

# LICENSING COMMITTEE

Wednesday, 23rd June, 2021  
6.30 pm





# LICENSING COMMITTEE

## COUNCIL CHAMBER, BURNLEY TOWN HALL

Wednesday, 23rd June, 2021 at 6.30 pm

Members are reminded that if they have detailed questions on individual reports, they are advised to contact the report authors in advance of the meeting.

Members of the public may ask a question, make a statement, or present a petition relating to any agenda item or any matter falling within the remit of the committee.

Notice in writing of the subject matter must be given to the Head of Legal & Democracy by 5.00pm three days before the meeting. Forms can be obtained for this purpose from the reception desk at Burnley Town Hall, Manchester Road or at the Contact Centre, Parker Lane, Burnley or from the web at: <http://burnley.moderngov.co.uk/ecCatDisplay.aspx?sch=doc&cat=13234> . You can also register to speak via the online agenda. Requests will be dealt with in the order in which they are received.

Due to Public Health guidance re social distancing there is a limit on the number of members of the public who can attend the meeting. You are advised to contact [democracy@burnley.gov.uk](mailto:democracy@burnley.gov.uk) in advance of the meeting.

### **AGENDA**

#### **1) Apologies**

To receive any apologies for absence.

#### **2) Minutes**

To approve as a correct record the Minutes of the last meeting as enclosed.

5 - 8

#### **3) Additional Items of Business**

To determine whether there are any additional items of business which, by reason of special circumstances, the Chair decides should be considered at the meeting as a matter of urgency

#### **4) Declaration of Interest**

To receive any declarations of interest from members relating to any item on the agenda in accordance with the provision of the Code of Conduct and/or indicate if S106 of the Local Government Finance Act 1992.

#### **5) Exclusion of the Public**

To determine during which items, if any, the public are to be excluded

from the meeting.

**6) Public Question Time**

To consider questions, statements or petitions from members of the public.

**7) Street trading Designation - Rossendale Road, Burnley** 9 - 30

To consider the re-classification of part of Rossendale Road, Burnley as a prohibited street for the purposes of street trading.

**8) Gambling Act Policy-Approve for Consultation** 31 - 66

To approve the draft policy to be circulated for statutory consultation.

**9) National Taxi Standards-Update** 67 - 114

To seek approval for changes to licensing conditions required to deliver compliance with the Department for Transport (DfT) Statutory Taxi and Private Hire Vehicle Standards.

**10) Vehicle Standards Enforcement Options** 115 - 120

To consider the options available to improve vehicle standards and to receive an update on the request to consider an extension to vehicle licenses.

**11) Review of Interim Driver Licence Requirements** 121 - 122

To review the relaxation of taxi driver application requirements to accommodate covid-secure measures as agreed by the Committee.

**12) Appointment of Sub Committees** 123 - 124

To establish a Licensing Act 2003 sub-committee, and a Taxi Licensing sub-committee; and to appoint members to those sub-committees.

**MEMBERSHIP OF COMMITTEE**

Councillor Jeff Sumner (Chair)  
Councillor Arif Khan (Vice-Chair)  
Councillor Howard Baker  
Councillor Ivor Emo  
Councillor Beatrice Foster  
Councillor Shah Hussain  
Councillor Karen Ingham  
Councillor Anne Kelly

Councillor Shbana Khan  
Councillor Sehrish Lone  
Councillor Lorraine Mehanna  
Councillor Emma Payne  
Councillor Asif Raja  
Councillor Don Whitaker  
Councillor Andy Wight

**PUBLISHED**

Tuesday, 15 June 2021

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## LICENSING COMMITTEE

**THE MEETING WAS A REMOTE MEETING HELD IN ACCORDANCE WITH THE REGULATIONS UNDER SECTION 78 OF THE CORONAVIRUS ACT 2020.**

**Thursday, 4th February, 2021 at 6.30 pm**

### PRESENT

### MEMBERS

Councillors A Khan (Chair), F Cant (Vice-Chair), H Baker, P Campbell, I Emo, P Gill, S Hall, S Hussain, M Lishman, A Raja, J Sumner and M Townsend

Councillor Baker joined the meeting at 6.36pm

Councillor Campbell joined the meeting at 6.52pm

### OFFICERS

Karen Davies	– Environmental Health and Licensing Manager
James Astin	– Workplace Compliance Officer
David Talbot	– Senior Solicitor
Chris Gay	– Governance Manager
Christine Wood	– Democracy Officer
Alison McEwan	– Democracy Officer
Eric Dickinson	– Democracy Officer

### 13. Apologies

Apologies were received from Councillor Charlie Briggs.

### 14. Minutes

To minutes of the previous remote meeting of the Licensing Committee held on Thursday, 12<sup>th</sup> November 2020 were approved as a correct record.

### 15. Additional Items of Business

There were no additional items of business.

## **16. Declaration of Interest**

There were no declarations of interest.

## **17. Exclusion of the Public**

There were no items of business requiring members of the public to be excluded from the meeting.

## **18. Public Question Time**

Mr Usman Arif addressed the Committee under the Council's Right to Speak Policy in relation to the age limit for private hire and black cabs that were due to expire in 2021.

Mr Usman requested that consideration be given to extending the expiration date for vehicles due to expire in 2021 for an extended period of 12-18 months. Mr Usman outlined to the Committee grounds for the request.

The Chair advised Mr Usman that the matter would be referred to Council Officers, in consultation with the Taxi Task Group. The Chair also advised that the Task Group included trade representatives and was the appropriate forum in which to consider the request.

## **19. Taxi Licence Fees 2021**

The Environmental Health and Licensing Manager submitted a report to the Committee to request that the level of taxi licence fees effective from January 2021, be determined.

As the year's activity on taxi related work had been largely in response to the pandemic, the Committee was advised that it would be inappropriate to pass those costs over to the taxi trade, and that fees should remain unchanged.

The Chair welcomed the recommendation and referred to the difficulties experienced by the taxi trade during the pandemic.

### **DECISION**

That in the light of the Covid-19 pandemic, and the significant changes to service delivery since March 2020, taxi fees remain unchanged for 2021.

## **20. Department for Transport Statutory Taxi & Private Hire Vehicle Standards**

The Licensing and Compliance Officer submitted a report to the Committee to:

1. Provide the Committee with an overview of actions required to deliver compliance with the Department of Transport (DfT) `Statutory Taxi and Private Hire Vehicle Standards`; and
2. To seek approval of the Committee of the proposals as outlined in the report.

The Committee was advised that on 21<sup>st</sup> July 2020, the DfT had published 'Statutory Taxi and Private Hire Vehicle Standards' (The DfT Standards) and that the Standards are applied to Local Authorities having regard to the Policing and Crime Act 2017 which enabled the Secretary of State for Transport to issue statutory guidance to Local Authorities as to how taxi and private hire licensing should be undertaken to protect children and vulnerable adults when using taxis and private hire vehicles.

A copy of the 'DfT Statutory Taxi and Private Hire Vehicle Standards – Burnley Borough Council's Position' was attached to the report at Appendix A. The Committee was advised that the Council will need to review its hackney carriage and private hire policies and procedures so that as a minimum they meet The DfT Standards but that any local standards must be appropriate for Burnley Borough Council's local needs, and that the Council would need to be transparent in explaining the reason for the standards it adopts.

The Committee was also advised that the original intention had been to include an estimated time-line for the development and implementation of each element of the standards, however, due to the uncertainties brought about by the pandemic, the proposal was that an update of the progress of the review work would be brought to Committee alongside matters for decision. This was to ensure that the Committee was kept updated on progress and that regular updates could be provided to the DfT as required. The parts of the DfT guidance that related to DBS checks had been prioritised, and would be the subject of an early report to the Committee

Members made the following points and received the following responses:

Councillor Howard Baker – Regarding the policy implications at paragraph 11 “the Department expects these recommendations to be implemented unless there is compelling local reason not to”, If we don't respond quickly, will it be assumed that we are following the recommendations because we have not responded?

*A document has been submitted providing a brief outline of areas we are looking at. There is not an expectation to deliver immediately because there is a lot of work to do. The Council must take the standards into account and must give clear reasons for departing from the policy. The Department for Transport do not have enforcement powers if we do not comply but there are administrative functions which will increase workload, but most of the guidelines are reasonable requests. We would need to provide good reason for not complying. When we are able to do so, we will report to Committee periodically for consultation and agreement, if the Conviction policy requires tweaking. We are doing what we can do that does not require the approval of the Committee.*

Councillor Margaret Lishman – It would be helpful to have a list of priority order brought to Committee in which tasks should be tackled and a time frame of how this would be accomplished to provide a structured way tasks are to be approached.

*There are points in the appendices that need to be prioritised. If you require a specific list, I will review the document and do that.*

Councillor Mark Townsend – It has always been that safety and protection of public is top priority, especially children and vulnerable adults. I fully support that this is carried out in a priority order as suggested by Councillor Lishman.

## DECISION

1. That the Committee approves the report; and
2. That a priority task list as suggested by Councillor Lishman and supported by Councillor Mark Townsend be submitted to a future meeting of the Licensing Committee.

### **21. Retirement of David Talbot, Senior Solicitor**

On behalf of the Committee, Members expressed thanks and best wishes for the future to David Talbot, Senior Solicitor at Burnley Borough Council who would be retiring from the Council in March 2021.



## REPORT TO LICENSING SUB-COMMITTEE



<b>DATE</b>	<b>23<sup>rd</sup> June 2021</b>
<b>PORTFOLIO</b>	<b>Community &amp; Environment</b>
<b>REPORT AUTHOR</b>	<b>Karen Davies</b>
<b>TEL NO</b>	<b>01282 425011</b>
<b>EMAIL</b>	<b>kdavies@burnley.gov.uk</b>

### Street Trading – Designation of Streets

#### PURPOSE

1. To consider a request from the Head of Green Spaces and Amenities (HGSA) to redesignate Rossendale Road, Burnley as a Prohibited Street for the purposes of street trading, for a distance of 25m to either side of the cemetery gates. See Plan at Appendix A.

#### RECOMMENDATION

3. Members can agree to either:
  - Advertise, in accordance with the statutory procedure, an intention to pass a resolution that Rossendale Road be redesignated a Prohibited Street for 25m either side of the cemetery gates, See Appendix B, or
  - Retain the street as a consent street and introduce a condition restricting the hours of trading at the location, or
  - Take no further action

#### REASONS FOR RECOMMENDATION

4. To respond to the request for consideration of the redesignation of the street.

#### SUMMARY OF KEY POINTS

5. The Council has adopted the provisions of the Local Government (Miscellaneous Provisions) Act 1982 in relation to street trading. The Council's functions under the scheme are delegated to Licensing Committee. Streets are currently designated either Consent Streets, where trading is permitted with a consent, or Prohibited Streets, where trading is prohibited. Consents are subject to conditions in certain streets. The guidance relating to the scheme is provided at Appendix C.

- 6 Rossendale Road is currently a Consent Street without conditions. The HGSA reports concerns in relation to the use of the cemetery entrance by street traders and has formally requested consideration of redesignation to a Prohibited Street to remove the permission to trade there.

The HGSA submission is as follows:

*I request that the redesignation to a prohibited street for the following reasons that relate to the street trading guidance notes:*

**1.1. Nuisance and/or annoyance shall not be caused by the consent holder or any of his employees to persons using the street or otherwise.**

*The location of street trading vehicles is not suitable in front of the main entrance to Burnley cemetery. The obstruction of the entrance causes a nuisance to cemetery visitors and traders parks in one (or more) of the spaces that is designated for cemetery visitors.*

*The tatty appearance of the trader's stall/vehicle is not appropriate to the main entrance to the cemetery.*

**1.2. No obstruction of any street or right of way or danger to the public shall be caused by the consent holder or any of his employees.**

*The trader is parked on the pavement and causes a visual obstruction and restricts sightlines for cars pulling out of Cemetery Lane onto Rossendale Road at this junction, which is adjacent to a pedestrian crossing*

*Customers frequently park their cars directly in the entrance to the cemetery whilst they purchase articles. This obstructs access to the cemetery for funeral corteges, cemetery visitors and office staff.*

*Customers frequently park on Cemetery Lane, obstructing the two-way flow of traffic at the junction with Rossendale Rd. This causes particular problems for funeral corteges arriving and departing. These can often consist of up to 20 cars driving either in, or out of the cemetery for a burial service or driving up and down Cemetery Lane to the crematorium. Cars following the hearse try to stay in the cortege and the obstruction caused by customers parking in the vicinity of this junctions makes this difficult and causes delays to traffic on Rossendale Road. This is particularly acute when funeral corteges approaching the cemetery entrance in either direction along Rossendale Road are delayed turning into the cemetery/cemetery lane by carelessly parked customers*

*Customers also pull up on Rossendale Rd and onto the pavement in front of the traders causing a hazard for traffic on Rossendale Rd.*

*In 2014 the Council obtained consent to place the planters. This did not proceed because of objections from traders and their representatives.*

The Act prescribes a process that involves formal advertisement of a draft resolution (provided at Appendix B) before any final resolution is made. The first recommendation to this report starts that process by advertising the intention to make a resolution.

Once the intention is advertised a formal consultation process begins with the Police and Highway Authority. This consultation period is a minimum of 28 days. After this time any

objections must be considered before a resolution is made. Once made, the resolution must be further advertised in two consecutive weeks before coming onto effect.

- 7 In the interests of fairness, the interested parties have been consulted in relation to the request by the HGSA, and invited to make informal representations to assist the decision making process. Their representations are outlined at paragraph 10 below.

#### **FINANCIAL IMPLICATIONS AND BUDGET PROVISION**

8. The costs of advertisement of the draft resolution and 2 separate notices of any final resolution will be approximately £1800

#### **POLICY IMPLICATIONS**

9. Prohibited Streets are concentrated in Burnley and Padiham town centres, with Springwood Road (the access to Towneley Park) also having been designated as such following nuisance to residents from parked trading vehicles. Other entrances to parks , and those streets within parks are conditioned so that they are subject to tender, in order that relevant Council service units can control numbers of traders.

#### **DETAILS OF CONSULTATION**

10. Interested Parties consulted:  
Highways Authority, Police, current holders of street trading consents.

#### **BACKGROUND PAPERS**

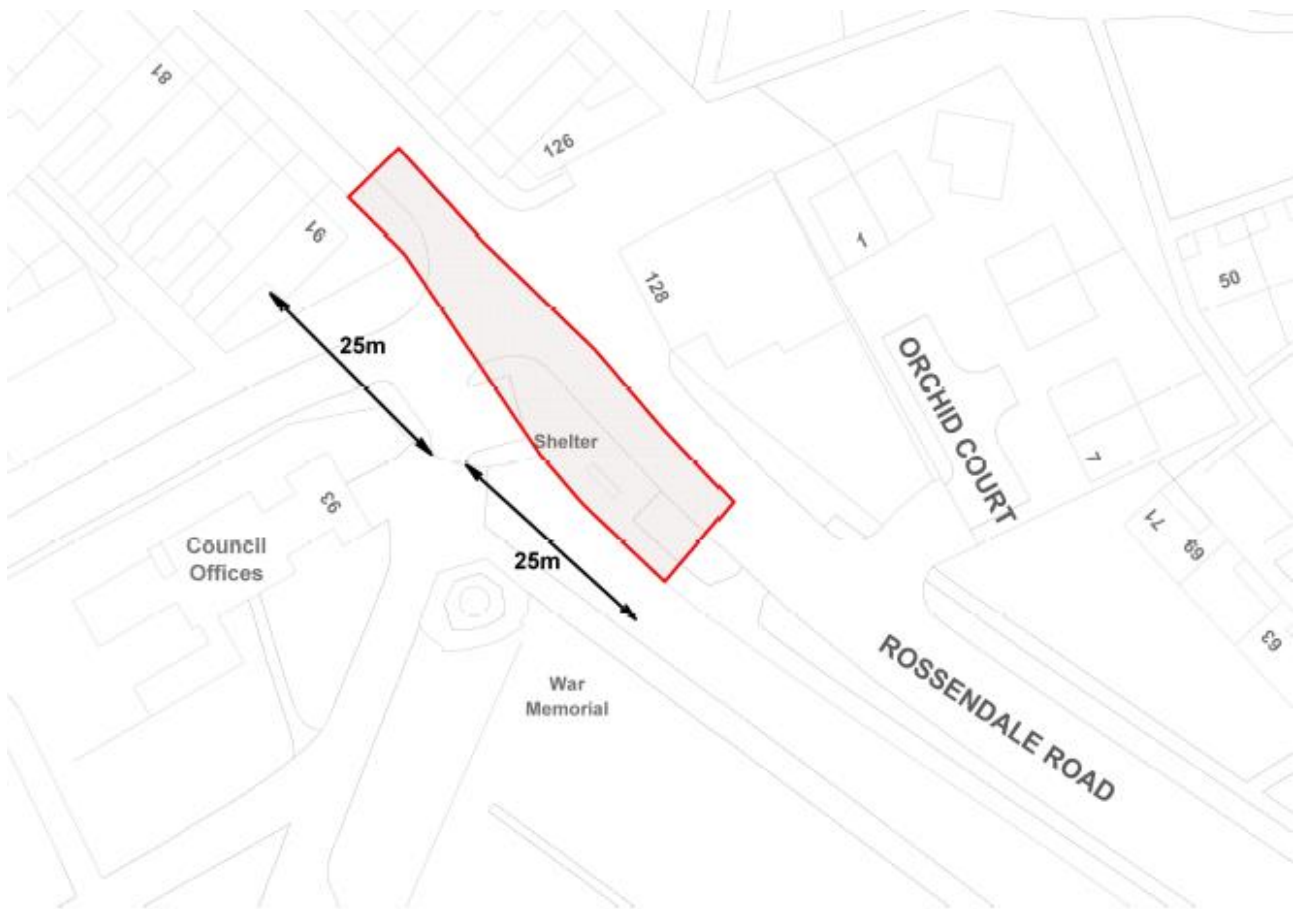
11. None

#### **FURTHER INFORMATION**

**PLEASE CONTACT:**

**Karen Davies**

Plan indicating the part of Rosendale Road to be redesignated a Prohibited Street



**Draft advertisement of intention to pass a resolution**

“That Rossendale Road, for a distance of 25 metres to either side of the Cemetery Gates, be designated as a prohibited street under paragraph 2 of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982. Such designation shall take effect on the day specified in that behalf in the resolution (which will not be before the expiration of the period of one month beginning with the day on which the resolution is passed)”

# BURNLEY BOROUGH COUNCIL



## Guidance Notes

For

**Street Traders**

# **CONTENTS**

## **1. INTRODUCTION**

## **2. GENERAL INFORMATION**

2.1 Definition of Street Trading

2.2 Designation of Streets

2.3 Conditions Applicable to all Consents

2.4 Special Conditions Relating to Ice-Cream Sales

2.5 Applying for a Consent, Fees and Refunds

## **3. FOOD SAFETY GUIDANCE**

## **4. HEALTH & SAFETY GUIDANCE**

## **5. BURNLEY TOWN CENTRE PLAN**

## 1. INTRODUCTION

- 1.1. These notes are produced to indicate the practical requirements of the law in relation to the construction, fittings and operation, of vehicles and stall operated by mobile traders.

The notes have no statutory force and should not be regarded as a strict interpretation of the law. They are intended to indicate acceptable methods of construction and practice but not to rule out equally suitable methods.

Compliance with these notes or alternative methods approved by the Environmental Health Unit will however be expected of any mobile traders applying for a Street Trading Consent from Burnley Borough Council.

### RELEVANT LEGISLATION

The Food Safety Act 1990

Food Hygiene (England) Regulations 2006

The Health and Safety at Work etc. Act 1974

## 2. GENERAL INFORMATION

### 2.1. DEFINITION OF STREET TRADING

2.1.1. Anyone intending to carry on street trading within the Borough of Burnley must first obtain the consent of the Council. The Local Government (Miscellaneous Provisions) Act 1982 defines street trading as: "the selling or offering for sale of any article (including a living thing) in a street". For the purposes of the Act the following are not classed as street trading:

- (a) trading under the authority of a Pedlars Certificate granted under the Pedlars Act 1981.
- (b) Trading in a market or fair.
- (c) Trading in a trunk road picnic area provided under Section 112 of the Highways Act 1980.
- (d) Mobile shops trading as roundsmen making deliveries to regular customers at home.
- (e) Trading at a petrol filling station.
- (f) Trading on a street adjoining a shop where the trading carried on is part of the business of that shop.
- (g) Trading as a news vendor where:
  - (i) the only articles sold or offered for sale are newspapers and periodicals; and
  - (ii) the stall or receptacle used (if one is used) is;
    - (a) no more than one metre in length or width and two metres in height.
    - (b) Exceed a ground area of 0.25 square metres



- (c) Does not stand on the carriageway of a street

Prospective traders are recommended to seek advice before commencing trading from the Environmental Health Unit , telephone 01282 425011.

## **2.2. DESIGNATION OF STREETS**

2.2.1. The Council has resolved that all streets within the Borough are either:

- (a) Prohibited Streets – where no street trading is allowed at all; or
- (b) Consent Streets – where street trading is allowed with the consent of the Council.

The Prohibited Streets are:

- (i) All streets within the area are bounded by the following streets:

Hargreaves Street, Grimshaw Street, Parker Lane, Red Lion Street, Croft Street, Yorkshire Street, Hall Street, Bridge Street, Kingsway, Parker Street, Curzon Street and Hammerton Street (with the exception of those streets forming the Burnley Town Centre Pedestrian Area – see plan at Appendix 1 for details).

- (ii) Springwood Road - for the whole length
- (iii) Burnley Road, Padiham - from the junction with Eccleshill Street to the Junction with Tattersall Street.
- (iv) Clitheroe Street, Padiham -from the junction with Sowerby Street to the junction with Ightenhill Street.
- (v) Darwen Street, Padiham - for the whole length.
- (vi) Eccleshill Street, Padiham -for the whole length.
- (vii) Ightenhill Street, Padiham -from the junction with Eccleshill Street to the Junction with Clitheroe Street.
- (viii) Mytton Street, Padiham - from the junction with Eccleshill Street to the Junction with Clitheroe Street.
- (ix) Sowerby Street, Padiham - for the whole length.

1.

The remaining streets within the Borough are Consent Streets. However, in relation to the following:

- (a) All streets, ramps, malls and walkways within the Burnley Town Centre Pedestrianised area (see attached plan); and
- (b) The following streets within or adjacent to the following parks in the Borough;
  - (i) All streets within Towneley Park.
  - (ii) All streets within Thompson Park and those parts of Ormerod Road, Colne Road and Shorey Bank for a distance of ten metre from the entrance to Thompson Park.
  - (iii) All streets within Queens Park and those parts of Queen Victoria Road, Queens Park Road and Ormerod Road for a distance of ten metres from the entrance to Queens Park.
  - (iv) All streets within Scott Park and those parts of Fern Road, Manchester Road, Scott Park Road and Carr Road for a distance of ten metres from the entrance to Scott Park.
  - (v) All streets within Ightenhill Park and those parks of Avondale Avenue, Brassey Street, Ightenhill Park Lane, Ighten Road and Southern Avenue which are co-extensive with the boundary of Ightenhill Park (including the bowling green and tennis courts).
  - (vi) All streets within Memorial Park, Padiham and those parts of Blackburn Road, Bridge Street and Church Street for a distance of ten metres from the entrance to Memorial Park.

The Council will only issue Consents following a successful tender being submitted to the Council for the right to trade in these areas. Further details can be obtained from Town Centre Management in respect of trading in the Town Centre and the Parks Department in respect of trading in any park in the Borough by telephoning 01282 425011.

### **2.3. CONDITIONS APPLICABLE TO ALL CONSENTS**

2.3.1. The consent granted by the Council is personal to the consent holder and is not transferable. Where the consent holder is an employer the consent will apply to named employees who have been previously named and approved by the Council. The consent may only be transferred to another vehicle, container or stall with the prior consent of the Council.

2.3.2. A basic DBS disclosure, not less than one calendar month old, shall accompany any new application for a consent. Information on obtaining a DBS check can be found at

[www.gov.uk/request-copy-criminal-record](http://www.gov.uk/request-copy-criminal-record)

2.3.3. That the consent holder must, within 14 days, disclose to the Council in writing, details of any convictions for criminal offences and any

pending prosecutions for such types of offences since the issue of his consent

- 2.3.4. Only goods specified in the consent may be sold from the vehicle and only the streets specified in the consent to be used for trading.
- 2.3.5. Nuisance and/or annoyance shall not be caused by the consent holder or any of his employees to persons using the street or otherwise.
- 2.3.6. No obstruction of any street or right of way or danger to the public shall be caused by the consent holder or any of his employees.
- 2.3.7. The name and address of the consent holder shall be displayed conspicuously on the vehicle, container or stall to which it relates.
- 2.3.8. The consent holder shall comply with all the legislation relevant to the conduct of the business in which he is engaged and ensure that any vehicle used by him is in a roadworthy condition and where necessary taxed and insured.
- 2.3.9. The consent holder or any person employed by him shall not use any loud speaker, whistle, horn, bell or other audible method to attract custom. This provision shall not apply to the chimes of any ice-cream van during the permitted hours of twelve noon and seven pm.
- 2.3.10. The consent holder shall provide adequate receptacles for rubbish and shall, after trading has ceased, remove all rubbish and litter from the site.
- 2.3.11. The permitted hours of trading shall be between 06.30 hrs and 2300 hrs except street traders who hold a late night refreshment premises licence under the Licensing Act 2003 who will be permitted to trade beyond this time in accordance with that licence
- 2.3.10 The consent holder shall comply with any reasonable requirement of the Council or any of its Officers or of a Police Officer in relation to the siting and/or operation of his street trading business.
- 2.3.11 The Council may withdraw the consent if the holder shall without good cause fail to comply with any condition herein.
- 2.3.12 Any consent issued will only be valid in relation to a single vehicle, container or stall
- 2.3.13 The consent holder shall at the request of the Council present the vehicle, container or stall for inspection at such time and place as required by the Council.

#### **2.4. SPECIAL CONDITIONS RELATING TO ICE-CREAM**

2.4.1. The following special conditions apply to consents issued in relation to ice-cream sales:

1. Chimes should not be sounded before twelve noon or after seven pm.
2. Chimes should not cause nuisance or annoyance, in particular they should not be sounded:
  - (i) For longer than four seconds at a time.
  - (ii) More often than once every three minutes
  - (iii) When the vehicle is stationary.
  - (iv) Exception on approach to a selling point.
  - (v) Within sight of another vehicle which is trading.
  - (vi) Within 50 metres of schools (during lunch hours), hospitals and places of worship (on Sundays or other recognised days of worship)
  - (vii) More other than once every two hours in the same length of street.
  - (viii) Louder than 80db(A) measured at a distance of 7.5 metres.
  - (ix) As loudly in quiet streets or narrow streets as elsewhere.

## **2.5. APPLYING FOR A CONSENT, FEES AND REFUNDS**

2.5.1. All traders must apply for and be granted a consent before commencing trading within the Borough. Application forms will be provided on request.

2.5.2. The appropriate fee, which can be found on the Councils website [www.burnley.gov.uk](http://www.burnley.gov.uk), must accompany the application form which should be returned to **Burnley Borough Council Licensing Unit, Parker Lane, Burnley, BB11 2DP**. Where necessary an inspection of the stall or vehicle will be arranged at a mutually convenient time, and necessary works required to comply with the law will be explained and must be completed before a consent will be issued. Consents will be issued for the following durations:

<b>Type of Consent</b>
12 months
6 months
3 months
1 month
12 months special event consent #
6 months special event consent #
3 months special event consent #
1 month special event consent #

# Special Event Consents – permit up to 6 days trading in any calendar month

Consents can be refunded where a trader decides to cease trading part way through a year.

The amount of refund will be calculated on the number of full months left minus administration costs incurred.

### 3.

#### **FOOD SAFETY GUIDANCE**

##### 3.1. CONSTRUCTION OF VEHICLE/STALL

- 3.1.1. Floors should be fitted with non-slip impervious material, ideally joint free the edges should be sealed to assist cleaning.
- 3.1.2. Walls and ceiling must be smooth and impervious joints must be sealed and kept to a minimum. Walls may be clad with plastic or laminate material (stainless steel sheeting is encouraged adjacent to fridges or similar cooking appliances).
- 3.1.3. Dirt traps must be eliminated.
- 3.1.4. The general fabric if painted must enable thorough cleaning, if the vehicle cab forms part of a food room it must be kept clean and constructed as to facilitate cleaning.
- 3.1.5. Work surfaces and shelving should be impervious, non toxic and readily cleansable surfaces abutting onto the wall should be sealed.
- 3.1.6. The structure of any unit must not allow pest infestation. Any infestation must be dealt with immediately.

##### 3.2. WASHING FACILITIES

- 3.2.1. Washing facilities must be separate for equipment and hand washing.
- 3.2.2. Plastic bowls and vacuum flasks of hot water may be acceptable for low risk food or raw foods for direct sale from the vehicle without further preparation (e.g. sale of fruit and vegetables or wet fish).
- 3.2.3. When open food for immediate consumption or further preparation on the vehicle is handled, these facilities should be separate and comprise.
  - 1. A sink
  - 2. A wash hand basin for hand washing only. This must be provided with an adequate supply of soap and hand drying facilities.
  - 3. Adequate supplies of hot and cold potable water should be provided to both sets of washing facilities.
  - 4. Waste water from washing facilities must be piped directly to sealed impervious containers. The waste water must be disposed of to foul drainage system and the containers thoroughly cleaned prior to re-use.

##### 3.3. WATER SUPPLY

- 3.3.1. Adequate quantities of water must be carried on the vehicle. Any water used in the production of food must be potable.

- 3.3.2. Containers used to carry water must be cleaned/disinfected between use. Adequate quantities of water must be carried on the vehicle. (It is recommended that at least five gallons of cold water and three gallons of hot water should be available).

NB: Units are available for adaptation to vehicles which utilise heat from the engine to provide a hot water supply.

#### 3.4. REFUSE STORAGE

- 3.4.1. Impervious, lidded containers of appropriate construction, kept in sound condition, easy to disinfect and with disposable liners should be provided for use inside the food unit.
- 3.4.2. All refuse generated by the business must be removed from the site and disposed of in a satisfactory manner.
- 3.4.3. Unnecessary accumulations of waste within the unit must be prevented.

#### 3.5. EQUIPMENT

- 3.5.1. All articles, fittings and equipment must be capable of being cleaned and where necessary disinfected.
- 3.5.2. They must be kept in a good state of repair.
- 3.5.3. Articles which come in to contact with food must not contaminate it.
- 3.5.4. Equipment must be installed in such a manner which enables free access for cleaning the surrounding area.

#### 3.6. VENTILATION

- 3.6.1. Ambient temperatures in mobile catering units tend to be high due to the construction and heat producing appliances. Adequate ventilation is therefore essential.
- 3.6.2. Care must be exercised to prevent the ingress of flies through ventilation inlets and outlets.

#### 3.7. LIGHTING

- 3.7.1. Adequate lighting is required. A standard of 400 lux is recommended enabling good illumination for food preparation and assisting vision for cleaning.

#### 3.8. FOOD CONTAMINATION

- 3.8.1. Food must be placed and protected so as to reduce the risk of contamination.
- 3.8.2. Effective separation must be maintained between raw and cooked foods, especially meat and poultry. Storage should be such as to avoid “drip” i.e. cooked food to be stored above raw food. This is more likely to occur in a refrigerator. (Separate refrigerator accommodation is recommended for raw and cooked foods. It is also recommended that separate utensils and chopping boards be provided for the preparation of raw and cooked foods).
- 3.8.3. All open foods must be covered (food storage in washable lidded containers is recommended).
- 3.8.4. Separation of food intended for use and waste food or refuse must be maintained. Waste food or refuse must be stored in secure labelled containers.
- 3.8.5. Under no circumstances are pets to be permitted on any vehicle, stall, etc.
- 3.8.6. Precautions must be taken against customer contamination from coughs, sneezes, etc.
- 3.8.7. Wrappings must be clean and stored in a clean environment. Newspaper wrapping is not acceptable.
- 3.8.8. No raw materials or ingredients should be carried on the food vehicle if they are known or suspected to be infested or contaminated or in such a condition which would render them unfit for human consumption.
- 3.8.9. Raw materials and ingredients stored on the vehicle must be kept in an appropriate condition which is designed to prevent harmful deterioration and protect them from contamination.

### 3.9. TEMPERATURE CONTROL

- 3.9.1. Adequate provision must be made to store any food which is likely to support the growth of harmful bacteria either cold at below 8°C or hot at above 63°C.
- 3.9.2. Temperatures of food stored on the vehicle should be checked regularly with an accurate thermometer to ensure that safe temperatures are being maintained.
- 3.9.3. Where it is necessary to cool food on the vehicle this should be carried out as quickly as possible under properly controlled conditions.

### 3.10. STOCK ROTATION

- 3.10.1. Stock rotation must be efficient. Attention must be given to “date coding” and any other specific storage requirements. It is an offence to sell food beyond its “Use by” date.

### 3.11. PERSONAL HYGIENE

- 3.11.1 All persons must be aware that they have an obligation to keep themselves and their protective over clothing (aprons, etc.) clean. Regular hand washing for staff handling food is essential.
- 3.11.2 The potential for the spread of infection from any person known or suspected to be suffering from food poisoning, diarrhoea, vomiting, skin infections etc. should be prevented. Direct or indirect contact with food should be avoided.
- 3.11.3. Clean and washable protective overclothing must be worn by food handlers. The storage of outdoor clothing and/or footwear in a food room should be avoided.
- 3.11.4. Clean waterproof dressings must cover any cuts or abrasions on hands and forearms.
- 3.11.5 Smoking or any use of tobacco whilst handling open food or whilst in any area in which open food is present is prohibited, this includes the driver's cab is not separated.

### 3.12 GENERAL HYGIENE PROVISIONS

- 3.12.1 The name and address of the person carrying on the business must be displayed conspicuously and legibly. The address should be the full postal address. A card or board is acceptable, preferably at the sales point.
- 3.12.2 Cleaning in mobile catering units is of the utmost importance and must be regularly maintained.
- 3.12.3. Home based stalls may, on occasions necessitate some degree of home preparation and storage, in such instances the provisions of the Food Safety (General Food Hygiene) Regulations 1995 will apply. Liaison with the Environmental Health and Cleansing Services Unit as to the acceptability of domestic premises is very important.
- Clearly by maximising the use of the mobile unit and by regularly purchasing food, the domestic activities can be lessened.
- 3.12.4 The vehicle/stall should be registered with the Local Authority responsible for the area in which it is kept. For new businesses registration should be carried out 28 days prior to opening. Registration is free and application forms are available from the relevant Local Authority.
- 3.12.5 It is a legal requirement that food handlers must be supervised and instructed and/or trained in food hygiene matters commensurate with their work activities.

### 3.13 HAZARD ANALYSIS



3.13.1. As the proprietor of a food business you must:-

1. Identify any food safety hazards associated with the activities that you undertake.
2. Know which steps in those activities are critical for food safety.
3. Ensure safe controls are in place, maintained and reviewed regularly to reduce any risk arising out of those activities.

#### **4. HEALTH AND SAFETY GUIDANCE**

##### 4.1. GENERAL

4.1.1. Employers have a legal duty to employees including the provision of safe systems of work, provision of training and supervision, safe handling and storage of substances and articles and a safe working environment.

4.1.2. Both employers and the self-employed have a duty to anyone who could be affected by work activities e.g. customers, visitors and contractors. Such persons should not be exposed to any risks to their health and safety.

Employees must safeguard themselves and their colleagues and co-operate with their employer in connection with the duties imposed upon them.

4.1.3. First-aid boxes and kits should always be adequately stocked. All vehicles/stalls will need at least one first-aid box which should contain a sufficient quantity of suitable first-aid materials. No medical products should be kept.

As a minimum it should normally contain:

- 1 guidance leaflet "First aid at Work" (IND 64)
- 20 individually wrapped sterile adhesive dressings (assorted sizes)
- 2 sterile eye pads with attachment
- 6 individually wrapped triangular bandages
- 6 safety pins
- 6 medium sized individually wrapped sterile unmedicated wound dressings (approx.10cm x 8cm)
- 2 large sterile individually wrapped unmedicated wound dressings (approx. 13cm x 8cm)
- 3 extra large sterile individually wrapped unmedicated wound dressings (approx. 28cm x 12.5cm).

Where tap water is not readily available for eye washing, sterile water or sterile normal saline in sealed disposal containers should be provided. Each container should hold at least 300mls and at least 900mls should be provided.

##### 4.2. L.P.G.

4.2.1. Increasing concern is being shown over the safety of Liquefied Petroleum Gas (L.P.G.) installations in catering vehicles used for cooking, water heating, etc. Precautions must be taken when fitting and/or using this type of installation.

The installation of gas appliances, fires, pipework valves, etc. must be undertaken by a competent person i.e. a CORGI (Council for Registered Gas Installers) registered contractor and comply fully with Gas Safety (Installation and Use) Regulations 1994 and all relevant British Standards.

4.2.2. Every employer or self employed person must ensure the correct operation of each gas appliance, installation pipework and any fitted safety devices. Each appliance should be checked annually by a competent person who is a member of an organisation registered with CORGI.

4.2.3. A record of the dates of inspection in respect of the appliances checked, the defects identified and remedial action taken should be kept.

4.2.4. Containers or cylinders of L.P.G. and any manifold and change over valves must be positioned in the open air or in a separate ventilated housing forming part of the vehicle. The housing construction must be of gas tight to the interior and have an internal construction capable of 30 minutes fire resistance. Joints are to be bonded to prevent fire or hot gas spreading into the vehicle. Ventilation can be achieved by ventilating the base and/or the side away from the vehicle, using re-enforced mesh or similar strong supporting construction. It is important to provide ventilation at low level as L.P.G. is heavier than air and therefore any leaking gas will descend.

4.2.5. The location of the housing should be such to prevent damage to cylinders if subject to impact during a road traffic accident. Access should only be from outside and made secure to prevent tampering but containers must be readily accessible in emergencies.

4.2.6. Only the minimum of L.P.G. considered necessary should be carried and a notice affixed to the outside of the compartment indicating the presence of L.P.G. Sources of ignition must be prohibited within one metre of the storage compartment.

4.2.7 All persons working in mobile catering units must have adequate instruction, training and information on the hazards of L.P.G. and be aware of necessary action to be taken in the event of an emergency. Safe systems of work must be established particularly in the changing of cylinders and the safe use of appliances.

#### 4.3. ELECTRICITY

4.3.1. All electrical systems including portable electrical equipment need to be maintained in a safe condition and comply fully with The Electricity at Work Regulations 1989. Equipment should only be used for the purpose it was intended and in the environment for which it was designed and constructed.

- 4.3.2. Checks on appliances can be made by any employer provided they are competent and have received training. However, all earthed equipment, leads and plugs connected to such equipment and extension leads should have an occasional combined inspection and test carried out by a competent person normally a qualified electrician.
- 4.3.3. It is recommended that a record of the dates of inspection in respect of the appliances checked, the defects identified and remedial action taken is kept.
- 4.3.4. Main electricity should be used where practicable where this is not available the use of generators is advised. Where mains electricity is used any cables should be positioned to prevent them being physically damaged and to avoid any tripping hazard

#### 4.4 GENERATORS

EXPERT ADVICE MUST BE FOLLOWED REGARDING APPLICATION AND INSTALLATION.

- 4.4.1. Generators must be sited away from gas containers or appliances in a well-ventilated area to allow dissipation of exhaust fumes.
- 4.4.2. Generators must not be sited so that noise emitted gives rise to nuisance.
- 4.4.3. Where possible petrol should not be stored. If storage is absolutely necessary it is limited to not more than two gallons in an approved metal or plastic container. Containers must be stored away from combustible or ignitable materials or sources.
- 4.4.4. Generators must be used in accordance with the manufacturers operating instructions.
- 4.4.5. Appliances must be protected by a 30 mA/30 ms residual current device to minimise the risk of electric shock. Before such devices are fitted specialist advice must be sought, complication can arise due to location, weatherproofing, vibration, mechanical damage and the need to establish an adequate true earth.

#### 4.5. OPERATOR SAFETY

- 4.5.1. All operators of electrical appliances should be instructed in its safe and correct use and told not to use damaged and/or defective items. Apparatus should be examined before use and if defective withdrawn from service and not returned to service until it has been repaired and checked by a competent person.

#### 4.6. APPLIANCES

- 4.6.1. Appliances should be securely fixed and meet the relevant British Standard.

- 4.6.2. Flame failure devices are recommended to gas appliances in all cases, i.e. a device which shuts off the supply of gas if the flame becomes extinguished.
- 4.6.3. Gas appliances should not be lit whilst the vehicle is in motion except that L.P.G. fuelled refrigerators may be used on the road when:
- (a) A flame failure device is fitted.
  - (b) An adequate flue (not necessary in trailers) is provided.
  - (c) The unit is properly secured.
  - (d) The unit does not show a naked flame.
- 4.6.4. When used on the road an additional air intake with an effective area of not less than 13 sq. cm is recommended to be fitted in the floor of the vehicle below the refrigerator but must not cause a draught so as to extinguish the burner or pilot light.
- 4.6.5. The use of 12 Volt battery sources to run refrigerators and freezers is encouraged.
- 4.6.6. Flues should be fitted to all appliances where required and adequate ventilation must be provided in every vehicle compartment where L.P.G. fuelled appliances are used.
- 4.6.7. Frying ranges should be fitted with an automatic high temperature limit device capable of shutting off the main burner if the temperature exceeds 230°C.
- 4.6.8. In addition, an automatic temperature control device should be fitted to allow the frying medium a maximum temperature of 230°C. A visual temperature indicator should also be provided and should include an alarm mechanism if the temperature of the frying medium exceeds the maximum.

#### 4.7. FIRE PRECAUTIONS

- 4.7.1. Clear written instructions must be displayed inside the vehicle detailing action to be taken in the event of fire or gas leakage.
- 4.7.2. A fire blanket should be provided especially where frying is undertaken.
- 4.7.3. A dry powder fire extinguisher of 4.5kg capacity should be a minimum provision and will be suitable for both L.P.G. and fat fires. Such equipment must be sited in a readily accessible position adjacent to an exit.
- 4.7.4. Access to and from the vehicle should be safe and free from any obstruction.
- 4.7.5. Where practicable cooking appliances and other sources of ignition must be sited away from the exit to allow staff to escape with passing through an area of risk.
- 4.7.6. Further advice on fire precautions can be obtained from the Fire Safety Officer, Burnley Fire Station, Belvedere Road, Telephone 423240.

#### 4.8. SANITARY ACCOMMODATION

- 4.8.1. Where traders operate at a fixed site throughout the day arrangements will have to be made for access to toilet facilities either on the vehicle or at premises immediately adjoining the site.
- 4.8.2. Sanitary accommodation should include a sanitary appliance, wash hand basin with hot and cold water supply and should be ventilated directly to the external air.
- 4.8.3. If sited on the vehicle, the sanitary accommodation should be approachable only from the exterior or via an intervening ventilated lobby.

#### 4.9 COVID SAFE RISK ASSESMENT

- 4.9.1 Whilst the COVID restrictions are in place an application for a new street trading consent or the renewal of an existing consent there needs to be a COVID safe Written Risk assessment done. This needs to be submitted with the application.

Information on how to do this and an example of a blank template can be found at

[www.hse.gov.uk/news/working-safely-during-coronavirus-outbreak.htm](http://www.hse.gov.uk/news/working-safely-during-coronavirus-outbreak.htm)

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## REPORT TO LICENSING COMMITTEE



<b>DATE</b>	<b>June 2021</b>
<b>PORTFOLIO</b>	<b>Community &amp; Environment</b>
<b>REPORT AUTHOR</b>	<b>John Clucas</b>
<b>TEL NO</b>	<b>0114 3999061</b>
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### Gambling Act 2005 Burnley Borough Council Gambling Policy

#### PURPOSE

1. The Gambling Act 2005 requires that Burnley Borough Council update its Gambling Policy at least every 3 years.
2. This needs to be revised, updated and published before the 2<sup>nd</sup> January 2022
3. There is a requirement when updating the policy that it is sent out to relevant authorities for consultation.

#### RECOMMENDATION

4. That the draft policy at Appendix A is sent out to the relevant people and organisations for a formal 6 week consultation.

#### REASONS FOR RECOMMENDATION

5. To comply with the timescale to have a final policy agreed and published by Jan 2021.

#### SUMMARY OF KEY POINTS

- 6 The Gambling Policy sets out the principles that the authority will apply when exercising its functions under the Gambling Act 2005.

The Licensing Committee are required to agree a draft policy for formal consultation.

After the consultation then, if required, amendments will be made and then this will be brought back before the Licensing Committee for approval in August 2021

Following this it will go to Scrutiny and then the Executive, then Full Council for approval in

December 2021.

There is however a national review of the Gambling Act 2005 and this may impact on this policy, and if that is the case any relevant changes will be incorporated into the Councils Policy.

There are only minor changes in this policy compared with the current version in place.

To assist Members and consultees the amended parts of the policy have been highlighted.

#### **FINANCIAL IMPLICATIONS AND BUDGET PROVISION**

7. None

#### **POLICY IMPLICATIONS**

8. The Policy once agreed will replace the Gambling Policy 2019-2021, and become effective from 2<sup>nd</sup> January 2022.

#### **DETAILS OF CONSULTATION**

9. The formal consultation will begin if this agenda item is agreed to.

#### **BACKGROUND PAPERS**

10. Burnley Borough Council Gambling Policy (Draft for formal consultation) 2022-2024

#### **FURTHER INFORMATION**

**PLEASE CONTACT:**

**John Clucas ext 249061  
Karen Davies ext 249058**





# Gambling Act 2005

**DRAFT POLICY STATEMENT**  
January 2022 to December 2024

**Burnley Borough Council  
Gambling Act 2005**

**Draft Policy statement Jan 2022 to Dec 2024**

**THE LICENSING OBJECTIVES**

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
- Ensuring that gambling is conducted in a fair and open way
- Protecting children and other vulnerable persons from being harmed or exploited by gambling

## Table of Contents

Item		Page
	<b>PART A</b>	
1.	Introduction	4
2.	A Profile of Burnley	6
3.	<b>Policy Statement and Consultation</b>	7
4.	Declaration	8
5.	Responsible Authorities	8
6.	Interested parties	9
7.	Exchange of information	10
8.	Enforcement	11
9.	Licensing Authority functions	12
	<b>PART B</b>	
10.	Premises licences	14
11.	Adult Gaming Centres	20
12.	(Licensed) Family Entertainment Centres	20
13.	Casinos	21
14.	Bingo premises	22
15.	Betting premises	22
16.	Tracks	23
17.	Travelling fairs	24
18.	Provisional Statements	24
19.	Reviews	24
	<b>PART C</b>	
20.	Unlicensed Family Entertainment Centre gaming machine permits	26
21.	Alcohol Licensed premises gaming machine permits	27
22.	Prize Gaming Permits	28
23.	Club Gaming and Club Machines Permits	29
24.	Temporary Use Notices	30
25.	Occasional Use Notices	30
	<b>APPENDICES</b>	
	Appendix A - CONSULTEES	31
	Appendix B - RESPONSIBLE AUTHORITIES	33
	Appendix C - SUMMARY OF DELEGATION	34

## 1. Introduction

- 1.1 This **policy statement** has been published as a consequence of:
- It being a requirement under Section 349 of the Gambling Act 2005 that dictates all licensing authorities to prepare and publish a statement of licensing principles that they propose to apply in exercising their functions under the Act, commonly known as a policy statement.
  - The policy statement forms the licensing authority's mandate for managing local gambling provision and sets out how the licensing authority views the local risk environment and therefore its expectations in relation to operators with premises in the locality.
  - The Policy Statement has to be approved by the Executive and the Full Council of Burnley Borough Council and need to be revised and updated at least every three years.
- 1.2 All references to the Gambling Commission's Guidance for local authorities refer to the **Guidance published on the Gambling Commission website**.
- 1.3 The Gambling Act 2005 (the Act) has appointed Burnley Borough Council as a Licensing Authority. We will regulate gambling with integrity in the public interest.
- 1.4 We are committed to avoiding duplication with other legislation and regulatory regimes as far as possible, and will not replicate issues in this **policy statement**, which are already legal requirements under other legislation such as health and safety and fire precautions.
- 1.5 This **policy statement** has been developed after having regard to the statutory guidance from the Gambling Commission and having given appropriate weight to the views of persons and organisations consulted.
- 1.6 The Council will delegate all functions under the Act to the Licensing Committee, except those functions, which by law must be dealt with by the Council as a whole such as fee levels and the approval of this policy statement.
- 1.7 Section 349 of the Act requires the Licensing Authority to publish a **policy statement** that we will apply in exercising our functions under the Act. This statement fulfils that statutory requirement.
- 1.8 This policy statement will be applied during the 3-year period from 3<sup>rd</sup> January **2022** until 31<sup>st</sup> December 2024 and during that time will be kept under review and revised when and if appropriate.
- 1.9 This document should be read in conjunction with the Act, Regulations made under the Act and Guidance issued by the Gambling Commission. This statement is designed to be a strategic gambling policy, not an operational guide to the Act.

- 1.10 In exercising our functions under the Gambling Act 2005, Burnley Borough Council as a licensing authority will have regard to the statutory licensing objectives, which are;
- **Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime**
  - **Ensuring that gambling is conducted in a fair and open way**
  - **Protecting children and other vulnerable persons from being harmed or exploited by gambling**
- 1.11 We are aware that Section 153 of the Act requires us, in making decisions concerning premises licences and temporary use notices, to aim to permit the use of premises for gambling in so far as we think it is:
- In accordance with any relevant code of practice issued by the Gambling Commission
  - In accordance with any relevant guidance issued by the Gambling Commission
  - Reasonably consistent with the statutory licensing objectives and
  - In accordance with this **policy statement**
- 1.12 Nothing in this policy will override the right of any person to make an application under the Act and have that application considered on its individual merits. Equally, nothing in this policy will undermine the right of any person to make representations on an application, or seek a review of a licence where there is a legal power to do so.
- 1.13 Previous legislation required that the grant of certain gambling permissions should take account of whether there was an unfulfilled demand for gambling facilities. We acknowledge that under the Act, unmet demand is not a criterion for a Licensing Authority in considering an application.
- 1.14 We appreciate that gambling can be an emotive subject but acknowledge that, in accordance with Gambling Commission Guidance for Local Authorities, “considerations such as moral or ethical nuisance, objections to gambling are not a valid reason to reject applications for premises licences “. Except in respect of a Casino resolution under Section 166 of the Act, and also that unmet demand is not a criterion for a Licensing Authority.
- 1.15 We will therefore consider any application in accordance with the Act, on its individual merits without regard to demand or moral objections to gambling in general.



### 3. The Policy Statement and Consultation

- 3.1 Burnley Borough Council is required by the Gambling Act 2005 to publish a policy statement, which we propose to apply when exercising our functions. This statement must be published at least every three years. The policy statement must also be reviewed from “time to time” and any amended parts re-consulted upon and the statement must be then re-published.
- 3.2 This policy statement has been published following extensive consultation. A list of the persons we have sent this document to is attached at **Appendix A**.
- 3.3 The Gambling Act requires that the following parties be consulted by Licensing Authorities:
- The Chief Officer of Police
  - One or more persons who appear to the authority represent the interests of persons carrying on gambling businesses in the authority’s area
  - One or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority’s functions under the Gambling Act 2005
- 3.4 Our consultation took place between July and October 2021 and we have followed best practice as set out by the Department for Business, Innovation and Skills,
- 3.5 The full schedule of comments and amendments consequential to these comments will be available by request in writing to the Licensing Office, Burnley Borough Council.
- 3.6 This policy statement will not override the right of any person to make an application, make representations about an application, or apply for a review of a licence, as each will be considered on its own merits and according to the statutory requirements of the Gambling Act 2005.

#### 4. Declaration

- 4.1 In producing the final **policy statement**, this licensing authority declares that it has had regard to the licensing objectives of the Gambling Act 2005, the guidance issued by the Gambling Commission, and any responses from those consulted on the **policy statement**.

#### 5. Responsible Authorities

- 5.1 Burnley Borough Council is required by regulations to state the principles that we will apply in exercising our powers under Section 157(h) of the Act to designate, in writing, a body which is competent to advise the authority about the protection of children from harm.

- 5.2 The principles we will use are:

- the need for the body to be responsible for an area covering the whole of the licensing authority's area
- the need for the body to be answerable to democratically elected persons, rather than any particular vested interest group etc

- 5.3 In accordance with the Gambling Commission's Guidance for Licensing Authorities, we intend to designate the Lancashire Safeguarding Children Board, Lancashire County Council for this purpose.

- 5.4 This body has countywide responsibility, is subject to democratic accountability and is currently the body that has become a responsible authority under the Licensing Act 2003.

- 5.5 The Responsible Authorities under the Gambling Act 2005 are:

- Burnley Borough Council Licensing Authority
- The Gambling Commission;
- The Chief Constable, Lancashire Constabulary
- Lancashire Fire and Rescue Service Authority
- Burnley Borough Council **Development Control and Planning Policy Services**
- Lancashire Safeguarding Children Board, Lancashire County Council
- H.M. Revenue & Customs

Subject to any other person being prescribed in Regulations made by the Secretary of State. The contact addresses for these authorities are attached at Appendix B.



## 6. Interested Parties

6.1 S.158 of the Act defines interested parties. To accept a representation from an interested party, we must take the view that the person:

- lives sufficiently close to the premises to be likely to be affected by the authorised activities;
- has business interests that might be affected by the authorised activities; or
- represents persons in either of these two groups;

We will have regard to anything an interested party says about their status to make representations.

The approach taken by us in determining who is an interested party is dealt with in this statement of policy.

6.2 The following gives further advice on how we can determine whether someone is an interested party.

### **People living close to the premises**

There are a number of factors that we will take into account when determining whether a person 'lives sufficiently close to the premises'. These might include:

- the size of the premises
- the nature of the premises
- the distance of the premises from the location of the person making the representation
- the potential impact of the premises such as the number of customers, routes likely to be taken by those visiting the establishment
- the circumstances of the person who lives close to the premises. This is not their personal characteristics, but their interests which may be relevant to the distance from the premises.

6.3 Relevant factors will depend on the particular application. For example, we believe it is reasonable for us to consider that living sufficiently close to premises to likely be affected could have a different meaning for (a) a private resident, (b) a residential school for children with truanting problems and (c) a residential hostel for vulnerable adults.

### **The nature and scope of business interests that could be affected**

6.4 It could be argued that any gambling business could be affected by another gambling business expanding into any part of Great Britain. But that is unlikely to be enough to satisfy the test of being 'a person with business interests that might be affected by

the premises' under consideration. For example, an operator in a particular sector be it casino, bingo, betting etc, should not be able to lodge representations on every application put in by a rival operator anywhere in the country, simply because they are in competition within the same gambling sector. Specifically, we recognise that the 'demand test' from previous gambling legislation does not apply under the Act

6.5 We should be satisfied that the relevant business is likely to be affected. Factors that are likely to be relevant include:

- the size of the premises
- the 'catchment' area of the premises, so how far people travel to visit the premises

Whether the person making the representation has business interests in that catchment area that might be affected

### **People representing those in the above categories**

6.6 Interested parties can be people who are democratically elected such as councillors and MPs, as persons representing individuals in the other categories. This would include county, parish and town councillors. Other representatives might include bodies such as trade associations and trade unions, and residents' and tenants' associations. A school head or governor might act in representing the interests of pupils or parents and a community group might represent vulnerable people living near to the proposed premises.

6.7 Save for democratically elected persons, We will satisfy ourselves on a case by case basis that a person does represent interested parties, and request written evidence where necessary. A letter from the interested person(s) they are representing would be sufficient.

6.8 If individuals wish to approach Councillors to ask them to represent their views then care should be taken that the Councillors are not part of the Licensing Committee dealing with the licence application. Applicants should contact the Principal Licensing Officer, Burnley Borough Council in the first instance rather than approach their Councillor directly.

## **7. Exchange of Information**

7.1 We are required to include the principles to be applied by the authority in exercising the functions under sections 29 and 30 of the Act with respect to the exchange of information between ourselves and the Gambling Commission, and the functions under section 350 of the Act with the respect to the exchange of information between it and the other persons listed in Schedule 6 to the Act.

7.2 The principle that this licensing authority applies is that it will act in accordance with the provisions of the Gambling Act 2005 in its exchange of information which includes the provision that the data protection legislation (as defined in section 3 of the Data Protection Act 2018) will not be contravened.

7.3 We will also have regard to the Guidance issued by the Gambling Commission to

Licensing Authorities, as well as any future relevant regulations issued by the Secretary of State under the powers provided in the Gambling Act 2005.

- 7.4 Should any protocol on information exchange be established in the future, such protocols will be publicly available.

## **8. Enforcement**

- 8.1 Licensing authorities are required by regulations under the Gambling Act 2005 to state the principles to be applied by the authority in exercising the functions under Part 15 of the Act with respect to the inspection of premises; and the powers under section 346 of the Act to institute criminal proceedings in respect of the offences specified.

- 8.2 This licensing authority's principles are that we will be guided by the Gambling Commission's Guidance for local authorities and our policy will endeavour to be :

- Proportionate: regulators should only intervene when necessary: remedies should be appropriate to the risk posed, and costs identified and minimised;
- Accountable: regulators must be able to justify decisions, and be subject to public scrutiny;
- Consistent: rules and standards must be joined up and implemented fairly;
- Transparent: regulators should be open, and keep regulations simple and user friendly; and
- Targeted: regulation should be focused on the problem, and minimise side effects

- 8.3 This licensing authority will also, as recommended by the Gambling Commission's Guidance for local authorities, adopt a risk-based approach to the compliance process where the main determinant is the risk posed to the three licensing objectives. The authority will have regard to the 'Regulators Code' in accordance with Section 22 of the Legislative and Regulatory Reform Act 2006.

- 8.4 The main enforcement and compliance role for this licensing authority in terms of the Gambling Act 2005 will be to ensure compliance with the three licensing objectives, including compliance with general licensing conditions (including mandatory and default conditions), specific licence conditions and any applicable codes of practice.

- 8.5 The Gambling Commission will be the enforcement body for Operator and Personal Licences. Concerns about manufacture, supply or repair of gaming machines will not be dealt with by the licensing authority but will be notified to the Gambling Commission for investigation.

- 8.6 Any prosecution will only be commenced in accordance with the sufficiency of evidence and public interest.

- 8.7 Any such prosecution will be commenced and conducted by the Head of Legal and Democratic Services in accordance with the powers delegated to her by the Council

## **9. Licensing Authority functions**

9.1 Licensing Authorities are required under the Act to:

- Be responsible for the licensing of premises where gambling activities are to take place by issuing Premises Licences
- Issue Provisional Statements
- Regulate members' clubs and miners' welfare institutes who wish to undertake certain gaming activities via issuing Club Gaming Permits and/or Club Machine Permits
- Issue Club Machine Permits to Commercial Clubs
- Grant permits for the use of certain lower stake gaming machines at unlicensed Family Entertainment Centres
- Receive notifications from alcohol licensed premises (under the Licensing Act 2003) of the use of two or fewer gaming machines
- Grant Licensed Premises Gaming Machine Permits for premises licensed to sell/supply alcohol for consumption on the licensed premises, under the Licensing Act 2003, where more than two machines are required
- Register small society lotteries below prescribed thresholds
- Issue Prize Gaming Permits
- Receive and Endorse Temporary Use Notices
- Receive Occasional Use Notices
- Provide information to the Gambling Commission regarding details of licences issued (see Section 7 above on 'information exchange')
- Maintain registers of the permits and licences that are issued under these functions

9.2 We as the licensing authority will not be involved in licensing remote gambling. Regulation of such activity will be the responsibility of the Gambling Commission via Operator Licences.

9.3 In accordance with the Act and Guidance, this authority will:

- Refer the decision whether to make a resolution not to issue casino licences within the Borough to Full Council.
- Refer approval of this three-year licensing policy to Full Council
- Refer any delegated power under forthcoming Regulations to set fees to Executive.

- Delegate all decisions relating to premises licences to the Licensing Committee where representations have been received and not withdrawn.
- Further delegate decision making to officers in accordance with the law and guidance, attached at Appendix C.

## PART B

### 10 Premises Licences

#### General Principles

- 10.1 Premises Licences will be subject to the permissions/restrictions set out in the Gambling Act 2005 and regulations, as well as specific mandatory and default conditions that will be detailed in regulations issued by the Secretary of State.
- 10.2 We, as the licensing authority, will be able to exclude default conditions and also attach other conditions, where we believe it to be appropriate.
- 10.3 This licensing authority is aware that in making decisions about premises licences we should aim to permit the use of premises for gambling in so far as we think it is:
- in accordance with any relevant code of practice issued by the Gambling Commission
  - in accordance with any relevant guidance issued by the Gambling Commission
  - reasonably consistent with the licensing objectives and
  - in accordance with this statement of licensing policy
- 10.4 We appreciate that gambling can be an emotive subject but acknowledge that, in accordance with Gambling Commission Guidance for Local Authorities, “moral or ethical objections to gambling are not a valid reason to reject applications for premises licences.” Except in respect of a Casino resolution and also that unmet demand is not a criterion for a Licensing Authority.
- 10.5 Premises are defined in the Act as “includes any place”. Different premises licences cannot apply in respect of single premises at different times. It is however possible for a single building to be subject to more than one premises licence, providing that each licence is for a different part of the building and such different parts can reasonably be regarded as different premises.
- 10.6 We will judge each case on its individual merits to decide as a matter of fact, whether different parts of a building can be properly regarded as being separate premises.
- 10.7 We note that the Gambling Commission, in their guidance, do not consider that areas of a building that are artificially or temporarily separate can be properly regarded as different premises. We support this view.
- 10.8 This licensing authority takes particular note of the Gambling Commission’s Guidance for local authorities which states that:

Licensing Authorities should take particular care in considering applications for multiple premises licences for a building and those relating to a discrete part of a building used for other (non gambling) purposes in particular they should be aware of the following:

- The third licensing objective seeks to protect children from being harmed or exploited by gambling. In practice that means not only preventing them from taking part in gambling, but also preventing them from being in close

proximity to gambling. Therefore premises should be configured so that children are not invited to participate in, have accidental access to, or closely observe gambling where they are prohibited from participating.

- Entrances to and exits from parts of a building covered by one or more premises licences should be separate and identifiable so that the separation of different premises is not compromised and people do not 'drift' into a gambling area. In this context it should normally be possible to access the premises without going through another licensed premises or premises with a permit.
- 10.9 We also note that in relation to premises which are still to be constructed, under construction or alteration that following case law operators may apply for a premises licence, albeit they are not ready to be used for gambling. This authority will determine such applications on their own merits.
- 10.10 This licensing authority is aware that demand issues cannot be considered in relation to the location of premises but that considerations made in terms of the licensing objectives can be considered. Operators will be expected to demonstrate in their local risk assessment (LRA) the impact of the provision of gambling facilities in a particular area on the licensing objectives. From 6 April 2016 a new requirement was introduced requiring licensed operators of certain gambling establishments to undertake local risk assessments. This requirement was formalised in the Gambling Commission's Licence Conditions and Codes of Practice (LCCP) which were revised and published in April 2018. <http://www.gamblingcommission.gov.uk/PDF/LCCP/Licence-conditions-and-codes-of-practice.pdf>
- 10.11 We will, in accordance with the Gambling Commission's Guidance for local authorities, pay particular attention to the protection of children and vulnerable persons from being harmed or exploited by gambling, as well as issues of crime and disorder.
- 10.12 This authority has not adopted any specific policy in relation to areas where gambling premises should not be located. Should any such policy be decided upon, this **policy statement** will be updated. However this authority would expect an operator's local risk assessment (LRA) to consider for example the proximity of their premises in relation to schools, hospitals and centres where children or vulnerable groups may be present.
- 10.13 It should be noted that any such future policy will not preclude any application being made and each application will be decided on its merits, with the onus upon the applicant to show how any potential concerns can be overcome.
- 10.14 This authority will seek to avoid any duplication with other statutory / regulatory systems where possible, including the statutory planning regime.
- 10.15 This Council acting as a licensing authority will not consider whether a licence application is likely to be awarded planning permission or building regulations approval in its consideration of an application for a Premises Licence.
- 10.16 We will though, carefully consider any concerns about licensing conditions which are not able to be met by licensees due to planning restrictions, should such a situation arise.

- 10.17 The Planning Department are a responsible authority under this Act and have the opportunity to make representations should they desire, otherwise the two regimes will be properly separated.
- 10.18 Premises licences granted must be reasonably consistent with the licensing objectives. Having regard to these objectives, we have considered the Gambling Commission's Guidance to local authorities and make the following observations:

**Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime**

- 10.19 This licensing authority is aware that the Gambling Commission will be taking a leading role in preventing gambling from being a source of crime. Their guidance does however envisage that the licensing authority should pay attention to the proposed location of gambling premises in terms of this licensing objective.
- 10.20 Therefore, where an area has known high levels of organised crime, we will consider carefully whether gambling premises are suitable to be located there and whether conditions may be suitable, such as the provision of door supervisors. Responsible authorities would however have the right to make representations with regard to such premises.
- 10.21 We are aware that there is not a clear line between nuisance and disorder and will consider factors such as whether police assistance was required and how threatening the behaviour was to those who could see it, so as to make that distinction. It should be noted that public nuisance is not a Gambling Act licensing objective and issues of nuisance are not relevant considerations under the Gambling Act 2005.
- 10.22 In considering licence applications, the Council will particularly take into account the following:
- The design and layout of the premises;
  - The training given to staff in crime prevention measures appropriate to those premises;
  - Physical security features installed in the premises. This may include matters such as the position of cash registers or the standard of CCTV that is installed;
  - Where premises are subject to age-restrictions, the procedures in place to conduct age verification checks;
  - The likelihood of any violence, public order or policing problem if the licence is granted.
  - The operators local risk assessment (LRA) in relation to known problems in an area such as high levels of crime, drug activity and anti-social behaviour.

**Ensuring that gambling is conducted in a fair and open way**

- 10.25 This licensing authority is aware that the Gambling Commission has stated that it would generally not expect licensing authorities to become concerned frequently with ensuring that gambling is conducted in a fair and open way as this will be addressed by the operator and personal licensing system. It is acknowledged that there is a



greater role for the Licensing Authority in track gambling which is explained in Section 16 below.

### **Protecting children and other vulnerable persons from being harmed or exploited by gambling**

10.26 We note the Gambling Commission Guidance to local authority's states that this objective relates to preventing children from taking part in gambling as well as restriction of advertising so that gambling products are not aimed at, or are particularly attractive, to children.

With regards to children and young persons we recommend that the following matters are considered by operators when making their risk assessment;

- Institutions, places or areas where the presence of children and young persons should be expected such as schools, youth clubs, parks, playgrounds and entertainment venues such as leisure centres, cinemas etc.
- Any premises where children congregate including bus stops, cafes, shops, and any other place where children are attracted
- Any areas that are prone to issues of anti-social behaviour, under-age drinking etc. involving children
- Recorded incidents of attempted under-age gambling

10.27 In reference to the term "vulnerable persons" we note that the Gambling Commission or statute law is not seeking to offer a definition but the Commission states that "it will for regulatory purposes assume that this group includes

- people who gamble more than they want to;
- people who gamble beyond their means;
- and people who may not be able to make informed or balanced decisions about gambling due to, for example, mental health, a learning disability or substance misuse relating to alcohol or drugs.

10.29 With regards to matters relating to vulnerable adults we recommend the following matters, are considered by operators when making their risk assessments:

- Information held by licensees regarding self-exclusions and incidents of under-age gambling
- Gaming trends that may mirror days for financial payments such as pay days or benefit payments
- Arrangement for localised exchange of information regarding self-exclusions and gaming trends
- Proximity of premises which may be frequented by vulnerable people such as hospitals, residential care homes, medical facilities, doctor's surgeries, housing association offices, addiction clinics or help centres, places where alcohol or drug dependent people may congregate etc.

10.30 This licensing authority will consider promotion of this licensing objective on a common sense, case by case basis. We will also take account of the Codes of Practice regarding this objective in relation to specific types of premises.

### **Conditions on Premises Licences**

10.31 Any conditions we attach to licences will be proportionate and will be :

- relevant to the need to make the proposed building suitable as a gambling facility
- directly related to the premises and the type of licence applied for;
- fairly and reasonably related to the scale and type of premises: and
- reasonable in all other respects.

10.32 The Authority is aware that the mandatory and default conditions imposed by the Gambling Commission will normally be sufficient to regulate gambling premises. In exceptional cases where there are specific risks or problems associated with a particular locality, specific premises or class of premises, the authority may consider attaching individual conditions related to the licensing objectives.

10.33 This Authority takes note of the Gambling Commission's guidance in relation to Local Risk Assessments for operators. The Gambling Commission's 'Licence Conditions and Codes of Practice' supplemented by a new 'Social Responsibility Code' formalise the need for operators to consider local risks and have policies, procedures and control measures to mitigate those risks. Account must be taken by operators of relevant matters identified in this Authority's statement of policy.

10.34 This Authority takes note of Gambling Commission's guidance requiring a licence applicant to undertake a local risk assessment when applying for a new premises licence. Their risk assessment must also be updated:

- When applying for a variation of a premises licence
- To take account of significant changes in local circumstances, including those identified in this council's statement of policy
- When there are significant changes at the licensee's premises that may affect their mitigation of local risks

10.35 Applicants may wish to refer to this council's Community Safety Partnership Strategic Assessment to obtain a local profile of the Borough along with highlighted and emerging threats to the Borough when preparing local risk assessments. The Social Responsibility Code supplemented by the ordinary code (LCCP) requires that licensees share their risk assessment with licensing authorities when applying for a premises licence or varying an existing licence. The risk assessment should be kept on the individual premises and made available at the request of the Authority; for example when carrying out inspections.

10.36 We will, where considered necessary, consider specific measures for buildings which are subject to multiple premises licences. Such measures may include the supervision of

entrances, segregation of gambling and non-gambling areas frequented by children and the supervision of gaming machines in non-adult gambling specific premises to promote the licensing objectives, in accordance with Gambling Commission Guidance.

10.37 We will also ensure that where Category A to C gaming machines are on offer in premises to which children are admitted, other than premises licensed for the supply of alcohol under the Licensing Act 2003,

- All such machines are located in an area of the premises which is separated from the remainder of the premises by a physical barrier which is effective to prevent access other than through a designated entrance
- Only adults are admitted to the area where these machines are located
- Access to the area where these machines are located is supervised
- The area where these machines are located is arranged so that it can be observed by the staff or the licence holder, and
- At the entrance to and inside any such areas there are prominently displayed notices indicating that access to the area is prohibited to persons under 18 years of age.

10.38 These considerations will apply to premises including buildings where multiple premises licences are applicable.

10.39 We are aware that tracks may be subject to one or more than one premises licence, provided that each licence relates to a specified area of the track.

10.40 We will, in accordance with the Gambling Commission's Guidance, consider the impact upon the third licensing objective and the need to ensure that the entrances to each type of premises are distinct from each other and that children are excluded from gambling areas where they are not permitted by law or condition, to enter

10.41 It is noted that there are conditions which the licensing authority cannot by law attach to premises licences which are:

- any condition on the premises licence which makes it impossible to comply with an operating licence condition
- conditions relating to gaming machine categories, numbers, or method of operation;
- conditions which provide that membership of a club or body be required (the Gambling Act 2005 specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated) and
- conditions in relation to stakes, fees, winning or prizes

10.42 The Gambling Commission advises in its Guidance that if a licensing authority is concerned that a premises may attract disorder or be subject to attempts at authorised access (for example by children and young persons) then it may require that entrances to premises are controlled by a door supervisor, and is entitled to impose conditions to that effect. Where it is decided that supervision of

entrances/machines is appropriate for particular cases, a consideration as whether or not these supervisors need to be licensed by the Security industry Authority will be necessary. It will not be automatically assumed that they need to be licensed, as the statutory requirements for different types of premises vary (as per guidance)

## **11 Adult Gaming Centres**

- 11.1 Adult gaming centres (AGCs) premises licences allow the holder of the licence to make gaming machines available for use on the premises. Persons operating an AGC must hold a gaming machines general operating licence from the Commission and must seek a premises licence from the licensing authority. Gaming machines are a form of gambling which is attractive to children and AGC's will contain machines of a similar format to the Category D machines on which children are allowed to play. However, no-one under the age of 18 is permitted to enter an AGC and applicants must be aware of the location of and entry to AGC's to minimise the opportunities for children to gain access. This licensing authority will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that persons under 18 years of age do not have access to the premises.
- 11.2 Because gaming machines provides opportunities for solitary play and immediate payouts, they are more likely to engender repetitive and excessive play. The council in considering premises licences and will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to, for example, ensure that under 18 year olds are not attracted to, or gain access to, the premises.

## **12 (Licensed) Family Entertainment Centres**

- 12.1 We will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machine areas.
- 12.2 We will pay particular attention to measures proposed by operators to protect children from harm in Adult Gaming Centres and Family Entertainment Centres. For example, such measures may include, but would not be limited to, the following:
- Proof of age schemes
  - CCTV
  - Supervision of entrances/machine areas
  - Physical separation of areas
  - Specific opening hours
  - Self-barring schemes
  - Notices/signage
  - Measures/training for staff on how to deal with suspected truanting school children on the premises and how to recognise signs of potential child sexual

- exploitation (CSE)
  - Clear policies that outline the steps to be taken to protect children from harm.
  - Provision of information leaflets/helpline numbers for organisations such as Gam-Care.
- 12.3 We will, in accordance with the Gambling Commission's guidance, refer to the Commission, and be aware of any conditions that apply to operating licences covering the way in which the area containing the Category C or higher machines, should be delineated.
- 12.4 This licensing authority will also make itself aware of any mandatory or default conditions on these premises licences, when they have been published.

### **13 Casinos**

- 13.1 This licensing authority does not have an existing licensed casino within the Borough. (Licences granted under the 1968 Act, granted under grandfather arrangements). There are two types of new casino premises licences, large and small casinos. The Borough of Burnley is not an area chosen for the issue of casino licences.

No casino resolution

- 13.2 This licensing authority has not passed a 'no casino' resolution under Section 166 of the Gambling Act 2005, but is aware that it has the power to do so.

#### Betting machines

- 13.3 It is desirable that the difference between a gaming machine and betting machine is understood. A machine is not a gaming machine if it is designed or adapted for use to bet on future real events.
- 13.4 Some betting premises may make available machines that accept bets on live events, such as horse racing, as a substitute for placing a bet over the counter. These "betting machines" are not gaming machines and therefore neither count towards the maximum permitted number of gaming machines, nor have to comply with any stake or prize limits.
- 13.5 Such betting machines merely automate the process which can be conducted in person and therefore do not require regulation as a gaming machine.
- 13.6 However, where a machine is made available to take bets on virtual races, that machine is a gaming machine and does count towards the maximum permitted number of gaming machines, and must meet the relevant category limitations for the premises.
- 13.7 Section 181 contains an express power for licensing authorities to restrict the number of betting machines, their nature and the circumstances in which they are made available by attaching a licence condition to a betting premises licence or to a casino premises licence (where betting is permitted in the casino).

- 13.8 In accordance with the Gambling Commission's Guidance for local authorities, when considering the number / nature / circumstances of betting machines that a casino operator wishes to offer, we will take into account;
- the size of the premises
  - the number of counter positions available for person-to-person transactions, and,
  - the ability of staff to monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable persons."

## **14 Bingo Premises**

- 14.1 This licensing authority notes that that the Gambling Commission Guidance states;
- "Children and young people are allowed into bingo premises; however they are not permitted to participate in the bingo and if category B or C machines are made available for use these must be separated from areas where children and young people are allowed. Social Responsibility (SR) code 3.2.5(3) states that 'licensees must ensure that their policies and procedures take account of the structure and layout of their gambling premises' in order to prevent underage gambling.
- 14.2 We note that under the Act, children and young persons (anyone up to the age of 18) cannot be employed in providing any facilities for gambling on bingo premises, and children (under 16) cannot be employed, in any capacity, at a time when facilities for playing bingo are being offered. However, young persons, aged 16 and 17, may be employed in bingo premises (while bingo is being played), provided the activities on which they are employed are not connected with the gaming or gaming machines.
- 14.3 We will consider restrictions that apply to such premises in the current Licence conditions and codes of practice published on the Gambling Commission's website.

## **15 Betting Premises**

- 15.1 We note that the Act contains a single class of licence for betting premises. However, within this single class of licence, there will be different types of premises which require licensing. This Section of our policy discusses off-course betting, that is betting that takes place other than at a track in what is currently known as a licensed betting office. Tracks are discussed in the following Section. It should be noted that there are also betting offices on tracks, that have a separate premises licence from the track licence.
- 15.2 It is noted that the Gambling Commission's Guidance for local authorities states, Section 181 contains an express power for licensing authorities to restrict the number of betting machines, their nature and the circumstances in which they are made available by attaching a licence condition to a betting premises licence or to a casino premises licence (where betting is permitted in the casino).

- 15.3 It is noted that the Gambling Commission's Guidance for local authorities states S.235(2)(c) provides that a machine is not a gaming machine by reason only of the fact that it is designed or adapted for use to bet on future real events. Some betting premises may make available for use machines that accept bets on live events, such as a sporting event, as a substitute for placing a bet over the counter. These SSBTs are not gaming machines and therefore neither count towards the maximum permitted number of gaming machines, nor have to comply with any stake or prize limits. Such betting machines merely replicate and automate the process that can be conducted in person, and therefore do not require regulation as gaming machines. S.181 of the Act contains an express power for licensing authorities to restrict the number of SSBTs, their nature and the circumstances in which they are made available, by attaching a licence condition to a betting premises licence or to a casino premises licence (where betting is permitted in the casino). Part 19 of this Guidance provides further details.
- 15.4 This licensing authority will give sympathetic consideration to re-sites within the same locality and extensions in order to enhance the quality of the facility provided for the benefit of the betting public

## **16 Tracks**

- 16.1 Tracks are sites (including horse racecourses and dog tracks) where races or other sporting events take place. Tracks are different from other premises in that they may be subject to one or more Premises Licences, provided that each Licence relates to a specific area of the track.
- 16.2 This licensing authority will have particular regard to the protection of children and other vulnerable persons from being harmed or exploited by gambling and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter. We would expect Premises Licence applicants to demonstrate suitable measures to ensure that children do not have access to adult only gaming facilities.
- 16.3 We are aware that tracks are different from other premises in that there may be more than one premises licence in effect, each covering a specified area of the track. In accordance with the Gambling Commission guidance, this authority will especially consider the impact of the third licensing objective.
- 16.4.1 The licensing authority notes the Commission's comments that it "may be considered that it is disproportionate and unnecessary to insist that betting rules are displayed at each distinct betting location; rather the rules should be made available at suitable central locations. The track premises licence holder should make the necessary arrangements to ensure that betting rules are accessible to all customers, regardless of which area of the track they are in" and that the requirement "could also be met by making a copy of the rules available in leaflet form from the main track office, and customers could be given a copy if they request one".

## **17. Travelling Fairs**

- 17.1 We note that we as the licensing authority are required to decide whether, where category D machines and / or equal chance prize gaming without a permit is to be made available for use at travelling fairs, the statutory requirement that the facilities for gambling amount to no more than an ancillary amusement at the fair is met.
- 17.2 The licensing authority will also consider whether the applicant falls within the statutory definition of a travelling fair.
- 17.3 It has been noted that the 27-day statutory maximum for the land being used as a fair, is per calendar year, and that it applies to the piece of land on which the fairs are held, regardless of whether it is the same or different travelling fairs occupying the land. This licensing authority will work with other departments of the Council and its neighbouring authorities to ensure that land which crosses our boundaries is monitored so that the statutory limits are not exceeded.

## **18. Provisional Statements**

- 18.1 Section 204 of the Act provides for a person to make an application to the Authority for a Provisional Statement in respect of premises that s/he:
- Expects to be constructed;
  - Expects to be altered; or
  - Expects to acquire a right to occupy.
- 18.2 Developers may wish to apply for Provisional Statements before they enter into a contract to buy or lease property or land to judge whether or not a development is worth taking forward in light of the need to obtain a Premises Licence. It is also possible for an application for a Provisional Statement to be made for premises that already have a Premises Licence (either for a different type of gambling or for the same type).
- 18.3 This authority has noted the Gambling Commission's Guidance that "A licensing authority must not have regard to whether or not a proposal by the applicant is likely to be permitted in accordance with planning or building law.

## **19. Reviews**

- 19.1 A premises licence may be reviewed by the licensing authority of its own volition or following the receipt of an application for a review, which is essentially a request by a third party to the licensing authority to review a particular licence.
- 19.2 Section 200 of the Act provides that licensing authorities may initiate a review in relation to a particular class of premises licence or in relation to particular premises. Officers may be involved in the initial investigations of complaints leading to a review, or may try informal mediation or dispute resolution techniques prior to a full-scale review being conducted, but the review itself, if necessary will be heard by elected members.
- 19.3 Requests for a review of a premises licence can be made by interested parties or responsible authorities; however, it is for the licensing authority to decide whether the review is to be carried-out.



19.4 An application for a review may be (but need not be) rejected if the licensing authority thinks that the grounds on which the review is sought:

- (a) are not relevant to the principles that must be applied by the licensing authority in accordance with section 153.

If the application raises issues that are not relevant to the Commission guidance/codes of practice, this **policy statement**, or the licensing objectives, then we may reject it. In addition, if the application raises general objections to gambling as an activity, that is likely to be irrelevant to the principles in section 153, given that we are required to permit the use of premises for gambling in so far we think that permission is in accordance with the matters set out in that section.

Examples that are likely to be irrelevant include demand for gambling premises, issues relating to planning, public safety, and traffic congestion;

- (b) the grounds are frivolous;
- (c) the grounds are vexatious;
- (d) the grounds “will certainly not” cause the authority to revoke or suspend a licence or to remove, amend or attach conditions on the premises licence;
- (e) are substantially the same as the grounds cited in a previous application for review relating to the same premises. In these circumstances we will take into account how much time has passed since the earlier application in reaching a judgement about whether it is reasonable to rely on this as a reason not to review the licence; or
- (f) are substantially the same as representations made at the time the application for a premises licence was considered. In these circumstances we will take into account the period of time that has passed since the representations were made, but the underlying requirement is that we should not review the licence on the basis of the same arguments considered on the grant of the premises licence.

## PART C

### 20. Unlicensed Family Entertainment Centre gaming machine permits

- 20.1 Family entertainment centres (FECs) will perhaps be most commonly located at seaside resorts, in airports and at motorway service centres, and will cater for families, including unaccompanied children and young persons.
- 20.2 Unlicensed FECs will be able to offer only category D machines in reliance on a gaming machine permit. Any number of category D machines can be made available with such a permit. Permits cannot be issued to vessels or vehicles.
- 20.3 Where a premises does not hold a premises licence but wishes to provide gaming machines, it may apply to the licensing authority for this permit. It should be noted that the applicant must show that the premises will be wholly or mainly used for making gaming machines available for use as required by Section 238.
- 20.4 The application for a permit can only be made by a person who occupies or plans to occupy the premises to be used as an unlicensed FEC and, if the applicant is an individual, he must be aged 18 or over. Applications for a permit cannot be made if a premises licence is in effect for the same premises.
- 20.5 The Gambling Act 2005 states that a licensing authority may prepare a **policy statement** that they propose to consider in determining the suitability of an applicant for a permit and in preparing this statement, and/or considering applications, it need not (but may) have regard to the licensing objectives and shall have regard to any relevant guidance issued by the Commission under section 25.
- 20.6 The Gambling Commission's Guidance for local authorities also states: "In their three year licensing statement of principles, licensing authorities should include a policy statement that they propose to apply when exercising their functions in considering applications for permits licensing authorities will want to give weight to child protection issues."
- 20.7 The Guidance also states: "...An application for a permit may be granted only if the licensing authority is satisfied that the premises will be used as an unlicensed FEC, and if the chief officer of police has been consulted on the application....Licensing authorities may also consider asking applications to demonstrate:
- a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed FECs;
  - that the applicant has no relevant convictions (those that are set out in Schedule 7 of the Act); and
  - that employees are trained to have a full understanding of the maximum stakes and prizes. (24.7)
- 20.8 We note that a licensing authority can grant or refuse a licence but cannot attach conditions to this type of permit.
- 20.9 This licensing authority will expect the applicant to show that there are policies and procedures in place to protect children from harm. Harm in this context is not limited to harm from gambling but includes wider child protection considerations.

20.10 The efficiency of such policies and procedures will each be considered on their merits. However, they may include appropriate measures / training for staff as regards suspected truant school children on the premises, measures / training covering how staff would deal with unsupervised very young children being on the premises, or children causing perceived problems on / around the premises

## **21. (Alcohol) Licensed premises gaming machine permits**

21.1 There is provision in the Act for premises licensed under the Licensing Act 2003 for the sale of alcohol for consumption on the premises, that have a bar at which alcohol is served, without a requirement that alcohol is only served with food to automatically have 2 gaming machines, of categories C and/or D. Licence holders merely need to notify the licensing authority.

21.2 The licensing authority can remove the automatic authorisation in respect of any particular premises if:

- provision of the machines is not reasonably consistent with the pursuit of the licensing objectives;
- gaming has taken place on the premises that breaches a condition of section 282 of the Gambling Act (i.e. that written notice has been provided to the licensing authority, that a fee has been provided and that any relevant code of practice issued by the Gambling Commission about the location and operation of the machine has been complied with);
- the premises are mainly used for gaming; or
- an offence under the Gambling Act has been committed on the premises.

21.3 If a premises licence holder wishes to have more than 2 machines, then they need to apply for a permit and the licensing authority must consider that application based upon the licensing objectives, any guidance issued by the Gambling Commission under Section 25 of the Gambling Act 2005, and “*such matters as they think relevant.*”

21.4 This licensing authority considers that “such matters” will be decided on a case by case individual basis, but generally there will be regard to the need to protect children and vulnerable persons from being harmed or exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult-only gaming machines.

21.5 Measures which will satisfy the authority that there will be no access may include the adult machines being in sight of the bar, or in the sight of staff who will monitor that the machines are not being used by those under 18. Notices and signage on the machines or in the premises may also be help. As regards the protection of vulnerable persons, applicants may wish to consider the provision of information leaflets / helpline numbers for organisations such as GamCare.

21.6 It is recognised that some alcohol licensed premises may apply for a premises licence for their non-alcohol licensed areas. Any such application would normally need to be applied for, and dealt with, as an Adult Gaming Centre premises licence.

- 21.7 It should be noted that we as the licensing authority can decide to grant the application with a smaller number of machines and/or a different category of machines than that applied for. Conditions (other than these) cannot be attached to a permit.
- 21.8 It should also be noted that the holder of a permit must comply with any Code of Practice issued by the Gambling Commission about the location and operation of the machine.

## **22. Prize Gaming Permits**

- 22.1 The Gambling Act 2005 states that a licensing authority may “prepare a **policy statement** that they propose to apply in exercising their functions under this Schedule” which “may, in particular, specify matters that the licensing authority propose to consider in determining the suitability of the applicant for a permit”.
- 22.2 This licensing authority has prepared a **Policy statement** which is that the applicant should set out the types of gaming that he or she is intending to offer and that the applicant should be able to demonstrate:
- that they understand the limits to stakes and prizes that are set out in Regulations;
  - and that the gaming offered is within the law.
- 22.3 In making its decision on an application for this permit the licensing authority does not need to have regard to the licensing objectives but must have regard to any Gambling Commission guidance.
- 22.4 It should be noted that there are conditions in the Gambling Act 2005 with which the permit holder must comply, but that the licensing authority cannot attach conditions. The conditions in the Act are :
- The limits on participation fees, as set out in regulations, must be complied with;
  - all chances to participate in the gaming must be allocated on the premises on which the gaming is taking place and on one day; the game must be played and completed on the day the chances are allocated; and the result of the game must be made public in the premises on the day that it is played;
  - the prize for which the game is played must not exceed the amount set out in regulations (if a money prize), or the prescribed value (if non-monetary prize); and
  - participation in the gaming must not entitle the player to take part in any other gambling.

## **23 Club Gaming and Club Machines Permits**

- 23.1 Bona Fide Members Clubs and Miners' welfare institutes (but not Commercial Clubs) may apply for a Club Gaming Permit or a Clubs Gaming machines permit.
- 23.2 The Club Gaming Permit will enable the premises to provide 3 gaming machines of categories B3A or B4 to D, equal chance gaming and games of chance.
- 23.3 The Act states: Members clubs must have at least 25 members and be established and conducted "wholly or mainly" for purposes other than gaming, unless the gaming is restricted to bridge and whist.
- 23.4 A members' club must be permanent in nature, not established to make commercial profit, and controlled by its members equally. Examples include working men's clubs, branches of Royal British Legion and clubs with political affiliations.
- 23.5 The Commission Guidance also notes that licensing authorities may only refuse an application on the grounds that:
- (a) the applicant does not fulfil the requirements for a members' or commercial club or miners' welfare institute and therefore is not entitled to receive the type of permit for which it has applied;
  - (b) the applicant's premises are used wholly or mainly by children and/or young persons;
  - (c) an offence under the Act or a breach of a permit has been committed by the applicant while providing gaming facilities;
  - (d) a permit held by the applicant has been cancelled in the previous ten years; or
  - (e) an objection has been lodged by the Commission or the police.
- 23.6 There is also a 'fast-track' procedure available under the Act for premises which hold a Club Premises Certificate under the Licensing Act 2003 (Schedule 12 paragraph 10).
- 23.7 The Gambling Commission's Guidance for local authorities states: "Under the fast-track procedure there is no opportunity for objections to be made by the Commission or the police, and the grounds upon which an authority can refuse a permit are reduced." and "The grounds on which an application under the process may be refused are:
- (a) that the club is established primarily for gaming, other than gaming prescribed under schedule 12;
  - (b) that in addition to the prescribed gaming, the applicant provides facilities for other gaming; or
  - (c) that a club gaming permit or club machine permit issued to the applicant in the last ten years has been cancelled."

- 23.8 There are statutory conditions on club gaming permits that no child uses a category B or C machine on the premises and that the holder complies with any relevant provision of a code of practice about the location and operation of gaming machines.

## **24. Temporary Use Notices**

- 24.1 Part 9 of the Act sets out the position in relation to temporary use notices. These allow the use of premises for gambling where there is no premises licence but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling. Premises that might be suitable for a temporary use notice would include hotels, conference centres, and sporting venues.
- 24.2 Regulations state that the only activities permitted under a TUN are the provision of facilities for any form of equal chance gaming where those participating in the gaming are taking part in a competition which is intended to produce a single, overall winner (this does not include providing such facilities in circumstances where any person participating in the gaming does so by means of a gaming machine).
- 24.3 In relation to premises we will apply the Gambling Commission Guidance which states:

“In the Act “premises” is defined as including “any place”. In considering whether a place falls within the definition of “a set of premises”, licensing authorities will need to look at, amongst other things, the ownership/occupation and control of the premises. A large exhibition centre, for example, would be likely to come within the definition as it is properly one premises, and should not be granted a temporary use notice for 21 days in respect of each of its exhibition halls. But in relation to other covered areas, such as shopping centres, the licensing authority will need to consider whether different units are in fact different “sets of premises”, given that they may be occupied and controlled by different people. This is a new permission and licensing authorities should be ready to object to notices where it appears that their effect would be to permit regular gambling in a place that could be described as one set of premises.”

## **25. Occasional Use Notices:**

- 25.1 We have very little discretion as regards these notices aside from ensuring that the statutory limit of 8 days in a calendar year is not exceeded. This licensing authority will, however, consider the definition of a ‘track’ and whether the applicant is permitted to avail him/herself of the notice. Provided that the Notice will not result in betting facilities being available for more than eight days in a calendar year, there is no provision for counter-notices or objections to be submitted.

**SCHEDULE OF CONSULTEES TO THIS DRAFT **POLICY STATEMENT****

- All Elected Councillors, Burnley Borough Council
- The Head of Planning and Environment, Burnley Borough Council
- The Head of Legal Services, Burnley Borough Council
- The Environment and Licensing Manager, Burnley Borough Council
- The Gambling Commission Headquarters Policy Section
- The Gambling Commission Regional Inspector for Lancashire and Cumbria
- The Chief Constable, Lancashire Constabulary
- Lancashire Fire and Rescue Service Authority
- Lancashire Area Child Protection Committee, Lancashire County Council  
Social Services Section
- H.M. Revenue & Customs
- Blackburn and Darwen Council
- Hyndburn Borough Council
- Ribble Valley Borough Council
- Rossendale Borough Council
- Pendle Borough Council
- Calderdale Borough Council
- British Amusement Catering Trade Association
- British Holiday & Home Parks Association
- Community Trade Union
- Association of British Bookmakers
- All persons who hold Betting Office and Bookmakers Permits in Burnley
- All persons who hold Bingo Licences or Bingo Certificates in Burnley
- Clubs and Institute Union
- Gaming Machine Suppliers who regularly apply for Gaming Permits in Burnley

- Representatives of Premises Licence Holders in Burnley
- Representatives of Club Premises Certificate holders in Burnley
- Lancashire County Council Trading Standards
- GamCare
- Responsibility in Gambling Trust
- Gam – Anon
- Residents Associations and Tenant Groups.



**SCHEDULE OF RESPONSIBLE AUTHORITIES  
GAMBLING ACT 2005**

1. Burnley Borough Council Licensing Authority  
First Floor Parker Lane Offices, Parker Lane, Burnley, BB11 2DT
2. The Gambling Commission, Victoria Square House, Victoria Square  
Birmingham, B2 4BP
3. The Chief Constable, Lancashire Constabulary C/O Divisional Licensing  
Unit, Burnley Police Station, Parker Lane, Burnley, BB11 2BT
4. Lancashire Fire and Rescue Authority C/O Fire Safety Department,  
Burnley Community Fire Station, Ormerod Road, Burnley, BB10 3AA
5. Burnley Borough Council Planning Services, Parker Lane, Burnley, BB11  
2DT
6. Burnley Borough Council Environmental Protection, Parker Lane,  
Burnley, BB11 2DT
7. Lancashire Safeguarding Children Board, Room B52, PO Box 61,  
County Hall, Preston, PR1 8RJ
8. H.M. Revenue and Customs, National Registration Unit (Betting &  
Gaming) Portcullis House, 21 India Street, Glasgow, G2 4PZ

**SUMMARY OF THE DELEGATION OF POWERS UNDER THE  
GAMBLING ACT 2005**

All to licensing committee except these to officers:

To undertake the following functions in relation to the Gambling Act 2005:

- To determine applications for premises licences where no representations received or representation have been withdrawn
- To determine applications for a variation to a licence where no representations received or representations have been withdrawn
- To determine applications for the transfer of licences where no representations have been received from the Commission or responsible authority
- To determine applications for provisional statements where no representations received or representation have been withdrawn
- To determine applications for club gaming/club machine permits where no representations have been made
- To determine applications for other permits
- To determine the cancellation of licensed premises gaming machine permits
- To determine requests for temporary use notices

## REPORT TO LICENSING COMMITTEE



<b>DATE</b>	<b>23<sup>rd</sup> June 2021</b>
<b>PORTFOLIO</b>	<b>Community &amp; Environment</b>
<b>REPORT AUTHOR</b>	<b>James Astin</b>
<b>TEL NO</b>	<b>01282 425011</b>
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## DfT Statutory Taxi & Private Hire Vehicle Standards

### PURPOSE

1. Further to Licensing Committee on 4<sup>th</sup> February 2021, this report progresses actions to deliver compliance with the Department for Transport (DfT) Statutory Taxi and Private Hire Vehicle Standards and seeks Committee approval in relation to changes to licence conditions.

### RECOMMENDATION

2. That Licensing Committee agrees to:
  - (i) Require 6 month DBS reviews for all drivers and annual DBS reviews for all operators via mandatory subscription to the DBS Update Service. To be implemented immediately for new applications, and at the first DBS renewal date for all existing licence-holders.
  - (ii) Introduce a mandatory requirement of Safeguarding Awareness Refresher Training for driver's licence renewal applications. To be completed within 2 months of renewal.
  - (iii) Require applicants for vehicle proprietor licences, who do not hold a Burnley BC driver or operator licence, or another vehicle licence where DBS conditions are met, to submit a basic DBS check with the application, and each year thereafter for as long as they retain a vehicle proprietor licence. To be effective from 1<sup>st</sup> July 2021.
  - (iv) Introduce a condition requiring Private Hire Operators to retain a register of all booking/despatch operators, containing dates of annual DBS reviews, for as long as they remain in their employment. To be effective from 1<sup>st</sup> July 2021.
  - (v) Consider at a future Licensing Committee any element of the DFT requirements relating to convictions that are more onerous than those contained in the existing convictions policy

### REASONS FOR RECOMMENDATION

3. To enable the Licensing Authority to comply with the recommendation of the DfT Statutory Taxi & Private Hire Vehicle Standards Guidance and fulfil its obligations and remove

obstacles and delays in DBS reviews and in the determination of licence applications. Additionally, for the Licensing Authority to adopt a strong approach to Safeguarding Awareness by ensuring more regularity and consistency in the training program.

## **SUMMARY OF KEY POINTS**

### **4. Subscription To The DBS Update Service**

Recommendation (i) brings the Council into line with the DfT Statutory Taxi & Private Hire Vehicle Standards Guidance Section 6 (6.1 – 6.4) – Criminality Checks For Drivers and Section 8 (8.2 – 8.6) – Criminality Checks For Private Hire Vehicle Operators. For ease of reference, the DfT Statutory Taxi & Private Hire Vehicle Standards Guidance document is available at Appendix A.

#### Drivers

The DfT Standards document recommends that DBS reviews are conducted biannually for all drivers (Paras 6.1 – 6.4 refers).

To do so effectively requires:

- a) subscription to the update service, and
- b) consent of the applicant/driver.

The update service is the most practical and cost effective way of allowing biannual DBS reviews.

Where an individual fails to consent, the individual would instead need to apply, pay for and submit a new DBS certificate every 6 months. This is an additional manual process that officers would need to manage, whereas update service checks are electronic and straightforward to complete in a matter of minutes.

Although applicants are strongly recommend to subscribe to this service now, at present it is not mandatory. The cost of each enhanced DBS check is £55.49 and the cost of the update service subscription is £13.00 annually equating to £39.00 over a 3 year period. The update service also streamlines the renewal process. Providing subscription is continued and an individual's personal circumstances remain unchanged, it is not necessary to apply for a new DBS certificate every time a licence is renewed. An additional benefit is the certificate is transferrable for other occupations where an enhanced certificate is required.

As the update service is only available at the application stage or within 28 days of the certificate issue date, implementation will need to be phased in over a 6 month period until the first check is due.

However, if Members agree to make this mandatory, a period of implementation will be required for existing drivers who do not subscribe to the update service and have not yet provided the required consent.

#### Operators

It is recognised that most operators are licenced as drivers and, therefore, would already be subject of a biannual DBS review. In which case, this section does not apply. However, for those who are not, all operators are also subject to an enhanced DBS check.

It is recommended by the DfT Standards document that DBS reviews are also conducted annually for operators (Paras 8.2 – 8.6 refers).  
The issues outlined above in relation to drivers also apply to operators and similar implementation arrangements will be necessary.

## 5. **Safeguarding Awareness Refresher Training**

Members are asked to consider making Safeguarding Awareness Refresher Training a mandatory requirement for driver's licence renewal applications. This will ensure that Safeguarding Awareness is current and up to date and meet some of the member's concerns in respect of public safety.

Although completing the Safeguarding Awareness Training Course is a mandatory licensing requirement, it only has to be fulfilled on a single occasion, at application. Although the DfT document makes recommendations for the need of Safeguarding Awareness Training within the trade, it does not make reference to refresher training.

Organisations throughout the UK, both commercial and voluntary, require employees and volunteers to complete Safeguarding Refresher Training on a regular basis. Given the nature of the hackney and private hire trade, similar arrangements should be considered.

Discussions with the current Safeguarding Awareness Training provider, Taxi Plus (formerly Personnel Checks), confirm they are able to deliver an online refresher course.

It is noteworthy that The Children's Society charity recently offered supplementary online Safeguarding training sessions free of charge to operators and drivers. The training focused on the exploitation of children. Details of the training sessions were notified to all operators to be cascaded to their respective drivers. Although attendance was voluntary, attendance across the trade was extremely poor.

It is proposed refresher training is complete every 3 years to coincide with the duration of a driver's licence and licence renewal applications.

The same 3 year period would also apply to drivers restricted to a 12 month licence.

The cost of the refresher course would be £18.00 which may be subject to change from time to time.

## 6. **DBS Checks For Vehicle Proprietors & Booking/Dispatch Staff**

### Vehicle Proprietors

Most vehicle proprietors are already licenced as drivers and/or operators and subject to an enhanced DBS check and passed a fit and proper test. If subscription to the DBS update service is made mandatory, most would be subject of an annual or biannual DBS review. In which case, this section does not apply.

However, at the present time there is no requirement for a vehicle proprietor to show they are a fit and proper person to hold a licence.

Unlike the London Cab Order 1934, the provisions of the Local Government (Miscellaneous Provisions) Act 1976 Part II (the Act) do not require a fit and proper test to be applied to vehicle proprietors.

The reasons for this are not specified in the Act. However, if an individual has to show they are a fit and proper person to hold an operator's licence and/or a driver's licence, then the same scrutiny should perhaps be considered for a vehicle proprietor. For example, individuals involved in the hackney & private hire trade as businesses solely providing a vehicle hire service (also known as credit hire) to replace taxis or private hire vehicles off the road due to accident damage or other reason, do not have to show evidence they are a fit and proper person when applying for a vehicle licence. The suggestion a vehicle proprietor should meet a fit and proper test is to ensure that every effort is made in the interest of public safety that vehicle proprietors are fit and proper to hold a licence and not likely to abuse the privilege of being a licence holder for illicit purposes. The DfT Standards document recommends that a licence applicant who is solely a vehicle proprietor should be the subject of a fit and proper test by way of a basic DBS check, an annual DBS review and where necessary applying the Conviction Policy (other than for those offences relating to driving convictions).

### Booking/Dispatch Staff

Many Booking/Dispatch Staff are already licenced as drivers and/or operators and subject to an enhanced DBS check and passed a fit and proper test. If subscription to the DBS update service is made mandatory, most would be subject of an annual or biannual DBS review. In which case, this section does not apply.

For those who are not, a vehicle dispatcher is responsible for deciding which driver to send to a user of a private hire vehicle, a position that could be misused by those seeking to exploit children and vulnerable adults. It is therefore appropriate that Booking/Dispatch staff that have contact with private hire vehicle users and the dispatching of vehicles should not present an undue risk to the public or pose a safeguarding risk to children and vulnerable adults.

Individuals performing this task are dealing with sensitive information relating to a private hire vehicle user's personal details.

The Licensing Authority does not have a `licensing relationship` with the booking staff, and so has no authority to require DBS checks of those individuals. The conditions attached to operator's licences currently make it the responsibility of the operator to ensure employees carrying out this task are subject to a recent basic DBS check.

As, subscription to the update service is not available with a basic DBS check, the operator should also be required to maintain a register of employees performing this task, and details of annual DBS reviews undertaken by them.

Cost of a basic DBS check is £43.99.

## **7 Priorities Already Introduced:**

### **NAFN NR3 National Database**

Burnley Borough Council subscribe to the NAFN NR3 national database. This is a mechanism for licensing authorities to share details of individuals who have had a hackney/private hire drivers licence revoked or an application for one refused. This is necessary for the performance of a task carried out in the public interest or in the exercise

of official authority vested in the licensing authority – that is, assessing whether an individual is a fit and proper person to hold a hackney/private hire driver's licence.

- Where a Hackney/ Private Hire Drivers Licence is revoked or an application for one refused, the authority will automatically record this decision on NR3.
- All applications for a new licence or a licence renewal will automatically be checked on NR3. If a search of NR3 indicates a match with an applicant, the authority will seek further information about the entry on the register from the authority which recorded it. Any information received as a result of an NR3 search will only be used in respect of the specific licence application and will not be retained beyond the determination of that application.

Only basic information of an individual's details is recorded and individual cases can only be kept for as long as is necessary depending on the circumstances. Where it is no longer necessary for an individual to remain on the database, their details will be removed. Management of this will be the responsibility of authorised officers with access to the database.

Whilst this facility has been used in the determination process of licence applications, it has not been used by the Council to record licence revocations and application refusals. This was partly due to Data Protection protocols.

This has been resolved and all drivers have now received documentation fully explaining the purpose of the database.

It is necessary for the Council to consider the content of the DfT Statutory Taxi & Private Hire Vehicle Standards Guidance and take appropriate steps to meet its statutory duties. Whilst options are not without risk, measures have been taken to minimise this as much as possible to maintain the highest possible degree of integrity.

## 8 NEXT STEPS

### **TAXI LICENSING – POLICY GUIDELINES TO FITNESS AND PROPRIETY INCLUDING CONVICTIONS AND OTHER RELEVANT INFORMATION (Conviction Policy)**

The Council currently has a Taxi Licensing Conviction Policy which is robust and fit for purpose.

The Conviction Policy takes into account a wide range of offences and other circumstances and applied appropriately. Where it is applied, proportionate measures are taken to ensure an individual is a fit and proper person to hold a licence in the interest of Public Safety.

The DfT Statutory Taxi & Private Hire Vehicle Standards Guidance makes recommendations in the form of an Assessment Of Previous Convictions document. A comparison of both documents identifies differences in some offence categories.

Some comparison examples are listed below:

#### Offences Of Violence

In this category, the DfT Statutory Taxi & Private Hire Vehicle Standards Guidance – Assessment of Previous Convictions does not specify any particular offences and suggests a period free on conviction of 10 years since the completion of sentence. Whereas, Burnley Borough Council's Conviction Policy is more comprehensive and specific to the offence/conviction. Depending on the severity of the offence, the Policy ranges from a licence not normally issued for the most serious offences. Then, to a period

free of conviction from 5 - 10 years depending on the nature and seriousness of offence.

### Exploitation

In this category, the DfT document includes Exploitation. It does not define specific offences. The reason is likely to be due to the wide reaching nature of offences where a degree of exploitation has been used to facilitate a crime.

The only reference to exploitation in the Council's Conviction Policy is under offences of violence and only refers to exploitation of prostitutes.

Whilst there are likely to be other categories of offences within the body of the Council's Conviction Policy that may include an underlying element of exploitation of a victim to facilitate a crime, there is no other reference to exploitation.

For example, apart from very rare extenuating circumstances, the illegal supply of controlled drugs requires an element of exploitation towards an addict to facilitate the supply of drugs for the financial benefit of one at the expense of the other.

### Drug Related Offences

Both the DfT document and the Council's Conviction Policy in this category are very similar. However, whereas the Council's conviction policy specifies the classification of drug, the DfT document does not.

### Motoring Convictions

In this category, the DfT document does not categorise motoring convictions in the same manner as the Council's conviction policy.

For example, the DfT document specifically refers to the offence of using a hand held device or a hand held mobile telephone whilst driving. It recommends that where an applicant has a conviction for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least **5 years** have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

The Council's conviction policy in respect of motoring convictions is more comprehensive in that it categorises Major, Minor and Hybrid Traffic offences. Additionally, it also takes into account the number of penalty points imposed.

Comparing the two documents, the Council conviction policy categorises using a hand held device or hand held mobile phone whilst driving as a Major Traffic Offence.

It states:

Where the Conviction is within **3 years** prior to the date of the Application the Application will normally be refused.

Applications where there is more than one Conviction for this type of offence within the last **5 years** will normally be refused.

Both documents will be the subject of comparison and further review. Any elements which are more onerous than existing policy will be the subject of a further report to Licensing Committee at a later date.



## 8 Private Hire & Hackney Carriage Licensing Policy

Officers will bring together in a single document all Council policy and conditions relating to taxi licensing issues.

### FINANCIAL IMPLICATIONS AND BUDGET PROVISION

- 9 In the event subscription to the DBS update service is made a mandatory requirement, operators and drivers would have to pay an additional nominal annual fee direct to the Update Service.  
In the event Safeguarding Awareness Refresher Training is agreed, operators and drivers would again have to pay an additional nominal fee direct to the training provider.  
In the event vehicle proprietors are required to pass a fit and proper test when applying for a vehicle licence in the manner described above, they would have to pay the required fee for a basic DBS check.  
There are no financial implications for the Council at this stage of the review process.

### POLICY IMPLICATIONS

- 10 The measures outlined will bring Council policy into line with the recommendations of the DfT Statutory Taxi and Private Hire Vehicle Standards.

### DETAILS OF CONSULTATION

- 11 Chair of Licensing Committee – Cllr Jeff Sumner  
Vice Chair of Licensing Committee – Cllr Arif Khan  
Executive Member For Community & Environmental Services – Cllr Bea Foster  
Taxi Task Group Trade Representatives

During the consultation process, details of this Committee Report were circulated to members of the Taxi Task Group Trade Representatives on Tuesday 1<sup>st</sup> June 2021 and afforded the opportunity to comment on the content.

Mr. Charles Oakes is the only Taxi Task Group member to have responded who agreed with the majority of the proposals.

He asked for a minor point of clarification in respect of the DBS subscription service and for the cost of the Safeguarding Refresher Training to be included in the report.

These matters have now been resolved.

### BACKGROUND PAPERS

- 12 Report To Licensing Committee – 4<sup>th</sup> February 2021

**FURTHER INFORMATION**

**PLEASE CONTACT:**

**James Astin**

**ALSO:**

**Karen Davies**



Department  
for Transport

# Statutory Taxi & Private Hire Vehicle Standards

## Contents

	Page
1. Introduction.....	4
2. Consideration of the Statutory Taxi and Private Hire Vehicle Standards.....	6
3. Administering the Licensing Regime.....	8
Licensing polices .....	8
Duration of licences .....	9
Whistleblowing.....	9
Consultation at the local level .....	10
Changing licensing policy and requirements .....	10
4. Gathering and Sharing Information.....	12
The Disclosure and Barring Service .....	12
The Disclosure and Barring Service Update Service .....	13
Common Law Police Disclosure .....	13
Licensee self-reporting .....	13
Referrals to the Disclosure and Barring Service and the Police .....	14
Working with the Police .....	15
Sharing licensing information with other licensing authorities.....	15
Multi-agency Safeguarding Hub (MASH).....	16
Complaints against licensees .....	17
Overseas convictions .....	17
5. Decision Making .....	19
Administration of the licensing framework .....	19
Training decision makers.....	19
The regulatory structure .....	20
Fit and proper test .....	21
Criminal convictions and rehabilitation .....	21
6. Driver Licensing.....	23
Criminality checks for drivers.....	23
Safeguarding awareness.....	23
‘County lines’ exploitation .....	24
Language proficiency .....	25

7. Vehicle Licensing.....	26
Criminality checks for vehicle proprietors .....	26
In-vehicle visual and audio recording – CCTV.....	27
Stretched Limousines .....	28
8. Private Hire Vehicle Operator Licensing .....	29
Criminality checks for private hire vehicle operators.....	29
Booking and dispatch staff.....	30
Record keeping .....	31
Use of passenger carrying vehicles (PCV) licensed drivers .....	31
9. Enforcing the Licensing Regime .....	33
Joint authorisation of enforcement officers .....	33
Setting expectations and monitoring.....	33
Suspension and revocation of driver licences.....	33
Annex – Assessment of Previous Convictions .....	35
Annex – Disclosure and Barring Service information .....	37
Annex – CCTV Guidance .....	38
Annex - Staying Safe: Guidance for Passengers .....	40

## 1. Introduction

- 1.1 There is evidence to support the view that taxis and private hire vehicles are a high-risk environment. In terms of risks to passengers, this can be seen in abuse and exploitation of children and vulnerable adults facilitated and in some cases perpetrated by the trade and the number of sexual crimes reported which involve taxi and private hire vehicle drivers. Links between the trade and child sexual abuse and exploitation have been established in many areas and other investigations continue. Data on reported sexual assaults by taxi and private hire vehicle drivers evidence the risk to passengers; data from [Greater Manchester](#) and [Merseyside](#) suggest that, if similar offence patterns are applied across England, 623 sexual assaults per year are reported. These figures do not however account for the under reporting of crime which is estimated to be as high as 83 percent in the [Crime Survey for England and Wales](#).
- 1.2 The Policing and Crime Act 2017 enables the Secretary of State for Transport to issue statutory guidance on exercising taxi and private hire vehicle licensing functions to protect children and vulnerable individuals who are over 18 from harm when using these services. For the purposes of this document, a child is defined as anyone who has not yet reached their 18th birthday; and the term “vulnerable individual” has the same meaning as the definition of a ‘vulnerable adult’ for the purpose of section 42 of the [Care Act 2014](#), which applies where a local authority has reasonable cause to suspect that an adult in its area (whether or not ordinarily resident there):
- (a) has needs for care and support (whether or not the authority is meeting any of those needs),
  - (b) is experiencing, or is at risk of, abuse or neglect, and
  - (c) as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it.
- 1.3 Whilst the focus of the Statutory Taxi and Private Hire Vehicle Standards is on protecting children and vulnerable adults, all passengers will benefit from the recommendations contained in it. There is consensus that common core minimum standards are required to regulate better the taxi and private hire vehicle sector, and the recommendations in this document are the result of detailed discussion with the trade, regulators and safety campaign groups. **The Department therefore expects these recommendations to be implemented unless there is a compelling local reason not to.**
- 1.4 It should be noted that as policing and criminal justice is not a devolved matter, the Statutory Taxi and Private Hire Vehicle Standards issued under the Policing and Crime Act 2017 will continue to have effect in Wales although responsibility for taxi and private hire vehicle policy was devolved to the Welsh Assembly in April 2018. Should the Welsh Government introduce legislation to regulate on these issues, the standards in this document would, cease to apply.

- 1.5 All local authorities and district councils that provide children's and other types of services, including licensing authorities, have a statutory duty to make arrangements to ensure that their functions and any services that they contract out to others are discharged having regard to the need to safeguard and promote the welfare of children. This means that licensing authorities should have in place arrangements that reflect the importance of safeguarding and promoting the welfare of children. This includes clear whistleblowing procedures, safe recruitment practices and clear policies for dealing with allegations against people who work with children, as set out in the [Working Together to Safeguard Children](#) statutory guidance.
- 1.6 The Statutory Taxi and Private Hire Vehicle Standards reflect the significant changes in the industry and lessons learned from experiences in local areas since the 2010 version of the Department's Best Practice Guidance. This includes extensive advice on checking the suitability of individuals and operators to be licensed; safeguarding children and vulnerable adults; the Immigration Act 2016 and Common Law Police Disclosure (which replaced the Notifiable Occupations Scheme).
- 1.7 The standards in this document replace relevant sections of the Best Practice Guidance issued by the Department in 2010, where there is a conflict between the Statutory Taxi and Private Hire Vehicle Standards and the Best Practice Guidance the Department issue on taxi and private hire vehicle licensing, the standards in this document take precedence.

## Terminology

Taxis are referred to in legislation, regulation and common language as 'hackney carriages', 'black cabs' and 'cabs'. The term '**taxi**' is used throughout this document and refers to all such vehicles. Taxis can be hired immediately by hailing on the street or at a rank.

Private hire vehicles include a range of vehicles including minicabs, executive cars, chauffeur services, limousines and some school and day centre transport services. All private hire vehicle journeys must be pre-booked via a licensed private hire vehicle operator and are subject to a 'triple licensing lock' i.e. the operator fulfilling the booking must use vehicles and drivers licensed by the same authority as that which granted its licence. The term 'private hire vehicle' is used throughout this document to refer to all such vehicles.

## 2. Consideration of the Statutory Taxi and Private Hire Vehicle Standards

- 2.1 The past failings of licensing regimes must never be repeated. The Department has carefully considered the measures contained in the Statutory Taxi and Private Hire Vehicle Standards and recommend that these should be put in to practice and administered appropriately to mitigate the risk posed to the public. The purpose of setting standards is to protect children and vulnerable adults, and by extension the wider public, when using taxis and private hire vehicles.
- 2.2 The Government set out in the [Modern Crime Prevention Strategy](#) the evidence that where Government, law enforcement, businesses and the public work together on prevention, this can deliver significant and sustained cuts in certain crimes. That is good news for victims and communities and it makes clear economic sense too. Educating the public on the risks of using unlicensed drivers and vehicles, how to identify the licensed trade and appropriate measure to take when using these services will protect help all passengers, more information is annexed to this document (Annex - Staying safe: guidance for passengers).
- 2.3 The Strategy committed to protect children and young people from the risk of child sexual abuse and exploitation (CSAE), by working with local authorities to introduce rigorous taxi and private hire vehicle licensing regimes. Both the [Jay](#) and [Casey](#) reports on CSAE highlighted examples of taxi/private hire vehicle drivers being directly linked to children that were abused, including instances when children were picked up from schools, children's homes or from family homes and abused, or sexually exploited.
- 2.4 The Casey Report made clear that weak and ineffective arrangements for taxi and private hire vehicle licensing had left the children and public at risk. The Department for Transport has worked with the Home Office, Local Government Association (LGA), personal safety charities, trade unions and trade bodies,



holding workshops, forums, and sharing evidence and good practice with local authorities to assist in the setting of the standards.

- 2.5 This document is published by the Secretary of State for Transport under section 177(1) of the Policing and Crime Act 2017 following consultation in accordance with section 177(5).
- 2.6 The document sets out a framework of policies that, under section 177(4), licensing authorities “**must have regard**” to when exercising their functions. These functions include developing, implementing and reviewing their taxi and private hire vehicle licensing regimes. “Having regard” is more than having a cursory glance at a document before arriving at a preconceived conclusion.
- 2.7 “Having regard” to these standards requires public authorities, in formulating a policy, to give considerations the weight which is proportionate in the circumstances. **Given that the standards have been set directly to address the safeguarding of the public and the potential impact of failings in this area, the importance of thoroughly considering these standards cannot be overstated.** It is not a question of box ticking; the standards must be considered rigorously and with an open mind.
- 2.8 Although it remains the case that licensing authorities must reach their own decisions, both on overall policies and on individual licensing matters in light of the relevant law, it may be that the Statutory Taxi and Private Hire Vehicle Standards might be drawn upon in any legal challenge to an authority’s practice, and that any failure to adhere to the standards without sufficient justification could be detrimental to the authority’s defence. **In the interest of transparency, all licensing authorities should publish their consideration of the measures contained in Statutory Taxi and Private Hire Vehicle Standards, and the policies and delivery plans that stem from these.** The Department has undertaken to monitor the effectiveness of the standards in achieving the protection of children and vulnerable adults (and by extension all passengers).
- 2.9 The Statutory Taxi and Private Hire Vehicle Standards does not purport to give a definitive statement of the law and any decisions made by a licensing authority remain a matter for that authority.

### 3. Administering the Licensing Regime

#### Licensing policies

- 3.1 The Department recommends all licensing authorities make publicly available a cohesive policy document that brings together all their procedures on taxi and private hire vehicle licensing. This should include but not be limited to policies on convictions, a 'fit and proper' person test, licence conditions and vehicle standards.
- 3.2 When formulating a taxi and private hire vehicle policy, the primary and overriding objective must be to protect the public. The importance of ensuring that the licensing regime protects the vulnerable cannot be overestimated. This was highlighted in the [report by Dame Louise Casey CB](#) of February 2015 on safeguarding failings.

*“It will be evident from this report that in many cases the activities of perpetrators take place in spheres which are regulated by the Council – taxis have been the focus of particular concern. Persistent and rigorous enforcement of the regulatory functions available to the council, including the placing of conditions on private hire taxi operator licences where appropriate, would send a strong signal that the trade is being monitored and would curtail the activities of opportunistic perpetrators whereby taxi drivers have solicited children to provide sex in return for cigarettes, alcohol or a fare free ride.”*

- 3.3 The long-term devastation caused by CSAE was summarised in the same report:

*“Victims suffer from suicidal feelings and often self-harm. Many become pregnant. Some have to manage the emotional consequences of miscarriages and abortions while others have children that they are unable to parent appropriately. The abuse and violence continues to affect victims into adulthood. Many enter violent and abusive relationships. Many suffer poor mental health and addiction.”*

- 3.4 Rotherham Metropolitan Borough Council ('Rotherham Council') provides an example of how the systematic review of policies and procedures and the implementation of a plan to drive improvements in practice can result in a well-functioning taxi and private hire vehicle sector that is rebuilding local confidence in the industry. The history of past failings here and elsewhere is well known, but it is the transparency and resolution that Rotherham Council has demonstrated and the high standards they now require that are rebuilding public confidence.
- 3.5 One of the key lessons learned is that it is vital to review policies and reflect changes in the industry both locally and nationally. **Licensing authorities should review their licensing policies every five years, but should also consider interim reviews should there be significant issues arising in their area, and their performance annually.**

## Duration of licences

- 3.6 A previous argument against issuing licences for more than a year was that a criminal offence might be committed, and not notified, during this period; this can of course also be the case during the duration of a shorter licence. This risk can be mitigated for drivers by authorities to undertaking regular interim checks. To help authorities monitor licensees' suitability, licensing authorities should engage with their police force to ensure that when the police believe a licensee presents a risk to the travelling public they use their Common Law Police Disclosure powers (see paragraphs 4.9 - 4.11) to advise them.
- 3.7 The Local Government (Miscellaneous Provisions) Act 1976 (as amended) sets a standard length at three years for taxi and private hire vehicle drivers and five years for private hire vehicle operators. Any shorter duration licence should only be issued when the licensing authority thinks it is appropriate in the specific circumstances of the case, if a licensee has requested one or where required (e.g. when the licence holder's leave to remain in the UK is time-limited) or when the licence is only required to meet a short-term demand; they should not be issued on a 'probationary' basis.

## Whistleblowing

- 3.8 It is in the application of licensing authority's policies (and the training and raising of awareness among those applying them) that protection will be provided. Where there are concerns that policies are not being applied correctly, it is vital that these can be raised, investigated and remedial action taken if required. **Licensing authorities should have effective internal procedures in place for staff to raise concerns and for any concerns to be dealt with openly and fairly.**

A report into the licensing of drivers by South Ribble Borough Council highlights the implications of not applying the agreed policies. In early August 2015, concerns were raised regarding decisions to renew the licences of drivers where there were potential incidents of child sexual exploitation. An internal review concluded that there had been failings in local investigatory procedures which might have affected the ability of the General Licensing Committee to make proper decisions, and information sharing with the police and data recording was not satisfactory.

- 3.9 The external investigation in South Ribble concluded “that there had been a lack of awareness and priority given to safeguarding and the safety of taxi [and private hire vehicle] passengers in the manner in which licensing issues were addressed”. We are pleased to note that the [report](#) concludes, “The Council have been active at every stage in responding to issues and concerns identified. It has taken steps to address operational issues in the licensing function and has engaged fully with other agencies in so doing. In the light of the above, it is not necessary to make any further recommendations.”
- 3.10 It is hoped that all licensing authorities will have learnt from these mistakes but to prevent a repeat, **local authorities should ensure they have an effective ‘whistleblowing’ policy and that all staff are aware of it.** If a worker is aware of, and has access to, effective internal procedures for raising concerns then ‘whistleblowing’ is unlikely to be needed.
- 3.11 The Public Interest Disclosure Act 1998 (PIDA), commonly referred to as whistleblowing legislation, provides protection for those that have a reasonable belief of serious wrongdoing, including failure to comply with professional standards, council policies or codes of practice/conduct. The PIDA is part of employment law. In the normal course of events, if a worker reveals information that his employer does not want revealed it may be a disciplinary offence. If someone leaked their employer’s confidential information to the press, they might expect to be dismissed for that. The PIDA enables workers who ‘blow the whistle’ about wrongdoing to complain to an employment tribunal if they are dismissed or suffer any other form of detriment for doing so. It is a qualified protection and certain conditions would have to be met for the worker to be protected. More information is available online for [employees](#) and [employers](#):

### Consultation at the local level

- 3.12 Licensing authorities should consult on proposed changes in licensing rules that may have significant impacts on passengers and/or the trade. Such consultation should include not only the taxi and private hire vehicle trades but also groups likely to be the trades’ customers. Examples are groups representing disabled people, Chambers of Commerce, organisations with a wider transport interest (e.g. the Campaign for Better Transport and other transport providers), women’s groups, local traders, and the local multi-agency safeguarding arrangements. It may also be helpful to consult with night-time economy groups (such as Pubwatch) if the trade is an important element of dispersal from the local night-time economy’s activities.
- 3.13 Any decision taken to alter the licensing regime is likely to have an impact on the operation of the taxi and private hire vehicle sector in neighbouring areas; and **licensing authorities should engage with these areas to identify any concerns and issues that might arise from a proposed change.** Many areas convene regional officer consultation groups or, more formally, councillor liaison meetings; this should be adopted by all authorities.

### Changing licensing policy and requirements

- 3.14 **Any changes in licensing requirements should be followed by a review of the licences already issued.** If the need to change licensing requirements has been identified, this same need is applicable to those already in possession of a licence. That is not however to suggest that licences should be automatically revoked overnight, for example if a vehicle specification is changed it is proportionate to allow those that would not meet the criteria to have the opportunity to adapt or change their vehicle. The same pragmatic approach should be taken to driver licence changes - if requirements are changed to include a training course or qualification, a reasonable time should be allowed for this to be undertaken or gained. The implementation schedule of any changes that affect current licence holders must be transparent and communicated promptly and clearly.
- 3.15 Where a more subjective change has been introduced, for example an amended policy on previous convictions, a licensing authority must consider each case on its own merits. Where there are exceptional, clear and compelling reasons to deviate from a policy, licensing authorities should consider doing so. Licensing authorities should record the reasons for any deviation from the policies in place.

## 4. Gathering and Sharing Information

- 4.1 Licensing authorities must consider as full a range of information available to them when making a decision whether to grant a licence and to meet their ongoing obligation to ensure a licensee remains suitable to hold a licence.

### The Disclosure and Barring Service

- 4.2 The Disclosure and Barring Service (DBS) provides access to criminal record information through its disclosure service for England and Wales. The DBS also maintains the lists of individuals barred from working in regulated activity with children or adults. The DBS makes independent barring decisions about people who have harmed, or where they are considered to pose a risk of harm to a child or vulnerable person within the workplace. The DBS enables organisations in the public, private and voluntary sectors to make safer employment decisions by identifying candidates who may be unsuitable for certain work, especially that which involves vulnerable groups including children.
- 4.3 Enhanced certificates with a check of the barred lists include details of spent and unspent convictions recorded on the Police National Computer (PNC), any additional information which a chief officer of police believes to be relevant and ought to be disclosed, as well as indicating whether the individual is barred from working in regulated activity with children or adults. Spent convictions and cautions are disclosed on standard and enhanced certificates according to rules set out in legislation. Convictions which resulted in a custodial sentence, and convictions or cautions for a specified serious offence such as those involving child sexual abuse will always be disclosed on a standard or enhanced certificate. Full details of the disclosure rules, and those offences which will always be disclosed, are available from the [DBS](#). As well as convictions and cautions, an enhanced certificate may include additional information which a chief police officer reasonably believes is relevant and ought to be disclosed. Chief police officers must have regard to the [statutory guidance](#) issued by the Home Office when considering disclosure. A summary of the information provided at each level of DBS checks is annexed to this document (Annex – Disclosure and Barring Service information).
- 4.4 It should be noted that licensing authorities must not circumvent the DBS process and seek to obtain details of previous criminal convictions and other information that may not otherwise be disclosed on a DBS certificate. Whilst data protection legislation (not just the Data Protection Act 2018 or General Data Protection Regulation (GDPR)) gives individuals (or data subjects) a 'right of access' to the personal data that an organisation holds about them, it is a criminal offence to require an individual to exercise their subject access rights so as to gain information about any convictions and cautions. This could potentially lead to the authority receiving information to which it is not entitled. The appropriate way of accessing an individual's criminal records is through an enhanced DBS and barred lists check.

## The Disclosure and Barring Service Update Service

- 4.5 Subscription to the DBS Update Service allows those with standard and enhanced certificates to keep these up to date online and, with the individual's consent, allows nominees to check the status of a certificate online at any time. Subscription to the service removes the need for new certificates to be requested, reduces the administrative burden and mitigates potential delays in relicensing.
- 4.6 The DBS will search regularly to see if any relevant new information has been received since the certificate was issued. The frequency varies depending on the type of information; for criminal conviction and barring information, the DBS will search for updates on a weekly basis. For non-conviction information, the DBS will search for updates every nine months.
- 4.7 Licensing authorities are able to request large numbers of status checks on a daily basis. The DBS has developed a Multiple Status Check Facility (MSCF) that can be accessed via a web service. The MSCF enables organisations to make an almost unlimited number of Status Checks simultaneously. Further information on the MSCF is available from the [DBS](#).
- 4.8 Should the MSCF advise that new information is available the DBS certificate should no longer be relied upon and a new DBS certificate requested.

### Common Law Police Disclosure

- 4.9 The DBS is not the only source of information that should be considered as part of a fit and proper assessment for the licensing of taxi and private hire vehicle drivers. Common Law Police Disclosure ensures that where there is a public protection risk, the police will pass information to the employer or regulatory body to allow them to act swiftly to mitigate any danger.
- 4.10 Common Law Police Disclosure replaced the Notifiable Occupations Scheme (NOS) in March 2015 and focuses on providing timely and relevant information which might indicate a public protection risk. Information is passed on at arrest or charge, rather than on conviction which may be some time after, allowing any measures to mitigate risk to be put in place immediately.
- 4.11 This procedure provides robust safeguarding arrangements while ensuring only relevant information is passed on to employers or regulatory bodies. **Licensing authorities should maintain close links with the police to ensure effective and efficient information sharing procedures and protocols are in place and are being used.**

### Licensee self-reporting

- 4.12 Licence holders should be required to notify the issuing authority within 48 hours of an arrest and release, charge or conviction of any sexual offence, any offence involving dishonesty or violence and any motoring offence. An arrest for any of the offences within this scope should result in a review by the issuing authority as to whether the licence holder is fit to continue to do so. This must not

however be seen as a direction that a licence should be withdrawn; it is for the licensing authority to consider what, if any, action in terms of the licence should be taken based on the balance of probabilities. Should an authority place an obligation on licensees to notify under these circumstances, authorities should also ensure appropriate procedures are in place to enable them to act in a suitable timeframe if and when needed.

- 4.13 Importantly, a failure by a licence holder to disclose an arrest that the issuing authority is subsequently advised of might be seen as behaviour that questions honesty and therefore the suitability of the licence holder regardless of the outcome of the initial allegation.

### Referrals to the Disclosure and Barring Service and the Police

- 4.14 In some circumstances it may be appropriate under the Safeguarding Vulnerable Groups Act 2006 for licensing authorities to make referrals to the DBS. **A decision to refuse or revoke a licence as the individual is thought to present a risk of harm to a child or vulnerable adult, should be referred to the DBS.** The power for the licensing authority to make a referral in this context arises from the undertaking of a safeguarding role. Further guidance has been provided by the [DBS](#).

- 4.15 The Department recommends that licensing authorities should make a referral to the DBS when it is thought that:

- an individual has harmed or poses a risk of harm to a child or vulnerable adult;
- an individual has satisfied the '[harm test](#)'; or
- received a caution or conviction for a relevant offence and;
- the person they are referring is, has or might in future be working in regulated activity;

if the above conditions are satisfied, the DBS may consider it appropriate for the person to be added to a barred list.

- 4.16 These referrals may result in the person being added to a barred list and enable other licensing authorities to consider this should further applications to other authorities be made. Further information on referrals to DBS is [available](#).



## Working with the Police

- 4.17 The police are an invaluable source of intelligence when assessing whether a licensing applicant is a 'fit and proper' person. It is vital that licensing authorities have a partnership with the police service to ensure that appropriate information is shared as quickly as possible. As part of building an effective working relationship between the licensing authority and the police, **action taken by the licensing authority as a result of information received should be fed-back to the police.** Increasing the awareness among police forces of the value licensing authorities place on the information received, particularly on non-conviction intelligence, will assist furthering these relationships and reinforce the benefits of greater sharing of information.
- 4.18 This relationship can be mutually beneficial, assisting the police to prevent crime. The police can gain valuable intelligence from drivers and operators, for example, the identification of establishments that are selling alcohol to minors or drunks, or the frequent transportation of substance abusers to premises.
- 4.19 To aid further the quality of the information available to all parties that have a safeguarding duty, a revocation or refusal on public safety grounds should also be advised to the police.

## Sharing licensing information with other licensing authorities

- 4.20 As has been stated elsewhere in this document, obtaining the fullest information minimises the doubt as to whether an applicant or licensee is 'fit and proper'. An obvious source of relevant information is any previous licensing history. **Applicants and licensees should be required to disclose if they hold or have previously held a licence with another authority. An applicant should also be required to disclose if they have had an application for a licence refused, or a licence revoked or suspended by any other licensing authority.** Licensing authorities should explicitly advise on their application forms that making a false statement or omitting to provide the information requested may be a criminal offence.
- 4.21 The LGA's Councillors' [Handbook on taxi and private hire vehicle licensing](#) advises that those responsible for licensing should "*communicate regularly with licensing committees and officers in neighbouring councils to ensure critical information is shared and that there is a consistency and robustness in decision-making. By working together, local government can make sure that this vital service is safe, respected, and delivering for local communities.*". While this approach may aid consistency and robustness in decision-making within regions, it has obvious inherent limitations as it is unlikely such protocols could be established between all licensing authorities. The LGA commissioned the National Anti-Fraud Network to develop a national register of taxi and private hire vehicle driver licence refusals and revocations (the register is known as 'NR3'). **Tools such as NR3 should be used by licensing authorities to share information on a more consistent basis to mitigate the risk of non-disclosure of relevant information by applicants.**

- 4.22 For these processes to be beneficial, all licensing authorities must keep a complete and accurate record as to the reasons for refusal, suspension or revocation of a licence in order that this might be shared if requested and appropriate to do so.
- 4.23 Data protection legislation provides exemption from the rights of data subjects for the processing of personal data in connection with regulatory activities. This includes taxi and private hire vehicle licensing. The exemption applies only to information processed for the core regulatory activities of appropriate organisations; it may not be used in a blanket manner. The exemption applies only to the extent that the application of the rights of data subjects to the information in question would be likely to prejudice the proper discharge of the regulatory functions. The Information Commissioner's Office has published [guidance](#) to assist organisations to fully understand their obligations and suggest good practice.
- 4.24 If notification under paragraph 4.20 or 4.21 of a refused or revoked licence is disclosed, the relevant licensing authority should be contacted to establish when the licence was refused, suspended or revoked and the reasons why. In those circumstances, the relevant licensing authority must consider whether it should disclose any information in relation to the previous decision, consistent with its obligations under data protection legislation. If information is disclosed, it can then be taken into account in determining the applicant's fitness to be licensed. The relevance of the reason for refusing/revoking a licence must be considered. For example, if any individual was refused a licence for failing a local knowledge test, it does not have any safeguarding implications. Conversely, a revocation or refusal connected to indecency would. Licensing authorities should not simply replicate a previous decision, authorities must consider each application on its own merits and with regard to its own policies.
- 4.25 Should a licensing authority receive information that a licence holder did not disclose the information referred to in paragraph 4.20, for example by checking the NR3 register, the authority should consider whether the non-disclosure represents dishonesty and should review whether the licence holder remains 'fit and proper'.

### **Multi-agency Safeguarding Hub (MASH)**

- 4.26 Multi-Agency Safeguarding Hubs are a way to improve the safeguarding response for children and vulnerable adults through better information sharing and high quality and timely safeguarding responses. MASHs (or similar models) should operate on three common principles: information sharing, joint decision making and coordinated intervention.
- 4.27 The Home Office report on [Multi Agency Working and Information Sharing](#) recommended that effective multi-agency working still needs to become more widespread. The Children's Commissioner's 2013 [Inquiry into Child Sexual Exploitation in Gangs and Groups](#) found that both police and local authorities still identified the inability to share information as a key barrier to safeguarding children from sexual abuse and exploitation.

4.28 All licensing authorities should operate or establish a means to facilitate the objectives of a MASH (i.e. the sharing of necessary and relevant information between stakeholders). As has been emphasised throughout this document, one of the most effective ways to minimise the risk to children and vulnerable adults when using taxis and private hire vehicles is to ensure that decisions on licensing individuals are made with the fullest knowledge possible.

### Complaints against licensees

4.29 Complaints about drivers and operators provide a source of intelligence when considering the renewal of a licence or to identify problems during the period of the licence. Patterns of behaviour such as complaints against drivers, even when they do not result in further action in response to an individual complaint, may be indicative of characteristics that raise doubts over the suitability to hold a licence. **All licensing authorities should have a robust system for recording complaints, including analysing trends across all licensees as well as complaints against individual licensees.** Such a system will help authorities to build a fuller picture of the potential risks an individual may pose and may tip the 'balance of probabilities' assessment that licensing authorities must take.

4.30 Licensees with a high number of complaints made against them should be contacted by the licensing authority and concerns raised with the driver and operator (if appropriate). Further action in terms of the licence holder must be determined by the licensing authority, which could include no further action, the offer of training, a formal review of the licence, or formal enforcement action.

4.31 To ensure that passengers know who to complain to, licensing authorities should produce guidance for passengers on making complaints directly to the licensing authority that should be available on their website. Ways to make complaint to the authority should be displayed in all licensed vehicles. This is likely to result in additional work for the licensing authority but has the advantage of ensuring consistency in the handling of complaints. Currently, it is more likely that a complaint against a taxi driver would be made directly to the licensing authority whereas a complaint against a private hire vehicle driver is more likely to be made to the operator. An effective partnership in which operators can share concerns regarding drivers is also encouraged.

4.32 Importantly, this approach will assist in the directing of complaints and information regarding the behaviour of drivers who may be carrying a passenger outside of the area in which the driver is licensed to the authority that issued the licence. In order for this to be effective licensing authorities must ensure that drivers are aware of a requirement to display information on how to complain and take appropriate sanctions against those that do not comply with this requirement.

4.33 In terms of investigating complaints CCTV footage of an incident can provide an invaluable insight, providing an 'independent witness' to an event. This can assist in the decision whether to suspend or revoke a licence. The potential benefits of mandating CCTV in vehicles is discussed in paragraphs 7.7 - 7.12.

### Overseas convictions

- 4.34 The DBS cannot access criminal records held overseas, only foreign convictions that are held on the Police National Computer may, subject to the disclosure rules, be disclosed. Therefore, a DBS check may not provide a complete picture of an individual's criminal record where there have been periods living or working overseas; the same applies when an applicant has previously spent an extended period (three or more continuous months) outside the UK. It should however be noted that some countries will not provide an 'Certificate of Good Character' unless the individual has been resident for six months or more
- 4.35 Licensing authorities should seek or require applicants to provide where possible criminal records information or a 'Certificate of Good Character' from overseas in this circumstance to properly assess risk and support the decision-making process (. It is the character of the applicant as an adult that is of particular interest, therefore an extended period outside the UK before the age of 18 may be less relevant. As with all licensing decisions, each case must be considered on its own merits. For information on applying for overseas criminal record information or 'Certificates of Good Character' please see the Home Office [guidance](#).
- 4.36 Where an individual is aware that they have committed an offence overseas which may be equivalent to those listed in the annex to this document (Annex – Assessment of previous convictions), licensing authorities should advise the applicant to seek independent expert or legal advice to ensure that they provide information that is truthful and accurate.

## 5. Decision Making

### Administration of the licensing framework

- 5.1 A policy is only effective if it is administered properly. The taxi and private hire vehicle licensing functions of local councils are non-executive functions i.e. they are functions of the council rather than the executive (such as the Cabinet). The functions include the determination of licence applications, reviews and renewals, along with the attachment of conditions when considered appropriate. The function may be delegated to a committee, a sub-committee or an officer – which should be set out within a clear scheme of delegation. In London the taxi and private hire vehicle licensing function is undertaken by Transport for London.
- 5.2 Licensing authorities should ensure that all individuals that determine whether a licence is issued or refused are adequately resourced to allow them to discharge the function effectively and correctly.

### Training decision makers

- 5.3 **All individuals that determine whether a licence is issued should be required to undertake sufficient training.** As a minimum, training for a member of a licensing committee should include: licensing procedures, natural justice, understanding the risks of CSAE, disability and equality awareness and the making of difficult and potentially controversial decisions. Training should not simply relate to procedures, but should include the use of case study material to provide context and real scenarios. All training should be formally recorded by the licensing authority and require a signature from the person that has received the training. Training is available from a number of organisations including the Institute of Licensing and Lawyers in Local Government; the LGA may also be able to assist in the development of training packages.
- 5.4 Public safety is the paramount consideration but the discharge of licensing functions must be undertaken in accordance with the following general principles:
- policies should be used as internal guidance, and should be supported by a member/officer code of conduct.
  - any implications of the Human Rights Act should be considered.
  - the rules of natural justice should be observed.
  - decisions must be reasonable and proportionate.
  - where a hearing is required it should be fairly conducted and allow for appropriate consideration of all relevant factors.
  - decision makers must avoid bias (or even the appearance of bias) and predetermination.
  - data protection legislation.

5.5 When a decision maker has a prejudicial interest in a case, whether it be financial or a personal relationship with those involved they should declare their interest at the earliest opportunity; this must be prior to any discussions or votes and, once declared, they must leave the room for the duration of the discussion or vote.

### The regulatory structure

5.6 It is recommended that councils operate with a Regulatory Committee or Board that is convened at periodic intervals to determine licensing matters, with individual cases being considered by a panel of elected and suitably trained councillors drawn from a larger Regulatory Committee or Board. This model is similar to that frequently adopted in relation to other licensing matters. To facilitate the effective discharge of the functions, less contentious matters can be delegated to appropriately authorised council officers via a transparent scheme of delegation.

5.7 It is considered that this approach also ensures the appropriate level of separation between decision makers and those that investigate complaints against licensees, and is the most effective method in allowing the discharge of the functions in accordance with the general principles referred to in 5.4. In particular, the Committee/Board model allows for:

- Each case to be considered on its own merits. It is rare for the same councillors to be involved in frequent hearings – therefore the councillors involved in the decision making process will have less knowledge of previous decisions and therefore are less likely to be influenced by them. Oversight and scrutiny can be provided in relation to the licensing service generally, which can provide independent and impartial oversight of the way that the functions are being discharged within the authority.
- Clear separation between investigator and the decision maker – this demonstrates independence, and ensures that senior officers can attempt to resolve disputes in relation to service actions without the perception that this involvement will affect their judgement in relation to decisions made at a later date.

5.8 Avoidance of bias or even the appearance of bias is vital to ensuring good decisions are made and instilling and/or maintaining confidence in the licensing regime by passengers and licensees.

5.9 Unlike officers, elected members are not usually involved in the day to day operation of the service and as such do not have relationships with licence holders that may give the impression that the discharge of a function is affected by the relationship between the decision maker and the licence holder.

5.10 Some licensing authorities may decide to operate a system whereby all matters are delegated to a panel of officers; however, this approach is not recommended and caution should be exercised. Decisions must be, and be seen to be, made objectively, avoiding any bias. In addition, it may be more difficult to demonstrate compliance with the principles referred to above due to the close



connection between the officers on the panel, and those involved in the operational discharge of the licensing functions.

- 5.11 Whether the structure proposed is introduced or an alternative model is more appropriate in local circumstances, the objective should remain the same - to separate the investigation of licensing concerns and the management of the licence process. Regardless of which approach is adopted, **all licensing authorities should consider arrangements for dealing with serious matters that may require the immediate revocation of a licence.** It is recommended that this role is delegated to a senior officer/manager with responsibility for the licensing service.

### Fit and proper test

- 5.12 Licensing authorities have a duty to ensure that any person to whom they grant a taxi or private hire vehicle driver's licence is a 'fit and proper' person to be a licensee. It may be helpful when considering whether an applicant or licensee is fit and proper to pose oneself the following question:

**Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?**

- 5.13 If, on the balance of probabilities, the answer to the question is 'no', the individual should not hold a licence.
- 5.14 Licensing authorities have to make difficult decisions but (subject to the points made in paragraph 5.4) the safeguarding of the public is paramount. All decisions on the suitability of an applicant or licensee should be made on the balance of probability. This means that an applicant or licensee should not be 'given the benefit of doubt'. If the committee or delegated officer is only "50/50" as to whether the applicant or licensee is 'fit and proper', they should not hold a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction.

### Criminal convictions and rehabilitation

- 5.15 In considering an individual's criminal record, licensing authorities must consider each case on its merits, but they should take a particularly cautious view of any offences against individuals with special needs, children and other vulnerable groups, particularly those involving violence, those of a sexual nature and those linked to organised crime. In order to achieve consistency, and to mitigate the risk of successful legal challenge, licensing authorities should have a clear policy for the consideration of criminal records. This should include, for example, which offences would prevent an applicant from being licenced regardless of the period elapsed in all but truly exceptional circumstances. In the case of lesser offences, a policy should consider the number of years the authority will require to have elapsed since the commission of particular kinds of offences before they will grant a licence.

- 5.16 Annexed to this document are the Department's recommendations on the assessment of previous convictions (Annex – Assessment of previous convictions). This draws on the work of the Institute of Licensing, in partnership with the LGA, the National Association of Licensing Enforcement Officers (NALEO) and Lawyers in Local Government, in publishing its guidance on determining the suitability of taxi and private hire vehicle licensees.
- 5.17 These periods should be taken as a starting point in considering whether a licence should be granted or renewed in all cases. The Department's view is that this places passenger safety as the priority while enabling past offenders to sufficiently evidence that they have been successfully rehabilitated so that they might obtain a licence. Authorities are however reminded that applicants are entitled to a fair and impartial consideration of their application.



## 6. Driver Licensing

### Criminality checks for drivers

- 6.1 Licensing authorities are entitled to request an enhanced criminal record certificate with check of the barred lists from the DBS for all driver licence holders or applicants. The DfT's 2019 [survey of taxi and private hire vehicle licensing authorities](#) shows that all licensing authorities in England and Wales have a requirement that an enhanced DBS check is undertaken at first application or renewal.
- 6.2 All individuals applying for or renewing a taxi or private hire vehicle drivers licence licensing authorities should carry out a check of the children and adult Barred Lists in addition to being subject to an enhanced DBS check (in section x61 of the DBS application 'Other Workforce' should be entered in line 1 and 'Taxi Licensing' should be entered at line 2). All licensed drivers should also be required to evidence continuous registration with the DBS update service to enable the licensing authority to routinely check for new information every six months. Drivers that do not subscribe up to the Update Service should still be subject to a check every six months.
- 6.3 Driving a taxi or private hire vehicle is not, in itself, a regulated activity for the purposes of the barred list. This means that an individual subject to barring would not be legally prevented from being a taxi or private hire vehicle driver but the licensing authority should take an individual's barred status into account alongside other information available. **In the interests of public safety, licensing authorities should not, as part of their policies, issue a licence to any individual that appears on either barred list.** Should a licensing authority consider there to be exceptional circumstances which means that, based on the balance of probabilities they consider an individual named on a barred list to be 'fit and proper', the reasons for reaching this conclusion should be recorded.
- 6.4 Drivers working under an arrangement to transport children may be working in 'regulated activity' as defined by the [Safeguarding Vulnerable Groups Act 2006](#). It is an offence to knowingly allow a barred individual to work in regulated activity. The [guidance on home-to-school travel and transport](#) issued by the Department for Education should be considered alongside this document. Please see [guidance](#) on driver DBS eligibility and how to apply.

### Safeguarding awareness

- 6.5 Licensing authorities should consider the role that those in the taxi and private hire vehicle industry can play in spotting and reporting the abuse, exploitation or neglect of children and vulnerable adults. As with any group of people, it is overwhelmingly the case that those within the industry can be an asset in the detection and prevention of abuse or neglect of children and vulnerable adults. However, this is only the case if they are aware of and alert to the signs of potential abuse and know where to turn to if they suspect that a child or vulnerable adult is at risk of harm or is in immediate danger.

6.6 All licensing authorities should provide safeguarding advice and guidance to the trade and should require taxi and private hire vehicle drivers to undertake safeguarding training. This is often produced in conjunction with the police and other agencies. These programmes have been developed to help drivers and operators:

- provide a safe and suitable service to vulnerable passengers of all ages;
- recognise what makes a person vulnerable; and
- understand how to respond, including how to report safeguarding concerns and where to get advice.

6.7 Since 2015, the Department for Education (DfE) has run a nationwide campaign – *‘Together, we can tackle child abuse’* which aims to increase public understanding of how to recognise the signs to spot and encourage them to report child abuse and neglect. The DfE continues to promote and raise awareness of the campaign materials through its [online toolkit](#), for local authorities, charities and organisations for use on their social media channels.

### **‘County lines’ exploitation**

6.8 County lines is a term used to describe gangs and organised criminal networks involved in exporting illegal drugs (primarily crack cocaine and heroin) into one or more importing areas [within the UK], using dedicated mobile phone lines or other form of “deal line”.

6.9 Exploitation is an integral part of the county lines offending model with children and vulnerable adults exploited to transport (and store) drugs and money between locations. Children aged between 15-17 make up the majority of the vulnerable people involved in county lines, but they may also be much younger. We know that both girls and boys are groomed and exploited and offenders will often use coercion, intimidation, violence (including sexual violence) and weapons to ensure compliance of victims. Children exploited by county lines gangs may have vulnerabilities besides their age, such as broader mental health issues, disrupted or chaotic homes, substance misuse issues, being excluded from school or frequently going missing.

6.10 The National Crime Agency’s 2018 county lines threat assessment set out that the national road network is key to the transportation of county lines victims, drugs and cash; with hire vehicles being one of the methods used for transportation between locations.

6.11 Safeguarding awareness training should include the ways in which drivers can help to identify county lines exploitation. Firstly, they should be aware of the following warning signs:

- Children and young people travelling in taxis or private hire vehicles alone;

- travelling at unusual hours (during school time, early in the morning or late at night);
- travelling long distances;
- unfamiliar with the local area or do not have a local accent;
- paying for journeys in cash or prepaid.

6.12 The Home Office is working with partners to raise awareness of county lines and has provided [material](#) to help taxi and private vehicle hire staff to identify victims and report concerns to protect those exploited through this criminal activity.

6.13 Drivers (or any person) should be aware of what to do if they believe a child or vulnerable person is at risk of harm. If the risk is immediate they should contact the police otherwise they should:

- use the local safeguarding process, the first step of which is usually to contact the safeguarding lead within the local authority;
- call Crime Stoppers on 0800 555 111.

### Language proficiency

6.14 A lack of language proficiency could impact on a driver's ability to understand written documents, such as policies and guidance, relating to the protection of children and vulnerable adults and applying this to identify and act on signs of exploitation. Oral proficiency will be of relevance in the identification of potential exploitation through communicating with passengers and their interaction with others.

6.15 A licensing authority's test of a driver's proficiency should cover both oral and written English language skills to achieve the objectives stated above.

## 7. Vehicle Licensing

7.1 As with driver licensing, the objective of vehicle licensing is to protect the public, who trust that the vehicles dispatched are above all else safe. It is important therefore that licensing authorities are assured that those granted a vehicle licence also pose no threat to the public and have no links to serious criminal activity. Although vehicle proprietors may not have direct contact with passengers, they are still entrusted to ensure that the vehicles and drivers used to carry passengers are appropriately licensed and so maintain the safety benefits of the licensing regime.

### Criminality checks for vehicle proprietors

7.2 Enhanced DBS and barred list checks are not available for vehicle licensing. **Licensing authorities should require a basic disclosure from the DBS and that a check is undertaken annually.** Any individual may apply for a basic check and the certificate will disclose any unspent convictions recorded on the Police National Computer (PNC). Licensing authorities should consider whether an applicant or licence holder with a conviction for offences provided in the annex to this document (Annex – Assessment of previous convictions), other than those relating to driving, meet the ‘fit and proper’ threshold.

7.3 However, it is important that authorities acknowledge that in many cases individuals that license a vehicle may already be licensed as a driver. An authority which undertakes the biannual DBS checks recommended for its drivers should not require those seeking to licence a vehicle to provide a basic DBS check as part of the application process; a basic DBS would not provide any information in addition to that disclosed under the enhanced DBS and barred lists check used for the driver assessment. In these circumstances, the authority should instead rely on the fact that the applicant is considered as fit and proper to hold a driver licence when considering their suitability to hold a vehicle licence. Should the individual cease to hold a driver licence a basic certificate should be required immediately.

7.4 A refusal to license an individual as a driver or to suspend or revoke a driver licence does not automatically mean that that individual cannot be issued or continue to hold a vehicle or private hire vehicle operator licence; these decisions must be independent of a driver licence refusal and based on the appropriate information i.e. it should not consider information that would only be available via an enhanced DBS check but instead that which would be disclosed on a basic check. DBS certificate information can only be used for the specific purpose for which it was requested and for which the applicant’s full consent has been given.

7.5 Private hire vehicle operator and vehicle licences may be applied for by a company or partnership; licensing authorities should apply the ‘fit and proper’ test to each of the directors or partners in that company or partnership. For this to be effective private hire vehicle operators and those to whom a vehicle licence should be required to advise the licensing authority of any change in directors or partners.

7.6 As explained earlier in the context of driver licensing, the DBS cannot access criminal records held overseas so other checks must be considered where and applicant has lived or worked overseas (see paragraph 4.34 - 4.36).

### **In-vehicle visual and audio recording – CCTV**

7.7 Government has acknowledged the potential risk to public safety when passengers travel in taxis and private hire vehicles. It is unfortunately the case that no matter how complete the information available to licensing authorities is when assessing whether to issue any taxi or private hire vehicle licence, nor how robust the policies in place are and the rigor with which they are applied, it will never completely remove the possibility of harm to passengers by drivers.

7.8 The Department's view is that CCTV can provide additional deterrence to prevent this and investigative value when it does. The use of CCTV can provide a safer environment for the benefit of taxi/private hire vehicle passengers and drivers by:

- deterring and preventing the occurrence of crime;
- reducing the fear of crime;
- assisting the police in investigating incidents of crime;
- assisting insurance companies in investigating motor vehicle accidents.

7.9 All licensing authorities should consult to identify if there are local circumstances which indicate that the installation of CCTV in vehicles would have either a positive or an adverse net effect on the safety of taxi and private hire vehicle users, including children or vulnerable adults, and taking into account potential privacy issues.

7.10 While only a small minority of licensing authorities have so far mandated all vehicles to be fitted with CCTV systems, the experience of those authorities that have has been positive for both passengers and drivers. In addition, the evidential benefits of CCTV may increase the level of reporting of sexual offences. According to the [Crime Survey for England and Wales](#) only 17 percent of victims report their experiences to the police, 28 percent of rape or sexual assault victims indicated that a fear they would not be believed as a factor in them not reporting the crime. The evidential benefits CCTV could provide are therefore an important factor when considering CCTV in vehicles.

7.11 The mandating of CCTV in vehicles may deter people from seeking a taxi or private hire vehicle licence with the intent of causing harm. Those that gain a licence and consider perpetrating an opportunistic attack against a vulnerable unaccompanied passenger may be deterred from doing so. It is however unfortunately the case that offences may still occur even with CCTV operating.

7.12 CCTV systems that are able to record audio as well as visual data may also help the early identification of drivers that exhibit inappropriate behaviour toward passengers. Audio recording should be both overt (i.e. all parties should be aware when recordings are being made) and targeted (i.e. only when passengers (or

drivers) consider it necessary). The recording of audio should be used to provide an objective record of events such as disputes or inappropriate behaviour and must not be continuously active by default and should recognise the need for privacy of passengers' private conversations between themselves. Activation of the audio recording capability of a system might be instigated when either the passenger or driver operates a switch or button.

- 7.13 Imposition of a blanket requirement to attach CCTV as a condition to a licence is likely to give rise to concerns about the proportionality of such an approach and will therefore require an appropriately strong justification and must be kept under regular review. More information and guidance on assessing the impacts of CCTV and on an authority mandating CCTV is annexed to this document (Annex – CCTV guidance).

### Stretched Limousines

- 7.14 Licensing authorities are sometimes asked to license small (those constructed or adapted to carry fewer than nine passengers) limousines as private hire vehicles, these vehicles may be used for transport to 'school proms' as well as for adult bookings. It is suggested that licensing authorities should approach such requests on the basis that these vehicles – where they have fewer than nine passenger seats - have a legitimate role to play in the private hire trade, meeting a public demand. It is the Department's view that it is not a legitimate course of action for licensing authorities to adopt policies that exclude limousines as a matter of principle thereby excluding these services from the scope of the private hire vehicle regime and the safety benefits this provides. A blanket policy of excluding limousines may create an unacceptable risk to the travelling public, as it may lead to higher levels of unsupervised operation. Public safety considerations are best supported by policies that allow respectable, safe operators to obtain licences on the same basis as other private hire vehicle operators.
- 7.15 Stretched large limousines which clearly seat more than eight passengers should not be licensed as private hire vehicles because they are outside the licensing regime for private hire vehicles. However, in some circumstances a vehicle with space for more than eight passengers can be licensed as a private hire vehicle where the precise number of passenger seats is hard to determine. In these circumstances, the authority should consider the case on its merits in deciding whether to license the vehicle under the strict condition that the vehicle will not be used to carry more than eight passengers, bearing in mind that refusal may encourage illegal private hire operation.



## 8. Private Hire Vehicle Operator Licensing

8.1 As with driver licensing, the objective in licensing private hire vehicle operators is to protect the public, who may be using operators' premises and trusting that the drivers and vehicles dispatched are above all else safe. It is important therefore that licensing authorities are assured that those that are granted a private hire vehicle operator also pose no threat to the public and have no links to serious criminal activity. Although private hire vehicle operators may not have direct contact with passengers, they are still entrusted to ensure that the vehicles and drivers used to carry passengers are appropriately licensed and so maintain the safety benefits of the driver licensing regime.

### Criminality checks for private hire vehicle operators

8.2 Enhanced DBS and barred list checks are not available for private hire vehicle operator licensing. **Licensing authorities should request a basic disclosure from the DBS and that a check is undertaken annually.** Any individual may apply for a basic check and the certificate will disclose any unspent convictions recorded on the Police National Computer (PNC). Licensing authorities should consider whether an applicant or licence holder with a conviction for offences provided in the annex to this document (Annex – Assessment of previous convictions), other than those relating to driving, meet the 'fit and proper' threshold.

8.3 However, it is important that authorities acknowledge that in many cases individuals that license as a private hire vehicle operator may already be licensed as a driver. An authority which undertakes the biannual DBS checks recommended for its drivers should not require those seeking a private hire vehicle operator licence to provide a basic DBS check as part of the application process; a basic DBS would not provide any information in addition to that disclosed under the enhanced DBS and barred lists check used for the driver assessment. In these circumstances, the authority should instead rely on the fact that the applicant is considered as fit and proper to hold a driver licence when considering their suitability to hold a vehicle licence. Should the individual cease to hold a driver licence a basic certificate should be required immediately

8.4 Refusal to license an individual as a driver or to suspend or revoke a driver licence does not automatically mean that that individual cannot be issued or continue to hold a private hire vehicle operator licence; this decision must be independent of a driver licence refusal and based on the appropriate information i.e. it should not consider information that would only be available via an enhanced DBS check but instead that which would be disclosed on a basic check. DBS certificate information can only be used for the specific purpose for which it was requested and for which the applicant's full consent has been given.

8.5 A private hire vehicle operator licence may be applied for by a company or partnership; licensing authorities should apply the 'fit and proper' test to each of the directors or partners in that company or partnership. For this to be effective

private hire vehicle operators should be required to advise the licensing authority of any change in directors or partners.

- 8.6 As explained earlier in the context of driver licensing, the DBS cannot access criminal records held overseas. Further information on assessing the suitability of those that have spent extended periods in overseas is provided in paragraphs 4.34 - 4.36.

### Booking and dispatch staff

- 8.7 Private hire vehicle drivers are not the only direct contact that private hire vehicle users have with private hire vehicle operators' staff, for example a person taking bookings (be it by phone or in person). A vehicle dispatcher decides which driver to send to a user, a position that could be exploited by those seeking to exploit children and vulnerable adults. It is therefore appropriate that all staff that have contact with private hire vehicle users and the dispatching of vehicles should not present an undue risk to the public or the safeguarding of children and vulnerable adults.
- 8.8 Licensing authorities should be satisfied that private hire vehicle operators can demonstrate that all staff that have contact with the public and/or oversee the dispatching of vehicles do not pose a risk to the public. **Licensing authorities should, as a condition of granting an operator licence, require a register of all staff that will take bookings or dispatch vehicles is kept.**
- 8.9 Operators should be required to evidence that they have had sight of a Basic DBS check on all individuals listed on their register of booking and dispatch staff and to ensure that Basic DBS checks are conducted on any individuals added to the register and that this is compatible with their policy on employing ex-offenders. DBS certificates provided by the individual should be recently issued when viewed, alternatively the operator could use a ['responsible organisation'](#) to request the check on their behalf. When individuals start taking bookings and dispatching vehicles for an operator they should be required, as part of their employment contract, to advise the operator of any convictions while they are employed in this role.
- 8.10 The register should be a 'living document' that maintains records of all those in these roles for the same duration as booking records are required to be kept, this will enable cross-referencing between the two records. A record that the operator has had sight of a basic DBS check certificate (although the certificate itself should not be retained) should be retained for the duration that the individual remains on the register. Should an employee cease to be on the register and later re-entered, a new basic DBS certificate should be requested and sight of this recorded.
- 8.11 Operators may outsource booking and dispatch functions but they cannot pass on the obligation to protect children and vulnerable adults. Operators should be required to evidence that comparable protections are applied by the company to which they outsource these functions.



8.12 Licensing authorities should also require operators or applicants for a licence to provide their policy on employing ex-offenders in roles that would be on the register as above. As with the threshold to obtaining a private hire vehicle operators' licence, those with a conviction for offences provided in the annex to this document (Annex – Assessment of previous convictions), other than those relating to driving, may not be suitable to decide who is sent to carry a child or vulnerable adult unaccompanied in a car.

## Record keeping

8.13 Section 56 of the [Local Government \(Miscellaneous Provisions\) Act 1976](#) requires private hire vehicle operators to keep records of the particulars of every booking invited or accepted, whether it is from the passenger or at the request of another operator. **Licensing authorities should as a minimum require private hire vehicle operators to record the following information for each booking:**

- the name of the passenger;
- the time of the request;
- the pick-up point;
- the destination;
- the name of the driver;
- the driver's licence number;
- the vehicle registration number of the vehicle;
- the name of any individual that responded to the booking request;
- the name of any individual that dispatched the vehicle.

8.14 This information will enable the passenger to be traced if this becomes necessary and should improve driver security and facilitate enforcement. It is suggested that booking records should be retained for a minimum of six months.

8.15 Private hire vehicle operators have a duty under data protection legislation to protect the information they record. The Information Commissioner's Office provides comprehensive on-line guidance on registering as a data controller and how to meet their obligations.

## Use of passenger carrying vehicles (PCV) licensed drivers

8.16 PCV licensed drivers are subject to different checks from taxi and private hire vehicle licensed drivers as the work normally undertaken, i.e. driving a bus, does not present the same risk to passengers. Members of the public are entitled to expect when making a booking with a private hire vehicle operator that they will receive a private hire vehicle licensed vehicle and driver. **The use of a driver who holds a PCV licence and the use of a public service vehicle (PSV) such**

**as a minibus to undertake a private hire vehicle booking should not be permitted as a condition of the private hire vehicle operator's licence without the informed consent of the booker.**

- 8.17 Where a private hire vehicle is unsuitable, for example where a larger vehicle is needed because more than eight passenger seats required or to accommodate luggage, the booker should be informed that a PSV is necessary, and that a PCV licenced driver will be used who is subject to different checks and not required to have an enhanced DBS check.

## 9. Enforcing the Licensing Regime

9.1 Implementing an effective framework for licensing authorities to ensure that as full a range of information made available to suitably trained decision makers that are supported by well-resourced officials is essential to a well-functioning taxi and private hire vehicle sector. These steps will help prevent the licensing of those that are not deemed 'fit and proper' but does not ensure that those already licensed continue to display the behaviours and standards expected.

### Joint authorisation of enforcement officers

9.2 Licensing authorities should, where the need arises, jointly authorise officers from other authorities so that compliance and enforcement action can be taken against licensees from outside their area. An agreement between licensing authorities to jointly authorise officers enables the use of enforcement powers regardless of which authority within the agreement the officer is employed by and which issued the licence. This will mitigate the opportunities for drivers to evade regulation. Such an agreement will enable those authorities to take action against vehicles and drivers that are licensed by the other authority when they cross over boundaries. A model for agreeing joint authorisation is contained in the [LGA Councillors' handbook](#).

### Setting expectations and monitoring

9.3 Licensing authorities should ensure that drivers are aware of the policies that they must adhere and are properly informed of what is expected of them and the repercussions for failing to do so. Some licensing authorities operate a points-based system, which allows minor breaches to be recorded and considered in context while referring those with persistent or serious breaches to the licensing committee. This has the benefit of consistency in enforcement and makes better use of the licensing committee's time.

9.4 The provision of a clear, simple and well-publicised process for the public to make complaints about drivers and operators will enable authorities to target compliance and enforcement activity (see paragraphs 4.29 - 4.33). This will provide a further source of intelligence when considering the renewal of licences and of any additional training that may be required. It is then for the licensing authority to consider if any intelligence indicates a need to suspend or revoke a licence in the interests of public safety.

### Suspension and revocation of driver licences

9.5 Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 provides a licensing authority with the ability to suspend or revoke a driver's licence on the following grounds: -

(a) that he has since the grant of the licence—

- (i) been convicted of an offence involving dishonesty, indecency or violence; or
- (ii) been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this Part of this Act;
- (aa) that he has since the grant of the licence been convicted of an immigration offence or required to pay an immigration penalty; or
- (b) any other reasonable cause

9.6 Licensing authorities have the option to suspend or revoke a licence should information be received that causes concern over whether a driver is a fit and proper person. Where the licence holder has been served an immigration penalty or convicted of an immigration offence the licence should be revoked immediately. [Guidance for licensing authorities](#) to prevent illegal working in the taxi and private hire vehicle sector has been issued by the Home Office. As with the initial decision to license a driver, this determination must be reached based on the balance of probabilities, not on the burden of beyond reasonable doubt.

9.7 Before any decision is made, the licensing authority must give full consideration to the available evidence and the driver should be given the opportunity to state his or her case. If a period of suspension is imposed, it cannot be extended or changed to revocation at a later date.

9.8 A decision to revoke a licence does not however prevent the reissuing of a licence should further information be received that alters the balance of probability of a decision previously made. The decision to suspend or revoke was based on the evidence available at the time the determination was made. New evidence may, of course, become available later.

9.9 New evidence may be produced at an appeal hearing that may result in the court reaching a different decision to that reached by the council or an appeal may be settled by agreement between the licensing authority and the driver on terms which, in the light of new evidence, becomes the appropriate course. If, for example, the allegations against a driver were now, on the balance of probability, considered to be unfounded, a suspension could be lifted or, if the licence was revoked, an expedited re-licensing process used.

9.10 A suspension may still be appropriate if it is believed that a minor issue can be addressed through additional training. In this instance the licence would be returned to the driver once the training has been completed without further consideration. This approach is clearly not appropriate where the licensing authority believes that, based on the information available at that time, on the balance of probability it is considered that the driver presents a risk to public safety.

## Annex – Assessment of Previous Convictions

Legislation specifically identifies offences involving dishonesty, indecency or violence as a concern when assessing whether an individual is 'fit and proper' to hold a taxi or private hire vehicle licence. The following recommendations to licensing authorities on previous convictions reflect this.

**Authorities must consider each case on its own merits, and applicants/licensees are entitled to a fair and impartial consideration of their application.** Where a period is given below, it should be taken to be a minimum in considering whether a licence should be granted or renewed in most cases. The Department's view is that this places passenger safety as the priority while enabling past offenders to sufficiently evidence that they have been successfully rehabilitated so that they might obtain or retain a licence.

### Crimes resulting in death

Where an applicant or licensee has been convicted of a crime which resulted in the death of another person or was intended to cause the death or serious injury of another person they will not be licensed.

### Exploitation

Where an applicant or licensee has been convicted of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of whether the victim or victims were adults or children, they will not be licensed. This includes slavery, child sexual abuse, exploitation, grooming, psychological, emotional or financial abuse, but this is not an exhaustive list.

### Offences involving violence against the person

Where an applicant has a conviction for an offence of violence against the person, or connected with any offence of violence, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

### Possession of a weapon

Where an applicant has a conviction for possession of a weapon or any other weapon related offence, a licence will not be granted until at least seven years have elapsed since the completion of any sentence imposed.

### Sexual offences

Where an applicant has a conviction for any offence involving or connected with illegal sexual activity, a licence will not be granted.

In addition to the above, the licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any barred list.

### Dishonesty

Where an applicant has a conviction for any offence where dishonesty is an element of the offence, a licence will not be granted until at least seven years have elapsed since the completion of any sentence imposed.

## Drugs

Where an applicant has any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least five years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant may also have to undergo drugs testing for a period at their own expense to demonstrate that they are not using controlled drugs.

## Discrimination

Where an applicant has a conviction involving or connected with discrimination in any form, a licence will not be granted until at least seven years have elapsed since the completion of any sentence imposed.

## Motoring convictions

Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the granting of a licence. However, applicants with multiple motoring convictions may indicate that an applicant does not exhibit the behaviours of a safe road user and one that is suitable to drive professionally.

Any motoring conviction while a licensed driver demonstrates that the licensee may not take their professional responsibilities seriously. However, it is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence may not necessitate the revocation of a taxi or private hire vehicle driver licence providing the authority considers that the licensee remains a fit and proper person to retain a licence.

## Drink driving/driving under the influence of drugs

Where an applicant has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least seven years have elapsed since the completion of any sentence or driving ban imposed. In the case of driving under the influence of drugs, any applicant may also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

## Using a hand-held device whilst driving

Where an applicant has a conviction for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least five years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

## Annex – Disclosure and Barring Service information

Table 1: Information included in criminal record checks

Information included	Type of check			
	Basic check	Standard DBS check	Enhanced DBS check	Enhanced DBS (including barred list) check
<b>Unspent convictions</b>	Yes	Yes	Yes	Yes
<b>Unspent cautions</b> <sup>1</sup>	Yes	Yes	Yes	Yes
<b>Spent convictions</b> <sup>2</sup>	No	Yes	Yes	Yes
<b>Spent cautions</b> <sup>1 &amp; 2</sup>	No	Yes	Yes	Yes
<b>Additional police Information</b> <sup>3</sup>	No	No	Yes	Yes
<b>Barred list(s) Information</b> <sup>4</sup>	No	No	No	Yes

1. Does not include fixed penalty notices, penalty notices for disorder or any other police or other out-of-court disposals.
2. Spent convictions and cautions that have become protected under the Rehabilitation of Offenders Act 1974 (Exceptions Order) 1975, as amended, are not automatically disclosed on any level of certificate. Further guidance is available [the DBS filtering guide](#).
3. This is any additional information held by the police which a chief police officer reasonably believes to be relevant and considers ought to be disclosed.
4. This is information as to whether the individual concerned is included in the children's or adults' barred lists maintained by the Disclosure and Barring Service (DBS).

## Annex – CCTV Guidance

It is important to note that, in most circumstances, a licensing authority which mandates the installation of CCTV systems in taxis and private hire vehicles will be responsible for the data – the data controller. It is important that data controllers fully consider concerns regarding privacy and licensing authorities should consider how systems are configured, should they mandate CCTV (with or without audio recording). For example, vehicles may not be exclusively used for business, also serving as a car for personal use - it should therefore be possible to manually switch the system off (both audio and visual recording) when not being used for hire. Authorities should consider the Information Commissioner's view on this matter that, in most cases, a requirement for continuous operation is unlikely to be fair and lawful processing of personal data.

The Home Office '[Surveillance Camera Code of Practice](#)' advises that government is fully supportive of the use of overt surveillance cameras in a public place whenever that use is:

- in pursuit of a legitimate aim;
- necessary to meet a pressing need;
- proportionate;
- effective, and;
- compliant with any relevant legal obligations

The Code also sets out 12 guiding principles which, as a 'relevant authority' under section 33(5) of the [Protection of Freedoms Act 2012](#), licensing authorities must have regard to. It must be noted that, where a licence is granted subject to CCTV system conditions, the licensing authority assumes the role and responsibility of 'System Operator'. The role requires consideration of all guiding principles in this code. The failure to comply with these principles may be detrimental to the use of CCTV evidence in court as this may be raised within disclosure to the Crown Prosecution Service and may be taken into account.

The Surveillance Camera Commissioner (SCC) has provided guidance on the Surveillance Camera Code of Practice in its '[Passport to Compliance](#)' which provides guidance on the necessary stages when planning, implementing and operating a surveillance camera system to ensure it complies with the code. The Information Commissioner's Office (ICO) has also published a [code of practice](#) which, in this context, focuses on the data governance requirement associated with the use of CCTV such as data retention and disposal, which it is important to follow in order to comply with the data protection principles. The SCC provides a [self-assessment tool](#) to assist operators to ensure compliance with the principles set out in the Surveillance Camera Code of Practice. The SCC also operate a [certification scheme](#); authorities that obtain this accreditation are able to clearly demonstrate that their systems conform to the SCC's best practice and are fully compliant with the Code and increase public confidence that any risks to their privacy have been fully considered and mitigated.

The [Data Protection Act 2018](#) regulates the use of personal data. Part 2 of the Data Protection Act applies to the general processing of personal data, and references and supplements the General Data Protection Regulation. Licensing authorities, as data controllers, must comply with all relevant aspects of data protection law. Particular attention should be paid to the rights of individuals which include the right to be informed, of access



and to erasure. The ICO has provided detailed [guidance](#) on how data controllers can ensure compliance with these.

It is a further requirement of data protection law that before implementing a proposal that is likely to result in a high risk to the rights and freedoms of people, an impact assessment on the protection of personal data shall be carried out. The ICO recommends in [guidance](#) that if there is any doubt as to whether a Data Protection Impact Assessment (DPIA) is required one should be conducted to ensure compliance and encourage best practice. A DPIA will also help to assess properly the anticipated benefits of installing CCTV (to passengers and drivers) and the associated privacy risks; these risks might be mitigated by having appropriate privacy information and signage, secure storage and access controls, retention policies, training for staff how to use the system, etc.

It is essential to ensure that all recordings made are secure and can only be accessed by those with legitimate grounds to do so. This would normally be the police if investigating an alleged crime or the licensing authority if investigating a complaint or data access request. Encryption of the recording to which the licensing authority, acting as the data controller, holds the key, mitigates this issue and protects against theft of the vehicle or device. It is one of the guiding principles of data protection legislation, that personal data (including in this context, CCTV recordings and other potentially sensitive passenger information) is handled securely in a way that 'ensures appropriate security', including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

All passengers must be made fully aware if CCTV is operating in a vehicle. Given that audio recording is considered to be more privacy intrusive, it is even more important that individuals are fully aware and limited only to occasions when passengers (or drivers) consider it necessary. The recording of audio should be used to provide an objective record of events such as disputes or inappropriate behaviour and must not be continuously active by default and should recognise the need for privacy of passengers' private conversations between themselves. Activation of the audio recording capability of a system might be instigated when either the passenger or driver operates a switch or button. As well as clear signage in vehicles, information on booking systems should be introduced. This might be text on a website, scripts or automated messages on telephone systems; the Information Commissioner's Office (ICO) has issued guidance on privacy information and the right to be informed on its website.

## Annex - Staying Safe: Guidance for Passengers

Licensing authorities should provide guidance to assist passengers in identifying licensed vehicles and the increased risks of using unlicensed vehicles. The guidance might include advice on:

- how to tell if a taxi or private hire vehicle is licensed.

Educate the public in the differences between taxis and private hire vehicles e.g.:

- a taxi can be flagged down or pre-booked.
- a private hire vehicle that has not been pre-booked should not be used as it will not be insured and may not be licensed.
- what a private hire vehicle should look like e.g. colour, signage, licence plates etc.
- the benefit of pre-booking a return vehicle before going out.
- arrange to be picked up from a safe meeting point.
- requesting at the time of booking what the fare is likely to be.

When using a private hire vehicle, passengers should always:

- book with a licensed operator.
- confirm their booking with the driver when s/he arrives.
- note the licence number.
- sit in the back, behind the driver.
- let a third party know details of their journey.

When using a taxi, passengers should where possible:

- use a taxi rank and choose one staffed by taxi marshals if available.

## REPORT TO LICENSING COMMITTEE



<b>DATE</b>	<b>23<sup>rd</sup> June 2021</b>
<b>PORTFOLIO</b>	<b>Community &amp; Environment</b>
<b>REPORT AUTHOR</b>	<b>Karen Davies</b>
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## Improving Vehicle Safety Standards

### PURPOSE

1. For Members to consider options to improve the safety of licenced vehicles on the taxi fleet.

### RECOMMENDATION

2. That the Licensing Committee agrees:
  1. To reduce the period of a vehicle licence to 4 months, increasing the number of routine inspections from 2 to 3 per annum, and
    - a. To agree a 4 month Private Hire Vehicle licence fee of £52, and
    - b. To agree a 4 month Hackney Carriage Vehicle fee of £83; and/or
  2. To recommend that Full Council amends the Council's Constitution to add revocation of vehicle licences to the Head of Legal and Democratic Services (HoL&DS) delegations as follows:  
 At Part 3 1(b) Licensing Committee HoL&DS para 1(e)  
 `To be responsible for the suspension and revocation of Hackney Carriage vehicle licences and Private Hire vehicle licences`; and/or
  3. To revise the exceptional criteria policy to apply the MOT inspection manual categories of `dangerous`, `major` and `minor` defects consistently to both the targeted intervention and exceptional condition criteria (which permits the licensing of hackney carriages up to 15 years). See Appendix A.
  4. To consider the recommendation of the TTG to take no further action in relation to the request for extension to vehicle licences.

### REASONS FOR RECOMMENDATION

3. To enable the Licensing Authority to fulfil its obligations to ensure that public safety is paramount by ensuring that vehicles licensed as Private Hire vehicles or Hackney Carriages are maintained to compliance standards by their respective proprietors.

### SUMMARY OF KEY POINTS

4. All vehicles are currently licenced for 6 months and require testing at renewal. In order to monitor vehicle safety between tests, licensing enforcement officers conduct regular targeted intervention days in partnership with Lancashire Constabulary. These operations were paused in February 2020 owing to the Covid19 pandemic, resuming 13<sup>th</sup> April 2021 following the easing of restrictions. The targeted element of the intervention involves the police selecting cars to stop at roadside and requiring any with obvious defects to attend one of the approved testing centres for inspection by a VOSA qualified examiner. Because some degree of selection is involved, this approach is not a random `spot check`, and is not a reflection of the fleet as a whole.

Results during the last two years have seen consistently poor results which are summarised below;

7<sup>th</sup> August 2019 - 12 vehicles inspected - 12 vehicles failed (6 with serious faults), 10 vehicles suspended.

23<sup>rd</sup> September 2019 - 9 vehicles inspected - 9 vehicles failed (4 with serious faults), 7 vehicles suspended.

26<sup>th</sup> November 2019 - 13 vehicles inspected - 13 vehicles failed (9 with serious faults), 11 vehicles suspended.

26<sup>th</sup> February 2020 - 7 vehicles inspected - 6 vehicles failed (3 with serious faults), 4 vehicles suspended.

13<sup>th</sup> April 2021 - 10 vehicles inspected - 10 vehicles failed (8 with serious faults), 9 vehicles suspended.

Serious faults currently relate to issues with brakes, suspension, steering, and tyres.

5. Enforcement officers currently issue suspension notices where vehicles fail the test and the matter cannot immediately be rectified. They do so using their powers as under section 68 of the Local Government (Miscellaneous Provisions) Act 1976 as authorised officers under the legislation. A suspension means that the vehicle cannot be used as a private hire vehicle or Hackney Carriage until the issues are satisfactorily addressed and the suspension formally lifted. This would normally mean that the vehicle is presented to an approved testing station for re-examination or to a licensing officer depending on the nature of the failure.
6. Drivers and operators have previously been brought before Sub-Committee to have licences reviewed where their vehicles have not been maintained. Drivers and operators each blamed the other for faults identified often leading to no further action being taken. This was administratively cumbersome, expensive and delayed the response. Operator licences in particular were sometimes transferred prior to review, making the process ineffective.
7. Despite these enforcement approaches, the results of targeted intervention operations remain poor. Enforcement officers currently have no further immediate powers to deal with serious or persistent failures.

Options available to strengthen the licensing regime, incentivise vehicle licence holders to

pay greater attention to vehicle maintenance, and thereby improve public safety are:

- **Option 1 – Period of Licence**

Reduce the period of a vehicle licence to 4 months, thereby increasing the test frequency at renewal. This is the maximum number of times in a year that the Licensing Authority can require tests. This will involve additional expenditure to the trade (via an additional £15 admin payment to the Council for processing an extra licence each year, and a separate test fee payment direct to the testing station). This will not eliminate issues arising where vehicles are not maintained between tests.

- **Option 2 – Officer Delegations**

Increase officer powers by amending the Council's Constitution to add revocation of vehicle licences to the HoL&DS's delegated powers. The Head of Service will then be able to delegate this on to competent enforcement officers so that revocation powers can be used where an approved VOSA examiner identifies 2 or more dangerous or major faults, OR where the vehicle is found to have a poor maintenance history, evidenced by 2 or more previous suspensions for vehicle safety issues within the preceding 2 years. Dangerous and major faults are outlined in the government's 'MOT inspection manual: cars and passengers vehicles'.

Utilise existing HoL&DS delegation to suspend with immediate effect any licensed driver found behind the wheel of a licensed vehicle deemed by an approved VOSA examiner to have 2 or more dangerous or major faults.

- **Option 3 – Consistency of Faults**

For consistency, there is an additional recommendation to bring the exceptional condition criteria (which currently apply to Hackney Carriage renewal applications beyond normal upper age limits) into line with the defects identified in the MOT manual. See Appendix A. The effect of this would be to extend the exceptional criteria beyond defects associated with brakes, steering, tyres or suspension to include for example seat belts and emission control equipment.

8. Option 1 is permitted within the legislation. Whilst option 2 (revocation and suspension) are decisions appealable to the magistrates court, it is necessary to balance the risk of successful appeal against public safety. Following vehicle revocation a licensed driver may need to source another licensed vehicle to drive, but it will not prevent them from working.
9. At the 4<sup>th</sup> February Licensing Committee a right to speak was exercised requesting consideration to be given to an extension to vehicle licences for 12 – 18 months due to the impact of the Pandemic for operators and drivers. As Committee requested, the matter was considered by the Taxi Task Group on 14<sup>th</sup> April. The Group noted that grants had been made available to the taxi trade, that fees had been frozen and vehicle licences extended free of charge through the summer of 2020 and also that free fitting of screens to reduce covid spread, and publicity to support the Trade getting back on its feet had been provided.

In reaching a consensus decision the Group recognised that whilst the financial needs of the Trade were important, this had to be balanced with the safety of the local fleet. The Group noted the poor results of the recent targeted intervention, and the impact of an older fleet on climate change, and were unable to recommend the measure.

#### **FINANCIAL IMPLICATIONS AND BUDGET PROVISION**

10. None

#### **POLICY IMPLICATIONS**

11. The scheme of delegation can only be amended by Full Council. Changes to vehicle conditions, including the duration of the licence, and the setting of fees are Licensing Committee responsibilities. Any decisions will become part of the taxi policy framework.

#### **DETAILS OF CONSULTATION**

12 Chair & Vice Chair of Licensing Committee  
Exec Member Community & Environment  
Taxi Task Group

#### **BACKGROUND PAPERS**

13 <https://www.gov.uk/guidance/mot-inspection-manual-for-private-passenger-and-light-commercial-vehicles>

#### **FURTHER INFORMATION**

**PLEASE CONTACT:**

**Karen Davies**

**ALSO:**

**David Hall**

Current Exceptional Condition Policy

The maximum age limit for vehicles depends on when the vehicle was first licenced as a Hackney Carriage with Burnley BC.

- For vehicles first licenced before 10th April 2014 the licence can be renewed up to 12 years from the date of first registration.
- For vehicles first licenced on or after 11th April 2014 the licence can be renewed up to 10 years from the date of first registration.

Any vehicle exceeding these age limits can be licenced up to 15 years of age where the 'exceptional condition criteria' is met.

The current exceptional condition criteria is

1. Any vehicle inspection resulting in a fail due to 2 major faults or more than 4 minor faults will usually result in the vehicle no longer being classed as in exceptional condition upon expiry of the licence. It will not be acceptable for such a vehicle to be taken away, repaired and represented for a further test. Any further application will not be accepted for such a vehicle.
  - 'Major faults' are defined as any brake, steering, tyre or suspension defects.
  - 'Minor faults' are defined as all other defects that are not classed as 'Major faults'.
2. The bodywork should be in good condition with little sign of panel age deterioration, dents, scratches, stone chips or rust or any other abrasions that may detract from the overall appearance of the vehicle.
3. The general paint condition should show little sign of fading; discolouration or mismatching that may detract from the overall appearance of the vehicle.
4. The interior trim, panels, seating and carpets etc. should be in good condition clean, free of damage.
5. The vehicle to be in good mechanical condition and in all respects safe and roadworthy with no signs of corrosion to the mechanical parts, chassis, underside or body work.
6. The boot or luggage compartment to be in good condition, clean and undamaged.
7. Passenger areas to be free from damp or any other odours that may cause passenger discomfort.

**The proposed amendment to para 1 as follows:**

1. Any vehicle inspection resulting in a fail due to 2 **dangerous or major faults**, or more than 4 minor faults, **as outlined in the government's MOT inspection manual: cars and passenger vehicles**, will usually result in the vehicle no longer being classed as in exceptional condition upon expiry of the licence. It will not be acceptable for such a vehicle to be taken away, repaired and represented for a further test. Any further application will not be accepted for such a vehicle.

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## REPORT TO LICENSING COMMITTEE



<b>DATE</b>	<b>23<sup>rd</sup> June 2021</b>
<b>PORTFOLIO</b>	<b>Community &amp; Environment</b>
<b>REPORT AUTHOR</b>	<b>Karen Davies</b>
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## Review of Covid-related Taxi Driver Application Requirements

### PURPOSE

1. To update Members on the relaxation of taxi driver application requirements to accommodate covid-secure measures.

### RECOMMENDATION

2. That the Licensing Committee agree:
  - to permanently introduce the option of Group 2 Medicals (with access to GP records) in the limited circumstances where the applicant's own GP is not offering the service,
  - to continue with the temporary Online Knowledge Tests (as prescribed by the Council) and Online safeguarding training (as prescribed by the Council) for a further 6 month period, before a further review, or if circumstances permit, resuming full safeguarding requirements.

And in each case a 12 month licence will be issued.

### REASONS FOR RECOMMENDATION

3. To review the arrangements as per Minute 12 Licensing Committee 12<sup>th</sup> November 2020.

### SUMMARY OF KEY POINTS

4. The interim arrangements are now established, although it is only recently that the online knowledge tests and safeguarding training have become available.
5. Group 2 medical examinations were put into effect in the limited situations outlined, and are working well, with approximately 8 drivers using this option. Medical concerns have been raised appropriately, and one application resulted in refusal. It is becoming increasingly apparent that GPs will not necessarily restart private medical services, and so there is a need to identify alternative provision. The recommendation therefore seeks approval to continue with this option permanently, but only where the applicant's GP does not offer the service.
6. Online knowledge tests and safeguarding training have only just been implemented, and

have worked well for the limited numbers that have gone through the process, less than 10 so far. We are still in a position where there is uncertainty about office reopening and occupation levels. Given recent concerns about variants, the recommendation is that we continue for a further 6 months, and at that point review further, or if circumstances permit resume face to face safeguarding arrangements.

<b>FINANCIAL IMPLICATIONS AND BUDGET PROVISION</b>
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7. None

<b>POLICY IMPLICATIONS</b>
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8. The recommendation would change application criteria as indicated.

<b>DETAILS OF CONSULTATION</b>
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9. None

<b>BACKGROUND PAPERS</b>
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10. None

<b>FURTHER INFORMATION</b>
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**PLEASE CONTACT:**

**Karen Davies**

**ALSO:**

**Joanne Swift**

## Appointment to Licensing Sub Committees

### REPORT TO LICENSING COMMITTEE



<b>DATE</b>	<b>23/06/2021</b>
<b>PORTFOLIO</b>	<b>Community and Environmental Services</b>
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#### PURPOSE

1. To obtain approval of the Licensing Committee for sub delegation of functions to a Licensing Act 2003 Sub Committee and to Taxi Licensing Sub Committees and for the appointment of Licensing Committee Members to these sub committees.

#### RECOMMENDATION

2. (1) That a Licensing Act 2003 Sub Committee be established for the sub delegation of functions under the Licensing Act 2003 for a final hearing procedure;
- (2) That a Taxi Licensing Sub Committees be established for sub delegation of functions vested in the Licensing Committee relating to taxi licensing functions as set out in Part 3 of the Council's Constitution;and
- (3) That Members be appointed to the sub committees on a rotational basis subject to their availability.

#### REASONS FOR RECOMMENDATION

3. For the efficient and effective discharge of the Council's Licensing Authority functions.

#### SUMMARY OF KEY POINTS

4. The Licensing and Gambling Acts do not require these sub committees to be politically balanced but it is the Council's current practice to apply the political balance calculation to all statutory and non-statutory groups wherever possible. Other forms of licensing are subject to the political balance rules. Seats on all sub committees will be allocated on a rotational basis between members subject to their availability.

#### **Licensing Act 2003 Sub Committee**

5. Section 10 of the Licensing Act 2003 allows for the powers vested in the Council to be discharged by sub committees of the Licensing Committee and the Council has previously passed a resolution to enable this function to be discharged in this way.

6. The workload of this committee is variable and during 2020/21 there were 6 meetings, As the hearings under this Act can lengthy and require attendance by the applicants legal representative(s) it is proposed that the committee meets during office hours.

#### **Taxi Licensing Sub Committees**

7. In 2014 Council allowed for the provisions with respect to taxis as set out in Part 3 of the Constitution and vested in the Licensing Committee, to be delegated to a Sub Committee comprising 7 members.
8. In recent years it has been found that daytime meetings (usually at 10 a.m.) are the most convenient for officers. Also a number of meetings are held to determine applications for renewal of private hire vehicle licences where the vehicles have exceeded the upper age limit as defined in the Council's vehicle age limit policy. This requires Committee members to inspect the vehicles and this is best done during daylight hours.
9. It is recommended that these hearings are also held during the day and whilst this means a greater workload for those members who are available for daytime meetings there have only been a few meetings in the past few years.

#### **FINANCIAL IMPLICATIONS AND BUDGET PROVISION**

10. None arising from this report

#### **POLICY IMPLICATIONS**

11. None

#### **DETAILS OF CONSULTATION**

12. Internal

#### **BACKGROUND PAPERS**

13. None

#### **FURTHER INFORMATION**

**PLEASE CONTACT:**

**ALSO:**