



**Committee:** LICENSING COMMITTEE

**Date:** THURSDAY, 27 AUGUST 2020

**Venue:** THIS WILL BE A VIRTUAL MEETING

**Time:** 1.00 P.M.

## A G E N D A

1. **Apologies for Absence**

2. **Minutes**

Minutes of meeting held on 2 July, 2020 (previously circulated).

3. **Items of Urgent Business authorised by the Chair**

4. **Declarations of Interest**

To receive declarations by Councillors of interests in respect of items on this Agenda.

Councillors are reminded that, in accordance with the Localism Act 2011, they are required to declare any disclosable pecuniary interests which have not already been declared in the Council's Register of Interests. (It is a criminal offence not to declare a disclosable pecuniary interest either in the Register or at the meeting).

Whilst not a legal requirement, in accordance with Council Procedure Rule 9 and in the interests of clarity and transparency, Councillors should declare any disclosable pecuniary interests which they have already declared in the Register, at this point in the meeting.

In accordance with Part B Section 2 of the Code Of Conduct, Councillors are required to declare the existence and nature of any other interests as defined in paragraphs 8(1) or 9(2) of the Code of Conduct.

Matters for Decision

5. **Information report regarding urgent business UB122 - Pavement Cafe Licences**  
(Pages 3 - 36)

Report of the Licensing Manager

6. **Department for Transport Statutory Taxi and Private Hire Vehicle Standards** (Pages 37 - 80)

Report of the Licensing Manager

## **ADMINISTRATIVE ARRANGEMENTS**

### **(i) Membership**

Councillors Colin Hartley (Chair), Mel Guilding (Vice-Chair), Richard Austen-Baker, Mandy Bannon, Roger Dennison, Merv Evans, Kevin Frea, Mike Greenall, Abi Mills and Jean Parr

### **(ii) Queries regarding this Agenda**

Please contact Liz Bateson, Democratic Services - email [ebateson@lancaster.gov.uk](mailto:ebateson@lancaster.gov.uk).

### **(iii) Changes to Membership, or apologies**

Please contact Democratic Support, telephone 582170, or alternatively email [democraticsupport@lancaster.gov.uk](mailto:democraticsupport@lancaster.gov.uk).

KIERAN KEANE,  
CHIEF EXECUTIVE,  
TOWN HALL,  
DALTON SQUARE,  
LANCASTER, LA1 1PJ

Published on Monday 17 August, 2020.

## Report to Licensing Committee

### Pavement Licences

27 August 2020

### Report of Licensing Manager

#### PURPOSE OF REPORT

The report is for information, to advise the committee of an urgent decision taken by the Director for Communities and Environment in consultation with the Chair of Licensing Committee in respect of the introduction and implementation of the administration and enforcement of the provisions contained within Part 1 of the Business and Planning Act 2020 in respect of Pavement Licences

#### RECOMMENDATIONS

1. That the report is noted.

##### 1.0 Introduction

The report attached as **Appendix I** provides the background to the request for the Director for Communities and the Environment in consultation with Chair of Licensing Committee to consider and approve administrative and enforcement provisions in respect of Pavement Licences introduced by Part 1 of The Business and Planning Act 2020. The matter was deemed to require urgent consideration for the reasons outlined in Para 2.1.of the report at Appendix I

##### 2.0 Decision/ Action Taken

2.1 On 31 July on behalf of the Chief Executive, The Director for Communities and the Environment in consultation with the Chair of the Licensing Committee considered the report attached at Appendix I and the appendices contained within the report as follows

Appendix A Pavement Licence Policy

Appendix B Statutory Guidance on Pavement Licences

2.2 The 3 recommendations within the report were all approved namely.

1. A fee of £100 be set in respect of an application fee for a pavement licence.
2. That where a pavement licence is granted it shall normally be granted for a period up to and including 30 September 2021 or a lesser period (not less than 3 months) as directed by the applicant or upon determination by the Local Authority

3. That the policy and associated appendices (1-4) attached at Appendix A be approved with immediate effect

### **3.0 Council Policy and Legislation**

- 3.1 Part 2 section 7 page 50 of the Council Constitution outlines how matters of urgency can be dealt with and gives the following delegations to the Chief Executive.

#### **Matters of Urgency**

To authorise any action reasonably necessary to protect the health, safety or welfare of individuals or the safety of property.

Where it is necessary for any function of the Council or one of its committees to be discharged and it is impracticable or impossible, by means of urgency for the matter to be considered by the Council or such committee, to take such action as they consider appropriate, in consultation as far as is practicable with the Mayor and group leaders in respect of a Council function or the relevant committee Chair in respect of a matter within the Terms of reference of a Council Committee

- 3.2 Part 2 Section 7 page 52 of the constitution indicates that Director for Communities and the Environment is authorised to exercise the General delegations from Council, Committees and Cabinet set out in relation to the Chief Executive
- 3.3 Furthermore the constitution requires that a report be prepared for the next Committee meeting recording the urgent circumstances which made the action necessary and detailing the action taken

### **4.0 Conclusion**

- 4.1 The detail as to the relevant considerations in the decision making are attached in **Appendix I** namely the report considered by the Director for Communities and the environment in consultation with the Chair of Committee. This report to the Committee is for information, but also provides transparency regarding the decision making process

<b>CONCLUSION OF IMPACT ASSESSMENT</b> (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)
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<b>FINANCIAL IMPLICATIONS</b> As set out in the original report
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**SECTION 151 OFFICER'S COMMENTS**

**LEGAL IMPLICATIONS**

These are detailed in the report in respect of the relevant Constitutional requirements

**BACKGROUND PAPERS**

None

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**Ref:** JH

**Matter for urgent consideration**

**Business and Planning Act 2020  
Introduction and Implementation of Pavement Licence  
requirements and “off sales” of alcohol**

**28 July 2020**

**Report of Licensing Manager**

**PURPOSE OF THE REPORT**

To seek approval for the introduction and implementation of the administration and enforcement of the provisions contained within Part 1 of the Business and Planning Act 2020 in respect of Pavement Licences

**RECOMMENDATIONS**

1. A fee of £100 be set in respect of an application fee for a pavement licence.
2. That where a pavement licence is granted it shall normally be granted for a period up to and including 30 September 2021 or a lesser period (not less than 3 months) as directed by the applicant or upon determination by the Local Authority
3. That the policy and associated appendices (1-4) attached at Appendix A be approved with immediate effect

**1.0 Introduction**

1.1 On 22 July 2020 The Business and Planning Act 2020 came into force.

1.2 Part 1 of the Act deals with the consumption and sale of food and drink outdoors, and relates to two particular licensing issues

- The introduction of Pavement licences
- The modification of premises licences to authorise off sales of alcohol for a limited period

1.3 Historically the Council has dealt with the Licensing of Street/ Pavement cafes utilising the provisions contained within the Highways Act 1980. In effect the licensing of such areas is the Council giving its approval for the applicant to use the part of the

highway as indicated by the licensee in his/her application. The Highways Act 1980 street café licences remain in place for 1 year, cost £158 and are subject to a set of standard licensing conditions. The licensing conditions are generally concerned with

- Protecting public safety
- Preventing public nuisance
- Ensuring access for public utility providers when needed
- Promoting the appearance of the area (quality/ type of furniture etc)

The Highways Act 1980 licence makes provision for licences to be revoked where problems are identified. The provisions of the Highways Act 1980 street café licences remain in statute and therefore any licences issued under these provisions remain valid.

- 1.4 The Business and Planning Act 2020 (the “Act”) now introduces a “Pavement Licence” for the licence holder to put removeable furniture on part of the highway **adjacent** to the premises to sell / serve food and/or drink and also allows people to consume food and or drink supplied from or in connection with the premises. In effect this allows the area to be used as an extended seating area to the premises or to be a stall from which food/ drink is sold/ served. The licence can be applied to any premises which sells food and/or drink for consumption on or off the premises and is not restricted to those premises where alcohol is sold. For example, it can be used by a café to set up an ice cream stall outside,) or it can be used to facilitate what we traditionally regard as a street café.
- 1.5 The B Act also introduces provisions for the automatic modification of premises licences (issued under licensing Act 2003) to authorise the “off-sale” of alcohol for a limited period. The period will end on 30 September 2021. The Act does include measures to exclude certain premises that are currently specifically excluded from selling “off sales” and also makes it clear that those off sales are only permitted during the hours that the premises is licensed for on sales. There are also provisions within the Act regarding proposals to review licences in respect of off sales that have proved problematic.
- 1.6 The above two provisions are being introduced as a temporary measure (up to and including 30 September 2021) in order to facilitate the operation of business within the restrictions / guidance currently in place regarding the covid 19 pandemic. The pavement licence provision provides a fast track application procedure detailing a 7 days consultation period and a subsequent maximum 7 day period in which those applications must be determined, failure to do so results in licences being granted by default

## **2.0 Reason for the matter to be considered as urgent**

- 2.1 The Act came into force on 22 July 2020 and requests for applications are already being received by the Licensing department. The Act specifies a short timescale for consultation and the decision-making process, to enable pavement licences to be facilitated quickly. It is envisaged that the use of pavement licences will be maximised during summer months i.e. longer days and milder weather. As such it is imperative that the Council has the necessary decision making processes and policies in place without delay.

### **3.0 Pavement Licences**

#### 3.1 The Act details the following

- Applications must be made in writing to the Local Authority
- Applications must be accompanied by a fee of not more than £100 as the local authority may require
- Applications must contain specific information; these are not detailed in this briefing paper but replicate the information currently required by the Council in respect of Highways Act licence applications
- The local authority has to publish the application and publicise the 7 day consultation period
- The applicant must place a notice at the premises advising of the application, the details of the notice requirements are not provided in this report but largely replicate the Licensing Act public notice requirements. The notice must stay in place until the end of the consultation period
- The local authority must consult the highways authority and any other persons it considers appropriate regarding the application.
- The local authority must take into account any representations made during the consultation period
- The local authority has 7 days following the close of consultation to determine the application, failure to do so means that the licence is granted by default
- The local authority can grant, or refuse the licence in respect of any or all of the purposes and or in respect of some or all of the highway area
- The licence if granted, cannot be for a period of less than 3 months and can be up to and including 30 September 2021
- The licence will be subject to default mandatory conditions in respect of provisions of no smoking areas and access for mobility impaired and can be subject to reasonable conditions imposed by the local authority
- Pavement licences do not repeal the provisions of the Highways Act Licences, as such existing highways licences remain in place and valid
- There are a number of provisions detailed in the Act in respect of enforcement powers, these include the facility to revoke the licence in respect of public health or safety concerns, anti-social behaviour, public nuisance or obstruction of the highway.
- The Act details that a pavement licence constitutes deemed planning permission.

A draft policy has been produced outlining the Councils processes and procedures to be followed in respect of applications for Pavement licences this is attached at within Appendix A

### **4.0 Modification of premises Licences to permit off sales**

This element of the Act requires little or no change to operational practices in the administration and issue of Premises licences. In effect the Act introduces an automatic modification of existing premises licence that only cover on sales to allow off sales of alcohol. There are provisions within the Act to withhold such permissions from particular premises who have actively been prohibited from undertaking off



sales and also a facility to review a premises licence in respect of the off sales provision. There is no requirement in the Act for Local Authorities to reissue premises licences to reflect the time limited automatic modification to allow off sales

## 5.0 Guidance

- 5.1 Statutory guidance has been produced by the Government and is attached at **Appendix B**. It should be noted that within the Act there is reference to a time period of 7 days where the guidance specifies 5 working days. The time periods detailed in the Act will take precedent



### **CONCLUSION OF IMPACT ASSESSMENT**

**(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)**

### **FINANCIAL IMPLICATIONS**

The current fee for a Highways Act Street café licence is set at £158, this fee has been set at a level of cost recovery . The Pavement Licence administrative process will largely replicate that of the Highways Act Street café licence process. the maximum fee that can be charged by the Council for a Pavement licence is £100.

It is unclear how many applications will be received, the provision of a outside eating/ drinking area will facilitate social distancing within premises, however this is reliant on appropriate highway space being available and a recognition that the benefit of such areas particularly during winter months may be limited.

The administrative work involved in processing the application is expected to be similar to that associated with Highways Act Street Café licences, with the additional administrative burden of a requirement to determine applications within 7 days of the close of consultation.

Within the Policy attached at Appendix 2 of Appendix A is a proposal to waiver the fee for premises licences application in respect of premises that hold a current valid Street Café Licence for the identical area/ location. This seeks to ensure that premises licensed under the street café licencing regime do not incur an additional financial burden if they wish to transfer to a pavement licence

### **LEGAL IMPLICATIONS**

These are outlined in the report and there are no further comments to add.

**SECTION 151 OFFICER'S COMMENTS**

**MONITORING OFFICER COMMENTS**

The Monitoring Officer has been consulted and has no further comments to make.

**BACKGROUND PAPERS**

None

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**Lancaster City Council**

**Pavement Licensing Policy**

**Business and Planning Act 2020**

Effective: 31 July 2020  
Version 1

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## **1. Introduction**

The Covid-19 pandemic has affected businesses across all sectors of the economy causing many to cease trading for several months while others have had to significantly modify their operations.

On 25 June 2020 the Government announced an intention to relax planning and licensing laws to help the hospitality industry recover from the coronavirus lockdown by removing short term obstacles that could get in their way.

The Business and Planning Act 2020 received Royal assent on 22 July 2020 and provides a fast track process for premises selling food and drink such as bars, restaurants, cafes and pubs, to sell and provide seating for customers outdoors through temporary changes to legislation. The Act introduces a temporary permission, in the form of a “pavement licence”, to be issued by Lancaster City Council for furniture such as tables and chairs to be placed on the pavement adjacent to their premises which will enable them to sell food and drink from that area and to maximise seating capacity whilst adhering to social distancing guidelines.

The measures included in the Act modify provisions in the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales. It is a temporary measure, with provisions lasting until the end of September 2021.

Currently, tables and chairs permissions are granted as Street café licences issued by Lancaster City Council, under Part 7A of the Highways Act 1980. The Street café licence fee is currently £158 for an annual licence and is subject to a statutory 28-day consultation period. Licence conditions are also attached to the grant of these licences

The new measures in the Business and Planning Act, places a cap on the application fee for businesses, specifies a 7 day consultation period with licences automatically granted if not determined by the Council within a further 7 day period

## **2. Scope**

### **2.1 Definition of pavement licence**

A pavement licence is a licence granted by the local authority, or deemed to have been granted, which allows the licence-holder to sell food and or drink and place removable furniture over certain highways adjacent to the premises in relation to which the application was made.

### **2.2 Highways Act Street Café Licences**

A holder of a Street Café licence may choose to apply for a Pavement Licence. A holder of a Street Café licence can apply free of charge for a Pavement Licence, to cover the same licensed area as the Street Café Licence, up to and including 30 September 2021. The application process is as outlined in this policy.

### **2.3 Eligible Businesses**

A business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a licence. Businesses that are eligible

include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours.

A licence permits the business to use furniture placed on the highway to sell or serve food or drink and/or allow it to be used by people for consumption of food or drink supplied from, or in connection with the use of the premises.

## **2.4 Eligible Locations**

Licences can only be granted in respect of highways listed in section 115A (1) Highways Act 1980.

Generally, these are footpaths restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited. Highways maintained by Network Rail or Crown land are exempt (so a licence cannot be granted).

## **2.5 Type of furniture permitted**

The furniture which may be used is:

- counters or stalls for selling or serving food or drink;
- tables, counters or shelves on which food or drink can be placed;
- chairs, benches or other forms of seating; and
- umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink.
- Ancillary items such as hand sanitising stations required to ensure that the area is covid secure

The furniture is required to be removable, and must be capable of being easily moved, and stored away in a secure safe manner when not in use.

The Council would also expect the type of furniture to be 'in keeping' with the local area.

## **2.6 Planning Permission**

Once a licence is granted, or deemed to be granted, the applicant will also benefit from deemed planning permission to use the land for anything done pursuant to the licence while the licence is valid.

## **3. Application and Determination of Pavement Licences**

### **3.1 Submission of the Application**

An application for a Pavement Licence must be made to the Council, and the following will be required to be submitted with the application:

- a completed Application Form
- the required fee of £100, (online payment)
- a plan showing the location of the existing premises and the area to which the application relates (ie pavement licensed area) shown by a red line, so the application site can be clearly identified
- a plan clearly showing the proposed area covered by the licence in relation to the highway, if not to scale, with measurements clearly shown. The plan must show the positions and number of the proposed tables and chairs, together with any other items

that they wish to place on the highway. The plan shall include clear measurements of, for example, pathway width/length, building width and any other fixed item in the proposed area.

- the proposed days of the week on which, and the times of day between which, it is proposed to put furniture on the highway,
- photos or brochures showing the proposed type of furniture ;
- Reference of any current street café licence ( Highways Act 1980 ) issued by Lancaster City Council ;
- evidence that the applicant has met the requirement to give notice of the application (for example photographs of the notice outside the premises and of the notice itself);
- a copy of a current certificate of insurance that covers the activity for third party and public liability risks, to a minimum value of £2 million,

### **3.2 Fees**

The Council has determined that the fee for applications will be £100. A pavement licence if granted will be issued from the date the application is granted until 30 September 2021. The £100 fee is payable irrespective of the duration of the licence, and is non returnable

### **3.3 Consultation**

Applications are consulted upon for 7 days, starting with the day on which a valid application was made to the Council.

The Council will publish details of the application on its website at [www.lancaster.gov.uk](http://www.lancaster.gov.uk).

The Council is required by law to consult with the Highways Authority ie Lancashire County Council. In addition, to ensure that there are not detrimental effects to the application the Council will consult with:

- Lancaster/ Morecambe Town Centre Management/ Business Improvement Manager, Carnforth Chamber of Commerce as appropriate
- Lancaster City Council Environmental Health Service (including Noise pollution and Food and Safety Teams)
- Lancaster City Council Planning Department
- Lancashire Fire & Rescue Service
- Lancashire Police
- Lancaster City Council Environmental Services (refuse/street cleaning)

Representations from the above parties or members of the public should be provided to Lancaster City Council's licensing team by emailing [Licensing@Lancaster.gov.uk](mailto:Licensing@Lancaster.gov.uk). The email should be headed Pavement licence representation followed by the name of the premises.

The Council will take into account representations received during the public consultation period and consider these when determining the application. The application will be determined in accordance with the relevant sections of the Council's scheme of delegation outlined at **Appendix 4**

### **3.4 Site Notice**

An applicant for a pavement licence must on the day the application is made, fix a notice of the application to the premises so that the notice is readily visible to, and can be read easily by, members of the public who are not on the premises. The notice must be constructed and secured so that it remains in place until the end of the public consultation period.

Evidence of the site notice requirement must be supplied to the Council.

The Site Notice must: contain the information as detailed in **Appendix 1** and must be a minimum size of A4 and use Black type in a minimum font size 16

### **3.5 Site Assessment**

The following matters will be used by the Council and consultees in considering the suitability of the proposed application:

- public health and safety – for example, ensuring that uses conform with latest guidance on social distancing and any reasonable crowd management measures needed as a result of a licence being granted and businesses reopening;
- public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour and litter; and
- accessibility – taking a proportionate approach to considering the nature of the site in relation to which the application for a licence is made, its surroundings and its users, taking account of:
  - any other temporary measures in place that may be relevant to the proposal, for example, the reallocation of road space. This could include pedestrianised streets and any subsequent reallocation of this space to vehicles;
  - whether there are other permanent street furniture or structures in place on the footway that already reduce access;
  - the impact on any neighbouring premises
  - the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people
  - other users of the space, for example if there are high levels of pedestrian or cycle movements.

Applicants are strongly encouraged to talk to neighbouring businesses and occupiers prior to applying for a pavement licence, and so take any issues around noise, and nuisance into consideration as part of the proposal.

### **3.6 Determination**

Once the application is submitted the Council has 14 days from the day after the application is made (excluding public holidays) to consult on and determine the application. This consists of 7 days for public consultation, and then 7 days to consider and determine the application after the consultation.

If the Council determines the application before the end of the determination period the local authority can:

- grant the licence in respect of any or all of the purposes specified in the application and impose conditions,
- grant the licence for some or all of the part of the highway specified in the application, and impose conditions, or
- refuse the application.



Where a valid application has been made and no objections received the application will be granted by licensing officers

Where a valid application has been made and relevant representations are received the application will be determined by The Licensing Sub Committee

If the Council does not determine the application within the 14 day period, the application will be deemed to have been granted.

A template for the notice required is provided at **Appendix 1**

### **3.7 Approval of Applications**

On approving the application, the Council will issue a Pavement Licence to which conditions will be attached. The licence will also contain specific terms such as days and hours of operation and appearance and location of the furniture corresponding to the application.

The Council generally will only permit Pavement Licences between 09:00 and 22:00 hours

Applications outside these hours will be assessed in terms of the criteria detailed above. The Council however retains the right to specify permitted hours of trading that are less than those specified above in appropriate circumstances.

### **3.8 Licence Duration**

The provisions regarding pavement Licences will remain in place until 30 September 2021. As such, the Council will normally grant applications to 30 September 2021.

A licence granted or deemed to be granted will not be valid beyond 30 September 2021.

### **3.9 Refusal of Applications**

If the site is deemed unsuitable for a Pavement Licence, or if relevant representations are made which cannot be mitigated by conditions then the application may be refused.

There is no statutory right of appeal detailed in the Act .

## **4. Conditions**

The Council's standard conditions are set out at **Appendix 2**. In some cases, extra measures may be required. This will be considered when determining any application which has been subject to representations, on a case by case basis.

However, this is not the case for the national licence conditions which are applied to all Pavement licences. These are detailed at **Appendix 3**.

## **5. Enforcement**

The Council aims to work closely with other enforcement authorities to enforce the provisions of all appropriate legislation. The case remains that an obstruction of the

Highway is an offence under The Highways Act 1980 and will be dealt with by the Highways Authority or the Police.

Obtaining a licence does not confer the holder immunity in regard to other legislation that may apply, e.g. Public Liability, Health & Safety at Work, Food Hygiene and Safety, Alcohol and Entertainment Licensing, Social distancing controls, Applicants must ensure all such permissions, etc. are in place prior to applying.

If a condition imposed on a licence either by the Council or via a National Condition is breached the Council will be able to issue a notice requiring the breach to be remedied and the Council can take action to cover any costs.

The Council may revoke a licence in the following circumstances:

1. For breach of condition, (whether or not a remediation notice has been issued) or
2. Where:
  - There are risks to public health or safety – for example by encouraging users to breach government guidance on social distancing by placing tables and chairs too close together;
  - the highway is being obstructed (other than by anything permitted by the licence);
  - there is anti-social behaviour, statutory nuisance or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up;
  - it comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or
  - the applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.
3. The Council may also revoke the licence where all or any part of the area of the relevant highway to which the licence relates has become unsuitable for any purpose for which the licence was granted or deemed to be granted. For example, the licensed area (or road adjacent) is no longer to be pedestrianised. The Council will give reasons where these powers are used.

## **6. Review Procedures**

This Policy covers the Temporary Permission for Pavement Licences under the Business and Planning Act which are scheduled to expire on 30 September 2021.

This Policy will be reviewed from time to time should changes occur in relevant legislation, the nature of Pavement Licence's generally, relevant social distancing measures or as a result of local considerations within the Lancaster City Council area

**BUSINESS AND PLANNING ACT 2020  
Notice of Application submitted to  
LANCASTER CITY COUNCIL  
In respect of a Pavement Licence for**

***NAME OF PREMISES]***  
***[FULL ADDRESS OF PREMISES]***

**NOTICE IS HEREBY GIVEN** that in accordance with Business and Planning Act 2020  
*(applicant name)*  
Has made an application to Lancaster City Council on *(Date)* for a Pavement Licence

The application is in respect of  
*(Description of the highway area to be utilised e.g area extending X meters from the frontage of the premises address)*

And is seeking permission to utilise a Pavement Licence to facilitate  
*(description of the activities to be carried on)*

The proposed hours of operation are as follows  
*(please insert days and timings)*

A copy of the proposal and accompanying plan are available for inspection on the Councils website at XXXXXXXXXX

Any person wishing to make representations to the Council regarding this application may do so by emailing [Licensing@lancaster.gov.uk](mailto:Licensing@lancaster.gov.uk). The email should be headed Pavement licence representation (insert premises name). Alternatively, in writing to the Licensing Manager, Morecambe Town Hall, Marine Road, Morecambe LA4 5AF **to be received no later than 7 days from the date of this notice.**

Signed ..... Name in Print .....

**Dated this                    th day of                    2020**

*(The date of the notice must be stated as the day after the application was made )*

**Pavement Licences**

**Standard licence conditions**

- 1.0 The Licence will have effect until 30 September 2021 unless surrendered or revoked.
- 2.0 The issue of a License does not give, or imply any permission to sell intoxicating liquor in the street.
- 3.0 The Licence shall be displayed in the window of the premises to which it relates.
- 4.0 The use of the Licensed Area shall cease before 22.00 hours each day and shall not commence prior to 09.00.
- 5.0 The Licensed Area shall be vacated immediately if requested by the Council, Lancashire County Council as Highway Authority, Lancashire Constabulary or other emergency service, statutory undertaker etc. without any liability for compensation, refund of application fee, or damage arising.
- 6.0 The Council reserve the right to request the clearing of the licensed area if required for special one-off events for public safety
- 7.0 The Licence shall be rendered invalid, should the Licensee cease to own the premises or cease employment.
- 8.0 The Licensee shall indemnify the Council and shall produce to the Council's Licensing Manager for inspection a policy of insurance indemnifying himself and the Council against any injury or damage to any person or property and against any claim liability expense or damage arising by reason or in consequence of the permission granted. The policy shall provide cover of not less than £2,000,000 in respect of any one accident or series of accidents arising from one incident unlimited during the period of the insurance.
- 9.0 Upon expiry or revocation of the permission the Licensee shall remove any structures from the highway and reinstate the highway to its former state and condition and in default thereof, the Council will be empowered to carry out such work of reinstatement and recover the expense in so doing from the Licensee.
- 10.0 For streets with footways and carriageways, the maximum width of any licensed area shall not exceed one third of the usable width of the footpath. A minimum unobstructed footpath width of 1.8 metres must be provided for safe and convenient pedestrian movement. This distance being, measured from the edge of the licensed area to any significant amount of street furniture (such as lamp posts, bollards, parking meters etc). Where there is a heavy pedestrian flow additional footpath space may be required.

- 11.0 For pedestrianised streets a minimum width of 1.8 meters or two thirds of the total width of the public highway, whichever is the greater, must remain free and unobstructed to facilitate pedestrian movement. This figure may be increased where there is a heavy pedestrian flow. The unobstructed route shall fall equally either side of the centre line of the highway to ensure the space available for tables and chairs is shared equally between premises on each side of the street.
- 12.0 A clear direct pathway of at least 1.2 metres wide shall be maintained to allow entry and exit from building premises.
- 13.0 Only the Licensed Area shall be used for trading.
- 14.0 Where tables and chairs are proposed directly outside a shop front, a well designed and constructed physical barrier or roped area of approximately 0.8 metres in height is required to designate the area and to guide persons with sight disability around the use. Such barriers must not be permanently fixed to the ground and must be of a style, design and type to be agreed by the Council
- 15.0 Only furniture associated with the operation of the pavement licence shall be placed within the Licensed Area. .
- 16.0 Tables and chairs shall be durable and suitable for outside use. No damaged furniture should be used.
- 17.0 An area of 1 metre around the Licensed Area must be regularly cleansed and floor debris and other' waste immediately removed to the satisfaction of the Council's Head of Environmental Services.
- 18.0 Tables, chairs and umbrellas shall not be positioned so as to obstruct sight lines for drivers of vehicles at junctions.
- 19.0 No canopy or umbrella shall be lower than two metres in height and shall be adequately secured.
- 20.0 All street cafe furniture, including barriers shall be removed and safely securely and stored at the end of trading each day, or at the end of the approved trading hours as defined by the Licence, whichever is the earliest.
- 21.0 Suitable safe storage for street café furniture shall be identified by the applicant at the time of application for a license.
- 22.0 There must be adequate provision made for the collection and containment of litter and, the Licensee must provide suitable litter bins.
- 23.0 The Licensee will ensure that the designated area is maintained in a clean and tidy condition. The Licensee shall also take appropriate precautions to prevent the immediate highway from becoming littered as a result of trading activities.
- 24.0 The Licensee shall at all times when the pavement cafe is in operation make available for customers toilets and hand washing facilities, to wheelchair accessible standards where it is practicable and reasonable to do so.

- 25.0 The Licensee will be responsible for the conduct of customers. They must not be a nuisance or annoy users of the highway or other persons.
- 26.0 No speakers or playing of music shall be permitted.
- 27.0 No electrical cables shall be run along the ground in such a way that they create a trip hazard or are susceptible to mechanical damage.
- 28.0 No tables and chairs (street furniture) to be placed so as to cause an obstruction or nuisance to any Charter Market stall holder.  
N.B. This may mean that a Pavement Licence cannot be used whilst the market is taking place.
- 29.0 Where alcohol is permitted to be served or consumed in the licensed area glass receptacles including bottles cannot be used. Polycarbonate or similar material receptacles should be used.
- 30.0 All patrons consuming intoxicating liquor must be seated at a table within the licensed area, there will be no vertical drinking

### National Licence Conditions

#### Smoke-free seating condition

The licence holder must make reasonable provision for seating where smoking is not permitted.

#### No obstruction condition

The licence-holder must ensure that anything done in pursuant to the pavement licence, or any activity of other persons which is enabled by the pavement licence, must not have an effect on the following:

(a) preventing traffic, other than vehicular traffic, from:

(i) entering the relevant highway at a place where such traffic could otherwise enter it (ignoring any pedestrian planning order or traffic order made in relation to the highway),

(ii) passing along the relevant highway, or

(iii) having normal access to premises adjoining the relevant highway,

(b) preventing any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,

(c) preventing statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or

(d) preventing the operator of an electronic communications code network having access to any electronic communications apparatus kept installed for the purposes of that network under, in, on or over the highway.

Function		Decision Delegated to
<b>Determination of Pavement Licence</b>	<b>Where, during the public consultation period, no representations have been received.</b>	<b>Licensing Manager</b> <b>(ref part 2 Section 7)</b>
	<b>Where, during the public consultation period, representations have been received.</b>	<b>Licensing Sub Committee</b> <b>(ref part 2 Section 5)</b>

Ref – Councils Constitution



**Business and Planning Act 2020**  
**Ministry of housing Communities and Local**  
**Government**

## **Guidance: pavement licences (outdoor seating proposal)**

Updated 22 July 2020

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## **1. Pavement licences**

### **1.1 What is a pavement licence?**

A pavement licence is a licence granted by the local authority, or deemed to have been granted, which allows the licence-holder to place removable furniture over certain highways adjacent to the premises in relation to which the application was made, for certain purposes. This is a streamlined process to allow businesses to secure these licences in time for the summer and, where they are deemed to have been granted, allow these licences to remain in place for a year but not beyond 30 September 2021. Where a pavement licence is granted, clear access routes on the highway will need to be maintained, taking into account the needs of all users, including disabled people.

### **1.2 What is the purpose of the new process for pavement licences?**

This new process introduces a streamlined and cheaper route for businesses such as cafes, restaurants and bars to secure a licence to place furniture on the highway. This will support them to operate safely while social distancing measures remain in place. This will provide much needed income over the summer months and protect as many hospitality jobs as possible.

### **1.3 How does the new process for pavement licences work?**

Pavement licences are presently granted primarily under Part 7A of the Highways Act 1980. The fee varies between local authorities. The new process provides a cheaper, easier and quicker way for businesses to obtain a licence. The fee for applying for a licence under the new process, is capped at £100 and the consultation period is 5 working days (excluding public holidays) starting the day after the application is sent electronically to the authority. It is currently a minimum of 28 calendar days under Part 7A.

If the local authority does not determine the application before the end of the determination period (which is 5 working days beginning with the first day after the end of the public consultation period, excluding public holidays), the licence is deemed to have been granted for a year (but not beyond 30 September 2021) and the business can place the proposed furniture such as tables and chairs within the area set out in the application for the purpose or purposes proposed.

### **1.4 What businesses are eligible?**

A business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a licence. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours including where such uses form an ancillary aspect of another use, for example supermarkets, or entertainment venues which sell food and drink.

A licence permits the business to use furniture placed on the highway to sell or serve food or drink and/or allow it to be used by people for consumption of food or drink supplied from, or in connection with the use of the premises.

### **1.5 What furniture can be permitted by a licence?**

The furniture which may be used is:

- counters or stalls for selling or serving food or drink;
- tables, counters or shelves on which food or drink can be placed;
- chairs, benches or other forms of seating; and
- umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink.

This furniture is required to be removable. Local authorities should be pragmatic when determining what is 'removable' but in principle this means it is not a permanent fixed structure, and is able to be moved easily, and stored away of an evening.

### **1.6 How much do applications cost?**

Fees will be set locally, but are capped at a maximum of £100.

### **1.7 Are there any exclusions from this provision?**

Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980. Generally, these are footpaths restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited. Highways maintained by Network Rail or over the Crown land are exempt (so a licence cannot be granted).

### **1.8 Where does this new process apply?**

This process applies to England only, including London and other areas where statutory regimes other than the regime in the Highways Act 1980 may be relevant to the grant of licences for street furniture.

### **1.9 Which authority can exercise pavement licence functions?**

Under Section 101 of the Local Government Act 1972, local authorities may arrange for the discharge of their functions by a committee, a sub-committee or an officer of the authority; or by any other local authority. This means that the executive of a local authority can delegate decisions to a committee, or officer of the authority. They may also wish to delegate the functions to another authority, for example to a County Council in a two-tier area.

### **1.10 How does this interact with other regulatory process, such as alcohol licensing?**

It is important to note the grant of a pavement licence only permits the placing of furniture on the highway. Other regulatory frameworks still apply such as the need for alcohol licenses and the need to comply with registration requirements for food businesses.

If the applicant has a licence to serve alcohol on-premises temporary amendments to the Licensing Act 2003, through the Business and Planning Act 2020, will allow them to sell alcohol for consumption off the premises without needing to apply for a variation of their licence. More details can be found in the [guidance accompanying the Business and Planning Act 2020](#).

Local authorities will also need to have regard to the Public Sector Equality Duty, under the Equality Act 2010 when devising and implementing the new licensing regime, which includes the need to have due regard to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act. Any businesses which apply for a pavement licence will also need to have regard to their own duties under the Equality Act 2010, such as their duty under s.29 of the Act not to discriminate in providing their service.

### **1.11 Does the applicant need planning permission as well as the licence?**

No. Once a licence is granted, or deemed to be granted, the applicant will also benefit from deemed planning permission to use the land for anything done pursuant to the licence while the licence is valid.

## **2. Duration**

### **2.1 How long are pavement licenses valid for?**

If a local authority determines an application before the end of the determination period (which is 5 working days, beginning with the first day after the end of the public consultation period, excluding public holidays) the authority can specify the duration of the licence, subject to a minimum duration of 3 months. The expectation is that local authorities will grant licences for 12 months or more unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space.

If a licence is ‘deemed’ granted because the authority does not make a decision on an application before the end of the determination period, then the licence will be valid for a year. However, if, when implemented, a licence that has been deemed granted does not meet the conditions set out in the legislation or any local conditions, it can be revoked at any time on the grounds that it has breached the conditions.

A licence granted or deemed to be granted will not be valid beyond 30 September 2021.

## **2.2 How long will the new process be in place?**

This is a temporary measure to support businesses while social distancing measures may still be in place. As it is uncertain how long some form of social distancing measures will be in place for, the new process will remain in place until the end of September 2021 – giving certainty to businesses for the foreseeable future, supporting them to operate safely while social distancing measures are in place. It will also allow them enough time to apply for new licences under Part 7A of the Highways Act 1980 or equivalent provisions in any Local Act, if they want to extend their use of pavement furniture beyond the end of September 2021.

## **3. Applications**

### **3.1 What information does an applicant need to provide?**

An application to the local authority must:

- specify the premises and, the part of the relevant highway to which the application relates;
- specify the purpose (or purposes) for which the furniture will be used which must be to sell or serve food or drink, and/or for use by other people for the consumption of food or drink. In both cases the food or drink must be supplied from, or in connection with relevant use of the premises;
- specify the days of the week on which and the hours between which it is proposed to have furniture on the highway;
- describe the type of furniture to which the application relates, for example: tables, chairs, and/or stalls;
- specify the date on which the application is made;
- contain or be accompanied by such evidence of public liability insurance in respect of anything to be done pursuant to the licence as the authority may require; and
- contain or be accompanied by such other information or material as the local authority may require, for example how national and local conditions have been satisfied.

Local authorities may require applications to be made on a standard application form.

### **3.2 What other information may the local authority require?**

Local authorities may require the applicant to provide other information or material to help them make a swift determination. This could be included in their standard application form. Any requirements imposed should be reasonable and should be kept as minimal as possible. Examples of the information a local authority might require might include:

- a plan showing the location of the premises shown by a red line, so the application site can be clearly identified (some authorities may require this on an OS Base Map);
- a plan clearly showing the proposed area covered by the licence in relation to the highway, if not to scale, with measurements clearly shown;
- the proposed duration of the licence (for e.g. 3 months, 6 months, or a year);
- evidence of the right to occupy the premises e.g. the lease;
- contact details of the applicant;
- photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied;
- evidence that the applicant has met the requirement to give notice of the application (for example photograph);
- (if applicable) reference of existing pavement licence currently under consideration by the local authority; and
- any other evidence needed to demonstrate how any local and national conditions will be satisfied.

### **3.3 What happens if an applicant has already made an application under the current regime?**

If an applicant has already applied for permission to place furniture on the highway under the existing regime and their application has not been determined, they may proceed with that application. However, that applicant may opt to make a fresh application for a pavement licence under the new process. In those circumstances the pending application will be deemed to have been withdrawn. If the fee for the pending application was paid the authority will not be permitted to charge a fee for the new application for a pavement licence.

## **4. National Conditions**

The 2020 Act sets out two conditions which apply to pavement licences which are granted or deemed to be granted these are: a no-obstruction condition and a smoke-free seating condition. These apply only to licences granted under the Business and Planning Act 2020, not existing licences permitted under Part 7A of the Highways Act 1980, or other relevant legislation.

### **4.1 How can the local authority and applicant consider the needs of disabled people when considering whether the requirements of the no-obstruction condition are met?**

The no-obstruction condition is a condition that the licence must not have the effects set out in section 3(6) of the 2020 Act. When determining whether furniture constitutes an unacceptable obstruction in light of the no-obstruction condition, the provisions require that local authorities consider the needs of disabled people. In order to do this, authorities should

consider the following matters when setting conditions, determining applications (in the absence of local conditions), and when considering whether enforcement action is required:

- Section 3.1 of Inclusive Mobility sets out a range of recommended widths which would be required, depending on the needs of particular pavement users, but is clear that in most circumstances 1500mm clear space should be regarded as the minimum acceptable distance between the obstacle and the edge of the footway,
- any need for a barrier to separate furniture from the rest of the footway so that the visually impaired can navigate around the furniture, such as colour contrast and a tap rail for long cane users. In some cases, it may be appropriate to use one or more rigid, removable objects to demarcate the area to which the licence applies, for example wooden tubs of flowers. However, this will need to be balanced to ensure any barriers do not inhibit other street users, such as the mobility impaired, as such barriers may create a further obstacle in the highway;
- any conflict of street furniture with the principal lines of pedestrian movement particularly for disabled people, older people and those with mobility needs. The positioning of furniture should not discourage pedestrians from using the footway. The available route must be entirely clear and not pass through an area with tables and chairs;
- so that where possible furniture is non-reflective and of reasonable substance such that it cannot easily be pushed or blown over by the wind, and thereby cause obstruction – for example, the local authority could refuse the use of plastic patio furniture, unless measures have been taken to ensure it is kept in place.

Section 149 of the Equality Act 2010 places duties on local authorities, to have due regard to: the need to eliminate unlawful discrimination, advance equality of opportunity between people who share a protected characteristic and those who don't, and foster or encourage good relations between people who share a protected characteristic and those who don't.

## **4.2 What is reasonable provision for seating where smoking is not permitted?**

The national smoke-free seating condition seeks to ensure customers have greater choice, so that both smokers and non-smokers are able to sit outside, in order to protect public health by reducing risks of COVID transmission.

It is important that businesses can cater to their customers' preferences. The Business and Planning Act 2020 imposes a smoke-free seating condition in relation to licences where seating used for the purpose of consuming food or drink has been, (or is to be) placed on the relevant highway. The condition requires a licence-holder to make reasonable provision for seating where smoking is not permitted. This means that where businesses provide for smokers, customers will also have the option of sitting in a non-smoking area. Ways of meeting this condition could include:

- Clear 'smoking' and 'non-smoking' areas, with 'no smoking' signage displayed in designated 'smoke-free' zones in accordance with Smoke-free (signs) regulations 2012 which can be viewed [here](#).
- No ash trays or similar receptacles to be provided or permitted to be left on furniture where smoke-free seating is identified.
- Licence holders should provide a minimum 2M distance between non-smoking and smoking areas, wherever possible.

Further, business must continue to have regard to smoke-free legislation under The Health Act 2006, and the subsequent Smoke-free (Premises and Enforcement) Regulations 2006.

Public Health England has published [guidance for smokers and vapers during the COVID pandemic](#).

### **4.3 Where an authority has set a local condition covering the same matter as a national condition, which take precedence?**

Where a local authority sets a local condition that covers the same matter as set out in national conditions, then the locally set condition would take precedence over the national condition where there is reasonable justification to do so.

## **5. Determining the application**

### **5.1 What happens once the information is submitted to the local authority?**

Once the information is submitted to the local authority the authority has 10 working days from the day after the application is made (excluding public holidays) to consult on, and determine the application. This consists of 5 working days for public consultation, and then 5 working days to consider and determine the application after the consultation.

If the local authority does not determine the application within the 10 working day period, the application will be deemed to have been granted.

### **5.2 What will a local authority consider when deciding whether to grant a pavement licence?**

The local authority will need to consider a number of factors, when determining whether to approve the application. These include whether local conditions might be needed to make it possible to approve an application which would otherwise be unacceptable.

The Secretary of State may specify conditions for pavement licences, in Regulations. This is in addition to the statutory 'no obstruction' condition referred to in sections 5(4) and 3(6) of the Business and Planning Act 2020 Act and 'smoke-free' seating condition.

Authorities are encouraged to publish local conditions subject to which they propose to grant pavement licences so that applicants and those making representations are aware of them. When considering their powers in relation to local conditions they should bear in mind the requirements of and seek to impose conditions which have the same effect as the no-obstruction condition and the smoke-free seating condition. They should also take into account any national conditions which may be specified in the future in Regulations.

When setting local conditions and determining applications, issues authorities will also want to consider include:

- public health and safety including security – for example, ensuring that uses conform with latest guidance on social distancing and any reasonable crowd management measures needed as a result of a licence being granted and businesses reopening;

- public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour and litter; and
- accessibility – taking a proportionate approach to considering the nature of the site in relation to which the application for a licence is made, its surroundings and its users, taking account of:
- considerations under the no-obstruction condition, in particular considering the needs of disabled people;
  - any other temporary measures in place that may be relevant to the proposal, for example, the reallocation of road space. This could include pedestrianised streets and any subsequent reallocation of this space to vehicles;
  - any other social distancing measures in place, for example any queuing systems that limit the space available on the pavement;
  - whether there are other permanent street furniture or fixed structures in place on the footway that already reduce access; and
  - other users of the space, for example if there are high levels of pedestrian or cycle movements.

### **5.3 How can local authorities consider Security?**

When considering public health and safety, local authorities should seek to ensure a balanced consideration for security implications, particularly the risk to groups of people from interaction with hostile vehicles, and the creation of large crowds in new public spaces. Local authorities should consider consulting with Police Licensing Teams, Designing Out Crime Officers and Counter Terrorism Security Advisors for relevant advice.

See the [guidance for managing the most common security implications](#).

### **5.4 Can local authorities impose conditions which are not published?**

Yes. When they grant a licence, local authorities may impose reasonable conditions whether or not they are published upfront. There is an expectation these will be supported by a clear justification for the need of a condition, such as evidence raised during the consultation, which is in addition to any published local conditions. Conditions might, for example, limit the maximum number of chairs and tables, or type of furniture, time and days of operation with justification for this.

### **5.5 Where can local authorities find out more about how to manage social distancing?**

The government has published the [COVID-19 Secure: safer public places guidance](#), which provides owners and operators of public spaces with information and examples of measures that may be undertaken to adapt and manage public spaces in order to help social distancing.

See [more detailed information on considering security implications in light of new Covid-19 measures](#).

See [specific advice on protecting queues\(PDF\)](#).



When considering the minimum width needed for clear access, authorities and applicants will need to take into account any social distancing measures in place and ensure that these distancing measures are also applied to allow for safe passing of highway users and for the safety of any customers using the furniture, and any other likely users of the area.

## **5.6 What are the outcomes of an application?**

If the local authority determines the application before the end of the determination period the local authority can:

- grant the licence in respect of any or all of the purposes specified in the application,
- grant the licence for some or all of the part of the highway specified in the application, and impose conditions, or
- refuse the application.

To the extent that conditions imposed on a licence by the local authority do not have the effects specified in the statutory conditions (see [paragraph 4.1](#) and [paragraph 4.2](#)) the licence is granted subject to those requirements .

## **5.7 Is there a route to appeal a decision?**

There is no statutory appeal process for these decisions, however, councils may wish to consider the scope for an internal review process, for example permitting appeals to their Licencing committee.

# **6. Deemed licences and conditions**

## **6.1 What is a deemed licence?**

If the local authority does not determine the application before the end of the determination period, the application is deemed to have been granted subject to any local conditions published by the local authority before the application was submitted.

To the extent that local conditions deemed to be imposed on the licence do not have the effects specified the statutory conditions (see [paragraph 4.1](#) and [paragraph 4.2](#)). the licence is granted subject to those requirements.

# **7. Consultation**

## **7.1 What steps should an applicant take to engage with their community?**

The applicant is required to affix a notice to the premises, so it is easily visible and legible to the public on the day they submit the application to the local authority. They must ensure the notice remains in place for the public consultation period which is the period of 5 working days beginning with the day after the day the application is submitted to the authority. When counting ‘working days’ public holidays are not included. Applicants are encouraged to keep evidence of this. Applicants are encouraged to engage with any services operated in the

vicinity for vulnerable customers, for example, care home or disability organisations nearby where individuals may be at particular risk.

## **7.2 What must a notice contain?**

The notice must:

- be in the form which the local authority prescribes, if it prescribes one;
- state that the application has been made and the date on which it was made;
- indicate that representations relating to the application may be made to that local authority during the public consultation period and when that period comes to an end; and
- contain such other information or material as that local authority may require.

The applicant is encouraged to talk to neighbouring businesses and occupiers prior to applying to the local authority, and so take any issues around noise, and nuisance into consideration as part of the proposal.

## **7.3 What information may local authorities require to be displayed on the site notice?**

The local authority may require that other information is included in the notice such as:

- the statutory provisions under which the application is made;
- description of the proposed use of the furniture;
- address of the premises and name of the business;
- website for the council where the application and any accompanying material can be viewed during the consultation period;
- address (which might be an email address) to which representations should be sent during the consultation period; and
- the end date of the consultation (5 working days starting the day after the application is submitted to the authority).

A template site notice local authorities may wish to adapt is contained in Annex A.

## **7.4 Who must local authorities consult?**

The local authority must consult the highways authority, if they are not the highways authority; this is usually the County Council in a two-tier area, or Transport for London in London. For security advice, local authorities should consult Police Licensing Teams, Designing Out Crime Officers or Counter Terrorism Security Advisors. The authority must also consult such other persons as the local authority considers appropriate.

## **7.5 How can members of the public make representations about the application?**

Members of the public can contact the council to make representations. Local authorities must take into account representations received from members of the public during the public consultation period which is the period of 5 working days starting the day after the

application is submitted (excluding public holidays). In order to promote accessibility to those unable to access printed notices, Local Authorities are encouraged to consider using digital methods of publicity. They should also consider the needs of those who may find it more difficult to access online publications.

## **7.6 How must local authorities publicise the application and seek representations from local communities and other stakeholders?**

The local authority is required to publish the application and any information or material which the applicant has submitted with it to meet the requirements of the authority, in such a manner as it considers appropriate, for example, on their website or via an online portal.

The local authority is also required to publicise the fact that representations may be made during the public consultation period and when that period comes to an end. Local authorities might consider using digital methods of publicity, such as automatic notices, which members of the public can opt in to receive. In deciding what steps to take authorities should consider the needs of those who may find it more difficult to access online publications.

When publishing applications and publicising the fact that representations can be made, authorities will need to have regard to their duties under the Equality Act 2010 and will need to meet the requirements in the Public Sector Bodies (Websites and Mobile Applications) (No 2) Accessibility Regulations 2018, and therefore ensure that these are made accessible.

## **8. Enforcement**

### **8.1 In what circumstances can the local authority enforce or revoke a licence?**

If a condition imposed on a licence (either by the local authority) or nationally is breached, the local authority will be able to issue a notice requiring the breach to be remedied and the authority can take action to cover any costs.

The authority may revoke a licence in the following circumstances:

1. For breach of condition, (whether or not a remediation notice has been issued) or
2. Where:
  - there are risks to public health or safety – for example by encouraging users to breach government guidance on social distancing by placing tables and chairs too close together or where it comes to light that there are significant security risks which have not been sufficiently considered, or addressed in a proportionate fashion (this should be reassessed as necessary, particularly in the event of changes to the terrorism threat level);
  - this use of the highway is causing an unacceptable obstruction, breaching the non-obstruction condition – for example, the arrangement of street furniture prevents disabled people, older people or a wheelchair users to pass along the highway or have normal access to the premises along side the highway.
  - the use is causing anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up;

- it comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or
  - the applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.
3. The local authority may also revoke the licence where all or any part of the area of the relevant highway to which the licence relates has become unsuitable for any purpose for which the licence was granted or deemed to be granted. For example, the licensed area (or road adjacent) is no longer to be pedestrianised. It is good practice for local authorities to give reasons where these powers are used.

<b>LICENSING COMMITTEE</b>
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## Department for Transport Statutory Taxi and Private Hire Vehicle Standards

**27 August 2020**

### Report of Licensing Manager

<b>PURPOSE OF REPORT</b>
To inform the Committee of the Departments for Transport (DfT) recently published “Statutory Taxi and Private Hire Vehicle Standards”, and officers’ proposals regarding working towards compliance with those standards
<b>The report is public</b>

#### RECOMMENDATIONS

- (1) That the Committee note the report including Appendix A - the DfT “Statutory Taxi and Private Hire Vehicle Standards”.
- (2) That officers be required to provide a further report to the Committee in October 2020 with a proposed workplan regarding achieving compliance with the requirements of the DfT standards

#### 1.0 Introduction

- 1.1 The Council is responsible for licensing hackney carriage and private hire drivers, vehicles and private hire operators. In undertaking those responsibilities, the Council has regard to the legislation in place including case law, relevant guidance, best practice documentation and its own policies and procedures.
- 1.2 On 21 July 2020 the DfT published “Statutory Taxi and Private Hire Vehicle Standards. The Standards are applied to local authorities having regard to the Policing and Crime Act 2017 which enables the Secretary of State for Transport to issue statutory guidance to local authorities as to how taxi (hackney carriage) and private hire licensing should be undertaken to protect children and vulnerable adults when using taxis and private hire vehicles.
- 1.3 A copy of the DfT standards are attached at Appendix A. The Council will need to review its taxi licensing policies and standards so that as a minimum they meet the standards outlined in the DfT document but that any standards adopted must be appropriate for Lancaster City Councils local needs, and the Council will need to be transparent in explaining the reasons for the standards it adopts.

#### 2.0 Report

- 2.1 The report does not provide a detailed resume of the DfT document, the document is attached at Appendix A. The intention of this report is to introduce the document to the Committee and agree the next steps regarding its consideration. The following paragraphs within section 2 provide a general overview of Appendix A
- 2.4 The standards recommend that local authorities provide a “taxi licensing policy” a single point of reference which includes all information relevant to private hire and taxi licensing. Whilst Lancaster City Council has several taxi licensing policies and procedures these are not contained in a single document. The Licensing workplan agreed in November 2019 contained an item to review and update taxi and private hire licensing conditions, this work is still outstanding, and will need to be undertaken to enable compliance with the standards detailed within Appendix A. For example Para 4.12 of Appendix A requires that licence holders should be required to notify the licensing authority within 48 hours of arrest or charge for a number of offences, Lancaster City Councils Licensing conditions do not currently require this, drivers are currently only required to notify the Council of a conviction.
- 2.5 Following production of a Taxi Licensing Policy, the Council would be expected to review existing licences against the content and standard of the new policy. It is also advocated that the Councils Taxi Licensing Policy should be reviewed every 5 years or sooner if appropriate
- 2.6 Appendix A details requirements in relation to complaint investigations and trends analysis. Recording and investigations systems are in place within the Licensing unit, however the introduction of formalised trends analysis – including regular reporting to committee would offer transparency and assist the Committee in decision making. Similarly at para 4.31 Appendix A advocates actions the local authority should do to ensure that the public know how to make complaints against the licensed trade. Officers will explore whether a Lancashire wide project could develop this so that a consistent message is developed across the County.
- 2.7 Appendix A advocates the use of the DBS update service. This was introduced as Council Policy in 2019 and is now in place for all new and renewal driver applicants, however there is no policy in place as to how often checks are to be carried out with the update service, this is something that could aim to be standardised across neighbouring authorities.
- 2.8 Appendix A makes considerable reference to training, both in terms of driver training and training to be undertaken by officers and Committee members involved in making decision on taxi/ private hire licensing matters. There are also requirements for training to be formally documented
- 2.8 Appendix A provides an Annex in respect of the Assessment of Previous Convictions. It provides minimum time periods for various types of offences/ convictions, and it would be appropriate for the Council to assess the Annex against the Councils current guidelines on conviction policy, which reflect a national standard developed and promoted by the Institute of Licensing.
- 2.9 As referenced in para 2.1 of this report Appendix A is very much focussed on measures to be taken to protect children and vulnerable people when using taxis, there is little or no information within Appendix A regarding the specifics of vehicle types/ standards,. The Councils declaration of a climate emergency, has resulted in the Council exploring options for a move towards zero emission vehicles including taxis and private hire. The DfT document does not address this issue.

### **3.0 Next steps**

- 3.1 On Wednesday 19 August there is an online meeting of the Lancashire Licensing Officers Group, the DfT Statutory Taxi and Private Hire Vehicle Standards is on the agenda for discussion at the meeting. An update will be provided at the meeting on 27 August regarding any relevant actions arising from that meeting
- 3.2 The Licensing Manager will identify a list of actions required to comply with the guidance and present this to the Committee at the October meeting in the form of a workplan.

### **4.0 Conclusion**

- 4.1 The report introduces the DfT recently published Statutory Taxi and Private Hire Standards. The Council will need to review licensing procedures to ensure compliance with the standards.
- 4.2 The Council had previously identified some policy changes in the Licensing workplan considered in Nov 2019, however other matters highlighted in the DfT standards will now also need consideration, and evidence collated to support any decisions made.
- 4.3 Officer resources are currently hampered by the impact of the covid19 pandemic and a significant amount of Licensing officer time is spent dealing with this, including general enquiries as to the types of events that can currently take place, issues in respect of taxi screens, the temporary closure of public access to Morecambe Town Hall, and a small number of licensed premises none compliance with covid 19 restrictions. The report proposed for October will identify the actions required, parties involved, resources needed and estimated timescale for completion

<p><b>CONCLUSION OF IMPACT ASSESSMENT</b> <b>(including Health &amp; Safety, Equality &amp; Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing):</b></p>
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<p>There are no impact assessments associated with this report.</p>
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<p><b>LEGAL IMPLICATIONS</b></p>
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<p>The Statutory Taxi and Private Hire Vehicle Standards are not legislation. However para 1.3 of the Standards states- The Department (for Transport) expects these recommendations to be implemented unless there is compelling local reason not to</p>
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<p>The document makes it clear that the standards have been developed as a result of past failings of licensing regimes and makes reference to both Jay and Casey reports and lists several local authorities where taxi licensing policy and practice had failed to offer the necessary protection to children.</p>
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<p>The duty is a “have regard” duty. This means that the Council must take the standards into account and must give clear reasons for departing from them</p>
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**FINANCIAL IMPLICATIONS**

There are no financial implications in respect to this report , however compliance with the DfT standards will require a significant amount of officer time and may result in policies and practices that incur additional costs to the licensing regime e.g. additional training for officers and members. There is also the potential for challenges by the trade to any change in policy that are brought in and if so, this may incur legal costs to defend any such challenge. Any additional costs associated with the administration and enforcement of the taxi licencing regime can be recovered via taxi licensing fees,  
There will likely be additional financial cost to the taxi trade, this could include additional indirect costs of recovering the Councils administrative costs, and direct costs associated with any possible change in policy e.g additional training/CCTV etc

**OTHER RESOURCE IMPLICATIONS, such as Human Resources, Information Services, Property, Open Spaces**

**BACKGROUND PAPERS**

Article Local Government Lawyer published 28.7.2020 by Philip Kolvin QC- Statutory taxi and private hire vehicle standards

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Department  
for Transport

# **Statutory Taxi & Private Hire Vehicle Standards**

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## 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 polices

- 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 in 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
Unspent convictions	Yes	Yes	Yes	Yes
Unspent cautions <sup>1</sup>	Yes	Yes	Yes	Yes
Spent convictions <sup>2</sup>	No	Yes	Yes	Yes
Spent cautions <sup>1&amp;2</sup>	No	Yes	Yes	Yes
Additional police Information <sup>3</sup>	No	No	Yes	Yes
Barred list(s) Information <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.