



Public Document Pack

North Devon Council
Brynsworthy Environment Centre
Barnstaple
North Devon EX31 3NP

K. Miles
Chief Executive.

LICENSING AND COMMUNITY SAFETY COMMITTEE

A meeting of the Licensing and Community Safety Committee will be held in the Barum Room - Brynsworthy on **TUESDAY, 8TH OCTOBER, 2019 at 10.00 am.**

(NOTE: A location plan for the Brynsworthy Environment Centre is attached to the agenda front pages. There are limited car parking spaces in the Visitors parking area. If no spaces are available, please find an alternative space. Please ensure that you enter your name and car registration details in the book in front of the entrance door)

Members of the Licensing and Community Safety Committee Councillor Tucker (Chairman)

Councillors Cann, Biederman, Bulled, Campbell, Chesters, Gubb, Henderson, Hunt, Luggar, Mack, Orange, D. Spear, L. Spear and York

AGENDA

1. Apologies for Absence
2. To approve as a correct record the minutes of the meeting held on 18th June 2019 (attached) (Pages 5 - 8)
3. Items brought forward which in the opinion of the Chairman should be considered by the meeting as a matter of urgency
4. Declarations of Interests
5. To agree the agenda between Part 'A' and Part 'B' (Confidential Restricted Information)

PART 'A'

6. **Review of North Devon Council's Sex Establishment Policy** (Pages 9 - 42)
Report by Public Protection Manager (attached).
7. **Hackney Carriage and Private Hire Policy - The Institute of Licensing 'Guidance on Determining the Suitability of Applicants and Licensees in the Hackney and Private Hire Trade'** (Pages 43 - 80)
Report by Licensing Service Lead (attached).

8. **Devon and Cornwall Police Crime Panel Update**
Councillor Biederman to report.
9. **Date of next Crime and Disorder Sub-Committee and Appointment of Chair**
Councillor Tucker (Chairman) to report.
10. **Licensing and Community Safety Sub-Committee** (Pages 81 - 84)
To consider and adopt the minutes of the following meeting:
 - (a) Licensing and Community Safety Sub-Committee A: 8th August 2019
(attached).

PART 'B' (CONFIDENTIAL RESTRICTED INFORMATION)

Nil.

**If you have any enquiries about this agenda, please contact Corporate and
Community Services, telephone 01271 388253**

30.09.19



North Devon Council protocol on recording/filming at Council meetings

The Council is committed to openness and transparency in its decision-making. Recording is permitted at Council meetings that are open to the public. The Council understands that some members of the public attending its meetings may not wish to be recorded. The Chairman of the meeting will make sure any request not to be recorded is respected.

The rules that the Council will apply are:

1. The recording must be overt (clearly visible to anyone at the meeting) and must not disrupt proceedings. The Council will put signs up at any meeting where we know recording is taking place.
2. The Chairman of the meeting has absolute discretion to stop or suspend recording if, in their opinion, continuing to do so would prejudice proceedings at the meeting or if the person recording is in breach of these rules.
3. We will ask for recording to stop if the meeting goes into 'part B' where the public is excluded for confidentiality reasons. In such a case, the person filming should leave the room ensuring all recording equipment is switched off.
4. Any member of the public has the right not to be recorded. We ensure that agendas for, and signage at, Council meetings make it clear that recording can take place – anyone not wishing to be recorded must advise the Chairman at the earliest opportunity.
5. The recording should not be edited in a way that could lead to misinterpretation or misrepresentation of the proceedings or in a way that ridicules or shows a lack of respect for those in the recording. The Council would expect any recording in breach of these rules to be removed from public view.

Notes for guidance:

Please contact either our Corporate and Community Services team or our Communications team in advance of the meeting you wish to record at so we can make all the necessary arrangements for you on the day.

For more information contact the Corporate and Community Services team on **01271 388253** or email **memberservices@northdevon.gov.uk** or the Communications Team on **01271 388278**, email **communications@northdevon.gov.uk**.

North Devon Council offices at Brynsworth, the full address is:
Brynsworth Environment Centre (BEC), Roundswell,
Barnstaple, Devon, EX31 3NP.

Sat Nav postcode is EX31 3NS.

At the Roundswell roundabout take the exit onto the B3232, after about ½ mile take the first right, BEC is about ½ a mile on the right.

Drive into the site, visitors parking is in front of the main building on the left hand side.

On arrival at the main entrance, please dial 8253 for Corporate and Community Services.



NORTH DEVON COUNCIL

Minutes of a meeting of Licensing and Community Safety Committee held at Barum Room - Brynsworthy Environment Centre on Tuesday, 18th June, 2019 at 2.00 pm

PRESENT: Members:

Councillor Tucker (Chairman)

Councillors Cann, Biederman, Bulled, Chesters, Gubb, Henderson, Lovering, Mack, Orange, D. Spear, E. Spear and York

Officers:

Solicitor

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Hunt.

2. DECLARATIONS OF INTERESTS.

There were no declarations of interest announced.

3. PROPOSED AMENDMENTS TO DANGEROUS WILD ANIMAL AND ZOO LICENSING FEES

The Committee considered a report by the Public Protection Manager (circulated previously) regarding the proposed amendments to Dangerous Wild Animal and Zoo Licensing Fees.

The Public Protection Manager outlined the report and welcomed the new Members to their first Committee. She explained that the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 came into effect on the 1st October 2018, which provided substantial updates to animal licensing. There were two areas of animal legislation, which fell outside of the scope of the regulations and those were in the areas of zoo licences and licences for keeping dangerous wild animals. She added that in the case of Hemmings v Westminster City Council, which examined the level of fees for Sex Shop licences judgements had clarified what local authorities could include when setting licences fees and concluded that the licence fee was made up of two parts, the first part covering direct costs for processing an application and the second part for costs associated with running the licensing function.

She advised that the Council currently licensed three zoos, which included Ilfracombe Aquarium, Combe Martin Dinosaur and Wildlife Park and Exmoor Zoo.

There were currently no licences in relation to keeping dangerous wild animals. She explained that the fee currently set for zoo and dangerous wild animal licences was £71.10. A review of those fees had not been undertaken for a considerable period and therefore the Council had been significantly under-recovering fees from that area of the licensed community. She referred the Committee to appendix A of the report, which set out the new fees proposed and explained the various parts of the fees. She explained that some zoos that held a small exhibit of animals could apply for exemption or a dispensation. A report in respect of the draft fees had been presented to the Licensing Committee on 5th February 2019 and a period of consultation took place on the Council's website from 11th February to 30th April 2019. Letters were also sent to the three licenced zoos, which provided a breakdown of the proposed fees and structure and to date no representations had been received. She added that additional income from the proposed amendments to the fees would only allow the Council to recover the costs of administration and enforcement. However, the fees would be regularly reviewed and any proposed increases would be presented to the Committee.

In response to a question, she advised that the report and recommendation would be presented to the Strategy and Resources Committee and then on to Full Council for final approval prior to the proposed fees coming into effect prior to October 2019.

The Committee discussed the wording of the recommendation to include a statement that no representations had been received.

RECOMMENDED, that following the consideration of the draft fees for zoo licences and licences for keeping dangerous wild animals, which had undergone a period of consultation and for which no representations had been received the Strategy and Resources Committee amend the fees in line with the proposals set out in appendix A of the report.

4. ALTERNATIVE ARRANGEMENTS FOR THE APPOINTMENT OF SUB-COMMITTEES

The Committee considered a report by the Senior Corporate and Community Services Officer (circulated previously) regarding alternative arrangements for the appointment of Sub-Committees.

The Corporate and Community Services Officer outlined the report to the Committee and following a question, explained the purpose of appointing Sub-Committees and their function for the main Committee.

In response to a question regarding the gender split of Sub-Committees A and B which were all one gender, the Corporate and Community Services Officer advised that the Sub-Committees had been appointed to include a selection of existing and newly appointed Members. However, advised that the membership of Sub-Committees A and B could be amended to reflect a more balanced gender split.

RESOLVED:

- (a) That five Sub-Committees each with three Members with the delegated powers be appointed as detailed in Appendix A of the report, with the following amendment to the membership of Sub-Committees A and B:
 - (i) That Councillor Mack be appointed to Sub-Committee B and Councillor L. Spear be appointed to Sub-Committee A to reflect a more balanced gender split.
- (b) That alternative arrangements be made for the appointment of Members of the Sub-Committees of the Licensing Committee in accordance with the powers set out in S17 of the Housing And Local Government Act 1989 and the provisions of the Local Government (Committees And Political Groups) Regulations 1990;
- (c) That the alternative arrangements provided that the membership of the Sub-Committees of the Licensing and Community Safety Committee be not politically balanced;
- (d) That a Member be selected by Corporate and Community Services to act as a Substitute Member for each Sub-Committee meeting if required;
- (e) That Members and Chairmen be appointed to the Sub Committees as detailed in Appendix B of the report until such time as re-appointments were made in 2020;
- (f) That the appointed Sub-Committees be restricted in that they may not further delegate any of their powers to an officer of the Council or any other body.

**5. LICENSING AND COMMUNITY SAFETY WORK PROGRAMME
2019/20**

The Committee considered the work programme 2019/20 (circulated previously).

The Public Protection Manager outlined the work programme for the forthcoming year and made the following amendments:

- Statement of Gambling Policy (Gambling Act 2005) - To be deleted.
- Statement of Licensing Act Policy (Licensing Act 2005) - To be deleted.
- Animal Activities: Licensing, Dog Breeding, Pet Shops, Riding Establishments, Animal Breeding Establishments – To be deleted.
- Dangerous Wild Animals and Zoo Licence Fees – To be deleted.
- Development of Internal Service Level Agreement (SLAs) – To be deleted.
- Regulating in Post – To be deleted.
- Street Trading – To be moved to 2020.
- BTEC Intermediate Award for Transporting Passengers by Taxi and Private Hire Monitoring report – To be deleted.
- Caravan Site Licensing Fees – To be considered at the next meeting.
- Taxi Driver and Private Hire Driver Convictions Policy - To be considered at the next meeting.

- Sex Establishment Policy – To be added to the work programme.

In response to concerns raised by the Committee in relation to street trading, the Public Protection Manager advised that there was no immediate public safety risk posed and that the Licensing Team had other areas of work, which it needed to prioritise and that there was not capacity within the team to address at the present time.

In response to concerns raised by the Committee in relation to an incident concerning the handling of a snake on the high street by an unlicensed member of the public, the Public Protection Manager advised that the incident had been reported and was currently being investigated.

In response to a question regarding the delegation of street trading to the Town and Parish Councils, the Public Protection Manager advised that this was a possibility, however from preliminary investigation surrounding the implementation of a street trading regime a number of years ago, it was clear that the introduction of any scheme would entail a very long and complicated process which would likely require the recruitment of an additional employee.

In response to a further question regarding the consideration of air and water quality, the Committee agreed to defer to the next meeting to allow the Clerk to ascertain whether it would be more appropriate for the Policy Development Committee to undertake that element of work.

RESOLVED:

- (a) that the work programme together with the proposed amendments be noted; and
- (b) that the Community Safety Team be invited to attend a future meeting of the Committee.

Councillor Cann declared a personal interest as she had reported the incident involving the snake handler.

6. APPOINTMENT OF A CRIME AND DISORDER SUB-COMMITTEE

The Committee considered and agreed of a Crime and Disorder Sub-Committee.

RESOLVED, that a Crime and Disorder Sub-Committee be appointed and that in accordance with the roles and responsibilities of the Committee as detailed in part 3 of the Constitution all Members of the Committee be appointed to the Sub-Committee.

Chairman

The meeting ended at 2.53 pm

NOTE: These minutes will be confirmed as a correct record at the next meeting of the Committee.



Open

NORTH DEVON COUNCIL

REPORT TO: LICENSING & COMMUNITY SAFETY COMMITTEE

Date: 8th October 2019

TOPIC: REVIEW OF NORTH DEVON COUNCIL'S SEX ESTABLISHMENT POLICY

REPORT BY: PUBLIC PROTECTION MANAGER

1 INTRODUCTION

- 1.1 The purpose of this report is to seek a review of the Council's Sex Establishment Policy, as part of a standard five year review cycle.

2 RECOMMENDATIONS

- 2.1 That Licensing and Community Safety Committee considers the draft Sex Establishment Policy found at **Appendix A**. Due to the limited changes proposed, which are solely suggested to address administrative updates, it is not proposed that any consultation be undertaken at this time.
- 2.2 That Licensing and Community Safety Committee recommend to Strategy and Resources Committee that the draft policy be approved.

3 REASONS FOR RECOMMENDATIONS

- 3.1 To ensure that the Council's policies are regularly reviewed and kept up to date.

4 REPORT

- 4.1 North Devon Council adopted a licensing policy and associated conditions of licence for sex establishments on the 5 April 2011. The policy was established following changes made to the Local Government (Miscellaneous Provisions) Act 1982 in 2010 which created a new class of sex establishment – the 'sexual entertainment venue'
- 4.2 There is no statutory requirement for the Council to have a licensing policy for sex establishments but most licensing authorities have developed policies and this is generally considered to be good practice. Without a policy in place, the Council would have great difficulty determining an application for a sex establishment licence and would potentially leave itself open to legal challenge in the event of refusal of a licence.
- 4.3 When originally documented the policy was drawn up as a collaborative piece of work with

Torrige District Council, and the document was written drawing upon guidance from the Home Office¹, local experience of licensing issues, best practice guidance from Local Government Regulation (LGR), and collaborative work carried out by the Devon Licensing Group.

4.4 A subsequent review took place in 2014 (approved by Licensing Committee 11 November 2014 and Executive 3 February 2015) when a series of minor updates were made which included:

- clarifying that the Council will not consider moral issues when determining applications and varying the review period from three to five years;
- new section 4 - Licensing Objectives;
- new section 5 - integration with other policies and strategies;
- new section 9.5.3 - which suggests criteria for refusal of applications on discretionary grounds under s12(3)(d);
- new section 9.5.5 – which sets out suggested criteria for assessing the suitability of applicants;
- new section 10 – which sets out the circumstances in which the Council might consider waiving the requirement for a licence;
- inclusion at Appendix A of suggested criteria to define ‘relevant locality’;
- revised and updated licence conditions (Appendix B);
- Appendix C – update to require a standard criminal disclosure/subject access request as part of the application process.
- Appendix D – procedures for Licensing Sub-Committee hearings and the form of discussion at hearings.

4.5 The Council has not licensed any sex establishments, nor has it received any applications for a licence during the period since the policy was last reviewed. Furthermore it is not envisaged that any applications will be forthcoming. Members should be aware that there are exemptions contained in the Local Government (Miscellaneous Provisions) Act 1982 in terms of sexual entertainment, for example surrounding the scale of a sex shop business, and the number of occasions sexual entertainment takes place at a venue. Therefore, just because there are no licensed premises in the district, does not mean to say that relevant activity has not and does not take place.

4.6 There have been no relevant legislative changes subsequent to the last review, and there have been no comments received in terms of the policy requiring amendment. As such, the only proposals for updates are largely administrative in nature. These are shown as tracked changes to the existing policy document, and are contained at **Appendix A**.

4.7 In light of the minor changes proposed, and the limited feedback previously gained when consultation was undertaken, no consultation is proposed as part of this policy update.

5 RESOURCE IMPLICATIONS

5.1 There is no financial or human resource considerations associated with this report.

¹ ‘Sexual Entertainment Venues: Guidance for England and Wales’, Home Office, March 2010

6 CONSTITUTIONAL CONTEXT

Article or Appendix and paragraph	Referred or delegated power?	Key decision?
Part 3, Annex 1, Paragraph 2	Delegated	No

7 STATEMENT OF CONFIDENTIALITY

7.1 This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

8 BACKGROUND PAPERS

8.1 The following background papers were used in the preparation of this report:

- *Sexual Entertainment Venues: Guidance for England and Wales*, Home Office, March 2010

The background papers are available for inspection and kept by the author of the report.

9 STATEMENT OF INTERNAL ADVICE

9.1 The author (below) confirms that advice has been taken from all appropriate Councillors and officers.

Licensing and Community Safety Committee Chair: Cllr Frederick Tucker

Author: Katy Nicholls

Date: 09/09/2019

This page is intentionally left blank



SEX ESTABLISHMENTS

Licensing Policy

Environmental Health and Housing Services

Version	3.0	Date	January 2020
Approved Licensing & Community Safety Committee	TBC	Adopted by Strategy and Resources Committee	TBC
Authors	K Nicholls (NDDC) A R Nicholls (TDC)	Next Review Date	TBC January 2025

Contents

		Page
Foreword		3
Contents		
1.	Introduction	4
2.	The Geographical Area	5
3.	Consultation	5
4.	The Licensing Objectives	6
5.	Integration with Other Policies	6
6.	The Licensing Function	6
7.	Number and Location of Licensed Premises	7
8.	Exempt Premises	7
9.	The Licensing Process	7
	9.1 Making an Application	7
	9.2 Objections to Applications	8
	9.3 Determination of Applications	9
	9.4 Licence Conditions	9
	9.5 Refusal of Licences	10
	9.6 Revocation of Licences	11
	9.7 Duration of Licence	11
	9.8 Cancellation of Licences	11
	9.9 Appeals	11
10.	Enforcement and Complaints	12
11.	Exchange of Information	12
12.	Equality and Human Rights Issues	13
Appendices		
A	Glossary of Definitions	14
B	Standard Licence Conditions	16
C	Application Procedures	25
D	Hearings Procedure	27

Foreword

This Licensing Policy sets out this Authority's licensing framework for premises which need to be licensed as sex establishments within the meaning of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009. This legislation is collectively referred to in this document as 'the Act'.

This Authority resolved to apply Schedule 3 of the Act with effect from the 1st February 1983 (with the additional provisions in relation to Section 27 being adopted on the 25 August 2010). The adoption of Schedule 3 allows the Authority to set terms and conditions and fees for the grant, renewal, variation and transfer of such licences and the number of licences that may be issued in the area.

Section 27 of the Policing and Crime Act 2009 was introduced in order to give licensing authorities greater control over premises such as lap dancing clubs which were previously regulated under the Licensing Act 2003. This is an important reform which gives local people greater influence over this type of sex establishment which has grown in popularity in recent years.

The Authority does not take a moral standpoint in publishing this Policy. The Authority recognises that Parliament has made it lawful to operate a sex establishment, and that such businesses are a legitimate part of the retail and leisure industries. The Council's role as the Licensing Authority is to regulate licensed premises in accordance with the law and Government guidance.

The Authority is not required by law to consult on this Policy but we recognise that applications for sex establishments – by their very nature – are often controversial and raise legitimate concerns among local residents and businesses in the community. For this reason we are keen to seek the views of relevant individuals and organisations within the community. Your views are important and we will take your comments into consideration when finalising our Policy.



Councillor Frederick Tucker
Chair, Licensing & Community Safety Committee

1. Introduction

NB. This Policy is intended to provide general guidance only. It does not constitute a definitive statement of law. Applicants who require legal advice on a specific topic are advised to consult a licensing solicitor. Text in the shaded boxes is advisory or explanatory and intended only to give assistance to applicants, statutory authorities, residents and businesses.

- 1.1 This Statement of Licensing Policy (“the Policy”) draws its authority from the Local Government (Miscellaneous Provisions) Act 1982 (“the Act”) as amended by section 27 of The Policing and Crime Act 2009 and has been prepared in accordance with guidance issued by the Home Office in March 2010.

The Policy has four main purposes:

- to assist the Licensing Authority in determining licence applications in a consistent and equitable manner,
- to inform and advise applicants,
- to inform and advise residents and businesses, and
- to inform a court at appeal.

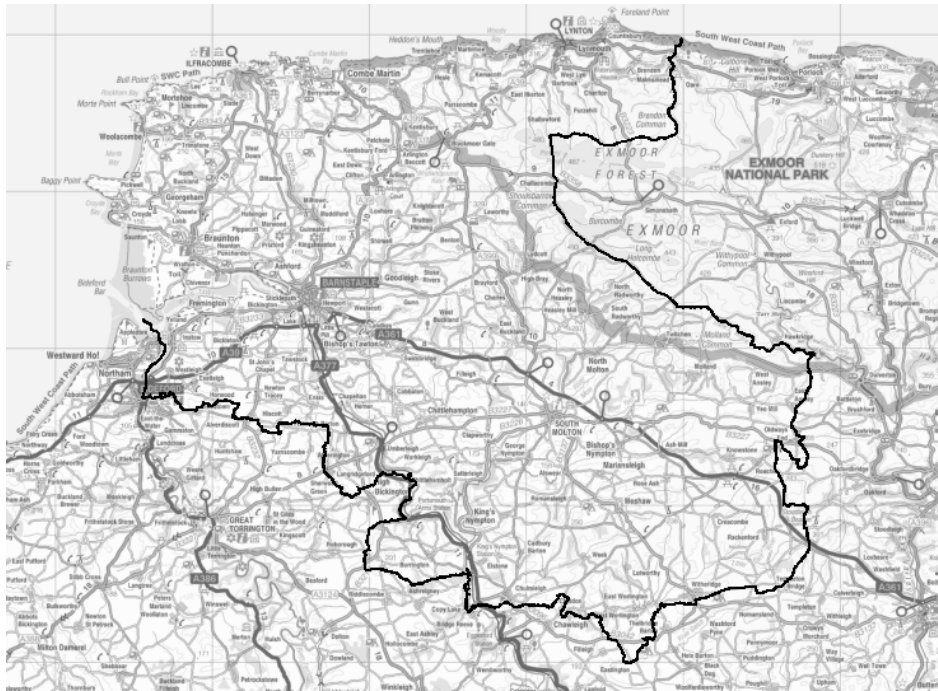
- 1.2 North Devon District Council (“the Authority”) resolved to adopt Schedule 3 (as amended by Section 27 of the Policing and Crime Act 2009 to allow for the licensing of sexual entertainment venues) on 25 August 2010 in order to regulate sex establishments.¹

Section 27 gives local authorities more powers to control the number and location of lap dancing clubs and similar venues in their area. Where adopted, these provisions will allow local authorities to refuse an application on potentially wider grounds than is permitted under the Licensing Act 2003 and will give local people a greater say over the regulation of such premises in their area. (Home Office Guidance 1.3)

- 1.3 This Statement of Licensing Policy sets out the Authority’s requirements for premises to be licensed as sex establishments within the meaning of the Act. The information contained in the appendices and referred to within this policy should be read as an inclusive part of this policy document. The Policy was formally adopted by Strategy and Resources Committee on TBC.
- 1.4 This Policy will be reviewed every five years. The Authority may review the Policy earlier at its discretion or if required by any legislative changes.
- 1.5 The Authority does not take a moral standpoint in publishing this Policy. The Authority recognises that Parliament has made it lawful to operate a sex establishment, and that such businesses are a legitimate part of the retail and leisure industries. The Authority’s role as the licensing authority is to regulate licensed premises in accordance with the law and Government guidance.
- 1.6 The Authority may depart from the guidelines set out in this Policy but will only do so in exceptional circumstances where there are compelling and justifiable reasons. The Authority will give a full explanation for any such departure from policy.
- 1.7 The Authority may from time to time exercise its powers under section 115 of the Crime and Disorder Act 1998 to exchange data and information with the police and other partners to fulfil its statutory objective of preventing and reducing crime in the area.

¹ See Glossary for definition

2. The Geographical Area



- 2.1 In being largely rural in character, and an area of outstanding natural beauty, North Devon, in common with other parts of Devon, has much to offer its residents and visitors. The holiday and entertainment industries, therefore, are major contributors to the economy of the district, with 50,000 visitors being accommodated in the area at peak times.
- 2.2 North Devon is 108,590 hectares (419 square miles) in size, and has an estimated resident population of 95,400¹, comprised of 45,766² households. Of those residents 46,800⁽¹⁾ are male and 48,600⁽¹⁾ are female. With individuals aged 16 to 64 estimated to number 55,200⁽¹⁾.
- 2.3 Almost half of the population lives in, or close to, Barnstaple, whilst there are smaller concentrations of population at Braunton, Ilfracombe and South Molton. Holiday locations such as Croyde and Woolacombe have national and international renown.
- 2.4 Despite the popularity and benefits of the area, however, the median gross annual pay for employees in full or part time employment (not including self-employed) in North Devon for 2016 is £17,565⁽³⁾ some £5,519⁽³⁾ below the median for all employees in the UK. The rate of unemployment is 2.3%⁽⁴⁾ , which is 2%⁽⁴⁾ lower than the national average. .

3. Consultation

- 3.1 Consultation on this draft Policy took place between 01/05/2014 and 26/06/2014. Consultation was conducted with statutory authorities, local residents and other relevant organisations.

The Act is not prescriptive about how the local authority should consult local people. Consultation should be fair and meaningful and local authorities should seek to make any relevant information available to local people in order to inform their understanding (Home Office Guidance 2.20).

Data Sources

- 1. 2017 Population estimates published by Office for National Statistics
- 2. NDC Figure 09.09.2018

3. 2017 Office for National Statistics population estimate
4. April 2017 to March 2018 Office for National Statistics annual population survey

4 Licensing Objectives

4.1 The Act does not prescribe any licensing objectives. However, this Authority believes it is desirable, in the interests of clarity and transparency, to define the key objectives which will underpin the regulation of sex establishments in its District. The objectives are:

- to prevent sex establishments from causing crime, harm or nuisance to the public;
- to ensure that sex establishments are located in areas where they will not have an adverse impact on the local community and amenities;
- to protect performers;
- to promote equality in sex establishment licensing.

4.2 The Authority will attach the greatest importance to the promotion of the licensing objectives when determining applications and regulating licensed premises.

5 Integration with other Policies

5.1 The Authority will endeavour to apply this Policy in a way which is consistent with other relevant policies/strategies.

5.2 Whilst this Policy stands alone, sex establishments may often require other consents in order to provide other facilities. In particular, applicants wishing to sell alcohol and/or provide regulated entertainment or late night refreshment are advised to have regard to this Authority's *Statement of Licensing Policy* which sets out licensing requirements for those activities. The Policy can be viewed at www.northdevon.gov.uk/licensing

6. The Licensing Function

6.1 This Policy sets out the general principles the Authority will apply when determining applications for licences for sex establishments. It explains the application process and provides information on what is expected of applicants. It also explains the procedure for making objections to licence applications.

6.2 In discharging its licensing function, the Authority will have regard to:

- The Local Government (Miscellaneous Provisions) Act 1982
- Crime and Disorder Act 1998 (in particular s.17)
- The Licensing Act 2003
- The Human Rights Act 1998
- The Policing and Crime Act 2009 (s.27)
- the Provision of Services Regulations 2009
- the Regulators' Compliance Code
- the current Safer North Devon Community Safety Strategy
- the Authority's Corporate Plan
- the Authority's Licensing Enforcement Policy
- Home Office Guidance: *Sexual Entertainment Venues (March 2010)*

(Reference to legislation shall include any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under them and all orders, notices, codes of practice and guidance made under them).

6.3 At the time of drafting this policy, this Authority has no licensed sex establishments and no premises likely to fall within the definition of a sexual entertainment venue.

7. Number and Location of Licensed Premises

- 7.1 The Authority recognises that, by virtue of s.12 (4) of Schedule 3 to the Act, it can limit the number of sex establishments in any locality within its District. That number may be nil. The Authority has not chosen not to set a limit and will therefore determine each application on its merits having regard to the likely impact on any given locality.
- 7.2 Whilst the Authority has not imposed a limit on the number of premises that may be licensed in any locality, the Authority will not license premises in proximity to:
- (a) a residential area;
 - (b) premises, areas (or access routes to premises or areas) which are designed for or attract children or families, such as leisure centres, schools, play areas, parks, children's centres, youth clubs, nurseries or other similar establishments;
 - (c) a place of public religious worship;
 - (d) historic buildings;
 - (e) cultural facilities (e.g. museums, art galleries, libraries);
 - (f) educational establishments;
 - (g) any premises which caters for, or is used by vulnerable children or adults
 - (h) community facilities and public buildings (including hospitals and medical centres);
 - (i) any area which is focus for tourist activity;
 - (j) an area designated for social or economic regeneration;
 - (k) an area with a history of significant crime or social difficulties.

8. Exempt Premises

- 8.1 The following are not sexual entertainment venues for the purposes of this Policy:
- sex cinemas and sex shops²;
 - premises at which the provision of relevant entertainment³ is such that:
 - (i) there have not been more than eleven occasions on which relevant entertainment has been so provided which fall (wholly or partly) within the period of 12 months;
 - (ii) no occasion has lasted for more than 24 hours; and
 - (iii) no occasion has begun within the period of one month beginning with the end of any previous occasion on which relevant entertainment has been so provided.
- 8.2 For the purposes of this policy, relevant entertainment is provided if, and only if, it is provided, or permitted to be provided, by or on behalf of the organiser⁴ before an audience and involves partial or full nudity⁵.

9. The Licensing Process

9.1 Making an Application

- 9.1.1 Whilst not a legal requirement, the Authority will normally expect that applications for licences for permanent commercial premises should be from businesses with planning consent for the property concerned.
- 9.1.2 The Authority expects that applicants will consult local residents, businesses and/or community groups in the vicinity of the premises so far as is reasonably practicable prior to submitting a formal application.

² See Glossary for definitions

³ See Glossary for definition

⁴ See Glossary for definition

⁵ See Glossary for definition

- 9.1.3 Applicants are advised to have regard to the Authority's standard licence conditions for sex establishments in order to ascertain the operational standards expected and the types of controls typically required (see Appendix B).
- 9.1.4 Applications must state the full address of the premises to be licensed. Applications in respect of a vehicle, vessel or stall must also state where it is to be used as a sex establishment.
- 9.1.5 Applications should be made in accordance with the procedures set out at Appendix C. Application forms can be downloaded from the Authority's web-site, completed online or are available upon request to the Licensing Team.
- 9.1.6 An application form and relevant documentation for the new licence, renewal, variation or transfer must be completed and returned with the appropriate fee as prescribed in the Authority's Schedule of Fees and Charges.

9.2 Objections to Applications

- 9.2.1 Any person may make an objection to an application for a sex establishment licence. Objectors do not have to live in the vicinity of the premises and may include residents, residents'/tenants' associations, community associations, and trade associations. Councillors and MPs may also raise objections. Elected councillors of this Authority may represent interested parties, provided they do not also sit on the Licensing Sub-Committee determining the application in question. The police are a statutory consultee for all applications.
- 9.2.2 Persons objecting to an application must state the grounds on which the objection is made. Objections should:
- be made in writing;
 - indicate the name and address of the person or organisation making the representation;
 - indicate the premises to which the objection relates;
 - indicate the proximity of the premises to the person making the representation.
- 9.2.3 Objections may only be made within the period of 28 days following the date on which the application was given to the Licensing Authority.
- 9.2.4 The Licensing Authority will not normally consider any objection that does not contain the name and address of the person making it. However, names and addresses of persons making representations will not be disclosed except with their written permission.
- 9.2.5 Objections that are repetitious, frivolous or vexatious will be disregarded. A frivolous objection is generally taken to be one that is lacking in seriousness. A vexatious objection is generally taken to be one which is repetitive, without foundation or made for some other reason such as malice.
- 9.2.6 The Authority will not accept objections made on moral grounds.
- 9.2.7 Where objections are made and accepted, the Licensing Authority will provide copies to the applicant.

9.3 Determination of Applications

Appendix A

- 9.3.1 The powers of the Licensing Authority under the Act may be carried out by the Licensing and Community Safety Committee or by a sub-Committee of the Licensing and Community Safety Committee.
- 9.3.2 When determining a licence application, the overriding principle adopted by this Authority will be that each application will be determined on its merits. The Authority will have regard to the relevant legislation, supporting regulations, guidance issued by the Home Office and this Statement of Licensing Policy.
- 9.3.3 When determining applications, the Licensing Authority will take account of any comments made by the Chief Officer of Police and any relevant objections.
- 9.3.4 Where no objections are received, the application will be granted on the terms applied for, subject to any conditions imposed by the Licensing Authority. Where relevant objections are received and not withdrawn, the application will be determined at a hearing⁶ before a Licensing sub-Committee. This will normally be held within 20 working days of the end of the period during which objections may be made. The sub-Committee will give clear reasons for its decision. The Authority has established its own hearing procedures as provided for under the Licensing Act regulations and these are included at Appendix D.
- 9.3.5 The names and addresses of objectors will not be disclosed to applicants or published in public reports without the objector's consent. Such details will only be made available to Councillors sitting on the Licensing Sub-Committee.
- 9.3.6 The grant of a licence does not exempt applicants from obtaining permissions or authorisations required under any legislation, byelaw, order or regulation other than Schedule 3 of the Act.

9.4 Licence Conditions

- 9.4.1 The Authority has the power to make regulations prescribing standard conditions which may be applied to a licence for a sex establishment. The standard conditions which this Authority will attach to a licence are shown at Appendix B. Where it is reasonable and necessary, the Authority may modify these conditions or attach additional conditions to a licence.
- 9.4.2 Conditions will generally relate to matters falling within the control of the licence holder and may include:
- the opening and closing hours of the premises
 - displays or advertisements on or in the premises
 - the visibility of the interior of sex establishments to passers-by
 - any change of a sex cinema to a sex shop or a sex shop to a sex cinema
- together with any other matters which the Authority considers relevant to the application.
- 9.4.3 Conditions will be appropriate, reasonable and proportionate and will be tailored to individual premises having regard to the need to promote the Authority's licensing objectives.

⁶ See Glossary

9.5 Refusal of Licences

9.5.1 Except where the Authority are prohibited from granting, renewing, varying or transferring a licence, the Authority will not refuse a licence without first:

- Notifying the applicant or holder of the licence in writing of the reasons;
- Giving the applicant or holder of the licence the opportunity of appearing and making representations before a Licensing Sub Committee.

9.5.2 Mandatory Grounds for Refusal (s.12(1))

The Act requires the Authority to refuse to grant or transfer a licence to:

- (a) A person under the age of 18;
- (b) A person who is for the time being disqualified from holding a licence;
- (c) A person who is not resident in an EU state or was not so resident throughout the period of 6 months immediately preceding the date upon which the application was made;
- (d) A body corporate which is not incorporated in an EU state; or
- (e) A person who has, within the period of 12 months immediately preceding the date upon which the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

9.5.3 Discretionary Grounds for Refusal (s.12(2 & 3))

An application for grant or renewal of a licence may be refused on one or more of the following grounds:

- (a) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason (see 9.5.5);
- (b) that if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;
- (c) that the number of sex establishments in the relevant locality that the application is made is equal to or exceeds the number which the Authority considers is appropriate for that locality (nil may be an appropriate number for these purposes).
- (d) that the grant or renewal of the licence would be inappropriate having regard to:
 - the character of the relevant locality⁷;
 - the use to which any premises in the vicinity are put; or
 - the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

9.5.4 When considering discretionary grounds for refusal under s.12(3)(d) of the Act, the Authority may take into consideration the following factors:

- the type of activity and the proposed hours of operation
- the likelihood of any adverse impact arising as a result of a licence being granted for a premises in a locality where there are already existing sex establishments
- crime and disorder issues
- the likelihood of any noise or disturbance being caused by the premises
- the type and character of other businesses in the locality
- the physical structure, condition and appearance of the premises (see Appendix B).

⁷ See glossary

9.5.5 Suitability of Applicant

When determining whether an applicant is a suitable person to hold a licence, the Authority may take into consideration the following factors:

- the honesty and integrity of the applicant
- any convictions, cautions or offences⁸
- the operation of existing or previous licences held by the applicant and their track record of compliance
- the experience and knowledge of the type of sex establishment the applicant intends to operate
- the applicant's ability to comply with the Authority's licensing requirements and to minimise the impact of the business on local residents and businesses
- any reports about the applicant received from the police or any other reputable source
- the managerial competence of the applicant
- evidence of robust management structure, policies and procedures clearly setting out how the premises will be operated to promote the Authority's licensing objectives
- policies for the protection and welfare of performers
- evidence that the applicant has appropriate measures in place to protect the public (e.g. transparent charging, freedom from solicitation etc.)

9.6 **Revocation of Licences**

9.6.1 The Authority may revoke a licence:

- on any of the mandatory grounds specified in paragraph 9.5.2; and
- on either of the discretionary grounds specified in paragraph 9.5.3 (a) and (b).

9.6.2 The Authority will not revoke a licence without first giving the holder of the licence the opportunity of appearing and making representations before a Licensing Sub Committee.

9.7 **Duration of Licences**

9.7.1 Licences will generally be issued on an annual basis but can be issued for a shorter term if deemed appropriate.

9.7.2 Where the Authority is satisfied that it is necessary for the purposes of winding up the estate of a deceased licence holder, it may extend the term of the licence (normally for three months or such other period the Authority considers appropriate).

9.8 **Cancellation of Licences**

9.8.1 The licence-holder may surrender the licence at any time and may request the Authority in writing to cancel the licence.

9.8.2 In the event of the death of the licence-holder, the licence will be deemed to have been granted to his personal representatives and will remain in force for three months from the date of death, unless previously revoked.

9.9 **Appeals**

➤ ⁸ The Authority will require applicants and any company directors and/or manager of the premises to provide a Basic Criminal Disclosure or the results of a Subject Access Request with their application (see Appendix C).

- 9.9.1 Section 27 of the Act provides for appeals against the decisions of the Authority. An appeal must be made to the local magistrates' court within 21 days of the date of the Licensing Authority's decision.
- 9.9.2 An appeal may be made in the following circumstances:
- refusal of an application for the grant, renewal or transfer of a licence.
 - refusal of an application to vary terms, conditions, or restrictions on or subject to which any licence is held.
 - a grievance relating to any term, condition or restriction on or subject to which a licence is held.
 - revocation of a licence.
- 9.9.3 There is no right of appeal for objectors. There is a right of appeal against refusal on mandatory grounds, only where the appellant alleges the ground did not apply to them. There is no right of appeal against refusal on the grounds that there are sufficient sex establishments in the locality or that the grant of a licence would be inappropriate having regard to the character of the locality, use of premises in the vicinity and the layout, character, condition and location of the premises.
- 9.9.4 A person wishing to appeal against a decision of the Authority about a sex establishment is strongly advised to seek legal advice prior to commencing any action in a court of law.

10. Waiver

- 10.1 Section 7(4) of the Act allows the Authority to waive the requirement for a licence where it considers this would be unreasonable or inappropriate.
- 10.2 The test of what might be considered 'unreasonable' or 'inappropriate' will be made on the facts of each individual case but may include:
- minor or temporary events (e.g. sale of sex articles at a trade show or exhibition);
 - events where the provision of sex articles is incidental or ancillary to the event itself;
 - a one-off screening of an erotic or sexually explicit film at a cinema (subject to BBFC film classification criteria).
- 10.3 The Authority may grant a waiver for such period as it sees fit and may terminate the waiver by giving 28 days notice in writing.

11 Enforcement and Complaints

- 11.1 Where possible, the Authority will give early warning to licence holders of any concerns about problems at a particular premises and of the steps required for improvement.
- 11.2 The Authority will have regard to the Regulators' Compliance Code and the Better Regulation Delivery Office's five Principles of Good Regulation. The Authority will carry out its regulatory functions in a fair, open and consistent manner.
- 11.3 Enforcement will also be carried out in accordance with the Authority's Licensing Enforcement Policy which sets out clear standards and procedures. Enforcement will be:
- proportionate - action will be commensurate with the offence
 - accountable - action will be justifiable and subject to public scrutiny
 - consistent - action will be fairly and equitably applied

- transparent - the reasons for action will be clearly explained
- targeted - action will be based on risk

- 11.4 Where possible and appropriate the Authority will give early warning to licence holders of any concerns about problems identified at premises and of the need for improvement
- 11.5 The Authority recognises the interests of both residents and businesses and will work closely with partners, to assist licence holders to comply with the law and any conditions attached to the licence. However, action will be taken against those who commit serious offences, persistently break the law or fail to comply with conditions of the licence.
- 11.6 Complaints about licensed premises should be made in writing and addressed to: Lead Officer Licensing, Environmental Health and Housing, North Devon Council, Lynton House, Commercial Road, , Barnstaple, Devon, EX31 1DG or e-mailed to licensing@northdevon.gov.uk

12 Equality and Human Rights Issues

- 12.1 In developing this policy, the Authority recognises its responsibilities under the Equality Act 2010, to consider the need to eliminate unlawful discrimination and to promote equal opportunities. The Policy therefore supports and is supported by North Devon and Torridge District Council's Joint Inclusive Equality Scheme and any equality issues will be addressed in an Equality Impact and Needs Assessment.
- 12.2 The Human Rights Act 1998 incorporates the European Convention on Human Rights and makes it unlawful for a local authority to act in a way that is incompatible with a convention right. The Authority will have regard to the Human Rights Act when exercising its licensing functions.
- 12.3 Conditions relating to disabled access will not be attached to licences, as this would duplicate existing statutory requirements. The Authority therefore takes this opportunity to remind applicants and licensees of their duties under the Equality Act 2010 and encourages individuals to provide adequate and appropriate facilities to enable the admission of disabled people.

APPENDIX A – Glossary of Definitions

- ‘Hearing’ – quasi-judicial arrangement for determination of applications before a Licensing sub-Committee. This will consist of a ‘bench’ of three councillors drawn from the Council’s Licensing and Community Safety Committee. The hearing will normally take place in public in accordance with the Authority’s established procedures (see Appendix D)
- ‘Nudity’ - in the case of a woman, exposure of her nipples, pubic area, genitals or anus; in the case of a man, exposure of his pubic area, genitals or anus.
- ‘Organiser’ - person who is responsible for the organisation or management of the relevant entertainment or the premises.
- ‘Relevant entertainment’ - any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means). An audience includes an audience of one.
- ‘Relevant locality’ – the Act does not define relevant locality but, for the purposes of this policy, the Authority, when determining relevant locality, may consider the following matters:
 - any area with a statutorily defined boundary (e.g. a parish or ward)
 - an area with a natural boundary such as a river or major road
 - a clearly defined area of a town such as a recognised retail/shopping centre
 - a clearly defined residential area or housing development
 - a business park or industrial estate

Each case will be considered individually.

- ‘Sex Establishment’ is defined under the Act as a ‘sex shop’, a ‘sex cinema’ or a ‘sexual entertainment venue’. It includes any premises, vehicle, vessel or stall used as a sex establishment but does not include a private dwelling to which the public are not admitted.
- ‘Sex Shop’ - any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating:
 - a) sex articles; or
 - b) other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity; or acts of force or restraint which are associated with sexual activity.
- ‘Sex Article’ - anything made for use in connection with, or for the purpose of stimulating or encouraging:
 - a. sexual activity; or
 - b. acts of force or restraint which are associated with sexual activity;

or any of the following:

- a) any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and
- b) any recording of vision or sound, which:
 - (i) is concerned primarily with the portrayal of, or primarily deals with or relates to, or

Appendix A

is intended to stimulate or encourage, sexual activity or acts of force or restraint which are associated with sexual activity;

(ii) is concerned primarily with the portrayal of, or primarily deals with or relates to genital organs or urinary or excretory functions.

- 'Sex Cinema' - any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which:
 - (a) are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage:
 - (i) sexual activity; or
 - (ii) acts of force or restraint which are associated with sexual activity;
 - (b) are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions, but does not include a dwelling-house to which the public is not admitted.
- 'Sexual entertainment venue' - any premises at which relevant entertainment is provided before a live audience for financial gain of an organiser. For the purposes of the Act it does not matter whether the financial gain arises directly or indirectly from the performance or display of nudity.
- 'Vessel' includes any ship, boat, raft or other apparatus constructed or adapted for floating on the water.

APPENDIX B

STANDARD CONDITIONS APPLICABLE TO LICENCES FOR SEX ESTABLISHMENTS

These Conditions are made by North Devon District Council under paragraph 13(1) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) and come into effect on 03/02/2015

The Conditions are divided into five parts as follows:

Part 1	Definitions and Interpretation
Part 2	Conditions applying to all premises
Part 3	Conditions applying to Sex Shops
Part 4	Conditions applying to Sex Cinemas
Part 5	Conditions applying to Sexual Entertainment Venues

PART I DEFINITIONS AND INTERPRETATION

- 1.1 In these Regulations the following expressions shall have the following meanings:
- i) "Act" means the Local Government (Miscellaneous Provisions Act) 1982.
 - ii) "Approval or consent of the Council" means approval or consent of the Council in writing.
 - iii) "Authorised Officer" means an officer of the Council authorised in writing to undertake duties under the provisions of the Local Government (Miscellaneous Provisions) Act 1982.
 - iv) "Premises" means a building or part of a building and any forecourt yard or place of storage used in connection with a building or part of a building which is the subject of a licence for a sex establishment granted under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
 - v) "Relevant Entertainment" means any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means).
 - vi) "Sex establishment", "Sex Cinema", "Sex Shop", "Sex Article" and "Sexual Entertainment Venue" have the meanings ascribed to them in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
 - vii) "The Council" means North Devon District Council.
- 1.2 The grant of a licence for a sex establishment shall not be deemed to convey any approval or consent which may be required under any other legislation, order or regulation other than Schedule 3 of the Act.
- 1.3 The Council reserves the right to add to, modify or dispense with these conditions.

Appendix A

- 1.4 All applications for modification or dispensation of these conditions shall be made in writing and shall state the reasons why it is desired to modify or dispense with these conditions.
- 1.5 Premises licensed as a Sex Shop, Sex Cinema or Sexual Entertainment Venue shall be used only for the purposes for which the licence was granted and shall not be used, wholly or in part, for any other purposes specified in Schedule 3 of the Act.

PART 2 CONDITIONS APPLYING TO ALL PREMISES

2.1 Exhibition of Licence

- 2.1.1 A copy of the licence and these conditions will be displayed in a prominent place on the premises where they can easily be seen and read by the public.

2.2 Times of Opening

- 2.2.1 A sex establishment will only be open to the public on the days and hours specified in the licence.
- 2.2.2 The premises shall not open on Sundays or any Bank Holidays or any public holidays without the prior consent of the Council.

2.3 Condition, Layout and External Appearance of the Premises

- 2.3.1 The premises must be maintained in accordance with the plan submitted with the application and approved by the Council. Alterations to the premises will not be permitted without the prior consent of the Council and may require an application to vary the licence under s.18 of the Act.
- 2.3.2 All parts of the premises shall be kept in good repair and in a clean condition to the satisfaction of the Council.
- 2.3.3 The number, size and position of all doors, openings or means of access shall comply with the following requirements:
 - (i) All such doors or openings shall be clearly indicated on the inside by the word "exit"/graphic type.
 - (ii) Doors and openings which lead to parts of the premises to which the public are not permitted to have access shall have notices placed over them marked, "private".
 - (iii) Save in the case of emergency, no access shall be permitted through the premises to any adjacent premises.
- 2.3.4 The external doors to the premises shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.
- 2.3.5 No sign, notice, advertisement, display or image or anything of a similar nature must be displayed outside the premises without the prior approval of the Council.
- 2.3.6 The entrances to the premises shall be constructed in such a way and of a material or covered with a material which will prevent passers by from seeing the interior of the premises.
- 2.3.7 Windows and openings to the premises other than entrances shall be of a material or covered with a material which will prevent passers by from seeing the interior of the premises.

2.4 Alterations, Additions and Change of Use

- 2.4.1 No change of use of any part of the premises from that approved by the Council shall be made without the prior consent of the Council and Devon and Cornwall Constabulary.
- 2.4.2 No change of use of the premises for any purpose specified in Schedule 3 of the Act will be permitted without the prior consent of the Council and Devon and Cornwall Constabulary.
- 2.4.3 Alterations or additions either internal or external and whether permanent or temporary to the structure, lighting or layout of the premises must not be made without the prior consent of the Council.

2.5 Closed Circuit Television (CCTV)

- 2.5.1 A CCTV system shall be installed and maintained to the satisfaction of Devon and Cornwall Constabulary and the Council.
- 2.5.2 The CCTV shall cover all entrances and exits to the premises and all internal areas open to the public. The system must be installed and fully operational before the premises opens to the public.
- 2.5.3 All cameras shall continually record whilst the premises are open to the public and all recordings shall be retained for at least 30 days and made available on request by the police or by an authorised officer.

2.6 Management of the Premises

- 2.6.1 The licence holder and all staff at the premises must be fully aware of and conversant with the conditions of the licence.
- 2.6.2 The licence holder shall maintain good order in the premises at all times when it is open to the public.
- 2.6.3 The licence holder shall take all reasonable precautions for the safety of the public and employees and must retain effective control over all parts of the premises.
- 2.6.4 The licence holder (or a responsible person aged 18 years or over nominated by him in writing in his absence) shall be in charge of and remain on the premises during the whole time they are open to the public. Such nomination shall be made available for inspection on request by the police or by an authorised officer. The person in charge shall not be engaged on any duties which will prevent him from exercising general supervision of the premises and he/she shall be assisted as necessary by suitable adult persons.
- 2.6.5 The licence holder or the responsible person shall maintain a daily register to be kept on the premises in which there shall be recorded the names and addresses of those employed in the sex establishment. The register is to be completed each day prior to the sex establishment opening for business and must be made available for inspection on request by the police or by an authorised officer.
- 2.6.6 The licence holder shall ensure that during the hours the sex establishment is open for business every employee (with the exception of performers whilst performing relevant entertainment) wears a badge of a type to be approved by the Council bearing the photograph of the employee and indicating his name and that she/he is an employee.
- 2.6.7 A notice showing the name of the person responsible for the management of the sex establishment must be prominently displayed within the premises throughout the period during which he/she is responsible for its management.

Appendix A

- 2.6.8 Where the licence holder is a body corporate or an unincorporated body, any change of director, company secretary or other person responsible for the management of the body is to be notified in writing to the Council within 7 days of such change.
- 2.6.9 The licence holder shall ensure that no part of the premises is used by prostitutes (male or female) for the purposes of soliciting or any other immoral purposes. 'Soliciting' includes the distribution of leaflets.
- 2.6.10 The licence holder, employee or any other person shall not seek to obtain custom by means of personal solicitation outside or in the vicinity of the premises.
- 2.6.11 The licence holder shall ensure that the public are not admitted to any part or parts of the premises other than those which have been approved by the Council and are so designated on the plan of the premises.

2.7 Admission to the Premises

- 2.7.1 No person under the age of 18 shall be admitted to the premises, employed in the business of the sex establishment, or permitted to work in the premises on a self-employed basis.
- 2.7.2 At each entrance to the premises there shall be prominently displayed a notice prohibiting entry to all persons under 18 years of age. A notice must also be prominently displayed at the entrance stating that any person suspected of being under 25 years of age will be required to produce valid photographic identification that they are over 18 years of age.
- 2.7.3 The licence holder or responsible person shall ensure that all persons employed on the premises are aware of the age restriction on clients and that they exclude or remove from the premises any person attempting to evade the restriction.
- 2.7.4 The licence holder must maintain a Refusals Log to record any occasion when a person is refused entry to the premises. The Log will be made available on request by the police or by an authorised officer.
- 2.7.5 Any person who appears to be drunk/intoxicated or under the influence of illegal drugs must not be admitted to the premises.
- 2.7.6 Police officers, authorised officers and officers of other authorised agencies shall be admitted immediately at all reasonable times and at any time the premises are open for business.

PART 3 CONDITIONS APPLYING TO SEX SHOPS

- 3.1 All sex articles and other things displayed for sale, hire, exchange or loan within a sex shop shall be clearly marked to show the price charged.
- 3.2 All printed matter offered for sale, hire, exchange or loan shall be available for inspection prior to purchase, hire, exchange or loan and a notice to this effect is to be prominently displayed within the premises.
- 3.3 No film shall be sold or supplied unless it has (a) been passed by the British Board of Film Classification and bears a certificate to that effect or (b) approved by the Council and is a reproduction authorised by the owner of the copyright of the film so certified.
- 3.4 No moving picture or display or recorded sound of any description however provided shall be permitted on the premises except for a period necessary to check a recording for fault by the licence holder or for a period of not more than one minute for the sole purpose of demonstrating it to a prospective purchaser or hirer of the article in question and such display shall be in a booth to which there shall only be permitted the prospective purchaser

Appendix A

or hirer and any one person employed by the licence holder to sell or hire such articles. The licence holder must not make any charge or permit any charge to be made for such a display as mentioned in this condition.

- 3.5 All refuse produced on the premises and materials, goods or articles discarded for any reason shall be securely stored within the premises and delivered in sealed containers to the designated refuse collection point.
- 3.6 The licence holder shall make such provision for the reception of goods and articles for sale, hire or display on the premises so that they are received directly into the premises and not subject to storage for any period of time outside the premises on any pavement, footpath, forecourt or yard.

Part 4 CONDITIONS APPLYING TO SEX CINEMAS

4.1 Film Categories

The categories U, PG, 12, 15, 18 and RESTRICTED 18 have the following effect:

U	Universal.- Suitable for all
PG	Parental Guidance. Some scenes may be unsuitable for young children.
12	Passed only for persons of 12 years and over.
15	Passed only for persons of 15 years and over.
18	Passed only for persons of 18 years and over.
RESTRICTED (18)	The 'R18' category is a special and legally restricted classification primarily for explicit works of consenting sex or strong fetish material involving adults. Films may only be shown to adults in specially licensed cinemas, and video works may be supplied to adults only in licensed sex shops. 'R18' videos may not be supplied by mail order.

4.2 Exhibition of Films

- 4.2.1 No film shall be exhibited at the premises unless it has been passed by the British Board of Film Classification as a U, PG, 12, 15, 18 or RESTRICTED 18 film and no notice of objection to its exhibition has been given by the Council; or it has been passed by the Council as a U, PG, 12, 15, 18 (North Devon) film.
- 4.2.2 A representation or written statement of the terms of any certificates given by the British Board of Film Classification shall be shown on the screen immediately before the showing of any film to which it relates and the representation or statement shall be shown for long enough and in form large enough for it to be read from any seat in the auditorium.
- 4.2.3 Where the Council has given notice in writing to the licence holder of the premises prohibiting the exhibition of a film on the ground that it contains material which, if exhibited, would offend against good taste or decency or would be likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling, that film shall not be exhibited in the premises except with the prior consent in writing of the Council.
- 4.2.4 No film in the 'RESTRICTED 18' category may be exhibited in a multi-screen complex whilst persons under 18 are being admitted to any other performance in the complex.
- 4.2.5 When the programme includes a film in 'RESTRICTED 18, category the Licence holder shall display in a conspicuous position at each entrance to the premises a notice in clear letters in the following terms:

"PERSONS UNDER 18 CANNOT BE ADMITTED TO THIS CINEMA FOR ANY PART OF THE PROGRAMME".

- 4.2.6 The licence holder shall display at each entrance to the premises in a prominent position where it can be easily seen and read a timetable of the films on exhibition. In case of a multi-screen complex, where consent has been granted, the notice shall specify the particular part of the premises in which films in the 'RESTRICTED 18' category are being exhibited.
- 4.2.7 When exhibiting a 'RESTRICTED 18' film, the timetable of films must include the following addition to the category shown:

'RESTRICTED 18': "PASSED ONLY FOR PERSONS OF 18 YEARS AND OVER. THIS FILM IS LIKELY TO CONTAIN EXPLICIT WORKS OF CONSENTING SEX OR STRONG FETISH MATERIAL INVOLVING ADULTS."

- 4.2.8 All individuals wishing to view a film in the 'RESTRICTED 18' category shall provide proof of age. The only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or ID card bearing the PASS hologram.

4.3 Advertisements

- 4.3.1 No advertisement displayed at the premises of a film to be exhibited at the premises shall depict any scene or incident which is not included in the film as certified by the British Board of Film Classification or approved for exhibition by the Council.
- 4.3.2 Where the Council has given notice in writing to the licence holder of the premises objecting to an advertisement on the ground, that, if displayed, it would offend against good taste or decency or be likely to encourage or incite to crime to lead to disorder or to be

offensive to public feeling, that advertisement shall not be displayed at the premises except with the prior consent of the Council.

4.4 Sale of Sex Articles

No sex articles or other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity shall be displayed, sold, hired, exchanged, loaned or demonstrated in a sex cinema.

PART 5 CONDITIONS APPLYING TO SEXUAL ENTERTAINMENT VENUES

5.1 Performances of Relevant Entertainment

5.1.1 Relevant entertainment shall take place only in the areas approved by the Council and so designated on the approved plan.

5.1.2 There shall be no private booths or performing areas provided on the premises.

5.1.3 There shall be a written code of conduct for performers. All performers must comply with the code and a record, signed by the performers, must be kept on the premises and be made available on request by the police or by an authorised officer. The code shall include the following:

- No performances shall include or simulate any sexual act, including any sex act with any other performer, the performer themselves, or persons in the audience or with the use of any object.
- Performers must not use any inappropriate, lewd, suggestive or sexually graphic language.
- Performers must not touch the breasts or genitalia of another performer, at any time as part of a performance.
- There shall be no use of sex articles (as defined by paragraph 4(3) of Schedule 3 of the Act) at any time.
- There shall be no physical contact between a performer and a customer except as permitted by the House Rules (see 5.2.1).
- Performers must not climb onto furniture provided for customers.
- Performers must not remain in a state of undress in any public area when they have completed their act.
- No performer must appear outside the premises in a nude or scantily-clad condition.
- At all times performers must keep a minimum distance of one metre away from customers.

5.2 House Rules

5.2.1 Prior to the opening of the premises, the licence holder must provide a copy of the premises' House Rules to the Council and to Devon and Cornwall Constabulary for approval. The House Rules must include, as a minimum, the following:

- No person under the age of 18 shall be permitted to view relevant entertainment.
- Physical contact with performers is not permitted. At all times customers will keep a minimum distance of one metre away from performers.
- No member of the audience shall throw money or otherwise give gratuities to the performers except as permitted above.
- No customer shall accept from or give to any performer or member of staff any telephone number or business card or note.
- Customers and staff will not be permitted to photograph, record, film or electronically transmit any performance.

- Customers must remain seated whilst watching a performance of relevant entertainment.
- Any customer behaving in a disorderly or inappropriate manner will be removed from the premises and may be excluded for such period as the licence holder considers appropriate.

5.2.2 On entry to the premises, each customer must be provided with a copy of the House Rules.

5.2.3 All performers and staff must be given a copy of the House Rules. They must sign and date a copy of the House Rules which must be retained on the premises and made available on request by the police or by an authorised officer.

5.2.4 A copy of the House Rules shall be displayed at all times in or near the performers' changing room(s) so that they can be easily read by the performers.

5.2.5 Copies of the House Rules will be prominently displayed throughout the premises in locations where they can be easily read by the public.

5.2.6 Any changes or alterations to the House Rules must be submitted in writing for the approval of the Council.

5.3 Protection of Performers

5.3.1 Performers shall be aged 18 years or over. The applicant shall ensure that, prior to employment, all performers undertaking relevant entertainment provide documents proving that they are 18 years of age or over. Acceptable forms of identification are recognised photographic identification documents, such as a driving licence, passport or ID card bearing the PASS hologram. These documents must be copied and retained on the performer's file.

5.3.2 A record shall be maintained on the premises detailing the names and start and finish times of individual performers involved in all forms of relevant entertainment. The record will be made available on request by the police or by an authorised officer.

5.3.3 Performers shall be provided with secure and private changing facilities. Performers shall have direct access to changing facilities without being required to pass through or in close proximity to the audience.

5.3.4 No performer shall be allowed to work if, in the judgement of the management they appear to be drunk, intoxicated, or under the influence of illegal substances.

5.3.5 All entrances to private areas to which members of the public are not permitted access shall have clear signage stating that access is prohibited.

5.3.6 Any exterior smoking area for use by performers shall be kept secure and separate to any public smoking area.

5.3.7 The licence holder shall implement a written policy to ensure the safety of performers when leaving the premises after of work. The policy must be made available for inspection on request by a police officer or by an authorised officer.

5.3.8 No person other than performers and authorised staff shall be permitted in the changing room(s).

5.3.9 The charges for entrance and any compulsory purchases within the venue must be clearly displayed at every entrance to the premises.

5.3.10 All charges for products and services must be displayed prominently inside the premises and at each customer table and in any bar area.

5.4 Door Supervisors

5.4.1 All individuals employed on the premises to conduct security activity (within the meaning of paragraph 2(1) (a) of Schedule 2 to the Private Security Act 2001) must be licensed by the Security Industry Authority (SIA).

5.4.2 An adequate number of SIA licensed door supervisors shall be on duty on the premises whilst the premises is open to the public (actual numbers and locations to be agreed with Devon and Cornwall Constabulary and the Council)

5.4.3 All door supervisors shall wear clothing to differentiate themselves from other staff.

5.4.4 A policy of random searches of persons entering the premises shall be operated. Any person found to be in possession of illegal drugs upon entry shall be prevented entry and, where possible, restrained until the police can take such person into custody. Any person found using illegal drugs on the premises shall be removed from the premises, or where possible, restrained until the police can take such person into custody.

5.5 Sale of Sex Articles

No sex articles or other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity shall be displayed, sold, hired, exchanged, loaned or demonstrated in a Sexual Entertainment Venue.

5.6 Exhibition of Films

Films classified as 'RESTRICTED 18' must not be shown on the premises.

APPENDIX C

Application Procedure for Grant, Variation, Transfer or Renewal of Licence for a Sex Establishment

Grant of a Licence

To apply for the grant of a sex establishment licence an applicant must:

- provide a completed application form;
- provide a scale plan of the premises to which the application relates;
- provide a criminal conviction certificate from Disclosure Scotland (issued under section 112(1)(a) of the Police Act 1997 or the results of a subject access search under the Data Protection Act 1998 of the Police National Computer conducted by the National Identification Service (this will apply to all partners and directors where appropriate);
- pay the current application fee (part refundable if a hearing is not required);
- display a notice on the premises or near the premises as agreed by the Council;
- advertise the application in a local newspaper;
- send a copy of the application and plan to the Chief Officer of Police, Licensing Department (East), Devon and Cornwall Police HQ, Middlemoor, Exeter, Devon, EX2 7HQ within 7 days of making the application to the council.

Plan of Premises

The plan shall show:

- the extent of the boundary of the building, if relevant, and any external and internal walls of the building and, if different, the perimeter of the premises;
- the location of points of access to and egress from the premises;
- the location of escape routes from the premises;
- in a case where the premises is to be used for more than one licensable activity, the area within the premises used for each activity;
- fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) which may impact on the ability of individuals on the premises to use exits or escape routes without impediment;
- in a case where the premises includes a stage or raised area, the location and height of each stage or area relative to the floor;
- in a case where the premises includes any steps, stairs, elevators or lifts, the location of the steps, stairs, elevators or lifts;
- in the case where the premises includes any room or rooms containing public conveniences, the location of the room or rooms;
- the location and type of any fire safety and any other safety equipment including, if applicable, marine safety equipment; and
- the location of any kitchen, bar or serverly on the premises.

The plan may include a legend through which the matters mentioned or referred to above are sufficiently illustrated by the use of symbols on the plan.

Public notices

A notice must be displayed at or on the premises to which the application relates for a period of not less than 21 consecutive days from the day following the day the application was given to the council, where it can be conveniently read from the exterior of the premises.

Where the premises cover an area of more than 50 square meters, a further identical notice must be displayed every 50 metres along the external perimeter of the premises abutting any highway.

The notice must be on pale blue paper sized A4 or larger and printed legibly in black ink or typed in black in a font size equal to or larger than 16.

The notice must state:

- details of the application and activities that it is proposed will be carried on or from the premises,
- the full name of the applicant,

Appendix A

- the postal address of the premises, or in the case where there is no postal address, a description of the premises sufficient to enable the location and extent of the premises to be identified,
- the date, being 28 days after that on which the application is given to the council, by which representations may be made to the council and that representations should be made in writing,
- that it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine (£5000) for which a person is liable on summary conviction for the offence.

A similar notice must be published in a local newspaper within 7 days of giving the application to the council.

Variation of a licence

The holder of a licence may apply at any time for any variation of the terms, conditions or restrictions on or subject to which the licence is held.

The process of applying for a variation is the same as that for applying for an initial grant except that a plan of the premises is not required unless the application involves structural alterations to the premises.

Renewal of a licence

The holder of a licence may apply for renewal of the licence. In order for the licence to continue to have effect during the renewal process, a valid application together with the appropriate fee must be submitted before the current licence expires.

The process of applying for renewal of a licence is the same as that for applying for an initial grant except that a plan of the premises is not required.

Transfer of a licence

A person may apply for transfer of a licence at any time.

The process of applying for transfer of a licence is the same as that for applying for an initial grant except that a plan of the premises is not required.

**APPENDIX D
PROCEDURES FOR LICENSING SUB-COMMITTEE HEARINGS AND THE FORM OF
DISCUSSION AT HEARINGS**

The quorum for Sub-Committees shall be 3 and decisions may be taken by a majority vote. Abstentions will not be permitted and the Chair will not have a casting vote.

The Sub-Committee may specify a maximum period of time in which an applicant or any other person who is permitted to appear at the hearing may address the Sub-Committee.

The Sub-Committee may refuse to permit the giving of evidence that it considers to be irrelevant or repetitious.

The Sub-Committee may from time to time adjourn the hearing and, if the date, time and place of the adjourned hearing are announced at the hearing before the adjournment, no further notice shall be required.

Public Hearings

Hearings before the Sub-Committee are normally to be held in public. The exceptions to this rule are:

- (i) Where the Sub-Committee decides that it is in the public interest for the public to be excluded from a particular hearing, or part thereof;
- (ii) Where the Sub-Committee makes a resolution that the public and the press be excluded from the hearing, on the basis that either confidential or exempt information is likely to be disclosed. This includes the situation where there is a need for the Sub-Committee to obtain legal advice.

Rights of Parties

All parties have the following rights:

- (i) to attend the hearing;
- (ii) to have their representations considered by the Sub-Committee, even if unable or unwilling to attend the hearing;
- (iii) to be assisted or represented by any person, whether legally qualified or not;
- (iv) to give further information in support of their application, representation or notice, in response to a point upon which the authority has given notice to a party that it will want clarification;
- (v) to address the Sub-Committee;
- (vi) to exercise their rights within the hearing for an equal maximum time.

Further Opportunities for Parties

If granted permission by the Sub-Committee, parties may also:

- (i) question any other party;
- (ii) call any other person as a witness.

A request by a party to call a witness at the hearing may only be granted where the party has given prior notification of the request and details of the points on which that witness may be able to assist the Sub-Committee in considering the application.

Procedures at the Hearing

Subject to the right of the Sub-Committee to amend its procedures at any given hearing, the following procedures are to be followed at all hearings:

- (i) The Chair welcomes those present to the meeting, and explains briefly the location of the facilities available for the public and the procedure in the event of there being a fire alarm;
- (ii) The Chair of the meeting introduces the members of the Licensing Sub-Committee officiating, and the Officers of the Licensing Authority present and explains the role of those present on behalf of the Authority;
- (iii) The Chair introduces the matter to be resolved, asks the parties to the hearing and their representatives to introduce themselves, and establishes that no members of the Sub-Committee have a disclosable pecuniary or personal interest in the matter to be considered;
- (iv) The Chair invites the Legal Officer to summarise the procedure to be followed at the hearing. The summary indicates that the hearing takes the form of a discussion led by the Sub-Committee, and cross-examination is not permitted unless the Sub-Committee considers it is necessary for it to consider the matter appropriately;
- (v) If any party fails to attend the hearing, the Sub-Committee decides whether to adjourn the matter, or proceed in the party's absence. If the decision is taken to proceed, the party's written application or representation is taken into account;
- (vi) The Sub-Committee decides whether to grant any written request made by any party for permission to call a witness at the hearing. Any request may not be unreasonably withheld;
- (vii) The Chair invites the Environmental Health Officer (EHO) or Licensing Officer in attendance to outline the matter before the Sub-Committee, without such Officer making any recommendation as to the conclusion the Sub-Committee should reach;
- (viii) The Applicant for the licence or variation presents their case, either personally or through a representative. The Applicant may give further information in support of the application, but only in response to a point upon which the Licensing Authority has given notice that it will want clarification;
- (ix) Documentary evidence or other information produced by the Applicant may be considered, provided this has been produced prior to the hearing, or if not, with the consent of all the other parties. It may be necessary in some circumstances for the hearing to be put back until later in the day so that parties may consider additional information, which is produced at the hearing;
- (x) Members of the Sub-Committee then question the Applicant. Questions should be directed through the Chair;
- (xi) The Applicant calls any witnesses in support of their application, if the Sub-Committee under above has permitted this. The witnesses address the Sub-Committee, which may then ask any question of the witnesses through the Chair;
- (xii) When the Applicant has completed the presentation of their case, the representatives of any responsible authorities who have made relevant representations address the hearing, and may be questioned by members of the Sub-Committee. Witnesses may be called by the responsible authorities where permitted by the Sub-Committee under (vi) above. Documentary or other information produced on behalf of the responsible authority may be considered, as indicated above at (ix);
- (xiii) Thereafter, interested parties address the hearing, and members of the Sub-Committee may question them. Members of the Sub-Committee then question witnesses, who are permitted to be called under (vi) above in support of the submissions of the interested parties. Documentary or other information produced on behalf of an interested party may be considered, as indicated above at (ix);
- (xiv) After the conclusion of the evidence, each party sums up their case, by addressing the Sub-

Committee in the order in which they presented their case;

- (xv) After each party has summed up, the Chair gives each party the opportunity to make any further comment, without introducing new material to the hearing;
- (xvi) In deliberating as to its decision, the Sub-Committee is entitled to exclude the parties and the general public for any reason mentioned in paragraph 3. The most likely justification is the receipt of legal advice;
- (xvii) Once a decision is reached, and the Sub-Committee is satisfied as to the terms in which the adjudication is to be delivered, the Chair invites the Licensing and Community Safety Committee Hearing Co-ordinator (LCHC) to read aloud the terms of the decision made, along with the reasons for such decision;
- (xviii) The Chair thanks everyone for their contributions, and closes the meeting, or moves on to the next item on the agenda.

After the Hearing

Once the meeting of the Sub-Committee has been concluded the LCHC prepares minutes of the hearings, for approval by the EHO/Licensing Officer and Solicitor, within three working days.

The EHO/Licensing Officer issues a notice to all of the parties involved (whether present at the hearing or not), outlining the decision of the Sub-Committee, within three working days from receipt of the approved minutes.

Right of Appeal

Any such appeals must be commenced by notice of appeal given by the appellant to the Clerk to the Justices for North Devon Magistrates' Court within the period of 21 days beginning with the date of receipt of the Hearing Decision Notice.

REPORT TO: LICENSING & COMMUNITY SAFETY COMMITTEE

Date: 8th October 2019

TOPIC: HACKNEY CARRIAGE AND PRIVATE HIRE POLICY – THE INSTITUTE OF LICENSING ‘GUIDANCE ON DETERMINING THE SUITABILITY OF APPLICANTS AND LICENSEES IN THE HACKNEY AND PRIVATE HIRE TRADE’

REPORT BY: LICENSING SERVICE LEAD

1 INTRODUCTION

- 1.1 The purpose of this report is to seek Licensing and Community Safety Committee approval for the Licensing Service to begin a formal public consultation on changing Appendix H of the North Devon Council Hackney Carriage and Private Hire Licensing Policy (the ‘policy’), ‘Guidelines relating to the relevance of convictions’ found at **Appendix A**.

2 RECOMMENDATIONS

- 2.1 That Licensing and Community Safety Committee considers the report and instruct the Licensing Service to begin a formal consultation on the necessary amendments to the policy for the adoption of agreed sections of the Institute of Licensing (IOL) ‘Guidance on Determining the Suitability of Applicants and Licensees in the Hackney and Private Hire Trades’ found at **Appendix B**.
- 2.2 Approve a six week consultation exercise with the ‘taxi trades’, general public, and anybody or person with an interest in ‘taxis’.
- 2.3 Request proposed amendments to the policy resulting from the consultation and review process be presented to this Committee in a further report.

3 REASONS FOR RECOMMENDATIONS

- 3.1 To ensure the Council’s policies are regularly reviewed and kept up to date.
- 3.2 To increase the robustness of the Council’s approach and procedure in respect of periodic checks on enhanced disclosures.

4 REPORT

- 4.1 North Devon Council approved the policy and associated conditions of licence for the Hackney Carriage and Private Hire trades including Appendix H 'Guidelines relating to the relevance of convictions' in August 2016. These guidelines are a modified version of the outdated Department of Transport Circular 2/92 and Home Office Circular 13/92.
- 4.2 In September and October 2017 a formal public consultation process took place to replace Appendix H of the policy with convictions guidelines based on a Local Government Association (LGA) template. Due to the personal circumstances of a North Devon Council officer the findings of the consultation process and request to approve the new convictions guidelines were not presented to the Licensing Committee.
- 4.3 The guidelines in appendix H of the policy need updating to reflect the content of the IOL guidance on determining the suitability of applicants and licensees in the hackney and private hire trades.
- 4.4 The IOL guidance has been produced by the IOL working in partnership with the LGA, Lawyers in Local Government and the National Association of Licensing and Enforcement Officers. It was issued in April 2018 following a widespread consultation.
- 4.5 The IOL guidelines are intended to provide guidance for authorities when carrying out their functions relating to the licensing of hackney carriage and private hire drivers, operators and vehicles, with a view to improving transparency and consistency on licensing decisions.
- 4.6 The IOL guidelines differ from our existing guidelines appended in appendix H of the policy, a summary of the more significant changes which are being proposed for adoption are as follows –

IOL Guidelines Paragraph number	Changes
3.23 Enhanced Criminal Record Disclosure	All applicants and licensees should be required to maintain their certificates through the Disclosure and Barring Service (DBS) Update Service throughout the currency of their licence. This will be a new requirement, the update service is a means to electronically check a disclosure at any point during the term of a licence in prescribed circumstances.
3.46 Basic DBS check	Basic DBS disclosure for vehicle proprietors. This will apply to vehicle proprietors who are not also licensed by this authority to drive a licensed vehicle and thereby will have not have obtained an enhanced DBS certificate with barred lists checks. This certificate must be maintained through the DBS Update Service throughout the currency of their licence.
4.11 Classification of a caution	A caution will be regarded in exactly the same way as a conviction. This will be a new policy.
4.30 Exploitation	Where an applicant or licensee has been convicted of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of

Agenda Item 7

	<p>whether the victim or victims were adults or children, they will not be licensed. This includes slavery, child sexual exploitation, grooming, psychological, emotional or financial abuse, but this is not an exhaustive list.</p> <p>This is not included in the existing guidelines.</p>
4.32 Possession of a weapon	<p>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.</p> <p>This is not included in the existing guidelines.</p>
4.33 & 4.34 Sex and indecency offences	<p>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.</p> <p>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.</p> <p>The existing policy is the applicant be refused unless a period of 3 to 5 years clear of convictions.</p>
4.35 Dishonesty	<p>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.</p> <p>The existing policy that an applicant be refused unless a period of 3 years clear of convictions.</p>
4.36 & 4.37 Drugs	<p>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.</p> <p>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.</p> <p>The existing policy is that an applicant be refused unless a period of 3 years clear of convictions.</p>
4.38 Discrimination	<p>Where an applicant has a conviction involving or connected with discrimination in any form, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.</p> <p>This is not included in the existing guidelines.</p>

Agenda Item 7

<p>4.40 Drink/drug driving</p>	<p>Where an applicant has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence or driving ban imposed.</p> <p>The existing policy is that an applicant be refused unless a period of 3 years clear of drink driving convictions.</p> <p>Drug driving is not included in the existing guidelines.</p>
<p>4.41 Use of mobile phone whilst driving</p>	<p>Where an applicant has a conviction for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least 5 years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.</p> <p>This is not included in the existing guidelines.</p>
<p>4.42 Minor traffic offences</p>	<p>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 7 or more points on their DVLA licence for minor traffic or similar offences, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed.</p> <p>The existing policy is that licensed drivers with more than 6 points are referred the Licensing committee and that an applicant be refused unless a period of 12 months has elapsed since the expiry of the disqualification or from the date of any subsequent conviction.</p>
<p>4.43 Major motoring offence</p>	<p>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 will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.</p> <p>The existing policy is that a conviction for dangerous driving is likely to lead to the refusal of an application unless at least three years has elapsed since the conviction.</p> <p>An isolated conviction for careless driving will ordinarily merit a warning as to future driving and advice on the standard expected of hackney carriage and private hire drivers. More than one conviction for this type of offence within the last three years should merit refusal.</p>

- 4.7 The proposal to introduce the mandatory requirement for all licensed drivers to subscribe to the DBS update service will be a significant change.

Agenda Item 7

- 4.8 The DBS is an executive non-departmental public body sponsored by the Home Office. It aids organisations to make safer decisions and prevent unsuitable people from working with vulnerable groups, including children. The Council's current policy requires all drivers to produce an Enhanced DBS certification on application every three years.
- 4.9 The DBS checking process is a credible means of checking on an individual's criminal activity, whether convicted or otherwise. The DBS Update Service is an online service which allows licence holders to keep their DBS Certificates up to date and for the District Council to be able to check a DBS Certificate. The use of the update service means the driver only ever has to apply once for a DBS certificate.
- 4.10 Since the launch of the update service in June 2013 North Devon Council licensed drivers have been encouraged to subscribe to it, giving benefits for licence holders and the Council. However the level of up take has been minimal.
- 4.11 Due to the increased level of robustness that the Council can gain from the service it is proposed that subscription to the DBS Update Service becomes mandatory for all licensed drivers (<https://www.gov.uk/dbs-update-service>).
- 4.12 An Enhanced DBS check for which the fee is £44 currently sought upon first application by an individual for a drivers licence every three years and thereafter (for a fee of £44). There is an annual fee of with the update service which is currently set at £13.00. This represents a reduction in the costs year on year associated with undertaking a full DBS check, which will be realised by the drivers themselves rather than the Council.
- 4.13 Subscription to the update service is quick and simple however it must be done within specified timescales. Subscription lasts for a year and must be renewed annually, before the current subscription ends. In some authorities drivers have fallen foul of the requirements to renew in the specified timescales thereby requiring them to undertake a full enhanced DBS
- 4.14 The benefits for the drivers include saving money, saving time by not having to complete a DBS application form, can take the DBS certificate from role to role within the same workforce and being in control of their certificate.
- 4.15 Officers will be able to undertake a quick on line status check to see if an individuals certificate is up to date. It also enables the Council to see if any relevant information has been identified about the individual since their DBS certificate was issued. This is the most pertinent area and thereby reduces the safeguarding risk to the Council and increases the robustness of the Councils licensing systems.
- 4.16 It is considered that the proposal to mandate the DBS update service is necessary to contribute to the Council's safeguarding responsibilities. The suggested time frame for moving all existing drivers to the DBS update service is a three year cycle, due to the logistical set up of licence renewals.

5 RESOURCE IMPLICATIONS

- 5.1 Any financial costs which are reduced or incurred through the approval of a new policy based upon the Institute of Licensing Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades use will be taken into account when calculating fees for taxi related licences.
- 5.2 Costs for subscription to the DBS update service will be borne by licence holders.

6 CONSTITUTIONAL CONTEXT

Article or Appendix and paragraph	Referred or delegated power?	Key decision?
Part 3 Annexe (4)	Delegated	No

7 STATEMENT OF CONFIDENTIALITY

7.1 This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

8 BACKGROUND PAPERS

8.1 The following background papers were used in the preparation of this report:

- *Local Government (Miscellaneous Provisions) Act 1976*
- *Town Police Clauses Act 1847*
- *North Devon Council Hackney Carriage and Private Hire Licensing Policy*

The background papers are available for inspection and kept by the author of the report.

9 STATEMENT OF INTERNAL ADVICE

9.1 The author (below) confirms that advice has been taken from all appropriate Councillors and officers.

Licensing and Community Safety Committee Chair: Cllr Frederick Tucker

Author: Howard Bee

Date: 27/09/2019

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



April 2018

 Institute of Licensing

Produced by the Institute of Licensing in partnership with:





Contents

Foreword	2
Chapter 1: Introduction	3
Chapter 2: Offenders and Offending - An Overview	5
Risk of re-offending:	7
Chapter 3: 'Taxi' Licensing Overview	9
Taxi Drivers	9
Private Hire Operators	13
Vehicle Proprietors	15
Chapter 4: Guidance on Determination	17
Pre-application requirements	17
Vehicles:	17
Drivers:	18
Operators:	18
Drivers	20
Crimes resulting in death	21
Exploitation	21
Offences involving violence.....	21
Possession of a weapon	21
Sex and indecency offences	21
Dishonesty	22
Drugs	22
Discrimination	22
Motoring convictions	22
Drink driving/driving under the influence of drugs/using a hand-held telephone or hand held device whilst driving	22
Other motoring offences.....	23
Hackney carriage and private hire offences.....	23
Vehicle use offences.....	23
Private Hire Operators	23
Vehicle proprietors.....	24
Acknowledgements	25



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

Foreword

The function of licensing is the protection of the public. A member of the public stepping into a motor vehicle driven by a stranger must be able to trust the driver. Are they honest? Are they competent? Are they safe? Are they trustworthy? When we transact with others, we usually have time and opportunity to make such assessments. When we transact with taxi drivers, we don't. Therefore, we must, and do, rely on the licence as the warranty of the driver's safety and suitability for the task at hand.

It follows that a licensing authority has an onerous responsibility. In making decisions regarding grant and renewal of licences it is, in effect, holding out the licensee as someone who can be trusted to convey the passenger from A to B in safety. That passenger may be you, or your elderly mother, or your teenage daughter, or a person who has had too much to drink, or who is vulnerable for a whole host of other reasons.

Everybody working in this field should acquaint themselves with the facts of the Rotherham case, which stands as a stark testament to what can happen when licensing performs its safeguarding role inadequately. But the extremity of that appalling story should not distract us from the job of protecting the public from more mundane incompetence, carelessness or dishonesty. The standards of safety and suitability do not have to be set as a base minimum. To the contrary, they may be set high, to give the public the assurance it requires when using a taxi service. It is good to know that one's driver is not a felon. It is better to know that he or she is a dedicated professional.

Crucially, this is not a field in which the licensing authority has to strike a fair balance between the driver's right to work and the public's right to protection. The public are entitled to be protected, full stop. That means that the licensing authority is entitled and bound to treat the safety of the public as the paramount consideration. It is, after all, the point of the exercise.

Therefore, this guidance is to be welcomed. It rightly emphasises that any circumstance relating to the licensee is potentially relevant, provided of course that it is relevant to their safety and suitability to hold a licence. It provides useful and authoritative guidelines to licensing authorities as to how they ought to approach their important task of making determinations about the safety and suitability of drivers and operators.

While, of course, licensing is a local function, it seems absurd that precisely the same conduct might result in a short period without a licence in one district, and a much longer period in a neighbouring district. If a driver is suitable in district A, they are surely suitable in district B, and vice versa. If, as is hoped, this guidance becomes widely adopted, this will result in a degree of national uniformity, which serves the public interest in consistency, certainty and confidence in the system of licensing. Adherence to the guidance may also provide protection to licensing authorities on appeal.

The guidance is therefore commended to licensing authorities. It is hoped that, in due course, it will sit at the elbow of every councillor and officer working in taxi licensing.

Philip Kolvin QC
Cornerstone Barristers

April 2018



Chapter 1: Introduction

- 1.1 This guidance has been produced by the Institute of Licensing working in partnership with the Local Government Association (LGA), Lawyers in Local Government (LLG) and the National Association of Licensing and Enforcement Officers (NALEO), following widespread consultation. We are grateful to all three organisations for their contributions. This guidance is formally endorsed by all of those organisations.
- 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. This guidance complements the LGA's Taxi and Private Hire Licensing Councillor's Handbook and any forthcoming Government guidance. Local authorities should also be aware of the forthcoming National Anti Fraud Network database on refusals and revocations of hackney carriage and private hire licences.
- 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

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.



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

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.

- 1.8 In Chapter 2 this Guidance explores the current thinking behind an individual's tendencies to reoffend. It is clear that this is not an exact science and that there is no meaningful and precise statistical evidence that can assist in the setting of policy. Given the important function of licensing to protect the public, any bar should be set at the highest level which is reasonable, albeit subject to the exercise of discretion as is set out in paragraph 1.7 and Chapters 3 and 4.
- 1.9 This Guidance contains no detailed list of offences. All offences are allocated to a general category such as 'dishonesty' or 'drugs'. This prevents it being argued that a specific offence is not covered by the Policy as it 'is not on the list' and also prevents arguments that a firearm is more serious than a knife and should lead to differentiation. In each case, appropriate weight should be given to the evidence provided.
- 1.10 This Guidance cannot have the force of legislation, new or amended; the need for which is both abundantly clear to, and fully supported by the Institute and the other organisations working with it. It is intended to help local authorities achieve greater consistency so that applicants are less able to shop between authorities. It is acknowledged that this cannot be fully achieved without the imposition of national minimum standards.
- 1.11 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.

² [2007] 1 WLR 2067



Chapter 2: Offenders and Offending - An Overview

- 2.1 The aim of local authority licensing of the taxi and PHV trades is to protect the public'.³ With this in mind, Public Protection must be at the forefront of the decision maker's 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 harm⁴. Risk assessment tools are regularly employed by those who are responsible for managing individuals who have committed offences. Local Authorities are not always privy to this information 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 DfT "Taxi and Private Hire Licensing – Best Practice Guide" para 8

⁴ Kemshall, H. (2008). Understanding the Management of High Risk Offenders (Crime and Justice). Open University Press

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

- 2.6 Flaud⁵ noted that risk is in principle, a matter of fact, but danger is a matter of judgment and opinion. He goes on to note that risk may be said to be the likelihood of an event occurring; danger may be the degree of damage (harm) caused should that event take place⁶.
- 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 future⁷. For example, recent published statistics revealed that 44% of adults are reconvicted within one year of release. For those serving sentences of less than twelve months this increased to 59%⁸. 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 offences⁹.
- 2.9 Dynamic factors are considered changeable and can vary over time. They include attitudes, cognitions and impulsivity¹⁰. It is documented that the greater their 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 problems and/or needs are more frequently observed in offender populations than in the general population¹¹. Many of these factors are interlinked and embedded in an individual's 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. Needs will vary from individual to individual and will rely upon their level of motivation and the nature of the offence committed.

⁵ 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.

⁶ Gendreau, P., Little, T. and Goggin, C. (1996). A meta-analysis of the predictors of adult offender recidivism: what works! *Criminology*, 34, 557-607.

⁷ Craig, L. A. and Browne, K. B (2008). *Assessing Risk in Sex Offenders: A Practitioner's Guide* Paperback.

⁸ Ministry of Justice (2017) *Proven reoffending statistics: July 2014 to June 2015*, London: Ministry of Justice.

⁹ Ministry of Justice (2015): *Transforming Rehabilitation: a summary of evidence on reducing reoffending*. London: Ministry of Justice.

¹⁰ 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

¹¹ Nash, M. (1999) *Police, Probation and Protecting the Public*. London: Blackwell Press.

Risk of re-offending:

- 2.11 The issue of recidivism and increase in serious crime rates has given rise to extensive publications, theories and changes in legislation with many focusing upon the need for more rehabilitation projects 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 individual’s ability to address and reduce such needs relies heavily upon their motivation to change and desist and often takes place over a period of time”¹².
- 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”¹³.
- 2.13 A consistent finding throughout criminological literature is that male offenders tend to desist from crime aged 30 years and over¹⁴. 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 positive social relationships¹⁵. 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 males¹⁶.
- 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 desist¹⁷. As a result, it is important for individuals to evidence change in their behaviour before they can be considered to present a low or nil risk of re-offending. Often the only way of achieving this is through lapse of 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 more one comes to see the benefits of desistance¹⁸. Demonstrating a change in offending behaviour and an ability to make effective choices takes time and comes with some

¹² National Offender Management Service (2016). Public Protection Manual Edition. Proven Reoffending Statistics Quarterly Bulletin, October 2015 to December 2015

¹³ Kurlychek, M C, Brame, R (2007). Scarlet letters and recidivism: Does an old criminal record predict future offending? University of South Carolina.

¹⁴ Serin, R, C. and Lloyd, C.D (2008). Examining the process of offender change: the transitions to crime desistance. 347-364.

¹⁵ Nash, M. (1999) Police, Probation and Protecting the Public. London: Blackwell Press.

¹⁶ Trueman, C.N. (2015). Women and Crime. The History Learning Site. Ingatestone: Essex.

¹⁷ Farrell, S (2005). Understanding Desistance from Crime: Emerging Theoretical Directions in Resettlement and Rehabilitation (Crime and Justice) Paperback.

¹⁸ Maguire, M., Morgan, R. and Reiner, R. (2002). The Oxford Handbook of Criminology. 3rd Edition. Oxford: Oxford University Press.



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

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”¹⁹.

- 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 to an individual’s 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 licence. Being able to evidence change in behaviour will involve consideration of the circumstances at the time of the offence, steps taken to address any issues identified and that person’s ability to sustain such change. This can be a long process that can only be achieved over time.

¹⁹ 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 driver's hands.
- 3.2 Local authorities (districts, unitaries and Welsh Councils) and TfL are responsible for hackney carriage and private hire licensing.
- 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 and 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?

Taxi Drivers

- 3.10 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

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

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 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.

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

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



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

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:

- Enhanced DBS certificates and sign-up to the update service;
- 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 that any and all criminal convictions (apart from “protected convictions” and “protected cautions” where they have been declared²⁷) can be taken into account by the local authority in assessing safety and 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 with Barred Lists checks²⁹ and to provide this to the Licensing Authority. All Licensees should also be required to maintain their Certificates through the DBS Update Service throughout the currency of their licence.

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.

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

²⁹ “For Taxi [driver] Licensing purposes the correct level of check is always the Enhanced level check, with the Adults and Children’s Barred list check. Other Workforce should always be entered at X61 line 1 and Taxi Licensing should be entered at X61 line 2” DBS email 31st August 2017.



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

- 3.24 If any applicant has, from the age of 10 years, 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 suitability³⁰.
- 3.26 The character of the driver in its entirety must be the paramount consideration when considering whether they should be licensed. It is important to recognise that local authorities are not imposing any additional punishment in relation to previous convictions or behaviour. They are using all the information that is available to them to make an informed decision as to whether or not the applicant or licensee is or remains a safe and suitable person.
- 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 driver's licence on the applicant and his family is not a consideration to be taken into account³¹. 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; drink driving is dangerous, irrespective of the situation; bald tyres are dangerous, irrespective of the situation. All these behaviours 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)

³⁰ As recommended by the DfT "Taxi and Private Hire Licensing – Best Practice Guide" para 59

³¹ *Leeds City Council v Hussain* [2002] EWHC 1145 (Admin), [2003] RTR 199 and *Cherwell District Council v Anwar* [2011] EWHC 2943 (Admin)



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

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

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

authority³². 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 person³³.

- 3.36 As with taxi drivers the role of the PHO 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 a PHO is as trustworthy and reliable as a driver, notwithstanding their slightly remote role. Hackney carriages can also be pre-booked, but local authorities should be mindful that where that booking is made by anybody other than a hackney carriage driver, there are no controls or vetting procedures in place in relation to the person who takes that booking and holds that personal information.
- 3.37 How then does a local authority satisfy itself as to the “fitness and propriety” or “safety and suitability” of the applicant or licensee?
- 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 licensee.
- 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
- 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

³² See *Dittah v Birmingham City Council*, *Choudhry v Birmingham City Council* [1993] RTR 356 QBD

³³ Section 55(1) Local Government (Miscellaneous Provisions) Act 1976

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

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 driver’s 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 being, 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 applications to transfer a vehicle as on grant applications.
- 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

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.



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

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 Many members of our society use, and even 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 either to be granted a licence in the first place or to 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:

- Basic DBS checks;
- 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;
- Wheelchair accessibility requirements.



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

Drivers:

- Enhanced DBS checks with update service;
- Checks made to the National Anti Fraud Network database on refusals and revocations of hackney carriage and private hire licences (when available);
- Medical checks;
- Knowledge of the geographic area;
- Spoken and written English tests;
- Disability awareness training;
- Child sexual exploitation and safeguarding training.

Operators:

- Basic DBS checks;
- Details of their vetting procedures for their staff;
- 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 and 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 proprietor’s licence.
- 4.9 “Fit and proper” means that the individual (or in the case of a private hire operator’s 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.

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.



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

- 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.
- 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 criminal 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 and what weight should be attached to it, and each and every case will be determined on its own merits, and 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 are relevant and weighty considerations, but they are not the only 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 or criminal behaviour are likely to cause greater concern than isolated occurrences as such patterns can demonstrate a propensity for such behaviour or offending.
- 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 human beings do make mistakes and lapse in their conduct for a variety of reasons, and it is further accepted that many learn from experience and do not go on to commit further offences. Accordingly, in many cases an isolated

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.



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

conviction, especially if committed some time ago, may 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 (driver's, vehicle and operator's) 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.

Drivers

- 4.25 As the criteria for determining whether an individual should be granted or retain a hackney carriage driver's licence are identical to the criteria for a private hire driver's licence, the two are considered together.
- 4.26 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 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.



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

- 4.27 As stated above, where an applicant has more than one conviction showing a pattern or tendency irrespective of time since the convictions, serious consideration will need to be given as to whether they are a safe and suitable person.
- 4.28 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.

Crimes resulting in death

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

Exploitation

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

Offences involving violence

- 4.31 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

- 4.32 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

- 4.33 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.
- 4.34 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.



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

Dishonesty

- 4.35 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

- 4.36 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.
- 4.37 Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

Discrimination

- 4.38 Where an applicant has a conviction involving or connected with discrimination in any form, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Motoring convictions

- 4.39 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 hand-held telephone or hand held device whilst driving

- 4.40 Where an applicant has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence or driving ban imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.
- 4.41 Where an applicant has a conviction for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least 5 years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.



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

Other motoring offences

- 4.42 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 7 or more points on their DVLA licence for minor traffic or similar offences, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed.
- 4.43 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 will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Hackney carriage and private hire offences

- 4.44 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

- 4.45 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

- 4.46 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.
- 4.47 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.
- 4.48 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 operator’s licence being revoked.



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

- 4.49 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

- 4.50 Vehicle proprietors (both hackney carriage and private hire) have two principal responsibilities.
- 4.51 Firstly, they must ensure that the vehicle is maintained to an acceptable standard at all times.
- 4.52 Secondly, they must ensure that the vehicle is not used for illegal or illicit purposes.
- 4.53 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 to be granted or retain a vehicle licence.
- 4.54 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.



Acknowledgements

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 comprised:

- Stephen Turner, Solicitor at Hull City Council, Licensing Lead for Lawyers in Local Government and Vice Chair of the North East Region IoL (Project Group Chair)
- Jim Button, Solicitor at James Button & Co and President of IoL
- Philip Kolvin QC, Cornerstone Barristers and Patron of IoL
- John Miley, Licensing Manager for Broxtowe Borough Council, National Chair for NALEO and Vice Chair of the East Midlands Region IoL
- Linda Cannon, previously Licensing Manager for Basingstoke & Dean and Hart Councils, and now private licensing consultant and Chair of the South East Region IoL
- Phil Bates, Licensing Manager for Southampton City Council
- Sue Nelson, Executive Officer of IoL

This Guidance is the result of the work of the project team and includes 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 is delighted to have the Local Government Association, the National Association of Licensing and Enforcement Officers and Lawyers in Local Government contributing to and supporting this project with IoL.

The Institute is also 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'.



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

This project has been further enhanced by invaluable contributions from the following individuals and organisations:

- Ellie Greenwood and Rebecca Johnson, Local Government Association
- Tim Briton, Lawyers in Local Government
- Ben Atrill
- Suzy Lamplugh Trust
- Councillor Richard Wright, North Kesteven District Council
- Professor of Criminology Fiona Measham, Durham University
- Councillor Philip Evans, Conwy County Borough Council
- Councillors Catriona Morris and Mick Legg, Milton Keynes Council
- Louise Scott Garner
- Jenna Parker, Institute of Licensing

Finally, grateful thanks go to all those who responded to the initial fact-finding survey and the subsequent consultation on the draft guidance.

Institute of Licensing
Egerton House
2 Tower Road
Birkenhead
CH41 1FN
T: 0151 650 6984
E: info@instituteoflicensing.org



The Institute of Licensing (IoL) is the professional body for licensing practitioners across the UK.
www.instituteoflicensing.org



The Local Government Association (LGA) is the national voice of local government.
www.local.gov.uk



Lawyers in Local Government (LLG). www.lawyersinlocalgovernment.org



National Association of Licensing and Enforcement Officers (NALEO). www.naleo.org.uk

Appendix H

Guidelines Relating to the Relevance of Convictions

The following guidelines are used to determine the relevance of criminal convictions in relation to applications for hackney carriage and private hire driver's licenses. In so stating, this Licensing Authority has taken account of the guidelines set out in the DOT Circular 2/92 and HO Circular 13/92, and modified them as appropriate for its needs.

General Policy

- 1 Each case will be decided on its own merits.
- 2 A person with a current conviction for serious crime need not be permanently barred from obtaining a licence but should be expected to remain free of conviction for 3 to 5 years according to the circumstances before an application is entertained. Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. However the overriding consideration should be the protection of the public.
- 3 The following examples afford a general guide on the action to be taken where convictions are admitted.

(a) Minor traffic offences

Convictions for minor endorseable traffic offences such as speeding, traffic signal matters etc should not prevent a person from proceeding with an application. If sufficient penalty points have been accrued to require a period of disqualification of the applicant's driving licence then a hackney carriage or private hire vehicle driver's licence may be granted after the restoration of the DVLA driving licence, but only after a period of 12 months has elapsed since the expiry of the disqualification or from the date of any subsequent conviction.

In circumstances where a driver acquires 12 or more penalty points on his DVLA driving licence but is not disqualified from driving because of the mitigating circumstances put before the magistrates' court, the Licensing Authority may still revoke or suspend a driver's hackney carriage or private hire licence. Such a matter is dealt with by way of a disciplinary hearing (see Appendix I).

(b) Major motoring offences

A conviction for dangerous driving is likely to lead to the refusal of an application unless at least three years has elapsed since the conviction.

An isolated conviction for careless driving will ordinarily merit a warning as to future driving and advice on the standard expected of hackney carriage and private hire drivers. More than one conviction for this type of offence within the last three years should merit refusal.

(c) Drunkenness

(i) With a motor vehicle

A serious view will be taken of a conviction of driving or being in charge of a vehicle while under the influence of drink. More than one conviction for these offences will raise grave doubts as to the applicant's fitness to hold a licence.

At least 3 years should elapse (after the restoration of the driving licence) before an applicant is considered for a licence.

If there is any suggestion that the applicant is an alcoholic, a special medical examination should be arranged before the application is entertained. If the applicant is found to be an alcoholic a period of 3 years must elapse after treatment is complete before a further licence is considered.

(ii) Not in motor vehicle

An isolated conviction for drunkenness need not debar an applicant from gaining a licence. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination (see (i) above). In some cases, a warning may be sufficient.

(d) Drugs

An applicant with a conviction for a drug related offence is required to show a period of at least 3 years free of convictions before an application is entertained.

(e) Indecency offences

As hackney carriage and PHV drivers often carry unaccompanied passengers, applicants with convictions such as indecent exposure, or importuning will be refused until they can show a substantial period, at least 3 years, free of such offences. Where there is more than one conviction of this kind or there are convictions for more serious sexual offences such as indecent assault, applications are likely to be refused unless there is a period of at least 5 years free of conviction. If a licence is granted, a strict warning as to future conduct may be issued by the Licensing Sub-Committee.

(f) Violence

As hackney carriage and private hire vehicle drivers maintain close contact with the public, a firm line will be taken with applicants who have convictions for grievous bodily harm, wounding, assault, assault occasioning actual bodily harm, violent disorder or affray. At least 3 years free of such convictions must be shown before an application is likely to be granted and even then a strict warning may be administered by the Licensing Sub-Committee. If there is more than one conviction of this kind applications are likely to be refused unless there is a period of 5 years free of convictions.

Where a person has been convicted of criminal damage or less serious offences of public disorder, such convictions if standing alone may not be a bar to the grant of an application, but the sub-committee may issue a warning as to future conduct.

(g) Dishonesty

Hackney carriage and PHV drivers are expected to be persons of trust. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in drivers. Moreover, it is comparatively easy for dishonest drivers to defraud the public, for example, by demanding more than the legal fare. Overseas visitors can be confused by the change in currency and become 'fair game' for an unscrupulous driver. For these reasons a serious view will be taken of convictions involving dishonesty. In general, a period of 3 years free of convictions is necessary before an application is likely to be granted.

PRINCIPLES OF THE REHABILITATION OF OFFENDERS ACT 1974 (as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012)

- (1) Under the 1974 Act, criminal convictions can become spent after a certain period of time, and once spent, for many purposes, can be disregarded completely.
- (2) The possibility of rehabilitation and the length of time before rehabilitation occurs depends on the sentence imposed, and not the offence committed.
- (3) Despite the above, the principles of the Act do not apply to applicants for hackney carriage and private hire drivers' licences. This is because the driving of taxis is listed as a "Regulated Occupation" in relation to which questions may be asked as to the suitability of individuals to be granted a licence.
- (4) Although the Act does not prevent judicial authorities (inclusive of the Licensing Authority) from taking spent convictions into account; such convictions are only admissible in so far as they are relevant to the issue as to whether the applicant is a fit and proper person to hold a licence.
- (5) The determination as to whether certain convictions are spent, therefore, may be a relevant exercise.
- (6) The rehabilitation periods to which reference is most commonly made are set out below. For a detailed commentary on the periods of rehabilitation applicable to all sentencing options, reference will need to be made to a specialist textbook on the Act.

Sentence

End of rehabilitation period for adult offenders

A custodial sentence of more than 30 months and up to, or consisting of, 48 months.	The end of the period of 7 years beginning with the day on which the sentence (including any licence period) is completed.
A custodial sentence of more than 6 months and up to, or consisting of, 30 months.	The end of the period of 4 years beginning with the day on which the sentence (including any licence period) is completed.
A custodial sentence of 6 months or less.	The end of the period of 2 years beginning with the day on which the sentence (including any licence period) is completed.
Removal from Her Majesty's service.	The end of the period of 1 year beginning with the date of the conviction in respect of which the sentence is imposed.
A sentence of service detention.	The end of the period of 1 year beginning with the day on which the sentence is completed.

A fine.	The end of the period of 1 year beginning with the date of the conviction in respect of which the sentence is imposed.
A compensation order.	The date on which the payment is made in full.
A community or youth rehabilitation order.	The end of the period of 1 year beginning with the day provided for by or under the order as the last day on which the order is to have effect.
A relevant order.	The day provided for by or under the order as the last day on which the order is to have effect.

NORTH DEVON COUNCIL

Minutes of a meeting of Licensing and Community Safety Sub Committee A held at Barum Room - Brynsworthy on Thursday, 8th August, 2019 at 10.00 am

PRESENT: Members:

Councillor Tucker (Chairman)

Councillors D. Spear and L. Spear

Officers:

Senior Solicitor, (TB)
Licensing Officer, (PF)
Committee Clerk, (AD)

1. APOLOGIES FOR ABSENCE

There were no apologies for absence received.

2. EXCLUSION OF PUBLIC AND PRESS RESTRICTION OF DOCUMENTS.

RESOLVED:

(i) That, under Section 100A (4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following items as they involved the likely disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A of the Act (as amended from time to time), namely information relating to the financial or business affairs of any particular person (including the authority holding that information).

(ii) That all documents and reports relating to the items be confirmed as "Not for Publication".

3. APPLICATION FOR THE GRANT OF A HACKNEY CARRIAGE AND A PRIVATE HIRE DRIVER'S LICENCE (REF PFND006)

Also present:

The Applicant.

The Chair introduced himself and those present introduced themselves. The Senior Legal Officer outlined the nature of the hearing.

The Licensing Officer outlined a report (circulated previously), regarding an application for the grant of a Hackney Carriage and a Private Hire Driver's Licence (Ref PFND006) and confirmed that the application had been properly made.

The Applicant addressed the Sub-Committee, outlining his previous lifestyle, his move to Devon over 20 years ago and his current employment status. The Applicant provided the Sub-Committee with three written character references which the Sub-Committee were happy to accept and read.

Members of the Sub-Committee questioned the Applicant and in response to their questions the Applicant explained he had worked in the Construction industry for 35 years and due to his age was beginning to feel the effects of this type of work, he enjoyed driving and currently travelled extensively as his work was in Exeter. He assured the Sub-Committee that there was no possibility of any further offences being committed as he was a completely changed person.

The Licensing Officer summed up.

The Applicant summed up.

RESOLVED, that everyone be excluded from the meeting with the exception of Members, the Legal representative and Committee Clerk in order for the Sub-Committee to receive legal advice in accordance with paragraph 5 of Schedule 12A of the Local Government Act 1972.

RESOLVED that everyone be re-admitted to the meeting.

The Chairman requested that the Committee Clerk read the proposed decision, which was voted upon and agreed.

RESOLVED, that the Application for the Grant of a Hackney Carriage and a Private Hire Driver's Licence (reference PFND006) be granted.

Having listened to the Applicant and considered the Licensing Officer's report the Sub-Committee were satisfied that he was a fit and proper person. Having been out of the Criminal Justice system for over 17 years the Sub-Committee were happy that the Applicant would not return to criminal activity and were happy to grant both the licences.

4. **DISCIPLINARY HEARING OF A HACKNEY CARRIAGE AND PRIVATE HIRE LICENSED DRIVER (REF PFDD0007)**

Also present:

The Applicant.

The Chairman introduced himself. The Members introduced themselves as did the other Officers present.

The Senior Legal Officer summarised the Hearing process.

The Licensing Officer presented his report, (circulated previously) regarding the Disciplinary Hearing of a Hackney Carriage and Private Hire Licensed Driver (Reference PFDD0007). In response to a question on whether the penalty points had been notified to the authority correctly the Licensing Officer advised that the Applicant had stated that he had telephoned customer services with the information and had not notified the authority in writing. No record had been found as to the telephone call.

The Applicant presented his case explaining how he had accrued penalty points in two separate incidents and that he had been at fault for not familiarising himself with the policy handbook and did not know the procedure for notifying his offences to the Local Authority. He had previously attended a speed awareness course. He had changed how he worked to avoid pushing himself to get to jobs. He had been a driver for over ten years and drove about 100,000 miles in a year.

In response to questions from the Sub-Committee the Applicant confirmed he had changed his working pattern to prevent being squeezed for time.

The Licensing Officer summed up.

The Applicant summed up.

RESOLVED, that everyone be excluded from the meeting with the exception of Members, the Legal representative and Committee Clerk in order for the Sub-Committee to receive legal advice in accordance with paragraph 5 of Schedule 12A of the Local Government Act 1972.

RESOLVED that everyone be re-admitted to the meeting.

The Chairman requested that the Committee Clerk read the proposed decision, which was voted upon and agreed.

RESOLVED that the Sub-Committee take no further action.

In reaching its decision the Sub-Committee had considered the Applicant's case and warned the Applicant that if he gained any further points not only would the Magistrate's Court deal with the matter, but he would find himself being required to attend before a Sub-Committee again when the likely outcome would be suspension or revocation of his licences.

Chairman

The meeting ended at 11.00 am

NOTE: These minutes will be confirmed as a correct record at the next meeting of the Committee.

This page is intentionally left blank