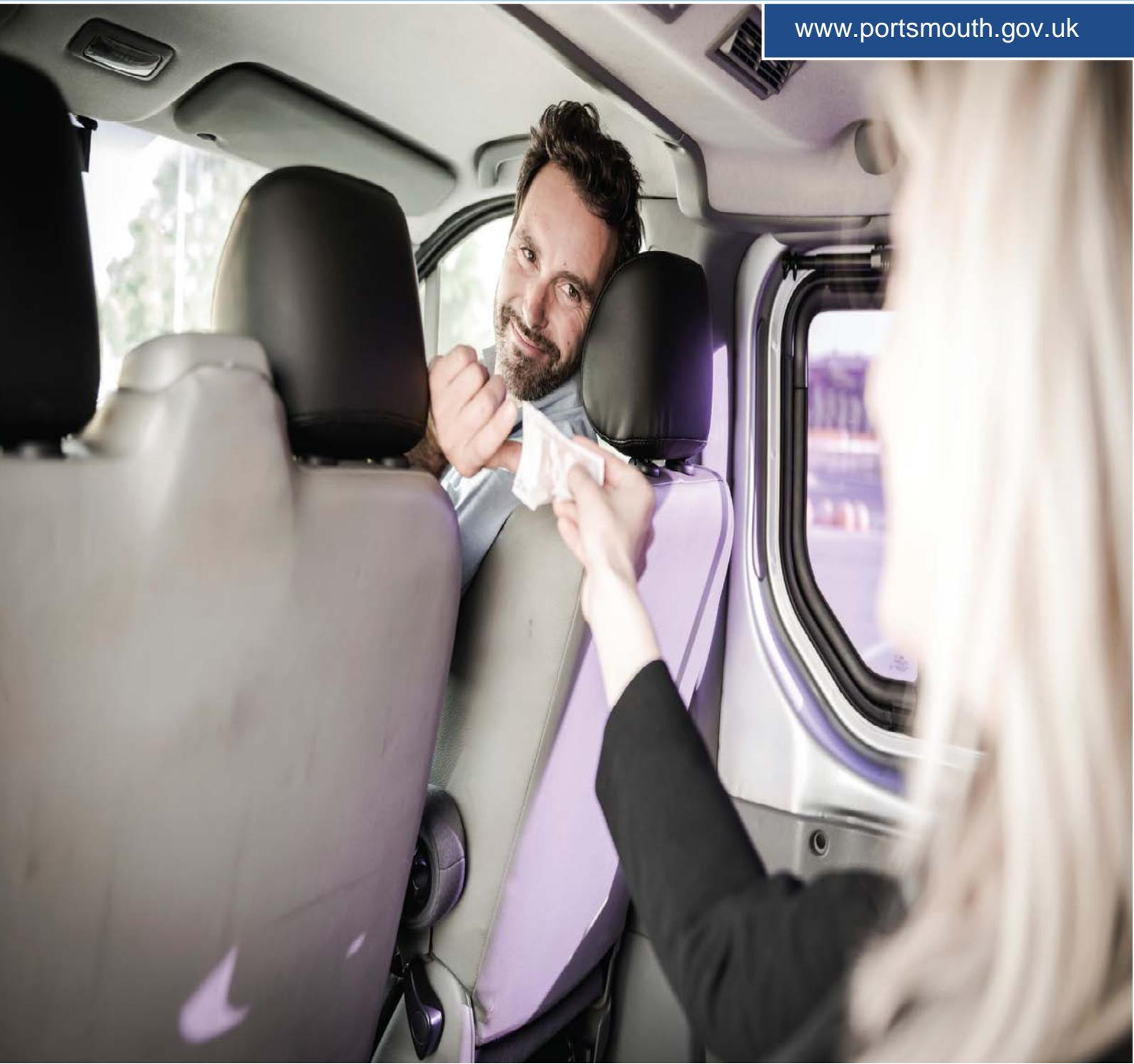


DfT Draft Statutory Guidance - Feb 2019

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

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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 ¹	<p>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?</p>
	<p>Policy:</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 & Audit & 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><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></p> <p>https://democracy.portsmouth.gov.uk/documents/s7304/Councillor%20training%20and%20development%20report.pdf</p>

¹ 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>Suggested Response:</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>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?</p>
	<p>Policy:</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>Suggested response:</p> <p>PCC supports the proposed council structure for dealing with licensing matters and currently operates in accordance with this recommendation.</p>
5	<p>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?</p>
	<p>Policy:</p> <p>No reference is made within PCC policy as the Licensing Authority has never required it's policies to apply retrospectively.</p>
	<p>Suggested response:</p> <p>PCC, as Licensing Authority, does NOT 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
	<p>Magistrates' Court by persons aggrieved by the revocation/non-renewal of the licence.</p> <p>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.</p>
6	<p>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?</p>
	<p>Policy:</p> <p>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.</p> <p>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.</p>
	<p>Suggested Response:</p> <p>PCC agree with the recommendation that all DBS checks should include checks on the barred lists.</p>
7	<p>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?</p>
	<p>Policy:</p> <p>PCC does not currently require applicants or licence holders to subscribe to the DBS update service.</p>
	<p>Suggested Response:</p> <p>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.</p>
8	<p>The draft statutory guidance recommends that appropriate DBS checks are conducted every 6 months (paragraph 2.39). Do you agree with this recommendation?</p>
	<p>Policy: See Chapter 8 - The test of "fit and proper". Paragraph 8.1 states that DBS checks will be undertaken every 3 years.</p>
	<p>Suggested Response:</p> <p>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</p>

No.	Consultation Questions
	months would have resource implications upon the Licensing Authority.
9	<p>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?</p>
	<p>Policy: 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>Suggested Response:</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>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?</p>
	<p>Policy: 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>Suggested Response:</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>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?</p>
	<p>Policy: 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>Suggested Response:</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>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?</p>
	<p>Policy:</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>Suggested Response:</p> <p>PCC fully supports this recommendation.</p>
13	<p>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?</p>
	<p>Policy:</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>Proposed Response:</p> <p>PCC fully supports this recommendation.</p>
14	<p>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?</p>
	<p>Policy:</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>Proposed Response:</p> <p>PCC fully supports this recommendation.</p>
15	<p>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?</p>
	<p>Policy:</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>Proposed Response:</p> <p>PCC fully supports this recommendation.</p>
16	<p>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?</p>
	<p>Policy:</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>Proposed Response:</p> <p>PCC fully supports this recommendation.</p>

No.	Consultation Questions
17	<p>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?</p>
	<p>Policy: 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>Proposed Response: PCC fully supports this recommendation.</p>
18	<p>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?</p>
	<p>Policy: 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>Proposed Response: PCC fully supports this recommendation.</p>
19	<p>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?</p>
	<p>Policy: 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>Proposed Response:</p> <p>PCC fully supports this recommendation.</p>
20	<p>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?</p>
	<p>Policy:</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>Proposed Response:</p> <p>PCC fully supports this recommendation.</p>
21	<p>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?</p>
	<p>Policy:</p> <p>No current provisions within the statement of licensing policy as regards staff employed by PHV operators.</p>
	<p>Proposed Response:</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>Policy and Proposed Response - 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>Policy and Proposed Response - 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>Policy:</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>Proposed Response:</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>Policy:</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>Proposed Response:</p> <p>PCC fully supports this recommendation.</p>
26	<p>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?</p>
	<p>Policy:</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>Proposed Response:</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>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?</p>
	<p>Policy:</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>Proposed Response:</p> <p>PCC fully supports this recommendation</p>
28	<p>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?</p>
	<p>Policy:</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>Proposed Response:</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>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?</p>
	<p>Policy:</p> <p>See Chapter 8 - The test of "fit and proper"</p> <p>See response for recommendation 28 above.</p>
	<p>Proposed Response:</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>Are there any offences that should be added to the list in Annex A of the statutory guidance?</p>
	<p>Policy:</p> <p>See Chapter 8 - The test of "fit and proper"</p> <p>See response for recommendation 28 above.</p>
	<p>Proposed Response:</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>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.</p>
	<p>Policy:</p> <p>See Chapter 8 - The test of "fit and proper" and Chapter 15 - Licensing Enforcement Paragraph 3.0 - Table of Offences.</p>
	<p>Proposed Response:</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>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.</p>
	<p>Anonymised data can be provided to the DfT.</p>
33	<p>If you have any comments or other data that may be relevant to the Impact Assessment please provide this.</p>
	<p>None</p>

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