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# NOTICE OF MEETING

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## LICENSING COMMITTEE

**FRIDAY, 22 MARCH 2019 AT 2.30 PM**

**THE EXECUTIVE MEETING ROOM - THIRD FLOOR, THE GUILDHALL**

Telephone enquiries to Jane Di Dino 023 9283 4060

Email: [jane.didino@portsmouthcc.gov.uk](mailto:jane.didino@portsmouthcc.gov.uk)

If any member of the public wishing to attend the meeting has access requirements, please notify the contact named above.

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### Licensing Committee Members:

Councillors David Fuller (Chair), Ian Lyon (Vice-Chair), Dave Ashmore, Tom Coles, Jason Fazackarley, George Fielding, Hannah Hockaday, Leo Madden, Gemma New, Scott Payter-Harris, Steve Pitt, Darren Sanders, Benedict Swann, David Tompkins and Claire Udy

### Standing Deputies

Councillors Ryan Brent, Jo Hooper, Hugh Mason, Gerald Vernon-Jackson CBE, Steve Wemyss and Rob Wood

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(NB This Agenda should be retained for future reference with the minutes of this meeting.)

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## AGENDA

- 1 Apologies for Absence
- 2 Declarations of Members' Interests
- 3 Minutes of the Previous Meeting (Pages 7 - 10)

**RECOMMENDED** that the minutes of the Licensing Policy Committee meeting held on 6 October 2017 be agreed as a correct record.

- 4 **DfT consultation - draft statutory guidance to licensing authorities - taxis and private hire licensing.** (Pages 11 - 78)

Purpose.

The purpose of this report is to notify the Licensing Committee of the current consultation by the Department for Transport (DfT) in respect of draft statutory guidance to taxi and private hire vehicle (PHV) licensing authorities on how their licensing powers can be exercised in order to safeguard children and vulnerable adults.

**RECOMMENDED** that the committee note:

- 1) The consultation and draft statutory guidance;
- 2) The comparison between the draft guidance and its own statement of policy for hackney carriage and private hire licensing;
- 3) The proposed responses to the consultation and delegate authority to the Head of Culture, Leisure and Regulatory Services to respond on behalf of the Licensing Authority.

- 5 **Section 165 and 167 of the Equality Act 2010- wheelchair accessible vehicles.** (Pages 79 - 106)

Purpose.

The purpose of this report is twofold, namely:

- To inform the committee as regards the provisions of Section 165 and 167 of the Equality Act 2010 ("The Act") in respect of wheelchair accessible vehicles; and
- For the committee to determine whether to instruct officers to compile a list of designated vehicles in accordance with the requirements of the Act.

**Recommendations**

- 1) That the committee determine whether to progress the introduction of a list of designated vehicles in accordance with the Equality Act 2010; and
- 2) If the committee wish to approve the arrangements as set out in the Act, that:
  - Delegated authority is granted to the Head of Culture, Leisure and Regulatory Services to commence action as set out in paragraph 3.9 of this report; and

- **Delegated authority is granted to the Head of Culture, Leisure and Regulatory Services to introduce and maintain such a list, including updates where appropriate, together with the issue and refusal of exemption certificates to licensed drivers in accordance with 166 of the Act.**

**6 Hackney carriage and private hire matters - amendments to statement of licensing policy. (Pages 107 - 282)**

Purpose.

The purpose of this report is twofold. Firstly, it is for the Committee to consider and approve amendments to its current statement of licensing policy for the hackney carriage and private hire trade in Portsmouth so far as they relate to age specifications for vehicles. Secondly, to determine whether it would wish officers to prepare a future report, together with any relevant evidence, in order to review any other aspect of the policy that the Committee considers is necessary.

**RECOMMENDATIONS:**

**a) That the Licensing Committee approve the proposed amendments in respect of age specifications for private hire and hackney carriage vehicle licences as follows;**

**(i) That the Licensing Policy (reference minute 9/2016) be amended as follows:**

**That, as a matter of local policy and condition for both hackney carriage and private hire vehicle licences; all private hire and hackney carriage vehicles presented for initial licensing shall be under 4 years of age on first licensing and may remain licensed until 8 years of age and provided the vehicle is mechanically fit and supported by an evidenced service history in line with the manufacturer's guidelines.**

**(ii) That any vehicle presented for a temporary use licence shall be under 2 years old and provided the vehicle is mechanically fit and supported by an evidenced service history in line with the manufacturer's guidelines.**

**(iii) As a consequence of the change in policy in relation to age specifications, that the existing mechanical testing for both types of vehicles be varied as follows:**

**Vehicles 0 - 4 years of age - 1 full test per year;  
Vehicles 4 years of age and over - 2 full tests per year.**

**Any reference within the policy to "mini-tests" to no longer apply.**

**b) That the Committee grant delegated authority to the Head of Culture, Leisure and Regulatory Services to:**

**(i) consider and determine applications for continued licensing of exceptional hackney carriage or private**

hire vehicles between the ages of 8 years and 10 years on individual merit and the scheme of delegation as set in the policy be amended accordingly;

ii) to prepare appropriate guidance to applicants seeking permission to extend the age specification in respect of individual licensed vehicles;

(ii) charge a reasonable application fee for such applications (subject to public consultation).

c) If considered necessary, to instruct officers to prepare a future report, together with any available evidence, that would support any review of any of the aspects of the current statement of licensing policy.

**7 Report of the task and finish group on taxi and private hire vehicle licensing - update on government response. (Pages 283 - 382)**

Purpose.

The purpose of this report is to inform the committee about work undertaken by the Task and Finish Group (TFG) on Taxi and Private Hire Vehicle Licensing and the published response by the Government to its recommendations.

**RECOMMENDED that the Licensing Committee note the contents of the report.**

**8 Fixed odds betting terminals - update on legislative changes. (Pages 383 - 466)**

Purpose.

The purpose of this report is to update the committee upon the government's consultation and subsequent response in relation to proposals for changes to gaming machines and social responsibility measures so far as they relate to fixed-odds betting terminals.

**RECOMMENDED that the Licensing Committee note the contents of the report**

Members of the public are permitted to use both audio visual recording devices and social media during this meeting, on the understanding that it neither disrupts the meeting nor records those stating explicitly that they do not wish to be recorded. Guidance on the use of devices at meetings open to the public is available on the Council's website and posters on the wall of the meeting's venue.

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# Agenda Item 3

## LICENSING COMMITTEE

MINUTES OF A MEETING of the Licensing Committee held on Friday, 6 October 2017 at 11.00 am at the Guildhall, Portsmouth

### Present

Councillors Lee Mason (Chair)  
Hannah Hockaday (Vice-Chair)  
Dave Ashmore  
Paul Godier  
Steve Hastings  
David Tompkins  
Gerald Vernon-Jackson CBE  
Hugh Mason (Standing Deputy)

#### 15. Apologies for Absence (AI 1)

Apologies for absence had been received from Councillors Scott Harris, Ian Lyon, David Fuller, Stephen Morgan MP and Leo Madden. Councillor Hugh Mason was the Standing Deputy for Councillor Fuller)

#### 16. Declarations of Members' Interests (AI 2)

There were no pecuniary interests. Councillor Lee Mason declared that he had used Viv Young's garage but this was not a clear interest.

#### 17. Minutes of the Previous Meeting - 23 June 2017 (AI 3)

**RESOLVED that the minutes of the Licensing Committee held on 23 June 2017 be approved as a correct record, to be signed by the Chair.**

#### 18. Survey for unmet demand for Hackney Carriage Vehicles (AI 4)

Nickii Humphreys, Licensing Manager, introduced her report, with the appended report by Vector Transport Consultancy, and the recommendations set out the range of options available at the discretion of the committee. Her report also put the study in the context of national guidance for local authorities to regularly review any unmet demand.

Mr Iain MacDonald, as author of the Vector report, presented the scope of the report and its findings. He reported that the survey had been undertaken at a time of high demand (being the Halloween weekend and payday) and the trade had coped relatively well with this. There had been little evidence of queuing of passengers, with the exception of Albert Road, where there had been problems with unauthorised parking in the taxi ranks. A high level of service had been witnessed and wheelchair accessibility had not been found to be a problem. The conclusion was that there was no significant unmet demand in Portsmouth, so there was not the need to issue further plates. There was however a need to tackle the problem of parked vehicles in the Albert Road taxi ranks.

Deputations were then heard by taxi trade representatives:

- i) Mr Viv Young - spoke to represent many taxi drivers and he supported the survey's findings that the trade was already meeting the demand, as evidenced on the Halloween weekend, and the statement that a value of less than 80 was a good indicator, whereas in Portsmouth the calculated Incidence of Significant Unmet Taxi Demand (ISUD) level was only 1.9. He therefore supported Option 1 to maintain the current level of hackney carriage vehicles. He endorsed the measures to promote good language and communication skills by drivers. Mr Young was concerned by private cars parking in taxi ranks; this problem had been brought to the attention of the Cabinet Member for Traffic & Transportation. The study had not identified problems with wheelchair access to vehicles. There had been very low levels of waiting times for passengers across the city (At Cosham it peaked at 3 people in an hour). There had been no fare increases and drivers earned below the minimum wage but provided a high quality service (passing strict tests) competing against out of city operators.
- ii) Mr Chris Dixon firstly continued Mr Young's representation - 99% of the trade were giving a sterling service to the public at affordable rates, so the findings of the study commissioned by the council should be supported and Option 1 should be approved by the committee. Mr Dixon also supported the survey and thanked Mr MacDonald for this piece of work and he hoped that the members would support its recommendations.

Members of the committee then raised the following issues:

The Chair welcomed the very comprehensive report, which had been undertaken at a busy time, and which clearly concluded that there was not an unmet demand. With changes in technology leading to more competition it would be unfair to extend the number of badges at the present time as it would adversely affect the livelihood of drivers, so the level should be kept the same for the next 3 years.

Councillor Vernon-Jackson agreed that there was no need to increase plate numbers as drivers were already struggling financially. He asked that there be future consideration of

- i) changing regulations in Albert Road to enforce against illegal parking in taxi ranks
- ii) Different standards between local authorities, even within Hampshire, which could be addressed at LGA level
- iii) Review the numbers of ranks, such as at Palmerston Road, and a request for a new rank at the Tesco in Fratton.

Members of the committee were supportive of the report which evidenced no unmet demand in the city and the need to support drivers in maintaining their income without extra competition, and the need to maintain the high standard for the trade in Portsmouth. The Chair thanked everyone for their comments and for the work undertaken to bring forward the survey.

The Licensing Manager reported that following on from this update on the existing provision a future report would be brought to committee to review hackney carriage ranks. There would first be a meeting of the revived consultative group to ask the trade representatives where they think the need is, to which committee members would be invited.

Discussions were also taking place with colleagues in the Transport section regarding parking problems at Albert Road and the need to educate the public and to see if the signage was sufficient. Committee members requested that a report also be brought back on this issue of enforcement at Albert Road.

A further future report on extending disabled access cars maximum age to tie in with the inventory of disabled access vehicles was also requested.

**RESOLVED:**

**(1) The report was received and noted;**

**(2) The Licensing Committee noted the report conclusions that "there is no significant unmet demand" for the services of hackney carriages within the City of Portsmouth;**

**(3) That, as a consequence of (2) above, the Licensing Committee determined the number of hackney carriages licensed to ply for hire within the city (currently 234 vehicles) as follows:**

- **To maintain the current limit of 234 licensed hackney carriages (Option 1)**

**(4) That the Director of Culture & City Development be authorised to amend such policy directives, conditions of licence and application procedures commensurate with any formal resolutions of the committee.**

**19. Prosecutions, Appeals and Enforcement Action Update - Licensing Matters (AI 5)**

Nickii Humphreys, Licensing Manager, presented this report which updated members of the enforcement and prosecutions work undertaken by officers on behalf of the committee. This covered cases taken to court as but did not take into account lower level warnings and penalty points on licences.

Questions were asked, including Councillor Godier raising what literature is used to inform the public regarding the rules on which taxis can be flagged down (which could be confusion especially with the arrival of Uber cars). The Licensing Manager reported that the PCC website gave the distinctions and there are exterior and interior livery stickers on vehicles to say "pre-book only". It was acknowledged that this was not usually a problem during the daytime but there was more confusion late at night, especially when out of town cars did not have the same standards. It was suggested that further work take place with licensed premises on this and regarding the signage at the taxi ranks and nightclubs. Officers were liaising with their

colleagues in the Hampshire & Isle of Wight Licensing Officers Group, and members could raise concerns through the Hants and Isle of Wight LGA.

The Licensing Manager reported that in future it was intended that this be an annual update to members.

**RESOLVED that the report be noted.**

The meeting concluded at 11.45 am.



# Agenda Item 4



Portsmouth  
CITY COUNCIL

**Title of meeting:** LICENSING COMMITTEE

**Date of meeting:** 22 MARCH 2019

**Subject:** DfT CONSULTATION - DRAFT STATUTORY GUIDANCE TO LICENSING AUTHORITIES - TAXIS AND PRIVATE HIRE LICENSING

**Report by:** DIRECTOR OF CULTURE, LEISURE AND REGULATORY SERVICES

**Wards affected:** ALL

**Key decision:** No

**Full Council decision:** No

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## 1. Purpose of report

The purpose of this report is to notify the Licensing Committee of the current consultation by the Department for Transport (DfT) in respect of draft statutory guidance to taxi and private hire vehicle (PHV) licensing authorities on how their licensing powers can be exercised in order to safeguard children and vulnerable adults.

## 2. Recommendations

- 1) **That the Committee note the consultation and draft statutory guidance;**
- 2) **That the Committee note the comparison between the draft guidance and its own statement of policy for hackney carriage and private hire licensing;**
- 3) **That the Committee note the proposed responses to the consultation and delegate authority to the Head of Culture, Leisure and Regulatory Services to respond to the consultation on behalf of the Licensing Authority.**

## 3. Background

3.1 The DfT first issued best practice guidance to licensing authorities in respect of private hire and hackney carriage licensing in 2006. This guidance was subsequently revised and updated in 2010. Since that date no further guidance has been issued.

3.2 The Committee will be aware from the report regarding the Government response to the Task and Finish Group (TFG), which is also on the agenda for this meeting, that one of the recommendations arising from that report was that

the Government should urgently update its Best Practice Guidance. The Government response welcomes the recommendation, recognising the leadership role that the Government must play, but also referencing the shared collective responsibility that licensing authorities have to work together to increase consistency in addressing wider concerns.

- 3.3 Legislative measures are available to the DfT under the Policing and Crime Act 2017 to issue Statutory Guidance on exercising taxi and PHV licensing functions in order to protect children and vulnerable individuals over the age of 18 from harm when using the services of taxis/private hire.
- 3.4 The consultation document is attached at **Appendix A** and the draft Statutory Guidance is attached as **Appendix B**.
- 3.5 The consultation is running for 10 weeks, from 12 February 2019 until 23:45 on 22 April 2019.
- 3.6 It is important to note that paragraph 9 of the consultation document highlights that:
- " .... 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 this guidance might be drawn upon in any legal challenge to an authority's practice; any failure to adhere to the guidance without sufficient justification could be detrimental to the authority's defence. The Guidance 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".***
- 3.7 The DfT have accepted that there is evidence to support the view that taxis and PHVs can be a high risk environment and reference risks to passengers, particularly crimes of a sexual nature.
- 3.8 The consultation document highlights that there is consensus that common core minimum standards are required to better regulate the taxi/private hire industry and the draft guidance reflects detailed discussion and consideration leading to its formation. The DfT have given a clear indication that ***"the Department therefore expects these recommendations to be implemented unless there is compelling local reason not to"***.
- 3.9 As the Committee are aware, both the Licensing Authority and Council adopted its statement of licensing policy in 2016 and a comparison document has been prepared by your reporting officer in order to evaluate the components of the draft statutory guidance against PCC's current policy in terms of compliance with the recommendations. This is attached as **Appendix C**.
- 3.10 In addition, the comparison document also provides proposed responses to the consultation for consideration by the Committee.

**4. Reasons for recommendations**

To provide up-to-date information to the Licensing Committee on the draft statutory guidance prepared by the DfT and to enable the licensing authority to submit comments if they consider it appropriate to do so.

**5. Equality impact assessment (EIA)**

No EIA required at present as the purpose of this report is to highlight a consultation document prepared by the DfT and it will not affect, at this time, any current policies of the licensing authority in respect of hackney carriage/private hire licensing.

**6. Legal Implications**

The legal implications are embodied within the report.

**7. Finance Comments**

No financial implications arising from the publication of the consultation document.

.....  
Signed by:

**Appendices:**

- Appendix A** DfT Consultation Document;
- Appendix B** Dft Draft Statutory Guidance; and
- Appendix C** Comparison Document to PCC Policy including proposed responses to consultation.

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/

rejected by ..... on .....

.....  
Signed by:



# Taxi and Private Hire Vehicle Licensing: Protecting Users

## Consultation on Statutory Guidance for Licensing Authorities

**Moving Britain Ahead**

DfT-2019-01

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Great Minster House  
33 Horseferry Road  
London SW1P 4DR  
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# Foreword

In recent years the taxi and private hire vehicle (PHV) industry has been subject of intense scrutiny as a result of failings in taxi and PHV licensing. Some authorities failed to ensure that individuals were 'fit and proper' to be issued a taxi or PHV licence and failed to take action when concerns were raised about the involvement of licensees in the abuse and exploitation of some of the most vulnerable in our society.

Above all else the taxi and PHV services provided to the public must be safe. Government will play its part, but the importance of local government in achieving this cannot be overstated. Government enables the legislative framework but it is the licensing authorities which set the standards and requirements and crucially make the decisions that can bring about the services the public deserve.

A key element of safety is ensuring that taxi and PHV drivers are properly assessed against robust standards and that this is the case regardless of where they are licensed. The granting of a licence must however not be seen as the end of the process but the beginning; licensees must continue to adhere to the high standards or risk having their licence revoked.

The excellent work undertaken in Rotherham following the identification of its past failings evidences what can be achieved with the powers licensing authorities currently have. We have recognised that not all licensing authorities are as proactive as others in raising standards. To address this, the Policing and Crime Act 2017 enables the issuing of statutory guidance to protect children and vulnerable adults, and by extension all passengers, when using these services.

Some of the recommendations proposed in the guidance would impose additional burdens on the trade. While I would sooner that such measures were not needed, the lessons from the Casey and Jay reports and the impact on the lives of those affected by these failures must not – and will not - be forgotten. To do otherwise would compound the harm and injustice done.

I hope that all authorities will adopt the Department's recommendations and bring about high common standards, and increased sharing of information and enforcement powers. There has long been a call for national standards to achieve greater consistency in licensing and in particular with respect to safety. Government, with the collaboration of all licensing authorities, can effectively bring this about without the delay of Parliament considering new legislation.



The Department has already undertaken to monitor the adoption of the recommendations made in the final version of the statutory guidance. While the measures in the final statutory guidance issued will be recommendations, these are the result of extensive discussions with a range of stakeholders and careful consideration. I will be asking licensing authorities that do not adopt these why they have not done so.



**Nusrat Ghani MP**

Parliamentary Under Secretary of State for Transport

# What we are consulting on

## Introduction

- 1 We are seeking views on proposed recommendations contained in draft statutory guidance to taxi and private hire vehicle (PHV) licensing authorities on how their licensing powers can be exercised in order to safeguard children and vulnerable adults. The power to issue this guidance comes from Section 177 of the Policing and Crime Act 2017.
- 2 This consultation will run for 10 weeks, from 12 February 2019 until 23:45 on 22 April 2019.

## Who this consultation is aimed at

- 3 Section 177 of the Policing and Crime Act requires the Secretary of State to consult the following:
  - a. the National Police Chiefs' Council,
  - b. persons who appear to the Secretary of State to represent the interests of public authorities who are required to have regard to the guidance,
  - c. persons who appear to the Secretary of State to represent the interests of those whose livelihood is affected by the exercise of the licensing functions to which the guidance relates, and
  - d. such other persons as the Secretary of State considers appropriate.
- 4 This consultation has therefore been drawn to the specific attention of the National Police Chiefs' Council, the Local Government Association, the National Association of Licensing Enforcement Officers, the Institute of Licensing, and a range of trade representative bodies and publications of which the Department is aware across the country.
- 5 This is a public consultation and we are keen to hear from any other groups or individuals with an interest.

## Our approach

- 6 The recommendations in the draft statutory guidance are the result of extensive engagement and detailed discussion with a range of bodies including representatives of licensing authorities, regulators, operators and drivers, and detailed consideration by the Department for Transport.
- 7 While there is a widespread consensus amongst stakeholders that common core standards are required to regulate better the taxi and PHV sector, government does

not currently have the legislative power to introduce national standards. The Department however expects the recommendations made in the final version of this statutory guidance to be implemented by licensing authorities unless there is compelling local reason not to. This consultation does not seek to discuss the merits of statutory guidance as opposed to legislation to mandate standards. Should Parliament pass legislation in the future to enable national taxi and PHV standards, the recommendations contained in both the statutory and best practice guidance will naturally be the starting point for considering what these might be.

- 8 All local authorities and district councils that provide childrens' and other types of services 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<sup>1</sup> statutory guidance.
- 9 **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 this guidance might be drawn upon in any legal challenge to an authority's practice; any failure to adhere to the guidance without sufficient justification could be detrimental to the authority's defence.** This guidance 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.
- 10 The draft statutory guidance reflects the significant changes in the industry and lessons learned from experiences in local areas since the Department's best practice guidance was last updated in 2010. This includes extensive advice on checking the suitability of individuals and operators to be licensed; safeguarding children and vulnerable adults, the Immigration Act 2016, the Disclosure and Barring Service checks and Common Law Police Disclosure (which replaced the Notifiable Occupations Scheme).
- 11 This guidance replaces relevant sections of the best practice guidance issued by the Department in 2010. A consultation on revised best practice guidance, which focuses on recommendations to licensing authorities to assist them in setting appropriate standards (other than those relating to passenger safety) to enable the provision of services the public demand, will be launched at a later date.

<sup>1</sup> <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

# Consultation proposals

- 12 The draft statutory guidance accompanies this consultation document.

## Terminology

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

Private hire vehicles (PHVs) include a range of vehicles including minicabs, executive cars, chauffeur services, limousines and some school and day centre transport services. All PHV journeys must be pre-booked via a licensed PHV operator. The term **PHV** is used throughout the draft statutory guidance and this consultation document to refer to all such vehicles.

# Consultation questions

- 13 The Department has carefully considered the recommendations proposed in the draft statutory guidance but these are of course subject to change following this consultation. While it is useful to have indications of the quantity of respondents that agree or disagree with these proposals, the Department wants to ensure that the final recommendations are informed by all available evidence and suggestions where these can be improved. We are specifically interested in ideas and proposals that:
  - are based on evidence
  - support the Government's aim to protect children and vulnerable adults from harm when using taxis and PHVs
- 14 There are 30 questions relating to the guidance, most of these ask for quantifiable (agree, disagree or no opinion) and qualitative (comments) responses.
- 15 Ahead of the consultation questions we would like to collect some information about you and your use of and/or role in the taxi and PHV trade. This information will be used to help to give context to the responses we receive from individuals and organisations. Only questions marked with an \* are mandatory.
- 16 The consultation questions and a response form are available at:  
<https://www.smartsurvey.co.uk/s/taxis-licence/>

# Confidentiality and data protection

- 17 The Department for Transport (DfT) is carrying out this consultation to gather views and evidence on measures for inclusion within the statutory guidance issued to taxi and PHV licensing authorities. This consultation and the processing of personal data that it entails is necessary for the exercise of our functions as a government department. If your answers contain any information that allows you to be identified, DfT will, under data protection law, be the Controller for this information.
- 18 As part of this consultation we are asking for your name and email address. This is in case we need to ask you follow-up questions about any of your responses. **You do not have to give us this personal information.** If you do provide it, we will use it only for the purpose of asking follow-up questions.
- 19 We may contract a third party to analyse the responses we receive to the consultation. If you provide your contact details, we may share this information with a contractor in case they need to contact you regarding your consultation response.
- 20 DfT's privacy policy has more information about your rights in relation to your personal data, how to complain and how to contact the Data Protection Officer. You can view it at <https://www.gov.uk/government/organisations/department-for-transport/about/personal-information-charter>.
- 21 DfT's privacy policy has more information about your rights in relation to your personal data, how to complain and how to contact the Data Protection Officer. You can view it at <https://www.gov.uk/government/organisations/department-for-transport/about/personal-information-charter>.
- 22 Your information will be kept securely and destroyed within 12 months after the consultation has been completed. Any information provided through the online questionnaire will be moved from their system to our internal systems within 2 months of the consultation end date.

# How to respond

The consultation period began on 11 February 2019 and will run until 23:45 on 22 April 2019. Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found at <https://www.gov.uk/dft#consultations> or you can contact [Taxis@DfT.GOV.UK](mailto:Taxis@DfT.GOV.UK) if you need alternative formats (Braille, audio CD, etc.).

## **Please respond to the consultation at:**

<https://www.smartsurvey.co.uk/s/taxis-licence/>

Alternatively, please send consultation responses to:

SG-Consultation2019@DfT.GOV.UK

Department for Transport

Buses and Taxis Division (Statutory Guidance Consultation 2019)

Great Minster House

33 Horseferry Road

London

SW1P 4DR

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

## Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure

of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.



# What will happen next

A summary of responses, including the next steps, will be published within three months of the consultation closing. Paper copies will be available on request.

If you have questions about this consultation please contact:

Paul Elliott

Taxis@DfT.GOV.UK

Buses and Taxis Division

Department for Transport

Great Minster House

33 Horseferry Road

London

SW1P 4DR

# Consultation principles

The consultation is being conducted in line with the Government's key consultation principles, further information is available at <https://www.gov.uk/government/publications/consultation-principles-guidance>

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# **Taxi and Private Hire Vehicle Licensing: Protecting Users**

## **Statutory Guidance for Licensing Authorities**



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## 1. Introduction

- 1.1 The Department first issued Best Practice Guidance to assist those licensing authorities in England and Wales that have responsibility for the regulation of the taxi and private hire vehicle (PHV) trades in 2006. Following consultation with stakeholders, taking into account their feedback on the original version, the Guidance was revised and updated in 2010.
- 1.2 There is evidence to support the view that taxis and PHVs are a high-risk environment. In terms of risks to passengers, this can be seen in the number of sexual crimes reported which involve taxi and PHV drivers. Data from Greater Manchester<sup>1</sup> and Merseyside<sup>2</sup> on reported sexual assaults 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% in the Crime Survey for England and Wales<sup>3</sup>.
- 1.3 The Policing and Crime Act 2017 enables the Secretary of State for Transport to issue Statutory Guidance on exercising taxi and PHV licensing functions to protect children and vulnerable individuals who are over 18 from harm when using these services. For the purposes of this guidance, 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<sup>4</sup>, 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.
- 1.4 There is consensus that common core minimum standards are required to regulate better the taxi and PHV sector, and the recommendations in this document are the result of detailed discussion and consideration. **The Department therefore expects these recommendations to be implemented unless there is compelling local reason not to.**

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1 [https://www.whatdotheyknow.com/request/sex\\_attacks\\_2](https://www.whatdotheyknow.com/request/sex_attacks_2)

2 [https://www.whatdotheyknow.com/request/taxi\\_private\\_hire\\_related\\_rapes#incoming-286178](https://www.whatdotheyknow.com/request/taxi_private_hire_related_rapes#incoming-286178)

3 <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesinenglandandwales/yearendingmarch2017#main-points>

4 <http://www.legislation.gov.uk/ukpga/2014/23/section/42/enacted>

- 1.5 It should be noted that as policing and criminal justice is not a devolved matter, the Statutory Guidance issued under the Policing and Crime Act 2017 will continue to have effect in Wales although responsibility for taxis and PHVs was devolved to the Welsh Assembly in April 2018. Should the Welsh Government introduce legislation to regulate the sector, this guidance would however cease to apply.
- 1.6 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*<sup>5</sup> statutory guidance.
- 1.7 This new Statutory Guidance reflects the significant changes in the industry and lessons learned from experiences in local areas since the Department’s Best Practice Guidance was last updated. 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).
- 1.8 This Statutory Guidance replaces relevant sections of the Best Practice Guidance issued by the Department in 2010. A consultation on revised Best Practice Guidance, which focuses on recommendations to licensing authorities to assist them in setting appropriate standards (other than those relating to passenger safety) to enable the provision of services the public demand, will be taken forward once the final Statutory Guidance has been issued.

### 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 guidance and refers to all such vehicles. Taxis are able to be hired immediately by hailing on the street or at a rank.

Private hire vehicles (PHVs) include a range of vehicles including minicabs, executive cars, chauffeur services, limousines and some school and day centre transport services. All PHV journeys must be pre-booked via a licensed PHV 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 **PHV** is used throughout this guidance to refer to all such vehicles.

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<sup>5</sup> <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>



## 2. Statutory Guidance

### Consideration of the Statutory Guidance

- 2.1 The Government set out in the Modern Crime Prevention Strategy<sup>6</sup> 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.
- 2.2 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 PHV licensing regimes. Both the Jay<sup>7</sup> and Casey<sup>8</sup> reports on CSAE highlighted examples of taxi/PHV 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.
- 2.3 The Casey Report made clear that weak and ineffective arrangements for taxi and PHV 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 formulation of this Statutory Guidance.
- 2.4 This Statutory Guidance 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).
- 2.5 The Guidance 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 PHV licensing regimes. “Having regard” is more than having a cursory glance at a document before arriving at a preconceived conclusion.
- 2.6 “Having regard” to guidance requires public authorities, in formulating a policy, to give considerations the weight which is proportionate in the circumstances. **Given that this is statutory guidance issued directly to address the safeguarding of the public and the potential impact of failings in this area, the importance of thoroughly considering these recommendations cannot be overestimated.** It is not a question of box ticking; the recommendations must be considered rigorously and with an open mind.
- 2.7 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 this Guidance might be drawn upon in any legal

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<sup>6</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/509831/6.1770\\_Modern\\_Crime\\_Prevention\\_Strategy\\_final\\_WEB\\_version.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509831/6.1770_Modern_Crime_Prevention_Strategy_final_WEB_version.pdf)

<sup>7</sup> [https://www.rotherham.gov.uk/downloads/file/1407/independent\\_inquiry\\_cse\\_in\\_rotherham](https://www.rotherham.gov.uk/downloads/file/1407/independent_inquiry_cse_in_rotherham)

<sup>8</sup> <https://www.gov.uk/government/publications/report-of-inspection-of-rotherham-metropolitan-borough-council>

challenge to an authority’s practice, and that any failure to adhere to the Guidance without sufficient justification could be detrimental to the authority’s defence. **In the interest of transparency however, the Department encourages all licensing authorities to publish their consideration of the recommendations contained in this Guidance and the policies and delivery plans that stem from these. The Department has already undertaken to monitor the effectiveness of the Statutory Guidance in achieving an appropriately high level of standards in taxi and PHV licensing with regard to the protection of passengers.**

- 2.8 This Guidance 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.

### Licensing policy

- 2.9 The Department encourages licensing authorities to create a cohesive policy document that brings together all their procedures on taxi and PHV licensing. This should include but not be limited to policies on convictions, a ‘fit and proper’ person test, licence conditions and vehicle standards.
- 2.10 When formulating a taxi and PHV 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<sup>9</sup>.

*“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.”*

- 2.11 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.”*

9

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/401125/46966\\_Report\\_of\\_Inspection\\_of\\_Rotherham\\_WEB.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/401125/46966_Report_of_Inspection_of_Rotherham_WEB.pdf)

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- 2.12 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 PHV sector that is rebuilding local confidence in the industry. The history of past failings here and elsewhere are 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.
- 2.13 One of the key lessons learned is that it is vital to review policies and reflect changes in the industry both locally and nationally. It is therefore recommended that licensing authorities regularly review their licensing policies and their performance, but should also consider interim reviews should there be significant issues arising in their area.

### Fit and proper test

- 2.14 Licensing authorities have a duty to ensure that any person to whom they grant a taxi or PHV 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?**

- 2.15 If, on the balance of probabilities, the answer to the question is 'no', the individual should not hold a licence.
- 2.16 Licensing authorities have to make difficult decisions but (subject to the points made in paragraph 2.19 below) 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 therefore include information that goes beyond criminal convictions.

### Administration of the licensing framework

- 2.17 A policy is only as effective as the way it is administered. The taxi and PHV 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 where 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.
- 2.18 It is essential that all those involved in the determination of licensing matters have received sufficient training and are adequately resourced to allow them to discharge the function effectively and correctly. The Department for Transport

supports the recommendation of the LGA that, as a minimum, training should cover licensing procedures, natural justice, understanding the risks of CSAE and disability and equality awareness in addition to any other issues deemed appropriate. Training should not simply relate to procedures, but should also cover the making of difficult and potentially controversial decisions – the use of case study material can be helpful to illustrate this. 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 the LGA can assist in the development of training packages.

2.19 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.

2.20 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.

2.21 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 2.19. 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

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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.

2.22 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. 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.

2.23 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.

2.24 Regardless of which approach is adopted, all councils 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.

### Whistleblowing

2.25 The past failings of licensing regimes must never be repeated. The Department has carefully considered the measures contained in this Guidance and believe that these should be put in to practice and administered appropriately to mitigate the risk posed to the public. The purpose of this Guidance is to protect children and vulnerable adults, and by extension the wider public, when using taxis and PHVs. However, it is in the application of these 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. It is therefore recommended that licensing authorities have effective internal procedures for staff to raise concerns and procedures in place 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.

- 2.26 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 PHV] passengers in the manner in which licensing issues were addressed*”. We are pleased to note that the report concludes<sup>10</sup>, “*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.*”
- 2.27 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.
- 2.28 The Public Interest Disclosure Act 1988 (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.

### Implementing changes to licensing policy and requirements

- 2.29 It is important to remember that 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

<sup>10</sup> [http://www.southribble.gov.uk/sites/default/files/FINAL\\_REPORT\\_JUNE\\_2016.pdf](http://www.southribble.gov.uk/sites/default/files/FINAL_REPORT_JUNE_2016.pdf)

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.

- 2.30 Where a more subjective change has been introduced, for example an amended policy on previous convictions, licensing authority must still consider each case on its own merits. Where there are exceptional, clear and compelling reasons to deviate from a policy, licensing authorities are able to do so. Licensing authorities should record the reasons for any deviation from the policies in place.

### The Disclosure and Barring Service

- 2.31 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. 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.
- 2.32 The DfT's 2018 survey of taxi and PHV licensing authorities<sup>11</sup> shows that all licensing authorities in England and Wales have a requirement that an enhanced DBS check is undertaken at first application or renewal. The Department considers that all licensing authorities should also request a check of the barred lists in addition to the enhanced DBS check, for individuals applying for or renewing taxi and PHV driver licences.
- 2.33 Enhanced certificates with 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. The filtering rules allow for certain old and minor convictions to be removed from a DBS certificate after an appropriate period has passed, but they do not allow filtering where an individual has more than one conviction, has received a custodial sentence or has committed a specified serious offence such as those involving child sexual abuse. Full details of the filtering rules, and those offences which may never be filtered, are available from the DBS<sup>12</sup>. As well as convictions and cautions, an

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<sup>11</sup> <https://www.gov.uk/government/statistics/taxi-and-private-hire-vehicle-statistics-england-2018>

<sup>12</sup> <https://www.gov.uk/government/collections/dbs-filtering-guidance>

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 detailed statutory guidance<sup>13</sup> when considering disclosure. The information provided at each level of DBS checks is summarised in table 1.

- 2.34 It should be noted that licensing authorities must not seek to circumvent the legitimate filtering of previous criminal convictions and other information held by the DBS. The appropriate way of accessing an individual's criminal records is through an enhanced DBS and barred lists check.
- 2.35 Whilst data protection legislation<sup>14</sup> gives individuals (or data subjects) a 'right of access' to the personal data that an organisation holds about them, you must not require an individual to exercise their subject access rights so as to gain information about any convictions and cautions. This is an offence under data protection legislation.
- 2.36 Driving a taxi or PHV is not, in itself, a regulated activity. This means that an individual subject to barring would not be legally prevented from being a taxi or PHV driver but the licensing authority should take an individual's barred status into account alongside other information available. It is the Department's opinion that, 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.
- 2.37 Drivers working under an arrangement to transport children may be working in 'regulated activity' as defined by the Safeguarding Vulnerable Groups Act 2006<sup>15</sup>. It is an offence to knowingly allow a barred individual to work in regulated activity. The guidance on home-to school travel and transport<sup>16</sup> issued by the Department for Education should be considered alongside this document. Please see DBS guidance on driver eligibility and how to apply.

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13 <https://www.gov.uk/government/publications/statutory-disclosure-guidance>

14 the full range of data protection legislation, not just the Data Protection Act 2018 or General Data Protection Regulation (GDPR)

15 <https://www.legislation.gov.uk/ukpga/2006/47/contents>

16 <https://www.gov.uk/government/publications/home-to-school-travel-and-transport-guidance>



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

Table 1

1. Cautions include reprimands and warnings, but not 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 disclosed on any level of certificate. Further guidance is available at <https://www.gov.uk/government/publications/dbs-filtering-guidance/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).

## DBS update service

- 2.38 Licensing authorities should make use of the DBS update service. This subscription service allows licensees to keep their DBS certificates up to date online and, with the individual's consent, allows licensing authorities (as a nominee) to check the status of a certificate online at any time. Subscription to the service removes the need for repeat checks, reduces the administrative burden and mitigates potential delays in relicensing. Licensees should be required to evidence continuous registration and nomination throughout the period of the licence.
- 2.39 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 level and type of DBS certificate. 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. Licensing Authorities should therefore consider routinely checking the DBS certificates of their licence holders, for example every six months.
- 2.40 Licensing authorities are able to request large numbers of status checks on a daily basis. The DBS has developed a Multiple Status Check facility that can be accessed via a web service. The Multiple Status Check facility enables organisations to make an almost unlimited number of Status Checks simultaneously. Further information on the Multiple Status Check facility is available from the DBS.<sup>17</sup> As discussed above, for taxi and PHV driver licensing purposes the recommended level of check is always the enhanced level with check of the adult and children Barred lists. Other Workforce should always be entered at X61 line 1 and Taxi Licensing should be entered at X61 line 2.

## Licensee self-reporting

- 2.41 As discussed above, the DBS update service is a valuable tool in discharging a licensing authority's duty to ensure that licence holders are fit to hold a licence. However, the routine checking of the DBS record should be in addition to a requirement that licence holders notify the issuing authority within 48 hours of an arrest and release, charge or conviction of any motoring offence, or any offence involving dishonesty, indecency or violence. 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.
- 2.42 Importantly, a failure by a licence holder to disclose an arrest that the issuing authority is subsequently advised of, would be a breach of a licence condition and might therefore be seen as behaviour that questions honesty and

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<sup>17</sup> <https://www.gov.uk/government/publications/dbs-update-service-multiple-status-checking-guide>

therefore the suitability of the licence holder regardless of the outcome of the initial allegation.

### Referrals to DBS and the police

2.43 In some circumstances it may be appropriate under the Safeguarding Vulnerable Groups Act 2006 for licensing authorities to make referrals to the DBS; for example, 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 in this context arises from the undertaking of a safeguarding role. Further guidance has been provided by the DBS<sup>18</sup>.

2.44 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;
- the DBS may consider it appropriate for the person to be added to a barred list.

2.45 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<sup>19</sup>.

2.46 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.

### Overseas convictions

2.47 **The DBS cannot access criminal records held overseas.** 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. A licensing authority should ensure they have access to all the information available to them when making a decision whether to grant a licence, particularly when an applicant has previously lived outside the UK. It should be noted that it is the character of the applicant as an adult that is of interest, therefore a period outside the UK before

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18 <https://www.gov.uk/government/publications/dbs-barring-referrals-local-authority-referral-duty-and-power/referral-duty-and-power-for-local-authorities-and-regulatory-bodies#local-authorities-as-regulated-activity-providers>

19 <https://www.gov.uk/guidance/making-barring-referrals-to-the-dbs>

the age of 18 may not be relevant. For information on applying for overseas criminal record checks or ‘Certificates of Good Character’ please see the Home Office guidance<sup>20</sup>. Licensing authorities should seek criminal records information from overseas when an applicant has previously lived outside the UK for a period of more than three continuous months to properly assess risk and support the decision making process.

- 2.48 Where an individual is aware that they have committed an offence overseas which may be equivalent to those listed, they should seek independent expert or legal advice to ensure that they provide information that is truthful and accurate.

### Conviction policy

- 2.49 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.

- 2.50 Engagement with licensing authorities identified that greater direction from the Department was sought and in some cases required. The Department did not make specific recommendations regarding the assessment of convictions in the 2010 update of the Best Practice Guidance. In response to concerns raised by stakeholders and to assist in greater consistency in licensing, Annex A provides the Department’s recommendations on this issue. 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 PHV licensees<sup>21</sup>. These periods should be taken as a minimum before a licence should be granted or renewed in all but truly exceptional circumstance. 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 each case must be considered on its own merits, and applicants are entitled to a fair and impartial public hearing of their application if required.

### Common Law Police Disclosure

- 2.51 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 PHV drivers.

<sup>20</sup> <https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>

<sup>21</sup> [https://instituteoflicensing.org/documents/Guidance\\_on\\_Suitability\\_Web\\_Version\\_\(16\\_May\\_2018\).pdf](https://instituteoflicensing.org/documents/Guidance_on_Suitability_Web_Version_(16_May_2018).pdf)

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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.

- 2.52 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.
- 2.53 The new procedure provides robust safeguarding arrangements while ensuring only relevant information is passed on to employers or regulatory bodies. We would therefore strongly recommend that licensing authorities maintain close links with the police to ensure effective and efficient information sharing procedures and protocols are in place and are being used.

### Other information

- 2.54 The LGA's Councillors' Handbook on taxi and private hire vehicle (PHV) licensing<sup>22</sup> 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.”*
- 2.55 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 we strongly recommend that action taken as a result of information received is 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.
- 2.56 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.
- 2.57 As has been stated elsewhere in this guidance, 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 should therefore 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. For this process

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<sup>22</sup> <https://www.local.gov.uk/councillor-handbook-taxi-and-phv-licensing>

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.

- 2.58 The LGA's Taxi and PHV licensing Councillors' handbook<sup>23</sup> advises that Councils should meet or communicate regularly with licensing committees and officers in neighbouring councils to ensure critical information is shared. 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 PHV driver licence refusals and revocations (the register is known as 'NR3'). The use of tools such as NR3 by licensing authorities to share information on a more consistent basis would mitigate the risk of non-disclosure of relevant information by applicants.
- 2.59 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 PHV driver 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<sup>24</sup>.
- 2.60 If notification under paragraph 2.57 or 2.58 of a refused or revoked license is disclosed, the relevant licensing authority should be contacted to establish when the licence was refused, suspended or revoked and the reasons why. The information disclosed 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.
- 2.61 Should a licensing authority receive information that a licence holder did not disclose the information referred to in paragraph 2.57, for example by checking the NR3 register, the authority should consider whether the non-disclosure represents dishonesty and should therefore review whether the licence holder remains 'fit and proper'.

### Multi-agency Safeguarding Hub (MASH)

- 2.62 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)

<sup>23</sup> <https://www.local.gov.uk/councillor-handbook-taxi-and-phv-licensing>

<sup>24</sup> <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/>

should operate on three common principles: information sharing, joint decision making and coordinated intervention.

2.63 The Home Office report on Multi Agency Working and Information Sharing<sup>25</sup> 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<sup>26</sup> 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.

2.64 The Department recommends all licensing authorities should establish a means to facilitate the objectives of a MASH. As has been emphasised throughout this guidance, one of the most effective ways to minimise the risk to children and vulnerable adults when using taxis and PHVs is to ensure that decisions on licensing individuals are made with the fullest knowledge possible.

### Complaints against licensees

2.65 The LGA recommends that all councils should have a robust system for recording complaints, including analysing trends across the whole system as well as complaints against individual licensees<sup>27</sup>. 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.

2.66 Licensing authorities should produce guidance for passengers on making complaints directly to the licensing authority that **must** be available on their website and displayed in 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 PHV driver is more likely to be made to the operator. An effective partnership in which operators can share concerns regarding drivers is also encouraged. A systematic recording of complaints will provide a further source of information to consider when renewing a licence for a driver or operator or identify problems during the period of the licence.

2.67 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.

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25 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/338875/MASH.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/338875/MASH.pdf)

26 [https://www.childrenscommissioner.gov.uk/wp-content/uploads/2017/07/If\\_only\\_someone\\_had\\_listened.pdf](https://www.childrenscommissioner.gov.uk/wp-content/uploads/2017/07/If_only_someone_had_listened.pdf)

27 <https://www.local.gov.uk/councillor-handbook-taxi-and-phv-licensing>

2.68 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 2.104 - 2.106.

### Duration of licences

2.69 The Local Government (Miscellaneous Provisions) Act 1976 (as amended) sets a standard length at three years for taxi and PHV drivers and five years for PHV operators. Any shorter duration should only be issued when the licensing authority thinks it is appropriate in the specific circumstances of the case. Such circumstances could include where the licensing authority considers that a probationary period is necessary 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.

2.70 A previous argument against this length of licence 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 by requiring licensees to subscribe to the DBS update service as discussed in paragraphs 2.38 – 2.40 and authorities to undertake regular interim checks. To help authorities monitor licensees’ suitability, police forces should inform licensing authorities when they believe a licensee presents a risk to the travelling public. Paragraphs 2.51 - 2.53 provide further information about this process.

### Safeguarding awareness

2.71 Licensing authorities should consider the role that those in the taxi and PHV 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.

2.72 It is the Department’s recommendation that licensing authorities provide safeguarding advice and guidance to the trade and that taxi and PHV drivers are required 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.



2.73 In February 2018, the Department for Education (DFE) launched phase 3 of its nationwide campaign – ‘Together we can tackle child abuse’. Building on phases 1 and 2, which ran in 2016 and 2017, it aims to increase public understanding of how to recognise and report child abuse and neglect. The DfE has developed an online toolkit<sup>28</sup> of material for local authorities, charities and other organisations to use to support the campaign.

### Other forms of exploitation – ‘County lines’ drug trafficking

2.74 Victims of exploitation may not appear as such at first sight. 74% of police forces noted the exploitation of vulnerable people (including children) by gangs and organised criminal networks involved in trafficking illegal drugs within the UK<sup>29</sup> to move and store drugs and money across the country, often from urban areas to regional locations. They will frequently use coercion, intimidation, violence (including sexual violence) and weapons. This gang activity (known as county lines), and the associated violence, drug dealing and exploitation has a devastating impact on young people, vulnerable adults and local communities.

2.75 The National Crime Agency’s updated annual threat assessment of county lines reported that county lines groups are using taxis and PHVs as a method of transportation. In that assessment, 33% of police forces in England and Wales (14 forces) reported use of taxis and PHVs to transport drug couriers between markets. These couriers are often young people who have been exploited and may be victims of trafficking; the typical age range is 15-17 years old, but may be much younger. They may have vulnerabilities besides their age, such as broader mental health issues, disrupted or chaotic homes, substance misuse issues or reported as missing.

2.76 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:

- young people, sometimes as young as 12, travelling in taxis 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.

<sup>28</sup> <https://tacklechildabuse.campaign.gov.uk/>

<sup>29</sup> <http://www.nationalcrimeagency.gov.uk/news/1247-latest-threat-update-estimates-at-least-720-county-lines-drug-dealing-lines>

2.77 The Home Office is working with partners to raise awareness of county lines and has produced promotional material that can be used by taxi and PHV companies.<sup>30</sup>

2.78 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

2.79 Authorities should consider whether an applicant would have any problems in communicating with customers because of language difficulties. Licensing authorities have the freedom to specify the level of proficiency, but it is recommended to cover both oral and written English language skills necessary to fulfil their duties, including in emergency and other challenging situations. This should include:

- conversing with passengers to demonstrate an understanding of the desired destination, an estimation of the time taken to get there and other common passenger requests;
- providing a customer with correct change from a note or notes of higher value than the given fare, and doing so with relative simplicity;
- providing a legibly written receipt upon request.

### Enforcement

2.80 Implementing an effective framework for licensing authorities is essential to a well-functioning taxi and PHV sector. These steps will help prevent the licensing of drivers that are not deemed 'fit and proper' but does not ensure that those already licensed continue to display the behaviours and standards expected.

2.81 We have discussed the benefits of licensing authorities working collaboratively in regard to the sharing of information, and this can equally apply to enforcement powers. 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. Together with increased clarity for the public on complaining, these measures will mitigate the opportunities for drivers to evade regulation. Such an agreement will enable those authorities to take action against vehicles and

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<sup>30</sup>[https://www.gov.uk/government/publications/county-lines-posters-for-taxi-and-private-vehicle-hire-staff?utm\\_source=HO&utm\\_campaign=LA](https://www.gov.uk/government/publications/county-lines-posters-for-taxi-and-private-vehicle-hire-staff?utm_source=HO&utm_campaign=LA)

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<sup>31</sup>.

2.82 It is not reasonable to expect drivers to adhere to a policy unless they 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.

2.83 The Department suggest that there should be a clear, simple and well-publicised process for the public to make complaints about drivers and operators. 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

2.84 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

2.85 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 PHV sector has been issued by the Home Office<sup>32</sup>. 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.

2.86 Before any decision is made, the licensing authority must give full consideration to the available evidence and the driver should be given the

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<sup>31</sup> <https://www.local.gov.uk/councillor-handbook-taxi-and-phv-licensing>

<sup>32</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/613415/A\\_Licensing\\_Authority\\_guide\\_to\\_right\\_to\\_work\\_checks\\_-\\_England\\_and\\_Wales.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/613415/A_Licensing_Authority_guide_to_right_to_work_checks_-_England_and_Wales.pdf)

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.

- 2.87 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 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.
- 2.88 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.
- 2.89 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.

### **Criminal record checks for PHV operators**

- 2.90 As with driver licensing, the objective in licensing PHV operators is to protect the public, who may be using operators' premises and trusting that the drivers and vehicles they dispatch are above all else safe. It is important therefore that licensing authorities are assured that the operators they license also pose no threat to the public and have no links to serious criminal activity. Although an operator may not have direct contact with passengers, they are still entrusted to ensure that the drivers and vehicles used to fulfil a booking are appropriately licensed and so 'fit and proper'. PHV operators are also frequently provided with sensitive information such as periods when a home may be vacated as the residents are on holiday. Those making licensing decisions should consider whether they would be content for an applicant to hold sensitive information and are confident that this would not be misused.
- 2.91 PHV operators (as opposed to PHV drivers) are not eligible for standard or enhanced criminal records checks. We recommend that licensing authorities request a criminal conviction certificate (Basic disclosure) from the DBS. Any individual may apply for a Basic check and the certificate will disclose any unspent convictions recorded on the PNC. Licensing authorities should consider whether an applicant or licence holder with a conviction for offences detailed in Annex A (other than those relating to driving) meet the 'fit and proper' threshold.
- 2.92 PHV operator 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 PHV

operators should be required to advise the licensing authority of any changes to the directors or partners.

- 2.93 Individuals, directors or partners granted a PHV operator licence should be required to subscribe to the DBS update service as a condition of licensing and licensing authorities should consider routinely checking the DBS certificates of their licence holders, for example every six months
- 2.94 As explained earlier in the context of driver licensing, the **DBS cannot access criminal records held overseas**. 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. A licensing authority should ensure they have access to all the information available to them when making a decision whether to grant a licence, particularly when an applicant has previously lived outside the UK. It should be noted that it is the character of the applicant as an adult that is of interest, therefore a period outside the UK before the age of 18 may not be relevant. For information on applying for overseas criminal record checks or a 'Certificate of Good Character' please see the Home Office guidance<sup>33</sup> on criminal record checks for overseas applicants. Licensing authorities should seek criminal records information from overseas when an applicant has previously lived outside the UK for a period of more than three continuous months to properly assess risk and support the decision making process.
- 2.95 Where an individual is aware that they have committed an offence overseas which may be equivalent to those listed in Annex A, they should seek independent expert or legal advice to ensure that they provide information that is truthful and accurate.

### PHV Operators - ancillary staff

- 2.96 PHV drivers are not the only direct contact that PHV users have with PHV operators' staff, for example a person taking bookings (be it by phone or in person). A vehicle controller decides which driver to send to a user, a position that could be exploited by criminals. It is therefore appropriate that all staff that have contact with PHV users and the dispatching of vehicles should not present an undue risk to the public or the safeguarding of children and vulnerable adults.
- 2.97 Licensing authorities should be satisfied that PHV 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 request that, as a condition of granting an operator licence, a register of all staff that will take bookings or dispatch vehicles is kept. The operator should be required to evidence that they have had sight of a Basic DBS check on all individuals listed.
- 2.98 Operators or applicants for a licence should also be required 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 PHV operators' licence, those with a

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<sup>33</sup> <https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>

conviction for offences detailed in Annex A (other than those relating to driving) may not be suitable to handle the sensitive information the public may provide (e.g. that their home is likely to be empty between certain dates) or to decide who is sent to carry a child or vulnerable adult unaccompanied in a car.

- 2.99 Those granted an operator licence should be required to maintain a register of staff that take bookings and/or control vehicles and 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.

### **PHV Operators – Use of passenger carrying vehicles (PCV) licensed drivers**

- 2.100 Members of the public are entitled to expect when making a booking with a PHV operator that they will receive a PHV 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 PHV booking should not be permitted as a condition of the PHV operator's licence. Drivers of PSVs who are PCV licence holders are not subject to the same checks as PHV drivers, as the work normally undertaken, i.e. driving a bus or coach, does not present the same risk to passengers.

### **PHV Operators - record keeping**

- 2.101 Section 56 of the Local Government (Miscellaneous Provisions) Act 1976<sup>34</sup> requires PHV 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. The particulars to be recorded may be specified by the licensing authority as a condition of the operator licence. The Department recommend that this information should include:

- 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.

- 2.102 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 six months is generally appropriate as the length of time that records should be kept.

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<sup>34</sup> <http://www.legislation.gov.uk/ukpga/1976/57>

2.103 PHV 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.

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

2.104 Government has acknowledged the potential risk to public safety when passengers travel in taxis and PHVs. In 2012 the Government enabled licensing authorities to undertake enhanced DBS checks. The Department appreciates that all licensing authorities have recognised the risk posed by the very small minority of licensed drivers and undertake this level of check. It is unfortunately the case that no matter how complete the information available to licensing authorities is, nor how robust the policies in place are and the rigor with which they are applied, it will never remove the possibility of harm to passengers by drivers. 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/PHV 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.

2.105 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<sup>35</sup> only 17% of victims report their experiences to the police, 28% 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.

2.106 The mandatory installation of CCTV in vehicles may deter people from seeking a taxi or PHV 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.

2.107 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 and targeted i.e. only when

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<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesinenglandandwales/yearendingmarch2017#main-points>

passengers (or drivers) consider it necessary and all parties should be made aware that a recording is being made. 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.

- 2.108 It is important to note that, in most circumstances, a licensing authority which mandates the installation of CCTV systems in taxis and PHV 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.
- 2.109 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.
- 2.110 The Home Office '*Surveillance Camera Code of Practice*'<sup>36</sup> 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
- 2.111 The Code also sets out 12 guiding principles which, as a 'relevant authority' under the Protection of Freedoms Act 2012<sup>37</sup>, 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.

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<sup>36</sup> <https://www.gov.uk/government/publications/surveillance-camera-code-of-practice>

<sup>37</sup> [Section 33\(5\) of the Protection of Freedoms Act 2012](#)



- 2.112 The Surveillance Camera Commissioner (SCC) has provided guidance on the Surveillance Camera Code of Practice in its '*Passport to Compliance*'<sup>38</sup> 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<sup>39</sup> (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<sup>40</sup> to assist operators to ensure compliance with the principles set of in the Surveillance Camera Code of Practice. The SCC also operate a certification scheme<sup>41</sup>; 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.
- 2.113 The Data Protection Act 2018<sup>42</sup> 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<sup>43</sup> on how data controllers can ensure compliance with these.
- 2.114 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<sup>44</sup> 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. Licensing authorities should consult on this issue 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 PHV users, including children or vulnerable adults.
- 2.115 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

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38 <https://www.gov.uk/government/publications/passport-to-compliance>

39 <https://ico.org.uk/media/for-organisations/documents/1542/cctv-code-of-practice.pdf>

40 <https://www.gov.uk/government/publications/surveillance-camera-code-of-practice-self-assessment-tool>

41 <https://www.gov.uk/government/publications/surveillance-camera-code-of-practice-third-party-certification-scheme>

42 <http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>

43 <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/>

44 <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/security/>

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.

- 2.116 All passengers must be made aware if CCTV is operating in a vehicle. 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.

### Stretched Limousines

- 2.117 Licensing authorities are sometimes asked to license small (those constructed or adapted to carry fewer than nine passengers) limousines as PHVs. 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. Indeed, the Department's view is 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 service from the scope of the PHV 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.
- 2.118 Stretched large limousines which clearly have more than eight passenger seats should not in most circumstance be licensed as PHVs because they are outside the licensing regime for PHVs. However, under some circumstances the Individual Vehicle Approval (IVA) regime accepts vehicles with space for more than eight passengers, particularly where the precise number of passenger seats is hard to determine. In these circumstances, if the vehicle has obtained an IVA certificate, 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.

### Consultation at the local level

- 2.119 It is good practice for licensing authorities to consult on any significant proposed changes in licensing rules. Such consultation should include not only the taxi and PHV 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.

- 2.120 Any decision taken to alter the licensing regime is likely to have an impact on the operation of the taxi and PHV sector in neighbouring areas; it would therefore be good practice to engage with these to identify any concerns and issue that might arise from a proposed change. Many areas convene regional officer consultation groups or, more formally, councillor liaison meetings; the Department considers this approach to be good practice.

## Annex A – Previous convictions guidance

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 PHV 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 public hearing of their application if required. The periods given below should be taken as a minimum before a licence should be granted or renewed in all but truly exceptional circumstance. 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

Where an applicant has a conviction for an offence of violence, 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 7 years have elapsed since the completion of any sentence imposed.

### Sex and indecency offences

Where an applicant has a conviction for any offence involving or connected with illegal sexual activity or any form of indecency, 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 of dishonesty, or any offence where dishonesty is an element of the offence, a licence will not be granted until at least 7 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 5 years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant will also have to undergo drugs testing 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 7 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 of 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 PHV 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/using a hand-held telephone or hand held device whilst driving**

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 7 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 will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

Where an applicant has a conviction for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least 5 years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

## Annex B - 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 PHVs e.g.:

- a taxi can be flagged down or pre-booked.
- a PHV that has not been pre-booked should not be used as it will not be insured and may not be licensed.
- what a PHV 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.

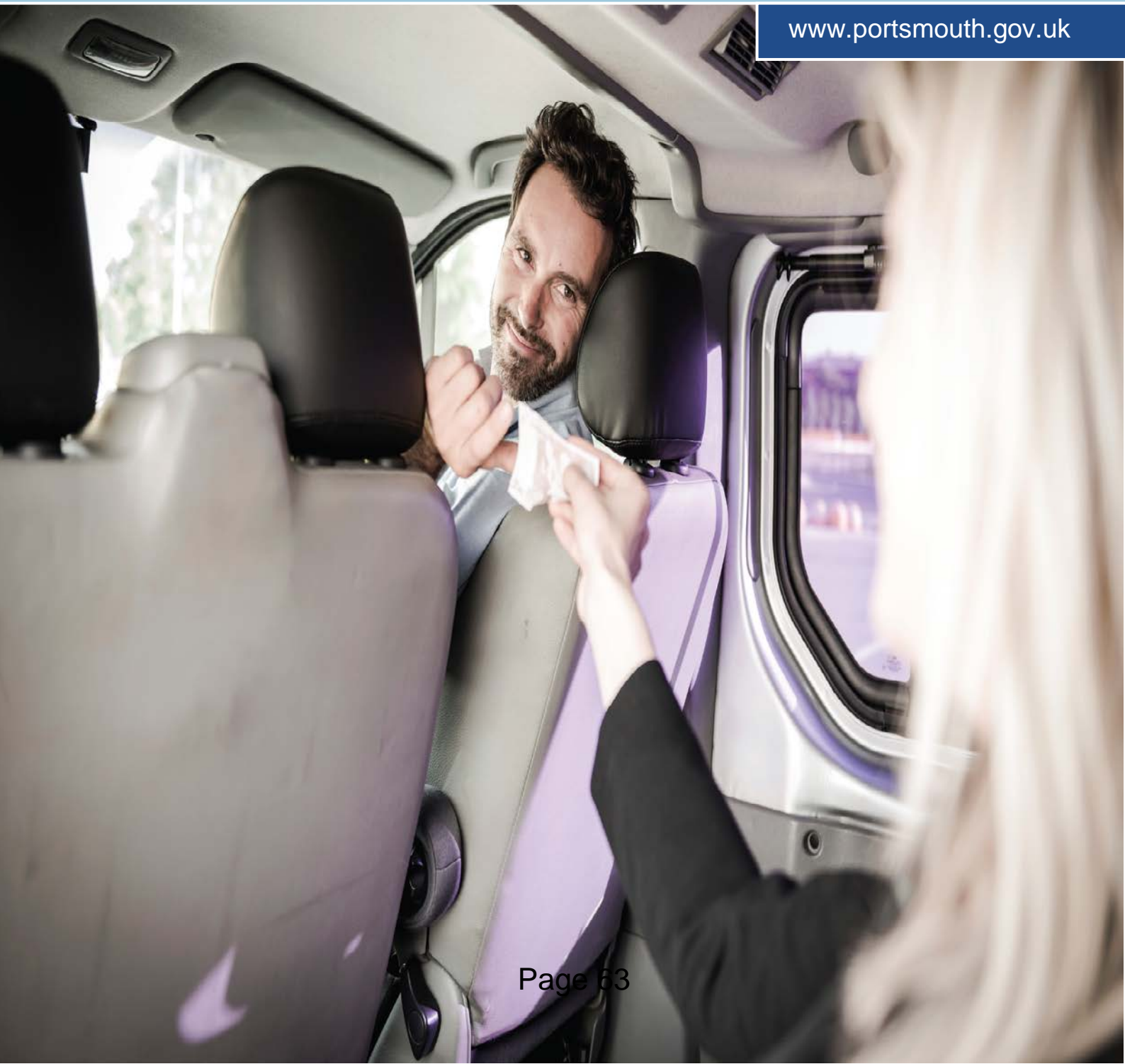
When using a taxi, passengers should where possible:

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

## DfT Draft Statutory Guidance - Feb 2019

Consultation Questions and Comparison to PCC Hackney Carriage and Private Hire Licensing Policy

[www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)



## Introduction

This appendix sets out in full the questions posed by the DfT concerning its draft statutory guidance to taxi and private hire vehicle (PHV) licensing authorities on how their licensing powers can be exercised in order to safeguard children and vulnerable adults.

To assist members in considering the proposals put forward, a comparison has been made between the draft statutory guidance and its current adopted policy.

It is both pleasing and reassuring to report to the Committee that, from a **total of 25 recommendations** arising from the draft statutory guidance in relation to powers that can be exercised by licensing authorities in order to safeguard the public, PCC's current statement of licensing policy **complies with 18 of those recommendations**.

Finally, a draft response to the questions raised as part of the consultation have also been included within this document for the Licensing Committee to consider and for those comments to be submitted to the DfT for consideration.

No.	Consultation Questions
3 <sup>1</sup>	<p><b>The draft statutory guidance recommends that all those involved in the determination of licensing matters should receive training covering licensing procedures, natural justice, child sexual abuse and exploitation, disability and equality in addition to any other issues deemed locally appropriate (paragraph 2.18). Do you agree with the recommendation?</b></p>
	<p><b>Policy:</b></p> <p>Reference is made in Chapter 15, paragraph 1.10 to training of officers in relation to enforcement measures. (This paragraph could be extended to reflect ongoing training undertaken by staff throughout the year relating to all aspects of the licensing process and procedure).</p> <p>The Government &amp; Audit &amp; Standards Committee received a report by the monitoring officer in 2015 in respect of Councillor training and development. One of the recommendations of that report was to :</p> <p><b><i>"Support the expectation that members (and standing deputies) receive training prior to committee membership or that appropriate records are kept to demonstrate that formal training is not required for an individual councillor"</i></b></p> <p><a href="https://democracy.portsmouth.gov.uk/documents/s7304/Councillor%20training%20and%20development%20report.pdf">https://democracy.portsmouth.gov.uk/documents/s7304/Councillor%20training%20and%20development%20report.pdf</a></p>

<sup>1</sup> Questions 1 and 2 of the consultation document relate to personal details such as name, email address and type of individual/authority responding.



No.	Consultation Questions
	<p><b>Suggested Response:</b></p> <p>PCC endorses the recommendation that all relevant parties with responsibility for determining licensing matters should receive training, including refresher training, on all matters which impact on the licensing regime.</p> <p>It is considered appropriate for such training to be mandatory for Councillors sitting on the Licensing Committee.</p>
4	<p><b>The draft statutory guidance recommends a council structure for dealing with licensing matters (paragraphs 2.20-2.24). Do you agree with this proposed structure?</b></p>
	<p><b>Policy:</b></p> <p>Chapter 3 - Scheme of delegation and associated responsibilities - sets out the Committee's powers and responsibilities including delegations to officers.</p> <p>The structure currently in place fully meets the requirements set out in the draft statutory guidance.</p>
	<p><b>Suggested response:</b></p> <p>PCC supports the proposed council structure for dealing with licensing matters and currently operates in accordance with this recommendation.</p>
5	<p><b>The draft statutory guidance recommends that all issued licences should be reviewed following changes in licensing policy (paragraph 2.29). Do you agree with this recommendation?</b></p>
	<p><b>Policy:</b></p> <p>No reference is made within PCC policy as the Licensing Authority has never required it's policies to apply retrospectively.</p>
	<p><b>Suggested response:</b></p> <p>PCC, as Licensing Authority, does <b>NOT</b> agree with this recommendation. It is accepted practice that any new or updated policies that are put in place are not applied retrospectively. To do so would, in our view, place significant burdens upon the private hire and taxi trades as well as the licensing authority itself.</p> <p>For example: Council A introduces a policy to licence vehicles up to 10 years old. This policy is then reviewed and the age limit reduces to 8 years. This would mean that any vehicle that was licensed under the previous policy would then need to be replaced earlier than was originally agreed. This would create a financial burden upon the vehicle proprietor who would, quite reasonably, have an expectation that the investment in the vehicle would be recouped over the 10 years under the previous policy and through no fault of the proprietor, that financial planning would be lost.</p> <p>In addition, it would create an additional burden upon the licensing authority to introduce processes and procedures to review issued licences and the potential risk of appeal to the</p>

No.	Consultation Questions
	Magistrates' Court by persons aggrieved by the revocation/non-renewal of the licence. The preferred approach in terms of introducing new/amended policy is to apply the new policy requirements with effect from the date they come into effect.
6	<b>The draft statutory guidance recommends that all drivers should be subject to an enhanced Disclosure and Barring Service (DBS) with barred lists check for individuals applying for or renewing taxi and PHV driver licences (paragraph 2.32). Do you agree with this recommendation?</b>
	<b>Policy:</b> See Chapter 8 - The test of "fit and proper" - Paragraph 8.1 of the policy refers to the DBS enhanced checks undertaken by PCC. These checks include a barred lists check as part of the enhanced level of check undertaken.  The category of check currently undertaken is under "child and adult workforce". DBS have advised that an alternative category of check ("Other Workforce) should be undertaken but that will still provide access to the barred lists.
	<b>Suggested Response:</b> PCC agree with the recommendation that all DBS checks should include checks on the barred lists.
7	<b>The draft statutory guidance recommends that all licence holders should be required to subscribe to the DBS update service (paragraph 2.38). Do you agree with this recommendation?</b>
	<b>Policy:</b> PCC does not currently require applicants or licence holders to subscribe to the DBS update service.
	<b>Suggested Response:</b> PCC has no opinion on this requirement but recognises that the update service requires the applicant/licence holder to pay a fee of £13 per year to subscribe to the service.
8	<b>The draft statutory guidance recommends that appropriate DBS checks are conducted every 6 months (paragraph 2.39). Do you agree with this recommendation?</b>
	<b>Policy:</b> See Chapter 8 - The test of "fit and proper". Paragraph 8.1 states that DBS checks will be undertaken every 3 years.
	<b>Suggested Response:</b> PCC currently requires DBS checks to be undertaken every 3 years (in line with guidance issued by the DBS). It is not considered necessary for checks to be undertaken at any other shorter period if the Common Law Police Disclosure requirements are robust enough to enable Police Authorities to contact the Licensing Authority if convictions are recorded which would impact upon the individual's suitability to hold a licence. As we have in excess of 1300 drivers licensed with this authority, to check DBS records every 6

No.	Consultation Questions
	months would have resource implications upon the Licensing Authority.
9	<p><b>The draft statutory guidance recommends that drivers and operators should be required to notify the issuing authority within 48 hours upon arrest and release, charge or conviction of any motoring offence or any offence involving dishonesty, indecency or violence (paragraph 2.41). Do you agree with this recommendation?</b></p>
	<p><b>Policy:</b> See Chapter 14 - Conditions of licence and byelaws - Drivers, proprietors and operators are currently required to notify the Council within 24 hours of any arrest, detention or charges being preferred against them or imposition of any conviction, caution, reprimand or warning.</p>
	<p><b>Suggested Response:</b></p> <p>PCC has no objection to the proposed requirement as our current policy guidelines require drivers, proprietors and operators are currently required to notify the Council within 24 hours of any arrest, detention or charges being preferred against them or imposition of any conviction, caution, reprimand or warning.</p>
10	<p><b>The draft statutory guidance recommends that licensing authorities should make referrals to the DBS when it considers that an applicant or licence holder is thought to present a potential risk of harm to the public (paragraph 2.43). Do you agree with this recommendation?</b></p>
	<p><b>Policy:</b> As this is a new process currently not undertaken by licensing authorities, there is no reference in the policy for this notification process.</p>
	<p><b>Suggested Response:</b></p> <p>PCC would support any initiative or process that further safeguards the public, particularly children and vulnerable persons.</p> <p>Any such process however would need guidance from the DBS as to the criteria and definition of "potential risk of harm to the public".</p>
11	<p><b>The draft statutory guidance recommends that a check of overseas criminality information or 'Certificate of Good Character' should be required, when an individual has spent a period of more than 3 continuous months outside the UK when over the age of 18 (paragraph 2.47). Do you agree with this recommendation?</b></p>
	<p><b>Policy:</b> See Chapter 8 - The test of "fit and proper" - Paragraph 8.1 which states:</p> <p>Any person who has lived overseas for any period of time since the age of 10 will be required to provide proof of fitness by way of a "certificate of good conduct" obtained via an embassy or other recognised government agency and to be authorised by an accredited notary. The certificate must be provided for both criminal AND motoring matters and be translated into English. ONLY ORIGINAL DOCUMENTS WILL BE ACCEPTED.</p>
	<p><b>Suggested Response:</b></p> <p>PCC already requires, as a matter of policy, applicants to provide a check of overseas criminality and therefore fully supports the recommendation.</p>

No.	Consultation Questions
12	<p><b>The draft statutory guidance recommends that licensing authorities should require applicants / licensees to disclose if they have been licensed elsewhere, or have had an application for a licence refused, or have had a licence revoked or suspended by any other licencing authority (paragraph 2.57). Do you agree with this recommendation?</b></p>
	<p><b>Policy:</b></p> <p>Whilst not contained within the statement of licensing policy, as part of the application process, an applicant for the grant or renewal of a driver licence is required to disclose information concerning their previous licensing history and any relevant information as part of the application form.</p>
	<p><b>Suggested Response:</b></p> <p>PCC fully supports this recommendation.</p>
13	<p><b>The draft statutory guidance recommends that licensing authorities should use tools such as the national register of taxi and PHV driver licence refusals and revocations (NR3) to improve information sharing (paragraph 2.58). Do you agree with this recommendation?</b></p>
	<p><b>Policy:</b></p> <p>Reference to the national register is not within the current statement of licensing policy as it was introduced after the adoption of the policy in 2016 (national register introduced in August 2018). However, the Licensing Authority is registered with the NAFN (National Anti-Fraud Network) and further project work is proposed, in consultation with the information governance team, to implement the use of the NR3.</p>
	<p><b>Proposed Response:</b></p> <p>PCC fully supports this recommendation.</p>
14	<p><b>The draft statutory guidance recommends that the authority considering an application for or renewal of a licence should consult and consider other licensing decisions in its assessment, when an applicant / licensee discloses they have had an application refused, or had a licence revoked or suspended elsewhere (paragraph 2.60). Do you agree with this recommendation?</b></p>
	<p><b>Policy:</b></p> <p>See Chapter 15 - Licensing Enforcement - Paragraph 4.4. Our current policy states that:</p> <p><i>"The council may share details of convictions recorded with partner agencies in appropriate circumstances and subject to compliance with the Data Protection Act."</i></p> <p>Given known problems with drivers having licences revoked by this authority and then applying in neighbouring districts and subsequently working in the original licensing area (cross-border issues), information is shared amongst our neighbours in Hampshire and the IOW in those circumstances where licences are revoked. Any information shared also</p>

No.	Consultation Questions
	meets the requirements of GDPR.
	<p><b>Proposed Response:</b></p> <p>PCC fully supports this recommendation.</p>
15	<p><b>The draft statutory guidance recommends that multi-agency safeguarding hubs (or similar) should be established by licensing authorities to improve the sharing of relevant information (paragraph 2.64). Do you agree with this recommendation?</b></p>
	<p><b>Policy:</b></p> <p>See Chapter 15 - Licensing Enforcement - Paragraph 11.3 which states:</p> <p><i>"An understanding that any child protection and safeguarding issues are raised immediately with management and, if necessary, referred to the Multi-Agency Safeguarding Hub (MASH) for consideration"</i></p> <p>PCC has already established a safeguarding hub and the Licensing Service report into that group when and if child protection and safeguarding issues arise.</p>
	<p><b>Proposed Response:</b></p> <p>PCC fully supports this recommendation.</p>
16	<p><b>The draft statutory guidance recommends that licensing authorities should produce guidance for passengers on making complaints directly to the licensing authority that must be displayed in licensed vehicles (paragraph 2.66). Do you agree with this recommendation?</b></p>
	<p><b>Policy:</b></p> <p>See Chapter 10 - Vehicle specification requirements - paragraph 4.4 (10)</p> <p><i>"Provision is made within the policy that a vehicle proprietor shall comply with any approved local livery requirements for both hackney carriage and private hire vehicles and so far as this relates to roof signs for hackney carriages and all exterior and interior signage".</i></p> <p>The internal livery for private hire and hackney carriage vehicles requires the display of a dashboard sticker which indicates the licence number of the vehicle and contact details for the licensing service.</p> <p>Hackney carriage vehicles also have to display a fare tariff for passengers within the vehicle and this provides contact details as well.</p>
	<p><b>Proposed Response:</b></p> <p>PCC fully supports this recommendation.</p>

No.	Consultation Questions
17	<p><b>The draft statutory guidance recommends that all licensing authorities should, as a condition of licensing, require drivers to undertake safeguarding training (paragraph 2.72). Do you agree with this recommendation?</b></p>
	<p><b>Policy:</b> See Chapter 8 - The test of "fit and proper" - Paragraph 13.</p> <p>All driver applicants must complete and pass various assessments of various topics relevant to the hackney carriage and private hire trade. This test has now been extended to include modules relating to disability awareness and child sexual exploitation (CSE).</p>
	<p><b>Proposed Response:</b> PCC fully supports this recommendation.</p>
18	<p><b>The draft statutory guidance recommends that all licensing authorities should consider whether an applicant for a licence is able to communicate in English orally and in writing with customers (paragraph 2.79). Do you agree with this recommendation?</b></p>
	<p><b>Policy:</b> See Chapter 8 - The test of "fit and proper" - Paragraph 12.</p> <p>All driver applicants must complete and pass an English language proficiency assessment.</p>
	<p><b>Proposed Response:</b> PCC fully supports this recommendation.</p>
19	<p><b>The draft statutory guidance recommends that 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 (paragraph 2.81). Do you agree with this recommendation?</b></p>
	<p><b>Policy:</b> See Chapter 15 - Licensing Enforcement - Paragraph 11.</p> <p><i>"Licensing enforcement staff carry out regular evening work either as part of normal duties, in response to the receipt of specific complaints and/or by way of operation orders in partnership with the Police and other agencies including staff from Adams Morey and Civil Enforcement colleagues".</i></p> <p>Other targeted operations have been undertaken with colleagues from other licensing authorities in Hampshire and IOW where officers have been jointly authorised to undertake compliance and enforcement action. This included undertaking random drug screening of drivers licensed by Southampton City Council at the authority's request.</p>

No. Consultation Questions	
	<p><b>Proposed Response:</b></p> <p>PCC fully supports this recommendation.</p>
20	<p><b>The draft statutory guidance recommends that PHV operators (applicants or licensees) should be subject to a basic DBS check (paragraph 2.91). Do you agree with this recommendation?</b></p>
	<p><b>Policy:</b></p> <p>See Chapter 8 - The test of "fit and proper" - Paragraph 8</p> <p><i>"Basic DBS checks will be required for private hire operators, upon subsequent renewal, and may be required for vehicle proprietors (if deemed necessary)".</i></p>
	<p><b>Proposed Response:</b></p> <p>PCC fully supports this recommendation.</p>
21	<p><b>The draft statutory guidance recommends that PHV operators should, as a condition of licensing, be required to keep a register of all staff that will take bookings or dispatch vehicles (paragraph 2.97). Do you agree with this recommendation?</b></p>
	<p><b>Policy:</b></p> <p>No current provisions within the statement of licensing policy as regards staff employed by PHV operators.</p>
	<p><b>Proposed Response:</b></p> <p>PCC does not, based upon the justification given in the draft statutory guidance, support this recommendation. It is our view that this requirement goes beyond the "fit and proper" requirements for licensed operators.</p> <p>It would have been advantageous if evidence had been provided as to exactly what risk staff taking bookings over the phone present to the travelling public, particularly relating to safeguarding of children and vulnerable adults. We suspect that there is minimal risk attached to such employees and that the proposed approach set out in the statutory guidance is excessive compared to the risk.</p> <p>Equally, who would ultimately sanction any policy relating to employment of ex-offenders? Would it, by reason that it is a requirement as a condition, be incumbent upon the Licensing Authority to challenge any employment policy if it considered that it would not adequately safeguard children or vulnerable adults.</p> <p>This is not the role of the licensing authority.</p> <p>We therefore do not consider it reasonable, nor proportionate, to make such a requirement as a condition of licence.</p>

No.	Consultation Questions
22	<p>The draft statutory guidance recommends that PHV operators should be required to evidence that they have had sight of a basic DBS check on all individuals listed on the above register (paragraph 2.97). Do you agree with this recommendation?</p>
	<p><b>Policy and Proposed Response</b> - see comments for question 21 above.</p>
23	<p>The draft statutory guidance recommends that PHV operators should, as a condition of licensing, be required to provide to the licensing authority their policy on employing ex-offenders that will take bookings or dispatch vehicles (2.98). Do you agree with this recommendation?</p>
	<p><b>Policy and Proposed Response</b> - see comments for question 21 above.</p>
24	<p>The draft statutory guidance recommends that, as a condition of the licensing, a PHV operator may not use a driver who does not hold a PHV licence (but may hold a PCV licence) to use a public service vehicle to carry out a PHV booking (paragraph 2.100). Do you agree with this recommendation?</p>
	<p><b>Policy:</b></p> <p>No reference within policy to this working practice. The recommendation may have arisen as a result of problems in other regions but PCC has no evidence to suggest any particular concerns within its area.</p>
	<p><b>Proposed Response:</b></p> <p>No concerns regarding the proposal and we recognise that to insist that only vehicles licensed as PHVs are dispatched by the operator to fulfil a booking would prevent confusion if complaints are subsequently received or where the vehicle does not meet the specification attributable to licensed PHVs.</p>
25	<p>The draft statutory guidance recommends that PHV operators should, as a condition of licensing, be required to record the information detailed in paragraph 2.101. Do you agree with this recommendation?</p>
	<p><b>Policy:</b></p> <p>See Chapter 14 - Conditions of licence and byelaws - Appendix</p> <p><i>"The operator shall maintain, for a period of 12 months, a record of every booking for a private hire vehicle or hackney carriage vehicle invited or accepted by him, whether by accepting the same from the hirer or by undertaking it at the request of another operator (from within the district or elsewhere) and shall produce such records, including transcripts of any phone calls associated with a booking, within 24 working hours on request to any authorised officer of the council or to any Police Officer.</i></p> <p><i>The records shall contain:-</i></p> <p><i>(a) The time and date the booking was made;</i></p> <p><i>(b) The name and contact telephone details of the hirer;</i></p> <p><i>(c) The time and date of the pick-up address;</i></p>



No.	Consultation Questions
	<p>(d) <i>The destination(s);</i></p> <p>(e) <i>The vehicle and driver details allocated to the hiring;</i></p> <p>(f) <i>If available, and for a period of 6 months, the Global Positioning Signal (GPS) vehicle tracking movements for the booking;</i></p> <p>(g) <i>A unique identifier and reference in respect of all bookings for a private hire vehicle accepted by the operator from another Portsmouth operator OR from a person licensed to operate outside of Portsmouth and bookings passed on to another operator whether within Portsmouth or elsewhere".</i></p> <p>The above requirements mirror the draft statutory guidance.</p>
	<p><b>Proposed Response:</b></p> <p>PCC fully supports this recommendation.</p>
26	<p><b>The draft statutory guidance recommends that licensing authorities should carefully consider potential public safety benefits and potential privacy issues when considering a policy mandating that taxis and PHVs have CCTV installed (paragraphs 2.104 to 2.109). Do you agree with this recommendation?</b></p>
	<p><b>Policy:</b></p> <p>See Chapter 13 - CCTV provision in vehicles</p> <p>PCC has implemented a policy for the mandatory provision of CCTV in hackney carriage and private hire vehicles.</p>
	<p><b>Proposed Response:</b></p> <p>PCC supports this recommendation in principle but any assessment must have regard to the overall aim of the protection of the travelling public balanced against potential privacy issues as highlighted by the ICO.</p>
27	<p><b>The draft statutory guidance recommends that licensing authorities should consider licensing vehicles with an Individual Vehicle Approval certificate, even if the passenger capacity is unclear, but under the strict condition that the vehicle will not be used to carry more than 8 passengers (paragraph 2.118). Do you agree with this recommendation?</b></p>
	<p><b>Policy:</b></p> <p>See Chapter 10 - Vehicle Specification Requirements - Resolution</p> <p>The current policy complies with this recommendation as the Licensing Authority will grant licences to vehicles with an IVA certificate and set capacity limits up to 8 passengers (e.g limousine vehicles).</p>

No. Consultation Questions	
	<p><b>Proposed Response:</b></p> <p>PCC fully supports this recommendation</p>
28	<p><b>The draft statutory guidance proposes that the Department for Transport issue guidance on the assessment of previous convictions (paragraph 2.50). Do you agree with this recommendation?</b></p>
	<p><b>Policy:</b></p> <p>See Chapter 8 - The test of "fit and proper" - page 47</p> <p>PCC has already adopted guidelines on the relevance of convictions and behaviour which were updated in 2016.</p>
	<p><b>Proposed Response:</b></p> <p>PCC is of the view that any statutory guidance provided by the DfT must include guidance on determining the suitability of taxi and PHV licence holders. This is particularly relevant given that the guidance will be issued in accordance with the Policing and Crime Act 2017 and that the DfT expects recommendations within the guidance to be implemented unless there is compelling reason not to.</p> <p>PCC also agrees that any recommendations within the guidance should be taken as a minimum in all but truly exceptional circumstance but that the Licensing Authority must consider each case on its own merits, and applicants are entitled to a fair and impartial public hearing of their application if required.</p>
29	<p><b>Annex A of the draft statutory guidance provides a list of offences to aid consistency in the 'fit and proper' assessment for licences. Do you think that the list provides enough detail to do this?</b></p>
	<p><b>Policy:</b></p> <p>See Chapter 8 - The test of "fit and proper"</p> <p>See response for recommendation 28 above.</p>
	<p><b>Proposed Response:</b></p> <p>PCC consider that there should be references to General Inappropriate Conduct (which would include that of a sexual nature, persistent and justified complaints about the conduct of an individual driver or any other matter not specifically mentioned above and/or where the reporting officer is not prepared to support an application or continued licensing).</p> <p>In addition there should be reference to substance abuse where an applicant or licence holder has not been convicted but there are sufficient concerns to consider that an individual is not fit and proper to hold a licence.</p>

No.	Consultation Questions
	<p>Such scenerios would include where there is evidence of illicit drug use either by way of medical examination or drug test failure.</p> <p>Similarly if there is evidence of excessive alcohol use.</p>
30	<p><b>Are there any offences that should be added to the list in Annex A of the statutory guidance?</b></p>
	<p><b>Policy:</b></p> <p>See Chapter 8 - The test of "fit and proper"</p> <p>See response for recommendation 28 above.</p>
	<p><b>Proposed Response:</b></p> <p>The draft statutory guidance does not make mention of any offences against the 1847 or 1976 Acts which should also include the byelaws and a breach of licensing conditions</p>
31	<p><b>If you answered yes, please list the offence(s) and the period you consider appropriate to prevent the granting of a licence under most circumstances.</b></p>
	<p><b>Policy:</b></p> <p>See Chapter 8 - The test of "fit and proper" and Chapter 15 - Licensing Enforcement Paragraph 3.0 - Table of Offences.</p>
	<p><b>Proposed Response:</b></p> <p>For any offences under the 1847 or 1976 Acts - normally 1 year ban from obtaining or holding a licence after date of conviction.</p>
32	<p><b>Do you have data relating to alleged offences committed in licensed vehicles either against or by passengers? If you have and are prepared to share this with us please add to your response.</b></p>
	<p>Anonymised data can be provided to the DfT.</p>
33	<p><b>If you have any comments or other data that may be relevant to the Impact Assessment please provide this.</b></p>
	<p>None</p>

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# Agenda Item 5



Portsmouth  
CITY COUNCIL

**Title of meeting:** LICENSING COMMITTEE

**Date of meeting:** 22 MARCH 2019

**Subject:** SECTION 165 AND 167 OF THE EQUALITY ACT 2010 -  
WHEELCHAIR ACCESSIBLE VEHICLES

**Report by:** DIRECTOR OF CULTURE, LEISURE AND REGULATORY  
SERVICES

**Wards affected:** ALL

**Key decision:** No

**Full Council decision:** No

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## 1. Purpose of report

1.1 The purpose of this report is twofold, namely:

- To inform the Committee as regards the provisions of Section 165 and 167 of the Equality Act 2010 ("The Act") in respect of wheelchair accessible vehicles; and
- For the Committee to determine whether to instruct officers to compile a list of designated vehicles in accordance with the requirements of the Act.

## 2. Recommendations

2.1 **1) That the Committee determine whether to progress the introduction of a list of designated vehicles in accordance with the Equality Act 2010; and**

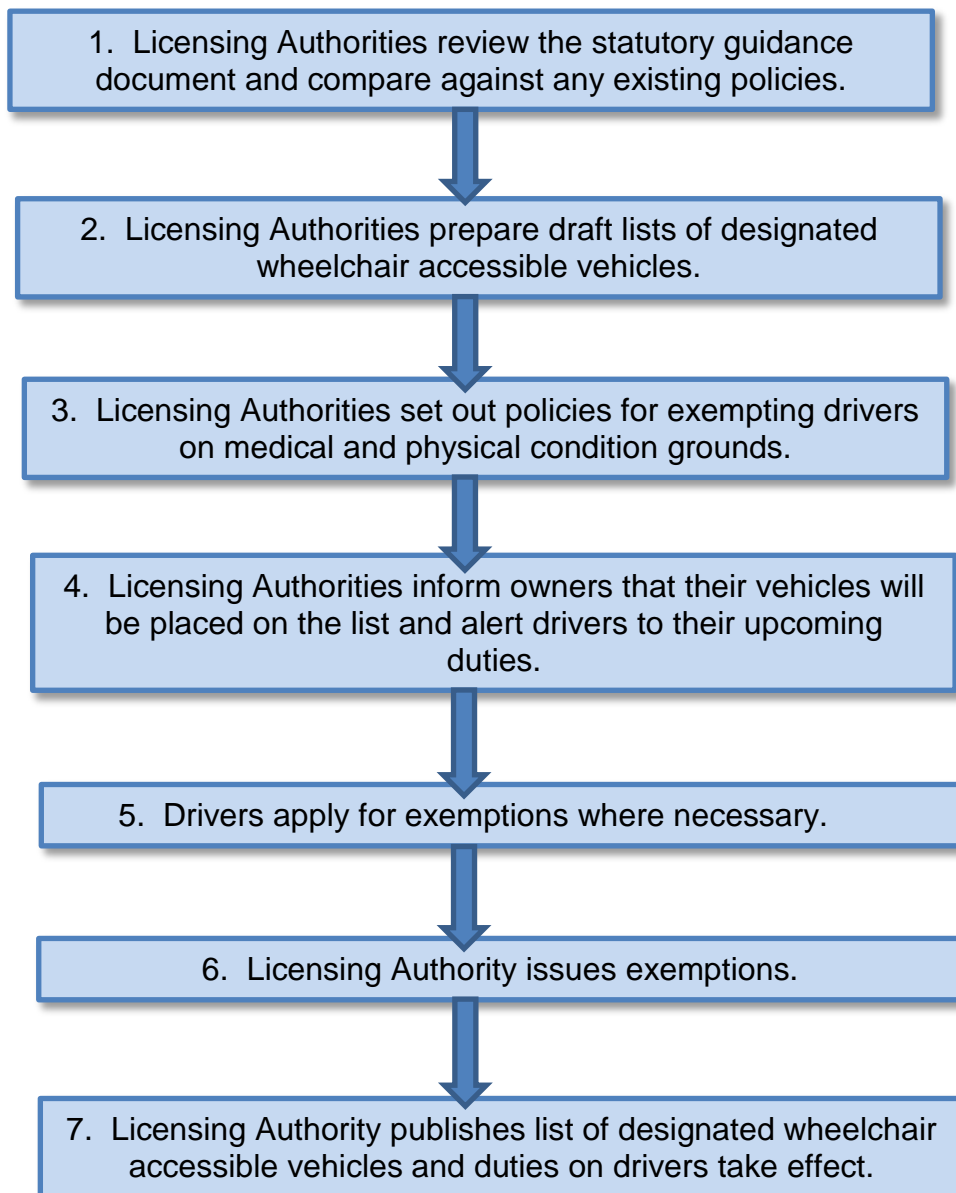
**2) If the Committee wish to approve the arrangements as set out in the Act, that:**

- **Delegated authority is granted to the Head of Culture, Leisure and Regulatory Services to commence action as set out in paragraph 3.9 of this report; and**
- **Delegated authority is granted to the Head of Culture, Leisure and Regulatory Services to introduce and maintain such a list, including updates where appropriate, together with the issue and refusal of exemption certificates to licensed drivers in accordance with 166 of the Act.**

### 3. Background

- 3.1 Section 167 of the Equality Act 2010 permits, but does not require, licensing authorities to maintain a designated list of wheelchair accessible taxis and private hire vehicles.
- 3.2 This section originally had its basis in section 36A of the Disability Discrimination Act 1995, which allowed licensing authorities to maintain lists of wheelchair-accessible vehicles with special licences to operate a local bus service. The 2010 Act now extends this provision to allow licensing authorities to also include wheelchair-accessible vehicles that hold only conventional licences.
- 3.3 If a LA maintains a list of "designated vehicles" in accordance with section 167, section 165 of the Act requires drivers of those vehicles to carry passengers in wheelchairs, provide assistance to those passengers and prohibits them from charging extra.
- 3.4 Section 166 enables drivers to be granted an exemption certificate by the LA, where it is appropriate to do so, on medical grounds or because the driver's physical condition makes it impossible or unreasonably difficult for them to comply with those duties.
- 3.5 Sections 165 to 167 of the Act were commenced on 6 April 2017 and the Government has also produced statutory guidance in relation to access for wheelchair users to taxis and private hire vehicles which is attached as **Appendix A**.
- 3.6 The guidance document has been issued under section 167(6) of the Act and provides assistance to licensing authorities in the implementation of legal provisions intended to assist passengers in wheelchairs in their use of designated taxi and private hire vehicle (PHV) services.
- 3.7 In particular, the guidance encourages LAs to put in place sensible and manageable transition procedures to ensure smooth and effective implementation of these provisions. Clear advice is given that LAs should only publish lists of wheelchair accessible vehicles for the purposes of section 165 of the Act when they are confident that those procedures have been put into place, drivers and owners notified of the new requirements and given time to apply for exemptions where appropriate.
- 3.8 The guidance suggests that the above arrangements should take no more than a maximum of six months to put in place, but recognise that this would be dependent upon individual circumstances.

3.9 A flowchart setting out the process the LA could follow has been provided in the guidance and is replicated below for easy reference:



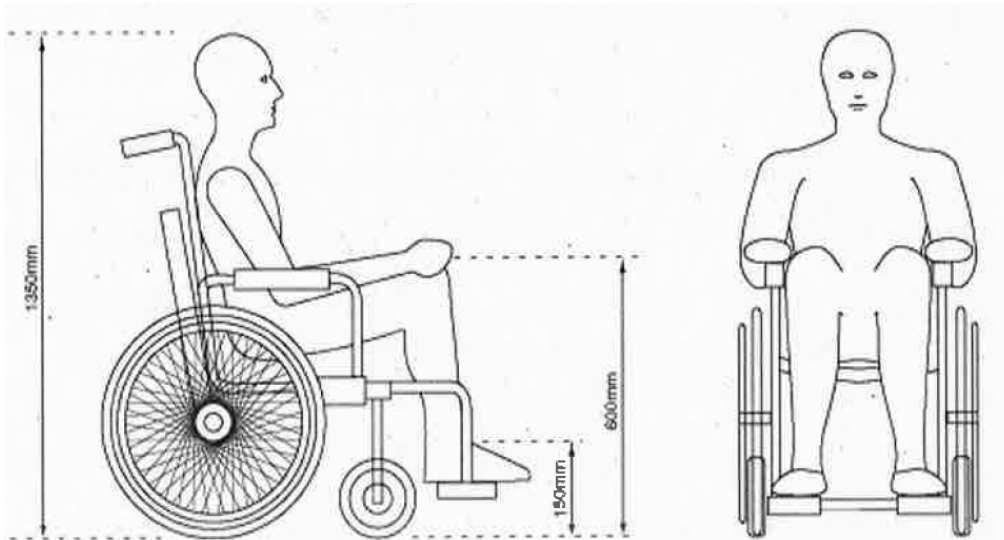
**Officer advice:** It is recommended that if the Committee wish to designate wheelchair accessible vehicles that they follow the above process but may wish to receive a further report from Officers after Action 3 to review and endorse the proposed draft list and policy.

### 3.10 Vehicles that can be designated

The Act states that a vehicle can be included on a LA's list of designated vehicles if it conforms to such accessibility requirements as the LA thinks fit. It also states that vehicles placed on the designated list should be able to carry passengers in their wheelchairs should they prefer.

3.11 This means that to be placed on a LA's list, a vehicle must be capable of carrying some - but not necessarily all - types of occupied wheelchairs. The guidance therefore recommends that a vehicle should only be included in the authority's list if it would be possible for the user of a "reference wheelchair" to enter, leave and travel in the passenger compartment in safety and reasonable comfort whilst seated in their wheelchair.

3.12 A "reference wheelchair" (as defined in Schedule 1 of the Public Service Vehicle Accessibility Regulations 2000) means an occupied wheelchair having the dimensions shown below:



3.13 The guidance recognises that this approach will mean that some types of wheelchair, particularly some powered wheelchairs, may be unable to access some of the vehicles included in the LA's list. The Act recognises this possibility, and section 165(9) provides a defence for the driver if it would not have been possible for the wheelchair to be carried safely in the vehicle.

3.14 By preparing and publishing lists of designated vehicles, it is the aim of the guidance to ensure that passengers in wheelchairs have the information they need to make informed travel choices and, as importantly, drivers and vehicle owners are clear about the duties and responsibilities placed upon them.

3.15 Such lists should set out the details of the make and model of the vehicle, together with specifying whether the vehicle is a taxi or private hire, and stating the name of the operator. The guidance suggests that where possible it would also be helpful to include information about the size and weight of wheelchair that can be accommodated and whether wheelchairs that are larger than a "reference wheelchair" can be accommodated.

3.16 Section 172 of the Act permits vehicle owners to appeal against the decision of a LA to include their vehicles on the designated list. That appeal should be made to the Magistrates' Court and must be made within 28 days of the vehicle in question being included on the LA's published list.



3.17 The Committee are advised that there are currently a total of 118 wheelchair accessible vehicles licensed with PCC. They are split as follows:

Hackney Carriage Vehicles - 87

Private Hire Vehicles - 31

### 3.18 **Driver responsibilities**

Section 165 of the Act sets out the duties placed on drivers of designated vehicles which are:

- To carry the passenger while in the wheelchair;
- Not to make any additional charge for doing so;
- If the passenger chooses to sit in a passenger seat to carry the wheelchair;
- To take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort; and
- To give the passenger such mobility assistance as is reasonable required.

3.19 Mobility assistance is defined as assistance:

- To enable the passenger to get into or out of the vehicle;
- If the passenger wishes to remain in the wheelchair, to enable the passenger to get into and out of the vehicle while in the wheelchair;
- To load the passengers luggage into or out of the vehicle;
- If the passenger does not wish to remain in the wheelchair, to load the wheelchair into or out of the vehicle.

3.20 Once the list of designated vehicles is published, it will then become an offence for the driver (unless exempt) of a taxi or private hire vehicle which is on the list to fail to comply with the above requirements. A person found guilty of any offence under this section of the Act is liable to a fine not exceeding level 3 on the standard scale (£1,000).

3.21 The provisions now close a void in that no specific offences for refusing to take a passenger in a wheelchair were previously enabled. The Council has, however, prosecuted hackney carriage drivers under section 53 of the Town Police Clauses Act 1847 for "refusing to drive" but this rather archaic provision does NOT apply to private hire drivers. The enabling provisions of the Equality Act 2010, should the Committee wish to implement them, now effectively provide for a specific offence should drivers of designated vehicles refuse to undertake such journeys.

### 3.22 **Driver exemptions**

Some drivers may have a medical condition or a disability or physical condition which makes it impossible or unreasonably difficult for them to provide the sort of physical assistance which these duties require. The Act, therefore allows the LA to grant exemptions from the duties to individual drivers (as set out in section 166 of the Act).

3.23 The guidance advises that decisions on exemptions will be fairer and more objective if medical assessments are undertaken by professionals who have been specifically trained and who are independent of the applicant.

3.24 In addition to the LA issuing an exemption certificate, exempt drivers need to be issued with a notice of exemption for display in their vehicle.

3.25 Section 172 of the Act provides an appeal mechanism for drivers to appeal against a decision of the LA not to issue an exemption certificate. That appeal must be made at the Magistrates' Court within 28 days beginning with the date of the refusal.

3.26 The Committee may also be aware of the recent adoption of the Equality and Diversity Strategy for 2019-2022 on 22 January 2019 by the Cabinet Member for Resources. The strategy is available at this link:  
<https://democracy.portsmouth.gov.uk/ieListDocuments.aspx?CId=168&MId=4046&Ver=4>

Reference is made within this document to Section 167 of the Equality Act 2010 and consideration by the Licensing Committee.

## 4. **Reasons for recommendations**

To have regard to the provisions within the Equality Act 2010 and to establish whether or not the Licensing Authority wishes to publish a list of designated wheelchair accessible vehicles having regard to the statutory guidance.

## 5. **Equality impact assessment (EIA)**

A preliminary EIA is attached as **Appendix B**, the main points from the EIA were as follows:

- Introducing this will help to eliminate unlawful discrimination that disabled people experience daily
- This will ensure disabled people experience a service that will not put them at a disadvantage and ensure that are not charged them more for their journey

**6. Legal Implications**

6.1 The legal implications are embodied within this report.

**7. Finance Comments**

7.1 If the Committee wish to introduce a list of designated wheelchair accessible vehicles, it is anticipated that this duty can currently be managed through the existing licensing budget.

.....  
Signed by:

**Appendices:**

- Appendix A - Access for Wheelchair users to Taxis and Private Hire Vehicles - Statutory Guidance**
- Appendix B - Preliminary EIA**

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

<b>Title of document</b>	<b>Location</b>
Equality Act 2010	<a href="https://www.legislation.gov.uk/ukpga/2010/15/contents">https://www.legislation.gov.uk/ukpga/2010/15/contents</a>

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by ..... on .....

.....  
Signed by:

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# Access for wheelchair users to Taxis and Private Hire Vehicles

## Statutory Guidance

**Moving Britain Ahead**

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# Ministerial Foreword



This Government is committed to ensuring that transport works for everyone, including disabled people. Since joining the Department for Transport in 2015, and taking on Ministerial responsibility for transport accessibility, I have made it my mission to challenge the status quo and encourage innovative thinking to improve access to transport across the modes.

I know however, that despite the real improvements which have taken place in recent years, some disabled passengers still face discrimination when attempting to travel. I am clear that this is unacceptable.

Owners of assistance dogs are already protected by provisions in the Equality Act 2010 which make it unlawful to refuse or charge them extra. I want similar protections to apply to wheelchair users, which is why I am delighted that we have commenced the remaining parts of sections 165 and 167 of the Equality Act 2010, making it a criminal offence for drivers of designated taxi and private hire vehicles to refuse to carry passengers in wheelchairs, to fail to provide them with appropriate assistance, or to charge them extra. I hope that in so doing we will send a clear signal to the minority of drivers who think it acceptable to discriminate on grounds of disability that such behaviour will not be tolerated – and, more importantly, to enable wheelchair users to travel with confidence.

A handwritten signature in blue ink that reads "Andrew Jones". The signature is written in a cursive style with a large initial 'A'.

**Andrew Jones MP,  
Parliamentary Under Secretary of State, Department for Transport**



# 1. Introduction

## Status of guidance

- 1.1 This guidance document has been issued in order to assist local licensing authorities (LAs) in the implementation of legal provisions intended to assist passengers in wheelchairs in their use of designated taxi and private hire vehicle (PHV) services. It provides advice on designating vehicles as being wheelchair accessible so that the new protections can apply, communicating with drivers regarding their new responsibilities and handling requests from drivers for exemptions from the requirements.
- 1.2 This is a statutory guidance document, issued under section 167(6) of the Equality Act 2010 and constitutes the Secretary of State's formal guidance to LAs in England, Wales and Scotland on the application of sections 165 to 167 of the Equality Act 2010. LAs must have regard to this guidance document.

## 2. Putting the law into practice

### Background

- 2.1 We have commenced sections 165 and 167 of the [Equality Act 2010](#) (“the Act”), in so far as they were not already in force. Section 167 of the Act provides LAs with the powers to make lists of wheelchair accessible vehicles (i.e. “designated vehicles”), and section 165 of the Act then requires the drivers of those vehicles to carry passengers in wheelchairs, provide assistance to those passengers and prohibits them from charging extra.
- 2.2 The requirements of section 165 do not apply to drivers who have a valid exemption certificate and are displaying a valid exemption notice in the prescribed manner. An exemption certificate can be issued under section 166 of the Act, which is already in force. This allows LAs to exempt drivers from the duties under section 165 where it is appropriate to do so, on medical grounds or because the driver’s physical condition makes it impossible or unreasonably difficult for them to comply with those duties.
- 2.3 On 15<sup>th</sup> September 2010, the Department for Transport issued guidance on the Act which stated, in relation to section 167, *“although the list of designated vehicles will have no actual effect in law until the duties are commenced, we would urge licensing authorities to start maintaining a list as soon as possible for the purpose of liaising with the trade and issuing exemption certificates”*.
- 2.4 We therefore recognise that many LAs have already implemented some of these provisions, including publishing lists of wheelchair accessible vehicles and exempting drivers. Therefore, there are likely to be a range of approaches being used in practice by LAs across England, Wales and Scotland.

### Transitional arrangements

- 2.5 We want to ensure that the commencement of sections 165 and 167 of the Act has a positive impact for passengers in wheelchairs, ensures they are better informed about the accessibility of designated taxis and PHVs in their area, and confident of receiving the assistance they need to travel safely.
- 2.6 But we recognise that LAs will need time to put in place the necessary procedures to exempt drivers with certain medical conditions from providing assistance where there is good reason to do so, and to make drivers aware of these new requirements. In addition, LAs will need to ensure that their new procedures comply with this guidance, and that exemption notices are issued in accordance with Government regulations. This will ensure that we get a consistent approach and the best outcomes for passengers in wheelchairs.
- 2.7 As such, we would encourage LAs to put in place sensible and manageable transition procedures to ensure smooth and effective implementation of this new law. LAs should only publish lists of wheelchair accessible vehicles for the purposes of

section 165 of the Act when they are confident that those procedures have been put in place, drivers and owners notified of the new requirements and given time to apply for exemptions where appropriate. We would expect these arrangements to take no more than a maximum of six months to put in place, following the commencement of these provisions, but this will of course be dependent on individual circumstances.

2.8 A flowchart setting out the sorts of processes that a LA could follow is set out below. This is an indicative illustration, and it will be down to each LA to determine the actions they need to take to ensure this new law is implemented effectively in their area.



# 3. Vehicles

## Overview

- 3.1 Section 167 of the Act permits, but does not require, LAs to maintain a designated list of wheelchair accessible taxis and PHVs.
- 3.2 Whilst LAs are under no specific legal obligation to maintain a list under section 167, the Government recommends strongly that they do so. Without such a list the requirements of section 165 of the Act do not apply, and drivers may continue to refuse the carriage of wheelchair users, fail to provide them with assistance, or to charge them extra.

## Vehicles that can be designated

- 3.3 We want to ensure that passengers in wheelchairs are better informed about the accessibility of the taxi and PHV fleet in their area, confident of receiving the assistance they need to travel safely, and not charged more than a non-wheelchair user for the same journey.
- 3.4 The Act states that a vehicle can be included on a licensing authority's list of designated vehicles if it conforms to such accessibility requirements as the licensing authority thinks fit. However, it also goes on to explain that vehicles placed on the designated list should be able to carry passengers in their wheelchairs should they prefer.
- 3.5 This means that to be placed on a licensing authority's list a vehicle must be capable of carrying some – but not necessarily all – types of occupied wheelchairs. The Government therefore recommends that a vehicle should only be included in the authority's list if it would be possible for the user of a "reference wheelchair"<sup>1</sup> to enter, leave and travel in the passenger compartment in safety and reasonable comfort whilst seated in their wheelchair.
- 3.6 Taking this approach allows the provisions of section 165 of the Act apply to a wider range of vehicles and more drivers than if LAs only included on the list vehicles capable of taking a larger type of wheelchair.
- 3.7 The Government recognises that this approach will mean that some types of wheelchair, particularly some powered wheelchairs, may be unable to access some of the vehicles included in the LA's list. The Act recognises this possibility, and section 165(9) provides a defence for the driver if it would not have been possible for the wheelchair to be carried safely in the vehicle. Paragraph 3.10 of this guidance below aims to ensure that users of larger wheelchairs have sufficient information about the vehicles that will be available to them to make informed choices about their journeys.

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<sup>1</sup> As defined in Schedule 1 of the [Public Service Vehicle Accessibility Regulations 2000](#)

## Preparing and publishing lists of designated vehicles

- 3.8 We want to ensure that passengers in wheelchairs have the information they need to make informed travel choices, and also that drivers and vehicle owners are clear about the duties and responsibilities placed on them.
- 3.9 Before drivers can be subject to the duties under section 165 of the Act, the LA must first publish their list of designated vehicles, and clearly mark it as 'designated for the purposes of section 165 of the Act'.
- 3.10 LAs should ensure that their designated lists are made easily available to passengers, and that vehicle owners and drivers are made aware. Lists should set out the details of the make and model of the vehicle, together with specifying whether the vehicle is a taxi or private hire vehicle, and stating the name of operator. Where possible it would also be helpful to include information about the size and weight of wheelchair that can be accommodated, and whether wheelchairs that are larger than a "reference wheelchair" can be accommodated.
- 3.11 However, we recognise that some passengers in wheelchairs may prefer to transfer from their wheelchair into the vehicle and stow their wheelchair in the boot. Although the legal requirement for drivers to provide assistance does not extend to the drivers of vehicles that cannot accommodate a passenger seated in their wheelchair, we want to ensure that these passengers are provided with as much information as possible about the accessibility of the taxi and PHV fleet in their area.
- 3.12 We would therefore recommend that LAs also publish a list of vehicles that are accessible to passengers in wheelchairs who are able to transfer from their wheelchair into a seat within the vehicle. It should be made clear however that this list of vehicles has not been published for the purposes of section 165 of the Act and drivers of those vehicles are therefore not subject to the legal duties to provide assistance. Authorities may however wish to use existing licensing powers to require such drivers to provide assistance, and impose licensing sanctions where this does not occur.

## Appeals

- 3.13 Section 172 of the Act enables vehicle owners to appeal against the decision of a LA to include their vehicles on the designated list. That appeal should be made to the Magistrate's Court, or in Scotland the sheriff, and must be made within 28 days of the vehicle in question being included on the LA's published list.

# 4. Drivers

## Driver responsibilities

- 4.1 Section 165 of the Act sets out the duties placed on drivers of designated wheelchair accessible taxis and PHVs.
- 4.2 The duties are:
- to carry the passenger while in the wheelchair;
  - not to make any additional charge for doing so;
  - if the passenger chooses to sit in a passenger seat to carry the wheelchair;
  - to take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort; and
  - to give the passenger such mobility assistance as is reasonably required.
- 4.3 The Act then goes on to define mobility assistance as assistance:
- To enable the passenger to get into or out of the vehicle;
  - If the passenger wishes to remain in the wheelchair, to enable the passenger to get into and out of the vehicle while in the wheelchair;
  - To load the passenger's luggage into or out of the vehicle;
  - If the passenger does not wish to remain in the wheelchair, to load the wheelchair into or out of the vehicle.
- 4.4 Once the duties are commenced, it will be an offence for the driver (unless exempt) of a taxi or PHV which is on the licensing authority's designated list to fail to comply with them. We encourage LAs to provide drivers of taxis and PHVs who are not exempt from the duties with clear guidance on their duties with respect to the carriage of passengers in wheelchairs, either as part of existing driver-facing guidance, or as supplementary communication. The Disabled Persons Transport Advisory Committee's Disability Equality and Awareness Training Framework for Transport Staff<sup>2</sup> may provide a useful resource.
- 4.5 Although each situation will be different, we take the view that reasonable mobility assistance will be subject to other applicable law, including health and safety legislation. However, we would always expect drivers to provide assistance such as folding manual wheelchairs and placing them in the luggage compartment, installing the boarding ramp, or securing a wheelchair within the passenger compartment.
- 4.6 Depending on the weight of the wheelchair and the capability of the driver, reasonable mobility assistance could also include pushing a manual wheelchair or

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<sup>2</sup>

<http://webarchive.nationalarchives.gov.uk/20080804135759/http://www.dptac.gov.uk/education/stafftraining/pdf/trainingframework-nontabular.pdf>

light electric wheelchair up a ramp, or stowing a light electric wheelchair in the luggage compartment.

- 4.7 It is our view that the requirement not to charge a wheelchair user extra means that, in practice, a meter should not be left running whilst the driver performs duties required by the Act, or the passenger enters, leaves or secures their wheelchair within the passenger compartment. We recommend that licensing authority rules for drivers are updated to make clear when a meter can and cannot be left running.

## Applying for and issuing exemptions

- 4.8 Some drivers may have a medical condition or a disability or physical condition which makes it impossible or unreasonably difficult for them to provide the sort of physical assistance which these duties require. That is why the Act allows LAs to grant exemptions from the duties to individual drivers. These provisions are contained in section 166, and were commenced on 1<sup>st</sup> October 2010.
- 4.9 Section 166 allows LAs to exempt drivers from the duties to assist passengers in wheelchairs if they are satisfied that it is appropriate to do so on medical or physical grounds. The exemption can be valid for as short or long a time period as the LA thinks appropriate, bearing in mind the nature of the medical issue. If exempt, the driver will not be required to perform any of the duties. Since October 2010, taxi and PHV drivers who drive wheelchair accessible taxis or PHVs have therefore been able to apply for exemptions. If they do not do so already, LAs should put in place a system for assessing drivers and a system for granting exemption certificates for those drivers who they consider should be exempt.
- 4.10 We suggest that authorities produce application forms which can be submitted by applicants along with evidence supporting their claim. We understand that some licensing authorities have already put in place procedures for accessing and exempting drivers, and as an absolute minimum, we think that the evidence provided should be in the form of a letter or report from a general practitioner.
- 4.11 However, the Government's view is that decisions on exemptions will be fairer and more objective if medical assessments are undertaken by professionals who have been specifically trained and who are independent of the applicant. We would recommend that independent medical assessors are used where a long-term exemption is to be issued, and that LAs use assessors who hold appropriate professional qualifications and who are not open to bias because of a personal or commercial connection to the applicant. LAs may already have arrangements with such assessors, for example in relation to the Blue Badge Scheme.
- 4.12 If the exemption application is successful then the LA should issue an exemption certificate and provide an exemption notice for the driver to display in their vehicle. As section 166 has been in force since 2010, many LAs will already have processes in place for issuing exemption certificates, and as such we do not intend to prescribe the form that those certificates should take. We are however keen to ensure that passengers in wheelchairs are able to clearly discern whether or not a driver has been exempted from the duties to provide assistance, and as such will prescribe the form of and manner of exhibiting a notice of exemption.
- 4.13 If the exemption application is unsuccessful we recommend that the applicant is informed in writing within a reasonable timescale and with a clear explanation of the reasons for the decision.

## Demonstrating exemptions

- 4.14 In addition to the exemption certificate, exempt drivers need to be issued with a notice of exemption for display in their vehicle.
- 4.15 The Department will soon make regulations which will prescribe the form of and manner of exhibiting a notice of exemption. Where a driver has been exempted from the duties under section 165 of the Act, they must display an exemption notice in the vehicle they are driving in the form and manner prescribed by the regulations. If the notice is not displayed then the driver could be prosecuted if they do not comply with the duties under section 165 of the Act.
- 4.16 The Department aims to distribute copies of the notice of exemption to LAs, but they are of course free to produce their own in accordance with the regulations.
- 4.17 Only one exemption notice should be displayed in a vehicle at any one time.

## Appeals

- 4.18 Section 172 of the Act enables drivers to appeal against the decision of a LA not to issue an exemption certificate. That appeal should be made to the Magistrate's Court, or a sheriff in Scotland, and must be made within 28 days beginning with the date of the refusal.
- 4.19 LAs may choose to establish their own appeal process in addition to the statutory process but this would need to be undertaken rapidly in order to allow any formal appeal to the Magistrate's Court to be made within the 28 day period.



# 5. Enforcement

## Licensing measures and prosecution

- 5.1 It is important to note that a driver will be subject to the duties set out in section 165 of the Equality Act 2010 if the vehicle they are driving appears on the designated list of the LA that licensed them, and the LA has not provided them with an exemption certificate, regardless of where the journey starts or ends.
- 5.2 The Government expects LAs to take tough action where drivers breach their duties under section 165 of the Act.
- 5.3 LAs have wide-ranging powers to determine the rules by which taxis and private hire vehicles within their respective areas may operate. We recommend that they use these powers to ensure that drivers who discriminate against disabled passengers are held accountable.
- 5.4 If a driver receives a conviction for breaching their duties under section 165 of the Act, it would be appropriate for the authority to review whether or not they remained a fit and proper person to hold a taxi or PHV drivers' licence. The Government's presumption is that a driver who wilfully failed to comply with section 165 would be unlikely to remain a "fit and proper person".
- 5.5 Authorities might also apply conditions which enable them to investigate cases of alleged discrimination and take appropriate action, even where prosecution did not proceed.

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# Equality Impact Assessment

Preliminary assessment form 2018

[www.portsmouthccg.nhs.uk](http://www.portsmouthccg.nhs.uk)

[www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

The preliminary impact assessment is a quick and easy screening process. It should:

- identify those policies, projects, services, functions or strategies which require a full EIA by looking at:
  - negative, positive or no impact on any of the equality groups
  - How are going to mitigate or remove any potential negative impacts
  - opportunity to promote equality for the equality groups
  - data / feedback
- prioritise if and when a full EIA should be completed
- justify reasons for why a full EIA is not going to be completed

**Directorate:**

City development and culture

**Service, function:**

Licensing

**Title of policy, service, function, project or strategy (new or old) :**

Designation of wheelchair accessible vehicles under section 167 of the Equality Act 2010 together with associated functions under section 165 and 166 of the Act.

**Type of policy, service, function, project or strategy:**

- Existing
- New / proposed
- Changed

**Q1 - What is the aim of your policy, service, function, project or strategy?**

In accordance with the provisions of sections 165 and 167 of the Equality Act 2010, the policy will provide the Licensing Authority with the powers to make lists of wheelchair accessible vehicles and requiring the drivers of those vehicles (by virtue of section 165) to carry passengers in wheelchairs, provide assistance to those passengers and prohibit them from charging extra.

**Q2 - Who is this policy, service, function, project or strategy going to benefit or have a detrimental effect on and how?**

To regulate the use of taxi and private hire vehicles to ensure that wheelchair users are able to access the services of such vehicles, to be provided with assistance and not to be charged extra for using those services.

In the city we have 16% of the population that have some sort of long term health condition that limits their day to day activities but there is no data telling us the percentage of people that use a wheelchair.

By introducing this it will ensure disabled people are not charged more but also gives confidence to disabled people that the local authority want to improve facilities to enable this group of people to participate in public life.

**Q3 - Thinking about each group below, does, or could the policy, service, function, project or strategy have a negative impact on members of the equality groups below?**

Group	Negative	Positive / no impact	Unclear
Age	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Race	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sex	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gender reassignment	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sexual orientation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Religion or belief	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pregnancy and maternity	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marriage & civil partnership	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other excluded groups	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Note:**Other excluded groups examples includes,Homeless, rough sleeper and unpaid carers. Many forms of exclusion are linked to financial disadvantage. How will this change affect people on low incomes, in financial crisis or living in areas of greater deprivation?

**If the answer is "negative" or "unclear" consider doing a full EIA**

**If there are any potential negative impacts on any of the protected characteristics, What have you put in place to mitigate or remove the negative impacts/barriers?**

Not all persons with mobility issues wish to travel in wheelchair accessible vehicles. The fleet of licensed hackney carriage and private hire vehicles will still offer the choice of typical saloon/hatchback/estate vehicles according to the Council's policy specifications.

**Q4 - Does, or could the policy, service, function, project or strategy help to promote equality for members of the equality groups? e.g. A new service has been created for people with a disability to help them gain employment this would mean that this helps promote equality for the protected characteristic of disability only.**

Group	Yes	No	Unclear
Age	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Disability	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Race	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Sex	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Gender reassignment	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Sexual orientation	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Religion or belief	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Pregnancy or maternity	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Marriage & civil partnership	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other excluded groups	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

**If the answer is "no" or "unclear" consider doing a full EIA**

**Q5 - Do you have any feedback data from the equality groups that influences, affects or shapes this policy, service, function, project or strategy?**

Please add in the text boxes below what feedback / meetings you have attended for each specific protected characteristic

Group	Positive or negative feedback
Age	
Disability	Positive feedback from Portsmouth Disability Forum for the introduction of such a list; Support from PCC Equalities Service; Equality and Diversity Strategy 2019/22 <a href="https://democracy.portsmouth.gov.uk/ieListDocuments.aspx?CId=168&amp;MId=4046&amp;Ver=4">https://democracy.portsmouth.gov.uk/ieListDocuments.aspx?CId=168&amp;MId=4046&amp;Ver=4</a>
Race	
Sex	
Gender reassignment	
Sexual orientation	
Religion or belief	
Pregnancy and maternity	
Marriage & civil partnership	
Other excluded groups	

**Q6 - Using the assessments in questions 3, 4 and 5 should a full assessment be carried out on this policy, service, function or strategy?**

yes  No

**PCC staff**-If you have to complete a full EIA please contact the Equalities and diversity team if you require help Tel: 023 9283 4789 or email: [equalities@portsmouthcc.gov.uk](mailto:equalities@portsmouthcc.gov.uk)

**CCG staff**-If you have to complete a full EIA please email: [sehccg.equalityanddiveristy@nhs.net](mailto:sehccg.equalityanddiveristy@nhs.net) if you require help

**Q7 - How have you come to this decision? Summarise your findings and conclusion below**

Given the purpose of the provisions of the Equality Act 2010 so far as they relate to hackney carriage and private hire vehicles, there is a clear indication that should the LA introduce a list of designated wheelchair accessible vehicles, it will have a positive impact on persons with mobility disabilities.

The local authority have a duty to eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act, advance equality of opportunity and Foster good relations between people who share a protected characteristic and those who do not.

We need to remove barriers or minimise disadvantages that people suffer due to their protected characteristic. We know that disabled people are the most disadvantaged group and experience discrimination in their day to day activities, by introducing this we want to demonstrate the council want to improve the lives of disable people and make sure they are not put at a disadvantage using taxis and

charged more because of their wheelchair as this mode of transport is used frequently for them to reach their destination.

Within the Equality Act 2010 it states that compliance with the duty may involve treating some people more favourably than others and this is one of those instances to enable disabled people to access this service on a level playing field as other people without disabilities.

A full EIA is not required as we know from disability groups that they feel is a the right thing to do and is in the right direction of trying to eliminate discrimination that this protected group experience. By Introducing this it will disproportionately impact positively on disabled people, no other protected group will benefit from this change so it will not have any adverse impacts on the other groups.

**Q8 - Who was involved in the EIA?**

Ross Lee, Principal Licensing Officer

**This EIA has been approved by:** Nickii Humphreys, Licensing Manager

**Contact number:** 023 9283 4604

**Date:** XXXXX

**PCC staff**-Please email a copy of your completed EIA to the Equality and diversity team. We will contact you with any comments or queries about your preliminary EIA.

Telephone: 023 9283 4789, Email: [equalities@portsmouthcc.gov.uk](mailto:equalities@portsmouthcc.gov.uk)

**CCG staff**-Please email a copy of your completed EIA to the Equality lead who will contact you with any comments or queries about your preliminary . Email: [sehccg.equalityanddiversity@nhs.net](mailto:sehccg.equalityanddiversity@nhs.net)

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**Title of meeting:** LICENSING COMMITTEE

**Date of meeting:** 22 MARCH 2019

**Subject:** Town Police Clauses Act 1847 and Part II, Local Government (Miscellaneous Provisions) Act 1976  
Hackney Carriage and Private Hire Matters - Amendments to Statement of Licensing Policy

**Report by:** DIRECTOR OF CULTURE, LEISURE AND REGULATORY SERVICES

**Wards affected:** ALL

**Key decision:** No

**Full Council decision:** No

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## 1. Purpose of report

1.1 The purpose of this report is twofold. Firstly, it is for the Committee to consider and approve amendments to its current statement of licensing policy for the hackney carriage and private hire trade in Portsmouth so far as they relate to age specifications for vehicles. Secondly, to determine whether it would wish officers to prepare a future report, together with any relevant evidence, in order to review any other aspect of the policy that the Committee considers is necessary.

## 2. Recommendations

2.1 **a) That the Licensing Committee approve the proposed amendments in respect of age specifications for private hire and hackney carriage vehicle licences as follows;**

**(i) That the Statement of Licensing Policy (reference - minute 9/2016) be amended as follows:**

**That, as a matter of local policy and condition for both hackney carriage and private hire vehicle licences; all private hire and hackney carriage vehicles presented for initial licensing shall be under 4 years of age on first licensing and may remain licensed until 8 years of age and provided the vehicle is mechanically fit and supported by an evidenced service history in line with the manufacturer's guidelines.**

- (ii) That any vehicle presented for a temporary use licence shall be under 2 years old and provided the vehicle is mechanically fit and supported by an evidenced service history in line with the manufacturer's guidelines.
- (iii) As a consequence of the change in policy in relation to age specifications, that the existing mechanical testing for both types of vehicles be varied as follows:

Vehicles 0 - 4 years of age - 1 full test per year;  
Vehicles 4 years of age and over - 2 full tests per year.

Any reference within the policy to "mini-tests" to no longer apply.

**b) That the Committee grant delegated authority to the Head of Culture, Leisure and Regulatory Services to:**

- (i) consider and determine applications for continued licensing of exceptional hackney carriage or private hire vehicles between the ages of 8 years and 10 years on individual merit and the scheme of delegation as set out in the policy be amended accordingly;
- ii) to prepare appropriate guidance to applicants seeking permission to extend the age specification in respect of individual licensed vehicles;
- (ii) charge a reasonable application fee for such applications (subject to public consultation).

**c) if considered necessary, to instruct officers to prepare a future report, together with any available evidence, that would support any review of any of the aspects of the current statement of licensing policy.**

### **3. Background**

3.1 On 24 February 2016, the Licensing Committee considered and approved its Statement of Licensing Policy (minute no. 9/2016 refers). This decision was noted and the recommendations and resolutions arising from the Licensing Committee were approved by Council on 22 March 2016 (minute no. 27/2016 refers).

3.2 In addition, Council delegated approval to the Licensing Committee to retain overall responsibility for the policy, to include any future amendments, variations, substitutions or deletions as may be required and after appropriate consultation.

- 3.3 As 3 years have now elapsed since the adoption of the policy, it is appropriate for the Committee to undertake a review of its policy and make any appropriate changes or amendments if it considers it necessary and appropriate to do so. Attached as **Appendix A** is the current statement of licensing policy.
- 3.4 The primary objective of the Committee in relation to licensing of vehicles is to ensure that licensed hackney carriages and private hire vehicles are maintained to the highest standards and that the public have access to safe, clean, environmentally friendly and comfortable vehicles.
- 3.5 Hackney Carriage and Private Hire Trade representatives have canvassed both the Licensing Service and Members via the Consultative Group Meetings, for consideration to be given to amend the current policy relating to vehicle age limits. Reasons given for this amendment include reference to the limitations of purchasing ex-fleet/lease hire vehicles which are normally made available for retail sale after 3 years.
- 3.6 Members gave tacit approval, in principle, to extend the entry age requirement for vehicles from 3 years to 4 years provided the empirical evidence from the Council's nominated vehicle inspector supported this proposal. Attached as **Appendix B** is a summary of vehicle testing for the last 5 years which shows a significant decrease in numbers of vehicle test failures for younger vehicles. This has been more evident since the introduction of the age policy restrictions in 2016.
- 3.7 The current policy recognises a drive towards licensing a fleet of younger, cleaner and greener vehicles and highlighted at the time that the Licensing Authority, in discussion with those responsible for environmental health issues, should wish to consider how far their vehicle licensing policies can and should support any local environmental policies that the local authority may have adopted.
- 3.8 The Council is required through a Ministerial Directive to produce an Air Quality Plan to achieve compliance city-wide with legal limits for nitrogen dioxide. The Council is therefore currently looking at various measures to improve air quality in the city under the guidance of DEFRA. Such schemes include promoting and incentivising the purchase of OLEV and ULEV taxis and private hire vehicles. Obviously these measures are reliant upon the support of the trade to purchase these vehicles and it would be appropriate in those circumstances to consider ways of incentivising a change to such vehicles which could include future consideration by the Licensing Committee of amending its policy to extend the maximum period of licensing for those specific types of vehicles.
- 3.9 The Assistant Director of Transport, Environment and Business Support (in consultation with the Cabinet Member for Traffic and Transportation) has been asked to advise the Committee of the likely impact on air quality in the City if the Licensing Authority were to extend the maximum age limit of all licensed

vehicles (petrol and diesel) from the current restriction of 8 years to 10 years. This advice is set out in paragraphs 3.10 and 3.11 below.

- 3.10 It is acknowledged that one of the main sources of nitrogen dioxide in the city's air are emissions from road vehicles. In 2017 the Council commissioned a Source Apportionment Study which identified that of all road vehicles, cars and taxis were the greatest contributors to mean annual concentrations of nitrogen dioxide. Changes to emissions standards over time have reduced the levels of pollution produced by vehicles, therefore older vehicles still on the road are likely to be the heaviest polluters. However, fully electric and hybrid-electric vehicles produce much lower levels of nitrogen dioxide, meaning an 8 year old electric or hybrid-electric taxi or private hire vehicle will have a much smaller negative impact on air quality than a comparable diesel or petrol vehicle.
- 3.11 It is therefore considered that encouraging the use of petrol and diesel vehicles over the age of 8 years would not be consistent with the Council's aim, and legal duty, to make improvements to air quality in the city. However, applications for continued licensing of hackney carriage or private hire vehicles between the ages of 8 years and 10 years could be supported where the vehicle is an electric or hybrid vehicle.
- 3.12 Based upon the considerations for the improvement of air quality in the city and in order to continue to maintain the improvement of standards in licensed vehicles evidenced since the introduction of the policy it is strongly recommended that any discretion in terms of extending the age restriction of a petrol/diesel vehicle over 8 years shall only be in accordance with the recommendations set out in 2.1(b) of this report.
- 3.13 The second purpose of this report is to address any other areas of the current statement of licensing policy that the Licensing Committee would wish to be reviewed. Members are requested to consider what policy considerations they would wish to see amended, and in what respect, in order that officers may bring a future report to the Committee, with appropriate guidance and evidence to enable them to make any further informed changes.

#### **4. Reasons for recommendations**

- 4.1 In accordance with the provisions of the policy, the Committee endorsed in 2016 that a review will take place every 3 years, if required.
- 4.2 Since the inception of the statement of licensing policy, a number of representations have been received from the taxi and private hire trade in terms of amendments to the policy.
- 4.3 The Licensing Service would recommend a number of minor amendments to the policy to clarify certain requirements and to recognise current and imminent legislative arrangements.

**5. Equality impact assessment (EIA)**

5.1 A preliminary EIA has been completed and is attached as **Appendix C**.

**6. Legal Implications**

6.1 The legal implications are embodied in this report and associated appendices.

**7. Finance Comments**

7.1 None applicable directly to this report but recommended guiding principles for "Fees and Charges" are contained within Chapter 16 of the statement of licensing policy.

.....  
Signed by:

**Appendices:**

- Appendix A - Current Statement of Policy for Hackney Carriage and Private Hire**
- Appendix B - Summary of vehicle mechanical testing from 2014 - 2018**
- Appendix C - Preliminary Equality Impact Assessment**

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by ..... on .....

.....  
Signed by:

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# Statement of licensing policy

April 2016

[www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

For the control, supervision and enforcement of the hackney carriage and private hire trades within the city of Portsmouth

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# Chapter 1: Introduction

1.0 This review has been prepared by the Director of Culture and City Development and follows the decision of the Licensing Committee in November 2014 to request that the Licensing Manager “undertake a thorough review of hackney carriage and private hire policy” (minute 7/2014 refers).

The last major review of the respective hackney carriage and private hire trades was undertaken in 2001. Prior to that, a review was considered by the then Licensing Panel in 1986.

1.2 The Council recognises that all persons, including those involved in the provision of local transport, should work together to help shape the great waterfront city. The Council aspires to provide safe communities and accordingly recognises that the taxi and private hire industry have an important role to play.

The determination of policy and associated guidelines can be shaped by many elements but an overriding emphasis of promoting a **local policy** based on **local needs** and having due regard to **local knowledge and evidence** for and from **local people** is of paramount importance.

1.3 Never more so is this apparent than when dealing with the Portsmouth taxi and private hire undertaking. Consultation must be undertaken and respective views heard.

Each local authority will have policies and conditions reflecting on local working practices and whilst good national practices will be embraced – the composition, supervision and day to day control of the local private hire and hackney carriage fleets is for the city council and city council alone to administer.<sup>1</sup>

It is often said, but not often remembered, that a licence is a statutory and lawful permission with authority to do something subject to compliance with conditions, byelaws or regulations. With any licence comes responsibility and accountability – particularly when the public safety is of paramount concern.

For these reasons, a licence is a privilege which should be treated as such accordingly.

1.4 Portsmouth hackney carriages are the **only vehicles** lawfully permitted to stand and ply for the hire from the streets of Portsmouth. No other vehicles have the authority and privilege to provide this service in Portsmouth.

1.5 The importance of the respective trades cannot be underestimated and this is seen in the thousands of jobs accepted and undertaken on a daily basis – whether conveying vulnerable children and adults to and from school or on other social services contracts, picking up passengers from the train stations and Ferry Port, conveying holiday makers to the airports or helping to clear the late night economy areas of revellers night after night after night.

1.6 The Council recognises and acknowledges that the vast majority of licensed taxi and private hire drivers are extremely hard working and committed to representing the city, as the local licensing authority, in a positive and professional manner.

Equally, the Council notes the important role both private hire operators and vehicle proprietors play in providing and facilitating modern and technologically advanced booking services and a fleet of vehicles in the city.

The respective private hire and hackney carriage trades play a critical role in providing a 24/7 local transport provision for residents and visitors alike.

1.7 That said however, the main function of the Council and Licensing Committee, as the local licensing authority, is to protect and to have regard to the public interest.

In recent times members have expressed concern about the following:

- The number of hackney carriages licensed to ply for hire and the resulting anecdotal evidence of “the buying and selling” of plates which are council property
- Whether the hackney carriage trade should be subject to numeric control
- The suitability of some drivers by way of background checks and ability to communicate in English and to know their way around the city
- The conduct of some drivers who, on the evidence, have behaved poorly with examples of consensual sexual contact with passengers and the need to establish firmer guidance and clear disciplinary sanctions to support the concept of drivers continuing to be “fit and proper”
- The quality of vehicles from both an age and mechanical suitability point of view and having regard to the local environmental issues such as air quality



1.8 National headlines about the conduct of licensed drivers from Rotherham and Milton Keynes have resulted in recommended changes to the guidelines on convictions (and conduct) and are contained within the review proper. There is no evidence whatsoever to support any local concern about safeguarding issues but nevertheless the need to continue to work closely with the trade, the police and partner agencies is paramount.

2.0 The Department for Transport – “Best Practice Guidance”<sup>2</sup> features heavily in the review. The council recognises and endorses, where possible, the guidance but notes that the guidance is “to assist licensing authorities” with the council making the final decision(s) on any matters. All reference to the guidance is shown in blue italics.

A link to the guidance is show below.

[www.gov.uk/government/publications/taxi-and-private-hire-vehicle-licensing-best-practice-guidance](http://www.gov.uk/government/publications/taxi-and-private-hire-vehicle-licensing-best-practice-guidance)

## Policy

3.0 This review will form the foundation and basis of future policy in respect of the hackney carriage and private hire undertaking in Portsmouth for the foreseeable future, but will be subject to regular review.

3.1 The purpose of policy is to “set the standards” and to offer informed advice and expectations to applicants, licence holders and their appointed representatives alike.

Policy should be made (and based) on evidence in order to formulate any local requirements and should **not** be introduced without prior consultation or on a whim.

3.2 Policy directives assist both members and officers in dealing with licensing matters in a uniform and consistent way and ultimately gives guidance to those in subsequent appeal situations as to the underlying rationale behind any individual decision making process.

3.3 No policy can ever be considered to be an absolute requirement, although the committee will look to persons to explain, in plain and clear terms, why a particular aspect of policy or a directive should not apply to them.

Applicants and licence holders are advised that each case will be heard and determined on merit with the policy used to “guide but not to bind” the decision maker – whether this is the Licensing Committee/Sub-Committee or officers acting under delegated authority and on behalf of the head of service.

## General

4.0 The council and committee must exercise any function with a view to preventing crime and disorder in accordance with section 17 of the Crime and Disorder Act 1998.

5.0 The Human Rights Act 1998 provides that persons are entitled to a fair hearing and this is recognised as a fundamental right particularly when consideration of disciplinary action by way of suspension, revocation or the non-renewal of a licence is under consideration. The legal advisor will always guide and alert the committee on any human rights matters.

5.1 The committee recognises however that a licence is NOT a personal piece of property for the purposes of the 1998 act but nevertheless will always strive to act in a fair and proportionate way.<sup>3</sup>

6.0 The Law Commission report and draft bill on taxi law reform has put forward proposals for the reform of the respective private hire and hackney carriage trade(s). The proposals have no lawful status at present and the committee is therefore at liberty to consider and implement the local policy framework on merit at this time.

A summary of the Commission’s work, for information purposes, is found at Chapter 17.

## About the City of Portsmouth

- 7.0 The City of Portsmouth is situated in the ceremonial county of Hampshire and is at the heart of Britain's southern coastline with long established direct road and rail links to London, the Midlands and Wales.
- 7.1 Portsmouth is undergoing great change with a £2billion investment plan underway. Elements such as the Tipner motorway junction and park and ride are already completed while there is more to come with new homes, businesses and jobs to come from the City Deal sites and the exciting regeneration plans for The Hard.
- 7.2 Portsmouth has a population of 200,000 in an area of only 4,196 hectares, which makes it one of the most densely occupied cities in the country outside London.
- 7.3 As the local highway authority the council is responsible for approximately 458km of vehicular carriageway in partnership with Colas and Ensign. Up to 90,000 inbound vehicle movements are recorded in any one 24 hour period and previous census data indicates 397 vehicles per 1000 people in Portsmouth.
- Traffic growth is predicted to generally rise between 19% and 55% by 2040.
- 7.4 A significant naval port for centuries, it is home to the world's oldest dry dock and to world famous ships including HMS Victory, HMS Warrior 1860 and the Mary Rose. Major investment around the harbour has transformed the "great waterfront city".

Home to Ben Ainslie Racing and hosting the preliminary 2015 America's Cup racing series, the dynamic waterfront city still has an important role as a major dockyard and home base to the Royal Navy.

- 8.0 The city offers a vibrant mix of entertainment facilities for residents and visitors alike with two established theatres, restaurants, cinemas, concert venues and a variety of pubs and clubs. The late night economy is well served with venues in the north located at Port Solent, the city centre located near the Guildhall and in the south both at Gunwharf Quays and in Southsea.
- Major music festivals are held during the summer months attracting tens of thousands of revellers.



## The Hackney Carriage and Private Hire Trades

9.0 There are 5 licence types associated with the hackney carriage and private hire trades as follows:

- **Hackney carriage vehicle licence (with recognition of the proprietors)**
- **Hackney carriage driver licence**
- **Private hire operator licence**
- **Private hire vehicle licence**
- **Private hire driver licence**

9.1 A licensed hackney carriage can ply for hire and seek customers from within the city (from ranks, cruising and being flagged down) and can also do private hire work. The vehicle, dependent on size, cannot seat more than 8 passengers. The number of hackney carriages may be limited. The driver must be licensed.

9.2 Conversely, a private hire vehicle can only pick up pre-booked fares (up to 8 passengers) given, in advance, by a licensed private hire operator. The operator, vehicle and driver licences are issued by the same council. The committee cannot limit the number of private hire vehicle licences.

Sometimes the public find it difficult to understand the legal difference between the respective trades and see all vehicles as “taxis” and a means of getting home after a night out. It is for this reason, and to support the differences between the trades, that local authorities including Portsmouth have policies designed to reflect the difference by way of vehicle colour, the use (or not) of TAXI roof signs and the use of locally prescribed liveries.

9.3 The committee can set the maximum fares that hackney carriages can charge but have no power to set private hire fares. It is for the individual operator and the market to determine.

9.4 The private hire operator is the “pinnacle” and all persons who, in the course of business, make provision for the invitation or acceptance of bookings for a private hire vehicle must be licensed. The operator is legally liable if unlicensed vehicles and drivers are used.<sup>4</sup>

The operator can be a single person, a partnership or a company. The legal concept is the same however (and regardless of size) in that the operator must be a “fit and proper” person.

Advanced modern technology utilising the latest forms of communication, GPS satellite tracking and mobile phone apps is now the norm and not the exception with operators finding more intuitive ways of encouraging customers to both book and continue to use their particular service provision. The 1976 act has been woefully left behind with the rapid advance of technology as operators can now command global audiences via the world wide web let alone those close to home. This makes the interpretation and enforcement of matters such as “cross border hirings and plying for hire” sometimes very challenging.

Operators in Portsmouth (particularly of recent) have insisted that drivers wear appropriate branded clothing to promote both individual company and the general trade image. This is to be supported. Likewise, the airport and specialist companies provide a “chauffeur” style service with uniformed drivers and high end luxury vehicles being utilised.

9.5 Vehicle proprietors can supply either the one vehicle or hundreds of vehicles. For example, Scope Leasing, Outlook UK and FTVL are the recognised major vehicle providers to Aqua Cars Ltd.

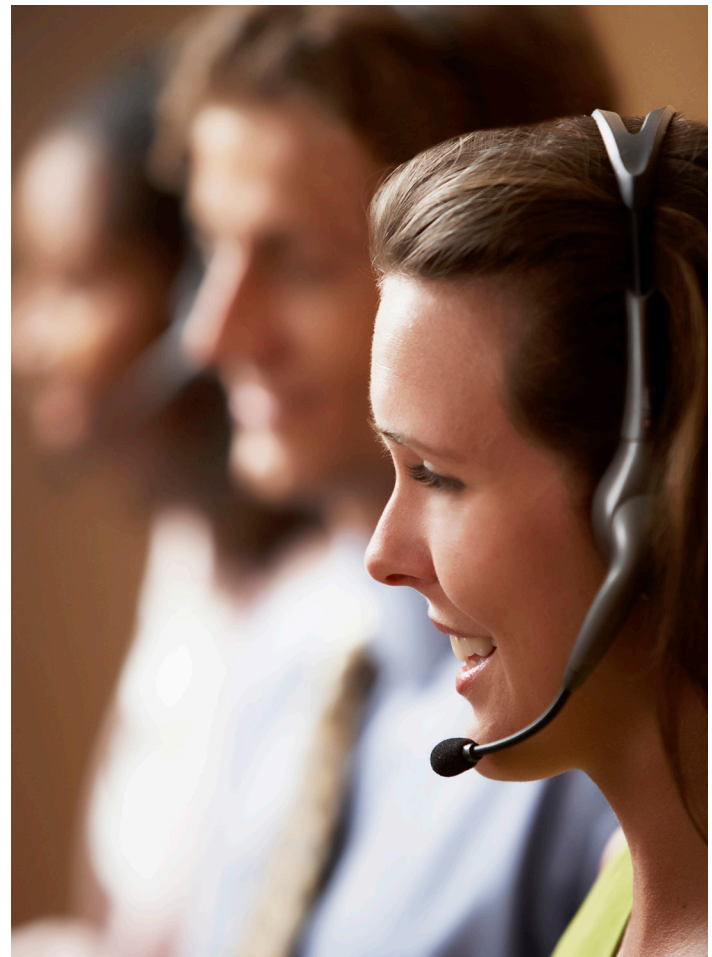
9.6 Portsmouth has one of the largest combined hackney carriage and private hire fleets on the south coast with over 2600 driver and vehicle licences issued in 2015. The private hire vehicle fleet alone comprises over 1000 licensed vehicles.

9.7 There are 22 licensed operators working in the city and providing a 24/7 public service together with specialist businesses, executive contracts and/or airport contracts as follows:

- 1st Choice Cars
- Airports Direct Ltd
- Airport Transfers
- Airport Travel
- Apex Airport Cars
- Andicars Portsmouth
- Aqua Cars Ltd
- Beckett Chauffeur Services
- Blue Star
- Breeze Airport Cars
- Citywide Taxis
- Clarks Airport Transfers
- Dovecote Executive Travel Services
- Evocatus
- Kals Airways Cars
- Livingstone
- Marina Cars
- MCA Cars
- North End Cars
- PDS Autos
- Smith's for Airports
- Uber Britannia Ltd

9.8 The local scene is currently dominated by vehicles and drivers affiliated to the Aqua Cars Ltd radio circuit.

Equally, Citywide Taxis based at The Hard provide a comprehensive combined hackney carriage and private hire service within the city and these two operators remain "the big two" and duly licensed by the council.



9.9 So far as drivers are concerned, both hackney carriage and private hire drivers must be licensed and be "fit and proper" persons. The same administrative arrangements and processes apply to help determine the fitness of drivers.

The main difference is that private hire drivers are governed by conditions and hackney carriage drivers by byelaws.

## Policy Review

10.0 This licensing policy will be reviewed, if required, by the Licensing Committee every 3 years.

The Licensing Service will recognise and work to the core "objectives" (shown at the head of each relevant chapter) at all times and will constantly have regard to these basic principles.

The day to day upkeep of the policy will be undertaken by the Licensing Manager in consultation with the head of service. Accordingly, the Licensing Manager shall be authorised to make such minor typographical and other corrective administrative amendments to the policy document as required.

# Chapter 2: Summary of resolutions

(As approved by the Licensing Committee on 24 February 2016 under minute 9/2016 and full council on 22 March 2016 under minute 27/2016)

## Chapter 3: Scheme of Delegation and Associated Responsibilities

1. That the scheme of delegation be noted and adopted by the Licensing Committee and officers alike.
2. That the Licensing Committee approve the scheme of delegation.
3. That the scheme of delegation be reviewed every 3 years.
4. That the head of service be authorised to amend such policy directives, conditions of licence and application procedures commensurate only with these proposals.

## Chapter 4: Hackney Carriages – Demand and Quantity Control

The committee resolved:

1. a) To retain the existing numeric limit (234 vehicles) on the number of hackney carriages licensed to ply for hire within the City of Portsmouth and to instruct the head of service to identify a suitably qualified independent transport consultant to carry out a survey on the demand or otherwise for the services of hackney carriages within Portsmouth;
- b) That such fees and costs (including staff costs) arising from the survey to be determined by the committee and paid for by the hackney carriage trade by way of “one off” increase in the vehicle (proprietor) fees;
- c) That the consultant to report back to the committee with recommended options

## Chapter 6: Trade Representatives and Consultation

1. That Licensing Sub Committee minute 10/1987 be noted and amended.
2. That the terms of reference, as previously approved by the committee, be varied so that reference to “meetings to be held six monthly” be substituted with “a meeting will be held once a year”.
3. That the Licensing Manager be authorised to appoint and remove trade representatives and that the change to the scheme of delegation be approved accordingly.

## Chapter 7: Duration of Licences

1. That the changes to the duration of driver and operator licences contained in the Deregulation Act 2015 be noted.
2. That the head of service be authorised to amend such policy directives, conditions of licence and application procedures commensurate only with these proposals; in particular to provide for:
  - The introduction of a “rolling 3 year licence period” for hackney carriage and private hire drivers
  - The introduction of a “rolling 5 year licence period” for private hire operators
  - The introduction of DBS checks to coincide with the renewal dates for both driver and operator licences
3. That the head of service be given delegated authority to grant and renew driver licences (hackney carriage or private hire) for a period of less than 3 years but only after having regard to the circumstances of any one individual case
4. That the head of service bring forward proposals to amend/vary fees for driver, vehicle and operator licences commensurate with these proposals.

## Chapter 8: The Test of “Fit and Proper”

1. That the contents be noted and endorsed.
2. That the Licensing Committee approve the:
  - I. The policy statement and guidelines on the relevance of convictions at paragraphs **5.2** and **5.4** respectively
  - II. The requirement for applicants for both hackney carriage and private hire drivers to have held a full driving licence for 2 years at paragraph **7.2**
  - III. The change to the drug testing requirements at paragraphs **9.1** and **9.3**
  - IV. The requirement to adopt a minimum entry age limit to the trade of 21 at paragraph **10.2**
  - V. The need to establish mandatory NEW driver training (for both hackney carriage and private hire drivers) to comprise of:
    - English language competency and proficiency testing at the discretion of the head of service who will arrange such local training provision to commence by **1 July 2016**
    - Disability and wheelchair awareness training – mandatory
    - Driving assessment training – mandatory to include eco driving assessment
3. That the head of service:
  - a) be authorised to finalise, appoint and to provide details of available courses and appropriate training providers with a view to commencing mandatory training for new drivers by no later than **1 July 2016**.
  - b) be authorised to formally request and require existing hackney carriage and private hire drivers to complete such disability and wheelchair awareness training together with driving assessment training (as the case may be) following receipt of a complaint or by way of refresher training as appropriate (NOTE – all such training to be paid directly to the service provider by the applicant or licence holder)
4. That the head of service be authorised to amend such policy directives, conditions of licence and application procedures commensurate only with these proposals.

## Chapter 10: Vehicle Specification Requirements

1. That:
  - a) the general vehicle specifications shown in paragraph **4.4** be approved and adopted.
  - b) the previous exemption from the standard vehicle specifications for “stretch limousines” be retained and that the head of service be authorised to consider such vehicle applications on individual merit and provided evidence of vehicle type approval is received.
2. That the head of service be authorised to amend such policy directives, conditions of licence and application procedures commensurate only with these proposals.
3. That the head of service be authorised, if required, to finalise a revised corporate livery and specification for both hackney carriages and private hire vehicles.



## Chapter 11: Vehicle Testing Requirements

1. That the PATN (Public Authority Transport Network – Technical Officer Group) best practice guidance for the inspection of hackney carriage and private hire vehicles and reproduced as an appendix be approved and adopted by the council for the purposes of complimenting and guiding the local vehicle testing and inspection criteria.
2. That the vehicle inspection and testing report shown at paragraph 4.7 and on page 65 be approved and adopted and the head of service (in consultation with the council’s approved vehicle inspectors) be authorised to amend, vary, add or substitute to such local testing criteria as considered appropriate in the future.
3. That all vehicles presented for initial licensing (with the exception of temporary use vehicles which must provide a current MOT) be subject to inspection and test at Adams Morey, Burrfields Road, Portsmouth.
4.
  - i) **That all licensed vehicles over 3 years old be subject to a minimum of 2 vehicle inspections** at Adams Morey per licensing year – the second test to be approximately 6 months after the first test and to comprise a “mini” test for the following:
    - Lighting equipment
    - Exhaust, Fuel & Emissions
    - Vehicle body & structure
  - ii) Should the vehicle fail ANY of the mini test criteria – a full inspection and test will be subsequently booked and completed and at the expense of the vehicle proprietor.
5. That all licensed vehicles **over 5 years old** be subject to a minimum of **2 full** vehicle inspections at Adams Morey Portsmouth per licensing year.
6. Should the subsequent full test for any vehicle contain at least 3 failures and/or the imposition of a red traffic light marker – the vehicle proprietor will be reported to the committee for consideration of the suspension or revocation of the respective vehicle licence.<sup>5</sup>
7. That the requirement for proprietors to make application to “extend a vehicle licence” after 6 years of age be abolished and that committee minute 37/1991 be rescinded accordingly.
8. That the head of service be authorised to amend such vehicle conditions so far as this relates to:
  - The need to carry a serviceable fire extinguisher (not recommended as a mandatory requirement)<sup>6</sup>
9. That the head of service bring forward proposals in relation to any variations to the fees and charges associated with the vehicle inspection and testing regime and commensurate with these proposals.
10. That the head of service be authorised to amend such policy directives, conditions of licence and application procedures commensurate only with these proposals.

## Chapter 12: Vehicle Age Limits

1. That minute 23/2006 be rescinded.
2. That, as a matter of local policy and condition for both hackney carriage and private hire vehicle licences; all private hire and hackney carriage vehicles presented for initial licensing shall be under **3 years of age** on first licensing and may remain licensed until **8 years of age** and provided the vehicle is mechanically fit and supported by an evidenced service history in line with the manufacturer’s guidelines.
3. That any vehicle presented for a **temporary use** licence shall be under **1 year old** and provided the vehicle is mechanically fit and supported by an evidenced service history in line with the manufacturer’s guidelines.
4. That the head of service be authorised to amend such policy directives, conditions of licence and application procedures commensurate only with these proposals.

## Chapter 13: CCTV Provision in Vehicles

1. That the Licensing Committee endorse and approve the mandatory use of in car CCTV camera surveillance in both licensed hackney carriage and private hire vehicles (to include "temporary use" vehicles).
2. That any camera system installed in a licensed vehicle shall comply with the technical specifications referred to in **5.3**
3. That the committee approve the following new condition for both hackney carriage and private hire vehicle licences:  
**The proprietor shall cause the vehicle to be fitted with a working and secure digital CCTV system (to capture both forward and rear facing colour images in high definition) and to retain such data for a period of 31 days.**  
**The installed CCTV to comply with any code(s) of practice issued by the Information Commissioner, the requirements of the Data Protection Act 1988 and any technical specifications approved by the committee for the time being in force.**  
**The proprietor shall, within 7 days, give written notice to the council of the installation of any CCTV system in the vehicle to include the make, model and serial number of the equipment so installed.**  
**The proprietor shall check the system for malfunctions at least once a month and, if a repair or download is required, the vehicle may continue to be used provided any malfunction is rectified within 24 hours.**  
**The proprietor shall, upon receiving any enquiry or request from an authorised officer or Police officer, provide details of any stored images or audio recordings as the case may be.**
4. That "airport only" vehicles and vehicles used mainly for executive account type work be exempted from the requirement to have CCTV installed and the head of service be given delegated authority to grant such exemptions to vehicle proprietors on individual merit.
5.
  - i) That all existing licensed hackney carriage and private hire vehicles as appropriate be fitted with compliant CCTV cameras by **30 September 2017.**
  - ii) That any newly licensed hackney carriage or private hire vehicle from 1 April 2016 onwards be required to be fitted with compliant CCTV cameras with immediate effect.
6. That the head of service be authorised to amend such policy directives, conditions of licence and application procedures commensurate only with these proposals.



## Chapter 14: Conditions of Licence and Byelaws

1. That the Licensing Committee approve and adopt the revised conditions of licence for hackney carriage vehicles, private hire operators, private hire vehicles and private hire drivers with immediate effect.
2. That the head of service be authorised to impose such further “special conditions” on individual licences, as considered appropriate and proportionate, and in respect of hackney carriage vehicles, private hire operators, private hire vehicles and private hire drivers. But this authority is NOT to be used to amend or vary any of the prescribed standard conditions.
3. That the conditions of licence for hackney carriages, private hire operators, private hire vehicles and private hire drivers be reviewed every 3 years.
4. That the use of the current adopted byelaws be endorsed and noted.

## Chapter 15: Licensing Enforcement

1. That the Licensing Committee note and endorse the contents.
2. That the Licensing Committee approve the changes to the local penalty points system and to come into force with immediate effect.
3. That the head of service be authorised to amend such policy directives, conditions of licence and application procedures commensurate only with these proposals.

# Chapter 3: Scheme of delegation and associated responsibilities

## Objective:

“To note the delegated powers and responsibilities to both the Licensing Committee and head of service alike and to formally re-establish and record the “working” delegations for the supervision, control and administration of all hackney carriage and private hire matters”

## 1.0 Introduction & Legal Provisions

1.1 The current scheme of delegations and the resulting “power to licence” the various functions under the control of the Licensing Committee are contained within the council’s constitution made pursuant to the executive arrangements under the Local Government Act 2000.

1.2 The discharge of functions can be by:

- The council
- A committee
- A sub committee
- Officer(s)
- Another local authority (by way of agency arrangement)
- Jointly with another local authority

1.3 The council is a statutory body pursuant to the Local Government Act 1972. And as such can undertake activities and functions for which there is an expressed statutory power or where empowered to do so by way of, for example, a “well-being” power such as prescribed by the Local Government Act 2000 – which provides for a council to carry out functions likely to achieve the promotion of economic, social or environmental well-being in the area.

1.4 The constitution provides for the Licensing Committee (currently comprising of 15 members) to carry out the functions relating to many licensing and registration matters including the hackney carriage and private hire undertaking.

Equally, there are other precise statutory provisions and guidance as, for example, matters relating to the administration of the Licensing Act 2003 are neatly summarised at section 7 of the act by the following:

“All matters relating to the discharge by a licensing authority of its licensing functions are, by virtue of this subsection, referred to its Licensing Committee and, accordingly, that committee must discharge those functions on behalf of the authority.”

1.5 For the purposes of hackney carriage and private hire matters the constitution specifies the functions shown below (and which are prescribed by the functions regulations)<sup>7</sup> to the Licensing Committee:

- **Power to licence hackney carriages and private hire vehicles.**

**As to hackney carriages, the Town Police Clauses Act 1847 (10 & 11 Vict. c. 89), as extended by section 171 of the Public Health Act 1875 (38 & 39 Vict. c. 55), and section 15 of the Transport Act 1985 (c. 67); and sections 47, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976 (c. 57);**

**As to private hire vehicles, sections 48, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976.**

- **Power to licence drivers of hackney carriages and private hire vehicles.**

**Sections 51, 53, 54, 59, 61 and 79 of the Local Government (Miscellaneous Provisions) Act 1976.**

- **Power to licence operators of hackney carriages and private hire vehicles.**

**Sections 55 to 58, 62 and 79 of the Local Government (Miscellaneous Provisions) Act 1976.**

1.6 The executive is prohibited from carrying out the above functions which are deemed to be “council” functions.<sup>8</sup> The executive cannot be responsible for the imposition of conditions or the imposition/consideration of any terms or restrictions subject to which the licence or permission is held. The executive cannot suspend or revoke licences nor take enforcement action to secure compliance.

Finally, the executive cannot set or regulate fees associated with these licensing functions.

There are however, two areas of taxi licensing where the Licensing Committee are not expressly empowered (by either the council’s constitution or the function regulations) to make binding decisions without referral to the cabinet or appropriate cabinet member. These are the fixing of hackney carriage fares and the appointment of hackney carriage stands pursuant to sections 63 and 65 of the 1976 act. They are “executive” and not “council” functions.<sup>9</sup>

In practical terms, the Licensing Committee has historically heard from established trade representatives about matters relating to taxi stands and officers have prepared appropriate Members Information Service reports for consideration - with the highway authority and/or cabinet member for Traffic & Transportation being subsequently invited to approve (or otherwise) the appropriate traffic regulation orders. There is no reason why the Licensing Committee cannot continue to act as a conduit for considering and receiving trade requests for the provision of taxi stands (and their subsequent variation or revocation) but with any final report and decisions being made by the appropriate cabinet member or officers of the highway authority acting under existing delegated authority.

In all cases involving the appointment, variation or revocation of taxi stands, it is important that the prescribed statutory requirements contained in the 1976 act are complied with.

The fixing of taxi fares has, however, been historically approved by the Licensing Committee and/or via the Members Information Service. It is therefore recommended, for future considerations, that the Licensing Committee continue to receive initial requests from the trade and other interested parties about future taxi fare rise proposals and submit a short briefing report and any recommendation(s) from the committee to the cabinet for final approval.

1.7 The constitution currently provides for the head of service to:

**“Approve registrations or to issue licences, certificates in respect of:**

**Hackney carriages (including the power to grant but not to refuse the allocation of vacant plates).**

**Hackney carriage proprietors, drivers, private hire operators, vehicles and drivers”**

There is a corresponding power to the head of service to suspend both hackney carriage and private hire driver licences pursuant to section 61 of the Local Government (Miscellaneous Provisions) 1976.<sup>10</sup>

- 1.8 The scheme of delegation from Full Council to the Licensing Committee (and subsequently to officers) ensures that there is no ambiguity and a clear and transparent decision making process is in place.<sup>11</sup>

This is important as it permits applicants, licence holders and their respective legal advisors to know that decisions of the committee or officers are decisions of the council and thus are binding without any need for referral or subject to any “call in” procedure to another decision making body.

Accordingly, any subsequent appeal process against a decision of the committee or an officer can be instigated quickly following receipt of the formal decision notice.

- 1.9 The widely accepted working model for any licensing provision is for the “day to day” management of licensing matters (together with routine and non-contentious applications) being dealt with by officers BUT with matters in conflict with policy or by their unusual nature or public interest together with contested applications being determined by the committee as appropriate and in accordance with any locally devolved delegation powers.
- 2.0 The accepted principle therefore is for officers to generally grant but not to refuse licences<sup>12</sup> – with all contested applications (or those with a public interest or where representations have been made) to be put before the Licensing Committee or a sub-committee for final determination.

This accords with the well-established principles of administrative law relating to the rules of natural justice and allows for persons to generally present their case, in person, and to be heard before members make a final determination.

- 3.0 Historically, the Licensing Service was, for many years, aligned with the former Director of Corporate Services/City Solicitor but more recently became a function under the control of the Head of Health, Safety & Licensing.

That has changed with the service (from 2015) now reporting to the Director of Culture and City Development and the team have now re-located to a new purpose built lower ground floor office.

- 3.1 As a result of the recent changes (and having regard to the fact that the committee has asked for a total review of the taxi and private hire licensing undertaking), the Licensing Manager has asked for a formal written scheme of those existing delegated functions (to reflect on the particular work of the committee and reporting officers) to be endorsed and approved by the committee.

This will enable applicants, licence holders and their legal representatives to be absolutely clear about the responsibilities given to members and officers alike.

- 4.0 Accordingly, the Licensing Committee is asked to approve the scheme of delegation as shown on pages 17–20.

## Scheme Of Delegation

Matter to be dealt with	Full Licensing Committee	Sub-Committee	Officers
<p>1 Determination of all policy matters relating to the hackney carriage and private hire undertaking</p> <p>To include determining the number of hackney carriages licensed to ply for hire within the city AND</p> <p>If mindful of retaining a fixed number of hackney carriages to appoint appropriate consultants' to carry out any future "unmet demand" surveys</p>	In all cases <sup>13</sup>		
<p>2 Determination and approval of all standard conditions for operators, vehicles and drivers to include any variations and amendments.</p> <p>Determination of "numeric thresholds" against vehicle proprietors, operators and drivers for the purposes of a sub-committee appearance resulting from the penalty points scheme and to vary, substitute or modify the penalty points scheme</p>	In all cases		
<p>3 Determination and approval of hackney carriage byelaws to include any proposed variations and amendments for consideration by the Secretary of State</p>	In all cases		
<p>4 Determination of all fees* and charges in respect of the private hire and hackney carriage undertaking</p> <p>*but for the head of service to authorise such refunds or amendments to respective operator, vehicle or driver fees as appropriate.</p>	In all cases		
<p>5 Grant or renewal of hackney carriage vehicle licence to include a temporary use licence</p>			In all cases
<p>6 Refusal to grant, renew, suspend* or revoke a hackney carriage vehicle licence including a temporary vehicle licence</p> <p>*under section 60 of the 1976 act</p>		In all cases	
<p>7 Grant or renewal of hackney carriage driver licence</p>			In all cases
<p>8 Refusal to grant, renew or to revoke* a hackney carriage driver licence</p> <p>*but see 24 post</p>		In all cases	
<p>9 Grant or renewal of private hire operator licence</p>			In all cases
<p>10 Refusal to grant, renew, suspend or revoke a private hire operator licence</p>		In all cases	
<p>11 Grant or renewal of private hire vehicle licence to include a temporary use licence</p>			In all cases

Matter to be dealt with	Full Licensing Committee	Sub-Committee	Officers
12 Refusal to grant, renew, suspend* or revoke a private hire vehicle licence including a temporary vehicle licence *under section 60 of the 1976 act		In all cases	
13 Grant or renewal of private hire driver licence			In all cases
14 Refusal to grant, renew or to revoke* a private hire driver licence *but see 24 below		In all cases	
15 Grant or refusal/revocation of a notice of exemption for hackney carriage or private hire driver from carrying guide, hearing or assistance dogs on medical grounds – Disability Discrimination Act 1995 as amended			In all cases and subject to satisfactory medical enquiry and reports being received
16 Determination of whether a vehicle is deemed “silver” or not and to refuse to grant or renew or to suspend a respective hackney carriage or private hire vehicle licence on these grounds accordingly			In all cases
17 Determination of passenger seating capacity for a hackney carriage or private hire vehicle			In all cases
18 Design of private hire operator paper licences			In all cases
19 Design of hackney carriage and private hire vehicle paper licences, windscreen licence discs, licence plates and all internal notices			In all cases
20 Design of hackney carriage and private hire driver paper licences and their respective badges			In all cases
21 Design of approved internal and external corporate livery for both hackney carriage and private hire vehicles and to grant or refuse permission for any other external or internal sign(s)			In all cases but in consultation with corporate communications
22 Design and content of all hackney carriage and private hire application forms to include any other required form(s) or notices commensurate with the provisions of the 1847 and 1976 acts. ‘Content’ includes the receipt of any further information that the Licensing Manager considers appropriate in order to determine whether a person is “fit and proper”.			In all cases
23 Suspension* of hackney carriage or private hire vehicle licences pursuant to section 68 of the 1976 act *with the sub-committee considering vehicle suspensions pursuant to section 60 of the 1976 act			In all cases



Matter to be dealt with	Full Licensing Committee	Sub-Committee	Officers
24 Suspension of hackney carriage or private hire driver licences pursuant to section 61 of the 1976 act and/or to revoke, with immediate effect, an existing hackney carriage or private hire driver licence having regard to the "interests of public safety" <sup>14</sup>			In all cases
25 Determination of application for exemption from the requirements to have CCTV in a private hire vehicle – NO EXEMPTION FOR HACKNEY CARRIAGES			In all cases
26 Determination of application for plate and/or livery exemption for private hire vehicles – NO EXEMPTION FOR HACKNEY CARRIAGES			In all cases
27 The grant or renewal, after consideration on individual merit, of a hackney carriage or private hire driver licence for a limited duration		If necessary	In all cases
28 The imposition of special conditions for private hire operator, private hire vehicle, hackney carriage vehicle or private hire driver licences as appropriate			In all cases but not to amend the standard conditions for the time being in force
29 The refusal to grant or renew a hackney carriage or private hire driver licence in certain EXCEPTIONAL circumstances			In all cases BUT only by reason of: <ol style="list-style-type: none"> <li>1. Evidenced repeated knowledge test failure</li> <li>2. Evidenced poor communication skills</li> <li>3. Evidenced medical concerns<sup>15</sup></li> <li>4. Failure of prescribed driving and or other competency tests as prescribed</li> </ol>

Matter to be dealt with	Full Licensing Committee	Sub-Committee	Officers
30 Fixing of hackney carriage fares <sup>16</sup>	To receive trade proposals and to make such recommendations to the cabinet as appropriate		
31 Appointment of hackney stands (to include proposed variations and revocations to such stands) <sup>17</sup>	To receive trade proposals and to make such recommendations to the cabinet member for Traffic & Transportation as appropriate		
32 To determine and appoint hackney carriage and private hire trade representatives and to rescind any appointment if appropriate <sup>18</sup>			In all cases
33 Any changes to the committee's prescribed vehicle mechanical and cosmetic inspection testing report for hackney carriage and private hire vehicles <sup>19</sup>			In all cases and after discussion with the council's appointed vehicle testing contractor
34 Penalty points scheme – power to issue points		If necessary	In all cases
35 Consideration of any disciplinary action against licence holders for reaching the appropriate penalty points "thresholds"		In all cases	
36 To instruct the City Solicitor to commence proceedings <sup>20</sup> for any offences and/or to offer a simple caution or attendance by an applicant or licence holder at any training course(s)			In all cases

## Resolved

1. That the scheme of delegation as specified in **4.0** above be noted and adopted by the Licensing Committee and officers alike.
2. That the Licensing Committee approve the scheme of delegation.
3. That the scheme of delegations be reviewed every 3 years.
4. That the head of service be authorised to amend such policy directives, conditions of licence and application procedures commensurate only with these proposals.

# Chapter 4: Hackney carriages – demand and quantity control

## Objective

“To determine the number of hackney carriages licensed to stand and ply for hire within the City of Portsmouth together with such quantity and/or quality controls as may be appropriate”

### 1.0 Introduction & Legal Provisions

- 1.1 The committee has previously expressed concern about hackney carriage plates (which remain the property of the council) changing hands for tens of thousands of pounds.

The trade say they are entitled to sell and pass on the “goodwill and business” associated with the previous long term use of a hackney carriage plate and that the transfer of a proprietorship interest in a licensed vehicle is lawful.<sup>21</sup> They warn against the consequences of an “open door” policy of de-restricting taxi vehicle numbers with a resultant loss in business.

On the other hand, issuing further licences could allow new blood to enter the trade and thus increase freedom of choice for the travelling public. Both the Department for Transport “best practice” guidance and the report into the regulation of the UK taxi industry by the Office of Fair Trading support this view.

Any appeal against the refusal to grant a hackney carriage licence is direct to the Crown Court.

- 1.2 This area of law has received much judicial scrutiny. The control (or otherwise) of hackney carriage numbers must be based on a local determination of local issues and focusing on local evidence of unmet demand for the distinct services of hackney carriages.

“Unmet demand” evidence should realistically be based on empirical independent survey data and not just on the anecdotal views of local trade representatives (or drivers) although the committee should give due regard to their representations and work related experiences.

In this context the committee are currently in a potentially weak bargaining position in justifying the refusal of any new hackney carriage licences as the last recorded survey to assess the demand for hackney carriages within the city was undertaken in 2006 and is now 9 years old.<sup>22</sup>

- 1.3 The committee should consider the detailed Department for Transport best practice guidance<sup>23</sup> reproduced at paragraphs 3.0–3.7 together with the report from the Office of Fair Trading<sup>24</sup>.

Equally, the extracts shown in paragraphs 1.4–1.5 (as amended) are taken from the “Options for Change” review considered by the committee in 2001 and remain as pertinent now as they did 14 years ago.

1.4 The Town Police Clauses Act of 1847 is still the primary legislation controlling hackney carriage vehicles, proprietors and their drivers. By virtue of Section 37, the committee previously had an absolute unfettered discretion to determine the number of hackney carriages that could be available at any one time to stand or ply for hire within the city of Portsmouth.

Without exception, such restricted practices of quantity control introduced a “monopoly” scenario with plates only being made available by a culture of “buying and selling”. Inevitably, waiting lists from applicants desirous of obtaining a coveted hackney carriage plate were commonplace with the committee receiving multiple enquiries from potentially suitable applicants in the rare event of a plate becoming available. Waiting lists and registers were kept for this purpose but quickly became strained and out of date due to persons moving away, family arguments over proprietorship details becoming apparent and ultimately with persons on the list passing away. The lists became almost impossible to manage and, as a consequence, were discontinued and destroyed in the early 1980s.

Strict quantity control measures on vehicle numbers also attracted hard and inflexible local conditions of licence and policy directives requiring, for example, full time driving, owners having no other work interests and a requirement for proprietors to personally drive their own vehicles.

Anecdotal evidence of proprietors “disguising” the truthfulness of their interest (or otherwise) in a licensed vehicle were apparent – particularly where a “one person one plate” policy was in force.

1.5 However, Section 16 of the Transport Act 1985 qualified the absolute discretion to limit the number of taxi licences by requiring the local authority to be satisfied “... that there is no significant unmet demand for taxi services ...” within the area. The burden shifted to the committee to be satisfied as to the demand or otherwise rather than the applicant to show evidence of demand when submitting an application.

This does not mean that a council MUST limit numbers if satisfied that demand is met but acts to forbid, by statutory instruction, local authorities from restricting vehicle numbers if not satisfied that there is no significant demand for the services of taxis.



Ironically, Part II of the Local Government (Miscellaneous) Provisions Act 1976 (the licensing code for private hire vehicles) specifically prohibits the local authority from controlling private hire vehicle numbers.

This change in the law had immediate and significant implications to local authorities and hackney carriage plate holders alike. The Department of Transport issued advice (Circular 3/85) to local authorities on the grant of taxi licences summarised in the following terms:–

*“District councils may wish to review their policy on the control of taxi numbers in the light of this new section. A limitation of taxi numbers can have many undesirable effects – an insufficiency of taxis either generally or at particular times or in particular places, insufficient competition between the providers of taxi service, detrimental customer satisfaction and prices for “transfer” of taxi licences from one person to another which may imply an artificial restriction of supply.”*

The circular gave a clear indication that district councils should not rely on the assertion of local taxi licence holders that demand was already catered for as they had evidence only of demand which they satisfied. The circular stated that it was for the committee to examine the evidence of unmet demand using local knowledge and circumstances. Councils were encouraged to consider whether persons had given up trying to use taxis because of an inadequacy of service or whether there would be a latent demand in parts of the local authority that had not been adequately served. In other words, those that might wish to use taxis may not have demonstrated their demand since there had been no opportunity of having it satisfied.

Equally, the circular advised that general overcrowding at designated taxi stands was not in itself evidence of unmet demand but rather that the provision of taxi stands was too limited.

The circular accepted that an immediate policy of “deregulation” could lead to an abandonment of quality control with an initial oversupply of taxis before market forces could bring about an appropriate equilibrium.

As a consequence there have been a number of court decisions on the question of demand for the services of hackney carriages:–

*“If demand for the services of hackney carriages is met a local authority can still issue licences. The licensing authority can adopt a reasonably broad approach in asking itself whether or not it is satisfied that there is no significant demand for the services of hackney carriages within its area to which the licence would apply which is unmet”.* *“The authority in my view is entitled to consider the situation in relation to the area as a whole and is also entitled to consider the position from a temporal point of view as a whole”.* *“It does not have to condescend into detailed consideration as to what may be the position on every limited area of the authority in relation to a particular time of the day”* **R -v- Great Yarmouth Borough Council ex parte Sawyer 1988.**

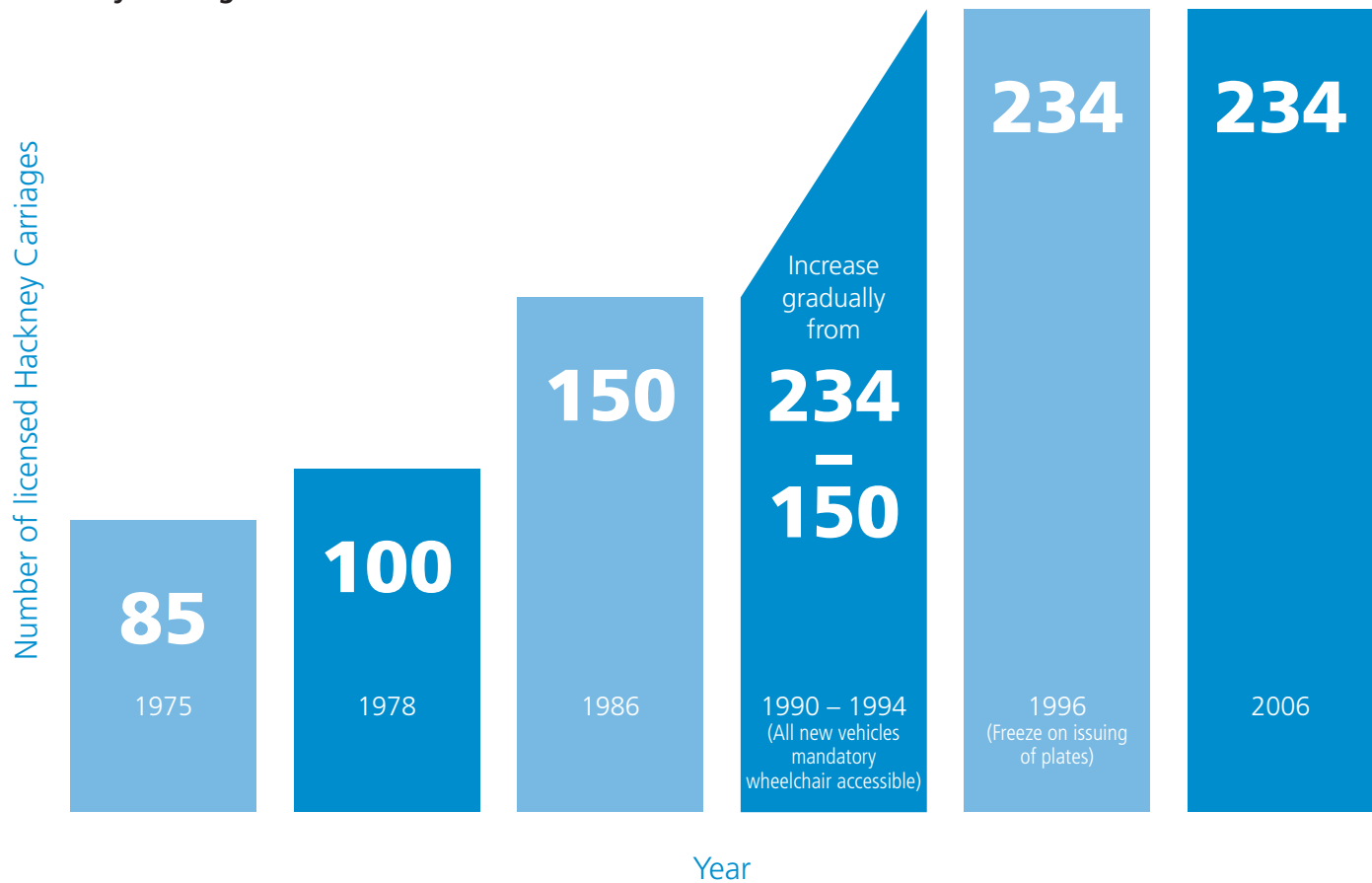
*“If an assessment of the number of hackney carriages to meet a significant unmet demand has been approved, and the committee grant up to that number, it may refuse further applications provided it is satisfied afresh as to the absence of any further demand”* **Ghafoor -v- Wakefield District Council 1990.**

*“A local authority does not have to show that demand is satisfied at all times and may, for example, conclude there is no significant unmet demand where there are sufficient taxis – except for periods during which existing drivers are reluctant to work anti-social hours”* **R -v- Brighton Borough Council ex parte Bunch 1989.**

- 1.6 Case law has also established the following general principles on the question of taxi deregulation or otherwise:
- Consultation should and must take place
  - If unmet demand exists then licences, on application, must be granted
  - Commercial considerations are not, in themselves and in isolation, relevant grounds
  - If unmet demand is met licences can still be issued subject to any decision(s) being reasonable
  - Additional licences could be issued in batches and subject to such local criteria as determined (points system, lottery etc).

## 2.0 Portsmouth Policy on Hackney Carriage Vehicle Numbers and Key Dates

### Hackney Carriage numbers in Portsmouth



Date	Number of Taxi Plates & Comments
Prior to 1975	85
1975–1978	100 (increase in 15 plates over the 3 year period 1975 to 1978)
1986	Further 50 hackney carriage plates issued to bring the number up to 150
April/May 1987	Survey of unmet demand carried out by Lewis Corner of Sussex University known as the “Corner” survey. Concluded that there was no evidence of significant unmet demand but also recommended issue of new licences based on “quality control”. 150 vehicle licence limit however, still maintained.
October 1988	Portsmouth City Council -v- Brown. Crown Court appeal against decision to refuse to grant hackney carriage vehicle licence. Court ruled that “services of hackney carriages” meant only the distinct services that a hackney carriage could provide i.e. standing and plying for hire. Evidence, in this case, that the use of a London style cab (wheelchair accessible) to facilitate “contract” bookings for persons with mobility problems was NOT deemed relevant for the distinct and unique service of a hackney carriage plying for trade from the street. Appeal dismissed and 150 vehicle limit still maintained.
January 1990	150 vehicle licence limit removed completely by the committee. “Quality control” policies introduced to permit the grant of new taxi licences to vehicles meeting the then Metropolitan Police Public Carriage Office specification. Vehicles to be wheelchair accessible and not over 4 years old on first licensing. Previous policy of “one person one plate” rescinded. Committee also clearly recognised that a “mixed fleet” of saloon style cars and purpose built wheelchair accessible vehicles was desired and would offer the public a wide and varied choice of vehicle types.  Vehicle fleet gradually increases from 150 to 234 vehicles.
June 1996	Committee resolves to defer issue of new hackney carriage vehicle licences after considering representations from interested parties (Minutes 36 and 47 of 1996 refer) and further resolved to commission a survey.
October 1997	Committee consider survey report from MCL consultants. Survey proper carried out in May/June 1997. Agree to refuse the grant of further hackney carriage licences (Minute 32/97 refers).
August 2001	“Options for Change” review of the hackney carriage and private hire undertaking. The committee agree to retain the 234 numerical limit subject to further review in 2002 (minute 37/2001 refers).
November 2003	Office of Fair Trading report published – recommends quantity regulation should be removed.
June 2004	Department of Transport write to all local authorities with restricted number policies asking for a review of policy and to publish review outcome by 31 March 2005.
January 2005	Application for grant of a hackney carriage licence by Mr H deferred by the Licensing Committee pending consideration of a further survey. Minute 8/2005 refers.
March 2005	Committee resolve to commission a survey into the demand for the services of hackney carriages and to increase the hackney carriage fees accordingly to pay for the survey. Minute 15/2005 refers.
August 2006	Transport Planning International Ltd conduct unmet demand survey in Portsmouth.
October 2006	Licensing Committee receive report of TPI Ltd who concluded that there is no significant unmet demand for hackney carriages in Portsmouth at this time. Consultant’s also say the committee has discretion to keep the limit at 234 vehicles, issue a limited further number as though fit or to remove the numeric limit.  <b>Committee resolve to retain the existing numeric limit of 234 vehicles.</b> Minute 23/2006 refers.

## 3.0 Best Practice Guidance

- 3.1 The best practice guidance on quantity restriction for taxi licences is shown in paragraphs 3.2–3.8 below<sup>25</sup>:
- 3.2 *The present legal provision on quantity restrictions for taxis outside London is set out in section 16 of the Transport Act 1985. This provides that the grant of a taxi licence may be refused, for the purpose of limiting the number of licensed taxis 'if, but only if, the [local licensing authority] is satisfied that there is no significant demand for the services of hackney carriages (within the area to which the licence would apply) which is unmet'.*
- 3.3 *Local licensing authorities will be aware that, in the event of a challenge to a decision to refuse a licence, the local authority concerned would have to establish that it had, reasonably, been satisfied that there was no significant unmet demand.*
- 3.4 *Most local licensing authorities do not impose quantity restrictions; the Department regards that as best practice. Where restrictions are imposed, the Department would urge that the matter should be regularly reconsidered. The Department further urges that the issue to be addressed first in each reconsideration is whether the restrictions should continue at all. It is suggested that the matter should be approached in terms of the interests of the travelling public – that is to say, the people who use taxi services. What benefits or disadvantages arise for them as a result of the continuation of controls; and what benefits or disadvantages would result for the public if the controls were removed? Is there evidence that removal of the controls would result in a deterioration in the amount or quality of taxi service provision?*
- 3.5 *In most cases where quantity restrictions are imposed, vehicle licence plates command a premium, often of tens of thousands of pounds. This indicates that there are people who want to enter the taxi market and provide a service to the public, but who are being prevented from doing so by the quantity restrictions. This seems very hard to justify.*
- 3.6 *If a local authority does nonetheless take the view that a quantity restriction can be justified in principle, there remains the question of the level at which it should be set, bearing in mind the need to demonstrate that there is no significant unmet demand. This issue is usually addressed by means of a survey; it will be necessary for the local licensing authority to carry out a survey sufficiently frequently to be able to respond to any challenge to the satisfaction of a court. An interval of three years is commonly regarded as the maximum reasonable period between surveys.*
- 3.7 *As to the conduct of the survey, the Department's letter of 16 June 2004 set out a range of considerations. But key points are:*
- the length of time that would-be customers have to wait at ranks.*** However, this alone is an inadequate indicator of demand; also taken into account should be...
- waiting times for street hailings and for telephone bookings.*** But waiting times at ranks or elsewhere do not in themselves satisfactorily resolve the question of unmet demand. It is also desirable to address...
- latent demand,*** for example people who have responded to long waiting times by not even trying to travel by taxi. This can be assessed by surveys of people who do not use taxis, perhaps using stated preference survey techniques.
- peaked demand.*** It is sometimes argued that delays associated only with peaks in demand (such as morning and evening rush hours, or pub closing times) are not 'significant' for the purpose of the Transport Act 1985. The Department does not share that view. Since the peaks in demand are by definition the most popular times for consumers to use taxis, it can be strongly argued that unmet demand at these times should not be ignored. Local authorities might wish to consider when the peaks occur and who is being disadvantaged through restrictions on provision of taxi services.



**consultation.** *As well as statistical surveys, assessment of quantity restrictions should include consultation with all those concerned, including user groups (which should include groups representing people with disabilities, and people such as students or women), the police, hoteliers, operators of pubs and clubs and visitor attractions, and providers of other transport modes (such as train operators, who want taxis available to take passengers to and from stations);*

**publication.** *All the evidence gathered in a survey should be published, together with an explanation of what conclusions have been drawn from it and why. If quantity restrictions are to be continued, their benefits to consumers and the reason for the particular level at which the number is set should be set out.*

**financing of surveys.** *It is not good practice for surveys to be paid for by the local taxi trade (except through general revenues from licence fees). To do so can call in question the impartiality and objectivity of the survey process.*

- 3.8 *Quite apart from the requirement of the 1985 Act, the Department's letter of 16 June 2004 asked all local licensing authorities that operate quantity restrictions to review their policy and justify it publicly by 31 March 2005 and at least every three years thereafter. The Department also expects the justification for any policy of quantity restrictions to be included in the Local Transport Plan process. A recommended list of questions for local authorities to address when considering quantity controls was attached to the Department's letter. (The questions are listed in Annex A to this Guidance.)*

4.0 The Department of Transport letter dated 16 June 2004 requested that councils review local policy to restrict hackney carriage vehicle licences and to make that review public. The letter stated:

- In the Government Action Plan for Taxis and Private Hire Vehicles, restrictions should only be retained where there is shown to be a clear benefit for the consumer;
- Councils should publicly justify their reasons for the retention of restrictions and how decisions on numbers have been reached; and
- That unless a specific case can be made, it is not in the interests of consumers for market entry to be refused to those who meet the application criteria.
- However, local authorities remain best placed to determine local transport needs and to make the decisions about them in the light of local circumstances.
- If Councils retain quantity restrictions then a review should be undertaken of such policies on a triennial basis.



## 5.0 The Way Ahead

5.1 If the committee are of a view, after consultation with the trade and all interested parties, that they DO NOT wish to retain the fixed limit on the number of hackney carriages plying for hire within the city – then members can make this decision immediately and without the need for further survey(s).

There would be an absolute need however to impose QUALITY restrictions on the grant of any new hackney carriage licences together with a demonstrable need for any applicant to produce evidence of a vehicle to be licensed.<sup>26</sup>

5.2 The recommended quality control measures are likely to be similar to those previously imposed after the previous de-regulation in 1990 and include:

- The provision of a suitably constructed or adapted fully wheelchair accessible vehicle having a minimum nearside loading access for wheelchair users and to meet the EC whole vehicle type approval standards for vehicles in the M1 category or to be VCA compliant and approved
- The proprietor (or company) making the application to either live within Portsmouth or within 5 miles of the boundary or have their office within Portsmouth
- The vehicle to meet with any local technical specifications and/or vehicle conditions of licence for the time being in force

5.3 The introduction of further hackney carriage licences based on the above criteria would NOT see an immediate and dramatic increase in vehicle numbers. It is likely that some private hire proprietors would apply for a hackney carriage licence and thus reduce the existing private hire fleet.

Nevertheless, it is accepted that the taxi fleet would increase. The comparative increase in vehicle numbers between 1990 and 1996 represented 14 per year until the limit was “capped” again in 1996.

5.4 The advantages of removing numeric restrictions would allow the market to operate freely with no barriers and promotes:

- Benefits to customers
- Reducing waiting times
- Creating more consumer choice
- Stops a culture of creating a premium for taxi licences with a resultant “buying and selling” scenario

5.5 The disadvantages are that the existing trade may suffer from a gradual over supply with a consequence of taxis “chasing fewer and fewer jobs” leading to friction and disputes at the ranks.

5.6 There would be a need to justify any locally set quantity control policies by the commission of independent surveys say every 3 years (recommended best practice) and at an on-going cost to the existing taxi trade. The survey fees should not be met by the tax payer and best guess estimates for a new survey is a fee of between £25000 and £35000 triennially.

5.7 The question of restricting (or otherwise) the number of hackney carriages in the city is likely to promote passionate and compelling arguments for and against.

The existing hackney carriage trade say that the work has “dried up” and there has been no fare rise application for 5 years. They also say that persons have not come forward to apply for a hackney carriage licence since 2005. This could however be because person(s) are aware that the committee is not issuing hackney carriage vehicle licences and have been reluctant to come forward accordingly.

5.8 Some drivers have asked about the issue of further plates and suggested that market forces should prevail with a corresponding culture of expansion of the taxi fleet subject to strict quality controls. Other persons have reported to the committee that the “buying and selling of plates” is wrong and should be tackled.<sup>27</sup> This is the shared view of your reporting staff.

The committee is in breach of the recommended good practice guidance and cannot, at this time, just rely on the anecdotal say so of the taxi trade about demand or otherwise without commissioning a further survey on demand.

This would have an immediate impact on the licensing fees levied against hackney carriage proprietors who would need to pay, on average, an extra £128 each to finance a survey coming in at a mean average cost of £30000.

## 6.0 Conclusion

6.1 The committee cannot continue in supporting a restricted numbers policy without making some fundamental decisions.

There are no formal recommendations put forward as this is a matter for determination after having considered all the available local evidence and after taking legal advice.

**The committee had previously noted the views expressed at paragraph 5.8. The committee were mindful of considering the deregulation of the Hackney carriage fleet and invited the trade representatives and any other interested parties to give reasons why the status quo should remain.**

After careful consideration, the committee resolved:

1. a) To retain the existing numeric limit (234 vehicles) on the number of hackney carriages licensed to ply for hire within the City of Portsmouth and to instruct the head of service to identify a suitably qualified independent transport consultant to carry out a survey on the demand or otherwise for the services of hackney carriages within Portsmouth;
- b) That such fees and costs (including staff costs) arising from the survey to be determined by the committee and paid for by the hackney carriage trade by way of “one off” increase in the vehicle (proprietor) fees;
- c) That the consultant to report back to the committee with recommended options

# Chapter 5: Hackney carriage stands

## Objective

“To review the provision of hackney carriage stands and to bring any future proposals to the attention of the highway authority and appropriate cabinet member as quickly as possible”

## 1.0 The Legal Provisions

- 1.1 Section 63 of the 1976 act permits the council to appoint, vary or to revoke hackney carriage stands situated either on the public highway or, with the consent and permission of the landowner, on private land – including railway premises.
- 1.2 Stands may be appointed for all or part of the day and the number of carriages permitted may vary from stand to stand.
- 1.3 Before appointing a stand formal notice must be given to the Chief Officer of Police together with a public notice giving persons 28 days to make representations.
- 1.4 A stand cannot be appointed so as to prevent access to public service vehicle pick up points, to impede access to a station or depot or without the consent of the highway authority.
- 1.5 The power to “appoint” stands also includes the power to vary and/or revoke a stand.



## 2.0 Overview

- 2.1 The Licensing Committee is not empowered to appoint, vary or to revoke hackney carriage stands and cannot make binding decisions without referral to the appropriate cabinet member for final determination. This is because the appointment of stands is an executive, not a council function.

The chapter on “scheme of delegation and associated responsibilities” provides more information on the delegated powers and responsibilities.

- 2.2 The appointment (or otherwise) of taxi stands has historically been after receipt of a trade request and following the emergence of an area that has contributed to the late night economy or where a large commercial pub/club has become popular.

**It will not be possible to appoint a stand in every requested area or location and experience has shown that areas of popularity within the city do change with a resultant loss of business at an appointed stand – which falls into subsequent disuse.**

- 2.3 Conversely, there are other areas where the provision of taxi stand space is limited due to other road traffic usage (like Albert Road by the Kings Theatre) and evidence of “over ranking” in this very busy area takes place.

“Unofficial” stands are also used – Goldsmith Avenue on football match days and Park Road at night to service the Gunwharf Quays stand. Licensing staff do, on occasion, enforce the byelaws and the Police have issued fixed penalty tickets to drivers for obstruction offences. It is difficult however to provide staff resources to constantly tackle evidence of over ranking which is not seen as a high priority enforcement issue.

- 3.0 The council has arranged, via partnership procedures with Colas, for the trade representatives to receive immediate notification of any planned/ scheduled road works that might impact on the ability to use a designated taxi stand.
- 3.1 The information on the currently appointed stands is shown via the link at the end of this paragraph but is not up to date. The changes resulting from the Ferry Port, Palmerston Road and Hard Interchange improvements have yet to

be incorporated and some other stands have now been revoked due to historical non-use.

[www.portsmouth.gov.uk/ext/business/licensing/taxi-licensing-general-information-and-fees.aspx](http://www.portsmouth.gov.uk/ext/business/licensing/taxi-licensing-general-information-and-fees.aspx)

- 4.0 The conduct of drivers whilst waiting at stands is regulated by the byelaws. In particular drivers must face their vehicles in the same direction, move the vehicle forward when other vehicles move and stay with the vehicle when “first turn”.

There is nothing at law to prevent potential passengers from negotiating with drivers “down the line” to seek the best fare but practice and etiquette generally recommends that drivers refer passengers to the first available vehicle for hire.

- 4.1 It is an offence for a person to cause or permit any other vehicle to wait on any stand. In practice, the council’s civil enforcement officers are the first line of defence in ensuring that persons comply although licensing staff do react to trade complaints as and when – particularly when “works” or other utility vehicles are blocking access to a stand.

- 5.0 The use of “temporary” stands is not legally recognised in the 1847 or 1976 acts. A stand is either appointed and in use or is not.

- 5.1 However, this is of some concern to the taxi trade representatives who say that they are left in a weak bargaining position and not often given early notice or consulted when major city events are being planned or taking place. They point to the America’s Cup and Victorious events together with smaller (but still high profile) events such as the Southsea Food Festival.

Likewise, the redevelopment of Palmerston Road, The Ferry Port and The Hard Interchange has led to apparent trade frustration that their needs were not considered at an early stage. This concern also echoes the private hire trade who have a legitimate and rightful expectation to have designated “pick up and drop off points” for pre-booked customers attending and leaving large scale events.

- 5.2 There is some merit in the respective trade concerns and, as a result, the cabinet member for Traffic and Transportation has introduced the Transport Liaison Group with attendees drawn from the hackney carriage and private hire trades.

- 5.3 The trade say that the process of appointing stands can be very slow and cite the possibility of relocating the Liquid & Envy stand from its present position in Stanhope Road with the matter still outstanding after 2 years.

It will not be possible for the council to accede to every trade request relating to taxi stand provision within the city but the adoption of the following good practice administrative principles will assist in the consideration of all future taxi stand matters:

- The trade representatives to continue to receive updates from Colas about road works and closures affecting taxi stands in the city
- The City Centre Management and Events teams as appropriate shall liaise with appointed hackney carriage and private hire trade representatives prior to any events taking place and shall positively consider the use of temporary taxi stands (with dolly stops) together with private hire drop off/pick up points
- The trade representatives to be on the circulation list for any SAG meetings and so far as this relates to the planning of major events such as Mutiny in the Park, Victorious and the America’s Cup
- Any formal trade request for a new or varied taxi stand to be submitted, in writing, in the first instance to the Licensing Manager who shall discuss the matter with the highway authority and report back to the trade within 14 working days with an initial determination
- If refused, the trade to receive a written response, with reasons, from the Licensing Manager on behalf of the council
- If agreed in principle, the Licensing Manager and officers of the highway authority to prepare a report and recommendation to the appropriate cabinet member within 28 working days of the initial agreement
- Once the matter has been referred to (and approved by) the appropriate cabinet member – the Licensing Manager and/or highway authority to give formal public notice with an intention, subject to no objections being received, to have the stand in operation or varied within 4 months

# Chapter 6: Trade representatives and consultation

## 1.0 Introduction

- 1.1 Any person, partnership, trade association or company involved in the hackney carriage or private hire business will have a legitimate expectation of being consulted about matters of policy, conditions of licence and other administrative or supervisory functions that may or will have a future impact on their working environment.
- 1.2 This does not mean that the committee must condescend into giving notice about every change or proposal but, in the interests of good administrative law<sup>28</sup> and the rules of natural justice, the committee will invite and hear the representations of those affected by proposal(s) before making any final decision(s).
- 1.3 Where the law requires the committee (or officers) to formally consult and to give proper public notice – this will be done together with notices displayed in the Licensing Service public area and given to recognised trade representatives for distribution.

## 2.0 The Consultative Group

- 2.0 The committee has recognised the need to consult with trade representatives and, as a result, formally approved the introduction of a consultative group in 1987 – minute 10/1987 refers.

In particular, the committee, at that time, instructed officers to request the following information from those persons apparently representing the respective trades:

- Does the organisation have a formal constitution governing such matters as the election of a committee and can you provide a copy?
  - What arrangements are made to inform members of current items of interest and to obtain their views?
  - Who does your organisation represent and can you supply a list of members?
- 2.1 As a result, the following trade representatives were appointed:
    - Mr A Brodie and E Baldwin representing the Portsmouth Hackney Carriage Owners Association
    - Mr C Dixon representing Citywide Taxis
    - Mr C Holman representing Streamline Taxis Ltd
    - Mr B Tondeur representing the Independent Hackney Carriage Proprietors
    - Mr W Brown and Mr R Tanner representing the Portsmouth Private Hire Association
    - Mr L Firth representing other private hire operators



2.2 The committee resolved to recognise the above trade representatives (2 persons on behalf of each organisation to attend meetings) and to meet twice a year to discuss items of interest.

2.3 The committee retained a final veto power on the appointment and recognition of either organisations or persons representing the respective trades.

### 3.0 The Present Situation

3.1 The use of the Consultative Group has waned over the last 10 years. The officers representing the respective hackney carriage and private hire trades have also changed.

The current trade representatives are:

- Aqua Cars Ltd
- Chris Dixon and Viv Young representing the hackney carriage trade
- Forhad Mahmud and Shahed Uddin also representing the hackney carriage trade
- Citywide Taxis
- Uber

3.2 In practice, established trade representatives are immediately alerted by licensing staff about any proposals affecting the trade and use modern means of communication to disseminate this information quickly to members.

Trade representatives are given every opportunity to attend and speak at committee hearings and regularly do so.

Trade members can (and do) make immediate contact with either Licensing Committee members or ward councillors by way of email to raise or request the resolution of matters of concern.

3.3 Trade representatives and operators meet with the Licensing Manager on matters of shared interest – for example preliminary meetings to discuss the annual licensing budget and any proposals relating to fees.

For matters concerning the use and management of the highway – the cabinet member for Traffic & Transportation has taken the lead with the establishment of the Transport Liaison Group (TLG) to discuss matters affecting all those in the local passenger transport environment including taxi, private hire, bus and cycle user groups.

Equally, licensing staff have arranged, via Colas, for notified road works/closures and other safety alerts to be automatically sent to the trade representatives as a matter of norm.

4.0 All this points towards an acceptance that the need for the Consultative Group to meet by way of formal 6 monthly meetings has now diminished (for the reasons set out above) but that the committee should retain the power to call the group together once a year if required.

### Resolved

1. That Licensing Sub Committee minute 10/1987 be noted and amended.
2. That the terms of reference, as previously approved by the committee, be varied so that reference to “meetings to be held six monthly” be substituted with “a meeting will be held once a year”.
3. That the Licensing Manager be authorised to appoint and remove trade representatives and that the scheme of delegation be amended accordingly.

# Chapter 7: Duration of licences

## Objective

“To recognise the defined licensing periods for drivers, vehicles and operators and to consequently review administrative procedures associated with the grant or renewal of such licences”

## 1.0 Introduction

- 1.1 Generally speaking, licences, permits, registrations and other statutory permissions for persons usually have a renewal or end date and do not last indefinitely.<sup>29</sup>
- 1.2 Things change. Personal and business decisions can influence and have an impact on future plans. People holding a licence may subsequently be convicted of a criminal offence that will have an impact on the ability to continue to hold that licence. As persons get older they may experience medical or other general health and well-being problems. They may also just move away from the area.  
  
Licensed and recognised business premises may move location and either expand or down size – recognised personnel at a business may also change.  
  
All these matters can have an influence on the duration of a licensing period.
- 1.3 People do not always tell the council immediately about changes in their personal circumstances that might have a significant impact on any subsequent licensing renewal process.
- 1.4 The renewal process for licences (particularly driver licences) is, unfortunately, a guaranteed “vetting” method in finding out and updating all those things that have changed in the previous 12 months.

Anecdotally, over 30% of the information provided by licence holders at renewal is different to that held on current records. This can relate to changes in address, telephone or other contact details, name changes, new convictions, endorsements or cautions and finally to the current disclosure of a previously underlying medical condition.

The council still needs to establish, at renewal, that there are no germane or valid reasons to suggest that a person is not still deemed to be “fit and proper” to hold a respective hackney carriage or private hire driver licence.

- 1.5 For all the above reasons, the council, as the local licensing authority, has historically exercised an extremely cautious view of “extending” licensing periods over and above a period of 1 year at a time for both drivers and operators.

However, the council recognises that the law has changed and that longer licensing periods for certain licensing functions are now the norm.

## 2.0 The Legal Provisions

- 2.1 Section 43 of the 1847 act provides that a hackney carriage vehicle licence shall be in force “for one year only from the day of the date of such licence”.
- 2.2 Section 48 of the 1976 act equally provides that a licence for a private hire vehicle “shall remain in force for such period not being longer than one year”.  
  
For the purposes of “temporary use” vehicle licences (which are used as a substitute when the main vehicle is off the road due to accident or mechanical repair) – the respective acts are silent on their use but, as a matter of local policy, the committee would expect to issue a temporary vehicle licence for usually no more than 31 days.  
  
This provision should be seen as an emergency exemption and to arbitrarily extend the temporary use period indefinitely would negate the whole purpose of the temporary permission and therefore extensions beyond 31 days are unlikely to receive approval unless in exceptional circumstances.
- 2.3 The 1976 act permits for vehicle inspections and testing to take place up to 3 times in any one period of 12 months.
- 2.4 The 1976 act also permits driver licences for both private hire and hackney carriage to remain in force for up to 3 years (or for such lesser period) as the committee may be specified.



- 2.5 For the reasons expressed in 1.1–1.5 above, it has been the longstanding policy of the council to grant driver licences for a period of 1 year only.
- 2.6 Private hire operator licences could, by law, remain in force for up to 5 years (or for such lesser period) as the council specified. Again, the local Portsmouth policy for operator licences has been to grant licences for periods of 1 year at a time.
- 2.7 Informal discussions with operators and trade representatives (as part of the previous transformation programme) in the last year or so had led to an initial officer view that operator licences could be granted and renewed for a period of up to 3 years and this was to be put before the Licensing Committee for consideration.
- 2.8 A word of caution should be exercised in relation to the “renewal” of respective driver, vehicle and operator licences. Sections 60, 61 and 62 of the 1976 act envisage a “renewal” or the “grant afresh” of a licence that is coming to an end.

There has been a historical informal practice to recognise, and to renew, “late renewals” – particularly for driver licences and sometimes for vehicle licences. This cannot be regarded as satisfactory as the individual driver circumstances may have changed significantly.

The “renewal” process is designed to minimise the need for persons to comply again with the original requirements used to determine the overall fitness of an applicant. This includes the knowledge test, medical and DBS requirements. To permit “late renewals” without consideration of the overall general licensing requirements would effectively nullify the power of the committee to require persons to provide information in support of their continued fitness to drive.

For these reasons, and due to case law<sup>30</sup>, the council will only accept and process any renewal application received on or just before a current licence is due to expire or, in exceptional cases, within 2 days after the expiry of the respective licence.

## 3.0 Best Practice Guidance

- 3.1 The Department for Transport guidance<sup>31</sup> does not support the view of annual driver licences and states *“it is not necessarily good practice to require licences to be renewed annually”*
- 3.2 Conversely, the guidance accepts that an annual licence may be more attractive due to the lower fee and if a person is likely to move away or get another job.
- 3.3 For operator licences, the guidance is clear that 5 year licences – *“may well be appropriate in the average case”*
- 3.4 It is agreed that operator licences should be granted or renewed for a longer licensing period than 1 year.
- 3.5 There are local reservations however about the concept and practical implications of driver licences lasting for a statutory minimum period of 3 years – but the council accepts that, with proper due diligence procedures in place, we should be able to manage any changes to licence periods without any detrimental impact on the control and supervision of licensed drivers.

## 4.0 Deregulation Act 2015

4.1 The 2015 act has significantly changed, by statutory instruction, the licensing periods for both drivers and operators.

4.2 The changes are:

- **For hackney carriage and private hire drivers – now a prescribed 3 year licence period**
- **For private hire operators – now a prescribed 5 year licence period**

4.3 The changes come into force on 1 October 2015.<sup>32</sup>

4.4 The relevant explanatory note to this part of the 2015 act states:

*“Subsection 2 changes the law in such a way as to establish a standard duration of 3 years for taxi and private hire vehicle driver licences. The section specifies that a licence may be granted for a period of less than 3 years but only in the circumstances of an individual case, not because of a blanket policy.”*

4.5 Vehicle licences (hackney carriage and private hire) are NOT affected by the changes and will remain licensed for periods of up to 1 year.

## 5.0 Exceptions to the 3 year rule

5.0 Whilst the default position is for the grant or renewal of 3 yearly driver licences – there may be justifiable reasons to grant (or renew) individual driver licences for shorter periods due to:

- Medical conditions (such as diabetes) which require the production of a yearly consultant’s report on continued fitness to drive to the group 2 vocational standard
- Persons granted a licence (or having a licence renewed) “on probation and/or warning” by the Licensing Sub Committee and subject to strict criteria such as completing a driving assessment or providing monthly reports and monitoring for good behaviour for a shorter period of time
- Those persons with say a limited permission to stay or work in the UK
- Those applicants or drivers requesting a shorter duration licence for personal reasons – (see paragraph 1.2)
- Any other reasonable and individual circumstances

5.1 It is recommended that the head of service be given delegated authority to grant and renew driver licences for a period of less than 3 years but only after having regard to the circumstances of any one individual case.

Good and proper reasons, consistent with 5.0 previous for restricting any licence duration should be recorded.

## 6.0 Impact on Current Working Procedures

6.1 For many years the Licensing Service has operated a “fixed year” renewal cycle for operators, vehicles and drivers. This practice has long been accepted by the trade and whilst it has caused “pressure points” for the Licensing Service at various times of the year – the system has worked reasonably well.

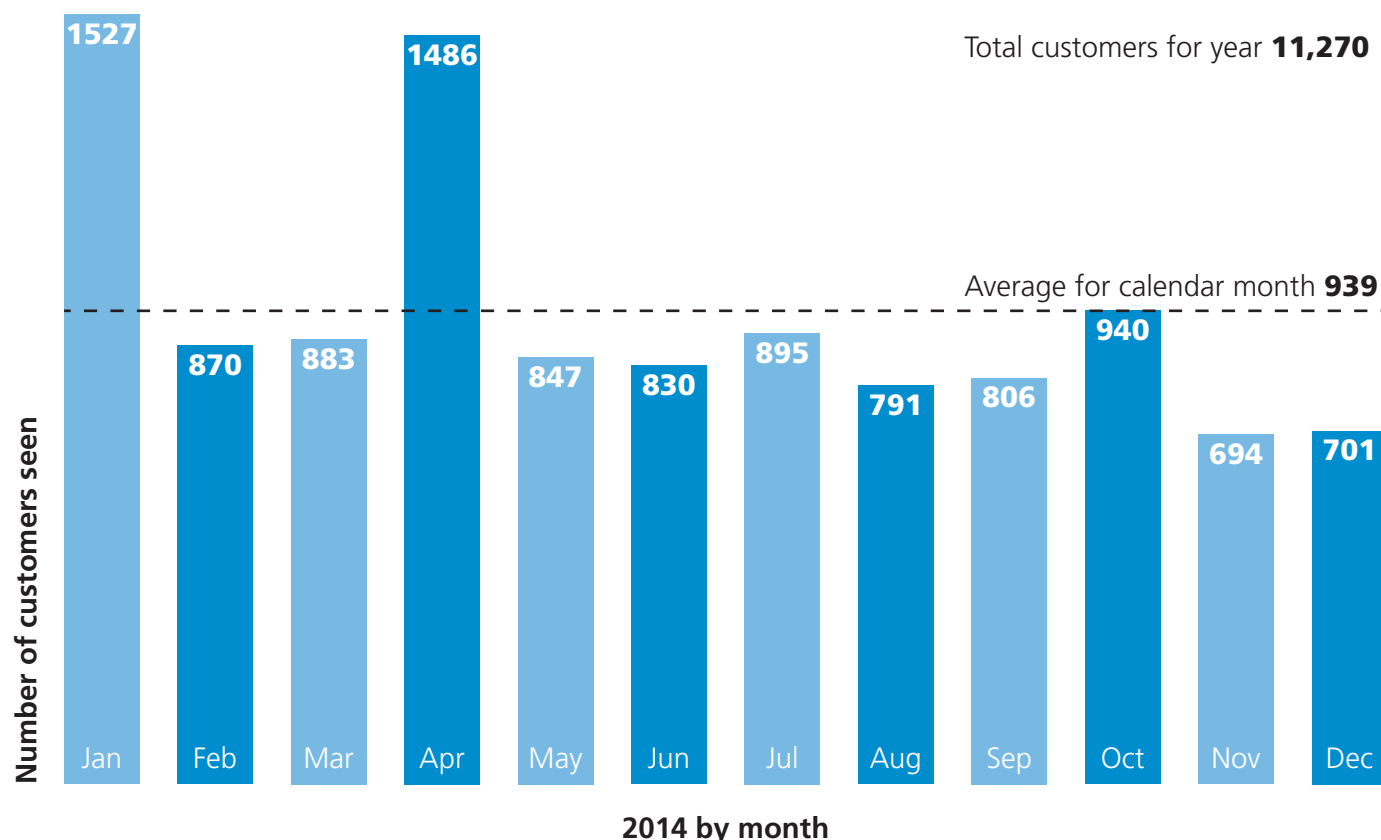
6.2 All hackney carriage licences expire on 30 April annually.

All private hire licences expire on 31 January annually.

6.3 There is however, pressure on staff to “turn around” renewal applications almost on demand. Staff goodwill is pushed to the limit and the public areas in licensing can become very busy at these peak periods. Other licensing matters are dealt with “as and when” during the peak demand periods for drivers, vehicles and operators.

An analysis of the 2014 Q Flow figures for the Licensing Service is shown opposite. These are the **total** figures and therefore including Licensing Act 2003 enquiries as well. However, the majority of enquiries are taxi and private hire related.

## Q flow for licensing service



6.4 There will always be a demand for both new (and renewal applications) to be dealt with in person as original documents including some of a highly sensitive nature (criminal record checks, driving licences, medicals, vehicle registration documents and insurances etc) are required to be produced in support of applications.

Applicants are NOT encouraged to send such documents through the post nor should licensing staff be required to keep or retain these documents pending consideration of any one application type.

6.5 Equally, new drivers are required to undertake a supervised in house knowledge test and will also be subject to drug screening and interview by licensing staff.

New vehicles must be inspected (and photographed) by licensing staff prior to first licensing and plating.

The service is dominated by a demand and need to have "face to face" personal contact with applicants and licence holders alike.

6.6 However, it is recognised that the use of say an automated "on line" renewal system for future years could be beneficial and should be explored. Equally, the use of "on line" diaries and automated booking facilities for driver knowledge tests, drug screens and vehicle inspections should also be explored.

This would all be subject to IT provision, audit compliance and general security requirements being put into place.

There may be cost implications in updating computer software to facilitate any secure on line renewal application process and this would also need to fit with corporate priorities.

The concept of on line renewals (and payments) should however be positively considered and for this reason it is contained as a statement of intent in this policy review.

It is likely, in any event, that the traditional procedure of "sending out renewal papers" to licensed drivers, vehicle proprietors and operators will cease as part of a drive to cut down on administrative processes, paperwork and ultimately to save costs to the licensing undertaking.

## 7.0

7.0 From October 2015 any new driver and operator licences will normally be granted for their respective longer licensing periods and therefore will expire on a “rolling” basis rather than all on a fixed end date.

On next renewal, existing driver licences will normally be “extended” for 3 year periods in line with the Deregulation Act 2015.

It is likely that DBS checks will be “moved” administratively to coincide with the next renewal date for any individual 3 year driver licence.

7.1 For vehicles however, the concept of a yearly licence with publicly displayed and “colour coded” windscreen licence discs is more appropriate and thus the fixed expiry dates of 31 January and 30 April for the respective private hire and hackney carriage fleets should be retained for the time being. The need to retain the vehicle licence expiry date on the plate may be discontinued.

## 8.0

8.0 Of paramount importance (and with the introduction of longer licensing periods) is the requirement for drivers to REPORT IMMEDIATELY any changes whatsoever in their circumstances that might affect their continued “fit and properness” to continue to hold a licence.

8.1 The council cannot rely on section 57 of the 1976 act as this requires **applicants** to provide information to determine whether a licence should be granted or renewed and does not compel those persons already licensed to provide information to the committee mid-term during a licensing period.

Accordingly, the conditions of licence for private hire drivers will be amended to require:

1. The driver shall notify the council within 24 hours of any changes to:
  - Their name, address, telephone or email contact details
  - Any medical condition that might affect an ability to drive professionally to the group 2 vocational standard
  - Their driving licence so far as this relates to the imposition of penalty points, any other endorsements, fines or disqualifications
  - Their Disclosure & Barring Service enhanced check certificate so far as this relates to the imposition of any convictions, cautions, reprimands or warnings
  - Their right to work or reside in the UK.
2. The driver shall notify the council within 24 hours of any arrest, detention or charges being preferred against them.

Similar conditions will apply to operators and vehicle proprietors.

8.2 The committee and/or officers will put into place formal mandates and procedures to ensure, either by way of electronic check or by way of a formal declaration, the production of driver licence and other relevant information and will use appropriate checking services for this purpose.

## 9.0

### **9.0 A zero tolerance view will be taken towards licensed drivers failing to notify the council at any time of:**

- **Any change in an existing medical condition (or new condition) that might interfere with an ability to drive professionally to the group II vocational standard**
- **The imposition of any new driving endorsement, fine, penalty points, short "totting up" ban or other driving sanction prescribed by law**
- **Any new conviction, caution, reprimand or warning received**

**And there will be a presumption in favour of a hearing before the Licensing Sub Committee to determine whether the driver is still deemed to be a fit and proper person and any consequential action against the respective hackney carriage or private hire driver licence.**

## Resolved

1. That the changes to the duration of driver and operator licences contained in the Deregulation Act 2015 be noted.
2. That the head of service be authorised to amend such policy directives, conditions of licence and application procedures commensurate only with these proposals; in particular to provide for:
  - The introduction of a "rolling 3 year licence period" for hackney carriage and private hire drivers
  - The introduction of a "rolling 5 year licence period" for private hire operators
  - The introduction of DBS checks to coincide with the renewal dates for both driver and operator licences
3. That the head of service be given delegated authority to grant and renew driver licences (hackney carriage or private hire) for a period of less than 3 years but only after having regard to the circumstances of any one individual case and consistent with 5.0 above.
4. That the head of service bring forward proposals to amend/vary fees for driver, vehicle and operator licences commensurate with these proposals.

# Chapter 8: The test of 'fit and proper'

## Objective:

"To protect the welfare, safety and interests of both the travelling public and all other road users by ensuring that licences are only granted or renewed to persons who are judged to be fit and proper."

## 1.0 The Legal Provisions

- 1.1 The 1847 act is silent on the need to examine or indeed to have regard to the "fitness" of those proprietors and drivers of licensed hackney carriages plying and standing for hire within the city.

Revocation or suspension of the respective hackney carriage licences is still permissible under section 50 of the 1847 act for persons convicted of two offences contrary to the act or byelaws; but, generally speaking, the question of determining whether a person or operator is judged to be "fit and proper" is a concept found only in the 1976 act.

- 1.2 Sections 51 and 59 of the 1976 act prescribe that the council shall NOT grant a private hire or hackney carriage driver licence unless satisfied that the applicant is a "fit and proper" person.

The same test is found at section 55 and in respect of private hire operators.

- 1.3 For vehicle proprietors, the council may grant or renew licences having regard to the fitness of the vehicle and after taking into consideration any locally approved policy guidance on vehicle specification, vehicle age limits and such like.

However, the question of the "fitness" of the individual vehicle proprietor(s) should not, in the committee's view, be overlooked or minimised. Just because vehicle owners may not have direct day to day contact with the public and are not subject to routine vetting by way of criminal background checks – does not mean that they play a lesser or insignificant part in the overall licensing process.

- 1.4 Vehicle proprietors (both hackney carriage and private hire) have a lawful duty to ensure that drivers are both properly licensed and insured to drive their vehicles. The vehicle itself must be licensed, maintained properly (and to a standard that meets the expectations of the committee by way of any prescribed testing criteria) and the proprietor must ensure that all documents are kept and made readily available for inspection.

All this points towards a positive presumption that vehicle proprietors must also be seen to be "fit persons" and that any evidence of general criminality or non-compliance with either the 1847 or 1976 acts will be considered seriously.<sup>33</sup>

- 1.5 There is no exact definition of "fit and proper" and each case stands to be considered on individual merit with the public protection and welfare at the heart of any deliberations.

The law was summarised by the then Lord Chief Justice in the following way:

***"The objectives of the licensing regime are plainly intended, among other things, to ensure so far as possible, that those licensed to drive private hire vehicles are suitable persons to do so, namely that they are safe drivers with good driving records and adequate experience, sober, mentally and physically fit, honest, and not persons who would take advantage of their employment to abuse or assault passengers".<sup>34</sup>***



1.6 Case law<sup>35</sup> has also established the following general principles to assist and determine the overall test of “fit and proper”:

- **The burden is on the applicant or licence holder to establish that they are fit and proper**
- **The Licensing Committee and/or officers will seek to establish the facts and merits of any particular case on the civil burden of the “balance of probabilities” and thus can consider evidence notwithstanding any acquittal or not guilty verdicts reached from any previous criminal proceedings**
- **The determination of “fit and proper” is not akin to criminal proceedings and the use of hearsay is admissible (although the legal advisor will caution the committee as to the weight of evidence to be attached to such background third party evidence) as appropriate to the case in question**
- **Private hire and hackney carriage drivers are part of the “exempted” professions so far as the Rehabilitation of Offenders Act 1974 (as amended) is concerned and the committee may consider evidence of**

**spent convictions, cautions or reprimands etc and where it is in the interests of justice to do so**

- **The committee does not have to conclude that there is a reasonable chance of a conviction when considering evidence of misconduct against an applicant or licence holder who has, or is, the subject of pending criminal matters**
- **Personal circumstances are not relevant considerations**
- **The committee cannot go behind (or review the merits of) previous criminal convictions**

## 2.0

2.0 Should the committee refuse to grant, suspend, revoke or refuse to renew a driver licence there is a right of appeal to the Magistrates’ Court.

Any “notice of decision” following a committee hearing will clearly advise persons of the reasons for any decision(s) taken together with their respective appeal rights.

### 3.0 Best Practice Guidance<sup>36</sup>

It is not surprising that the best practice guidance provides much information about the licensing of drivers as shown in paragraphs 3.1–3.10:

#### 3.1 **Acceptance of Driving Licences from other EU Member States**

*“Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 as enacted stated that an applicant for a taxi or private hire vehicle (PHV) driver’s licence must have held a full ordinary GB driving licence for at least 12 months in order to be granted a taxi or PHV driver’s licence. This requirement has subsequently been amended since the 1976 Act was passed.*

*The Driving Licences (Community Driving Licence) Regulations 1996 (SI 1996 No 1974) amended sections 51 and 59 of the 1976 Act to allow full driving licences issued by EEA states to count towards the qualification requirements for the grant of taxi and PHV driver’s licences.*

*Since that time, a number of central and eastern European states have joined the EU and the EEA and the Department takes the view that drivers from the Accession States are eligible to acquire a taxi or PHV driver’s licence under the 1976 Act if they have held an ordinary driving licence for 12 months which was issued by an acceding State (see section 99A(i) of the Road Traffic Act 1988). To complete the picture, the Deregulation (Taxis and Private Hire Vehicles) Order 1998 (SI 1998 No 1946) gave equal recognition to Northern Ireland driving licences for the purposes of taxi and PHV driver licensing under the 1976 Act (see section 109(i) of the Road Traffic Act 1988, as amended).*

#### 3.2 **Criminal Record Checks**

*A criminal record check is an important safety measure particularly for those working closely with children and the vulnerable. Taxi and PHV drivers can be subject to a Standard Disclosure (and for those working in “Regulated Activity” to an Enhanced Disclosure) through the Criminal Records Bureau. Both levels of Disclosure include details of spent and unspent convictions, cautions reprimands and final warnings. An Enhanced Disclosure may also include any other information held in police records that is considered relevant by the police, for example, details of minor offences, non-conviction information on the Police National Computer such as Fixed Penalty Notices and, in some cases, allegations. An Enhanced Disclosure is for those working in Regulated Activity and the Government has produced guidance in relation to this and the new “Vetting and Barring Scheme”.*

*In considering an individual’s criminal record, local licensing authorities will want to consider each case on its merits, but they should take a particularly cautious view of any offences involving violence, and especially sexual attack. In order to achieve consistency, and thus avoid the risk of successful legal challenge, local authorities will doubtless want to have a clear policy for the consideration of criminal records, for example the number of years they will require to have elapsed since the commission of particular kinds of offences before they will grant a licence.*

*Local licensing authorities will also want to have a policy on background checks for applicants from elsewhere in the EU and other overseas countries. One approach is to require a certificate of good conduct authenticated by the relevant embassy. The Criminal Records Bureau website gives information about obtaining certificates of good conduct, or similar documents, from a number of countries.*

*It would seem best practice for Criminal Records Bureau disclosures to be sought when a licence is first applied for and then every three years, even if a licence is renewed annually, provided drivers are obliged to report all new convictions and cautions to the licensing authority.*



### 3.3 **Notifiable Occupations Scheme**

*Under this Scheme, when an individual comes to the notice of the police and identifies their occupation as a taxi or PHV driver, the police are requested to notify the appropriate local licensing authority of convictions and any other relevant information that indicates that a person poses a risk to public safety. Most notifications will be made once an individual is convicted however, if there is a sufficient risk, the police will notify the authority immediately.*

*In the absence of a national licensing body for taxi and PHV drivers, notifications are made to the local licensing authority identified on the licence or following interview. However, it is expected that all licensing authorities work together should they ascertain that an individual is operating under a different authority or with a fraudulent licence.*

*The police may occasionally notify licensing authorities of offences committed abroad by an individual however it may not be possible to provide full information.*

### 3.4 **Immigration Checks**

*The Department considers it appropriate for licensing authorities to check on an applicant's right to work before granting a taxi or PHV driver's licence. It is important to note that a Criminal Records Bureau check is not a Right to Work check and any enquires about the immigration status of an individual should be addressed to the Border and Immigration Agency. Further information can be found at [www.bia.homeoffice.gov.uk/employingmigrants](http://www.bia.homeoffice.gov.uk/employingmigrants)*

*More generally, the Border and Immigration Agency's Employers' Helpline (0845 010 6677) can be used by licensing staff to obtain general guidance on immigration documentation, although this Helpline is not able to advise on individual cases.*

*The authority can obtain case specific immigration status information, including whether a licensing applicant is permitted to work or details of work restrictions, from the Evidence and Enquiry Unit, Floor 12, Lunar House, Wellesley Road, Croydon CR9 2BY. Further details on the procedures involved can be obtained by contacting the Unit (020 8196 3011).*

### 3.5 **Medical Fitness**

*It is clearly good practice for medical checks to be made on each driver before the initial grant of a licence and thereafter for each renewal. There is general recognition that it is appropriate for taxi/PHV drivers to have more stringent medical standards than those applicable to normal car drivers because:*

*they carry members of the general public who have expectations of a safe journey; they are on the road for longer hours than most car drivers; and they may have to assist disabled passengers and handle luggage.*

*It is common for licensing authorities to apply the "Group 2" medical standards – applied by DVLA to the licensing of lorry and bus drivers – to taxi and PHV drivers. This seems best practice. The Group 2 standards preclude the licensing of drivers with insulin treated diabetes. However, exceptional arrangements do exist for drivers with insulin treated diabetes, who can meet a series of medical criteria, to obtain a licence to drive category C1 vehicles (ie 3500–7500 kgs lorries); the position is summarised at Annex C to the Guidance. It is suggested that the best practice is to apply the C1 standards to taxi and PHV drivers with insulin treated diabetes.*

### 3.6 **Age Limits**

*It does not seem necessary to set a maximum age limit for drivers provided that regular medical checks are made. Nor do minimum age limits, beyond the statutory periods for holding a full driver licence, seem appropriate. Applicants should be assessed on their merits.*

### 3.7 **Driving Proficiency**

*Many local authorities rely on the standard car driving licence as evidence of driving proficiency. Others require some further driving test to be taken. Local authorities will want to consider carefully whether this produces benefits which are commensurate with the costs involved for would-be drivers, the costs being in terms of both money and broader obstacles to entry to the trade. However, they will note that the Driving Standards Agency provides a driving assessment specifically designed for taxis.*

### 3.8 **Language Proficiency**

Authorities may also wish to consider whether an applicant would have any problems in communicating with customers because of language difficulties.

### 3.9 **Other Training**

Whilst the Department has no plans to make training courses or qualifications mandatory, there may well be advantage in encouraging drivers to obtain one of the nationally-recognised vocational qualifications for the taxi and PHV trades. These will cover customer care, including how best to meet the needs of people with disabilities. More information about these qualifications can be obtained from GoSkills, the Sector Skills Council for Passenger Transport. GoSkills is working on a project funded by the Department to raise standards in the industry and GoSkills whilst not a direct training provider, can guide and support licensing authorities through its regional network of Regional Managers.

Some licensing authorities have already established training initiatives and others are being developed; it is seen as important to do this in consultation with the local taxi and PHV trades. Training can cover customer care, including how best to meet the needs of people with disabilities and other sections of the community, and also topics such as the relevant legislation, road safety, the use of maps and GPS, the handling of emergencies, and how to defuse difficult situations and manage conflict. Training may also be considered for applicants to enable them to reach an appropriate standard of comprehension, literacy and numeracy. Authorities may wish to note that nationally recognised qualifications and training programmes sometimes have advantages over purely local arrangements (for example, in that the qualification will be more widely recognised).

Contact details are:

GoSkills, Concorde House, Trinity Park, Solihull, Birmingham, B37 7UQ.

Tel: 0121-635-5520

Fax: 0121-635-5521

Website: [www.goskills.org](http://www.goskills.org)

Email: [info@goskills.org](mailto:info@goskills.org)

### 3.10 **Topographical Knowledge**

Taxi drivers need a good working knowledge of the area for which they are licensed, because taxis can be hired immediately, directly with the driver, at ranks or on the street. So most licensing authorities require would-be taxi-drivers to pass a test of local topographical knowledge as a pre-requisite to the first grant of a licence (though the stringency of the test should reflect the complexity or otherwise of the local geography, in accordance with the principle of ensuring that barriers to entry are not unnecessarily high).

However, PHVs are not legally available for immediate hiring in the same way as taxis. To hire a PHV the would-be passenger has to go through an operator, so the driver will have an opportunity to check the details of a route before starting a journey. So it may be unnecessarily burdensome to require a would-be PHV driver to pass the same 'knowledge' test as a taxi driver, though it may be thought appropriate to test candidates' ability to read a map and their knowledge of key places such as main roads and railway stations. The Department is aware of circumstances where, as a result of the repeal of the PHV contract exemption, some people who drive children on school contracts are being deterred from continuing to do so on account of overly burdensome topographical tests. Local authorities should bear this in mind when assessing applicants' suitability for PHV licences."

## 4.0

- 4.0 The committee generally agrees with the best practice guidance.

## 5.0 Policy on the Consideration and Relevance of Convictions

- 5.1 The council both as an employer, and as the local licensing authority responsible for taxi and private hire matters, is a registered body and receives information about convictions and cautions etc recorded against persons from the Disclosure & Barring Service.

As such, the council has adopted a policy statement on the recruitment of ex-offenders.

The committee, as the local licensing authority, has also adopted a policy statement for the purposes of the hackney carriage and private hire undertaking.

It should be noted that the function and purpose however of the Licensing Committee is not to “recruit” persons but rather to ensure that those person(s) with previous convictions and seeking “to apply for and/or to retain a licence” are considered to be “fit and proper”.

- 5.2 The policy statement is shown below:

The city council, as the local licensing authority will make all efforts to prevent discrimination against any applicant or licence holder or users of the licensing service, regardless of race, gender, religion, sexual orientation, age, disability or offending background.

The licensing authority complies fully with the Disclosure and Barring Service Code of Practice which is available to view at the link shown below:

**[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/143662/cop.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/143662/cop.pdf)**

The licensing authority will receive appropriate guidance in the relevant legislation, e.g. the Rehabilitation of Offenders Act 1974 as amended. The use of “spent” convictions, cautions or other sanctions may be considered as appropriate and subject to legal advice.

Having a conviction, community or other order or caution resulting from a custodial or non-custodial sentence need not necessarily bar persons from obtaining or continuing to hold a licence.

The committee will consider the seriousness of the offence(s), whether isolated or not, the age of the offender and the sentence imposed by the convicting court.

Each case will be considered on merit but the overriding consideration will be the protection and welfare of the public. The licensing authority will have regard to the overall convictions policy shown in this document and will hear the representations of those persons affected before making any final decisions.

The licensing authority however expects all persons to make a full and honest disclosure of all previous convictions together with any outstanding arrest or charges being brought against them. A serious view will be taken for non-disclosure.

Should any convictions be revealed following a DBS check, the person concerned will be asked to attend for interview with an authorised officer and, if necessary, the sub-committee will be asked to consider any contested matter or application.

The licensing authority will not disclose the results of any DBS checks to third parties and will use the information solely to determine the fit and properness of the person concerned. In this respect, the information will be retained for as long as that person remains licensed by the council and destroyed thereafter.

- 5.3 The current Portsmouth policy on the relevance of convictions<sup>37</sup> stems from joint guidance published in March 1992 by the Department for Transport and the Home Office.<sup>38</sup>

This followed the introduction of the then Road Traffic Act 1991 which, by virtue of section 47, created a new power for the council to send details of driver applications to the Police and to seek the Police views accordingly.<sup>39</sup>

- 5.4 The policy is now over 20 years old and in need of review. The LGA "Taxi and private Hire Councillors' Handbook" supports this view.<sup>40</sup>

Accordingly, the Licensing Committee has adopted the following guidelines on criminal convictions, cautions etc together with guidelines on the evidence of non-criminal behaviour amounting to inappropriate conduct by an applicant or licensed professional driver. The guidelines are produced opposite.

- 5.5 Each case will be determined on merit.

The committee will expect persons and/or their representatives to have read and had regard to the requirements shown in **1.5**, **1.6** and **5.2** above.

- 5.6 The committee will not, as a matter of norm, consider "spent" matters except in those circumstances shown in the chapter "Rehabilitation of Offenders" and at paragraph **4.2**.

## Guidelines on the relevance of convictions and behaviour

Type of Conviction <sup>41</sup>	Guideline	Comments
Any <b>violence</b> offence(s) to include threatening behaviour, domestic abuse, harassment and stalking matters, possession of offensive weapons, more serious public order matters, resisting arrest, criminal damage, arson etc	Normally a minimum <b>5 (and up to 10) year ban</b> from obtaining or holding a licence.  For convictions of GBH (or with intent), wounding, manslaughter, murder or any terrorism linked offences the committee are <b>unlikely to support an application</b>	A particularly serious view will be taken in relation to offences against Police or other public servants or against children
Any <b>sexual</b> offence(s) to include sexual assault, indecency, indecent assault, gross indecency grooming, sexual trafficking offences, having or downloading obscene material, possession of indecent images, rape	Normally a minimum <b>10 year ban</b> from obtaining or holding a licence.  For convictions of grooming, sexual assault, rape and/or offences against children or vulnerable adults or for persons on the sex offenders register the committee are <b>unlikely to support an application</b>	Drivers may, by nature of their duties, convey vulnerable single females late at night.  Drivers convey vulnerable adults and children on school and other special needs contracts on a daily basis – sometimes supervised and sometimes alone.
Any <b>dishonesty</b> offence(s) to include theft, shop lifting, handling, fraud, burglary, making false statements, perjury etc	Normally a minimum <b>5 (and up to 10) year ban</b> from obtaining or holding a licence.	Drivers are in an absolute position of trust with access to lost property left in vehicles, knowledge of empty properties when persons are away on holiday and dealing with customers/tourists that might not be familiar with the locally prescribed fares
Any offence(s) against the <b>1847 or 1976 acts</b> to include the byelaws and a breach of conditions constituting an offence at law	Normally a <b>1 year ban</b> from obtaining or holding a licence after date of conviction	A person who offends against the licensing code shows a propensity towards non-compliance with the law
Any <b>substance abuse</b> offence(s) and to include evidence of illicit drug use either by way of medical examination or drug test failure.	Normally a <b>3 year ban</b> <sup>42</sup> from obtaining or holding a licence and any future application to include appropriate and supporting medical reports if necessary	To include, drink, drugs or use of legal highs

Type of Conviction <sup>41</sup>	Guideline	Comments
<p><b>Motoring</b> offence(s) to include endorsements, short disqualifications, totting up disqualifications, drink drive, no insurance, driving without due care, reckless or dangerous driving, failure to control a motor vehicle by using a mobile phone or other device, failure to comply with prescribed road traffic signs, failure to stop or to report an accident, defective vehicle and illegal parking etc</p>	<p>Normally a <b>verbal warning for endorsements and less than 8 penalty points</b>.</p> <p>If more than <b>8 current penalty points endorsed on a driving licence</b> then refer to Licensing Sub Committee for determination on merit.</p> <p>For "one off" <b>short disqualifications</b> licence may be restored at end of disqualification by officers subject to a <b>written warning</b> and compliance with any directives to attend and pass approved <b>driving competency tests</b>.</p> <p>For <b>no insurance, drink driving, careless driving, failing to stop or report an accident</b> etc normally a <b>3 year ban</b> from obtaining or holding a licence.</p> <p>For offences of causing death by reckless or dangerous driving, repeated drink drive convictions the committee are <b>unlikely to support an application</b></p>	<p>A driver is considered to be a "professional" driver and offences contrary to the road traffic acts and regulations will be treated seriously</p> <p>The committee have previously received evidence of road traffic incidents involving licensed drivers in Portsmouth – particularly towards cyclists and other road users and a serious view will be taken accordingly<sup>43</sup>.</p>
<p>General <b>Inappropriate Conduct</b> to include that of a <b>sexual nature, persistent and justified complaints (service requests) against an individual driver</b> OR due to any other matters not specifically mentioned above and/or where the reporting officer is not prepared to support an application or continued licensing</p>	<p><b>Normally a 5 year ban</b> from obtaining or holding a licence<sup>44</sup></p>	<p>The committee has previously considered and adjudicated on complaints about drivers "chatting up" or having consensual sex with passengers after "stopping work".<sup>45</sup></p> <p>In such cases, and despite no evidenced criminality or Police investigation leading to charges, the committee's view is that such behaviour is not becoming of a professional driver and, upon complaint or referral from another agency, is likely to result in the revocation of a driver licence.</p> <p>This includes drivers asking for personal details from passenger(s), inappropriate sexual banter (to include the sending and receiving of texts or other social media) and/or comments made of an offensive or discriminatory nature whether verbally, by text or by way of social media to which there is public access.</p> <p>For drivers receiving multiple complaints from the public, other road users or the trade (and in any one licensing period) the committee will take a serious view accordingly.</p>

## 6.0 Other Considerations

- 6.1 The overall concept of what constitutes a “fit and proper” person cannot be drawn from just the consideration of an antecedent criminal history alone.

For example, a person may be free from conviction but have a medical condition (such as obstructive sleep apnoea) that would prevent them from holding a driver licence notwithstanding that they could drive their own motor vehicle and also hold a DVLA driver licence.

They could have a poor understanding of the geography of the city or be unable to communicate in English to a satisfactory standard thus being unable to read or comprehend road signs and the like.

They could be a poor driver with evidence of complaints, previous endorsements and a failure to pass any prescribed driving or other practical tests.

All these factors are, in themselves, matters that go to the heart of determining whether, and in the round, a person is fit and proper.

## 7.0 Driving Licence Requirements

Sections 51 and 59 of the 1976 act prescribe that a person applying for either a hackney carriage or private hire driver licence must have held a full driving licence for a period of 12 months and be the holder of a licence “at the date of application”.<sup>46</sup>

This does not mean that they must have held a driver licence for a continuous period of 12 months prior to submitting an application.

Driver licences from EU and EEA member states are compatible with the requirements of the 1976 act – see the Best Practice guidance at 3.1 previously.

There is no immediate need, at law, for the holder of an EU licence to exchange their driving licence to one issued by DVLA but some drivers choose to do so.

- 7.1 The minimum legal requirement is for a person to have held a full driving licence for 12 months. It is doubtful that persons are deemed “good and experienced drivers” by virtue of recently passing their test as driving skills will develop with age, experience and on-going training.

It is all too easy for drivers to slip into bad and predictable habits.

This is recognised by the Road Traffic (New Drivers) Act 1995. New drivers are subject to more robust regulation with the revocation of driver licences by DVLA if 6 or more penalty points are imposed within the first “two year probationary period”.

Following revocation, the driver would need to obtain a provisional licence and pass both the theory and practical tests again.

- 7.2 The Licensing Committee supports the view that driving experience is relative to the length of time a person has been lawfully permitted to drive and therefore would expect applicants for either a hackney carriage or private hire driver licence to have held a full driving licence for a minimum period of 2 years.<sup>47</sup>
- 7.3 The council notes the abolition of the “counterpart” driving licence with effect from June 2015 and further notes that the head of service will introduce such administrative procedures (including driver mandates) to enable appropriate DLC checks to be carried out on both applicants and licence holders alike.

## 8.0 Criminal Record Checks

- 8.1 The council notes the advice contained in the best practice guidance at 3.2 previously and will ensure compliance with the following administrative requirements:
- All driver DBS checks will be to an enhanced level with a formal request for drivers to be checked, as a matter of local policy, against the position of “child and adult workforce”<sup>48</sup>
  - Any person who has lived overseas for any period of time<sup>49</sup> since the age of 10 will be required to provide proof of fitness by way of a “certificate of good conduct” obtained via an embassy or other recognised government agency and to be authorised by an accredited notary. The certificate must be provided for both criminal AND motoring matters and be translated into English. ONLY ORIGINAL DOCUMENTS WILL BE ACCEPTED\*
  - DBS checks will be carried out on initial application and every 3 years to coincide with the general renewal dates for driver licences
  - Basic DBS checks will be required for private hire operators, upon subsequent renewal, and may be required for vehicle proprietors (if deemed necessary)
  - Any DBS check or certificate of good conduct will be rejected if over 3 months old
  - There will be a DBS portability presumption at the discretion of the head of service for any enhanced check up to 3 months old
  - There will be a presumption in favour of the refusal to grant, suspension or non-renewal of a driver licence (as the case may be) if a driver has failed to comply with the requirements to produce a DBS enhanced check or certificate of good conduct

\* further information on criminal record checks for overseas applicants can be found via the following link:

<https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>

## 9.0 Medical Fitness to Drive

- 9.1 The council notes the best practice guidance at 3.5 above and considers that the current policy of requiring applicants and drivers to comply with the group 2 vocational standards has stood the test of time and offers satisfactory public protection.

The revisions to the conditions of licence to now require the formal reporting of any medical condition will be of assistance.

The “At a Glance” guide to medical standards provided by the DVLA Drivers Medical Group provides regular updates for medical practitioners and is available via the following link:

<https://www.gov.uk/government/publications/at-a-glance><sup>50</sup>

The policy in Portsmouth about the general requirements for medicals is as follows:

- The medical MUST be completed by the person’s own GP and/or at the practice having immediate access to that person’s medical records
  - The medical must be completed on first application, then at 45 and every 5 years<sup>51</sup> until 65 and then annually but with a presumption of drug testing every 3 years
  - A driver must declare any medical condition that might affect his/her ability to drive
  - The committee and officers will use the appointed Medical Referee for the time being in force to act as a final arbiter in any cases of concern<sup>52</sup>
- 9.2 Of some concern is that evidence of illicit drug use by a small minority of drivers is still apparent. For example, the last 23 spot checks undertaken on drivers by enforcement staff revealed 4 failures. 3 for cannabis use and 1 for cocaine use.
- The use of drugs whether prescribed or not is **simply not compatible with professional driving** and is likely to lead to either the immediate suspension or revocation of a respective driver licence.
- 9.3 Enforcement staff will remain proactive and carry out random drug screens on drivers, vehicle proprietors and operators as appropriate.



**There will be a presumption in favour of mandatory drug screening for all drivers every 3 years.**

The DVLA 'At a glance' medical standards of fitness to drive recommend the refusal to grant, renew or to revoke a vocational licence where persistent use or dependency on illicit drugs is noted and evidenced.

However, for evidence of any illicit drug use (or misuse of prescribed drugs) the council will normally suspend or refuse a driver licence for a minimum period of 6 months and/or up to a maximum period of 3 years and will only consider the reinstatement of a driver licence subject to the receipt of negative drug screens at the expense of the driver.

## 10.0 The Age of Drivers

- 10.1 Apart from the requirement for a person to have held a full driving licence for 12 months there are no other requirements in either the 1847 or 1976 acts to regulate the age of drivers.

This does not mean that it is unlawful to impose an age limit guideline provided the rationale is sound and non-discriminatory. Some councils impose "entry age limits" and some do not.<sup>53</sup>

- 10.2 In practice however, new drivers are subject to "vetting" via insurance brokers and their underwriters and local research<sup>54</sup> shows that persons under the age of 25 are extremely unlikely to receive acceptance to drive licensed vehicles for insurance purposes.

Coupled with the noted requirement for a person to have held a full driving licence for 2 years – (see 7.2 above), this would indicate that an appropriate minimum age limit for both hackney carriage and private hire drivers should be 21.

Analysis of computer records for 'new driver' applications in 2014-2015 show 311 applications being received. Of these, 9 drivers were under 25. It seems that a certain amount of 'self-regulation' is in place but a policy guideline would re-inforce this position.

The committee does not consider that an "upper" age limit for drivers should apply provided continued medical fitness to drive is maintained.

## 11.0 Immigration Checks

- 11.1 A person who has no right to reside or work in the UK will not be entitled to make application for a driver, vehicle or operator licence. Close links are maintained with the local visa and immigration staff from the Portsmouth office and regular and routine liaison between licensing and immigration staff is encouraged and maintained.

Copies of documents provided by applicants in support of any licensing application may be given to Home Office and/or immigration staff upon formal request.

It is likely that in the future, formal enquiries about "the right to work in the UK" will be made on respective driver and operator applicants having regard to clauses in the current Immigration Bill which is before parliament.

## 12.0 Language Proficiency

- 12.1 The ability to both speak and write in clear English is essential. Drivers are the first and only point of contact for passengers who might have little geographic knowledge of the city and thus are totally reliant on a driver understanding their journey and onward travel requirements – this is particularly so for hackney carriage drivers. The ability to read and understand road and other traffic direction signs is essential.

Drivers must be able to write a receipt for business travellers upon request.

The prescribed knowledge test contains a number of modules and an understanding of English is required to both attempt and to pass the individual modules.

Face to face contact with initial applicants can alert licensing staff to refer any applicant with apparent communication difficulties to the senior staff for interview.

Should staff be satisfied that an application cannot be supported for language proficiency reasons – the applicant will be advised to seek and obtain further communication skills by way of education and training and the application will be refused under delegated power to the head of service.

## 13.0 Knowledge Test

13.1 The ability to convey persons both around the city and to further afield destinations (such as airports and international ports) is essential. The best practice guidance at 3.10 indicates that hackney carriage drivers are more likely to require “local knowledge” than a private hire driver who will have advance notification of a booking.

This does not mean however that a test of local knowledge is NOT required for both hackney and private hire drivers and the committee considers that both sides of the trade should be subject to local knowledge testing by way of formal examination. This will include adhoc verbal examination by licensing staff including undertaking routes within the city.

The previously permitted “exemption” from the knowledge test for airport drivers will be removed due to evidenced mis-use and ALL drivers will therefore need to demonstrate competency in the prescribed modules.

There are 6 prescribed local modules comprising:

- General knowledge and basic law on hackney carriage and private hire matters
- Driving theory and highway code
- Building locations, local landmarks and shortest routes
- Basic numeracy
- Out of town locations
- Complaints and general rules
- NOTE –the test will be kept under review and modified as required.

The large private hire operators (Aqua Cars and Citywide) also undertake knowledge testing as part of their local compliance criteria.

Drivers have a lawful duty not to prolong, in time or distance, any journey booked.<sup>55</sup>

## 14.0 Other Locally Prescribed Training

14.1 The best practice guidance at 3.9 is positive about the advantages of

*“encouraging drivers to obtain one of the nationally recognised vocational qualifications”.*

14.2 In Portsmouth, there has not been a historic practice to require either applicants or existing drivers to obtain formal training and this does need to be addressed.

Members have expressed a collective desire to see the introduction of “customer care” training. The committee’s equalities advisor has also advised that there is a real need to establish wheelchair accessibility training – particularly for those drivers of wheelchair accessible vehicles.<sup>56</sup>

Although previous council initiatives such as the “Pride in Pompey” campaign positively encouraged drivers to participate in “local” schemes – the take up, without being mandatory in nature, was disappointing.

The ability to require applicants and drivers alike to both participate in, and produce evidence of, acquired training skills has found judicial favour as section 57 of the 1976 act permits the council to ask persons to submit such information as may be considered reasonably necessary... to determine whether a licence should be granted.<sup>57</sup>



**THE BLUE LAMP TRUST**

**DRIVER TRAINING FOR BUSINESS**



**AN INTRODUCTION TO THE BLUE LAMP TRUST**

A Charity set up in Hampshire by the Fire and Rescue Service & Police to promote safety in our community. We are a **not-for profit** organisation and any profit generated from our business activities is re-invested into running the Bobby Scheme and providing grants to local communities.

As an employer you are required to implement safe working practices for all aspects of your business. This includes employees who drive for work whether they use company vehicles or their own. As a Director, if you fail to meet those obligations, you could be exposing yourself to imprisonment (14 years) if found guilty of Gross Negligence Manslaughter or large fines (up to 10% of turnover) if the company is convicted of corporate Manslaughter.

For more information on our training please see our website at:  
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**0300 777 0157**  
 or email us at [info@bluelamptrust.org.uk](mailto:info@bluelamptrust.org.uk)



Blue Lamp Trust, C/o Hampshire Fire and Rescue Service, Leigh Road, Eastleigh, SO50 9SJ. Charity Number 1137786  
 Registered in England & Wales 07207840. Registered Address: 1, London Road, Southampton, SO15 2AE  
 VAT No. 110 7412 60

## Resolved

1. That the contents be noted and endorsed.
  2. That the Licensing Committee approve the:
    - I. The policy statement and guidelines on the relevance of convictions at paragraphs **5.2** and **5.4** respectively
    - II. The requirement for applicants for both hackney carriage and private hire drivers to have held a full driving licence for 2 years at paragraph **7.2**
    - III. The change to the “age related” drug testing requirements at paragraph **9.1** and **9.3**
    - IV. The requirement to adopt a minimum entry age limit to the trade of 21 at paragraph **10.2**
    - V. The need to establish mandatory NEW driver training (for both hackney carriage and private hire drivers) to comprise of:
      - English language competency and proficiency testing at the discretion of the head of service who will arrange such local training provision to commence by **1 July 2016**
      - Disability and wheelchair awareness training - mandatory
      - Driving assessment training - mandatory to include eco driving assessment
  3. a) That the head of service be authorised to finalise, appoint and to provide details of course(s) and appropriate training providers with a view to commencing mandatory training for new drivers by no later than **1 July 2016**
  - b) That the head of service be authorised to formally request and require existing hackney carriage and private hire drivers to complete such disability and wheelchair awareness training together with driving assessment training (as the case may be) following receipt of a complaint or by way of refresher training as appropriate
- (NOTE – all such training to be paid for direct to the service provider by the applicant or licence holder)
4. That the head of service be authorised to amend such policy directives, conditions of licence and application procedures commensurate only with these proposals.

14.3 The committee and officers have instructed individual drivers in the past to attend and pass driver training and awareness courses by way of improving and dealing with evidence of previous poor driving skills; and local providers such as the Blue Lamp Trust<sup>58</sup> have found favour in providing a quick and reliable service.

The Blue Lamp Trust is used as the council's preferred assessor for staff driver competency training.

Some of the big fleet private hire vehicle providers have requested that new drivers from Eastern Europe attend and pass driver awareness courses prior to making driver licence applications.

14.4 Finally, the evidence given to the Licensing Committee in November 2014 about road traffic accidents in the city and involving Portsmouth hackney carriages and private hire vehicles would suggest that the time is right to specify, by local policy directive, that all new drivers (and, in due course, existing drivers) attend and complete approved and prescribed driver training courses.

The trade representatives have already indicated a complete support for any road safety and disability awareness training initiatives.

# Chapter 9: Rehabilitation of Offenders Act 1974

## Objectives

1. "To provide applicants and licence holders alike with information about the rehabilitation periods for custodial and non-custodial sentences
2. To recognise that licensed drivers are a regulated occupation for the purposes of the exceptions order AND
3. To recognise that the council is a judicial body for the purposes of the act and thus may take into consideration 'spent' convictions or cautions"

## 1.0 Introduction & Legal Provisions

- 1.1 Prior to the introduction of the Rehabilitation of Offenders Act 1974 there were no protections in place to prevent potential employers from making negative decisions about a person's suitability based on evidenced criminality (even if a one off offence) that occurred many, many years previously.

The "checks and balances" were not in favour of recognising that persons could become "rehabilitated".

- 1.2 The then Local Authorities Conditions of Service Advisory Board wrote to all local authorities following the introduction of the act and stated:  
"The main purpose of this short but complex piece of legislation is to ensure that a person who has been convicted of a criminal offence in his past and who has since lived on the right side of the law for a specified period of time is, so far as possible, freed from the stigma of that conviction and is treated as if the conviction had never occurred."

- 1.3 The act introduced the concept of defined rehabilitation periods with the "slate being wiped clean" with most previous convictions being deemed "spent" after a period of time.

There were caveats however in respect of persons convicted for subsequent "either way" or indictable offences (following an earlier conviction) which resulted in both the previous and new conviction being deemed not spent until the end of the rehabilitation period for both offences.

- 2.0 The act prescribed for a table of rehabilitation periods to apply in respect of the sentences imposed (not the offence type) and also, by statutory order, prescribed certain regulated occupations where persons would have to declare convictions and cautions even if considered spent.
- 3.0 There has not always been an automatic right to enquire about, and receive details of, an applicant's previous criminal history and up until 1992 the council relied completely on the individual declarations made by applicants and drivers.
- 3.1 Evidence of previous convictions not being declared was sometimes apparent and, following extensive lobbying and the introduction of the Road Traffic Act 1991, – local authorities received access to police records from April 1992. The function was then administered by the Chief Officer of Police.
- 3.2 From 2002, subsequent criminal record enquiries became a responsibility of the former Criminal records Bureau (CRB) until the formation of the Disclosure & Barring Service (DBS) in 2012.

The council is a registered body for the purposes of receiving information from the DBS. Licensing staff are all registered "counter signatories" for the purposes of both processing, receiving and considering evidence of previous convictions via enhanced DBS checks. The Licensing Manager retains the "lead counter signatory" role and is responsible, on behalf of the service, for compliance with the DBS codes of practice for registered bodies.



4.0 Hackney Carriage and Private Hire drivers are a regulated occupation and have been so since 2002.<sup>59</sup> Equally, the council is a “judicial authority” for the purposes of the act and thus can ask for, and consider evidence of, spent convictions where justice cannot otherwise be done.<sup>60</sup>

4.1 Accordingly, evidence of previous convictions (including the consideration of spent convictions on individual merit) may be used to assess whether an applicant or driver is considered to be a fit and proper person for the purposes of holding (or continuing to hold) a licence. This test will also be used, as appropriate, for the consideration of vehicle and operator matters.

4.2 **However, the council will ONLY receive evidence of, and thus take into consideration, spent convictions when satisfied that:**

- **The overall circumstances of the application and/or matter under consideration outweighs the right not to consider spent convictions**
- **Any current convictions taken together with any spent convictions reveal a pattern of previous repeat offending**
- **OR with evidence of conviction(s) spent or otherwise, there has been the release of further information from the Disclosure & Barring Service in relation to:**
  - The children’s barred information list or**
  - The adult’s barred information list or**
  - Other relevant information disclosed by the Chief Officer of Police**
- **AND the applicant or licence holder has been invited to address the committee as to why, in general terms, any spent matters should not be considered**

5.0 In 2014 the government announced significant reforms to the rehabilitation periods for both custodial and non-custodial sentences and these new changes came into effect in March 2014.<sup>61</sup>

5.1 The old (red) and new (green) rehabilitation periods are shown below:

### For custodial sentences

Sentence Length	Former Rehabilitation Period	New Rehabilitation Period (Period of sentence PLUS the buffer period below which applies from the end of the sentence)
0 – 6 months	7 years	2 years
6 – 30 months	10 years	4 years
30 months – 4 years	Never spent	7 years
Over 4 years	Never spent	Never spent

### For non-custodial sentences

Sentence	Former Rehabilitation Period	New Rehabilitation Buffer period (Applies from the end of sentence)
Community order and Youth Rehabilitation Order	5 years	1 year
Fine	5 years	1 year from date of conviction
Absolute discharge	6 months	None
Conditional discharge, referral order, reparation order, action plan order, supervision order, bind over order, hospital order	Various – mostly between 1 year and length of the order	Period of order

5.2 The link to the gov.uk web advice is shown below:

<https://www.gov.uk/government/publications/new-guidance-on-the-rehabilitation-of-offenders-act-1974>

5.3 From December 2008, simple cautions, reprimands and warnings are considered spent with immediate effect.

6.0 **Finally, it should be emphasised that the effect of the 1974 act is to consider the impact and relevance of any previous convictions against the need to establish whether an applicant, driver or other licence holder is a fit and proper and suitable person to drive the public on a professional basis OR to provide a vehicle OR to accept bookings from the general public. The protection of the public is the committee’s prime consideration.**

6.1 **The committee is not seeking to punish a person twice on the basis of “he’s done the crime and done his time” – but are carrying out an important statutory function where the evidence of previous wrong doing must be balanced against the need to protect the travelling public.**

**The committee and officers alike will also have regard to the adopted policy guidelines on the relevance of criminal convictions as shown elsewhere in the policy document.**

# Chapter 10: Vehicle specification requirements

## Objective:

“To provide the travelling public with access to a wide range of spacious, safe and comfortable vehicles”

## 1.0 Introduction & Legal Provisions

- 1.1 A hackney carriage is defined as a wheeled carriage, whatever its form or construction, used in standing or plying for hire in any street within the prescribed distance.

The carriage must seat fewer than 9 passengers and is normally recognised as being a motorised vehicle but equally could be a horse drawn or other form of non-motorised transport such as a rickshaw or pedicab.<sup>62</sup>

Only a hackney carriage can stand or ply for hire from a street in Portsmouth. Hackney carriages can also wait at appointed taxi stands, cruise for work and be hailed in the street.

The driver must be licensed.

Hackney carriages can also accept private hire “pre-booked” work (without needing an operator licence) and it is not unusual to see hackney carriages affiliated to established private hire operator radio circuits.

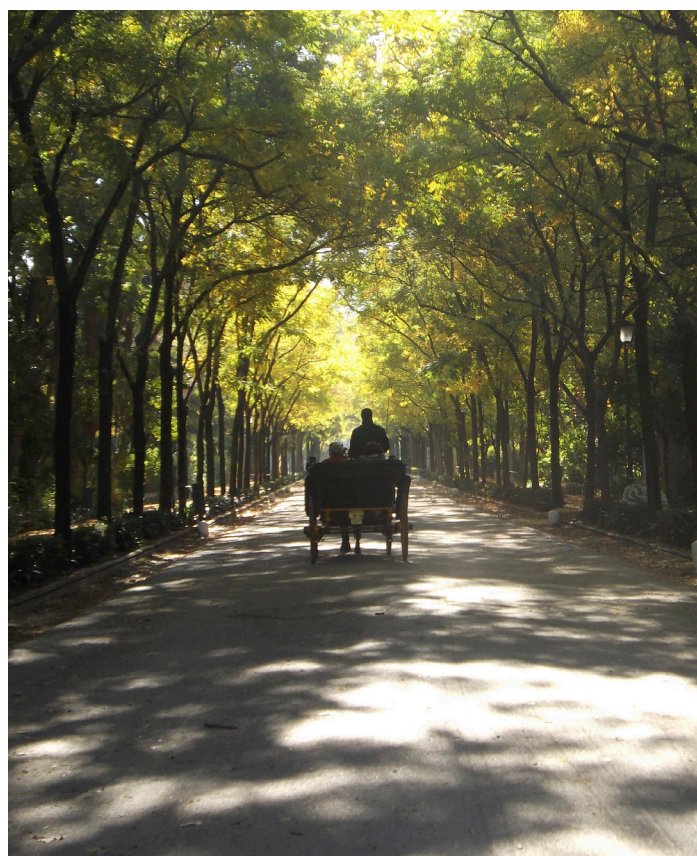
- 1.2 A private hire vehicle is a motor vehicle constructed or adapted to seat fewer than 9 passengers, other than a hackney carriage or public service vehicle, which is provided for hire with the services of a driver for the purposes of carrying passengers.

All work given to the driver of a licensed private hire vehicle must be via a licensed private hire operator.

- 1.3 Section 47 of the 1976 act permits the council to require a hackney carriage to be of such design or appearance or bear such distinguishing marks as shall clearly identify it as a hackney carriage.
- 1.4 Section 48 of the 1976 act permits the council to be satisfied that a private hire vehicle is suitable in type, size and design.

A hackney carriage or private hire vehicle could theoretically, by law, be licensed to accommodate 1 passenger – i.e. a pillion on a licensed motorbike but normally vehicles accommodating a minimum of 4 passengers have been recognised at a local level.

The safety concerns and suitability relating to the use of a motorcycle as a licensed private hire vehicle could be a valid consideration notwithstanding that the machine has been constructed by the manufacturer to a very high and safe standard.<sup>63</sup>



1.5 Over the years the council has considered applications (or given suitable advice) for the consideration of hackney carriage and private hire vehicle licences in respect of:

- Horse drawn Jersey carriages
- Ford Lincoln Town Cars (stretched limousines)
- Hummers
- Converted JCB digger machine
- Converted Volvo fire appliance
- Converted ambulance
- Piaggio Ape Calessino and Bajaj motorised 3 wheeler tricycles
- Pedicabs and rickshaws<sup>64</sup>

1.6 Vehicles used for hire or reward at separate fares and with a seating capacity of 9 or more passengers are recognised as PSV's and regulated by the Traffic Commissioners.

1.7 It is permissible (particularly so for the licensing of hackney carriages) to approach a local vehicle specification policy in a "partial and progressive way" by implementing policy that affects part of the licensed fleet only.<sup>65</sup>

Equally, the use of all wheelchair accessible vehicles meeting the former Metropolitan Police Public Carriage Office specification (now Transport for London) has found favour in some local authority areas, but not all.

"Split" fleets with a mixture of saloon style and wheelchair adapted vehicles are popular and this is the case in Portsmouth.

1.8 The current hackney carriage fleet comprises 150 saloon, estate, MPV style vehicles and a further 84 fully wheelchair accessible vehicles. The committee has shown little inclination previously to enforce and promote a uniform standard wheel chair accessible fleet and have recognised that persons travelling short distances may not wish to do so in a large "people mover" type or London style vehicle whilst on their own.

The current make-up of the "mixed" vehicle fleet offers various choices to the travelling public.

**There are therefore no proposals to insist on a fully wheelchair accessible fleet of hackney carriages in Portsmouth.**

The private hire fleet comprises 1034 vehicles<sup>66</sup> with about 30 wheelchair accessible vehicles being licensed.

The majority of the private hire fleet comprise of models from the Skoda and Hyundai ranges together with a number of larger 6–8 seater models including the Vauxhall Zafira and Ford Tourneo.

A number of "executive" and airport cars are used by both the established larger operators and the smaller specialist niche market operators.

1.9 It is generally accepted that most persons with a disability or restricted movement will phone in advance for a suitable vehicle. This does not mean however that there should not be recognition towards the provision of wheelchair accessible vehicles nor should their use be discouraged by way of policy guideline or condition.

Currently Aqua Cars Ltd have over 30 dedicated wheelchair accessible vehicles operating on their circuit.





## 2.0 Best Practice Guidance

- 2.1 The Department for Transport best practice guidance offers advice to local authorities as follows<sup>67</sup>:

*“The legislation gives local authorities a wide range of discretion over the types of vehicle that they can license as taxis or PHVs. Some authorities specify conditions that in practice can only be met by purpose-built vehicles but the majority licence a range of vehicles.*

***Normally, the best practice is for local licensing authorities to adopt the principle of specifying as many different types of vehicle as possible. Indeed, local authorities might usefully set down a range of general criteria, leaving it open to the taxi and PHV trades to put forward vehicles of their own choice which can be shown to meet those criteria. In that way there can be flexibility for new vehicle types to be readily taken into account.***

*It is suggested that local licensing authorities should give very careful consideration to a policy which automatically rules out particular types of vehicle or prescribes only one type or a small number of types of vehicle. For example, the Department believes authorities should be particularly cautious about specifying only purpose-built taxis, with the strict constraint on supply that that implies. But of course the purpose-built vehicles are amongst those which a local authority could be expected to license. Similarly, it may be too restrictive to automatically rule out considering Multi-Purpose Vehicles, or to license them for fewer passengers than their seating capacity (provided of course that the capacity of the vehicle is not more than eight passengers).*

*The owners and drivers of vehicles may want to make appropriate adaptations to their vehicles to help improve the personal security of the drivers. Licensing authorities should look favourably on such adaptations, but, as mentioned in paragraph 35 below, they may wish to ensure that modifications are present when the vehicle is tested and not made after the testing stage.”*

- 3.0 The committee agrees with the general views expressed in the best practice guidance and, in particular, with the sentiments shown in bold.



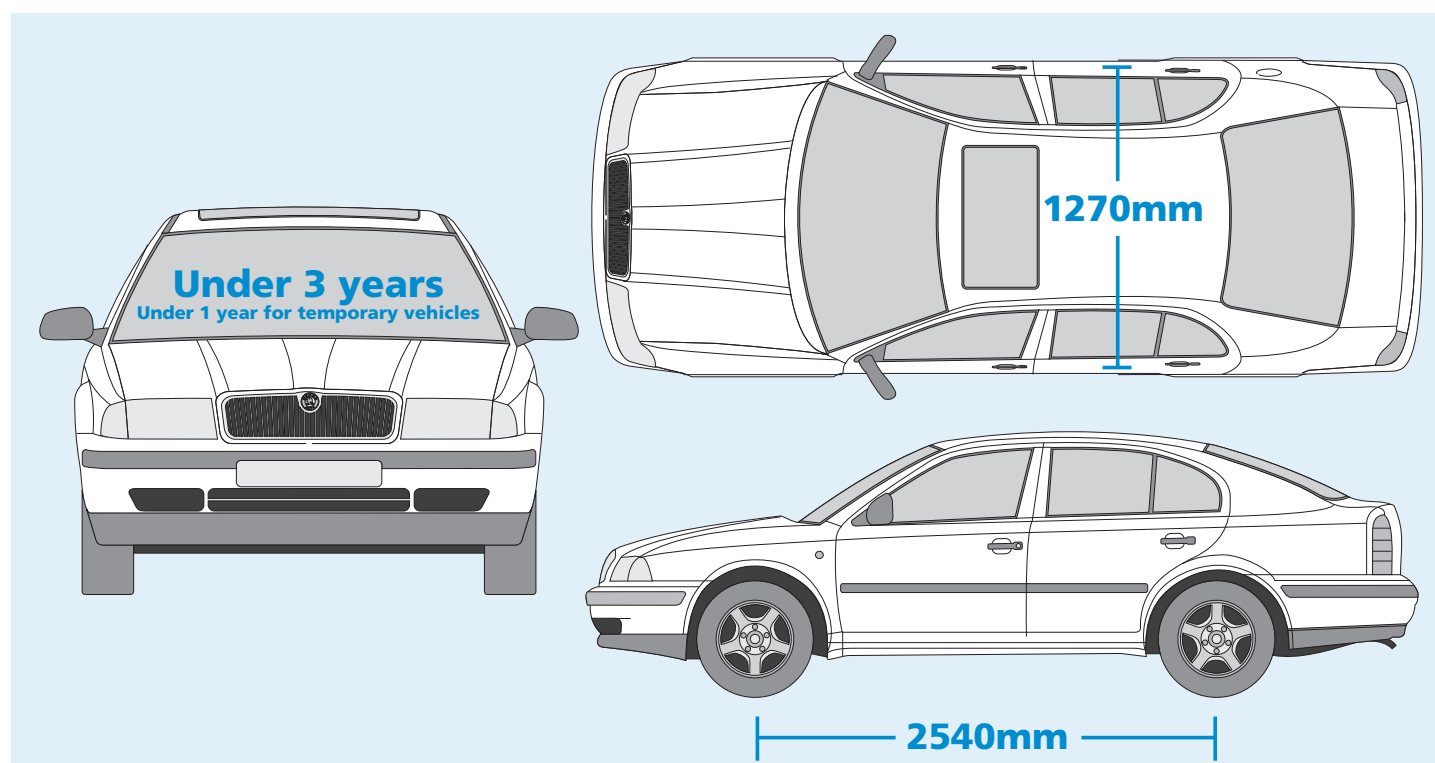
## 4.0 Proposed Vehicle Specifications for Portsmouth

- 4.1 The current Portsmouth vehicle specifications have been in place, with minimal modifications, since 1978. They relate generally to the age of vehicles, minimum seating capacity, a requirement for a minimum of 4 doors, wheelbase and interior seating dimensions together with ease of access, comfort considerations and colour.
- They are in need of review and clarification.
- 4.2 Local vehicle specifications may not always be reflected in any corresponding vehicle conditions as they are matters that form part of the initial application and guidance process to potential vehicle proprietors. That said, any requirements should be formulated with due care and the consideration of such discretionary powers should have regard to the underlying statutory provision which, in this case, is the **design, appearance, fitness and comfort** of the vehicle to be licensed.
- 4.3 The committee would expect any vehicle to comply with the general specifications together with any age limit policy, mechanical inspection and testing regime and subsequent conditions of vehicle licence. The hackney carriage byelaws also offer some guidance as to the vehicle fittings and fixtures.

As a prerequisite, the council would expect that the proprietor of any hackney carriage should either reside in Portsmouth or within five miles of the boundary or, if a company, have an operating base or registered office within Portsmouth. A proprietor may only hold an interest in one saloon style vehicle (not wheelchair accessible) at any one time.

4.4 The standard vehicle specification for both hackney carriage and private hire vehicles will normally be as follows:

1. **The vehicle should meet the EC whole vehicle type approval standards for vehicles in the M1 category or be VCA compliant and approved – Private hire or hackney carriage wheelchair accessible vehicles licensed prior to 1 April 2016 may remain in use with a minimum nearside loading provision BUT any newly licensed fully wheelchair accessible private hire or hackney carriage after this date may be licensed with either rear, side loading or both.**
2. **If a hackney carriage, the vehicle shall be a uniform silver in colour**
3. **If a private hire vehicle, the vehicle shall be any colour other than silver**
4. **The vehicle shall normally be right hand drive**
5. **There should be sufficient doors of sufficient size to aid entrance and exit from the vehicle in comfort<sup>68</sup>**
6. **The vehicle shall have a wheelbase of at least 2540mm**
7. **The back seat shall be at least 1270mm wide**
8. **Any individual seats should be at least 400mm wide<sup>69</sup>**
9. **The vehicle shall comply with any age limit guidelines**
10. **The vehicle proprietor shall comply with any approved local livery requirements for both hackney carriage and private hire vehicles and so far as this relates to roof signs for hackney carriages and all exterior and interior signage<sup>70</sup>**
11. **If the currently licensed hackney carriage is on a designated and recognised wheelchair accessible plate – it may only be replaced by a wheelchair accessible vehicle and complying with the requirements of 1 above.**
12. **The vehicle must not have been “written off” for the purposes of the industry recognised categories A, B, C and D.**



- 4.5 The council may change, substitute or vary vehicle specification guidelines at any time and proprietors should make contact with the Licensing Service if in any doubt about the suitability of an individual vehicle.
- 4.6 A person may still however ask the committee to consider an application for a vehicle that does not meet the general specifications and have that matter considered on merit – for example the previous licensing of left hand drive imported stretch limousines.
- 4.7 Locally, there has been concern expressed in the past about licensing smaller MPV type vehicles (such as the Vauxhall Zafira) for 6 persons as the rear most seats are not easily accessible and are smaller than the “standard seating” configuration. The best practice guidance however warns against licensing such vehicles for fewer passengers than their deemed seating capacity (see 2.1 above) and provided any individual seat is 400mm wide; there should be a presumption in favour of recognising the manufacturer’s recommended seating capacity.
- 5.0 However, any concern about the general level of comfort and safety associated with a vehicle could lead to the matter being referred direct to the committee for consideration and determination on merit.

## Resolved

1. a) That the general vehicle specifications shown in paragraph **4.4** on page 60 be approved and adopted.
- b) That the previous exemption from the standard vehicle specifications for “stretch limousines” be retained and that the head of service be authorised to consider such vehicle applications on individual merit and provided evidence of vehicle type approval is received.
2. That the head of service be authorised to amend such policy directives, conditions of licence and application procedures commensurate only with these proposals.
3. That the head of service be authorised, if required, to finalise a revised corporate livery and specification for both hackney carriages and private hire vehicles.



# Chapter 11: Vehicle testing requirements

## Objective:

“To ensure that licensed hackney carriages and private hire vehicles are maintained to the highest standards and that the public have access to safe, clean, environmentally friendly and comfortable vehicles.”

## 1.0 The Legal Provisions

- 1.1 Apart from those statutory requirements for vehicle fitness prescribed under the Road Traffic Acts and road traffic regulations – there are no definitive national standards to determine the overall inspection and fitness regime for both hackney carriage and private hire vehicles. In this respect, local variances to both the standard (and frequency of vehicle testing) will inevitably be found.
- 1.2 National MOT standards are prescribed by law and updated on a regular basis by DVSA. The current MOT inspection standards are contained within the publication “MOT Inspection Manual – car and light commercial” – ISBN 978-0-9549352-5-2  
<https://www.gov.uk/topic/mot/manuals>
- 1.3 All vehicles must have an MOT after 3 years of age although hackney carriages require an MOT (or an equivalent test) after 1 year.<sup>71</sup>
- 1.4 It is an offence, under the road traffic regulations, to use a vehicle that is not roadworthy or fit for use on the public highway. The Police and partner agencies such as DVSA are responsible for general enforcement of road traffic laws but the council, as the local licensing authority, is ultimately responsible for setting the local testing criteria and specifications to regulate the Portsmouth hackney carriage and private hire fleets.
- 1.5 The 1847 act is silent on the testing and fitness of hackney carriages. This is not surprising as, at that time, carriages, growlers or hansom cabs (in their various working guises as fast or ponderous forms of public conveyance) were horse drawn and proprietors were perhaps more concerned with the fitness and stabling arrangements of the animals and their livery/welfare after a day's work. The internal car combustion engine had yet to be invented.
- 1.6 However, the subsequent byelaws (for both hackney carriages and their drivers) made pursuant to section 68<sup>72</sup> of the 1847 act prescribe, amongst other matters, for hackney carriages that:
  - “The fittings and furniture generally to be kept in a clean condition, well maintained and in every way fit for public service” .....and
  - “Every proprietor of a hackney carriage vehicle shall present his vehicle for annual inspection at the council's nominated garage”.
- 1.7 Failure to comply with the byelaws is an offence at law.
- 1.8 The 1976 act<sup>73</sup> is more prescriptive in respect of the inspection and testing arrangements for private hire vehicles and prohibits, by statutory order, the grant of a private hire vehicle licence unless the council is satisfied that the vehicle is:
  - in a suitable mechanical condition, safe and comfortable.
- 1.9 Further, section 50 of the 1976 act provides for the mandatory inspection and testing (within the area of the council) of both hackney carriages and private hire vehicles by way of up to 3 inspections<sup>74</sup> in any one period of 12 months BUT does not specify the testing criteria. Parliament appears to have given local authorities the discretion to determine local testing and inspection standards.
- 1.10 A vehicle licence (hackney carriage and private hire) may be suspended, revoked or not renewed if “unfit for use”.

## 2.0 Best Practice Guidance

2.1 The current Department for Transport guidance<sup>75</sup> recognises variations between local authorities for both vehicle testing and vehicle age limits. Annual testing (as a minimum standard) is recommended together with more frequent tests for older vehicles together with an emphasis on emissions testing.

The council agrees with this view.

2.2 The council also agrees that due regard should be given to both the MOT test requirements and the PATN guidance – see paragraphs 4.5 and 4.6 post.

2.3 The council does not agree that more than one testing station is required. Portsmouth is a compact area and the Adams Morey garage facility is geographically centrally located within the city. 9 vehicle inspections per day (together with ad hoc spot check and emergency appointments) can be accommodated with little delay apparent.

Proprietors can licence a new vehicle normally within 24 hours of making application to the Licensing Service.

2.4 It is accepted that older vehicles can be in “good condition” but that this is not a reason to reject the consideration or setting of a local age limit policy. Even younger and “doubled manned” fleet vehicles that are subject to constant 24 hour public use (with a resulting higher wear/tear and mileage) can be replaced or found to be mechanically defective at a relatively early age.

2.5 The average mileage for private hire vehicles recorded on the computer database is 136,091 with a highest recorded individual mileage of 390,305 miles.

2.6 The average mileage for hackney carriages recorded on the computer database is 112,209 with a highest recorded mileage of 423,549 miles.



TSB/07/21/01/54

### CERTIFICATE OF EXEMPTION

**ISSUED UNDER REGULATIONS 6(4) OF  
THE MOTOR VEHICLES (TESTS) REGULATIONS 1981**

TO: PORTSMOUTH CITY COUNCIL

I am directed by the Secretary of State for Transport to inform you that he is satisfied that the granting of a licence in respect of hackney carriages and private hire cars by your authority, in accordance with the procedures summarised in your communication dated 17TH July 1997 is conditional upon the passing by the vehicle of annual test, within the meaning of the above Regulations, required by your authority.

This Certificate will cease to have validity if there is a change in procedures mentioned above and the issue of this certificate is conditional upon the Secretary of state being notified, without delay, should such a change in procedures be made.

DATE: 21 July 1997

SIGNED:.....  
CGENCO  
A Higher Professional and Technology  
Officer in the Department of Transport

3.0 The council has received, as the local licensing authority, a “Certificate of Exemption” issued by the Secretary of State for Transport pursuant to the Motor Vehicle (Tests) Regulations 1981.

The effect of this is that proprietors of licensed hackney carriages and private hire vehicles are EXEMPTED from the requirement to obtain a separate MOT for their vehicle each year. This is because the local taxi and private hire testing standards are more prescriptive than those minimum standards for an MOT. The certificate of exemption is shown above.

3.1 As a consequence, there is an on-going annual saving to proprietors of the cost of an annual MOT test fee.



- 4.0 Historically (from 1978), the then Central Depot located on the Eastern Road was responsible as the “in house” vehicle testing station for both hackney carriage and private hire vehicles.
- 4.1 Following re-organisation, the testing facilities were outsourced to Amey Facilities Management Ltd T/A AFM Southern who continued to trade from the Central Depot.
- 4.2 AFM Contract Services continued as the fleet management facilitators for all PCC vehicles (and taxis) until a seamless transition and transfer of the taxi testing undertaking to Adams Morey, Burrfields Road, Portsmouth in January of 2002.
- 4.3 Adams Morey have continued to be the council’s preferred “one stop shop” facilitator for hackney carriage and private hire vehicle testing and, following a comprehensive tender consultation, were formally approved to carry out the inspection and testing regime for hackney carriages and private hire vehicles (including taxi meters) in August 2013.
- 4.4 A dedicated new hackney carriage and private hire testing and inspection bay received DVSA approval and came into operation in July 2014. This includes a larger “pit” bay to inspect stretch limousines, fire engines and other such vehicles of an unusual size and weight configuration.
- 4.5 During (and following) the conclusion of the tender consultation process extensive negotiations took place with staff from Adams Morey to determine the locally prescribed inspection and testing criteria for vehicles having regard to the latest MOT updates, the Department for Transport best practice guidance and the resultant “PATN” (Public Authority Transport Network) best practice guidance. The PATN guidance has been recognised, on an ad hoc basis, by both your reporting officers and Adams Morey staff and all operators and trade representatives were advised of the guidance in February 2012.
- 4.6 It is recommended to formally adopt the PATN guidance (in line with the best practice guidance) and with immediate effect.
- The PATN guidance is also available via the following link: [http://www.fta.co.uk/export/sites/fta/\\_galleries/downloads/vehicle\\_testing/Hackney\\_Carriage\\_document\\_0812.pdf](http://www.fta.co.uk/export/sites/fta/_galleries/downloads/vehicle_testing/Hackney_Carriage_document_0812.pdf)
- 4.7 The current vehicle inspection and testing report is shown on page 65.
- 4.8 The “traffic light” system was introduced to enable licensing staff to monitor quickly and easily evidence of a vehicle showing signs of deterioration or distress whether mechanically or cosmetically.
- Licensing staff are not qualified mechanics and rely, as do the committee members, on the technical advice and expertise offered by Adams Morey. This traffic light system enables more spot checks (if necessary) to be undertaken on vehicles to ensure vehicle fitness standards are maintained.

# Vehicle inspection and testing report

P = PASS A = ADVISORY F = FAIL



Testable item	P	A	F	Reason for failure or advisory*
1 Lighting equipment	Front / rear lamps			
	Headlamps and aim			
	Stop lamps / fog lamps / reflectors			
	Direction indicators/hazard lamps			
	Registration plate lamps			
2 Steering & suspension	Steering controls / mechanism			
	Power steering			
	Transmission shafts			
	Stub axle assemblies			
	Wheel bearings			
	Front / rear suspension & shock absorbers			
3 Brakes	ESC system condition			
	ABS warning system/controls			
	Service brake condition			
	Parking brake condition			
	Service brake performance			
	Parking brake performance			
	Service brake balance			
4 Tyres & wheels (including spare)	Tyre type/size			
	Tyre condition			
	Roadwheels			
<b>Notes: 1. Vehicles presented with 'space saver' spare tyres fitted to one of the 4 road wheels will not be tested. 2. Vehicles with no spare wheel must have an approved emergency tyre repair kit immediately available. 3. For stretch limousines/novelty vehicles the tyre rating and load index must be compatible for the vehicle size, weight and design.</b>				
5 Seat belts	Security of mountings			
	Condition			
	Operation			
	SRS malfunction lamp illuminated			
6 Vehicle body & structure	Airbag present & operational			
	Body condition exterior generally			
	Body condition interior generally			
	Seats/upholstery/carpets/cleanliness/odour			
	Interior lights/motion door locks/warning lights (inc. all passenger controls/switches & grab handles)			
	Boot for cleanliness, security, water leaks etc			
	Doors & designated exits			
	Registration plates, licence plate & VIN number			
7 Exhaust, fuel & emissions	Towbar condition			
	Exhaust system			
	Exhaust emissions			
	Fuel system & security			
8 Driver's view of the road	Engine noise			
	Mirrors			
	Wipers & washers			
	Windscreen			
	Glazing generally / tinting			
	Driver's view of road generally			
	All driving controls and horn			
	Speedometer			
9 General	Under bonnet generally			
	Oil & water leaks			
	Battery / electrical wiring			
	Engine & transmission including mounts			
	Luggage space			
	TAXI roof sign security, illumination & decals			
	Livery fitted & in good visual condition			
	Fire extinguisher present and serviceable			
	Wheel trims fitted			
	Fare chart displayed			
	*No smoking* stickers evident			
	Windscreen and interior licence number displayed			
	Byelaws available (HCV only)			
Meter installed – test and seal				
10 Wheelchair accessible vehicles	Wheelchair restraints, operation & security			
	Wheelchair ramp availability, storage & accessibility			
	Wheelchair logo affixed to rear licence plate			

## Vehicle details

Make .....

Model.....

Reg mark .....

Colour .....

VIN .....

CC .....

Mileage reading .....

HCV/PHV plate number.....

## Test type

New  Spot check

Annual/month  Retest

## Traffic lights

Tick as appropriate

🔴 = Poor (unsuitable)

🟡+🟠 = Average

🟡 = Satisfactory

🟢 = Excellent (like new)



## Inspection result

PASS – Stamp white book

FAIL – See reasons for failure.

**Note: vehicle must not be used until all failures have been satisfactorily repaired.**

FUTURE TESTING – I recommend that this vehicle is tested every:

12  6  4 months

## Authentication stamp

Signed .....

(vehicle examiner)

Date of pass.....

**\*Licensed vehicles are subject to higher mileage and general wear and tear associated with hire and reward use. Accordingly, in assessing the overall mechanical condition, any advisory item which would normally pass an MOT could result in a test failure and refusal to issue a compliance certificate.**

White copy to PCC Licensing Service Pink copy to vehicle proprietor Blue copy to garage  
RETESTS MUST BE BOOKED WITHIN 10 DAYS VIA ADAMS MOREY, CALL 023 9269 1122

January 2013

www.portsmouth.gov.uk

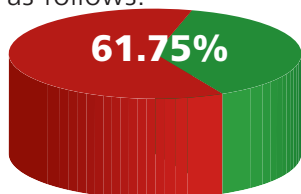
5.0 Licensed vehicles are subject to more wear and tear associated with constant public use. As a consequence, mileages are much higher and the need to maintain a prescribed servicing schedule in line with the manufacturer's recommended guidelines is of paramount importance.

5.1 It is pleasing to note that the established "fleet" operators annexed to Aqua Cars Ltd and Citywide Taxis generally speaking have their own dedicated garage and body shop facilities together with mechanical and administrative staff – including "night time" managers.

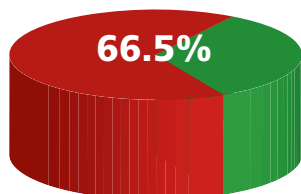
6.0 For the first time ever there has been a systematic and thorough analysis of the vehicle testing results for the whole of 2014/2015 in order to identify trends associated with mechanical inspections for both hackney carriage and private hire vehicles.

Quarterly meetings between Licensing and Adams Morey staff have taken place to ensure both compliance with the tender “Key Performance Indicators” and to “drill down” the test results with a view to using the empirical data available to recommend and/or to identify possible future initiatives and policy changes for consideration.

6.1 The test results for the calendar year 2014 are as follows:

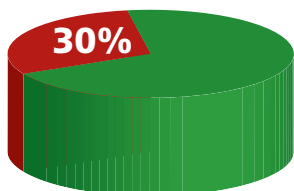


1142 private hire vehicle inspections with a 61.75% failure rate

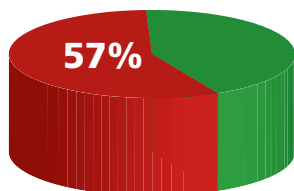


298 hackney carriage inspections with a 66.5% failure rate

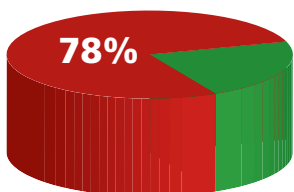
By vehicle age, the results were:



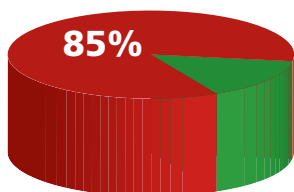
Failure rate of vehicles between 0-3 years of age



Failure rate of vehicles between 3-6 years of age



Failure rate of vehicles between 6-9 years of age



Failure rate of vehicles over 9 years of age

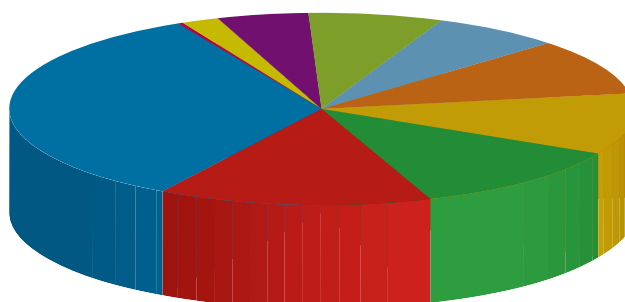
Recent analysis of the now received 2015 test results show an overall failure rate for both hackney carriage and private hire vehicles of 64% for the year.

The 2015 failure rates, by vehicle age, have generally increased year on year as follows.

0-3 years	46%
3-6 years	72%
6-9 years	74%
9+ years	87%

6.2 The generic vehicle inspection and testing report (at 4.7) has 62 prescribed testable items grouped into 10 core areas. Each testable item is denoted with a “pass, advisory or fail”.

6.3 An in depth analysis<sup>76</sup> of the vehicle inspection records for each month during 2014 provided the following recorded failure results:



- Lighting equipment 55%
- Exhaust, Fuel & Emissions 23%
- Vehicle body & structure 19%
- Steering & Suspension 17%
- General items 15%
- Driver's view of the road 11%
- Brakes 11%
- Tyres & Wheels 8%
- Seat belts 3%
- Wheelchair accessible vehicles 0.25%

6.4 It is disappointing to note that 55% of the recorded failures were for lighting matters. All proprietors are aware (apart from spot check inspections) of their annual vehicle test dates and any lighting related failures should be the exception and not the norm.

Equally, the emission failures (23%) are of concern.





- 6.5 All new cars must comply with EU vehicle emission standards which have been in place since 1994. The 2015 requirements<sup>77</sup> are that new cars registered in the EU should not emit more than an average of 130 grams of CO<sub>2</sub> per kilometre (g CO<sub>2</sub>/km).
- 6.6 As a consequence, and also to support the council's Air Quality Action Plan together with recent campaigns against idling engines, there is a demonstrable need to review both the vehicle inspection and testing arrangements AND to consider this in relation to the adoption of locally prescribed vehicle "age limits".
- 6.7 The best practice guidance states: *"Local Licensing authorities, in discussion with those responsible for environmental health issues, will wish to consider how far their vehicle licensing policies can and should support any local environmental policies that the local authority may have adopted. This will be of particular importance in designated Air Quality Management Areas (AQMAs)".*
- 6.8 The council's Transport Fleet Manager has been asked to contribute to the policy review with particular regard to vehicle testing and emissions. He is in favour of retaining vehicle age limits but IS NOT in favour of vehicle age limits being dictated and linked directly by CO<sub>2</sub> emissions and comments:
- "The Licensing Committee should not consider imposing an upper limit based on a vehicle's publicised CO<sub>2</sub> emissions. Since 2002 manufactures have been required to publicise CO<sub>2</sub> data on each model it produces and it is that data, measured in the amount of CO<sub>2</sub> (Carbon Dioxide) produced (in grams) per Kilometre travelled, which is then used to determine the vehicle excise duty (tax) rate.**
- This data is produced under strictly controlled laboratory like conditions and bears little relation to a vehicles negative impact on the environment whilst in service. In addition these tests are not the same as the emissions tests which are carried out as a part of the MOT test. While it is certainly generally true that newer cars will be more fuel efficient and have less harmful effects on the environment the publicised CO<sub>2</sub> emissions figure when that vehicle has been in service for 5 years, particularly as a taxi will not reflect that vehicles negative effect on the environment.**

There are many other harmful products of the internal combustion engine that affect the environment which the CO2 'when new' figures do not reflect when in service. Diesel engines on the whole produce less CO2 emissions than their petrol counterparts, however due to the higher temperatures they operate at diesels produce a greater amount of NOx (Nitrous Dioxides) which is more harmful to local air quality.

To choose or be forced to choosing a vehicle for life as a taxi based purely on its publicised CO2 output is therefore to the detriment of several other important factors.

Maintaining a vehicle is of great importance. A well maintained older vehicle will undoubtedly be less harmful to the environment than a badly maintained newer vehicle, particularly in high mileage/inner city journey cycles.

In addition the way a vehicle is driven is of paramount importance. Again badly driven newer vehicles (with lower publicised CO2 emissions) will be more harmful to the environment than a well driven older car. We have recently undertaken an extensive training scheme training for over 350 drivers in 'eco' driving techniques and overall drivers under monitored assessment were able to produce a drive which was on average 17.5% more efficient than before they undertook training. It goes without saying that a more efficient driver will also be a safer driver.

Similarly consideration should be given to efficient vehicle routing and despatch processes in order to cut down any wasted journeys. It doesn't matter how environmentally friendly a vehicle is if the journey is unnecessary or the wrong route is chosen then that is more harmful to the environment than an older vehicle not making that journey at all!

Finally, we have to consider alternative fuels. It is unlikely that we in our career lifetime will ever see a fully electrically powered vehicle suitable for a taxi application. However it is likely that hybrids will begin to play a part. No matter what the arguments

around the 'whole life' sustainability of hybrid (as in diesel/petrol – electric) vehicles are it is indisputable that their 'tailpipe' emissions are lower and their use should be encouraged.

Consequently, my advice to the committee would be:

1. **Vehicle maintenance – proof of regular periodic servicing and a preventative maintenance programme including an established vehicle checking regime. This could be backed up by increased roadside testing or twice annual emissions testing to MOT standards**
2. **Driver training – proof of driver training including 'eco' driving techniques. Refresher training periods should also be considered**
3. **Vehicle routing and despatch – sat nav systems for cars and route planning and despatch software for operators**
4. **Alternative fuels – may be to offer some kind of financial incentive for hybrid or alternative fuelled vehicles?**
5. **Vehicle age – generally the newer the vehicle the more efficient it will be**
6. **CO2 emissions – as described probably bears little relevance to a vehicle in a real life application particularly high mileage/inner city**
7. **Engine size – probably the least relevant, particularly in modern cars where larger engines can be very efficient"**

6.9 These views are endorsed by the council's Environmental Health Manager. In particular, the introduction of a 1 year "entry" age limit for vehicles will compliment the Euro 6 diesel standard. There is also a supportive view to encourage and licence, for the future, "near zero" emitting vehicles and the Environmental Health Manager will be encouraged to bring forward proposals and recommendations for future changes to the vehicle specifications in order to support any local air quality measures and initiatives.

## Resolved

1. That the PATN (Public Authority Transport Network – Technical Officer Group) best practice guidance for the inspection of hackney carriage and private hire vehicles **and reproduced as an appendix** be approved and adopted by the Licensing Committee for the purposes of complimenting and guiding the local vehicle testing and inspection criteria.
2. That the vehicle inspection and testing report shown at paragraph **4.7** be approved and adopted and the head of service (in consultation with the council's approved vehicle inspectors) be authorised to amend, vary, add or substitute to such local testing criteria as considered appropriate in the future.
3. That all vehicles presented for initial licensing (with the exception of temporary use vehicles which must provide a current MOT) be subject to inspection and test at Adams Morey, Burrfields Road, Portsmouth.
4. i) **That all licensed vehicles over 3 years old be subject to a minimum of 2 vehicle inspections** at Adams Morey per licensing year – the second test to be about 6 months after the first test and to comprise a “mini” test for the following:
  - Lighting equipment
  - Exhaust, Fuel & Emissions
  - Vehicle body & structure
- ii) Should the vehicle fail ANY of the mini test criteria – a full inspection and test will be subsequently booked and completed and at the expense of the vehicle proprietor.
5. That all licensed vehicles **over 5 years old** be subject to a minimum of **2 full vehicle inspections** at Adams Morey Portsmouth per licensing year.
6. Should the subsequent full test for any vehicle contain at least 3 failures and/or the imposition of a red traffic light marker – the vehicle proprietor will be reported to the committee for consideration of the suspension or revocation of the respective vehicle licence.<sup>78</sup>
7. That the requirement for proprietors to make application to “extend a vehicle licence” after 6 years of age be abolished and that committee minute 37/1991 be rescinded accordingly.
8. That the head of service be authorised to amend such vehicle conditions so far as this relates to:
  - The need to carry a serviceable fire extinguisher (not recommended as a mandatory requirement)<sup>79</sup>
9. That the head of service bring forward proposals in relation to any variations to the fees and charges associated with the vehicle inspection and testing regime and commensurate with these proposals.
10. That the head of service be authorised to amend such policy directives, conditions of licence and application procedures commensurate only with these proposals.

# Chapter 11: Appendix

## Hackney Carriage and Private Hire Vehicles National inspection standards



### Best Practice Guide

August 2012

Produced by Hackney Carriage and Private Hire Inspection Technical Officer Group  
Public Authority Transport Network (PATN)

Supported by



Delivering safe, efficient, sustainable logistics



FREIGHT TRANSPORT ASSOCIATION

**FTA best practice guide to inspection of Hackney Carriage and Private Hire Vehicles**

August 2012

Editor: **Andy Mair**

Production: **Hilary Kingdon**

Design: **Tracey Garrett**

This best practice guide sets out the procedures and standards for those who carry out inspections of hackney carriage and private hire vehicles. It is recommended that the guide is also made freely available to owners, proprietors, operators and drivers of hackney carriage and private hire vehicles, who may find it useful as it details the standards that vehicles are subjected to. The guide also explains the reasons why, a vehicle presented for inspection has not been issued with a pass certificate.

This guidance deliberately seeks to embrace safety aspects of vehicle inspections using, as a basic inspection standard, those laid down in the MOT Inspection Manual – Private Passenger & Light Commercial Vehicle Testing issued by VOSA. This best practice guide provides additional testing requirements to those in the MOT Inspection Manual. It is advised that local licensing authorities use the best practice guide in conjunction with the VOSA MOT Inspection Manual as an advocate to public safety.

This best practice guide has been developed to provide all local licensing authorities with a benchmark with regard to vehicle inspections and safety.

For details of how to join FTA contact the Member Service Centre on 08717 11 22 22\*

\*Calls may be recorded for training purposes

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## Foreword

The Vehicle and Operator Services Agency (VOSA) is committed to saving lives, making roads safer, cutting crime and protecting the environment.

As responsibility for the maintaining of vehicle safety standards of hackney carriage and private hire vehicles falls to various local authorities, VOSA, in the pursuit of its objectives, fully supports the Public Authority Transport Network (PATN) in its promotion of common standards and best practice within industry.

VOSA recommends that local authorities consider this guide when setting technical standards and take the opportunity to become involved in its continued development such that we all contribute to a safer environment.

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### Revision record

Section number	Section title	Description of change	Revision date	Revision number
	2009 version	VOSA foreword	November 2009	1
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# Part I: Introduction

## 1.1 Best practice guide

This best practice guide has been prepared by the Technical Officer Group (TOG) to assist Hackney Carriage proprietors (HC) and Private Hire Vehicle (PHV) drivers/owners and operators. It is intended for use by local licensing authorities, vehicle inspectors and local authority authorised officers.

It is intended that this best practice guide will endorse a *minimum* national vehicle inspection standard. It will be appreciated that it is for individual local licensing authorities to reach their own decisions, both on overall policies and on individual inspection standards, in the light of their own operational needs and geographical circumstances.

Various interested parties, including the Department for Transport (DfT), Vehicle & Operator Services Agency (VOSA), Disabled Persons Transport Advisory Committee (DPTAC) and the Institute of Licensing, have been consulted on this best practice guide.

The Technical Officer Group commends the DfT for the production of the Taxi and Private Hire Vehicle Licensing: Best Practice Guidance. Vehicle operators, local licensing authorities and vehicle inspectors are strongly advised to refer to the DfT guide in conjunction with this best practice guide. More information can be obtained on the DfT website at [www.dft.gov.uk](http://www.dft.gov.uk)

## 1.2 Application to devolved administrations

The Department for Transport (DfT) has responsibility for HC and PHV legislation in England and Wales and, accordingly, the guidance that has been published will be directed at local authorities in England and Wales. Responsibility for HC and PHV licensing in Scotland and Northern Ireland is devolved, but the respective administrations have been involved in the preparation



of the licensing guidance and will decide for themselves the extent to which they wish to make use of or adapt to suit their own purposes.

## 1.3 Technical safety issues

The aim of a local licensing authority is to protect the public. Local licensing authorities will be aware that the public should have reasonable access to safe and well maintained HC and PHVs. For example, it is clearly important that somebody using a HC or PHV should be confident that the vehicle is safe.

To this end, this best practice guide will detail specific vehicle safety issues based on expert technical knowledge and experience of the Technical Officer Group (TOG). This guide will focus therefore on technical safety issues and make recommendations towards safe working practices. For example, the TOG supports the DfT recommendation that there is no upper age limit for HC and PHVs provided there is documentary evidence to support a routine maintenance regime.

Local licensing authorities will want to ensure that each of their various licensing requirements is properly justified by the risk it aims to address. This is not to propose that a detailed, over-zealous inspection regime creates difficulties for the HC and PHV trades but primarily to promote vehicle safety for the protection of passengers and not for the benefit of operators.

## 1.4 Scope of the guidance

This guidance deliberately seeks to embrace safety aspects of vehicle inspections using, as a basic inspection standard, those laid down in the *MOT Inspection Manual – Private Passenger & Light Commercial Vehicle Testing* issued by VOSA. This best practice guide provides additional testing requirements to those in the MOT Inspection Manual. It is advised that local licensing authorities use the best practice guide in conjunction with the VOSA MOT Inspection Manual as an advocate to public safety.

This best practice guide has been developed to provide all local licensing authorities with a benchmark with regard to vehicle inspections and safety.

## 1.5 Specification of vehicle types that may be licensed

The legislation gives local authorities a wide range of discretion over the types of vehicle that they can license as HC or PHVs.

Some authorities specify conditions that in practice can only be met by purpose-built vehicles but the majority license a range of vehicles.

Normally, best practice is for local licensing authorities to adopt the principle of specifying as many different types of vehicles as possible. Indeed, local licensing authorities might usefully specify only general criteria, leaving it open to the HC and PHV trades to put forward vehicles of their own choice which can be shown to meet those criteria. In that way, there can be flexibility for new vehicle types to be readily taken into account.

It is suggested that local licensing authorities should give very careful consideration to a policy which automatically rules out particular types of vehicle or prescribes only one type or a small number of types of vehicle. For example, the Department believes authorities should be particularly cautious about specifying only purpose-built taxis, with the strict constraint on supply that that implies. But, of course, the purpose-built vehicles are amongst those which a local authority could be expected to license. Similarly, it may be too restrictive to automatically rule out considering Multi-Purpose Vehicles, or to license them for fewer passengers than their seating capacity (provided of course that the capacity of the vehicle is not more than eight passengers).

## 1.6 Accessibility



In addition to their general conditions, local licensing authorities will want to consider the accessibility for disabled people (including – but not only – people who need to travel in a wheelchair) of the vehicles they licence as Hackney Carriage or Private Hire vehicles.

Licensing authorities will be aware that it remains the Department

for Transport's intention to make accessibility regulations for Hackney Carriage vehicles subject to a Law Commission review. In the meantime, licensing authorities are encouraged to introduce HC accessibility policies for their areas.

## 1.7 Type approval

It may be that from time to time a local licensing authority will be asked to license, as a HC or PHV, a vehicle that has been imported independently (that is, by somebody other than the manufacturer). Such a vehicle might meet the local licensing authority's criteria for licensing, but may nonetheless be uncertain about the wider rules for foreign vehicles being used in the UK. Such vehicles will be subject to the 'type approval' rules. For passenger cars up to 10 years old at the time of first GB registration, this means meeting the technical standards of either:

- European Community Whole Vehicle Type Approval (ECWVTA)
- National Small Series Type Approval (NSSTA) or
- Individual Vehicle Approval (IVA)

Most registration certificates issued since late 1998 should indicate the approval status of the vehicle. Further information about these requirements and the procedures for licensing and registering imported vehicles can be seen at [www.businesslink.gov.uk](http://www.businesslink.gov.uk)

It is important for local licensing authorities to insist that **at least one** of the above 'type approvals' is produced prior to any **imported vehicle** being licensed as a Hackney Carriage or Private Hire Vehicle. Local authorities are advised to verify the validity of an IVA certificate by contacting the VOSA helpline number 0300 123 9000.

## Voluntary inspections

Vehicles that are already registered for use in the UK are not eligible for a statutory approval, however there are situations where evidence of compliance with the approval standard would be beneficial or be a requirement. An example would be a local licensing authority that may require evidence of compliance for a vehicle that has been modified since original registration, or where evidence of compliance is being used as part of a contractual agreement on a modified vehicle. To facilitate this requirement, a non-statutory voluntary IVA test is available, and it would be appropriate for local authorities to accept a 'basic' IVA certification as a minimum requirement. The test criteria applied will be dependent on the vehicle category/class nominated on the application form VIVA 1. The fees are the same as those appropriate to the particular class of vehicle/test required, other than VAT is payable. If the vehicle is found to meet the requirements, a letter of compliance with the technical standards will be issued and not an Individual Approval certificate. The letter of compliance is not acceptable for first licensing/registration purposes.

## 1.8 Vehicle testing

There is considerable variation between local licensing authorities on vehicle testing. This best practice guide provides local licensing authorities with a **minimum** standard for vehicle inspections. All HC and PHV must be maintained to no less than the standards set out in the VOSA publication 'MOT Inspection Manual – Private Passenger and Light Commercial Vehicle Testing', ISBN 978-0-9549352-5-2.

As the term implies, hackney carriage and private hire vehicles are vehicles used for hire and reward purposes and as such are subject to much higher annual mileages and more arduous driving than normal private vehicles. Therefore, in the interests of passenger and other road user's safety, a more stringent maintenance and testing regime is required.



The purpose of the HC and PHV test is to confirm vehicles meet these more stringent standards. Vehicles must be submitted fully prepared for the test. **It is not intended that the test be used in lieu of a regular preventative maintenance programme.** If, in the opinion of the vehicle examiner, the vehicle has not been fully prepared, the test will be terminated and a further full test shall be required. It is an offence under the road traffic regulations to use an unroadworthy vehicle on the public highway.

HC proprietors and PHV drivers/owners and operators failing to maintain their vehicles in a safe and roadworthy condition may have their vehicle licence suspended, revoked or their licensing application refused by the local licensing authority. In addition, licence holders risk the suspension or revocation of their driver or operator licences by the local licensing authority.

This best practice guide should be read in conjunction with Vehicle & Operator Services Agency (VOSA) publication 'MOT Inspection Manual – Private Passenger and Light Commercial Vehicle Testing', ISBN 978-0-9549352-5-2. This best practice guide provides a working document for those who inspect, maintain and prepare vehicles for inspection prior to being issued with a hackney carriage or private hire licence. Although detailed in its content the best practice guide is not exhaustive.

However, in assessing the mechanical condition of a vehicle, it is more likely an item which would ordinarily pass an MOT test with an advisory note, could fail the HC and PHV test.

## 2 Novelty vehicles (stretched limousines)

This section of the best practice guide offers advice to local licensing authorities on the requirements for licensing novelty vehicles. The standard of the test for novelty vehicles will be at the same standard as for other private hire vehicles. That is, as a basic inspection standard, those laid down in the 'MOT Inspection Manual – Private Passenger and Light Commercial Vehicle Testing' issued by VOSA and this best practice guide. *(For the purpose of clarity, novelty vehicles in this guide will refer to stretch limousines only until such times as further guidance is obtained on any other such vehicle, ie fire tenders etc.)*



A novelty vehicle shall only be registered as a private hire vehicle if it complies with the following conditions.

- Vehicles with no more than eight passenger seats as indicated on the V5C. The V5C will state the number of seats and **must be produced to the local licensing authority prior to the vehicle being licensed or inspected.** If the number of seats differs to what is indicated on the V5C, then contact VOSA and your local area DVLA office immediately. Failure to produce a valid and current V5C for the vehicle to be tested could result in refusal to inspect the vehicle
- Evidence of either European Community Whole Vehicle Type Approval (ECWVTA) or Individual Vehicle Approval (IVA) being presented for inspection
- Local licensing authorities may consider, as novelty vehicles are not factory produced, that a recommended vehicle maintenance inspection be applied every 10 weeks. The frequency of maintenance inspections is recommended by Traffic Commissioners, VOSA and the National Limousine and Chauffeur Association (NLCA)
- The inspection standards to be applied to novelty vehicles are the same standards as those applied to other hackney carriage and private hire vehicles with the following additions:
  - Any additional item previously mentioned in this paragraph with regard to seating capacity, the production of the relevant documents and frequency of vehicle inspections
  - See part 2, section 4 – Tyres and road wheels. Reference in this section is made to tyre rating to be applied to novelty vehicles
  - See part 2, section 12 – Vehicle Identification Number (VIN) markings should be checked to ensure compliance, seating capacities and undue stresses

Local licensing authorities are strongly advised to obtain a declaration, from the operator of a licensed novelty vehicle, that the side facing seats will never be used to carry passengers under 16 years of age, **regardless of whether the vehicle is fitted with or without seat belts.**

It is strongly advised that notices forbidding children to be carried in side facing seats are displayed in prominent positions, ie on entry to the passenger compartment and on either side of the passenger compartment. Local licensing authorities may also require additional outward facing signs adjacent to all entrance/exit doors to the passenger compartment.

## 3 General information

Only vehicles complying with the following conditions will generally be considered for licensing as private hire vehicles.

- 
- Cars fitted with at least four doors and four wheels
  - Right-hand drive vehicles – with the exception of stretch limousines (where applicable)
  - Vehicles with adequate space for luggage
  - Vehicles must be capable of carrying at least four and not more than eight passengers in addition to the driver
  - With the exception of stretch limousines, vehicles will not be accepted with blacked out windows. Passengers being carried in the vehicle must be visible from the outside. In **exceptional circumstances**, tinted windows may be acceptable
  - To allow a thorough examination of a vehicle or any part thereof, it must be presented for test in a clean condition. The vehicle presented will fail the test if, in the opinion of the vehicle examiner, the vehicle is so dirty that it would be unreasonable for the test to be carried out
  - A test will not be carried out unless the licence fee/ examination fee has been paid in advance

### Statement of undertakings and declaration

In the interests of road and passenger safety, the licensed driver/ owner or operator undertakes to make proper arrangements so that licensed vehicles are kept in a roadworthy condition at all times.



# Part 2: Procedures and standards of inspection

This best practice guide sets out the procedures and standards for those who carry out inspections of hackney carriage and private hire vehicles.

It is recommended that the guide is also made freely available to owners, proprietors, operators and drivers of hackney carriage and private hire vehicles, who may find it useful as it details the standards that vehicles are subjected to. The guide also explains the reasons why a vehicle presented for inspection, has not been issued with a pass certificate.

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## Section 1

### Lamps, reflectors and electrical equipment

#### 1.9 Electrical wiring and equipment

Method of inspection	Reason for rejection
<i>This examination is limited to that part of the electrical system that can be readily seen without dismantling any part of the vehicle.</i>	
a Check all electrical wiring for: <ul style="list-style-type: none"> <li>condition</li> <li>security</li> <li>position</li> <li>signs of overheating</li> <li>heavy oil contamination</li> </ul>	a Wiring <ul style="list-style-type: none"> <li>positioned so that it is chafing or clipped to a fuel line or likely to be damaged by heat so that insulation will become ineffective</li> <li>with clear evidence of overheating</li> <li>heavily contaminated with oil</li> </ul>
b Check all switches controlling all obligatory lights	b Switches <ul style="list-style-type: none"> <li>Insecurity or malfunction of a switch controlling an obligatory light</li> </ul>

## 1.9 Additional lamps

Method of inspection	Reason for rejection
<b>With the ignition switched on check the following.</b>	
<b>Reversing lamps</b> <ul style="list-style-type: none"> <li>a The reversing lamps emit a diffused white light when reverse gear is selected</li> <li>b The lamps extinguish when neutral gear is selected</li> <li>c The lamps are in good working order and are secure</li> <li>d The lamps do not flicker when lightly tapped by hand</li> </ul>	<b>Reversing lamps</b> <ul style="list-style-type: none"> <li>a Fails to operate or does not emit a white diffused light</li> <li>b Fails to extinguish when neutral or forward gear is selected</li> <li>c Are not in good working order or insecure</li> <li>d Flickers when tapped lightly by hand</li> </ul>
<b>Front fog/driving lamps</b> <ul style="list-style-type: none"> <li>e A single front fog lamp emitting a white or yellow diffused light illuminates only when dipped beam is selected</li> <li>f A pair of matched fog lamps both emitting a white or yellow diffused light should illuminate together</li> <li>g A pair of matched, long-range driving lamps, both emitting a white diffused light, should illuminate together</li> </ul>	<b>Front fog/driving lamps</b> <ul style="list-style-type: none"> <li>e Lamp inoperative or operates other than in dipped beam mode</li> <li>f Operate incorrectly</li> <li>g Operate incorrectly</li> </ul>
<b>'For Hire' and roof signs</b> <ul style="list-style-type: none"> <li>a Correct style and type of sign fitted</li> <li>b Ensure the sign is securely fastened to the vehicle</li> </ul>	<b>'For Hire' and roof signs</b> <ul style="list-style-type: none"> <li>a Incorrect colour or details shown on sign, ie registration number, vehicle number etc</li> <li>b Insecure sign</li> </ul>
<ul style="list-style-type: none"> <li>c Condition and security of wiring</li> <li>d Functional test of signs for illumination</li> </ul>	<ul style="list-style-type: none"> <li>c Wiring is not in good condition or is loose or chuffed</li> <li>d Illumination not consistent across the sign, ie all light bulb(s) LED(s) illuminated when switched on</li> </ul>

## Section 2

### Steering and suspension

#### 2.1 Steering control – steering wheel

Method of inspection	Reason for rejection
<b>With both hands rock the steering wheel from side to side at right angles to steering column and apply slight downward and upward pressure to the steering wheel rim (in line with column). Note the following.</b>	
<ul style="list-style-type: none"> <li>a Fractures in steering wheel hub</li> <li>b Fractures in steering wheel rim</li> <li>c Steering wheel spokes loose or fractured</li> <li>d Jagged edges on steering wheel rim</li> <li>e. If possible, check the retaining device on steering wheel is fitted</li> </ul>	<ul style="list-style-type: none"> <li>a Steering wheel hub fractured</li> <li>b Steering wheel rim fractured</li> <li>c A steering wheel spoke loose or fractured</li> <li>d Jagged edges on steering wheel rim likely to injure the driver</li> <li>e. A steering wheel hub-retaining device not fitted</li> </ul>

## 2.1 Steering control – steering column

Method of inspection	Reason for rejection
a Try to lift the steering in line with the steering column and note the movement at centre of steering wheel	a Excessive movement at centre of steering wheel in line with steering column (end float)  <i>Note: Certain types of steering column might show some movement not due to excessive wear, eg those fitted with universal joints or flexible couplings</i>
b While steering wheel is rotated, check for deterioration in any flexible coupling or universal joint of steering column	b A flexible coupling or universal joint deteriorated, worn or insecure
c Where practical, check any clamp bolts for presence and security of locking devices. (These may be located in the engine compartment or under chassis)	c A coupling clamp bolt or locking device loose or missing

## 2.4 Suspension spring units and linkages

Method of inspection	Reason for rejection
<b>Coil springs</b>	<b>Coil springs</b>
a Welding repairs	a Repaired by welding

## Section 3

### Brakes

No additional inspection requirements

## Section 4

### Tyres and road wheels

#### 4.1 Tyres – condition

Method of inspection	Reason for rejection
On all the tyres, including spare wheel <b>where fitted</b> , examine each tyre meets all the requirements laid down in the 'MOT Inspection Manual – Private Passenger and Light Commercial', ISBN 978-0-9549352-5-2  <i>Note: Where a doughnut tank is fitted in the boot for LPG, the spare wheel if still carried in the boot must be properly secured. Alternatively, a spare wheel cage installed to manufacturer's and British Standards may be fitted to the underside of the vehicle</i>	In accordance with the 'MOT Inspection Manual – Private Passenger and Light Commercial Vehicle Testing', ISBN 978-0-9549352-5-2  <i>Note: Space saver tyres should only be approved with the support of a method statement highlighting driver responsibilities with regard to the maximum permitted speed and that space savers are a temporary 'get-you-home tyre'</i>

Method of inspection	Reason for rejection
<p><b>Important note: stretched limousines</b></p> <p>In the case of American imported stretched limousines, vehicle inspectors will need to be vigilant when inspecting tyres for suitability, and an assessment should be made with the information detailed on the convertor plate. Most converted stretched limousines are converted from Ford Lincoln Town Cars with a number of Cadillac variants also.</p> <p>In approved 'stretch' limousine conversions, the maximum weight can be in excess of 7,100lbs (3.2 tonnes) and care should be exercised when determining suitable tyre ratings. Generally speaking a Ford Lincoln or Cadillac would require a tyre rating index of at least 107T, which gives a load rating of 2,149lbs (975kgs) with a maximum speed of 118 miles per hour.</p>	<p><b>Stretched limousines</b></p> <p>More information and guidance can be obtained from: National Limousine &amp; Chauffeur Association on: <a href="http://www.nlca.co.uk">www.nlca.co.uk</a></p>

## Section 5

### Seat belts and supplementary restraint systems

No additional inspection requirements

## Section 6

### Body, structure and general items

#### 6.1 Vehicle body and condition (exterior)

Method of inspection	Reason for rejection
<p>Examine the body thoroughly for security, corrosion, damage, poor repair/paint match or sharp edges that are likely to cause injury</p>	<ul style="list-style-type: none"> <li>a An insecure or missing body panel, trim, step or accessory</li> <li>b Any sharp edge whatsoever which may cause injury</li> <li>c Heavy scuffing, abrasions or deformation to front and rear bumper</li> <li>d More than 8 stone chips visible on a bonnet/grill that has not penetrated to the metal or more than 4 stone chips that have penetrated to the metal</li> <li>e More than 8 stone chips on any panel including door edges, provided the base coat has not been penetrated</li> <li>f More than 4 stone chips on any panel where the base coat has been penetrated to the metal and is untreated</li> <li>g A single dent of more than 80mm, or more than 3 dents of not more than 20mm in any one panel</li> <li>h More than 4 scratches and or abrasions of more than 50mm in length in any one panel provided that the base coat has not been penetrated</li> <li>i Dull, faded paintwork which has lost its gloss finish or paint miss-match to a panel(s) to such an extent that it detracts from the overall appearance of the vehicle</li> </ul>

Method of inspection	Reason for rejection
	<ul style="list-style-type: none"> <li>j Evidence of poor repairs and or paint finish to a repaired panel(s) including runs and overspray to adjoining panels/trim that detracts from the overall appearance of the vehicle</li> <li>k Obvious signs of rust/corrosion of any size particularly those that are covered by advertising signs</li> <li>l Lack of clearly displayed or omission of 'No Smoking' signs</li> </ul>

## 6.1 Vehicle body, security and condition (interior)

Method of inspection	Reason for rejection
a Examine thoroughly the interior for damaged, insecure or loose fixtures, fittings or accessories	a Insecure and loose fixtures, fittings or accessories
b Dirty, missing and worn trim, carpets, seat belts, mats, headlining, boot area and inclusion of prescribed items. Remove mats to inspect carpets underneath for cleanliness and wear	b Missing, dirty, soiled, stained worn or insecure trim, carpets, headlining, and mats in such a condition that they are likely to soil or damage passengers' clothing or luggage
c Examine interior lights, motion door locks and warning lights	c An inoperative interior light (all lights must illuminate if they are part of the manufacturer's standard equipment). Missing or defective motion switch/lock or warning lamp not illuminated
d Examine heating, demisting and air condition systems for correct operation, including passenger compartment controls where fitted (includes electric front and rear screen demisters)	d A system(s) which does not function correctly, or any part is missing including vents, controls and switches
e Examine all windows ensuring they allow lowering and rising easily	e An opening window that is inoperative or difficult to open and or close mechanism broken/missing
f Examine interior door locks, grab handles/rails safety covers	f Missing, defective or loose door locks, child locks, protective covers grab handles and rails. Grab handles/rails, which are rigid to aid the blind and partially sighted, and are worn to excess
g Examine grills/partitions for security and condition	g A grill/partition which is insecure or has sharp edge which may cause injury to passengers or driver
h Examine electrical wiring for condition, security, including intercom systems	h Frayed, chaffing wiring, non-shielded terminals and cables so routed that they cause a trip hazard, cables that can be easily disconnected. Intercom system defective, warning light inoperative and signs illegible/missing
i Examine the boot for access, contents, cleanliness and water ingress	i Unable to open, close and or lock boot lid, failure of boot lid support mechanism, defective seals/evidence of water ingress, dirty boot and/or carpets, loose items stored in boot (ie spare wheel tools and equipment etc)
<b>Additional items to be inspected in limousines and novelty vehicles.</b>	
j All fixtures and fittings, ie mirror balls, drinks cabinets, televisions etc must be stored securely and not hinder the ingress or egress from the passenger compartment	j Any fixture or fitting that is loose or insecure or where walkways are blocked that prevent ease of ingress or egress from the passenger compartment

Method of inspection	Reason for rejection
<p>k A notice identifying the maximum seating capacity to be displayed in the passenger compartment and clearly visible to all passengers. It may be necessary to display more than one sign indicating the maximum seating capacity</p> <p><i>Note: Any vehicle presented in a dirty, untidy condition will not be tested</i></p>	<p>k No maximum seating capacity sign or signs displayed. A sign or signs not clearly visible to all passengers</p>
<p><b>Mandatory 'No Smoking' sign</b></p> <p>l Check for presence and display of No Smoking sign</p>	<p>l No Smoking sign missing/not adequately displayed</p>

## 6.1 Bumper bars

Method of inspection	Reason for rejection
<p><b>Examine the bumper bars and check the following.</b></p> <p>a They are secure to their mountings</p> <p>b The mountings are secure to the vehicle</p> <p>c There is no evidence of damage</p>	<p>a A loose bumper bar or mounting. A weakened bumper bar and/or mounting is insecure because of poor repairs</p> <p>b A fractured mounting bracket. Mounting bolts so worn or elongated that the bumper bar is likely to detach partially or completely from the vehicle when in use. A bumper bar secured by wire or other temporary means is regarded as insecure and must be rejected</p> <p>c Bumper bars which have jagged edges, cracks, splits or projections, which may cause injury to persons near the vehicle. Paint miss-match or fading which is significantly different to that of the rest of the paintwork</p>

## 6.2 Doors and seats

Method of inspection	Reason for rejection
<p><b>Doors and emergency exits</b></p> <p>Examine the condition of all doors and emergency exits. Check door locks, striker plates, handles and hinges for security, wear and missing and damaged trim/cover plates</p> <p>Check the presence, condition and correct functioning of all door stay catches and devices (including sliding doors)</p> <p>Check markings describing the presence and method of opening emergency exit(s) are readily visible on or adjacent to the exit and are legible</p> <p>Check that seats are secure, clean and not unduly worn</p>	<p><b>Doors and emergency exits</b></p> <p>a A door or emergency exit does not latch securely in the closed position</p> <p>b A door or emergency exit cannot be opened from both the inside and outside the vehicle from the relevant control in each case</p> <p>c Missing, loose or worn handles, lock or striker plate</p> <p>d Markings describing the presence and method of opening an emergency exit missing, illegible or incorrect</p> <p>e Missing, loose or damaged trim/cover plate</p> <p>f Seat cushion(s) stained, torn, holed, worn or insecure. A seat that does not provide adequate support at base or backrest. Torn, slashed or badly stained seats are not acceptable</p> <p>g A door stay catch or device missing, excessively worn or not fulfilling its function</p>



Method of inspection	Reason for rejection
<p><b>Important note</b></p> <p>With the exception of 'novelty vehicles' only vehicles with forward and rear facing seats will be accepted.</p> <p>For more information on seating for novelty vehicles see section 12.1</p>	
<p><b>Accessibility: wheelchair vehicles</b></p> <p>Door configurations for wheelchair accessible vehicles</p> <p>a Single rear door – must open to a minimum of 90 degrees and be capable of locking in place</p> <p>b Twin rear doors – both must open to a minimum of 180 degrees and be capable of being locked in place. This is to enable an attendant (driver or guide) to assist the wheelchair passenger if required</p>	<p><b>Accessibility: wheelchair vehicles</b></p> <p>a Door does not open to a full 90 degrees and cannot be secured in the open position</p> <p>b Twin doors do not open to a full 180 degrees and cannot be secured in the open position</p>

## Section 7

### Exhaust, fuel and emissions

#### 7.1 Exhaust system

Method of inspection	Reason for rejection
Where applicable, check for presence, security and adequacy of grease shields to hot exhausts	A heat shield missing, insecure or inadequate

#### 7.2 Fuel system – pipes and tanks

Method of inspection	Reason for rejection
<p>a Check that fuel tank filler caps are:</p> <ul style="list-style-type: none"> <li>• present</li> <li>• of the correct type</li> <li>• secure and seated properly to ensure correct function of sealing</li> </ul> <p>b Examine pipes to see they are securely clipped to prevent damage by chafing and cracking, and are not in a position where they will be fouled by moving parts</p> <p>c Check that no fuel pipe runs immediately adjacent to or in direct contact with electrical wiring or the exhaust system</p>	<p>a A filler cap missing or unsuitable or in such condition that it would not prevent fuel leaking or spilling</p> <p>b Damaged, chafed, insecure pipes or pipes so positioned that there is a danger of them fouling moving parts</p> <p>c A fuel pipe immediately adjacent to or in direct contact with electrical wiring or exhaust system</p> <p>d Temporary/emergency fuel cap fitted</p>

## Section 8

### Driver's view of the road

#### 8.1 Mirrors and view to rear

Method of inspection	Reason for rejection
<b>The number and position of all obligatory mirrors must be checked.</b>	
Check the condition of each mirror reflecting surface	A mirror reflecting surface deteriorated or broken. <i>Note: A defective additional external mirror is not a reason for rejection</i>

#### 8.3 Windscreen – view to the front

Method of inspection	Reason for rejection
<b>Sit in the driver's seat and check that there is reasonable view of the road ahead, bearing in mind the original design of the vehicle.</b>	The position or size of any object restricts the driver's view of the road ahead, bearing in mind the original design of the vehicle
For all air operated wipers examine: <ul style="list-style-type: none"> <li>the condition of any visible piping</li> <li>the function of the operating mechanism</li> <li>the function of necessary valves to protect the braking system</li> </ul> <p><i>Note: Equipment or objects not originally fitted to the vehicle as part of the original design must not obstruct the designed forward view of the driver. In particular, objects such as (but not limited to) pennants, cab decorations and external stone guards/visors should not interrupt the view through the swept area by the windscreen wipers</i></p>	Air operated wipers: <ul style="list-style-type: none"> <li>pipes inadequately clipped or supported</li> <li>incorrect function of the wipers or leaking components</li> <li>incorrect operation of protection valves</li> </ul>

#### 8.5 Window glass or other transparent material

Method of inspection	Reason for rejection
a Visually check the condition of all windscreens, internal screens, partitions, side, rear, roof and door windows for cracks, surface damage and discolouration	a A crack, surface damage or discoloration in glass or other transparent material that: <ul style="list-style-type: none"> <li>impairs the driver's front, side, or rear view of the road</li> <li>presents a danger to any person in the vehicle</li> </ul>
b Check presence and security of all windscreens, side, roof, or rear windows, or internal screens or partitions	b A windscreen or any other outside window missing, or any windscreen, window, internal screen or partition insecure
c Check for evidence of obvious leaks from all windscreens and side, rear, roof or door windows	c Any external window or windscreen is obviously leaking
d Check for presence, security and condition of guard rails or barriers at windows, internal screens or partitions	d A guard-rail or barrier at a window, internal screen or partition missing, insecure or damaged
e For all vehicles first used before 1 January 1959. As far as is practicable, check that glass fitted to windscreens and outside windows facing to the front is safety glass, except glass fitted to the upper deck of a double deck bus	e The windscreen and/or any outside window facing to the front of a vehicle obviously not safety glass fitted to a vehicle first used before 1 January 1959
f For all vehicles used on or after 1 January 1959, as far as is practicable, check that glass used for windscreens and all outside windows is safety glass, or safety glazing	f Glass used for a windscreen or an outside window is obviously not safety glass

Method of inspection	Reason for rejection
<p>g Vehicles first used on or after 1 June 1978, check that windscreens and other windows, wholly or partly, on either side of the drivers' seat are made from safety glass displaying an acceptable safety mark</p> <p><i>Note: Marking is not required for safety glass on vehicles first used before 1 June 1978</i></p>	<p>g For vehicles first used on or after 1 June 1978, that windscreens and/or other windows wholly or partly on either side of the drivers seat that are not made from safety glass display an acceptable safety mark</p>

## Section 9

### Tricycles and quadricycles

No additional inspection requirements

## Section 10

### Additional requirements

#### 10.1 Transmission

Method of inspection	Reason for rejection
<b>Examine transmission, check for the following.</b>	
a Missing or loose flange bolts	a A loose or missing flange bolt(s)
b Cracked or insecure flanges	b A flange cracked, or loose on the transmission shaft
c Wear in shaft and/or wheel bearings	c Excessive wear in shaft bearing
d Security of bearing housings	d A bearing housing insecure to its fixing
e Cracks or fractures in bearing housings	e A cracked or fractured bearing housing
f Wear in universal joints	f Excessive wear in a universal joint
g Deterioration of flexible couplings	g Deterioration of a transmission shaft flexible coupling
h Distorted, damaged shafts	h A damaged, cracked or bent shaft
i Deterioration of bearing housing flexible mountings	i Deterioration of a flexible mounting of a bearing housing
j Clearance between transmission shafts and adjacent components	j Evidence of fouling between any transmission shaft and an adjacent component

#### 10.2 Oil and water leaks

Method of inspection	Reason for rejection
a Check vehicle for oil and water leaks from any assembly or component to the ground	a An oil or water leak, from any assembly, which deposits fluids underneath the vehicle whilst stationary
b And/or which could be deposited on surrounding bodywork or onto the exhaust system.	b Leaks which, when the vehicle is moving, could be deposited upon the surrounding bodywork, exhaust and brake system so that it would: <ul style="list-style-type: none"> <li>contaminate areas</li> <li>could potentially cause a health, safety or fire risk</li> </ul>
<i>Note: If necessary, the engine can be run at idle speed to confirm the existence of an oil leak</i>	

### 10.3 Luggage/load space

Method of inspection	Reason for rejection
Physical separation is not so much an issue as is the safety of passengers in the event of an accident. The luggage should therefore be secure and prevented from becoming dislodged in an accident in such a manner as may cause injury. Such security can be by means of a sheet or net, which could be anchored to the floor of the luggage area. Clearly if the luggage compartment is not physically separated from the passenger compartment then care will need to be taken so as not to carry any hazardous items such as fuel cans, detergents or other loose items that could leak if they become damaged	<p>Load restraint system, if required, not present at time of test</p> <p>Load restraint system faulty or unserviceable</p>

### 10.4 Trailers and towbars

Method of inspection	Reason for rejection
<p><b>Trailers</b></p> <p>Where a local licensing authority permits the use of trailers for the carriage of luggage, then the trailer needs to be presented for test along with the vehicle that will be authorised to tow it. The trailer will also need to display the appropriate registration plate and a licence plate</p> <p><i>Note: Trailers presented for inspection should be built by an approved or recognised trailer manufacturer</i></p> <p><i>An example of a typical trailer inspection sheet can be found at Appendix A</i></p>	<p><b>Trailers</b></p> <p>Rejections as indicated on the trailer inspection sheet shown at Appendix A</p>
<p><b>Towbars</b></p> <p>Where tow bars are fitted checks must be made on the condition and security to the towing vehicle</p>	<p><b>Towbars</b></p> <p>Rejections as indicated on the trailer inspection sheet shown at Appendix A</p>

## Section 11

### Ancillary equipment

#### 11.1 Wheelchair restraint and access equipment

Method of inspection	Reason for rejection
<p><b>Wheelchair restraint</b></p> <p>a Where applicable check condition and operation of wheelchair restraint</p> <p>b A system for the effective anchoring of wheelchairs shall be provided within the vehicle in all spaces designated as wheelchair spaces</p>	<p><b>Wheelchair restraint</b></p> <p>a A wheelchair restraint is defective, worn or missing.</p> <p>b Wheelchair anchorage systems and devices do not conform to European Directive 76/115 EEC (as amended)</p>
<p><b>Wheelchair access and equipment</b></p> <p>A vehicle shall be fitted with either of the following forms of wheelchair access equipment:</p>	

Method of inspection	Reason for rejection
<p><i>Ramps</i></p> <p>c Check that appropriate ramps fitted are securely installed in the designated storage area. Examine for damage, deformity, sharp edges etc. and provision of anti-slip covering</p>	<p>c Ramps missing, insecurely stored, damaged/deformed, anti-slip covering in poor condition or missing</p>
<p><i>Wheelchair lift</i></p> <p>d A purpose designed wheelchair lift shall conform to the LOLER 98 Regulations. A report, confirming that the lifting equipment is safe to use, shall be presented at the time of the vehicle inspection. Vehicles presented for inspection with a wheel chair lift will require a LOLER certificate that is valid for a period of six months from the date of issue</p> <p><i>Note: Passenger lifting equipment will need to be thoroughly examined by a competent person, in use, at least once every six months</i></p>	<p>d Vehicle not presented with a valid or current LOLER certificate</p>
<p>e Any purpose designed wheelchair access ramp that is carried must be lightweight and easy to deploy. The installed ramp shall have visible reference to safe working load of 250kgs and certified to BS 6109</p>	<p>e The installed ramp does not have any visible reference to a maximum safe working load or certification to BS 6109</p>
<p>f Wheelchair access equipment shall be fitted either into the rear or side access door of the vehicle. Where it is fitted to a side door this shall be the door situated on the nearside of the vehicle, ie kerbside when stopped in a normal road</p>	<p>f Wheelchair access equipment is fitted to the offside access door of the vehicle</p>
<p>g The aperture of the door into which the access equipment is fitted shall have minimum clear headroom in its central third of 48 inches (1,220mm). The measurement shall be taken from the upper centre of the aperture to a point directly below on either the upper face of the fully raised lift platform or the upper face of the ramp fully deployed on level ground</p>	<p>g There is not clear headroom in the aperture within the central third of 48 inches (1,220mm)</p>
<p>h A locking mechanism shall be fitted that holds the access door in the open position whilst in use</p>	<p>h No evidence of a suitable locking mechanism to hold the door open</p>
<p>i All wheelchair tracking must be fit for purpose and structurally sound</p>	<p>i Damaged or insecure tracking or detritus deposits within the tracking rails</p>

## 11.2 Fire extinguisher

Method of inspection	Reason for rejection
<p>a Check the fire extinguisher for presence:</p> <ul style="list-style-type: none"> <li>• the expiry date</li> <li>• seal</li> <li>• type – water or foam</li> <li>• approved mark – BS5423 or EN3</li> </ul>	<p>a A fire extinguisher is missing or:</p> <ul style="list-style-type: none"> <li>• out of date</li> <li>• broken or missing seal</li> <li>• no approved marking visible or other non-approved marking shown</li> <li>• incorrect type</li> <li>• in an obviously poor condition or discharged state</li> </ul>
<p>b The fire extinguisher must be kept in an accessible position inside the vehicle. The extinguisher may be carried out of view, ie in a fastened glove compartment provided there is a clear sign on the dashboard, stating the location</p>	<p>b Not fitted in an accessible position or its position is not clearly marked</p>

### 11.3 First aid kit

Method of inspection	Reason for rejection
a Check the first aid kit for presence, the expiry date and the seal is intact. There is no requirement to inspect the contents of the first aid kit	a A first aid kit is missing, out of date, in a poor or contaminated condition or the seal has been broken
b The first aid kit must be kept in an accessible position inside the vehicle. The first aid kit may be carried out of view, ie in a fastened glove compartment provided there is a clear sign on the dashboard, stating the location	b The first aid kit is not fitted in an accessible position or its position is not clearly marked

## Section 12

### Novelty vehicles (stretch limousines)

#### 12.1 Seating capacity

Method of inspection	Reason for rejection
It is strongly recommended that prior to the inspection of a novelty vehicle the inspector checks the seating capacity on the V5C to ensure it does not exceed 8 passenger seats	If the V5C states more than 8 passengers, then this vehicle <b>MUST NOT</b> be tested or licensed as a Private Hire Vehicle. The vehicle should be referred to VOSA for licensing as a passenger carrying vehicle (PCV)

#### 12.2 Undue stresses

Method of inspection	Reason for rejection
Vehicle inspectors should be aware of undue stresses caused to the steering, brakes and tyres due to the additional weight imposed on the vehicle at the modification process	Tolerances and wear should be as defined in the VOSA MOT Inspection Manual – Private Passenger and Light Commercial Vehicle Testing as follows: <ul style="list-style-type: none"><li>• steering – section 2</li><li>• brakes – section 3</li><li>• tyres – section 4</li></ul>

#### 12.3 Passenger notices

##### Driver declaration

Local licensing authorities are strongly advised to obtain a declaration, from the operator of a licensed novelty vehicle, that side facing seats will never be used to carry passengers under 16 years of age, <b>regardless of whether the vehicle is fitted with or without seat belts</b>
---

##### Passenger notices

i In addition, notices forbidding children to be carried in side facing seats must be displayed in prominent positions, ie on entry to the passenger compartment and on the inside of the vehicle on either side of the passenger compartment. In addition, local licensing authorities may require outward facing signs adjacent to all entrance/exit doors to the passenger compartment
ii Further notices should be displayed inside the vehicle, where all passenger can clearly read the notice, advising passengers of the maximum carrying capacity of the vehicle and a warning to passengers that should the capacity be exceeded then the vehicle will not be insured

# Appendices

## Appendix A

### Hackney Carriage and Private Hire – Trailer inspection form

## Hackney Carriage and Private Hire

### Trailer inspection sheet

Space for  
local authority logo




Plate number of towing vehicle \_\_\_\_\_

Registration number of towing vehicle \_\_\_\_\_

Registered owner of vehicle \_\_\_\_\_

Manufacturer's plate showing chassis number \_\_\_\_\_

Manufacturer's plate showing maximum weight \_\_\_\_\_

Inspection area	Description	Pass (✓)	Fail (X)
Licence plate	Contains details and complies with local licensing authorities' format		
Licence plate	Clearly displayed, legible and securely fixed		
Licence plate	Serviceable – not damaged or defaced		
Trailer couplings	Check condition and operation and presence of a safety breakaway cable		
Tow bar mounting brackets	Check condition and security		
Trailer body	Check condition of side and rear tailboards		
Trailer chassis	Check condition		
Suspension	Check condition and operation		
Wheel bearings	Check for excessive free play or roughness in bearings		
Tonneau cover and fittings	Check for condition		
Wheels and tyres	Check security, condition and wear		
Braking system	Operates satisfactorily		
Lighting	All obligatory lights work		
Indicators	All indicators work		
Reflective triangle	Check presence and condition		
Numberplate	Check condition, security of fitting and displayed clearly		
Speed restriction notice	Check condition and displayed clearly		

I hereby certify that the above trailer has been inspected and has/has not\* been found to be roadworthy and suitable to be used as a hackney carriage/private hire\* trailer at the time of inspection.

Examined by (name) \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

\*Delete as appropriate

---

## Appendix B

### Definition of motor vehicles

Category	Definition
<b>M</b>	A motor vehicle with at least four wheels designed and constructed for the carriage of passengers
<b>M1</b>	Vehicles designed and constructed for the carriage of passengers and comprising no more than eight seats in addition to the driver's seat
<b>M2</b>	Vehicles designed and constructed for the carriage of passengers and comprising more than eight seats in addition to the driver's seat, and having a maximum mass not exceeding five tonnes
<b>M3</b>	Vehicles designed and constructed for the carriage of passengers and comprising more than eight seats in addition to the driver's seat, and having a maximum mass exceeding five tonnes




Appendix C

Hackney Carriage and Private Hire – Inspection sheet (front)

## Hackney Carriage and Private Hire

### Inspection form

Space for  
local authority logo



**IMPORTANT: READ NOTES OVERLEAF**

Chassis no	Certificate of Compliance serial no		Class of inspection (tick) <input type="checkbox"/> Hackney Carriage <input type="checkbox"/> Private hire <input type="checkbox"/> Car purchase
Vehicle reg mark	Make and model	Year of manufacture	
Plate no	Recorded mileage	Colour	

A	Item tested	Pass (✓)	Fail (X)	Reasons for failure
	<b>Lighting equipment</b>			
	Front and rear lamps			
	Headlamps			
	Headlamp aim			
	Stop lamps			
	Rear reflectors			
	Direction indicators			
	<b>Steering and suspension</b>			
	Steering control			
	Steering mechanism/system			
	Power steering			
	Transmission			
	Wheel bearings			
	Front suspension			
	Rear suspension			
	Shock absorbers			
	<b>Brakes</b>			
	Controls/ABS warning system			
	Condition of service brake system			
	Condition of parking brake system			
	Service brake performance			
	Parking brake performance			
	<b>Tyres and wheels</b>			
	Tyre type			
	Tyre condition (including spare)			
	Road wheels			
	<b>Seat belts</b>			
	Mountings			
	Condition			
	<b>General</b>			
	Driver's view of the road, mirrors			
	Horn			
	Exhaust system			
	Fuel system			
	Exhaust emissions			
	Vehicle structure			
	Body interior and luggage space			
	Fire extinguisher, first aid kit and bulb kit			
	Meter – test and seal			
	Licence plates/discs			
	Roof sign and For Hire sign			
	Body exterior			
	Doors and seats			
	Electrical wiring and equipment			
	Speedo			
	Oil and water leaks			
	Ancillary equipment			
	Trailers and tow bars Yes/No			

*delete as appropriate <b>B</b>	I hereby certify that the above vehicle has been inspected and has/has not* been found to be roadworthy and suitable to be used as a hackney carriage/private hire* vehicle at the same time of inspection.  Signed _____ (Tester/Inspector)  Name in capitals _____ Date _____	<b>Authentication stamp</b>   
------------------------------------	---	---

<b>C</b>	WARNING: IN MY OPINION, THE VEHICLE IS DANGEROUS TO DRIVE BECAUSE OF THE FOLLOWING DEFECT:   
----------	--

## Hackney Carriage and Private Hire – Inspection sheet (back)

### If your vehicle has failed the test please read the following notes

- 1 Your vehicle does not meet the legal requirements. You should have it repaired without delay and you are not to use the vehicle for hire and reward until such repairs are carried out.
- 2 It is an offence to use on a public road a vehicle of testable age that does not have a current certificate of compliance, except when:
  - bringing it away from a testing station after it has failed the test
  - taking it to or bringing it away from a place where by PREVIOUS ARRANGEMENT repairs are to be or have been made to remedy the defects for which the vehicle was failed
  - taking it to the testing station for a test booked in advance

Even in the above circumstances you may still be prosecuted for driving an unroadworthy vehicle if it does not comply with the various regulations affecting its construction and use.

Additionally the insurance may not be operative.

- 3 A FULL FEE IS PAYABLE IF:
  - a the vehicle is submitted for retest at the testing station more than seven days after being failed
  - b having been presented for a retest, fails any subsequent test

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# Chapter 12: Vehicle age limits

## Objective:

“To prescribe vehicle age limits based on local empirical evidence and in order to promote public safety and confidence in the licensed hackney carriage and private hire fleet.”

## 1.0 The Legal Provisions

- 1.1 The 1847 act is silent on age limits for hackney carriages. Likewise, the 1976 act makes no specific reference to age limits for vehicles but permits for the imposition of conditions on both hackney carriage and private hire vehicle licences.
- 1.2 The “fitness” of a licensed vehicle is of paramount consideration and licences may be suspended, revoked or not renewed if the committee is satisfied that a licensed vehicle is “unfit for use”.

## 2.0 Current Policy on Age Limits

- 2.1 Some council’s impose age limits on vehicles and some do not.

Vehicle age limits have been applied in Portsmouth for many, many years. This has been by way of a local policy directive and as a “pre-application” requirement for both proprietors of hackney carriages and private hire vehicles.

Historically, there was an old “split rule” for “normal” saloon vehicles to remain licensed until 8 years of age (with an entry age of 5 years or under) and London approved FX type vehicles being licensed for up to 12 years.<sup>80</sup>

- 2.2 Corresponding vehicle licence conditions have been imposed to reflect on the vehicle age limits approved by the committee.
- 2.3 Proprietors have a right of appeal to the Magistrates’ against conditions imposed on respective hackney carriage and private hire vehicle licences.

- 3.0 The previously approved vehicle age limits were as follows:

- For all hackney carriage and private hire saloons, hatchbacks, estates and multi people vehicles (MPV’s) - the vehicle must be **under 6 years of age on first licensing and can remain licensed until 8 years of age;**
- For suitable adapted fully wheelchair accessible hackney carriages (including those meeting the Transport for London and old PCO specifications) and having a minimum nearside loading for wheelchair users – the vehicle must be **under 4 years of age on first licensing and can remain licensed until 12 years of age – (minute 23/2006 refers).<sup>81</sup>**

The local vehicle age limit policy directives/ conditions have stood the test of time and have not been subject to judicial challenge.

However vehicle proprietors have approached the Licensing Committee direct to seek a further vehicle licensing period on individual merit. In some cases the committee have agreed to extend a vehicle licence – in others, they have not. The overall mechanical fitness and comfort of the vehicle (together with the individual vehicle servicing and maintenance history) have been of paramount importance to the committee.<sup>82</sup>

Equally, the committee has chosen, in the past, to waive the current “entry” 6 year age limit policy for unique vehicles such as older Lincoln Town cars (stretched limousines) and converted Volvo fire appliance vehicles used as “novelty fun vehicles”. Again, an emphasis of individual consideration, on merit, has applied.

- 3.1 There is nothing wrong in having clear local guidelines on vehicle age limits (to aid both proprietors, officers and members alike) and accordingly the committee has robustly defended the use of a local vehicle age limit policy on the grounds of public safety but have not “closed their eyes and ears” to hearing a case on merit.<sup>83</sup>

However, the committee would expect a proprietor to bring evidence of an exemplary mechanical and cosmetic history to support any extension of a vehicle licence.

3.2 Comparative vehicle age limits from other local authorities in Hampshire is shown below:

Authority	Vehicle age at first licensing	Maximum vehicle age	Notes
Portsmouth – saloon style	under 6 years	8 years	
Portsmouth – wheelchair accessible	under 4 years	12 years	
Southampton – saloon style	nil	9 years	(under review)
Southampton – wheelchair accessible	nil	12 years	(under review)
East Hants	under 5 years	no upper age limit	
Fareham	under 2 years	no upper age limit	officer discretion
Test Valley	under 5 years	13 years*	*reducing to 10 years
Basingstoke	under 3 years	8 years*	*may cease earlier depending on test results
New Forest	nil	nil	officer discretion
Rushmoor	based on EU emission standards		
Havant	under 5 years	no upper age limit	
Winchester	under 3 years	6 years	officer discretion
Gosport	under 3 years	8 years	officer discretion
Hart	under 3 years	7 years	6 month licence issued
Eastleigh	under 15 years		
Isle of Wight	under 3 years	no upper age limit	



## 4.0 Best Practice Guidance<sup>84</sup>

4.1 The Department for Transport guidance states...  
.....*"It is perfectly possible for an older vehicle to be in a good condition. So the setting of an age limit beyond which a local authority will not licence vehicles may be arbitrary and inappropriate. But a greater frequency of testing may be more appropriate for older vehicles – for example, twice yearly tests for vehicles more than 5 years old"*.

4.2 The council notes but does not entirely agree with the guidance. In an ideal world, vehicle proprietors should not have to face barriers to "renew" existing vehicle licences year after year; BUT the empirical evidence gleaned from the analysis of the 2014/2015 vehicle test results shows that older vehicles have a higher failure rate than those younger and newer vehicles.

The results of the 2014 vehicle testing data analysis showed a test failure rate of 85% for vehicles aged 9 years and over. Equally, the noted failure rate for vehicles aged between 6 – 9 years of 78% is also of concern.

5.0 The previous age limit policy favoured a longer life for wheelchair accessible hackney carriage vehicles (up to 12 years) but corresponding wheelchair accessible private hire vehicles were only permitted to remain licensed until 8 years.

5.1 This anomaly reflected a previous desire to "recognise" the virtues of the then approved "Public Carriage Office purpose built taxis"<sup>85</sup> which were built for the specific demands of public conveyance and had a purpose built chassis and running gear. The universally recognised vehicles were the iconic "London cab" Fairway and FX range (now the LTI TX range) and the Metrocab. Other vehicles such as the Eurotaxi are now PCO (as was) compliant.

However, the 12 year age limit for all locally approved wheelchair accessible hackney carriages was NOT based on a recognition of all these vehicles being "purpose built" and the differing age limit standard between those wheelchair hackney carriages and wheelchair private hire vehicles should be addressed. This should be to either increase the private hire wheelchair accessible vehicles (WAV) to 12 years (if existing policy were to be maintained) or to reduce both classes of WAV hackney carriage and private hire vehicles to a similar age.

6.0 **There should be a drive towards recognising and licensing a fleet of younger, cleaner and greener vehicles working in Portsmouth. The evidence in the "Vehicle Testing Requirements" chapter supports this stance.**

**This view is shared by your reporting staff, the Environmental Health Manager, the Transport Manager and Adams Morey.**

Ironically, the evidence suggests that vehicle proprietors are presenting newer vehicles for initial licensing anyway with 40% of new private hire or hackney carriage vehicles licensed in 2014 being brand new or under 1 year old at first licensing. This may be due to competitive finance deals together with a desire to drive a modern and more fuel efficient vehicle.

6.1 As a consequence, it is recommended that vehicle age limits be retained (and modified) subject to an individual proprietor's right to have his/her case heard before the Licensing Committee (or sub - committee) on individual merit.

## Resolved

1. That minute 23/2006 be rescinded.
2. That, as a matter of local policy and condition for both hackney carriage and private hire vehicle licences; all private hire and hackney carriage vehicles presented for initial licensing shall be **under 3 years of age** on first licensing and may remain licensed until **8 years of age** and provided the vehicle is mechanically fit and supported by an evidenced service history in line with the manufacturer's guidelines.
3. That any vehicle presented for a **temporary use** licence shall be **under 1 year old** and provided the vehicle is mechanically fit and supported by an evidenced service history in line with the manufacturer's guidelines.
4. That the head of service be authorised to amend such policy directives, conditions of licence and application procedures commensurate only with these proposals.

# Chapter 13: CCTV provision in vehicles

## Objective:

“To protect the safety and welfare of drivers, passengers and other road users by requiring the mandatory provision of CCTV digital camera recording equipment in licensed hackney carriage and private hire vehicles”

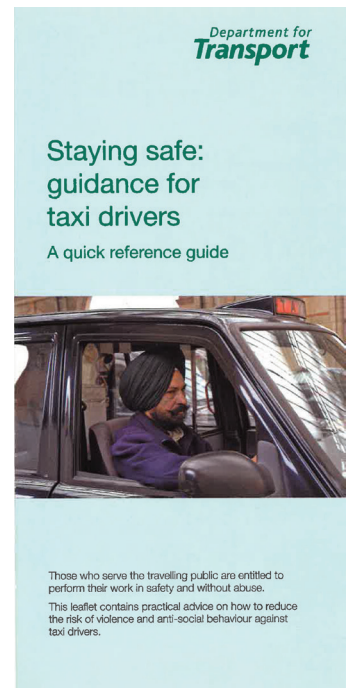
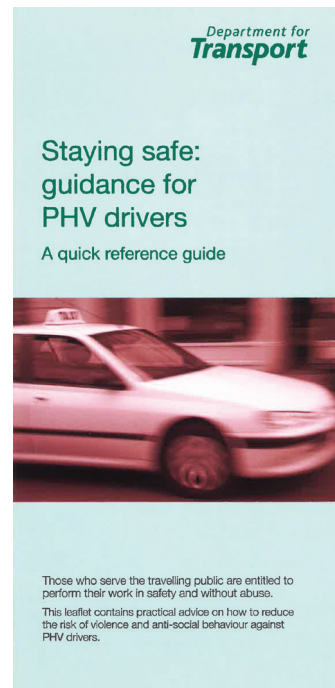
## 1.0 The Legal Provisions

- 1.1 The use of modern digital visual and/or audio camera recording equipment post-dates the 1976 act and, not surprisingly, there is nothing in the taxi or private hire legislation that reflects on this important and now common aspect of public and personal protection.
- 1.2 CCTV surveillance camera devices which process personal data/information must comply with the principles of the Data Protection Act 1988. Operators of surveillance cameras must register with the Information Commissioner and have due regard to the current best practice guidance issued by the Information Commissioner’s Office.<sup>86</sup>
- 1.3 Underpinning the 1988 act are the “data protection principles”  
Equally, regard should also be given to the code – “Surveillance Camera Code of Practice” and issued by the Secretary of State pursuant to the Protection of Freedoms Act 2012.  
All data controllers should follow the code
- 1.4 The use of CCTV in licensed vehicles in Portsmouth is currently voluntary with no conditions of vehicle licence or policy directives in place to permit or control “in car” CCTV systems. The council has hitherto taken a neutral stance on the provision of CCTV in licensed vehicles.

## 2.0 Best Practice Guidance

- 2.1 The Department for Transport guidance recognises that the personal security of both hackney carriage and private hire drivers is a prime consideration. Councils’ are reminded of the Crime and Disorder Act 1998 which requires the committee to consider crime and disorder reduction measures.

- 2.2 The guidance states “The owners and drivers of vehicles will often want to install security measures to protect the driver. Local licensing authorities may not want to insist on such measures, on the grounds that they are best left to the judgement of the owners and drivers themselves. But it is good practice for licensing authorities to look sympathetically on – or actively to encourage – their installation. They could include a screen between driver and passenger or CCTV”.
- 2.3 The department has previously produced helpful guidance in leaflet format for drivers – “Staying safe – guidance for taxi drivers” and “Staying safe – guidance for private hire drivers”<sup>87</sup>:



The department’s staying safe advice in respect of CCTV was:

*“Installing CCTV cameras has been shown to lead to reduced threats and violence against drivers. Signs in the vehicle can highlight the presence of CCTV to passengers. Cameras can be bought or rented and the cost may be offset by reduced insurance premiums. They can be useful when there is a dispute with a passenger – it is not just your words against theirs”.*



### 3.0 The use of CCTV

3.1 The use of any form of surveillance system should be carefully considered and where necessary a “privacy impact assessment” should be conducted by those persons wishing to install such devices. In terms of “in car systems” – It is clear that there are benefits to both the driver (and vehicle owner) as CCTV provides unequivocal evidence.

3.2 Any “blurring or confusion” between the perceived truth and actual events in any one particular matter can be established quickly – this would help not only your reporting staff in dealing with any complaints but will also allow drivers to collate good evidence in respect of assaults, racial (or other abuse) and assist greatly in dealing with persons making off without payment.

This became more apparent in 2013 with the trade expressing concern to both the Police and the council about racially motivated attacks and verbal abuse being directed at both hackney carriage and private hire drivers; and a concern about persons not paying a cab fare at journey’s end.

Meetings were held between the council, taxi trade and the Police to identify the core concerns and questionnaires were distributed amongst the trade. Of the 167 returns received 65% of drivers had experienced a crime against them with over 90% of respondents reporting that making off without payment was the most common crime.<sup>88</sup>

This resulted in the council endorsing the “payment up front” for longer journeys and the “Pay Your Fare” campaign car stickers as shown below:

**PLAY FAIR. PAY YOUR FARE.**  
Payment up front may be requested for some journeys

**The Safer Portsmouth Partnership fully supports the rights of all drivers to receive a fare based on time and distance travelled and reminds passengers:**

- Help the driver take the best route by stating clearly the destination(s) for your journey.
- Always pay your way – if you don't pay and get caught you could be fined, go to prison and have a criminal record for life\*.
- Fares are set by the council or company operating the vehicle. If necessary, please ask the driver for a receipt.
- Remember – someone is always watching, and the car may have CCTV installed.

**In an emergency call the police by dialling 999.**

**PAY YOUR FARE**

\*Fraud Act 2006 - Section 11

[www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

3.3 The continued success or otherwise of such partnership working can only be enhanced with the use of robust evidence provided by CCTV images.

The chief officer of Police supports the use of CCTV in licensed vehicles.

Hackney carriage and private hire drivers are vulnerable and one of the few forms of current local public transport provider that are not protected by CCTV. Evidence of criminal behaviour or criminal activity caught on camera would be both a deterrent and subsequent benefit in any criminal proceedings.

3.4 On occasion, the committee has had to deal, by way of disciplinary hearings, with drivers allegedly involved in sexual contact with passengers or instances of passengers making false statements about the conduct or actions of drivers – particularly when a dispute over a fare was at the heart of any issue. Either way, the use of CCTV may help bring clarity to such issues.

3.5 It is accepted that evidence may be used to address concerns about the conduct of an individual driver – particularly when involved in a road traffic incident with another car, cyclist or pedestrian. This may result in disciplinary action by way of suspension, revocation or non-renewal of a driver licence OR the imposition of penalty points and an instruction to undertake further driver awareness training.

The committee is aware of concerns about personal injury collisions involving licensed vehicles and other road users in Portsmouth and members received a report and statistical data on this subject in November 2014. Although further enforcement and/or driver training may help address these concerns – the use of CCTV to identify and provide empirical evidence would be helpful to all agencies including the committee in dealing with the aftermath of road traffic incidents.

3.6 There has been a significant local shift in vehicle owners using in car CCTV surveillance systems to thwart spurious insurance and “cash for crash” claims.

This has led to one well known taxi insurer offering to subsidise both the installation costs and subsequent insurance premiums for Portsmouth fleet owners and individual owner drivers who install a competent CCTV system in their vehicle.

3.7 The initial costs of any CCTV system may be recoverable as an allowable business expense for tax purposes. It is understood that a competent system can be purchased and installed for about £250.

4.0 Locally, the committee and/or officers have benefitted in their decision making by seeing actual CCTV footage of incidents relating to<sup>89</sup>:

- A night driver seen doing u turns, bumping up the kerb and doing “figure of 8” manoeuvres in a licensed vehicle whilst driving in Milton Road in an apparent bizarre attempt to locate the source of an unknown “knocking” noise from the vehicle
- A night driver who pulled the handbrake on whilst travelling at over 70mph on the M275 (with passengers on board) causing an accident and slight injuries to the passengers (see below still image)

- A hackney driver who failed to give way at a side road and proceeded to cross a busy junction hitting an on-coming private hire vehicle travelling along Winter Road (see below still image)



Licensing staff have dealt with (and continue to deal with) many complaints about taxi and private hire drivers where evidence from CCTV footage would have been extremely helpful in determining both the facts and weight of evidence in any one case.

4.1 All this points towards an acceptance that the use (and benefits) of appropriate recording media in licensed vehicles is fair, proportionate and human rights compliant and outweighs any “right to privacy” concerns.

4.2 Although it is pleasing to see a voluntary move by proprietors to installing CCTV (about 150 vehicles so far), your reporting officers recommend the formal introduction of a condition for respective hackney carriage and private hire vehicle licences to require the mandatory use of CCTV in most working vehicles.

Whilst the drivers of independent hackney carriages are the most vulnerable form of transport provider (with no immediate operator radio back up) – all “town” working cars are subject to some degree of risk, no matter how small. Equally, accidents can happen to any driver and vehicle irrespective of work type or mode.





4.3 There will be some exceptions to the rule.

4.4 The risk of violence, threat or intimidation however towards an airport or other business type driver is very small. Accordingly, there should be a presumption in favour of requiring all licensed vehicles to have CCTV with the exception of:

- Airport only vehicles
- Vehicles used mainly for executive account type work

And that the head of service be authorised to grant such dispensations to proprietors from the requirement to have CCTV on individual merit.

4.5 Should the committee endorse the mandatory use of in car CCTV cameras by way of formal condition, there should be a presumption in favour of a “phased in” approach to allow both vehicle proprietors and system installers’ time to comply with any new committee directives.

5.0 The council considers that all proprietors providing in car CCTV camera surveillance SHOULD be registered as a data controller with the Information Commissioner’s Office accordingly.

For this purpose, the “data controller” is deemed to be the company, organisation or individual (including those working in partnership) who have decided to have the CCTV installed in the vehicle. The data controller will be responsible for processing and exercising control over personal information together with how images are stored and how they should be disclosed. Data controllers must ensure that any processing of personal data for which they are responsible complies with the 1988 act. Failure to do so risks enforcement action, even prosecution, and compensation claims from individuals.

5.1 Evidence of initial registration and annual renewal with the ICO may be requested by any authorised officer.

5.2 The specification (or guidelines) for the use of “approved” camera surveillance systems in Portsmouth vehicles should be as wide as possible. There appears to be no need to over subscribe the minutiae of any technical guidelines or specification – particularly as this is a fast moving industry with rapid technological advances and changes.

5.3 Recommended guidelines for the use of CCTV in licensed vehicles (and which appear to be based on industry best practice) are shown below:

## General

All equipment must be designed, constructed and installed in such a way and from such materials as to present no danger to the driver or passengers, including any impact against the equipment in the event of a collision or danger from the electrical integrity being breached through vandalism, misuse, or wear and tear.

## Specifications

- The equipment must be permanently wired to the vehicle power supply
- The equipment to have a clear serial or other unique identification number
- The equipment must not obstruct the driver's view of the road ahead
- The camera(s) must record both forward and rear facing images
- Images to be clear, date and time stamped, in colour and in high definition
- There must be no facility to view recorded images from within the vehicle
- The equipment should be removable from the vehicle when not working and not kept on permanent display
- The equipment must be tamper proof
- The equipment must have a built in battery back up
- There must be a GPS tracking and positioning function together with integration with the vehicle electrics to determine, for example, vehicle speed
- There must be an auto record function whether by ignition switch turn, door opening, person motion sensor or vehicle in motion sensor and NOT just activated by the driver alone.
- The equipment to have a minimum of 31 days image recording and storage capacity
- If an audio function is provided - this must be set in the default OFF position AND ONLY ACTIVATED BY TRIGGER OR PANIC BUTTON FUNCTION<sup>90</sup>
- All equipment shall be installed, maintained and serviced by a competent and/or authorised person
- A simple operator user manual shall be provided on demand
- All stored images to be protected with no unauthorised access and all images shall be encrypted
- Any requested images shall be capable of viewing and play back using industry standard software
- Clear and prominent signs within the vehicle giving details of the organisation/person/purpose and contact details should be provided where possible



- 6.0 The data controller is likely to receive requests from authorised council officers, the Police, insurance companies and possibly members of the public to view any relevant data including visual or audio and will be responsible for responding to such requests. Formal requests in writing or by electronic means and specifying why the disclosure is required will be made.

Data controllers may charge members of the public making a request for the disclosure of any images in line with the ICO current code of practice.

## Resolved

1. That the Licensing Committee endorse and approve the mandatory use of in car CCTV camera surveillance in both licensed hackney carriage and private hire vehicles (to include "temporary use" vehicles).
2. That any camera system installed in a licensed vehicle shall comply with the technical specifications referred to in **5.3**.
3. That the committee approve the following new condition for both hackney carriage and private hire vehicle licences:

**The proprietor shall cause the vehicle to be fitted with a working and secure digital CCTV system (to capture both forward and rear facing colour images in high definition) and to retain such data for a period of 31 days. The installed CCTV to comply with any code(s) of practice issued by the Information Commissioner, the requirements of the Data Protection Act 1988 and any technical specifications approved by the committee for the time being in force.**

**The proprietor shall, within 7 days, give written notice to the council of the installation of any CCTV system in the vehicle to include the make, model and serial number of the equipment so installed.**

**The proprietor shall check the system for malfunctions at least once a month and, if a repair or download is required, the vehicle may continue to be used provided any malfunction is rectified within 24 hours.**

**The proprietor shall, upon receiving any enquiry or request from an authorised officer or Police officer, provide details of any stored images or audio recordings as the case may be.**

4. That "airport only" vehicles and vehicles used mainly for executive account type work be exempted from the requirement to have CCTV installed and the head of service be given delegated authority to grant such exemptions to vehicle proprietors on individual merit.
5.
  - i) That all existing licensed hackney carriage and private hire vehicles as appropriate be fitted with compliant CCTV cameras by **30 September 2017**.
  - ii) That any newly licensed hackney carriage or private hire vehicle from **1 April 2016** onwards be required to be fitted with compliant CCTV cameras with immediate effect.
6. That the head of service be authorised to amend such policy directives, conditions of licence and application procedures commensurate only with these proposals.

# Chapter 14: Conditions of licence and byelaws

## Objective:

“To promote public safety and to maintain high local standards by the imposition of conditions for the supervision and control of:

- hackney carriages and their proprietors
- private hire vehicles and their proprietors
- private hire operators
- private hire drivers”

## 1.0 The Legal Provisions

- 1.1 The 1847 act does not permit the council to impose conditions on the grant (or renewal) of either a hackney carriage licence or a hackney carriage driver licence.
- 1.2 The 1976 act permits for the imposition of conditions considered “reasonably necessary” to regulate the following licence types:
  - Private hire drivers
  - Private hire vehicles
  - Private hire operators
  - Hackney carriages
- 1.3 Respective licences are considered granted or renewed for each (licensing period) subject to any approved conditions imposed. Proprietors, operators and drivers have a right of appeal direct to the Magistrates’ if aggrieved by the conditions but may only do so within restricted time periods following the grant or renewal of the licence under consideration.
- 1.4 It is accepted common ground that conditions cannot be imposed on hackney carriage drivers licences and no express power is found in the 1976 act to do so. The council will look to the local byelaws made pursuant to the 1847 act to control hackney carriage drivers.<sup>91</sup>
- 1.5 However, there is nothing to prevent the council from adopting a policy of requiring hackney carriage drivers to provide required information (by way of the renewal process) and to also seek further information at any other reasonable time about medical fitness, convictions etc to determine overall fitness to drive.
- 2.0 The operator, vehicle and driver conditions currently imposed by the council are based on those standard models recommended by the then Association of District Councils (“ADC”) and originate from guidance published in 1978.



2.1 The conditions are in urgent need of review both to reflect modern working practices in the respective hackney carriage and private hire trades and also to comply with the generally accepted principles of good administrative law in that<sup>92</sup>:

- The conditions should be precise and enforceable
- The conditions should be clear with an emphasis on “must”, “shall” and “will”
- The conditions should not duplicate other statutory requirements or duties
- The conditions should be proportionate, justifiable and capable of being met
- Standard conditions can be utilised but local circumstances can/will dictate local criteria for the imposition of special conditions

2.2 Conditions should also normally reflect on any local policy and/or other directives (such as vehicle specification and age limits) approved by the committee.

Sometimes there may be local policy matters that are seen as a “pre-requisite” to obtaining a licence (such as a vehicle colour or vehicle age on entry to the trade) and these will be considered as “pre-application” specification requirements and expressed as being conditional once a licence has been granted.

It is important that in formulating policy and conditions (and in exercising any discretionary powers) that they should be capable of withstanding any “*Wednesbury unreasonable*” test challenge.<sup>93</sup>

Conditions should also be reviewed on a regular basis.

2.3 The standard conditions must be approved and adopted by the committee as there is no delegated power to your reporting staff to implement or confirm conditions.

Persons likely to be affected by any conditions should be given advance opportunity to make representation or comment – particularly if there is any apparent concern about the vires of the conditions under consideration.

There may be occasion when your reporting staff would wish to impose “special conditions” on an individual licence for unique and individual circumstances (such as the requirement to carry out medical enquiries) and to subsequently “remove” those special conditions once complied with.

At present, the scheme of delegation does not permit officers to impose such conditions on an individual licence and permission is sought for an appropriate scheme of delegation to be put in place accordingly.

2.4 **The new and revised conditions are attached as appendices A, B, C and D respectively.** They reflect on the good practice guidance mentioned in paragraph 2.1 above. They are guided by the overall concept of “fit and proper” and the desire to promote public safety.

2.5 A “less is more” approach has been adopted in order to minimise confusion and jargon to the trade. Pages and pages of convoluted and heavily scripted conditions are hardly likely to be easily remembered (or recognised) by either the trade or indeed your reporting staff.

3.0 A breach of conditions by a licence holder may not necessarily be an offence at law and may be enforced by the use of verbal or written warnings, points or a referral to the committee for consideration of any disciplinary action. An isolated breach may result in suitable verbal advice being given.

3.1 If the breach (for example an operator failing to keep records of vehicles operated by him) is an offence contrary to the 1976 act – then proceedings may be commenced by the City Solicitor if recommended by your reporting manager and where it is in the public interest to do so.

3.2 **It is imperative, for the purposes of local control and consistency, that drivers, vehicle proprietors and operators understand their respective obligations under the conditions and accept that the council will take strong and firm enforcement action to support compliance with the conditions.**

# Byelaws

www.portsmouth.gov.uk

with respect to  
Hackney Carriages in  
the City of Portsmouth

To be kept in vehicle at all times

## 4.0 Byelaws

- 4.1 The council has adopted byelaws for the control and supervision of hackney carriages, their proprietors and drivers. The enabling provision is contained within section 68 of the 1847 act. The byelaws were approved by the council in 1970 and subsequently by the Secretary of State in 1971.
- 4.2 The byelaws have been slightly modified to reflect, for example, the need for vehicles to attend the council's nominated garage but overall are based on the "model" byelaws from 1974.
- 4.3 The current byelaws are attached **as an appendix.**
- 4.4 The Department for Transport has issued guidance to local authorities on the making (or amending) of byelaws and expects local authorities to "base their byelaws" on the prescribed national model. It is not an easy process to seek and obtain approval to deviate from the wording of the model byelaws.<sup>94</sup>

- 4.5 The council has used the byelaws to prosecute hackney carriage drivers for offences of failing to remain with a carriage when first turn on a rank, failing to behave in a civil and orderly manner and failing to wear a badge.

Alternatively, however, "byelaw offences" have also attracted the healthy imposition of penalty points to deal with minor and "one off" breaches – particularly say with hackney drivers "over ranking".

- 4.6 Although slightly archaic in wording, the byelaws remain a useful enforcement tool and, as a consequence, there are no proposals to consider any amendments to the current byelaws.

## Resolved

1. That the Licensing Committee approve and adopt the revised conditions of licence for hackney carriage vehicles, private hire operators, private hire vehicles and private hire drivers and with immediate effect.
2. That the head of service be authorised to impose such further "special conditions" on individual licences, as considered appropriate and proportionate, and in respect of hackney carriage vehicles, private hire operators, private hire vehicles and private hire drivers. But this authority is NOT to be used to amend or vary any of the prescribed standard conditions.
3. That the conditions of licence for hackney carriages, private hire operators, private hire vehicles and private hire drivers be reviewed every 3 years.
4. That the use of the current adopted byelaws be endorsed and noted.





### PRIVATE HIRE OPERATOR'S LICENCE Local Government (Miscellaneous Provisions) Act 1976

PORTSMOUTH CITY COUNCIL being satisfied that the applicant is a fit and proper person and pursuant to section 55, Local Government (Miscellaneous Provisions) Act 1976 hereby grant a licence to operate private hire vehicles to:

Name of operator(s):  
Operator trade name:

Trading address:

Date licence granted:  
**Date licence expires:**

Signed on behalf of the Head of Service  
(Authorised Officer)

#### NOTES

- This licence is issued subject to compliance with the act and any standard/special conditions shown over
- This licence will expire on the date shown unless previously suspended or revoked
- Appeal provisions apply against any conditions attached to the grant of a licence or to the suspension, revocation or refusal to renew an operator licence
- An authorised officer may request the production of this licence
- Every contract for the hire of a private hire vehicle is deemed to be made with the operator

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## CONDITIONS OF LICENCE

1. The licence is not transferable to any another person nor does it authorise the operator to operate from any addresses other than that and/or those specified in the licence.
2. 1) The operator shall notify the council within 24 working hours of any change to the:
  - Trading name of the operator
  - Telephone numbers utilised by the operator
  - The email and world wide web address utilised by the operator
  - The name and contact details of any staff authorised to act on behalf of the operator for the purposes of exercising supervision of vehicles and their drivers

2) The operator shall notify the council within 24 hours of any arrest, detention or charges being preferred against them or the imposition of any conviction, caution, reprimand or warning.
3. 1) The operator shall record and keep the name, address and contact telephone and/or email details of any person(s) making any complaint about a licensed vehicle or driver (whether hackney carriage or private hire) for a period of 6 months after receipt;
 

2) The operator shall, at the request of any authorised officer, forward the complaint details referred to in 3(1) above, together with the details of the relevant vehicle(s) and driver(s) concerned, to the council and within 24 hours of such a request being made;

(3) The operator **must notify the council immediately** (or on the next available working day if after normal office hours) of any complaint received and recorded against a licensed vehicle or driver that affects either the public safety or fitness of the vehicle or driver. Any voice recording of a complaint shall be retained and forwarded to an authorised officer upon request.
4. The operator shall maintain a current and updated record of all vehicles and drivers (private hire and hackney carriage) affiliated to the operator and shall record as a minimum:
  - The registration number, council plate number and any unique call sign given by the operator to that vehicle
  - The full name, council badge number and any unique call sign given by the operator to that driver

And shall provide such details about vehicles or drivers to an authorised officer of the council within 24 hours upon such a request being made.
5. The operator shall maintain, for a period of 12 months, a record of every booking for a private hire vehicle or hackney carriage vehicle invited or accepted by him, whether by accepting the same from the hirer or by undertaking it at the request of another operator (from within the district or elsewhere) and shall produce such records, including transcripts of any phone calls associated with a booking, within 24 working hours on request to any authorised officer of the council or to any Police Officer.
 

The records shall contain:-

  - (a) The time and date the booking was made;
  - (b) The name and contact telephone details of the hirer;
  - (c) The time and date of the pick-up address
  - (d) The destination(s)
  - (e) The vehicle and driver details allocated to the hiring.
  - (f) If available, and for a period of 6 months, the Global Positioning Signal (GPS) vehicle tracking movements for the booking
  - (g) A unique identifier and reference in respect of all bookings for a private hire vehicle accepted by the operator from another Portsmouth operator OR from a person licensed to operate outside of Portsmouth and bookings passed on to another operator whether within Portsmouth or elsewhere
6. Any proposed company (or other) operator advertisement (whether for display on or from a vehicle or from a building) shall be forwarded to the council and approved by an authorised officer, in writing, at least 7 days prior to such advertisements being displayed.
7. An operator must not refuse the carriage of a passenger in a licensed vehicle by reason of the fact that the passenger is disabled or requires to have with him/her a wheelchair or other facility of reasonable size for the disabled.
8. The operator shall, when operating under the terms of this licence, have regard to the requirements of the Town and Country Planning Act 1990 (as amended).
9. The operator shall provide to the council a table of all current fares and charges associated with the hire of a private hire vehicle and shall further submit any amendment/variations to such table of fares to the Council within 7 days of such changes being made.



10. The operator shall retain any lost property left in a licensed vehicle (and given to him by a driver or owner driver) for a minimum period of 28 days and arrange for the disposal of same as he sees fit should the property not be claimed by the owner.

**TO BE READ IN CONJUNCTION WITH OUR LEAFLET “CONDITIONS OF LICENCE AND ENFORCEMENT”**

Portsmouth City Council is committed to complying with the Freedom of Information Act 2000 (FOIA) which applies to all recorded information that it holds or is held on its behalf. Information that is provided to or held by the City Council will be processed and disclosed strictly in accordance with the FOIA, the Data Protection Act 1998 or other appropriate legislation.

This authority is under a duty to protect the public funds it administers, and to this end may use the information you have provided on this form for the prevention and detection of fraud. It may also share this information with other bodies responsible for auditing or administering public funds for these purposes. For further information go to [www.portsmouth.gov.uk](http://www.portsmouth.gov.uk) and search for 'National Fraud Initiative'.

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## ADDITIONAL INFORMATION

Please note that this information does not form part of your licence conditions but is provided for information purposes.

### SMOKING

Since 2007 provisions contained in the Health Act 2006 prohibits the smoking of tobacco or any other substance by **any person** in a licensed vehicle. The legislation applies at all times whilst the vehicle remains licensed, thus smoking remains prohibited when the vehicle is not hired or not for hire.



Every licensed vehicle is required to carry appropriate signage under the Smoke free (Signs) Regulations 2007.

### ASSISTANCE DOGS

The Equality Act 2010 imposes a duty on licensed drivers and operators to convey any guide, hearing or other assistance dog in a licensed vehicle.

#### Drivers must:

- carry assistance dogs accompanying disabled people;
- allow the dog to remain with the passenger

#### Operators must:

- accept bookings made by or on behalf of a disabled person who is accompanied by a guide, hearing or other assistance dog;
- accept bookings made by a person who will be accompanied in a PHV by such a disabled person; and
- not make an additional charge for carrying the assistance dog

### Exemptions

If a driver has a medical condition, such as severe asthma, which is aggravated by contact with dogs, or is allergic or has an acute phobia to dogs, it may be possible for them to qualify for an exemption. Please discuss this with the Licensing Service in the first instance, to whom application for exemption must be made. The driver will be required to produce conclusive medical evidence in support of any exemption application.

There is a right of appeal to the Magistrates' Court against the refusal to issue an exemption certificate.

Please note that the law does not allow for an exemption to be granted on religious grounds.

**An operator cannot claim an exemption from the above requirements.**



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## HACKNEY CARRIAGE LICENCE

Town Police Clauses Act 1847

Public Health Act 1875

Local Government (Miscellaneous Provisions) Act 1976

PORTSMOUTH CITY COUNCIL pursuant to sections 37 and 40 of the Town Police Clauses Act 1847 hereby grant a licence to use the vehicle specified below as a hackney carriage and licensed to stand and ply for hire within the said city

Name and address of proprietor(s):

Make and model:

Registration number:

Licence number:

Licensed to carry:

Date of next mechanical test:

**Date licence expires:**

Signed on behalf of the Head of Service  
(Authorised Officer)

### NOTES

- This licence is issued subject to compliance with the said acts, byelaws and any standard/special conditions shown
- This licence is NOT transferable to another vehicle unless a formal application has been submitted and approved
- This licence will expire on the date shown unless previously suspended or revoked
- Appeal provisions generally apply against any conditions attached to the grant of a licence or to the suspension, revocation or refusal to renew a vehicle licence
- An authorised officer may request the production of this licence

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## CONDITIONS OF LICENCE

1. The vehicle must not be over **3 years old** on first licensing and may, at the discretion of the council, remain licensed **until 8 years old** (plus the remainder of the licensing period for that licensing year) subject to satisfactory mechanical inspection and testing.
2. The vehicle must be a uniform silver in colour.
3. The proprietor shall ensure that the vehicle is maintained and serviced in accordance with the manufacturer's guidelines and recommendations and shall keep documentary evidence of such servicing and maintenance records for inspection by an authorised officer upon request.
4. The proprietor(s) shall notify the council within 24 hours of any arrest, detention or charges being preferred against them or the imposition of any conviction, caution, reprimand or warning.
5. The proprietor shall keep the interior and exterior of the licensed vehicle clean and comfortable at all times.
6. The vehicle licence plate shall be securely affixed to the rear of the vehicle and kept in public view at all times. The front windscreen licence disc and interior plate number shall also be on public view. The proprietor shall report any loss in respect of the vehicle licence, windscreen disc, interior plate number or rear licence plate to the council within 24 hours.
7.
  - 1) The proprietor shall cause the vehicle to be fitted with a working and secure digital CCTV system (to capture both forward and rear facing colour images in high definition) and to retain such data for a period of 31 days. The installed CCTV to comply with any code(s) of practice issued by the Information Commissioner, the requirements of the Data Protection Act 1988 and any technical specifications approved by the council for the time being in force.
  - 2) The proprietor shall, within 7 days, give written notice to the council of the installation of any CCTV system in the vehicle to include the make, model and serial number of the equipment so installed.
  - 3) The proprietor shall check the system for malfunctions at least once a month and, if a repair or download is required, the vehicle may continue to be used provided any malfunction is rectified within 24 hours.
  - 4) The proprietor shall, upon receiving any enquiry or request from an authorised officer or Police officer, provide details of any stored images or audio recordings as the case may be.
8. The vehicle shall exhibit the prescribed local "TAXI" roof sign which shall be illuminated when the vehicle is for hire. The roof sign shall comply with any specifications approved by the council for the time being in force.
9.
  - 1) No interior or exterior signs, adverts, notices or any other wording shall be publicly displayed from a licensed vehicle without the prior written consent of the council. A proprietor shall submit any signage for approval and for display from the front doors only to the council at least 7 days prior to such proposed use and shall NOT display any signage until written approval has been given by an authorised officer.
  - 2) 9(1) above shall not apply to the following:
    - Any prior approved Portsmouth private hire operator windscreen and/or rear window sign stating the trade name and/or telephone number and www address of the licensed Portsmouth operator.
    - Any prior approved Portsmouth private hire operator signage (permanent and not magnetic) or approved proprietor signage displayed from the front doors of the licensed vehicle only.
    - The local mandatory (permanent and not magnetic) display of the council's corporate livery for hackney carriages as may be from time to time prescribed by the council.
  - 3) A proprietor shall only display on or from the vehicle **one set** of approved Portsmouth operator signage as required in 9(2) above at any one time.
10. The vehicle shall be fitted with an accurate clock calendar controlled taximeter incorporating a progressive function. The meter shall be clearly displayed and maintained in accordance with the byelaws.
11. The proprietor shall ensure that the licensing record "white book" prescribed by the council shall be carried in the vehicle at all times and made available for immediate inspection by any authorised officer of the council.



12. The proprietor shall give not less than 7 days prior written notice to the council of the introduction of any further tariff or table of fares for the use of a hackney carriage under a contract or purported contract for private hire or any subsequent amendment thereto.

**TO BE READ IN CONJUNCTION WITH OUR LEAFLET “CONDITIONS OF LICENCE AND ENFORCEMENT”**

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This authority is under a duty to protect the public funds it administers, and to this end may use the information you have provided on this form for the prevention and detection of fraud. It may also share this information with other bodies responsible for auditing or administering public funds for these purposes. For further information go to [www.portsmouth.gov.uk](http://www.portsmouth.gov.uk) and search for 'National Fraud Initiative'.

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PORTSMOUTH CITY COUNCIL, Licensing Service,  
Civic Offices, Guildhall Square, Portsmouth, PO1 2AL

Telephone (023 9283 4830/023 9268 8519) • Fax (023 9283 4811) • Email: [Licensing@portsmouthcc.gov.uk](mailto:Licensing@portsmouthcc.gov.uk)

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## PRIVATE HIRE DRIVER'S LICENCE

### Local Government (Miscellaneous Provisions) Act 1976

PORTSMOUTH CITY COUNCIL pursuant to section 51 Local Government (Miscellaneous Provisions) Act 1976 hereby grant a licence to the person specified below to act as the driver of any private hire vehicle licensed by the said council

Name of licence holder:

Address:

Licence number:

Date licence granted:

**Date licence expires:**

Signed on behalf of the Head of Service  
(Authorised Officer)

#### NOTES

- This licence is issued subject to compliance with the said act and standard/special conditions shown over
- This licence is NOT transferable and will expire on the date shown unless previously suspended or revoked
- An authorised officer may request the production of this licence within 5 days
- Appeal provisions apply against any conditions attached to the grant of a licence or to the suspension, revocation or refusal to renew a driver's licence

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## CONDITIONS OF LICENCE

1. **A)** The driver shall notify the council within 24 hours of any changes to:
  - Their name, address, telephone or email contact details
  - Any medical condition that might affect an ability to drive professionally to the group 2 vocational standard
  - Their driving licence so far as this relates to the imposition of penalty points, any other endorsements, fines or disqualifications
  - Their Disclosure & Barring Service enhanced check certificate so far as this relates to the imposition of any convictions, cautions, reprimands or warnings
  - Their right to work or reside in the UK.
  
- B)** The driver shall notify the council within 24 hours of any arrest, detention or charges being preferred against them.
  
2. The driver shall be clean and tidy in appearance and shall at all times be dressed in a manner so as not to cause offence to members of the public. If the operator has provided for drivers to abide by a corporate "company" clothing policy when working - the driver shall wear such branded clothing.

The driver shall wear appropriate foot wear and no flip flops shall be permitted.
  
3. The driver shall behave in a civil and orderly manner at all times.
  
4. The driver shall take all reasonable precautions to ensure the safety and comfort of persons travelling in the vehicle and shall give assistance in helping persons in and out of the vehicle when requested. Further, the driver shall give reasonable assistance with loading and unloading of any luggage to and from the entrance of any house or other place where he collects or sets down any passengers.
  
5. **A)** The driver shall keep the interior and exterior of the licensed vehicle clean and comfortable at all times. The driver shall report immediately to the vehicle proprietor any apparent defect materially affecting the safety, comfort or roadworthiness of the vehicle.  
**B)** The driver shall, unless previously claimed by the owner, hand any property left in the vehicle within 24 hours to the operator who provided the booking for the vehicle.
  
6. The driver shall not interfere with any installed CCTV media recording device and shall report immediately to the vehicle proprietor any apparent defect to the recording media. The driver shall ensure that the recording media (visual) is switched on at all times when the vehicle is working.
  
7. The driver shall ensure that the rear licence plate and interior front windscreen licence disc are on public view at all times and shall report immediately any loss to the vehicle proprietor.
  
8. The driver shall not carry more passengers than the "**licensed to carry**" number prescribed both in the vehicle licence and on the plate.
  
9. No driver shall refuse to carry a passenger in a licensed vehicle by reason of the fact that that passenger is disabled or requires to have with them a wheelchair or other facility of reasonable size.

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## ADDITIONAL INFORMATION

Please note that this information does not form part of your licence conditions but is provided for information purposes.

### SMOKING

Since 2007 provisions contained in the Health Act 2006 prohibits the smoking of tobacco or any other substance by **any person** in a licensed vehicle. The legislation applies at all times whilst the vehicle remains licensed, thus smoking remains prohibited when the vehicle is not hired or not for hire.

Every licensed vehicle is required to carry appropriate signage under the Smoke free (Signs) Regulations 2007.



### ASSISTANCE DOGS

The Equality Act 2010 imposes a duty on licensed drivers and operators to convey any guide, hearing or other assistance dog in a licensed vehicle.

#### Drivers must:

- carry assistance dogs accompanying disabled people;
- allow the dog to remain with the passenger

#### Operators must:

- accept bookings made by or on behalf of a disabled person who is accompanied by a guide, hearing or other assistance dog;
- accept bookings made by a person who will be accompanied in a PHV by such a disabled person; and
- not make an additional charge for carrying the assistance dog

### Exemptions

If a driver has a medical condition, such as severe asthma, which is aggravated by contact with dogs, or is allergic or has an acute phobia to dogs, it may be possible for them to qualify for an exemption. Please discuss this with the Licensing Service in the first instance, to whom application for exemption must be made. The driver will be required to produce conclusive medical evidence in support of any exemption application.

There is a right of appeal to the Magistrates' Court against the refusal to issue an exemption certificate.

Please note that the law does not allow for an exemption to be granted on





religious grounds.

***An operator cannot claim an exemption from the above requirements.***



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## PRIVATE HIRE VEHICLE LICENCE

### Local Government (Miscellaneous Provisions) Act 1976

PORTSMOUTH CITY COUNCIL being satisfied that the vehicle specified below is suitable in type, size and design; is mechanically suitable, safe and comfortable hereby grant, pursuant to section 48 Local Government (Miscellaneous Provisions) Act 1976, a licence to use the said vehicle as a private hire vehicle

Name and address of proprietor(s):

Make and model:

Registration number:

Licence number:

Licensed to carry:

Date of next mechanical test:

**Date licence expires:**

Signed on behalf of the Head of Service  
(Authorised Officer)

#### NOTES

- This licence is issued subject to compliance with the said act and any standard/special conditions shown
- This licence is NOT transferable to another vehicle unless a formal application has been submitted and approved
- This licence will expire on the date shown unless previously suspended or revoked
- Appeal provisions generally apply against any conditions attached to the grant of a licence or to the suspension, revocation or refusal to renew a vehicle licence
- An authorised officer may request the production of this licence

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## CONDITIONS OF LICENCE

1. The vehicle must not be over **3 years old** on first licensing and may, at the discretion of the council, remain licensed **until 8 years old** (plus the remainder of the licensing period for that licensing year) subject to satisfactory mechanical inspection and testing.
2. No private hire vehicle licence shall be granted to any vehicle deemed to be silver in colour; and any licensed vehicle must be maintained in a colour other than silver.
3. The proprietor shall ensure that the vehicle is maintained and serviced in accordance with the manufacturer's guidelines and recommendations and shall keep documentary evidence of such servicing and maintenance records for inspection by an authorised officer upon request.
4. The proprietor(s) shall notify the council within 24 hours of any arrest, detention or charges being preferred against them or the imposition of any conviction, caution, reprimand or warning.
5. The proprietor shall keep the interior and exterior of the licensed vehicle clean and comfortable at all times.
6. The vehicle licence plate shall be securely affixed to the rear of the vehicle and kept in public view at all times. The front windscreen licence disc and interior plate number shall also be on public view. The proprietor shall report any loss in respect of the vehicle licence, windscreen disc, interior plate number or rear licence plate to the council within 24 hours.
7.
  - 1) The proprietor shall cause the vehicle to be fitted with a working and secure digital CCTV system (to capture both forward and rear facing colour images in high definition) and to retain such data for a period of 31 days. The installed CCTV to comply with any code(s) of practice issued by the Information Commissioner, the requirements of the Data Protection Act 1988 and any technical specifications approved by the council for the time being in force.
  - 2) The proprietor shall, within 7 days, give written notice to the council of the installation of any CCTV system in the vehicle to include the make, model and serial number of the equipment so installed.
  - 3) The proprietor shall check the system for malfunctions at least once a month and, if a repair or download is required, the vehicle may continue to be used provided any malfunction is rectified within 24 hours.
  - 4) The proprietor shall, upon receiving any enquiry or request from an authorised officer or Police officer, provide details of any stored images or audio recordings as the case may be.
8. The proprietor shall not display on or from the vehicle any roof sign, nor any notice or wording with the words "taxi", "cab", "for hire" or any other similar wording to suggest to the public that the vehicle is available for immediate public hire.
9.
  - 1) No interior or exterior signs, adverts, notices or any other wording shall be publicly displayed from a licensed vehicle without the prior written consent of the council. A proprietor shall submit any signage for approval and for display from the front doors only to the council at least 7 days prior to such proposed use and shall NOT display any signage until written approval has been given by an authorised officer.
  - 2) 9(1) above shall not apply to the following:
    - Any prior approved Portsmouth operator windscreen and/or rear window sign stating the trade name and/or telephone number and www address of the licensed Portsmouth operator.
    - Any prior approved Portsmouth operator signage (permanent and not magnetic) or approved proprietor signage displayed from the front doors of the licensed vehicle only.
    - The local mandatory (permanent and not magnetic) display of the council's corporate livery for the rear doors of private hire vehicles - "advanced bookings or pre-booked only" as may be from time to time prescribed by the council and with the exception of airport only vehicles and exceptional prestige vehicles.
  - 3) A proprietor shall only display on or from the vehicle **one set** of approved Portsmouth operator signage as required in 9(2) above at any one time.
10. Licensed 7 or 8 seater mini bus/MPV type vehicles may display "all over" Portsmouth operator signage including the trade name and/or telephone number and www address of the licensed operator together with any wheelchair accessibility provision. This shall NOT include window adverts or general vehicle wraps.

A proprietor shall submit any "all over" signage for approval to the council at least 7 days prior to such proposed use and shall



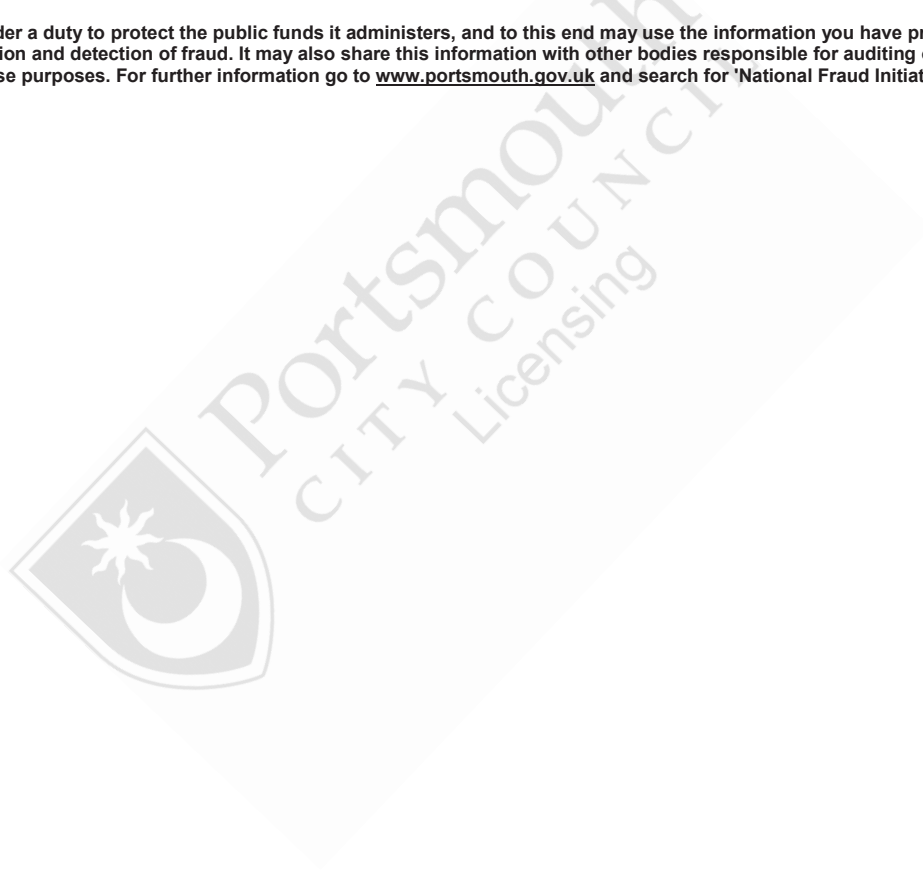
NOT display any signage until written approval has been given by an authorised officer.

11. The proprietor shall keep a copy of the operator's current fare chart (for private hire bookings) in the vehicle and make this available for public inspection at any time.
12. The proprietor shall ensure that the licensing record "white book" prescribed by the council shall be carried in the vehicle at all times and made available for immediate inspection by any authorised officer of the council.

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# Byelaws

www.portsmouth.gov.uk



with respect to  
Hackney Carriages in  
the City of Portsmouth

To be kept in vehicle at all times

## Index (by paragraph number)

1. Interpretation
2. Licence number to be displayed on carriage
3. Keep carriage clean, tidy and carry fire extinguisher
4. Garage testing
5. Taxi meter to be installed in visible position and illuminated at night
6. Use of taxi meter
7. Tampering of taxi meter or seals
8. Drivers proceeding to stand(s) and conduct whilst on a stand
9. Drivers not to tout for business
10. Drivers to behave in a civil and orderly manner and ensure safety of persons
11. Don't be late for a hiring
12. Don't carry more passengers than permitted
13. Wear your badge
14. Convey luggage and assist passengers
15. Produce byelaws on request
16. Exhibit table of fares
17. Check carriage for any property left
18. Take any property to nearest Police Station within 48hrs
19. Provide Police with driver details
20. Penalty for breach of byelaws
21. Repeal of previous byelaws

**Proprietors and drivers should note that it is an offence to breach any of these byelaws**

## Byelaws

Made under Section 68 of the Town Police Clauses Act 1847; Section 171 of the Public Health Act 1875, by the Portsmouth City Council with respect to hackney carriages in the City of Portsmouth.

### Interpretation

1. Throughout these byelaws "the Council" means the Portsmouth City Council and "the district" means the City of Portsmouth.

**Provisions regulating the manner in which the number of each hackney carriage corresponding with the number of its licence, shall be displayed.**

2. (a) The proprietor of a hackney carriage shall cause the number of the licence granted to him in respect of the carriage to be legibly painted or marked on the outside and inside of the carriage, or on plates affixed thereto.
- (b) The proprietor or driver of a hackney carriage shall:-
  - (i) not wilfully or negligently cause or suffer any such number to be concealed from public view while the carriage is standing or plying for hire;
  - (ii) not cause or permit the carriage to stand

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or ply for hire with any such painting, marking or plate so defaced that any figure or material particular is illegible.

**Provisions regulating how hackney carriages are to be furnished or provided.**

3. The proprietor of a hackney carriage shall
  - (a) provide sufficient means by which any person in the carriage may communicate with the driver;
  - (b) cause the roof or covering to be kept watertight;
  - (c) provide any necessary windows and a means of opening and closing not less than one window on each side;
  - (d) cause the seats to be properly cushioned or covered;
  - (e) cause the floor to be provided with a proper carpet, mat or other suitable covering;
  - (f) cause the fittings and furniture generally to be kept in a clean condition, well maintained and in every way fit for public service;
  - (g) provide means for securing luggage if the carriage is so constructed as to carry luggage;

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- (h) provide an efficient fire extinguisher which shall be carried in such a position as to be readily available for use;
  - (i) provide at least two doors for the use of persons conveyed in such carriage and a separate means of ingress and egress for the driver.
4. In order to enforce compliance with byelaws nos 2 and 3 inclusive every proprietor of a hackney carriage shall present his vehicle for annual inspection at the Council's nominated garage and on such other occasions as he may be specifically requested in writing or by request of an authorised officer. If on inspection the Council are satisfied that any hackney carriage fails to comply with the requirements of byelaws 2 and 3 they may suspend the vehicle licence and require the proprietor forthwith to cease using the hackney carriage for public hire until the requirements of the byelaws have been met to the Council's satisfaction and failure to comply with the notice shall be an offence.
5. The proprietor of a hackney carriage shall cause such carriage to be fitted with a taximeter so constructed, attached and maintained as to comply with the following requirements, that is to say,

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- (a) the taximeter shall be fitted with a key, flag or other device the operation of which will bring the machinery of the taximeter into action and cause the word "HIRED" to appear on the face of the taximeter;
- (b) such key, flag or other device shall be capable of being locked in such a position that the machinery of the taximeter is not in action and that no fare is recorded on the face of the taximeter;
- (c) when the machinery of the taximeter is in action there shall be recorded on the face of the taximeter in clearly legible figures a fare not exceeding the rate or fare which the proprietor or driver is entitled to demand and take for the hire of the carriage by distance and time in pursuance of the tariff fixed by the Council.
- (d) the word "fARE" shall be printed on the face of the taximeter in plain letters so as clearly to apply to the fare recorded thereon;
- (e) the taximeter shall be so placed that all letters and figures on the face thereof are at all times plainly visible to any person being conveyed in the carriage and for that purpose the letters and figures shall be capable of being suitably

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- illuminated during any period of hiring;
- (f) the taximeter and all the fittings thereof shall be so affixed to the carriage with seals or other appliances that it shall not be practicable for any person to tamper with them except by breaking, damaging or permanently displacing the seals or other appliances.

**Provisions regulating the conduct of the proprietors and drivers of hackney carriages plying within the district in their several employments and determining whether such drivers shall wear any and what badges.**

6. The driver of a hackney carriage provided with a taximeter shall:-
- (a) when standing or plying for hire, keep the key, flag or other device fitted in pursuance of the byelaw in that behalf locked in the position in which no fare is recorded on the face of the taximeter;
  - (b) before beginning the journey for which a fare is charged for distance and time, bring the machinery of the taximeter into action by moving the said key, flag or other device, so that the word "HIRED" is legible on the face of the taximeter and keep the machinery of the

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- taximeter in action until the termination of the hiring;
- (c) cause the dial of the taximeter to be kept properly illuminated throughout any part of a hiring which is during the hours of darkness. This being the time between half an hour after sunset to half an hour before sunrise and also at any other time at the request of the hirer.

7. A proprietor or driver of a hackney carriage shall not tamper with or permit any person to tamper with any taximeter with which the carriage is provided, with the fittings thereof, or with the seals affixed thereto.
8. The driver of a hackney carriage shall, when plying for hire in any street and not actually hired:-
- (a) proceed with reasonable speed to one of the stands fixed by the Council;
  - (b) if a stand, at the time of his arrival, is occupied by the full number of carriages authorised to occupy it, proceed to another stand;
  - (c) on arriving at a stand not already occupied by the full number of carriages authorised to occupy it, station the carriage immediately behind the carriage or carriages on the stand and so as to face in the same direction.

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- (d) being on a stand from time to time when any other carriage immediately in front is driven off, or moved forward, cause his carriage to be moved forward so as to fill the place previously occupied by the carriage driven off or moved forward;
- (e) when his carriage is the first carriage on a stand, remain with the carriage and be ready to be hired at once by any person.

Provided that for the purpose of this byelaw where a driver has reason to believe that there are persons attending a particular function or activity in an area not served or not adequately served by a convenient stand who may wish to hire a hackney carriage or by reasons of inclement weather may wish to do so, he may cruise in that area for a reasonable period and shall not be deemed on that account to be in contravention of sub-sections (a) and (c) of this byelaw. for the purpose of this clause "cruise" shall mean that the vehicle is in motion at all times except for picking up passengers.

- 9. A proprietor or driver of a hackney carriage, when standing or plying for hire, shall not, by calling out or otherwise, importune any person to hire such

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carriage and shall not make use of the services of any other person for that purpose.

- 10. The driver of a hackney carriage shall behave in a civil and orderly manner and shall take all reasonable precautions to ensure the safety of persons conveyed in or entering or alighting from the vehicle.
- 11. The proprietor or driver of a hackney carriage who has agreed or has been hired to be in attendance with the carriage at an appointed time and place shall, unless delayed or prevented by some sufficient cause, punctually attend with such carriage at such appointed time and place.
- 12. A proprietor or driver of a hackney carriage shall not convey or permit to be conveyed in such carriage any greater number of persons than the number of persons specified on the plate affixed to the outside of the carriage.
- 13. If a badge has been provided by the Council and delivered to the driver of a hackney carriage he shall, when standing or plying for hire, and when hired, wear that badge in such position and manner as to be plainly visible.
- 14. The driver of a hackney carriage so constructed as to carry luggage shall, when requested by any

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person hiring or seeking to hire the carriage:-

- (a) convey a reasonable quantity of luggage;
  - (b) afford reasonable assistance in loading and unloading;
  - (c) afford reasonable assistance in removing it to or from the entrance of any building, station, or place at which he may take up or set down such person.
- 15. The driver of a hackney carriage shall at all times while standing or plying for hire have a complete copy of these byelaws ready to produce and shall produce the same for perusal and inspection by any person hiring such carriage on request.
  - 16. (a) The proprietor of a hackney carriage shall cause a statement of the fares fixed by the Council to be exhibited inside the carriage, in clearly distinguishable letters and figures.
  - (b) the proprietor or driver of a hackney carriage bearing a statement of fares shall not wilfully or negligently cause or suffer the letters or figures in the statement to be concealed or rendered illegible at any time while the carriage is plying or being used for hire.

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**Provisions securing the safe custody and re-delivery of any property accidentally left in hackney carriages, and fixing the charges to be made in respect thereof.**

- 17. The proprietor or driver of a hackney carriage shall immediately after the termination of any hiring or as soon as practicable thereafter carefully search the carriage for any property which may have been accidentally left therein.
- 18. The proprietor or driver of a hackney carriage shall, if any property accidentally left therein by any person who may have been conveyed in the carriage be found by or handed to him:-
  - (a) carry it as soon as possible and in any event within 48 hours, if not sooner claimed by or on behalf of its owner, to the nearest police station, and leave it in the custody of the officer in charge of such police station on his giving a receipt for it;
  - (b) be entitled to receive from any person to whom the property shall be re-delivered an amount equal to five pence in the pound of its estimated value (or the fare for the distance from the place of finding to the nearest police station, whichever be the greater) but not more than five pounds.

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### Furnishing of information

19. Every proprietor of a hackney carriage shall on request of any police constable furnish the name and place of abode of any person who was authorised to drive such carriage at any specified time within seven days previous to such request being made.

### Penalties

20. Every person who shall offend against any of these byelaws shall be liable on summary conviction to a fine not exceeding the statutory amount and in the case of a continuing offence to a further fine not exceeding the statutory amount for each day during which the offence continues after conviction therefor.

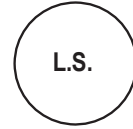
### Repeal of Byelaws

21. The byelaws relating to hackney carriages which were made by the Council on the 24th May 1938, 14th June 1966 and 30th July 1968, which were confirmed by the Minister of Health on 25th May 1938 and Secretary of State on 27th October 1966 and 25th September 1968, are hereby repealed.

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Given under the Common Seal of the Lord Mayor Aldermen and Citizens of the City of Portsmouth this Seventeenth day of November 1970.

**The Common Seal of  
The Lord Mayor Aldermen  
and Citizens of the  
City of Portsmouth**



Was hereunto affixed in pursuance of a resolution of the Council passed at a meeting duly Convened and held.

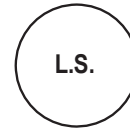
(Sgd) J F Blair

Lord Mayor

(Sgd) J R Haslegrave

Town Clerk and  
Chief Executive Officer

The Secretary of State this day confirmed the foregoing byelaws and fixed the date on which they are to come into operation as the 25th day of January 1971.



(Signed) K P Witney  
An Assistant Under Secretary of  
State

Home Office  
Whitehall  
8 January 1971

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Licensing Section, Civic Offices,  
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[www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

You can get this  
Portsmouth City  
Council information  
in large print, Braille,  
audio or in another  
language by calling  
9283 4073.



Corporate member of  
Plain English Campaign  
Committed to clearer communication.

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Document Ref: LIC\_Byelaws11c-4626

# Chapter 15: Licensing enforcement

## Objectives:

- “1. To ensure that the policies, conditions, byelaws and all other requirements relating to the hackney carriage and private hire undertaking are enforced in a firm, fair, transparent and proportionate way;
2. (a) To target operators, vehicle proprietors and drivers (to include those vehicles and drivers licensed elsewhere and coming into the city) based on the principle of “risk assessment” and with the use of intelligence data recording;  
(b) To take strong enforcement action and consider the use of both criminal proceedings AND to seek the suspension or revocation of licences where evidence that the public safety and welfare is/has been put at risk;
3. To work in partnership with other agencies including the Police, Immigration Enforcement Service and DVSA;
4. To offer on-going advice and support to licence holders”



## 1.0 Introduction

- 1.1 The council, as the local licensing authority, is responsible for the statutory control and supervision of both the hackney carriage and private hire trades.  

This supervision is based on the core principle of ensuring the safety of the travelling public and other road users.
- 1.2 Licensed drivers and private hire operators are considered to be professional and responsible persons who have been vetted to a high standard and thus are required to be seen and to act in compliance with any policies, conditions and statutory requirements for the time being in force.
- 1.3 It is often said, but sometimes not remembered, that a licence is a privilege and with that privilege comes accountability and responsibility.
- 1.4 **For operators**, the council expects that those running a business inviting and accepting bookings from the public for the hire of any licensed vehicle will make the provision and booking service quick and easy, provide a clearly defined fare structure, an on time arrival/drop off service, the secure retention of records of bookings and an ability to deal with and react to customer feedback (whether good or bad) in a timely and prompt way. The operator should encourage and demand high standards of customer care from drivers at all times.
- 1.5 **For vehicle proprietors**, the council would expect the vehicle to be kept in a clean and tidy condition, well maintained and serviced in accordance with the manufacturer’s guidelines, tested regularly and for all documentation to be in date and readily available.
- 1.6 **For drivers**, the council would expect a driver to be clean and tidy, polite and courteous to passengers and other road users, to have a good local knowledge and to drive sensibly and with regard to local road conditions, offer assistance where necessary and to ensure that, for example, any property left in a car is returned to the rightful owner.

1.7 The council would expect that all licence holders be aware of, and comply with, the licence conditions and/or byelaws appropriate to the particular licence type.

If things go wrong, officers or the Licensing Committee will take enforcement action commensurate with the risk and to ensure that the public safety is not compromised.

1.8 Enforcement cannot ever be seen as a means to an end in itself.

Enforcement must be part of the overall licensing control exercised by the council and will be secondary to our aim of offering support, advice and assistance to licence holders.

Equally however, if enforcement is non-existent then lower standards of conduct might occur with a likely increase in public concern and dissatisfaction with the trade. The requirement to abide by the statutory provisions contained in both the 1847 and 1976 acts would be pointless if no enforcement took place.

Licence holders may feel resentful if they see evidence of non-compliance by other persons within the trade.

For all these reasons the use of enforcement powers is considered a responsible part of the overall licensing control and will be used to:

- Protect the public interest
- Respond and deal with public and trade complaints received
- Deter future non-compliance and to punish offenders
- Support the policies of the Licensing Committee
- Support partnerships with other agencies including the Police, Immigration Enforcement Service and HM Revenue & Customs

1.9 The licensing staff are appointed as “authorised officers” for the purposes of carrying out their respective functions under the 1847 and 1976 acts. It is an offence to obstruct an officer or to fail to comply with any requirement or request properly made.

1.10 Licensing enforcement staff have been trained (and have extensive experience) in complying with the provisions of the Police & Criminal Evidence Act 1984 (PACE) so far as this relates to the investigation of offences and conducting interviews under caution. The PACE codes of practice are available for inspection and digital recording media is utilised.

Refresher training is available as part of individual personal development.

1.11 The officers are compliant with their individual (and joint) responsibilities as both investigating and disclosure officers for the purposes of the Criminal Procedures and Investigations Act 1996 and relevant codes of conduct.

1.12 The officers are aware of the council’s RIPA policy and guidelines.

## 2.0 The Council's Enforcement Concordat

2.1 For many years the council has adopted the principles and had regard to the then Cabinet Office Enforcement Concordat. Whilst this now has been replaced by the Regulators Compliance Code<sup>95</sup> the principles of the former concordat (together with the "Hampton & Rogers review principles")<sup>96</sup> have been followed by all council enforcement staff and not just licensing staff.

These are:

- **Proportionality** – any recommended action will relate to the seriousness of the perceived risk
- **Consistency** – officers will try to act in a similar way when faced with similar circumstances
- **Transparency** – we will tell people what the legal requirements are and how to comply – for example to make sure licence conditions are printed on the reverse of respective paper licences and that copies of the byelaws are readily available and on the web. We will give clear advice about any complaints procedure should persons be unhappy with any enforcement action taken
- **Targeting** – we will look at those who have either an adverse or poor history of compliance and target our resources accordingly. Sometimes the overall cost of carrying out targeted enforcement action against, say, drivers is not cost recoverable via the licence fees and the service will therefore have regard to the overall costs involved in the consideration of targeted enforcement

Targeted enforcement may involve the use of police officers or council colleagues working in tandem with licensing staff under strict

rules of engagement. Where necessary, "test purchases" or similar "mystery shopper" exercises will take place – particularly to detect offences of plying or standing for hire"<sup>97</sup>

These actions are not entrapment and officers are clearly briefed not to incite, encourage or to persuade someone to commit an offence. This form of investigation and evidence gathering is essential in providing empirical evidence of any wrong doing

- **Informative** – we will always advise persons WHY we are taking (or considering) any action and will send alerts to the trade representatives<sup>98</sup> about proposed future enforcement initiatives

A link to the Regulators' Code is shown below:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300126/14-705-regulators-code.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf)

2.2 In determining what enforcement action to take, each case will be dealt with on merit but the following principles will apply:

- **Minor breaches** – if the officer believes the matter to be minor, of low risk and the offender is prepared to put right any wrong doing immediately – verbal or written advice or warnings may be given
- **Repeated breaches** or evidence of continued wrong doing – would lead to points and/or a final written warning/suspension period being given
- **Serious breaches**<sup>99</sup> – would lead to points and/or suspension, proposed revocation, consideration of a simple caution and/or criminal proceedings being commenced (if an offence at law).

## 3.0 Table of Offences

3.1 The various offences found in both the Town Police Clauses Act 1847 and Local Government (Miscellaneous Provisions) Act 1976 are reproduced below:

### 3.2 For the Town Police Clauses Act 1847 – Hackney Carriage Matters

Section	Offence	Who is liable
40	Giving false information on application for a HC proprietors licence	Any person party to the giving (or not giving) of information required
44	Failure to notify change of address or to produce licence for updating	The proprietor concerned
45	Proprietor permitting use of HC without a licence, plying for hire without a licence, failure to display licence number	The proprietor, any person found standing or plying for hire or failing to display the licence number
47	Driving a HC without a driver licence, lending or parting with a driver licence, HC proprietor employing unlicensed driver	Proprietor and driver concerned
48	Failure by HC proprietor to hold HC driver licence, failure by HC proprietor to produce HC drivers licence	Proprietor
52	Failure to display HC plate with “number of persons” denoted, driver refusing to carry full number (or lesser number) of passengers	Proprietor or driver
53	Refusal to take a fare	Driver
54	Charging more than the agreed fare	Proprietor, driver or any other person
55	Obtaining more than the legal fare	Driver or any person
56	Travelling less than the lawful distance for an agreed fare	Proprietor, driver or any person
57	Failing to wait after receipt of deposit	Driver
58	Charging more than the legal fare	Proprietor or driver
59	Carrying persons without consent of hirer	Proprietor or driver
60	Driving a HC without consent of proprietor	Any person
61	Driver of HC drunk, furious driving etc	Driver or any other person
62	Leaving HC unattended	Driver
64	Driver obstructing other drivers	Any driver
68	Byelaw breach	Proprietor or driver <sup>100</sup>

### 3.3 For Part II, Local Government (Miscellaneous Provisions) Act 1976

#### 3.4 For Hackney Carriage Matters

Section	Offence	Who is liable
49	Failure to notify transfer of HC vehicle licence	Proprietor
50(1)	Failure to present vehicle for inspection	Proprietor
50(2)	Failure to advise where vehicle is stored	Proprietor
50(3)	Failure to report accident damage	Proprietor
50(4)	Failure to produce HC licence and insurance	Proprietor <sup>101</sup>
53(3)	Failure to produce HC drivers licence to authorised officer or Police	Driver
57	Making false statement or withholding information	Any person
58(2)	Failure to return plate on revocation, expiry or suspension of HC licence	Proprietor
61(2)	Failure to surrender drivers licence following suspension, revocation or refusal to renew	Driver
64	Permitting any vehicle other than a HC to wait on a HC stand	Any person
66	Charging, without prior agreement, more than permitted fare for journey ending outside the district	Driver
67	Charging more than the meter fare when HC is used as a private hire vehicle	Driver
69	Prolonging a journey by time or distance	Driver
71	Interfering with a taximeter	Any person
73(1) (a–c)	Obstruction, failure to comply with requirement, give false or provide false information	Any person

#### 3.5 For Private Hire Matters

Section	Offence	Who is liable
46(1) (a)	Using an unlicensed PH vehicle	Any person
46(1) (b)	Unlicensed PH driver driving a PH vehicle	Any person
46(1) (c)	Proprietor of PH vehicle using an unlicensed driver	Any person
46(1) (d)	Operating a PH vehicle without an operator's licence	Any person
46(1) (e)	Operating a PH vehicle which is not licensed or a driver is not licensed	Any person
48(6)	Failure to exhibit PH plate	Any person
49	Failure to notify transfer of PH vehicle licence	Proprietor
50(1)	Failure to present vehicle for inspection	Proprietor
50(2)	Failure to advise where vehicle is stored	Proprietor
50(3)	Failure to report accident damage	Proprietor
50(4)	Failure to produce PH vehicle licence and insurance	Proprietor
53(3)	Failure to produce PH drivers licence to authorised officer or Police	Driver
54(2)	Failure to wear PH drivers badge	Driver
56(2)	Failure by operator to keep record of bookings	Any person
56(3)	Failure by operator to keep record of PH vehicles operated by him	Any person
56(4)	Failure to produce operator licence to authorised officer or Police	Any person
57	Making false statement or withholding information	Any person
58(2)	Failure to return plate on revocation, expiry or suspension of PH vehicle licence	Proprietor
61(2)	Failure to surrender drivers licence following suspension, revocation or refusal to renew	Driver
69	Prolonging a journey by time or distance	Driver
71	Interfering with a taximeter	Any person
73(1) (a–c)	Obstruction, failure to comply with requirement, give false or provide false information	Any person



## 4.0 To Prosecute or Not?

Prosecutions are not, and never will be, a first resort option unless in the most serious of circumstances.

Failure to comply with some of the provisions in both the 1847 and 1976 acts cannot be the subject of criminal sanction – for example a breach of conditions where no corresponding offence is provided.

For those matters that are subject to summary criminal proceedings; licensing staff will have regard to an established “in house” prosecution scoring matrix (and based on the Code for Crown Prosecutors) in order to consider whether a prosecution or simple caution is the most appropriate course of action and will also consider the following:

- Has the person ignored previous advice given to help resolve a problem?
- Has the person blatantly disregarded the law and/or obstructed an authorised officer?
- Is there a serious risk?
- Is it in the public interest?
- Is the offence serious?
- Is there a statutory defence?
- What explanation has been given?
- What is the history of the offender?
- What is the likelihood of a successful prosecution and is the evidence (including witness evidence) of a good standard?

- 4.1 Any prosecution will be managed by both a case officer and supervisor with recourse to Legal Services for advice where necessary. All prosecutions must be authorised by either the Licensing Manager or Principal Officers and on behalf of the head of service before the matter is put to the City Solicitor for consideration. <sup>102</sup>

Any file will be carefully considered in relation to the above guidelines.

- 4.2 It is important to note that the consideration of proceedings and/or a prosecution for offences can include consideration of offences outside the remit of the 1847 and 1976 acts. This is because the council can use those provisions contained within section 222 of the Local Government Act 1972 and section 6 of the Prosecuting of Offences Act 1985.

For example, any investigation into an allegation of a driver standing or plying for hire contrary to section 45 of the 1847 act WILL result in officers making enquiries and seeking evidence from insurance companies and their underwriters as to the vires of the insurance covering the use of the vehicle at the time of the alleged offence(s).



The result is that persons can be (and are) summonsed for no insurance offence(s) contrary to section 143 of the Road Traffic Act 1988. Upon conviction these offences carry potentially both a financial penalty and the mandatory imposition of between 6–8 penalty points on a driving licence.<sup>103</sup>

- 4.3 The Licensing Committee will formally receive, from time to time, a report from their officers on the outcome of any prosecutions. It is for the committee to determine whether they wish a person previously convicted of a licensing or other offence to appear before them to consider whether they remain a “fit and proper” person.
- 4.4 The council may share details of convictions recorded with partner agencies in appropriate circumstances and subject to compliance with the Data Protection Act.

## 5.0 The use of Simple Cautions

- 5.1 Simple cautions are an effective and alternative means of disposal when dealing with offences and are now the subject of guidance issued by the Ministry of Justice.

It is recommended that local authorities should have regard to the guidance.<sup>104</sup>

The head of service has delegated authority via the City Solicitor to issue and administer simple cautions.

- 5.2 The basic fundamental principles for the consideration of whether to issue a simple caution are:
  - **The person is over 18**
  - **There is sufficient evidence that could have resulted in a prosecution**
  - **The person has admitted their guilt to the offence(s)**
  - **The person consents to accept a simple caution**
- 5.3 A record will be kept of any simple caution and it may influence a decision to institute proceedings against an individual should they break the law in the future.
- 5.4 A simple caution is not a conviction but is an admission of guilt and may be cited in court should a person subsequently be found guilty of an offence by a court of law.
- 5.5 A simple caution is spent immediately but is subject to the Rehabilitation of Offenders (Exceptions) Order 1975. If a person works in a job which is included in a list of notifiable occupations (for example working with children, vulnerable groups and/or in a position of trust) – any current or future employer may be told about the caution.
- 5.6 There is no right of appeal against the acceptance of a simple caution.

6.0 This guidance (on the way the council will deal with prosecutions and simple cautions as shown in 4 and 5 above) will equally apply to any enforcement action taken in respect of the following acts:

- Licensing Act 2003
- Gambling Act 2005
- Local Government (Miscellaneous Provisions) Act 1982
- Equality Act 2010

## 7.0 The Use of Injunctions

7.1 There may be rare occasions where a person does not comply with a formal request and directive from the council to cease trading or otherwise comply with the law – whether by way of breach of notice, suspension, revocation of a licence or non-compliance with any other statutory permission.

If the council considers that it is expedient (and in the public interest) to obtain injunctive relief to restrain a person from carrying out an activity, it is permissible to seek an injunction from the courts. The City Solicitor would be asked to draft the appropriate summons/order for consideration by the High Court.<sup>105</sup>

Whilst driver licences may be lawfully suspended or revoked and the driver cannot drive pending appeal where the “interests of public safety” is concerned – this does not usually apply to suspended vehicle or operator licences.

The use of injunctions is rare but could, on occasion, be a useful enforcement tool.

## 8.0 Best Practice Guidance<sup>106</sup>

The best practice guidance states:

*“Well-directed enforcement activity by the local licensing authority benefits not only the public but also the responsible people in the taxi and PHV trades. Indeed, it could be argued that the safety of the public depends upon licensing authorities having an effective enforcement mechanism in place. This includes actively seeking out those operators who are evading the licensing system, not just licensing those who come forward seeking the appropriate licences. The resources devoted by licensing authorities to enforcement will vary according to local circumstances, including for example any difficulties with touting by unlicensed drivers and vehicles (a problem in some urban areas). Local authorities will also wish to liaise closely with the police. Multi-agency enforcement exercises (involving, for example, the Benefits Agency) have proved beneficial in some areas.*

*Local licensing authorities often use enforcement staff to check a range of licensed activities (such as market traders) as well as the taxi and PHV trades, to make the best use of staff time. But it is desirable to ensure that taxi and PHV enforcement effort is at least partly directed to the late-night period, when problems such as touting tend most often to arise. In formulating policies to deal with taxi touts, local licensing authorities might wish to be aware that the Sentencing Guidelines Council have, for the first time, included guidance about taxi touting in their latest Guidelines for Magistrates. The Guidelines, which came into effect in August 2008, can be accessed through the SGC’s web-site - [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk).*

*Some local licensing authorities employ taxi marshals in busy city centres where there are lots of hirings, again perhaps late at night, to help taxi drivers picking up, and would-be passengers queuing for taxis.*

*As part of enforcement, local licensing authorities will often make spot checks, which can lead to their suspending or revoking licences. They will wish to consider carefully which power should best be used for this purpose. They will note, among other things, that section 60 of the Local Government (Miscellaneous Provisions) Act 1976 provides a right of appeal for the*

*licence-holder, whereas section 68, which is also sometimes used, does not; this can complicate any challenge by the licence-holder.*

*Section 52 of the Road Safety Act 2006 amended the Local Government (Miscellaneous Provisions) Act 1976 such that local authorities can now suspend or revoke a taxi or PHV driver's licence with immediate effect on safety grounds. It should be stressed that this power can only be used where safety is the principal reason for suspending or revoking and where the risk justifies such an approach. It is expected that in the majority of cases drivers will continue to work pending appeal and that this power will be used in one-off cases. But the key point is that the law says that the power must be used in cases which can be justified in terms of safety. The Department is not proposing to issue any specific guidance on this issue, preferring to leave it to the discretion of licensing authorities as to when the power should be used."*

8.1 The committee notes and agrees with the best practice guidance.

## 9.0 The use of Other Enforcement Powers

9.1 Whilst prosecutions and/or the offer of simple cautions can be an effective disciplinary sanction leading to the imposition of a criminal record – they are not the only form of enforcement control available to both the council and officers alike.

The 1976 act permits respective hackney carriage or private hire vehicle, driver and private hire operator licences to be suspended, revoked or not renewed (as the case may be) and after consideration on individual merit.

9.2 Sections 60, 61 and 62 of the 1976 specify the grounds for the consideration of such actions which may be taken following evidenced criminality leading to say a conviction or on the basis of having a "reasonable cause" for a concern and considering any evidence on the balance of probabilities and having regard to hearsay matters if necessary.

9.3 The prescribed considerations for taking action to suspend, revoke or not to renew a licence include:

- A vehicle being unfit
- A proprietor, operator or driver being convicted of an offence contrary to, or has not complied with, the provisions of the 1847 and/or 1976 acts
- A driver being convicted of an offence for dishonesty, indecency or violence
- The conduct of an operator or any material change in the circumstances of an operator
- Any other reasonable cause

The scheme of delegation details the powers available to both the committee and officers which, generally speaking, are subject to appeal provisions to the Magistrates' Court.

9.4 Written or verbal warnings may be given as appropriate together with any other instruction (either by the committee or officers) for licence holders to attend specified training or refresher courses such as driver awareness, customer care or disability awareness courses.

These will normally be at the expense of the licence holder and failure to comply (or to pass any prescribed testing criteria) will lead to consideration of either the subsequent suspension or revocation of a respective licence.

9.5 Suspensions, as a form of short punitive punishment or to prevent a licensee from working whilst non-compliant with a licensing matter (such as an overdue DBS check, overdue medical or a car being damaged and not roadworthy), are used regularly and are a useful enforcement option.

9.6 The consideration however of either the revocation or non-renewal of a licence is generally delegated to the committee for determination.

9.7 And finally, there will always be a place and a time for an officer to use discretion and to have "a quiet word in the ear" just to remind a person to buck up their ideas!!

## 10.0 The Points System

10.1 Introduced by the committee in 1994 and after extensive consultation with the trade, the “penalty points system” has been used as a “fast track” and parallel disciplinary code for:

- Licence holders breaching conditions
- Non-compliance with the provisions of the 1847 and 1976 acts
- General unsatisfactory conduct
- Sanctions following receipt of complaints from the public, other road users and the trade about the conduct of licence holders

10.2 The weight of evidence is assessed on the “balance of probabilities” and after hearing the explanation or representations of the licence holder. The history of the licence holder will be taken into consideration before determining any final action.

The issue of points is a “formal and stepped” way to deal with enforcement concerns but does not prejudice the right of authorised officers to take other action if deemed necessary. Points may be awarded as a final (and only) sanction or given together with a verbal and written warning. Equally, if the “offence” under investigation is one for which a prosecution could be instigated – that course of action may also be considered as appropriate.

10.3 Portsmouth was one of the first local authorities to introduce this local form of control and the use of a penalty point’s scheme is now a common form of enforcement. <sup>107</sup>

10.4 There is no financial penalty associated with the scheme and a licence holder may continue to lawfully work even if points are awarded. There is however a presumption in favour of a hearing before the sub-committee if the number of points accumulated exceeds the following in any one period of time:

- **Hackney carriage driver**     **10 points**
- **Private hire driver**     **10 points**
- **Hackney carriage vehicle**     **10 points**
- **Private hire vehicle**     **10 points**
- **Private hire operator**     **40 points**

10.5 The sub-committee must consider whether they have “reasonable cause” to determine, on individual merit, if a licence holder is a fit and proper person to continue to hold a respective driver, vehicle or operator licence. The sanctions available, and after hearing all the evidence are wide ranging and could include:

- Verbal warning\*
- Written warning\*

- Suspension of licence
- Revocation or non-renewal of licence

\* If, on the evidence, a person has previously received verbal or written warnings – it is unlikely that the sub-committee would just replicate such previous action taken but they do retain the power to do so.

The current points ticket is shown below:

## POINTS SYSTEM

### Hackney Carriage/Private Hire

Local Government (Miscellaneous Provisions) Act 1976 & Town Police Clauses Act 1847

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**Incident Details**

Surname ..... Forenames .....

Badge No. HC/PH ..... Company .....

Plate No. HC/PH ..... Reg No. ....

Date ..... Time .....

Location .....

**Computer Code:** for explanation of codes please see overleaf

1  2  3  4  5  6  7  8

9  10  11  12  13  14  15  16

17  18  19  20  21  22  23  24

25  26  27  28  29  30  31  32

33  34  35  36  37  38  39

**Points Awarded:** Driver  Proprietor  Operator

**Document Production:** (tick as appropriate)

Please produce within 5 days Driving Licence  Insurance

Registration Document  MOT/COC

**Notice of warning or to complete works or suspend vehicle licence:** (tick as appropriate)

Warning Given  7 day Notice  Suspension of Vehicle Licence

If the vehicle licence is suspended it **must not** be used until the suspension notice is lifted. Reasons for any action taken and/or warning given will be shown in the notes below.

**NOTES:**

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Signed ..... Signed .....

Driver/Proprietor Authorised Officer, Licensing Office,  
Portsmouth City Council  
Tel: 023 9283 4830 Fax: 023 9283 4811  
Email licensing@portsmouthcc.gov.uk

White - Driver/Proprietor, Green - Office Copy HH-40

		10	10	40
		Driver	Vehicle	Operator
<b>General Breaches</b>				
1	Failure to notify change of address within 7 days	2	2	2
2	False declaration on application/renewal of licence	3	1	2
3	Failure to notify motoring or criminal convictions or to produce certificates of conviction/driving licence within 7 days	3	3	3
4	Failure to behave in a civil and orderly manner to customers and other road users	2-6	-	2
5	Failure to display badge or return same at request of authorised officer	4	-	-
6	Dishonoured cheque for payment of licence	1	1	1
7	Overdue medical examination/drug screen	2	-	-
8	Obstruction of authorised officer	3	3	4
<b>Vehicle Breaches</b>				
9	No fire extinguisher	1	3	-
10	Failure to display vehicle licence plate	1	3	1
11	Failure to exchange defaced vehicle licence plate	1	2	-
12	Failure to display vehicle licence disc	-	2	1
13	Failure to return vehicle licence plate at request of authorised officer	-	2	-
14	Failure to report accident damage within 72 hours	-	3	1
15	Failure to produce insurance documents at request of authorised officer within 5 days	-	6	-
16	Permitting no insurance	-	10	-
17	Carrying more passengers than permitted by vehicle licence	2	-	-
18	No vehicle licensing record book ("white book") in vehicle	-	2	-
19	Refusal to carry passengers without reasonable excuse	3	-	-
20	Unauthorised 'company' window stickers and/or failure to display prescribed HCV/PHV vehicle identification livery	-	2	3
21	Failure to notify transfer of vehicle licence interest within 14 days	-	3	-
22	Failure to convey or assist with carrying of luggage	2	-	-
23	Failure to deliver lost property to Police	2	-	-
24	Failure to carry byelaws in vehicle	-	3	-
25	Failure to display tariff of fares or to conceal same	1	3	-
26	Defective taxi meter	-	3	-
27	Defective taxi top light	-	1	-
28	Out of date tax disc	-	3	-
29	Vehicle not clean, well maintained or comfortable	1	4	1
30	Illegal tyres	1	4	-
31	Illegal ranking	2	-	-
32	Unattended hackney carriage vehicle on rank	1	-	-
33	Failure to attend mechanical inspection	-	6	-
34	Late cancellation of mechanical inspection	-	6	-
35	Use of vehicle without current certificate of compliance	-	6	-
36	Standing or plying for hire	3	-	1
37	Overcharging	3	-	-
<b>Operator Breaches</b>				
38	Breach of special condition on licence	-	-	4
39	Failure to keep proper records of bookings	-	-	4



10.6 Feedback from licence holders and licensing staff (particularly from the enforcement staff) has resulted in an agreed consensus to review the “points” attributable for “offences” and to tidy up the scheme generally. It is many years since the scheme has been amended.

For example, the owners (and vehicle proprietors) of the “big fleet” garages argue that it is unfair for them to receive 4 points (as the vehicle proprietor) for illegal tyres and the driver only 1 point.

They have dedicated workshop facilities and drivers are both instructed and encouraged to return and report any apparent defect at any time.

This is accepted and thus more onus should be on the driver to take day to day responsibility for the general roadworthiness of the vehicle and to check things like oil, water, lights and tyres on a regular basis.

The proprietor however maintains overall responsibility for the maintenance of the vehicle.

10.7 Accordingly, committee approval is sought to modify the penalty points system as follows:

- To keep the existing thresholds of 10 points for drivers and vehicle proprietors and 40 points for operators but to calculate the accumulation threshold (with a presumption in favour of a resultant sub-committee hearing) to be within ANY 12 month period of time rather than using the “fixed” licensing periods currently prescribed<sup>108</sup>
- To modify the wording of some “breaches” for the purposes of clarity
- To add new offence types
- To remove some existing offence types
- To amend the number of points for particular offence types

The proposed new model is shown on the following pages and has been subject to trade consultation:

Number	Description	Driver 10 Points	Vehicle Proprietor 10 Points	Operator 40 Points
<b>General &amp; driver matters</b>				
1	Failure to notify change of address or other contact details	2	2	2
2	False declaration on application or renewal of licence	4	4	4
3	Failure to notify criminal or motoring charges, convictions or failure to produce documents upon request	4	4	4
4a	Failure to behave in a civil and orderly manner to customers or other road users <b>by reason of abusive/foul language or gestures</b>	6	0	0
4b	Failure to behave in a civil and orderly manner to customers or other road users <b>by reason of threatening behaviour</b>	6	0	0
4c	Failure to behave in a civil and orderly manner to customers or other road users <b>by reason of poor driving</b>	6	0	0
4d	Failure to behave in a civil and orderly manner to customers or other road users <b>by reason of use of violence</b>	10	0	0
5	Failure to display badge or return same at request of authorised officer	4	0	0
6	Overdue medical, DBS, drug screen	2	0	2
7	Driver smoking in vehicle (to include e-cigarettes)	2	0	0
8	Obstruction of authorised officer	4	4	4
9	Failure to abide by company dress code or to be clean and tidy in appearance	4	0	0
10	Refusal to carry passengers without reasonable excuse	4	0	0
11	Refusal to carry passenger(s) with wheelchair or by reason of disability	10	0	10
12	Refusal to carry guide/assistance dog	10	0	10
13	Carrying more passengers than permitted by vehicle licence	6	0	0
14	Overcharging	6	0	0
15	Illegal ranking	4	0	0
16	Standing or plying for hire	4	0	2
17	Unattended hackney carriage on taxi stand	2	0	0
18	Failure to convey or assist with luggage	2	0	0
19	Failure to report lost property	6	0	0

Number	Description	Driver 10 Points	Vehicle Proprietor 10 Points	Operator 40 Points
<b>Vehicle matters</b>				
20	Failure to properly display vehicle licence plate	4	2	0
21	Failure to display vehicle licence windscreen disc	4	2	0
22	Failure to return licence plate at request of authorised officer	0	4	0
23	Failure to report accident damage within 72 hours	0	4	0
24	Failure to produce vehicle documents to include insurance, registration document and/or certificate of compliance	0	6	0
25	Permitting no insurance	0	10	0
26	No "white book" in vehicle	0	2	0
27	Unauthorised notices or company window stickers either inside or outside the vehicle	0	4	4
28	Failure to notify transfer of vehicle licence within 14 days	0	4	0
29	Failure to carry byelaws in vehicle	2	4	0
30	Failure to display tariff of fares or to conceal same	4	2	0
31	Defective and/or unsealed taxi meter	2	4	0
32	Defective TAXI top light	2	2	0
33	Faded TAXI top light or livery	2	2	0
34	Out of date tax	0	6	0
35	Vehicle not clean, well maintained or comfortable	4	2	2
36	Illegal tyres (points for each tyre)	4	1	0
37	Defective CCTV	0	2	0
38	Failure to attend mechanical inspection	0	6	0
39	Late cancellation of mechanical inspection	0	6	0
40	Use of vehicle without a current certificate of compliance	0	10	0
<b>Operator matters</b>				
41	Failure to keep proper records of bookings	0	0	4
42	Unauthorised vehicle livery	0	0	4



## 11.0 Service Requests & Operation Orders

11.1 The Licensing Service uses a central computer database to record all complaints against licence holders. These are generically known as “Service Requests” and are allocated to the enforcement team to investigate and action.

In 2014 the enforcement team dealt with 411 complaints of which 320 (77%) were in respect of the hackney carriage or private hire trades as shown below:

- Hackney carriage driver 113 complaints
- Hackney carriage vehicle 18 complaints
- Private hire driver 144 complaints
- Private hire vehicle 39 complaints
- Private hire operator 6 complaints

Licensing enforcement staff carry out regular evening work either as part of normal duties, in response to the receipt of specific complaints and/or by way of operation orders in partnership with the Police and other agencies including staff from Adams Morey and Civil Enforcement colleagues responsible for parking matters. These orders have tackled concerns such as plying and standing for hire, the fitness of vehicles, drivers over ranking and breaching the byelaws, drug testing on drivers, prom night limousine checks and the conveyance of assistance and hearing dogs.

The committee receives update reports on action taken as appropriate.

11.2 Of significance is that the management team both receive, and have access to, regular reports on trends associated with the number and type of service requests together with updates on the penalty point’s scheme.

This allows for “markers” to be placed against individual cases which can be seen and viewed by the whole service whether administrative, enforcement or management. There can be no doubt about whether an individual driver, proprietor or operator is cause for concern and remedial action can be flagged immediately.<sup>109</sup>

11.3 The enforcement team has regular staff meetings to appraise the managers of current trends associated with complaints. This is particularly important in the area of safeguarding and there is a strong team ethic to ensuring that all parties are alerted to any concerns involving children and vulnerable adults by way of:

- Regular liaison with the Police licensing unit
- Regular liaison with both Aqua Cars Ltd and Citywide so far as the administration of bookings for school and other contract work is concerned and an absolute presumption that any complaint about the actions of a driver involved in contract work is investigated immediately
- Regular liaison with the council’s Passenger Transport Officer and Fleet Transport Manager on safeguarding issues
- An absolute requirement for all DBS checks on drivers to be to an enhanced level and for “child and adult workforce” checks to be the norm
- An understanding that any child protection and safeguarding issues are raised immediately with management and, if necessary, referred to the Multi-Agency Safeguarding Hub (MASH) for consideration



## 12.0 Complaints Procedure

- 12.1 Any person aggrieved by the imposition of penalty points or any other disciplinary sanction may, in the first instance, contact one of the principal staff officers to review any particular case.
- 12.2 The investigation of a person or business by licensing staff into the merit of any complaint is not, in itself, a reason for a licence holder to complain. Staff have a duty to establish the facts in any one particular case. The evidence obtained may lead the officer to conclude that the case against a licence holder is weak or even potentially unfounded or malicious in nature. Equally, the evidence may also point to the need to interview, for example, the licensee under caution.

This is all part of the process of evidence gathering and to ensure a fair and balanced investigation.

- 12.3 However, if a person is subsequently not happy with any action taken or decision made, the Licensing Manager can be asked to further review the case. If still unhappy, a person can resort to the council's corporate complaints procedure which is shown in the link below:

<https://www.portsmouth.gov.uk/ext/the-council/transparency/comment-compliment-or-complaint.aspx>

A person can also seek independent advice or ask a ward councillor for assistance.

## Resolved

1. That the Licensing Committee note and endorse the contents.
2. That the committee approve the changes to the local penalty points system and to come into force with immediate effect.
3. That the head of service be authorised to amend such policy directives, conditions of licence and application procedures commensurate with these proposals.

# Chapter 16: Fees and charges

## Objectives:

1. "To administer the licensing budget, so far as it relates to the hackney carriage and private hire undertaking, at no cost to the tax payer
2. To review all fees and charges on an annual basis and in an open and transparent way"

## 1.0 The Legal Provisions

1.1 Although not commonly used, section 46 of the 1847 act permits the council to levy "such fee as may be determined" in respect of a hackney carriage driver licence. The act is silent on what the fee may encompass but nevertheless, a fee charging power is still lawful and permitted under this section.

1.2 However, the main fee charging powers are contained in part II of the 1976 act.

Section 53 permits the council to demand and recover for the grant to any person of a licence to drive a hackney carriage or a private hire vehicle such a fee as considered reasonable with a view to recovering the costs of issue and administration.

Section 70 permits the council to charge such fees for the grant of vehicle and operator licences as may be resolved by them from time to time as may be sufficient in the aggregate to cover in whole or in part:

The reasonable cost of carrying out by or on behalf of the council inspections of hackney carriages and private hire vehicles for the purposes of determining whether any such licence should be granted or renewed;<sup>110</sup>

- The reasonable cost of providing hackney carriage stands;
- Any reasonable administrative or other costs in connection with the foregoing and with the control and supervision of hackney carriages and private hire vehicles

Any proposed fees considered under section 70 are subject to public consultation and notice for a period of 28 days.

## 2.0 Best Practice Guidance

2.1 The Department for Transport guidance is silent and gives no advice about fees and their subsequent application.

This is perhaps not surprising as fees are determined on a local basis and after having regard to the local overall costs for the administrative control and supervision of the respective private hire and hackney carriage trades.

## 3.0 Policy, Case Law and Other Considerations

3.1 The policy of the Licensing Committee has always been to work towards total cost recovery for the purposes of administering the licensing undertaking.

There are, however, caveats to this principle as the statutory authority (and thus the ability to levy a fee) falls into four distinct groups:

- Those licences and permits where no fee is payable – such as charitable collections and busker registrations
- Fees fixed by statute – such as the Licensing Act 2003 and permits/notifications under the Gambling Act 2005
- Discretionary fees subject to a statutory maximum fee – such as licences under the Gambling Act 2005
- Discretionary fees set by the council as sufficient to cover costs of administration, supervision and, where lawfully possible, enforcement costs for non-compliance - such as hackney carriage and private hire, sex establishments, street trading and scrap metal dealers

3.2 The council, as the local licensing authority, will always want to work with and promote local businesses but, in the context of fair and proportionate financial management; would NOT expect the costs of the licensing undertaking (particularly for those involved in running a business) to fall on, or be subsidised by, the tax payer.

23,522	8,446	8,838	43,887	40,687	30,867
26,603	542	950	2,767	2,645	2,481
1,275	6,559	5,970	39,296	32,899	26,448
26,767	2,055	49,287	70,884	65,286	57,535
19,542	3,783	12,602	27,922	26,323	26,459
11,537	4,410	6,633	14,218	13,909	13,044
3,175	104	85	1,497	1,250	
1,308					
136,341	28,458	86,723	251,522	232,319	194,654
64,558	2,450	2,234	69,242	52,234	48,183
200,899	30,908	88,957	320,764	284,553	242,837
38,706	20,481	32,979	92,166	90,606	74,027
27,832	10,266	19,798	896	45,951	34,555
66,538	30,747	52,777	62	136,557	108,582
267,437	61,655	141,734	4,113	421,110	351,419
customers – gross				(3,884)	(4,168)
visions				466,000	417,226
to customers – net				748	101,227
45,644	24,480	45,116	115,240		

- 3.3 Equally, persons and those in business licensed and regulated by the council (and who are subject to the requirement to pay discretionary fees) should expect the council to charge fees based on clear and transparent evidence and to reasonably justify and identify “on costs” associated with any particular licence regime.
- 3.4 Evidence that supports either the increase or reduction of fees should be acted upon in a timely manner and all discretionary fees should be reviewed by the committee (not officers) on a regular basis.
- Separate accounts for hackney carriage and private hire matters will be maintained and any budgetary surplus or deficit must be acted upon when determining fees. It is not permissible to “cross subsidise” monies from one trading account to another.<sup>111</sup>
- 3.5 The courts do not support the principle that fees which exceed cost recovery could be used as a general revenue raising scheme for non-licensing matters.<sup>112</sup>
- 4.0 Council licensing budgets around the country have been subject to scrutiny from both taxi and private hire trade representatives – particularly where the underlying rationale for justifying costs has been challenged. This had led, in some cases, to councils refunding monies to aggrieved parties and to ring fencing the licensing revenue for licensing use alone.<sup>113</sup>

- 4.1 The then Audit Commission had also been asked, by way of complaint, to examine council licensing budgets. In a case involving a local council and following a complaint about the taxi and private hire budget, the District Auditor issued a public interest report pursuant to the Audit Commission Act 1998 and commented, amongst other things, that in the case in question:

- **There was no licensing time recording system in place**
- **There was no method to independently verify the accuracy of staff time allocated to certain parts of the licensing undertaking**
- **The council should have kept a better record of costs and fees**
- **Enforcement costs against drivers and operators were not recoverable under the fee raising regime**
- **Any fees should be sufficient to cover costs but not to make a surplus**

- 5.0 Advice to councils has been further provided by the Local Government Association publication "Open for Business – Guidance on locally set fees".<sup>114</sup>
- 5.1 Councils are reminded that locally set fees are a vital means of ensuring that costs can be recovered by each and every council, rather than relying on subsidy from the local tax payers.
- 5.2 Although the taxi and private hire sectors are excluded from The Provision of Service Regulations 2009 (which activated the provisions of the EU Services Directive 2006), it is nevertheless considered that compliance with the principles of the EU Directive<sup>115</sup> is of paramount importance particularly in relation to fees being:
- Justified and proportionate
  - Clear and objective
  - Public and transparent
- 5.3 The identified costs of administration and the processing of applications must be established and "rejected" applications should result in refunds where appropriate to the circumstances.
- 5.4 Fees should not be used to make a profit or to act as a deterrent to certain business types. Any surplus should be used to reduce fees for the next year and any deficit can be tackled by cost recovery over a period of time.<sup>116</sup>

Module Reference	Category	Sub-Category	Time	Units
U 14/02608/HCV	U - Licensing	HCV - Hackney Carriage Vehicles	00:10	2
U 15/02393/HCV	U - Licensing	HCV - Hackney Carriage Vehicles	00:10	2
U LAPREM/6269	U - Licensing	LAPREM - LA 2003 - Premises	00:05	1
U 14/02059/LAPREM	U - Licensing	LAPREM - LA 2003 - Premises	00:10	2
U	U - Licensing	PHDRIV - Private Hire Drivers	00:20	4
U LAPREM/6271	U - Licensing	LAPREM - LA 2003 - Premises	00:05	1
U 14/04810/PHDRIV	U - Licensing	PHDRIV - Private Hire Drivers	00:25	5
U	U - Licensing	LAPERS - LA 2003 - Personal	00:20	4
U	U - Licensing	LAPERS - LA 2003 - Personal	00:30	6
U	U - Licensing	LICCOM - Licensing Committee/Sub Committee	01:00	12
U 14/02734/HCDRIV	U - Licensing	HCDRIV - Hackney Carriage Drivers	00:10	2
U	U - Licensing	PHDRIV - Private Hire Drivers	00:10	2
Hours Worked			Totals	6:30 78

An aggregate of the licence fee, to reflect the across the board officer time and "on costs" is a much fairer distribution in order to determine the fee payable.\*

\*See 6.2 overleaf

5.5 Fees should be calculated to include all reasonable “on costs” which could include:

- Administration
- Initial visits
- Third party costs
- Liaison with other persons and the public
- Management costs
- Local democracy costs
- Development of policy and web guidance etc
- General advice and guidance
- Reviewing fees
- Additional visits and compliance inspections together with dealing with complaints (subject to the legal principles of cost recovery)

6.0 The Licensing Committee have resolved to review fees on an annual basis - minute 15/2008 refers.

6.1 As a consequence to a critical examination and analysis of costs associated with each component of the hackney carriage and private hire undertaking (and balanced against officer time recording) a significant deficit in the hackney carriage budget was identified.

This has been addressed by the committee resolving to increase fees for hackney carriage vehicles, drivers and private hire operators over a 5 year rolling period - minute 3/2015 refers.

The fees are not reproduced here as they are subject to annual review and possible change. They can be viewed via the PCC web and at the following link:

<https://www.portsmouth.gov.uk/ext/business/licensing/taxi-licensing-general-information-and-fees.aspx>

6.2 The Licensing Service uses a dedicated time recording system to record officer time spent against a licensing matter - whether generically or specifically against one driver, vehicle or operator.<sup>117</sup>

The service is getting close to being able to identify potential individual costs against an applicant, driver, vehicle proprietor or operator which could result in future individual billing and subsequent cost recovery.

This would not, however, be practical or realistic as some cases could result in a legitimate levied fee of hundreds of pounds and others would be significantly less. \* See page 143

7.0 The trade<sup>118</sup> have previously requested a “breakdown” of costs associated with any one particular licence type or application. This is not an unreasonable request as a guide to the administrative practices in place will help to understand the rationale behind such fees and give your reporting staff an opportunity to examine and, where possible, streamline future work processes in order to save costs.

7.1 As a note of caution however, the underlying test is to ensure the overall public safety and confidence in the licensing regime and thus any potential cost saving proposals must be balanced against this fundamental rationale.

7.2 Whilst it is not possible to give absolute costings, - examples based on the average officer times and on costings for each grant of a licence type are shown opposite:

Licence type	Action	Process	Officer time
Private Hire or Hackney Carriage Driver	Initial enquiry at reception	Give out and explain: <ul style="list-style-type: none"> <li>• Application form</li> <li>• References</li> <li>• DBS Enhanced check form</li> <li>• Medical form</li> <li>• Drug Screen consent</li> <li>• Geography test</li> <li>• Check held DVLA licence for one year</li> <li>• Discuss importance of declaring criminal/motoring matters</li> <li>• Interview with emphasis on good communication skills and look for command of English</li> </ul>	15 minutes
	Applicant returns with completed application	Interview and check: <ul style="list-style-type: none"> <li>• Application form for completeness and errors</li> <li>• Driving licence and counterpart (subject to review with abolition of counterpart in 2015)</li> <li>• Validity of all documents to support DBS check: e.g. passport, driving licence, birth certificate, utility bills</li> <li>• Take photograph of applicant</li> <li>• Take copies of all documents</li> <li>• Validate and countersign DBS check for sending to DBS direct</li> <li>• Enter new case on Uniform</li> <li>• Scan and image all documents</li> <li>• Interview with emphasis on good communication skills and look for command of English</li> </ul>	20 - 30 minutes
	Geography test (could be multiple attempts)	Book test: <ul style="list-style-type: none"> <li>• Take payment</li> <li>• Monitor progress of test over various modules, check for cheating or odd behaviour</li> <li>• If fail, offer and update new test date(s)</li> <li>• If pass, ensure certificates are printed and scanned</li> </ul>	2.30 hours (average)
	References	Check for accuracy - contact and discuss application with referees if required - scan and image.	15 minutes
	Medical certificate	Check medical completed to group II standard and certified by GP with practice stamp - scan and image. If concerns refer to senior officer and/or council's appointed Medical Referee.*	10 minutes
	Drug screen Undertaken	Book in and take payment. Carry out drug screen. Send away sample for analysis	20 minutes
	Drug screen returned	Check results and scan and image. If a failure recorded call applicant in for interview and pass to senior officer.*	10 minutes
	DBS check returned	Update case and scan/image. If matters revealed refer to senior officer for interview.*	10 minutes
	Grant of licence	Print badge and give out lanyard, print paper licence, give out or advise re byelaws, give out "conditions of licence and enforcement leaflet". Give overview of legal provisions applicable to licence type. Scan and image licence to case.	15 minutes
	After grant	Update and finalise case together with any scanning/indexing. Ensure update complete to facilitate public register.	10 minutes
	<b>Total average time:</b>		<b>4.45 hours</b>
	<b>Total average cost:</b>		<b>£134.34<sup>119</sup></b>

\*Senior officer time NOT taken into consideration in this example.

Licence type	Action	Process	Officer time
Private Hire or Hackney Carriage Vehicle	Initial enquiry at reception	Give out and explain: <ul style="list-style-type: none"> <li>• Application form</li> <li>• Explain PCC vehicle technical specifications - colour, wheelbase, seating capacity etc</li> <li>• Discuss importance of proper declarations re proprietor details - particularly for HCV</li> <li>• Ensure that applicant provides all necessary documents on next visit</li> </ul>	15 minutes
	Applicant returns with completed application	Interview and check: <ul style="list-style-type: none"> <li>• Application form for completeness and errors and signed by an operator</li> <li>• Check validity of all documents to include bill of sale, V5, insurance</li> <li>• Take photograph of applicant and ensure photographs of all other proprietors are obtained together with address and other contact details</li> <li>• Take copies of all documents</li> <li>• Enter new case on Uniform</li> <li>• Book mechanical inspection for new vehicle</li> <li>• Scan and image all documents</li> <li>• Take fees</li> <li>• Inspect vehicle prior to mechanical inspection</li> <li>• Give out prescribed livery</li> </ul>	30 minutes
	Mechanical inspection completed	<ul style="list-style-type: none"> <li>• If fail, offer new test date</li> <li>• If pass, update case and arrange for certificate of compliance to be printed and scanned</li> </ul>	10 minutes
	Grant of vehicle licence	<ul style="list-style-type: none"> <li>• Print plate, windscreen licence disc and paper licence</li> <li>• Give out or advise re vehicle conditions and/or byelaws, give out "conditions of licence and enforcement leaflet".</li> <li>• Give overview of legal and appeal provisions applicable to licence type.</li> <li>• Inspect vehicle once plate and livery all fitted and take x 4 photographs of front, rear, nearside and offside</li> <li>• Scan and image licence to case.</li> <li>• Image photographs to case.</li> </ul>	30 minutes
	After grant	Update and finalise case together with any scanning/indexing. Ensure update complete to facilitate public register.	10 minutes
		If necessary, consider livery and/or plate dispensation request - obtain evidence from operator to support request	30 minutes*
			<b>Total average time:</b>
		<b>Total average cost:</b>	<b>£40.75<sup>120</sup></b>

\*Senior officer time NOT taken into consideration in this example.



Licence type	Action	Process	Officer time
Private Hire Operator	Initial enquiry at reception	Give out and explain: <ul style="list-style-type: none"> <li>Application form</li> <li>DBS check form</li> <li>Company/partnership details if application likely to be from a corporate body or persons trading in partnership</li> <li>Check proposed premises in Portsmouth</li> <li>Discuss importance of declaring criminal/motoring matters</li> <li>Discuss any planning issues for proposed premises</li> <li>Interview with emphasis on good communication skills and look for command of English</li> </ul>	20 minutes
	Applicant returns with completed application	Interview and check: <ul style="list-style-type: none"> <li>Application form for completeness and errors</li> <li>Check on company directors and or persons acting in partnership with validity of all documents to support ALL DBS checks - passport, driving licence, birth certificate, utility bills etc</li> <li>To include overseas criminal record checks if foreign nationals identified in application</li> <li>Take photographs of applicant(s)</li> <li>Take copies of all documents</li> <li>Validate and countersign DBS checks for sending to DBS direct</li> <li>Check for table of fares</li> <li>Enter new case on Uniform</li> <li>Scan and image all documents</li> <li>Interview with emphasis on good communication skills and look for command of English</li> </ul>	1 hour
	Site visit and interview	Visit proposed business premises <ul style="list-style-type: none"> <li>Take photographs</li> <li>Interview applicants and discuss business model</li> <li>Check for method of establishing and retaining record of bookings received</li> </ul>	2 hours (average)
	References	Take up if necessary and carry out company checks if necessary	30 minutes
	Communication with Police, City Development staff and ward councillors	Give 2 weeks to consult re use of premises and to determine if applicants deemed "fit and proper" <ul style="list-style-type: none"> <li>Write to Chief Officer of Police</li> <li>Ward Councillors</li> <li>City Development staff</li> <li>Update case as responses subsequently received</li> </ul>	1 hour
	Drug screen Undertaken	If necessary for all applicants	20 minutes
	Drug screen returned	Check results and scan and image. If a failure recorded call applicant in for interview and pass to senior officer*	10 minutes
	DBS check(s) returned	Update case and scan/image. If matters revealed refer to senior officer for interview*	10 minutes
	Grant of licence	Print operator licence and give out "conditions of licence and enforcement leaflet". Give overview of legal provisions applicable to licence type. Scan and image licence to case.	15 minutes

After grant	Update and finalise case together with any scanning/indexing. Ensure update complete to facilitate public register.	10 minutes
<b>Total average time:</b>		<b>5.55 hours</b>
<b>Total average cost:</b>		<b>£327.61<sup>121</sup></b>

\*Senior officer time NOT taken into consideration in this example.

## 8.0 Future Considerations

8.1 The Licensing Service has, in the last year, been able to process debit and credit card payments from the respective taxi and private hire trades.

The resultant shift away from enabling receipt of direct “cash” transactions and payments reflects on one strand of the council’s proposed channel shift working policies.



## **8.2 The Licensing Service will focus on continuing to provide and/or implementing, where possible, the following “core” objectives:**

- To work towards total cost recovery from the hackney carriage and private hire trades with no subsidy from the tax payer (in line with the overall objective)
- To continue to provide the Licensing Committee with reports on the licensing budget and fees
- To continue to ensure that budget headings for the respective hackney carriage and private hire trades are separately maintained and no cross subsidy will take place
- To critically examine existing departmental recharges levied to the licensing budget with a view to their removal or future reduction
- To encourage and recommend to the Licensing Committee that any yearly surplus or deficit be rolled forward year on year
- To encourage and recommend to the Licensing Committee that the Licensing budget be ring fenced
- To recommend increases in fees (with corresponding supporting rationale provided) where appropriate
- To recommend decreases in fees (with corresponding supporting rationale provided) where appropriate
- To consult with respective trade representatives and the trade in general over any proposal affecting licence fees and to comply with any and all statutory publishing requirements
- To consider introducing fees for “pre application” licensing advice - subject to legal opinion
- To consider fees for section 49 transfers and the use of private registration plates
- To constantly review working practices and processes with a view to driving down costs to the trade
- To ALWAYS instruct the City Solicitor to apply for (and to provide a breakdown) to ensure full cost recovery when determining criminal proceedings and/or defending appeals against decisions of the committee in the courts
- To continue to provide empirical time recording evidence from the Licensing Service to support any proposals for fee increases/decreases
- To ensure that any licences previously issued are immediately and considered “null and void” in the event of cheques offered for payment being returned
- To consider the introduction of private hire operator fees based on both a flat fee together with a further fee to reflect the size of the working private hire fleet associated with a particular company (this was the previous policy of the council for many years) as the evidence shows more officer time is spent dealing with the larger operators than the “one man bands”
- To establish an on line secure payment facility for applicants, drivers, vehicle proprietors and operators, 24 hours a day, 365 days a year - subject to IT and audit advice and approval
- To refund, where appropriate plate deposit refunds to respective private hire vehicle proprietors
- To remit such fees and/or charges for operator, vehicle and driver licences as may be appropriate and proportionate in respect of an individual case.
- In those circumstances where a driver holds a respective private hire or hackney carriage driver’s licence and wishes to hold both types of driver licences simultaneously, to introduce a reduced fee.
- Whilst it is considered reasonable and appropriate to reduce the cost of simultaneously holding both types of driver licences, the council does not recognise the concept of a “dual hackney carriage/ private hire driver’s licence” as they are granted under different statutory provisions and subject to different enforcement criteria.

# Chapter 17: Law commission proposals

## 1.0 Introduction

- 1.1 The Law Commission is the statutory independent body created by the Law Commissions Act 1965 whose purpose is to keep the law under review and to recommend reform based on the principles that the law is:
- Fair
  - Modern
  - Simple
  - Effective
- 1.2 The commission carried out a comprehensive review of the taxi and private hire industry from 2011 with their final report and draft bill being published in 2014. A link to the comprehensive proposals is shown below:
- <http://www.lawcom.gov.uk/project/taxi-and-private-hire-services/#taxi-and-private-hire-services-consultation>
- 1.3 Some of the recommended proposals put forward are already in place (either by way of current statutory requirement or by way of existing local requirement) but there are many new recommendations that reflect on the significant advances in technology and working practices since the inception of the 1847 and 1976 acts.
- 1.4 The draft bill is not law and thus the council is not bound by the recommendations. It would be sensible however (and for the purposes of this review exercise) for members and officers to have due regard to the depth of thought and knowledge that forms the backbone of the proposals which are summarized in 2.1 - 2.30 opposite.

## 2.0 The Law Commission Main Proposals

- 2.1 Taxi and private hire licensing to remain a function of the local authority and the “two tier” system to be retained
- 2.2 Hackney carriages to be generally defined by a “there and then” hiring scenario
- 2.3 The taxi and private hire licensing code will apply to services for commercial gain only
- 2.4 The non-professional use of taxis and private hire vehicles to be permitted
- 2.5 Wedding and funeral car hire services to remain exempt from the licensing code
- 2.6 There will be national standards for taxi and private hire vehicles with the local authority to set additional local standards for taxis only
- 2.7 Taxi quantity controls to locally remain and based on a test of “public interest” rather than “unmet demand” and to be reviewed every 3 years
- 2.8 Private hire services to have national applied standards with no power for the local authority to impose local conditions
- 2.9 Stretch limousines and novelty vehicles to include non-motorized pedicabs/rickshaws etc to be brought into the licensing system by mandatory order
- 2.10 Any “standing room” to be assessed to determine vehicle passenger capacity
- 2.11 No general local authority power to impose conditions on taxis and private hire vehicles
- 2.12 Private hire vehicles and drivers to work for any licensed dispatcher
- 2.13 There will be prescribed basic national standards for drivers and dispatchers
- 2.14 Operators will be called dispatchers and will have to be “fit and proper”. They will be deemed as those who send the vehicle and driver and will be able to sub contract bookings to any dispatcher in England and Wales
- 2.15 The Secretary of State will have power to designate specific conditions - with an offence for non-compliance

- 2.16 The Secretary of State to impose requirements to recognise the difference between taxis and private hire vehicles
- 2.17 The Secretary of State to retain the power to set private hire licensing fees
- 2.18 Taxi fares to be regulated by the local authority in the compellable area with drivers charging more for journeys ending outside the licensing area if agreed in advance
- 2.19 Mandatory disability awareness training for both taxi and private hire drivers to a standard set by the Secretary of State
- 2.20 The Secretary of State to prescribe minimum standards re convictions, breaches of licence conditions rendering a person's right to hold a licence incompatible with prescribed standards
- 2.21 A requirement to comply with the relevant provisions of the Equality Act 2010 by condition of licence
- 2.22 A "how to complain" information notice in both vehicles and on the local authority web pages
- 2.23 A touting offence to be broadly retained
- 2.24 Fixed penalties for minor criminal breaches to licence conditions with an ability for officers to stop any licensed vehicle and to impound vehicles used for "touting"
- 2.25 A power to suspend any licence type immediately and on public safety grounds
- 2.26 The local authority to retain the power to revoke licences and may consider evidence or recommendations from other local authority enforcement staff
- 2.27 A secondary right of internal appeal to the Local Authority itself against refusal to grant, suspension, revocation or refusal to renew respective licences
- 2.28 Subsequent appeals to the Magistrates' and to the Crown Court
- 2.29 Policy and conditions to be challengeable in the County Court
- 2.30 The local authority to promote cost recovery from licence fees and to provide for and control:
- Administration costs
  - Inspections and testing costs
  - Fares, ranks and taxi quantity control reviews
  - Enforcement of taxi and private hire services (to include licensed and unlicensed activities)
  - Suspension and revocation proceedings
  - Providing stands for taxis

# Chapter 18: Contact information

- 1.0 The Licensing Service is part of the Culture and City Development Directorate. The service reports direct to the Licensing Committee.
- 2.0 Applicants and licence holders can obtain further information including application forms and fees in respect of operators, vehicles and drivers from:

**The Licensing Service**  
**Portsmouth City Council**  
**Civic Offices**  
**Guildhall Square**  
**Portsmouth PO1 2AL**

**Tel: 023 9283 4073**

**Fax: 023 9283 4811**

**Email: [licensing@portsmouthcc.gov.uk](mailto:licensing@portsmouthcc.gov.uk)**

Web: [www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

- 3.0 The Licensing Service is located on the lower ground floor of the Civic Offices. Access to the office is via Charles Dickens Street.

The opening hours are:

**Monday to Friday** 0900 until 1600

No appointment is generally necessary but please phone in advance if you wish to see and speak to a particular officer.

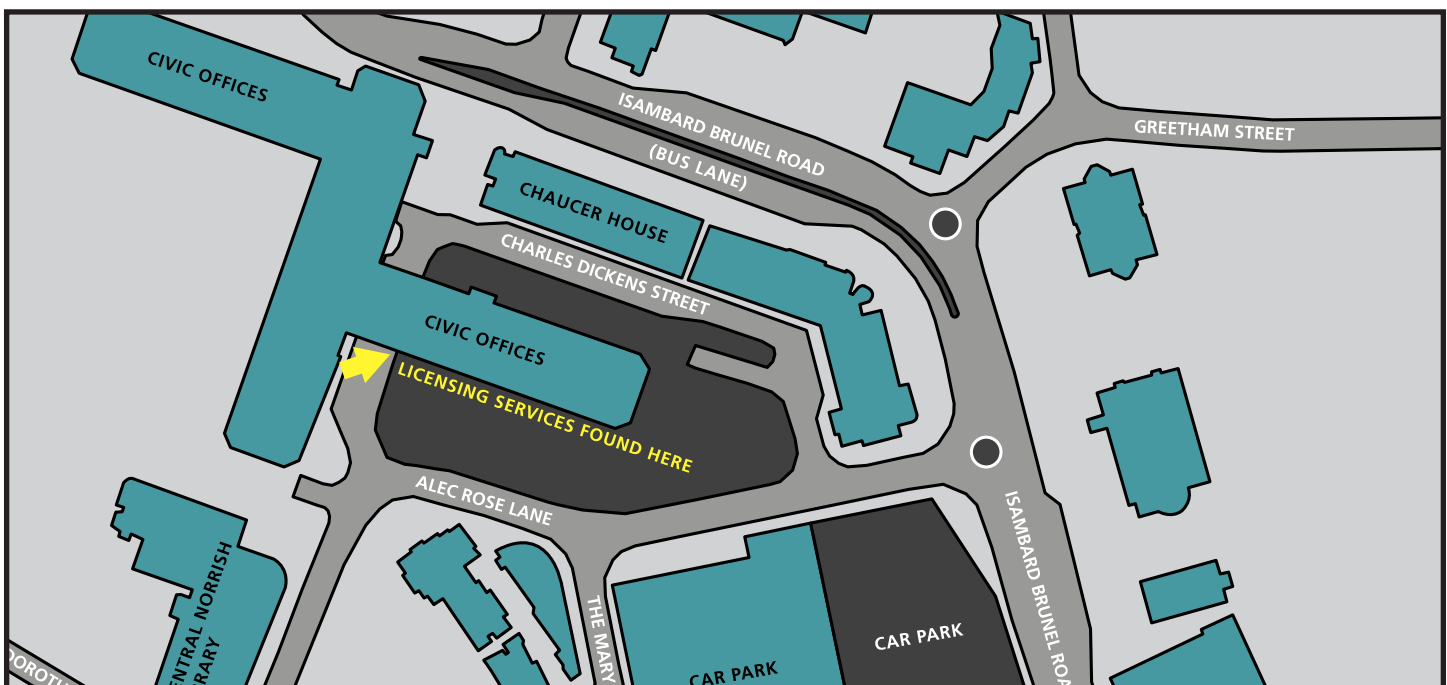
Limited on-street parking is available and pay and display car parks are situated nearby.

- 4.0 The Licensing Service comprises:

- Nickii Humphreys (Licensing Manager)
- Derek Stone
- Ross Lee
- Jason Ellam
- Kevin Weeks
- Les Matthewson
- Debra Robson
- Karen Bowie
- Hazel Maidment
- Zoe Gofton
- Chris Berry
- Lauren Tyler

Together with seconded temporary and apprentice staff as appropriate

- 4.1 The staff are all duly appointed as “authorised officers” for the purposes of carrying out their respective duties under the 1847 and 1976 acts and so far as this relates to the control and supervision of the hackney carriage and private hire undertaking.



# Chapter 19: References

- Audit Commission Act 1998
- "Button on Taxis" - Third Edition
- Criminal Procedures and Investigations Act 1996
- Crime & Disorder Act 1998
- Data Protection Act 1988
- Department for Transport - "Taxi and private Hire Vehicle Licensing" - "Best Practice Guidance" - March 2010 and "Private Hire Vehicle licensing" - "A note for guidance" - August 2011
- Disability Discrimination Act 1995
- Equality Act 2010
- EU Services Directive 2006
- Human Rights Act 1998
- Law Commissions Act 1965
- Legislative and Regulatory Reform Act 2006
- Local Authorities (Functions & Responsibilities) (England) Regulations 2000 as amended
- Local Government Act 1972
- Local Government (Miscellaneous Provisions) Act 1976
- Local Government Act 2000
- "Options for Change" - A PCC review of hackney carriage and private hire policy - August 2001
- Police and Criminal Evidence Act 1984
- Protection of Freedoms Act 2012
- Prosecution of Offences Act 1985
- Public Health Act 1875
- Rehabilitation of Offenders Act 1974
- Road Traffic Act 1988
- Road Traffic Act 1991
- Road Traffic (New Drivers) Act 1995
- Road Safety Act 2006
- The Legal Aid, Sentencing and Punishment Act 2012
- Town Police Clauses Act 1847
- Transport Act 1985

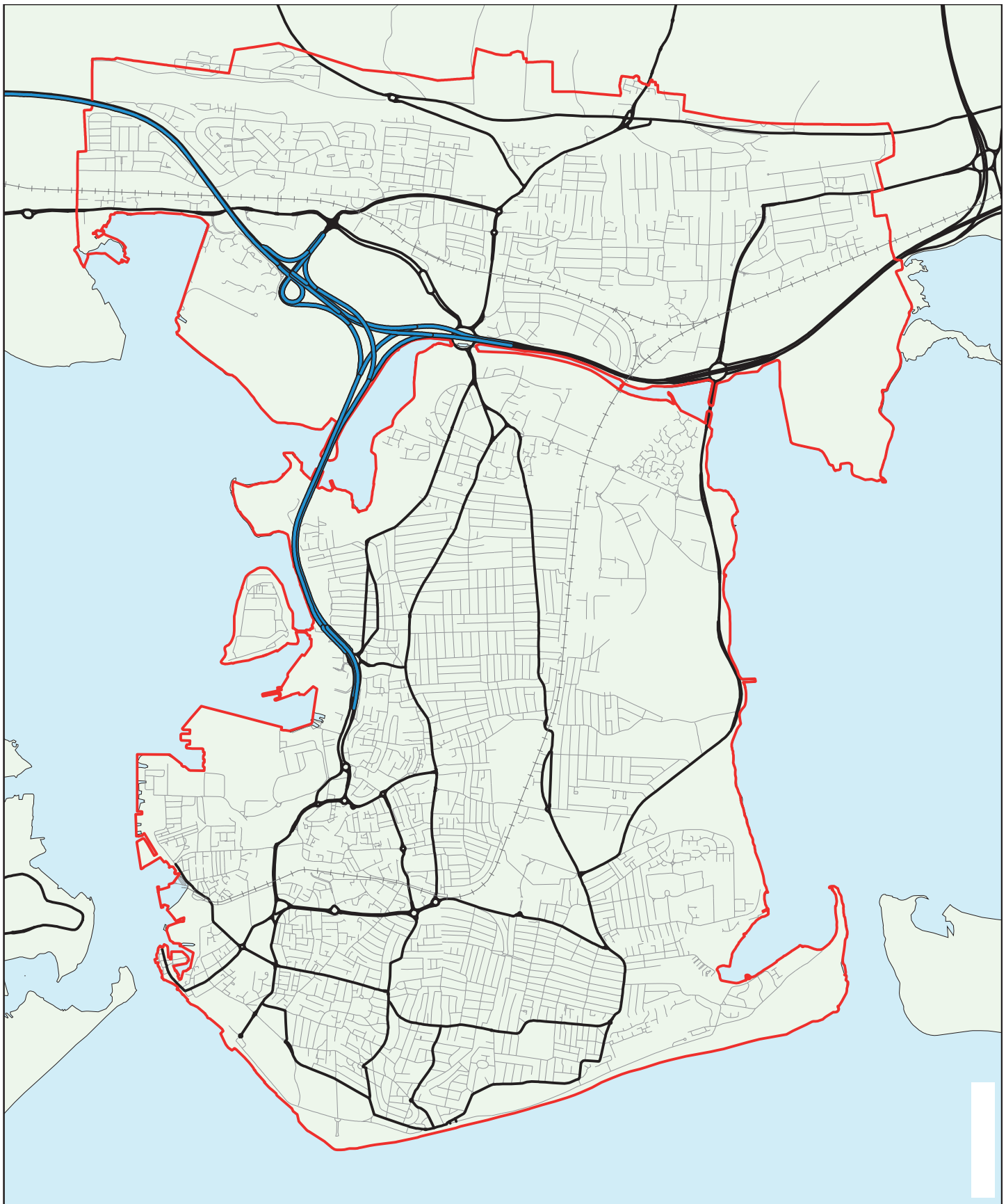
## Chapter 20: Glossary of terms

<b>"1847 Act"</b>	means the Town Police Clauses Act 1847 and byelaws made thereunder
<b>"1976 Act"</b>	means part II, Local Government (Miscellaneous Provisions) Act 1976
<b>"Adams Morey"</b>	means the council's prescribed vehicle testing and inspection station and situated at Burrfields Road, Copnor, Portsmouth PO3 5NN
<b>"Alere"</b>	means Alere Toxicology Plc, 92 Park Drive, Milton Park, Abingdon Oxfordshire OX14 4RY
<b>"Authorised Officer"</b>	means any officer of the council authorised in writing and acting on behalf of the appropriate head of service for the time being prescribed and for the purposes of the following principal statutes; together with any other statutes, prescribed regulations or statutory instruments for the time being in force relating to the control and supervision of hackney carriages, their proprietors and drivers and Private hire operators, vehicles and their drivers. <ul style="list-style-type: none"> <li>• The Town Police Clauses Act 1847 ("the 1847 act")</li> <li>• The Local Government (Miscellaneous Provisions) Act 1976, Part II (" the 1976 act")</li> </ul>
<b>"Councillors' Handbook"</b>	means the taxi and private hire licensing handbook prepared by the Local Government Association for councillors in England and Wales and dated March 2015.
<b>"Drivers Badge"</b>	means, in relation to the driver of a hackney carriage, any badge issued under byelaws made under section 68 of the 1847 act and, in relation to the driver of a private hire vehicle, any badge issued under section 54 of the 1976 act.
<b>"Drivers Licence"</b>	means, in relation to the driver of a hackney carriage, a licence issued under section 46 of the 1847 act and, in relation to the driver of a private hire vehicle, a licence issued under section 51 of the 1976 act.
<b>"DVLA"</b>	means the Driver & Vehicle Licensing Agency, Swansea SA99 1BU.
<b>"DVSA"</b>	means the Driver & Vehicle Standards Agency who have a local enforcement office at:  DVSA Southampton GVTs Bottings Industrial Estate Hillson Road Botley Southampton SO30 2DY
<b>"Hackney Carriage"</b>	means every wheeled carriage, whatever may be its form or construction, used in standing or plying for hire in any street within the prescribed distance and seating less than 9 passengers.
<b>"Hackney Carriage Byelaws"</b>	means the byelaws made pursuant to section 68 of the 1847 act and for the time being in force in the controlled district of Portsmouth and relating to hackney carriages, their proprietors and drivers.
<b>"Head of Service"</b>	means the recognised chief officer and/or director for the time being responsible for the Licensing Service.



<b>“Licensing Committee or Licensing Sub Committee”</b>	means the committee and sub-committee duly appointed by the Full Council to determine all hackney carriage and private hire matters in accordance with the current scheme of delegation and as prescribed by statute, the Functions and Responsibilities Regulations (as amended) and the council’s adopted constitution.
<b>“Licensing Service”</b>	means the authorised officers of the Licensing Service for the time being of Portsmouth City Council and situated at the Civic Offices, Guildhall Square, Portsmouth PO1 2AL.
<b>“Medical Referee”</b>	means the Occupational Health Department, Queen Alexandra Hospital, Southwick Hill Road, Cosham, Portsmouth PO6 3LY
<b>“Magistrates”</b>	means The Portsmouth Magistrates’, The Law Courts, Winston Churchill Avenue, Portsmouth, Hampshire PO1 2DQ.
<b>“Operate”</b>	means in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle.
<b>“Operator licence”</b>	means a licence issued under section 55 of the 1976 act.
<b>“PATN Guidance”</b>	means the best practice guidance for the minimum inspection and testing standards in respect of hackney carriages and private hire vehicles as prepared by the Technical Officers Group of the Public Authority Transport Network.
<b>“Portsmouth City Council”, together with the “prescribed distance”, the “relevant area” and “controlled district”</b>	means the council and the administrative area comprising of the City of Portsmouth as shown in the reproduced map.
<b>“Private Hire Vehicle”</b>	means a motor vehicle constructed or adapted to seat fewer than 9 passengers, other than a hackney carriage or public service vehicle, which is provided for hire with the services of a driver for the purposes of carrying passengers.
<b>“Proprietor”</b>	means those person(s) truly engaged in the keeping, employing or letting to hire of such carriage. “Proprietor” also includes a part-proprietor and, in relation to a vehicle which is the subject of a hiring agreement or hire purchase agreement, means the person in possession of the vehicle under that agreement.
<b>“Taximeter”</b>	means any device for calculating the fare to be charged in respect of any journey in a hackney carriage or private hire vehicle by reference to the distance travelled or time elapsed since the start of the journey, or a combination of both.
<b>“Vehicle Licence”</b>	means in relation to a hackney carriage a licence issued under sections 37 to 45 of the 1847 act and in relation to a private hire vehicle means a licence under section 48 of the 1976 act.

# Chapter 21: Map of Portsmouth



**Portsmouth**  
CITY COUNCIL

Title: **PORTSMOUTH CITY COUNCIL  
ADMINISTRATIVE AREA**  
Prepared for: **LICENSING OFFICE**  
Prepared by: **Geographic Information Service**

Drg No:  
Scale: **1:54000**  
Date: **01/09/2015**



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# Footnotes & Commentary

1. The local circumstances of licensing control became a prominent consideration in R (app Newcastle City Council) -v- Berwick upon Tweed Borough Council 2008. The court said "the local authority can issue its own conditions and make its own byelaws. It can make provision for its own inspections of hackney carriages. Thus the licensing regime is local in character. In addition it can be seen that most of the provisions have public safety in mind"
2. Department for Transport - Taxi and Private Hire Vehicle licensing - Best Practice Guidance - March 2010 refers
3. Cherwell District Council -v- Anwar 2011
4. With the exception of wedding, funeral and pet ambulance service type activities
5. Section 60, Local Government (Miscellaneous Provisions) Act 1976 refers in relation to the fitness of the vehicle
6. The adopted byelaws (at number 3) require a hackney carriage to be provided with a fire extinguisher and the council cannot dis-apply the byelaw. However, the Fire Authority does NOT recommend that drivers should tackle vehicle fires and their use should be advisory only.
7. Local Authorities (Functions & Responsibilities) (England) Regulations 2000 as amended
8. The council adopted the provisions of part II of the 1976 act with effect from 01 February 1978 and following a report by the City Secretary & Solicitor to both the Environmental Health Committee and to full Council - block council minutes 21 June 1977 and 26 July 1977 refer
9. Source - Local Authorities (Functions & Responsibilities) (England) Regulations 2000 as amended and as endorsed by "Button on Taxis" and the LGA publication "Taxi & Private Hire Licensing - Councillors' Handbook" - March 2015
10. Licensing Committee minute 33/2003 refers
11. This is never more important and necessary than when determining licensing matters which are more likely to be subject to judicial scrutiny either following an appeal or judicial review
12. There may be limited but good exceptions to this rule - see the "delegation of functions" at 4.0
13. The case of 007 Taxis Stratford Ltd -v- Stratford on Avon District Council 2010 considered the question of policy - in this case the cabinet received a report from the Licensing Committee about taxi policy matters. The council was unsuccessfully challenged over the vires of the decision making process which was deemed lawful
14. By virtue of section 61 2B to the 1976 act (following section 52 of the Road Safety Act 2006). The ability to suspend a current driver licence is conferred by Licensing Committee minute 33/2003. However, the question of revocation ONLY in cases of immediate public safety interests is requested following the judgement in R (app Singh) -v- Cardiff City Council 2012. Endorsed by the LGA publication "Taxi & Private Hire Licensing - Councillors' Handbook" - March 2015
15. For example evidence of epilepsy or the taking of anti-convulsant medication, repeated loss of consciousness or sudden and unexplained disabling giddiness, eyesight and other prescribed visual acuity problems, strokes, drug or alcohol dependency and/or other serious and prescribed medical conditions affecting the ability to drive to the group 2 vocational standard
16. Executive function
17. Executive function
18. If evidence, for example, of any criminal convictions or adverse conduct becomes apparent and/or there is evidence that the representative does not have the support of a membership
19. To include, for example, any "MOT" or other DVSA updates or new conditions/directives imposed by the committee
20. An information report in respect of prosecutions will be referred to the committee for subsequent consideration
21. Section 49, Local Government (Miscellaneous Provisions) Act 1976 and the case of R -v- Weymouth Borough Council ex parte Teletax (Weymouth) Ltd 1947
22. Report and conclusions of Transport Planning International Ltd to the Licensing Committee - October 2006
23. Department For Transport - Taxi and private hire vehicle licensing - best practice guidance - March 2010
24. The regulation of licensed taxi and private hire vehicle services in the UK - November 2003
25. Department For Transport - Taxi and private hire vehicle licensing - best practice guidance - March 2010
26. Keycabs Ltd T/A Taxifast -v- Plymouth City Council 2007
27. Email correspondence by an interested party to the Licensing Service - Ms Katie Mills
28. R -v- Liverpool Corporation ex parte Liverpool Taxi Fleet Operators Association 1975 - Lord Denning commenting "The corporation should be ready to hear persons or bodies whose interests are affected. It is perhaps putting it a little high to say that they are exercising judicial functions. They may be said to be exercising an administrative function but must act fairly" R -v- North & East Devon Health Authority ex parte Coughlan 2001 - "It has to be remembered that consultation is not litigation: the consulting authority is not required to publicise every submission it receives or (absent some statutory obligation) to disclose all its advice. Its obligation is to let those who have a potential interest in the subject matter know in clear terms what the proposal is and exactly why it is under positive consideration, telling them enough (which may be a good deal) to enable them to make an intelligent response. The obligation, although it may be quite onerous, goes no further than this"
29. That said, and as a recent contra example, from 01 April 2015 personal licences granted under the Licensing Act 2003 now last indefinitely.
30. Exeter City Council -v- Sandle 2011
31. Department for Transport - Taxi and Private Hire Vehicle Licensing - Best Practice Guidance March 2010
32. Statutory Instrument 994/2015 refers - "The Deregulation Act 2015 (Commencement No 1 and Transitional and Saving Provisions) Order 2015".
33. Norwich City Council -v- Thurtle & Watcham 1981
34. Lord Bingham of Cornhill in the case of McCool -v- Rushcliffe Borough Council 1997 and as noted in Leeds City Council -v- Hussain 2002
35. Nottingham City Council -v- Farooq 1998, Leeds City Council -v- Hussain 2002, R -v- Maidstone Crown Court Ex parte Olson 1992, Westminster City Council -v- Zestfair Ltd 1989, Adamson -v- Waveney District Council 1997
36. Department for Transport - Taxi and Private Hire Vehicle Licensing - Best Practice Guidance - March 2010
37. Licensing Committee minute 41/1994 refers
38. Joint circulars 2/92 and 13/92 refer

39. Now the function of the Disclosure & Barring Service (DBS) - see chapter on Rehabilitation of Offenders
40. At page 14 of the handbook
41. The conviction guidelines are, by nature, generalised and shown in "categories". It is not possible to list all offence types nor is it possible to list or categorise each and every area of "conduct" that might, or might not, be appropriate
42. As recognised by the DVLA "At a Glance" medical guide on alcohol or illicit drugs
43. Source - Licensing Committee minute 7/2014 refers - Police & Local Authority Road Safety Officer casualty records
44. Not to include matters relating to the "penalty points system" which will be dealt with, on merit, and separately from these guidelines
45. Confidential Licensing Sub Committee reports refer. A licensed vehicle is licensed at all times and thus can only ever be driven by a licensed driver. The fact that the "data box" may be switched off or the driver was/is "on a break and not receiving work" is not a mitigating consideration - see Yates -v- Gates 1970 and Benson -v- Boyce 1997
46. Crawley Borough Council -v Crabb 1996
47. The crash risks are highest for new and younger male drivers aged 17 - 20 - source "Fitness to Drive - a guide for health professionals" - Tim Carter. See also "age limits" at 9.0 below
48. The council is both the local licensing authority and local highway authority responsible for transport provision. All drivers are capable of carrying out sensitive school and other contract work ("a regulated activity under the workforce relevancy tests") on a daily basis. The council's Transport Fleet Manager and passenger transport staff estimate over 200 daily journeys by drivers with children and/or vulnerable adults. For these reasons the child and adult workforce checks are vital
49. Not to include holidays or short trips to visit family but with the final decision on whether to require a certificate of good conduct to rest with the head of service. The age of 10 recognises the age of criminal responsibility in England and Wales.
50. Supplemental reference books are the "Medical Aspects of Fitness to Drive" published by the Medical Commission on Accident Prevention and "Fitness to Drive - A guide for health professionals" by Tim Carter
51. This policy which requires a medical on first application, next at aged 45, then every 5 years until 65, then annually but drug testing should be carried out at more stringent intervals
52. Currently the Occupational Health Service at QA Hospital, Southwick Hill Road, Portsmouth
53. Both Southampton City Council and East Hants District Council require a driver to be 21
54. Informal discussions with Citywide Taxis, Aqua Cars Ltd, Scope Vehicle Leasing, Outlook UK Ltd and Tradex
55. Section 69, Local Government (Miscellaneous Provisions) Act 1976
56. With anecdotal evidence via the Portsmouth Disability Forum of drivers not securing wheelchairs, overcharging and generally being poorly prepared in dealing with persons with either assistance dogs or using a wheelchair. On a positive note - Aqua Cars Ltd both encourages and requires drivers of wheelchair accessible vehicles to undertake local MIDAS training courses.
57. Darlington Borough Council -v- Kaye 2004 - the introduction of the Driver Standard Agency (DSA) testing for drivers was deemed lawful
58. The Blue Lamp trust, c/o Hampshire Fire & Rescue Service, Leigh Road, Eastleigh, SO50 9SJ - Telephone 0300 777 0157
59. The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) order 2002
60. Adamson -v- Waveney District Council 1997. The council, via the Licensing Committee will not look at all "spent" matters and then try to ignore those that are not relevant but rather will focus ONLY on those spent convictions (if any) that reflect on the considerations shown in Chapter 9, 4.2
61. The Legal Aid, Sentencing and Punishment Act 2012 refers
62. The definition of a hackney carriage is very wide and could include pedicabs etc. There have been no "licensed" pedicab hackney carriages plying for trade in Portsmouth (as the restricted numbers policy applied to ALL types of hackney carriage whether motorised, horse drawn or people drawn) and thus applications could not be granted under delegated authority and without referral to the committee.  
Previous surveys have not indicated any demand for these unique and quirky forms of public conveyance and their brief use in Portsmouth in 2010 was by way of pre bookings only. As they were not a motorised form of transport - the private hire legislation did not apply to their use.
63. Chauffeur Bikes Ltd -v- Leeds City Council 2006 and Department for Transport guidance note July 2012. It is suggested that any application be considered on its individual merit
64. The evidence of previous pedicab use in Portsmouth identified that the construction and safety of the wheeled trikes was poor with mechanical failures evident - particularly to the main front fork assembly. This highlights the need for ANY form of perceived public transport to be tested and inspected prior to use.
65. R -v- Manchester City Council ex p Reid 1989 in which new licences were granted in favour of wheelchair accessible vehicles only.
66. Correct at July 2015 - source licensing computer database
67. Department For Transport - Taxi and Private Hire Vehicle Licensing - Best Practice Guidance - March 2010
68. The adopted byelaws require the vehicle to have at least 2 doors for passengers - byelaw 3(i) refers. A previous specification requirement for vehicles to seat a minimum of 4 passengers in comfort is considered unreasonable as the Mercedes CLS (for example) can only realistically seat 3 passengers due to the unique rear seat squab design.
69. Historically, seating capacities were determined by the "16 inch" (400mm) rule for individual passengers having regard to the Road Vehicles (Registration & Licensing) Regulations 1971 and used to determine seating capacity for the purposes of duty payable.
70. This should be subject to review. The corporate livery is now 14 years old and is likely to need re-branding to take into account the council's current image for the great waterfront city. The mandatory use of bonnet stickers for hackney carriages also needs further consideration due to both material supply concerns and to previous quality control issues being raised by the trade.
71. Section 47, Road Traffic Act 1988
72. Approved by the Secretary of State for the Home Office for commencement in Portsmouth on 25 January 1971
73. Section 48 of the 1976 act refers

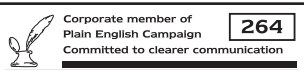
74. The ability however to inspect and test vehicles at "all reasonable times" to ascertain vehicle fitness is permitted under section 68 of the 1976 act and is used as a means of carrying out "spot checks" and other ad hoc immediate enforcement by both authorised officers and police officers.
75. Department for Transport - Taxi & Private Hire Vehicle Licensing - March 2010
76. Source - Adams Morey monthly recorded data for vehicle inspections in 2014
77. Source European Union - Climate Action plan
78. Section 60, Local Government (Miscellaneous Provisions) Act 1976 refers in relation to the fitness of the vehicle
79. The adopted byelaws (at number 3) require a hackney carriage to be provided with a fire extinguisher and the committee cannot dis-apply the byelaw. However, the Fire Authority does NOT recommend that drivers should tackle vehicle fires and their use should be advisory only.
80. Source - "Hackney carriage and private licensing - review of policy" - a report by the City Secretary & Solicitor 30 January 1984 to the Licensing Panel & a further report to the Licensing Sub Committee - minute 11/1986 refers
81. Prior to this, the previous age limit policy (for wheelchair accessible hackney carriages) was to be brand new on first licensing and to stay licensed until 8 years of age - Licensing Committee minute 37(20)(v)/2001 refers.
82. See Licensing Sub Committee minutes 14 and 23 of 2015
83. In the case of R -v- Hyndburn Borough Council ex parte Rauf & Kasim 1992, the court held it was possible to impose a condition about vehicle age limits without being Wednesbury unreasonable and/or fettering their discretion - PROVIDED the local authority would give consideration to any application. The general presumption, as stated earlier in this document, is that policy is to "guide rather than to bind" the decision making process.
84. Department for Transport - Taxi and Private hire Vehicle Licensing - Best Practice Guidance - March 2010
85. Now Transport for London
86. "In the picture - A data protection code of practice for surveillance cameras and personal information" - October 2014
87. Source - Department for Transport guidance - December 2008 - Product codes 08DFT 008/009
88. Source - "Safer Portsmouth Partnership - Crime concerns of taxi drivers in Portsmouth." - May 2013
89. Source - confidential Licensing Sub Committee hearings to determine whether drivers were deemed to be "fit and proper" persons.
90. In the case of Southampton City Council and the Information Commissioner on appeal reference EA/2012/0171 to the First Tier Tribunal (19 February 2013), it was concluded that equipment with continuous blanket audio recording was disproportionate and not justified under article 8(2) of the ECHR (right of privacy) and contravened the data protection first principle.
91. Wathan -v- Neath Port Talbot County Borough Council 2001
92. The revised guidance issued by the Secretary of State and in respect of the Licensing Act 2003 gives clear and useful "principles" about the imposition of conditions - March 2015
93. Associated Provincial Picture Houses Ltd -v- Wednesbury Corporation 1948.
94. Source - Department for Transport Guidance Notes and Model Byelaws, Buses & Taxis Division - July 2005
95. Legislative and Regulatory Reform Act 2006 refers - Department for Business Innovation & Skills, Better Regulation Delivery Office - Regulators' Code - April 2014
96. The Hampton Review - "Effective Inspection & Enforcement" - March 2005 and the Rogers Review - "National Enforcement Priorities" - March 2007
97. Section 45, Town Police Clauses Act 1847 refers
98. It has been the practice of the enforcement team to give general notice to the trade representatives of proposed future ad hoc or co-ordinated enforcement activities together with the use of targeted operation orders as required for such activities including plying for hire, illegal ranking and drug testing.
99. Although not strictly defined "serious" breaches could include any acts of dishonesty, making false statements, failing to comply with officer requests, failing to produce documents upon request, refusal to take passengers, overcharging, plying for hire, having no insurance, permitting the use of unlicensed vehicles or drivers, breach of byelaws etc  
A suspension or revocation of a licence could be for evidence of an arrest, charges or a conviction being recorded for offences relating to dishonesty, violence, offences of a sexual nature including abuse and serious road traffic offences including those leading to a disqualification OR evidence of a new or underlying serious medical condition that has worsened - this list is a guide only and not meant to be exhaustive
100. Penalty by virtue of section 183, Public Health Act 1875
101. The penalty for breach of sections 50 (1-4) above is contained within section 50 (5) of the act and whilst it indicates "any person who contravenes", we consider the proprietor has lead responsibility for compliance with the general provisions of section 50 to the 1976 act.
102. In this respect, the licensing management team can consider the overall quality of any file and offer guidance and, on occasion, recommend that the offender be given a lesser sanction such as a final written warning or simple caution.
103. Middlesbrough Council -v- Safer 2001 refers
104. Ministry of Justice guidance - "Simple Cautions for Adult offenders" - 08 April 2013. Replaced Home Office guidance 016/2008.
105. In the matter of Portsmouth City Council and Mitchell (1990) - the council obtained an injunction to prevent a former hackney carriage driver from driving who had previously been declared medically unfit to drive.
106. Department for Transport - Taxi and Private Hire Vehicle Licensing - Best Practice Guidance - March 2010

107. The use of a penalty points scheme has been subject to judicial consideration - in the case of R (app Singh) -v- Cardiff City Council 2012 - Mr Justice Singh commented "in my view there is nothing wrong in principle... with the adopting of such a policy which seeks, both in fairness to the driver potentially affected and also to protect the public interest, to have, as it were, a staged process by which the cumulative effect of incidents of misconduct may well lead ultimately to the conclusion that in the judgment of the local authority, a person is not a proper person to continue to enjoy the relevant licence"
108. The use of a "rolling" 12 month period will mean that any points outside of the 12 month period will be considered void and spent
109. In contrast with the "Casey report" in respect of Rotherham MBC's hackney carriage and private hire undertaking which revealed concerns about the lack of recording and use of data associated with complaints against drivers - February 2015
110. Kelly -v- Liverpool City Council 2003 - the court concluded that different charges could be applied for different vehicle test criteria notwithstanding that a licence was not granted. The court also stated that "the fees charged for the grant of licences are not to be used as a revenue raising measure".
111. R -v- Cardiff City Council ex parte Cummings 2014
112. R -v- Manchester City Council ex p King 1991 and R -v- GLC ex p Rank Organisation 1982
113. Source - Birmingham, Sefton MB and Bolton council's and the LGA "Taxi and private Hire Councillors' handbook" at page 8
114. Source - LGA Corporate guidance - "Locally Set Fees" 2014
115. EU Services Directive 2006/123/EC
116. Hemming -v- Westminster City Council 2013/2015
117. Source - Licensing Uniform database
118. Mr Bruce Hall, general manager and on behalf of Aqua Cars Ltd
119. This is based on an average officer hourly rate "on-cost" of £30.19\* and does not presume a first time pass at the geography test, any concerns with the DBS Enhanced check, medical or drug screening concerns and no apparent motoring or criminal convictions requiring further investigation or interview. This costing does not take into account any stationery, specialist badge printing, computer software and maintenance charges, web advice and updates or if further officer advice and interview is needed with a view to referral to the Licensing Sub Committee.
- Should a senior officer be involved in interviewing, reporting and attending a committee the average "on cost" hourly rate of £69.30\*\* would apply with an average overall case time of 3 hours to include all phone calls, correspondence, interviews and compilation of committee report together with notices of hearing and notices of decision and to include appeal rights. The cost would therefore increase by a further £207.90 giving a total of £342.24. This figure equally does not include professional legal and democratic input and advice together with the cost of any committee hearing to establish the fit and properness of a driver.
- \*Average of the divided hourly rate "on costs" for 4 licensing assistant posts.
- \*\* Average of the divided hourly rate "on costs" for the licensing manager, principal and senior officers.
120. This is based on an average officer hourly rate "on-cost" of £30.19 and represents only the officer administration cost but does not include the costs associated with computer hardware and software for the purposes of the plate and licence disc production, plate bracket, disc holders and other sundries, livery costs together with the costs of the council's nominated garage for inspecting and testing vehicles.
- This fee does not include the on-going administrative support in arranging annual plate tests, sending out reminders, checking on insurance and V5 documentation, dealing with year on year enforcement operation orders to check on vehicle fitness, dealing with vehicle suspensions due to accident damage or mechanical defects, recovering plates following suspension or non-renewal of same, processing personalised/cherished plate transfers, inspecting and giving approval for vehicle commercial advertising, updating the public registers, etc.
- Again, this fee does NOT include any contested matters referred to committee for final determination due to age limit challenge or other reason(s) affecting the material safety of the vehicle under consideration. The same principles highlighted previously for driver costs should be applied.
121. An average officer time cost of £59.03 (equating to the average hourly costs split between the principal and senior staff) has been used to determine the general costs associated with operator applications. Given that operator applications are all uniquely different (ranging from "one man bands" to international organisations such as Uber which took over 37 officer hours to determine and thus would have cost £2184.11) - the costings as shown above are a generic guide only to the amount of officer time devoted to each operator application.



Licensing Service  
Civic Offices  
Guildhall Square  
Portsmouth Hants PO1 2AL

Telephone: 023 9283 4073  
Email: [licensing@portsmouthcc.gov.uk](mailto:licensing@portsmouthcc.gov.uk)  
Website: [www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)



You can get this Portsmouth City Council information in large print, Braille, audio or in another language by calling 9283 4073.



**ADAMS MOREY LTD  
OVERALL VEHICLE TEST RESULTS 2014 - 2018**

2014 Results By Vehicle Age	Percentage Failure Rate
0 - 3 Years	30%
3 - 6 Years	57%
6 - 9 Years	78%
9 +	85%

2015 Results By Vehicle Age	Percentage Failure Rate
0 - 3 Years	46%
3 - 6 Years	72%
6 - 9 Years	74%
9 +	87%

2016 Results By Vehicle Age	Percentage Failure Rate
0 - 3 Years	48%
3 - 6 Years	63%
6 - 9 Years	72%
9 +	71%

2017 Results By Vehicle Age	Percentage Failure Rate
0 - 3 Years	28%
3 - 6 Years	29%
6 - 9 Years	49%
9 +	51%

2018 Results By Vehicle Age	Percentage Failure Rate
0 - 3 Years	15%
3 - 6 Years	29%
6 - 9 Years	44%
9 +	46%

The average HCV Max mileage is 194,253 with the highest mileage on a working vehicle recorded as 464,188 miles

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# Equality Impact Assessment

Preliminary assessment form 2018

[www.portsmouthccg.nhs.uk](http://www.portsmouthccg.nhs.uk)

[www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

The preliminary impact assessment is a quick and easy screening process. It should:

- identify those policies, projects, services, functions or strategies which require a full EIA by looking at:
  - negative, positive or no impact on any of the equality groups
  - How are going to mitigate or remove any potential negative impacts
  - opportunity to promote equality for the equality groups
  - data / feedback
- prioritise if and when a full EIA should be completed
- justify reasons for why a full EIA is not going to be completed

**Directorate:**

City development and culture

**Service, function:**

Licensing

**Title of policy, service, function, project or strategy (new or old) :**

Amendment to the PCC statement of licensing policy for the control, supervision and enforcement of the hackney carriage and private hire trades in respect of vehicle age restrictions.

**Type of policy, service, function, project or strategy:**

- Existing
- New / proposed
- Changed

**Q1 - What is the aim of your policy, service, function, project or strategy?**

The policy brings together all the legal and local policy requirements and procedures for the control, supervision and enforcement of the respective hackney carriage and private hire trades within the City of Portsmouth.

To give advice and to promote fair and consistent procedures to applicants and licence holders alike (together with their legal representatives) and to ensure the safety and welfare of the travelling public. This review examines and makes recommendations in respect of vehicle age limits for hackney carriage and private hire vehicles.

**Q2 - Who is this policy, service, function, project or strategy going to benefit or have a detrimental effect on and how?**

The policy will benefit the city council's Licensing Committee, officers, licence holders, applicants and their legal representatives alike by clearly setting out the standards expected by the council as the local licensing authority in respect of vehicle age restrictions.

The policy will benefit members of the public and other road users by maintaining enhanced vehicle provisions (younger and cleaner vehicles) but allowing some discretion to ensure that there are sufficient opportunities for the trade to purchase vehicles which meet PCC's specifications.

**Q3 - Thinking about each group below, does, or could the policy, service, function, project or strategy have a negative impact on members of the equality groups below?**

Group	Negative	Positive / no impact	Unclear
Age	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Race	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sex	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gender reassignment	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sexual orientation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Religion or belief	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pregnancy and maternity	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marriage & civil partnership	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other excluded groups	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Note:**Other excluded groups examples includes,Homeless, rough sleeper and unpaid carers. Many forms of exclusion are linked to financial disadvantage. How will this change affect people on low incomes, in financial crisis or living in areas of greater deprivation?

**If the answer is "negative" or "unclear" consider doing a full EIA**

**If there are any potential negative impacts on any of the protected characteristics, What have you put in place to mitigate or remove the negative impacts/barriers?**

No potential negative impacts are envisaged in relation to any of the protected characteristics.

**Q4 - Does, or could the policy, service, function, project or strategy help to promote equality for members of the equality groups? e.g. A new service has been created for people with a disability to help them gain employment this would mean that this helps promote equality for the protected characteristic of disability only.**

Group	Yes	No	Unclear
Age	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Race	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sex	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gender reassignment	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sexual orientation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Religion or belief	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pregnancy or maternity	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marriage & civil partnership	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other excluded groups	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**If the answer is "no" or "unclear" consider doing a full EIA**

**Q5 - Do you have any feedback data from the equality groups that influences, affects or shapes this policy, service, function, project or strategy?**

Please add in the text boxes below what feedback / meetings you have attended for each specific protected characteristic

Group	Positive or negative feedback
Age	No specific data collected
Disability	No specific data collected
Race	No specific data collected
Sex	No specific data collected
Gender reassignment	No specific data collected
Sexual orientation	No specific data collected
Religion or belief	No specific data collected
Pregnancy and maternity	No specific data collected
Marriage & civil partnership	No specific data collected
Other excluded groups	No specific data collected

**Q6 - Using the assessments in questions 3, 4 and 5 should a full assessment be carried out on this policy, service, function or strategy?**

yes  No

**PCC staff**-If you have to complete a full EIA please contact the Equalities and diversity team if you require help Tel: 023 9283 4789 or email: [equalities@portsmouthcc.gov.uk](mailto:equalities@portsmouthcc.gov.uk)

**CCG staff**-If you have to complete a full EIA please email: [sehccg.equalityanddiveristy@nhs.net](mailto:sehccg.equalityanddiveristy@nhs.net) if you require help

**Q7 - How have you come to this decision? Summarise your findings and conclusion below**

A full EIA is not required as we know that this amendment will not have a negative impact upon protected groups or indeed the public in general as it will provide greater flexibility for the Licensing Authority to licence vehicles according to its specification and may indeed encourage licence holders to purchase newer vehicles if they have a greater choice arising from increasing age limits for initial licensing from 3 years to 4 years.

**Q8 - Who was involved in the EIA?**

Ross Lee, Principal Licensing Officer

**This EIA has been approved by:** Nickii Humphreys, Licensing Manager

**Contact number:**

023 9283 4604

**Date:**

13 March 2019

**PCC staff-**Please email a copy of your completed EIA to the Equality and diversity team. We will contact you with any comments or queries about your preliminary EIA.

Telephone: 023 9283 4789, Email: [equalities@portsmouthcc.gov.uk](mailto:equalities@portsmouthcc.gov.uk)

**CCG staff-**Please email a copy of your completed EIA to the Equality lead who will contact you with any comments or queries about your preliminary . Email: [sehccg.equalityanddiversity@nhs.net](mailto:sehccg.equalityanddiversity@nhs.net)

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<b>Title of meeting:</b>	LICENSING COMMITTEE
<b>Date of meeting:</b>	22 MARCH 2019
<b>Subject:</b>	REPORT OF THE TASK AND FINISH GROUP ON TAXI AND PRIVATE HIRE VEHICLE LICENSING - UPDATE ON GOVERNMENT RESPONSE
<b>Report by:</b>	DIRECTOR OF CULTURE, LEISURE AND REGULATORY SERVICES
<b>Wards affected:</b>	ALL
<b>Key decision:</b>	No
<b>Full Council decision:</b>	No

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## 1. Purpose of report

- 1.1 The purpose of this report is to inform the Committee about work undertaken by the Task and Finish Group (TFG) on Taxi and Private Hire Vehicle Licensing and the published response by the Government to its recommendations.

## 2. Recommendations

**That the Licensing Committee note the contents of the report.**

## 3. Background

- 3.1 The TFG on Taxi and Private Hire Vehicle Licensing was established in September 2017. Its remit was to consider evidence relating to the adequacy of current taxi and private hire licensing authority powers, as set out in legislation and guidance, and to make recommendations for actions to address any priority issues identified. The findings and recommendations (34 in total) were submitted to the Secretary of State for Transport on 9 July 2018.
- 3.2 The Chair of the TFG, Professor Mohammed Abdel-Haq, states in the foreword to this report that

*"In scoping the work together we were determined, above all, to chart a future which ensured public safety for all, a working environment for those in the trade which guaranteed fair working conditions and whilst maintaining a competitive, dynamic market, preserve the character, integrity and aesthetics of this time-honoured trade".*

3.3 He also highlighted that:

*"It is clear that the status quo whereby taxi and private hire licensing is inconsistent, ineffective and incompatible with the protection of vulnerable people must not be allowed to continue. Alongside other incidents of criminality, the events in Rotherham, Rochdale, Oxford and elsewhere have brought the fundamental flaws in the licensing regime into the sharpest possible focus; these oblige uncompromising determination to make taxis and private hire vehicles safe for all".*

3.4 A copy of this report is attached as **Appendix A**.

3.5 The Government published its response to the TFG on 12 February 2019. The response first sets out a broad summary of the government's position, and the actions it proposes to take. It is then followed by a point-by-point consideration of the report's 34 specific recommendations.

3.6 The response recognises that the TFG report sets out a road-map for the reform of the regulation of the taxi and private hire sector. The response also acknowledges that the TFG, in reaching its conclusions and recommendations, have put the passenger at the heart of its thinking and the Government have committed to take action where needed to ensure a safe and well-functioning sector which meets the needs and expectations of its passengers.

3.7 The response accepts three key measures recommended to achieve a safe service for passengers which are:

- National Minimum Standards;
- National Enforcement Powers; and
- A National Licensing Database.

3.8 A copy of the response document is attached as **Appendix B**.

3.9 The response identifies what legislation the Government proposes to take forward. However, in the short term this will not include a full replacement of the law for private hire and hackney carriages.

#### **4. Reasons for recommendations**

To provide up-to-date information to the Licensing Committee on the potential for changes to the licensing regime for the taxi and private hire trade.

#### **5. Equality impact assessment (EIA)**

No EIA required as this report is for noting purposes only.

**6. Legal Implications**

The legal implications are embodied within the report.

**7. Finance Comments**

No financial implications arising from the publication of the document.

.....  
Signed by:

**Appendices:**

- Appendix A - TFG -Taxi and Private Hire Report**
- Appendix B - Government Response to TFG Report**

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by ..... on .....

.....  
Signed by:

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# Taxi and Private Hire Vehicle Licensing

## Steps towards a safer and more robust system

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# Acknowledgement

In preparing this study and throughout the work of the Task and Finish Group the expertise, endeavour and understanding of its members has been exceptional.

Whilst preparing and writing this report I have been supported throughout this process by the officials at the Department for Transport; without exaggeration I conclude that none of what has been achieved would have been possible without the support of these officials who personify all that is admired about the British Civil Service.

I would like to wholeheartedly thank all those who have shared with the Group their valuable knowledge and experience in the trade and its regulation, and their views on the way forward.



**Professor Mohammed Abdel-Haq**

Chairman, the Task and Finish Group on Taxi and Private Hire Vehicle Licensing



# Foreword

This report is about public wellbeing. Its genesis and mission were framed by the vision of the then Minister of State at the Department of Transport, the Rt. Hon. John Hayes CBE MP. In commissioning me to lead this vital work, he made clear that in his view the current regulatory regime for the taxi and private hire vehicle (PHV) sector is no longer fit for purpose.

In scoping the work together we were determined, above all, to chart a future which ensured public safety for all, a working environment for those in the trade which guaranteed fair working conditions and whilst maintaining a competitive, dynamic market, preserve the character, integrity and aesthetics of this time-honoured trade.

It is clear that the status quo whereby taxi and PHV licensing is inconsistent, ineffective and incompatible with the protection of vulnerable people must not be allowed to continue. Alongside other incidents of criminality, the events in Rotherham, Rochdale, Oxford and elsewhere have brought the fundamental flaws in the licensing regime into the sharpest possible focus; these oblige uncompromising determination to make taxis and PHVs safe for all.

Our efforts should also be informed by the Prime Minister's determination that the economy must work for all, and that those who, despite their hard work and skill, are 'just about managing' to provide for their families, must not become victims of the 'sweated economy' by those who accept little or no regard to the notion of social responsibility.

I have drawn on the insight of those who know best, and worked with a first-class group of colleagues. It is their sharp minds, commitment, professionalism and cool heads that have enabled the critical thinking and discussions that underpin my recommendations. Members of the Group have strongly held, sometimes polar opposite opinions and, while this means that it has not always been possible to reach a consensus, I am of no doubt that all have the best interests of passengers and the trade foremost in their thoughts. I am grateful to them all.

I learned from the collective wisdom of the Group that there is no single solution to the challenges facing the taxi and PHV sector. So, each aspect of this study and the consequent recommendation is dependent on others. The report aims to produce a holistic ecosystem and solution to the problems it was devised to address and, as a result, to set out a comprehensive platform for the changes necessary to protect and promote the public interests in the common good.

I would like to make it clear that it is in the public interest to allow, indeed encourage, competitive markets. The arrival of new businesses and new modes of business are the healthy expressions of a market economy. So, provided that public safety and employee working conditions are assured and that appropriate emphasis is placed on congestion, air quality and similar concerns, market change can be welcome.

Licensing conditions should be demanding, arguably to a greater degree than at present, but should not, in effect, prohibit market entry for new businesses.

As my task is now complete, the onus falls to the Secretary of State for Transport Chris Grayling, MP and his Ministers, in particular Nusrat Ghani, and Parliamentarians to take the ideas of the report further and to begin to craft the legislation that it will, in some instances, require. In other instances, I trust that Parliament and the Department will lead the cultural change which is necessary to ensure that passengers, workers, operators, and neighbouring authorities are treated fairly. I look forward to the Government's prompt response to this report in order to maintain the momentum for improvement. Undue delay would risk public safety.

**Professor Mohammed Abdel-Haq**

Chairman, the Task and Finish Group on Taxi and Private Hire Vehicle Licensing.

# 1. List of Recommendations

## Recommendation 1

Notwithstanding the specific recommendations made below, taxi and PHV legislation should be urgently revised to provide a safe, clear and up to date structure that can effectively regulate the two-tier trade as it is now.

## Recommendation 2

Government should legislate for national minimum standards for taxi and PHV licensing - for drivers, vehicles and operators (**see recommendation 6**). The national minimum standards that relate to the personal safety of passengers must be set at a level to ensure a high minimum safety standard across every authority in England.

Government must convene a panel of regulators, passenger safety groups and operator representatives to determine the national minimum safety standards. Licensing authorities should, however, be able to set additional higher standards in safety and all other aspects depending on the requirements of the local areas if they wish to do so.

## Recommendation 3

Government should urgently update its Best Practice Guidance. To achieve greater consistency in advance of national minimum standards, licensing authorities should only deviate from the recommendations in exceptional circumstances. In this event licensing authorities should publish the rationale for this decision.

Where aspects of licensing are not covered by guidance nor national minimum standards, or where there is a desire to go above and beyond the national minimum standard, licensing authorities should aspire to collaborate with adjoining areas to reduce variations in driver, vehicle and operator requirements. Such action is particularly, but not exclusively, important within city regions.

## Recommendation 4

In the short-term, large urban areas, notably those that have metro mayors, should emulate the model of licensing which currently exists in London and be combined into one licensing area. In non-metropolitan areas collaboration and joint working between smaller authorities should become the norm.

Government having encouraged such joint working to build capacity and effectiveness, working with the Local Government Association, should review progress in non-metropolitan areas over the next three years.

### **Recommendation 5**

As the law stands, 'plying for hire' is difficult to prove and requires significant enforcement resources. Technological advancement has blurred the distinction between the two trades.

Government should introduce a statutory definition of both 'plying for hire' and 'pre-booked' in order to maintain the two-tier system. This definition should include reviewing the use of technology and vehicle 'clustering' as well as ensuring taxis retain the sole right to be hailed on streets or at ranks.

Government should convene a panel of regulatory experts to explore and draft the definition.

### **Recommendation 6**

Government should require companies that act as intermediaries between passengers and taxi drivers to meet the same licensing requirements and obligations as PHV operators, as this may provide additional safety for passengers (e.g. though greater traceability).

### **Recommendation 7**

Central Government and licensing authorities should 'level the playing field' by mitigating additional costs faced by the trade where a wider social benefit is provided – for example, where a wheelchair accessible and/or zero emission capable vehicle is made available.

### **Recommendation 8**

Government should legislate to allow local licensing authorities, where a need is proven through a public interest test, to set a cap on the number of taxi and PHVs they license. This can help authorities to solve challenges around congestion, air quality and parking and ensure appropriate provision of taxi and private hire services for passengers, while maintaining drivers' working conditions.

### **Recommendation 9**

All licensing authorities should use their existing powers to make it a condition of licensing that drivers cooperate with requests from authorised compliance officers in other areas. Where a driver fails to comply with this requirement enforcement action should be taken as if the driver has failed to comply with the same request from an officer of the issuing authority.

### **Recommendation 10**

Legislation should be brought forward to enable licensing authorities to carry out enforcement and compliance checks and take appropriate action against any taxi or PHV in their area that is in breach of national minimum standards (**recommendation 2**) or the requirement that all taxi and PHV journeys should start and/or end within the area that issued the relevant licences (**recommendation 11**).

**Recommendation 11**

Government should legislate that all taxi and PHV journeys should start and/or end within the area for which the driver, vehicle and operator (PHV and taxi – see **recommendation 6**) are licensed. Appropriate measures should be in place to allow specialist services such as chauffeur and disability transport services to continue to operate cross border.

Operators should not be restricted from applying for and holding licences with multiple authorities, subject to them meeting both national standards and any additional requirements imposed by the relevant licensing authority.

**Recommendation 12**

Licensing authorities should ensure that their licensing, administration and enforcement functions are adequately resourced, setting fees at an appropriate level to enable this.

**Recommendation 13**

Legislation should be introduced by the Government as a matter of urgency to enable Transport for London to regulate the operation of pedicabs in London.

**Recommendation 14**

The Department for Transport and Transport for London should work together to enable the issue of Fixed Penalty Notices for both minor taxi and PHV compliance failings. The Department for Transport should introduce legislation to provide all licensing authorities with the same powers.

**Recommendation 15**

All ridesharing services should explicitly gain the informed consent of passengers at the time of a booking and commencement of a journey.

**Recommendation 16**

The Department for Transport must as a matter of urgency press ahead with consultation on a draft of its Statutory Guidance to local licensing authorities. The guidance must be explicit in its expectations of what licensing authorities should be doing to safeguard vulnerable passengers. The effectiveness of the guidance must be monitored in advance of legislation on national minimum standards.

**Recommendation 17**

In the interests of passenger safety, particularly in the light of events in towns and cities like Rochdale, Oxford, Newcastle and Rotherham, all licensed vehicles must be fitted with CCTV (visual and audio) subject to strict data protection measures. Licensing authorities must use their existing power to mandate this ahead of inclusion in national minimum standards.

To support greater consistency in licensing, potentially reduce costs and assist greater out of area compliance, the Government must set out in guidance the standards and specifications of CCTV systems for use in taxis and PHVs. These must then be introduced on a mandatory basis as part of national minimum standards.

**Recommendation 18**

As Government and local authorities would benefit from a reduction in crime in licensed vehicles both should consider ways in which the costs to small businesses of installing CCTV can be mitigated.

**Recommendation 19**

National standards must set requirements to assist the public in distinguishing between taxis, PHVs and unlicensed vehicles. These should require drivers to have on display (e.g. a clearly visible badge or arm-band providing) relevant details to assist the passengers in identifying that they are appropriately licensed e.g. photograph of the driver and licence type i.e. immediate hire or pre-booked only.

All PHVs must be required to provide information to passengers including driver photo ID and the vehicle licence number, in advance of a journey. This would enable all passengers to share information with others in advance of their journey. For passengers who cannot receive the relevant information via digital means this information should be available through other means before passengers get into the vehicle.

**Recommendation 20**

All drivers must be subject to enhanced DBS and barred lists checks. Licensing authorities should use their existing power to mandate this ahead of inclusion as part of national minimum standards.

All licensing authorities must require drivers to subscribe to the DBS update service and DBS checks should must be carried out at a minimum of every six months. Licensing authorities must use their existing power to mandate this ahead of inclusion as part of national standards.

**Recommendation 21**

Government must issue guidance, as a matter of urgency, that clearly specifies convictions that it considers should be grounds for refusal or revocation of driver licences and the period for which these exclusions should apply. Licensing authorities must align their existing policies to this ahead of inclusion in national minimum standards.

### **Recommendation 22**

The Quality Assurance Framework and Common Law Police Disclosure Provisions must be reviewed to ensure as much relevant information of conduct as well as crimes, by taxi and PHV drivers (and applicants) is disclosed ensuring that licensing authorities are informed immediately of any relevant incidents.

### **Recommendation 23**

All licensing authorities must use the National Anti-Fraud Network (NAFN) register of drivers who have been refused or had revoked taxi or PHV driver licence. All those cases must be recorded, and the database checked for all licence applications and renewals. Licensing authorities must record the reasons for any refusal, suspension or revocation and provide those to other authorities as appropriate. The Government must, as a matter of urgency, bring forward legislation to mandate this alongside a national licensing database (**recommendation 24**).

### **Recommendation 24**

As a matter of urgency Government must establish a mandatory national database of all licensed taxi and PHV drivers, vehicles and operators, to support stronger enforcement.

### **Recommendation 25**

Licensing authorities must use their existing powers to require all drivers to undertake safeguarding/child sexual abuse and exploitation awareness training including the positive role that taxi/PHV drivers can play in spotting and reporting signs of abuse and neglect of vulnerable passengers. This requirement must form part of future national minimum standards.

### **Recommendation 26**

All individuals involved in the licensing decision making process (officials and councillors) must be obliged to undertake appropriate training. The content of the training must form part of national minimum standards.

### **Recommendation 27**

Government must review the assessment process of passenger carrying vehicle (PCV) licensed drivers and/or consideration of the appropriate boundary between taxis/PHVs and public service vehicles (PSVs).

### **Recommendation 28**

Licensing authorities must require that all drivers are able to communicate **in English** orally and in writing to a standard that is required to fulfil their duties, **including in emergency and other challenging situations.**

**Recommendation 29**

All licensing authorities should use their existing powers to require that the taxi and PHV drivers they license undergo disability quality and awareness training. This should be mandated in national minimum standards.

**Recommendation 30**

Licensing authorities that have low levels of wheelchair accessible vehicles (WAVs) in their taxi and PHV fleet should ascertain if there is unmet demand for these vehicles. In areas with unmet demand licensing authorities should consider how existing powers could be used to address this, including making it mandatory to have a minimum number of their fleet that are WAVs. As a matter of urgency, the Government's Best Practice Guidance should be revised to make appropriate recommendations to support this objective.

**Recommendation 31**

Licensing authorities which have not already done so should set up lists of wheelchair accessible vehicles (WAVs) in compliance with s.167 of the Equality Act 2010, to ensure that passengers receive the protections which this provides.

**Recommendation 32**

Licensing authorities should use their existing enforcement powers to take strong action where disability access refusals are reported, to deter future cases. They should also ensure their systems and processes make it as easy as possible to report disability access refusals.

**Recommendation 33**

The low pay and exploitation of some, but not all, drivers is a source of concern. Licensing authorities should take into account any evidence of a person or business flouting employment law, and with it the integrity of the National Living Wage, as part of their test of whether that person or business is "fit and proper" to be a PHV or taxi operator.

**Recommendation 34**

Government should urgently review the evidence and case for restricting the number of hours that taxi and PHV drivers can drive, on the same safety grounds that restrict hours for bus and lorry drivers.



## 2. Group membership and task

### Introduction

- 1 The Task and Finish Group was brought together between July and August 2017 by the then Minister of State for Transport the Rt Hon John Hayes CBE MP, and met for the first time in September 2017.
- 2 The Group's objectives were confirmed in the Terms of Reference agreed by its members. The Group was tasked with:
  - Considering evidence relating to the adequacy of current taxi and PHV licensing authority powers, as set out in legislation and guidance, making recommendations for actions to address any priority issues identified. Specifically:
  - Identifying the current priority concerns regarding the regulation of the sector, based on evidence of impact and scale across England;
  - Considering, in particular, the adequacy of measures in the licensing system to address those issues;
  - Considering whether it would advise the Government to accept the recommendations made in the Law Commission's May 2014 report on taxi and PHV legislative reform relevant to the issues, and;
  - Making specific and prioritised recommendations, legislative and non-legislative, for action to address identified and evidenced issues.

#### **Chairman of the Task and Finish Group**

Mohammed Abdel-Haq is a professor in Banking and a Director of the Centre for Islamic Finance at the University of Bolton. Prof Abdel-Haq has a wealth of practical experience in a long career in banking in major financial institutions including Citi Bank, Deutsche Bank, and HSBC. He is the CEO of Oakstone Merchant Bank, Director of the Centre for Opposition Studies at the University of Bolton.

Professor Abdel-Haq was a member of the Council of the Royal Institute for International Affairs (Chatham House) from 2011-2014. In 2011 Prof Abdel-Haq was appointed Chairman of the UK Ministerial Advisory Group on Extremism in Universities and FE Colleges. He was Vice President of The Disability Partnership. Several of his articles on various issues related to public life have been published. Prof Abdel-Haq is a Freeman of the City of Oxford, a member of Amnesty International, a Fellow of the Royal Society of Arts. Prof Abdel-Haq was a Prospective Parliamentary Candidate for Swansea West in the 2005 General Election.

- 3 Membership of the Task and Finish Group:
  - Helen Chapman - Director of Licensing, Regulation & Charging, Transport for London
  - Rt Hon Frank Field MP - - Member of Parliament for Birkenhead
  - Saskia Garner - Policy Officer, Personal Safety, the Suzy Lamplugh Trust
  - Ellie Greenwood - Senior Adviser (Regulation), Local Government Association
  - Dr Michael Grenfell - Executive Director, Enforcement, Competition and Markets Authority
  - Anne Main MP - Member of Parliament for St Albans
  - Steve McNamara - General Secretary, Licensed Taxi Drivers' Association
  - Mick Rix - National Officer for Transport and Distribution, GMB union
  - Donna Short - Director, National Private Hire and Taxi Association
  - Steve Wright MBE - Chairman, Licensed Private Hire Car Association
- 4 To ensure that the Group heard views from a wide cross-section of the sector, it sought written evidence from a range of stakeholders, and further invited a selection of organisations to give oral evidence to the Group. The Group received submissions from 39 organisations and heard evidence from 11.
- 5 Secretariat functions for the Group were provided by officials in the Department for Transport.
- 6 Group members were each able to submit a short summary of their views of this report if they wished to do so; those summaries are attached at Annex A.

# 3. Market function and regulation

## Current regulation

- 3.1 The UK Government is responsible for setting the regulatory structure within which local licensing authorities in England license the taxi and PHV trade. Regulation of taxi drivers in Scotland, Wales and Northern Ireland is devolved to the Scottish Government, Welsh Government and Northern Irish Assembly respectively. This report is focussed on the sector in England only.
- 3.2 Taxi and PHV licensing in England is decentralised; there are 293 licensing authorities. The national legislation is enabling in its nature, giving licensing authorities the discretion to set standards for drivers, vehicles and PHV operators that they deem to be appropriate. There are significant variations in both policy and practice between licensing authorities.

## A changing industry

- 3.3 The Task and Finish Group heard from many stakeholders about the age of the legislation that underpins taxi and PHV licensing, and how it is no longer fit for the modern world. Taxi licensing in England outside Greater London rests on the Town Police Clauses Act of 1847, which of course pre-dates the motor car. PHV licensing outside Greater London rests on the Local Government (Miscellaneous Provisions) Act 1976; significantly less old, but still pre-dating the mobile phone and the internet, both of which are increasingly important means of booking taxis and PHVs. Greater London PHV legislation is newer still, passed in 1998, but this still pre-dates near universal mobile phone use, and smartphone apps.<sup>1</sup>
- 3.4 Legislation has been out of date for many years now, but it seems that the rise of smartphone booking apps, in particular, has thrown the need for an urgent update on legislation into sharp focus. PHV legislation was written for a world where radio signals were unlikely to reach outside the licensing authority area, and people had to go to a local minicab office, or telephone it using a landline, to book a car. The new way of using apps to book PHVs has an ease (as well as safety features and usually value for money) that has proved very popular with passengers, but the law was not written with such technology in mind and so it can be hard to apply to what is happening in reality.
- 3.5 The effectiveness of the highly localised taxi and PHV licensing system has become unsustainable in the face of new internet and smartphone app-based technology and the public's widespread adoption of those methods of arranging taxi and PHV trips. Government, both central and local, should acknowledge such changes and manage

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<sup>1</sup> For simplicity, this report does not describe the separate legislation that licenses PHVs in Plymouth, the Plymouth City Council Act 1975. For the level of detail in this report, it is sufficient to say that its provisions are broadly the same as those in the Local Government (Miscellaneous Provisions) Act 1976.

them to ensure that alongside the benefits being achieved, any negatives are minimised for passengers, the trade and wider communities.

- 3.6 We should also recognise that the changes in how the sector works are being driven by public demand. It is unacceptable to require the public to restrict its reasonable demands to support an outdated framework. It is the market and regulation that must adapt while maintaining high standards.
- 3.7 This report makes a number of specific recommendations about what Government and licensing authorities should do with their taxi and PHV powers, but there is an urgent overarching need to update legislation to reflect much better the reality of the way the trade is operating today. The Government implicitly acknowledged as much by asking the Law Commission to review the legislation in 2011, and it is deeply regrettable that the Government has not yet responded to the report and draft bill which the Commission subsequently published in 2014. Had the Government acted sooner the concerns that led to the formation of this Group may have been avoided.

### Recommendation 1

Notwithstanding the specific recommendations made below, taxi and PHV legislation should be urgently revised to provide a safe, clear and up to date structure that can effectively regulate the two-tier trade as it is now.

- 3.8 Regardless of technological change, the Government should legislate for national minimum standards for the licensing of drivers, vehicles and operators. These minimum standards should be set at a high but still proportionate level that would in practice reduce the need (actual or perceived) for individual authorities to add their own further checks or conditions - **'minimum' should not be understood or treated as meaning 'minimal'**.
- 3.9 The current level of discretion given to local licensing authorities has resulted in very significant and unacceptable variations in standards. Failures by some authorities to uphold high standards for the assessment of drivers, for example, have contributed to the involvement of the taxi and PHV trade in well-documented sexual abuse and exploitation of hundreds of children.
- 3.10 Significant variation in standards and the application of these in the licensing of drivers provides an opportunity for individuals to 'forum shop' for licences. Although factors such as service levels and total licensing cost (i.e. inclusive of fees and training requirements) may provide the motivation for most individuals that seek to obtain a licence from an authority other than that in which they intend to predominantly work, this also enables individuals who would not be deemed 'fit and proper' by one authority to potentially obtain a licence elsewhere. The Government has a responsibility to set a national framework that enables safe and effective licensing, and local authorities have a wider responsibility towards all people both within and beyond their boundaries. Better information sharing amongst authorities is also essential, and this is discussed further in Chapter Four.
- 3.11 The Law Commission recommended that all PHV standards should be set at a national level without the ability for licensing authorities to add additional local conditions, but that taxi standards should be 'minimum standards' which could be supplemented locally. This, in the Commission's view, reflected the more localised

nature of taxi markets, particularly the ability to be hired immediately on the street and the requirement for local knowledge that this brings.

- 3.12 However, other recommendations made in this report would restore the link between licensing authorities and PHVs operating in their area and so national minimum standards are more appropriate in this framework. Taxis and PHVs serve a range of very different localities across England, and local licensing authorities should not be prevented from applying extra conditions to their drivers or vehicles where there is an evidenced need. An example of this might be vehicle conditions, to help address local air quality challenges.

### **Recommendation 2**

Government should legislate for national minimum standards for taxi and PHV licensing - for drivers, vehicles and operators (**see recommendation 6**). The national minimum standards that relate to the personal safety of passengers must be set at a level to ensure a high minimum safety standard across every authority in England.

Government must convene a panel of regulators, passenger safety groups and operator representatives to determine the national minimum safety standards. Licensing authorities should, however, be able to set additional higher standards in safety and all other aspects depending on the requirements of the local areas if they wish to do so.

- 3.13 In advance of national minimum standards, the Department for Transport's Best Practice Guidance should be updated; both this and the forthcoming Statutory Guidance should be more directive, to make clearer the requirements and standards that the Government considers are necessary.
- 3.14 All licensing authorities should adopt the Department's recommendations, which should be viewed as the pre-cursors to national minimum standards. Early adoption of these recommendations will therefore assist in the transition for the industry. It will also assist joint working by licensing authorities and in particular support stronger cross-border enforcement activity. The Task and Finish Group heard about current and developing best practice in areas such as Merseyside, West Yorkshire and Greater Manchester. Common standards are the keystone of effective enforcement within regions, giving enforcement officers one set of rules to check drivers and vehicles against, regardless of which authority issued the licences.
- 3.15 There are few barriers that prevent the licensing of operators and drivers in multiple areas, but this is not true for the licensing of vehicles, as requirements in different areas may be contradictory. These variations can include colour; livery; vehicle age restriction both at first licensing and maximum age; whether tinted windows are permissible; seat configuration; engine size (or if electric vehicles can be licensed); and visible signage/ID conditions. It is in the interest of licensing authorities (ease of enforcement), passengers (increased availability) and the trade (increased flexibility to meet demand) for multiple licensing to be possible.

### Recommendation 3

Government should urgently update its Best Practice Guidance. To achieve greater consistency in advance of national minimum standards, licensing authorities should only deviate from the recommendations after very careful consideration and in exceptional circumstances. In this event licensing authorities should publish the rationale for this decision.

Where aspects of licensing are not covered by guidance nor national minimum standards, or where there is a desire to go above and beyond the national minimum standard, licensing authorities should aspire to collaborate with adjoining areas to reduce variations in driver, vehicle and operator requirements. Such action is particularly, but not exclusively, important within city regions.

- 3.16 In the long term, greater consistency in licensing that will result from national minimum standards raises the question of the appropriate 'level' of taxi and PHV licensing - that is, which administrative level should undertake this function.
- 3.17 The licensing regime should be rationalised. People are increasingly mobile and the licensing regime should reflect the way in which the public use taxi and PHV services. There may be significant benefits to raising the administrative level of taxi/PHV licensing in some areas, whether as part of wider reform or as a distinct proposal.
- 3.18 An example of the benefits that may accrue from raising the licensing level can be seen in the way the system operates in Greater London in comparison to other large urban areas. Transport for London licenses 108,709 vehicles and 142,199 drivers. By way of contrast, Greater Manchester has 10 authorities licensing a total of 13,392 vehicles and 18,085 drivers<sup>2</sup>.
- 3.19 Without Transport for London, London's 33 local authority districts would be able to set its own policies, requirements, taxi fare rates etc. In addition, each of these would have to replicate the associated administration, likely resulting in increased licensing costs which may ultimately increase passenger fares. Importantly, this would also result in immense enforcement problems in the absence of agreements between the districts to enable their enforcement officers to take action against each other's licensees.
- 3.20 The variance in the costs of obtaining licences (fees and to meet requirements) in different licensing areas within one conurbation can be considerable, by matters of hundreds of pounds. The example of licensing in Greater Manchester was highlighted in the Urban Transport Group's report 'Issues and options for city region taxi and private hire vehicle policy'<sup>3</sup> (see fig. 1). The time and cost it takes to obtain a licence can also vary greatly and influence licensing behaviour, exacerbating the number of 'out-of-area' drivers. It is unsurprising that a driver, who is indeed fit and proper by any measure, may still choose to license in a neighbouring authority even if the costs are higher if they will get their licence in a few months rather than two years, and therefore start earning much sooner.
- 3.21 It has not been possible within the timeframe of the Task and Finish Group to make a recommendation as to precisely which authorities (and how many) should be

<sup>2</sup> Data as of 31 March 2017 - <https://www.gov.uk/government/statistics/taxi-and-private-hire-vehicles-statistics-england-2017>

<sup>3</sup> [http://www.urbantransportgroup.org/system/files/general-docs/UTG%20Taxi%20and%20PHV%20Report\\_FINALforweb.pdf](http://www.urbantransportgroup.org/system/files/general-docs/UTG%20Taxi%20and%20PHV%20Report_FINALforweb.pdf)

responsible for taxi/PHV licensing across the country. However, direct electoral accountability must be maintained to ensure that the needs of all residents in any expanded licensing areas are considered.

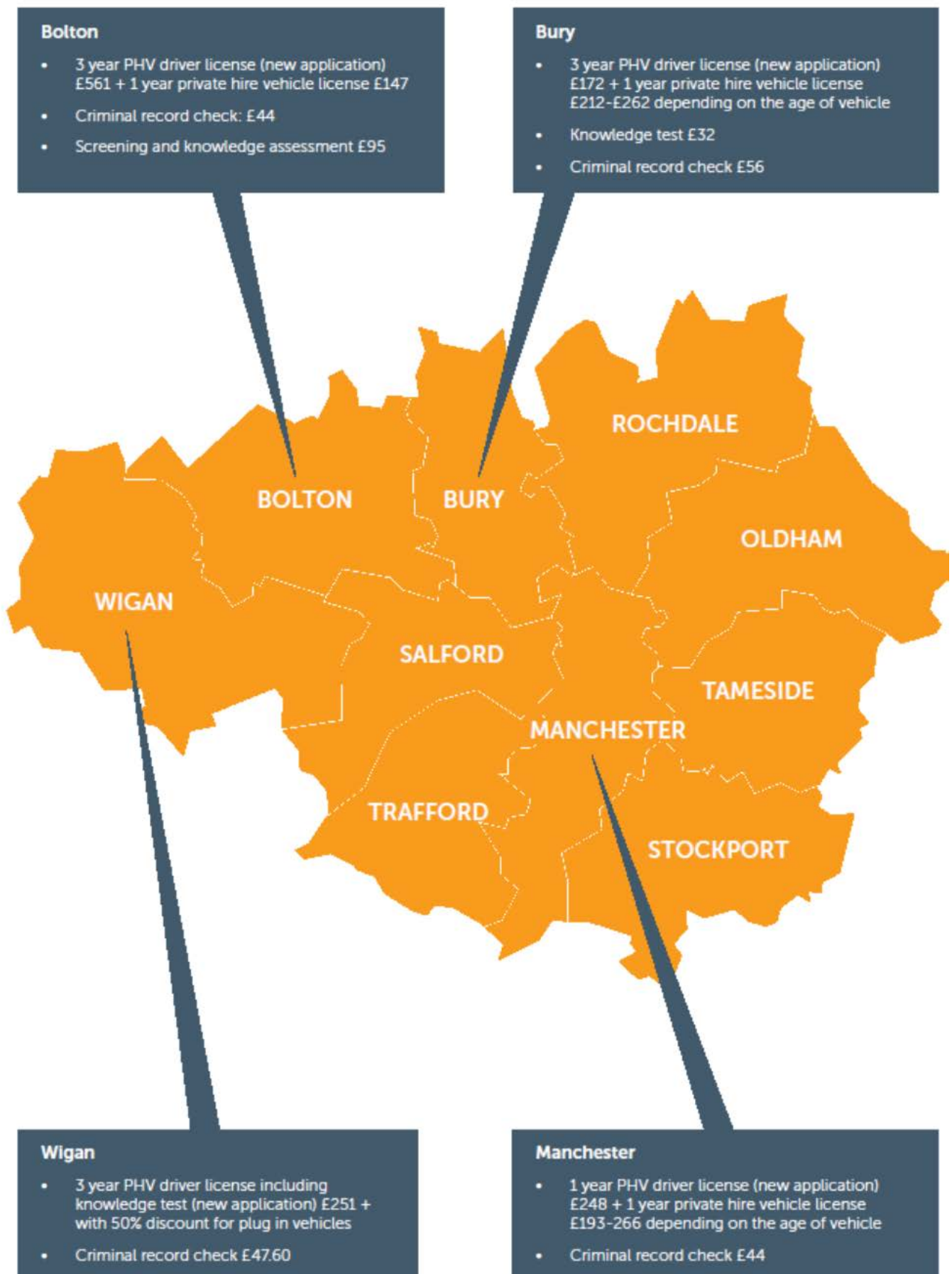
- 3.22 There seems a clear case that large urban areas, particularly those with Metro Mayors, should each be covered by one taxi and PHV licensing authority. Outside those areas, Government should strongly encourage much greater collaboration and joint working between neighbouring authorities, and subsequently review over time whether formal consolidation of more licensing areas is needed.
- 3.23 Where taxi licensing is concerned, larger licensing authorities areas could still retain more localised requirements of taxi regulation, such as quantity restrictions, fare setting, local knowledge testing at the same granular level as now (if deemed beneficial) through the use of taxi zones as are already used in a number of licensing authority areas.

**Recommendation 4**

In the short term, large urban areas, notably those that have metro mayors, should emulate the model of licensing which currently exists in London and be combined into one licensing area. In non-metropolitan areas collaboration and joint working between smaller authorities should become the norm.

Government having encouraged such joint working to build capacity and effectiveness, working with the Local Government Association, should review progress in non-metropolitan areas over the next three years

Figure 1 - Licensing in Greater Manchester <sup>4</sup>



<sup>4</sup> <http://www.urbantransportgroup.org/resources/types/reports/ Taxi issues and options-city-region-taxi-and-private-hire-vehicle-policy>



## The two tier system

- 3.24 Only taxis are available for immediate hire, be it hailed in the street or at a designated rank. Nevertheless, the potentially very short gap between booking a PHV via an app and getting in the vehicle, may appear similar to members of the public to getting a taxi. Indeed the speed and convenience of using an app might be an easier and more attractive option in some circumstances than hailing a taxi.
- 3.25 This increased ease and speed of PHV hiring has significantly eroded the differentiation in service and the potential additional earnings that taxis' ability to ply for hire can provide. The regulation of the sector has not adapted to reflect this erosion. The Task and Finish Group unanimously agreed that there is still merit in the two-tier taxi and PHV system. For example, the setting of maximum fare tariffs for taxis provides an important element of passenger protection, as people are not able to research fares with alternative providers when hiring immediately. This can protect both visitors to an area, who may have no notion of the distance of their journey and what this might reasonably cost, and also local residents who are protected from the charging of excessively high fares when demand is high. At the same time, the unregulated fares of PHVs enable price competition to the benefit of many consumers.
- 3.26 The Group received many submissions which requested that a statutory definition of 'plying for hire' and 'pre-booked' should be introduced to make clearer the different services that taxis and PHVs can provide.
- 3.27 The Law Commission deliberated whether 'plying for hire' should be defined as part of its work, and ultimately recommended that different terms should be defined. In my view, if we are to be supportive of the two-tier system, it is inevitable that we must be able to effectively distinguish those two tiers. Defining 'plying for hire' is essential to that.

### **Recommendation 5**

As the law stands, 'plying for hire' is difficult to prove and requires significant enforcement resources. Technological advancement has blurred the distinction between the two trades.

Government should introduce a statutory definition of both 'plying for hire' and 'pre-booked' in order to maintain the two-tier system. This definition should include reviewing the use of technology and vehicle 'clustering' as well as ensuring taxis retain the sole right to be hailed on streets or at ranks.

Government should convene a panel of regulatory experts to explore and draft the definition.

- 3.28 Taxi 'radio circuits' or taxi smart phone apps undertake a similar function as PHV operators but are not subjected to a 'fit and proper test' as they do not require a licence. PHV operators are under an obligation to ensure that the drivers and vehicles used are licensed by the same authority and that vehicles are insured and in a suitable condition.
- 3.29 A freedom of information request found that in in the 12-month period running from 08 January 2016 to 07 January 2017, 1,290 Transport for London licensed taxis were reported for not having a second MOT test, six months from the date the taxi licence

was granted. However, it is unknown whether any of these vehicles were used for 'taxi radio circuit' work. Transport for London's data for the period April to December 2017 indicated that 27.1% of PHVs and 35.8% of taxis stopped were non-compliant<sup>5</sup>. In both cases, the total number non-compliant vehicles may be higher as these vehicles were identified as a result of 'on-street' enforcement.

- 3.30 It is true, of course, that unlike PHVs where there must be an operator to take a booking for the transaction to be legal, taxis are able to ply for hire. The booking recording function of a PHV operator evidences that a journey has been pre-booked and is essential in ensuring compliance and preventing a PHV from working illegally as a taxi. However, data from Transport for London's Black cabs and Minicabs Customer Satisfaction Survey (Q3 2016/17) evidence that a decreasing proportion of taxi journeys are engaged by hailing or at a rank, down from 83% in 2013 to 66% in 2016. This trend suggests that it is now appropriate for these intermediaries to be regulated in the same way as PHV operators are.

### **Recommendation 6**

Government should require companies that act as intermediaries between passengers and taxi drivers to meet the same licensing requirements and obligations as PHV operators, as this may provide additional safety for passengers (e.g. though greater traceability).

- 3.31 Central Government and local regulators must acknowledge that new technology has fundamentally changed the market and act if the two-tier system is to remain viable. The competition between taxis and PHVs has increased, but taxis are often subject to additional regulation and, where purpose built vehicles are required, significantly higher costs than their PHV counterparts. If the benefits of a two tier system (e.g. there is a higher proportion of wheelchair accessible vehicles (WAVs) in the taxi fleet) are to be maintained, regulators should consider ways to support the taxi trade. The way to do this is not by 'punishing' the PHV trade, but by reducing the additional cost burden that WAV owners face.
- 3.32 Central Government has already recognised the different costs the two sectors can face; the maximum Plug-in-Taxi Grant (for the purchase of wheelchair accessible zero-emission capable (ZEC) purpose-built taxis) is £7,500, compared to the £4,500 maximum Plug-in-Car Grant available for other vehicles; this kind of approach should be explored further. Government and licensing authorities should explore additional financial assistance that could be provided to off-set the additional costs of WAV and/or ZEC vehicles.
- 3.33 There are various mechanisms that could encourage more rapid adoption of ZEC vehicles in area where air quality is or may become an issue; Transport for London's delicensing scheme, for example, provides a payment of up to £5,000 to delicense older (10+ years old) vehicles. All new taxis licensed by Transport for London must now be ZEC.
- 3.34 Taxis, particularly in London, are perceived by the public as reliable "work horses" on the roads for long hours every day. This perception could be at the forefront of changing opinions and attitudes towards electric vehicles, in general, and specifically

<sup>5</sup> <https://tfl.gov.uk/cdn/static/cms/documents/phv-licensing-compliance-and-enforcement-january-2018.pdf>

as viable options for commercial and small goods vehicles. The wider benefits of supporting drivers to get such vehicles on the roads could be considerable.

- 3.35 Funding could be allocated to subsidise a tiered taxi and PHV licensing structure that exempts or reduces fees for zero emission capable vehicles and/or those which are wheelchair accessible. This would assist those who make the additional investment to use wheelchair and/or accessible vehicles such as the 'black cab' and reflect the additional benefits these would provide the public.

**Recommendation 7**

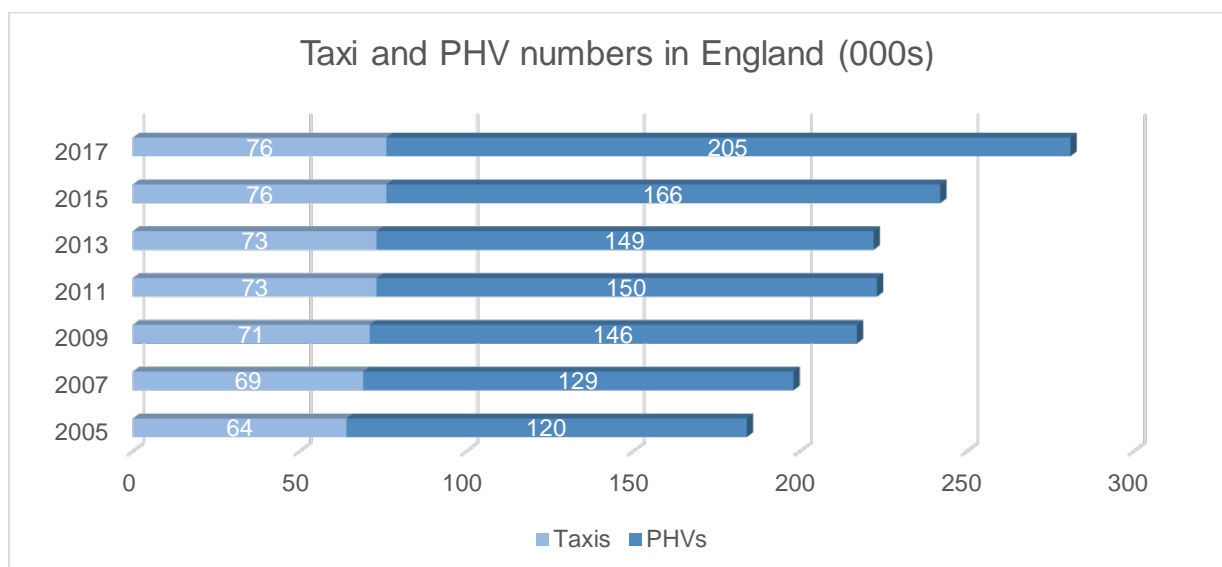
Central Government and licensing authorities should 'level the playing field' by mitigating additional costs faced by the trade where a wider social benefit is provided – for example, where a wheelchair accessible and/or zero emission capable vehicle is made available.

**A growing industry**

- 3.36 The sector has seen rapid growth in recent years. The total number of licensed taxis and PHVs in England reached record levels in 2017, increasing by 26% since 2011 to 281,000<sup>6</sup>. This growth has not been uniform across the two tiers, but was driven by the 37% increase in PHVs over the period, compared to the 3% increase in taxis. In 2017, 73% of all licensed vehicles in England were PHVs; in 2011 this proportion was 67%.

- 3.37 The increase in licensing numbers is also inconsistent across England; to give just some examples, the number of PHVs licensed by Transport for London increased by 39% between 2011 and 2017 to 87,400; in the same period, the number of PHVs licensed by Wolverhampton City Council increased by 434% to 2,949; but decreased by 37% in Tandridge District Council to just 46.

**Figure 2 - Taxis and PHVs in England (DfT survey 2017)<sup>7</sup>**



<sup>6</sup> <https://www.gov.uk/government/statistics/taxi-and-private-hire-vehicles-statistics-england-2017>

<sup>7</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/61/taxi-private-hire-vehicles-2017.zip](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61/taxi-private-hire-vehicles-2017.zip)

- 3.38 Currently, licensing authorities outside Greater London have the ability to restrict the number of taxis they license. As of 31 March 2017, 90 English authorities do, to balance the supply and demand of services. Legislation does not currently allow PHV licences to be restricted in such a way, and the Group received a number of submissions arguing in favour of changing this.
- 3.39 Granting licensing authorities the power to cap the number of PHVs could give them an extra tool to help reduce levels of congestion in areas where high numbers of PHVs operate and thereby address in part air quality issues. To use the power for those purposes would require a public interest approach, not merely the "unmet demand" test currently applied to allow the limiting of taxi numbers.
- 3.40 There are potential drawbacks to licence restriction, including administrative burden, restriction of competition and restriction of work opportunities for drivers. Carrying out a clear, well evidenced and considered public interest test before a numbers restriction can be applied would enable an authority to weigh up those factors and make a balanced decision.
- 3.41 This matter was considered as part of the Law Commission's review, albeit in the case of taxis rather than PHVs, but their consideration of what a public interest test should include could equally apply to both segments of the trade. Any test should include matters such as:
- the interests of taxi and PHV users, particularly those of disabled people
  - the interests of licensees
  - the need to avoid traffic congestion, and
  - the need to preserve the environment
  - and for taxis, the need to avoid excessive queues at ranks

### **Recommendation 8**

Government should legislate to allow local licensing authorities, where a need is proven through a public interest test, to set a cap on the number of taxi and PHVs they license. This can help authorities to solve challenges around congestion, air quality and parking and ensure appropriate provision of taxi and private hire services for passengers, while maintaining drivers' working conditions.

## Cross-border and out-of-area working

### Background

- 3.42 Although taxis and PHVs are locally licensed, the passenger journeys they can carry out are not restricted solely to their licensed area.

#### **Cross-border / out of area working: a simplified summary**

- **Taxis** can only ply for hire (to be flagged down or hired from a rank) in their licensed area, but can generally undertake pre-booked work anywhere.
- A **PHV** driver, vehicle and operator must all be licensed in the same area for a journey to be carried out legally - but the journey itself does not need to be in that licensed area: e.g. a London-licensed vehicle and driver can be booked through a London-licensed operator to carry out a passenger journey that takes place entirely in St Albans.
- A **PHV** booking can also be sub-contracted: e.g. a St Albans-licensed operator could take a booking, and arrange for another operator to carry it out: this could be another St Albans-licensed operator, or an operator licensed by any other authority, who would need to fulfil the booking using a driver and vehicle licensed by the same authority as they are.

- 3.43 The ability for a PHV journey to take place anywhere, so long as the driver, vehicle and operator are all licensed by the same authority, comes from the original licensing legislation (the 1998 Act for London, and the 1976 Act elsewhere). It was always possible for a PHV operator to sub-contract a booking to an operator licensed in the same area. Greater London operators have always been able to sub-contract bookings to operators in other areas, and that ability was extended to PHV operators outside Greater London by Section 11 of the Deregulation Act 2015.

- 3.44 Although all PHV operators have always been able to accept bookings regardless of the start and end point of a journey, in practice the advertising of their services and the ability of operators to maintain contact with drivers reduced the likelihood of booking requests from distant locations being received.

### The issue

- 3.45 New technology has changed the landscape. The members of the public who use apps for booking PHVs carry with them the ability to request a vehicle anywhere. It is not necessary for the subcontracting process to be undertaken to facilitate the dispatching of an out of area driver to fulfil a booking. An operator could currently, if it chose to, operate nationally on a single licence. It is unlikely that this is what was intended when the legislation was drawn up, and it underlines that it is no longer fit for purpose.
- 3.46 Not all 'cross-border' work is a concern: many journeys will naturally start within one licensing authority and end in another, and the framework should allow this. In areas near to the boundaries of licensing authorities, and particularly in city and urban locations with multiple authorities, there will be high levels of cross-border working. Operators will sometimes fulfil bookings out of their licensing area to reduce dead

mileage, or meet vehicle type requirements (e.g. wheelchair accessible vehicles) when none are available locally. A passenger may have confidence in the safety and quality of a service that a particular operator provides and would prefer to use that favoured operator regardless of the start and/or end points of their journey. This is perhaps more likely in the executive and chauffeur segment of the PHV market.

- 3.47 However, the Group have heard from many sources about the increasing numbers of drivers who now work entirely at (sometimes considerable) distance from the authority that licensed them. The Group saw no evidence of precise numbers but anecdotal evidence is that it is widespread, particularly of drivers licensed by Transport for London but living in cities far away making it highly unlikely that they would travel to London before working. Figure 3 show a map of the home addresses of Transport for London licensed drivers by postcode.
- 3.48 It is difficult for licensing authorities to be effective in monitoring the activities of drivers who are working in this way. The enforcement officers of one authority cannot undertake enforcement action against taxis or PHVs licensed by other authorities. An authority could send its enforcement officers to carry out checks in known 'hot-spots' for its drivers, but while this seems reasonable for an adjoining licensing area, it seems an inefficient solution when the distances involved can be so great. In conjunction with the earlier recommendation on national minimum standards, all licensing authorities should have the powers to take enforcement action against those standards regardless of where a specific driver or vehicle is licensed. So, for example, a Bristol City Council licensing enforcement officer should be able to stop and question any taxi or PHV driving in Bristol regardless of which authority issued the licence. The Group heard evidence that taxis and PHVs can carry passengers across different boundaries and nobody can monitor their compliance or question them. This is simply wrong.

**Recommendation 9**

All licensing authorities should use their existing powers to make it a condition of licensing that drivers cooperate with requests from authorised compliance officers in other areas. Where a driver fails to comply with this requirement enforcement action should be taken as if the driver has failed to comply with the same request from an officer of the issuing authority.

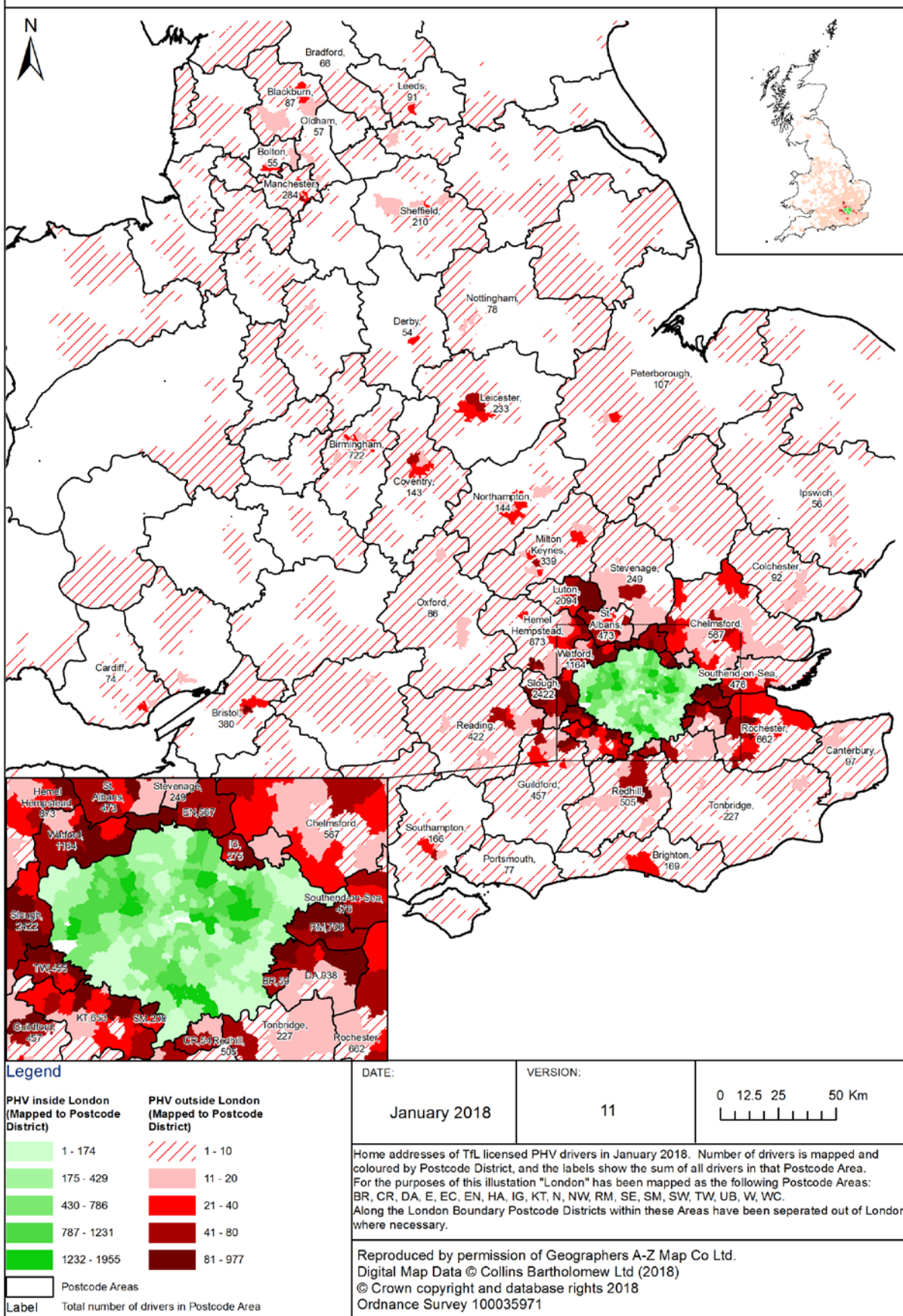
**Recommendation 10**

Legislation should be brought forward to enable licensing authorities to carry out enforcement and compliance checks and take appropriate action against any taxi or PHV in their area that is in breach of national minimum standards (**recommendation 2**) or the requirement that all taxi and PHV journeys should start and/or end within the area that issued the relevant licences (**recommendation 11**).

- 3.49 This report has already recommended that licensing authorities should be able to restrict the number of taxi and PHV licences they issue. However, without a method to prevent vehicles licensed in other areas from working within the "capped" area, any restriction could be easily circumvented by someone licensing elsewhere and simply working remotely within the "capped" area.

**Figure 3 - Home postcodes of active Transport for London licensed PHV drivers, January 2018**

**Figure 4: Prevalence of active London-licensed private hire drivers with home addresses outside London**



- 3.50 A number of submissions to the Group supported a proposed restriction that taxi and PHV journeys should only be permitted where the start and/or end point are within the licensing area of the driver, vehicle and (for PHVs) operator. This was primarily proposed to address concerns over the drivers operating predominantly or exclusively outside of the area in which they are licensed.
- 3.51 That proposal is the most effective on the table. There would be a need to carefully consider any flexibilities that may be needed to allow for specific destinations to continue to be served without disruption (e.g. airports), business models to continue (e.g. in the chauffeur / executive hire sector), or specific services for the disabled to not be disrupted.
- 3.52 All those matters would need careful further work, to reduce the risk of causing damage legitimate business models and passenger choice. The potential negative aspects of the proposed restriction would be greatest in inner-city areas which have many boundaries. Without the reduction of licensing authorities proposed in recommendation 4, and the resulting larger areas, all parties would be detrimentally affected. With small geographic areas and more borders, passengers in these areas may no longer be able to use their favoured PHV operator even if these were the closest but simply as a consequence of being the wrong-side one of the many boundaries.
- 3.53 Rationalising the number of licensing areas in these locations would have benefits in its own right, but would also significantly reduce the negative impacts of a start/end point restriction.

### **Recommendation 11**

Government should legislate that all taxi and PHV journeys should start and/or end within the area for which the driver, vehicle and operator (PHVs and taxis – see **recommendation 6**) are licensed. Appropriate measures should be in place to allow specialist services such as chauffeur and disability transport services to continue to operate cross-border.

Operators should not be restricted from applying for and holding licences with multiple authorities, subject to them meeting both national standards and any additional requirements imposed by the relevant licensing authority.

### **Licensing fee income**

- 3.54 Taxi and PHV licensing fees must be set on a cost recovery basis. They should reflect the true costs of the regime, and should not be used by licensing authorities to make profit or be subsidised by the council tax payer. Licensing authorities should ensure that the administration, compliance and enforcement of taxi and PHV licensing is sufficiently funded to enable an efficient process.
- 3.55 Resourcing functions based on revenue received approaches the issue the wrong way around. Licensing authorities should of course aim to deliver value for money by working efficiently, but that is not the same as at the lowest possible cost. Licensing authorities should first establish what resources are required to adequately administer and enforce the regime and set the licensing fees based on this. For example, the Group received evidence of how the funding of a police intelligence liaison officer can significantly improve cooperation and the flow of information. The resourcing of initiatives such as this may be beneficial but prove prohibitive for some



of the smaller licensing authorities, the restructuring proposed in recommendation 4 would result in authorities operating at a scale which enable them to resource these activities but removing administrative duplication and spreading the costs across a wider pool of licensees.

### **Recommendation 12**

Licensing authorities should ensure that their licensing, administration and enforcement functions are adequately resourced, setting fees at an appropriate level to enable this.

## **Pedicab regulation in London**

- 3.56 One result of having different taxi legislation applicable to London and the rest of England is that pedicabs (sometimes called rickshaws) cannot be regulated in the former. Case law has established that they are classed as "stage carriages" in the context of London taxi law, and therefore out of scope of taxi regulation. While there should be a place for a safe and responsible pedicab trade, particularly in Central London, there has been much justified criticism in recent years of rogue pedicab operators taking advantage of tourists with excessive charges and absence of safety checks.
- 3.57 It is not acceptable that Transport for London is unable to regulate pedicabs to ensure a safe service; the Government announced in 2016 that it would rectify this, and the legislation should be brought forward as soon as possible.

### **Recommendation 13**

Legislation should be introduced by the Government as a matter of urgency to enable Transport for London to regulate the operation of pedicabs in London.

## **Fixed Penalty Notice for minor compliance infringements**

- 3.58 The enforcement of minor licensing infringements can be excessively burdensome on licensing authorities and frustrates their efforts to raise standards within their area. There are important benefits to setting a culture where licensees know that they must adhere to the basics or else face sanctions, freeing up officials and enabling them to focus on more serious matters.
- 3.59 Transport for London has proposed that it should be enabled to issue Fixed Penalty Notices to PHV drivers as it already is to taxi drivers who have breached minor licensing requirements such as failing to wear their badge. Transport for London's view is that this immediate financial deterrent would expand the enforcement options available to them to increase compliance and reduce the need to resort to more expensive measures that ultimately increase licensing fees for the majority of drivers that are compliant. The Local Government Association's initial submission to the working Group also called on licensing authorities to have modern enforcement tools such as Fixed Penalty Notices and stop notices.

3.60 Transport for London has elected not to make use of the powers it currently has to issue Fixed Penalty Notices until it is able to apply the same to PHVs. As stated elsewhere in this report, the two tiers of the trade should as far as practicable be treated equitably. Elsewhere in this report the case has been made for greater consistency in regulation across England in part to underpin national enforcement powers of national standards. Therefore it would be appropriate for the powers to issue Fixed Penalty Notices to be available to all licensing authorities, for both taxis and PHVs.

#### **Recommendation 14**

The Department for Transport and Transport for London should work together to enable the issue of Fixed Penalty Notices for both minor taxi and PHV compliance failings. The Department for Transport should introduce legislation to provide all licensing authorities with the same powers.

## Ridesharing

3.61 Ridesharing services in this context refers to the sharing of taxis or PHVs for hire by individuals that are unknown to each other prior to the beginning their trips. This form of service may provide members of the public with cheaper fares as costs are shared, and better utilise the capacity of vehicles, thereby reducing congestion and pollution. But there are potentially increased risks, too.

3.62 The limited time available to the Group has required that attention was focussed on key areas of urgent concern. While the issue of ridesharing has not been considered in depth, it should be clear to all that use these services that that they consent to sharing a confined space with people that are unknown to them. Operator and drivers should be required to make this clear when booking and at the start of a journey.

3.63 Where a taxi or PHV is no longer used entirely for exclusive private hire, the arguments in favour of mandating CCTV are enhanced; the argument that CCTV may represent an invasion of privacy is reduced greatly if not entirely negated, as there can be no argument that the vehicle is a private space. The use of CCTV is discussed further in Chapter Three.

#### **Recommendation 15**

All ridesharing services should explicitly gain the informed consent of passengers at the time of the booking and commencement of the journey.

## 4. Safety in taxis and private hire vehicles

### Public protection

- 4.1 One of the most important considerations of any regulatory system is safety. It is of paramount importance that passengers using taxis or PHVs can get into a vehicle knowing that their driver has been rigorously checked and deemed to be a suitable person to carry passengers. The enclosed nature of a taxi or PHV affords a potential opportunity to a person who wishes to take advantage of the vulnerable. It is important to recognise that in different circumstances, it may be either the passenger or the driver who is vulnerable.
- 4.2 The vast majority of licensed taxi and PHV drivers in the UK are decent and law-abiding people. Nevertheless, there have been recent and numerous cases of licensed drivers participating in, or enabling, child sexual exploitation as well as isolated opportunistic attacks on passengers. Following these horrendous offences, many licensing authorities have acted to address the failings that contributed to enabling these incidents. The lessons from the Casey and Jay reports and the impact on the lives of those affected by these and other failures must not be forgotten. To do otherwise would compound the harm and injustice done to the victims. No licensing authority should consider that the lessons learned do not apply to them merely because there have not been significant reports of such activity in their area: many of the previous offences in these cases have only become known many years after the event. Neither central government nor licensing authorities can provide absolute assurances of safety, but licensing authorities have the powers to mitigate the risks now. In the long term it is for central government to act to enable the mandating of standards to force any complacent authorities to act.
- 4.3 The Policing and Crime Act 2017 gave the Government the power to issue Statutory Guidance to local licensing authorities on the way taxi and PHV licensing powers should be used to protect children and vulnerable adults. That guidance should ultimately form the core of the national safety standards for both the taxi and PHV sector, and it should be issued as soon as possible.
- 4.4 Until national minimum standards for the taxi and PHV sector are introduced, the Statutory Guidance provides an opportunity to take a significant step towards in greater consistency in how the safety elements of the 'fit and proper' test are applied.

- 4.5 The application of high standards with regard to safety would provide increased public confidence in the sector and mitigate the potential for drivers to seek out areas where standards are applied less rigorously.

### **Recommendation 16**

The Department for Transport must as a matter of urgency press ahead with consultation on a draft of its Statutory Guidance to local licensing authorities. The guidance must be explicit in its expectations of what licensing authorities should be doing to safeguard vulnerable passengers. The effectiveness of the guidance must be monitored in advance of legislation on national minimum standards.

- 4.6 Under the current highly devolved regulatory framework, local licensing authorities have a pivotal role in the effectiveness of guidance. Once the guidance has been issued, licensing authorities should play their part and give it due consideration. The Department for Transport should also monitor the overall effect of the guidance; the policies outlined will only be as successful as their implementation.
- 4.7 Until such time as the Government brings forward legislation to mandate national minimum standards, licensing authorities should work collectively to increase consistency. As the recommendations made in the Statutory and Best Practice Guidance are the Government's views, it is reasonable to assume that these would be considered as the basis for national minimum standards. As noted earlier in this report, licensing authorities would not be acting in the long-term best interests of the trade to divert far from the recommendations, as this may result in a period of significant change in standards and requirements at a later date.

## **CCTV**

- 4.8 The Group received a number of submissions and heard from witnesses about the benefits of having CCTV in taxis and PHVs. There were numerous positive comments regarding the potential benefits that CCTV might provide to both passengers and drivers. The vast majority of taxi and PHV passengers receive a good and safe service but the few drivers that abuse their position of trust undermine public confidence in passenger safety. CCTV can reaffirm or increase passenger confidence.
- 4.9 CCTV would not just protect passengers. In England and Wales, approximately 53% of taxi and PHV drivers are non-white, a much higher than average percentage of the workforce. The Group heard from the United Private Hire Drivers that 50% of drivers it surveyed had been threatened or assaulted and that 57% had been racially abused while working.
- 4.10 Where both cameras and audio recording is used, those who verbally and physically abuse drivers would do so knowing that the attack would be recorded, providing invaluable evidence to enforcement agencies. There are also incidents of false allegations being made against drivers, and CCTV evidence can protect drivers from potentially losing their licence and their livelihood.

4.11 Only a small number of licensing authorities in England currently require CCTV in their licensed vehicles<sup>8</sup>; however, there is a strong case for having CCTV in taxis and PHVs, and licensing authorities which do not already mandate CCTV should do so. The concern most commonly raised is the costs of installing and maintaining CCTV systems. These do not however appear to be unreasonable for owners of licensed vehicles to bear given an assumed operational life of a system and the potential for reduced damage to the vehicle. The majority of taxis and PHV are owner driven - these could benefit from reduced abuse and assaults by passengers, reduced fare evasion and potentially increased passenger usage through greater confidence in the sector.

### **Recommendation 17**

In the interests of passenger safety, particularly in the light of events in towns and cities like Rochdale, Oxford, Newcastle and Rotherham, all licensed vehicles must be fitted with CCTV (visual and audio) subject to strict data protection measures. Licensing authorities must use their existing power to mandate this ahead of inclusion in national minimum standards.

To support greater consistency in licensing, potentially reduce costs and assist greater out of area compliance, the Government must set out in guidance the standards and specifications of CCTV systems for use in taxis and PHVs. These must then be introduced on a mandatory basis as part of national minimum standards.

4.12 It is however not just the driver and passenger that CCTV can benefit. Licensing authorities are better able to make an informed decision whether to take no action, suspend or revoke a licence following a complaint. This evidence can be used at court should the driver appeal a decision, and it may even prevent the driver guilty of misconduct from launching an appeal. Society as a whole benefits from increased protection from crime.

4.13 Yet mandating CCTV in vehicles will incur extra cost for many small businesses, the vast majority of drivers currently consider as such. Recognising the benefits to society, ways of helping with individual and small business costs should be seriously explored.

### **Recommendation 18**

As Government and local authorities would benefit from a reduction in crime in licensed vehicle both should consider ways in which the costs to small businesses of installing CCTV can be mitigated.

4.14 Technology has advanced rapidly in recent years and what may once have been an expensive and difficult to achieve is now common place. GPS has provided an accurate and reliable way to track vehicles for many years now. These advances can further public safety (driver and passengers) by recording the movements of vehicles and provide valuable evidence in proving or disproving an allegation. As part of the

<sup>8</sup> <https://www.gov.uk/government/statistics/taxi-and-private-hire-vehicle-statistics-england-2017> (Table 0106)

work that will be required to set an appropriate minimum standard for CCTV systems in taxis and PHVs, the Government should also consider whether and how GPS tracking could also be included.

- 4.15 As discussed previously in this report, the public often view taxis and PHVs as providing identical services. Plying for hire by PHVs and unlicensed vehicles is illegal and should not be tolerated under any circumstances. However, when the public see a licensed PHV they may attempt to hire this immediately through confusion between the two-tiers of the system. Raising public awareness of the differences between taxis and PHVs protects all parties; passengers use the appropriately insured and licensed drivers and vehicles, taxi drivers receive the benefits of their exclusive right to 'ply for hire' in recognition of meeting the relevant requirements and law-abiding PHV drivers will not face confrontation from refusing to carry passengers that have not pre-booked.

### **Recommendation 19**

National standards must set requirements to assist the public in distinguishing between taxis, PHVs and unlicensed vehicles. These should require drivers to have on display (e.g. a clearly visible badge or arm-band providing) relevant details to assist the passengers in identifying that they are appropriately licensed e.g. photograph of the driver and licence type i.e. immediate hire or pre-booked only.

All PHVs must be required to provide information to passengers including driver photo ID and the vehicle licence number, in advance of a journey. This would enable all passengers to share information with others in advance of their journey. For passengers who cannot receive the relevant information via digital means this information should be available through other means before passengers get into the vehicle.

## **Background checks and information sharing**

- 4.16 To enable licensing authorities to make the best decisions on applications they receive, and to support greater consistency, they should have as complete as possible a picture of the applicant's background. It is welcomed that all licensing authorities require an enhanced Disclosure and Barring Service (DBS) check for all drivers<sup>9</sup>; however, only 77% report that they currently also check the barred list for both taxi and PHV drivers, and there is no reason why this should not be 100%. This can be carried out at no extra charge.

<sup>9</sup> Department for Transport's 2017 Taxi and Private Hire statistics, <https://www.gov.uk/government/collections/taxi-statistics>

4.17 The DBS update service is an online subscription that allows individuals to keep their standard or enhanced DBS certificate up to date and allows employers and regulators to check a certificate online. This subscription service therefore allows taxi and PHV drivers licensing authorities (as a nominee with the individual's consent) to check the status of a certificate online at any time. Subscription to the service removes the need for repeat checks, reduces the administrative burden and mitigates potential delays in relicensing. This will more cheaply and easily allow licensing authorities to undertake checks other than at first application or renewal. Drivers are licensed for three years and vehicles usually on year however vehicles are routinely checked every 6-12 months to ensure they continue to meet the standards required. Interim checks on the continued suitability of driver does not therefore seem disproportionate.

#### **Recommendation 20**

All drivers must be subject to enhanced DBS and barred lists checks. Licensing authorities should use their existing power to mandate this ahead of inclusion as part of national minimum standards.

All licensing authorities must require drivers to subscribe to the DBS update service and DBS checks should must be carried out at a minimum of every six months. Licensing authorities must use their existing power to mandate this ahead of inclusion as part of national standards.

#### **Recommendation 21**

Government must issue guidance, as a matter of urgency, that clearly specifies convictions that it considers should be grounds for refusal or revocation of driver licences and the period for which these exclusions should apply. Licensing authorities must align their existing policies to this ahead of inclusion in national minimum standards.

4.18 There is a concern that critical information about the risk posed by a driver is not always being shared with licensing authorities by the police, under the Common Law Police Disclosure (CLPD) provisions. It is vital that licensing authorities have access to this 'soft intelligence'; patterns of behaviour such as complaints against drivers (regardless of whether they were working) even when these do not result in arrest or charge may be indicative of characteristics that raise doubts over the suitability to hold a licence. Provision of this helps authorities to build a fuller picture of the potential risks an individual may pose. This information may tip the 'balance of probabilities' assessment that licensing authorities must undertake.

4.19 The CLPD provisions enable new information obtained by the police to be rapidly passed on to licensing authorities, rather than information becoming known to them through a DBS check some time after an incident. However, a survey carried out by the Institute of Licensing of its local authority members in 2017 shows that less than 25% of respondents consider that the current data sharing agreements are satisfactory. This process can be of huge benefit to protecting the safety of

passengers and it is imperative that the maximum protection this provides is being delivered.

### **Recommendation 22**

The Quality Assurance Framework and Common Law Police Disclosure Provisions must be reviewed to ensure as much relevant information of behaviours as well as crimes by taxi and PHV drivers (and applicants) is disclosed to and to ensure licensing authorities are informed immediately of any relevant incidents.

- 4.20 The current efforts of the Local Government Association to create a register of drivers who have been refused or revoked taxi or PHV driver licences, in conjunction with the National Anti-Fraud Network (NAFN), are to be welcomed. It was disappointing to see that the Private Members Bill brought by Daniel Zeichner MP, which would have made use of such a register mandatory, failed to pass its Second Reading in the House of Commons on 2 February when the bill was "talked out".
- 4.21 Without that Bill, it is hoped that all licensing authorities will use the register as only complete coverage will make the most of the benefits. It is unacceptable that a driver could have a licence refused or revoked on safety grounds by one authority, but gain a licence in an another authority by virtue of not disclosing that history. A DBS check may not provide the cause for a refusal or revocation by another authority; this would depend, for example, on whether the decision was based on previous convictions or on 'soft-intelligence' received. The register will enable past revocations or refusals to be flagged, and the authority considering an application to seek further information from the refusing authority.
- 4.22 Even with that information, decisions must still be made in accordance with the policies of the authority that is handling the application - a refusal in one area must be fully understood and should not be an automatic bar to a licence being issued elsewhere; for example, if one refusal has been made on the basis of a conviction, but sufficient time has now passed during which the applicant has demonstrated continued good character to comply with the authority's convictions policy. The system will provide an extra safeguard for the public, not a blacklist of drivers; licensing authorities will continue to make independent judgements whether, on the balance of probabilities, an individual is fit and proper. The purpose of this database is to assist licensing authorities in this assessment by enabling as fully a picture of an individual as possible to be considered.

### **Recommendation 23**

All licensing authorities must use the National Anti-Fraud Network (NAFN) register of drivers who have been refused or had revoked taxi or PHV driver licence. All refusals and revocations must be recorded, and the register checked for all licence applications and renewals. Licensing authorities must retain the reasons for any refusal, suspension or revocation and provide those to other authorities as appropriate. The Government must, as a matter of urgency, bring forward legislation to mandate this alongside a national licensing database (**recommendation 24**).



- 4.23 In addition, a broader national database of all taxi and PHV licences, for drivers vehicles and operators should be introduced. This would be a significant aid to cross-border enforcement, complementary to the national enforcement powers recommended. In the current absence of such powers, it would still improve the ability of authorities to be able to identify where driver and vehicles are licensed in order to report concerns or issues to the "home" licensing authority, or indeed the police.

#### **Recommendation 24**

As a matter of urgency Government must establish a mandatory national database of all licensed taxi and PHV drivers, vehicles and operators, to support stronger enforcement.

### **Training and engagement**

- 4.24 It is important that drivers are equipped with the skills and knowledge they need to identify situations where vulnerable passengers may be at risk. Over half of licensing authorities currently require their drivers to undertake child sexual abuse and exploitation (CSAE) awareness training, and this is good practice that all licensing authorities should follow. It is not sufficient to wait for evidence of a 'problem' within a licensing area before doing this.
- 4.25 As part of that training, and their wider engagement with drivers, licensing authorities should remember that their network of checked and trained, professional drivers can be an important source of intelligence about signs of abuse and neglect amongst their passengers. Poorly checked and trained drivers may pose risks, but well trained and supported drivers can be an important part of the solution. An example of the positive contribution the trade can play is that of Cherwell District Council driver Satbir Arora, whose awareness prevented a 13-year-old girl from meeting a 24-year-old male who was convicted of attempted abduction and the distribution and making of indecent images.

#### **Recommendation 25**

Licensing authorities must use their existing powers to require all drivers to undertake safeguarding/child sexual abuse and exploitation awareness training including the positive role that taxi/PHV drivers can play in spotting and reporting signs of abuse and neglect of vulnerable passengers. This requirement must form part of future national minimum standards.

## Improving decision making

- 4.26 Implementing national standards, including those on the consideration of convictions, will be a huge step toward greater consistency in licensing decisions. There have been examples of individuals that have been issued licences despite convictions for serious offences. However all licensing decisions are ultimately made by individuals, not policy documents. It is essential therefore that those involved in the determination of licensing matters have received sufficient training to discharge their duties effectively and correctly. This training should cover licensing procedures, natural justice, understanding the risks of child sexual exploitation, consideration of 'soft intelligence', and disability and equality, in addition to any other issues deemed appropriate. Training should not simply relate to procedures, but should also cover the making of difficult and potentially controversial decisions.

### **Recommendation 26**

All individuals involved in the licensing decision making process (officials and councillors) must have to undertake appropriate training. The content of the training must form part of national minimum standards.

## Use of Passenger Carrying Vehicle (PCV) licensed drivers

- 4.27 Driving a Public Service Vehicle (a vehicle that can carry 9 or more passengers e.g. a minibus or bus) for hire or reward requires a PCV licence. PCV driver licences are issued by the Driver and Vehicle Licensing Agency (on behalf of Traffic Commissioners). Unlike taxi or PHV drivers, applicants for a PCV licence are not subject to any routine DBS checks (neither basic nor enhanced).
- 4.28 Applicants for a licence to drive passenger minibuses and buses must complete an application form and declare any convictions for non-driving offences as well as those relating to driving hours, roadworthiness or loading of vehicles as well as any.
- 4.29 The declaration of any offences will result in the DVLA notifying the relevant Traffic Commissioner so the applicant's suitability to hold the licence, in relation to their conduct, may be reviewed. Traffic Commissioners may grant refuse, suspend or revoke driving entitlement, taking into account passenger safety.
- 4.30 However, a number of areas have experienced issues whereby individuals whose taxi or PHV licence or application have been refused or revoked have applied to the Driver and Vehicle Licensing Agency and obtained a PCV licence, and these individuals have then carried passengers driving a minibus. In some cases, people who have had their licence revoked have even continued to work for the same operator.
- 4.31 This is an issue that has clear implications for passenger safety. Although it may technically be outside the scope of taxi and PHV licensing, there are evidently clear overlaps in practice. It is not acceptable that individuals that are deemed to be unfit to carry passengers in a vehicle that seats fewer than nine passengers are able to do under a different licensing system, simply because there are additional seats in a vehicle.

### **Recommendation 27**

Government must review the assessment process of passenger carrying vehicle (PCV) licensed drivers and/or consider the appropriate licensing boundary between taxis/PHVs and public service vehicles (PSVs).

## Language skills

4.32 It is important that drivers are able to converse effectively, and particularly so in emergency situations. Drivers should be able to:

- Converse with passengers to demonstrate an understanding of the desired destination, an estimation of the time taken to get there and other common passenger requests;
- Provide a customer with correct change from a note or notes of higher value than the given fare, and doing so with relative simplicity;
- Provide a legibly written receipt upon request.

### **Recommendation 28**

Licensing authorities must require that all drivers are able to communicate **in English** orally and in writing to a standard that is required to fulfil their duties, **including in emergency and other challenging situations.**

## 5. Accessibility

### The importance of the taxi and PHV market

- 5.1 As an introduction to this chapter, from the following quote from the evidence received from the Disabled Persons' Transport Advisory Committee (DPTAC) sets the scene appropriately:

'For those who cannot use public transport, either due to the nature of their conditions or because they live in areas with a poor public transport service, taxis can be the key element allowing them to live independently.'

**Submission from DPTAC, November 2017**

- 5.2 Evidence received by the Group highlighted that consideration of accessibility needs is essential in any reform of the sector. If the Government enacts national standards, accessibility considerations should be an integral part of their development, not a mere add-on. In the short term, it is important that licensing authorities use the powers they already have to improve access and passenger experience.

### Training

- 5.3 The 2017 taxi and private hire statistics show that only 38% of licensing authorities in England require their taxi drivers to undertake disability equality training, and 35% require it for their PHV drivers. This training should be a national requirement as part of national standards, but licensing authorities have the power to require it now and should do. It is important that drivers working in a sector that can be a lifeline for those unable to use public transport understand that position, and how they can best support their passengers.

#### **Recommendation 29**

All licensing authorities should use their existing powers to require that their taxi and PHV drivers undergo disability equality and awareness and equality training. This should ultimately be mandated as part of national minimum standards.

## Vehicle types and access

- 5.4 As can be seen in figures 4 and 5, the proportion of vehicles licensed by different authorities that are wheelchair accessible varies considerably. The 2017 statistics show that 63% of authorities require their taxi fleets to be a wheelchair accessible vehicle (WAV). These figures show that in England (excluding London) 41% of taxis are WAVs but this is only part of the story; in over a quarter of authorities, 5% or fewer of taxis are accessible. The situation is even worse for PHVs - nearly two-thirds of authorities have a fleet in which 5% or fewer of PHVs are wheelchair accessible.
- 5.5 Standard (non-WAV) vehicles remain important too: most disabled people do not use wheelchairs, and many people will find saloons easier to get in and out of. Mixed fleets are important, reflecting the diverse needs of passengers, but nonetheless, levels of WAV PHVs in particular (given the significant increase in PHVs in recent years) appears low in even the most populous areas. I have outlined one way in which licensing authorities can seek to increase availability in paragraph 3.35.

### **Recommendation 30**

Licensing authorities that have low levels of wheelchair accessible vehicles (WAVs) in their taxi and PHV fleet should ascertain if there is unmet demand for these vehicles. In areas with unmet demand licensing authorities should consider how existing powers could be used to address this, including making it mandatory to have a minimum number of their fleet that are WAVs. As a matter of urgency the Government's Best Practice Guidance should be revised to make appropriate recommendations to support this objective.

- 5.6 It is welcome that in 2017, the Government brought sections 165 and 167 of the Equality Act 2010 into force, ensuring that drivers of wheelchair vehicles that a licensing authority designates for this purpose cannot charge wheelchair users more than non-wheelchair users, and must provide appropriate assistance.

### **Recommendation 31**

Licensing authorities which have not already done so should set up lists of wheelchair accessible vehicles (WAVs) in compliance with s.167 of the Equality Act 2010, to ensure that passengers receive the protections which this provides.

- 5.7 It is illegal for a taxi or PHV driver to refuse to carry an assistance dog, unless the driver has obtained a medical exemption certificate from their licensing authority. Despite this, a recent campaign by the Guide Dogs for the Blind Association indicates that nearly half of guide dog owners surveyed had experienced an access refusal in the past year. This is unacceptable, and licensing authorities should ensure that strong action is taken when instances are reported. Driver awareness is also

critical, and the earlier recommendation in favour of mandatory disability equality training would address this.

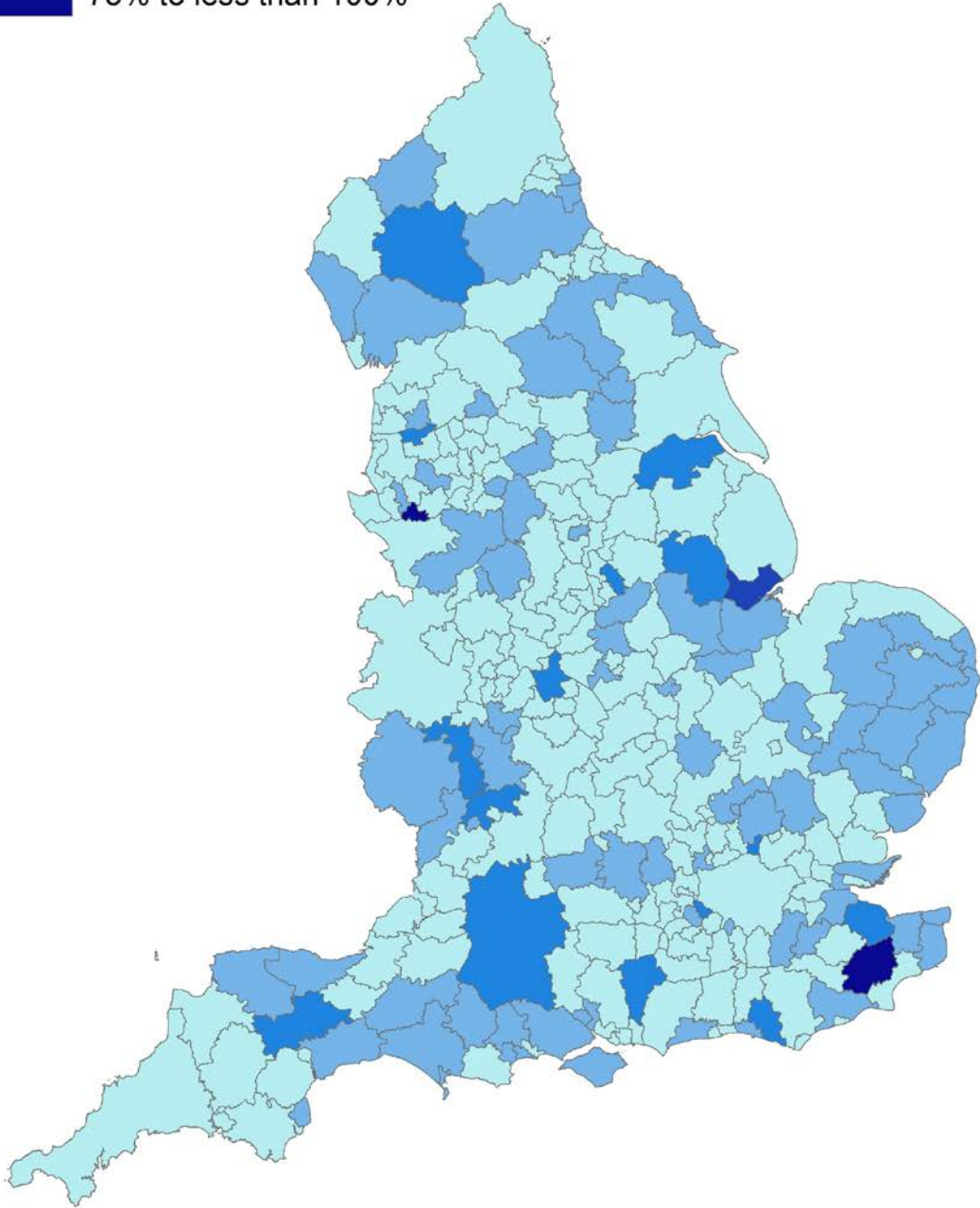
**Recommendation 32**

Licensing authorities should use their existing enforcement powers to take strong action where disability access refusals are reported, to deter future cases. They should also ensure their systems and processes make it as easy as possible for passengers to report disability access refusals.

Figure 4 - Wheelchair accessible PHVs in England<sup>10</sup>

**Percentage of accessible PHVs**

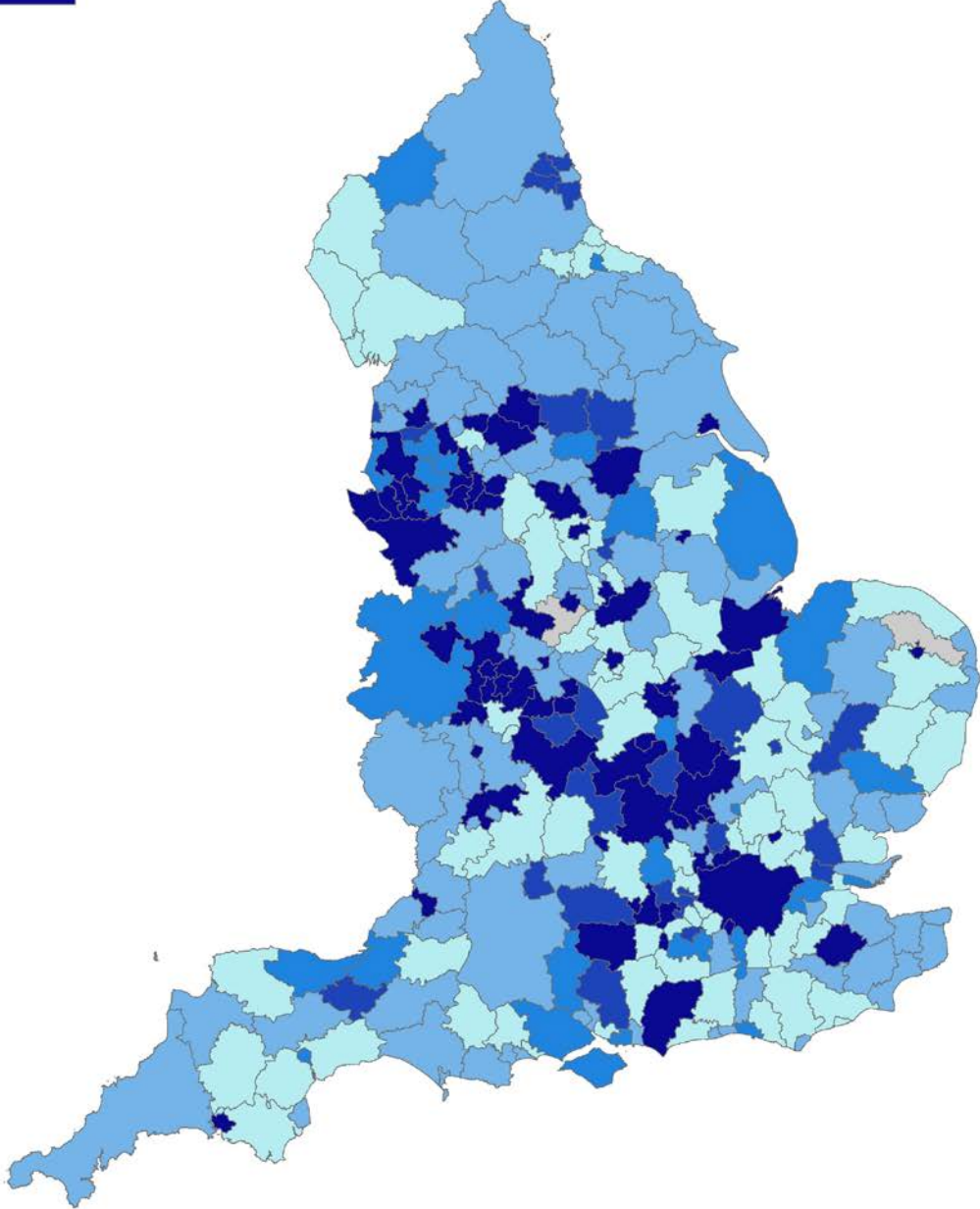
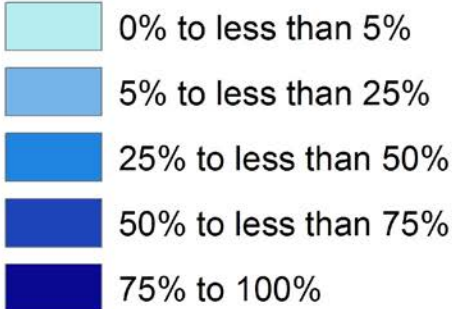
- 0% to less than 5%
- 5% to less than 25%
- 25% to less than 50%
- 50% to less than 75%
- 75% to less than 100%



<sup>10</sup> Information provide by licensing authorities - <https://www.gov.uk/government/statistics/taxi-and-private-hire-vehicles-statistics-england-2017>

Figure 5 - Wheelchair accessible taxis in England<sup>11</sup>

**Percentage of accessible taxis**



<sup>11</sup> Information provide by licensing authorities - <https://www.gov.uk/government/statistics/taxi-and-private-hire-vehicles-statistics-england-2017>



## 6. Working conditions

### Characteristics of employment in the sector

- 6.1 Traditionally a large proportion of taxi and PHV drivers have been self-employed. In the PHV sector, the 'traditional' working model is largely based on drivers paying a fee to the operator to gain a place on its list of drivers. Although this does not guarantee an income, drivers are able to decide whether to renew this relationship at the end of the period, or in the interim should they not receive what they consider sufficient fares.
- 6.2 This absence of guaranteed income is now being repeated in the 'gig economy' PHV model, the difference being that the fee(s) paid to the operator is usually taken as a percentage of each fare. The 'gig economy' was defined as 'the exchange of labour for money between individuals or companies via digital platforms that actively facilitate matching between providers and customers, on a short-term and payment by task basis' in the Department for Business, Energy and Industrial Strategy's [2018] research paper<sup>12</sup>.
- 6.3 However, even in the 'gig economy' PHV model, the relationship between the PHV operator and driver has changed very little from the 'traditional' model. Drivers still require an operator to act as the intermediary between them and the passenger. This means that PHV operators have control over the fare levels and the number of journeys a driver may receive.
- 6.4 The introduction of new technology in the private hire market has enabled new ways for the PHV operator to bring together drivers and passengers. This experience is not unique to this sector nor is the use of such technology unique to new entrants. There are many long-established companies that now use apps both in the PHV and taxi markets. At the same time I am aware that there are a number of ongoing legal disputes regarding the legal status of individuals that work in the PHV trade. While the reporting of these cases has focused on those involving app-based PHV operators the relationship between driver and operator appears similar in both the established and disruptive operator business models
- 6.5 On 7 February the Government's 'Good Work'<sup>13</sup> document, which was published in response to the 2017 'Good Work – The Taylor Review of Modern Working Practices'<sup>14</sup>, acknowledged Taylor's seven point plan was important to achieve the overarching ambition that all work in the UK should be decent and fair. The second of the points is focused on seeking clarity in the gig economy. It acknowledges that platform-based working offers opportunities for genuine two-way flexibility, and that these should be protected. However, it also recognises the importance of ensuring fairness both for those who work in this way and those who compete with them. It

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<sup>12</sup> <https://www.gov.uk/government/publications/gig-economy-research>

<sup>13</sup> <https://www.gov.uk/government/news/governments-response-to-the-taylor-review-of-modern-working-practices>

<sup>14</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf)

proposes that 'worker' status should be maintained but it should make it easier for individuals and businesses to distinguish 'workers' from those who are legitimately self-employed.

- 6.6 While it was not in the remit or expertise of the Group to decide the employment status of drivers, it did hear about and consider working practices in the sector. In particular, concerns were raised about the balance of risk and reward for PHV drivers and the effects this has on their welfare and, potentially for public safety.

## Working practices and earnings

- 6.7 The Group heard concerns that drivers, of both taxis and PHVs, are working longer hours to maintain existing incomes due to the increasing numbers of drivers. Of particular concern was the suggestion that drivers may be working excessively long periods without adequate breaks and the possible consequences of this for public safety.
- 6.8 All operators must meet their statutory obligations to drivers. Where drivers are 'workers' or employees, operators must ensure that none takes home less than they are entitled under National Living Wage legislation. Operators however should have a duty of care to support their drivers regardless of their employment status. Such an approach would obviously benefit drivers but it is also in operator's interests to support good working environments. It can support the retention of good drivers and lead to benefits for passengers; a driver who is content with their relationship with the operator may provide a better service and lead to repeat custom.

## The role of PHV licensing authorities

- 6.9 It is outside the expertise and scope of a local licensing authority to determine the employment status of drivers working with its licensed PHV operators. However, licensing authorities do have a responsibility to ensure that operators are 'fit and proper'. If a licensing authority has evidence of an operator persistently flouting employment law (for example, making no changes in response to an employment tribunal that is not being appealed, or can be appealed no further), that should legitimately be seen as casting doubt on whether that operator is "fit and proper", and would be worthy of thorough consideration.

### **Recommendation 33**

The low pay and exploitation of some, but not all, drivers is a source of concern. Licensing authorities should take into account any evidence of a person or business flouting employment law, and with it the integrity of the National Living Wage, as part of their test of whether that person or business is "fit and proper" to be a PHV operator.

## Working/driving hours and safety

- 6.10 As already noted, the Group heard the view from some stakeholders that erosion in drivers' earnings has resulting in drivers working for increased, and potentially excessive, hours to maintain their income. It is self-evident that, at some threshold,

tiredness and long hours of driving in any vehicle poses a risk to public safety through reduced alertness and response times. The Group did not see independent evidence of how many hours drivers are working however it heard from industry experts that the taxi and PHV industry is one which has historically lent itself to long working hours generally.

- 6.11 At present, taxi and PHV drivers are not subject to the Road Transport (Working Time) Regulations 2005<sup>15</sup>. Drivers can therefore choose the hours they work, and there are no rules that limit the number of hours they can work in a day or week.
- 6.12 That appears potentially problematic. A minibus driver has limits on how long they can work and when they must take rest breaks. There is no logical reason why a taxi or PHV driver (possibly the same person as the minibus driver) should be permitted to carry paying passengers in a car for an unlimited length of time. A taxi/PHV driver still needs to be aware of the road and environment around them and be able to respond in a timely way to changes.
- 6.13 However, there are many questions of detail which it has not been possible to consider in full for this report. The European Union rules on drivers' hours and working time are complex, as the scenarios detailed in the Department's guidance<sup>16</sup> illustrates. The appropriateness of these rules for the taxi and PHV sector is also open to debate; for example, limiting the number of driven hours may seem more appropriate than including times when a person is available and waiting for work. By its nature, the periods when taxis and PHVs are "available to answer calls to start work" (referred to as 'period of availability' in the guidance) would contribute to working hours but could not be considered as a rest period for the purposes of calculating driving hours according to the current rules.
- 6.14 The biggest challenge is how any limit(s) would be monitored and enforced; monitoring may require a tachograph system such as that used in buses and HGVs to be fitted to all taxis and PHVs. This may record the working/driving hours but consideration would need to be given to whether licensing authorities would monitor compliance or whether this would be done by the Traffic Commissioners (as for buses and HGVs). Despite these issues, this report favours driving time restrictions in principle if evidence indicates this is required on safety grounds and if a workable and proportionate way of doing so can be found. I think that Government should look at these issues in much greater detail than we reasonably can be done here.

#### **Recommendation 34**

Government should urgently review the evidence and case for restricting the number of hours that taxi and PHV drivers can drive, on the same safety grounds that restrict hours for bus and lorry driver.

- 6.15 In the meantime, it is worthwhile noting again that local licensing authorities have a key role to play in maintaining safety. Drivers have a responsibility to themselves, their passengers and the public to ensure they are fit to drive, and this requires drivers to be open and honest with licensing authorities (as well as the DVLA) on any health issues that may mean they should not be driving. Where concerns about the operation of taxis and PHVs are brought to the attention of licensing authorities they could – and should – take immediate action against drivers and operators if there is

<sup>15</sup> <http://www.legislation.gov.uk/ukSI/2005/639/contents/made>

<sup>16</sup> <https://www.gov.uk/government/publications/eu-rules-on-drivers-hours-and-working-time>

any evidence of unsafe activity. A fit and proper operator should neither encourage nor condone excessive working or driving hours.

# Annex A- Comments by Group Members

**Helen Chapman**

**Director of Licensing, Regulation & Charging, Transport for London**

Transport for London (TfL) is the largest taxi and private hire licensing authority in England with almost a quarter of a million taxi and private hire licensees. In London, like many parts of the rest of the UK and globally, we have seen significant change in the taxi and private hire sector in recent years which we anticipate will continue to change in line with consumer needs.

Regulation is required to ensure the safety of passengers engaging with taxi and private hire services but it is right that this regulation is reviewed and modernised to reflect the modern world and the changing needs of passengers.

On behalf of the Mayor of London and TfL I am grateful for the opportunity to have formed part of the Department for Transport Working Group. It has been a worthwhile and rewarding experience to work as part of a group looking at regulatory practices to meet the needs of a changing world while remaining focussed on passenger safety and convenience. I would like to thank the Chair for his efforts in navigating a course through the often strongly held views of the Group and invited guests to produce a report of real substance with the safety of passengers at its heart.

We agree wholeheartedly with many of the recommendations put forward by the report which, if adopted, will deliver fundamental improvements in public safety and improvements in delivering a world class two tier taxi and private hire service. Many of these recommendations for primary legislative change have previously been raised by the Mayor and TfL and, indeed, many London based taxi and private hire stakeholders and we are delighted to have these views shared by the Chair of the Working Group.

Proposals within the report, in particular a solution to address the common practice referred to as cross border hiring, national minimum standards, national enforcement capabilities and statutory definitions to define the two tier system will produce a model of licensing and regulation that helps to enhance passenger safety and is not only fit for today but is also future-proofed and flexible to meet the changing demands of passengers.

We remain ready to support Government in implementing these recommendations, particularly those that require national legislation. As the largest licensing authority we can provide expert support and guidance to any panels that are formed to take forward these sensible recommendations.

We would like to comment on a number of recommendations from a TfL perspective:

**Recommendation 2** – we strongly support the introduction of national minimum standards and that these minimum standards should be set at a high level for safety.

We would like to thank the Chair for the common sense approach in recommending that licensing authorities can go further than the minimum, where required, to meet local needs. This is particularly important in London to retain the ability to set standards to meet air quality challenges and to continue to deliver the Knowledge of London for taxi drivers.

**Recommendation 5** – The two tier system has worked well in London for many years and London’s taxis are frequently voted the best in the world. Recommending a statutory definition for plying for hire and pre-booked services is sensible and long overdue. We would like to formally register our interest in joining the panel of regulatory experts to help draft appropriate definitions.

**Recommendation 8** – we welcome the Chair’s recommendation to allow local licensing authorities to set a cap on the number of taxi and private hire vehicles. The growing number of private hire vehicles in the capital is causing significant challenges in tackling congestion, air quality and appropriate parking controls. However, we note and strongly agree that there should be a proven need to set a cap by having a public interest test so monopolies cannot be formed. Once again, we remain ready to assist Government in defining an appropriate public interest test.

**Recommendation 11** – cross border hiring has been commonplace in the industry for many years but with the introduction of app based services in the industry and the expansion in the number of private hire drivers and vehicles, it requires an urgent solution so as not to undermine public safety and confidence in using private hire services. TfL explored this issue in detail and in February 2018 we published a detailed policy paper with proposals to address this issue. The paper was presented to the Working Group and we are delighted to see this is being taken forward as one of the key recommendations for change.

**Recommendations 25 and 29** we are fully supportive of these two proposals, however, we believe that an assessment is the more appropriate “minimum standard”. As a licensing authority our role is to assess the fitness of an applicant rather than to train them to be fit. However, for some authorities they may wish to provide this training above and beyond the minimum standard and this flexibility could be accommodated.

**Recommendation 30** - All taxis in London are Wheelchair Accessible and we recognise the need to enhance the provision for Wheelchair Accessible Vehicles in the private hire fleet. However, this recommendation, as written, will be difficult to achieve as vehicles are licensed separately to private hire operators and therefore it isn’t easy to introduce a minimum quota of wheelchair accessible vehicles.

We look forward to working with the Government to see these recommendations brought forward and ensure a modern, sustainable and two-tier taxi and private hire system for the future.

## **Rt Hon Frank Field MP**

### **Member of Parliament for Birkenhead**

Mohammed Abdel-Haq has written a superb report. It follows a thorough, comprehensive evidence-gathering process conducted by the Working Group under his chairmanship.

The House of Commons debate, in which the Minister announced the creation of the Working Group, centred on the pay, working conditions and living standards of taxi and private hire drivers.

This report addresses each of those important points. In doing so, it puts forward sound recommendations to restore the integrity of the National Living Wage – the cornerstone of the Government’s labour market policy – while ensuring adequate rates of pay and decent working conditions for drivers are put at the heart of what it means to be a ‘fit and proper’ operator.

The implementation of those recommendations, alongside many others in this report, will perform the crucial role of constructing minimum standards upon which the taxi and private hire industry can continue to thrive and innovate.

**Saskia Garner**

**Policy Officer, Personal Safety, the Suzy Lamplugh Trust**

Suzy Lamplugh Trust would like to commend the Chair on the completion of this final report and express our thanks for being included in the Task and Finish Group. We are delighted that most of the recommendations from our research report, *Steering Towards Safety in Taxi and Private Hire Licensing*, have been included in the report. We fully endorse the content of the report, with the exception of the comments below, which should not defer from our recognition of what has been achieved.

We have no position on **Recommendation 4** which recommends combining licensing areas. This is because we think the problems of inconsistency between neighbouring licensing authority policies would be resolved with the introduction of national minimum standards.

We would like to emphasise, in relation to **Recommendation 8**, the importance of the public interest test to determine whether a cap on numbers will increase or reduce personal safety. Our concern would be a situation where a cap resulted in demand out-weighting supply, which may put passengers at risk if they are unable to hire a licensed vehicle for their journey.

We do not support **Recommendation 11** as we do not believe there is a personal safety reason for limiting the start and end-point of a journey. We believe that the current practice of drivers choosing which licensing authority to obtain their licence from based on less stringent safety checks would be resolved by the introduction of national minimum standards.

In point 3.8 of the report we would request that the word ‘proportionate’ be defined, to ensure that the high standards set are in no way compromised by this stipulation.

In addition to what has been included in the report, Suzy Lamplugh Trust would like to recommend the addition of the following recommendations:

**Inclusion of taxi and PHV drivers as a regulated activity**

This would enable the offences under the Safeguarding Vulnerable Groups Act 2006, relating to a barred individual working or seeking to work in regulated activity, to apply.

**No deregulation of licensing**

Suzy Lamplugh Trust is also concerned about the proposed deregulation of licensing requirements for PHV drivers as set out in the 2016 Tourism Action Plan. This would effectively allow individuals to have access to members of the public including vulnerable adults and children in a private vehicle, without any prior safety checks. There should therefore be no de-regulation of existing laws that protect personal safety within taxi and PHV licensing.

**Prohibition of taxis or PHVs for use by non-taxi/PHV licensed drivers**

The prohibition of PHVs and taxis for personal use by non-PHV or taxi-licensed drivers must be introduced in London. This is to prevent drivers who do not hold a PHV or taxi licence, and who therefore have not been subject to safety checks, from picking up passengers who may assume they do hold a PHV or taxi licence as they are driving a licensed vehicle. While we are aware that PHVs should always be pre-booked, research carried out by the Suzy Lamplugh Trust in September 2017 showed that one in five people (21%) think that minicabs can be hailed on the street, and a quarter of people (26%) believe minicabs can take passengers who approach



them while parked. In addition, our research showed that over half (57%) have taken a taxi or minicab without asking to see the driver's ID badge first.

## Ellie Greenwood

### Senior Adviser (Regulation), Local Government Association

As the organisation representing licensing authorities, the Local Government Association (LGA) is pleased to have been part of this working group. The LGA is supportive of the vast majority of recommendations in this document, many of which we have been actively calling for over several years, and the objectives underpinning them. Encouragingly, it has been clear throughout the process of the working group how much consensus there is on key issues including updating the legislation, a strengthened and consistent approach to safeguarding standards and the need to address out of area working.

The LGA has worked closely with its members in recent years to support them to strengthen taxi and PHV licensing; producing guidance, running training events and, most recently, commissioning the development of the national register of licence refusals and revocations. The focus of all this work has been to ensure authorities are doing all that they can to safeguard people using taxis and PHVs.

In doing this, we have also consistently urged Government to take the much needed step of modernising outdated taxi and PHV legislation.

It is to be hoped that the report of an independent Chairman marks a turning point on this, and that Government now moves swiftly to take it forward and introduce new legislation. The report recognises that the taxi and PHV market has changed beyond recognition since the existing framework was introduced. As we said in our original submission to the working group, this has too often left councils and Transport for London on the front line of competing, costly legal challenges as to whether new business models fit within an obsolete framework. It is ultimately Government's responsibility to ensure we have a regulatory framework that is fit for purpose and protects people, and it must now do so.

The LGA and its members recognise and accept that as markets change and develop, so too regulation and regulators themselves must adapt. But we believe that local authorities must continue to be central to the licensing process and are pleased that the report recognises the importance of retaining local flexibility in taxi / PHV licensing, in terms of the ability to set local conditions (alongside national minimum standards) and the proposal for a power to set local caps.

There is a strong case to be made for greater collaboration across licensing authorities: on local policies, standards and enforcement of taxi and PHV licensing. The LGA urges all of its members to move forward on this cooperatively and quickly.

In some places, there may be also be a good case for reviewing licensing authority borders. But licensing authorities need to reflect local areas, economies and taxi / PHV markets, and will therefore look different in different places, as they do currently. Any process of revising licensing authority boundaries needs to be led from the bottom up, based on functional economic geography, and should in the first instance be encouraged as a voluntary approach.

It should also be linked to the fact that, beyond the licensing function, the map of local government is evolving. Combined authorities, metro mayors and proposed reorganisation in two tier areas may impact the way in which licensing authorities are structured and operate. These developments should provide the foundation for any changes to the map of licensing authorities, to help maintain the local democratic accountability that the report highlights, while also ensuring that licensing authorities do not become remote from the communities that they serve and seek to safeguard.

It is positive that the report envisages a voluntary approach on this issue, and recognises that Government can help to encourage this – for example, through funding for licensing authorities to develop new models and legislation enabling authorities to form shared licensing areas.

A particular issue for many local areas and licensing authorities has been the growth in out of area working over recent years. The LGA believes that drivers should operate predominantly in the areas where they are licensed, and welcomes the recognition of this issue in the report. We are also pleased that the report recognises the concerns that the LGA and its members have raised about the very limited oversight of drivers of PCVs. It is vital that this safeguarding issue is addressed quickly, building on the work the LGA is doing to develop the national register of refusals and revocations.

Finally, we would caution that while undoubtedly desirable, there may be practical and financial barriers to local licensing authorities introducing some of the report's recommendations, such as mandating minimum numbers of wheelchair accessible vehicles, or (in particular) mitigating additional costs faced by the trade (on zero emission or wheelchair accessible vehicles, or CCTV). However, we look forward to working with Government to explore the options available in these areas.

**Dr Michael Grenfell**

**Executive Director, Enforcement, Competition and Markets Authority**

The Competition and Markets Authority has a statutory duty to promote competition for the benefit of consumers. This draws on the insight that, generally, consumers benefit from choice and also from the effect of competitive pressures on suppliers of services and goods, giving those suppliers an incentive to provide their services and goods to a high standard of quality, at a competitive price and with a desire to innovate; where there is effective competition, that is the only way that suppliers can win and retain business.

Applying this to the taxi and private hire vehicle (PHV) sector, competition provides operators with the incentive to give passengers value for money, by way of higher service standards, affordable fares and innovativeness in service provision.

The CMA recognises the need for robust regulation to protect passengers where market competition cannot wholly do this – for example, as regards safety standards. But we consider that such regulation should be proportionate and should be no more onerous than is necessary, with the concern that excessive or unnecessary regulation can create barriers to competition and new market entry, which would be counterproductive for the interests of passengers, depriving them of the benefits of competition (described above) as regards quality standards, price and innovation.

The benefit of price competition – affordability of taxi and cab fares for millions of ordinary people, and particularly the less affluent – should not be regarded as merely a ‘nice-to-have’ add-on. It is extremely important, including for some of the most vulnerable citizens in our society. It is also relevant to safety considerations; if people are unable to afford a taxi or cab fare (for example, after an evening out), they might well choose ways of transport that are considerably less safe – such as unlicensed vehicles, or themselves driving under the influence of alcohol – endangering themselves and others.

Having regard to these considerations, representing the CMA I have sought to engage with the serious work of the Group in what I hope has been in a constructive and cooperative spirit. As the Chairman says in his Foreword, there have been *‘strongly held and sometimes polar opposite opinions’* among members of the Group, and this is surely almost inevitable given the diverse range of interests and perspectives represented on the Group. It has been the Chairman’s task to draw useful insights from the range of expertise in the Group and produce a series of practical recommendations – designed to improve the sector and be workable – even if there is not complete consensus or unanimity about these.

My view is that the Chairman has been very successful in this.

I am happy to endorse the vast majority of the recommendations.

The only significant qualifications that I would wish to put on record are:

- As regards **Recommendation 8**, I am concerned that a numerical cap on the number of providers of taxi/PHV services risks having the effect of artificially and unnecessarily constraining competition, to the detriment of passengers – depriving them of the best prospect of high service standards, value for money and innovation in service provision.

I welcome the report’s recognition, in paragraph 3.40, of the risks of this and the consequent need to carry out *‘a clear, well-evidenced and considered public interest test before a number of restrictions can be applied’*.

Nevertheless, I am not convinced that the case for any kind of cap or numbers has been adequately made out.

In any event, I would urge that, even if there were to be such a cap, the factors taken into account in a public interest test should at least include, in addition to those listed in paragraph 3.41:

*‘the effects on competition, including on service standards and affordability of fares, bearing in mind that the absence of affordable fares can induce people to travel by less safe modes of transport’.*

- As regards **Recommendation 11**, I am concerned that limiting taxi and PHV operations to the area of pick-up or destination where the provider is licensed narrows the choice available to passengers and weakens competitive pressures, to the potential detriment of passengers (as described above).

Nevertheless, I fully recognise the concern that this recommendation is designed to address – namely, the risk of ‘forum shopping’ by providers, undermining regulatory safeguards applied by licensing authorities.

The report proposes some mitigating measures, specifically:

- Larger licensing areas (as proposed in Recommendation 4); I think that giving effect to this is a necessary precondition to Recommendation 11.
- The notion that operators should not be restricted from applying for and holding licences with multiple authorities, subject to meeting both national standards and any additional requirements imposed by the relevant licensing authority; in my view, this will be effective so long as the cost of multiple licensing is not so onerous as to represent a barrier to operators taking it up.

Finally, I should like to record that, in spite of the differences of opinion between members of the Group, it has been a huge privilege to work alongside such talented and well-informed individuals, who have brought their particular expertise and skills to bear on these difficult issues, and have consistently done so with a view to advancing the public interest, improving the sector and protecting the position of passengers and drivers.

I am in addition impressed by, and grateful for, the secretariat of officials from the Department for Transport who provided support and advice to the Group with admirable efficiency and professionalism.

As for our Chairman, Professor Mohammed Abdel-Haq, he had, as I have noted, the unenviable task of bringing together these disparate perspectives to form a coherent and workable set of recommendations; he is to be warmly commended on his achievement in doing so, and on conducting the Group’s meetings throughout in a spirit of courtesy and good humour. It has been an honour to be a member of his Group.

## Anne Main MP

### Member of Parliament for St Albans

It has been a pleasure to serve on the working group set up to advise and contribute to debate on the future of Taxi and Private Hire Vehicle licensing. The group has worked on this issue for a considerable period of time and there has been healthy debate throughout the process.

It is a considerable achievement that Professor Mohammed Abdel-Haq has been able to compile a report that has received backing from the many different viewpoints represented on the group.

Whilst I endorse almost all of the recommendations made in the report, I do want to share my concerns about three of the more contentious issues that we have not been able to find consensus on during our meetings;

#### **Recommendation 8**

I am concerned with the proposed power for local authorities to cap taxi and PHV vehicle licences. Whilst I appreciate that a public interest test will mitigate the potential issues with this proposal, I am still not convinced that it will benefit public safety or competition in the industry.

One of the issues that this seeks to address is ‘forum shopping’ by drivers who seek PHV licences from those authorities that are seen as easier, quicker and cheaper to get a licence from. The structure of the report suggests a significant strengthening of the licensing requirements across all local authority areas which I feel reduces any need for capping powers.

Combined with a more effective method of reducing drivers licensing in one area and working predominately in another, along with considerably higher licensing standards for all authority areas then I do not believe there is a requirement for a cap. Which I believe would reduce competition and do little to protect passenger safety.

#### **Recommendation 11**

I am still not convinced, based on evidence we have heard and read from many different stakeholder groups, that this is the best way to effectively license taxi and PHVs going forward. Although many firms will be totally unaffected by this, I believe there will be considerable implications for smaller PHV companies who regularly operate across several invisible local authority boundaries.

The aim of this recommendation is to prevent drivers being licensed in one part of the country from working predominately somewhere else. I had hoped we would have found a more creative way of reducing this problem whilst still retaining local autonomy, as I fear this recommendation is overly burdensome and is not a practical solution that fits in with passengers’ demands in the modern PHV industry.

I hope that the government will consult on this particular issue widely and seek to find a better and more creative solution that will protect the integrity of local authority licensing and retain healthy competition across boundaries that passengers have come to expect.

#### **Recommendation 17**

I do not believe the case has been made for the mandatory enforcement of CCTV in all taxis and PHVs. I support the aims of this recommendation, CCTV will be helpful for the prevention and conviction of crime involving taxi and PHV journeys.

However, I believe that local authorities should have the autonomy to decide on whether or not mandatory CCTV is required for the area in which they cover. I also remain concerned about the financial implications for drivers and small PHV companies who will bear the cost for installation, maintenance and recording of the footage in a data compliant manner.

I do believe the case has been made for drivers or companies choosing to have CCTV. This could form part of proposals for drivers to choose to license themselves at a higher level for passenger safety. A suggestion would be that if drivers choose to have CCTV installed, and license themselves at a higher level, this could allow them to operate across different LA boundaries other than the one they are licensed in.

I hope the government give careful consideration to the recommendations in this report. I believe there is a need to modernise the legislation governing the taxi and PHV industry and there are many sound proposals within this report that should be acted upon.

I would like to register my thanks to Professor Abdel-Haq and the team at the Department for Transport who have worked very hard to pull together this excellent report. I am also grateful to the other working group members who have contributed to a lively and informed debate.

**Steve McNamara**

**General Secretary, Licensed Taxi Drivers' Association**

The Licensed Taxi Drivers' Association agrees with the need to stop some drivers, particularly PHV drivers working through apps, from working excessively. However, we are concerned that the proposed measures set out in this report, especially the installation of tachographs, are neither practical nor proportionate and will prove to be very costly for both regulators and drivers.

For those PHV drivers who use apps for all their business it would be relatively easy to introduce restrictions on how long they are logged into the app. However, it would be much harder to regulate the hours of taxi drivers. The installation of tachographs has previously been discussed to try and control the hours of taxi drivers but each time the relevant regulator has deemed it an excessive measure, as well as intrusive and costly.

The best way to tackle excessive driving hours is to remove the need for drivers to work these hours in order to make ends meet. The LTDA believes that if all PHV operators paid their drivers at least the national minimum wage the hours those drivers feel the need to work would fall substantially.



**Mick Rix**

**National Officer for Transport and Distribution, GMB union**

The report attempts to address in a number of key areas enhanced public safety provisions with national minimum standards.

The issues around cross border working, plying for hire are issues which have blighted the trade for a number of years. The report recommendations are serious attempt to address these concerns and tackle head on what is a serious problem.

The recommendations on workers rights being placed into license conditions for operators if adopted will be another nail in the coffin for those who seek to exploit drivers for their own gain.

GMB urges the report recommendations to be adopted by our law makers and that legislation should be brought forward as quickly as possible.

Finally I would like to thank our Chair, who along with his good humour and humility, kept everyone focussed. It was a pleasure to work with him.

**Donna Short**

**Director, National Private Hire and Taxi Association**

Firstly I would like to echo the sentiments of every member of this group and commend the Chair of the group, Professor Mohammed Abdel-Haq, for a very comprehensive, detailed and easy to read report to the Minister. It is my belief that the report reflects accurately and succinctly the thoughts and views of the majority of the group's members on most of the points raised during the meetings held over the past few months.

This has been an arduous task, given the complexity of existing taxi and private hire legislation – and its archaic and user-unfriendly state, which was the prime motivation for Transport Minister John Hayes MP to have set up the group in the first place. In that regard I would also wish to thank the officers of the Department for Transport for their administrative support and input into the production of the report, and indeed the entire process of hosting and overseeing all the group meetings.

There is no need for me to put down each recommendation and comment on all of them, as in reality I am in agreement with most of the recommendations. What is most important is for the Minister to consider each of the recommendations' aims and goals, and whether they would pass the test of "Is this really what Parliament intends if/when they revise the legislation?"

This presupposes that the current Minister will approve and "sign off" the report at the earliest possible opportunity, so that Government can start work on those recommendations that may be activated immediately without having to depend upon new primary legislation - which we have all been advised would not be feasible for this industry during the current session of Parliament.

May I give a huge personal thumbs-up to **Recommendations 17/18** (CCTV in all licensed vehicles, with a funding boost; the debate is as to voluntary or mandatory) and Recommendation 26 (the training of council officers and emphatically, Councillors on licensing committees).

There are some recommendations however which will certainly be more controversial than others; none more so than **Recommendation 11** concerning all journeys – both taxi and private hire – having to start and/or finish within the area in which all three elements (driver, vehicle and operator) are licensed.

Given that there would be concessions made for certain segments of the industry, this only slightly eases the blow of what would otherwise cause a serious restraint of trade. In my opinion such a fundamental ring-fencing of licensing restriction would stifle competition, stunt the growth of some of the larger companies and conglomerates, and possibly put some of the smaller private hire operations out of business.

In practical terms, hundreds of operations that depend almost entirely on airport transfers (these operations are not exclusively chauffeur/executive, but often cater for a mix of upmarket and "ordinary" private hire passengers), would be severely hampered in particular, as often their drivers are dispatched to pick up or drop off regular customers at any of the major airports from, say, the driver's own home without having set foot in his licensing area during that journey.

Above all, there could be severe risks posed to public safety, as the recommended ABBA [that all taxi and PHV journeys should start and/or end within the area for

which the driver, vehicle and operator are licensed] restriction limits customer choice to the extent that some passengers may end up stranded, often late at night, merely because their potential transport has the wrong plate on the vehicle. This cannot be right, nor in the best interests of the travelling public.

We understand that the practice of many drivers and operators at the present time of working entirely remotely from their own licensing district is not what Parliament intended in any existing legislation; nor is it safe for the public in all its ramifications; nor is it anything but damaging to bona fide firms that “do it right”. There must be some way to curtail this pandemic abuse of licensing practice; however I do not believe that Recommendation 11 is the way to accomplish this.

Unfortunately any potential alternatives are scuppered by two recent pieces of case law: that of **Skyline Taxis v Milton Keynes Council** from November 2017 (where the necessity of a “physical presence” of a private hire operator base in each district was discarded), and **Knowsley MBC v Delta and Uber** from March 2018 (which rules out the concept of “intended use policy” for private hire). This entire topic requires intense investigation.

The other recommendation which seems to have caused a great deal of controversy is **Recommendation 8**: to set a cap on the number of private hire vehicles. At present there are entirely too many licensed vehicles now in operation, and this on the surface has caused severe competition, longer drivers’ hours, congestion and air quality issues.

However, it is my view that a cap on private hire numbers at this time is a “closing the stable door after the horse has bolted” scenario: it is too late to have the desired effect of correcting the above problems, as numbers have already skyrocketed and the vehicles that are currently licensed cannot be taken off the road purely on numerical grounds.

There is still a perceived need for more drivers and vehicles in some districts, whilst there is an over-supply in others. To limit PHV numbers across the board would possibly endanger passengers in those areas where supply is short, to the extent that those passengers could seek transport in unlicensed vehicles, drive their own vehicle when over the alcohol limit, or even attempt to walk to their destination and put themselves at risk on the street during night time hours.

If national standards are brought in at the level whereby (a) licence-shopping outside the district becomes less attractive; (b) reciprocal implementation of authority by officers allows for stricter enforcement across borders; and (c) the standards for both drivers and vehicles preclude volumes of casual licensing of substandard vehicles, these factors in themselves would limit further numbers of licensed vehicles flooding the market.

It is my belief that market forces will prevail without an artificial ceiling; supply and demand of PHVs must be allowed to continue in the name of fair competition and public safety.

As for driver training (**Recommendation 25**), this is an area that needs serious consideration: there is no longer a Sector Skills Council to sanction and implement future training programmes; there is no longer a current structure of updated BTEC (underpinning knowledge) and NVQ (assessment) that could be applied nationally; and crucially there is little funding in place to assist applicants to gain this very important and necessary training. The situation needs careful examination, new funding sources and constructive reform as soon as possible.

Within **Recommendation 30** (wheelchair accessible vehicle provision) the most important criterion must be clarity: it must be stressed that the Government position favours a mixed fleet of both saloon and wheelchair taxis. If it is not possible to have a set percentage of WAVs agreed across the entire country, then there must be another way to provide such provision without making WAVs compulsory across the entire taxi fleet in any one district. This policy is discriminatory against ambulant disabled passengers: arthritics, stroke victims, partially blind passengers, as they often have great difficulty getting into and out of WAVs.

There are perceived practical difficulties in implementing **Recommendation 34**, the restriction of taxi and PHV drivers' hours. Government will have to come up with an alternative to tachographs in every licensed vehicle, which is the current method of tracking drivers' hours in the bus, coach and logistics industries.

My only concern in respect of a possible omission within the recommendations is any mention of medical standards for drivers. I appreciate that this may fall under the category of "fit and proper" (which still needs defining); however in our experience the DVLA Group 2 criteria for medical fitness to drive are not being adhered to, either in terms of the exam itself or its correct frequency of intervals, by far too many licensing authorities. This poses a serious risk to the travelling public, and should be addressed with some urgency.

The motto, credo and remit of this Association from its inception has always been "to raise standards in the trade, both actual and as perceived by the public". The view of members of the group, and indeed the report itself, mirror(s) those desires and sentiments, and it has been an honour and a privilege for me to have been chosen and to have taken part in the group meetings and discussions.

Time is of the essence if this industry is to be rescued from its current state of chaotic lack of coherence and direction. I cannot emphasise strongly enough that this report encapsulates and addresses in great detail and insight the difficulties currently at hand, and – unlike previous attempts at reforming the industry - it must be acted upon with alacrity and determination.

## Steve Wright MBE

### Chairman, Licensed Private Hire Car Association

The views below are based on known policy and positions of LPHCA members alongside the discretionary judgement I am constitutionally afforded as LPHCA Chairman.

Given there were so many different and interested parties providing input, I feel the quality of the Report and the proposal outcomes, are in the main excellent and I'd like to congratulate and commend the Chair, DfT Officials and Group Colleagues for the hard work, professionalism and spirit of collaboration, widely shown.

Inevitably there are a few areas of non-agreement and unless referenced below, the LPHCA fully endorses the proposals and more generally the superb quality of the report.

#### **Recommendation 8**

We cannot agree with recommendation 8 because it is, in our view, anti-competitive, protectionist, un-environmentally friendly and safety compromising, furthermore it would be extremely costly, as well as difficult to enforce and regulate.

We do not accept that the proposal should help authorities to solve challenges around congestion, air quality and parking, which can be resolved outside of Taxi & PHV licensing. Nor do we accept that it would ensure appropriate provision of taxi and private hire services for passengers, while maintaining drivers' working conditions, which again is a matter that in our view is wholly outside of Taxi & PHV licensing.

This proposal, if adopted, could bring about shortage of supply and make it very difficult for hire and replacement vehicle companies to operate. This in turn could leave consumers at risk of being stranded because of volatile and unpredictable demand factors, such as the weather and seasonal demands (e.g. during, Diwali, Christmas & New Year periods).

This proposal also lacks any tangible safety benefits and in our view, it would compromise rather than enhance safety.

#### **Recommendation 11**

We cannot agree with recommendation 11 because it is anti-competitive, protectionist, un-environmentally friendly and safety compromising, furthermore it would be extremely costly, as well as difficult to enforce and regulate. It would also increase dead mileage, make the industry far less efficient, increase costs and potentially lead to demand outstripping supply, which has serious safety implications.

The notion that Operators could hold multiple licenses is unsound, unnecessary and cost-prohibitive. Some operators would need to hold scores and possibly hundreds of licenses to operate as they do now, the cost and administrative burden would take the Private Hire Industry into an area that we believe has no place in a modern economy.

This proposal, in our view, is also out of kilter with the Law Commission's recommendations, government policy and fair, progressive competition. It will be, without doubt, vehemently opposed by the Private Hire Industry and will badly let down consumers if taken forward. National standards, compliance and enforcement proposed by the Chair elsewhere will eradicate many of the current inhibiting factors

on Local Authorities to deliver 'fit for purpose' regulations, without such inhibitive measures.

This proposal looks to be borne out of so called 'Cross-Border hiring', something which has always been undertaken by PHVs without problem until the arrival of large 'App-Only' companies whose drivers show themselves publicly outside of the area they are licensed in.

The proposal, as drafted, would not solve 'Out of area working' as the entities that have caused this anomaly, will simply licence in every licensing authority, which will be beyond the scope of the vast majority of PHV operators in England.

A viable solution may be to only allow pre-booked and corporate journeys to be undertaken out of area, with PHV drivers only able to show their position / availability in the area they are licensed in.

This could be enshrined in the future definition of Plying for Hire recommended elsewhere, by establishing a clear distinction between Public and Private Hiring of PHV's and Taxis.

The notion that specialist services such as chauffeur and disability transport services could continue to operate cross border under exemption is problematic as defining what a chauffeur is would be difficult.

Nearly every PHV carries elderly, disabled, special needs and vulnerable passengers and many PHVs are not specialist vehicles, but nevertheless they are the preferred mode of door-to-door transport for such passengers. This proposal would have a negative impact on such passengers.

We therefore cannot endorse the proposal and point out there are far better ways to deal with 'cross-border' / 'out of area operation'. We believe safety would in fact, be compromised, rather than improved.

### **Recommendation 12**

We agree that Licensing Authorities should ensure that their licensing administration and enforcement functions are adequately resourced, setting fees at an appropriate level to enable this.

We must however ensure that such fees are proportionate, distributed appropriately and set at reasonable levels. Such fees should also be applicable to taxi & PHV drivers and operators and not have commercially inhibiting factors in the fees structure.

### **Recommendation 17**

We accept that CCTV has a great role to play regarding both passengers and driver safety. We have undertaken research with consumers, operators and drivers on both the merits and issues that CCTV can bring.

We accept 'in principle' the spirit of what is being sought by way of safety, but personal privacy, uncertainty of costs, who has access to the data and how this would affect entities that provide hire-cars for drivers when either broken down or following an accident are significant issues.

We therefore cannot agree with mandating CCTV across the board and would like government to undertake a full-blown regulatory impact assessment and have considerable dialogue with trade representatives and others, so we can get the right balance for CCTV to go forward in a viable way.

## **Recommendation 28**

We agree that Licensing Authorities must require that all drivers are able to communicate in English orally and in writing to a standard that is required to fulfil their duties, including in emergency and other challenging situations.

A problem area however comes within any written element, which in our view in London has been set way above the standard that is required for a PHV driver to fulfil their duties. We would like a fixed national standard of English to be in place that enshrines an oral test, the ability to plan a route and use an atlas & satnav. Good tests are already available and in use by some Local Authorities.

The level needed for written English is low because the only writing that most taxi or PHV drivers will need to do in the course of work is to write out a receipt. Since the introduction of English Language testing in London, there have been legal challenges, trade protests, heavily signed petitions, alongside the changing of requirements and implementation dates.

Proposed exemptions have been dropped and a great deal of hardship, unnecessary stress and cost has also been the consequence, alongside serious unresolved issues for dyslexic drivers. The British Dyslexia Association are in contact with TfL and the LPHCA on very real problems that the written element is causing.

TfL's current English Language requirements has caused the Mayor of London to have two meetings with Trade Representatives to date. The requirement date has been moved back several times (now to 30th April 2019) and the Mayor has stated that further dialogue could be needed in 2019 to get things right.

As well as the above, taxi drivers in London are exempted, whilst PHV drivers are not, which is something we are looking at on the basis of equality and discrimination. It is also very questionable why someone who has been working in the PHV industry for many years needs to be retrospectively tested for their English.

It should be remembered that every PHV driver in London has passed a driving test and for many years all PHV drivers have undertaken a TfL approved topographical assessment.

We propose that an agreed pan-England standard of assessment is needed, rather than every Local Authority doing its own thing, at differing costs and standards.

## **Recommendation 30**

We are very supportive of measures that improve disabled vehicle provision but around 90% of disabled passengers are not wheelchair bound and rely on normal PHVs for their transport, with many actually preferring non-wheelchair accessible vehicles.

Mandating fleet quotas would bring considerable problems for PHV Operators as well as many drivers who are majoritively self-employed and now move between fleets. We would therefore like government to facilitate dialogue with PHV trade representatives and disabled groups like the Disabled Persons Transport Advisory Committee (DPTAC) to discuss how Private Hire can play a greater role in providing appropriate vehicles.

## **SUMMARY**

The LPHCA believes that following the Law Commission Review and Professor Mohammed Abdel-Haq's excellent report, a number of these recommendations could

be brought in fairly quickly as there appears to be wide ranging consensus on key areas.

We also feel that for certain recommendations like English Language, enhanced DBS and barred lists checks, use of the National Anti-Fraud Network (NAFN) database, etc., that an absolute standard should be put in place. This would ensure that inconsistency, which has traditionally been the root cause of licensing problems, is eradicated.





# Government Response Report of the Task and Finish Group on Taxi and Private Hire Vehicle Licensing Moving Britain Ahead



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# Foreword

I would like to thank the Chair and Members of the Task and Finish Group on Taxi and Private Hire Vehicle Licensing for their time and for sharing their knowledge and expertise. I share the group's desire to act where needed. Many of the recommendations in the Chair's report seek to ensure the safety of passengers in taxis and private hire vehicles wherever they may be travelling, and the report is clear on the role that government and licensing authorities must play to achieve this.

My Department has considered the recommendations made by the Chair and the comments of the members; it is clear where there is a consensus and where the arguments are more finely balanced. In this response I will set out the action Government will take. At the forefront of our deliberations are the interests of passengers, both in the short-term and going forward to provide a framework that works now and for the future as the sector faces further change.

The existing licensing framework provides licensing authorities with extensive powers to set appropriate standards for drivers, vehicles and private hire operators. As the Chair has identified, licensing authorities can bring about much of the needed reform through the use of these powers and we support the call for far greater collaboration between licensing authorities in the interests of both passengers and the trade.

Together, Government and licensing authorities can learn from past failings and regulatory and industry best practice, to provide a framework that fosters fair competition, high standards and a service for all that those working in the trade can be rightly proud of.



**Nusrat Ghani MP**

Parliamentary Under Secretary of State for Transport

# Background

## The Task and Finish Group

- 1 The Task and Finish Group (TFG) on Taxi and Private Hire Vehicle Licensing was established in September 2017. The group's remit was to consider evidence relating to the adequacy of current taxi and private hire vehicle (PHV) licensing authority powers, as set out in legislation and guidance, and to make recommendations for actions to address any priority issues identified; specifically:
  - Identifying the current priority concerns regarding the regulation of the sector, based on evidence of impact and scale across England;
  - Considering, in particular, the adequacy of measures in the licensing system to address those issues;
  - Considering whether it would advise the Government to accept the recommendations made in the Law Commission's May 2014 report on taxi and PHV legislative reform relevant to the issues, and;
  - Making specific and prioritised recommendations, legislative and non-legislative, for action to address identified and evidenced issues.
- 2 The Chair of the group, Professor Mohammed Abdel-Haq, submitted his report (the 'TFG report'), with individual annexes contributed by group members, to the Secretary of State for Transport on 9 July 2018.

## The format of this response

- 3 This response first sets out a broad summary of the Government's position, and the actions it proposes to take.
- 4 This is followed, in chapters two to five, by a point-by-point consideration of the report's 34 specific recommendations. The chapter headings mirror the named sections of the TFG report.

# 1. Summary

The report of the Chair of the independent Task and Finish Group sets out a road-map for reform of the regulation of the taxi and private hire vehicle (PHV) sector. His report highlights the leadership role that government must provide and the extensive powers that licensing authorities currently have to shape the sector and the benefits of increased collaboration between them. Above all other considerations the Task and Finish Group has put the passenger at the heart of its thinking; we welcome and share this view. Government will take action where needed to ensure a safe and well-functioning sector which meets the needs and expectations of its passengers.

Greater collaboration is essential to delivering safe and convenient travel for all; unlike other forms of licensing the people and premises (in this case the drivers and vehicles) are mobile and will frequently be asked to work beyond the area in which they are licensed - while regulation is undertaken at a local level, journeys the public wish to take are not bound by borders. Greater consistency and collaboration in regulation is needed to address the changes in the sector and the concerns of the public, the trade and of regulators themselves.

The primary concern of the group was considering ways in which the safety of passengers can be protected. The Chair, with the full support of the group's members, has made a number of recommendations on robust measures he feels are appropriate and how government should ensure these are consistently applied and enforced. The Government accepts the three key measures recommended to achieve a safe service for passengers:

- National Minimum Standards
- National Enforcement Powers; and
- A National Licensing Database.

In addition, Government will consider further, with a view to legislation, the Chair's recommendation around tackling cross-border working, including how it might work in detail.

Government has already made commitments as part of its Inclusive Transport Strategy to work with licensing authorities to increase the availability of wheelchair accessible vehicles where demand is unmet; to prevent the refusal of wheelchair users and those travelling with assistance dogs; and to take strong action if such offences occur.

As with other parts of the economy, the PHV trade has experienced growth in numbers and changes to the way those within it work. The Good Work Plan, published in December 2018, sets out the Government's vision for the future of the labour market and its ambitious plans for implementing the recommendations arising from the Taylor Review.

## 2. Market function and regulation

### **TFG Recommendation 1**

*Notwithstanding the specific recommendations made below, taxi and PHV legislation should be urgently revised to provide a safe, clear and up to date structure that can effectively regulate the two-tier trade as it is now.*

### **Government response**

- 2.1 We agree that the regulation of taxis and private hire vehicles needs reform. Government acknowledged that need in 2012 by asking the Law Commission to review the regulation of the sector and propose an updated legislative framework. The Commission published a report and draft Bill in May 2014.
- 2.2 Since the Law Commission's report was published in 2014, the sector has undergone rapid change and continues to do so. Increased use of technology by passengers and the trade has resulted in a significantly different licensing landscape from that which existed when the Commission undertook its review. The TFG report makes a number of specific recommendations which conflict with the approach that the Law Commission took - for example, concerning cross-border journey restrictions - and it does not address in detail many of the fundamental questions about how an entirely new legislative framework might look.
- 2.3 We will set out in this response what legislation the Government proposes to take forward. In the short term this does not include a full replacement of the law which regulates taxi and private hire. It will, however, be important to fully consider this as part of work on the Future of Mobility<sup>1</sup>, which will consider how Government can support new technology and innovation through regulatory frameworks which can evolve with time.

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<sup>1</sup> <https://www.gov.uk/government/publications/industrial-strategy-the-grand-challenges/industrial-strategy-the-grand-challenges#future-of-mobility>

### **TFG Recommendation 2**

Government should legislate for national minimum standards for taxi and PHV licensing - for drivers, vehicles and operators (see recommendation 6). The national minimum standards that relate to the personal safety of passengers must be set at a level to ensure a high minimum safety standard across every authority in England.

Government must convene a panel of regulators, passenger safety groups and operator representatives to determine the national minimum safety standards. Licensing authorities should, however, be able to set additional higher standards in safety and all other aspects depending on the requirements of the local areas if they wish to do so.

### **Government response**

- 2.4 The Government agrees that there should be national minimum standards for taxi and PHV licensing, and will take forward legislation when time allows to enable these.
- 2.5 There is a welcome consensus in favour of the principle of national minimum standards, though careful consideration will be needed to define the scope of those standards and what they should be. In particular, it will be important to carefully balance the need to create more harmonised licensing practice, particularly where safety is concerned, with the important right of local licensing authorities to set conditions appropriate for their areas.
- 2.6 In the interim, Government will continue to review its statutory and best practice guidance. The development of these, through engagement and consultation, will ultimately shape the content of national minimum standards.
- 2.7 At Autumn Budget 2018, the Government announced that it will consider legislating at Finance Bill 2019-20 to introduce a tax-registration check linked to the licence renewal processes. This would include drivers of taxis and PHVs and PHV operators licensing in England and Wales. Applicants would need to provide proof they are correctly registered for tax in order to be granted these licences. This would help to raise regulatory standards and improve tax compliance in this sector.

### **TFG Recommendation 3**

Government should urgently update its Best Practice Guidance. To achieve greater consistency in advance of national minimum standards, licensing authorities should only deviate from the recommendations in exceptional circumstances. In this event licensing authorities should publish the rationale for this decision.

Where aspects of licensing are not covered by guidance nor national minimum standards, or where there is a desire to go above and beyond the national minimum standard, licensing authorities should aspire to collaborate with adjoining areas to reduce variations in driver, vehicle and operator requirements. Such action is particularly, but not exclusively, important within city regions.



### Government response

- 2.8 The Government welcomes this recommendation, recognising as it does the leadership role that Government must play but also the shared collective responsibility that licensing authorities have to work together to increase consistency beyond safety standards and in doing so address the root cause of wider concerns over 'out-of-area' working by some licensees.
- 2.9 Alongside this response, the Department is for the first time consulting on statutory guidance to be issued to licensing authorities which details the Department's view of how their functions may be exercised so as to protect children and vulnerable adults from harm. Licensing authorities are obligated to have regard to this guidance, and as such we expect the final recommendations to be enacted unless there is a clear local reason to deviate from them.

#### **TFG Recommendation 4**

In the short-term, large urban areas, notably those that have metro mayors, should emulate the model of licensing which currently exists in London and be combined into one licensing area. In non-metropolitan areas collaboration and joint working between smaller authorities should become the norm.

Government having encouraged such joint working to build capacity and effectiveness, working with the Local Government Association, should review progress in non-metropolitan areas over the next three years.

### Government Response

- 2.10 The Government agrees that collaboration and joint working can be helpful in ensuring efficient operation of taxi and PHV licensing in smaller local authorities. The Government will keep progress in this area under review.

#### **TFG Recommendation 5**

As the law stands, plying for hire is difficult to prove and requires significant enforcement resources. Technological advancement has blurred the distinction between the two trades.

Government should introduce a statutory definition of both plying for hire and pre-booked in order to maintain the two-tier system. This definition should include reviewing the use of technology and vehicle 'clustering' as well as ensuring taxis retain the sole right to be hailed on streets or at ranks.

Government should convene a panel of regulatory experts to explore and draft the definition.

### Government response

- 2.11 This matter was the subject of specific consideration by the Law Commission in the course of its review. The Commission ultimately concluded that a statutory definition of plying for hire would not be a practical improvement on the current position. This decision was reached with the advice of an expert panel established specifically for the purpose of discussing reform of "plying for hire". The Commission's main reason

for reaching this conclusion was that whether a vehicle is plying for hire in particular circumstances is a matter of fact and degree that the courts must consider. It concluded that many of the current grey areas would remain unresolved as no statutory list of factors could be sufficiently determinative to give clear guidance.

- 2.12 We have no reason to believe that the legal situation has changed since 2014, and thus no reason to believe that a new or reconvened expert panel would reach a different conclusion. As a result, the Government does not intend to take this recommendation forward at this time.

#### **TFG Recommendation 6**

Government should require companies that act as intermediaries between passengers and taxi drivers to meet the same licensing requirements and obligations as PHV operators, as this may provide additional safety for passengers (e.g. though greater traceability).

#### **Government response**

- 2.13 PHV operators, and companies that act as intermediaries for taxi bookings, do perform functions that appear very similar. However, the Government is not convinced that there is a compelling case for the licensing of taxi intermediaries (such as taxi apps or radio circuits).
- 2.14 An operator is fundamental to the booking of a PHV, and so has a distinct and legally necessary role in the regulatory system. Conversely, when a taxi is requested via an intermediary, that intermediary is doing nothing more than passengers could do themselves - they merely convey the request from the passenger to a taxi driver. This is unlike the situation with PHVs where it would be illegal for the passenger to engage the services of the driver directly, and the involvement of the PHV operator is necessary to make the journey a lawful one. This distinction reflects the greater degree of regulation applied to taxis than PHVs.
- 2.15 The Law Commission also considered this, and concluded that intermediaries working solely with licensed taxis should not require licensing.

#### **TFG Recommendation 7**

Central Government and licensing authorities should 'level the playing field' by mitigating additional costs faced by the trade where a wider social benefit is provided – for example, where a wheelchair accessible and/or zero emission capable vehicle is made available.

#### **Government Response**

- 2.16 Government is aware of the additional cost involved in the purchase of a wheelchair accessible vehicle (WAV) or a zero-emission capable vehicle, whether voluntarily or because of licensing requirements.

- 2.17 For zero-emission capable vehicles, the Government provides the plug-in car grant<sup>2</sup> and the plug-in taxi grant<sup>3</sup>.
- 2.18 A number of authorities are proactively encouraging the provision of WAVs through offering discounted licensing fees for these vehicles. Government welcomes this initiative and would encourage licensing authorities to consider what other incentives could be offered (particularly those which may not impose costs on licensing authorities themselves - for example, allowing WAVs access to bus lanes).
- 2.19 The Government does not propose to introduce further financial incentives for taxis and PHVs based on vehicle type at the current time; however we will keep this under review.

### **TFG Recommendation 8**

Government should legislate to allow local licensing authorities, where a need is proven through a public interest test, to set a cap on the number of taxi and private hire vehicles they license. This can help authorities to solve challenges around congestion, air quality and parking and ensure appropriate provision of taxi and private hire services for passengers, while maintaining drivers' working conditions.

### **Government Response**

- 2.20 Local licensing authorities outside London can currently limit the number of taxis they licence, provided there is no significant 'unmet demand' for taxi services in their areas. It is not currently possible by law for any licensing authority in England to limit the number of PHVs it licenses.
- 2.21 The TFG members had differing opinions on this recommendation, recorded in their comments in the annex to the report; Transport for London (TfL) strongly supports it, while some other members flag concerns about the effects on competition in particular. Competition benefits consumers by incentivising operators to give value for money, to innovate, and drive improvements in service standards.
- 2.22 Of particular concern would be any potential impact on safety. An undersupply of vehicles would increase wait times and cause people to be stranded in vulnerable situations, potentially increasing the use of unlicensed, unvetted and illegal drivers and vehicles. We acknowledge that the recommendation is that licence 'caps' should require a public interest test, which may allow for consideration of any negative impacts. Nevertheless, the potential negative impacts of capping for passengers are considerable, and real-life demand for taxi and PHV services can be very difficult to accurately calculate. Reducing the availability of PHVs could also result in higher prices for passengers, as, unlike taxis, PHV fares are not controlled.
- 2.23 There has been significant growth in the number of PHVs licensed in London in recent years; there was an increase of 66% between March 2014 and March 2017, from around 53,000 vehicles to nearly 88,000. Since then, the number does appear to have stabilised at around 87,500.<sup>4</sup> TfL has congestion charging powers, and has announced following public consultation that the exemption from the congestion

<sup>2</sup> <https://www.gov.uk/government/publications/plug-in-car-grant/plug-in-car-grant-eligibility-guidance>

<sup>3</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/682046/plugin-taxi-grant-vehicle-application-guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/682046/plugin-taxi-grant-vehicle-application-guidance.pdf)

<sup>4</sup> <https://tfl.gov.uk/info-for/taxis-and-private-hire/licensing/licensing-information>

charge currently given to PHVs when they are working will be removed from April 2019.<sup>5</sup>

- 2.24 The Government does not propose to take this recommendation forward. We would instead wish to see local authorities make the most use of existing powers to address air quality and congestion issues.

#### **TFG Recommendation 9**

All licensing authorities should use their existing powers make it a condition of licensing that drivers cooperate with requests from authorised compliance officers in other areas. Where a driver fails to comply with this requirement enforcement action should be taken as if the driver has failed to comply with the same request from an officer of the issuing authority

#### **Government Response**

- 2.25 The Government welcomes this recommendation. Regardless of any current or future rules on cross-border working (see paragraphs 2.30 - 2.35), drivers will on occasion encounter licensing officers from other authorities.
- 2.26 We are aware of a number of authorities that already have this requirement as part of their licensing conditions and we would encourage other licensing authorities to do so too. Where drivers are working in an area other than that in which they are licensed, it should be expected that licensees comply with the reasonable requests of any licensing officers, assisting them in ensuring compliance with appropriate standards, and ultimately protecting passengers.

#### **TFG Recommendation 10**

Legislation should be brought forward to enable licensing authorities to carry out enforcement and compliance checks and take appropriate action against any taxi or PHV in their area that is in breach of national minimum standards (recommendation 2) or the requirement that all taxi and PHV journeys should start and/or end within the area that issued the relevant licences (recommendation 11).

#### **Government Response**

- 2.27 The Government agrees that there should be national enforcement against the national minimum standards that will be introduced in response to recommendation two, and will legislate for this when time allows.
- 2.28 As noted above, regardless of any current or future rules on cross-border working, drivers will inevitably undertake some journeys which take them outside their licensed area. The benefits to passenger safety resulting from robust national minimum standards can only be maximised when effective enforcement ensures compliance with these, regardless of where journeys are taking place.

<sup>5</sup> <https://consultations.tfl.gov.uk/policy/private-hire-charge-exemption/> (the exemption will continue to be available for wheelchair accessible PHVs).

- 2.29 The Government will work closely with licensing authorities and enforcement officers to ensure that the precise scope of national enforcement powers, and how they would be used in practice, are carefully considered and defined.

#### **TFG Recommendation 11**

Government should legislate that all taxi and PHV journeys should start and/or end within the area for which the driver, vehicle and operator (PHVs and taxis – see recommendation 6) are licensed. Appropriate measures should be in place to allow specialist services such as chauffeur and disability transport services to continue to operate cross border.

Operators should not be restricted from applying for and holding licences with multiple authorities, subject to them meeting both national standards and any additional requirements imposed by the relevant licensing authority.

#### **Government Response**

- 2.30 There are clearly a range of views within the sector and interested parties about how cross-border, or out-of-area, journeys by taxis and PHVs should be permitted or restricted. This can clearly be seen in the range of views expressed by individual members of the TFG in their comments in the annex to the report.
- 2.31 Currently, a PHV journey can take place anywhere in England provided that the driver, vehicle and operator are licensed by the same licensing authority. However, the licensing requirements in different areas (for example, the training required of drivers or the vehicle standards set) can vary considerably.
- 2.32 Such variations, combined with the freedom to carry out journeys anywhere, can incentivise drivers or operators to license away from the area where they actually intend to carry out work. This means that the ability of local licensing authorities to set and maintain taxi and PHV standards for their local areas is undermined.
- 2.33 We acknowledge the view that national minimum standards will go some way towards resolving that problem. The Suzy Lamplugh Trust noted in its comments on the TFG report that it did not support recommendation 11 because the introduction of national minimum standards would resolve the current practice of drivers choosing which licensing authority to obtain their licence from based on "less stringent" safety checks.
- 2.34 Even with national minimum standards in place, there will still be variations in licensing conditions (and therefore matters like licence costs and processing times), since the Government does not intend to remove the ability of licensing authorities to set their own local standards in matters not covered by the national minimum standards, or above and beyond those minimum standards. Local authorities are accountable for licensing in their areas and it is only right that they have the powers to properly shape and influence their local market.
- 2.35 Government therefore agrees with the principle of this recommendation, and will consider further (with a view to legislation) how it might best work in detail. In particular, Government will need to consider what size of area is appropriate. We will also consider what flexibilities or exemptions might be needed to reduce or avoid negative impacts on any particular business models, types of transport or passenger,

and businesses or localities that are close to (perhaps multiple) licensing authority borders.

**TFG Recommendation 12**

Licensing authorities should ensure that their licensing administration and enforcement functions are adequately resourced, setting fees at an appropriate level to enable this.

**Government Response**

- 2.36 The prime reason for regulation of taxis and PHVs is to protect the public and licensing authorities must ensure that this function is sufficiently resourced to do so. We therefore urge licensing authorities to ensure that they have efficient and effective procedures in place to minimise the cost to the trade of establishing a robust and well-resourced licensing body and undertake a review of their licensing fees to recover the permissible costs and no more of providing this.

**TFG Recommendation 13**

Legislation should be introduced by the Government as a matter of urgency to enable Transport for London to regulate the operation of pedicabs in London

**Government Response**

- 2.37 The Government fully supports this recommendation.
- 2.38 Under the current law, pedicabs can be regulated as taxis elsewhere in England but not in London. This is the result of the differing legislation that governs London and the rest of England. In London, pedicabs are considered to be 'stage carriages' rather than taxis (hackney carriages). The resulting lack of any regulation of pedicabs in London is an anomaly which needs fixing, in the clear interest of passengers.
- 2.39 The Government has worked with TfL to support the Pedicabs (London) Private Members' Bill brought forward by Paul Scully MP. The objective of the Bill has cross party support, and we hope that Parliament will enable this to become statute.
- 2.40 Should the Pedicabs (London) Bill not become law, the Government will put forward its own legislation when time permits to enable TfL to regulate pedicabs.

**TFG Recommendation 14**

The Department for Transport and Transport for London should work together to enable the issue of Fixed Penalty Notices (FPNs) for both minor taxi and PHV compliance failings. The Department for Transport should introduce legislation to provide all licensing authorities with the same powers.

## Government Response

- 2.41 The Transport for London Act 2008 enables an FPN system to be introduced for certain taxi and PHV offences within London. These powers have never been commenced by TfL. Despite the title of the relevant schedule to the 2008 Act, the list of offences only relates to Acts which govern taxi regulation and therefore would not enable FPNs to be issued regarding any PHV offence.
- 2.42 The Department for Transport and TfL are discussing what amendments to the schedule of offences would be required to address this regulatory imbalance and address TfL's concerns, so that it can make effective use of its powers.
- 2.43 The Department is aware that a number of licensing authorities operate a penalty points system to address minor infringements. We will engage with licensing authorities to establish if there is significant demand for a power to issue fixed penalty notices outside of London to assist in the enforcement of national minimum standards.

### **TFG Recommendation 15**

All ridesharing service services should explicitly gain the informed consent of passengers at the time of the booking and commencement of the journey.

## Government Response

- 2.44 Taxi and PHV ridesharing services (i.e. multiple passengers sharing a taxi or PHV to the same, or similar, destinations who are charged separate fares - for example, the 'Uber Pool' service) have been permitted for over 30 years but the adoption by the public of new technology is likely to increase the participation rate.
- 2.45 Government supports choice for consumers but this must be an informed choice. It would be unacceptable for any person to be led to believe that they are hiring a taxi or PHV exclusively, and then be expected to share with other passengers who are unknown to them. Although the TFG report does not present any evidence that such confusion is happening in practice, operators should ensure their systems make it entirely clear to passengers when they are engaging a shared service. Licensing authorities may wish to ensure that their operator licensing conditions make clear that operators must do this.

## 3. Safety in taxis and private hire vehicles

- 3.1 Many of the recommendations made by the TFG Report in this area call on local licensing authorities to make better use of their existing powers, ahead of Government legislating for the introduction of national minimum standards.

### **TFG Recommendation 16**

The Department for Transport must as a matter of urgency press ahead with consultation on a draft of its Statutory Guidance to local licensing authorities. The guidance must be explicit in its expectations of what licensing authorities should be doing to safeguard vulnerable passengers. The effectiveness of the guidance must be monitored in advance of legislation on national minimum standards.

### **Government Response**

- 3.2 The TFG received submissions and heard evidence on ways to increase passenger safety from a wide range of organisations.
- 3.3 Both the Jay and Casey Reports into child sexual abuse and exploitation noted the prominent role played by taxi and PHV drivers in a large number of cases of abuse. The Casey Report in particular uncovered what was described as "weak and ineffective arrangements for taxi licensing which leave the public at risk." To help reduce the risk posed to children and vulnerable individuals from harm by taxi and PHV drivers who seek to abuse their position of trust, section 177 of the Policing and Crime Act 2017 enables the Secretary of State to issue statutory guidance to licensing authorities on the exercise of their taxi and PHV licensing functions.
- 3.4 The TFG was invited to review the draft statutory guidance ahead of the public consultation, and it has now been published for consultation alongside this response. The Department is grateful to the organisations it engaged with while drafting the guidance for consultation, and we encourage all organisations and individuals with views on the guidance to respond to the consultation.



### **TFG Recommendation 17**

In the interests of passenger safety, particularly in the light of events in towns and cities like Rochdale, Oxford, Newcastle and Rotherham, all licensed vehicles must be fitted with CCTV (visual and audio) subject to strict data protection measures. Licensing authorities must use their existing power to mandate this ahead of the requirement's inclusion in national minimum standards.

To support greater consistency in licensing, potentially reduce costs and assist greater out of area compliance, the Government must set out in guidance the standards and specifications of CCTV systems for use in taxis and PHVs. These must then be introduced on a mandatory basis as part of national minimum standards

### **Government Response**

- 3.5 The Government's view on the use of CCTV in taxis and private hire vehicles is set out in the consultation on draft statutory guidance which accompanies this response.
- 3.6 It is the Department's view that CCTV (with targeted overt recording of audio instigated when either the passenger or driver deems necessary) provides additional public protection - to both passengers and drivers - providing a fuller objective record of events, assisting in identification of unacceptable and/or illegal behaviour by all occupants of the vehicle. As the TFG report identifies, ridesharing in taxis and PHVs is becoming more popular, introducing further risks as passengers are travelling in close proximity with strangers.
- 3.7 However, Government must also consider the importance of protecting individuals' privacy. It is vital therefore that any recordings made are able to be viewed only by those with a legitimate need to do so, such as the police when investigating an allegation or licensing authorities in response to a complaint. Licensing authorities should refer to guidance issued by the Information Commissioner and the Surveillance Camera Commissioner when formulating their policies on the specification and use of in vehicle CCTV system.
- 3.8 It should be noted that where a local authority considers granting a license subject to CCTV conditions, it assumes the role of a system operator for the purposes of the Home Secretary's Surveillance Camera Code issued under the Protection of Freedoms Act 2012, which means it must have regard to the Code; and is the data controller for the purposes of the Data Protection Act 2018.

### **TFG Recommendation 18**

As Government and local authorities would benefit from a reduction in crime in licensed vehicle both should consider ways in which the costs to small businesses of installing CCTV can be mitigated.

### **Government Response**

- 3.9 It is likely that Government and local authorities would benefit from a reduction in crime as a result of more extensive installation of CCTV in taxis and PHVs. However, CCTV is installed in many businesses at their own cost with an expectation that this

will deter crime and so protect their staff and property. For example, similar conditions may be required before granting establishments a licence to sell alcohol.

- 3.10 Government has acted to assist the trade where tighter regulation has significantly increased costs, for example providing a grant of up to £7,500 to assist the trade in transitioning to zero emission capable vehicles. The cost of installing a CCTV system is similar to a replacement set of tyres for a vehicle; as such we do not consider subsidising of these additional costs is necessary.

#### **TFG Recommendation 19**

National standards must set requirements to assist the public in distinguishing between taxis, PHVs and unlicensed vehicles. These should require drivers to have on display (e.g. a clearly visible badge or arm-band providing) relevant details to assist the passengers in identifying that they are appropriately licensed e.g. photograph of the driver and licence type i.e. immediate hire or pre-booked only.

All PHVs must be required to provide information to passengers including driver photo ID and the vehicle licence number, in advance of a journey. This would enable all passengers to share information with others in advance of their journey. For passengers who cannot receive the relevant information via digital means this information should be available through other means before passengers get into the vehicle.

#### **Government Response**

- 3.11 It is clearly important that people are able to identify a licensed vehicle and driver, minimising the risk of them travelling in vehicles that are not licensed or correctly insured.
- 3.12 It is also common that people do not understand fundamental differences between taxis and PHVs; comments from the Suzy Lamplugh Trust in the annex to the TFG report highlight that over a quarter of people believe PHVs can be hired directly through the driver.
- 3.13 There are divergent standards through England as to what a taxi and PHV may look like, or display. These differences range from the minor e.g. whether an operator's details can or must be displayed (either permanently or in a form which can be removed) to specifying what colour vehicles must be in order to be licensed.
- 3.14 The Government will consider what vehicle and driver identification requirements should be included within national minimum requirements, focussing on supporting safety. Over and above national minimum standards, local considerations (particularly in respect of vehicle licensing conditions) will remain important.

### **TFG Recommendation 20**

All drivers must be subject to enhanced DBS and barred lists checks. Licensing authorities should use their existing power to mandate this ahead of inclusion as part of national minimum standards.

All licensing authorities must require drivers to subscribe to the DBS update service and DBS checks should must be carried out at a minimum of every six months. Licensing authorities must use their existing power to mandate this ahead of inclusion as part of national standards.

### **Government Response**

- 3.15 The Government agrees with both parts of this recommendation, and they are included in the statutory guidance which has been issued for consultation alongside this response. In the longer term, they will be considered as part of national minimum standards.
- 3.16 In 2012 the Government enabled licensing authorities to undertake enhanced Disclosure and Barring Service (DBS) checks; this includes the ability to check both barred lists, which list people who are prevented from working with children and/or adults as they are, have been, or might in the future be, engaged in regulated activity or where a person is cautioned or convicted for a relevant (automatic barring) offence. As the TFG report acknowledges, all licensing authorities have a stated policy of requiring enhanced DBS checks for taxi and PHV drivers, but a small minority of authorities do not also check the barred lists despite there being no additional cost to do so.
- 3.17 The TFG report also highlights the benefits of requiring licensees to subscribe to the DBS's update service, through reduced administration and lower long-term costs for both licensing authorities and licensees themselves.

### **TFG Recommendation 21**

Government must issue guidance, as a matter of urgency, that clearly specifies convictions that it considers should be grounds for refusal or revocation of driver licences and the period for which these exclusions should apply. Licensing authorities must align their existing policies to this ahead of inclusion in national minimum standards.

### **Government Response**

- 3.18 The Government agrees with this recommendation, and its view has been included in the statutory guidance which has been issued for consultation alongside this response.
- 3.19 As with the introduction of national minimum standards, Government will seek to balance the need for greater nationwide consistency with respect for local decision making. We welcome the work that the Institute of Licensing in partnership with the Local Government Association, the National Association of Licensing and Enforcement Officers and Lawyers in Local Government have done in this area. Their work has informed the guidance on previous convictions that is included in the

draft statutory guidance. The intention is that, subject to the outcome of the consultation, this will be included in national minimum standards.

**TFG Recommendation 22**

The Quality Assurance Framework and Common Law Police Disclosure Provisions must be reviewed to ensure as much relevant information of behaviours as well as crimes by taxi and PHV drivers (and applicants) is disclosed to and to ensure licensing authorities are informed immediately of any relevant incidents.

**Government Response**

- 3.20 Under section 113B (4) of the Police Act 1997, the legislation requires that the DBS requests that a relevant Chief Officer of police provide any information which he/she reasonable believes to be relevant and considers ought to be disclosed. The Quality Assurance Framework (QAF) is the decision-making tool used by the Disclosure Units of police and other law enforcement agencies when considering whether information should be disclosed or not for inclusion in Enhanced Disclosure and Barring Service certificates. This is overseen by the National Police Chiefs' Council (NPCC) as it relates to the statutory police role within the disclosure regime.
- 3.21 Under Common Law Police Disclosure provisions (CLPD), the police can use their common law powers for the prevention and detection of crime to proactively provide police intelligence or information to a third party (such as a licensing authority) where there is a public protection risk, to allow them to act swiftly to mitigate any danger. It is for Chief Police Officers to locally determine the implementation of CLPD provisions.
- 3.22 Government will discuss the provision of information with the NPCC with a view to ensuring that appropriate steps are being taken to provide relevant information to licensing authorities.

**TFG Recommendation 23**

All licensing authorities must use the National Anti-Fraud Network (NAFN) register of drivers who have been refused or had revoked taxi or PHV driver licence. All refusals and revocations must be recorded, and the register checked for all licence applications and renewals. Licensing authorities must retain the reasons for any refusal, suspension or revocation and provide those to other authorities as appropriate. The Government must, as a matter of urgency, bring forward legislation to mandate this alongside a national licensing database (recommendation 24).

**Government Response**

- 3.23 It is important that licensing authorities who are making a decision on whether to grant a taxi or PHV driver licence can do so in possession of all relevant facts, including whether the applicant has been refused or lost a licence in another area because of safety concerns. At present, there is no data sharing mechanism to make sure that such history is disclosed to them.

- 3.24 The Government supports the Private Member's Bill brought by Daniel Zeichner MP that would mandate licensing authorities to use such a database. The Government also welcomes the initiative of the LGA in setting up a voluntary database of drivers who have been refused or revoked licences. Any information obtained using data sharing methods like this must be used as an aid to local, independent decision making. The statutory guidance which is published for consultation alongside this response expands further on the Government's view.
- 3.25 In the longer term, the Government intends that information about drivers who have had licences refused or revoked would be one part of the wider-ranging national database discussed against the next recommendation (24).

#### **TFG Recommendation 24**

Government must establish a mandatory national database of all licensed taxi and PHV drivers, vehicles and operators, to support stronger enforcement.

#### **Government Response**

- 3.26 Government will legislate for the creation of a national taxi and private hire database, as a necessary accompaniment to national enforcement powers. Development of the database will take account of the work undertaken for the identification of taxis and PHVs for charging Clean Air Zone purposes.
- 3.27 It will assist in the effective application of national minimum standards by enabling suitably qualified local authority enforcement officers to take action against taxis and PHVs regardless of where they are licensed.
- 3.28 The establishment of a national licensing database will assist bodies such as licensing authorities and the police to communicate information in a timely manner, as it will enable them to quickly and accurately identify where a driver or vehicle are licensed. For example, this would assist the police in disclosing relevant information under the Common Law Police Disclosure powers.

#### **TFG Recommendation 25**

Licensing authorities must use their existing powers to require all drivers to undertake safeguarding / child sexual abuse and exploitation awareness training including the positive role that taxi/PHV drivers can play in spotting and reporting signs of abuse and neglect of vulnerable passengers. This requirement must form part of future national minimum standards.

#### **Government Response**

- 3.29 The Government welcomes this recommendation and the acknowledgement that such a requirement can be universally applied under powers already available to licensing authorities.
- 3.30 The draft statutory guidance which has been issued for consultation alongside this response includes a recommendation that licensees should be required to undertake safeguarding / child sexual abuse and exploitation awareness training.

- 3.31 In the longer term, the Government intends that this requirement would be included in national minimum standards.

**TFG Recommendation 26**

All individuals involved in the licensing decision making process (officials and councillors) must have to undertake appropriate training. The content of the training must form part of national minimum standards.

**Government Response**

- 3.32 It is important that councillors or officers making decisions about the suitability of licensing applicants are suitably trained and equipped to do so. Authorities may have very robust policies in place, but it is the practical application of these that provides protection to the public. Licensing officers may frequently be called on to make difficult decisions, such as revoking or refusing a licence conscious of the implications that decision may have on the applicant or licensee and their family. Licensing authorities must ensure that their decision makers are aware of the public protection role they have and that the overriding consideration is the safety of the public.
- 3.33 The draft statutory guidance which has been published for consultation alongside this response recommends that those charged with determining taxi and PHV licensing matters undertake appropriate training.
- 3.34 In the longer term the Government intends that the requirement for training would be included in national minimum standards.

**TFG Recommendation 27**

Government must review the assessment process of passenger carrying vehicle (PCV) licensed drivers and/or consider the appropriate licensing boundary between taxis/PHVs and public service vehicles (PSVs).

**Government Response**

- 3.35 The TFG report explains the current demarcation (i.e. seating capacity) and differing licensing processes between the PHV and Public Service Vehicle (PSV - minibuses, buses and coaches) regimes.
- 3.36 The Government attaches the utmost priority to passenger safety in the licenced taxi and PHV trade. The licensing regime for any transport mode must be reflective of the relative potential risk they might pose to the travelling public. It is not therefore acceptable that the PHV licensing regime may be evaded through the use for PHV bookings of drivers and vehicles which are not licensed for PHV purposes.
- 3.37 Where PHV operators also hold a PSV operator's licence, PSVs should not be used to fulfil bookings except with the informed consent of the hirer. For example, if a member of the public contacts a PHV operator and seeks a booking for a party of fewer than nine passengers, it cannot be reasonable to assume that a PSV is required unless there are other factors e.g. a large amount of baggage. If, for

example, a nine-seater minibus (a PSV) is necessary, the difference in licensing requirements should be explained and explicit consent obtained. Licensing authorities should use their existing powers to include as a condition of a PHV operator's licence that bookings received by that licence-holder must be fulfilled using a PHV licensed driver and vehicle. Authorities may then take appropriate steps to monitor and enforce compliance with the licence condition.

- 3.38 In the longer term, it will be important to consider as part of the Future of Mobility Grand Challenge what changing technologies and ways of working might mean for the differing regulatory frameworks applied to road transport in the UK, including whether the number of seats in a vehicle remains an appropriate way of deciding how to regulate.

#### **TFG Recommendation 28**

Licensing authorities must require that all drivers are able to communicate in English orally and in writing to a standard that is required to fulfil their duties, including in emergency and other challenging situations.

#### **Government Response**

- 3.39 Government supports this recommendation. Those that carry members of the public must be able to understand the needs of their passengers.
- 3.40 The draft statutory guidance which has been issued for consultation alongside this response recommends that licensing authorities require an English assessment (oral and written) for their licensees.
- 3.41 In the longer term, Governments intends that this requirement would be included in national minimum standards.

## 4. Accessibility

### **TFG Recommendation 29**

All licensing authorities should use their existing powers to require that their taxi and PHV drivers undergo disability awareness and equality training. This should ultimately be mandated as part of national minimum standards.

### **Government Response**

- 4.1 The Government supports this recommendation. Taxis and PHVs play a vital role in enabling disabled people to travel where other modes may not be available or accessible. The Department has, in previous best practice guidance, encouraged licensing authorities to use their powers to improve drivers' awareness of the needs of disabled people including by undertaking disability awareness training. This training should include awareness of less visible impairments, such as learning disabilities and dementia.
- 4.2 Licensing authorities have the powers to mandate this training. The TFG report highlights the low proportion of authorities (38% as of 31 March 2017, increasing to 41% as of 31 March 2018) which currently do so.
- 4.3 Since the Group submitted its report, Government has published the Inclusive Transport Strategy<sup>6</sup> (ITS). The ITS includes a commitment to consult on updated best practice guidance which should better support licensing authorities to use their existing powers. In particular, we will recommend that authorities require taxi and PHV drivers to complete disability awareness and equality training, make it simple to report discrimination, and take robust action against drivers who have discriminated against disabled passengers.
- 4.4 In the longer term the Government intends that these training requirements will be included in national minimum standards.

### **TFG Recommendation 30**

Licensing authorities that have low levels of Wheelchair Accessible Vehicles (WAVs) in their taxi and PHV fleet should ascertain if there is unmet demand for these vehicles. In areas with unmet demand licensing authorities should consider how existing powers could be used to address this, including making it mandatory to have a minimum number of their fleet that are WAVs. As a matter of urgency the Government's Best Practice Guidance should be revised to make appropriate recommendations to support this objective

<sup>6</sup> <https://www.gov.uk/government/publications/inclusive-transport-strategy>



## Government Response

- 4.5 The TFG report highlights the variation in the availability of wheelchair accessible vehicle (WAVs) across England. In over a quarter of authorities, 5% or fewer of taxis are wheelchair accessible, and this measure increases to nearly two-thirds of authorities for PHVs. It is however acknowledged that an entirely WAV fleet may not be beneficial to disabled passengers, most of whom are not wheelchair users.
- 4.6 In its comments in the annex to the TFG report, Transport for London comments on the difficulty in achieving a mixed PHV fleet as vehicles are often licensed by individuals rather than PHV operators to whom a quota might be more easily applied. The Local Government Association also noted that there may be practical barriers to mandating practicality minimum WAV numbers.
- 4.7 In the ITS Government stated a desire to see a much greater proportion of WAVs, particularly in non-urban areas, over the next 10 years. We will write to all local licensing authorities stressing the importance of supporting an inclusive taxi and PHV fleet.
- 4.8 We will continue to monitor the proportion of WAVs within overall taxi and PHV fleets, as reported in the annual DfT taxi and PHV statistics, and to seek clarification from authorities as to the steps they are taking to assess and respond to the local need for such vehicles.

### **TFG Recommendation 31**

Licensing authorities which have not already done so should set up lists of Wheelchair Accessible Vehicles (WAVs) in compliance with s.167 of the Equality Act 2010, to ensure that passengers receive the protections which this provides.

## Government Response

- 4.9 In 2017, the Government commenced sections 165 and 167 of the Equality Act 2010. Under Section 167 a licensing authority may publish a list of their licensed vehicles designated as wheelchair accessible; those vehicles are then required to apply the passenger protections in Section 165. These are to not charge more to a passenger in a wheelchair than to any other passenger, and to provide reasonable assistance (drivers may be exempted from the latter on medical grounds).
- 4.10 In the ITS, Government strongly encouraged licensing authorities to publish lists under section 167 of the Equality Act 2010 to ensure that wheelchair users are protected from discriminatory behaviour. The ITS also committed Government to:
- From autumn 2019 publish on an annual basis a list of those authorities which we know to have issued a list of taxis and PHVs designated as being wheelchair accessible in accordance with Section 167 of the Equality Act 2010;
  - Continue to encourage local licensing authorities, which have not already done so, to publish lists of taxis and PHVs designated as wheelchair accessible under Section 167 of the Equality Act 2010, and to inform the Department that they have done so.

### **TFG Recommendation 32**

Licensing authorities should use their existing enforcement powers to take strong action where disability access refusals are reported, to deter future cases. They should also ensure their systems and processes make it as easy as possible for passengers to report disability access refusals.

### **Government Response**

- 4.11 The TFG report notes the findings of a recent survey of guide dog owners which identified that almost half (42%) had experienced a refusal to enter a taxi or PHV in the previous year because of their dog. The Government agrees that this is unacceptable.
- 4.12 In the ITS we committed to undertake research to identify why the risk of fines and the loss of a driver's taxi or PHV licence appear insufficient in some circumstances to prevent them from discriminating against assistance dog owners. It is obvious that prevention of illegal refusals is preferable to retrospective sanctions, which do little to rebuild the confidence of assistance dog users who have been subject to illegal refusals. We will therefore use evidence from this research to inform ways in which training can play a role in preventing refusals occurring. As set out in response to recommendation 29 of the TFG report, Government intends to include disability awareness and equality training in national minimum standards.
- 4.13 The Government agrees that those that refuse to meet their legal obligation under Sections 168 and 170 of the Equality Act 2010 should be subject to enforcement action. We have stated in the ITS that licensing authorities should use the powers available to them, and take robust action against those who have discriminated illegally against disabled passengers.

## 5. Working conditions

### **TFG Recommendation 33**

The low pay and exploitation of some, but not all, drivers is a source of concern. Licensing authorities should take into account any evidence of a person or business flouting employment law, and with it the integrity of the National Living Wage, as part of their test of whether that person or business is "fit and proper" to be a PHV operator.

### **Government Response**

- 5.1 The TFG report acknowledges that the group did not have the expertise, nor was it within its scope, to determine the employment status of drivers. This is also true of licensing authorities; only the courts can make rulings on employment status.
- 5.2 However, the Government agrees that the decisions of tribunals, and whether an operator concerned is complying with a ruling in the way the law requires, should reasonably be considered by a licensing authority as part of the 'fit and proper' test for a PHV operator. It is unacceptable for business not to comply with and deny workers their statutory employment rights - such as the appropriate National Minimum Wage rate or National Living Wage - and if a business deliberately does so in disregard of what is required of them, this calls into question whether they are fit and proper to be licensed.
- 5.3 As the TFG report also notes, the current high-profile debate on employment status goes beyond the taxi and PHV sector. The Good Work Plan, published in December 2018, states Government will legislate to improve the clarity of the employment status tests, reflecting the reality of modern working relationships.

### **TFG Recommendation 34**

Government should urgently review the evidence and case for restricting the number of hours that taxi and PHV drivers can drive, on the same safety grounds that restrict hours for bus and lorry driver.

### **Government Response**

- 5.4 The TFG report explains that although the group did not receive independent evidence of the number of hours drivers are working (or, more specifically, driving), the current lack of regulation of working hours for taxi and PHV drivers may potentially be a cause for concern.

- 5.5 The report also acknowledges that there may be monitoring and enforcement problems to enforcing such limits. This is particularly the case in a sector where currently the majority of drivers are self-employed.
- 5.6 In the first instance, in order to assess the scale of the issue, the Government will engage informally with sector stakeholders to determine whether it is possible to more accurately assess the hours drivers are working, and whether there is a trend for working more or excessive hours. The Government is mindful not just of road safety, but also of the need to avoid burdensome, yet difficult to enforce, regulation.



**Title of meeting:** LICENSING COMMITTEE

**Date of meeting:** 22 MARCH 2019

**Subject:** FIXED-ODDS BETTING TERMINALS (FOBTs) - UPDATE ON LEGISLATIVE CHANGES

**Report by:** DIRECTOR OF CULTURE, LEISURE AND REGULATORY SERVICES

**Wards affected:** ALL

**Key decision:** No

**Full Council decision:** No

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**1. Purpose of report**

- 1.1 The purpose of this report is to update the Committee upon the Government's consultation and subsequent response in relation to proposals for changes to gaming machines and social responsibility measures so far as they relate to fixed-odds betting terminals (FOBTs).

**2. Recommendations**

**That the Licensing Committee note the contents of the report**

**3. Background**

- 3.1 The Government initiated a consultation on gaming machines and social responsibility measures which ran from 31 October 2017 until 23 January 2018. The objective of that exercise was to ensure that the right balance exists between the gambling sector being able to grow and contribute to the economy and social responsibility by the industry doing all it should to protect consumers and communities from harm.
- 3.2 The Government published its response to this consultation in May 2018 and formally recognised that urgent additional regulation was needed in relation to B2 gaming machines (FOBT's). These machines operate in a different manner to other gaming machines because of the speed with which it is possible to lose large amounts of money. A copy of the response is attached as **Appendix A**.
- 3.3 To highlight, the Government stated in its response that:

*"It is of the view that B2 gaming machines should have a mandatory maximum stake of £2. This is the lowest end of the Gambling Commission's suggested range and we select it after very careful deliberation. There remain consistently*

*high rates of problem gamblers among players of these machines and high proportion of those seeking treatment for gambling addiction identify these machines as their main form of gambling. We are concerned that factors such as these are further amplified by the relationship between the location of B2 gaming machines and areas of high deprivation. Following analysis of the evidence received at consultation, £2 has been found to be the stake limit that would most substantially impact on harm by reducing the ability to suffer high session losses, while also targeting the greatest proportion of problem gamblers, and mitigating risk for the most vulnerable players for whom even moderate losses might be harmful. Even cutting to £10 would leave problem gamblers, and those most vulnerable, exposed to losses that would cause them and their families significant harm.*

- 3.4 The response document also highlights that the consultation was overwhelmingly in support of a significant reduction in B2 stakes, in particular by local authorities, charities, faith groups, Parliamentarians, interest groups and academics.
- 3.5 The changes to the current stakes for B2 machines are to be enabled by way of statutory requirements. The Gaming Machine (Miscellaneous Amendments and Revocation) Regulations were made on 20 December 2018 and come into force on the 1<sup>st</sup> April 2019.
- 3.6 The Committee will be aware that its current statement of licensing policy (which came into effect on 1 September 2017) issued in accordance with section 349 of the Gambling Act 2005 refers to the use of FOBTs at paragraph 18.9 and states:
- "The Licensing Authority is concerned at the potential effects of excessive use of FOBTs by customers who may be least able to afford to lose cash, coupled with the speed and ease with which they can gamble compared with other forms of gambling".*
- 3.7 Attached as **Appendices B and C** are tables identifying the various categories of gaming machines and the maximum number of machines permissible by premises type.

#### **4. Equality impact assessment (EIA)**

No EIA required as this report is for noting purposes only in relation to legislative changes.

#### **5. Legal Implications**

The legal implications are embodied within the report.

#### **6. Finance Comments**

No financial effect upon the Licensing Authority

.....  
Signed by:

**Appendices:**

**Appendix A Government response to the consultation on proposals for changes to Gaming Machines and Social Responsibility Measures**

**Appendix B Table of Categories of Gaming Machines**

**Appendix C Table of Maximum Number of Machines by Premises Type**

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
Gambling Act 2005 - Statement of Licensing Policy	PCC Website <a href="https://www.portsmouth.gov.uk/ext/licensing/statement-of-licensing-principles">https://www.portsmouth.gov.uk/ext/licensing/statement-of-licensing-principles</a>
The Gaming Machine (Miscellaneous Amendments and Revocation) Regulations 2018	<a href="http://www.legislation.gov.uk/uksi/2018/1402/made">http://www.legislation.gov.uk/uksi/2018/1402/made</a>

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by ..... on .....

.....  
Signed by:

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Department for  
Digital, Culture,  
Media & Sport

# Government response to the consultation on proposals for changes to Gaming Machines and Social Responsibility Measures

May 2018

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Annex A - Supporting analysis on B2 gaming machines

## Ministerial Foreword



Millions of people enjoy gambling responsibly and the Government is committed to supporting a healthy gambling industry that generates employment and investment. But gambling also carries a serious risk of harm for individual players, as well as for their families and the communities they live in. When we announced this review, we made clear our purpose was to strike a balance between socially responsible growth and protecting the most vulnerable, including children, from gambling-related harm. The

Government is satisfied with the overall framework of gambling regulation, but as part of our action to build a fairer society and a stronger economy, we believe that when new evidence comes to light, we need to act to target gambling products and activities of concern.

We see gambling-related harm as a health issue and we are working closely with the Department of Health and Social Care (DHSC) and Public Health England (PHE). We are also working with the independent regulator, the Gambling Commission, to bring forward measures that span the industry with the aim of reducing risk to players and communities. Our response outlines initiatives to strengthen protections around advertising and online gambling, and to build the evidence on what treatment works best to help problem gamblers while boosting the system of voluntary contributions which funds it.

One product in particular, however, requires urgent additional regulation. B2 gaming machines (more commonly known as Fixed-Odds Betting Terminals (FOBTs)) are an outlier in the world of high-street gambling because of the speed with which it is possible to lose large amounts of money. It is significant that the gambling industry itself recognises the danger of these machines and accepts there is a case for a reduction in the maximum stake. In March 2018, the Gambling Commission issued formal advice to the Government, suggesting a stake limit between £2 and £30. We are now responding to that advice as well as setting out our proposals in other areas.

The Government is of the view that B2 gaming machines should have a mandatory maximum stake of £2. This is the lowest end of the Gambling Commission's suggested range and we select it after very careful deliberation. There remain consistently high rates of problem gamblers among players of these machines and a high proportion of those seeking treatment for gambling addiction identify these machines as their main form of gambling. We are concerned that factors such as these are further amplified by the relationship between the location of B2 gaming machines and areas of high deprivation. Following analysis of the evidence received at consultation, £2 has been found to be the stake limit that would most substantially impact on harm by reducing the ability to suffer high session losses, while also targeting the greatest proportion of problem gamblers, and mitigating risk for the most vulnerable players for whom even moderate losses might be harmful. Even

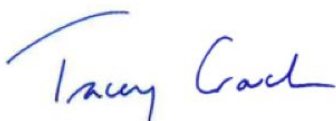
cutting to £10 would leave problem gamblers, and those most vulnerable, exposed to losses that would cause them and their families significant harm.

The response to our consultation has been overwhelmingly in support of a significant reduction in B2 stakes. Local authorities, charities, faith groups, Parliamentarians, interest groups and academics all submitted opinions in favour of a £2 limit. A majority of respondents to the consultation agreed and as such we believe this step has strong public approval.

We recognise the potential impact of this change for betting shops which depend on B2 revenues, but also that this is an industry that is innovative and able to adapt to changes. We will continue to work with the industry and the Gambling Commission to examine the effects of regulatory changes and also the continuing trend of growth of gambling activity online. The online market has been an area of focus throughout this review and I remain committed to supporting the industry to continue this growth in a socially responsible manner, in line with proposals to strengthen the player protection measures currently in place.

More widely, I also intend the change in the law to communicate our determination to achieve, in partnership with the industry, a culture of responsible gambling. I want to be very clear that a stake reduction on B2 gaming machines should not be a signal to the wider industry to take its foot off the pedal on this issue. We want to use this opportunity to see the industry redouble its efforts to promote responsible gambling and to deliver on the actions set out in the National Responsible Gambling Strategy. As part of this agenda, we will also be considering the issue of 16 year olds playing National Lottery products as part of the next licence competition for the National Lottery. We will aim to gather evidence on this issue in order to consider it fully in time for the next licence competition.

We will continue to work with the industry and with the Gambling Commission to monitor betting products and promotions, including the impact of advertising on children and others at risk of harm, increasing our efforts to ensure that gambling is a safe and enjoyable pastime for everyone who chooses it, without unintended impacts on society.



TRACEY CROUCH MP  
Minister for Sport and Civil Society  
Department for Digital, Culture, Media and Sport  
May 2018

## 1. Executive Summary

- 1.1. The objective of the review is to ensure that we have the right balance between a sector that can grow and contribute to the economy, and one that is socially responsible and doing all it should to protect consumers and communities. Underlying this objective is our focus on reducing gambling-related harm, protecting the vulnerable and making sure that those experiencing problems are getting the help they need.
- 1.2. We welcome the responses to the consultation and in preparing our conclusions, we have reflected on the evidence, concerns and issues that have been raised. Having considered these responses, as well as the advice from the Responsible Gambling Strategy Board (RGSB) and the Gambling Commission (the Commission), we are taking forward the following measures on gaming machines, and driving action across online, advertising, research, education and treatment (RET) and more widely, the public health agenda in regard to gambling.
- 1.3. We are reducing the maximum stake from £100 to £2 on B2 gaming machines. As we set out at consultation stage, there remain consistently high rates of problem gamblers among players of these machines, with the latest data for 2016 (England only) finding that 13.6% of players of gaming machines in betting shops are problem gamblers, the highest rate for any gambling activity.<sup>1</sup> We noted that the highest proportion of those who contact the main gambling addiction provider (GamCare) identify machines in betting shops as their main form of gambling and gaming machines in betting shops also account for one of the highest proportion of those in treatment for gambling addiction. We are concerned that factors such as these are further amplified by the relationship between the location of B2 gaming machines and areas of high deprivation.
- 1.4. Following analysis of consultation responses, we think that a reduction to £2 will reduce harm for the most vulnerable. In comparison to other gaming machines, B2 machines generate a greater proportion and volume of large-scale losses (for example, more than £500 in a session); and losses are larger and sessions longer for those who bet at the maximum stake (£100) than those who play at a lower level. Even cutting to £10 leaves problem gamblers, and those most vulnerable, exposed to losses that would cause them and their families significant harm. In particular, we note that over 170,000 sessions on B2 roulette ended with losses between £1,000.01 and £5,000. These sessions persist at average stakes of £5 and £10, but by contrast, none involved average stakes of £2 or below. We also think that a limit of £2 is likely to target the greatest proportion of problem gamblers and mitigate the impact on those most vulnerable to harm, such as those in

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<sup>1</sup> <http://www.gamblingcommission.gov.uk/PDF/survey-data/England-Health-Survey-Findings-2016.pdf>

more deprived areas and those who are unemployed. There was clear support for this measure at consultation stage from the public, local authorities, faith groups, Parliamentarians, charities, interest groups and academics, as well as from some within the betting sector itself, with calls for cutting the stake limit to £10 or less from one betting operator.

- 1.5. In addition, the Commission will work with industry to improve player control measures, including the potential ending of sessions when player limits are met, effectively limiting session losses to a certain cap. It is also seeking to explore in more detail the costs and benefits of tracked play, not just on B2 gaming machines, but also on B1 and B3 machines in other premises (see para 1.6). We encourage industry to work proactively with the Commission on these measures.
- 1.6. We are alive to the risks posed by other Category B gaming machines, so we welcome steps taken by the Commission to take forward proposals to improve player protections on B1 and B3 machines, including measures such as time and spend limits for players, which are already in place on B2 gaming machines. We acknowledge the complexities around identifying and implementing harm-minimisation measures and therefore encourage the Commission, RGSB and industry to continue to develop, trial and evaluate further measures in the pursuit of reducing harm.
- 1.7. We are maintaining the status quo across all other gaming machine stakes and prizes and allocations for the time being. We have agreed to an uplift for stakes and prizes on prize gaming which we think is sufficiently low-risk. However, we have asked the Commission to monitor any potential risks following the change. Stakes and prizes on Category C machines will be maintained, but we will continue to monitor consumer demand and player protection in the sector. If regulatory changes are needed, these will be considered and take place outside of the review process. On Category D machines (including non-complex cranes and pushers), stakes and prizes will be maintained. We are aware there are pressures facing Family Entertainment Centres (FECs) in seaside locations. It is for this reason we have requested further information from the British Amusement Catering Trade Association (BACTA) relating to player protection measures for children, including their existing social responsibility code of practice and evidence of how this is monitored and reported. Discussions related to these points will be taken forward outside of the review process.
- 1.8. We are not minded to make any immediate changes to stakes and prizes or machine allocations in casinos. However, we accept that machine allocations are, by international standards, low for this sector; and unlike other venues, the total number of casinos is capped, which

also limits the total possible number of machines available across the casino estate in Britain. We are aware that pilots of further player protections are underway and encourage casinos to work with the Commission on measures to enhance both player protections and evaluation strategies. If additional measures are put in place to manage the risk of gambling-related harm effectively, we will consider looking again at the question of allocations.

- 1.9. We are not minded to pursue contactless payments on gaming machines at this stage due to concerns about player protection. However, we encourage industry to continue its engagement with the Commission so that it can keep pace with technological change in regard to payment methods, including potential alignment with work that the Commission will be doing in regard to tracked play.
- 1.10. We were clear at consultation stage that more is needed to be done to protect consumers who gamble online. Unlike the land-based sector, all online gambling is account-based and therefore operators know who their customers are and their patterns of play. Operators must use customer data effectively to identify potentially harmful behaviour and target interventions to reduce the risk of harm occurring. We expect operators to act now and trial a range of measures to strengthen the existing protections in place. If operators fail to demonstrate sufficient progress, then the Government and the Commission has powers to introduce additional controls or restrictions on the online sector.
- 1.11. The Commission has also set out a clear plan of action to strengthen player protections online; specifically around age verification, improving terms and conditions, identifying risks to players earlier and on customer interaction policies. This continues to be a rapidly growing and evolving sector and we welcome the ongoing focus of the Commission to assess the effectiveness of current protections and to enhance these wherever possible to reduce the risk of harm.
- 1.12. Our engagement with stakeholders during the Review made clear the importance of technology in developing stronger player protection measures. Through the development of algorithms to identify potential harmful play, gambling operators have been at the forefront of using data and technology to protect players. We recognise that this area evolves quickly and for our understanding to evolve alongside it, we will need greater collaboration. As the department responsible for the digital and online agenda, we have an important role to play in bringing together work from across Government with industry initiatives. As a result, the Minister for Sport and Civil Society will co-chair a roundtable with Margot James, Minister for Digital and the Creative Industries, to bring together stakeholders from the gambling and technology sectors and move towards a wider roll-out of best practice. This will include helping to develop understanding of, and best practice around, online advertising and marketing.

- 1.13. On advertising, we set out a package of measures at consultation - to be implemented by regulators, industry and broadcasters - which will help protect those who are most vulnerable and continue to improve our knowledge about the links between advertising and harm. There has been good progress on these measures: the Committees of Advertising Practice (CAP) has published new guidance on tone and content to help protect those vulnerable to harm, and further guidance on children and young people is due later this year; the Commission has consulted on toughening sanctions for breach of the advertising codes and aims to publish a response in July this year; and a major responsible gambling advertising campaign is due to be launched later this year. This will seek to raise public awareness of the risks associated with gambling and how to mitigate these, including where to seek further information and help if needed.
- 1.14. The Industry Group for Responsible Gambling (IGRG) is also amending its code on socially responsible gambling advertising to ensure that a responsible gambling message appears for the duration of all TV adverts. This change is due to be implemented in June this year. Substantial research on the effects of marketing and advertising on children, young people and vulnerable groups has been commissioned by GambleAware. Getting advertising protections right is an essential part of protecting vulnerable people. We welcome these initiatives and will continue to monitor the situation carefully.
- 1.15. The chapter on research, education and treatment looks at support for those who experience harm, including the arrangements for funding and delivering treatment and the research that underpins this. Steps are being taken to improve evidence on treatment, to assess gaps and expand services and to develop treatment guidelines. Tools are being developed to make it easier for staff in front line services to identify people with gambling problems and signpost them to help available. The chapter also outlines action the Commission proposes to take to strengthen the voluntary system for funding and commissioning research, education and treatment. Gambling-related harm is a health issue and the Department of Health and Social Care (DHSC) and Public Health England (PHE) will be closely involved with DCMS on follow-up to this review.
- 1.16. We recognise the concern from some local authorities about gambling at the local level and the potential impact that gambling has on communities. We also note that the main concern raised by local authorities at consultation stage was around B2 gaming machines, and that a stake reduction to £2 will help support local authorities in their pursuit of protecting wider communities. However, in regard to the request for more powers, we note that where current powers are deployed, local authorities can have a greater say over how and where



gambling can be offered and will not therefore be bringing forward further changes at this stage.

- 1.17. We also recognise the special and long-standing relationship between the betting and horseracing industries. We are confident that Britain's thriving racing industry will continue to prosper and that future commercial arrangements between the two industries will adapt to any changes in the market.
- 1.18. In April 2017, we acted to future-proof the Horserace Betting Levy against channel shift from Licensed Betting Offices (LBOs) to online by extending the Levy to include offshore bookmakers who take bets on British racing - resulting in an estimated £35m increase in statutory funding this year.<sup>2</sup> We previously committed to review the rate of the Horserace Betting Levy by 2024. If it becomes apparent that changes to stake limits cause significant market changes, we will consider bringing forward the timing of the review of the Levy arrangements.

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<sup>2</sup> The statutory Horserace Betting Levy yield was £50m in 2017/18, with voluntary payments providing an additional £15m. The statutory yield is expected to be c.£85m in 2017/18.

## 2. Introduction

- 2.1. In October 2016, the Government launched a call for evidence on gaming machines and social responsibility measures across the industry. This included stakes and prizes and allocations on gaming machines, as well as a review of gambling advertising, online gambling and research, education and treatment for gambling-related harm.
- 2.2. We received 275 responses to the call for evidence, and the submissions received helped to inform our preferred proposals which were subsequently outlined in a consultation which was published in October 2017.

### Consultation responses

- 2.3. The consultation ran from 31 October 2017 to 23 January 2018. We received 7,361 survey responses from a wide range of interested parties, and a further 243 submissions of supplementary information and evidence. In addition, we received a petition from 38 Degrees and the Association of British Bookmakers (ABB) highlighted a petition it submitted as part of the call for evidence. A full breakdown of responses via the online survey and supplementary submissions received is provided below. Each respective chapter will provide a more detailed summary of consultation responses. These will not be exhaustive, but will instead focus on key points and themes which emerged from the responses. Where permission has been granted, a copy of non-public responses to the consultation will be made available on the gov.uk website.
- 2.4. 96 per cent [7,043] of respondents to the survey identified themselves as individuals and 4 per cent [318] were responding on behalf of an organisation. The breakdown by respondents type is set out below:

Respondent type	Number of responses (online survey)
Member of the public	4,665
Gambling Industry / professional / employee / expert	1,850
Local authority employee	95
Medical / Healthcare professional	145
Charity / voluntary / not for profit sector employee	227
Government Employee <sup>3</sup>	58

<sup>3</sup> Individuals were able to self-classify themselves into more than one category. Of those who responded 'Government Employee', they also selected: 'Member of the public' [39] / Gambling Industry professional/employee/expert [2] and Armed Forces [1].

Advertising / Media industry employee	33
Campaign group member	36
Other	240
No response	869
Total categories selected <sup>4</sup>	8,218
<b>Total individual responses</b>	<b>7,361</b>

<b>Respondent type</b>	<b>Number of responses (supplementary submissions)</b>
Gambling Industry – Individual Company, Manufacturer or Supplier	28
Gambling Industry – Trade Association	12
Faith & Community Groups	27
Academics & Think Tanks	9
Local authorities / Public sector <sup>5</sup>	40
Charities	4
Interest groups	23
Other (individuals)	100
Total	243

### Gambling Commission / Responsible Gambling Strategy Board (RGSB) advice

- 2.5. The Commission published its formal advice to the department in March 2018,<sup>6</sup> taking into account advice from its own advisory body, the Responsible Gambling Strategy Board (RGSB), which was published in October 2017,<sup>7</sup> as well as the responses to the consultation which were shared with it. The provision of such advice is in accordance with section 26 of the Gambling Act 2005, which places

<sup>4</sup> Individuals were able to select more than one option for self classification in the online survey which may explain why there is a higher number than the overall number of people who took the survey.

<sup>5</sup> We had a variety of responses from representatives of local authorities which we have captured here as local authorities. This included responses from: individual councillors, Mayors, specific directorates of local authorities, including licensing boards and other relevant parties.

<sup>6</sup><http://www.gamblingcommission.gov.uk/PDF/Review-of-gaming-machines-and-social-responsibility-measures-%E2%80%93-formal-advice.pdf>

<sup>7</sup><http://www.rgsb.org.uk/PDF/Advice-in-relation-to-the-DCMS-review-of-gaming-machines-and-social-responsibility-measures.pdf>

a duty on the Gambling Commission to provide advice to the Secretary of State on matters relating to gambling and its regulation.

- 2.6. In summary, both the Commission and RGSB support action in regard to B2 gaming machines and support a precautionary reduction in stake. RGSB advised that this should be set below £50, and the Commission subsequently advised that this should be materially lower than £50 and involve a stake limit between £2 and £30 if it is to have a significant effect on the potential for players to lose large amounts of money in a short space of time. When considering a specific level for the maximum stake, the Commission's advice was that it was important to consider risks of displacement, riskier staking strategies, comparisons with other gaming machines in other environments, and the potential effect on consumer choice.
- 2.7. Both the Commission and RGSB make clear that setting a revised maximum is a matter of judgement for Government, but is something which should be considered as part of a wider package of measures and be carefully monitored.
- 2.8. On all other gaming machine issues, both the Commission and the RGSB are clear that, in line with the Government's preferred option in the consultation, they do not support any increase in stakes and prizes or machine allocations across all other gaming machines, suggesting that these increases should only be allowed where industry can demonstrate that it has implemented measures that will manage the risk of gambling-related harm effectively. In addition to what we set out on B2 gaming machines at consultation stage, we also asked the Commission to take forward further protection measures on other Category B machines. We welcome its proposal to extend protections such as time and spend limits to B1 and B3 gaming machines, as well as to further explore the costs and benefits of tracked play on B1, B2 and B3 gaming machines. We encourage industry to work proactively with the Commission on this.
- 2.9. In regard to the wider social responsibility agenda, the Commission shares concerns about gambling advertising, but acknowledges that the available evidence is not clear on links with harm. It highlights work to improve the evidence base, and suggests this continues to be an area that requires close scrutiny. Regarding the current voluntary arrangement which involves GambleAware raising funds from industry to fund research, education and treatment, the Commission has identified a number of steps to strengthen it, but thinks that it will struggle against more challenging future demands. It advises that industry needs to meet funding targets in full on a sustainable and guaranteed basis and if these targets cannot be met, the Commission thinks that there is a strong case for implementing a statutory levy.

- 2.10. In regard to online gambling, the Commission recently completed a review of the online sector and identified four areas where it will take action to strengthen the protections in place: age verification; customer identification and better management of risks; unfair terms and conditions; and customer interaction policies. In addition, it will continue to assess the effectiveness of the current consumer protections in place with reference to gambling management tools available and will consider whether the use of credit cards for online gambling should continue to be permitted.

#### Next steps

- 2.11. In regard to the maximum stakes on B2 gaming machines, changes will be through regulations in Parliament. The move will need parliamentary approval and we will also want to engage with the gambling industry to ensure they are given sufficient time to implement and complete the technological changes. Other commitments will be taken forward along different timings which we have set out in more detail later on in this document. An Impact Assessment containing a cost/benefit analysis of the final proposals has been published alongside this document.
- 2.12. Gambling is devolved in Northern Ireland, but substantially reserved in Scotland and Wales. However, as of 23 May 2016, the Scottish Parliament and Scottish Ministers have executive and legislative competence to vary the number of high-staking gaming machines authorised by a new betting premises licence in Scotland. Under the Wales Act 2017, identical powers were transferred to the Welsh Ministers and the National Assembly for Wales. We are committed to working constructively with devolved administrations as we move towards implementation of the £2 stake limit on B2 gaming machines.

### 3. Gaming Machines

#### Key findings and next steps:

- We are reducing the maximum stake on B2 gaming machines from £100 to £2 with the aim of reducing harm for those most vulnerable by reducing the ability to suffer high session losses, while also targeting the greatest proportion of problem gamblers, and mitigating risk for the most vulnerable players for whom even moderate losses might be harmful.
- The Gambling Commission will work with industry to improve player control measures, including the potential ending of sessions when player limits are met and exploring in more detail the costs and benefits of tracked play, not just on B2 gaming machines, but also on B1 and B3 machines in other premises.
- We are maintaining the status quo across all other gaming machine stakes and prizes and allocations for the time being.
- We have agreed to an uplift for stakes and prizes on prize gaming which we think is sufficiently low-risk.
- We are not minded to make any immediate changes to stakes and prizes or machine allocations in casinos. We will amend regulations to clarify the definition of a gaming table for the purposes of machine allocations.

#### Category B2 gaming machines

##### Summary of consultation options

- 3.1. At consultation stage, we were clear that we would cut stakes by at least half, from £100 to £50, and wanted to look at options down to £2. We set out 4 illustrative options for a stake reduction - to £50, £30, £20 (with £2 on B2 slots) and £2 - and said that a reduction could be accompanied by one or more additional measures that take into account other factors that may contribute to harm. We acknowledged the progress that industry and, in relation to these machines, the betting sector have made to develop, trial and evaluate measures to reduce gambling-related harm, and also acknowledged that problem gambling rates had remained unchanged since the introduction of the Gambling Act 2005. However, we also set out the evidence and related concerns about the damage that these machines cause to players and wider communities and illustrative options for consultation.

##### Government response

- 3.2. The Commission has been clear in their advice that while the case has been made to reduce the maximum stake to between £2 and £30, it is a matter of judgement as to what that level should be.

- 3.3. In arriving at this judgement we have considered the information and evidence we received in response to the consultation and concluded that the maximum stake should be cut to £2, the lowest end of the range suggested by the Commission. In coming to this decision, we have put particular weight on the following factors:
- a. The relationship between data for session losses and stake size
  - b. The spread of problem gamblers at each staking level
  - c. The impact on vulnerable players in more deprived areas
- 3.4. We think that a £2 maximum stake will reduce harm because of the effect on a player's ability to place very large stakes quickly. This is something that might be important not only to problem gamblers, but those who might not be categorised as problem gamblers.
- 3.5. Based on current gaming machine data, a £2 maximum stake is likely to best target the volume and proportion of high session losses, one of the best proxies for harm. In particular, we note that over 170,000 sessions on B2 roulette ended with losses between £1,000.01 and £5,000. These sessions persist at average stakes of £5 and £10, but by contrast, none involved average stakes of £2 or below. In addition, according to this data, it is very hard for a player to lose more than £500 in a session using average stakes up to £2.<sup>8</sup> Although dependent on the circumstances of individual players, we think losses of this scale might be harmful to problem and non-problem gamblers alike.
- 3.6. We highlighted in the consultation that evidence from research into loyalty card holders in LBOs allowed us to identify - albeit with an imperfect sample of gaming machine players - that the proportion of problem and at-risk gamblers was smaller at lower staking levels for this sample of gaming machine players. Based on this data, we think that a £2 maximum stake is likely to capture the greatest proportion of problem gamblers, noting that only at very low levels would a stake reduction have an impact on the large proportion of problem gamblers who typically place stakes at relatively modest levels.<sup>9</sup>
- 3.7. We know that players of B2 machines tend to live in areas with greater levels of income deprivation than the population average; and, alongside problem gamblers, those who are unemployed are more likely to use the maximum stake more often than any other socio-economic group. We think that a £2 maximum stake will also therefore mitigate the impact on those most vulnerable to harm, primarily players in more deprived locations as well as the corresponding harm to communities in which these machines are

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<sup>8</sup><http://www.gamblingcommission.gov.uk/news-action-and-statistics/news/2017/New-data-to-inform-government-gambling-review.aspx>

<sup>9</sup><http://www.rgsb.org.uk/PDF/Advice-in-relation-to-the-DCMS-review-of-gaming-machines-and-social-responsibility-measures.pdf>

based. Based on the assumption that some of those who are most vulnerable to harm are likely to be those who can least afford to lose large sums of money, we think that these factors also points to reducing the maximum B2 stake to £2.

- 3.8. While we acknowledge the risks of potential displacement, the nature of this, and the effect on overall harm, are impossible to predict and it does not necessarily follow that those who displace to other forms of gambling will be exposed to the same or higher levels of harm. However, we are asking the Commission and the RGSB to monitor closely the impact of all the changes we have set out here to ensure we understand their effects and can respond accordingly.
- 3.9. We acknowledge the potential impacts highlighted in consultation responses that cutting the maximum stake to £2 could have on the industry. We will continue to liaise with key stakeholders on how the impact of these measures can be best managed and help them make necessary preparations. But we are clear that this action is necessary to protect those most vulnerable from harm.
- 3.10. We recognise the special and long-standing relationship between the betting and horseracing industries, and we note the estimates provided by the betting and racing industries of the potential impact on racing's income of a B2 stake reduction. While we acknowledge that changes to stake levels may impact on the racing sector, we consider that these changes are necessary to protect vulnerable people. If it becomes apparent that changes to stake limits cause significant market changes, we will consider bringing forward the timing of the review of the Levy arrangements.
- 3.11. The change to B2 stakes will be accompanied by changes to the wider landscape, with the Commission also taking forward a package of player protection measures on Category B2 and other Category B machines across all premises, and developments in regard to advertising and online, as set out in later chapters of this response.
- 3.12. A summary of consultation responses is set out below with more detailed analysis and supporting data in Annex A.

#### Summary of consultation responses

- 3.13. Over two thirds (69%) of those who answered the online survey question on this issue agreed that the maximum stake of £100 should be reduced. Those who answered yes were asked a separate question about what the specific stake level should be; over two thirds (69%) supported a reduction to £2, with 10% in favour of £20 (non slots) and £2 (slots), while 7% highlighted a preference for £50. Only 3% wanted to see a £30 stake with a further 3% supporting a different amount



between £2 and £50<sup>10</sup>. An additional 6% of respondents chose 'other', with most in favour of abolishing B2 machines altogether or a stake reduction to be lower than £2<sup>11</sup>.

- 3.14. In addition to those survey responses, we had supporting submissions for a reduction to £2 from local authorities, faith groups, Parliamentarians, charities, interest groups and academics. We received a petition from campaign group 38 Degrees, with over 137,000 signatures calling for a reduction to £2. The rationale for this position varied by respondent but broadly focused on the following themes: harm attributed to the £100 maximum stake and the ability to lose large amounts of money quickly; addictiveness of this particular product; violence and crime associated with B2 gaming machines and LBOs; and community concerns related to the presence of LBOs on the high street. A number of respondents also drew on the Commission's data,<sup>12</sup> collected from gaming machine suppliers, to highlight the large number of high level session losses on B2 gaming machines compared to other gaming machines featured in the data.
- 3.15. Of the members of public that responded to the survey and submitted evidence, similar themes were apparent, with a majority supporting a stake reduction to £2 to reduce high level losses. In addition, concerns were raised about the ease of accessibility to B2 gaming machines and a relationship between these gaming machines and vulnerable groups. Of those that cited alternative stake levels, some supported a reduction to £10 on similar grounds of protecting vulnerable groups.
- 3.16. 31% of the online survey respondents supported the status quo on maximum stakes on B2 gaming machines. In addition, the Association of British Bookmakers (ABB) and a number of operators submitted responses in support of the status quo, or the least restrictive stake option of £50, as did gaming machine suppliers. The ABB also submitted a 'Back the Bookies' petition which has over 300,000 signatures. Other betting operators also put forward suggestions ranging from reductions to £30 and below £10, the latter based on the rationale that the industry desired regulatory certainty and only a significant reduction could achieve this.
- 3.17. The ABB highlighted that problem gambling rates had not increased, argued that there was no link between B2 gaming machines and problem gambling and disputed the data that was set out in the consultation linking high stakes with problem gamblers. The ABB suggested that the focus of Government should be on maintaining the

<sup>10</sup> A further 1% responded 'don't know' along with 1% selecting 'none of the above'.

<sup>11</sup> 'Other' included amounts between £2 and £50 (the most popular amounts were £5 [21] and £10 [15]). Most responses however were in favour of abolishing FOBTs / having the stake as low as possible / £1 or less / zero.

<sup>12</sup><http://www.gamblingcommission.gov.uk/news-action-and-statistics/news/2017/New-data-to-inform-government-gambling-review.aspx>

regulatory hierarchy on gaming machines, drawing comparisons between B2 and B3 gaming machines in terms of Expected Average Theoretical Cost per hour (EATC/h), highlighting that parity with B3 gaming machines would mean that, if it should be reduced at all, stake should be reduced to £50. The ABB also acknowledged that a reduction on B2 slots' maximum stake had merit based on the higher session losses associated with B2 slots that we highlighted in the consultation, and they suggested a revised limit of £25.

- 3.18. The ABB also set out a number of other social responsibility measures that they saw merit in pursuing, including: hard stops when current voluntary time and spend limits were met; debit card blocking as a supplementary tool to the self-exclusion scheme; and expansion of a treatment pilot they have supported aimed at areas of high economic deprivation. We very much welcome these proposals and encourage the ABB and operators to work with the Commission and the RGSB on how to take these forward.
- 3.19. The British Horseracing Authority (BHA) as well as some horseracing operators highlighted in their responses the potential secondary impact of shop closures on the money racing receives from the betting sector via media and Horserace Betting Levy payments. They stated that while the Levy could be affected by closures, the effect may be felt most on media rights payments which are mainly paid on a per-shop basis. Betting and racing respondents estimated that every shop closure reduces racing's income by £30,000 (inc VAT) per annum. A full analysis of these points is set out in Annex A.

#### Gambling Commission/Responsible Gambling Strategy Board (RGSB) Advice

- 3.20. The Responsible Gambling Strategy Board (RGSB) published its advice to the Commission in relation to the DCMS review of gaming machines and social responsibility measures on 31 October 2017.<sup>13</sup> Its advice stated that *“Despite uncertainty about the effects, a reduction in maximum stakes on B2 gaming machines implemented for precautionary reasons could still be a potentially useful part of a coherent strategy to mitigate gambling-related harm, provided that the impact on actual harm is carefully monitored and evaluated so that appropriate offsetting action can be taken if necessary.”* It acknowledged that there was sufficient evidence of harm associated with these machines to apply the precautionary principle, but doing so required judgement about the balancing of risks and should take into account the impact on player behaviour including the potential displacement to other forms of gambling which might be greater or equal to the harm caused on B2 gaming machines.

<sup>13</sup><http://www.rgsb.org.uk/PDF/Advice-in-relation-to-the-DCMS-review-of-gaming-machines-and-social-responsibility-measures.pdf>

- 3.21. In its formal advice to Government, published in March 2018,<sup>14</sup> the Commission made clear that the case has been made for action to be taken on B2 gaming machines to reduce the risk of harm, but that there is no definitive evidence to support any given value for a new maximum stake, so this must be a matter of judgement for Government. However, it advised that there is a case for a stake limit between £2 and £30 on non-slots and £2 on slots available on B2 gaming machines.
- 3.22. The Commission’s advice differentiates between different content available on B2 gaming machines, which they broadly categorise as “slots games” and “other games, which include roulette”. Industry data collected by the Commission<sup>15</sup> highlights that the amount that players lose appears to be proportionately greater on B2 slots than on roulette. It highlights this, as well as the characteristics of slots games, to recommend a £2 limit on slots games.
- 3.23. In coming to a view on “B2 roulette” or non-slots, the Commission states that *“a precautionary approach should involve a stake limit at or below £30 if it is to have a significant effect on the potential for players to lose large amounts of money in a short space of time”*. However, it advises that the chosen level will depend on the weight that Government attaches to the risk of harm, implications for the way different products are regulated, consumer choice, and public and stakeholder opinion.
- 3.24. In addition, we asked the Commission to advise on whether a change in the maximum stake could be accompanied with changes to the speed of play or other measures, including tracked play. On speed of play it concluded that:
- *“As an alternative measure to cutting stake, slowing the speed of play is unlikely to be a viable alternative to a stake reduction if the aim is to achieve a significant reduction in potential loss rates e.g. a spin cycle slower than 60 seconds (compared to the current 20 seconds) would be necessary to achieve loss rates equivalent to those achieved with a maximum stake of £30 and the current 20 seconds.*
  - *The same level of loss rate protection afforded by a given stake limit could be achieved with a smaller reduction in maximum stake, combined with a slower spin speed – for example, a £50 stake limit with a 50 second spin cycle would be equivalent to £20 and 20 seconds. But the evidence does not point to a combination which would achieve a greater impact on*

<sup>14</sup><http://www.gamblingcommission.gov.uk/PDF/Review-of-gaming-machines-and-social-responsibility-measures-%E2%80%93-formal-advice.pdf>

<sup>15</sup><http://www.gamblingcommission.gov.uk/news-action-and-statistics/news/2017/New-data-to-inform-government-gambling-review.aspx>

*gambling-related harm, taking account of effects beyond potential rates of loss”.*

3.25. The Commission saw more potential benefit in other measures aimed at helping players stay in control, in particular tracked play. Despite some gaps in the evidence needed to fully assess costs and benefits, the Commission’s view was that there is a strong case in principle to make tracked play mandatory across Category B1, B2 and B3 machines, with the possibility of running a trial to get a better understanding of the costs and challenges associated with its implementation. The Commission’s advice was that regardless of the level of stake cut Government decides on, a stake cut alone on B2s would not go far enough to address the wider risk of harm, and it proposed to take forward an additional package of measures which we support, including:

- Banning the facility for machines to allow different categories of games to be played in a single session
- Working with industry and others on steps to make pre-commitment tools more effective - this could include ending sessions when consumers reach time and money limits
- Increasing the availability of information about play, potentially to include tracking play on Category B1, B2 and B3 machines
- Supporting industry to meet the expectations set out in the National Responsible Gambling Strategy.

## **Category B1 gaming machines**

### Summary of consultation options

- 3.26. Casinos are permitted to offer gaming machines of Category B1 or lower (except sub-category B3A), and the vast majority of machines in casinos are B1. The number permitted depends on the type of casino licence. The current maximum stake for a B1 machine is £5 and the maximum prize a single B1 machine can pay out is £10,000 (or, with a progressive jackpot, £20,000).
- 3.27. Proposals from the National Casino Forum (NCF), representing the land-based casino sector, were outlined in our consultation document. They included an increase in the maximum progressive linked jackpot on B1 gaming machines to £100,000, a higher stake and prize machine for high-end casinos, an increase to the amount that can be deposited on machines to £50, and for casinos to be able to provide facilities for remote gaming without this counting against machine allowances.
- 3.28. The casino sector’s main request was for casinos with converted licences (1968 Act casinos) to be allowed the same number of machines as Small Casinos licensed under the 2005 Act and for both

to be allowed a ratio of three machines per table. Evidence was provided of the proposed economic benefits of this change. A higher machine cap for Large Casinos was also requested.

- 3.29. The consultation acknowledged the progress that the casino industry has made in relation to player protection measures, and that casinos are in some regards more highly regulated than other environments. However, there was little evidence of how increased risks to players would be managed, and we therefore did not recommend pursuing the industry's proposals at this stage. We instead asked the Commission to take forward with industry additional player protection measures on Category B gaming machines, including B1s.

### Summary of consultation responses

- 3.30. The consultation asked whether respondents supported maintaining the status quo on B1 gaming machine stakes and prizes. Of those who answered the online survey question, 48% agreed, with 31% disagreeing and 20% answering 'don't know'. Of those that responded to the online survey question about player protection measures on Category B machines, 78% supported the package set out by Government.
- 3.31. Over half (55%) agreed with the Government's proposals to maintain the status quo on allocations for casinos, arcades and pubs and under one third did not agree.
- 3.32. In the additional submissions received, local authorities and faith groups supported maintaining the status quo on both B1 stakes and prizes and machine allocations. The Local Government Association (LGA) raised concerns about allocations being set at a national level and highlighted the need for local involvement in decision-making.
- 3.33. Supplementary submissions from the casino sector argued that casinos are at the top of the regulatory pyramid, with strict regulation, supervision and player protections in place. It was highlighted that NCF members continue to work to strengthen these and are pursuing limit-setting technologies, with a significant number set to offer this in 2018, as well as trialling facial recognition technology. NCF estimates that around 50% of machine play is currently tracked through loyalty card schemes.
- 3.34. NCF's Playing Safe project with Focal Research has looked at the development of diagnostic algorithms to identify potential harmful patterns of play and NCF has developed a model which it is now piloting. An evaluation of SENSE, the casino sector's national self-exclusion scheme, will be published this year. Casinos employ human supervision at their venues, and ask that this is recognised as a valuable player protection measure.

- 3.35. NCF also submitted a report produced by Novomatic<sup>16</sup>, which suggests that casinos with limited machines often have longer playing sessions at busy times, as players are reluctant to take breaks so as not to lose their machine to other waiting players. They intend to commission further research into this issue.

#### Gambling Commission/Responsible Gambling Strategy Board (RGSB) Advice

- 3.36. The Commission advises that increases to stakes and prizes and machine allocations should only be allowed where industry can demonstrate that it will also implement measures that will manage the risk of gambling-related harm effectively. It will take forward discussions with industry around extending player protection requirements, such as time and spend limits, to B1 and B3 gaming machines. As described in the previous chapter, it is also seeking to explore in more detail the costs and benefits of tracked play, not just on B2 gaming machines, but also on B1 and B3 machines.
- 3.37. On machine allocations, the Commission considers that, if these were to be increased, 1968 Act casinos should be required to meet the same requirements for size and non-gambling space as 2005 Act Small Casinos in order to benefit. It is in favour of amending the Gambling Act 2005 (Gaming Tables in Casinos) (Definitions) Regulations 2009 as outlined in the consultation and in paragraph 3.44 below.

#### Government response

- 3.38. We welcome the progress that the casino sector has made on player protection measures and the wider social responsibility agenda but the Government is not minded to make any immediate increases to stakes and prizes or machine allocations. We accept that machine allocations are by international standards low for this sector, which is in some regards the most highly regulated, and we have noted evidence that restricted allocations could be having unintended consequences in discouraging players from taking breaks. We are aware that pilots of further player protections are underway and encourage casinos to work with the Commission on measures to enhance both player protections and evaluation strategies. If additional measures are put in place to manage the risk of gambling-related harm effectively, we will consider looking again at the question of allocations.
- 3.39. Regarding progressive linked jackpots, although there have not been reports of an increase in harm in other jurisdictions as a result of increased prizes, we would need further evidence in order to understand potential impacts to players in Britain and proposals to

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<sup>16</sup> 'The Influence of Machine Occupancy Rates on Category B1 Machine Player Behaviour', Novomatic, 2017

address the risk of increased player harm. The Government is therefore not minded to increase the progressive prize at this stage.

- 3.40. The current system of cash deposits and transfers provides a basic social responsibility control by slowing the speed at which players can commit funds to gambling, allowing consumers to consider their actions. An increase to £50 would speed up the committed-funds process and without evidence as to how operators would manage the risks it generates, we do not support taking forward this proposal.
- 3.41. While there is nothing to stop customers accessing their remote accounts on their own devices if they wish, we do not think it appropriate for a casino to offer tablets restricted to its own online offerings where that tablet would not count as a 'gaming machine'.
- 3.42. We recognise that higher stake and prize machines could be a significant source of revenue for high-end casinos, which cater for a wealthy international clientele. However, high-end casinos hold the same premises licences as other casinos, and without further information - for example, evidence of how this could be implemented so that only high-end casinos could offer such a category of machine - we do not support this proposal. We encourage the casino sector to work with the Commission to develop stronger proposals on the controls that could be put in place to provide these machines in a socially responsible manner and in a way that would substantially restrict their availability.
- 3.43. We also note concerns from the Local Government Association (LGA) that an increase in gaming machine allocations could impact local areas differently, depending on the number of casinos in that area. The number of casino premises licences in a certain area reflects the applications made and granted by each local authority under the Gaming Act 1968, and was intended to meet local demand. Local authorities have a range of powers, including issuing a 'no casino' policy statement, which would prevent new licences being issued or unused licences coming into use. However, they cannot revoke existing casino licences, meaning they could not limit the number of gaming machines in the case of a national allocation increase. We would welcome further research on the effects on gaming machine allocations at a regional level.
- 3.44. The Government also intends to amend the Gambling Act 2005 (Gaming Tables in Casinos) (Definitions) Regulations 2009 to make clear that only tables for multi player live gaming, operated by a casino dealer, will qualify as a gaming table for the purposes of attracting a machine allowance in both Small and Large Casinos. Neither partially automated nor wholly automated gaming tables will count as "gaming tables" for these purposes.

## Category B3 gaming machines

### Summary of consultation options

- 3.45. Category B3 is the fastest growing gaming machine category in terms of Gross Gambling Yield (GGY). B3 machines, are located in casino, betting, arcade and bingo venues and received an uplift in maximum stake from £1 to £2 in 2011. The consultation addressed proposals from the British Amusement Catering Trade Association (BACTA), the trade body representing the arcade sector, which proposed an increase in stake from £2 to £2.50, suggesting it would provide an economic stimulus to the sector.
- 3.46. At consultation stage, the Government highlighted the level of growth associated with these machines and player protection concerns. Research by GambleAware into bingo halls<sup>17</sup> and NatCen in relation to LBOs<sup>18</sup> was referenced and showed not insignificant levels of problem gambling amongst players of these machines. Gaming machine data, obtained by the Commission, demonstrated comparability of B3 machines with B2s on session losses and duration, albeit not at the very high levels of losses.<sup>19</sup> We therefore asked the Commission to consider taking forward additional player protection measures on these machines, in line with what is set out above in regards to B1 machines. In the consultation, the Government proposed to maintain the status quo on stakes and prizes for B3 machines.

### Summary of consultation responses

- 3.47. The consultation asked whether respondents supported maintaining the status quo on B3 gaming machine stakes and prizes. Of those who answered the online survey question, 49% agreed. There were 31% who disagreed, with the remaining 20% answering 'don't know'.
- 3.48. The sectors that operate B3 machines were broadly in favour, with 8 industry organisations supportive of maintaining the status quo on stake and prize. This included BACTA who did not repeat this request for an uplift at consultation. The majority of non-industry responses came from local authorities and faith groups who supported maintaining the status quo. Some groups went further to suggest that, before any future consideration of an increase to stake or prize, increased levels of player protection measures would need to be applied. A common theme in consultation responses also outlined the importance of monitoring closely the growth of B3 machines and player

<sup>17</sup> <http://infohub.gambleaware.org/wp-content/uploads/2016/07/Bingo-Research-Final-140716.pdf>

<sup>18</sup> <http://natcen.ac.uk/media/1464625/gambling-behaviour-in-great-britain-2015.pdf>

<sup>19</sup> <http://www.gamblingcommission.gov.uk/news-action-and-statistics/news/2017/New-data-to-inform-government-gambling-review.aspx> (The data covers nearly 20 billion plays on machines in licensed betting offices, and over 2 billion plays on machines in adult gaming centres and bingo venues.)



behaviour, specifically in relation to potential displacement of play following a change in stake on B2 machines.

- 3.49. Of those that responded to the online survey question about player protection measures on Category B machines, 78% supported the package set out by Government. The majority of responses from industry accepted the need to introduce some additional player protection measures on B3 machines. A number of sectors suggested it could be a challenge implementing such measures on older version machines and noted that the overall impact of the same measures on B2s were inconclusive. There was overall support across non-industry groups for the introduction of additional player protection measures, including the ban of mixed play between B2 and B3 machines in LBOs and the introduction of mandatory alerts and time/spend limits. A number of local authorities referenced the need to improve player protection measures more broadly, suggesting those currently available are not as effective as they should be at protecting the most vulnerable in society.

#### Gambling Commission/Responsible Gambling Strategy Board (RGSB) Advice

- 3.50. The Commission reflects similar concerns in its advice on B3 machines to those outlined in the consultation. As highlighted under the B1 and B2 sections above, in regards to B3 gaming machines, the Commission will be taking forward additional protection measures with industry.
- 3.51. The RGSB recommended there should be no increase in stakes and prizes on B3 gaming machines until the impact of any reduction in stakes on B2 gaming machines has been evaluated.

#### Government response

- 3.52. The Government is aware of the growing concern related to the growth of B3 gaming machines as well as calls for increased player protection measures. Taking into account responses submitted as part of the consultation and advice from the Commission, the Government has decided to maintain the status quo on B3 gaming machines, and to keep this category of machine under review.
- 3.53. On additional player protection measures, we welcome steps outlined by the Commission in its advice and the indicative support from industry in relation to these proposals. These additional tools are already in place on B2 machines, and even though evaluation to date has been inconclusive on the overall effect, we still feel they provide value as a way of enhancing player protection. We are aware of points raised by some sectors about potential challenges and costs

associated with tracked play and urge industry to work with the Commission to better understand these areas.

### **Category B3A/ B4 gaming machines**

#### Summary of consultation options

- 3.54. B3A and B4 machines are primarily located in members clubs. In the absence of any relevant submissions at the call for evidence, the Government was not minded at consultation stage to take forward any changes to stake or prize on either category of machine.

#### Summary of consultation responses

- 3.55. In the online survey, 49% of respondents supported the proposal to maintain the status quo on B3A machines, with 30% disagreeing and 21% answering 'don't know'. For B4 machines, 49% supported the proposals to maintain the status quo, with 29% disagreeing and 22% responding 'don't know'. No additional references were made to either classification of machine in the additional submissions received at consultation.

#### Government responses

- 3.56. There were no additional submissions received as part of the consultation in relation to either B3A or B4 machines. For this reason, we have decided to maintain the status quo for both stakes and prizes on B3A and B4 machines.

### **Category B5 gaming machines**

#### Summary of consultation options

- 3.57. BACTA set out in their response to the call for evidence a recommendation for the introduction of a new B5 machine that would have a £10 stake and £125 prize with a game of 30 seconds minimum. This was accompanied by a corresponding request to allow B5s to account for 10% of all gaming machines in Adult Gaming Centres (AGCs). At consultation stage, Government was not minded to agree to the request for a new category of machine at this time.

#### Summary of consultation responses

- 3.58. The consultation asked whether respondents supported maintaining the status quo on allocations for casinos, arcades and pubs. Of those who answered the online survey question, over half (55%) agreed and under one third did not agree.
- 3.59. In the consultation response, BACTA did not repeat its request for the B5 machine, but stated it would look to revisit plans in the future. There

was one specific reference to B5 machines in the additional submissions which agreed with the Government's position outlined in the consultation.

#### Gambling Commission advice

- 3.60. The Commission suggest it would not be appropriate to allow Category B5 machines at this stage, with the need to better understand how players would interact with this type of machine.

#### Government response

- 3.61. We understand the importance of innovation in any sector, but in addition to the point raised in the Commission's advice, it is important to fully understand the impact of changes on B2 gaming machines before exploring the introduction of a new category of gaming machine. For this reason, the Government has decided to maintain its position outlined in the consultation and will not be taking forward the request in relation to allocations for a B5 Category in arcades at this time.

### **Category C gaming machines**

#### Summary of consultation options

- 3.62. Category C machines are available in casinos, LBOs, tracks with pool betting, bingo halls, AGCs, members' clubs, miners' welfare clubs, commercial clubs and pubs. Stake and prize limits were last increased from 50p/£35 to £1/£70 in 2009 and the maximum prize further increased to £100 in 2014. The Gambling Act 2005 sets out machine allocations for pubs which give an automatic entitlement of two gaming machines of Category C or D upon notification to the licensing authority.
- 3.63. The pub and arcade sector put forward an economic case for an uplift to stake and prize at the call for evidence stage. The proposals included an uplift in stakes from £1 to £2 and a prize increase from £100 to £150, referencing a decline in revenue and performance of the machine category.
- 3.64. The consultation referenced concerns relating to player protection, with the proposed uplift by industry making Category C comparable in maximum stake to B3 machines (but with a lower return to player ratio), combined with availability in environments where gambling is not the primary activity. No additional player protection measures were put forward to support the sector's request, citing a lack of evidence that the machines have the potential to cause harm.

- 3.65. On machine allocations, several members of the pub sector also requested changes to the automatic entitlement of machines from two to four. The consultation incorrectly noted that the request for changes were made by one pub chain, but other pub chains and the Association of Licensed Multiple Retailers (ALMR) had also supported this proposal. However, the consultation did highlight that local authorities already have the ability to permit additional machine licenses and that pubs are ambient gambling establishments, without dedicated staff for a gambling function. Government therefore proposed to maintain the status quo for stakes and prizes for Category C machines and automatic allocation entitlement.

### Summary of consultation responses

- 3.66. The consultation asked whether respondents supported maintaining the status quo on Category C machine stakes and prizes. In the online public survey, 49% agreed, 29% disagreed, with the remaining 22% answering 'don't know'.
- 3.67. Over half (55%) agreed with the proposals to maintain the status quo on allocations for casinos, arcades and pubs, and under one third did not agree.
- 3.68. In additional submissions, the majority of industry responses were from the pub sector and related trade associations. The sector disagreed with proposals set out at consultation stage to maintain the status quo and reinforced its call for an uplift, suggesting not all Category C machines would offer the higher levels of stake and prize. The British Beer and Pub Association (BBPA) and others highlighted a lack of evidence to suggest Category C machines are associated with harm, but indicated a willingness to engage in discussions to improve the social responsibility requirements around these machines. In responses, the BBPA, ALMR and others from the sector referenced the recently published NatCen research which does not associate pub amusement machines with problem gambling.<sup>20</sup> In the absence of a stake uplift, the sector want the Commission's machine technical standards to be revised, which would aim to make existing requirements more flexible to allow for modernisation to the machine category. BACTA state that an uplift in stake and prize is warranted, but will work with stakeholders to allay concerns about the product.
- 3.69. On the allocation of Category C machines the BBPA, ALMR and four other members of the pub sector questioned why notification on the automatic entitlement of two machines had to be applied for and paid to local authorities. They want to see a deregulation of these payments or, if the requirement is retained, the notification should be a one-off cost, removing the need to reapply each time there is a new

<sup>20</sup> <http://natcen.ac.uk/media/1464625/gambling-behaviour-in-great-britain-2015.pdf>

tenant/licensee or change in machine category. Three responses from the sector also asked the Government to reconsider its view that the automatic allocation of two should not be increased.

- 3.70. The majority of non-industry responses supported maintaining the status quo on stake, prize and machine allocation. The Local Government Association (LGA) and Citizens Advice (CA) supported proposals to maintain stake and prize limits on Category C machines. Christian faith groups, including Church of England and Quaker Action among others, broadly supported maintaining the status quo, but raised concerns about the level of supervision in non-gambling establishments. The position to maintain the status quo on allocation of machines in pubs was supported in other non-industry responses.

#### Gambling Commission/Responsible Gambling Strategy Board (RGSB) Advice

- 3.71. The Commission supports Government proposals to maintain the status quo on Category C machines. It states that industry needs to demonstrate that player protection controls in place are adequate to provide a safe environment for gambling, given the potential theoretical loss per hour that can be experienced on Category C machines. Results from its recent 'Young People and Gambling' report also identified 5% of 11-15 year olds claimed to have gambled on a fruit machine in an arcade/pub/club in the past 7 days.<sup>21</sup> The Commission advises that there should be no change to machine allocation in pubs, recommending it would not be appropriate to consider increasing automatic entitlements until the sector can demonstrate that the controls it has in place are sufficient.
- 3.72. The RGSB advise there is a strong argument on precautionary grounds not to increase stakes on Category C machines due to availability in venues where gambling is not the primary activity, alcohol is served and where there is limited supervision.

#### Government response

- 3.73. For many people, fruit machines are used occasionally for pleasure, generally as part of a wider social occasion, and are available in a variety of establishments, including pubs, arcades and bingo venues. The Government has considered the case set out by the pub and arcade sector, as part of the rationale for an uplift to stake and prize.
- 3.74. The need for improved player protection measures has been drawn out as a common theme in responses received as part of the consultation

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<sup>21</sup> Extrapolating from the whole population is equivalent to approximately 140,000 children in a week. (Gambling Commission advice)

about Category C machines. In most cases, this is in relation to their availability in venues where gambling is not the primary activity.

- 3.75. Advice from the Commission references the theoretical loss per hour for a Category C machine and access children have to these machines in Family Entertainment Centres (FECs) and pubs, which, when combined with the recent 2017 young people report<sup>22</sup>, has raised questions about the potential for harm.
- 3.76. On gaming machine allocations, the Gambling Act 2005 currently provides pubs with an automatic allocation of two machines (Category C or D), which involves notification and a fee being paid to the local authority. We have noted in responses industry frustration relating to additional payments for machines and transfer of licences.
- 3.77. We have considered all responses as part of the consultation and decided to maintain our position on stakes and prizes at this time. However, we will continue to monitor impacts, including current consumer demand as outlined by the pub sector alongside player protection measures, and will consider any future regulatory changes to this category of machine outside of the review process. There will not be any changes to machine allocations, as we are content that the option for pubs to apply for a licence permit through the local authority is sufficient.

## **Category D gaming machines**

### Summary of consultation options

- 3.78. Category D machines are made up of five subcategories and are available in high street arcades (AGCs), seaside arcades (FECs), bingo venues and pubs. The most common types of machine in this category are fruit machines which are reel-based (complex) and cranes and pushers (non-complex) offering monetary and non-monetary prizes<sup>23</sup>. The stake and prize limits for most Category D gaming machines were last changed in 2009, and coin pushers received a stake and prize increase in 2014. The most significant change was a new type, a crane grab machine, with a £1/£50 stake/prize ratio; such machines previously operated at 30p/£8 ratio.
- 3.79. In the consultation, Government recognised the case set out by the arcade and pub sector. However, it also noted concerns about the

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<sup>22</sup><http://www.gamblingcommission.gov.uk/news-action-and-statistics/Statistics-and-research/Levels-of-participation-and-problem-gambling/Young-persons-survey.aspx>

<sup>23</sup><http://www.gamblingcommission.gov.uk/for-gambling-businesses/Compliance/Sector-specific-compliance/Arcades-and-machines/Gaming-machine-categories/D-gaming-machines.aspx>

access and availability of these machines to children and young people and the potential for associated harm. Industry did not propose any strengthening of measures to improve player protection in line with any stake and prize increase. Government on balance was not minded to take forward industry proposals and proposed maintaining the status quo.

### Summary of consultation responses

- 3.80. Of those who answered this question in the online survey, 49% of respondents supported maintaining the status quo for stakes and prizes on Category D machines. There were 29% who disagreed, with the remaining 22% answering 'don't know'.
- 3.81. BACTA disagreed with Government proposals to maintain stakes and prizes for Category D non-complex machines and requested an uplift to be reconsidered for pushers and cranes. This position was also supported by British Association of Leisure Parks, Piers and Attractions (BALPPA), the BBPA, ALMR and other arcade sector organisations. It stated increases would provide a boost to the sector, specifically for FECs and seaside entertainment. BACTA's response criticised research referenced in the consultation which linked early gambling with later gambling problems.
- 3.82. All groups in support of an uplift continue to cite a lack of evidence linking Category D machines with the potential to cause harm. In its response BACTA referenced research which identified "*no link between early exposure and later problem gambling.*"<sup>24</sup> Additional responses also suggested that: cranes should be removed from the gaming classification; the need to streamline technical standards on Category D machines to support innovation; and there should be a review to simplify sub-classifications. No additional player protection measures were proposed on these machines.
- 3.83. A total of 16 local authorities and Councils responded on the issue of Category D machines. The majority supported Government proposals for maintaining the status quo including the Local Government Association (LGA). Four local authorities raised concerns about the potential impact of the machines on children and vulnerable adults. Age limits and lack of player protection measures were also raised. A number of faith groups supported Government proposals on Category D machines, but highlighted concern about links between early

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<sup>24</sup> D. Forrest and I. McHale: Gambling and problem Gambling Among Young Adolescents in Great Britain. Journal of Gambling Studies 2011.

gambling, specifically on Category D machines, and later life problem gambling.

### Gambling Commission/Responsible Gambling Strategy Board (RGSB) Advice

- 3.84. The Commission recommended no stake or prize increases on Category D machines for precautionary reasons, reflecting a lack of conclusive evidence that these machines do not cause harm. The advice states that Britain is more or less alone internationally in permitting children access to gaming machines, and in principle, this generates a risk that children will become involved in other forms of gambling from an early age.<sup>25</sup> For this reason an increase in stake and prize limits would be inappropriate.
- 3.85. The Responsible Gambling Strategy Board (RGSB) advise against any increase to stakes and prizes on these machines. Reference is made to problem gambling rates among children and young people in Britain, which, although not unusually high either historically or compared with other countries, should be a matter of concern. It recommends maintaining the status quo on precautionary grounds, unless those proposing an uplift can demonstrate that no additional harm would be caused.

### Government response

- 3.86. We have considered all responses on Category D machines and have reviewed the case and rationale put forward by the arcade and pub sector, specifically in relation to those based in seaside locations, as reason for an uplift to Category D non-complex machines.
- 3.87. We note that the majority of survey responses, the Commission, RGSB, some local authorities and faith groups have raised concerns about Category D machines in relation to children and young people, on both complex and non-complex machines. Recent statistics from the Commission's 2017 study into young people and gambling, highlighted that 6% of 11-16 year olds had participated in gambling in the past week on commercial premises (such as arcades or LBOs). However, a recent GambleAware-commissioned review of academic literature on young people and gambling, which reviewed a range of studies in North America, Australia, New Zealand and the Nordic countries estimates between approximately 3-5% of young people are

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<sup>25</sup><http://www.gamblingcommission.gov.uk/PDF/Review-of-gaming-machines-and-social-responsibility-measures-%E2%80%93-formal-advice.pdf>



problem gamblers, compared with a lower figure in the UK of between 1 and 2%.<sup>26</sup>

- 3.88. The potential for harm has been questioned by the arcade sector who suggest that player protection measures would be disproportionate to the potential for harm. However, where young people are involved, it is important that we monitor carefully and ensure suitable protection measures are in place where appropriate.
- 3.89. We have considered all responses that have been submitted as part of the consultation and have decided to maintain the status quo on all Category D machines (including non-complex cranes and pushers) at this time. However, we are aware that there are pressures facing Family Entertainment Centres (FECs) in seaside locations, which formed the basis of the request for an uplift to non-complex Category D (cranes and pushers). For this reason, we requested further information from BACTA relating to the current player protection measures in place for children, including their existing social responsibility code of practice and evidence of how this is monitored and reported. Discussions relating to these points will be conducted outside of the review process.

## **Prize Gaming**

### Summary of consultation options

- 3.90. The consultation proposed an uplift for Prize Gaming<sup>27</sup> in line with requests by industry sectors during the call for evidence. The change would involve an increase in stake from £1 to £2 and prizes from £70 to £100 (£500 to £1000 aggregate). The stake limit on Prize Gaming was last amended in 2009 with an increase to stake from 50p to £1. The limit on cash prize remained at £70 and where prizes are linked up to £500. The popularity of prize gaming has waned in recent years and a number of venues have removed their prize gaming units in favour of amusement machines. However, there is still a market for the game, particularly at the seaside, and would be aligned with the objectives of this review, with the activities classed as low-risk.

### Summary of consultation responses

- 3.91. In the online survey 51% of respondents who answered the question disagreed with consultation proposals to increase the stake and prize,

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<sup>26</sup><https://about.gambleaware.org/media/1274/1-june-update-children-young-people-literature-review.pdf>

<sup>27</sup> Prize gaming is defined in section 288 of the Act, and is gaming in which neither the nature nor the size of a prize is determined by the number of persons playing or the amount paid for or raised by the gaming.

with 31% agreeing with the proposals; the remainder of people responded 'don't know'.

- 3.92. Arcades and Bingo supported proposals for an uplift. Other industry groups either agreed with the position to increase the stake and prize or did not comment. Four local authorities also supported the proposals.
- 3.93. Four local authorities and five faith groups disagreed with increase to stake and prize proposals, referencing in some instances the activity relating to children.

### Government response

- 3.94. In the consultation we proposed to increase the maximum participation fee from £1 to £2 and a prize increase from £70 to £100 (and from £500 to £1,000 aggregate) on prize gaming. We have considered all responses and are content that an uplift is in keeping with the objective of this review and that activities associated with prize gaming are low-risk. For this reason Prize Gaming will receive the proposed increases outlined in the consultation. The Commission has been asked to monitor any potential risks that arise as an outcome of these changes.

### **Other gaming machine issues**

- 3.95. We made clear at consultation stage that we had concerns with the introduction of contactless payments on gaming machines. However, there appears to be continued industry wide support for the introduction of contactless payments, especially given the potential for corresponding player protection measures that could be introduced alongside this form of payment.
- 3.96. We note the Commission advice on this issue and will not be taking this proposal forward at this time. We do, however, encourage industry to continue their engagement with the Commission so that industry can keep pace with technological change in regard to payment methods, including potential alignment with work that the Commission will be doing on tracked play.

## 4. Online Gambling

### Key findings and next steps:

- We were clear at consultation stage that more needed to be done to protect consumers who gamble online.
- All online gambling is account-based and therefore operators know who their customers are and their patterns of play. We expect operators to act now and trial a range of measures to strengthen the existing protections in place.
- If operators fail to demonstrate sufficient progress then the Government and the Commission has powers to introduce additional controls or restrictions on the online sector.
- The Minister for Sport and Civil Society will co-chair a roundtable with Margot James, Minister for Digital and the Creative Industries, to bring together stakeholders from the gambling and technology sectors and move towards a wider roll-out of best practice in using technology to improve player protections.
- The Gambling Commission has now set out a clear plan of action to strengthen player protections online: specifically around age verification, improving terms and conditions, identifying risks to players earlier and on customer interaction policies.

### Summary of consultation options

- 4.1. The consultation outlined a package of measures to improve protections for those who gamble online. This included the introduction of a new multi-operator self-exclusion scheme for online gambling, new requirements to improve the information available to players to help manage their gambling and a call to industry to increase the pace of change to incorporate behavioural analytics into their responsible gambling systems.

### Summary of consultation responses

- 4.2. Of those who responded to the public survey, 81% supported the package of measures to improve player protection measures for the online sector, 12% disagreed, and 7% answered 'don't know'. 29% of those who responded to the public survey did not respond to this question. The majority of written submissions which referred to the online sector came from industry respondents, local authorities and faith groups.
- 4.3. There was widespread support for the proposals for the online sector but several respondents thought that the package of measures could go further. Suggestions for additional protections included preventing

the use of credit cards to gamble online, preventing online gambling between midnight and 6am and prohibiting reverse withdrawals. Some respondents argued that the absence of stakes and prizes limits for the online sector was anomalous in the context of stakes and prizes on gaming machines. Some concerns were also raised about the availability and impact of gambling-style games, and the risks to children and young people of 'skins' gambling.<sup>28</sup>

- 4.4. The charity GambleAware called for protections equivalent to those for gaming machines, including limits on stakes and prizes, to be applied to online gambling products until such time as the sector has successfully implemented effective player protection measures. The charity also highlighted a number of risks associated with online gambling, such as 24/7 accessibility and products that enable continuous play.
- 4.5. Industry respondents were broadly supportive of the package of measures for the online sector and agreed that the use of data analytics to identify problematic play provided opportunities for operators to identify those at risk of gambling-related harm and make effective interventions. Several made the point that this was a more sophisticated approach towards online player protection than the imposition of stake or prize limits. Some industry respondents explained the work they are already undertaking in this area, which included the use of predictive models and player tracking to identify potential markers of harm. Some academic responses expressed doubt about the precision rates of algorithms used to identify at-risk gamblers.
- 4.6. Industry respondents were unanimous in their support for the implementation of the online multi-operator self-exclusion scheme at the earliest opportunity. It was noted that the scheme should be widely promoted to ensure uptake, and that evaluation would be essential. Other respondents also supported this measure, but noted that the long-term objective should be for a single, integrated multi-operator exclusion scheme covering both online and land-based operators.
- 4.7. The Remote Gambling Association (RGA) welcomed clarity being provided to industry by regulators through guidance on terms and conditions relating to promotional offers and free bets or bonuses.

#### Gambling Commission/Responsible Gambling Strategy Board (RGSB) Advice

- 4.8. The Commission has been responsible for regulation of the fast-growing online sector since November 2014<sup>29</sup>. The online market

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<sup>28</sup> Skins' are in-game items, used within some video games. They provide cosmetic alterations to a player's weapons, avatar or equipment used in the game.

<sup>29</sup> Gambling (Licensing and Advertising) Act 2014.

is now worth £4.7bn per annum and the emergence of new products, technology and changing patterns of consumer behaviour has contributed to continued growth. The Health Survey report on Gambling Behaviour in Great Britain<sup>30</sup> found that 10% of the adult population had gambled online in the past year.<sup>31</sup>

- 4.9. The Commission recently completed a review of the online gambling sector which was published on 26 March 2018<sup>32</sup>, which includes, and draws upon, advice from the Responsible Gambling Strategy Board (RGSB). The review has looked at the current status of the market and the action taken to ensure that customers who choose to gamble can do so safely.
- 4.10. The Commission collected data from operators covering net player expenditure, stake size and frequency of gambling by slots and non-slots players over a one month period. The Commission's advice notes that the majority of plays are at relatively small stakes and are in line with comparable products offered in the land-based sector.
- 4.11. The Commission found that 93% of stakes on online slots and 67% of stakes on non-slots products were £2 or less over a one month period.<sup>33</sup> During the same period, 73% of slots players either won money or lost less than £50. For non-slots players, 85% either won money or lost less than £50. The Commission will continue to collect data from industry to inform its work to raise player protection standards in the sector.
- 4.12. The Commission's review found that, although online operators are taking steps to minimise harm, progress in this area has been slower than expected - and is not consistent across the sector.
- 4.13. The review has established four areas where the Commission plans to take robust action to strengthen the protections in place to protect vulnerable people who gamble online. In addition, the Commission has set out a further five areas where it will consider placing further restrictions and requirements on operators to ensure high standards of player protection in the online sector.

#### Gambling Commission action plan

- 4.14. The Commission will bring forward proposals for consultation in the following areas:

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<sup>30</sup><http://www.gamblingcommission.gov.uk/PDF/survey-data/Gambling-behaviour-in-Great-Britain-2015.pdf>

<sup>31</sup> Excludes National Lottery.

<sup>32</sup><http://www.gamblingcommission.gov.uk/news-action-and-statistics/news/2018/Gambling-Commission-makes-online-gambling-safer.aspx>

<sup>33</sup> Where 'slots' are defined as 'reel-based' games and 'non-slots' are all other casino products excluding poker.

*i. Age verification*

- 4.15. The Commission requires licensees to have policies and procedures designed to prevent underage gambling. Under existing requirements, operators have a period of 72 hours to carry out age verification. The Commission intends to bring forward proposals to remove the current 72 hour window for age verification checks - meaning that age verification must be completed before a customer is able to deposit funds and gamble.
- 4.16. The Commission has also considered the availability of free-to-play gambling-style games. These games are not gambling as they are free to play and offer no prize - but they may encourage young people to gamble. The Commission will strengthen the rules by requiring licensed gambling operators to complete age-verification checks before consumers are able to access free-to-play games.

*ii. Customer identification*

- 4.17. The review identifies several risks linked to operators holding insufficient information about their customers, which includes their ability to effectively detect problem gambling or criminal activity on their platforms. The Commission will introduce a new customer due diligence requirement meaning that operators will have more information about their customers at an earlier stage.
- 4.18. The Commission will bring forward proposals for mandatory limits on player spending which can only be increased once an operator has verified information about a customer, for example via an affordability check.

*iii. Unfair terms and conditions*

- 4.19. The Commission has been working closely with the Competition and Markets Authority (CMA) to tackle concerns relating to unfair terms and misleading practices. The CMA has found widespread evidence of unfair terms and misleading practices and has recently taken action against several operators in relation to their promotions that are likely to be breaking consumer protection law. The CMA has set out principles that all gambling operators must adhere to, to demonstrate compliance with consumer protection law and the Commission's licence conditions and codes of practice (LCCP). The Commission will carry out compliance activity to test how remote operators are making changes to ensure promotions are clear and fair to consumers. The Commission published a consultation<sup>34</sup> on 25 January 2018 which brings forward changes to the LCCP with the aim of ensuring operators are being fair and open with consumers.

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<sup>34</sup><http://www.gamblingcommission.gov.uk/news-action-and-statistics/Consultations/Open-consultation/Proposed-changes-to-LCCP-fair-and-open.aspx>

- 4.20. The Commission will also publish guidance for operators and Alternative Dispute Resolution services on unfair terms and provide more information to consumers about the standards they should expect from operators.

*iv. Ineffective customer interaction*

- 4.21. The Commission has found that although some operators are making progress, there remain concerns about the online sector's approach to customer interaction. The Commission will bring forward proposals to strengthen the requirements to interact with consumers who may be experiencing, or are at risk of developing, problems with their gambling.
- 4.22. Operators must use data more effectively to identify potential indicators of harm at the earliest possible stage and adopt effective methods of intervention to reduce the risk of harm. The Commission has recently published guidance<sup>35</sup> to operators which sets out its expectations and shares current good practice and practical ways in which operators can improve their approach. The Commission will consult on changes to the LCCP requirements in relation to customer interaction.

Areas of further work

- 4.23. In addition to taking robust action in the four areas outlined above, the Commission will be taking forward further work and analysis in the following areas before deciding whether further consultation on changes to the LCCP are required:

*i. Effectiveness of the current consumer protections*

- 4.24. The Commission will review the effectiveness of current gambling management tools and consider whether there is a need to further strengthen and expand the range of tools operators are required to provide to enable consumers to control their gambling in a safe and responsible manner. This may include ways to encourage more players to use the tools available.

*ii. Game and product characteristics*

- 4.25. The Commission has concerns that game characteristics may be used to encourage and incentivise consumers to play for longer and/or spend more. The Commission will conduct further research into the relationship between in-game features and the potential for this to incentivise players to play for longer and/or spend more.

*iii. Requirements on the protection of customers funds and protections around dormant accounts*

- 4.26. The Commission will undertake a package of work to assess the risks and options relating to customer funds and dormant accounts. The Commission will support the CMA's investigation into the application of

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<sup>35</sup><http://www.gamblingcommission.gov.uk/for-gambling-businesses/Compliance/General-compliance/Social-responsibility/Customer-interaction-guidance-for-remote-gambling-operators.aspx>

“dormant account fees”. Following conclusion of this work, the Commission will consider if consultation on amendments to the LCCP is required.

*iv. Gambling on credit*

- 4.27. The Commission will consider whether gambling using credit cards online should continue to be permitted and will work to develop a more detailed understanding of this issue and the associated risks of gambling on credit online.

*v. Withdrawal of funds*

- 4.28. The Commission will consult on requiring operators to undertake customer due diligence checks at an earlier stage, which should resolve the practice of operators requesting such information at point of withdrawal - thereby delaying the withdrawal process. The Commission will also consider the practice of “reverse withdrawals”, which enables consumers to cancel their initial withdrawal requests, and will gather evidence on the use, and potential risk of harm, associated with reverse withdrawals.
- 4.29. The CMA continues to tackle concerns of unfair terms and practices in the remote sector. On 1 March 2018, the CMA launched enforcement action against a number of online operators in respect of practices that may place unfair obstacles in the way of customers withdrawing their money (whether as part of a promotion or not). The outcome of the CMA’s enforcement action will inform the Commission’s next steps.
- 4.30. In addition to this programme of work, the Commission will continue to raise standards across the industry, raising awareness of common failings identified in compliance work and taking robust regulatory action where failings are identified.

Government response

- 4.31. Online gambling operators are regulated by the Commission and must adhere to the LCCP set by them. The licence conditions are kept under review to ensure they reflect developments in the industry or emerging evidence on the most effective means of promoting socially responsible gambling.
- 4.32. The Commission has outlined four key areas where it plans to take robust action to strengthen the protections in place to protect vulnerable people who gamble online. The Commission has outlined a further five areas where it will consider placing further restrictions and requirements on operators to ensure high standards of player protection in the online sector.



- 4.33. As set out in the consultation, the Government is clear that the risk of harm should not be affected by whether individuals are gambling online or in land-based venues.
- 4.34. Since the consultation was published, we have seen progress to enhance the measures in place to protect players from harm including:
- the implementation of new rules which require operators to provide customers with more information about their gambling activity to help them manage their time and spend;
  - the initial launch of a new multi-operator self-exclusion scheme allowing customers to self-exclude from all licensed online operators; and
  - the publication of new guidance by the Commission, and by the industry itself, on how operators can do more to interact effectively with customers who may be showing signs of problem gambling.
- 4.35. Effective evaluation of measures to prevent and reduce harm is essential to understanding the impact they have on players - and to inform future measures. The Government expects to see continued evaluation of current and new measures to protect players online.
- 4.36. We welcome the Commission's commitment to obtain further data - including on length of activity, time of play and use of gambling management tools - and to work with the industry to review the effectiveness of existing gambling management tools in order to consider whether they can be improved and to consider new tools to improve the protections available.
- 4.37. In addition to the Commission's plan of action to enhance the player protection measures in place, the industry itself is also taking forward a series of initiatives to address concerns regarding its approach to player protection.
- 4.38. The Government notes the recent publication<sup>36</sup> by industry of good practice guidelines to help operators develop or implement systems to recognise indicators of problem gambling behaviour and to interact with customers to reduce the risk of harm occurring.
- 4.39. The Commission plans to consult on the LCCP code of practice for customer interaction, and has published guidance for online operators outlining the key factors which operators must consider when implementing their approaches.
- 4.40. Both the industry guidelines and the Commission's work in this area will be informed by ongoing research<sup>37</sup> commissioned by GambleAware into harm minimisation in the remote sector, which is expected to

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<sup>36</sup> <https://www.rga.eu.com/behavioural-analytics-rga-good-practice-guidelines/>

<sup>37</sup> <https://about.gambleaware.org/research/research-publications/>

conclude in 2019 and aims to produce a best practice model for harm minimisation which operators can adopt. The research has already found that the industry could accurately detect problem gamblers using data held by operators today, with a refined set of 22 predictive markers - including time of play and time spent playing - which operators should consider when designing their customer interaction policies.

- 4.41. The Commission's advice notes that while gambling on gaming machines is subject to stake and prize limits, there are no regulatory restrictions on structural characteristics such as stake, prize, and speed of play for online. This reflects the fact that, unlike the land-based sector, all online gambling is account-based and therefore operators know who their customers are. This provides opportunities for operators to use customer data to identify potentially harmful behaviour using algorithms and to target interventions which aim to reduce the risk of harm.<sup>38</sup>
- 4.42. Despite some progress in this area, the Government is clear that industry must do more to develop and implement more effective approaches to customer interaction and harm minimisation. We expect operators to act now and to trial a range of harm minimisation measures using customer data to strengthen their responsible gambling policies and processes. Interventions should be evaluated to ensure they are effective and outcomes should be shared across industry, to raise standards across the sector. If operators fail to demonstrate sufficient progress then the Government and the Commission has powers to introduce additional controls or restrictions on the online sector.
- 4.43. Our engagement with stakeholders during the Review made clear the importance of technology in developing stronger player protection measures. Through the development of algorithms to identify potential harmful play, gambling operators have been at the forefront of using data and technology to protect players. We recognise this area evolves quickly and, for our understanding to evolve with it, we will need greater collaboration. As the department responsible for the digital and online agenda, we have an important role to play in bringing together work from across Government with industry initiatives. As a result, the Minister for Sport and Civil Society will co-chair a roundtable with Margot James, Minister for Digital and the Creative Industries, to bring together stakeholders from the gambling and technology sectors and try to move towards a wider roll-out of best practice.
- 4.44. Self-exclusion is a valuable tool to support people who have decided that they want to stop gambling. We therefore welcome the initial launch of GAMSTOP - a new multi-operator self-exclusion scheme for

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<sup>38</sup> <http://www.gamblingcommission.gov.uk/PDF/Online-review-March-2018.pdf>

online gambling - by the largest operators in April 2018.<sup>39</sup> Once fully operational, the new scheme will significantly enhance the self-exclusion arrangements available for online gamblers by providing an effective route for consumers to exclude themselves from all licensed online gambling websites. The Government expects to see the full and effective rollout of GAMSTOP to include all online licensed operators at the earliest opportunity.

- 4.45. We note that GAMSTOP does not currently include a facility to remove its customers from direct gambling marketing. It is an existing licence requirement that marketing materials must not be sent to people who choose to self-exclude from individual operators and we strongly support this principle being extended to those who use GAMSTOP to self-exclude. We therefore welcome the industry's commitment to review the scheme's ability to offer a marketing suppression facility and again we would encourage them to deliver this service at the earliest opportunity.
- 4.46. The Government also notes some of the suggestions for additional measures to enhance the protections available for online gambling raised by respondents to the consultation. The Commission is committed to examining proposals to prohibit reverse withdrawals and the use of credit cards for online gambling.
- 4.47. We note that research has found that time of day is a behavioural marker which operators should use to identify at-risk customers and target interventions. The Commission will also collect further data from operators - including on time of play - in order to consider calls raised by respondents to the consultation for prohibitions on gambling online between midnight and 6am. This will inform the Commission's understanding of the sector and any future action.
- 4.48. With regard to unlicensed 'skins' gambling, the Commission has strong powers to tackle this issue and has shown it will take action and prosecute unlicensed gambling with in-game items.<sup>40</sup>
- 4.49. The Government welcomes the Commission's commitment to consult on amending the current requirements so that free-to-play games offered by licensed operators are only accessible to customers who have been age-verified.
- 4.50. We also note concerns that entertainment products, such as some video games, could encourage gambling-like behaviour and we will continue to look closely at any evidence around this issue. The Government's Internet Safety Strategy Green Paper outlines how the Government will work with online platforms, game publishers and game developers, and with agencies such as the Video Standards Council

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<sup>39</sup> <https://www.gamstop.co.uk/>

<sup>40</sup> <http://www.gamblingcommission.gov.uk/news-action-and-statistics/news/2017/Two-men-convicted-after-offering-illegal-gambling-parasitic-upon-popular-FIFA-computer-game.aspx>

(VSC) Rating Board, to continue to improve online safety in games. The Government will respond to the Strategy in due course.

### Conclusion

- 4.51. The Government is clear that protecting vulnerable people from harm must be at the heart of the industry's approach to offering gambling services online.
- 4.52. As set out in the Government's consultation, the Commission has a broad range of powers to regulate and respond to changes in the market. The Commission has reviewed the online sector and is planning to take robust action to raise standards in four areas - and it has set out a further five areas where it will consider placing further restrictions and requirements on operators to ensure high standards of player protection in the online sector.
- 4.53. The Commission has made clear that it will continue to monitor and respond to emerging risks to the licensing objectives to ensure operators are doing all they can to treat their customers fairly and minimise the risk of gambling-related harm.
- 4.54. We expect the industry to make rapid improvements to the player protection measures currently in place by gaining a better understanding of the impact of existing and new measures through effective evaluation. We will continue to pay close attention to progress in this area. If operators fail to demonstrate sufficient progress, then the Government and the Commission has strong powers to introduce additional controls or restrictions on the online sector to ensure the protection of vulnerable people from gambling-related harm.

## 5. Advertising

### Key findings and next steps:

- We set out at consultation stage a package of measures which will help protect those who are more vulnerable and continue to improve our knowledge about links between advertising and harm.
- There has been good progress on these measures, including new Committees of Advertising Practice (CAP) guidance on tone and content to help protect the most vulnerable and a Gambling Commission consultation on tougher sanctions for breaches of the advertising codes.
- Later this year, a major responsible gambling advertising campaign will be launched, and CAP will publish further guidance on children and young people.
- The Industry Group for Responsible Gambling (IGRG) will amend their codes on gambling advertising to ensure that a responsible gambling message appears for the duration of all TV adverts.
- Further research on the effects of marketing and advertising on children, young people and vulnerable groups has been commissioned by GambleAware.
- The roundtable to be chaired by DCMS ministers (chapter 4) will bring together key players from the gambling and technology sectors to consider online advertising and best practice among other digital issues.

- 5.1. The previous chapter covered online gambling. The growth of online gambling has opened up the market to more competition and has seen a growth in advertising of gambling on TV and in social media. This chapter looks at the issue of gambling advertising in more detail.

### Summary of consultation options

- 5.2. The consultation outlined a package of measures and initiatives proposed by regulators, including the Commission and the Advertising Standards Authority (ASA) and Committees of Advertising Practice (CAP), by broadcasters and the gambling industry and by GambleAware, in response to calls from Government to address concerns about gambling advertising. The measures are intended to address concerns about gambling advertising on a number of levels: by addressing the tone and content of adverts to strengthen protections further, by providing counterbalancing messages to raise awareness of risks associated with gambling and by making sure the Commission has the right sanctions available to ensure that operators comply with the advertising codes.

### Summary of consultation responses

- 5.3. The consultation asked the question: Do you support this package of measures to address concerns about gambling advertising? Of those who answered the question in the survey, 80% agreed, 15% disagreed and 5% responded 'don't know'.
- 5.4. The supplementary submissions of evidence we received were also supportive of the package of measures. Responses from broadcasters and the remote gambling industry emphasised the controls already in place on gambling advertising, pledged support to the responsible gambling advertising campaign and welcomed the new CAP guidance. Senet reported that it is making its responsible gambling content available to all operators, not just Senet partners. Citizens Advice said the campaign should also make clear the impacts that problem gambling has on others beside the gambler and signpost the support available.
- 5.5. Some respondents said that more should be done to restrict direct marketing, the total volume of gambling advertising, sponsorship and broadcast advertising around sporting events, in particular football before the watershed. Several respondents raised concerns about the targeting and impact of free bets and promotional offers on young and vulnerable people.

### Gambling Commission advice

- 5.6. In its advice, the Commission said it shared public concerns that gambling advertising and marketing could lead to harm for children and vulnerable people, but that the evidence is not clear. It is working with partners to improve the evidence and suggests the area continues to require close scrutiny. It will continue to work closely with the Advertising Standards Authority (ASA) to enforce advertising standards and encourage regulators and trade bodies with DCMS leadership to work with social media platforms to help vulnerable people limit their exposure to online advertising.

### Government response

- 5.7. There has already been substantial progress against many of the actions in the package outlined in the consultation document, which we welcome.
- 5.8. In January this year, the Commission launched its consultation into raising compliance with the CAP/BCAP advertising codes to a social responsibility condition of its licensing, which means that breaches could be subject to the full range of the Commission's regulatory powers. The Commission is also proposing the introduction of a new

requirement to prevent consumers from receiving ‘spam’ marketing by email or SMS, as well as making it clear to licensees that they are responsible for the actions of any third party organisations that they use. The consultation closed in April this year and the Commission aims to publish a response by July 2018.

- 5.9. In February 2018, CAP published guidance setting out tougher standards for interpreting the rules on gambling advertising, focusing on protections for those vulnerable to problem gambling and on free bets and bonuses. The new standards on problem gambling:
- Restrict ads that create an inappropriate sense of urgency like those including “Bet Now!” offers during live events;
  - Curb trivialisation of gambling (e.g. encouraging repetitive play);
  - Prevent approaches that give an irresponsible perception of the risk or control (e.g. “Risk Free Deposit Bonus”);
  - Provide greater detail on problem gambling behaviours and associated behavioural indicators that should not be portrayed, even indirectly;
  - Prevent undue emphasis on financial motives for gambling; and
  - Provide more detail on vulnerable groups like problem gamblers who need to be protected.
- 5.10. CAP said that the evidence reviewed in developing its guidance suggested that advertising does not play a causal or even significant role in problem gambling or harm in general. As we outlined in our consultation, problem gambling rates have remained relatively stable during a period of considerable growth in advertising volumes. Although the overall impact is small, CAP said that the evidence points to potential risk factors in the form of claims, imagery or approaches that might unduly influence people to behave irresponsibly. Its guidance will inform the ASA’s approach to enforcement. Further guidance on protecting children and young people will be published later in the year.
- 5.11. In the consultation, we announced a major responsible gambling advertising campaign, to run for two years with a budget of £5-7m in each year. This will be led by GambleAware, which will approve all content, with airspace and digital media provided by broadcasters and funding by the gambling industry. Work is progressing and we expect the campaign to go live later this year.
- 5.12. The gambling industry has responded to concerns raised during the course of this Review and has agreed to tighten its Code for Socially Responsible Advertising to include the requirement that a responsible gambling message or a reference to [begambleaware.org](http://begambleaware.org) will appear on screen throughout the length of a television advert. Alongside the new socially responsible gambling campaign, this will help raise awareness

of the risks around gambling and improve access to help by signposting people to sources of advice.

- 5.13. As mentioned in the consultation, new research on the effects of marketing and advertising on children, young people and vulnerable groups has been commissioned by GambleAware after being identified as a priority in the RGSB's research strategy. This is a comprehensive piece of work examining which particular features of exposure or content constitute risk to which groups. The research project will run for twelve months, until the beginning of 2019.

*Further action for social media/ online advertising*

- 5.14. The advertising codes of practice, which ensure gambling advertising is not aimed at children or young people and does not exploit vulnerable people, apply across all advertising platforms, including social media and online.
- 5.15. Online advertising uses a number of techniques to identify its audience and better target adverts at those who are interested, including using information on recent browsing on a particular device (Online Behavioural Advertising), as well as advertising on social media sites. Technology now has an equally important role in protecting children and young people from being exposed to adverts which could potentially be harmful to them.
- 5.16. Social media platforms are already required to make sure that adverts for age-restricted products are not targeted at children. The ASA has made clear that it will take action if the data held by social media platforms on customers' interests, as well as their declared age on sign-up, is not used to form a view of their likely age when targeting adverts for these products. This will help to prevent adverts being seen by children who might have given a false date of birth on sign-up because they were too young to join the platform in question.
- 5.17. Like gambling advertising, alcohol advertising must not be targeted at children. In a recent ruling, the ASA found that insufficient care had been taken to target a Captain Morgan Snapchat lens away from under-18s, because customer interest data had not been used. The ASA questioned the efficacy of Snapchat's age verification policy, which relies on users to self-report their own date of birth, and the reliance on this data when the advertisement was run. Since the campaign ran, Snapchat has introduced more age targeting options, including behavioural and interest-based data.
- 5.18. Through the Internet Safety Strategy, the Government seeks to make Britain the safest place in the world to be online. The green paper committed to exploring how higher expectations of online safety from



advertisers can be translated into a greater focus on safety from platforms. We will look to examine how measures put forward as part of this Strategy could provide extra protections around gambling advertising, particularly on social media. As outlined in chapter 4, the roundtable chaired by DCMS Ministers will also bring together expertise from the gambling and technology sectors to help strengthen protections.

- 5.19. As set out at consultation, the Gambling Industry Code for Socially Responsible Advertising now also requires operators to age-gate gambling content and gambling channels on social media, using the tools provided by platforms to ensure their content is inaccessible to children.
- 5.20. As noted in chapter 4, GAMSTOP does not currently include a facility to remove customers who choose to self-exclude from all direct marketing databases. However, industry has committed to review GAMSTOP and we strongly support the inclusion of a marketing suppression facility.
- 5.21. The Commission will also continue its work to encourage social media platforms to develop user-friendly guides on how a person wishing to limit their exposure to gambling advertising can do so, using settings and preferences.

## Conclusion

- 5.22. The Government understands that in order for concerns about gambling advertising to be addressed, the tone and content of adverts must be improved and responsible gambling messaging strengthened. This approach needs support from the gambling industry, the platforms they advertise on, the Commission and the ASA.
- 5.23. We are pleased with the response to our call for more to be done by operators and others who benefit from gambling to minimise the risks to vulnerable people. This includes the commitment to the responsible gambling advertising campaign, and the enhancement of the messaging requirements in the Industry Code for Socially Responsible Gambling Advertising.
- 5.24. We also recognise that the way consumers experience gambling advertising is changing, with a shift towards online, and our intention is to support regulators as they strengthen protections and equip consumers with the necessary knowledge in this space. A crucial aspect of protecting people is improving the available evidence around gambling advertising, and we will continue to monitor the situation closely.

## 6. Research, Education and Treatment

### Key findings and next steps:

- Public Health England (PHE) will conduct an evidence review of health aspects of gambling-related harm to inform action on prevention and treatment.
- The National Institute for Health Research (NIHR) has launched a call for evidence on which interventions are most effective and the National Institute for Health and Care and Excellence (NICE) is considering treatment guidelines.
- The Gambling Commission is taking steps to strengthen the current arrangements that support research, education and treatment for those that experience harm.
- Industry is currently supporting a range of initiatives alongside publicly funded services, but this needs better coordination and improved understanding of what measures are most effective to ensure future funding increases will be spent in the most effective way. The Government does not consider introducing a statutory levy is necessary or appropriate at this stage.
- GambleAware is expanding access to existing services and reviewing their effectiveness. It is also providing tools for frontline staff in other services to help identify people at risk of harm and signpost to appropriate services.

- 6.1. So far we have focused largely on ‘upstream’ arrangements for protecting vulnerable people and the population as a whole from gambling-related harm. These include the limits on stakes and prizes set out in the Gambling Act 2005 and the activities of the Gambling Commission, the regulator which the Act created. The Commission regulates the gambling industry in accordance with the licensing objectives, to keep gambling free from crime, ensure it is fair and open and protect children and vulnerable people from harm and exploitation.
- 6.2. In this chapter, we look at support for those who experience harm, including the arrangements for funding and delivering treatment, as well as education about risks and the research that underpins both treatment and regulation. This is particularly key in the light of other activities outlined in this document, including the responsible gambling advertising campaign, which in raising awareness of risks associated with gambling is also likely to increase the numbers of people seeking support.

### Summary of consultation options

- 6.3. The consultation outlined a number of initiatives on research, education and treatment, including action by the Department of Health (now

Department of Health and Social Care, DHSC), GambleAware and local authorities. It called for industry support to ensure appropriate and effective player protection systems that minimise the risk of harm, as well as the provision of funding for third parties to support their work on tackling gambling-related harm. We made clear that Government expects the gambling industry to maintain and increase its funding in line with the targets identified in the Responsible Gambling Strategy Board (RGSB) and GambleAware strategies.

### Summary of consultation responses

- 6.4. The consultation asked the question: Do you agree that the Government should consider alternative options, including a mandatory levy, if industry does not provide adequate funding for research, education and treatment? Of those who answered the question in the survey, 80% agreed, 14% disagreed and 6% answered 'don't know'.
- 6.5. Supplementary submissions of evidence generally supported more money for these purposes, in particular for treatment. Many respondents, including local authorities, campaign groups and members of the public, called for a statutory levy. Some industry bodies also support a statutory levy now, while others want to see current arrangements improved, with more transparency and accountability about how money is spent and more recognition of the donations that operators make to bodies outside GambleAware.
- 6.6. Several respondents expressed concern about the hidden nature of gambling-related harm and the particular impact on groups which are vulnerable for other reasons. A number highlighted the importance of recognising gambling as a public health issue, calling for more direct involvement by frontline health workers, DHSC and local authorities. Some, including the Respublica think tank, suggested that funding should be provided to expand the current infrastructure of alcohol and drug services to provide gambling help as well. Citizens Advice said that existing support services needed to be improved, expanded and better advertised.
- 6.7. Some made links to wider player protection measures examined in previous chapters of this response. For example, the Gordon Moody clinic, which provides inpatient treatment, said that: "Any measures which reduce the amount that can be played at any time, reduce the impact that advertising has on negative/compulsive behaviours and ensure that player protection measures are as stringent as possible, will help to reduce the number of people who require treatment."

### Gambling Commission review

- 6.8. The Commission recently carried out a review of the current arrangements for commissioning research, education and treatment, which are funded by voluntary contributions from the gambling industry to the charity GambleAware. A summary of its findings was included in its advice on the Review, which was published on 19 March 2018.<sup>41</sup>
- 6.9. The Commission noted that the industry's voluntary arrangements are a focal point for efforts to minimise gambling-related harm rather than the only source of them. Action by individual operators, Government, public health bodies and others is also needed.
- 6.10. It identified a number of areas for improving the current arrangements, working in collaboration with its specialist advisers on gambling-related harm, the RGSB and GambleAware. It recognised important progress has been made over the past two years, and there is the potential to do more. However, it also argued that demands for funding were likely to increase substantially in future and was sceptical that the current voluntary system would be able to meet them.

#### *Actions to improve the voluntary system*

- 6.11. The Commission has identified and committed to take action to:
- Improve voluntary funding levels, for example through increased transparency;
  - Bring more clarity to the arrangements, especially over its own role and that of the RGSB and GambleAware, and monitor their capability;
  - Strengthen governance arrangements and assess the pros and cons of different commissioning models, especially for research; and
  - Improve industry participation in delivery of the National Responsible Gambling Strategy
- 6.12. As part of this work, the Commission will consult on changing licence conditions to make clear that operators must contribute to organisations signed up to delivering the National Responsible Gambling Strategy (there is an existing requirement to contribute to research, education and treatment; see paragraph 6.17 below). This might mean that contributions to other organisations as well as those to GambleAware could officially support work on the strategy if those organisations are signed up to delivering it.

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<sup>41</sup><http://www.gamblingcommission.gov.uk/PDF/Review-of-gaming-machines-and-social-responsibility-measures-%E2%80%93-formal-advice.pdf>

Government response

- 6.13. The overarching focus of this Review is to ensure the right balance between a sector that can grow and contribute to the economy, and one that is socially responsible and doing all it should to protect consumers and communities. Underlying this objective is our focus on reducing gambling-related harm, protecting the vulnerable and making sure that those experiencing problems are getting the help they need. As well as stimulating action in a number of areas, the Review, in conjunction with work by health bodies and those within the voluntary system, has also identified areas where further research and evidence is required.

*Problem gambling figures and treatment options*

- 6.14. The latest problem gambling statistics for Great Britain (based on the 2015 Health Survey) indicate that 0.8% of the population are problem gamblers, with 3.9% 'at risk' (2.8% counted as low-risk, 1.1% as at moderate risk).<sup>42</sup>
- 6.15. Problem gambling rates have remained stable for many years at below 1% of the population (although some groups within the population have higher rates) but only a small proportion of problem gamblers seek help or receive dedicated treatment. Most dedicated treatment is funded by donations from industry to the voluntary sector rather than from public funds.
- 6.16. The charity GamCare, commissioned by GambleAware, provides a telephone helpline, online advice and (with partners) face to face counselling. 8,000 people accessed counselling last year, with 30,000 contacting the helpline. GambleAware also funds a specialist NHS clinic, which treats a smaller number of people with more complex needs, and the charity Gordon Moody, which provides some intensive inpatient care.

*Funding for research, education and specialist treatment through the voluntary system*

- 6.17. As part of its social responsibility licensing code, the Commission requires operators licensed under the Gambling Act 2005 (i.e. excluding the National Lottery operator) to contribute financially to one or more organisation(s) which provide research, education and treatment for gambling-related harm. It does not specify how much or to which organisation.

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<sup>42</sup> <http://natcen.ac.uk/media/1464625/gambling-behaviour-in-great-britain-2015.pdf>

- 6.18. GambleAware commissions dedicated support for problem gamblers, as well as research and awareness-raising on gambling-related harm, mainly with funding from gambling industry donations. This commissioning is according to priorities set in the National Responsible Gambling Strategy, which is published by RGSB, who are expert advisers to the Gambling Commission.
- 6.19. RGSB has also estimated the funding needed to deliver the identified priorities. In January 2017 it estimated that GambleAware in 2017/18 would need £9.3m plus its running costs to deliver its part of the strategy, increasing to £9.5m in 2018/19. It has since said that funding requirements are likely to increase substantially in future, although on treatment in particular the evidence to determine appropriate levels of funding is not yet available. GambleAware currently asks operators to give it 0.1% of their Gross Gambling Yield (GGY), which roughly matches the 2017 RGSB estimates.
- 6.20. Some operators do not give to GambleAware at all, while others, including the largest, give large sums. Industry contributions to GambleAware in 2017/18 totalled £9.4m, up 16% on 2016/17. This is a welcome development and we encourage industry to continue working with GambleAware to provide security of funding.
- 6.21. Industry also made donations to other bodies supporting RET in 2017/18 and the previous year. These direct donations include funding for GamCare and Gordon Moody, which GambleAware also funds, Young Gamblers Education Trust (YGAM), which works with children in schools, and responsible gambling campaigns such as that run by Senet. While they do not contribute to meeting RGSB's target for GambleAware funding, they do go to supporting problem gamblers and bring industry's collective support for RET to above 0.1% of its Gross Gambling Yield (GGY, which for operators licensed under the 2005 Act (i.e. excluding National Lottery) was £10.8bn in 2016/17).
- 6.22. In addition to voluntary donations from industry, GambleAware has also received large sums of money from 'voluntary settlement' payments made by operators following Gambling Commission enforcement action; for example, where there has been a failure in applying responsible gambling or anti-money laundering protections. These payments are made to good causes agreed with the Commission. Such failures are unacceptable and these voluntary settlements cannot be considered a sustainable source of funding. However, while it does not absolve operators from their social and licence condition obligation to provide support for problem gamblers on a regular and ongoing basis, this represents a significant uplift in GambleAware's budget from fundraising and they are developing plans to use this in 2018/19. GambleAware is also leading the responsible

gambling awareness campaign, with additional dedicated funding from the gambling industry.

- 6.23. The consultation asked whether Government should consider alternative options, including a mandatory levy, if industry does not provide adequate funding for research, education and treatment. As this indicates, a mandatory levy would be one option, but is not the only one open to Government. Actions identified by the Commission will help to make the voluntary system stronger and more resilient and pave the way to increase funding and make sure it is spent in the most effective way. We encourage it in the meantime to continue the work it has begun with industry and operators to develop a clear picture of how much funding is being contributed to organisations outside GambleAware, and how it provides support to problem gamblers.

#### *Education and improving signposting*

- 6.24. As outlined in the section on advertising above, a major responsible gambling advertising campaign will help raise awareness of risks and practical actions to take to reduce them. In response to concerns raised in the course of this Review, the Industry Group for Responsible Gambling (IGRG) has also changed its code to ensure that responsible gambling messaging and/or begambleaware.org will be on screen for the whole length of TV gambling adverts.
- 6.25. These measures could drive an increase in demand for advice and treatment, which we address in the next section. GambleAware services such as the helpline and counselling services will need to be prepared to respond to larger numbers of people coming forward for help, and we expect industry to step up funding as needed to support that.
- 6.26. GambleAware has published a 'Brief Intervention Guide' as a resource for professionals who do not specialise in the treatment of gambling problems. This is recommended to those working in social and criminal justice settings, social workers, employment advisers, probation officers, community workers, counsellors, GPs, nurses, psychologists and others working in primary care and other health settings.
- 6.27. GambleAware is in discussion with Citizens Advice about extending the reach of the training, screening and early intervention pilot project it funded Newport CAB to deliver from 2016 to 2018, with the expectation that the work will be delivered via a number of regional hubs covering England and Wales. The Local Government Association (LGA), together with PHE, will also publish a briefing for councillors on the impacts of gambling-related harm in local areas and how to develop a strategic response at a local level.

- 6.28. Gambling operators are required by Gambling Commission licence conditions to train staff to intervene where they think a person is having difficulty with gambling and make information readily available to all customers about how they can access help and advice relating to problem gambling if needed.

*Improving understanding of gambling-related harm and treatment needs*

- 6.29. The following section outlines a package of initiatives, including several led by the DHSC and PHE, to develop understanding of gambling-related harm, including research and development of treatment guidelines. The Government will reflect carefully on the outcome from this work in developing our policy on prevention and treatment.
- 6.30. Gambling-related harm and its impact on society as a whole is increasingly being recognised as a health issue. As such, Government's interest is broad. It is not just in the upstream measures mentioned at the beginning of this chapter, with protections built in at the level of product, environment and operator through a comprehensive system of regulation. DHSC and the devolved administrations, who have responsibility for health and public health more broadly, share with DCMS an interest in and responsibility for preventing and reducing harms associated with gambling.
- 6.31. Each year, the Minister for Public Health writes to PHE setting out the organisation's strategic remit and priorities for the next year. For 2018/19, PHE is explicitly committed for the first time to action on gambling-related harm. As a first step, Government has asked PHE to carry out a review of the evidence relating to the public health harms of gambling.
- 6.32. In Wales, the Chief Medical Officer, Dr Frank Atherton, highlighted the health aspects of gambling in his annual report for the first time this year, with a number of recommendations including for the Welsh Government to develop a plan to reduce gambling-related harm. Public Health Wales has also recently commissioned work on gambling from Bangor University and Swansea University. In 2016 the Scottish Public Health Network published a scoping document towards a public health approach to gambling-related harm.
- 6.33. The NHS's National Institute for Health Research (NIHR)'s Public Health Research programme has launched a call for further research on which interventions are effective and cost-effective in preventing or reducing gambling-related harm. It is recognised that the evidence base on problem gambling is restricted and the NIHR call should help stimulate interest in this field and help build research expertise for the future.



- 6.34. While wider Health-led research is being set in train, GambleAware is commissioning a treatment-related needs assessment and gap analysis as well as a systematic review of evidence on effective gambling treatment and support. Preliminary findings from both studies are expected by early 2019. This work will inform its commissioning strategy in relation to funding treatment, support and after-care services in the future. Findings from this research will also help inform the Health-led research outlined above.
- 6.35. GambleAware has also established an expert steering group to help build a better shared understanding of what is meant by gambling-related harms, chaired by the deputy chair of the Responsible Gambling Strategy Board (RGSB). The group includes health economists and others experienced in methodologies for measuring harm in different areas of public health. It will shortly publish an initial paper for wider consultation.
- 6.36. DCMS's Chief Scientific Adviser is coordinating research requirements across the department and will be liaising closely with UK Research and Innovation (UKRI) and the research councils to communicate the needs of DCMS and its sectors as part of the next round of UKRI challenge funding.

#### *National Lottery*

- 6.37. Unlike commercial gambling products, National Lottery games can be played from 16. We intend to consider this issue as part of the next licence competition for the National Lottery. We will aim to gather evidence on this issue in order to consider it fully in time for the next licence competition. The current licence expires in 2023.

#### *Improvement of treatment and provision of services*

##### *The voluntary sector*

- 6.38. GambleAware has an existing goal of tripling the number of people accessing its commissioned services, including via more early intervention and tailoring interventions according to need. This work will also be informed by its new commissioning strategy.
- 6.39. GambleAware is collaborating with a wide range of local organisations in Leeds to pilot a partnership approach, the Leeds Problem Gambling Support Hub. This would include supporting GPs to identify people at risk, training outreach and community champions and developing capacity in the local NHS to treat those people with more complex needs. The intention is that this specialist support would be available to

the people living in the area around Leeds and beyond.

- 6.40. The effectiveness and sustainability of the initiative will be evaluated to inform decisions about expanding access to treatment elsewhere in Great Britain. It is planned to have the Leeds Hub underway by the summer of 2018.

#### *Other treatment providers*

- 6.41. Mental health services commissioned by the NHS and specialist substance misuse provision commissioned by local authorities are likely to be in contact with and treating individuals for whom gambling is an associated problem. In some cases, this treatment for associated conditions may also help address the gambling problem and services may also screen and refer to specialised gambling treatment. The current provision of treatment will also be examined in the upcoming PHE evidence review.
- 6.42. GambleAware has commissioned the Royal Society for Public Health to develop an eLearning programme to promote awareness among health professionals on the advice they can give to someone who presents with a gambling problem. This builds on work previously undertaken in relation to the Brief Intervention Guide, and learns from a pilot programme of eLearning delivered in conjunction with the Royal College of General Practitioners.
- 6.43. GambleAware has also sponsored the development of a Common Screening Tool for providers to use in assessing individuals' gambling problems and this is in the process of being rolled out across the provider network.
- 6.44. In May 2018, gambling and other non-chemical addictions were officially referred by NHS England to the National Institute for Health and Care Excellence (NICE) for development of treatment guidance. Having treatment guidelines would promote the earlier identification of problem gamblers and improve access to help.

#### Conclusion

- 6.45. As outlined above, Government, health and local authority partners and the bodies in the voluntary system are taking steps to improve understanding of gambling-related harm, how to prevent and reduce it, the need for treatment and the most effective means of delivering it. The aim is to achieve a joined-up system which addresses gambling-related harm as a public health issue. The Commission has identified a number of practical actions to take, working with RGSB, industry, public health bodies, GambleAware and a wider range of

charities to strengthen the voluntary system.

- 6.46. The voluntary system for funding RET provides vital support to help those suffering from gambling-related harm and to help prevent further harm. We call on industry to continue to give full support to this system, providing the funding needed to meet current and future priorities in the National Responsible Gambling Strategy, and working with the Commission and GambleAware to help strengthen the current system.
- 6.47. We will continue to monitor and assess the situation. As our understanding of funding needs and of gambling-related harm develops, and as efforts to strengthen the voluntary system have an opportunity to show results, we will consider what further steps might need to be taken to reduce gambling-related harm. Gambling-related harm is a health issue and the Department of Health and Social Care and Public Health England will be closely involved with DCMS on follow up to this review.

## 7. Local Authorities

### Key findings and next steps:

- We are reducing the maximum stake on B2 gaming machines from £100 to £2 which we believe will support local authorities in their pursuit of protecting wider communities.
- We encourage local authorities to continue to utilise powers available to them to manage gambling at a local level.

### Summary of consultation options

- 7.1. At consultation stage, we noted concerns raised by local authorities about the need for further powers to control gambling at a local level, specifically the request to introduce cumulative impact assessments. We said at consultation phase that local authorities should continue to work closely with the Commission to ensure the effective deployment of the existing tools at their disposal. We also indicated that where an increase in the number of LBOs is considered to be a local issue, having an up-to-date, relevant local plan in place will support the local planning authority in the determination of any applications for planning permission.

### Summary of consultation responses

- 7.2. We had 95 survey responses from local authority employees and 40 submissions from local authorities.<sup>43</sup> Local authorities were broadly in favour of reducing the stakes on B2 machines to £2 and maintaining the status quo on other categories of gaming machine, and supported the social responsibility measures outlined in the consultation. They also welcomed raising the profile of problem gambling as a public health concern, supporting more public health funding for RET.
- 7.3. Some remained of the view that they do not have the powers they need to restrict the clustering of betting shop premises in certain areas and believe that cumulative impact assessments are necessary to achieve this. This appeared to be of particular concern to authorities in the more economically deprived areas of the country. In contrast, Westminster Council, which is the council with the most gambling premises, felt it already had sufficient powers available to manage this issue.

<sup>43</sup> We had a variety of responses from representatives of local authorities which we have captured here as local authorities. This included responses from: individual councillors, Mayors, specific directorates of local authorities, including licensing boards and other relevant parties.

Government response

- 7.4. We acknowledge concerns about the impacts of gambling at a local level, but remain convinced that local authorities can address substantive concerns using existing powers. As set out at consultation stage, local authorities can already set out the same assessment of the risk in a given location under their licensing statement of policy. The Commission advises that the implementation of this tool varies from one local authority to another, but where it is used effectively and updated regularly, for example in Westminster Council, it can be an effective tool at rejecting licence applications or imposing conditions on new licences, as would be the case with the introduction of CIAs. We encourage local authorities to continue to work closely with the Commission to ensure the effective deployment of the existing tools at their disposal.

## 8. List of Unique Respondents

Where permission has been granted, a copy of non-public responses to the consultation will be made available on the gov.uk website. This list does not include names of respondents who have not granted permission for their response to be published.

### Gambling/Pub/Leisure Industry - individual company, manufacturer or supplier

Arena Racing
Bet Bet Bet 24/7
Bet Extra
BetFred
Gala Bingo
Greene King
Hippodrome Casino
International Game Technology (IGT)
Ladbrokes Coral Group
Novomatic UK
Rank Group
Regal Amusement Machine Sales Limited
Regency Amusements
Shipleys Leisure Limited
Stonegate Pub Company
William Hill

### Gambling/Pub/Leisure industry - trade associations

Association of British Bookmakers (ABB)
Association of Licensed Multiple Retailers (ALMR)
British Amusement Catering Trade Association (BACTA)
British Association of Leisure Parks, Piers and Attractions (BALPPA)

Bingo Association
British Beer & Pub Association (BBPA)
British Horseracing Authority (BHA)
Gambling Business Group (GBG)
National Casino Forum (NCF)
Racecourse Promoters Association Ltd
Remote Gambling Association (RGA)

Faith and Community Groups

CARE
Christian Institute
Church of England
Diocese of London Synod
Diocese of Lichfield
Diocese of Rochester
Evangelical Alliance
King's Community Church - Southampton
Ladder Community Safety Partnership
Methodist Church, the United Reformed Church, the Baptist Union and the Church of Scotland (joint submission)
Muslim faith groups
Presbyterian Church of Wales
Quaker Action on Alcohol and Drugs
Salvation Army
Scotland's Towns Partnerships
Sikh faith groups

Academics/Think-tanks

Institute of Economic Affairs
Jim Orford, University of Birmingham/Gambling Watch UK
Kate Bedford, Birmingham Law School
Professor Peter Collins
ResPublica
Social Care Workforce Research Unit, King's College London
Dr Steve Sharman, University of East London

Local Authorities / Public Sector

Aberdeenshire Council
Aberdeenshire Council [community planning partnership]
Babergh & Mid Suffolk District Councils
Basildon Council
Bournemouth Borough Council
Bradford Metropolitan District Council
Brent Council
Chief Medical Officer/Medical Director NHS Wales
Crawley Council
Dartford Labour Party
East Riding of Yorkshire Council
Glasgow City Council
Hackney Council
Havering Council
Knowsley Council
Lambeth Council
Leeds City Council



Leicester City Council
Local Government Association (LGA)
Medway Council (Labour Group)
Newham Council
North East Lincolnshire Council
Norwich City Council
Royal Borough of Greenwich
Sefton Council
Sheffield City Council
South Kesteven (Labour Group)
South Staffordshire Council
Southampton Council
Sutton Council
Swale Borough Council
Tower Hamlets Council
Waltham Forest Council
Wandsworth Council
Warrington Borough Council
West Lancashire Borough Council
Westminster City Council

Charities

Charities Aid Foundation
Citizens Advice
GamCare
GambleAware
Gordon Moody Association

Interest groups

38 Degrees
Advertising Association
Advertising Standards Authority
Association of Directors of Public Health
Campaign For Fairer Gambling
English Football League (EFL)
GamblingHurts
ISBA
ITV
Justice4Punters
Law Society of Scotland
LM Consultants Limited
Machine Zone Community Interest Company
Money and Mental Health Policy Institute
Royal Society for Public Health
Senet Group
Sky
Viacom
Working Mens Clubs and Institute Union

Parliamentarians

APPG on Fixed Odds Betting Terminals <sup>44</sup>
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<sup>44</sup> This includes the following Parliamentarians as members: Carolyn Harris MP, Bishop of St Albans, Lord Beecham, Lord Foster, Lord Clement-Jones, Hannah Bardell MP, Ian Blackford MP, Kirsty Blackman MP, Sir Peter Bottomley MP, Fiona Bruce MP, Ruth Cadbury MP, Dr Lisa Cameron MP, Ronnie Cowan MP, Wayne David MP, Louise Haigh MP, Lady Hermon, Gerald Jones MP, Graham Jones MP, David Lammy MP, Jeremy Lefroy MP, David Linden MP, Jonathan Lord MP, Stuart McDonald MP, Liz McInnes MP, Jim McMahon MP, Jim Shannon MP, Jeff Smith MP, Alison Thewliss MP, Stephen Timms MP, Charles Walker MP, Sammy Wilson MP, Judith Cummins MP

Chris Philp MP
Laurence Robertson MP
Lord Browne of Belmont
Richard Graham MP
Stephen Timms MP
Stuart McDonald MP
Susan Jones MP

Members of the public

Responses were received from members of the public. In order to maintain anonymity, these respondents are not listed here. In addition, a large number of identical responses were received as part of campaigns run by particular organisations.

## Annex A - Supporting analysis on B2 gaming machines

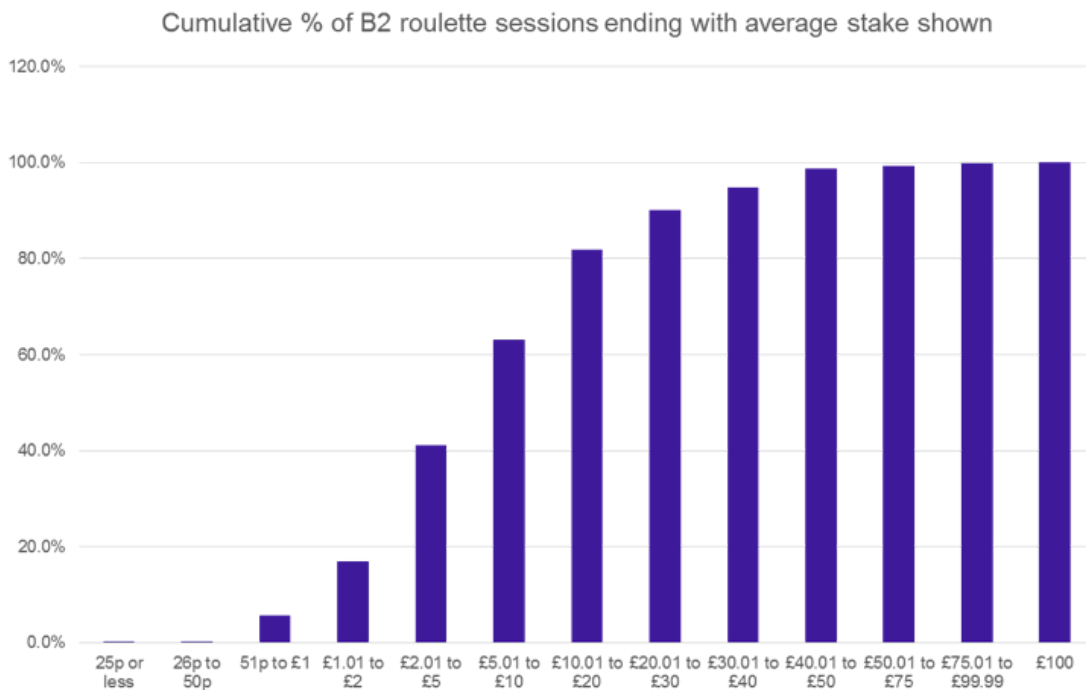
### Category B2 gaming machines

- 8.1. The Commission and RGSB have been clear in their submissions that while the case has been made to reduce the maximum stake on a precautionary basis, it must be a matter of judgement as to what that level should be. Having carefully considered all the information and evidence we received in response to the consultation, we have concluded that the maximum stake should be cut to £2, the lowest end of the range suggested by the Gambling Commission. In coming to our conclusion, we have placed greater weight protecting those most vulnerable to harm and reducing the prevalence of high level session losses as a proxy for harm.
- 8.2. Reducing the maximum stake to £2 will reduce harm by targeting the volume and proportion of high session losses, capturing the greatest proportion of problem gamblers, and mitigating risk for the most vulnerable players for whom even moderate losses might be harmful.
- 8.3. In arriving at this conclusion we have looked in detail at the following factors, placing greater weight on some of these over others:
  - a. Staking patterns as proxy for the impact on consumer choice and potential displacement
  - b. Comparisons with other gaming machines in terms of average theoretical and potential maximum losses
  - c. The relationship between data for actual session losses and stake size
  - d. Spread of problem gamblers at each staking level
  - e. Impact on more vulnerable players
  - f. Economic impact
- a. *Staking patterns as proxy for the impact on consumer choice and potential displacement*
- 8.4. We have used industry data around staking patterns to illustrate the potential impact that a stake reduction may have on consumer choice and potential displacement. The Commission note that the lower the limit, the more restricted consumers are in their choices - e.g. 17% of B2 non-slots sessions ended with an average stake up to £2 (see figure 1) - and the greater the potential for displacement to other forms of gambling.
- 8.5. Based partly on this data, the Commission conclude that a stake limit lower in its recommended range may be more likely to encourage players to switch to other forms of gambling. While we acknowledge

the potential risk of displacement to other forms of gambling as a result of any stake reduction, as well as the potential detrimental impact on consumer choice, we note the following points in regards to this information:

- There is significant uncertainty about what players will do in response to a stake reduction and consequences of displacement are unknown.
- The potential for displacement should not prevent Government taking action in regard to specific gambling products if there is a body of evidence to suggest they are associated with unacceptable levels of risk of harm. We are clear that if other forms of gambling are harmful to an unacceptable extent, then action should be taken on them as well.
- If some players do respond to a stake reduction by shifting to other forms of gambling, it does not necessarily follow that they will be exposed to the same or higher levels of harm.
- However, noting both Commission and RGSB advice, we will carefully monitor the impact on player behaviour resulting from changes to the maximum stake so that we can better understand displacement and the potential risks around this.

Figure 1.



*b. Comparisons with other gaming machines in terms of average theoretical and maximum potential losses*

- 8.6. A number of respondents, including the ABB, highlighted the potential anomaly that a stake reduction on B2 gaming machines may cause in terms of the regulatory regime on gaming machines which permits different categories of gaming machines to offer different levels of stakes, prizes and speeds of play. Acknowledging that stake size is only one comparator, both the Commission and the RGSB highlight that one way of combining some of these characteristics is to calculate Expected Average Theoretical Cost per hour (EATC/h) for different categories of machines. This is the statistical expectation of the loss a player would experience if they were playing a machine for an hour, assuming play takes place at a maximum speed and with the highest stake possible. Table 1 sets out the EATC/h under the status quo for existing gaming machines, and for each of the illustrative options we set out in the consultation document on B2 gaming machines. It shows that the current EATC/h for B2 (roulette) is £486, at £50 it is £243 and at £2 it is £9.72. The current EATC/h for B3 gaming machines is £302.
- 8.7. The ABB suggests that if stake were to be reduced, it should be to no lower than £50 in order to ensure the maintenance of this hierarchy, but also concedes it could be reduced further to £25, subject to allowing players to stake up to £50 on the condition that their play is tracked through an account card. While we acknowledge this data as potentially useful in informing a debate about stake level, we remain unconvinced about relying on this factor alone and note the following points:
- B2 gaming machines at £100 maximum stake did not adhere to this hierarchy upon the implementation of the Gambling Act 2005 under this particular proxy.
  - Averages can conceal a wide range of outcomes, including large losses or gains at the extreme and B2 machines offer the potential for higher losses in shorter periods.
  - EATC/h is theoretical at a player level. The actual loss or gain experienced by a player may be very different from another player using an identical machine or from session to session.
  - Changes in the return to player ratio (RTP), which are not currently controlled by regulation, can make a significant impact on EATC/h.
  - Gaming machine data of session outcomes linked to stakes illustrate how difficult it is to generate very high losses with average stakes at £2 or below. Analysis of gaming machine data is set out below.
- 8.8. We note from the Commission's advice that in order to account for some of these concerns with this particular proxy, we must also take into account shorter session lengths that more accurately reflect how

the machines are played, as well as the maximum potential loss rates possible on these machines, which provide a better insight into larger losses at the extremes.

8.9. Table 2 shows expected average theoretical loss rates and maximum possible loss rates over a 9-minute session (the average session duration observed from industry data). Looking at maximum possible loss rates provides us with the potential losses that a player could lose in a session if every bet were lost. This shows that the maximum possible loss with a maximum stake of £16 on a B2 gaming machine is £432, which is the same as the current maximum possible loss on a B3 gaming machine.

8.10. If the objective of a stake reduction were to achieve broad equivalence between B2 and B3 overall, taking account of both of these proxies, maximum stake might fall between £16 and £50. We acknowledge this data as useful in helping to understand potential outcomes of a stake reduction, but we think the other factors below carry greater weight.

Table 1. EATC/h for gaming machines B1 - D

Category & type/location	Max stake (£)	Return to player ratio (RTP) <sup>45</sup> (percent)	EATC/h (£)	Time to complete each game (seconds)
B1	5	92.5	540	2.5
B2 (roulette)	100	97.3	486	20
	50	97.3	243	20
	30	97.3	145.80	20
	20	97.3	97.20	20
	2	97.3	9.72	20
B3	2	89.5	302	2.5
B4	2	80	576	2.5
C (AGCs)	1	88	173	2.5
C (pubs)	1	78	316	2.5
D <sup>46</sup>	10p	70	43	2.5

<sup>45</sup> RTP taken as the midpoint in the range of typical RTP values provided by the Gambling Commission

<sup>46</sup> Category D money prize gaming machine. Meaningful figures cannot be provided for those Category D machines that have a non-monetary prize element.

Table 2: B2 roulette loss rates in a 9 minute session, with 20 second spin cycle

Stake limit	£2	£16	£20	£30	£50	£100	B3 loss
Expected average loss	£1.46	£11.66	£14.58	£21.87	£36.45	£72.90	£35
Maximum possible loss	£54	£432	£540	£810	£1350	£2700	£432
Probability of maximum loss	47.7%	22.3%	22.3%	10.2%	4.6%	0.1%	N/A

*c. The relationship between data for actual session losses and stake size*

8.11. To inform its advice to DCMS, the Commission obtained detailed data from operators about how consumers use Category B2 and B3 gaming machines.<sup>47</sup> The data covers nearly 20 billion plays on machines in licensed betting offices (LBOs), and over 2 billion plays on machines in Adult Gaming Centres (AGCs) and bingo venues (see tables 3 and 4). We note the following points about this data:

- We highlighted in the consultation document the higher losses associated with B2 slots and mixed sessions on B2/B3s in LBOs on what we call slot games. We also note that the Commission cite this as signalling a potentially higher risk associated with slots, recommending a reduction to £2 on this content (see figure 2).
- We also highlighted the broad similarities between the profiles of session losses on B3 play in Adult Gaming Centres (AGCs) and bingo premises with B2 play on roulette in LBOs. We cover B3 machines in more detail in chapter 3.
- We highlighted that it was very hard for a player to lose more than £500 in a session using average stakes up to £2. However, we also note that under the status quo on other machines on the high street, notably B3 gaming machines, on which the current stake is £2, there are still a large number of sessions with losses greater than £500. This remains a concern to us and is covered in more detail in chapter 3.
- In addition, we note that session losses greater than £5000 were only observable on B2 content and there was a greater volume and proportion of the total of session losses between £1000.01

<sup>47</sup><http://www.gamblingcommission.gov.uk/news-action-and-statistics/news/2017/New-data-to-inform-government-gambling-review.aspx>



and £5000 on B2 content than B3 content in any venue (almost 40 times as many £1000.01-5000 losses on B2 sessions than for B3 sessions). However, it is clearly still possible for players to lose these amounts in a single session on B3 gaming machines in other venues, albeit on far fewer occasions.

- Where B2 and B3 session data differ dramatically is on the volume and proportion of the total of session losses between £1000.01 and £5000. In particular, we note that over 170,000 sessions on B2 roulette ended with losses between £1,000.01 and £5,000. These sessions persist at average stakes of £5 and £10, but by contrast, none involved average stakes of £2 or below (see tables 3 and 4).

8.12. It is uncertain how players would respond to a stake reduction, but under the status quo, these figures suggest that larger volumes of session losses above £1000 occur much more frequently when players stake upwards of £2.

Figure 2.

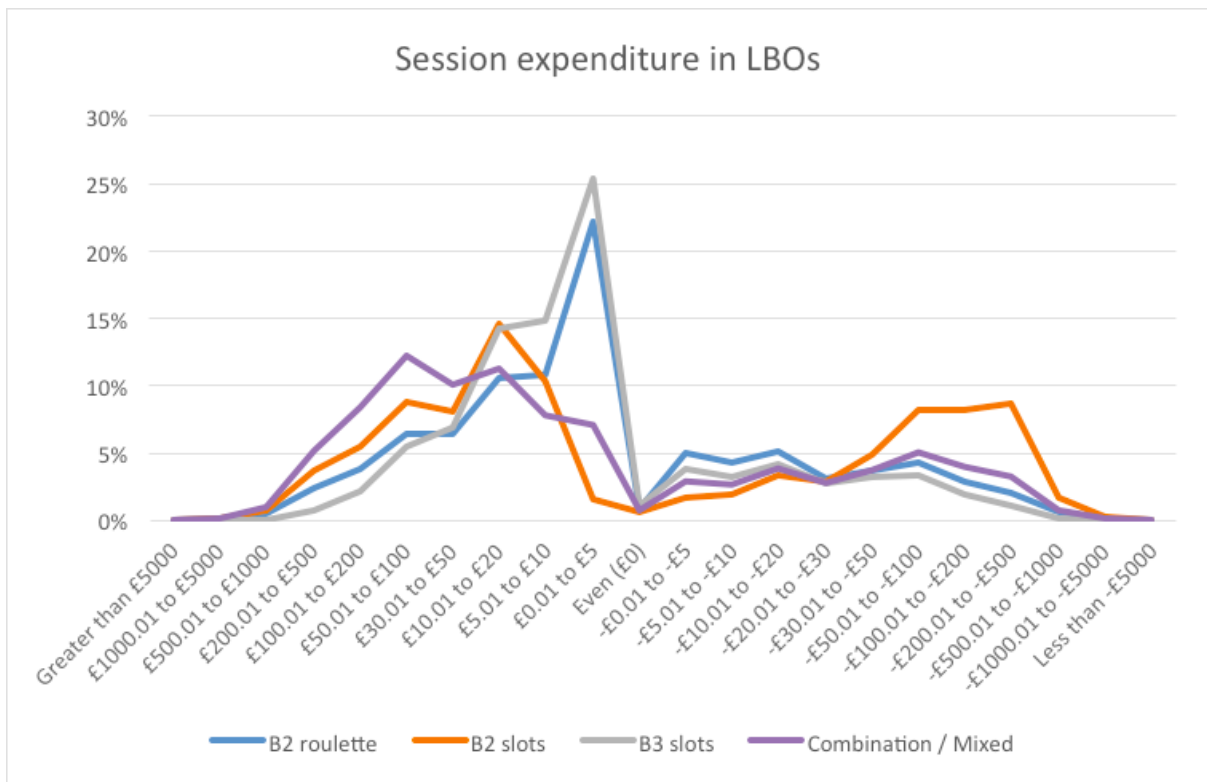


Table 3. Session outcome by venue and category of machines play (number and % of total) - sessions recorded between July 15-July 16

Session outcome	B3 (bingo)	B3 (Arcade)	B3 (betting shop)	B2 roulette (betting shop)	B2 (slots) (betting shop)	Mixed B2/B3 sessions (betting shop)
Greater than £5000	0	0	0	543 (0.0%)	0	118 (0.0%)
£1000.01 to £5000	415 (0.0%)	655 (0.0%)	1733 (0.0%)	170,217 (0.132%)	1522 (0.15%)	60,671 (0.2%)
£500.01 to £1000	6589 (0.1%)	10,329 (0.3%)	27,643 (0.1%)	626,897 (0.5%)	7695 (0.76%)	267,114 (1%)
£200.01 to £500	74,240 (1.2%)	95,343 (2.3%)	362,210 (0.7%)	3,008,317 (2.3%)	36,811 (3.7%)	1,352,290 (5.2%)
£100.01 to £200	206,237 (3.3%)	198,765 (4.9%)	1,136,169 (2.2%)	4,939,356 (3.9%)	54,995 (5.5%)	2,180,991 (8.4%)
£50.01 to £100	454,439 (7.3%)	353,425 (8.6%)	2,839,770 (5.5%)	8,230,583 (6.4%)	87,450 (8.7%)	3,163,451 (12.1%)
Base - Total number of sessions (millions)	6.3m	4.1m	51.7m	128.2m	999,521	26.1m

Table 4. Session outcome by average staking level (volume and % of total) on B2 roulette - sessions recorded between July 15 - July 16

Session outcome (loss to the player)	Total number of sessions by outcome	Involving average stakes at £2 or below	Involving average stakes at £10 or below	Involving average stakes at £20 or below	Involving average stakes at £30 or below	Involving average stakes at £50 or below
Greater than £5000	543	0	0	0	4 (0.7%)	99 (18.2%)
£1000.01 to £5000	170,217	0	373 (0.2%)	3842 (2.2%)	13,744 (8.1%)	99,933 (58.7%)
£500.01 to £1000	626,897	14 (0.0%)	5794 (0.9%)	43,251 (6.9%)	122,813 (19.6%)	481,646 (76.8%)
£200.01 to £500	3,008,317	882 (0.03%)	110,962 (3.7%)	572,859 (19%)	1,231,500 (40.9%)	2,690,922 (89.4%)
£100.01 to £200	4,939,356	8473 (0.17%)	516,494 (10.45%)	1,885,742 (38.2%)	3,129,644 (63.4%)	4,701,342 (95.2%)
Illustrative example: Out of the total number of sessions which ended with a loss to the player of more than £1000 (170,217), none involved average stakes at £2 or below.						

*d. Spread of problem gamblers at each staking level*

- 8.13. We highlighted in the consultation that evidence from research into loyalty card holders in LBOs allowed us to identify - albeit with an imperfect sample of gaming machine players - that the proportion of problem and at-risk gamblers was smaller at lower staking levels for this sample of gaming machine players. While this doesn't necessarily indicate that higher stakes cause problem gambling, we are concerned that this indicates a correlation between high stakes and problem gambling and further supports a stake reduction.
- 8.14. The ABB highlighted the small and potentially skewed sample size involved in this research, suggesting that this data could not be relied upon. Nevertheless, what data there is shows that a smaller proportion of problem gamblers are found at staking levels £2 and below (19% at £2 or less compared with 42% at £20 or more). Table 5, taken from the RGSB's advice, sets this out in more detail.

Table 5.

<b>Table 1: Problem gambling status by average staking level (Loyalty card holders who played machines in bookmakers – includes B3)</b>					
PGSI status	Average staking level				
	£2 or less	£2.01 to £10	£10 or more	£20 or more	£30 or more
	%				
Non problem gambler	32	29	19	13	16
Low risk gambler	25	25	22	21	19
Moderate risk gambler	24	23	28	23	23
Problem gambler	19	24	31	42	42
<b>Base</b>					
<i>Weighted</i>	1669	1704	612	230	88
<i>Unweighted</i>	1611	1708	668	239	96

*\*Caution advised because of very small base values*

*e. Impact on more vulnerable players*

- 8.15. A number of respondents highlighted the links between gaming machine players and areas of deprivation. As we said in the consultation, we are particularly concerned that potential harm is being amplified further by the concentration of LBOs (and therefore B2 machines) in areas of high deprivation. GambleAware research found that areas containing a high density of machines tend to have greater levels of income deprivation and more economically inactive residents; that players of B2 machines also tend to live in areas with greater levels of income deprivation than the population average; and alongside problem gamblers, those who are unemployed are more

likely to use the maximum stake more often than any other socio-economic group.

- 8.16. Based on the assumption that some of those who are most vulnerable to harm are likely to be those who can least afford to lose large sums of money, we think that these factors also point to reducing the maximum B2 stake to a lower level.

*f. Economic impact*

- 8.17. We have published a final impact assessment covering the costs and benefits associated with this policy. The impact assessment sets out a central estimate impact on the gambling industry of £540m per annum, which will primarily affect the bookmaking sector. In addition, industry estimates suggest that a stake cut to £2 could lead to significant shop closures and related job losses. We have acknowledged in our impact assessment that these estimates are very sensitive to assumptions we have made about how players will respond.
- 8.18. In addition, estimates from the British Horseracing Authority (BHA) as well as some racing participants highlight the potential secondary impact of shop closures on the payments racing receives from the betting sector via media rights and Horserace Betting Levy payments.
- 8.19. With regard to media rights, we note that although media rights deals have historically been based, primarily, on shop numbers, a recent deal in July 2017 was agreed based purely on a profit share basis - and so is less reliant on overall shop numbers.<sup>48</sup> This may provide a model for future commercial deals to adapt to the changing retail landscape (betting shop numbers have declined steadily in recent years, -3% between 2008/09 and 2016/17). We also note that racing has successfully monetised commercial opportunities to sell data and streaming rights to online gambling operators in recent years, providing an estimated £17m in 2014.<sup>49</sup>
- 8.20. Acknowledging trends around the growth of online betting on horseracing, alongside the continued decline of bets placed in LBOs, we introduced reforms to the Horserace Betting Levy in April 2017 designed to future proof the Levy.<sup>50</sup> The reforms extended the Levy to online operators for the first time - reversing a period of steady decline in the Levy yield - and are expected to provide a £34m uplift in the statutory Levy yield in 2017/18. This represents a £20m total uplift in

<sup>48</sup> <https://www.ladbrokescoralplc.com/media/press-releases/ladbrokes-coral-group/2017/https://www.telegraph.co.uk/business/2017/07/21/ladbrokes-coral-ends-spat-right-show-races-betting-shops/>

<sup>49</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/586305/Frontier\\_Economics- An economic analysis of the funding of horseracing.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/586305/Frontier_Economics- An economic analysis of the funding of horseracing.pdf) p.91

<sup>50</sup> <https://www.legislation.gov.uk/ukdsi/2017/9780111155530/contents>

Levy income from bookmakers compared to 2016/17 receipts (including voluntary contributions).<sup>51</sup>

- 8.21. The Government has also committed to further administrative reforms<sup>52</sup> to the Levy which we estimate will result in savings of £0.6m per annum from 2019/20 - meaning more Levy funds are available to the horseracing industry.
- 8.22. The reforms to the Levy were introduced following State aid approval<sup>53</sup> from the European Commission and included a commitment to review the rate of the Levy within 7 years. This was designed to provide a mechanism to respond to any market changes. Noting the special and long-standing relationship between the betting and horseracing industries, we will keep under review how the changes set out in this document impact on the horseracing sector as part of our wider work to monitor the impact of these reforms.

## Conclusion

- 8.23. In coming to our conclusion, we have placed greater weight on reducing high level session losses as a proxy for harm and protecting those most vulnerable to harm. Our conclusion from the analysis set out above is that a reduction to £2 would therefore:
- Reduce harm because of the effect on a player's ability to place very large stakes quickly. This is something that might be important not only to problem gamblers, but also those who might not be categorised as problem gamblers.
  - Target the volume and proportion of high session losses, one of the best proxies for harm.
  - Capture the greatest proportion of problem gamblers, noting that only at very low levels would a stake reduction have an impact on the large proportion of problem gamblers who typically place stakes at relatively modest levels.
  - Mitigate the impact on those most vulnerable to harm, primarily players in more deprived locations, in which even moderate losses might be harmful.
- 8.24. While we acknowledge the risks of potential displacement, the nature of this, and the effect on overall harm, are impossible to predict. We are therefore asking the Commission and the RGSB to monitor closely the impact of all the changes we have set out here to ensure we understand their effects and can respond accordingly. In addition, the change to B2 stakes will be accompanied by changes to the wider

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<sup>51</sup><http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-02-27/130003/>

<sup>52</sup><https://www.gov.uk/government/consultations/consultation-on-the-use-of-a-legislative-reform-order-to-reform-the-administration-of-the-horserace-betting-levy>

<sup>53</sup>[http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_46216](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_46216)

landscape, with the Commission also taking forward a package of player protection measures on Category B2 and other Category B machines across all premises, and developments in regards to advertising and online.

<b>Table of Categories of Gaming Machines</b>		
<b>Category of machine</b>	<b>Maximum Stake</b>	<b>Maximum Prize</b>
<b>A</b>	Unlimited	Unlimited
<b>B1</b>	£5	£10,000 <sup>1</sup>
<b>B2<sup>2</sup></b>	£100 (£2 wef 1 April 2019)	£500
<b>B3</b>	£2	£500
<b>B3A</b>	£2	£500
<b>B4</b>	£2	£400
<b>C</b>	£1	£100
<b>D - non-money prize (not crane grab)</b>	30p	£8
<b>D - non-money prize (crane grab)</b>	£1	£50
<b>D - Money Prize</b>	10p	£5
<b>D - combined money and non-money prize (coin pusher/penny falls)</b>	20p	£20 (of which no more than £10 may be a money prize)
<b>D - combined money and non-money prize (other than coin pusher or penny falls)</b>	10p	£8 (of which no more than £5 may be a money prize)

<sup>1</sup> With the option of maximum £20,000 linked progressive jackpot on premises basis only.

<sup>2</sup> Also known as Fixed Odds Betting Terminals (FOBTs).

**Table of Maximum Number of Machines by Premises Type**

Premises Type	Machine Category							
	A	B1	B2	B3	B3A	B4	C	D
Large casino (machine/table ratio of 5-1 up to maximum)	Maximum of 150 machines Any combination of machines in categories B to D (except B3A machines), within the total limit of 150 (subject to machine/table ratio).							
Small casino (machine/table ratio of 2-1 up to maximum)	Maximum of 80 machines Any combination of machines in categories B to D (except B3A machines), within the total limit of 80 (subject to machine/table ratio).							
Pre-2005 Act casino (no machine/table ratio)	Maximum of 20 machines categories B to D (except B3A machines), or any number of C or D machines instead.							
Betting premises and tracks occupied by pool betting	Maximum of 4 machines categories B2 to D (except B3A machines)							
Bingo premises*				Maximum of 20% of the total number of gaming machines which are available for use on the premises categories B3 or B4		No limit on category C or D machines		
Adult gaming centre**				Maximum of 20% of the total number of gaming machines which are available for use on the premises categories B3 or B4		No limit on category C or D machines		
Licensed family entertainment centre							No limit on category C or D machines	
Family entertainment centre (with permit)***							No limit on category D machines	
Clubs or miners' welfare institute (with permits)****	Maximum of 3 machines in categories B3A or B4 to D							
Qualifying alcohol-licensed premises							1 or 2 machines of category C or D automatic upon notification	
Qualifying alcohol-licensed premises (with licensed premises gaming machine permit)	Number of category C or D machines as specified on permit							
Travelling fair							No limit on category D machines	