - 32

To receive and consider the following report, which requires a recommendation to Council: -

5 Adoption of Policies in relation to the Mobile Homes (Wales) Act 2013.

33 - 60

Circulation:

Councillors Mrs C. Forehead, D.T. Hardacre, K. James, Mrs B. A. Jones, G. Jones, Mrs R. Passmore, D.V. Poole, K.V. Reynolds, T.J. Williams and R. Woodyatt,

And Appropriate Officers.



CABINET

MINUTES OF THE MEETING HELD AT PENALLTA HOUSE, TREDOMEN ON WEDNESDAY, 18TH FEBRUARY 2015 AT 2.00 PM

PRESENT:

Councillor G. Jones - Deputy Leader (Presiding)

Councillors:

Mrs C. Forehead (HR and Governance/Business Manager), D.T. Hardacre (Performance and Asset Management), Mrs B. Jones (Deputy Leader and Cabinet Member for Corporate Services), D.V. Poole (Community and Leisure Services), R. Woodyatt (Social Services).

Together with:

C. Burns (Interim Chief Executive), Mrs S. Aspinall (Acting Deputy Chief Executive), N. Scammell (Acting Director of Corporate Services and S.151 Officer), D. Street (Corporate Director Social Services).

Also in Attendance:

J. Morgan (Trading Standards, Licensing and Registration Manager),
S.M. Kauczok (Committee Services Officer).

1. APOLOGIES FOR ABSENCE

Apologies for absence had been received from Councillors K. James (Regeneration, Planning and Sustainable Development), Mrs R. Passmore (Education and Lifelong Learning), K.V. Reynolds (Leader) and T.J. Williams (Highways, Transportation and Engineering).

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CABINET

RESOLVED that the minutes of the meeting held on 4th February 2015 be approved and signed as a correct record.

MATTERS ON WHICH EXECUTIVE DECISIONS WERE REQUIRED

4. SCRAP METAL DEALERS LICENSING FEES 2015/16

The report sought approval for a revised fee structure for Scrap Metal Dealer licences for 2015/16.

The Scrap Metal Dealers Act 2013 was enacted on 1st October 2013 and introduced a new licensing system to control site operators and itinerant collectors. The Act and supporting regulations are silent upon the issue of the responsibility for exercising the function under the Act. Consequently the provisions of S 9 (D) of the Local Government Act 2000 are triggered and by default the function is exercised by the Executive.

It was anticipated that further regulations would be implemented making it a Local Choice function i.e. a function that can be exercised by the Council or the Executive. Ideally this regime should be administered in the same way as the other licensing functions of the Authority, a Council function delegated to the Licensing Committee. To date such regulations have not been implemented so the function remains the responsibility of the Executive.

The Act requires that each local authority set fees on a cost recovery basis for each category of Scrap Metal Dealer licences. Existing fees have been reviewed in line with the guidance and the levels set out in paragraph 4.5 of the report are proposed in order to cover the cost of providing the function. The increase is mainly due to the review of on costs and incorporation into the hourly rates applied of officers involved in the process. The fees are for a three-year period.

Following consideration and discussion, it was moved and seconded that the recommendation in the report be approved. By a show of hands this was unanimously agreed.

RESOLVED that for the reasons contained in the officer's report, the fee structure set out at paragraph 4.5 of the report be approved.

5. CABINET FORWARD WORK PROGRAMME

The report sought approval of the Cabinet Forward Work Programme for the period February to May 2015. The Forward Work Programme is updated on a monthly basis to reflect any amendments that are made to it since it was first agreed on 22nd January 2014.

Following consideration and discussion, during which a Member sought information on a report on a strategy for open spaces, it was moved and seconded that the recommendation in the report be approved, subject to the Cabinet Member responsible for the report on the Anti Poverty Strategy being amended to Councillor G. Jones (Anti Poverty Champion). By a show of hands this was unanimously agreed.

RESOLVED that for the reasons contained in the officer's report, the Cabinet Forward Work Programme outlined in Appendix 1 to the report be approved, subject to the Cabinet Member responsible for the report on the Anti Poverty Strategy being amended to Councillor G. Jones (Anti Poverty Champion).

The meeting closed at 2.08 pm.

Approved and signed as a correct record subject to any corrections made at the meeting held on 4th March 2015.

CHAIR



CABINET – 4TH MARCH 2015

SUBJECT: PUBLIC PROTECTION ENFORCEMENT POLICY

REPORT BY: ACTING DIRECTOR OF CORPORATE SERVICES AND SECTION 151 OFFICER

-
- 1.1 The attached report, which sought the views of Members on a revised Public Protection Enforcement Policy, was considered by the Regeneration and Environment Scrutiny Committee on 17th February 2015, prior to its presentation to Cabinet.
 - 1.2 It was explained that the Public Protection division has a major regulatory role in protecting the environment and ensuring a safe, healthy and prosperous community for citizens, business and visitors. This role includes the enforcement of numerous statutes, many of which include criminal and other sanctions on those who infringe the law. In order to ensure a fair and consistent approach to their enforcement responsibilities, the Public Protection division developed an Enforcement Policy, which was last approved in 2011. This policy now requires updating due to changes in legislation and the range of sanctions available to the division.
 - 1.3 The Enforcement Options section of the existing Policy has been expanded and updated in a number of areas, with the revised Policy attached as Appendix 1 to the report. The Policy will be reviewed annually with a report on compliance and enforcement action submitted to the relevant Scrutiny Committee. Once approved, the Policy will be bilingual, published on the Council's website and be made available in hard copy and other formats. In addition, Service Standards (attached as Appendix 2 to the report) have also been established in line with the Regulators' Code and The Better Regulation Delivery Office (BRDO) toolkit and will be published on the Council's website.
 - 1.4 Discussion of the report ensued and Officers responded to general queries regarding enforcement options, processes and principles contained within the revised Policy. A query was raised regarding the sustainability of the revised Policy if staffing levels reduced in future years, and it was confirmed that the Public Protection division would prioritise the delivery of regulatory functions accordingly. Officers also clarified procedures relating to cost recovery and shared enforcement roles with other agencies and authorities
 - 1.5 Following consideration of the report, the Regeneration and Environment Scrutiny Committee unanimously recommended to Cabinet that for the reasons contained therein, the revised Public Protection Enforcement Policy be approved.
 - 1.6 Members are asked to consider the recommendation.

Author: R. Barrett, Committee Services Officer, Ext. 4245

Appendices:

Appendix 1 Report to Regeneration and Environment Scrutiny Committee on 17th February 2015 – Agenda Item 8

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REGENERATION AND ENVIRONMENT SCRUTINY COMMITTEE – 17TH FEBRUARY 2015

SUBJECT: PUBLIC PROTECTION ENFORCEMENT POLICY

REPORT BY: CORPORATE DIRECTOR SOCIAL SERVICES

1. PURPOSE OF REPORT

- 1.1 To seek Members views on a revised Public Protection Enforcement Policy before submission to Cabinet for approval.

2. SUMMARY

- 2.1 The Public Protection division has a major regulatory role in protecting the environment and ensuring a safe, healthy and prosperous community for citizens, business and visitors.
- 2.2 This regulatory role includes the enforcement of numerous statutes, many of which include criminal and other sanctions on those who infringe the law.
- 2.3 In order to ensure a fair and consistent approach to their enforcement responsibilities the division developed an Enforcement Policy, which was last approved in 2011.
- 2.4 The existing Policy now requires updating due to changes in legislation and the range of sanctions available to the division.

3. LINKS TO STRATEGY

- 3.1 Enforcing public protection legislation is a statutory duty and this activity also contributes to the Healthier Caerphilly, Greener Caerphilly, Prosperous Caerphilly, and Safer Caerphilly priorities within the Caerphilly Local Service Board single integrated plan, Caerphilly Delivers, and Objective 1 of the Council's Strategic Equality Plan 2012.

4. THE REPORT

- 4.1 The existing Public Protection Enforcement Policy required amending due to the implementation of the Regulators' Code in 2014 and a number of other changes to legislation, sanctions and powers.
- 4.2 The Regulators' Code places a statutory responsibility on certain regulators to have regard to it when developing policies and operational procedures that guide their regulatory activities. The Code applies to specific regulatory functions, which mainly include non-devolved functions exercised by officers within the Trading Standards, Environmental Health and Licensing service areas. It is expected that supplemental legislation will be implemented in Wales to widen the Code's application to also include devolved functions. With that in mind

the new Policy will apply to devolved and non-devolved functions in the relevant service areas. The current and revised enforcement policies cover all enforcement activities carried out by the Public Protection Division, not just those functions controlled by the Regulators' Code.

- 4.3 Section 6 of the Code sets out Government's expectation that local authorities will ensure that their approach to regulatory activities is transparent. The provision includes an expectation that local authorities will publish a clear set of service standards, setting out what those they regulate should expect from them. This includes an enforcement policy, explaining how we respond to non-compliance.
- 4.4 BRDO (The Better Regulation Delivery Office) produced a Local Authority Tool Kit on section 6 of the code to aid local authorities, which includes templates for Service Standards and Enforcement Policies. This policy has been produced in line with the toolkit and is attached as Appendix 1.
- 4.5 The Enforcement Options section of the existing Policy has also been expanded and updated in the following areas: -
- Taking Animals into Possession
 - Tobacco Restriction Orders
 - Charging of Suspects
 - Equalities
 - Criminal Behaviour Orders
- 4.6 The Policy will be reviewed annually and a report submitted to the relevant Scrutiny Committee on compliance and enforcement action taken by Public Protection.
- 4.7 Once approved the Policy will be bilingual, published on the website and available in hard copy and other formats.
- 4.8 Service Standards have also been established in line with the Regulators' Code and BRDO toolkit and will be published on the Public Protection Web pages. The Standards are included as Appendix 2 for information.

5. EQUALITIES IMPLICATIONS

- 5.1 The authority and its officers in the Public Protection Division take all reasonable and practical steps to prevent and eliminate unlawful discrimination and encourage good relations between all parties, treating all those involved with equal respect, both when corresponding with those individuals and organisations and during the enforcement proceedings.

6. FINANCIAL IMPLICATIONS

- 6.1 None. The policy will be published on the Council's website and supplied in hard copy on request.

7. PERSONNEL IMPLICATIONS

- 7.1 All Officers within the Public Protection areas will be informed of the new Policy and the requirements for implementation and compliance.

8. CONSULTATIONS

- 8.1 This report has been sent to the Consultees listed below and all comments received are reflected in this report.

8.2 A number of external agencies have also been consulted on the revised policy and include Gwent Police, Home Authority Companies, Food Standards Agency, BRDO, Animal Health and the Health and Safety Executive. Any responses received have, where appropriate, been reflected in the policy.

9. RECOMMENDATIONS

9.1 That the views of Scrutiny Committee are sought before submission to the Cabinet for approval.

10. REASONS FOR THE RECOMMENDATIONS

10.1 To establish a proportionate and transparent approach to enforcement throughout the Public Protection Division and to satisfy the requirements of the Enforcement Concordat and Regulators' Code.

11. STATUTORY POWER

11.1 Local Government Act 1972, Prosecution of Offences Act 1985, The Legislative and Regulatory Reform Act 2006, Part 2. Legislative and Regulatory Reform (Regulatory Functions) Order 2007.

Author: Jacqui Morgan, Trading Standards, Licensing and Registrars Manager, Ext. 5034
Consultees: Cllr. Dave Poole, Cabinet Member for Community and Leisure Services
Cllr. D.T. Davies, Chair Regeneration & Environment Scrutiny
Cllr. E.M. Aldworth, Vice-Chair Regeneration & Environment Scrutiny
Dave Street, Corporate Director Social Services
Sandra Aspinall, Acting Deputy Chief Executive
Rob Hartshorn, Head of Public Protection
Kath Peters, Community Safety Manager
Ceri Edwards, Environmental Health Manager
Gail Williams, Interim Head Of Legal Services And Monitoring Officer
Sue Ead, Solicitor, Legal Services
David A. Thomas, Senior Policy Officer (Equalities and Welsh Language)
Mike Eedy, Finance Manager
Sian Phillips, HR Manager

Background Papers:
Current Public Protection Compliance and Enforcement Policy
Regulators' Code – April 2014

Appendices:
Appendix 1 Public Protection Enforcement Policy
Appendix 2 Service Standards

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PUBLIC PROTECTION ENFORCEMENT POLICY

INTRODUCTION

The Public Protection division of the Directorate of the Environment is divided into four groups: - Environmental Health, Trading Standards, Licensing and Registrars, Community Safety and Catering. The division has extensive regulatory functions, dealing with matters as diverse as animal health and welfare, health and safety, emergency planning, pollution and pest control, dog warden services, public health nuisances, food safety, communicable disease control, abandoned vehicles, licensing, registration of births, marriages and deaths, community safety, anti-social behaviour, littering and dog fouling, consumer safety, weights and measures and fair trading.

These services aim to promote the health, safety, social and economic well being of the public and improve environmental conditions by regulation, information, licensing, advice and action. They also aim to assist legitimate business in meeting their legal obligations within a fair, competitive market place.

This policy only applies to those services within the division that have regulatory responsibilities and has been developed with the Enforcement Concordat's principles of good enforcement as its foundation as well as the principles of the Regulators' Code.

AIM OF THE ENFORCEMENT POLICY

The aim of the Policy is to set out our approach to enforcement action through out the service areas covered, without placing an unnecessary burden on local businesses, organisations, consumers and the public. We intend to apply our legal powers consistently and fairly, whatever the circumstances. This Policy sets out our approach for those affected by our enforcement activities as well as for Officers of the Council.

Objectives.

- : To ensure we enforce the law in a fair and consistent manner
 - To assist and advise business and others in meeting their legal obligations
 - To focus on prevention rather than cure
 - To take firm action against those who flout the law, act irresponsibly, or where there is an immediate risk to health and safety
 - To support economic progress.
- We will also make sure all enforcement activities are;
- Taken in accordance with the principles of good enforcement (best practice guides and / or statutory provisions).

Compatible with the European Convention on Human Rights and the Human Rights Act 1998, to protect the rights of the individual. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

Managed efficiently

Taken promptly and without unnecessary delay

Undertaken consistently by all relevant service areas within Public Protection

Undertaken in a fair and transparent manner

Targeted according to risk and having regard to the National Enforcement Priorities for Wales.

EQUALITY AND DIVERSITY

The authority and its officers in Public Protection will take all reasonable and practical steps to prevent and eliminate unlawful discrimination and encourage good relations between all parties, treating all those involved with equal respect, both when corresponding with those individuals and organisations and during the enforcement proceedings.

This will be done irrespective of the individual's ethnic origin, sex, age, marital status, sexual orientation, disability, gender reassignment, religious beliefs or non-belief, use of Welsh, BSL or other languages, nationality, responsibility for any dependents or any other reason which cannot be shown to be justified.

During the monitoring and review process the Council will also ensure that the enforcement reflects these requirements, all of which are in line with the Council's Strategic Equality Plan. This and other related documents can be found at Equalities, Strategies, Plans and Policies.

This Policy is bilingual and will be provided in any other language or format on request. Officers are aware of and respect cultural requirements and when necessary and with prior notice, will arrange suitable meeting times and venues, and appropriate translation or interpretation services.

When dealing with juveniles or persons who are vulnerable, whether due to learning difficulties, mental illness or in some other way, due regard will be taken of their vulnerability and of any current Codes of Practice whether statutory or not, to ensure these persons are treated fairly.

CONSULTATIONS AND REVIEW

This Policy was subject to consultation during its production. We continue to welcome feedback, particularly responses from affected persons. We strive to monitor continually the content and adherence of our officers to this policy. The Policy will be reviewed regularly and we will endeavour to include suggested improvements in future

revisions where possible. A report on enforcement action taken by the Public Protection Division will be submitted annually to the relevant Scrutiny committee.

This Policy was formally approved by Cabinet on

COMPLAINTS

Any complaints about the application of this Policy should be addressed to the Head of Public Protection at the address below. If the matter is not satisfactorily concluded it will be dealt with in accordance with the Caerphilly County Borough Council Corporate Complaint Scheme

This Policy is published on the Public Protection pages of our website at Caerphilly County Borough Council Website and in hard copy. Requests for copies in other formats or languages or comments on this policy should be sent to the following:-

Head of Public Protection
Environment Directorate
Pontllanfraith House
Pontllanfraith
Blackwood
NP12 2YW
01495 235316

THE PRINCIPLES OF GOOD ENFORCEMENT - LOCAL GOVERNMENT CONCORDAT ON GOOD ENFORCEMENT

The Authority has formally adopted the central and local government Concordat on 'Good Enforcement' and will abide by its principles. Consideration will also be given to any additional guidance or codes of practice on enforcement that are relevant to the Public Protection services. The following principles will also be adhered to:

Openness

We will provide information and advice in plain language and in other languages and formats on request, on the rules that apply, and will distribute this as widely as possible. We will be open about how we set about our work including any charges we set. We will discuss general issues, specific compliance failures or difficulties in complying with the law, we will respond to enquiries and visit individuals when requested.

In certain circumstances we will take steps to raise awareness and increase compliance levels by publicising unlawful business practices or criminal activity and, where appropriate, we will publicise the results of specific court cases and other formal actions.

We will draw up clear standards, setting out the level of service and performance the public and business can expect to receive. These will be developed in consultation with other relevant interested parties, where appropriate. We will publish these standards and our annual performance against them. The standards will be made available to local businesses and others who are regulated.

Helpfulness

We believe that 'prevention is better than cure' and that our role involves actively working with business and individuals to advise on compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number and will encourage businesses and individuals to seek advice and information from us. Applications for licences, registrations, and approval of establishments etc will be dealt with efficiently and promptly. We will ensure that wherever practicable, our enforcement activities are effectively co-ordinated to minimise unnecessary overlaps and time delays.

Proportionality

We will minimise the costs of compliance for business by ensuring that any action we require or take is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the business or persons involved when considering action. We will take particular care to work with small businesses and voluntary and community organisations, so that they can meet their legal obligations without unnecessary expense, where practicable.

When dealing with individual members of the public, the concept of proportionality will also apply, in so far as the relevant legislation permits. We will balance the potential effect of enforcement action on the individual against the harm caused by allowing the activity to continue if it affects communities and others. Where possible we will attempt to identify and contact all individuals concerned with each case.

Consistency

We will carry out our duties in a fair, equitable and consistent manner. Where Officers are expected to exercise judgement in individual cases, we will have arrangements in place to ensure consistency, including effective arrangements for liaison with other authorities and enforcement bodies. This will be achieved through staff development training and where appropriate the use of written procedures and protocols.

THE PRINCIPLES OF GOOD REGULATION - REGULATORS CODE

The Legislative and Regulatory Reform Act 2006, Part 2, requires the Authority to have regard to the Principles of Good Regulation when exercising a specified regulatory function¹. The Regulators Code applies to the regulation of business and supplements the principles of the Enforcement Concordat. The code only applies to specified functions carried out by our Environmental Health, Trading Standards and Licensing services.

Regulators must have regard to the code when developing policies and operational procedures that guide their regulatory activities. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented. Consideration will also be given to any additional guidance or codes of practice on enforcement that are relevant to the regulatory services.

¹ Specified by the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, available at <http://www.legislation.gov.uk/ukdsi/2007/9780110788708/schedule>

Supporting Regulated Businesses to Comply and Grow

We will try to avoid imposing unnecessary regulatory burdens on business through our regulatory activities and we will assess whether the desired outcomes could be achieved by less burdensome means. Our policies and practices will encourage and promote compliance but, in doing so, will try to minimise the negative economic effect of our activities and the cost of compliance. We will take into consideration the size of the regulated entity, capacity and the nature of their activities.

Engaging With Those We Regulate and Hearing Their Views

We will create effective consultation and feedback opportunities to enable continuing cooperative relationships with regulated entities and other interested parties. We will consider the impact of our policies and service standard on businesses, so we invite views from businesses, citizens and others about them.

We will ensure that our officers provide courteous and efficient services to regulated entities and others and take account of comments regarding the behaviour and activity of our enforcement officers.

Complaints will be dealt with in accordance with the Council's Corporate Complaints Procedure. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

Basing Our Regulatory Activity On Risk

We will ensure that the allocation of our efforts and resources are prioritised and targeted where they would be most effective by assessing the risks to our regulatory outcomes. Such risk assessments will inform our approach to regulatory activity including data collection, inspection programmes, business advice and enforcement /sanctions. Risk assessment will take into consideration the potential impact of and the likelihood of non-compliance. We will make use of any risk assessment methodology schemes that are devised and approved by Government Departments for our specific service areas. Some of the nationally agreed risk assessment schemes that we adhere to are listed below:

- The Health and Safety Executive / Local Authorities Enforcement Liaison Committee (HELA) Health and Safety Inspection Rating System (A rated premises only)
- The Trading Standards Risk Assessment Scheme
- The FSA Food Hygiene Intervention Rating Scheme
- The FSA Food Standards Intervention Rating Scheme
- The DEFRA Local Authority Integrated Pollution Prevention and Control (LA-IPPC)
- Local Authority Pollution Prevention and Control (LAPPC) Risk Method
- DEFRA Animal Health Risk Assessment Scheme
- The Feed Law Enforcement Code of Practice Animal Feed Law Inspection Rating Scheme

We will ensure that inspections and other visits to check compliance will occur in accordance with a risk assessment methodology, except where visits are requested by businesses or where visits are made to check compliance with our advice regarding rectifying non-compliances or where we act on relevant intelligence or complaints. In those circumstances we may carry out inspections outside the

frequencies stated in the appropriate risk assessment scheme. Health and safety interventions are also project based and are determined on a regional basis in line with HSE's priorities. Certain categories of premises are inspected as they are included in the National Local Authority Enforcement Code Annex A - activities/sectors for proactive inspection. In addition we may use a small element of random inspection in our programme.

When we carry out a revisit to check that non-compliances have been rectified we will expect this to have been implemented, at least to a significant extent, and for the business to demonstrate that they have improved their systems to prevent similar non-compliances occurring in the future. If non-compliances have continued we will consider taking more formal enforcement action.

We will focus our greatest inspection efforts on businesses where our risk assessment shows that a compliance breach would pose a serious risk to regulatory outcome and there is a high likelihood of non-compliance by business. We will provide feedback about the results of our visits including the more positive aspects of the visits and encourage and reinforce good practices. We will have regard to published inspection plans for businesses that are a Primary Authority partnership when conducting our programmed activity at the business.

We will comply with the requirements of the Regulatory Enforcement and Sanctions Act 2008, as amended when we are considering taking enforcement action against any business or organisation that has a Primary Authority Partnership, and will have regard to any relevant guidance issued by the Secretary of State. In particular we will consult with the Primary Authority and take into account any advice that they have provided, notify them of any proposed enforcement action and comply with the statutory procedure if the Primary Authority does not consent to us taking this action.

At every step of the decision making process we will choose the most appropriate type of intervention or way of working with businesses, including when targeting checks on compliance or taking enforcement action. If the performance of a business is seen to represent a greater or lesser risk than others of a similar type, we will make a change to their risk rating when this is allowed by the relevant risk assessment scheme. We will recognise their compliance record, including evidence of any external verification so that we can consider any appropriate earned recognition approaches. We will review the effectiveness of our regulatory activities in delivering the desired outcomes and will make any necessary adjustments accordingly.

SHARING INFORMATION ABOUT COMPLIANCE AND RISK

When determining the data we require from businesses we will endeavour to reduce business costs where possible by varying data requests according to risk, limiting collection to specific businesses or sectors, reducing the frequency of data collection, obtaining data from other sources, allowing electronic submission and only requesting data which is justified by risk assessment. In order to help target our resources and activities and to minimise duplication we will share information about business with other regulators when the law allows this. Where there is a need for this authority to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1988.

Making Information, Guidance And Advice Available To Business

We will provide general information, advice and guidance free of charge to make it easier for business to understand and meet their legal obligations and we will provide it in clear, concise and accessible language. Where possible we will look to utilise any relevant national guidance. Officers are encouraged to promote compliance with the law by raising awareness of relevant standards and legal requirements by means of press statements, distributing leaflets and face-to-face contact. Face to face contact is generally on request or by means of a programmed visit to discuss general compliance.

When offering compliance advice we will distinguish between legal requirements and suggested best practice and we will try not to impose any unnecessary burdens. Advice will be confirmed in writing, if requested. If our advice conflicts with that provided by another regulator we will liaise with them in order to reach agreement. Businesses may seek advice from us without directly triggering an enforcement action. If a business wishes to enter into a formal Primary Authority Partnership or Home Authority agreement with us, we will use our best efforts to achieve a satisfactory arrangement.

Where we encounter non-compliances we will explain the nature of the non-compliance, clearly advise on any action required and why and explain the reasons behind any decisions we make in relation to them.

When considering formal action we will, where appropriate, discuss the circumstances with those suspected of the breach and take these into account when deciding on the best approach. However this will 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.

Ensuring Our Approach Is Transparent

We will publish a set of clear service standards about:

- How we communicate with those we regulate and how we can be contacted;
- Our approach to providing information, guidance and advice;
- Our approach to checks on compliance and protocols for our conduct;
- Our enforcement policy;
- Our fees and charges;
- Our appeals procedure;
- Our complaints procedure;

These service standards are available on the Councils website ([hyperlink](#)) and will be provided on request. We will also publish on a regular basis details on our performance against these standards including customer satisfaction survey results and data on complaints and appeals.

ENFORCEMENT OPTIONS

A number of enforcement options are available and Officers are authorised to enforce legislation in accordance with the Council's **Scheme of Delegation**

The appropriate option will be determined following careful consideration of the circumstances of each individual case. Our enforcement officers will interpret and apply legal requirements and enforcement policies consistently and fairly.

Our Enforcement Actions Will:

- Aim to change the behaviour of the offender and deter future non-compliance;
- Aim to eliminate any financial gain or benefit from non-compliance;
- Consider what is appropriate to the nature of the offence and the regulatory issue;
- Be proportionate to the nature of the offence and the harm caused, with consideration of the size of the business entity where relevant
- Aim to restore the harm caused by regulatory non-compliance, where appropriate;

Conduct Of Investigations

Officers investigating breaches of legislation may use powers relevant to the specific legislation they are enforcing. These can include entering premises, in some instances under a warrant of entry, to inspect goods, services, procedures, and documentation, carry out an investigation, requiring a name and address, taking samples, making test purchases and seizing items. Some legislation may include offences for obstructing an authorised officer or failing to comply with a reasonable requirement made by the officer.

As well as using such powers officers may need to speak to individuals and, in the more serious case, interview persons under caution. Such interviews will take place in accordance with the Police and Criminal Evidence Act 1984. In the most serious cases officers may make arrangements for a potential defendant to be arrested by the police to facilitate the investigation. The authority will comply with any relevant time limits specified in legislation for commencing legal proceedings. All investigations will be conducted expeditiously.

All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to this authority:

The Police and Criminal Evidence Act 1984

The Criminal Procedure and Investigations Act 1996

The Regulation of Investigatory Powers Act 2000

The Criminal Justice and Police Act 2001

The Anti-social Behaviour, Crime and Policing Act 2014

The Human Rights Act 1998

Where there is a need for CCBC to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1988. Authorised officers will comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice and will keep

alleged offenders, complainants and witnesses informed of the progress of investigations. Investigating officers and managers will make a recommendation on suitable outcomes to the Head of Public Protection who in consultation with Legal Services will make the final decision.

Shared Enforcement Role

There are situations where the local authority shares or has a complimentary enforcement role with other agencies, e.g. Police, Health and Safety Executive. In such situations we shall have due regard to the Data Protection Act 1998 any Information Sharing Protocols, Codes of Practice or Memoranda of Understanding that exist in seeking to co-operate with those agencies.

On occasion, it will be more appropriate for other agencies or other Local Authorities to deal with particular breaches of legislation. In carrying out shared duties, we will still comply with our Enforcement Policy, but the other agencies will maintain the right to take any action they consider to be necessary.

If an offender commits an offence in a number of Local Authority areas, it may be more appropriate for one Council to take a prosecution for all the offences, including ones that took place outside of its area. In such circumstances we may enter into legal agreements with other councils for one authority to take the lead role, making use of the provisions under Sections 19 of the Local Government Act 2000 and 222 of the Local Government Act 1972 or any other enabling powers.

Informal Action

In circumstances where minor breaches of legislation have been identified formal action may not be considered appropriate. There may be no significant risk and the offence appears to have been committed by a genuine mistake or accident and, from the individuals/businesses past history, it can be reasonably expected that informal action will achieve compliance. Therefore formal action may not be in the public interest. Informal action may consist of verbal or written warnings.

We will clearly identify any contraventions of the law and give advice on how to put them right. We will distinguish between legal requirements and best practice. The time allowed will be reasonable and will take into account the seriousness of the contravention. Continued non-compliance of legal requirements could result in an escalation to more formal enforcement action.

We will take account of any advice or guidance provided to businesses by their Primary Authority Partnership when considering the most appropriate enforcement action for us to take and may discuss any need for compliance advice and support with the primary authority.

The authority may in some circumstances accept voluntary undertakings that breaches will be rectified and /or recurrences prevented. Any failure to honour such undertakings is likely to result in enforcement action.

Formal Action

Statutory Notices

Certain legislation allows statutory notices to be served to require offenders to take specific actions or cease activities within particular timescales. These can include prohibition, improvement, revocation, suspension and remedial action, cessation and rectification, seizure and detention notices. A statutory notice will clearly set out the actions that must be taken and the timescale for completion. Failure to comply with statutory notices can be an offence and in some instances may allow the Authority to carry out works in default and charge the person served with the notice for the cost of the work. All notices will include details of any applicable appeal procedure. Some notices issued in respect of premises may be affixed to the premises and /or registered as local land charges.

Fixed Penalty Notice, Penalty Notices for Disorder, Penalty Charge Notices and Community Protection Notices.

In some areas, for example dog fouling, littering, disorder, non display of food hygiene rating, sales of alcohol to minors, and smoking in enclosed public places officers can exercise powers to issue either Fixed Penalty Notices or Penalty Notices for Disorder, which give the offender an opportunity to avoid prosecution by payment of the penalty. They are recognised as a low-level enforcement tool, whereby they do not create a criminal record for the offender. Choosing to pay the penalty is not an admission of guilt and so the issuing of these notices cannot be used as evidence in any future court proceedings. In some circumstances, particularly where breaches are serious or recurrent, or the notice is ignored, a prosecution may be more appropriate. Such action will only continue where there is adequate evidence to support a prosecution. Failure to pay the amount imposed by the notice may result in the offender being pursued through the courts. All notices issued will include details of any applicable appeal procedure.

The service areas will follow relevant guidance on issuing such notices to juveniles, with actions taken being influenced by the offender's age and the circumstances of the offence. When dealing with juveniles who are vulnerable, whether due to learning difficulties, mental illness or in some other way, due regard will be taken of their vulnerability and of any current Codes of Practice whether statutory or not, to ensure these persons are treated fairly. Where a fixed penalty is issued to a juvenile which remains unpaid the authority will implement the Resolution of non payment of FPNs Youth Offending Service intervention programme to minimise the number of cases referred to the criminal justice system. This is outlined in the process map in appendix 1.

Penalty Charge Notices (PCN) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.

Community Protection Notices (CPN's) may be issued where anti-social behaviour is of a persistent or continuing nature and is affecting a community. A warning stipulating the matter to be resolved will be issued first. A CPN will stipulate the action to be taken

to resolve the issue and the reasonable timeframe to achieve this. Failure to comply with a CPN may result in prosecution.

Revocation, Review and Suspension

The authority issues a number of licences, permits and approvals. It also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions, which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of licence conditions may also lead to a review of the licence, which may result in its revocation or amendment. When considering future licence applications, the Authority may take previous breaches and enforcement action into account. In relation to reviews or revocations of licences, licence holders have the right to attend hearings and to be informed of their right of appeal against the decision.

The Authority is responsible for issuing Environmental Permits to operators who carry out certain types of industrial processes. The permits contain conditions intended to prevent or minimise pollution. Enforcement powers include revocation and suspension of permits, and in serious cases prosecution for non-compliance with an enforcement notice.

The Authority is responsible for issuing approvals to certain food establishments. The approval authorises the handling of certain types of product within an establishment. Enforcement powers include revocation and suspension of approvals.

Part 2A Orders

The Authority can apply for Part 2A orders under the Health Protection (Part 2A Orders) (Wales) Regulations 2010, to deal with threats to human health from infection or contamination that presents, or could present significant harm. It is for the JP to decide whether an order is necessary to address the risk. If the JP is satisfied by the local authority's case, an order can be made under the Public Health (Control of Diseases) Act 1984 Act. Such orders for instance can specify that an operation must cease and articles and equipment should be surrendered. The Order can also specify to destroy and dispose of surrendered articles.

Injunctive Actions

The authority may seek injunctive orders in the Civil Courts to stop infringements of a wide range of laws that seriously affect the rights of others. Officers may seek agreement from a person /business to:

- Cease a particular action
- Comply with a negative requirement
- Comply with a positive requirement
- Sign an informal undertaking
- Sign a formal undertaking

In urgent cases or where the above cannot be agreed upon, the services may seek an injunctive order in the civil courts or an interim, or without notice order. Contravention of injunction, formal undertaking or order issued by the courts could result in contempt of court and be liable to a fine or imprisonment.

In certain circumstances officers are required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice.

The Council is one of the “responsible authorities” of the Safer Caerphilly Community Safety Partnership (SCCSP). The SCCSP operates a multi-agency “4 Strike” Anti-Social Behaviour (ASB) process, into which partners may refer perpetrators of ASB. Where behaviour is not moderated, and in appropriate cases, the Council may apply to the County Court, or Youth Court in the case of juveniles, on behalf of the partnership, for grant of an Anti-social Behaviour Order (Anti-Social Behaviour Injunction after enactment of Section 1 of the Anti-social Behaviour, Crime and Policing Act 2014). Following conviction of a criminal offence, the Crown Prosecution Service (via the Police), or the local authority may apply for the grant of a Criminal Behaviour Order (CBO).

Confiscation of Assets

Under the Proceeds of Crime Act 2002, officers may seek Confiscation Orders against persons who have been convicted of offences where they have made money from their crimes. The purpose is to recover the financial benefit that the offender has obtained from their crimes and act as an additional deterrent to others. Proceedings only take place after a criminal conviction has been obtained, and are conducted according to the civil standard of proof.

Seizure and Forfeiture

Certain legislation enables officers to seize goods, equipment or documents, where they may be required as evidence for possible future court proceedings or to prevent further offences from being committed. When items are seized an appropriate receipt will be given to the person from whom the items are taken. In certain circumstances an application will be made to the Magistrates’ Courts for forfeiture of the goods. Forfeiture may be used in conjunction with seizure and / or prosecution, where there is a need to dispose of the goods or equipment to prevent them being used to cause a further problem or to prevent them re –entering the market place.

Taking Animals into Possession

Under the Animal Welfare Act 2006, if a veterinary surgeon certifies that ‘protected animals’ are suffering or are likely to suffer if their circumstances do not change, we may consider taking them into possession and applying for Orders for re-imbursment of expenses incurred and subsequent disposal. Additionally Horses and Ponies found fly grazing, straying or that have been abandoned may be seized and impounded and owners pursued for the associated costs. In cases of non payment of these costs the authority may keep the animals and dispose of them in accordance with the relevant legislation.

Tobacco Restriction Orders

Where an offender continually breaks the law by selling tobacco products to young people, we may make a complaint to the court and apply for a restricted premises order or a restricted sale order. The effect of such an order is to prohibit a premise or a person from selling tobacco for a period of time up to one year.

Fixed Monetary Penalties

The authority has powers under certain legislation to impose Fixed Monetary Penalties, which are not intended to be used for more serious cases of non-compliance. Fixed Monetary Penalties are not criminal fines and do not appear on an individual's criminal record. Fixed Monetary Penalties cannot be used in conjunction with any other sanction. The form and content of such notices varies between different legislation but will generally include details of the offence, the amount of penalty, the period during which proceedings will not be taken, how to appeal and where to pay. Usually the legislation allows the authority to amend or withdraw such notices if it is appropriate to do so.

Discretionary Requirements

Under certain legislation the authority has the power to impose Variable Monetary Penalties and Non-Monetary Discretionary Requirements.

Variable Monetary Penalties may be imposed up to a maximum level set out in the relevant legislation.

Non-Monetary Discretionary Requirements are requirements to take steps to ensure that a breach does not continue or recur. Where the authority chooses to impose Non-Monetary Discretionary Requirements it will clearly set out what those steps should be and the time period within which they must be completed. A failure to comply with the requirements is likely to result in a financial penalty.

The Authority may use Variable Monetary Penalties and Non-Monetary Discretionary Requirements in combination.

Simple Cautions

The use of a Simple Caution offers an alternative to prosecution and may be considered during any decision to prosecute. A simple caution is an admission of guilt but is not a form of sentence, nor is it a criminal conviction. Before issuing a Simple Caution the following conditions must be satisfied:

- There must be evidence of guilt sufficient to give a realistic prospect of conviction
- The offender must understand the significance of a caution and consent to it
- The offender must admit to the offence
- The offender must be over 18 years of age

A simple caution is a serious matter, which will be recorded and will influence any future decision as to enforcement action should the business or person offend again. A simple caution can be cited in court, so it may influence the severity of any sentence imposed by the court. The refusal of an offender to be cautioned will be a material consideration when deciding whether the offender should then be prosecuted for that offence. Accepting a simple caution may have consequences if an individual seeks certain types of employment.

Prosecution

Where the circumstances warrant it and the alternative actions listed above are considered inappropriate, then prosecution may result. As with all the previous methods of enforcement, in deciding what action to take, a number of factors will be taken into consideration including:

- The nature and seriousness of the offence
- The previous history of the offender
- Any statutory defence available
- Action taken to avoid reoccurrence
- Any explanation offered, and if the law allows, the circumstances and attitude of the offender
- What course of action will best serve the public interest
- Realistic prospect of conviction

The decision to prosecute or any other formal action is taken by an appropriate authorised officer and takes into account:

- This policy
- The current Crown Prosecution Service, 'Code for Crown Prosecutors'
The CPS : The Code for Crown Prosecutors
- Any statutory requirements
- Consideration of all other relevant codes of practice

The Code for Crown Prosecutors has two main tests that must be satisfied;

Evidential Test -Is there sufficient evidence to provide a realistic prospect of conviction?

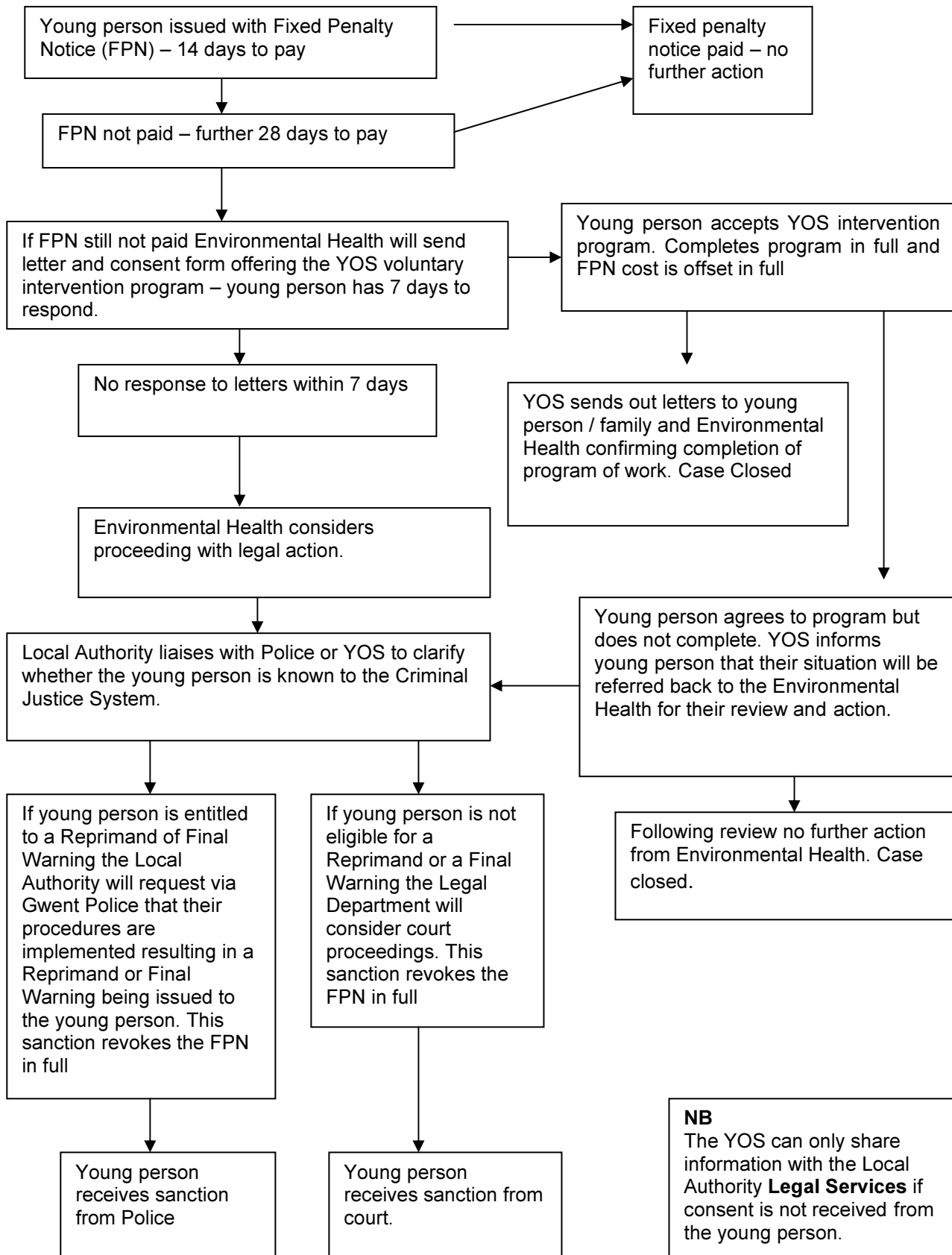
Public Interest Test -Is it in the public interest to take action?

Charging Suspects

There may be circumstances where the police have arrested a suspect but the offences will be investigated by the authority. After interview at the police station it may be appropriate to charge the offender and bail to an appropriate court for the offences rather than to report the suspect so that summonses can be issued at a later date. A senior officer will consider the evidential and public interest tests and if satisfied will instruct an authorised officer to charge the suspect with the offence(s) at the police station.

Fixed Penalty Notice Process

Appendix 1



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Trading Standards, Environmental Health and Licensing Service Standards.

Trading Standards, Environmental Health and Licensing services are a part of the Public Protection Division of Caerphilly County Borough Council. This document explains what businesses regulated by these services can expect from them. We are committed to providing you with an efficient, courteous and helpful service, but where necessary this will be coupled with appropriate enforcement action. This document tells you how we aim to do that and what standards we will meet.

How we deliver our services

Through legislation, local policies, education and enforcement, the above services deal with a wide range of functions that are necessary to help protect personal, environmental, economic and social well-being, to create a safe living and working environment for the communities and people we serve.

We determine our activities by assessing the needs of local people and our business community, and considering the risks that require addressing. We do this through various forms of engagement with local citizens and businesses (satisfaction surveys, feedback mechanisms, report a matter options on our web pages, household surveys etc) and through using data and other information available to us and our partners. In this way we ensure our resources are targeted appropriately, in the light of these local needs and of national priorities.

Details of our current Service Improvement Plan which includes reviews of previous years performance is available at ([hyperlink PP SIP](#)). Also attached is a link to the Corporate Performance Report

We carry out all our activities in a way that supports those we regulate to comply and grow:

- We ensure that information, guidance and advice is available to help you to meet legal requirements (see [Helping you to get it right](#)).
- We carry out inspections and other activities to check compliance with legal requirements, and we target these checks where we believe they are most needed (see [Inspections and other compliance visits](#)).
- We deal proportionately with breaches of the law as set out in our Enforcement Policy, including taking firm enforcement action when necessary (see [Responding to non-compliance](#)).
- We provide a range of services to businesses see [Requests for our service](#)).

We aim to operate our services in accordance with the requirements of the Regulators' Code.

Working with you

In all your dealings with us you can expect, and will receive, an efficient and professional service. Our officers will:

- Be courteous and polite
- Always identify themselves by name in dealings with you, and provide you with contact details
- Seek to gain an understanding of how your business operates
- Provide details of how to discuss any concerns you may have
- Agree timescales, expectations and preferred methods of communication with you
- Ensure that you are kept informed of progress on any outstanding issues.

We recognise that your business will receive advice and inspections from other organisations, and we will do our best to work with them to ensure that you receive the best service.

Helping you to get it right

We want to work with you to help your business to be compliant and successful and it is important to us that you feel able to come to us for advice when you need it. We won't take enforcement action just because you tell us that you have a problem unless there is an imminent safety or health risk.

Information and guidance on meeting legal requirements is available from the CCBC website at the following links;

Trading Standards

Licensing

Environmental Health

Other information and guidance may also be provided on request or in conjunction with our dealings with you.

Where you need advice that is tailored to your particular needs and circumstances we will:

Discuss with you what is required to achieve compliance

Provide advice that supports compliance and that can be relied on

Provide clear advice that can be easily understood and implemented

Distinguish legal requirements from suggested good practice

Ensure that any verbal advice you receive is confirmed in writing if requested

Acknowledge good practice and compliance.

If a business wishes to enter into a formal Primary Authority Partnership arrangement with us under the Regulatory Enforcement and Sanctions Act 2008, or a more informal Home Authority arrangement, we will use our best efforts to achieve a satisfactory arrangement.

Inspections and other compliance visits

We monitor and support compliance in a number of different ways including through inspections, revisits, sampling visits, test purchases, advisory visits and complaint investigations.

We will carry out inspections and other visits to check compliance in accordance with a risk assessment methodology, except in circumstances where we act on relevant intelligence or complaints or where visits are at the request of the business or to check that, following non-compliances, businesses are complying with our advice. We may also carry out a small proportion of random inspections in order to maintain a proper knowledge of business activity within the Council area. We will focus our greatest inspection efforts on businesses where our risk assessment shows that a compliance breach would pose a serious risk and there is a higher likelihood of non-compliance by businesses. Health and safety interventions are also project based and are determined on a regional basis in line with HSE's priorities. Certain categories of premises are inspected as they are included in the National Local Authority Enforcement Code Annex A - activities/sectors for proactive inspection. When carrying out our visits we will have regard to any published inspection plans for those businesses that are in a Primary Authority Partnership.

Some legislation requires the officer to give advance notice in writing two days before exercising a power to enter a business premises. However this requirement is subject to certain exemptions, including where the officer has cause to suspect that there has been a breach of legislation or where the officer reasonably considers that giving notice would defeat the purpose of the entry. If this or similar legislation applies our officers will provide the necessary written advance notice unless a relevant exemption applies. If such legislation does not apply the officer will only give advance notice when it is appropriate to do so.

When we visit you our officer's will:

- Explain the reason and purpose of the visit
- Carry their identification card at all times, and present it on request when visiting your premises

- Exercise discretion in front of your customers and staff
- Have regard to your approach to compliance, and use this information to inform future interactions with you
- Provide information, guidance and advice to support you in meeting your statutory obligations, if required
- Provide written feedback about the results of our visits where appropriate.

Risk assessment frameworks

We use a number of risk assessment frameworks that are devised and approved by relevant Government Departments to cover different aspects of our work. These risk assessment frameworks enable us to decide the frequency of inspections and visits to check compliance.

- The Health And Safety Executive/Local Authorities Enforcement Liaison Committee (HELA) Health and Safety Inspection Rating System (A rated businesses only);
- The Trading Standards Risk Assessment Scheme
- The FSA Food Hygiene Intervention Rating Scheme)
- The FSA Food Standards Intervention Rating Scheme
- The DEFRA Local Authority Integrated Pollution Prevention and Control (LA-IPPC)
- Local Authority Pollution Prevention and Control (LAPPC) Risk Method
- DEFRA Animal Health Risk Assessment Scheme
- The Feed Law Enforcement Code of Practice Animal Feed Law Inspection Rating Scheme

As part of our use of these risk assessment frameworks, we will give consideration to the combined effect of the potential impact of non-compliance on regulatory outcomes and the likelihood of non-compliance. If the performance of a business is seen to represent a greater or lesser risk than other businesses of a similar type, we will make a change to their risk rating when this is allowed by the relevant risk assessment methodology.

Responding to non-compliance

Where we identify any failure to meet legal obligations, we will respond proportionately, taking account of the circumstances, in line with our Enforcement Policy ([hyperlink](#))

Where we require you to take action to remedy any failings we will:

- Explain the nature of the non-compliance
- Discuss what is required to achieve compliance, taking into account your circumstances
- Clearly explain any advice, actions required or decisions that we have taken
- Agree timescales that are acceptable to both you and us, in relation to any actions required
- Where appropriate provide in writing details of how to appeal against any advice provided, actions required or decisions taken, including any statutory rights to appeal
- Explain what will happen next
- Keep in touch with you, where required, until the matter is resolved

Requests for our services

We will respect any requests that are made to contact a business or individual by a particular method of communication and to work with them in the most appropriate way to meet their needs.

In responding to requests for our services, including requests for advice and complaints about breaches of the law, we will:

- Acknowledge your request within 5 working days
- Where a detailed response is required and will take time to complete tell you when you can expect a substantive response
- Seek to fully understand the nature of your request
- Explain what we may or may not be able to do, so that you know what to expect
- Keep you informed of progress throughout our involvement
- Inform you of the outcome as appropriate

A detailed breakdown of our response times and expected resolution times is available at Customer Standards however, please be aware that our officers will exercise their judgment to determine whether a more prompt response is required.

Fees and Charges

We charge for a number of services, which are detailed below:
Trading Standards Verifications

Caerphilly is part of the Cymru Group Notified Body, which undertakes verifications across the Gwent and Mid –Wales area. The fees are set by that group and are based upon fees, which were set nationally and are reviewed yearly.

Approval of Feed Business Establishments

These fees are specified in Schedule 3 of the Feed (Hygiene and Enforcement) (Wales) Regulations 2005 via regulation 14 of those regulations.

Licensing Fees

Locally set licensing fees are reviewed annually in order to recover reasonable costs of providing the service. Other fees are set centrally e.g. Licensing Act 2003 (alcohol & Entertainment), Explosives, and Petroleum Licenses. Whilst the Government sets maximum levels for Gambling fees, the Authority has the discretion to set fees at a level considered appropriate to cover costs.

Pest Control Fees

Fees are set on a cost recovery basis

Environmental Permit Fees

The Environmental Permitting (England and Wales) regulations 2010 (as amended) allow ministers to establish local schemes to revise fees and charges. The current schemes are: 'The Local Authority Permits for Part A2 installations and Small Waste Incineration Plant (Fees and Charges)(Wales) scheme 2014 and The Local Authority Permits for Part B installations and Mobile Plant and Solvent Emission Activities (Fees and Charges) (Wales) scheme 2014

Food Hygiene Re-Rating Inspection

If you wish to apply for a re-rating inspection then the charge is £150. Details on how to apply can be found here <http://www.caerphilly.gov.uk/Business/Food-hygiene-for-businesses/Food-hygiene-ratings-for-businesses>

How to contact us

You can contact us by:

Post:

Written correspondence addressed to Head of Public Protection or the relevant service area should be sent to: CCBC Directorate of the Environment, Ty Pontllanfraith , Blackwood Rd, Pontllanfraith . NP122YW

In person:

At the above address, however appointments are required for a number of services e.g. Licensing, so please check with the service area before calling.

By email or telephone

Consumer Advice

If a consumer requires advice on a consumer law issue please contact Citizens Advice Consumer Service on 03454 04 05 06

They will provide the consumer with initial advice and they will refer the matter to us if there is a need for our involvement.

Trading Standards Businesses Advice

Telephone: 01495 235291 (Not for initial calls about consumer advice issues) or
E-mail: tradingstandards@caerphilly.gov.uk

Licensing

Telephone: 01443 866750 or E-mail: licensing@caerphilly.gov.uk

Environmental Health

Telephone: 01443 866544 or E-mail: environmentalhealth@caerphilly.gov.uk
Food and health and safety issues :- foodhealthsafety@caerphilly.gov.uk

We will seek to work with you in the most appropriate way to meet your individual needs. We can make information available in different formats, and have access to translation and interpretation services.

If you contact us we will ask you for your name and contact details to enable us to keep in touch with you as the matter progresses. We treat all contact with the service in confidence unless you have given us permission to share your details with others as part of the matter we are dealing with on your behalf or there is an operational reason why we need to do so. We will respond to anonymous complaints and enquiries where we judge it appropriate to do so.

Personal data will be managed in accordance with our policies of Data Protection and Freedom of Information. Data Protection

Our Teams

We have dedicated teams of officers who have the appropriate qualifications, skills and experience to deliver the services provided. We have arrangements in place to ensure the ongoing professional competency of all officers.

Where specialist knowledge is required in an area outside of our expertise we have arrangements in place, with both neighbouring authorities and other regulatory organisations, to call on additional resources as necessary.

Working with others

We work closely with other council services and our aim is to provide a streamlined service to you. We have good working relationships with other regulators and this enables us to deliver a more joined up and consistent service. This includes sharing information and data on compliance and risk, where the law allows, helping target regulatory resources. Our officers are familiar with the work of our partners and can signpost you to the advice and guidance you need.

Having your say

Complaints and Appeals

Where we take enforcement action, there is often a statutory right to appeal. We will always tell you about this at the appropriate time.

We are always willing to discuss the reasons why we have acted in a particular way or why we require certain actions to be taken. If you wish to discuss such matters or to appeal against a regulatory decision or a failure to act in accordance with the Regulators Code you can contact the Head of Public Protection as detailed in the contact information above. If after such contact you are still unhappy the matter will be referred to the corporate complaints procedure.

If you have a complaint regarding health and safety regulatory activity undertaken you should firstly follow the above route. If you are not satisfied with the response you receive you can contact the Independent Regulatory Challenge Panel

Complaints

It should be noted that an appeal against an action taken is quite distinct from making a complaint about the service generally or an officer's conduct, which would be covered by the Council's Corporate Complaints Policy. Details can be found at [Complaints and complaints](#) can be made on line by emailing complaints@caerphilly.gov.uk, or by telephone on 01443 864221.

Feedback

We value input from you to help us ensure our service is meeting your needs. We would like to hear from you whether your experience of us has been good or in need of improvement. This helps us to ensure we keep doing the right things and make changes where we need to. We use customer satisfaction surveys from time to time but we would welcome your feedback at any time. You can provide feedback by email, post or telephone via the contact information listed above. Any feedback that we receive will where appropriate be acknowledged, considered and responded to.

Performance against service standards

This is how we performed against our service standards during 2014/15

Business and consumer satisfaction surveys

X% of businesses were fairly or very satisfied with the overall level of service provided by Trading Standards.

X% of Consumers were fairly or very satisfied with the overall service provided by Trading Standards

X% of customers were fairly or very satisfied with the overall service provided by the Licensing

X% of customers were fairly or very satisfied with the overall service provided by the Environmental Health

X% of customers were fairly or very satisfied with the overall service provided by the Food and health and safety Team

Complaints against us

X complaints were received about the services or officers conduct under the Corporate Complaints Policy in 2014/15

X complaints or appeals against our regulatory decisions or compliance with our Enforcement Policy or the Regulator Code were received in 2014/15.

X complaints about Trading Standards, Licensing , Environmental Health Services were considered by the Ombudsman in 2014/15, X were upheld.

Dated: *[insert date]*

Name: Robert Hartshorn

Job title: Head of Public Protection

Review Due: *[insert date]*

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CABINET – 4TH MARCH 2015

SUBJECT: ADOPTION OF POLICIES IN RELATION TO THE MOBILE HOMES (WALES) ACT 2013

REPORT BY: CORPORATE DIRECTOR OF SOCIAL SERVICES

1. PURPOSE OF REPORT

- 1.1 To inform Cabinet of changes to the legislation applicable to mobile homes prior to presentation of the report to Council to amend the Council's Constitution to include The Mobile Homes (Wales) Act 2013.
- 1.2 To obtain additional authorisation for officers under the Mobile Homes (Wales) Act 2013.
- 1.3 To enable officers to progress with the implementation of the Mobile Homes (Wales) Act 2013 through the adoption of:
 - A Fees and Fines Policy (Appendix 1)
 - A Fit and Proper Persons Policy (Appendix 2)

2. SUMMARY

- 2.1 The National Assembly for Wales recently introduced the Mobile Homes (Wales) Act 2013 which came into force on 1st October 2014. This Act replaces legislation, originally implemented in the 1960s, to regulate sites accommodating residential mobile homes. It is designed to help improve regulation, so that conditions on mobile home sites are improved and the rights of residents are better protected.
- 2.2 There are 3 mobile home sites within Caerphilly county borough. Officers within the Public Protection Division require additional authorisation under The Mobile Homes (Wales) Act 2013 in order to enforce the legislation and carry out their duties.

This report also seeks approval for the adoption of:

- The Fees and Fines Policy (Appendix 1) including minimum charges for the taking of enforcement action, and
- The Fit and Proper Persons Policy (Appendix 2)

3. LINKS TO STRATEGY

- 3.1 Public protection is a statutory duty of the authority and contributes to the Prosperous, Healthier, and Safer Caerphilly Priorities within the Caerphilly Local Service Board single integrated plan, Caerphilly Delivers, and Objective 1 of the Council's Strategic Equality Plan 2012.

4. THE REPORT

- 4.1 The National Assembly for Wales recently introduced the Mobile Homes (Wales) Act 2013 which came into force on 1st October 2014.
- 4.2 This Act replaces legislation, originally implemented in the 1960s, to regulate sites accommodating residential mobile homes. It is designed to help improve regulation, so that conditions on mobile home sites are improved and the rights of residents are better protected. There are currently 3 mobile home sites within Caerphilly county borough:-

Beddau Farm Residential Caravan Site St Cenydd
The Conifers Pandy Road Bedwas
Caravan Site Commercial Lane Pontymister

The main features of the new Act are:

- Site owners will be required to apply for a licence from their local authority to operate a site. The licence will last up to 5 years
 - Site managers will need to pass a 'fit and proper person' test before being awarded a licence
 - Site owners will no longer be able to block the sale of a mobile home. The mobile home owner will be free to sell their home to who they wish
 - Local authorities will be able to inspect sites and issue a fixed penalty notice to site owners if conditions on the site are not kept properly
 - In more serious instances, local authorities will be able to issue the site owners with a compliance notice to make sure that site conditions are upheld
 - Pitch fees will only be increased in line with the Consumer Prices Index
 - Site owners and residents will be able to appeal to the Residential Property Tribunal in certain circumstances
- 4.3 A copy of the new Mobile Homes (Wales) Act 2013 and the Explanatory Notes to the Act can be found on the Welsh Government website.
- 4.4 All mobile homes sites must have the relevant planning permission and as a result of the implementation of this legislation all mobile homes sites must have a site licence issued by the local authority. Existing site licenses issued under the original Caravan and Control of Development Act 1960 will remain in force. Local authorities are given a six month period to revoke existing licenses and relicence the sites.
- 4.5 The Model Standards 2008 for Caravan Sites in Wales are the conditions, 'normally expected as a matter of good practice on sites.' They apply only to residential caravans and can cover areas such as the layout of mobile home parks and the provision of facilities, services and equipment for them. These standards introduced a number of changes, the most significant relating to:
- dealing with park site boundaries
 - making clearer what should and should not be allowed within the six metre separation space between homes
 - permitting a single car to be parked between homes
 - requiring a concrete hardstanding for all homes
 - extending park drainage requirements to include the pitch
 - making sure that common areas of the site are maintained in a good condition
 - setting out the minimum standards required for the supply of water, electricity, drainage and sanitation
 - making it clear that land allocated for recreational space is required only when children live on the park

- 4.6 As a result of the introduction of new legislation it is considered that the Council's Constitution should be amended to include The Mobile Homes (Wales) Act 2013. Adding this Act to the Constitution will allow authorised officers to deal with the re-licencing of the sites within the county borough and deal with any associated provisions contained in the Act.
- 4.7 A local authority may require an application for a site licence to be accompanied by a fixed fee. Before implementing the fees, the local authority must prepare and publish a fees policy. When fixing a fee for the purposes of the Act the local authority:-
- Must act in accordance with its fees policy
 - May fix different fees for different cases or descriptions of case, and
 - May determine that no fee is required to be paid in certain cases or descriptions of case.
- 4.8 The council will also need to agree a Fit and Proper Persons Policy for consideration during the application process for licence holders and/or managers.
- 4.9 When fixing the fee the Authority may not take into account any costs incurred by it in exercising its functions under sections 15 to 25 of the Act Any fees charged must fairly cover the costs (or part of the costs) incurred by the local authority in performing its functions under the Act, (excluding the costs of enforcement action or any function under any provision of the Act which is not a regulated site).
- 4.10 A fees toolkit has also been developed in conjunction with the Wales Heads of Environmental Health Licensing Expert Panel with the aim of providing a consistent and robust mechanism for the setting of licence fees. The toolkit includes full guidance notes on how to populate the spreadsheet to calculate the fees. It also provides a clear methodology for calculating the application fee and other fees set out in the Act. It has been designed to help set fees that are based on the full cost recovery of the work involved in the licensing of sites in a way that is transparent and robust.
- 4.11 Using this methodology, the following fees are proposed:-

Process	Fee
Application for Small site 1-10 caravans	£345
Application for Medium site 11-51 caravans	£398
Application for Large Site 51+ caravans	£597
Amendment/Variation Existing Licence	£200/260
Replacement Licence	£26
Lodge Site rules	£42

ENFORCEMENT CHARGES

- 4.12 The Council is entitled in accordance with section 19 and 22 of the Mobile Homes (Wales) Act 2013, and will seek to recover expenses incurred in carrying out enforcement action involved in the service of a compliance/emergency compliance notice and Fixed Penalty Notices (set at not exceeding level 1 of the standard scale for summary offences within the Act for the latter). These expenses include costs incurred in deciding whether to serve a notice, site inspections, preparing the notice and obtaining expert advice.
- 4.13 Where appropriate, the council will also seek to recover expenses incurred:-
- In taking action following conviction of the site owner for failure to carry out actions required by a compliance notice; or
 - In taking emergency action where there is an imminent risk of serious harm to any person on the site as a result of the site owner's failure to comply with licence conditions

- 4.14 Interest may be charged on any sums to be recovered as a result of enforcement action. The council will also be able to register any of the debts to be recovered for enforcement actions as a local land charge against the site.

Fixed Penalty Notices

- 4.15 Section 15 of the Mobile Homes (Wales) Act 2013 allows the Council discretion to issue Fixed Penalty Notices (FPN) to discharge certain minor breaches of site licence conditions. Fixed Penalty Notices must not exceed level 1 on the standard Scale of fines for summary offences (currently £200). A fixed penalty notice could be used by the Council to deal with minor infringements such as:-

- Failure to remove litter
- Non compliance with site rules
- Poor provision of adequate lighting around the site

- 4.16 It is proposed that the charge for the Fixed Penalty Notice is set at £100 with this reduced to £75 if paid within 10 days.

Compliance Notices

- 4.17 Section 17 of the Mobile Homes (Wales) Act 2013 allows the Council discretion to serve compliance notices on site owners where site licence conditions are breached. Such notices will set out what the site owner needs to do to correct the breaches and the timescales. Failure to comply with the notice would be a criminal offence, punishable by a fine and the site licence could be revoked upon a third or more subsequent prosecutions (section 18). Following a successful prosecution for breaching a compliance notice, the Council would be able to serve notice to enter the site and carry out the necessary works (Works in default).

- 4.18 In addition to this, Section 21 of the Act allows a notice to be served on site owners enabling the Council to enter the site and carry out emergency work where there is an imminent risk of serious harm.

- 4.19 The cost of deciding whether to take action, preparing and serving compliance and/or emergency action notices can be recovered (Section 19 and 22 respectively). The total expenses the local authority seeks to recover (the relevant expenses) can include, but not limited to:-

- Expert advice (including legal advice)
- Inspection costs
- Administration costs in serving notice

- 4.20 It is proposed that the costs of issue of a compliance notice will be a minimum set fee of £300 to cover the costs of qualified staff. Expert advice and other costs associated specifically with an individual case will also be chargeable on a case-by-case basis. A detailed breakdown of the relevant expenses will be outlined in the case demand schedule.

- 4.21 Interest may also be charged on compliance notice costs in accordance with the Act and set out in the policy.

5. EQUALITIES IMPLICATIONS

- 5.1 Officers from the Public Protection Division already carry out their enforcement duties taking due regard of any relevant equalities and language considerations. This new legislation is aimed at improving the conditions of mobile home sites and to better protect the rights of residents.

6. FINANCIAL IMPLICATIONS

6.1 There are no additional costs related to staffing.

The proposed charges are detailed below.

Process	Fee	Income
Application for Small site 1-10 caravans	£345	
Application for Medium site 11-51 caravans	£398	£1,194 (every fifth year)
Application for Large Site 51+ caravans	£597	
Amendment/Variation Existing Licence	£200/260	
Replacement Licence	£26	
Lodge Site rules	£42	
Issue of a compliance notice	£300.00	
Fixed Penalty Notice	£100 reduced to £75 if paid within 10 days.	

6.2 There are currently 3 mobile home sites within Caerphilly county borough and therefore additional income from application fees is estimated to be £1,194 every 5 years.

7. PERSONNEL IMPLICATIONS

7.1 None directly arising from the authorisation of officers under this Act where it is used to supplement existing enforcement activities.

8. CONSULTATION

8.1 This report has been sent to the Consultees listed below and all comments received are reflected in this report.

9. RECOMMENDATIONS

9.1 That Cabinet note the implementation of this legislation and refer the recommended changes to the Council's Constitution to Council for determination. The Council's Monitoring Officer make the necessary amendments to the Council's Constitution.

9.2 That the Council's Constitution and Terms of Reference be amended by adding the following:

- The Mobile Homes (Wales) Act 2013

9.3 That Officers within the Public Protection Division be authorised under The Mobile Homes (Wales) Act 2013 in order to enforce the legislation and carry out their duties.

9.4 That Cabinet approve the Fees and Fines Policy (Appendix 1) including minimum charges for the taking of enforcement action.

9.5 That Cabinet approve the Fit and Proper Persons Policy (Appendix 2).

10. REASONS FOR RECOMMENDATION

10.1 In order to ensure proper and effective enforcement of the legislation and appropriate recovery of costs.

11. STATUTORY POWER

11.1 The Mobile Homes (Wales) Act 2013. The discharge of duties under the above legislation is a Cabinet function.

Author: Lyndon Ross, Senior Environmental Health Officer.

Consultees: Councillor David Poole, Cabinet Member for Community and Leisure Services
Dave Street, Director of Social Services
Rob Hartshorn, Head of Public Protection
Gail Williams, Interim Head of Legal Services
Lisa Lane Solicitor
Ceri Edwards, Environmental Health Manager
Graham North, Public Sector Housing Manager
Tim Stephens, Development Control Manager
David A. Thomas, Senior Policy Officer (Equalities and Welsh Language)
Sian Phillips, Human Resources Manager
Mike Eedy, Finance Manager

Appendices:

Appendix 1 Fees and Charges Policy for Licensing and Compliance of Residential Mobile Homes Sites

Appendix 2 A Policy to Establish a Fit and proper Person Criteria in relation to The Mobile Homes (Wales) Act 2013

Caerphilly CBC

Mobile Homes (Wales) Act 2013

**Fees and Charges Policy for
Licensing and Compliance of
Residential Mobile Homes Sites**

Draft 5th January 2015

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APPENDICES

- A - FEES FOR LICENSING RESIDENTIAL MOBILE HOME SITES**
- B – CALCULATION OF FEES**

1. INTRODUCTION

- 1.1 The Mobile Homes (Wales) Act 2013 has been introduced to supersede those elements of the Caravan Sites and Control of Development Act 1960 relating to the licensing of residential mobile home sites. The Mobile Homes (Wales) Act 2013 (MHW Act), authorises local authorities to issue licences in respect of 'relevant protected sites' and to require applications for such licences to be accompanied by a fee fixed by the authority. A licence may be granted for up to 5 years. Fees may also be charged for applications to transfer site licences or to change conditions in site licences.
- 1.2 Caerphilly CBC is the local authority for purposes of the act for the county of Caerphilly, and has agreed to make charges for the licensing of relevant protected sites in accordance with the powers granted under the act as agreed by cabinet decision (*insert decision date*)
- 1.3 A relevant protected site is defined in the act as any land to be used as a caravan site other than one where the application for a licence is:
- For holiday use only, or
 - Subject to restrictions or conditions which limit the times of the year when the site may be used for stationing caravans for human habitation (e.g. planning conditions)
- 1.4 A relevant protected site does not however include sites that are owned by the local authority.

2. Legislation related to setting a Mobile Homes Site Licence Fee

Before a local authority can charge a fee, it must prepare and publish a fees policy. When fixing a fee the local authority:

- Must act in accordance with its fees policy
- May fix different fees in different cases
- May determine that no fee is required in some cases

Any fees charged must fairly cover the costs (or part of the costs) incurred by the local authority in performing its functions under the MHW Act, (excluding the costs of enforcement action or any functions relating to prohibiting caravans on commons or provision of sites by the local authority itself).

2.1 Section 6 of the MHW Act 2013

- (5) A local authority may require an application for a site licence to be accompanied by a fee fixed by the local authority (section 36).

2.2 Section 36 of the MHW Act 2013

- (1) This section applies where a local authority proposes to charge a fee under Section 6 (application for a site licence) or Section 13 (variation of a site licence)
- (2) Before charging the fee, the local authority must prepare and publish a fees policy
- (3) When fixing a fee for the purposes of Section 6 or 13 the local authority –
 - A. Must act in accordance with its fees policy
 - B. May fix different fees for different cases or descriptions of case, and
 - C. May determine that no fee is required to be paid in certain cases or descriptions of case.
- (4) When fixing a fee for any of those purposes, the local authority may not take into account any costs incurred by it in exercising –
 - A. Its functions under any of the sections 15 to 25 (breach of conditions), or
 - B. Any function under any provision of this Act in relation to a site which is not a regulated site.
- (5) The local authority may revise its fees policy and, where it does so, must publish the policy as revised.

2.3 Fee to vary a condition of Site Licence

Section 13 of the MHW Act 2013

- (4) A local authority may require an application for a variation of the conditions of the site licence to be accompanied by a fee fixed by the local authority (section 36).

2.4 Fee for the lodging of Site Rules

Section 52 of the MHW Act 2013

- 11 The Welsh Ministers may by regulations—
 - (a) require a local authority to establish and keep up to date a register of site rules in respect of protected sites in its area,
 - (b) require a local authority to publish the up-to-date register,
 - (c) provide that any deposit required to be made by virtue of subsection (d)
 - (d) must be accompanied by a fee of such amount as the local authority may determine.

Regulation 12(4) of the Mobile Homes Site Rules (Wales) Regulations 2014 state:

(4) A deposit required to be made by virtue of this regulation must be accompanied by a fee of such amount as the local authority may determine.

2.5 In setting its fees policy and the fees to be charged the council has had regard to the Fees Toolkit Guide for Local Authorities On Setting Site Licensing Fees issued by the Wales Heads of Environmental Health Expert Panels for Licensing and Private Sector Housing.

3. THE LICENCE FEE STRUCTURE

3.1 In calculating its fee structure, the council has calculated its fees in accordance with the provisions of the act, and the fees determined are set out in the appendix to this policy.

3.2 In determining those fees, the council has taken into account all administrative costs incurred in the licensing process, officer visits to sites, travel costs, consultations, monitoring of sites/investigation of complaints and the giving of informal advice.

3.3 The council, in accordance with the legislation the following sites are exempt from licensing:

- Local Authority-owned sites
- Use incidental to a dwelling house within the same curtilage
- Sites where a single caravan is stationed on land more not more than 28 days in any 12 month period.
- Sites where caravans are stationed on land not less than 20,000 square metres for not more than 28 days and not more than 3 caravans are stationed at any one time.
- Sites where caravans are solely for workers employed in building or engineering operations on that or adjacent land.
- Sites where caravans are solely for seasonal agricultural/forestry workers employed on land owned by the site owner.
- Sites used by travelling showmen who are members of a relevant organisation.
- Sites occupied by organisations holding a certificate of exemption

4. REVIEW OF THE LICENCE FEE STRUCTURE

4.1 A review of the fee structure will be carried out every other year/biennially and it will be revised if necessary. Any adjustments will take into account variations in officer and administration time to those used in calculating the fees set out in this policy document, along with any changes to other costs incurred in providing the licensing function.

5. PUBLISHING THE FEE POLICY

- 5.1 The fees policy for licensing of residential park home sites will be published on the council's website
- 5.2 If the council revises its fees policy, it will replace the published policy with the revised policy. The policy will also be available to view during normal office hours at:

***Environmental Health ,
Ty Pontllanfraith,
Blackwood Road ,
Pontllanfraith
NP12 2YW***

6. PAYMENT OF FEES.

- 6.1 The council requires application fees for a site licence, for amending a site licence or for transferring a site licence to accompany the application. The council will not commence the application process until such time as the fee is received.
- 6.2 Application fees are not refundable if the application is not approved.

7. OTHER CHARGES

7.1 Enforcement Expenses

- 7.1.1 The council is entitled, and will seek, to recover expenses incurred in carrying out enforcement action involved in the service of a compliance notice. These expenses include costs incurred in deciding whether to serve a notice, site inspections, preparing the notice and obtaining expert advice.
- 7.1.2 Where appropriate, the council will also seek to recover expenses incurred:
- In taking action following conviction of the site owner for failure to carry out actions required by a compliance notice; or
 - In taking emergency action where there is an imminent risk of serious harm to any person on the site as a result of the site owner's failure to comply with licence conditions
- 7.1.3 Interest may be charged on any sums to be recovered as a result of enforcement action.
- 7.1.4 The council will also be able to register any of the debts to be recovered for enforcement actions as a local land charge against the site.

7.2 Deposit of Site Rules

7.2.1 In accordance with the Mobile Homes (Site Rules) (Wales) Regulations 2014 requires site owners to review existing site rules and consult with residents in respect of proposed site rules. Once agreed with the residents the site owner is required to lodge the site rules with the Council. The Council needs to approve and register the rules. The Council will also be required to publish the list of site rules on the Council's website.

7.2.2 A **set fee of £42 is made for depositing, varying and deleting site rules.** If the park owner has completed an inadequate consultation process, it is proposed that a new fee for depositing of site rules must be paid by the park owner to cover the Council's costs

APPENDIX A FEES FOR LICENSING RESIDENTIAL MOBILE HOME SITES

The following fees will apply

i. Initial Licence Application:

- a set flat administrative fee for processing the application,

Application for Small site 1-10 caravans	£345
Application for Medium site 11-51 caravans	£398
Application for Large Site 51+ caravans	£597

A licence will be granted for up to 5 years

It is proposed that small sites with only 1 pitch, and used exclusively for the owner and their family (and not deemed incidental to the use of a dwelling house within the same curtilage), and not operated for financial gain are not charged.

It is considered unreasonable to charge an inspection fee for these types of sites because experience has shown that they represent a low risk and require little or no enforcement therefore more suitable for light touch monitoring.

ii. Discount incentives for early renewal following 5 years

It is proposed that an incentive based discount scheme is introduced in respect of site licence renewals. The purpose of the discount is to encourage good practice and early submission of the renewal applications that would prevent unnecessary chasing of applications by the Council. The details of this policy will be developed at a future date during the annual review of site licence fees that will be brought to Scrutiny and Cabinet at this time.

iii. Variation of existing site licence condition / replacement licence

The Council may also apply a fee to vary an existing site licence. The Council may vary the site licence upon the request of the licence holder or if there is a change in

circumstances. It is proposed that the **application fee for variation of a site licence is a set fee of £200 rising to £260 if an inspection is required**. If the Council deems it necessary to alter site licence conditions to take account of new Welsh Assembly Government Model Standards for Residential Caravan Sites, there will be no fee payable from the licence holder.

For a **replacement licence a charge of £26** will be levied

iv. Fees for lodging site rules

In accordance with the Mobile Homes (Site Rules) (Wales) Regulations 2014 requires site owners to review existing site rules and consult with residents in respect of proposed site rules. Once agreed with the residents the site owner is required to lodge the site rules with the Council. The Council needs to approve and register the rules. The Council will also be required to publish the list of site rules on the Council's website.

It is proposed that a **set fee of £42 is made for depositing, varying and deleting site rules**. If the park owner has completed an inadequate consultation process, it is proposed that a new fee for depositing of site rules must be paid by the park owner to cover the Council's costs.

v. Enforcement Charges

The council is entitled in accordance with section 19 and 22 of the MHW Act 2013, and will seek to recover expenses incurred in carrying out enforcement action involved in the service of a compliance/emergency compliance notice and Fixed Penalty Notices (set at not exceeding level 1 of the standard scale for summary offences within the MHW Act for the latter). These expenses include costs incurred in deciding whether to serve a notice, site inspections, preparing the notice and obtaining expert advice.

Where appropriate, the council will also seek to recover expenses incurred:

- In taking action following conviction of the site owner for failure to carry out actions required by a compliance notice; or
- In taking emergency action where there is an imminent risk of serious harm to any person on the site as a result of the site owner's failure to comply with licence conditions

Interest may be charged on any sums to be recovered as a result of enforcement action.

The council will also be able to register any of the debts to be recovered for enforcement actions as a local land charge against the site.

Fixed Penalty Notices

Section 15 of the Mobile Homes (Wales) Act 2013 allows the Council discretion to

issue Fixed Penalty Notices (FPN) to discharge certain minor breaches of site licence conditions. Fixed Penalty Notices must not exceed level 1 on the standard Scale of fines. A fixed penalty notice could be used by the Council to deal with minor infringements such as:

- failure to remove litter
- non compliance with site rules
- poor provision of adequate lighting around the site

The charge for the Mobile Home Fixed Penalty Notices will be £100 with this reduced to £75 if paid within 10 days.

Compliance Notices

Section 17 of the Mobile Homes (Wales) Act 2013 allows the Council discretion to serve compliance notices on site owners where site licence conditions are breached. Such notices will set out what the site owner needs to do to correct the breaches and the timescales. Failure to comply with the notice would be a criminal offence, punishable by a fine and the site licence could be revoked upon a third or more subsequent prosecutions (section 18). Following a successful prosecution for breaching a compliance notice, the Council would be able to serve notice to enter the site and carry out the necessary works (Works in default).

In addition to this, Section 21 of the Act allows a notice to be served on site owners enabling the Council to enter the site and carry out emergency work where there is an imminent risk of serious harm.

The cost of deciding whether to take action, preparing and serving compliance and/or emergency action notices can be recovered (Section 19 and 22 respectively). The total expenses the local authority seeks to recover (the relevant expenses) can include, but not limited to:

- Expert advice (including legal advice)
- Inspection costs
- Administration costs in serving notice

The costs of issue of a compliance notice will be a **minimum set fee of £300**. Additional officer costs including expert advice and other costs associated specifically with an individual case will also be chargeable on a case-by-case basis. A detailed breakdown of the relevant expenses will be outlined in the demand that will accompany the payment.

In accordance with section 25 of the Act, the Council reserves the right to charge interest above the Bank of England Base rate to all outstanding operative demands in respect of Compliance or Emergency Action Notices.

The relevant expenses and any accrued interest are, until recovered, a legal land charge.

APPENDIX B CALCULATION OF FEES

A Fees Toolkit has also been developed in conjunction with the All Wales Licensing Expert Panel with the aim of providing a consistent and robust mechanism for the setting of licence fees. The All Wales Licensing Expert Panel is a sub group of the Welsh Heads of Environmental Health Group (WWhoEHG).

The membership includes Managers and Senior Officers from local authorities in Wales that have responsibility for Licensing functions. The toolkit includes full guidance notes on how to populate the spreadsheet to calculate the fees. The toolkit provides a clear methodology for calculating the application fee and other fees set out in the Act. It has been designed to assist in setting fees that are based on the full cost recovery of the work involved in the licensing of sites in a way that is transparent and robust. Below is a summary of how the fees and charges have been calculated:

In completing the toolkit, officer hourly rates, fixed inspection times and per pitch times were calculated for the various steps in the toolkit which were based on officer experience and benchmarking with other local authorities who have already gone through the process of site inspections and licensing.

The Finance section provided hourly rates for officers and managers within licensing and public health protection, as they are responsible for mobile home licensing and inspections.

Table 1 New Site Licence Application –Small Site

Mobile Homes (Wales) Licensing

Post Title	Licensing Manager	EHO	Admin	Totals
Hourly Rate	£45.98	£39.83	£21.86	
<u>New Small</u>				-
<u>Application Process</u>	-	-	-	-
Receipt of application form	£0.00	£0.00	10 £3.64	£3.64
Check application form and associated documents and deal with any issues	£0.00	30 £19.92	10 £3.64	£23.56
Receipt of application fee & issue receipt	£0.00	£0.00	5 £1.82	£1.82
Record created on			5	

computer system and paper file created	£0.00	£0.00	£1.82	£1.82
Consultation carried out with relevant authorities i.e planning	£0.00	£6.64	£0.00	£6.64
Inspection Carried Out (Small Site) inc. travelling time	£0.00	£79.67	£0.00	£79.67
Prepare draft licence conditions / letter identifying works /	£0.00	£39.83	£0.00	£39.83
discuss with applicant and amend	£0.00	£29.88	£0.00	£29.88
Consultation responses / representations received	£0.00	£13.28	£5.46	£18.74
Amend draft licence conditions as necessary	£0.00	£19.92	£0.00	£19.92
Verify application criteria met	£0.00	£9.96	£0.00	£9.96
Refer for management decision	£11.50	£0.00	£0.00	£11.50
Computer system updated	£0.00	£0.00	£3.64	£3.64
Licence and conditions produced	£0.00	£0.00	£5.46	£5.46
Licence authorised and signed	£0.00	£3.32	£0.00	£3.32
2 copies of licence and conditions posted	£0.00	£0.00	£3.64	£3.64
Paper file updated and filed / stored	£0.00	£0.00	£1.82	£1.82
Interim Inspection (small site) inc travelling time	£0.00	£79.67	£0.00	£79.67
				£344.53
				£345

Table 2 - New Site Licence Application– Medium Site

Mobile Homes (Wales) Licensing

Post Title	Licensing Manager	EHO	Admin	Totals
Hourly Rate	£45.98	£39.83	£21.86	

New Medium

<u>Application Process</u>	-	-	-	-
Receipt of application form	£0.00	£0.00	£3.64	£3.64
Check application form and associated documents and deal with any issues	£0.00	£19.92	£3.64	£23.56
Receipt of application fee & issue receipt	£0.00	£0.00	£1.82	£1.82
Record created on computer system and paper file created	£0.00	£0.00	£1.82	£1.82
Consultation carried out with relevant authorities i.e planning	£0.00	£6.64	£0.00	£6.64
Inspection Carried Out (Medium Site) inc travelling time	£0.00	£106.22	£0.00	£106.22
Prepare draft licence conditions / letter identifying works /	£0.00	£39.83	£0.00	£39.83
discuss with applicant and amend	£0.00	£29.88	£0.00	£29.88
Consultation responses / representations received	£0.00	£13.28	£5.46	£18.74
Amend draft licence conditions as necessary	£0.00	£19.92	£0.00	£19.92
Verify application criteria met	£0.00	£9.96	£0.00	£9.96
Refer for management decision	£11.50	£0.00	£0.00	£11.50
Computer system updated	£0.00	£0.00	£3.64	£3.64
Licence and conditions produced	£0.00	£0.00	£5.46	£5.46
Licence authorised and signed	£0.00	£3.32	£0.00	£3.32

2 copies of licence and conditions posted	10			
	£0.00	£0.00	£3.64	£3.64
Paper file updated and filed / stored	5			
	£0.00	£0.00	£1.82	£1.82
Interim Inspection (Medium site) inc travelling time	160			
	£0.00	£106.22	£0.00	£106.22
				£397.64
				£398

Table 3 New Site Licence Application –Large Site

Mobile Homes (Wales) Licensing

Post Title	Licensing Manager	EHO	Admin	Totals
Hourly Rate	£45.98	£39.83	£21.86	
<u>New Large</u>				-
<u>Application Process</u>	-	-	-	-
	-	-	-	-
Receipt of application form	10			
	£0.00	£0.00	£3.64	£3.64
Check application form and associated documents and deal with any issues	30		10	
	£0.00	£19.92	£3.64	£23.56
Receipt of application fee & issue receipt	5			
	£0.00	£0.00	£1.82	£1.82
Record created on computer system and paper file created	5			
	£0.00	£0.00	£1.82	£1.82
Consultation carried out with relevant authorities i.e planning	10			
	£0.00	£6.64	£0.00	£6.64
Inspection Carried Out (Large Site) inc travelling time	310			
	£0.00	£205.81	£0.00	£205.81
Prepare draft licence conditions / letter identifying works /	60			
	£0.00	£39.83	£0.00	£39.83
discuss with applicant and amend	45			
	£0.00	£29.88	£0.00	£29.88
Consultation responses / representations received	20		15	
	£0.00	£13.28	£5.46	£18.74
Amend draft licence conditions as necessary	30			
	£0.00	£19.92	£0.00	£19.92
Verify application criteria	15			

met	£0.00	£9.96	£0.00	£9.96
Refer for management decision (time per task multiplied by no. referred to Cabinet divided by total number of applications)	15			
	£11.50	£0.00	£0.00	£11.50
Computer system updated	10			
	£0.00	£0.00	£3.64	£3.64
Licence and conditions produced	15			
	£0.00	£0.00	£5.46	£5.46
Licence authorised and signed	5			
	£0.00	£3.32	£0.00	£3.32
2 copies of licence and conditions posted	10			
	£0.00	£0.00	£3.64	£3.64
Paper file updated and filed / stored	5			
	£0.00	£0.00	£1.82	£1.82
Interim Inspection (Large site) inc. travelling time		310		
	£0.00	£205.81	£0.00	£205.81
				£596.81
				£597

Table 4 - Amendment of existing site licence/ Variation of conditions

Mobile Homes (Wales) Licensing

Post Title	Licensing Manager	EHO	Admin	Totals
Hourly Rate	£45.98	£39.83	£21.86	
<u>Vary Conditions</u>				-
<u>Application Process</u>	-	-	-	-
	-	-	-	-
Receipt of request	10			
	0.00	0.00	3.64	3.64
Check request and deal with any issues	30			
	0.00	19.92	0.00	19.92
Receipt of fee & issue receipt	0		10	
	0.00	0.00	3.64	3.64
System updated	0		5	
	0.00	0.00	1.82	1.82
Consultation carried out with relevant authorities i.e planning	30			
	0.00	19.92	0.00	19.92

discuss with applicant and amend (if necessary)	30			19.92
	0.00	19.92	0.00	
Inspection Carried Out (if necessary)	90			59.75
	0.00	59.75	0.00	
Amend site licence and conditions	30.00			19.92
	0.00	19.92	0.00	
discuss with applicant and amend	15.00			9.96
	0.00	9.96	0.00	
Consultation responses / representations received	30.00			19.92
	0.00	19.92	0.00	
Amend draft licence conditions as necessary	30			19.92
	0.00	19.92	0.00	
Refer for management decision	20		0	15.33
	15.33	0.00	0.00	
Liaise with consultees	20			13.28
	0.00	13.28	0.00	
Computer system updated	0		10	3.64
	0.00	0.00	3.64	
Licence and conditions produced	0	20	0	13.28
	0.00	13.28	0.00	
Licence authorised and signed		10	0	6.64
	0.00	6.64	0.00	
2 copies of licence and conditions posted	0		15	£5.46
	£0.00	£0.00	£5.46	
Paper file updated and filed / stored			10	3.64
	0.00	0.00	3.64	
	£0.00	£0.00	£0.00	£0.00
				£259.59
				£260

It is proposed that the application fee for variation of a site licence is a set fee of £200 rising to £260 if an inspection is required

Table 5 - Replacement Licence

Mobile Homes (Wales) Licensing

Post Title	Licensing Manager	EHO	Admin	Totals
Hourly Rate	£45.98	£39.83	£21.86	
<u>Replacement Licence</u>				-
<u>Application Process</u>	-	-	-	-
	-	-	-	-
Notification received	0.00	0.00	3.64	£3.64
			10	
Computer System updated	0.00	0.00	3.64	£3.64
			10	
Licence produced	0.00	0.00	5.46	£5.46
			15	
File Updated	0.00	0.00	3.64	£3.64
			10	
Licence sent	0.00	0.00	7.29	£7.29
			20	
File returned in system	0.00	0.00	1.82	£1.82
			5	
	0.00	0.00	0.00	£0.00
				£25.50
				£26

For a replacement licence a charge of £26 will be levied.

Table 6 - Fees for lodging site rules

Mobile Homes (Wales) Licensing

Post Title	Licensing Manager	EHO	Admin	Totals
Hourly Rate	£45.98	£39.83	£21.86	
<u>Lodge Rules</u>				-
<u>Application Process</u>	-	-	-	-
	-	-	-	-
Receipt of notification	0.00	0.00	3.64	3.64
			10	
Check notification and		30		

deal with any issues i.e. against model standards	0.00	19.92	0.00	19.92
Receipt of fee & issue receipt			10	
	0.00	0.00	3.64	3.64
System updated			10	
	0.00	0.00	3.64	3.64
Confirmation letter sent to applicant			10	
	0.00	0.00	3.64	3.64
Upload site rules to online register			20	
	0.00	0.00	7.29	7.29
				£41.77
				£42

It is proposed that a set fee of £42 is made for depositing, varying and deleting site rules.

ENFORCEMENT CHARGES

The cost of deciding whether to take action, preparing and serving compliance and/or emergency action notices can be recovered (Section 19 and 22 respectively).

The total expenses the local authority seeks to recover (the relevant expenses) can include, but not limited to:

- Expert advice (including legal advice)
- Inspection costs
- Administration costs in serving notice

The costs of issue of a compliance notice will be a minimum set fee of £300. Additional officer costs including expert advice and other costs associated specifically with an individual case will also be chargeable on a case by case basis. A detailed breakdown of the relevant expenses will be outlined in the demand, which will accompany the payment.

This initial fee is based on an officer hourly rate of £39.83 for 6 hours, plus senior officer or management check of 30 minutes at £23.99.

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**A Policy to Establish a Fit and proper Person Criteria in relation to
The Mobile Homes (Wales) Act 2013**

1. Introduction

1.1 In deciding to grant a site licence for a regulated mobile home site under the Mobile Homes (Wales) Act 2013, a local authority must be satisfied that the site owner “is a fit and proper person to manage the site or (if the owner does not manage the site) that a person appointed to do so by the owner is a fit and proper person to do so...” or “has, with the owner’s consent, itself appointed a person to manage the site.” This requirement is to ensure that those responsible for operating the site licence and managing the site are of sufficient integrity and good character to be involved in the management of a regulated site for mobile homes to which the application relates and as such they do not pose a risk to the welfare or safety of persons occupying mobile homes on the site.

1.2 A licence should be refused if there is a finding that the licence holder and/or his manager is unfit, if there are doubts as to someone’s fitness these can be addressed through the setting of appropriate site licence conditions. However, the question of the person’s fitness must be in relation to the **management** of the mobile home site to which the application relates.

2. Evidence

2.1 When considering whether a person is ‘fit and proper’ the local authority must have regard to any ‘wrong doings’ of the person concerned, i.e. evidence that the person has:

(a) committed any offence involving fraud or other dishonesty, violence, firearms or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (offences attracting notification requirements),

(b) practised unlawful discrimination or harassment on the grounds of any characteristic which is a protected characteristic under section 4 of the Equality Act 2010 or victimised another person contrary to that Act, in or in connection with the carrying on of any business, or

(c) contravened any provision of the law relating to housing (including mobile homes) or landlord and tenant.

3. Items to Consider

3.1 A local authority must also consider evidence that anyone associated or formerly associated with the person has committed any of the offences set out above and

whether that evidence is relevant to the question of whether the person is a fit and proper person to manage the regulated site.

3.2 Local authorities should not consider poor management practices as wrong doings, unless they are in breach of the criminal or civil law. A person cannot be deemed unfit, simply because of poor management, although that is highly relevant to determining any question of suitability or competence.

3.3 The wrong-doing has to be relevant to the person's fitness to hold a licence and/or manage the particular mobile home site to which the application for a licence relates and, in regard to criminal offences, the local authority must only have regard to unspent convictions.

3.4 An unspent conviction will not necessarily prevent a fit and proper judgement by the local authority. A local authority should not adopt a blanket policy with respect to its treatment of wrong-doings. Each case must be considered on its own merits and if a licence is to be refused on the ground that a person is unfit, the local authority must be able to defend that decision with cogent reasons. Upon refusal, the local authority must notify the person of the reasons for the decision and their right to appeal. The proposed licence holder then has 28 days to appeal to the Residential Property Tribunal against the decision.

4. Applications

4.1 In an application for a site licence the proposed licence holder must provide details of the following in relation to him/herself and the proposed manager (if the applicant is not to be the licence holder):

- details of any refusal to grant a licence, or details of the revocation of a licence in the past 3 years in respect of a regulated mobile home site under his/her management or ownership.
- the details of any offence involving fraud, violence, firearms or drugs or any offence listed in Schedule 3 of the Sexual Offences Act 2003. This should include the offence, the date of sentence and the court that passed sentence.
- any findings of a court/tribunal that the person has practised unlawful discrimination under Section 4 of the Equality Act 2010.
- any judgement entered against that person in relation to a contravention of housing (including mobile homes) or landlord and tenant law (and, in so far it relates to the housing or landlord and tenant law, any contravention of any enactment relating to public or environmental health)

4.2 Since an applicant for a licence must disclose his/her and any proposed manager's wrong-doings, if any, a local authority should normally have sufficient information to decide a person's fitness based on the application. If the local authority is satisfied that it has sufficient information (being that supplied in

connection with the application) to make a determination, it may require the applicant to provide further details. In some cases it may wish to invite the applicant and/or the manager to a meeting to discuss and clarify any issues arising.

4.3 If an applicant provides false or misleading information about any wrong-doings, he commits an offence and can receive an unlimited fine upon summary conviction. If an applicant has provided false or misleading information (without reasonable excuse), that would be a clear indication of his unfitness. The Welsh Government in its 'Advice for Local Authorities – August 2014' indicates that local authorities should not routinely make police checks or request information on criminal convictions. It states that this is particularly the case because any evidence relating to criminal convictions is only part of the picture in assessing a person's fitness and that a local authority should only conduct such checks if it has a good reason for doing so

4.4 Where a business or organisation is to be the licence holder or manager, a 'fit and proper person' declaration signed by the company secretary or other responsible person is needed on behalf of the company, partnership or trust. Any employee who is involved with the management of the mobile home site can be regarded as an 'associate'.

4.5 In the case of an applicant who has a relevant conviction which was correctly declared, a judgement must still be made taking account of other information available about the applicant and if necessary by interview to assess whether he or she is able and willing to operate in a manner regarded by the local authority as fit and proper. In considering past actions of the applicant and the conviction, the local authority should consider whether any problems are likely to occur again and whether they are likely to affect the applicant's management and conduct on the site. In particular, the nature of any agency arrangement should be taken into account.

5. Completion

5.1 Where a licence holder under the Mobile Homes (Wales) Act 2013 contravenes the fit and proper person test during the period of the licence, a local authority may apply to the Residential Property Tribunal Wales for an order revoking the site licence. A person guilty of an offence is liable on conviction to an unlimited fine.

5.2 Similarly, the fit and proper person status can be removed from managers and anyone else involved in the management of the site. It would then be a breach of a licence condition if that person continues in that capacity.

If the local authority is however satisfied that the applicant is a fit and proper person to manage the site then Section 3 of the application for a site licence is completed.

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