

Members of the Licensing Committee –

Councilors R P Lillis (Chairman), D J Westcott (Vice Chairman),
I Aldridge, S Y Goss, I Jones, A J Kingston-James, J Parbrook, R
Thomas, N Thwaites, K H Turner, T Venner

6 March 2018

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Dear Councillor

LICENSING COMMITTEE MEETING

Date: Wednesday 14 March 2018
Time: 4.30 pm
Venue: Council Chamber, Council Offices, Williton

Please note that this meeting may be recorded. At the start of the meeting the Chairman will confirm if all or part of the meeting is being recorded.

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Yours sincerely



BRUCE LANG
Proper Officer

RISK SCORING MATRIX

Report writers score risks in reports uses the scoring matrix below

Risk Scoring Matrix

Likelihood	5	Almost Certain	Low (5)	Medium (10)	High (15)	Very High (20)	Very High (25)
	4	Likely	Low (4)	Medium (8)	Medium (12)	High (16)	Very High (20)
	3	Possible	Low (3)	Low (6)	Medium (9)	Medium (12)	High (15)
	2	Unlikely	Low (2)	Low (4)	Low (6)	Medium (8)	Medium (10)
	1	Rare	Low (1)	Low (2)	Low (3)	Low (4)	Low (5)
			1	2	3	4	5
			Negligible	Minor	Moderate	Major	Catastrophic
Impact							

Likelihood of risk occurring	Indicator	Description (chance of occurrence)
1. Very Unlikely	May occur in exceptional circumstances	< 10%
2. Slight	Is unlikely to, but could occur at some time	10 – 25%
3. Feasible	Fairly likely to occur at same time	25 – 50%
4. Likely	Likely to occur within the next 1-2 years, or occurs occasionally	50 – 75%
5. Very Likely	Regular occurrence (daily / weekly / monthly)	> 75%

- Mitigating actions for high ('High' or above) scoring risks are to be reflected in Service Plans, managed by the Group Manager and implemented by Service Lead Officers;
- Lower scoring risks will either be accepted with no mitigating actions or included in work plans with appropriate mitigating actions that are managed by Service Lead Officers.

LICENSING COMMITTEE - AGENDA

Wednesday 14 March 2018 at 4.30 pm

Council Chamber, Williton

1. **Apologies for Absence**

2. **Minutes**

Minutes of the Meeting of the Committee held on 28 November 2017 – **SEE ATTACHED.**

3. **Declarations of Interest**

To receive and record any declarations of interest in respect of any matters included the Agenda for consideration at this Meeting.

4. **Public Participation**

The Chairman to advise the Committee of any items on which members of the public have requested to speak and advise those members of the public present of the details of the Council's public participation scheme.

For those members of the public wishing to speak at this meeting there are a few points you might like to note.

A three-minute time limit applies to each speaker and you will be asked to speak before Councillors debate the issue. There will be no further opportunity for comment at a later stage. Your comments should be addressed to the Chairman and any ruling made by the Chair is not open to discussion. If a response is needed it will be given either orally at the meeting or a written reply made within five working days of the meeting.

5. **Licensing Update Report**

To consider Report No. WSC 19/18. To be presented by John Rendell, Licensing Manager – **SEE ATTACHED.**

The purpose of the report is to provide an update on the activities of the Council's licensing service, changes to legislation, current consultations and other general licensing matters.

6. **Minutes of the meeting of the Licensing Sub-Committee**

Minutes of the meeting of the Licensing Sub-Committee held on 4 October 2017, for information – **SEE ATTACHED.**

COUNCILLORS ARE REMINDED TO CHECK THEIR POST TRAYS

The Council's Vision:

To enable people to live, work and prosper in West Somerset

The Council's Corporate Priorities:

- Local Democracy:
Securing local democracy and accountability in West Somerset, based in West Somerset, elected by the people of West Somerset and responsible to the people of West Somerset.
- New Nuclear Development at Hinkley Point
Maximising opportunities for West Somerset communities and businesses to benefit from the development whilst protecting local communities and the environment.

LICENSING COMMITTEE**Minutes of the Meeting held on 28 November 2017 at 4.30pm****In The Council Chamber, West Somerset House, Williton****Present:**

Councillor R Lillis Chairman
 Councillor D Westcott Vice-Chairman

Councillor I Aldridge
 Councillor I Jones
 Councillor R Thomas
 Councillor K Turner

Councillor S Goss
 Councillor A Kingston-James
 Councillor N Thwaites
 Councillor T Venner

Members in Attendance:

Councillor M Chilcott

Officers in Attendance:

Licensing Officer (L Fumagalli-Roberts)
 Licensing Officer (M Banczyk-Gee)
 Licensing Officer (A Evens)
 Democratic Services Officer (C Rendell)

LEP9 Apology for Absence

An apology was received from Councillor J Parbrook.

LEP10 Minutes of the meeting held on 5 July 2017

(Minutes of the Meeting of the Licensing Committee held on 5 July 2017 – circulated with the Agenda.)

RESOLVED that the Minutes of the Licensing Committee held on 5 July 2017 be noted.

LEP11 Declarations of Interest

Members present at the meeting declared the following personal interests in their capacity as a Member of a County, Parish or Town Council:

Name	Minute No.	Member of	Action Taken
Councillor I Aldridge	All	Williton Parish Council	Spoke and voted
Councillor S Goss	All	Stogursey Parish Council	Spoke and voted
Councillor R Thomas	All	Minehead Town Council	Spoke and voted
Councillor N Thwaites	All	Dulverton Town Council	Spoke and voted
Councillor K Turner	All	Brompton Ralph Parish Council	Spoke and voted
Councillor D Westcott	All	Watchet Town Council	Spoke and voted
Councillor M Chilcott	All	Somerset County Council	Spoke

LEP12 Public Participation

No members of the public had requested to speak on any item on the agenda.

LEP13 Licensing Update Report

The purpose of the report was to keep the Council's statutory Committee up to date on the activities of the Council's Licensing Service, changes to legislation, current consultations and other general licensing matters.

A summary of the activity and performance of the Licensing Service since the last meeting of the Committee was as follows:-

The performance of the Licensing Service was measured against the number of applications that were completed within 14 days of them being determined. The target was 95%. Between 1 July and 30 September 2017, 99.3% of applications had been completed within the 14 day timescale.

Members were provided with a comparison of the numbers of applications received for each of the regimes administered by the Licensing Team between July and September 2017 and the numbers of licences in force and notices given as at 17 November 2017.

The Licensing Manager had moved over to the Accommodation Team to provide them with interim support and to assist with work involved in the implementation of the revised refurbishment plan of the Deane House.

Although the move was initially until the end of December, it was possible that it could be extended. Therefore, firm arrangements had been put in place to support the Licensing Team. The team would take on further responsibility and be lighter on specialist licensing knowledge, which would undoubtedly impact negatively on the performance of the service.

There continued to be regular allegations made about unlicensed dog breeders. A person was deemed to be operating a dog breeding establishment by the following definitions of the Breeding of Dogs Act 1973, as amended by the Breeding and Sale of Dogs (Welfare) Act 1999:-

- They ran a business which involved the breeding of dogs for sale: or
- Any bitch or bitches they kept (or were kept by other persons but under a breeding arrangement with them) gave birth to five litters of puppies within a twelve month period.

This meant that a person could breed up to four litters of puppies in a year and sell them legitimately, unless they were deemed to be running a business.

The legislation was due to be reformed in October 2018, along with other Animal Licensing Acts. When this had been done, officers would issue a press release and distribute information to raise awareness of the licensing laws.

During the discussion the following points were raised:-

- Members congratulated the team on their performance.
- Concern was raised on the future performance of the team and whether the high standard would be upheld in the interim period whilst the Licensing Manager assisted the Accommodation Project.

Officers were confident that the everyday performance would not suffer, however, more in-depth queries might take a bit longer to answer than normal.

- Members requested assurance that the Williton office would be covered every day.

Officers confirmed that office cover would be provided.

- Members were pleased to see that work had been carried out to prevent unlicensed dog breeders.
- Members queried why fees and charges were not included in the report.
Officers confirmed this was a delegated decision made by managers and not decided by the Committee.

RESOLVED that the update report be noted.

LEP14 Scrap Metal Dealers Policy

The purpose of the report was to recommend that Members adopted the policy document for all matters that related to Scrap Metal Dealers.

Following a recent Licensing Sub-Committee for an application for a Scrap Metal Dealers licence at Taunton Deane Borough Council, it had become apparent to Members that they had no guidance in respect of the options available to them when such matters were dealt with.

Much of the Scrap Metal Dealers Act 2013 covered the procedure required for applications, variations or appeals, however, with all legislation it could cause confusion.

A policy document had now been compiled which clearly showed what any person could expect when they applied for a Scrap Metal Dealer's or Collector's licence. The guidance covered definitions and procedures to be adopted should a case go before a Sub-Committee.

During the discussion the following points were raised:-

- Concern was raised that if the Act had been in place since 2013, did that mean that the Council had not had a policy document for the past four years.

That was correct. Officers confirmed that the Police also monitored the scrap metal sites.

- Members queried that if a person had operated without a licence, were they penalised.

Yes, both the Council and the Police could take action.

- Members agreed that it was a comprehensive document and should be adopted.

RESOLVED that Members adopted the policy document.

LEP15 Caravan Sites and Accommodation of Hinkley Point C (HPC) Workers

The Chairman of the Licensing Committee had requested an item for discussion about HPC workers that resided on caravan sites within West Somerset.

The EDF Energy Accommodation Strategy had been discussed at Corporate PAG held on 25 October 2017. It highlighted that there would be 600 non-home based workers that could reside in tourism accommodation during the peak phase of construction at HPC.

Due to the HPC campus not being completed, Sedgemoor District Council had taken the opportunity and had granted temporary licences to caravan sites in and around the Bridgwater area to ease the accommodation gap.

There were already caravan sites within West Somerset that were being used by HPC workers. Each site had different licensing consents and planning permissions, which made it difficult to monitor. Officers were aware that they did not want to inadvertently push workers toward the private sector accommodation which could cause a housing issue.

The Assistant Director for Energy Infrastructure had approached the Committee to obtain feedback on what criteria they might wish to be placed on caravan sites if they were approached to accommodate HPC workers.

During the discussion the following points were raised:-

- Members requested details of bed spaces required by HPC workers.
The amount of HPC workers in the area during the peak construction phase would be 5600. 3700 would be non-home based workers who would require accommodation. This was broken down as follows:-
 - 600 in tourism accommodation;
 - 1500 in the HPC campus;
 - 750 in private sector housing;
 - 400 in latent accommodation;
 - 500 would purchase properties.*Research had shown that within the 60 minute radius of HPC there had been 2300 spare tourism bed spaces in the peak summer months and EDF required 600 for their HPC workers.*
- Clarification was requested on the differences between the types of caravan sites.
Holiday sites allowed accommodation for 10-11 months of the year and were subject to pay Non Domestic Rates only because the sites were not to be used as people's primary residence. Park Home sites allowed accommodation all year round and were subject to both Non Domestic Rates and Council Tax.
- Members queried if officers would only consider new sites or existing caravan sites for HPC accommodation.
Officers would be willing to grant conditions that allowed Holiday sites to provide accommodation for 12 months.
- Concern was raised on HPC workers and the assurance that they would pay Council Tax for their accommodation.
- Members highlighted that Sedgemoor District Council had granted temporary permissions for joint use of the caravan sites to bridge the gap before other accommodation was made available.
- Members suggested that the caravan sites be granted a temporary licence should be located along the transport link to the HPC site.
Officers confirmed that EDF would change their bus routes to collect workers from other locations not on the transport link.

- Members requested that the proportion of workers should be compared to spaces available and that if they were accommodated on caravan sites, the workers should be in an area separate to tourists, due to the disruption caused by shifts patterns.
- Members did not want tourists to be discouraged and were cautious about how many workers should be allocated on each caravan site.
- Members were mindful that HPC was the largest civil engineering project in Europe and they understood that tourism was important to the area but so were the opportunities available from the project.
- This was a dilemma for the Members. They needed to protect housing, promote tourism and enhance business, all of which had different interests.
- Members proposed that officers be minded that the Committee would consider granting a temporary licence for 12 months.
- Members requested that the officers returned to the next Licensing Committee with an update.

LEP16 Minutes of the Licensing Sub-Committees

(Minutes of the Meetings of the Licensing Sub-Committee held on 22 June 2017 and 2 August 2017– circulated with the Agenda.)

RESOLVED that the Minutes of the Licensing Sub-Committees held on 22 June 2017 and 2 August 2017 be noted for information.

(The meeting closed at 6.10pm.)

Report Number: WSC 19/18

West Somerset Council

Licensing Committee – 14th March 2018

Licensing Update report

This matter is the responsibility of Cabinet Member Keith Turner

Report Author : John Rendell, Licensing Manager

1 Executive Summary

- 1.1 This report provides an update on the activities of the council's licensing service, changes to legislation, current consultations and other general licensing matters.

2 Recommendations

- 2.1 That the report be noted.

3 Risk Assessment

Risk Matrix

Description	Likelihood	Impact	Overall
If the Licensing function were not carried out in an efficient manner, complaints or legal challenges may be brought that could undermine the work being done to support the Council's Corporate Strategy.	4	4	16
Demonstrating good governance of the licensing function through presentation of current arrangements and statistics relating to the licensing service.	3	4	12

Risk Scoring Matrix

Likelihood	5	Almost Certain	Low (5)	Medium (10)	High (15)	Very High (20)	Very High (25)
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5. Very Likely	Regular occurrence (daily / weekly / monthly)	> 75%

4 Background and Full details of the Report

Staffing

- 4.1 The Licensing Manager, John Rendell, has returned from supporting the Accommodation Team and a period of paternity leave, bringing to an end the temporary management arrangements described in the last Licensing Committee update report.

Performance of the service

- 4.2 The performance of the licensing service is measured against the number of applications that are completed within 14 days of them having been determined i.e. decision as to whether to grant the licence or not, has been reached. The target for the service is that, for all applications that are completed within a set quarter, 90% must be completed within 14 days of them being determined.
- 4.3 98% of all applications completed between the 1st of October and 31st December 2017 were completed within the 14 day timescale.

Applications received and licences in force

- 4.4 The numbers of applications received for each of the regimes administered by the licensing service, between October and December 2017, are shown in comparison with those received for the period in the preceding two years at **Appendix A**. The numbers of licences in force and notices given as of the 27th February 2018 are shown at **Appendix B**.

Review of Statement of Licensing Policy for the Licensing Act 2003

- 4.5 Each licensing authority is required by the Licensing Act 2003 to publish a 'statement of licensing policy', in which it sets out the approach it intends to take when making alcohol, entertainment and late night refreshment licensing decisions. This policy must be reviewed every 5 years, or less if it is necessary.
- 4.6 A revision of West Somerset Councils statement of policy, attached at **Appendix C**, is now overdue, having last been reviewed in 2012.
- 4.7 The Licensing Manager is not proposing to make any radical changes to the current document, such as the introduction of a cumulative impact policy (CIP), further details of all three are attached at **Appendix D**. Other than improvements to the language and in places, level of detail, the only notable change will be to include an explanation of the procedure that the licensing authority follows in instances where representations are made against a licence application but all parties agree a hearing is unnecessary. The 2003 Act is unclear in this regard and although this authority has a settled procedure; which is to hold a sub-committee 'behind closed doors' to grant the licence, without any parties needing to be present; this is not currently reflected in the policy and should be.
- 4.8 As a result of the JMASS project, both Taunton Deane Borough Council and West Somerset Council have identical statements of licensing policy, save for branding. It is proposed that the new policy, once revised, will be a joint policy for both authorities.
- 4.9 Once the draft policy is complete, it will be circulated to a number of prescribed persons for consultation, which includes existing licence holders, the chief officer of the police and the fire authority.

HMRC consultation on 'conditionality'

- 4.10 HM Revenues and Customs (HMRC) is consulting on proposed changes to certain licensing regimes in order to tackle the hidden economy.
- 4.11 The proposals would make compliance with certain tax obligations a condition of holding certain licences and introduce checks on applicants' tax-registration status as part of licensing processes. Some of the licences potentially affected by the proposals are the responsibility of the Council, such as taxi driver, street trader and scrap metal. There are other licence types which are not, such as private security and waste management.
- 4.12 A copy of the consultation document is attached at **Appendix E**.
- 4.13 The Licensing Manager has been in discussion with HMRC for some time; helping to shape the proposals and there are currently talks around conducting a test-and-learn activity to trial how some aspects of the proposals would work in practice; specifically, the signposting of new applicants towards tax obligations and HMRC services, mentioned at paragraph 67 of **Appendix E**.

- 4.14 The Licensing Manager supports the proposals and will respond to this effect. The consultation ends on the 2nd March 2018.

Institute of Licensing consultation on draft taxi driver guidance

- 4.15 The Institute of Licensing (IoL) has consulted its members (of which the Council is one) in relation to draft guidance it has produced on determining the suitability of applicants and licensees in the taxi and private hire trade. A copy of the draft is attached at **Appendix F**.
- 4.16 Produced in partnership with the Local Government Association (LGA), National Association of Licensing and Enforcement Officers (NALEO) and lawyers in local government, the document is intended to provide guidance on determining the suitability of applicants, taking into account the character of the applicant or licensee and will be available for use by local authorities as a basis for their own policies.
- 4.17 Widespread adoption of the standards presented in the guidance would effectively achieve a level of consistency when considering applications for taxi and private hire licences. Recent media reports have highlighted the importance of vetting and assessing potential licence holders, and a level of consistency across the country would effectively prevent licence shopping where an individual refused in one area, is subsequently granted a licence in another area.
- 4.18 Officers are supporting the proposals and intend to incorporate the guidance into the policy document, the 'Private Hire and Hackney Carriage Drivers, Vehicles and Operators Handbook', more commonly referred to as the 'Taxi Handbook'.

Taxi safeguarding Bill published

- 4.19 A Private Member's Bill seeking to introduce new rules to improve taxi safeguarding procedures has been published.
- 4.20 The Licensing of Taxis and Private Hire Vehicles (Safeguarding and Road Safety) Bill, proposed by Daniel Zeichner MP, had its first reading on 19 July 2017. The Bill seeks to put a statutory duty on licensing authorities to share information about licences they have revoked, refused or suspended on a register, and to check the register in respect of every new and renewal application.
- 4.21 Such a change would be welcomed. Since there is no central register or database, all licensing authorities can do is to ask an applicant if they have had a taxi driver licence revoked, refused or suspended by another licensing authority and hope that, if the applicant has, they are honest and give details. If the applicant does not disclose such information, they do commit an offence by making a false statement but the difficulty comes in that officers might never learn of the truth.

Service plan and list of outstanding and potential projects

- 4.22 Members of the Licensing Team are often asked why applications for licences and permits can't be issued on the day they are received and why the performance target of the service allows up to two weeks for that to happen. This is of course because the team must balance the demands of other duties; from complicated tasks such as investigating complaints, writing and reviewing policies and procedures, to more straight forward tasks like answering the phone and providing advice to customers.

4.23 In order to provide an overview of the work the service does, in particular day to day functions, the Licensing Manager has created the licensing service work plan, shown at **Appendix G**.

4.24 Also shown at **Appendix G** is a list of policy and procedure development tasks and projects the team have identified, through forward planning at team meetings. The Licensing Manager will be working with the team to prioritise these tasks and incorporate them into the workload, against the background of transformation and potential to form a new council.

5 Links to Corporate Aims / Priorities

5.1 The licensing service is committed to helping businesses and individuals to comply with all relevant legislation, in order to support new and existing businesses and enable cultural and leisure activities, thereby supporting the Council's growth agenda.

6 Finance / Resource Implications

6.1 Where legislation allows for cost recovery, licence fees are levied against the administration of the regime and the supervision of licences issued. It would be unlawful to deliberately set the fees to make a profit and any over (or under) recovery is redressed in future fee levels.

7 Legal Implications

7.1 No legal implications identified.

8 Environmental Impact Implications (if any)

8.1 There are no specific environmental impact implications identified as a result of this report.

9 Safeguarding and/or Community Safety Implications

9.1 The four licensing objectives under the Licensing Act 2003 are:

- Prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

With the addition of securing the welfare of animals, these are the main aims of the Licensing Service. The continued work of the service to achieve and promote these aims, further supports the role of the Council in ensuring community safety.

10 Equality and Diversity Implications

10.1 There are a number of protected characteristics identified in the Equality Act 2010, which are; age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation and members need to demonstrate that they have consciously thought about the three aims of the Public Sector Equality Duty as part of the decision making process. The three aims the authority must have due regard for are:

- Eliminate discrimination, harassment, victimisation;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

10.2 No equality and diversity implications were identified.

11 Social Value Implications

11.1 As this report does not relate to the procurement of any services or products, no social value implications were identified.

12 Partnership Implications

12.1 No partnership implications were identified.

13 Health and Wellbeing Implications

13.1 Through effective regulation, confidence in licensed premises and activities can be maintained, helping communities to thrive.

14 Asset Management Implications

14.1 No asset management implications were identified.

15 Consultation Implications

15.1 No consultation implications were identified.

16 Scrutiny Comments

16.1 There are no scrutiny comments or recommendations.

Democratic Path:

- **Scrutiny / Corporate Governance or Audit Committees – No**
- **Cabinet/Executive – No**
- **Full Council – No**

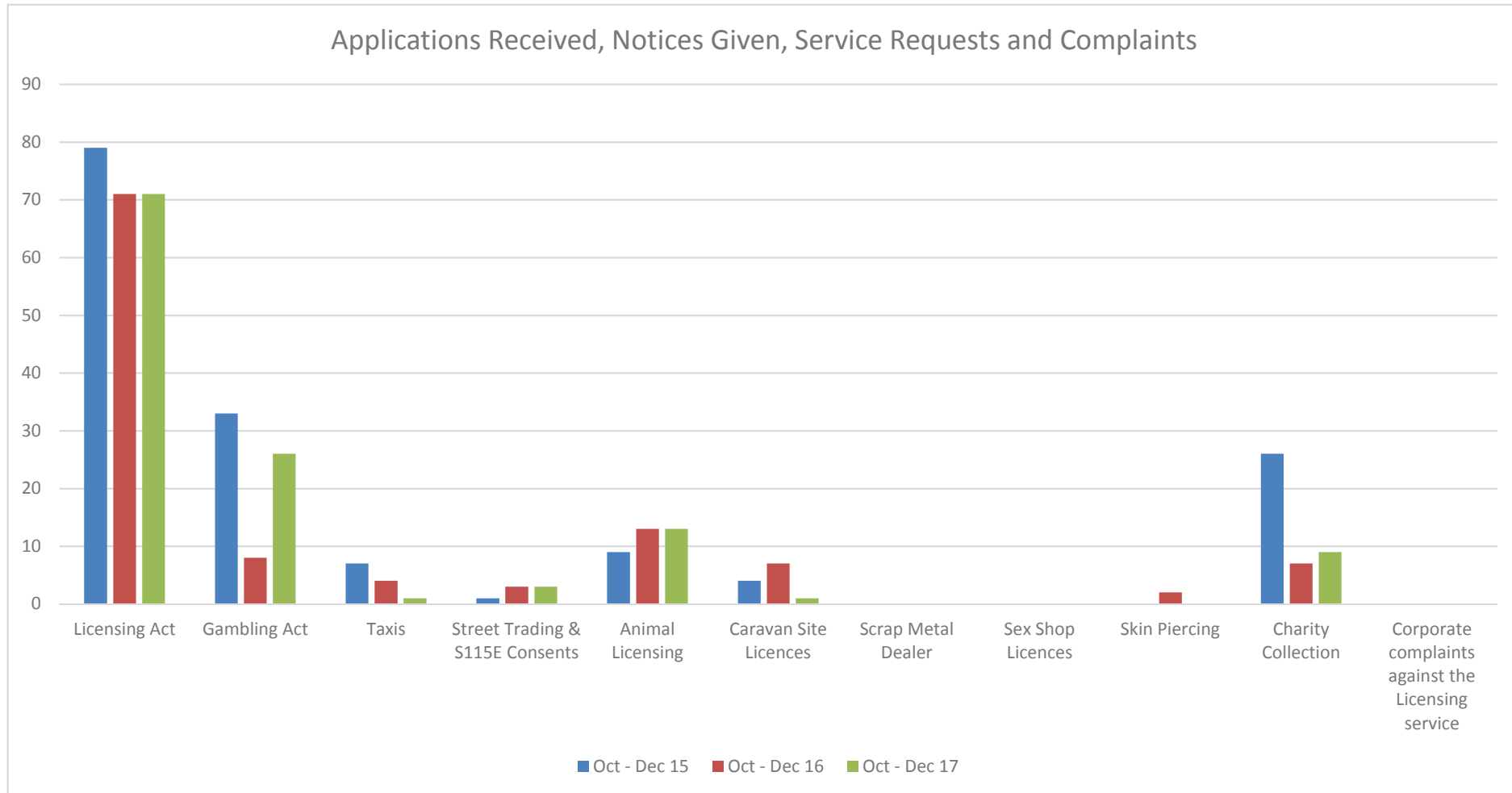
Reporting Frequency : **Once only** **Ad-hoc** **Quarterly**
 Twice-yearly **Annually**

List of Appendices

Appendix A	Applications received, notices given, service requests and complaints
Appendix B	Licences issued and notices given
Appendix C	Licensing Act 2003: Statement of Licensing Policy
Appendix D	Cumulative impact policies
Appendix E	HMRC consultation paper
Appendix F	IoL draft guidance
Appendix G	Service work plan

Contact Officers

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Direct Dial	01823 219491
Email	j.rendell@tauntondeane.gov.uk



Licences Issued and Notices Given

These figures show the number of licences in force at the 27th February 2018 and the number of notices given since commencement of the relevant legislation

	Total
Licensing Act 2003 Premises Licences	265
Licensing Act 2003 Club Premises Certificates	21
Licensing Act 2003 Personal Licences	851
Licensing Act 2003 Temporary Event Notices	2825
Gambling Act 2005 Club Machine Permit	8
Gambling Act 2005 Club Gaming Permit	0
Gambling Act 2005 Licensed Premises Gaming Machine Permits	3
Gambling Act 2005 Occasional Use Notices	27
Gambling Act 2005 Premises Licences	12
Gambling Act 2005 Prize Gaming Permits	1
Gambling Act 2005 Society Lotteries	57
Gambling Act 2005 Temporary Use Notices	0
Gambling Act 2005 Unlicensed Family Entertainment Centres	11
Gambling Act 2005 Notification of 2 or less Gaming Machines	51
Hackney Carriages	43
Private Hire Vehicles	26
Hackney Carriage & Private Hire Drivers	30
Private Hire Operators	20
Street Trading Consents	8
Zoo Licences	2
Pet Shop Licences	1
Dog Breeding Licence	0
Animal Boarding Licence	12
Riding Establishment Licences	9
Dangerous Wild Animal Licences	0
Caravan Site Licences	34
Scrap Metal Dealer licence	3
Sex Shop Licences	0
Skin Piercing Registrations	23
Street Collection Permits	49
House to House Collection Permit	368

WEST SOMERSET COUNCIL
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T 01643 703704 F 01984 633022 DX 117701 WILLITON
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Statement of Licensing Policy 2014 – 2017

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Policy and Contact Details

This Statement of Licensing Policy was considered by the Licensing Committee on 11th March 2014.

The Policy was adopted by Full Council on the 26th March 2014 for the period 2014-2017.
The Policy became operative from 1st April 2014.

For further information regarding the Licensing Act 2003 and this Statement of Licensing Policy please contact:

Environmental Health and Licensing Manager
West Somerset Council
West Somerset House
Killick Way
Williton
Taunton
Somerset
TA4 4QA

Telephone: 01643 703704
Fax: 01984 633022
E-mail: licensing@westsomerset.gov.uk
Website: www.westsomersetonline.gov.uk

Information is also available from:

The Department for Culture Media and Sport
2-4 Cockspur Street
LONDON
SW1Y 5DH

Telephone: 020 7211 6200
E-mail: enquiries@culture.gov.uk
Website: <https://www.gov.uk/government/organisations/department-for-culture-media-sport>

1.0 Introduction

1.1 Background

1.1.1 West Somerset Council (the Council) is the licensing authority under the Licensing Act 2003 (the Act). It is empowered to administer the following in respect of the sale and/or supply of alcohol and the provision of regulated entertainment and late night refreshment within the district:

- premises licences including provisional statements, variations, transfers, interim authorities and reviews
- club premises certificates
- temporary events notices
- personal licences

1.1.2 Unless otherwise stated this licensing policy will not depart from the revised Secretary of State's guidance. Therefore to reduce repetition if matters are detailed in the guidance they may not be included in this policy

1.2 Aim

The Act requires the licensing authority to carry out its various licensing functions so as to promote the four licensing objectives.

The aim of this Licensing Policy is to set out how the licensing authority seeks to promote the four licensing objectives, which are:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm

These four objectives will be the paramount considerations when determining a course of action in relation to the licensing authority's licensing functions. Each objective will be given equal importance.

1.3 Purpose

The main purpose of this policy is to provide clarity to applicants, interested parties and responsible authorities on how the licensing authority will determine applications to supply alcohol, provide regulated entertainment and operate late night refreshment.

1.4 Consultation

1.4.1 Before determining its policy for any three year period, the licensing authority will consult the following:

- the Chief Officer of Police
- the Fire Authority
- persons/bodies representative of local holders of premises licences
- persons/bodies representative of local holders of club premises certificates
- persons/bodies representative of local holders of personal licences
- persons/bodies representative of businesses and residents in the District

- 1.4.2 The licensing authority may consult beyond the statutory requirements, and seek comments from additional bodies, groups or individuals.

1.5 Fundamental Principles

- 1.5.1 This Policy sets out the licensing authority's general approach to the making of licensing decisions and is consistent with the provisions of the Act. Nothing in the policy will undermine the right of any individual to apply for permissions and to have any such application considered on its individual merits. Similarly, nothing in the policy will override the right of any person to make representations on an application or to seek a review of a licence or certificate where provisions have been made to do so in the Act.
- 1.5.2 The licensing authority may only impose conditions on a premises licence if they are consistent with the operating schedule or after receiving relevant representations. Any conditions attached to the licence must relate to the promotion of the licensing objectives.
- 1.5.3 The licensing authority acknowledges that the government believes that in some circumstances flexible hours for the sale of alcohol can help to ensure that the concentrations of customers leaving premises simultaneously are avoided.
- 1.5.4 It is necessary to consider national guidance in the context of local circumstances. Where licensed premises are surrounded by housing, unrestricted extensions of hours could extend the time of such disturbance to later in the night. The guidance acknowledges that tighter control may be justified in residential areas and the licensing authority considers that this is particularly relevant to parts of its administrative area, always having regard to the individual merits of any application.
- 1.5.5 In general terms the licensing authority will closely scrutinise applications for premises licences showing a late terminal hour so as to be satisfied that they will have no adverse impact on the licensing objectives.
- 1.5.6 Once people are beyond the control of the individual, club or business holding the relevant authorisation licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour. Licensing law will always be part of a holistic approach to the management of the evening and night-time economy in this district.

2. General Principles

In all applications relating to premises, the legislation requires applicants to specify methods by which they will promote the four licensing objectives in their operating schedules. The operating schedule should include reference to the measures the applicant intends to promote the licensing objectives.

2.1 Revisions to Policy

- 2.1.1 The licensing authority have a duty to review their licensing policy and have therefore consulted with responsible authorities and other stakeholders since the implementation of the legislation in order to identify topics that may need to be added or removed from the licensing policy.
- 2.1.2 Areas of change have been necessitated through the implementation of the Police Reform and Social Responsibility Act 2011.
- 2.1.3 Applicants for a premises licence are advised to include in their operating schedule, (where applicable) specifically how they prevent sales of alcohol to persons under 18, minimise glass related injuries and or assaults, prevent noise from licensed premises become a nuisance and manage customers outside their premises who are smoking.

- 2.1.4 Crime statistics locally have indicated that a last time of entry condition has assisted in the promotion of the licensing objectives. It is therefore expected that applicants for late licensed premises will be expected to provide detailed reasons in their operating schedules for seeking to allow any new entry to the premises after 1am.

2.2 Children and Cinemas

- 2.2.1 The Act requires applicants for premises licences and club premises certificates to copy details of their applications to a body which:
- a) represents those who, in relation to any such area, are responsible for, or interested in, matters relating to the protection of children from harm, and
 - b) is recognised by the licensing authority for that area for the purposes of this section as being competent to advise it on such matters.
- 2.2.2 The licensing authority's policy is that the "Responsible Authority" in relation to the protection of children from harm will be Somerset County Council's Children and Learning Department at County Hall, Taunton, TA1 4DY.
- 2.2.3 The licensing authority will expect licensees of premises giving film exhibitions to include, in their operating schedules, arrangements for restricting children from viewing age restricted films. Such premises will be subject to a mandatory condition requiring that access will be restricted to only those who meet the required age limit in accordance with any certificate granted by the British Board of Film Classification, or in specific cases where such certificates have not been granted, the licensing authority.
- 2.2.4 The licensing authority does not intend to adopt its own system of film classification but reserves the right to amend the classification imposed by the British Board of Film Classification.
- 2.2.5 If the licensing authority attaches an age-restriction to any film that differs from the BBFC classification or attaches one to an unclassified film, the information about the Licensing Authority's classification will be published on the Council's website at www.westsomersetonline.gov.uk

2.3 Licensing Hours

- 2.3.1 With regard to licensing hours the licensing authority will consider each application on its individual merits.
- 2.3.2 Applications for premises licences with a terminal hour later than 12 midnight where the sale or supply of alcohol for consumption on the premises is the main activity or where the sale or supply of alcohol is accompanied by musical entertainment, will be subject to close scrutiny by the responsible authorities to ensure that there will be no adverse impact on the licensing objectives. Specifically, the applicant should ensure that the operating schedule for such a premises demonstrates how the licensing objectives will be met. Applicants are strongly recommended to seek the advice of both the council's licensing officers and the Police in this regard.
- 2.3.3 This is a general policy and does not automatically mean that all applications will result in licences being granted until midnight or that no applications will be granted with a closing hour after midnight.
- 2.3.4 In considering these issues the licensing authority will give careful consideration to the nature of the venue proposed. For example, the Council is keen to promote establishments at which the service and consumption of alcohol is not the primary activity. These may include restaurants,

theatres, cinemas, comedy clubs, galleries, museums, and similar venues. The licensing authority's experience is that such venues are liable to give rise to fewer public concerns, and therefore applications for such premises to operate past midnight are more likely to be successful.

- 2.3.5 The licensing authority will pay special regard to the proximity of residential uses to the proposed premises, the parking areas and routes taken by customers when arriving at and leaving the premises. Consideration will be given to the imposition of stricter noise control conditions, if representations are received in areas with a concentration of residential property.
- 2.3.6 The licensing authority will expect premises to be cleared of patrons within a reasonable time of the terminal hour set for the premises. Applicants should state in their operating schedule the time they require to clear the premises. In normal circumstances, this will not exceed 30 minutes from the last sale of alcohol. Where the applicant can show that an extended period would assist in the promotion of the licensing objectives, the Council will consider permitting longer than 30 minutes.
- 2.3.7 Shops, stores and supermarkets will generally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping, unless there are good reasons for restricting those hours. An example would be where the Police make representations that the premises are a focus of disorder and disturbance.

2.4 Maximum Capacities

- 2.4.1 The type of entertainment offered on licensed premises and the closing hour of premises permitted to provide alcohol to the public often have a direct link to crime and disorder, public nuisance and public safety issues.
- 2.4.2 The licensing authority believes that some of the problems that may occur in late night licensed premises may be controlled by good management practices. However, controlling the numbers of customers allowed into the premises will also assist in promoting the following three licensing objectives:
- **the prevention of crime and disorder**
 - **public safety**
 - **the prevention of public nuisance**

2.5 Late Night Refreshment

- 2.5.1 The licensing authority will expect applicants for licences in respect of late night refreshment premises to detail in their operating schedules how they intend to promote the licensing objectives and in particular how they intend to address queue management, litter and noise disturbance.

3.0 Licensing Approach

3.1 Partnership Working

- 3.1.1 The council recognises that licensing functions are not the only means of promoting the licensing objectives. Delivery must involve working in partnership with Planning, Environmental Health, the Police, the Fire Authority, the Crime and Disorder Reduction Partnership, Pubwatch, local businesses and residents, Somerset County Council, transport operators and those involved with child protection.

- 3.1.2 The council recognises that co-operation and partnership remain the best means of promoting the licensing objectives.

3.2 Integrating Strategies

- 3.2.1 There are many stakeholders involved in the leisure industry and many are involved in the promotion of the licensing objectives. A number of stakeholders' plans and strategies deal with matters related to the licensing function. Where this is the case the council will aim, as far as possible, to coordinate them.
- 3.2.2 Cultural Strategy – The council will monitor the impact of any decisions on the provision of regulated entertainment. The aim is not to deter live music, but to ensure that the licensing objectives are promoted. The council will monitor the effect of licensing on the provision of regulated entertainment, particularly live music and dancing to ensure that any licensing conditions that impose any restrictions on such events are proportionate and reasonable.
- 3.2.3 Equality & Diversity – The council is required by legislation to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between people. The impact of these issues on the Licensing Policy will be monitored and amendments will be made as necessary.
- 3.2.4 Enforcement Policy – All licensing enforcement will be conducted in accordance with the Regulators Compliance Code and the Environmental Health & Licensing Enforcement Procedures.

3.3 Avoiding Duplication

- 3.3.1 The licensing authority recognises the need to avoid, so far as possible, duplication with other regulatory regimes such as health and safety at work, fire safety, building control and planning. Conditions will not be imposed if the matters concerned are already provided for in other legislation. However, other legislation may not always cover the unique circumstances that arise in connection with licensable activities and in such cases tailored conditions may be necessary but only if relevant representations are received.
- 3.3.2 Non-compliance with other statutory requirements may be taken into account in reaching a decision about whether or not to grant a licence but only if relevant representations are received.

3.4 Conditions

- 3.4.1 Conditions may only be attached if relevant representations are received, any such conditions attached to licences and certificates will be tailored to the individual style and characteristics of the premises and events concerned.
- 3.4.2 However, where it is considered necessary to promote one or more of the licensing objectives the licensing authority will, if relevant representations are received, consider attaching conditions drawn from the Pool of Model Conditions set out in Revised Secretary of State's Guidance. This list is not exhaustive and additional conditions may be attached to any licence or authorisation if a representation is received.

3.5 Enforcement

- 3.5.1 The Council when planning and carrying out enforcement activities will always have regard to the principles in the Regulators' Compliance Code.

- 3.5.2 The Council intends to use appropriate enforcement to promote the licensing objectives. Once licensed, it is essential that premises are monitored to ensure that they are run in accordance with their operating schedules, in compliance with the specific requirements of the Act and any licence conditions. It will also be important to monitor the District for unlicensed activities that require a licence.
- 3.5.3 The Licensing Authority has established protocols with Avon and Somerset Police Authority, Somerset County Council Trading Standards and Devon and Somerset Fire Authority on enforcement issues to ensure an efficient deployment of Police and Council Officers.

3.6 Live Music, Dancing and Theatre

- 3.6.1 The council recognises the need to encourage and promote a broad range of entertainment, particularly live music, dancing and theatre for the wider cultural benefit of the community and in particular for children and young people.
- 3.6.2 When considering applications for such events and the imposition of any conditions if representations are received on licences or certificates, the licensing authority will carefully balance the need to promote the licensing objectives against these wider cultural benefits.

4.0 Administrative Issues

4.1 Temporary Event Notices

- 4.1.1 The Act requires that a temporary event notice must be given to the licensing authority, Avon and Somerset Police and the environmental health team at WSC a minimum of 10 clear working days before the event or in the case of a late temporary event notice not less than 5 clear working days before the beginning of the event.
- 4.1.2 The licensing authority however recommends that notices are submitted at least 28 days before the planned event to allow enough time for the organiser to liaise with the Police, other relevant council officers and organisations to ensure that the event passes off safely with minimum disturbance to local residents.

4.2 Applicants for Personal Licences

The licensing authority places particular emphasis on the role of premises supervisors and licensees and where the Police object on the grounds of prevention of crime and disorder there will be a presumption against issuing a personal licence to any applicant with an unspent conviction for a relevant offence. If the applicant can demonstrate exceptional and compelling reasons for disregarding the conviction, this will be taken into consideration.

4.3 Large Scale Events

Large scale events of a temporary or more permanent nature will generally require detailed planning and more consultation with responsible authorities and possibly representatives of other organisations concerned with safety. For such events it is recommended that applicants contact the licensing team at the earliest opportunity to discuss their proposals.

4.4 Reviews of Licence or Club Premises Certificate

- 4.4.1 The Licensing Act details that where a premises licence or club premises certificate has effect, an interested party or a responsible authority may apply to the relevant licensing authority for a review of the licence. The relevant licensing authority may, at any time, reject on any grounds for review specified in an application under this section if it is satisfied that the grounds are not

relevant to one or more of the licensing objectives, or in the case of an application made by a person other than a responsible authority, that the ground is frivolous or vexatious, or the ground is a repetition.

- 4.4.2 The licensing authority can on review of licence or certificate, revoke the licence or certificate, suspend the licence or certificate, remove the Designated Premises Supervisor, reduce hours or licensable activities or add conditions to the licence or certificate.
- 4.4.3 The licensing authority recommends that persons or bodies considering seeking a review should discuss the matter with the licensing team to discuss possible alternatives and to ascertain the correct procedure.

4.5 Administration, Exercise and Delegation of Functions

- 4.5.1 The council has a licensing committee, consisting of 11 elected members, to carry out its licensing functions and to make licensing decisions, except those functions relating to the making of a statement of licensing policy.
- 4.5.2 In the interests of speed, efficiency and cost-effectiveness the committee will delegate certain decisions and functions to sub-committees and officers.
- 4.5.3 A licensing sub-committee of three councillors will sit to hear applications where relevant representations have been received from interested parties or responsible authorities. Ward councillors will not sit on a panel involving an application within their ward.
- 4.5.4 Where there are no relevant representations on an application for the grant of a premises licence or club premises certificate or Police objection to an application for a personal licence or to an activity taking place under the authority of a temporary event notice, these matters should be dealt with by officers.
- 4.5.5 The following table sets out the agreed delegation of decisions and functions to the licensing committee, sub-committees and officers.
- 4.3.6 This scheme of delegation does not prevent the referral of matters to a higher authority if considered appropriate in the circumstances of any particular case.

MATTER TO BE DEALT WITH	SUB-COMMITTEE	OFFICERS
Application for personal licence	If an objection is made	If no objection is made
Application for personal licence, with unspent convictions	All cases	
Application for premises licence/club premises certificate	If a representation is made	If no representation is made
Application for provisional statement	If a representation is made	If no representation is made
Application to vary premises licence/club premises certificate	If a representation is made	If no representation is made
Application for minor variation to premises licence/club premises certificate		All cases
Application to vary designated premises	If a police objection is made	All other cases

supervisor		
Request to be removed as designated premises supervisor		All cases
Application for alternative licence condition to be included in licence		All cases
Application for transfer of premises licence	If a police objection is made	All other cases
Application for interim authority	If a police objection is made	All other cases
Application to review premises licence/club premises certificate	All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious, etc		All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application	All cases	
Determination of a police objection to a temporary event notice	All cases	

5.0 The Licensing Authority as a Responsible Authority

- 5.1 There is no requirement under the Act for responsible authorities to make representations about applications for the grant of premises licences or to take any other steps in respect of different licensing processes. The council will therefore determine when it considers it appropriate to act in its capacity as a responsible authority based on the individual circumstances of each situation and in accordance with its duties under section 4 of the 2003 Act.
- 5.2 The licensing authority would not normally expect to act as a responsible authority on behalf of other parties (for example, local residents, local councillors or community groups) although there are occasions where the authority may decide to do so. Such parties can make relevant representations to the licensing authority in their own right, and the licensing authority considers it reasonable to expect them to make representations themselves where they are reasonably able to do so. However, if these parties have failed to take action and the licensing authority is aware of relevant grounds to make a representation, it may choose to act in its capacity as responsible authority.
- 5.3 The licensing authority will normally expect that other responsible authorities should intervene where the basis for the intervention falls within the remit of that other responsible authority.
- 5.4 The 2003 Act enables licensing authorities to act as responsible authorities as a means of early intervention; where it considers it appropriate the Council may do without having to wait for representations from other responsible authorities.
- 5.6 In cases where the Licensing Authority is also acting as Responsible Authority in relation to the same process, it is important to achieve a separation of responsibilities within the authority to ensure procedural fairness and eliminate conflicts of interest. In such cases licensing determinations will be made by the licensing committee or subcommittee comprising elected members of the authority (although they are advised by a licensing officer). Therefore, a separation is achieved by allocating distinct functions (i.e. those of Licensing Authority and responsible authority) to different officials within the authority.

- 5.7 In these cases, the licensing authority where possible will allocate the different responsibilities to different licensing officers or other officers within the local authority to ensure a proper separation of responsibilities. The officer advising the licensing committee (i.e. the authority acting in its capacity as the licensing authority) will be a different individual to the officer who is acting for the responsible authority. The officer acting for the responsible authority should not be involved in the licensing decision process and should not discuss the merits of the case with those involved in making the determination by the licensing authority.
- 5.8 Communication between these officers in relation to the case should remain professional and consistent with communication with other responsible authorities. Representations, subject to limited exceptions, will be made in writing.

6.0 Suspension of licences following non-payment of fees

- 6.1 In order to provide a strong incentive for businesses to pay their fees in a timely manner and save the council the time and cost of pursuing non-payment, the licensing authority will use its powers under the Act to suspend licences due to non-payment of fees.

GLOSSARY OF TERMINOLOGY

Club Premises Certificate	means a certificate granted to a qualifying club under the Act in respect of premises occupied, and habitually used for the purposes of a club. Alcohol must not be supplied other than to members by or on behalf of the club.
Entertainment facilities	are defined as facilities for enabling persons to take part in entertainment for the purpose of being entertained. The descriptions of entertainment are making music, dancing, and entertainment of a similar description to that falling within those mentioned above. This definition is subject to Part 3 of Schedule 1 to the Licensing Act 2003 (interpretation).
Hot food or hot drink	<p>food or drink supplied on or from any premises is “hot” for the purposes of Schedule 2 to the Act if the food or drink, or any part of it:</p> <p>(i) before it is supplied, is heated on the premises or elsewhere for the purpose of enabling it to be consumed at a temperature above the ambient air temperature and, at the time of supply, is above that temperature,</p> <p>or</p> <p>(ii) after it is supplied, may be heated on the premises for the purpose of enabling it to be consumed at a temperature above the ambient air temperature.</p>
Interested Party	<p>is defined as:</p> <p>(i) a person living in the vicinity of the premises</p> <p>(ii) a body representing persons who live in that vicinity</p> <p>(iii) a person involved in a business in that vicinity</p> <p>(iv) a body representing persons involved in such businesses</p> <p>(v) a member of the relevant licensing authority</p>
Licensable activities and qualifying club activities	<p>are defined in the Licensing Act as:</p> <p>(i) the sale by retail of alcohol</p> <p>(ii) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club</p> <p>(iii) the provision of regulated entertainment</p> <p>(iv) the provision of late night refreshment - for those purposes the following licensable activities are also qualifying club activities:</p> <p>(v) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club for consumption on the premises where the supply takes place</p> <p>(vi) the sale by retail of alcohol by or on behalf of a club to a guest of a member of the club for consumption on the premises where the sale takes place</p>

	(vii) the provision of regulated entertainment where that provision is by or on behalf of a club for members of the club or members of the club and their guests.
Operating Schedule	<p>means a document that must be prepared by or on behalf of an applicant for a premises licence or club premises certificate containing a statement including the following matters:</p> <ul style="list-style-type: none"> • the relevant licensable activities • the times at which licensable activities are to take place and any other times the premises are to be open to the public • information about the Designated Premises Supervisor • whether any alcohol sales are on and/or off sales • the steps being taken to promote the licensing objectives.
Personal Licence	authorises an individual to supply or authorise the supply of alcohol in accordance with a premises licence.
Premises Licence	authorises the premises to be used for one or more licensable activity.
Provision of late night refreshment	<p>is defined as the provision of hot food or hot drink to members of the public, or a section of the public on or from any premises, whether for consumption on or off the premises between 11 pm and 5 am</p> <p>or</p> <p>at any time between those hours when members of the public, or a section of the public, are admitted to any premises, a person supplies, or holds himself willing to supply, hot food or hot drink to any persons, or to persons of a particular description, on or from those premises, whether for consumption on or off the premises.</p>
Regulated Entertainment	<p>is defined as:</p> <ul style="list-style-type: none"> (a) a performance of a play (b) an exhibition of film (c) an indoor sporting event (d) a boxing or wrestling entertainment (e) a performance of live music (f) any playing of recorded music (g) a performance of dance (h) entertainment of a similar description to that falling within paragraph (e), (f) or (g) where the entertainment takes place in the presence of an audience and is provided for the purpose, or for purposes which include the purpose, of entertaining that audience. Any reference to an audience includes a reference to spectators. This definition is subject to Part 3 of Schedule 1 to the Licensing Act 2003 (interpretation). (i) Entertainment Facilities. This definition is subject to Part 1 of Schedule 1 to the Licensing Act 2003 (interpretation).

Responsible Authority	<p>is defined as:</p> <p>(i) Chief Officer of Police for any Police area in which the premises are situated</p> <p>(ii) the Fire Authority for any area in which the premises are situated</p> <p>(iii) the enforcing authority within the meaning given by section 18 of the Health and Safety at Work etc Act 1974 for any area in which the premises are situated</p> <p>(iv) the local planning authority within the meaning given by the Town and Country Planning Act 1990 (c.8) for any area in which the premises are situated</p> <p>(v) the local authority by which statutory functions are exercisable in any area in which the premises are situated in relation to minimising or preventing the risk of pollution of the environment or of harm to human health</p> <p>(vi) a body which:</p> <p>(a) represents those who, in relation to any such area, are responsible for, or interested in matters relating to the protection of children from harm, and</p> <p>(b) is recognised by the licensing authority for that area for the purposes of this section as being competent to advise it on such matters</p> <p>(vii) any licensing authority (other than the relevant licensing authority) in whose area part of the premises is situated</p> <p>(viii) in relation to a vessel:</p> <p>(a) a navigation authority (within the meaning of section 221(1) of the Water Resources Act 1991 (c.57)) having functions in relation to the waters where the vessel is usually moored or berthed or any waters where it is or is proposed to be, navigated at a time when it is used for licensable activities</p> <p>(b) the Environment Agency</p> <p>(c) the British Waterways Board, or</p> <p>(d) the Secretary of State</p> <p>(e) the Local Licensing Authority</p> <p>(f) Local Health Bodies for the responsible area to include a Primary Care Trust</p> <p>(g) a person prescribed for the purpose of this subsection.</p>
Temporary Event	<p>is defined as the use of premises for one or more of the licensable activities during a period not exceeding 168 hours usually where a premises licence covering the licensable activity is not in place.</p>
Temporary Event Notice	<p>a document giving notice to the Licensing Authority of intention to hold a temporary event.</p>

Cumulative impact policies (CIP)

“Cumulative impact” is not mentioned specifically in the Licensing Act 2003, but is described in the guidance published by the Home Office as ‘the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area.’

Where there is evidence that cumulative impact is having a negative impact on the licensing objectives, the licensing authority can include within its statement of licensing policy a cumulative impact policy (CIP).

The effect of a CIP is a presumption that applications for new premises licences or variations to existing premises licenses (increase in hours, capacity or change of conditions) will be refused. That is unless the applicant can demonstrate that the grant of a licence will not negatively impact on the licensing objectives; usually the ones called into play are the prevention of crime and disorder and prevention of public nuisance.

A CIP can apply to new builds, unlicensed sites or existing on and off licence premises e.g. restaurants, pubs, bars, cafes, supermarkets etc.



HM Revenue
& Customs

Tackling the hidden economy: public sector licensing

Consultation document

Publication date: 8 December 2017

Closing date for comments: 2 March 2018

Subject of this consultation:	This consultation proposes ‘conditionality’ measures to tackle the hidden economy This would make compliance with certain tax obligations a condition of holding some licences, and introduce checks on applicants’ tax-registration status as part of licensing processes.
Scope of this consultation:	The consultation suggests licensing regimes which could be suitable for changes to introduce conditionality. It seeks feedback on their suitability for the proposed changes, and outlines ways that tax-registration checks could be administered and enforced.
Who should read this:	In particular, we would like to hear from local authorities and national bodies that administer relevant licences, trade bodies, small businesses, individuals, and representative or professional bodies with expertise in tax administration.
Duration:	The consultation will run from 8 December 2017 until 2 March 2018.
Lead official:	Jamie Horton and Georgina Treacy
How to respond or enquire about this consultation:	Please send e-mail responses to: isbc.compliancepolicy@hmrc.gsi.gov.uk Please send written responses to: Georgina Treacy, HMRC Room G/72 100 Parliament Street London SW1A 2BQ
Additional ways to be involved:	HMRC officials would like to meet interested parties to discuss any aspect of this consultation and will be organising meetings following publication.
After the consultation:	A response document will be published. The government will consider proposals to develop draft legislation to introduce conditionality measures.
Getting to this stage:	HMRC published an initial consultation in August 2016. This discussed the principles of developing conditionality in order to tackle the hidden economy. A response document was published in March 2017.
Previous engagement:	HMRC met with a range of stakeholders as part of the initial consultation exercise, including small business representative bodies, tax organisations and the Local Government Association. HMRC officials have met with a number of licensing authorities, including local authorities to discuss conditionality proposals, and have engaged with other government departments in developing these proposals.

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Executive Summary

1. This consultation proposes options to tackle the hidden economy by making access to licences needed to trade conditional on tax compliance, known as 'conditionality'.
2. The first chapter outlines how these proposals fit into HMRC's compliance strategy: the best way to tackle non-compliance is to prevent it from happening in the first place. HMRC aims to promote compliance by designing it into systems and processes, enabling customers to get their affairs right from the outset. At the same time, HMRC aims to prevent and respond to non-compliance by identifying and targeting the areas of greatest risk, and using tough measures to tackle those who deliberately try to cheat the system.
3. HMRC published a first consultation on the principles of developing conditionality in August 2016, which was broadly well received. This consultation makes the case for initial changes to introduce tax-registration checks into some licensing processes administered by public-sector bodies.

Chapter 2: options for applying conditionality through public sector licensing

4. Chapter 2 outlines specific licensing schemes which could be suitable for these changes. These have been selected because existing licence conditions align reasonably well with tax-compliance measures; they apply to sectors vulnerable to hidden economy activity; and there are broader potential benefits to be realised in driving up wider regulatory standards. Licences issued in the following sectors are included for consideration in the consultation:
 - private security,
 - taxi and private hire vehicles (PHVs),
 - waste management,
 - houses in multiple occupation (HMOs) and selective licensing in the private rental sector,
 - scrap metal, and
 - retail and trade.

Chapter 3: options for developing tax-registration checks

5. Chapter 3 sets out the principles for how HMRC and licensing authorities should work jointly to ensure that those applying for licences are correctly registered. Key principles of this process include:
 - **New applicants should be signposted towards tax obligations and HMRC services:** Checks applying to first-time applicants aim to ensure that they understand their taxable status and are able to register as soon as possible after they begin trading.

- **Checks should apply to those renewing licences:** Checks carried out at the renewal stage would ask applicants to confirm and provide evidence of their tax-registration status.
- **No requirement upon licensing authorities to carry out more detailed tax checks:** The government would not expect licensing authorities to provide advice to applicants on their tax status. Applicants requiring particular support or advice could be directed towards appropriate HMRC services.

Chapter 4: minimising burdens and impacts

6. Chapter 4 discusses how HMRC would seek to minimise burdens. This includes safeguards intended to ensure applicants for licences are not required to register earlier than they currently need to under law. It also seeks feedback on how privacy impacts can be minimised and how HMRC could ensure that minimal new requirements are placed upon licensing authorities.

Chapter 5: next steps and further options for conditionality

7. Chapter 5 outlines the link between the current proposals and longer-term options to develop conditionality. The government would like to explore the potential for these proposals to act as a first step in a longer-term roadmap for developing conditionality. This could, in time, see simple tax checks integrated into more of the essential services or platforms that businesses use to trade.

1. Introduction

The hidden economy and its impact

1. The majority of UK taxpayers pay what they owe, but a small minority are active in the 'hidden economy'. The term hidden economy refers to individuals and businesses with sources of taxable economic activity that are entirely hidden from HM Revenue & Customs (HMRC).
2. In 2015 HMRC commissioned the first major survey¹ in Great Britain to assess the relative sizes of different hidden economy groups, and collect other behavioural and attitudinal information, such as why people find themselves in the hidden economy.
3. The hidden economy deprives the government of funding for vital public services. The hidden economy tax gap² is estimated at £3.5 billion for 2015-16 (the most recent year for which an estimate has been calculated) and is the fifth largest behavioural component of the 2015-16 tax gap. The hidden economy tax gap has remained relatively stable since 2009-10 at around 10% of the total tax gap.
4. The hidden economy also distorts fair competition and is linked to wider rule breaking and criminality, including money laundering, health and safety violations, failure to comply with employment rights and immigration offences.

Tackling the hidden economy

5. HMRC is committed to achieving a significant and sustained narrowing of the hidden economy tax gap. Tackling the hidden economy is also a crucial part of our role in supporting and creating a level playing field for compliant customers.
6. The best way to tackle non-compliance is to prevent it happening in the first place, while cracking down on the minority who do break the rules, so we are:
 - promoting good compliance by designing it into our systems and processes, enabling customers to get their affairs right from the outset,
 - preventing non-compliance by using the data we have to spot mistakes, prevent fraudulent claims, personalise online services and automate calculations, and
 - responding to non-compliance by identifying and targeting the areas of greatest risk, and using tough measures to tackle those who deliberately try to cheat the system.³
7. We know that some people enter the hidden economy because they think it would be difficult to register and declare their income to HMRC. And that some of those who are in the hidden economy find it more difficult to come forward

¹ <https://www.gov.uk/government/publications/the-hidden-economy-in-great-britain>

² The tax gap is the difference between the amount of tax that should, in theory, be collected by HMRC, and what is actually collected. <https://www.gov.uk/government/statistics/measuring-tax-gaps>

³ HMRC Strategy, published on 20 July 2017.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/629941/HMRC-Strategy.pdf

and declare their earnings the longer they have been hidden from HMRC. This is one of the reasons why the government is making it easier than ever to register for, and pay tax through, highly accessible digital services. HMRC is also expanding and updating the support it provides to new business, helping them to understand and comply with their tax obligations at the earliest opportunity.

8. At the same time, the government is developing new ways to divert people away from non-compliance before it occurs, including through closer working with intermediaries to play an active role in helping customers to understand and comply with their tax obligations.
9. This consultation, which was announced at Autumn Budget 2017, proposes measures to introduce tax registration checks into some of the key public sector approvals that individuals and businesses need in order to trade.

Aim of the consultation

10. Few businesses can exist in a vacuum: most require services from other businesses, or approvals and services from part of local or national government. The proposals included in this consultation would integrate tax-registration checks into some of these existing approvals to encourage more customers to engage with the tax system at the right time.
11. These proposals would support a key aim of our strategy: to crack down on the hidden economy by preventing people from entering it in the first place. They would promote tax registration, helping customers to better understand their obligations to register for tax and the simple steps they need to take to declare their income to HMRC.
12. This is in everyone's interests: compliant businesses benefit from a level playing field where everyone pays their fair share of taxes. Regulators and licensing authorities may benefit from improved standards when licence holders comply with their key responsibilities for tax. And the broader public benefits from the additional tax that is protected through a reduction in the hidden economy tax gap.

Scope of the consultation

13. This consultation is intended to help HMRC to develop proportionate measures which work in the interests of compliant customers.
14. The consultation suggests specific sectors which HMRC believes would be suitable for the proposed changes. We welcome comments, in particular, from those who issue or receive licences and permits for the below activities:
 - private security,
 - taxi and private hire vehicles (PHVs),
 - waste management,
 - houses in multiple occupation (HMOs) and selective licensing in the private rental sector,
 - scrap metal, and

- retail and trade.
15. The consultation does not set out firm proposals for how checks on licensees' tax-registration status should be administered: any final proposals will be informed by the outcome of this consultation. We want to hear from licensing authorities to identify the best options for delivery which would help to promote shared regulatory objectives.
 16. The checks that are described in this consultation refer to whether or not a person is appropriately registered for tax. Individuals or business can have different requirements to register for tax depending on their circumstances. But for the purposes of this consultation, the aim would be to determine whether or not a person is registered through one of the following routes:
 - **Obligations to register for Self Assessment:** when people are setting up or operating as self-employed or a partnership, they should be registering for Self Assessment to pay income tax and Class 2 National Insurance. People who are known to HMRC through Pay As You Earn (PAYE) but who have additional sources of income to report, such as income from rental property, also need to register for Self Assessment.
 - **Obligations to enrol employees for tax:** employees should be registered for tax by their employer. Income tax and national insurance from employment is normally collected by employers through the Pay as You Earn (PAYE) system.
 - **Obligations to register for Corporation Tax:** private limited companies need to register for Corporation Tax within three months of starting to do business.
 17. Tax registration is a simple marker of compliance because it evidences whether a person has told HMRC about a particular source of their taxable income. Individuals or businesses who are not properly registered when they should be, have either their entire income, or part of their income, hidden from HMRC.
 18. People can also be in the hidden economy due to a failure to register for VAT, where their VAT taxable turnover is above the statutory threshold. It is not the aim of the specific checks described in this consultation to determine whether or not a person should be registered for VAT.
 19. Likewise, the checks described in this consultation would not need to determine the correct employment status of a person applying for a licence. The question of whether or not a person is self-employed or employed for tax purposes can depend upon a number of factors, on which HMRC provides guidance and support. Instead, checks would simply aim to establish that a person is not in the hidden economy, by confirming that their earnings in a licensed sector are being reported to HMRC through one of the routes described at paragraph 16.

Progress to date

20. In August 2016 HMRC published a first consultation paper on conditionality which sought views on how tax-registration checks can be best applied as a way of tackling the hidden economy. It covered options to apply conditionality to both public sector licences and services provided to businesses by private-

sector providers, such as financial or insurance services, and online platforms that link businesses with customers.

21. The majority of responses agreed that HMRC should be focussing on new ways to tackle the hidden economy, and recognised that conditionality could be an effective way to support compliance.
22. In particular, feedback highlighted that many small businesses and their representative groups are very concerned about the unfair competition posed by those operating in the hidden economy – particularly, when they don't comply with their wider legal duties or provide customers with an appropriate level of service. This also reflects concerns highlighted directly to HMRC by members of the public about the damaging effects that unregistered businesses have on compliant taxpayers. Many of HMRC's customers feel that hidden economy activity distorts fair competition, making it harder for businesses to operate on a level playing field.
23. Most responses to the consultation were also clear that any approach to conditionality must minimise burdens upon compliant businesses, and providers of licences and business services.
24. Several responses said that public-sector licences would be a good basis for initial proposals. Following the consultation, the government recognised that there is a strong case that some public sector licences should be subject to conditionality. The government said it would develop further proposals, and consider further the longer-term case for conditionality in the private sector.

Longer term options

25. This consultation makes the case for some initial changes to introduce conditionality in sectors that are affected by the hidden economy and associated non-compliance. The aim is to achieve simple, easy-to-administer changes that would divert more customers away from the hidden economy, and make it harder to trade as a hidden business.
26. The government would like to explore the potential for these proposals to act as a first step in a longer-term roadmap for developing conditionality. This could, in time, see simple tax checks integrated into more of the essential services or platforms that businesses use to trade.
27. The government recognises that the design of these proposals, and their impacts upon customers and third parties, would need to be carefully assessed. They would also be developed in line with the government's ongoing proposals to transform tax and payments for HMRC customers.
28. Longer-term options to develop conditionality could drive down hidden economy activity on a larger scale, and support a level playing field for businesses.

Chapter 2: options for applying conditionality through public sector licensing

Introduction

29. This chapter sets out options for introducing tax-registration checks through public sector licensing schemes. It identifies several licences that the government believes would be appropriate and seeks feedback on the proposals.
30. The government has taken account of the results of HMRC's first consultation on conditionality in identifying these licences. That earlier consultation set out a number of principles that HMRC should use to identify suitable licences (or services). These principles were endorsed by the majority of respondents. In particular the government has taken account of the following factors:
- **Alignment of conditionality with existing licensing rules:** licences selected have existing conditions that align reasonably well with legal obligations to register-for and pay tax. For example several of the licences concerned already include 'fit and proper person' tests which may include assessments of the applicant's financial integrity. Introducing tax registration checks within these licensing schemes would be reasonably compatible with existing rules.
 - **Risks posed by the hidden economy:** good standards of overall compliance exist in these sectors, and the government recognises that the large majority of those holding relevant licences wish to pay their fair share of tax. But a combination of factors make these sectors vulnerable to exploitation by a minority, who wish to undercut their competitors by staying hidden from HMRC. In recent years, HMRC has conducted taskforce⁴ activity in a number of these sectors, demonstrating non-compliance by a minority within them.
 - **Potential wider benefits:** results from the first consultation suggested that a number of stakeholders recognise an overlap between businesses which are non-compliant for tax purposes, and those which may also be non-compliant in relation to other areas of regulation. Discussions between HMRC and regulatory or licensing authorities have highlighted that conditionality could carry broader compliance benefits. By integrating regulatory standards, and developing closer working between HMRC and other parts of local or national government, there may be opportunities to drive up standards for the benefit of compliant businesses, as well government and the public.

⁴Taskforces were first launched in spring 2011 as part of HMRC's compliance strategy to tackle tax evasion and fraud. Taskforces bring together various HMRC compliance and enforcement teams for intensive bursts of activity targeted at specific sectors and locations where there is evidence of a high risk of tax evasion and fraud.

31. The government's intention would be to legislate to introduce conditionality for aspects of licensing that are within the competence of the UK Parliament. However, some licensing powers in the sectors described below are held by the Devolved Administrations in Scotland, Wales and Northern Ireland. The government will work with the Devolved Administrations to identify the extent to which they might wish to pursue similar aims to those described in this consultation.
32. Building on the outcomes of the first consultation, the following licensing schemes are likely to be areas that are suitable for changes to introduce tax-registration checks. The outcomes of this consultation would inform options for future policy design.

The private security industry

33. Individuals in specific sectors of the private security industry, conducting licensable activities such as door supervision, close protection and manned guarding, require a licence from the Security Industry Authority (SIA). Front line licences are required for those undertaking licensable activity. Non-front line licences are required for those who manage, supervise and/or employ individuals who engage in licensable activity.
34. The SIA establishes licensing criteria in accordance with the Private Security Industry Act 2001. SIA licensing ensures that private security operatives are 'fit and proper' persons who are properly trained and qualified.
35. The SIA also runs an Approved Contractor Scheme (ACS), allowing organisations that meet agreed standards to advertise themselves as approved. Approved organisations are also able to complete and pay for licence applications online on behalf of employees. Currently 330,000 people hold a licence to operate from the SIA and over 800 businesses/organisations hold approved contractor status.
36. The SIA's application process includes checks on a person's identity, address history, right to work, criminality and mental health. Those applying for a front-line licence must also undergo a competency check and provide evidence that they hold relevant qualifications. All applicants must agree to a consent statement, which states that their information will be shared with government and private agencies, and accept a legal declaration, confirming that the data they have entered is correct. Licences are renewed every three years.
37. The SIA exists to improve standards in the private security industry, a sector affected by crime and tax evasion. For example, in 2015/16 the SIA progressed 39 cases towards a criminal prosecution for offences under the Private Security Industry Act. In addition, HMRC taskforces and operations have identified a range of risks in the sector, ranging from hidden-economy related activity to failures by employers to register employees for tax, through to serious fraud and evasion.
38. Introducing tax-registration checks to SIA licences, including front line and non-front line licences could strengthen existing regulation and help to raise standards of compliance further in the sector. Consideration could also be given to how HMRC could work with the SIA to support ACS contractors to demonstrate and maintain good standards of tax compliance.

The waste management sector

39. The UK generated just over 200 million tonnes of waste in 2014. Nearly 60% of this was generated by the construction industry with households responsible for a further 14%. Nearly 45% of household waste is recycled, whilst a little over 20% is taken to landfill. Most waste is collected by private waste or reclamation contractors. This sector includes many small and medium-sized enterprises and covers a range of activity, from transportation of waste through to brokering and dealing, treatment, recycling and disposal.
40. The Environment Agency and Natural Resources Wales have responsibility for regulating the waste management sector in England and Wales respectively, and administer two regimes in which the government believes the application process aligns well with conditionality:
- **Permits for waste sites and exemptions to environmental permits for waste sites:** environmental permits are mandatory for those who wish to use, treat, store and dispose of waste. The rules on permitting are set out in the *Environmental Permitting (England and Wales) Regulations 2016*.

Those undertaking operations with waste (other than operations deemed low or negligible risk) need to be considered ‘competent’ by the Environment Agency. This covers an operator’s environmental record, technical competence, financial competence and (in some cases) financial provision. There are nearly 12,000 existing environmental permits for the waste sector in England and Wales.

Low environmental risk sites require an exemption from the main permitting regimes. These are subject to renewal every three years and require the applicant to meet the limits and conditions of the exemption and to ensure their waste operation doesn’t harm the environment or human health. There are currently around 500,000 exemptions registered with the Environment Agency and Natural Resources Wales for sites in England and Wales.
 - **Waste carrier licences:** the Environment Agency and Natural Resources Wales requires waste carrier licences to be held by those who transport waste; buy, sell or dispose of waste; or arrange for someone else to buy sell or dispose of waste as part of their business. Conditions are set out in the Waste (England and Wales) Regulations 2011. Licences need to be renewed every three years and currently do not include competency checks on the licence holder. The Environment Agency and Natural Resources Wales has issued around 130,000 of these licences in England and Wales.
41. The government recognises that waste sites operating under a permit or exemption play a critical role in managing waste to achieve high levels of resource efficiency. However, the ability to gain profits in short time periods and low barriers to entry in some areas has left the sector open to exploitation by a minority of unscrupulous operators.

42. Waste crime is a significant problem, which is estimated to cost the UK economy £604 million a year⁵. The impact of waste crime includes environmental damage (including degradation in the quality of local environments) but also economic damage, including loss to legitimate businesses and loss to the Exchequer through tax evasion. In 2015-16 (the latest year we have data available for) the tax gap for landfill tax was estimated to be £100 million.
43. The government believes that applying conditionality to permitting and licensing regimes in the waste management sector could help to strengthen existing regulation and make it harder for a small number of dishonest businesses to undercut compliant businesses in the sector. It could also act as a further deterrent to criminal activity in the waste sector, and support a number of improvements to existing regulation in the sector that government has announced over recent years.

Scrap metal dealers

44. The Scrap Metal Dealers Act 2013 introduced a licensing scheme for individuals who deal with scrap metal in England and Wales. Under the Act, there are two types of licences: site licences and collector's licences. A site licence authorises the licensee to buy, sell and transport scrap metal to and from any site in a particular local authority (where the licence was applied for), from any local authority area. A collector's licence authorises the licensee to carry out business as a mobile collector, other than at a site, in a local council area. A mobile collector needs to hold a licence for every local council area in which they wish to collect scrap metal by way of door-to-door visits. Scrap metal dealers can only hold one type of licence in any one local authority area.
45. Licences are issued by local authorities, who also have responsibility for determining the suitability of a licence. Currently around 10,000 of these licences have been issued and they must be renewed every three years. Applicants for a scrap metal dealers' licence must provide identifying information, including on any company partners, and details of the nature and location of related activities. Applicants are also required to give the details of the bank account that will be used to pay for scrap metal.
46. The scrap metal industry is vulnerable to criminal activity through the trading of stolen metal. The 2013 Act was brought in to address a number of market failings, including the ease with which stolen metals could be traded anonymously and poor trading standards in the industry. The prevalence of cash transactions in the sector also created opportunities for tax evasion and hidden economy activity; the Act banned scrap metal dealers from trading in cash. The industry has also previously been subject to HMRC taskforce activity.
47. The government believes that applying conditionality to scrap metal licences could strengthen regulation in the sector, and help to better integrate the regime's focus on tackling crime and antisocial behaviour with HMRC's objectives.

⁵ The cost of waste crime to the UK economy in 2013 was estimated to be between £568 million and £808 million per year. The Environmental Services Association Education Trust (2014) *Waste crime: tackling Britain's dirty secret*.

Taxis and Private Hire Vehicles

48. The government is responsible for setting the regulatory structure within which local licensing authorities in England and Wales license the taxi and private hire vehicle (PHV) sector. Regulation of the trade in Scotland and Northern Ireland is devolved to the Scottish Government and Northern Irish Assembly respectively and will be devolved to the Welsh Assembly from April 2018.
49. Vehicles for hire in the UK consist of taxis and PHVs. Taxis are legally able to pick up customers from the street without a booking in the area in which they are licensed and undertake pre-booked work outside this. PHVs are required to be pre-booked through an operator for all journeys. Individual local authorities are responsible for regulating the taxi and PHV trades and therefore conditions for licences vary – as does the legislation which underpins these. Licences are issued by local authorities in England, Wales and Scotland (and Transport for London), but by a national body in Northern Ireland.
50. There are three licensing regimes in this sector that the government believes may be suitable for conditionality:
- **PHV driver licences:** These licences are required for anyone wishing to operate a PHV in the UK. Unlike taxis, PHVs must have their journeys pre-booked by an operator, sometimes via a ‘taxi app’. PHVs include minicabs and chauffeur cars. Some PHV licence holders own their own vehicle and, often, enter into a contract with an operator for booking services. Alternatively, some PHV licence holders do not own their own vehicle but may lease their vehicle. There are around 242,200 PHV driver licences in operation across England and Wales. Sources of income for PHV drivers include cash work (where the passenger pays the driver at the end of the journey) and payment routed through an operator.
 - **PHV operator licences:** Operators provide bookings for PHVs. There are around 15,000 PHV operators who hold licences in England and Wales. Operators sometimes provide radio or other equipment in addition to a booking service, often in return for a fee or commission. Journeys are typically booked with an operator by phone, in person or via a taxi app. Bookings are then passed on to available drivers. Some operators are large concerns with hundreds of PHVs in different localities (these larger operators are often limited companies). Others are much smaller with a small number of PHVs in one area.
 - **Taxi driver licences:** All drivers of taxis or black cabs, who are able to pick people up at the street without a booking in the area for which they are licensed, are required to hold a taxi driver licence. There are around 55,000 taxi licences in operation across England and Wales. Taxi driver licences can be held by drivers who own their own vehicle, or they can be held by drivers who drive a cab owned by someone else (usually subject to some form of hire or profit-sharing arrangement with the owner of the vehicle). Holders of taxi licences are generally not prevented from carrying out private work, and a proportion of their work may arise from this.

A number of licensing authorities issue combined or dual taxi and PHV licences. The total number of driver licences issued (i.e. taxi, PHV and dual) in England and Wales is just under 368,000.

51. The licensed taxi and private hire industry is a vital element of public transport systems across the UK. It makes an important contribution to the UK's economy and achieves high professional standards. Although overall standards of tax compliance are good, the government believes the composition of the sector makes it vulnerable to evasion and hidden economy activity from a minority.
52. Tax-registration checks could help to strengthen current regulatory standards and support a level playing field for the majority compliant drivers and operators. This would align with the government's aim of open, safe and fair competition in the taxi and PHV market.
53. Checks for these licences align well with conditionality. The Department for Transport provides best practice guidance which outlines the checks that should be carried out as part of licensing processes. Taxi and PHV drivers are all subject to enhanced Disclosure and Barring Service (criminal background) checks. Other checks include those relating to medical fitness, driving proficiency, language proficiency, training and topographical knowledge. In addition the Immigration Act 2016 introduced right-to-work checks for taxi and PHV licensees to ensure they are in the UK lawfully and have permission to work. Checks for operators, although they also vary by authority, include a fit and proper person test, which includes checks for convictions, bankruptcy, company directorship, health and safety, accounts and insurance.

Licences issued under the Housing Act 2004

54. There are two licensing regimes in this sector that the government believes may be suitable for conditionality:
 - **Houses in multiple occupation (HMO) licences:** A house in multiple occupancy (HMO) is a property rented out by at least three people who are not from one 'household' e.g. a family, but share facilities like the bathroom and kitchen. Licences are required for those who rent large HMOs. There are approximately 510,000 HMOs in England and approximately 64,000 of these are currently required to be licensed. The Department for Communities and Local Government (DCLG) recently consulted on changing the definition of mandatory licensing which would bring a further 160,000 HMOs in scope. Local authorities have the power to introduce additional licensing schemes, which would capture further HMOs. These licences must be renewed every 5 years.
 - Existing conditions for a licence in England are set by DCLG in accordance with Part 2 of the Housing Act 2004. Local authorities can add other conditions and set fees for the licences. A number of conditions focus on the suitability of the house – for example, whether it is suitable for the number of occupants living there. The manager of the house must also be deemed 'fit and proper' – for example, this can relate to any criminal record, or breaches of landlord laws or codes of practice.

- **Selective licensing for private rented properties:** Part 3 of the Housing Act 2004 (the Act) sets out a scheme for licensing private rented properties in a local authority area in England and Wales. Under section 80 of the Act, a local authority can introduce selective licensing of privately rented homes in order to tackle problems in their areas (or any part or parts of them) caused by low housing demand or significant anti-social behaviour. In 2015, DCLG introduced further grounds for implementing selective licensing schemes: poor property conditions, high levels of migration, high levels of deprivation and high crime.

Where a selective licensing designation is made it applies to privately rented property in the area, and all properties in the private rented sector are required to be licensed by the local housing authority (subject to certain exemptions). Local authorities in England are required to obtain confirmation from the Secretary of State for any selective licensing scheme which would cover more than 20% of their geographical area or would affect more than 20% of privately rented homes in the local authority area.

55. The government values the private rented sector and wants to see a strong, healthy and vibrant market, which meets housing needs in a professional way. This includes ensuring that landlords are reporting and paying the tax they owe. To support this aim, HMRC is increasing its targeted compliance activity across the private rental sector through taskforce activity. It is also encouraging those who have been non-compliant to come forward through activities such as the Let Property Campaign⁶.
56. Applying conditionality to HMO licences could support existing HMRC compliance activity by helping and encouraging more landlords to ensure they are compliant with tax laws before renting out properties. Similarly, there may be potential for tax-registration checks to be incorporated into selective licensing schemes where appropriate and proportionate.

Retail and services

57. Licences are administered by local authorities for businesses providing some retail and service activities which are understood to be vulnerable to hidden economy activity. The government would like to explore the potential to introduce additional checks on applicants' tax-registration status for the following licences:
58. **Street trading and market stall licences:** These licences are required by those wishing to trade in streets designated for such activity in a local area or by those running a market stall as a trader in England and Wales. Where a local authority has chosen to apply the provisions in the Local Government (miscellaneous Provisions) Act 1982, and in the case of London Boroughs, the London Local Authorities Act 1990, then the conditions specified in those provisions will be required before a trader can operate in a specified locality. However, several local authorities operate licensing under local acts that govern street trading.

⁶ The Let Property Campaign allows landlords to report previously undisclosed taxes on rental income to HMRC. Further information is available at: <https://letproperty.campaign.gov.uk>

59. Requirements for licences vary by local authority, but often include identifying information from the applicant and their business (if applicable) and information about where and what they wish to trade. Licensing authorities often require additional information, particularly if they are trading food, including: insurance information, national insurance numbers, proof of the applicant's right to work in the UK and proof of address.
60. **Massage and special treatment premises licences:** These are required for those running an establishment for massages or other special treatments including: manicures, chiropody, light treatments and electric treatments, among others. Separate licences are required for skin piercing treatments, except in Greater London (with the exception of the City of London). Provision for these licences is made in the Local Government (Miscellaneous Provisions) Act 1982 and London Local Authorities Act 1990 (and the London County Council (General Powers) Act 1920 for the City of London). Existing licence conditions vary, but are often focused on the suitability of the premises. Other identifying information is required about the applicant, including name, address, date of birth and company details.
61. The market trader sector has recently been subject to an HMRC taskforce, which found evidence of hidden economy activity. Introducing conditionality would help level the playing field by helping traders into the tax system. The government is also keen to understand the risks among massage and special treatment premises and how conditionality could benefit compliant businesses.

Question 1: Please provide comments or evidence on the suitability of the government's proposals to apply conditionality to one or more of the licensing schemes outlined above. In your answer, please comment on:

- **The extent to which checks on people's tax-registration status would address problems highlighted in the relevant sectors, or whether additional or alternative measures of compliance should be considered.**
- **How effective conditionality would be in improving standards of tax compliance in the sectors concerned.**
- **Any positive or negative effects that conditionality would have upon the compliant majority who trade in the relevant sectors; please provide details of any additional one-off or ongoing costs that might be incurred.**

Other sectors

62. The above sections define specific licensing schemes that would be suitable for changes to introduce tax conditionality. However, the government is also interested in the potential to develop forms of conditionality through closer working with providers of other businesses approvals. This is particularly the case in sectors which make an important contribution to the UK economy, but are nonetheless affected by non-compliance.

63. This could include parts of the construction sector, such as the private market for home improvement and repairs, including building and maintenance of extensions, garages or external repairs. It could also include the market for internal building work, such as painting and decorating and specialist internal work including plumbing, electrical installation or gas maintenance and repair.
64. Those working in the construction sector are, in many cases, not subject to specific licensing schemes. However, they often seek membership of guilds or professional or trade bodies, and make use of other services in order to trade. The government would like to consider ways that professional bodies or service providers could promote tax registration amongst businesses operating in the construction sector. For example, this could include professional bodies taking steps to enquire whether members are correctly tax registered as a way of ensuring high professional standards.

Question 2: Please provide comments or evidence on the suitability of applying forms of conditionality – or similar approaches to promote tax compliance – in the construction sector?

- **Are there any other sectors that the government should consider for similar applications of conditionality?**

Chapter 3: options for developing tax-registration checks

65. The previous chapter outlined sectors and licensing schemes which can be affected by hidden economy activity or tax non-compliance. It also discussed how tax registration, or similar standards of compliance, could be included within the conditions of accessing those licences.
66. This chapter suggests processes to ensure that people are properly registered for tax as a condition of accessing a licence. These include options to make tax-registration checks part of application and renewal processes for one or more of the licences described in chapter 2, and ways that licensing authorities can confirm that applicants are registered when they ought to be. It also includes options to allow HMRC to disclose to a licensing authority where an applicant has provided false information about their tax-registration status, or where it has certain other information about an applicant's tax status.

Chapter overview

67. A broad approach is set out in this chapter, which reflects the following key principles. This does not represent a final policy design and the government welcomes views on ways this could be adapted:
 - **New applicants should be signposted towards tax obligations and HMRC services:** Checks applying to first-time applicants may not require confirmation that an applicant is registered. This is because first-time applicants may not have been working or trading in the relevant sector for long enough to have an obligation to register with HMRC. The aim, at this stage, would be to ensure that the applicant understands their taxable status and registers as soon as possible after they begin trading; knows where to go for support or advice; and understands that their identifying information may be submitted to HMRC.
 - **Checks should apply to those renewing licences:** Where licences are being renewed, HMRC's basic assumption would be that applicants have been working or trading in the sector for a reasonable period of time. It follows that they should be registered for tax in some form. Checks carried out at this stage would ask applicants to confirm and provide evidence of their tax-registration status.
 - **The process should depend upon applicants submitting required proof of registration:** The process for carrying out tax-registration checks should be led by self-declarations and evidence from the person applying for the licence. In practice, this would mean the applicant would need to tell the licensing authority whether and how they are registered for tax and provide simple confirmation of this as part of licensing processes.

- **No requirement upon licensing authorities to carry out more detailed tax checks:** The government would not expect licensing authorities to provide advice to applicants on their tax status or carry out any further checks beyond requesting declarations and/or simple evidence of registration. Applicants requiring particular support or advice could be directed towards appropriate HMRC services.

68. The principles set out above are intended to assist those trading in relevant sectors to register at the right time, whilst making it harder to trade for those determined to hide their income from HMRC. They are also intended to minimise burdens upon compliant customers and licensing authorities. The government would also issue guidance to those issuing licences to help to familiarise them with any new processes.

Amending terms of licences to introduce conditionality

69. The basis of the proposal would be that licence holders need to be properly registered for tax as a condition of a licence. A new condition could be added to licences requiring licensees to be properly registered for tax. Other markers of compliance relevant to the problems posed by the hidden economy could also be added to licence conditions – for example, applying to an applicants' wider compliance record such as obligations to register employees in payroll through PAYE.

70. A different approach could be to incorporate markers of tax compliance into existing licence conditions. For example, where it is established that an applicant or licence holder has not complied with relevant tax obligations, the licensing authority could consider whether that person continues to meet a 'fit and proper person' test.

Question 3: please describe how tax-registration or a similar standard of compliance could be introduced into existing terms and conditions of licences:

- **Would it be best to introduce tax conditionality as a new, standalone condition of licences, or would it better included as a consideration with fit-and-proper person or similar checks?**
- **Would tax-registration be the best standard of compliance, or should a similar or broader standard of compliance be introduced – if so, what additional factors should be considered?**

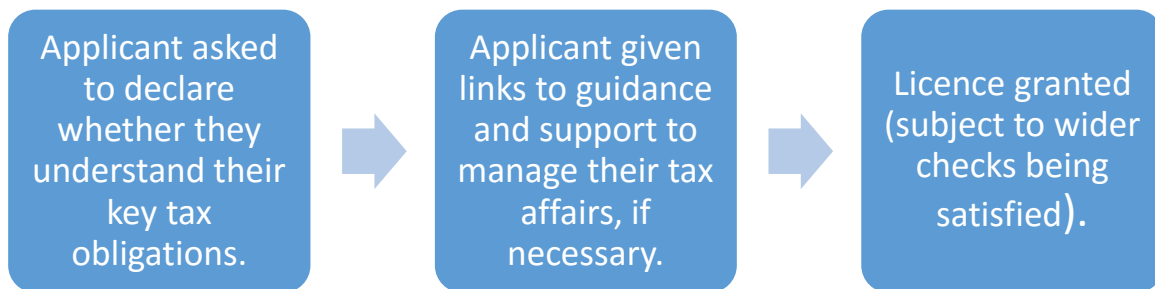
Checks on new applicants for licences

71. When applicants apply for licences for the first time, they may not yet need to be in the tax system or may not yet be trading at all. For example, HMRC requires self-employed customers to register for Self Assessment and Class 2 National Insurance as soon as they can after starting a business; and they must register no later than 5 October in the business's second tax year⁷. Those applying for licences for the first time may not have been trading for long enough to enable them to register for Self Assessment with HMRC. Likewise, HMRC recognises that people may apply for licences with the expectation that they will later use them to undertake work.

⁷ <https://www.gov.uk/log-in-file-self-assessment-tax-return/register-if-youre-self-employed>

72. In view of the above, licensing authorities could introduce questions into the procedure for processing a new licence, to ensure the applicant understands their tax obligations, understands that tax registration checks are a condition of the licence and is able to register as soon as possible after they begin trading. There are also opportunities to direct applicants towards further support or advice that is available from HMRC. However, it may not be necessary at this stage to confirm that an applicant is registered for tax. Checks on first-time applicants would aim to establish that:
- They know what their taxable position is or will be when trading in the licensed sector.
 - They understand that HMRC needs to hear from them as soon as possible after they begin trading, and they agree that they are (or will be) registered, if there is an existing obligation to be so, as a condition of holding their licence.
 - They understand that their details may be provided to HMRC which will hold a record that they are a licence holder with a potential tax liability.
73. Those who require further support could be directed towards the range of services and guidance that HMRC provides to new businesses.
74. The above objectives could be achieved by adding some standardised questions to licensing forms or processes, with links to appropriate further guidance being provided by HMRC in electronic or paper form. HMRC would provide guidance to licensing authorities on how to administer these changes and direct queries from applicants to HMRC.

Figure 1: conditionality – process for new licence holders



Question 4: please comment on the proposed process for introducing tax checks into new licences.

- **How effective would it be in promoting registration?**
- **How easily could the required changes be introduced into licensing processes?**
- **Please provide details of any additional one-off and ongoing costs that might be incurred.**

Checks on applicants renewing licences

75. As described at the start of this chapter, the licences in chapter 2 need to be renewed periodically. Where a licence holder has applied for a licence at least once, and then taken a decision to renew that licence at a later date, that is a strong indication that the applicant is trading or earning income in the sector. So, where licences are being renewed, tax-registration checks should apply.
76. Applicants could be required to demonstrate their tax-registration status to a licensing authority before the licence renewal is processed. This could apply to the following routes through which individuals and businesses can declare and pay tax to HMRC:
- **Self Assessment:** those trading as self-employed⁸ need to register for Self Assessment to pay Income Tax and make National Insurance contributions;
 - **PAYE:** Employees should be registered for tax by their employer. Income tax and national insurance from employment is normally collected by employers through the Pay as You Earn (PAYE) system⁹.
 - **Corporation Tax:** those operating as a private limited company must register for Corporation Tax within three months of starting to do business.

Figure 2: demonstrating tax registration when renewing licences



How to prove registration at renewal

77. The government's view is that people applying for licence renewals should be asked to demonstrate their registration status as part of the process of renewing a licence.
78. This could be done by producing evidence proving that they have engaged with the tax system. The methods through which applicants could be asked to demonstrate their registration status could include:

⁸ Full details on who must send a Self Assessment tax return (other than those trading in self employment) are available at: <https://www.gov.uk/self-assessment-tax-returns/who-must-send-a-tax-return>

⁹ Employers don't need to register for PAYE if none of their employees are paid £113 or more a week, get expenses and benefits, have another job or get a pension. However, they must keep payroll records.

- **Evidence generated through Personal Tax Accounts or online tax accounts for businesses:** HMRC's aim is to use digital tax accounts and other online services as its main way of interacting with customers. This makes it easier for them to see all their affairs in one place and harder for them to make mistakes. For example, customers who are self-employed can now manage details about their Self Assessment return online, and those who are employed can use the Pay as You Earn (PAYE) section of the personal tax account to manage their affairs. Customers can also print an HMRC letter (addressed to their home address) confirming their National Insurance number in writing. Information available on Personal and Business Tax Accounts could provide an easy way for customers to demonstrate their registration status to a licensing authority.
 - **Other documentation:** alternative options could be considered for those who do not engage digitally with HMRC. For example, businesses or those in self-employment, could provide a copy of official documentation from HMRC confirming registration, such as a 'Notice to File' or letter confirming registration along with the applicant's Unique Tax Reference number (UTR). Those in employment, could provide a relevant letter from HMRC or their employer - for example, a PAYE Coding Notice or a payslip. Those in Corporation Tax could provide an appropriate statement of account.
79. To supplement this information and support any later checks by HMRC, licensing authorities may need powers to require certain additional information as part of the application process. This could include an applicant's National Insurance Number, a statement of the purposes for which the licence is needed (for example, whether self-employment or employment) and the applicant's employer's details, where relevant.
80. Where proof of registration is provided digitally, a secure method may be needed to enable an applicant to transfer the required information from their personal tax account to a licensing body. This would need to maintain appropriate safeguards on customers' privacy, and any relevant information provided by an applicant to a licensing authority would need to be kept secure and confidential.
81. The government's view is that this approach would provide a more robust system than one which relies solely on self-declarations by applicants (for example, an approach which would simply require applicants to state that they are registered on a licensing form).
82. This would impose greater responsibilities upon applicants to demonstrate that they are registered for tax, including the compliant majority. However, providing that a route to demonstrate registration is simple and easy for applicants to make use of, the government believes that this would not add disproportionate burdens to existing licensing requirements.
83. To help customers to understand any new requirements, HMRC would ensure that those requiring access to licences have guidance on the steps they need to go through to obtain proof of registration and have the opportunity to do so before they need to renew a licence.

84. It may also be proportionate to consider grace periods for existing licence holders who need to renew licences. This would ensure that licence holders have sufficient time to understand and comply with new requirements before they need to renew their licence. It would also ensure that any licence holders who are in the hidden economy have sufficient time to come forward and declare this to HMRC before they would risk facing any restrictions on their licence.

85. **The government's view is that applicants should be asked to produce suitable evidence showing that they are correctly registered for tax.**

Question 5: please provide evidence on the likely effectiveness of these proposals in motivating more applicants to register with HMRC.

Question 6: please provide further evidence on the suitability of the options described for verifying the tax-registration status of people applying for licences.

- **If evidence of an applicant's registration status is generated through personal or business tax accounts, how could applicants transfer this to a licensing authority in a secure and efficient way?**
- **If evidence is generated through use of documentation, how could applicants transfer this to a licensing authority in a secure and efficient way?**
- **Would an option be needed for those who do not engage digitally with HMRC?**

Cases where applicants have a permissible reason for not providing evidence of their tax-registration status

86. Where licences are renewed, in general, applicants should be registered for tax and should be able to provide evidence of this. However, there may still be cases where an applicant has a reason for not being registered that should not prevent them from obtaining the licence. For example, this might be because the licence is being held but not actively used to generate any income.

87. In these cases, applicants may need to provide suitable confirmation that the applicant does not need to be registered with HMRC. This may include a route for an applicant to notify HMRC that they are a licence holder alongside confirmation of why they are not registered (and to demonstrate to a licensing authority that they have done so). Alternatively, it may include a route for a licensing authority to provide these details to HMRC. HMRC would provide appropriate support and guidance to licensing authorities to ensure that any process is simple to administer.

Question 7: How frequently would applicants have a permissible reason for not being registered in the sectors outlined in chapter 2?

- **If applicants have a permissible reason for not being registered, how should they be able to demonstrate this in order to obtain the licence?**
- **How can HMRC ensure that any process is simple for applicants and licensing authorities to administer?**

88. Employees should normally pay tax and national insurance by being enrolled in PAYE by their employer. Employees can, therefore, occasionally find themselves in the hidden economy due to a failure which is mainly on the part of their employer. We would also like to explore what licensing authorities should do when applicants state they are employed but cannot provide any evidence that they are appropriately registered for tax. For example, should licences simply be withheld in these cases, or should an alternative course of action be considered?

Withholding access to licences

89. Where an applicant for a licence renewal declares that they are registered for tax, but doesn't provide the required evidence to support this declaration, then licensing authorities should refuse to process the licence.
90. The government believes that this would be the simplest approach to implementation. It would provide a robust process, ensuring that anyone who declares they are registered for tax has done so. It would also minimise the need for checks to be carried out by HMRC after licences have been granted.
91. It would also impose minimal impacts upon customers, since any applicant who is not able to satisfy the licensing body's requirements can easily correct this by taking simple steps to register for tax with HMRC, or by demonstrating a permissible reason for not being registered.

Question 8: Should licensing authorities refuse to process licences where no evidence is provided to verify an applicant's declaration that they are registered for tax?

Data to verify information with HMRC

92. The aim of the above proposals would be to ensure that tax-registration checks are completed before licences are granted. However, there may also be a need for HMRC to check details provided to licensing authorities after the event – for example, to assess overall levels of compliance in the licensed population and, potentially, in a small number of cases to identify where applicants have provided false information to a licensing authority. HMRC already has powers to collect relevant data from licensing bodies. This includes data that are transmitted in bulk form (through a process of obtaining large amounts of customer records from a single data holder)¹⁰. It also includes powers to obtain data from a third party to check the tax position of a customer¹¹.
93. HMRC already carries out compliance activity in the sectors described in chapter 2, and data is routinely collected from licensing authorities for matching against HMRC systems. This process would enable HMRC to carry out checks on those who have applied for licences, and it would also help to identify any cases where applicants may have provided false information.

¹⁰ Finance Act 2011, Schedule 23, Part 2, Section 17: The gathering of data in bulk about taxpayers' income and assets is vital to the successful discharge of HMRC's responsibilities as the UK tax authority. HMRC routinely compares data provided by customers with third party data linked to their financial activity. This enables HMRC to check customers' tax status and the accuracy of their returns, while minimising the administrative burden of providing additional information where needed.

¹¹ Finance Act 2008: Schedule 36 contains a power to require information about a person from a third party where the identity of the person is known.

94. It is not currently the government's intention to expand these powers for the purposes of conditionality, for example, to require more frequent or regular submissions of bulk data. However, it may be necessary to amend existing powers to ensure that they are sufficient to allow HMRC to obtain all relevant data submitted by an applicant in connection with a tax-registration check. It may also be necessary to require licensing authorities to report certain issues (such as potential cases of employer non-compliance) to HMRC or to allow HMRC to inspect some details held about licence holders on request.

Question 9: Please comment on data powers that might be needed to support the tax-registration checks described in this chapter.

HMRC powers to disclose relevant information back to licensing authorities

95. To support the process for administering tax-registration checks, new powers may be needed to allow HMRC to disclose certain information to licensing authorities about applicants or licence-holders. For example, information could be provided to a licensing authority where HMRC thinks an applicant may have deliberately provided it with false information.
96. In addition, HMRC may need new powers to tell a licensing authority where it finds that a licence holder is operating in the hidden economy or where it finds that a person is operating in a relevant sector without a licence.
97. Finally, there may be other circumstances in which HMRC should have powers to disclose information to licensing authorities. For example, to support regulatory objectives and uphold the principles involved with tax conditionality, some licensing authorities may wish to be informed where an applicant or licence holder is engaging in related or serious tax non-compliance. For example, this could include information relevant to an applicants' wider compliance record such as their obligations to register employees in payroll through PAYE; it could also include where an applicant or a licence holder is engaging in potentially fraudulent behaviour.

Question 10: please comment on the circumstances in which HMRC could disclose relevant information back to a licensing authority.

- **What action would licensing authorities wish to take in these cases?**
- **Are there circumstances in which licensing authorities would wish to be informed about a licence holder engaging in tax non-compliance, beyond a failure to register for tax? Please describe what these would be.**

Chapter 4: minimising burdens and impacts

98. This chapter seeks evidence on the extent to which the government's proposals would address risks posed by the hidden economy in the identified sectors, whilst minimising administrative or other burdens for customers and licensing authorities.

Minimising administrative burdens upon customers

99. The suggested process for carrying out tax-registration checks is permissive for first-time applicants. Those requiring a licence to trade will face no hard barriers at all until they come to renew a licence. In practice, this means that new businesses would be given a reasonable period of time to register for tax and get their affairs in order before they need to demonstrate any evidence of their registration status to a licensing authority.
100. First-time applicants would instead be asked to confirm that they understand what their taxable position is or will be and, if required, will be given access to guidance, support and services provided by HMRC.
101. By the time that customers require a licence to be renewed, they will have had sufficient time to register and familiarise themselves with their key tax obligations. As a further safeguard, the government could also consider a grace period for those renewing licences. As described in the above chapter, this would ensure that existing licence holders have sufficient time to understand and comply with new requirements. It would also ensure that any licence holders who are in the hidden economy have sufficient time to come forward and declare this to HMRC before they face any restrictions on their licence.
102. The government's view is that providing this evidence as part of a licence renewal process would be a proportionate and achievable test to meet for most customers. However, the government also recognises that some customers may face challenges in supplying the required evidence. We are keen to hear views on how the needs of these customer groups can be accommodated through any proposals to introduce conditionality.

Question 11: What one-off and ongoing costs and administrative burdens do you think will arise as a result of this proposal? Please provide evidence on the extent to which these proposals would minimise additional administrative burdens for licensing bodies?

Question 12: Are there any extra steps or safeguards that should be considered, particularly for customer groups who may find it difficult to provide proof that they are registered for tax?

Minimising impacts upon customers' privacy

103. A further aim of these proposals is to strike a suitable balance between the privacy of customers and the risks posed to the tax system by the hidden economy. The importance of customer privacy would be a key consideration in the development of any process to verify tax registration status.

104. The proposals set out in the above chapter may, in some cases, give licensing authorities the power to request personal documentation relevant to a person's tax registration status as part of a licence renewal process.
105. Public sector licensing authorities have protocols to keep sensitive customer information secure, but the government would consider it very important that stringent standards are in place to safeguard any tax-related information supplied by customers.

Question 13: Do you agree that the proposals set out in chapter 3 strike an appropriate balance between the need to safeguard customer privacy and to address risks posed by the hidden economy? Are there any different or additional safeguards that the government should consider?

Minimising burdens for licensing authorities

106. The government also intends that any process to introduce conditionality should minimise burdens upon licensing authorities. It also wants to ensure that any changes do not alter the regulatory effectiveness of existing regimes and processes – for example, by ensuring that they support existing and ongoing compliance with licencing rules. The changes proposed in chapter 3 would be likely to require some additions to licensing systems or forms, introducing new fields to require additional information about an applicant's tax-registration status. The government is keen to work with licensing authorities to identify how this could be achieved with minimal changes to existing processes. HMRC will also take account of the new burdens doctrine¹² in developing these proposals.
107. Staff administering checks outlined in chapter 3 would also need to familiarise themselves with any new process to deliver conditionality. To assist with this, HMRC intends to issue guidance to licensing authorities, offering assistance and support in familiarisation.
108. The process described in Chapter 3 could be achieved by asking sets of proscribed questions and carrying out checks based on clearly defined criteria. It would not be HMRC's intention that licensing bodies will need to provide guidance on individual queries or make assessments of people's tax status. HMRC provides a range of services to customers intended to support them in managing their tax affairs, and the process described in chapter 3 would not be intended to duplicate this.
109. Nonetheless, in developing conditionality, HMRC will work closely with licensing authorities to identify an approach that works in their interests. The government recognises that a one-size-fits-all approach may not work for different licensing schemes identified in this consultation.

Question 14: please provide evidence on the extent to which these proposals would minimise administrative burdens for licensing authorities. What factors should be considered to ensure that changes do not alter the regulatory effectiveness of existing regimes and processes? Are there any extra steps or safeguards that should be considered?

¹² The new burdens doctrine is part of a suite of measures to ensure Council Tax payers do not face excessive increases. Further information is available at: <https://www.gov.uk/government/publications/new-burdens-doctrine-guidance-for-government-departments>

Appeals

110. The proposals in chapter 3 would require licensing authorities to refuse to process licences in cases where an applicant is not registered for tax. The chapter provides suggests the circumstances in which this action may be required.
111. In addition, where HMRC identifies that information provided by a licence holder is false, the licensing authority could take action against that person (including after a licence has been granted), since it is, in some cases, an offence to provide false information to a licensing authority.
112. In each of these cases, applicants may have a right to appeal the licensing authority's decision.

Question 15: Please describe appeal mechanisms that would, or should, apply in relation to the proposals detailed in chapter 3. Please describe any additional one-off and on-going costs or any administrative burdens associated with these proposals, and how these could be kept to a minimum.

Chapter 5: next steps and further options

113. HMRC will evaluate delivery options in light of responses to this consultation, and will issue a response.
114. The government plans to bring forward draft legislation to implement conditionality, and this will be informed by the outcome of this consultation. The government may consider changes to a smaller number of the licences described in chapter 2 initially, with the possibility of broadening this out further at a later date.
115. As described in chapter 2, HMRC also consulted last year on broader proposals to apply conditionality to wider services, such as services offered to businesses by private sector providers. The government would like to explore the potential for the proposals outlined in this consultation to act as a first step in a longer-term roadmap for developing conditionality. This could, in time, see simple tax checks integrated into more of the essential services or platforms that businesses use to trade.
116. The government recognises that the design of these proposals, and their impacts upon customers and third parties would need to be carefully assessed. They would also be developed in line with the government's ongoing proposals to transform tax and payments for HMRC customers.
117. Longer-term options to develop conditionality could drive down hidden economy activity on a larger scale, and support a level playing field for businesses across the UK.
118. However, as the government acknowledged in response to its earlier consultation, these longer term proposals would also carry a larger range of challenges and dependencies which would require careful consideration. The government is keen to continue dialogue with providers of relevant services and their representative bodies to consider further the role that they can play in promoting tax compliance amongst those who use their services.

Chapter 6: Assessment of Impacts

Summary of Impacts

Exchequer impact (£m)	2016-17	2017-18	2018-19	2019-20	2020-2021
	Final costing will be based on the outcome of this consultation and any subsequent delivery measures. This will be subject to scrutiny by the Office for Budget Responsibility.				
Economic impact	This proposal would not be expected to have a significant economic impact.				
Impact on individuals, households and families	This proposal would not be expected to have an impact on individuals, households, or families. There is no impact on family formation, stability or breakdown.				
Equalities impacts	HMRC has considered the equalities impact and it is not expected that this measure would have a negative impact on any equality group.				
Impact on businesses and Civil Society Organisations	<p>Conditionality would be likely to impose new requirements upon businesses to demonstrate that they are registered for tax before accessing licences. This would include the majority of businesses who are compliant with their tax obligations. The exact way that customers would fulfil these obligations will depend on the final design of any policy measures. However, the consultation outlines processes that would be intended to impose only minimal obligations upon compliant customers.</p> <p>This reflects feedback in response to HMRC's first consultation on conditionality; most responses said that any approach to conditionality must minimise burdens upon compliant businesses and providers of licences and business services. We will progress work to identify, and consider ways to minimise, burdens throughout this consultation.</p>				
Impact on HMRC or other public sector delivery organisations	<p>If the government decides to progress conditionality proposals following this consultation, impacts upon HMRC or other public sector organisations will be determined at this stage, and will depend upon the final policy design. Costs to HMRC could include IT costs, such as those associated with any changes to HMRC digital systems to facilitate tax-registration checks. It could also include staff costs associated with dealing with reports submitted by licensing bodies and/or supporting licensing bodies in administering checks on applicants' tax-registration status.</p> <p>Conditionality may have an operational impact upon licensing bodies (either central or local government) if new tax registration</p>				

	<p>conditions are introduced for licences that they administer. In particular, this would include costs to licensing bodies in familiarising licensing teams with new proposals and costs associated with administering checks on applicants' tax-registration status. It would also involve any costs associated with amending licensing forms and/or licensing systems to include new questions on applicants' tax registration status.</p> <p>If conditionality proposals would give licensing bodies new powers or obligations to withhold access to licensing, then there may also be costs associated with administering and responding to appeals against relevant licensing decisions.</p>
Other impacts	<p>Other impacts have been considered and none have been identified. HMRC seeks views from respondents as part of this consultation on any other potential impacts of this proposal.</p>

Chapter 7: Summary of Consultation Questions

Question 1: Please provide comments or evidence on the suitability of the government's proposals to apply conditionality to one or more of the licensing schemes outlined above. In your answer, please comment on:

- The extent to which checks on people's tax-registration status would address problems highlighted in the relevant sectors, or whether additional or alternative measures of compliance should be considered.
- How effective conditionality would be in improving standards of tax compliance in the sectors concerned.
- Any positive or negative effects that conditionality would have upon the compliant majority who trade in the relevant sectors; please provide details of any additional one-off or ongoing costs that might be incurred.

Question 2: Please provide comments or evidence on the suitability of applying forms of conditionality – or similar approaches to promote tax compliance – in the construction sector?

- Are there any other sectors that the government should consider for similar applications of conditionality?

Question 3: please describe how tax-registration or a similar standard of compliance could be introduced into existing terms and conditions of licences:

- Would it be best to introduce tax conditionality as a new, standalone condition of licences, or would it better included as a consideration with fit-and-proper person or similar checks?
- Would tax-registration be the best standard of compliance, or should a similar or broader standard of compliance be introduced – if so, what additional factors should be considered?

Question 4: please comment on the proposed process for introducing tax checks into new licences.

- How effective would it be in promoting registration?
- How easily could the required changes be introduced into licensing processes?
- Please provide details of any additional one-off and ongoing costs that might be incurred.

Question 5: please provide evidence on the likely effectiveness of these proposals in motivating more applicants to register with HMRC.

Question 6: please provide further evidence on the suitability of the options described for verifying the tax-registration status of people applying for licences.

- If evidence of an applicant's registration status is generated through personal or business tax accounts, how could applicants transfer this to a licensing authority in a secure and efficient way?
- If evidence is generated through use of documentation, how could applicants transfer this to a licensing authority in a secure and efficient way?
- Would an option be needed for those who do not engage digitally with HMRC?

Question 7: How frequently would applicants have a permissible reason for not being registered in the sectors outlined in chapter 2?

- If applicants have a permissible reason for not being registered, how should they be able to demonstrate this in order to obtain the licence?
- How can HMRC ensure that any process is simple for applicants and licensing authorities to administer?

Question 8: Should licensing authorities refuse to process licences where no evidence is provided to verify an applicant's declaration that they are registered for tax?

Question 9: Please comment on data powers that might be needed to support the tax-registration checks described in this chapter.

Question 10: please comment on the circumstances in which HMRC could disclose relevant information back to a licensing authority.

- What action would licensing authorities wish to take in these cases?
- Are there circumstances in which licensing authorities would wish to be informed about a licence holder engaging in tax non-compliance, beyond a failure to register for tax? Please describe what these would be.

Question 11: What one-off and ongoing costs and administrative burdens do you think will arise as a result of this proposal? Please provide evidence on the extent to which these proposals would minimise additional administrative burdens for licensing bodies?

Question 12: Are there any extra steps or safeguards that should be considered, particularly for customer groups who may find it difficult to provide proof that they are registered for tax?

Question 13: Do you agree that the proposals set out in chapter 3 strike an appropriate balance between the need to safeguard customer privacy and to address risks posed by the hidden economy? Are there any different or additional safeguards that the government should consider?

Question 14: please provide evidence on the extent to which these proposals would minimise administrative burdens for licensing authorities. Are there any extra steps or safeguards that should be considered?

Question 15: Please describe appeal mechanisms that would, or should, apply in relation to the proposals detailed in chapter 3. Please describe any additional one-off and on-going costs or any administrative burdens associated with these proposals, and how these could be kept to a minimum.

Chapter 8: The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the best options for delivery and to develop a framework for implementation.

How to respond

Please provide responses to this consultation no later than 2 March 2018.

A summary of the questions in this consultation is included at chapter 7.

Please send e-mail responses to:
isbc.compliancepolicy@hmrc.gsi.gov.uk

Please send written responses to:
Georgina Treacy, HMRC
Room G/72
100 Parliament Street
London
SW1A 2BQ

Telephone enquiries 03000 599937 (from a text phone prefix this number with 18001)

Please do not send consultation responses to the Consultation Coordinator.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC's GOV.UK pages](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the 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 with, amongst other things, 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 HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

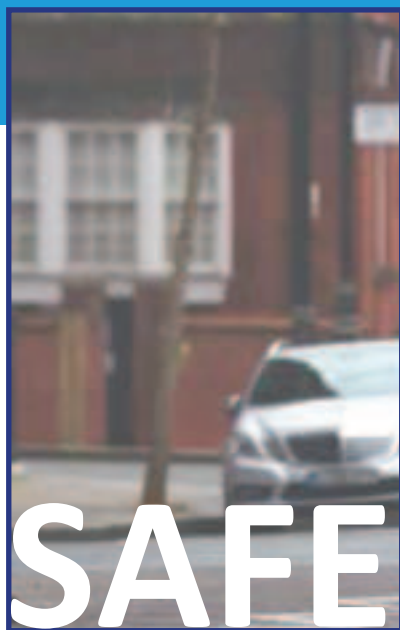
If you have any comments or complaints about the consultation process please contact:

John Pay, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Guidance on determining the suitability of applicants and licensees in the hackney carriage and private hire trades



Consultation version, February 2018



Institute of **Licensing**



CONSULTATION DRAFT

In December 2015, the Institute of Licensing established a working party to look at the creation of a model or standard set of guidelines in relation to assessing the suitability of applicants and licence holders in relation to taxi drivers, operators and vehicle proprietors, taking into account the character of the applicant or licensee.

The core project group comprises:

1. Stephen Turner, Solicitor at Hull City Council and Licensing lead for the Lawyers in Local Government (Project Group Chair)
2. Jim Button, James Button & Co
3. Philip Kolvin QC, Cornerstone Barristers
4. John Miley, Broxtowe Borough Council and National Chair for NALEO
5. Linda Cannon, previously Licensing Manager for Basingstoke & Dean and Hart Councils, and now private licensing consultant and Chair of the IoL South East Region.
6. Phil Bates, Licensing Manager for Southampton City Council

This 'Guidelines on determining suitability for applicants etc.' is the result of the work of the project team and we welcome views on this consultation draft document. The guidelines include consideration of antecedent history of the applicant or licence holder and its relevance to their 'character' as well as consideration of convictions, cautions and non-conviction information.

The Institute of Licensing is delighted to have the Local Government Association, the National Association of Licensing and Enforcement Officers and Lawyers in Local Government jointly supporting this project with IoL.

We are grateful to others who have contributed to the work of the project group, including former probation officer Hannah Jones (now Housing Officer at Flintshire Council) who has assisted the group in providing the chapter on 'Offenders and Offending'. There are many other contributors and we are grateful to everyone for their contributions. All contributors will be acknowledged in the final post consultation document.

Responding to the consultation

We have provided an online survey to collect responses, and would ask that where possible, the survey is used to submit consultation responses. Please take the time to complete our survey giving us your views on the draft guidelines.

The survey can be accessed via:

https://www.surveymonkey.co.uk/r/Guidelines_on_Suitability_consultation_Feb18

THIS SURVEY WILL BE AVAILABLE UNTIL MIDNIGHT ON 28 FEBRUARY 2018 WHEN THE CONSULTATION PERIOD WILL END.



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Chapter 1: Introduction

- 1.2 The overriding aim of any Licensing Authority when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators, must be the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services.
- 1.3 The relevant legislation provides that any person must satisfy the authority that they are a fit and proper person to hold a licence and that is a test to be applied after any applicant has gained any reasonably required qualifications¹. It is the final part of the process of an application when the decision is made, whether by a committee, sub-committee or an officer under a Scheme of Delegation. It involves a detailed examination of their entire character in order to make a judgment as to their fitness and propriety.
- 1.4 If a licence holder falls short of the fit and proper standard at any time, the licence should be revoked or not renewed on application to do so.
- 1.5 There is no recent Statutory or Ministerial guidance as to how such decisions should be approached or what matters are relevant or material to a decision.
- 1.6 This document is intended to provide guidance on determining suitability, taking into account the character of the applicant or licensee. It can then be used by local authorities as a basis for their own policies: in particular it considers how regard should be had to the antecedent history of the applicant or licence holder and its relevance to their 'fitness and propriety' or 'character'. As with any guidance it need not be slavishly followed but it provides a starting or reference point from which decisions can be made taking into account the particular merits of each case.
- 1.7 A licensing authority policy can take a 'bright line approach' and say "never" in a policy, but it remains a policy, and as such does not amount to any fetter on the discretion of the authority. Each case will always be considered on its merits having regard to the policy, and the licensing authority can depart from the policy where it considers it appropriate to do so. This will normally happen where the licensing authority considers that there are exceptional circumstances which warrant a different decision. This approach was endorsed by the High Court in *R (on the application of Nicholds) v Security Industry Authority*².

¹ Except vehicle proprietors. In those cases there is no "fit and proper" requirement, but the authority has an absolute discretion over granting a licence.

² [2007] 1 WLR 2067



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- 1.8 In preparing this document the Institute's Working Party has consulted with and considered the issues from all perspectives including, Councillors, Licensing Officers, Lawyers, the Hackney Carriage and Private Hire Trades, Academics, the Probation Service and the Police.

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Chapter 2: Offenders and Offending - An Overview

“The aim of local authority licensing of the Hackney and PHV trades is to protect the public.”

- 2.1 With this in mind, Public Protection must be at the forefront of the decision makers mind when determining whether an individual is considered a “fit and proper person” to hold a licence.
- 2.2 This section aims to provide a brief overview of public protection, how to determine risk and factors to be considered when an applicant seeks to demonstrate a change in their offending behaviour.
- 2.3 The licensing process places a duty on the local authority to protect the public. Given the nature of the role, it is paramount that those seeking a living in the trades meet the required standards. As the previous offending behaviour can be considered as a predictor in determining future behaviour as well as culpability, it is essential that the decision maker considers all relevant factors including previous convictions, cautions and complaints and the time elapsed since these were committed.
- 2.4 There has been extensive research into the reasons behind why some individuals commit crimes, why some learn from their mistakes and stop offending whilst others find themselves in a cycle of repeat offending. Several theories have evolved over many years offering insight into the reasons behind offending behaviour. One common theme is that no two crimes are the same and that risk cannot be eliminated, or the future predicted. What can be done, is to examine each case on its individual merits, look at the risks involved along with any change in circumstances since any offences were committed to assist in making the decision.
- 2.5 A key factor when considering an application from an individual with any convictions, cautions or complaints recorded is Public Protection. This includes assessing the risk of re-offending and harm³. Risk assessment tools are regularly employed by those who are responsible for managing individuals that have committed offences. Local Authorities are not always privy to this information and so it is important when they are making decisions around suitability that they have an understanding of offending behaviour and risk of re-offending in generic terms.

³ Kemshall, H. (2008). Understanding the Management of High Risk Offenders (Crime and Justice). Open University Press

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- 2.6 Flaud⁴ noted that risk is in principle, a matter of fact, but danger is a matter of judgement and opinion. He goes on to note that risk may be said to be the likelihood of an event occurring, danger maybe the degree of damage (harm) caused should that event take place⁵.
- 2.7 The National Offender Management Service refers to risk in two dimensions. That being the likelihood that an offence will occur, and the impact / harm of the offence should it happen. Generally, when making a decision around probability and likelihood of re-offending, consideration is needed towards static and dynamic factors.
- 2.8 Static factors are historical and do not change such as age, previous convictions and gender. They can be used as a basis for actuarial assessments and are fundamental in considering an individual's potential to reoffend in future⁶. For example, recent published statistics revealed that 44% of adults are reconvicted within one year of release. For those serving sentences of less than 12 months this increased to 59%⁷. It is also widely accepted that generally persons with a large number of previous offences have a higher rate of proven reoffending than those with fewer previous offences⁸.
- 2.9 Dynamic factors are considered changeable and can vary over time for example attitudes, cognitions and impulsivity⁹. It is documented that the greater the unmet need, the more likely an individual is to re-offend. When considering whether an individual has been rehabilitated, it is important to have regard towards the motivation behind their offending and dynamic risk factors present at the time, against the steps taken to address such factors thus reducing the risk of re-offending.
- 2.10 It is of note that more often than not, problems and/or needs are more frequently observed in offender populations than in the general population¹⁰. Many of these factors are interlinked and embedded in an individuals' past experiences. This can impact upon that person's ability to change their behaviour particularly if the areas identified have not been addressed or support has not been sought. It is of note that such needs will vary

⁴ Flaud, R. (1982). Cited in, Gendreau, P., Little, T. and Goggin, C. (1996). A meta-analysis of the predictors of adult offender recidivism: what works! *Criminology*, 34, 557-607.

⁵ Gendreau, P., Little, T. and Goggin, C. (1996). A meta-analysis of the predictors of adult offender recidivism: what works! *Criminology*, 34, 557-607.

⁶ Craig, L. A. and Browne, K. B (2008). *Assessing Risk in Sex Offenders: A Practitioner's Guide* Paperback.

⁷ Ministry of Justice (2017) *Proven reoffending statistics: July 2014 to June 2015*, London: Ministry of Justice.

⁸ Ministry of Justice (2015): *Transforming Rehabilitation: a summary of evidence on reducing reoffending*. London: Ministry of Justice.

⁹ McGuire, J. (2008). A review of effective interventions for reducing aggression and violence. *Philosophical Transactions of the Royal Society B: Biological Sciences*, 363(1503), 2577-2597

¹⁰ Nash, M. (1999) *Police, Probation and Protecting the Public*. London: Blackwell Press.



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from individual to individual and will rely upon their level of motivation and the nature of the offence committed.

Risk of re-offending:

- 2.11 Increase in crime rates has given rise to extensive publications, theories and changes in legislation with many focusing upon the need for more rehabilitation prospects as a means of reducing re-offending rates. Central to the rehabilitation of offenders is the concept of criminogenic needs. This has been described by the National Offender Management Service as “any area where the offender has needs or deficits, in which a reduction in the need or deficit would lead to a reduction in the risk of re-conviction. An individuals’ ability to address and reduce such needs relies heavily on their motivation to change and desist and often takes place over a period of time”¹¹.
- 2.12 Kurlychek, 2007 in her study noted that “a person who has offended in the past has been found to have a high probability of future offending, but this risk of recidivism is highest in the time period immediately after arrest or release from custody and, thereafter, decreases rapidly and dramatically with age”¹².
- 2.13 A consistent finding throughout criminological literature is that male offenders tend to desist from crime aged thirty years and over¹³. It is well documented that the change occurs for various reasons, for example, as a result of successful treatment, natural maturation or the development of pro social relationships¹⁴. Female offenders are also considered more likely to desist from offending as they mature. The peak age of reported offending for females was 14 compared to 19 for males¹⁵.
- 2.14 Desisting from crime for people who have been involved in persistent offending is a difficult and complex process, likely to involve lapses and relapses. Some individuals may never desist¹⁶. As a result, it is important for individuals to evidence change in their behaviour. Often the only way of achieving this is over time.
- 2.15 The longer the time elapsed since an offence has been committed, the more likely the individual will desist from crime. It is noted that the more a life is lived crime-free, the

¹¹ National Offender Management Service (2016). Public Protection Manual Edition. Proven Reoffending Statistics Quarterly Bulletin, October 2015 to December 2015

¹² Kurlychek, M C, Brame, R (2007). Scarlet letters and recidivism: Does an old criminal record predict future offending? University of South Carolina.

¹³ Serin, R, C. and Lloyd, C.D (2008). Examining the process of offender change: the transitions to crime desistance. 347-364.

¹⁴ Nash, M. (1999) Police, Probation and Protecting the Public. London: Blackwell Press.

¹⁵ Trueman, C.N. (2015). Women and Crime. The History Learning Site. Ingatestone: Essex.

¹⁶ Farrell, S (2005). Understanding Desistance from Crime: Emerging Theoretical Directions in Resettlement and Rehabilitation (Crime and Justice) Paperback.



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more one comes to see the benefits of desistance¹⁷ . Demonstrating a change in offending behaviour and an ability to make effective choices takes time and comes with some ambiguity for those who have committed offences. A study in 2007 looking into previous convictions and the links to re-offending concluded that “individuals who have offended in the distant past seem less likely to recidivate than individuals who have offended in the recent past”¹⁸ .

- 2.16 Although it is not possible to determine the future behaviour of an individual, taking steps to reduce risk and protect the public can be achieved by following correct processes and guidance. Having regard towards an individuals’ previous behaviour and their potential to cause harm as a result of the choices they have made plays a significant part when making a decision as to whether to grant a license. Being able to evidence change in behaviour will involve consideration towards the circumstances at the time of the offence, steps taken to address any issues identified and that persons’ ability to sustain such change. This can be a long process that can only be achieved over time.

¹⁷ Maguire, M., Morgan, R. and Reiner, R. (2002). The Oxford Handbook of Criminology. 3rd Edition. Oxford: Oxford University Press.

¹⁸ Kurlychek, M C, Brame, R (2007). Scarlet letters and recidivism: Does an old criminal record predict future offending? University of South Carolina.

Chapter 3: 'Taxi' Licensing Overview

- 3.1 Taxis are used by almost everyone in our society occasionally, but they are used regularly by particularly vulnerable groups: children; the elderly; disabled people; and the intoxicated, and a taxi driver has significant power over a passenger who places themselves, and their personal safety, completely in the hands of the driver.
- 3.2 Local authorities (districts, unitaries and Welsh Councils) and TfL are responsible for hackney carriage and private hire licensing¹⁹.
- 3.3 The principal legislation is the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976. The purpose of taxi licensing is detailed in the DfT "*Taxi and Private Hire Licensing – Best Practice Guide*" para 8 which states:
- "The aim of local authority licensing of the taxi and PHV trades is to protect the public."
- 3.4 Within the two licensing regimes, there are 5 types of licence: hackney carriage vehicle, private hire vehicle, hackney carriage driver, private hire driver and private hire operator.
- 3.5 In relation to all these licences, the authority has a discretion over whether to grant. Whilst there is some guidance issued by the DfT, there are no national standards.
- 3.6 Drivers and operators cannot be granted a licence unless the authority is satisfied that they are a "fit and proper person" to hold that licence (see Local Government (Miscellaneous Provisions) Act 1976 ss 51 & 59 in respect of drivers; s55 in respect of operators).
- 3.7 There are no statutory criteria for vehicle licences, therefore the authority has an absolute discretion.
- 3.8 In each case, the authority has powers to grant a licence, renew it on application, and during the currency of the licence, suspend or revoke it.
- 3.9 What is the role of each of these, and how do authorities determine an application, or take action against a licence?

¹⁹ Unfortunately, TfL have declined the invitation to contribute to, or participate in, this exercise, so this guidance document concentrates on the position in the remainder of England and Wales.

Taxi Drivers

- 3.10 What is a taxi driver? The term “taxi driver” encompasses two different occupations: hackney carriage drivers and private hire drivers. “Taxi driver” is therefore used as a broad, overarching term to cover both hackney carriage and private hire drivers. In each case there are identical statutory criteria to be met before a licence can be granted and many authorities grant “dual” or “combined” licences to cover driving both types of vehicle.
- 3.11 An applicant must hold a full DVLA or equivalent driver’s licence, have the right to work in the UK, and be a “fit and proper” person²⁰.
- 3.12 The driving licence element is a question of fact. Although there are some issues with foreign driving licences, ultimately a person either has, or does not have a driving licence.
- 3.13 An applicant must also have the right to remain, and work in the UK²¹.
- 3.14 Again, this is ultimately a question of fact and the local authority should follow the guidance issued by the Home Office.²²
- 3.15 It is the whole issue of “fit and proper” that causes local authorities the most difficulties. It has never been specifically judicially defined but it was mentioned in *Leeds City Council v Hussain*²³. Silber J said
- “... the purpose of the power of suspension is to protect users of licensed vehicles and those who are driven by them and members of the public. Its purpose [and], therefore [the test of fitness and propriety], is to prevent licences being given to or used by those who are not suitable people taking into account their driving record, their driving experience, their sobriety, mental and physical fitness, honesty, and that they are people who would not take advantage of their employment to abuse or assault passengers.”
- 3.16 This is reflected in a test widely used by local authorities:
- ‘Would you (as a member of the licensing committee or other person charged with the ability to grant a hackney carriage driver’s licence) allow your son or daughter, spouse

²⁰ Local Government (Miscellaneous Provisions) Act 1976. Section 51(1) covers private hire drivers, and section 59(1) covers hackney carriage drivers.

²¹ Local Government (Miscellaneous Provisions) Act 1976 S51(1)(a)(ii) in respect of private hire drivers and S59(1)(a)(ii) in respect of hackney carriage drivers.

²² “Guidance for Licensing Authorities to Prevent Illegal Working in the Taxi and Private Hire Sector in England and Wales” - Home Office, 1st December 2016 available at <https://www.gov.uk/government/publications/licensing-authority-guide-to-right-to-work-checks>

²³ [2002] EWHC 1145 (Admin), [2003] RTR 199



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or partner, mother or father, grandson or granddaughter or any other person for whom you care, to get into a vehicle with this person alone?’²⁴

3.17 It is suggested that the expression “safe and suitable” person to hold a driver’s licence is a good interpretation which neither adds nor removes anything from the original term of “fit and proper” but brings the concept up to date.

3.18 How can a local authority assess and then judge whether or not someone is safe and suitable to hold a drivers’ licence?

3.19 The local authority has the power to require an applicant to provide

“such information as they may reasonably consider necessary to enable them to determine whether the licence should be granted and whether conditions should be attached to any such licence.”²⁵

This “information” can include any pre-conditions or tests that they consider necessary

3.20 Some of these are universal, such as medical assessments²⁶. Others are required by some authorities, but not others. These include:

- Knowledge tests;
- Driving tests;
- Disability Awareness;
- Signed Declarations;
- Spoken English tests.

3.21 The provision of information in these terms can satisfy the local authority that a person has the skills and competencies to be a professional driver to hold a licence. However, the concepts of safety and suitability go beyond this. There is the character of the person to be considered as well.

3.22 Both hackney carriage and private hire drivers are exempt from the provisions of the Rehabilitation of Offenders Act 1974. This means that there are no “spent” convictions and any and all criminal convictions (apart from “protected convictions” and “protected cautions”²⁷) can be taken into account by the local authority in assessing safety and

²⁴ Button on Taxis – Licensing Law and Practice 4th Ed Bloomsbury Professional at para 10.21

²⁵ Local Government (Miscellaneous Provisions) Act 1976 s57(1)

²⁶ See Local Government (Miscellaneous Provisions) Act 1976 s57(2)

²⁷ “Protected convictions” and “protected cautions” are single, minor and elderly matters that do not appear on any DBS Certificates.



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suitability, but only relevant spent convictions should be considered by the decision maker²⁸.

- 3.23 All Applicants/Licensees should be required to obtain an Enhanced DBS Certificate and to provide this to the Licensing Authority. All Licensees should also be required to maintain it through the DBS Update Service throughout the currency of their licence.
- 3.24 If any applicant has spent six continuous months or more living outside the United Kingdom, evidence of a criminal record check from the country/countries covering the relevant period should be required.
- 3.25 Local authorities should have a policy to provide a baseline for the impact of any convictions, cautions or other matters of conduct which concern a person's safety and suitability²⁹.
- 3.26 The character of the driver in its entirety must be the paramount consideration when considering whether they should be licensed.
- 3.27 There are occasions where unsuitable people have been given licences by local authorities, or if refused by the authority, have had it granted by a court on appeal.
- 3.28 Often this is because of some perceived hardship. Case law makes it clear that the impact of losing (or not being granted) a drivers' licence on the applicant and his family is not a consideration to be taken into account³⁰. This then leads to the question of whether the stance taken by local authorities is robust enough to achieve that overriding aim of public protection.
- 3.29 However, all too often local authorities depart from their policies and grant licences (or do not take action against licensees) without clear and compelling reasons. It is vital that Councillors recognise that the policy, whilst remaining a policy and therefore the Authority's own guidelines on the matter, is the baseline for acceptability. It should only be departed from in exceptional circumstances and for justifiable reasons which should be recorded.
- 3.30 One common misunderstanding is that if the offence was not committed when the driver was driving a taxi, it is much less serious, or even if it was in a taxi but not when passengers were aboard. This is not relevant: speeding is dangerous, irrespective of the situation;

²⁸ See *Adamson v Waveney District Council* [1997] 2 All ER 898

²⁹ As recommended by the DfT "Taxi and Private Hire Licensing – Best Practice Guide" para 59

³⁰ *Leeds City Council v Hussain* [2002] EWHC 1145 (Admin), [2003] RTR 199 and *Cherwell District Council v Anwar* [2011] EWHC 2943 (Admin)



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drink driving is dangerous, irrespective of the situation; bald tyres are dangerous, irrespective of the situation. All these situations put the general public at risk. Violence is always serious. The argument that it was a domestic dispute, or away from the taxi is irrelevant. A person who has a propensity to violence has that potential in every situation. Sexual offences are always serious. A person who has in the past abused their position (whatever that may have been) to assault another sexually has demonstrated completely unacceptable standards of behaviour.

- 3.31 Applicants may claim that they have sought employment in other fields and been precluded as a result of their antecedent history particularly if that contains convictions. They therefore seek to become a licensed driver as an occupation of last resort. This is unacceptable as the granting of a licence would place such a person in a unique position of trust. The paramount responsibility of a Licensing Authority is to protect the public, not provide employment opportunities.
- 3.32 Licensees are expected to demonstrate appropriate professional conduct at all time, whether in the context of their work or otherwise. Licensees should be courteous, avoid confrontation, not be abusive or exhibit prejudice in any way. In no circumstances should Licensees take the law into their own hands. Licensees are expected to act with integrity and demonstrate conduct befitting the trust that is placed in them.
- 3.33 There are those who seek to take advantage of vulnerable people by providing services that they are not entitled to provide, for example by plying for hire in an area where they are not entitled to do so. Licensees are expected to be vigilant of such behaviour and to report any concerns to the Police and the relevant Licensing Authority. Passengers should feel confident to check that the person offering a service is entitled to do so. Licensees should willingly demonstrate that they are entitled to provide the offered service by for example showing their badge.
- 3.34 As a society, we need to ask the question “who is driving my taxi?” and be secure in the knowledge that the answer is “a safe and suitable person”. The vast majority of drivers are decent, law abiding people who work very hard to provide a good service to their customers, and the community at large. However poor decisions by local authorities and courts serve to undermine the travelling public’s confidence in the trade as a whole. Unless local authorities and the courts are prepared to take robust (and difficult) decisions to maintain the standards the local authority lays down, and in some cases tighten up their own policies, the public cannot have complete confidence in taxi drivers. This is detrimental to all involved.

Private Hire Operators

- 3.35 A private hire operator (“PHO”) is the person who takes a booking for a private hire vehicle (“PHV”), and then dispatches a PHV driven by a licensed private hire driver (“PHD”) to fulfil that booking. All three licences (PHO, PHV and PHD) must have been granted by the same authority.³¹ A local authority cannot grant a PHO licence unless the applicant has the right to work in the UK and is a fit and proper person.³² PHOs also often take bookings for hackney carriages³³, which is outside the scope of a PHO Licence and local authorities should be mindful that passengers who are dispatched anything other than a PHV by a PHO will not have the benefit of the safeguards provided by the private hire regime.
- 3.36 As with taxi drivers the role goes far beyond simply taking bookings and dispatching vehicles. In the course of making the booking and dispatching the vehicle and driver, the PHO will obtain significant amounts of personal information. It is therefore vital that PHOs are as trustworthy and reliable as a driver, notwithstanding their slightly remote role.
- 3.37 How then does a local authority satisfy itself as to the “fitness and propriety” or “safety and suitability”?
- 3.38 Spent convictions can be taken into account when determining suitability for a licence, but the applicant (or licensee on renewal) can only be asked to obtain a Basic Disclosure from the Disclosure and Barring Service.
- 3.39 Although this is by no means a perfect system, it does give local authorities a reasonable basis for making an informed decision as to fitness and propriety of an applicant or existing PHO.
- 3.40 To enable consistent and informed decisions to be made, it is important to have a working test of fitness and propriety for PHOs and a suitable variation on the test for drivers can be used:
- “Would I be comfortable providing sensitive information such as holiday plans, movements of my family or other information to this person, and feel safe in the knowledge that such information will not be used or passed on for criminal or unacceptable purposes?”³⁴

³¹ See *Dittah v Birmingham City Council*, *Choudhry v Birmingham City Council* [1993] RTR 356 QBD

³² Section 55(1) Local Government (Miscellaneous Provisions) Act 1976

³³ There is no requirement for a person who takes bookings solely for hackney carriages to hold any form of licence (see *Brentwood Borough Council v Gladen* [2004] EWHC 2500 (Admin); [2005] R.T.R. 12 and *Stockton v Fidler* [2010] EWHC 2430 (Admin); [2011] R.T.R. 23 Admin Crt

³⁴ *Button on Taxis – Licensing Law and Practice* 4th Ed Bloomsbury Professional at para 12.35



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- 3.41 There is a further point to consider in relation to PHOs and that concerns the staff used on the telephones and radios. There is no reason why a condition cannot be imposed on a PHO licence requiring them to undertake checks on those they employ/use within their company to satisfy themselves that they are fit and proper people to undertake that task and retain that information to demonstrate that compliance to the local authority. Any failure on the part of the PHO to either comply with this requirement or act upon information that they obtain (thereby allowing unsuitable staff to work in positions of trust) would then have serious implications on the continuing fitness and propriety of the PHO.
- 3.42 Care should be taken in circumstances where a PHO Licence is sought in the name of a limited company, partnership or other business structure that all the requirements applicable to an individual applicant are made of each director or partner of the applicant organisation³⁵. Only by so doing can a decision be made as to the fitness and propriety of the operating entity.

Vehicle Proprietors

- 3.43 Similar considerations apply to the vehicle proprietors, both Hackney carriage and private hire (referred to here generically as “taxis”). Although the vehicle proprietor may not be driving a vehicle (and if they are they will be subject to their own fitness and propriety test to obtain a drivers’ licence), they clearly have an interest in the use of the vehicle. They will also be responsible for the maintenance of the vehicle, and vehicles that are not properly maintained have a clear impact on public safety.
- 3.44 Taxis are used to transport people in many circumstances, and are seen everywhere across the United Kingdom, at all times of the day and night, in any location. Therefore, taxis could provide a transportation system for illegal activities or any form of contraband, whether that is drugs, guns, illicit alcohol or tobacco, or people who are involved in or are the victims of illegal activity, or children who may be at risk of, or are being, abused or exploited.
- 3.45 In relation to both hackney carriages and private hire vehicles, the local authority has an absolute discretion over granting the licence³⁶ and should therefore ensure that both their enquiries and considerations are robust. It is much more involved than simply looking at the vehicle itself and it is equally applicable on applicants to transfer a vehicle as well as on grant applications.

³⁵ See s57(1)(c) of the 1976 Act.

³⁶ S37 of the 1847 Act in relation to hackney carriages; section 48 of the 1976 Act to private hire vehicles.



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3.46 Again, this is not an exempt occupation for the purposes of the 1974 Act, but exactly the same process can be applied as for Private hire operators – Basic DBS, statutory declaration and consideration of spent convictions. This can then be used in the light of a similar policy in relation to suitability as the authority will already have for drivers and PHOs.

3.47 A suitable test would be:

“Would I be comfortable allowing this person to have control of a licensed vehicle that can travel anywhere, at any time of the day or night without arousing suspicion, and be satisfied that he/she would not allow it to be used for criminal or other unacceptable purposes, and be confident that he/she would maintain it to an acceptable standard throughout the period of the licence?”³⁷

³⁷ Button on Taxis – Licensing Law and Practice 4th Ed Bloomsbury Professional at para 8.98



Chapter 4: Guidance on Determination

- 4.1 As is clear from the overview of Offenders and Offending above, there is no evidence which can provide precise periods of time which must elapse after a crime before a person can no longer be considered to be at risk of reoffending, but the risk reduces over time. In light of that, the suggested timescales below are intended to reduce the risk to the public to an acceptable level.
- 4.2 All members of our society use, and in many cases rely on, hackney carriages and private hire vehicles to provide transportation services. This can be on a regular basis, or only occasionally, but in all cases passengers, other road users and society as a whole must have confidence in the safety and suitability of the driver, the vehicle itself and anyone involved with the booking process.
- 4.3 Ideally, all those involved in the hackney carriage and private hire trades (hackney carriage and private hire drivers, hackney carriage and private hire vehicle owners and private hire operators) would be persons of the highest integrity. In many cases that is true, and the vast majority of those involved in these trades are decent, upstanding, honest and hard-working individuals. Unfortunately, as in any occupation or trade, there are those who fail to conform to those standards.
- 4.4 The purpose of this document is to offer guidance on how licensing authorities can determine whether a particular person is safe and suitable to either be granted a licence in the first place or retain such a licence. As outlined above, a policy can be robust, and if necessary, say never, and each case is then considered on its own merits in the light of that policy.

Pre-application requirements

- 4.5 Licensing authorities are entitled to set their own pre-application requirements. These will vary depending upon the type of licence in question but can include some or all of the following (these are not exhaustive lists):

Vehicles

- Specifications e.g. minimum number of doors, minimum seat size, headroom, boot space etc;
- Mechanical tests and tests of the maintenance of the vehicle e.g. ripped seats etc;
- Emission limits/vehicle age limits.



Drivers

- Medical checks;
- Knowledge of the geographic area;
- Spoken and written English tests;
- Disability awareness training;
- Child sexual exploitation and safeguarding training.

Operators

- Knowledge of the licensing area.

- 4.6 In relation to each of these licences, the licensing authority has discretion as to whether or not to grant the licence.
- 4.7 Drivers and operators cannot be granted a licence unless the authority is satisfied that they are a “fit and proper person” to hold that licence (see Local Government (Miscellaneous Provisions) Act 1976 ss 51 & 59 in respect of drivers; s55 in respect of operators).
- 4.8 There are no statutory criteria for vehicle licences, therefore the authority has an absolute discretion over whether to grant either a hackney carriage or private hire proprietors licence.
- 4.9 “Fit and proper” means that the individual (or in the case of a private hire operators licence, the limited company together with its directors and secretary, or all members of a partnership³⁸) is “safe and suitable” to hold the licence.
- 4.10 In determining safety and suitability the licensing authority is entitled to take into account all matters concerning that applicant or licensee. They are not simply concerned with that person’s behaviour whilst working in the hackney carriage or private hire trade. This consideration is far wider than simply criminal convictions or other evidence of unacceptable behaviour, and the entire character of the individual will be considered. This can include, but is not limited to, the individual’s attitude and temperament.
- 4.11 Convictions for attempt or conspiracy will be regarded as convictions for the substantive crime. A caution is regarded in exactly the same way as a conviction³⁹. Fixed penalties and community resolutions will also be considered in the same way as a conviction⁴⁰.

³⁸ Section 57(2)(c) of the Local Government (Miscellaneous Provisions) Act 1976 allows a local authority to consider the character of a company director or secretary, or any partner.

³⁹ This is because a caution can only be imposed following an admission of guilt, which is equivalent to a guilty plea on prosecution.

⁴⁰ This is because payment of a fixed penalty indicates acceptance of guilt, and a community resolution can only be imposed following an admission of guilt.



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- 4.12 It is important to recognise that matters which have not resulted in a criminal conviction (whether that is the result of an acquittal, a conviction being quashed, decision not to prosecute or an investigation which is continuing where the individual has been bailed) can and will be taken into account by the licensing authority. In addition, complaints where there was no police involvement will also be considered. Within this document, any reference to "conviction" will also include matters that amount to unacceptable behaviour, but which have not resulted in a conviction.
- 4.13 In the case of any new applicant who has been charged with any offence and is awaiting trial, the determination will be deferred until the trial has been completed or the charges withdrawn. Where an existing licensee is charged, it will be for the licensing authority to decide what action to take in the light of these guidelines.
- 4.14 In all cases, the licensing authority will consider the conviction or behaviour in question, what weight should be attached to it and each and every case will be determined on its own merits, but in the light of these guidelines.
- 4.15 Any offences committed, or unacceptable behaviour reported whilst driving a hackney carriage or private hire vehicle, concerning the use of a hackney carriage or private hire vehicle, or in connection with an operator of a private hire vehicle will be viewed as aggravating features, and the fact that any other offences were not connected with the hackney carriage and private hire trades will not be seen as mitigating factors.
- 4.16 As the licensing authority will be looking at the entirety of the individual, in many cases safety and suitability will not be determined by a specified period of time having elapsed following a conviction or the completion of a sentence. Time periods do have relevance, but they are not the determining factor.
- 4.17 In addition to the nature of the offence or other behaviour, the quantity of matters and the period over which they were committed will also be considered. Patterns of repeated unacceptable behaviour are likely to cause greater concern than isolated occurrences as such patterns can demonstrate a propensity for unacceptable behaviour.
- 4.18 Most applicants or licensees will have no convictions and that is clearly the ideal situation. In relation to other people, it is accepted that people do make mistakes, and it is further accepted that many learn from those mistakes and do not continue to commit further offences. Accordingly, in many cases an isolated conviction, especially if committed some time ago, will not prevent the grant or renewal of a licence.
- 4.19 It is also important to recognise that once a licence has been granted, there is a continuing requirement on the part of the licensee to maintain their safety and suitability. The licensing authority has powers to take action against the holder of all types of licence

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(drivers, vehicle and operator) and it must be understood that any convictions or other actions on the part of the licensee which would have prevented them being granted a licence on initial application will lead to that licence being revoked.

- 4.20 Any dishonesty by any applicant or other person on the applicant's behalf which is discovered to have occurred in any part of any application process (e.g. failure to declare convictions, false names or addresses, falsified references) will result in a licence being refused, or if already granted, revoked and may result in prosecution.
- 4.21 As the direct impact on the public varies depending upon the type of licence applied for or held, it is necessary to consider the impact of particular offences on those licences separately. However, there are some overriding considerations which will apply in all circumstances.
- 4.22 Generally, where a person has more than one conviction, this will raise serious questions about their safety and suitability. The licensing authority is looking for safe and suitable individuals, and once a pattern or trend of repeated offending is apparent, a licence will not be granted or renewed.
- 4.23 Where an applicant/licensee is convicted of an offence which is not detailed in this guidance, the licensing authority will take that conviction into account and use these guidelines as an indication of the approach that should be taken.
- 4.24 These guidelines do not replace the duty of the licensing authority to refuse to grant a licence where they are not satisfied that the applicant or licensee is a fit and proper person. Where a situation is not covered by these guidelines, the authority must consider the matter from first principles and determine the fitness and propriety of the individual.

Crimes resulting in death

- 4.25 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 as a driver, operator or proprietor.

Drivers

- 4.26 As the criteria for determining whether an individual should be granted or retain a hackney carriage drivers licence are identical to the criteria for a private hire driver's licence, the two are considered together.
- 4.27 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the

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vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.

- 4.28 As stated above, where an applicant has more than one conviction, serious consideration will need to be given as to whether they are a safe and suitable person.
- 4.29 In relation to single convictions, the following time periods should elapse following completion of the sentence (or the date of conviction if a fine was imposed) before a licence will be granted:

Offences involving violence

- 4.30 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

- 4.31 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

- 4.32 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.
- 4.33 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

- 4.34 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

- 4.35 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.



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- 4.36 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.

Motoring convictions

- 4.37 Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. Any motoring conviction demonstrates a lack of professionalism and will be considered seriously. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the grant of a licence or may not result in action against an existing licence. Subsequent convictions reinforce the fact that the licensee does not take their professional responsibilities seriously and is therefore not a safe and suitable person to be granted or retain a licence.

Drink driving/driving under the influence of drugs/using a mobile phone whilst driving

- 4.38 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 5 years have elapsed since the completion of any sentence or driving ban 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.
- 4.39 Where an applicant has a conviction for using a mobile phone whilst driving, a licence will not be granted until at least 3 years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

Other motoring offences

- 4.40 A minor traffic or vehicle related offence is one which does not involve loss of life, driving under the influence of drink or drugs, driving whilst using a mobile phone, and has not resulted in injury to any person or damage to any property (including vehicles). Where an applicant has a second conviction for a minor traffic offence or similar offence, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed.
- 4.41 A major traffic or vehicle related offence is one which is not covered above and also any offence which resulted in injury to any person or damage to any property (including vehicles). It also includes driving without insurance or any offence connected with motor insurance. Where an applicant has a conviction for a major traffic offence or similar offence, a licence



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will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Hackney carriage and private hire offences

- 4.42 Where an applicant has a conviction for an offence concerned with or connected to hackney carriage or private hire activity (excluding vehicle use), a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Vehicle use offences

- 4.43 Where an applicant has a conviction for any offence which involved the use of a vehicle (including hackney carriages and private hire vehicles), a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Private Hire Operators

- 4.44 A private hire operator (“an operator”) does not have direct responsibility for the safety of passengers, other road users or direct contact with passengers who are in the private hire vehicle (except where they are also licensed as a private hire driver). However, in performing their duties they obtain and hold considerable amounts of personal and private information about their passengers which must be treated in confidence and not revealed to others or used by the operator or their staff for criminal or other unacceptable purposes.
- 4.45 As stated above, where an applicant has more than one conviction, serious consideration will need to be given as to whether they are a safe and suitable person.
- 4.46 Operators must ensure that any staff that are used within the business (whether employees or independent contractors) and are able to access any information as described above are subject to the same standards as the operator themselves. This can be effected by means of the individual staff member being required by the operator to obtain a basic DBS certificate. If an operator is found not to be applying the required standards and using staff that do not meet the licensing authority’s overall criteria, that will lead to the operators’ licence being revoked.
- 4.47 As public trust and confidence in the overall safety and integrity of the private hire system is vital, the same standards will be applied to operators as those applied to drivers, which are outlined above.

Vehicle proprietors

- 4.48 Vehicle proprietors (both hackney carriage and private hire) have two principal responsibilities.



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- 4.49 Firstly, they must ensure that the vehicle is maintained to an acceptable standard at all times.
- 4.50 Secondly, they must ensure that the vehicle is not used for illegal or illicit purposes.
- 4.51 As stated above, where an applicant has more than one conviction, serious consideration will need to be given as to whether they are a safe and suitable person.
- 4.52 As public trust and confidence in the overall safety and integrity of the private hire system is vital, the same standards will be applied to proprietors as those applied to drivers, which are outlined above.

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TDBC & WSC Licensing service work plan 2018/19

	Key dates/events/scheduled work	Day to day duties
January 2018	<ul style="list-style-type: none"> Corporate Performance quarterly stats due for period Oct to Dec. Review of statement of licensing policy for Licensing Act 2003 due 	<ul style="list-style-type: none"> Complete 95% of all licence applications within 14 days of decision being reached. Record and investigate complaints and requests made against licensed premises, persons and vehicles or which relate to any suspected licensable activity. Provide information and advice to licence holders and members of the public about relevant legislation and licensable (and non-licensable) activities, whether by phone, email or face to face. Facilitate the setting up of contracts and sending of invoices to customers who are required to pay periodic licence fees and suspend/revoke licences where fees not paid. Respond to requests for information made under Freedom of Information, Data Protection and Finance Acts. Co-ordinate and contribute to the Safety Advisory Group (SAG).
February 2018		
March 2018		
April 2018	<ul style="list-style-type: none"> Home Office Licensing Act 2003 statistical return due. Gambling Commission Gambling Act 2005 return due. Corporate Performance quarterly stats due for period Jan to Mar. 	
May 2018		
June 2018		
July 2018	<ul style="list-style-type: none"> Corporate Performance quarterly stats due for period Apr to Jun. 	
August 2018		
September 2018	<ul style="list-style-type: none"> Annual performance reviews due for team. 	
October 2018	<ul style="list-style-type: none"> The Animal Welfare (Licensing of Activities Involving Animals) Regulations 2018 take effect. 	

	<ul style="list-style-type: none"> Corporate Performance quarterly stats due for period Jul to Sept. 	
November 2018		
December 2018		
January 2019	<ul style="list-style-type: none"> Corporate Performance quarterly stats due for period Oct to Dec. 	
February 2019		
March 2019		
April 2019	<ul style="list-style-type: none"> Corporate Performance quarterly stats due for period Jan to Marc. 	
May 2019		

Unassigned policy and procedure development/aspirational work (in no particular order)

- Re-write taxi driver knowledge tests for TDBC/WSC;
- Publish list of accessible taxis in accordance with Equality Act 2010 powers;
- Introduce practical driving test for taxi drivers;
- Formally adopt fit and proper person test referred to in 'Button on Taxis' as part of policy;
- Re-write/re-format 'Taxi Handbook';
- Update application forms, licence and letter templates to ensure fit for purpose (esp. taxi licences, to include list of offences);
- Review taxi driver medical policy to increase frequency (esp. for younger drivers) and review medical form;
- Review street trading policy;
- Write and publish dangerous wild animal licence webpage;
- Develop online register of licences, to reduce avoidable contact.
- Establish program of compliance checks (esp. for LA2003 premises with possible some self assessment for lower risk premises).
- Mystery shopper intelligence gathering across taxis and animal boarders.

West Somerset Council

Minutes of the Licensing Sub-Committee Hearing for a Variation of the Premises Licence for Doniford Farm Park, Doniford, held on 4 October 2017 at 2.00pm in the Council Chamber, West Somerset House, Killick Way, Williton, TA4 4QA.

Present: Councillor Lillis (Chairman)
Councillors Thwaites and Kingston-James

Officers: Leigh-Ann Fumagalli (Licensing Officer), Lesley Dolan (SHAPE Legal Services), Nicola Dyer (SHAPE Legal Services) and Clare Rendell (Democratic Service Officer).

Applicant: Mrs Annabel Cottrell (Applicant), Mr Adrian Pring (Applicant), Mr Chris Cottrell and Mrs Virginia Pring.

Interested Parties: Yolanda Roberts, Chris Owen, Norman Baker, Keith McConnell, Chris Baggott, Mary Owen, Marilyn Green and Mike Green.

(The meeting commenced at 2.00pm)

The Chairman introduced himself and his fellow Sub-Committee Members and officers then explained their roles. As well as acknowledging the documents he explained the procedure to be followed during this meeting of the Sub-Committee.

The Licensing Officer introduced her previously circulated report. An application had been received from **Mrs Cottrell and Mr Pring** for a Variation of a Premises Licence to be granted for **Doniford Farm Park, Doniford, Watchet**.

The Applicant was seeking authorisation for an extension to the licensable hours for the sale of alcohol, the addition of the provision of regulated entertainment, late night refreshment and the removal of condition two on the current licence. Following the application being received, the Licensing Department had duly notified Environmental Health and Avon and Somerset Constabulary. Following the notification, objection notices had been received from Interested Parties.

The Licensing Officer informed the Sub-Committee that a mediation meeting was held on 13 September 2017 between the Applicant and Interested Parties that had made representations. The Applicant had outlined the plans for the premises and the Interested Parties had put forward their concerns and asked questions in relation to the planned activities and events at the premises. An agreed position was not reached. However, suggestions were put forward by those that had made representations such as limited use of the outside areas and the number of events held at the premises.

Detailed in the Officer's report were the four licensing objectives. The Sub-Committee was reminded that the Licensing Policy required the Licensing Authority to carry out its various functions to promote these objectives. These were:-

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

The objectives would be paramount considerations when determining a course of action in relation to the Licensing Authority's licensing functions. Each objective would be given equal importance.

The Legal Representative for the Sub-Committee outlined the licensing objectives for the Interested Parties and confirmed that the Sub-Committee could only consider factors that affected the objectives directly. She also gave a list of factors that could not be considered and highlighted Planning as one of the main issues that could not be discussed.

The following question was made by the Interested Parties of the Licensing Officer following presentation of her report (Responses are shown in italics):-

- Concern was raised that the plans used in the report were out of date.
The plans were used simply to outline the licensable area.

The following comments and points were presented by the Interested Parties in relation to their written objections:-

- Concern was raised that the Applicant did not have a business plan.
- Concern was raised about the potential noise nuisance caused by events held at the premises.
- Clarification was requested that if the licence was not granted, the Applicant could still apply for 15 events throughout the year via a Temporary Events Notice.
The Licensing Officer gave clarification.
- The Interested Parties were concerned on the level of noise reported in the application. The Applicant had used 80 decibels as an example, but this was louder than the recommended safe level of noise.
- Concern was raised on the noise created by and the drunken behaviour of customers when they left the premises late at night and the disruption caused for local residents. There was not a suitable infrastructure in place to be able to deal with any anti-social behaviour.
- Concern was raised on the building to be used for the events, this was not a proper structure and was not adequately sound proofed.
- The Interested Parties requested advance notification of events that were due to be held at the premises so they could advise their guests of any disruption.
- Concern was raised on a recent event held locally and the noise it had created could be heard for miles around.
- There was a large housing development planned for the surrounding area which would lead to increased traffic on the road.
- Concern was raised on public safety. The roads were very narrow with no pavements or street lighting.
- Concern was raised that the application appeared to change the use of the premises from a farm and restaurant to a late night venue.
- Concern was raised over the welfare of the animals that resided at the farm.
- The Interested Parties supported the business in its current format because it did not disrupt the quiet nature of the area.
- The Interested Parties highlighted that at mediation when they had asked how many events would be held and how many customers were likely to visit the premises, no details were given.
- The Interested Parties did not believe that a venue was needed in the area and it would not help the local economy.
- The Interested Parties thanked the Sub-Committee for the chance to speak at the meeting.

The following comments and points were presented by the Applicant in relation to their written application:-

- The Applicant had lived in the area all of her life and was involved with the local church and groups. She wanted to be able to give back to the community and hoped to build a relationship with the local residents.
- She lived on the premises and would continue to do so. A small tin fence had been erected around the property to give the Applicant and her family some privacy.
- The Applicant confirmed that the day to day operation of the farm and restaurant would continue between 9.00am and 6.00pm. After the hours of 6.00pm, she wanted the premises to be used in the same manner as a village hall.
- The Applicant advised the Sub-Committee there was a business plan available.
- The premises was a brick building that was double glazed and insulated. The Applicant confirmed the premises would be surveyed to reassure the local residents.
- The Applicant wanted to put Doniford Farm back on the map and create jobs for local residents.

The following questions and statements were made by the Sub-Committee of the Applicant following presentation of their report: (Responses are shown in italics):-

- Members queried whether the Applicant would be flexible on the closing times for the sale of alcohol and the provision of regulated entertainment.
Yes she would be flexible, but she would prefer the times for both the sale of alcohol and the provision of regulated entertainment to be kept the same for ease of managing the licence. The Applicant was the Designated Premises Supervisor so she would be on site for all events. She had applied for a closing time of 11.00pm because this was the time stated that noise was acceptable.
- Members asked if the Interested Parties would be happy with a closing time between 10.00pm and 11.00pm.
No they did not agree with this. They were concerned on how it would be policed. The Licensing Officer interjected and informed the Interested Parties that they would be relied upon to report any issues or breaches and a review could be requested.
- Would the Applicant be willing to restrict the noise to the back of the building.
Yes she would. Concern was raised by the Interested Parties that noise still travelled. They had heard the noise from the Watchet Festival which was located on the other side of the town.

The following question was raised by the Legal Representative for the Sub-Committee of the Applicant following presentation of their report: (Responses are shown in italics):-

- Clarification was sought that the Applicant would be happy with a closing time for the sale of alcohol between 10.00pm and 11.00pm, seven days a week. She would ensure everyone was off the premises by that time and would prefer the closing time for the provision of regulated entertainment be the same to make the licence easier to manage.
Yes. That was correct.

The following questions and statements were raised by the Interested Parties of the Applicant following presentation of their report: (Responses are shown in italics):-

- Concern was raised because the types of groups likely to use the premises would not need it to be open until midnight.
The Applicant had applied for midnight to allow for flexibility when customers booked events.
- The Interested Parties questioned whether the Applicant would compromise and only allow inside events to be booked. This meant that the noise levels would be kept to a minimum.
Yes the Applicant was happy to compromise.
- Could the events be limited to a certain amount per year?

That would be difficult because they were unsure of what events would be requested by customers.

The Legal Representative for the Sub-Committee reminded the Interested Parties that planning, noise and light pollution were not factors that could be considered when the Sub-Committee made their decision.

Closing Statements

The Applicant made a brief closing statement to the Members of the Sub-Committee:-

- They were happy to compromise but ultimately wanted to run a successful business.
- The Applicant highlighted that the residents of Bridge Farm supported the application.

The Interested Parties made a brief closing statement to the Members of the Sub-Committee:-

- They still objected to the application.
- The Interested Parties did not believe that the Applicant understood the area and the issues faced by the local residents.

The Sub-Committee Members retired at 3.35pm.

The Sub-Committee Members returned at 4.45pm.

The Sub-Committee Decision

The Legal Representative of the Sub-Committee read out the following decision:-

“This was the decision of the Licensing Sub-Committee held at West Somerset House on 4 October 2017.

The Sub-Committee had taken into account the following:-

- The Licensing Act 2003 as amended by the Police Reform and Social Responsibility Act 2011;
- The Statutory Guidance issued under Section 182 of the Licensing Act 2003 (re-issued in April 2017);
- The powers of the Licensing Authority to deal with this application contained within Section 18 of the Licensing Act 2003;
- The obligation to promote the four licensing objectives as set out in Section 4(2) of the 2003 Act; and
- The Council’s Statement of Licensing Policy referred to in the Licensing Officer’s report.

Under the statutory guidance issued under Section 182 of the Licensing Act 2003, all parties were expected to work together in partnership to ensure that the licensing objectives were promoted collectively. The Licensing Officer had advised the Sub-Committee that mediation had been attempted between the parties, however an agreed position was not reached.

In regard to the alleged breaches of planning control, it was not within the remit of the Licensing Sub-Committee to discuss and determine the merits of the planning issues. The licensing and planning regimes were not mutually exclusive.

The Licensing Sub-Committee must carry out its functions with a view to promote the four licensing objectives -

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

Accordingly the Sub-Committee had focused its decision making on the likely effect of the grant of the application on the promotion of those objectives. In its promotion of the four licensing objectives, the Sub-Committee had to balance the interests of the Interested Parties against the business interests of the Applicants.

It was the decision of the Sub-Committee that the licence would be varied as follows:-

- The Applicants had agreed to close the premises at 11.00pm every day.
- In regard to the supply of alcohol both on and off the premises, the terminal hour would be 10.45pm;
- All live music, recorded music and anything of a similar description, as set out in Section H of the application, would cease at 11.00pm, with sound levels in respect of all live music, recorded music and anything of a similar description, reduced from 10.30pm to the terminal hour;
- The Applicants had to ensure that all patrons had left the site by 11.15pm and that appropriate signage was erected that advised patrons to leave the premises in a quiet, orderly and respectful way so not to disturb neighbours in the vicinity;
- No licensed activities were to take place on the area to the rear and side of the premises after 10.00pm; and
- A variation in non-standard timings be granted in accordance with the application.

All parties were reminded that there were rights of appeal against the Licensing Authority's decision pursuant to Section 181 and Schedule 5 of the Licensing Act 2003. An appeal had to be made to the Magistrates' Court and commenced within 21 days of notification of the Authority's decision.

All parties were reminded of the procedures contained within the Licensing Act 2003 which related to the review of the Premises Licence. This provision permitted nearby residents, businesses or responsible authorities to apply for a review of a Premises Licence where problems with crime and disorder, public safety, public nuisance or the protection of children from harm had occurred. The Sub-Committee respectfully reminded all parties that for any review to go ahead, evidence would need to be collected of incidents which had occurred that undermined the licensing objectives.

That was the decision of this Licensing Sub-Committee."

The Chairman declared the meeting closed.

(The meeting closed at 4.50pm)