MUNICIPAL YEAR 2015 - 2016

LICENSING COMMITTEE 20th October 2015

REPORT OF: Service Director Public Health & Protection

Part I	Item No. 4
	of 'Intended Use/ ing Policy' for riages

1. PURPOSE OF THE REPORT

The purpose of the report is to:

- Consider the risk to public safety presented by the remote trading of Hackney Carriages in other Authority areas;
- Consider an appropriate policy to mitigate such risk.

2. RECOMMENDATION

Members are requested to: -

- (i) Note the content of the report which is provided for information;
- (ii) Support the proposal of the Director of Public Health & Protection for the change of policy advocated in respect of intended use/remote trading of Hackney Carriages;
- (iii) Note the proposal of the Director of Public Health & Protection to undertake a short consultation with the licensed trade on the draft policy, with the outcome to be reported to a future meeting of this Committee.

3. BACKGROUND

The licensing regime which incorporates Hackney Carriage & Private Hire Vehicles exists to provide a control over a trading activity, where the absence of such control could present a significant risk to public safety.

On this basis, there are a number of controls which govern the suitability of persons issued with licences and also how those licences operate. In very general terms, Hackney Carriages can be hailed from the highway (or pre booked) and Private Hire Vehicles MUST always be pre booked.

3.1 Legal Precedent

In 2008 a High Court Judgement – Newcastle City Council v Berwick upon Tweed established a principle that it was lawful for Hackney Carriages to trade as Private Hire Vehicles, (accepting only pre bookings) in a local authority area other than that which issued the licences, (the home authority).

The judgement in itself was acceptable, in that many licensed vehicles trade to some extent in areas other than the home licensing authority where licences are issued. For example, residents of Rhondda Cynon Taf may wish to travel to or from neighbouring Boroughs, such as Cardiff, Vale of Glamorgan, Caerphilly, Newport, or Neath Port Talbot and this generally does not present a problem to the trade or the travelling public, being a legitimate aspect of a journey.

However, the case precedent arose as a result of a challenge from a licensing authority (Newcastle City Council) against a neighbouring licensing authority (Berwick Upon Tweed) where there was a considerable disparity between standards of vehicles, conditions of licence and fees.

There were a disproportionate number of licence applications, (both personal and vehicle), in Berwick upon Tweed, where applicants sought to take advantage of less stringent conditions of licence and preferential fees, although vehicles and drivers were actually intending to trade exclusively in Newcastle.

The position of Berwick upon Tweed was that the less stringent conditions and lower fees applied to their licences were proportionate to the local conditions and supported a viable fleet in their Borough.

The position of Newcastle City Council was that the less stringent conditions and lower fees detracted from their ability to promote public safety in a city centre environment, with a consequential risk to the travelling public.

As a result of the decision that such activity was indeed lawful, several licensing authorities identified 'out of area' vehicles trading in their Boroughs and took steps to eliminate such trade. This primarily affected larger cities, but more recently all types of areas have been affected.

The principle of local control is important and a licensing authority will set out its regime to ensure that its statutory obligations to provide a service are met, subject to the specific needs its area – with the understanding that such vehicles and drivers will trade primarily within that area.

3.2 Risk to Public Safety

The key risk to public safety is that only the home licensing authority has enforcement powers to deal with any offences/anomalies and where trading

areas are a considerable distance apart this undermines effective enforcement & control to the detriment of the travelling public.

It is accepted that, in principle, that this activity is NOT unlawful, but it can present certain difficulties which have the potential to compromise public safety in the following manner:

- the Licensing Authority which issues the licence will not easily keep their licensed fleet under proper control;
- enforcement powers have to be exercised at a distance;
- the Licensing Authority in whose district a remote vehicle has chosen to operate has no enforcement powers over the vehicle in its area;
- the remote vehicle will not be subject to the same conditions & By-Laws as local vehicles
- the concept of local control is undermined

Discretion is afforded to a Licensing Authority as to whether to grant a licence - or not. The exercise of that discretion should be considered in the context of public interest, for the protection of public safety in a manner consistent with the local policy objectives of the issuing authority – without adverse impact to neighbouring Authorities.

3.3 The Rhondda Cynon Taf Position

A review of out of area licensees has been conducted and as at 28th September 2015, the position is as follows:-

Area	No. of Vehicle	No of Driver	Comment
	Licences	Licences	
Cardiff	25	57	Licensed Drivers
			Leasing vehicles
			from RCT Licensees
			and trading in RCT
Newport	13	6	All vehicles licensed
			to one
			operator/licensee
Bridgend	1	7	
Caerphilly	13	4	All vehicles licensed
			to one
			operator/licensee
Merthyr	3	5	
Bristol	2	3	
Insurance Companies with Registered Offices in other areas.	6		Use of replacement vehicles following accident damage
33.33			etc

Having examined the circumstances and applications of various licensees, there is limited concern that the practice of 'out of area' /remote trading is prevalent for Rhondda Cynon Taf vehicles & drivers at this time. However, there is some concern with persons making application from the Bristol area, given the distance to the boundaries of Rhondda Cynon Taf and this is reinforced by information received from Bristol City Council.

Officers are currently liaising with Bristol colleagues to consider licences in force, together with evidenced trading practice. (It is possible that such licences may be the subject of separate review by this Committee.) In order to illustrate the level of concern from larger Authorities who are subject to the practice of remote trading, a copy of a letter sent by Bristol City Council to several Authorities is reproduced for information **as Appendix A**

(NOTE: This letter DOES NOT refer to Rhondda Cynon Taf CBC and is reproduced for information only.).

There is currently no provision that requires an applicant to live within the Borough where application is made and to do so may be considered disproportionate. However, it is possible to consider this factor as an element of the 'fit & proper person' criteria when determining applications for grant of licences.

3.4 Way Forward

Having conducted a review of existing licensees and concluded that this is not a major issue <u>at this time</u> for Rhondda Cynon Taf, it is prudent to consider the future.

Best practice advocates that prevention is better than cure and it is clearly preferable to apply closer scrutiny to applications, with the prospect of challenge prior to grant as opposed to review of a licence when trading activity becomes a problem.

In order to assist in this challenge process, it is proposed that the <u>'Technical Specification/Conditions of Licence'</u>, <u>with specific reference to Hackney Carriages</u> be amended to reflect a structured policy statement for dealing with appropriate applications. This will support any subsequent challenges to applications that may need to be made and also strengthen any challenge at appeal.

(Members are reminded that an appeal has already been lodged in respect of a revocation of licence, primarily due to remote trading, determined at the meeting held 2nd September 2015)

A copy of the draft policy proposal is reproduced for information as Appendix B.

3.5 Conclusion

It is considered to be in the wider public interest to recognise the potential for out of area/remote trading of Hackney Carriages to compromise public safety and to take steps to prevent it. It is proposed that the draft policy be the subject of a short consultation with the licensed trade and that the outcome of the consultation be the subject of a further report to this Committee.

In the interim period, Members may be required to review licences of persons who are identified as trading remotely 'out of area' and presenting a risk to public safety. Whilst the adoption of a formal policy will make the process more robust for the future, legal advice confirms that any reviews of licences that may be required can still proceed in the interim period, (prior to formal adoption of the policy), in order to satisfy the wider public interest test.

Consequently it is recommended that Members:

- (i) Note the content of the report which is provided for information;
- Support the proposal of the Director of Public Health & Protection for the draft policy advocated in respect of out of area/remote trading of Hackney Carriages;
- (iii) Note the proposal of the Director of Public Health & Protection to undertake a short consultation with the licensed trade on the draft policy, with the outcome to be reported to a future meeting of this Committee.

Paul J Mee
Service Director Public Health & Protection

APPENDIX A



reply to:

P.S. POWELL

telephone:

01179 - 222293

fax:

01179 - 223436

e-mail:

pauline.powell@bristol.gov.uk

our ref:

PSP/CA3.1869

your ref:

date:

02 March 2015

Dear Sir

Hackney Carriages licensed by your authority but being operated in Bristol

I am writing to you in your capacity as Monitoring officer in connection with your Council licensing hackney carriages and hackney carriage drivers in a way that appears to be contrary to case law. The practice is detrimental to public safety and protection in Bristol so I should be grateful if you would prioritise this matter.

You will be aware that Bristol is a large city. As such it is not surprising that high standards have been established in respect of the licensing of hackney carriages and drivers. In regard to the vehicles this is in order to ensure, among other things, that they are: suitable to transport our diverse population, safe, comfortable and do not disproportionately impact on air quality levels. In respect of the licensing of drivers procedures and standards of fitness seek to ensure, among other things, that the drivers are fit and proper persons able to assist passengers, both inhabitants of Bristol and visitors to our city, by providing a high quality and professional service, including transportation of vulnerable children and adults who are at particular risk of harm from those who would abuse their position of trust to engage in opportunistic crime.

The means by which the council seeks to achieve these outcomes include an expectation that all Hackney carriages will be:-

- coloured Bristol blue:
- comfortable and accessible to wheelchair users
- new on first licence application, with a minimum of four doors and suitable for carrying passengers safely, comfortably and with easy access and egress
- compliant with European community whole vehicle type approval

Legal Services PO Box 3176 Bristol City Council BS13 9FS Sanjay Prashar, Interim Service Director - Legal Website www.bristol.gov.uk

DX 7827 Bristol



Applicants for drivers licenses are expected to provide information to prove that they satisfy the fit and proper person test to the standard expected in Bristol, including:-

- certificate of medical fitness;
- satisfactory disclosure and barring service check, which is assessed against the council's robust policy on the impact of offending conduct for taxi drivers;
- satisfactory driver information provided by the DVLA;
- DSA pass certificate;
- knowledge test training certificate;
- BTEC road passenger vehicle driving certificate;
- world host training certificate

The council has in place procedures under which those applicants whom officers consider to fall short of the standard expected by the council are afforded the right to a hearing, usually before a committee or subcommittee of elected members, who will determine whether to grant or refuse their application for a licence.

The council therefore makes strenuous efforts to ensure public safety and protection of residents and visitors. Our aim is that they will enjoy a high standard of service when travelling around the city in what is essentially quasi-public transport.

You will readily appreciate that it would be a significant concern if vehicle proprietors and their drivers could avoid these well considered protective measures (and/or the relatively high licence fees needed to support them) merely by seeking a licence from other authorities with less stringent standards and consequently lower licence fees and then plying their trade in Bristol without the agreement of this Council.

The consequence of lower standards of regulation can be serious as events in Rotherham make clear. Bristol's fit and proper person policy has developed over many years in full consultation with experts, including those concerned with child protection, in order to leave this council in the best position to avoid licensing those with criminal motives who would take the opportunity to abuse their position of trust. It will be obvious that any council that licences those wishing to work wholly or mainly in another local authority's area risks significantly undermining public protection in that other area. I am told that your authority falls into this category in that you are licensing vehicles and drivers who are mainly working in Bristol and thereby sidestepping our robust standards.

In making these observations no criticism is intended of the licensing standards set by your council. The legislation is deliberately framed to enable local councils to set conditions as they see fit for their area. However, the fact that vehicle proprietors and drivers are apparently securing hackney carriage licences in your area for the main or even sole purpose of using that licence to engage in private hire work in Bristol is a real and pressing concern. Bristol's carefully developed regulatory framework is being significantly undermined by what is happening in other councils and we want to work with you to quickly regularise the position.

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I am enclosing for your information a copy of the judgement of Mr Christopher Symons QC in the case of The Queen on the application of Newcastle City Council-and-(1) Berwick-upon-Tweed Borough Council and others. I particularly draw your attention to paragraph 31:-

"in my judgement a local authority, properly directing itself, is entitled, and indeed obliged, to have regard to whether the applicant intends to use the licence to operate a Hackney carriage in that authority's area and also to have regard to whether in fact the applicant intends to use that hackney carriage predominantly, or entirely, remotely from the authority's area. This should result in each local authority licensing those hackney carriages that will be operating in their own area and should reduce the number of Hackney carriages which operate remotely from the area where they are licensed"

and further at paragraph 34:-

"... it would seem to me to be difficult for any local authority to justify exercising their discretion by granting a hackney carriage licence to an applicant when the authority knows that the applicant has no intention of using that licence to ply for hire in its area. This is particularly so when the local authority also knows that the intention is to use the Hackney carriage in an area remote from that authority's area."

You will note that the court made a declaration (see paragraph 59) including that:-

(i) in the proper exercise of its statutory discretion under section 37 of the Town Police Clauses Act 1847 a licensing authority is obliged to have regard (a) to whether the applicant intends that Hackney carriage if licensed will be used to ply for hire within the area of that authority, and (b) whether the applicant intends that hackney carriage will be used (either entirely or predominantly) for private hire remotely from the area of that authority."

The council has evidence that your authority is one of those to whom certain Bristol-based applicants have applied for and then obtained a hackney carriage licence and then use that licence for private hire work mainly or predominantly in the Bristol area. The scale of the problem is not insignificant; it is believed that there are between one and two hundred 'out of town' hackney carriages being used to satisfy private hire bookings in our area and many more out-of-town licensed drivers driving them. Some of the drivers licensed have sought authorisation elsewhere having failed to satisfy the fit and proper person test in Bristol and not one of the vehicles that have been licensed by other councils meets the standards expected in this city. Not only does this undermine Bristol's public protection work but it also directly impacts upon the right of those who do meet the standards to use their properly obtained authorisation for their livelihood. You will readily appreciate that individuals who are properly licensed enjoy rights under the European Convention on Human Rights. Article 1 of protocol 1 and article 8 in particular appear to be engaged by the actions of councils who licence vehicles and drivers when they know, or should know, that the applications ought to have been firmly rejected leaving those who have been

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properly licensed free to earn their living unimpeded by the actions of those who do not have the required licence from Bristol.

My client expects your council to work with us to rectify this sorry state of affairs without delay. We expect:-

- (i) that your council will urgently review all current licences issued to applicants (whether for vehicle or driver licenses) giving a Bristol address (or giving an address elsewhere but it is known or suspected that they are mainly working in Bristol) and require the licensees to produce evidence that they are using the licence mainly or predominantly in your area;
- (ii) that in respect of those who are unable or unwilling to produce such evidence, the licence or licences issued will be revoked;
- (iii) that your council will review its application procedures to ensure no recurrence;
- (iv) that your council will provide me with an extract from your hackney carriage register of all proprietors or part proprietors with a Bristol address
- (v) that your council will provide copies of all driver licence application forms that resulted in the grant of a licence to an applicant with a Bristol address

I hope this situation can be remedied quickly and without the need for Bristol to engage in litigation as was necessary in the Newcastle case referred to above and similar cases. I look forward to hearing from you shortly what your council intends to do.

Yours Faithfully,

Sanjay Prashar Service Director-Legal and Monitoring Officer for the City Council of Bristol

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DRAFT Proposal

Amendment to 'Technical Specification/Conditions of Licence for Hackney Carriage & Private Hire Vehicles'

'Intended Use' /Remote Trading of Hackney Carriages

1. Introduction

- 1.1The purpose of this policy is to set out how the Licensing Authority will deal with applications for grant, renewal and transfer of Hackney Carriages following the High Court Judgement Newcastle City Council v Berwick upon Tweed [2008] EWHC 2369 (Admin) and its impact on remote trading of Hackney Carriages.
- 1.2 The Council will determine each application on its merits, but will place public safety above all other considerations, seeking to maintain local control in respect of its licensed fleet.
- 2. Applications for the GRANT/RENEWAL of a Hackney Carriage Licence
- 2.1 Applicants for licence will be expected to demonstrate a bona fide intention to trade primarily within the administrative area of Rhondda Cynon Taf County Borough Council under the terms and conditions of the licence for which application is being made. There will be a presumption to **REFUSE** an application for a Hackney Carriage Licence for persons who **DO NOT** intend to trade to a material extent within the administrative area of Rhondda Cynon Taf County Borough Council.
- 2.2 Where the applicant intends to operate to a material extent in Rhondda Cynon Taf and the intention is to trade in another Authority area also for a substantial amount of time, (and it appears that the purpose of the legislation and public safety will be frustrated), there will be a presumption REFUSE the application.
- 3. TRANSFER of Interest in licensed Hackney Carriage (where an existing licensed vehicle is transferred from one person to another)
- 3.1 Section 49 of the Local Government (Miscellaneous Provisions) Act 1976 requires that the proprietor of the licensed vehicle who transfers his interest to another MUST, within 14 days of the transfer, give written notice to the Council of the name and address of the Transferee of the Hackney Carriage, (i.e. the person receiving the licence). The Council has no power to refuse to register the new proprietor and provided that the requisite Notice of Transfer has been given in accordance with section 49 of the Local Government (Miscellaneous Provisions) Act 1976, in the format required by the Authority, the Transferee of a licensed Hackney Carriage will be registered as the current licensee.

- 3.2 Transferees of licences will be expected to have a bona fide intention to operate within the administrative area of Rhondda Cynon Taf County Borough Council under the terms and conditions of the licence in respect of the vehicle being transferred. Transferees should note the obligation under section 73 of the Local Government (Miscellaneous Provisions) Act 1976 to give to an authorised officer information which may reasonably be required for the purpose of carrying out their functions under the legislation. Where there is a failure to provide the requested information; the Council will consider exercising its powers of suspension of the licence under section 60 of the 1976 Act until such information is forthcoming.
- 3.3 Where the Transferee of a licensed Hackney Carriage:
 - Proposes to operate remotely from the administrative area of Rhondda Cynon Taf County Borough Council;
 - has no intention to trade to a material extent within the administrative area of Rhondda Cynon Taf County Borough Council;
 - o and/or intends to trade in another Authority area also for a substantial amount of time;
 - and it appears that the purpose of the legislation and public safety will be frustrated,

there will be a presumption that the licence will be revoked.

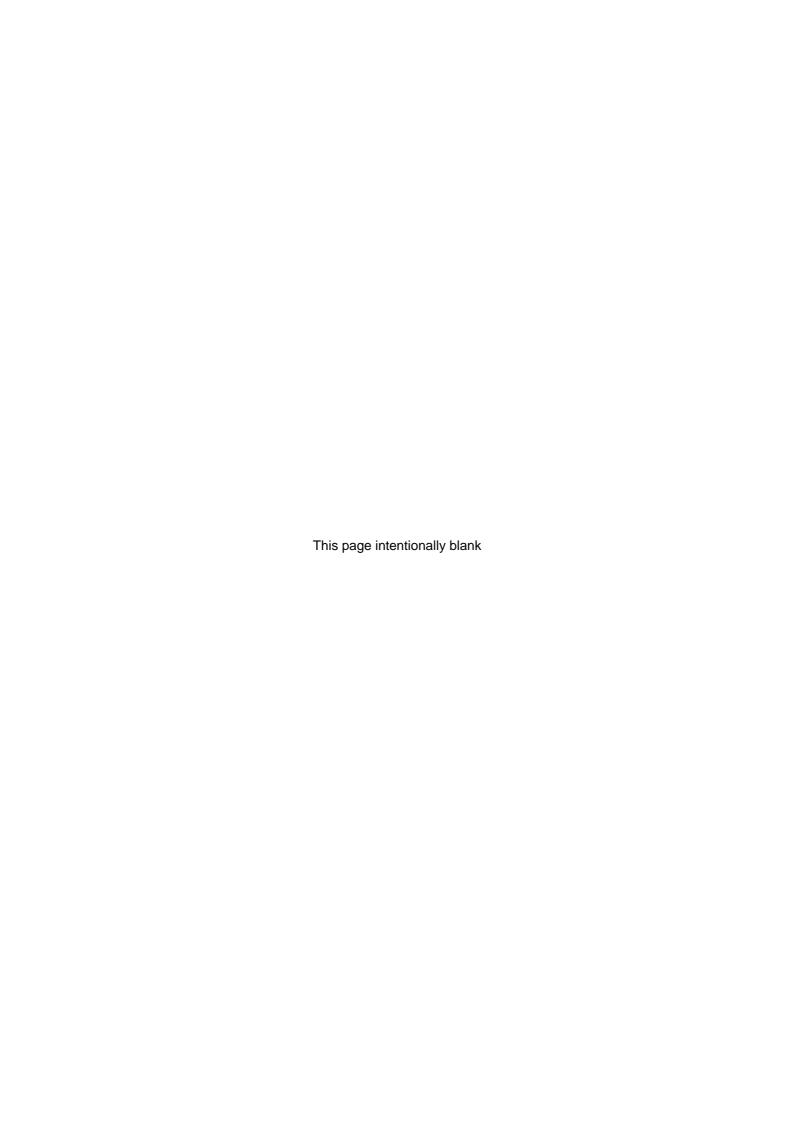
4. Revocation of licence

Where a licence has been granted under the terms that the applicant intends to operate to a material extent within the administrative area of Rhondda Cynon Taf County Borough Council but is subsequently found to be trading remotely, in another Authority area for a substantial amount of time, (and it appears that the purpose of the legislation and public safety will be frustrated), **there will be a presumption that the licence will be revoked.**

5. Exceptional circumstances

Each application will be decided on its merits. However the presumptions for refusal or revocation of licence for remote trading in an Authority other than Rhondda Cynon Taf will be rebuttable in exceptional circumstances. It will be a matter for the applicant/licensee to demonstrate exceptional circumstances and to satisfy the Licensing Committee that it would not frustrate the purposes of the legislation or compromise public safety if the licence were granted, renewed, not suspended or revoked (as the case may be).

ENDS



MUNICIPAL YEAR 2014-2015

LICENSING COMMITTEE 20 October 2015

REPORT OF:

SERVICE DIRECTOR
PUBLIC HEALTH AND PROTECTION

Agenda Item No.5

LICENCES AND REGISTRATIONS ISSUED UNDER THE PROVISION OF DELEGATED POWERS

PURPOSE OF THE REPORT

I append hereunder details of such licensing and registrations issued from the 24th August 2015 to 4th October 2015 within the following services areas:-

Petroleum Explosives Miscellaneous

Members are requested to note the report.

Members will be aware that on the basis of legal advice, Personal Licences issued will be reproduced as a Part II item.

> <u>Paul J Mee</u> <u>Service Director Public Health and Protection</u>

ANIMAL ESTABLISHMENT LICENCES

Licences issued for the period 24th August 2015 to 4th October 2015

Applicants Name	Premises Address	Licence Type	Date Granted
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Mr Edwards	Valley Pets and Aquatics	Pet Shop Licence	28 August 2015

38 Bryncelyn Unit 4

CF46 6HN

Nelson Cwm Cynon Business

Centre

Penrhiwceiber

Mountain Ash

CF45 4ER

Miss Allen In The Dog House Animal Boarding 9 September 2015
Establishment Licence

26 Palalwyf Avenue 26 Palalwyf Avenue

Pontyclun Pontyclun

CF72 9EG CF72 9EG

PREMISES	ADDRESS	LICENSEE	NATURE OF EXPLOSIVES
Aldi Stores Limited	Unit 3 Glamorgan Vale Retail Park Talbot Green Pontyclun CF72 8RP	Aldi Stores Ltd	
Aldi Stores Ltd	Unit 2 Midway Retail Park Upper Boat Pontypridd CF37 5BL	Aldi Stores Ltd	
Asda Living	Unit 4 Glamorgan Vale Retail Park Talbot Green Pontyclun CF72 8RP	Asda Stores Limited	
Asda Stores Ltd	Ffordd Tirwaun Cwmbach Aberdare CF44 0AH	Asda Stores Limited	
Asda Stores Ltd	Llwynypia Road Llwynypia Tonypandy CF40 2JQ	Asda Stores Limited	

Personal Registration Piercing Approved between: 24th August 2015 to 4th October 2015

REFERENCE APPLICANT NAME **PREMISES ISSUED DATE**

Mrs Sarah Iveson 455890 La Moda Hair Design

> 17 Sardis Road Pontypridd CF37 1DX

2nd September 2015

PREMISES	ADDRESS	LICENSEE	NATURE OF EXPLOSIVES
The Firework Shop/AL Griffiths	Common Junction Sidings Ely Valley Road Ynysmaerdy Pontyclun CF72 8LN	Mr Andrew L Griffiths	
R L Gibbons	49 Tylacelyn Road Penygraig Tonypandy CF40 1JU	Mr Robert Gibbons	
KTA General Store	15-16 Llewellyn Street Trecynon Aberdare CF44 8LP	Mr Kalairupan Pararajasingam	
Lidl UK GmbH	East Road Tylorstown Ferndale CF43 3HJ	Lidl UK GMBH	
Lidl Uk Gmbh	Riverside Yard High Street Treorchy CF42 6EJ	Lidl UK GMBH	

PREMISES	ADDRESS	LICENSEE	NATURE OF EXPLOSIVES
Lidl UK GMBH	Cymmer Road Porth CF39 9BW	Lidl UK GMBH	
Lidl UK GmbH	Gadlys Road Gadlys Aberdare CF44 8AD	Lidl UK GMBH	
Morrisons	Pontypridd Road Porth CF39 9BA	W M Morrison Supermarkets Plc	
One Stop Stores Ltd	25-28 Lewis Street Aberaman Aberdare CF44 6PY	One Stop Stores Ltd	
Patel's General Store	111 Garth Avenue Glyncoch Pontypridd CF37 3AD	Mr Vinod Patel	
Sainsburys	Brown Lennox Retail Park Ynysangharad Road Pontypridd CF37 4DA	Sainsbury's Supermarket Limited	

PREMISES	ADDRESS	LICENSEE	NATURE OF EXPLOSIVES
Tesco Extra Stores Ltd	Newpark District Shopping Centre Talbot Green Pontyclun CF72 8RE	Tesco Stores Ltd	
Tesco Pontypridd Extra	Gelli Hirion Industrial Estate Rhydyfelin Pontypridd CF37 5SN	Tesco Stores Ltd	
Tesco Stores Ltd	Depot Road Gadlys Aberdare CF44 8DL	Tesco Stores Ltd	
What Stores Ltd	Hirwaun Road Penywaun Aberdare CF44 9LL	What Aberdare Ltd	

Fireworks and Explosives
Licences granted from 24th August 2015 to 4th October 2015

PREMISES ADDRESS LICENSEE NATURE OF EXPLOSIVES

What Stores Ltd

Unit 1A

What Aberdare Ltd

Aberaman Industrial Estate

Aberaman Aberdare CF44 6DA

ANIMAL ESTABLISHMENT LICENCES

Licences issued for the period 24th August 2015 to 4th October 2015

Licence Type

Date Granted

Premises Address

1 Waunlai Cottages

Collenna Road

Tonyrefail

CF39 8YS

Porth

Applicants Name

Gilcoru Kennels

Tonyrefail

CF39 8YS

Porth

1 Waunlai Cottages

Mrs Rual	Gilcoru Boarding Kennels&Cater	Dog Breeding Licence	22 September 2015