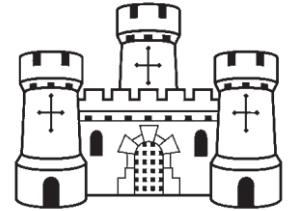


Public Document Pack

Date of meeting Tuesday, 22nd October, 2019
Time 7.00 pm
Venue Lancaster Buildings - Lancaster Buildings, Newcastle, Staffs
Contact Geoff Durham 742222



**NEWCASTLE
UNDER LYME**
BOROUGH COUNCIL

Castle House
Barracks Road
Newcastle-under-Lyme
Staffordshire
ST5 1BL

Licensing & Public Protection Committee

AGENDA

PART 1 – OPEN AGENDA

PART 1 - LICENSING

- 1 APOLOGIES**
- 2 DECLARATIONS OF INTEREST IN RELATION TO LICENSING MATTERS**
To receive declarations of interest from Members on items contained within the agenda
- 3 MINUTES OF PREVIOUS MEETING** (Pages 5 - 8)
- 4 LOCAL GOVERNMENT ASSOCIATION HANDBOOK FOR COUNCILLORS - LICENSING ACT 2003 UPDATE** (Pages 9 - 62)
- 5 LOCAL GOVERNMENT ASSOCIATION HANDBOOK FOR COUNCILLORS - GAMBLING ACT 2005** (Pages 63 - 110)
- 6 REVIEW AND UPDATE OF RESPONSIBILITIES AND TERMS OF REFERENCE OF THE LICENSING SUB-COMMITTEE** (Pages 111 - 118)
- 7 MINUTES OF LICENSING SUB COMMITTEE MEETINGS** (Pages 119 - 128)
To consider the minutes of the Licensing Sub-Committees which have met since the previous Licensing and Public Protection Committee.

FIVE MINUTE BREAK

PART 2 - PUBLIC PROTECTION (OPEN)

- 8 DECLARATIONS OF INTEREST IN RELATION TO PUBLIC PROTECTION MATTERS**

To receive declarations of interest from Members on items contained within the agenda

- 9 **THE AIR QUALITY (TAXI AND PRIVATE HIRE VEHICLES DATABASE) (ENGLAND AND WALES) REGULATIONS 2019** **(Pages 129 - 152)**
- 10 **AMENDMENTS TO SCHEME OF DELEGATION FOR LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 AND TOWN POLICE CLAUSES ACT 1847** **(Pages 153 - 158)**
- 11 **VEHICLE DOOR SIGNAGE** **(Pages 159 - 168)**

PART 3 - PUBLIC PROTECTION (CLOSED)

12 DISCLOSURE OF EXEMPT INFORMATION

To resolve that the public be excluded from the meeting during consideration of the attached report, because it is likely that there will be disclosure of exempt information as defined in paragraphs 1, 2 and 7 in Part 1 of Schedule 12A of the Local Government Act 1972.

13 MINUTES OF PUBLIC PROTECTION SUB-COMMITTEE MEETINGS **(Pages 169 - 184)**

To consider the minutes of the Public Protection Sub-Committees which have met since the previous Licensing and Public Protection Committee.

14 URGENT BUSINESS

To consider any business which is urgent within the meaning of Section 100B (4) of the Local Government Act 1972

Members: Councillors M. Olszewski (Chair), Hutton (Vice-Chair), J. Cooper, S. Dymond, T. Kearon, A. Parker, K. Robinson, S. Sweeney, J. Walklate, J Waring, G White, G Williams, J Williams, R. Wright and G. Heesom

Members of the Council: If you identify any personal training/development requirements from any of the items included in this agenda or through issues raised during the meeting, please bring them to the attention of the Democratic Services Officer at the close of the meeting.

Meeting Quorums :- 16+= 5 Members; 10-15=4 Members; 5-9=3 Members; 5 or less = 2 Members.

SUBSTITUTE MEMBER SCHEME (Appendix 9, Section 4 of Constitution)

The Constitution provides for the appointment of Substitute members to attend Committees. The named Substitutes for this meeting are listed below:-

Substitute Members:	Miss J Cooper	M. Reddish
	T. Johnson	J Tagg
	P. Northcott	S. Moffat
	B. Proctor	S. Burgess

If you are unable to attend this meeting and wish to appoint a Substitute to attend in your place you need go:

- Identify a Substitute member from the list above who is able to attend on your behalf

- Notify the Chairman of the Committee (at least 24 hours before the meeting is due to take place) NB Only 2 Substitutes per political group are allowed for each meeting and your Chairman will advise you on whether that number has been reached

Officers will be in attendance prior to the meeting for informal discussions on agenda items.

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LICENSING & PUBLIC PROTECTION COMMITTEE

Tuesday, 20th August, 2019
Time of Commencement: 7.00 pm

Present:- Councillor Mark Olszewski – in the Chair

Councillors Miss J Cooper, S. Dymond, T. Kearon, A. Parker, K. Robinson,
S. Sweeney, G White and R. Wright

Officers Nesta Barker - Head of Environmental Health Services,
Matthew Burton - Licensing Administration Team Manager,
Geoff Durham - Mayor's Secretary / Member Support Officer and
Anne-Marie Pollard - Solicitor

1. APOLOGIES

Apologies were received from Councillors' G Heesom, J Walklate, J Waring, G Williams and J Williams.

2. DECLARATIONS OF INTEREST IN RELATION TO LICENSING MATTERS

There were no declarations of interest stated.

3. MINUTES OF PREVIOUS MEETING

Resolved: That the Minutes of the meeting held on 11 June, 2019 be agreed as a correct record.

4. DECLARATIONS OF INTEREST IN RELATION TO PUBLIC PROTECTION MATTERS

There were no declarations of interest stated.

5. TAXI TARIFFS - PROPOSED INCREASE

Consideration was given to a report asking Members to consider The Hackney Carriage Trade Association's request to increase the council set maximum metered tariffs and to amend the times for the proposed tariffs.

The Council's Licensing Administration Team Manager, Matt Burton drew Members' attention to the three appendices which outlined current fares, an extract from the Minutes of this meeting held on 3 November, 2015 and a new proposed table of fares. Members were also referred to paragraph 2.3 showing comparisons with neighbouring authorities.

Councillor Stephen Sweeney asked if the new fares request could be tied in with the meters not being put on for journeys which drivers have stated was standard practice. Councillor Sweeney proposed that the increase be given but the meters had to be on for journeys.

Mr Burton advised that if a Hackney Carriage picked up a fare in Newcastle and dropped off in Newcastle, the meter reading or below must be charged. However, if a fare is picked up in Newcastle and the drop off was outside of the Borough, the meter does not have to be used but a pre-agreed price must be honoured. To ensure that the fare isn't less than this, the meter would have to be on.

Councillor Kyle Robinson asked what consultation had taken place with the Hackney Carriage Trade and whether they were in support?

The Council's Licensing Administration Team Manager, Matt Burton advised that the Trade had requested the increase and meetings had taken place to reach an agreement.

Councillor Robinson suggested that this needed to be reviewed on a regular basis as it had not been looked at since 2008. Mr Burton advised that the Council had to await a request from the Trade before they could be increased.

Councillor Robinson stated that if the fares were agreed by this Committee, residents would need to be informed of the price increases and taxi drivers given a letter which they could show to anyone who queried the prices.

Councillor Tony Kearon made reference to the table on page 39 comparing the new tariffs with other areas showing that the current were comparable but the proposed fares would be higher than other authorities. Mr Burton explained that this was the flag fare (starting distance) where Stoke on Trent travels a longer distance before the initial fee of £3 begins.

Members requested that the public be made aware, through communication, of when meters are/are not used and that the drivers receive a letter to show to their passengers.

Members debated the changing of the time of commencement of tariff 2 to 10pm instead of the current time of midnight. Members suggested 11pm or keeping it at midnight but were against changing it to 10pm. Members took a vote and agreed to keep this at midnight.

- Resolved:**
- (i) That the proposed table of metered fares, outlined in Appendix C be approved.
 - (ii) That the proposed table of metered fares, outlined in Appendix C be advertised and implemented in line with statutory provisions.
 - (iii) That the commencement time of tariff 2 remain at midnight.

6. TAXI AND PRIVATE HIRE LICENSING POLICY

Consideration was given to a report presenting the final policy document to Members for approval and to agree upon a date for implementation.

At its meeting held on 11 June, 2019, this Committee determined the final content to be included within the Council's Taxi and Private Hire Licensing Policy. A copy of the redrafted document was attached at Appendix 1.

Members' attention was drawn to paragraph's 2.3 to 2.5 of the report outlining two areas that required completion.

- Resolved:
- (i) That the final policy document be approved.
 - (ii) That the policy be partially implemented on 1 November, 2019 and the remaining sections, (the in-house Knowledge Test and Disability Equality Training) implemented on 1 January, 2020.

7. PUBLIC PROTECTION SUB-COMMITTEE ARRANGEMENTS

Consideration was given to a report seeking approval of the Public Protection Sub-Committee arrangements.

Members' attention was drawn to the revised table at paragraph 2.4 and a revision to a date - from the first week in December to the 27 November due to a clash of committees.

Members were asked if the table could be sent to all Members to make them aware of the dates.

Councillor Gary White asked if calendar invites could also be sent out. This was confirmed by Mrs Barker.

- Resolved:**
- (i) That the report be received and the dates and times of Members' required attendance at Sub-Committees, be noted.
 - (ii) That, should Members be unable to attend a sub-Committee meeting, they notify Democratic Services of a substitute.

8. ENVIRONMENT ACT 1995 - PART IV - LOCAL AIR QUALITY MANAGEMENT - ANNUAL STATUS REPORT 2019

Consideration was given to a report advising Members of the findings of the statutory Annual Status Report for 2019 covering the 2018 calendar in respect of air quality within the Borough.

Members' attention was drawn to paragraph 2.2 of the report which gave an overall summary for 2018. Maps were appended to the report showing the four Air Quality Management Areas.

Mrs Barker advised that Nitrogen Dioxide came from vehicles and the annual concentration was due to traffic flow and congestion. The Weather conditions could also affect the readings. As the older vehicles were replaced with newer ones, pollution would fall.

- Resolved:** That the report be received.

9. DISCLOSURE OF EXEMPT INFORMATION

- Resolved:-** That the public be excluded from the meeting during consideration if the following matter because it is likely that there will be disclosure of exempt information as defined in paragraphs 1,2 and 7 contained within Part 1 of Schedule 12A of the Local Government Act, 1972

10. **MINUTES OF LICENSING SUB COMMITTEE MEETINGS**

Resolved: That the Minutes of the meeting held on 30 July, 2019 be received.

11. **MINUTES OF PUBLIC PROTECTION SUB-COMMITTEE MEETINGS**

Resolved: That the Minutes of the meetings held on 12 June, 19 June, 3 July and , 31 July, 2019 be received.

12. **APPEAL OUTCOMES**

Resolved: That the appeal outcomes be received and noted.

13. **URGENT BUSINESS**

There was no urgent business.

COUNCILLOR MARK OLSZEWSKI
Chair

Meeting concluded at 7.50 pm

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

LICENSING COMMITTEE

22 October 2019

Report Title: LGA Handbook for Councillors – Licensing Act 2003 Update

Submitted by: Head of Environmental Health Services

Portfolio: Finance & Efficiency

Ward(s) affected: All

Purpose of the Report

To inform Members of the updated guidance document created by the Local Government Association for Locally Elected Members in respect of the Licensing Act 2003.

Recommendations

The Committee note the updated document.

Reasons

The guidance document is periodically updated by the Local Government Association. The most recent update was July 2019.

1. Background

- 1.1 The Local Government Association (LGA) regularly produce and subsequently update guidance documents on a range of matters that are dealt with by Local Authorities.
- 1.2 Since the Licensing Act 2003 came into force in 2005 the LGA have produced several versions of the guidance document “*Licensing Act 2003: Councillor’s Handbook (England and Wales)*” (handbook). The most recent update was released in July 2019. A copy is attached as Appendix A.
- 1.3 The handbook gives an overview or summary of the below areas:
 - The Licensing Act;
 - The role of councils in licensing;
 - The role of responsible authorities
 - The key permissions under the Act;
 - Representations;
 - Licence Conditions;
 - Hearings and Appeals; and
 - Responding to issues at licensed premises.
- 1.4 The updated areas include:
 - Recent trends – the inclusion of data from various Government Department surveys;
 - Statutory Guidance references have been amended;
 - Case studies in relation to the setting of Licensing Policy;

- Reference to the House of Lords Select Committee Review;
- Which organisations are 'Responsible Bodies';
- Changes to Personal Licences;

2. **Issues**

- 2.1 The Licensing Act 2003 is administered and enforced by local authorities. The legislation sets down the roles and responsibilities of local authority officers and elected Members. It also provides for the constitution of the Licensing Committee and Sub-Committee when dealing with policy and contested applications.

3. **Options**

- 3.1 To note the updated handbook issued by the LGA.

4. **Proposal**

- 4.1 That Members note the updated handbook issued by the LGA.

5. **Reasons for Preferred Solution**

- 5.1 Not applicable

6. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

- 6.1 *The Council's corporate priorities are:*

- Local Services that work for Local People
- Growing our people and places
- A healthy, active and safe borough
- A town centre for all

7. **Legal and Statutory Implications**

- 7.1 The Council have a statutory duty to administer and enforce the Licensing Act 2003 in line with associated legislation, guidance and policy.

8. **Equality Impact Assessment**

- 8.1 Not applicable

9. **Financial and Resource Implications**

- 9.1 Not applicable

10. **Major Risks**

- 10.1 Not applicable

11. **Sustainability and Climate Change Implications**

- 11.1 Not applicable

12. **Key Decision Information**

12.1 Not applicable

13. **Earlier Cabinet/Committee Resolutions**

13.1 Not applicable

14. **List of Appendices**

14.1 Appendix A – July 2019 version of LGA Licensing Act 2003: Councillor's Handbook (England and Wales)

15. **Background Papers**

15.1 Not applicable

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Licensing Act 2003

Councillor's handbook
(England and Wales)

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Foreword

Licensing makes a fundamental contribution to how our communities develop, live, work and relax. With the right tools, councils can use licensing to significantly improve the chances of businesses and residents moving to an area, whether in the heart of London or in a more rural district.

In 2018¹ there were 212,800 premises licences in England and Wales. There is a broad spectrum of licenced premises, including off-licences, supermarkets and cafes as well as the pubs, bars and clubs that typically make up the night time economy. Research estimates that the alcohol industry contributes £46 billion a year to national income and is responsible for around 2.5 per cent of all UK employment.² At a local level, a vibrant and mixed night time economy can encourage tourism, boost the local economy and contribute to shaping places where people want to live.

But, at the same time licenced premises in the night time economy, in particular, can create challenges as well as bringing benefits and the Local Government Association (LGA) has argued that councils need the right tools to manage these challenges locally. The pressures placed on police and health services as a result of intoxication and harmful alcohol consumption are well-known. Whilst reported instances of alcohol-related crime and disorder have been decreasing in recent years, alcohol remains a factor in 40 per cent³ of violent incidents.

The total cost to society of alcohol-related crime is estimated at £11 billion.

In 2016 the Government published the Modern Crime Prevention Strategy which, amongst other things, set out a vision for how the Government planned to address alcohol-related crime and disorder in the night time economy and, in particular, promotes the role that partnership working can play in addressing issues.

We are pleased that since the strategy was published we have seen some further steps towards encouraging more localised approaches in licensing, for example new powers under the Policing and Crime Act 2017 mark a positive step in terms of giving licensing authorities the power to make assessments at a local level about what interventions could be helpful.

However, there is still more that can be done locally to strengthen approaches to licensing and we hope this handbook will act as a helpful tool for licensing authorities in carrying out their functions under the Licensing Act.



Councillor Simon Blackburn

Chair of Safer Stronger Communities Board

¹ www.gov.uk/government/statistics/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2018

² Institute of Alcohol Studies (2017) 'Splitting the Bill: Alcohol's Impact on the Economy'

³ Office for National Statistics (2017) 'Focus on Violent Crime and Sexual Offences, 2015/16'

The Licensing Act: An overview

Context

The Licensing Act 2003 (the Act) replaced earlier controls of alcohol and introduced a more permissive, flexible regime. The Act consolidated a diverse system of licences that had been separately issued for late-night refreshment and regulated entertainment. Before the Act, alcohol licences had been issued in Magistrates' courts through what was largely an administrative procedure, and licensees had to formally attend to get their licences renewed every three years.

The intention of the Act was to liberalise a previously rigid licensing system. The Act gave licensing authorities (district, unitary and metropolitan borough councils) new powers over licensed premises, as well as giving local people more of a say in licensing decisions. A fundamental, and at the time controversial, part of the new Act was the potential to extend licensing hours beyond the previous 'permitted hours', in the hope that this would bring about more of a 'cafe culture' in line with other European countries.

The Act was widely welcomed by local authorities, licensees and the police and in many respects, the Licensing Act remains a positive model for a licensing system. It has a clear set of objectives, it allows local decision-making, it has a clear appeals process and there are opportunities for everyone affected by the licence to make comments on it.

Recent trends

Since the Act came into force there has been some notable trends in terms of the way people consume alcohol, with consumption patterns showing a steady decline. In 2007, around 17 per cent of adults in England reported drinking alcohol on five or more days in the last week, which had fallen to 10 per cent by 2017.⁴ This has been driven by a fall in consumption among those aged under 45.

Alcohol-related crime has also decreased over this period, with the number of violent incidents involving alcohol falling by over half from approximately 999,000 in 2006/07 to 464,000 in 2016/17. While there has been a fall in the number of 'alcohol-related' violent crimes, latest statistics from 2016 show that in over half (53 per cent) of all violent incidents, the victim believed the perpetrator to be under the influence of alcohol.

Health harms related to alcohol remain high. The number of alcohol-related hospital admissions has increased from around 287,000 in 2006/07 to 337,000 in 2016/17⁵ as have the incidences of certain alcohol-related health conditions. While alcohol consumption has fallen in recent years, clearly the harms associated with alcohol misuse remain high.

As well as changes in the level of consumption, there has also been a shift in where alcohol is being consumed with more than two thirds of all alcohol now sold through the off-trade for example in supermarkets or off-licences rather than through the on-trade in places like pubs or bars.

⁴ Office for National Statistics (ONS) (2017) Adult drinking habits in England

⁵ Office for National Statistics (ONS) (2017) Adult drinking habits in Great Britain

The Licensing Act 2003

Objectives of the Act

The objective of the Licensing Act 2003 (the Act) is to provide a clear, transparent framework for making decisions about applications by individuals or businesses wishing to sell or supply alcohol, or provide certain types of regulated entertainment and late night refreshment.

The Act is administered by licensing authorities which are district, unitary and metropolitan borough councils. Under the Act, the licensing authority's responsibilities are delegated to the authority's licensing (or regulatory) committee. The licensing committee is responsible for considering and proposing the authority's statement of licensing policy, and for taking decisions on specific licence applications or issues.

There are four licensing objectives which underpin the Act and which need to be taken into account and promoted throughout the licensing process. Each of these objectives is of equal weight.

The licensing objectives are:

- the prevention of crime and disorder⁶
- public safety
- the prevention of public nuisance and
- the protection of children from harm.

Licensing authorities must issue a licence, providing it is consistent with the licensing objectives and there have been no comments on the application or objections to it, which are known as representations. As noted earlier, the Act enables scrutiny of applications both by experts, local residents and businesses who all have the opportunity to comment on an application.

There are some organisations, known as responsible authorities (RAs), which need to be notified of every application for a new premises licence, or variation of an existing licence. RAs can make representations to the council about applications where they feel there will be a negative impact on the promotion of the licensing objectives if the application were to be approved. RAs include the police, fire authority, trading standards, health and safety and environmental health.

Anyone who may be affected by an application for a new licence or variation to an existing licence can make a representation. However, in order for a representation to be deemed 'relevant' it needs to relate to the likely effect of the application on the promotion of the licensing objectives.

What activities are licensed?

There are a number of different activities that were brought together under the Act which are referred to in legislation as 'licensable activities'.

Licensable activities are:

- the sale of alcohol by retail
- the supply of alcohol in qualifying members' clubs
- the provision of regulated entertainment
- the provision of hot food and hot drink ('late night refreshment') to the public between 11.00 pm and 5.00 am.

The distinction between the sale and supply of alcohol is made in recognition of the fact that at a member's club there is technically no sale taking place as members of the club already own the assets of the club, including the alcohol.

⁶ It is worth noting that the first objective can be read as two separate duties, ie a duty to prevent crime or a duty to prevent disorder (R. (on the application of Blackpool Council) v Howitt [2008] EWHC 3300 (Admin); (2009) 173 J.P. 101)

Regulated entertainment is arguably a less well known part of councils' licensing responsibilities. To count as regulated entertainment, the activity must be provided in front of an audience for the purpose of entertaining them and must fit into one of the following categories:

- it is provided for members of the public (anybody can buy a ticket or come to the event)
- it is exclusively for members of a (private) qualifying club and their guests
- it is arranged by someone who is trying to make a profit.

There are certain forms of entertainment that are always regulated, for example entertainment provided to over 500 people (or over 1000 people for indoors sporting events), entertainment provided between 11.00 pm and 5.00 am and boxing and wrestling.

Regulated entertainment is defined as (subject to exemptions):

- live amplified and unamplified music
- recorded music
- exhibition of film
- performances of plays
- indoor sports
- boxing and wrestling.

There are however a number of activities that are exempt under the Act from needing a licence, such as the sale of alcohol in an aircraft. Reforms since the Act originally came into force in 2005 mean that a number of activities no longer need to be licensed in particular circumstances, for example the performance of live music to a limited audience. A list of exemptions can be found in the Section 182 Guidance.⁷

Types of licence and permission

Carrying out licensable activities requires a licence or other type of permission. The four types of 'authorisation' under the Act are summarised below, and are explored in more detail later on.

Premises licence	A premises licence allows licensable activities to be provided 'at any place' either indefinitely or for a fixed duration.
Personal licence	Each sale must be authorised by a personal licence holder. A personal licence is needed by an individual to act as a Designated Premises Supervisor where there is a premises licence to sell or authorise the sale of alcohol.
Temporary event notice	Allows licensable activities to be provided by any person at any place for up to seven days at a time on no more than 21 days a year, for no more than 499 people at a time.
Club premises certificate	Qualifying members' clubs (eg the Royal British Legion, working men's clubs and sports clubs) planning to sell or supply alcohol may need to apply for a club premises certificate.

⁷ Home Office (2018) 'Revised guidance issued under Section 182 of Licensing Act 2003' www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003b

Strengths and weaknesses of the current system

In many respects, the Licensing Act is a positive model for a licensing system. It has a clear set of objectives, it allows local decision-making, it has a clear appeals process and there are opportunities for everyone affected by a licence to make comments on it.

Used creatively, licensing can be a tool to shape the places that communities live, work and socialise in and can help manage our concerns.

However, the LGA has raised concerns about some weaknesses in the Act. Firstly, that the implementation of the Act has been consistently undermined by a lack of resourcing due to the centrally-set fee system. Secondly that the Act's objectives have not been updated to reflect the return of public health responsibilities to local government.

Licensing fees, which are set nationally have remained unchanged since 2005. The LGA has consistently argued that these fees underestimate the costs councils incur in overseeing the Act, and should be set locally. There have been various reviews and consultations around the localisation of fees over the last 10 years, and in 2015, the Government asked the LGA to work with it to develop an evidence base on the costs to councils of overseeing the Act.

The LGA's view is that locally set fees would re-dress the imbalance in fee incomes and whilst locally set fees might increase fees in some places, in others there may be decreases. Local fees could also benefit businesses, for example if there was a reduced annual fee.

Government has indicated that fees may be re-considered at some point in the future.⁸

LGA/CIPFA survey into licensing fees

- The LGA worked with CIPFA to undertake the 2015 survey. The survey indicated that some councils are in surplus from the Act, but others are losing a lot and overall local government is in deficit by around £10-12 million per year.
- A small majority (52 per cent) of councils reported running a deficit, however analysis shows that the sum of net deficit is greater than that of the net surplus making the overall picture that of a deficit. For those that responded to the survey, there is an average surplus/deficit of -£29,520 for each local authority.
- There was extensive variation across councils. The largest deficit of -£1.358 million was in a London borough, whilst the largest surplus of £265,000 was in an English unitary authority. Different council types also has an impact on whether an authority is in deficit/surplus with London boroughs, metropolitan districts and district councils operating a deficit whilst unitary authorities (English and Welsh) are running a surplus.
- There was also extensive variation in results for different fee categories. While councils experienced losses in some categories, conversely in others they operate at a surplus with annual fees for premises licences generating the largest surplus of £5.9 million. Temporary event notices (TENs) showed the biggest shortfall at -£3.2 million. This reflects feedback from councils that the process is extremely resource intensive, and not being used for what it was intended. Councils report that they are managing the shortfall by cutting back on enforcement activity.

⁸ www.gov.uk/government/uploads/system/uploads/attachment_data/file/657231/CCS207_CCS1017254842-1_Cm_9471_Govt_Response_Licensing_Act_PRINT_3_.pdf

Lobbying for a health objective in the Licensing Act is long standing LGA policy. Whilst public health can contribute against any of the four existing licensing objectives, in practice it can be difficult for them to be heard; a specific 'health' objective could resolve that and allow a much more straightforward contribution. There is also strong support for a health objective among public health directors, Public Health England (PHE) and among some in Parliament.

There has been a lot of work to build the evidence base for how this could work and PHE have piloted a health objective with eight advanced areas including Cornwall, Leeds and Wigan, which all developed practical ways to make using health data in licensing work.

Building on this work PHE have developed an online resource⁹ which brings together nationally available data and materials with local information to support councils to access a range of databases and tools. Local teams can input their own data to create interactive maps and reports to help them in their role as a responsible authority.

Whilst there is no indication that the Government is going to take this forward, at least in the near future they continue to highlight the important role that public health plays in the licensing system as a responsible authority under the Act. This includes promoting the use of PHE's analytical support package, providing public health teams with new tools to help effectively present relevant health data and supporting the Information Sharing to Tackle Violence programme to encourage A&E departments to share their data with community safety partnerships.

9 www.gov.uk/guidance/alcohol-licensing-a-guide-for-public-health-teams

Overview of the role of councils in licensing

Introduction to the role of the council

The Act moved the responsibility for administering alcohol licensing from Magistrates and licensing justices to local authorities, bringing democratic accountability to decision making.

District councils and unitary councils are designated as licensing authorities. Each licensing authority is responsible for developing a local policy, processing applications and convening hearings to consider any representations concerning applications or existing licences. To deliver their responsibilities licensing authorities' core functions can be summarised as:

- setting the local framework through a statement of licensing policy
- considering applications with a view to promoting the licensing objectives
- undertaking inspection and enforcement activities to ensure conditions of licences are being met
- maintaining a register of licensed premises, activities and individuals
- providing bi-annual statistics to government as part of the National Statistics collection.

Licensing authorities are responsible for administering the Act and this function is delegated to the council's licensing committee. The licensing committee is responsible for considering and proposing the authority's licensing policy through developing a statement of licensing policy prior to its approval by the licensing authority (full council), and for taking decisions on

specific licence applications or issues.

Statutory guidance for licensing authorities is issued by the Secretary of State under Section 182 of the Act, often referred to as 'Section 182 guidance'. Licensing authorities have a duty to have regard to this guidance and it should be followed unless there is good reason to depart from it. The Section 182 guidance is a comprehensive and useful tool for councils around the discharge of functions under the Act, including processes for hearings. It is updated from time to time, the latest version can be found on the gov.uk website.

Fee setting

Fees under the Licensing Act have been fixed in regulations since 2005. Premises and club premises licence fees are based on the rateable value of the premises. Premises with higher rateable values that are primarily being used for alcohol sales pay additional premiums as do premises with particularly large capacities (in excess of 5000 people). Fees are also set for a range of other administrative processes under the Act, such as:

- varying a licence
- transferring a licence from one individual to another
- varying the Designated Premises Supervisor (the person named on the premises licence as the individual designated to supervise the premises)
- issuing a temporary event notice (TEN).

As discussed earlier, whilst fees were intended to provide full cost-recovery, in practice many licensing authorities will incur a deficit. The LGA has consistently argued that the Government has underestimated the costs councils incur in administering the Licensing Act, and should be set locally. At the very least, the Government should commit to a flat-rate increase to the 2005 fee levels.

Developing a statement of licensing policy

What is a licensing policy

Under the Act, licensing authorities are required to prepare a statement of licensing policy (SLP) which sets out how licensable activities will be regulated and how licensing functions will be exercised in their areas, as well as expectations of licence holders and operators. They can be used to identify areas where the risk of harm may be greater due to the characteristics of a particular area, and how these risks can be mitigated.

The SLP is an opportunity to take a strategic look across all of the licensable activities within your area and set out a vision for them. The decisions made can enhance an area's economy, public health, safety and cultural appeal to tourists and visitors from surrounding areas.

Getting the statement of licensing policy right is important as this will guide the local authority's decision making. Authorities must have regard to their SLP when carrying out their licensing functions and the policy acts as a starting point for a decision. Whilst licensing authorities can depart from their policy when considering applications, there will need to be good reasons for doing so.

The SLP should set out how licensees can contribute to creating the evening and night time economy that the council envisages, for example encouraging certain types of applications in certain areas, for example food led businesses. It is also an opportunity to set out the context in terms of specific local issues that licensees should consider

for example areas of saturation in a town centre, and how they can contribute towards positively addressing them.

An active place-shaping approach in your licensing policy and practice can also help design out problems before they occur and promote safe and sustainable communities. Diversifying the evening and night time offer for example can encourage a wider range of people to engage in it and increase the perception of safety. Thought should be given to how the licensing policy can help to attract entertainment that is not alcohol led, for example restaurants, venues or cinemas which will bring more people into the night time economy and can help to manage levels of alcohol related crime and disorder. On a smaller scale staggering closing times can also be helpful.

In shaping a policy, the licensing authority will need to have regard to the Section 182 guidance as well as giving appropriate weight to the views of the local community. Whilst there is a certain amount of flexibility around setting an approach to making licensing decisions this cannot be inconsistent with the provisions in the Act. The statement cannot create new requirements for applicants outside of the Act, or override the right of anyone to make an application under the Act, make representations or seek a review of a licence.

The SLP takes on additional significance in the event that an applicant challenges or appeals the sub-committee's decision. At this point the Magistrates court will adopt the licensing authority's policy as if it were its' own.

Process

The SLP must be formally adopted by the licensing authority (full council) normally after a recommendation from the licensing committee. Councils with cabinet governance arrangements may also seek the cabinet's views too. A SLP runs for a maximum period of five years. There is nothing to prevent an authority from updating its statement more frequently if it wishes to, but the five yearly review cycle must still be followed.

There is no need for a SLP to re-state the requirements of the Act or the statutory guidance, although the guidance does suggest topics that ought to be acknowledged in the SLP – for example, an obligation for licensing authorities to help promote cultural activities within their areas by not imposing excessively burdensome conditions, or an acknowledgment that licence-holders cannot be held responsible for their customers' actions once they leave the vicinity of their premises.

Possible headings within an SLP could include:

- context
- council aspirations and vision for the place
- partnership working
- the licensing objectives
- other legislative responsibilities (such as those under the Human Rights Act 1998, Crime and Disorder Act 1998, Equalities Act 2010 and the statutory Regulators' Code)
- reference to any cumulative impact assessments
- policies for specific circumstances
- approach to setting conditions including whether there is a pool of model conditions
- dealing with representations (including petitions and 'round-robin' letters)
- delegation of functions
- a statement of where the SLP departs from the statutory guidance (if relevant)
- enforcement protocol (usually agreed with the other responsible authorities)
- the use of other legislation alongside the Licensing Act.

Development of the SLP must involve engagement with the community. Consultation is a key part of making sure licensing work is transparent; there should be opportunity for open discussion so that communities have an input into what they want their area to look like.

There are a number of statutory consultees who will need to be involved, including representatives of local businesses, residents and licence-holders as well as the responsible authorities.¹⁰ Both Lambeth and Watford case studies are useful examples of how authorities can engage with stakeholders through consultation events.

In Cheshire and Merseyside, public health, licensing, environmental health, trading standards and the police have worked together to develop a toolkit to support anyone who would like to have a say on how alcohol impacts their community. The toolkit explains how the licensing process works and provides some practical tips to help people who want to get involved:
www.alcohollicensing.org.uk

Case study Watford

Watford Council wanted to regenerate its town centre through a cultural arts programme to remove its reliance on a mono-alcohol economy of late-night clubs and bars. A pop-up shop was opened in the town centre for two weeks to explain proposals and to get views on proposed changes to the public realm and to planning policy, as well as significant changes to the SLP which encouraged the growth of food-led and entertainment businesses through the offer of later hours at the expense of more restrictive hours for alcohol-led premises

Case study Lambeth

Following the adoption of Lambeth Council's new Licensing Policy in January 2014, six area-based Licensing Transformation co-production workshops were held across the borough. These aimed to bring together a select and focused group of businesses, local residents, ward councillors and statutory partners to help shape local guidance and also offered an opportunity to discuss licensing in practice.

¹⁰ Licensing authorities should consider adopting the Cabinet Office's Consultation Principles when consulting on revisions to their SLP.

Organised jointly with business improvement districts (BIDs), the council's Neighbourhood Regeneration team and the Cross River Partnership, local police, Neighbourhood Watch co-ordinators and Safer Neighbourhood Panel chairs, as well as residents' representatives were invited to attend the workshops. Council staff from Legal Services and Community Safeguarding were also in attendance.¹¹

Key issues for consideration in the statement of licensing policy

Area specific expectations

At the most local level, licensing authorities' decisions will shape individual neighbourhoods, establishing some as vibrant, active areas late into the night, while other areas may become a centre for restaurants. Similarly, a pub in a smaller community may not attract large numbers from outside the area, but can nonetheless act as a hub for the community.

There may be some neighbourhoods that have particular challenges and require a more detailed and targeted approach.

The SLP can guide applicants towards particular concerns the authority has relating to a locality. In addition to tackling specific problems, it can be used to help shape the local economy, such as by setting out preferred opening hours, which can encourage applications from particular types of premises.

Planning

The relationship between licensing and planning systems came under intense scrutiny in the House of Lords Select Committee post-legislative review of the Licensing Act in 2017. The committee's key recommendation was that the two systems should be merged and licensing committees

should be scrapped with responsibility shifted to planning committees. The Government rejected this recommendation but accepted that improvements could be made by focusing on improving how the two regimes communicate and interact at local level.

The licensing and planning systems operate independently with the planning and licensing regimes involving consideration of different, albeit related, matters. Planning is the regime that is directed at development of land and the use of premises upon it. Licensing is the regime that is directed at licensable activities and responsible management of said premises upon that land. Licensing committees are not bound by decisions made by a planning committee, and vice versa. For example, a premises licence or club premises certificate cannot be refused on the grounds that they do not have planning permission. Licensing authorities are also able to specify different opening hours on the licence from those specified under planning permission. This is somewhat incongruous, but the two schemes take different matters into account when determining hours, and the more restrictive set of hours always applies.

Nevertheless, where applicants have indicated that they have also applied for planning permission or that they intend to do so, licensing committees and officers should consider discussion with their planning service prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs. It is also important to note that any decision of the licensing authority on an application for a premises licence does not relieve the premises user of any requirements under planning law for appropriate planning permission where it is required. Premises operating in breach of their planning permission would be liable to prosecution under planning law.

Planning is an important consideration when thinking about what you want your licensing policy to achieve. Your licensing policy should reflect your Local Plan policies core planning documents, and likewise the Local Plan policies planning documents should reflect

¹¹ A full outline of Lambeth's workshops, including template invitations, can be found at <https://khub.net/documents/5833795/10633403/Lambeth%27s+Licensing+Transformation+Work/587fdf00-ac15-4a28-b249-4be16b2e077f> (Free registration is required)

what you want to achieve with your licensed premises. Whilst there is a clear distinction and separation between licensing and planning in terms of their remit, councillors have a key role in ensuring that these two different services are fully joined-up and aligned.

Where this doesn't happen councils can struggle to shape their areas as they would like them to be. It can be helpful to include your expectation that any premises for which a licence is required should normally have the appropriate authorised use under town planning legislation, in the SLP.

The development of new housing, often under permitted development rights, can have the potential to cause tension within communities where there are already established licensed premises, particularly those that promote live music. These venues can provide an important cultural contribution to an area, as well as promoting the next generation of musicians. In 2018 the Government updated the National Planning Policy Framework to include detailed reference to the 'Agent of Change' principle. Agent of change means those bringing about a change take responsibility for its impact. This means that developers will be responsible for identifying and solving any sound problems, if granted permission to build housing, to help avoid music venues, community and sports clubs and even churches running into expensive issues as a result of complaints from new neighbours.

Safeguarding

Protecting children from being harmed in licensed premises is one of the four licensing objectives and includes harms from consumption of alcohol as well as wider harms including sexual exploitation.

Safeguarding can be addressed in part through licence conditions. The Act includes a mandatory condition requiring alcohol-licensed premises to have an age-verification policy, but other conditions relating to the protection of children from harm can include restrictions on the times which children may be present and the requirement that children must be accompanied by an adult.

Whilst the local children's safeguarding board, or multi-agency safeguarding arrangements as they are now known, are a responsible authority, in practice it is unusual for them to make representations. Public health also have an important role to play in safeguarding and PHE have developed a guidance note¹² which explores how public health can support prevention and intervention. Some authorities have used their powers under the Licensing Act to address child sexual exploitation (CSE) both proactively and reactively when considering licences.

The SLP is an opportunity to set out the councils approach to safeguarding, for example recommending that applicants should address access of children in the operating schedule.

Case study Kirklees council

Kirklees Safeguarding Children Board (KSCB) has been working proactively with partners to engage with the licensed trade and promote risk management in relation to CSE. The board provides advice to assist licensees to identify risk and report concerns at different types of licensed premises and they have developed a webpage providing local information about child safety, child sexual exploitation, policies and procedures including risk factors and signs and symptoms.

Kirklees' licensing policy outlines the council's recommendation that applicants address the access of children in the operating schedule. They also expect that employers will make careful checks where premises or entertainment is specifically targeted towards children to ensure all persons employed or involved with the supervision or management are deemed appropriate persons to be engaged in the activity, for example that employers would use a Criminal Records Bureau check.

¹² Public Health England and Association of Directors of Public Health (2019) 'Child sexual exploitation: How public health can support prevention and intervention'

Case study Harrow Council

Harrow Council states within its SLP that it expects staff in premises that will be particularly attractive to children to be familiar with the Metropolitan Police's Operation Makesafe to identify and report possible signs of abuse.

It is also important to look at the wider context of vulnerability. Safeguarding is not limited to children and young people, and vulnerability is an inherent part of the night time economy, for the most part due to the presence of alcohol and drugs. There are various resources and training packages that could be signposted to in the SLP, including the Welfare and Vulnerability Engagement (WAVE) initiative¹³ which is a free tool, developed by the Metropolitan Police, looking at vulnerability in the night time economy and the proactive steps operators can and should take to address this.

Again there are various initiatives that can be utilised by operators to help identify and manage vulnerability in the night time economy, for example Drinkaware schemes and Ask for Angela. Reference to these initiatives could be made in the SLP.

Ask for Angela

Ask for Angela was an initiative first launched by Lincolnshire County Council as part of a campaign to raise awareness of sexual violence and abuse and has since been rolled out across a number of cities.

The intention is to help prevent and reduce sexual violence and vulnerability in the night time economy. Customers are advised via posters in venue toilets that, if they 'ask for Angela' at the bar, staff will be alerted to the fact that they feel unsafe or threatened. Bar staff will know that the individual needs some help getting out of their situation and will call a taxi or help them out discreetly and providing a vital life-line to someone who finds themselves in a difficult situation and can't get out of it.

Drinkaware

Drinkaware is an independent charity, funded by the alcohol industry, which works to reduce alcohol misuse and harm in the UK. Drinkaware's focus is on education and they offer information, advice and practical resources to support people to make better choices around their alcohol consumption.

Drinkaware also run a number of different initiatives including 'Drinkaware crews' who work in clubs and venues to help support provide support the welfare and wellbeing of young people on a night out. More recently they have partnered with PHE on a 'Drink Free Days' campaign which aims to help people cut down on the amount of alcohol they are regularly drinking.

www.drinkaware.co.uk

Working in partnership

Creating a safe, vibrant and diverse night time economy is in everyone's interests and the police, councils, emergency services, local businesses and the community all play a central role to achieving this.

Working together will almost always achieve the best results; at a minimum, it will establish a clear understanding of positions and identify where there is room for agreement and collaboration.

There is plenty of evidence of the success that partnership approaches to managing the night time economy has had in our towns and cities. The Government's Modern Crime Prevention Strategy placed considerable weight on the benefits of voluntary partnerships, a theme which is likely to remain on Government's agenda for the foreseeable future.

The role of councils is to facilitate dialogue between different groups including local businesses and residents, in particular making sure that there are forums for these conversations to happen.

¹³ <https://nbcc.police.uk/article/?id=b2cd2a7d17d92c915996003a0473a4b8>

Whilst challenges will be different in different places, there is a range of best practice from schemes across the country as well as tools available to support joint working. The LGA will shortly be publishing some case studies which will be available on the website. The Governments Local Alcohol Action Area (LAAA) programme, has recently completed its second phase, has been one way that authorities have been supported to tackle issues like diversifying the night time economy and data sharing.

The industry has worked hard to raise standards, and there are a large number of initiatives which can be used as tools by business to manage and improve the night time economy, for example the Purple Flag accreditation scheme: www.atcm.org/purple-flag

The best premises will be active participants in one or more of the many industry best practice schemes that exist. If these schemes are not in operation locally, then they can be an effective way to significantly boost performance for comparably little investment. The Portman Group have useful guides around the various industry led Local Alcohol Partnerships.¹⁴

There is always scope to set up a local initiative to tackle a specific issue; but the following is a short outline of some of the more prominent schemes that already exist. The scheme coordinators will always be happy to meet with councils to discuss how their scheme could work in the local area.

Partnership schemes involving the industry

Pubwatch is an effective network of licensees working together to combat crime, disorder, and anti-social behaviour in towns, cities and local communities. There are about 1000 pubwatches in the UK. www.nationalpubwatch.org.uk

Best Bar None is a national award scheme, supported by the Home Office that aims

to improve standards in local night time economies by sharing and promoting best practice. www.bbnnuk.com

Purple Flag is the accreditation programme that recognises excellence in the management of town and city centres in the early evening and night time economy. It provides an endorsement of the vibrancy of the local night time economy. www.purpleflag.org.uk

Community Alcohol Partnerships is a retailer-led partnership to tackle issues of underage drinking and promote greater awareness and understanding of alcohol among young people. www.communityalcoholpartnerships.co.uk

Street Pastors are volunteers from the local church community who give up their time to help people out for the evening. www.streetpastors.org

What other tools are available?

There are a variety of statutory and non-statutory tools that can be used to help manage the night time economy where issues are identified.

Cumulative impact assessments

If authorities have evidence that the high number or density of licensed premises in a particular area is having a detrimental effect on one or more of the licensing objectives, the licensing authority may consult on a cumulative impact assessment (CIA).

A CIA is essentially an evidence-based tool for licensing authorities to limit the growth of licensed premises in a problem area. Whilst the concept of cumulative impact was not initially included in the Act, it was included in the Section 182 guidance and therefore a number of authorities introduced cumulative impact policies (CIPs).

¹⁴ www.portmangroup.org.uk/responsibility-programmes/landing_page/local-partnerships

Recent changes under the Policing and Crime Act 2017 have now put cumulative impact on a statutory footing and the Section 182 guidance has been updated to include CIAs. Existing CIPs will need to be reviewed to ensure they comply with the principles in new legislation, primarily the need for evidence, rules around consultation and the need to review CIAs at least every three years. A CIA sits apart from the SLP but the statement should include a summary of the CIA.

The effect of having a cumulative impact assessment is that it creates a presumption that applications for new (or sometimes variations to) licences that receive relevant representations will be refused unless the applicant can show that granting the application will not add to the cumulative impact of existing premises. This does not automatically mean applications will be reviewed. Additionally a licensing sub-committee, in considering an application, may be justified in finding an exception to its CIA depending on the merits of a particular application.

Even in an area where cumulative impact has been identified, licence applications must be granted if no relevant representations are made in relation to that particular application. However CIPs shift the balance of the Act and have been popular, with many authorities having more than one in place for example to cover different parts of the town or city.

Late-night levy

The late night levy is payable by licensed premises and holders of club premises certificates within the designated area, which sell or supply alcohol between midnight and 6.00 am. The levy is intended to recoup some of the costs of policing, and generally maintaining, an area with a high number of licensed premises operating late into the night. It is effectively a tax on licensed premises in the area that must be approved by the full council following an extended consultation period and a recommendation by the licensing committee.

There has been a limited uptake of the levy by local authorities, which is due in part to the requirement to apply a levy across the entirety of a local authority area, and limitations on how the levy can be spent.

Legislation requires that up to 30 per cent of net levy revenue can be allocated to local councils, with at least 70 per cent allocated to the local police and crime commissioner (PCC). However, in practice PCCs have the ability to agree a different split locally, an approach taken in Hounslow and Cheltenham.

Whilst originally a levy had to apply across the whole of the local area, changes under the Policing and Crime Act 2017 (yet to be commenced) will allow licensing authorities to target the levy at specific geographic areas rather than having to implement it in the entirety of their area. They will also give PCCs the right to formally request that a council consults on the levy and make it a requirement that local authorities publish information about what the levy revenue has been spent on, to increase transparency. Changes will also allow local authorities to charge the levy to late night refreshment outlets, in addition to premises selling alcohol in the night time economy. These measures will be commenced once the Home Office has consulted on the levy charge to be applicable to late night refreshment providers.

Whilst there has been some criticism of how the levy is spent, legislation is prescriptive in terms of the types of services that councils can fund with revenue from the levy, to help ensure it is spent on tackling alcohol-related crime and disorder.¹⁵ PCCs have no restrictions on how their portion can be spent. As highlighted above, new regulations under the Policing and Crime Act mean that licensing authorities will need to be more transparent, requiring them to publish details about how the levy is spent.

¹⁵ (1.42) www.gov.uk/government/uploads/system/uploads/attachment_data/file/183490/Late-night_levy_guidance_amended_.pdf

The levy has also been criticised by sections of the trade as having a disproportionate effect on smaller businesses. Whilst fees are set centrally in line with the rateable value of the premises, consideration should be given to whether exemptions could be applied. Councils have the option to apply exemptions and reductions from a list set out by regulations for example to theatres and cinemas, and country village pubs.

Councils can also exempt, or reduce the level of levy for businesses contributing to a business improvement district (BID). Islington and City of London offer a 30 per cent reduction and Nottingham City Council allow a complete exemption to licensed businesses that are part of a BID.

Any plans to introduce a late-night levy will need to be consulted on. In 2017 Tower Hamlets Council's introduction of the levy had to be delayed following a successful challenge following a Judicial Review launched by the Association of Licensed Multiple Retailers (ALMR). The challenge focused on the consultation process which failed to include an implementation date for the levy.

There is dedicated statutory guidance available on the late-night levy, which can be found on the gov.uk website.¹⁶

Business improvement districts

Often councils prefer to use alternative approaches to the levy and BIDs are one such alternative. BIDs are not specific to licensed premises and have been operating across the UK for over a decade and there are over 250 established around the country. BIDs are a popular approach which enable a targeted and business led approach to managing the allocation of funds collected through the BID levy. BIDs have the benefit of being locally led, and can be tailored and developed to meet the needs of the locality in which they operate.

A BID can be set up by a council, business rate payer or a person or company whose purpose is to develop the BID area. The 'proposer' of the BID is required to develop a proposal and submit this to the local authority, along with a business plan setting out the size and scope of the BID, and what businesses will be required to contribute. Following this, businesses which will be affected by the proposed levy vote in a ballot to determine whether the scheme goes ahead.

The amount that businesses pay (the BID levy) is calculated by the business rates of the premises within the targeted area in a similar way to the late night levy (LNL) and the money is ring-fenced to use within the BID area. Unlike the LNL, all types of business contribute rather than just those open between 12.00 pm-6.00 am, meaning that BIDs can often raise more revenue than LNL.

Whilst councils will often play a role in BIDs, they are primarily business led with businesses deciding and directing what they want money to be spent on. This could include extra safety, cleaning or environmental measures. Councils do have the power to propose the introduction of a BID, however they still need to go through the ballot process and ultimately any scheme would need the support of business to be successful meaning in some cases BIDs are not always a viable option.

Case study Cheltenham

A LNL was introduced in Cheltenham in 2014 and between its introduction and 2017 raised over £250,000 which was allocated to various projects to improve the late night economy. Projects and work funded by the levy include the purchase of body worn CCTV cameras for taxi marshals and licensed door staff, funding a 'club hosts' trial in partnership with DrinkAware and obtaining Purple Flag accreditation for the town.

In August 2016, Cheltenham adopted its first BID which is set to generate around £440,000 annually through its levy. Although the BID focused on a smaller area of the city,

¹⁶ Home Office (2015) 'Amended guidance on the late night levy'

the significant majority of licensed premises paying the LNL were also subject to the BID levy and therefore were disproportionately affected. In 2017 the council made a decision to remove the LNL given the BID's potential to generate significantly more income and its commitment to continue to fund the existing projects funded by the LNL, where they operated within the BID area.

Case study Leeds Business Improvement District

Leeds Business Improvement District (LeedsBID), established in 2015 was developed by the city's business community and has been a catalyst for change, leading on inspiring plans, projects and events to deliver its vision to make Leeds city centre an attractive place to live, work, visit and do business.

Representing close to 1,000 businesses and organisations in the city centre (those within the BID area with a rateable value of £60,000 or above), LeedsBID is focused on transforming Leeds city centre working in collaboration to improve experiences and standards for all city users.

Initiatives led by LeedsBID include the introduction of new street teams to improve the welcome and experience for people, the creative use of art, lighting and experiential activities in public spaces and a new programme of events.

LeedsBID has been a lead partner in helping strengthen, improve and highlight the city's growing evening economy, working collaboratively with a range of organisations to secure Purple Flag status. The LeedsBID Street Rangers provide an early morning reactive service to tackle litter from the night before, while the introduction of the Leeds Evening Ambassadors (primarily funded by LeedsBID with Leeds City Council and BACIL (Businesses Against Crime in Leeds)), welcome people in to the city centre on Fridays and Saturdays from early evening through to the early morning. In addition new events and activities have helped to

encourage people into the city for a night out.

More information about LeedsBID can be found on their website: www.leedsbid.co.uk

Early morning restriction orders (EMROs)

An Early Morning Restriction Order may be applied where an area experiences a significant amount of late-night alcohol-related crime and disorder. The order, which can apply to a specific geographical area within the council's district, can restrict all alcohol sales (but not other licensable activities) between midnight and 6.00 am where this is appropriate for the promotion of the licensing objectives. A strict consultation process must be followed before an EMRO can be adopted. Although it was introduced in the Police Reform and Social Responsibility Act 2011, no licensing authority has yet introduced one.

Blackpool Council looked at the introduction of an EMRO to restrict premises in the town centre from selling alcohol between 3.00 am and 6.00 am. After consideration, the Licensing Committee decided that an EMRO would be disproportionate and instead opted to establish a multi-agency Night Time Economy Working Group which could present recommendations to the committee on alternative approaches to addressing violent crime in the town centre.

Role of councillors

Licensing committees/sub-committees

Membership of the licensing committee is prescribed within the Act, and should consist of at least 10, but no more 15 councillors. The licensing committee may delegate some of its responsibilities to a licensing sub-committee, however this must consist of three members of the main committee in order for decisions to be made with proper authority. This has been highlighted in recent case law¹⁷ where the decision of a licensing sub-committee in a review hearing was challenged successfully on the basis that the sub-committee was not lawfully constituted as members were not part of the licensing committee. The sub-committee does not need political balance and can also be appointed outside of full council.

The sub-committee's primary role is to consider whether a licence application is likely to undermine one or more of the licensing objectives in the light of any relevant representations that may have been made about it. These considerations will be made at a hearing.

Licensing hearings, which are convened when a sub-committee is required to consider a contested application, must be held within strict timescales which are set out in regulations.

Day-to-day administration is carried out by licensing officers with some authorities opting for shared service arrangements. Licensing teams are commonly located within environmental health, regulatory services or legal services departments.

The Licensing Act 2003 (the Act) is a permissive regime. This means that licences must be granted if they have been made in accordance with statutory requirements and in the absence of any relevant representations or (depending on the type of application), objections.

Councillors may wish to check if arrangements are in place for the grant of non-contested licences to be reported to members on a regular basis, for example by an annual report to the Licensing Committee.

The House of Lords select committee which undertook post-legislative scrutiny of the Act between 2016 and 2017 was critical of licensing committees/sub-committees. The committee felt they had seen and heard about poor examples of practice by licensing committees. They made a number of recommendations in relation to this, the most far reaching being that the functions of licensing committees and sub-committees should be transferred to planning committees. Whilst government did not accept this recommendation they did support recommendations around the training of licensing committee members.

Training of councillors

No councillor should be permitted to sit on a committee or sub-committee without first having been formally trained.

It is important that training does not simply relate to procedures, but also covers the making of difficult and potentially controversial decisions, as well as the legal parameters within which the committee as a decision-making body may operate. The use of case study material can be helpful to illustrate this.

All training should be formally recorded by the council and require a signature by the councillor. Training should be refreshed at regular intervals for example following changes in legislation.

In addition to in-house training, there are a number of independent training providers, including licensing bodies – the National Association of Licensing Enforcing Officers (NALEO) and the Institute of Licensing (IoL). The IoL is in the process of developing a course outline for a councillor training package.

¹⁷ MuMu Enterprises (Weston) Limited v North Somerset District Council (2014)

Suggested content of a training course

- background to the Licensing Act
- makeup of local licensed premises
- current industry trends
- licensable activities
- the Licensing Authority
- responsible authorities
- statement of licensing policy
- statutory guidance
- premises licences
- personal licences
- temporary event notices
- club premises certificates
- industry initiatives such as Challenge 21, ID entry schemes, Best Bar None
- enforcement
 - licence reviews
 - other procedures
- making representations
- holding a hearing
 - committee procedure, rules of natural justice, proportionality, Wednesbury principles, and other legislative duties, eg Human Rights Act
 - member's conduct during a licence consultation
- member's conduct at a hearing
- assessing and testing representations
- developing licence conditions
- giving reasons
- appeals
- partnership working with the licensed trade and others

Role of responsible authorities

Overview

Responsible authorities (RAs) are statutory bodies which are able to comment on applications made under the Act. They can make representations about the grant, full variation, transfer and review of premises licences as well as those for regulated entertainment which are not exempt, and can also apply for licence reviews in their own right.

The responsible authorities are:

- the licensing authority itself
- the chief officer of police
- the fire and rescue authority
- the body responsible for enforcing health and safety at work (this may be the Health and Safety Executive for council-run premises)
- the local planning authority
- environmental health
- the body designated by the local authority for the prevention of children from harm (eg the multi-agency safeguarding arrangements – previously local children's safeguarding board)
- trading standards
- the council's director of public health (England) or local health boards (Wales)
- with regard to a vessel – the Environment Agency, the Maritime and Coastguard Agency
- Home Office Immigration Enforcement.

Police

The police are one of the primary partners in managing the licensed economy and will gather considerable information about the operation of premises through their policing of the area. Consequently, the police are generally the most proactive of the responsible authorities in liaising with applicants and licence-holders, making representations about licences and seeking reviews of licences. Some police forces will have a dedicated licensing team and within that a police licensing officer who manages applications for premise licences, monitors compliance and coordinates enforcement activity.

In April 2017, a mandatory requirement was introduced for police forces in England and Wales to begin systematically recording alcohol-related crime. They are required to apply a 'flag' to their recorded crime data, for crimes where alcohol is perceived as an aggravating factor. This data is expected to inform future licensing and policy decisions at a local and national level, provided it is of sufficient quality. The police have a key role in managing the night time economy and should usually be the main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the Act may make representations with regards to any of the licensing objectives if they have evidence to support such representations.

A licensing committee must actually consider all relevant representations carefully, including crime numbers and other evidence presented by the police, as this may well include examples that do not relate to the licensable activity: several licensing decisions have been overturned on appeal as a consequence of this.

The partnership with the police extends outside of the licensing process and related enforcement. The police are often key players in partnership schemes such as Pub Watch and Best Bar None, and can also have an interest in exploring the possibility of a late night levy. The statutory guidance to licensing authorities states that PCCs are expected to have a central role working in partnership with local authorities, enforcement bodies and other local partners to decide on what action is needed to tackle alcohol-related crime and disorder in their areas. It is important to ensure that a licensing authority's engagement is not limited to the local police licensing officer and includes some discussion with the PCC about the licensed economy and how it is managed.

Many authorities have regular briefings from their local police, at ward level or through community safety partnership arrangements.

Police officers have specific powers in the Act in relation to:

- serving a closure notice on problem premises (either within an area or specific premises) where there is crime, disorder or nuisance
- calling for a review or summary review of a licence
- objecting to the transfer of a premises licence
- objecting to a change of Designated Premises Supervisor (DPS)
- objecting to a personal licence application if the applicant has relevant current convictions or after a licensing authority has decided not to revoke a personal licence
- objecting to a temporary event notice
- exercising powers of entry to licensed premises if they suspect offences under the Act are being committed.

Public health

One of the primary reasons for including the director of public health (DPH) as a responsible authority is that public health may have access to information that is unavailable to other responsible authorities.

The role of the DPH is to help promote the health and wellbeing of the local populations they serve. This is an expansive remit that influences a wide range of circumstances, including local licensing arrangements. Similarly the licensing regime is concerned with the promotion of the licensing objectives, which collectively seek to protect the quality of life for those who live and work in the vicinity of licensed premises and those who socialise in licensed premises. This focus on the wellbeing of the wider community via licensing is an important addition to public health teams' existing work to promote the wellbeing in their localities.

Public health representations must be assessed in the same way as evidence from any other responsible authority. It can be more challenging for them to make representations as there is no specific health objective, but is entirely possible and a number of public health teams have made successful representations – either in their own right or in support of other responsible authorities.

Public health teams have a particularly important role in shaping SLPs, and in building the evidence base for CIAs or other special policies being considered.

PHE have supported a number of councils to develop practical ways to use health data in licensing work. These have informed PHE's web based resource¹⁸ which brings together nationally available data and materials with local information to support councils to access a range of databases and tools. PHE's resource allows local teams to input their own data to create interactive maps and reports to help them in their role as a responsible authority.

¹⁸ www.gov.uk/guidance/alcohol-licensing-a-guide-for-public-health-teams

For more information on the role public health can play, PHE and the LGA have published joint guidance which includes useful case studies on how public health teams have usefully contributed to licensing decisions.¹⁹ PHE's website also includes tools to support public health teams to make effective representations.

Environmental health

Environmental health plays a significant role in addressing potential nuisance and safety issues associated with licensed premises, such as music noise, dispersal noise from patrons, intrusive odours and general safety. Environmental health officers (EHOs) will frequently discuss conditions with applicants such as proposed sound control or mitigation measures. EHOs can consider 'public nuisance' in relation to licensed premises, which is a broader and more flexible term than the specific 'statutory nuisance' in relation to unlicensed premises.

Statutory guidance warns against using the Licensing Act when other more specific legislative powers are available. The Health and Safety at Work Act 1974 and food hygiene regulations therefore would be used by EHOs to secure workplace and food safety rather than licensing conditions.

Along with the police, environmental health can object to temporary event notices which other RAs are unable to do.

Trading standards

Weights and measures authorities (trading standards) have a specific duty under the Act to enforce the under-age alcohol sales provisions. They have a specific power to conduct test purchase operations and will often organise age-related product sales training and awareness for businesses.

Trading standards may issue fixed penalty notices following an under-age sale, and issue a notice preventing alcohol sales from taking place for up to seven days following two or more failed test purchases within three months.

Trading standards might also apply for reviews where there is evidence of offences on licensed premises such as copyright infringement, the sale of counterfeit cigarettes or other goods.

Fire service

Although in practice the fire service very seldom make representations, their representations on public safety grounds means licensing sub-committees have to effectively either reject the application or reject the representation.

The Regulatory Reform (Fire Safety) Order 2005 does not allow fire-safety related conditions to be applied to a licence. It can be useful to remind applicants of their duties under the Fire Safety Order, ie that they need to carry out a fire risk assessment and implement findings. This can be included in any guidance the council offers to support the application process as well as setting this out as an expectation in the SLP. Applicants can be signposted to the government's guidance on completing fire risk assessments.²⁰

Home Office Immigration Enforcement

Home Office Immigration Enforcement (HOIE) are the most recent addition to the list of responsible authorities following changes brought in by the Immigration Act 2016 which requires all licence holders to have the right to live and work in the UK. HOIE can make representations about the grant, full variation, transfer and review of premises licences for the sale of alcohol and/or late night refreshment, and can apply for licence reviews in their own right. They can also make representations for personal licence applications.

HOIE have a central contact point for anything relating to their role as responsible authority for personal and premises licence applications (alcohol@homeoffice.gsi.gov.uk).

¹⁹ www.gov.uk/government/publications/public-health-and-the-licensing-act

²⁰ www.gov.uk/workplace-fire-safety-your-responsibilities/fire-risk-assessments

Licensing authority

The licensing authority administers and enforces the Act, but they can also make representations about applications or call for reviews. Crucially it must act as a coordination point between the different interests associated with licensable activities and premises.

The statutory 'Section 182' guidance suggests that there should be a separation between the licensing authority officers processing an application and those acting in its role as a responsible authority intending to make representations. This may not always be possible within smaller authorities. Councillors should ensure sufficient resources are in place so the licensing authority can exercise its role to administer and enforce the Act, (including appropriately trained and qualified officers) and to act as a responsible authority.

Summary of key permissions under the Act

Premises licences

Key features

- Can apply to 'any place' (including outdoors).
- Can last indefinitely or for a fixed duration.
- Must name a Designated Premises Supervisor (DPS) in order to allow alcohol sales.
- Subject to public consultation before grant or variation.
- May be reviewed on application by residents/other persons or responsible authorities.

Application process

A premises licence is required to allow licensable activities to be provided in a specific location.²¹ Licences can be granted for an indefinite period, or for a fixed period such as for a music festival in a local park. More than one premises licence can be in force for an area or premises at a time.

To allow public engagement in the process, applicants are required to prominently advertise applications for new or varied licences on the premises for 28 days (10 working days for minor variations). There is a prescribed format for notices that are displayed which need to be at least A4 and printed on pale blue paper. Whilst the LGA has called for the end of the requirement for public notices to be published in a local paper as a way to save businesses money

this is still a requirement and an application needs to be advertised in a local newspaper (except for minor variations). It is the responsibility of the licensing authority to advertise applications for new licences and full variation applications on its website from the day after they are received.

Every licensing authority must be able to accept electronic applications to comply with the EU Provision of Services Regulations 1990. Where applications come in online, the licensing authority is responsible for sharing them with responsible authorities in a timely manner as set out in regulations. However, in the case of postal applications, applicants themselves must distribute applications to all responsible authorities, licensing authorities application forms should therefore include addresses for responsible authorities.

There are four key parts to a premises licence application:

- the application fee
- the operating schedule, where the applicant details how they propose to operate and promote the licensing objectives
- a detailed plan of the premises
- the consent of the person designated as the premises supervisor (DPS) if alcohol is to be sold.

Since 2017 personal applicants for premises licences (such as sole traders or partnerships) also have to demonstrate they have a right to work in the UK as part of their application process.

²¹ Some places do not require a licence, eg military establishments and airside at most airports (although the Government have committed to looking at whether the Licensing Act should extend to airside at airports).

Operating schedule

An operating schedule is an important part of a premises licence (or club premises certificate) setting out how the applicant will promote the licensing objectives. It is good practice for applicants to discuss their operating schedules with officers from the appropriate responsible authorities before an application is submitted so that any potential issues can be identified early on and advice given. There is no rule to prevent ward councillors being involved in these discussions, providing they do not subsequently sit on a licensing sub-committee which considers an application they have been involved in discussing.

Making changes to a licensed premises

Where changes occur, there are provisions for varying a premises licence. A full variation application (similar to the process for the grant of a new licence) is required for significant changes, for example extending the hours during which alcohol may be sold.

A minor variation can only be used for less significant changes such as the removal of outdated or redundant licence conditions, or minor changes to the premises layout. The minor variation process involves a more streamlined 10-day consultation period compared to 28 days for a full variation.

Granting a licence

If no representations are made about a premises licence application during the consultation period, the licence must be granted subject to the mandatory conditions and any conditions consistent with the operating schedule. Where relevant representations are received, a hearing will need to be held to consider these. The next section considers these in more detail.

Once a licence has been granted, a review of a current licence can be called for by anyone. Someone experiencing 'noise' well outside the vicinity can still make a representation, as long as it is about the effect of granting the licence on the promotion of one of the licensing objectives. Reviews are explored in more detail later on.

Premises licences may be suspended if the annual licence fee is not paid. Procedures are laid down as to notices that must be given by the licensing authority before a licence can be suspended, and suspensions last until the outstanding fee is paid.

Ways to support businesses

Westminster, Cheltenham and Cherwell are among a number of licensing authorities offering a cost recovery, pre-application advisory service for business licences. This service collaborates with businesses to advise on the most appropriate, cost-effective and sustainable licence for them.

For new or growing businesses, the licensing process can be particularly complex, costly and difficult to get right the first time. Business licences can stretch the most fragile budgets and therefore investing a proportionate amount of time and money into a pre-application advisory service can result in businesses trading sooner. An additional benefit of this service is that these councils now receive more appropriate, full and accurate licence applications which overall speeds up the time required to grant businesses their licence to trade.

Temporary event notices

Key features

- Can apply to 'any place'.
- Can be held by any individual over the age of 18 whether or not they hold a personal licence.
- May not allow temporary events to last for more than seven days.
- No premises may be used for more than 21 days in total a year under a TEN.
- May be objected to by the police or environmental health.

Unlike licences, carrying out 'temporary licensable activities' does not have to be authorised by the licensing authority, instead the person holding an event is required to give notice to the licensing authority in the form of a temporary event notice (TEN).

TENs usually account for the largest number of authorisations or transactions for a licensing authority. They can be used to hold 'one-off' licensable events at unlicensed premises where a premises licence, club premises certificate or the presence of a personal licence holder might not be necessary. They can also be used to temporarily extend the hours or activities permitted by existing premises licences or club premises certificates, although there are limitations on the amount of times a premises, and an individual, can use a TEN, depending on whether or not they are a personal licence holder.

Notices can be submitted to the licensing authority online (for example via www.gov.uk) or by post, in which case they will need to be sent by the applicant to the police and environmental health, and acknowledged by the licensing authority.

The key features of TENs are that an individual, rather than a business, will need to make the application as a 'premises user'. The premises user has the same responsibilities as a Designated Premises Supervisor (DPS) but is not required to be a personal licence holder.

Compared to other types of notices the timeframes for TENs are relatively short – no less than 10 clear working days for a standard TEN and no less than five working days for a late TEN. A late TEN is simply a TEN that is submitted late; again there are restrictions on the amount of times this can be done by an individual or at a premises.

Whilst only environmental health or the police can object to either type of TEN, an objection to a standard TEN could lead to a hearing whereas objections to late TENs (due to the timescales involved) means the TEN cannot be used. This does not always mean the associated event has to be cancelled – for instance, a TEN may seek to allow alcohol to be sold at a school fund-raising event. The event could still take place, but not with the alcohol sales.

The police or environmental health may also intervene by agreeing a modification of the proposed arrangements directly with the proposed premises user. If they send an objection, this may result in the licensing authority imposing conditions on a TEN if there is an existing premises licence or club premises certificate.

As a matter of practice, licensing teams will often notify ward councillors when a TEN has been given, particularly if the premises or event is likely to cause concern locally. The ward councillor cannot however object to a TEN.

Issues frequently arise when a premises user does not give a notice in sufficient time. The Act is very prescriptive and the licensing authority does not have any discretion to override those timescales.

Licensable activities under a TEN may not last for more than seven days at a time, and there must be a 24-hour gap between successive TENs when given by the same premises user. No more than 499 people may be present on the premises at any one time, which includes staff.

The licensing authority's officers will issue a counter-notice if any of the limits (for example in relation to the number of TENs given in a year) have been exceeded.

The LGA has raised concerns that in many areas these are not being used by the community groups and clubs for whom it was intended, but instead to extend the regular operating hours of premises without the safeguards normally imposed by a licence. TENs are also the area where there is the biggest discrepancy between the fee charged and the costs received by licensing authorities, while also making up a significant administrative volume.

Club premises certificates

Key features

- May only be granted to a bona fide non-commercial qualifying club consisting of at least 25 members.
- A DPS is not required.
- The club may be open to members and to guests (not the general public).
- Subject to public consultation before grant or variation.
- May be reviewed on application by residents or other persons, club members or responsible authorities.

‘Qualifying’ clubs can operate under club premises certificates instead of premises licences. This means, for example, that they are not required to have a designated premises supervisor, and sales of alcohol do not need to be authorised by a personal licence holder.

The club premises certificate authorises the supply of alcohol and regulated entertainment. To be classified as a qualifying club, a number of requirements need to be met which are outlined in the Act. Examples of qualifying clubs are Labour, Conservative and Liberal clubs, the Royal British Legion, other ex-services clubs, working men’s clubs, miners’ welfare institutions and social and sports clubs.

As with the premises licence, where an application for a club premises certificate has been made lawfully and there have been no representations, the licensing authority must grant the application subject only to the conditions that are consistent with the operating schedule and relevant mandatory conditions. A hearing will be held to consider any relevant representations.

There are various benefits for qualifying clubs. There is technically no sale by retail of alcohol (except to guests of members) as the member owns part of the alcohol stock and the money passing across the bar is merely a mechanism to preserve equity between members where one may consume more than another.

This means that there is no requirement for a personal licence holder or a DPS to authorise the supply of alcohol. The premises are considered private as they are not open to the public which means the police and the licensing authority have more limited powers of entry. They would also be exempt in the case of a Magistrates’ court order to close all licensed premises in an area where disorder is happening or expected to happen.

Applications for club premises certificates must be in a specific format and be accompanied by the required fee, plans (if applicable), a copy of the club rules, and a club operating schedule (which is equivalent to an operating schedule). The licensing authority may inspect the premises before an application is considered

A club may apply to a licensing authority to vary a certificate in the same way as a premises licence. Certificates may be suspended for non-payment of fees in the same way as premises licences.

Personal licences

Key features

- Applicants must have attended an approved training course.
- Authorities have the power to suspend or revoke a licence following conviction for a relevant offence.
- Licences last indefinitely.
- Applicants must demonstrate they have a right to work in the UK.

A personal licence is granted to an individual to make a sale of alcohol, or to authorise others to make sales of alcohol from licensed premises. Whilst all sales of alcohol must be made by or under the authority of a personal licence holder, not everyone who makes a sale has to hold a personal licence. A personal licence holder will need to give 'meaningful' authorisation for the sale of alcohol by non-licence holders which could mean either by being on the premises, or by written permission from the Designated Premises Supervisor (DPS) or another personal licence holder.

In a similar way to a driving licence, a personal licence is 'portable' and is not attached to a specific premises. Personal licence holders no longer have to apply for a renewal of their licence, meaning it lasts in perpetuity unless it is surrendered by the licence holder, or revoked/suspended by the licensing authority, or a court.

To qualify to be a personal licence holder applicants must be over 18 and hold a licensing qualification that has been accredited by the Secretary of State, the intention being that licence holders are aware of licensing law and the wider social responsibilities attached to the sale of alcohol.

Applicants will also need to prove their right to work in the UK and submit a police disclosure check with their application. If there are relevant current offences (as set out in Schedule 4 to the Act), the police can make a representation against the application on

crime prevention grounds. If the police make a representation then there will be a hearing on the application.

A court can order a licence to be forfeited or suspended for up to six months following a conviction for one of the relevant offences. New powers introduced in 2017 allow licensing authorities to also suspend or revoke personal licences following a conviction for a relevant offence, or if the holder has been required to pay an immigration penalty.

Role of Designated Premises Supervisor

Each licensed premises must have a DPS, the person named on the premises licence as the individual designated to supervise the premises; they must always be a personal licence holder. The DPS will be the single point of contact for responsible authorities, particularly the police and licensing authority. They also have responsibility to make sure licensable activities are carried out lawfully in the premises, although they are not required to be on the premises at all times.

There can only be one DPS in relation to each premises, although the same personal licence holder could be the DPS for several premises. The DPS may also be the, or one of the, premises licence holders.

It is a breach of a mandatory condition for alcohol to be sold without a DPS being named on the licence. There are routine procedures in place for a DPS to be replaced, for example when changing their job. A DPS may be removed following a licence review; the police may object to an incoming DPS on the grounds that they would undermine the crime prevention objective.

Premises that are run as community facilities such as village halls may apply to remove the requirement to have a DPS, making the management committee collectively responsible for the supervision of alcohol sales instead.

Representations

Licensing sub-committees will need to meet to consider relevant representations about the likely effect of an application on the promotion of the licensing objectives, unless all parties agree that a hearing is unnecessary.

What is a 'relevant' representation?

Representations by parties other than RAs, for example individuals or businesses, are not relevant if the licensing authority considers them to be vexatious or frivolous, ie are not serious or there are insufficient grounds for action. Representations can be made in favour of or against an application. Equally, a representation may contain both relevant and irrelevant matters.

Representations must be made in writing within the required time period, and are copied or summarised to the applicant for them to consider. Officers can reject representations that are out of time (outside the 28 day period) or irrelevant, or if they are from persons other than responsible authorities and are considered vexatious or frivolous. Statutory guidance recommends that the benefit of the doubt should be given to those making representations and borderline submissions allowed to be considered by the sub-committee.

In the case of a review, representations should not be repetitious, ie identical or substantially similar to grounds for review already made should not be considered if a reasonable interval has not elapsed since an earlier application or a review (at least 12 months).

Councillors may make representations:

- in their capacity as a private individual
- as a ward councillor
- on behalf of local residents or organisations.

Representations can be withdrawn in writing at any time up to 24 hours before the start of a hearing, or alternatively at the hearing itself.

Hearings are convened where relevant representations have been made and those issues have not been satisfactorily resolved. In the run up to the hearing it is quite proper and indeed should be encouraged, for applicants, responsible authorities and other persons to discuss issues that may lead to the application being amended, additional conditions agreed and/or the representations being withdrawn. Applicants should be encouraged to contact responsible authorities and others, such as local residents, who may be affected by their application before formulating it so that the mediation process may begin before the statutory time limits on hearings (addressed later in this handbook) come into effect following the submission of an application.

Licence conditions

Overview

The setting of conditions is one of the most significant ways in which licensing authorities can influence the running of a premises. As well as mandatory conditions which are set out in the Act, authorities can also add 'voluntary' conditions to a licence. Used effectively, this can mean that authorities put in place the elements that are essential to promoting the licensing objectives.

However, poorly designed or inappropriate conditions can have the effect of hampering a premises, preventing it from being financially viable and potentially leaving the community with an empty premises. The general rule is that conditions should be appropriate to the specific premises, necessary and proportionate.

Many licensing authorities publish pools of conditions, which give applicants an idea of the types of conditions that may be imposed. It is recommended that these are published separately from the SLP to allow them to be updated in a more flexible way than the SLP would allow. Whilst pools of conditions are helpful, licensing committees should always avoid imposing these conditions as a matter of course, or as blanket conditions to be applied to every premises. The wording of such conditions should be seen as a template to ensure conditions are tailored to the specific operation of the premises.

Licensing authorities must bear in mind that breach of any licence condition can potentially amount to a criminal offence, punishable by an unlimited fine and/or up to six months' imprisonment. Conditions must therefore be clear, precise and proportionate in order for them to be enforceable.

Applications that do not attract any representations (or where representations have been withdrawn) are granted subject only to conditions consistent with the operating schedule and the relevant mandatory conditions. Officers will draft those conditions under delegated authority in that situation, drawing on their expertise and any pools of model conditions.

However, if there have been representations then licensing authorities have the opportunity to impose or amend/modify conditions on the licence. Like any decision during a licensing hearing, the steps taken to impose conditions must be appropriate to promote the licensing objectives.

A sub-committee should be proactive with conditions and it is always worth considering whether objections could be overcome by conditions. Comments should be invited on proposed conditions before they are imposed. Conditions can be imposed in any case where they are considered 'appropriate'.

The key thing to remember with conditions is that less is more. The premise licence holder will need to be able to easily implement them if they are genuinely to make a difference to how the premises are run. Licences may be issued with just the mandatory conditions.

Licensing authorities should not aim to micro-manage premises through the use of conditions. Premises that appear to need more conditions than usual may have more fundamental problems in terms of management or planned operation.

Many operators will put forward their own conditions when they make an application. This is to be welcomed, but licensing

committees will need to ensure that all of these proposed conditions are genuinely necessary; properly worded so that they are enforceable; and are achievable. These conditions can also be modified or new conditions added.

Example 1

A poorly-worded condition which is imprecise and difficult to comply with at all times might read:

‘Windows and doors must be kept closed’.
A better-worded condition which is more appropriate (addressing the particular concern of the prevention of public nuisance objective) and proportionate (only applying during specific times) might read:

‘The Designated Premises Supervisor shall ensure that (apart from access and egress) all external windows and doors are kept closed when live music is played between 10.00 pm and the closing time of the premises on any day.’

Example 2

An inappropriate condition might read:
‘The premises licence holder shall ensure customers use public transport to travel to the premises.’

A better-worded condition might read:

‘The premises licence holder shall prominently display signs and notices in the premises promoting the use of public transport to travel to the premises.’

The premises licence holder would be unable to control their customers’ action beyond the immediate vicinity of the premises, as stated in the statutory guidance.

Similarly, conditions that relate solely to best practice or management styles are often more effectively addressed by a code of practice on effective management. A number of licensing authorities have adopted this approach and it has proven effective, removing any distracting conditions from the licence and emphasising the crucial importance of those remaining on the licence.

However, there will always be individual cases where a specific condition may be appropriate to include on the actual licence; for instance, serving drinks in polycarbonate or polycarbonate containers may be appropriate where a premises has a history of violence or where broken glass is routinely found on nearby public footpaths. In this example, the conditions would be imposed during a review of the premises.

Mandatory conditions

There are five mandatory conditions²² which all licensed premises and club premises must follow.

1. Staff on relevant premises must not carry out, arrange or participate in any irresponsible promotions in relation to the premises. This includes drinking games, encouraging someone to drink as much as possible with or without a time limit; providing free or unlimited alcohol or for a fixed or undetermined fee, including as a prize; using posters that promote or glamorise anti-social behaviour or present the effects of drunkenness in a positive manner.
2. Provide free potable drinking water on request to customers in on-licensed premises.
3. Have in place an age-verification policy and apply it to the sale of all alcohol.

²² The full details are set out in legislation, which can be found at www.legislation.gov.uk/ukxi/2014/2440, with supporting guidance at www.gov.uk/government/uploads/system/uploads/attachment_data/file/350507/2014-08-29_MC_Guidance_v1_0.pdf

4. Must ensure that the following drinks if sold or supplied for consumption on the premises are available in the following measures:

- beer or cider – half pint
- gin, rum, vodka or whisky – 25ml or 35ml
- still wine in a glass – 125ml.

The availability of these measures must be displayed in a menu, price list, or other printed material available to customers and must be brought to a customer's attention if they do not specify what quantity they want.

5. Not sell alcohol below the cost of duty plus VAT.

Volunteered conditions

In a premises licence application, the applicant has the opportunity to volunteer conditions, which will be measures that the licenced premises will introduce, above and beyond the mandatory conditions to promote the licensing objectives.

There are some conditions which need to be approached particularly carefully, as the choice of words used could make the difference between something that makes a meaningful difference to the safety and background noise of the area, and something that causes a regulatory burden to business but fails to protect the community.

Example

There shall be a minimum of four door supervisors employed at the premises (or more if required in writing by the police) from 9.00 pm until 30 minutes after the time for the premises to close on Fridays, Saturdays and any Sunday falling within a bank holiday.

It is not clear if this volunteered condition applies every Friday, every Saturday and any Sunday or only those that are also a bank holiday (in which case there would not be a Saturday or Sunday bank holiday).

These risks exist with all conditions, but experience has shown that they are most acute when it comes to conditions that require the installation of CCTV or the imposition of noise limits. There have been a number of instances where CCTV has been installed at the licensing committee's request, but the quality of the system failed to meet the standards needed for it to be used by the police.

Similarly, a number of noise conditions have been overturned in Magistrates' courts due to wording that required the premises to keep noise levels 'inaudible' – raising questions of audibly by whom, in what location, and failing to take account of the fact that for the most part young people can detect more sounds than older people.

Where conditions concerning noise or CCTV are being imposed, the final wording must have the input of the police or the council's acoustic expert in the environmental health team. This will ensure the conditions meet their purposes, although the licensing officer will need to ensure that they remain intelligible to the DPS, who will not be trained in these technical areas but must understand how to meet them. Again, these sort of conditions need to be proportionate.

'Mediating' conditions in advance of a hearing

Example 1

Following an application for a late night restaurant, the police make representations about crime and disorder; environmental health make representations about noise control, and local residents make representations about possible late-night noise. The applicant agrees to install CCTV, to include licence conditions to keep windows and doors shut after 9.00 pm, and to close an hour earlier than originally applied. All parties withdraw their representations and no hearing is necessary.

Example 2

An off-licence wants to extend its premises into the shop next door. The police's representations about crime prevention measures and trading standards representations about under-age sales have been resolved by the applicant agreeing to include appropriate conditions. However, the residents' association representation about possible anti-social behaviour has not been withdrawn and a hearing is arranged.

Example 3

A petrol station submits an application to extend its sales of late-night refreshment until 3.00 am. A number of representations are made and the application is withdrawn.

Example 4

A nightclub applies to vary its hours for licensable activities until 6.00 am. Representations are made and the applicant decides that an application to allow closing at 7.00 am would allow customers to use public transport better to get home. As this is applying for longer than the original hours, a new application is needed.

Example 5

A nightclub within a cumulative impact area is being refurbished and will need to submit an application to vary its licensing plans and also extend its hours. The applicant meets with officers from various responsible authorities, local residents and ward councillors. New conditions are agreed between all the parties that are included on the operating schedule. If no representations are made the varied licence is granted by officers under delegated authority.

Hearings and appeals: What to expect

Purpose of hearings

The purpose of a hearing is to decide whether granting an application would undermine the licensing objectives in the light of any relevant representations, the statutory guidance and the authority's SLP.

Potential issues in terms of an applicant not meeting the licensing objectives should be identified early. Licensing officers should provide pre-application advice and guidance to applicants to help avoid the need for a hearing, this advice could form part of the SLP. In cases where relevant representations are made about either granting or changing a licence, early mediation is encouraged between parties; this can help avoid the need for a hearing.

Conducting a hearing

Provisions for holding hearings are set out in the Licensing Act 2003 (Hearings) Regulations 2005 which provide for the various notification requirements, conduct at, and timings of, hearings.

Where specific provisions for the procedure for hearings have not been made, councils are able to set and control their own procedure as long as it is not contrary to the Regulations. The purpose of procedure should always be to enable those with the right to, to appear and advance their point of view and to test the case of their opponents. This will assist the licensing sub-committee to gather evidence and understand relevant issues. Expectations should be clearly documented in a member's Code of Conduct.

Councillors should be aware there may often be an imbalance of expertise between applicants who may be represented by lawyers, and residents (or even representatives from responsible authorities) who do not have the same degree of familiarity with the Act or the licensable activities being proposed. A degree of latitude and discretion may be necessary.

There is a growing body of case law around licensing hearing procedures, but the following should act as a guide to help avoid decisions being challenged.

Procedural issues

The Act delegates hearings to the licensing committee or sub-committee, and cannot be delegated to officers. They must be held within 20 working days of the end of the consultation period for premises licences and full variation applications.²³ Hearings may be held during normal working hours, and this may be more suitable if all of the parties are available. Hearings during an evening may be more suitable if local residents are unable to attend during the day but run the risk of being more rushed for parties to make their case and for members to reach a reasoned decision.

Regulations set out timescales for the giving of notices of the hearing, and specify that details of the representations should be provided to the applicant in advance. The Local Government Act 1972 requires that agendas should be published at least five clear days before the meeting (although this would not apply to hearings for TENs or for expedited reviews).

²³ Other time-scales apply to other applications.

Where there are no longer any matters of dispute a hearing is usually cancelled. If the licensing committee wants to hold the hearing anyway, it is recommended that the reasons why should be communicated as soon as possible to the applicant/licensee. It should be clear within the scheme of delegation in the SLP who has the authority to dispense with a hearing. Hearings should not be held where all parties agree one is unnecessary.

Licensing officers should prepare a report for committee members in advance of the hearing. Whilst there is no standard format for these reports they should collate and summarise relevant representations.

In some councils the sub-committee may receive a briefing before the start of the hearing. This should be solely confined to procedural matters. The merits of any material or the application before the sub-committee must not be discussed.

Who may attend the hearing

Any party making an application or making a representation can attend the hearing, and may be accompanied by anyone to represent them or give evidence.

A hearing can still take place in the absence of a person making representations although it is recommended it should not take place in the absence of an applicant/licence holder (particularly for a review) unless they have previously indicated otherwise.

If a party has indicated they will attend as required by the regulations but are absent at the stated time, the hearing should be temporarily adjourned to allow officers the opportunity to try and contact the people concerned.

Powers exist for a hearing to be adjourned in the above circumstances. Hearings may be adjourned in the public interest before they start (for example to allow an applicant to arrange legal representation following consideration of the representations). Hearings may be adjourned during the hearing if for example further information is needed in order to reach a decision. However, case law determines that a matter cannot be adjourned indefinitely but, instead, to a specific date.²⁴

Member conduct

Members must, at all times, comply with the council's member code of conduct which should set out the standards that members must observe and include:

- treat others with respect
- do not bully or intimidate anyone
- do not compromise the impartiality of an officer
- give reasons for all decisions
- the 'prejudicial interest' concept.

A prejudicial interest is 'one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest'.

Appearance of bias

While third party lobbying of elected members is legitimate and councillors may make representations to the licensing committee on behalf of other persons, it is crucial for the licensing authority and its committee to ensure that there is neither actual nor an appearance of bias in its decision-making. It should also be remembered that concerns about political lobbying were the basis of the concerns which led to the first Nolan Committee on Standards in Public Life.

²⁴ R (on the application of Murco Petroleum Limited) v Bristol City Council

Section 25 of the Localism Act 2011 does not prevent councillors from publicly expressing a view about an issue or giving the appearance of having a closed mind towards an issue on which they are to adjudicate. However it is recommended that to avoid an appearance of bias the following advice should be observed.

- No member sitting on the licensing sub-committee can represent one of the interested parties or the applicant. If s/he wishes to do so s/he must excuse him/herself from membership of the sub-committee which is considering the application. Case law has also established they should not be in the room for the hearing once an interest has been declared.
- If a member who sits on the licensing sub-committee is approached by persons wishing to lobby him/her as regards the licence application then that member must politely explain that they cannot discuss the matter and refer the lobbyist to his/her ward member or the licensing officer who can explain the process of decision making. If the member who sits on the licensing sub-committee wishes to represent them then s/he will need to excuse him/herself from the licensing sub-committee.
- Members who are part of the licensing sub-committee must avoid expressing personal opinions prior to the licensing sub-committee decision. To do so will indicate that the member has made up his/her mind before hearing all the evidence and that their decision may not be based upon the licensing objectives nor the statement of licensing policy.
- Members must not pressurise licensing officers to make any particular decisions or recommendations as regards applications.
- Political group meetings should never be used to decide how any members on the licensing sub-committee should vote. The view of the Local Government Ombudsman is that using political whips in this manner may well amount to findings of maladministration. It may be advisable that the chair of the licensing sub-committee should state, during proceedings, that no

member of the sub-committee is bound by any party whip.

- Councillors must not be members of the licensing sub-committee if they are involved in campaigning about the particular application.
- Other members (ie those who do not sit on the licensing sub-committee) need to be careful when discussing issues relating to matters which may come before the licensing sub-committee members as this can easily be viewed as bias/pressure and may well open that sub-committee member to accusations of such. While a full prohibition upon discussing such issues with committee members by other members may be impractical and undemocratic, local authorities are advised to produce local guidance for members on how such matters can be dealt with. Such guidance could include a definition of what is viewed as excessive, eg attempting to obtain a commitment as to how the member might vote.
- Councillors must also be aware of the need to declare any pecuniary or non-pecuniary interests in matters that may come before them, whether these relate to policy issues or to specific applications.
- Member behaviour is also governed by the code of conduct which members should have regard to, and most authorities also have a member/officer protocol which governs how members and officers should interact and the differences in their roles and responsibilities.
- Members should consult their monitoring officers for further advice where necessary.

A well-defined policy and comprehensive scheme of delegation to officers can go a long way to avoiding many of these pitfalls, although, of course, members must retain full oversight of how the scheme is working.

There are no rules preventing councillors from sitting on applications within their own wards, although some authorities adopt their own rules to avoid this. Members may make representations about applications,

make representations on behalf of others, or appear at a hearing if asked to do so by another person who has made a representation (subject to the rules above).

Principles of good practice

Ultimately, there are three objectives in holding a hearing; to conduct it fairly, so that each party, regardless of the outcome, would ultimately accept that they have had a fair opportunity to put forward their case; to grant a licence (if appropriate) that promotes the licensing objectives; and also to assist in producing well-reasoned, balanced, and proportionate decisions which will withstand the scrutiny of an appeal.

Procedures should be published before the hearing and reiterated at the outset of a hearing. The chair (who may be elected at the start of the hearing) also has the role of ensuring members have read and understood papers. During a hearing (within the boundaries of fairness), needless formality should be avoided, the meeting should proceed as a discussion, and there should be a dialogue with the chair who is keeping order. The cross-examination of parties at the hearing (the repeated questioning of a person on the same point) should be avoided.²⁵

Time limits can be a useful way of managing the hearing, but must be sufficient to allow an applicant or their representative to effectively put their case forward. The practise of allowing a limited amount of time, for example five minutes, for each party to address the sub-committee should be discouraged in all apart from exceptional cases such as where there are a very large number of people wishing to address the sub-committee. Parties must also have adequate time to respond to submissions or questions.

Members must take into account anything relevant, and use this to make judgements or inferences, about potential harm and what is necessary to avoid it. For example they can draw on local knowledge, regardless of whether it would qualify as 'evidence' in a court. However, it is sensible to raise any specific areas of local knowledge for comment by the parties. The committee must disregard any irrelevant considerations, including (but not limited to) information or evidence which is not relevant to the application or to the promotion of the licensing objectives.

The committee may accept hearsay evidence, such as when a witness gives evidence of something which they did not personally see or hear. For example, a newspaper report about a fight at the premises or a neighbour's description of dispersal noise from the premises at night. Hearsay is admissible but it inherently carries less weight than the direct evidence of a witness who experienced the events being described.

Many SLPs contain rules about how petitions would be treated by the sub-committee. It may also refer to 'round robin' letters, and how much weight will be attached to those.

Part of the role of the committee is to keep order, which can mean making sure people stick to the point and to 'cut through issues'. Committees also need to ensure fair treatment of witnesses for example preventing them from being interrupted, and ensuring no 'leading questions' are asked on contentious matters. It is good practice to ask open-ended questions and preferably through the chair.

The committee should be proactive with conditions and it is always worth considering whether objections could be overcome by conditions. Comments should be invited on proposed conditions before they are imposed.

²⁵ Regulation 23, Licensing Act 2003 (Hearing) Regulations 2005 states: 'A hearing shall take the form of a discussion led by the authority and cross-examination shall not be permitted unless the authority considers that cross-examination is required for it to consider the representations, application or notice as the case may require.'

Members should not express a view on merits before giving decisions. There is a duty to behave impartially so members should not make up their mind until the end, nor appear to do so. Merits of the case should not be discussed with the press or residents or any of the parties to the hearing. If this does happen, disqualification from the hearing should be considered.

This also applies to the time leading up to the hearing. Members must not prejudge any application, express any view on the merits of any application, organise any support or opposition to any application, in advance of the hearing. Any member with a 'closed mind' on any application should be disqualified from sitting on the Licensing Committee which considers that application.

The sub-committee has up to five working days after the end of the hearing to make its decision and give its reasons. Sometimes this additional time is useful to fully consider the representations and the application in more depth.

Late representations and evidence

Representations can be supported with any other relevant material, and can be provided at any time up to 24 hours before the hearing. If material is provided at the hearing, it must be with the consent of all the parties, to avoid a party being ambushed with material they might not be able to respond to.

It is up to the committee's discretion whether to allow late evidence. You may want to consider:

- length, content, complexity and impact of the document
- explanation for any delay
- prejudice to other parties
- whether an adjournment (even to later the same day) would assist the parties to assess the material.

Decision making

Licensing hearings are administrative in nature – neither party has a burden of proof – but the procedures may be slightly different to the usual arrangements for other council committee meetings. The rules of natural justice apply, ie a party must know the case against them; anyone affected by a decision has a right to be heard; and no one should be a judge in his own cause.

All the parties should be given a full and fair hearing, which should be conducted in an open, transparent and accountable manner. Licensing applications must all be considered on the basis of whether they promote the four licensing objectives as incorporated in the SLP. Each application must be considered on its own merits and whilst consistency is important similar applications may be decided in different ways.

Decisions must accord with the Wednesbury²⁶ principle of reasonableness.

Wednesbury principle

'[A decision] So outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.'

Wednesbury criteria

- in making the decision, the sub-committee took into account factors that ought not to have been taken into account, or
- the sub-committee failed to take into account factors that ought to have been taken into account, or
- the decision was so unreasonable that no reasonable authority would ever consider imposing it.

²⁶ Associated Provincial Picture Houses Ltd. v Wednesbury Corporation' [1948] 1 KB 223

In reaching their decisions under the Act, the Licensing Committee must have regard to all relevant considerations including (but not limited to):

- the relevant statutory provisions
- relevant statutory guidance issued under Section 182 of the Act
- the SLP
- the licensing objectives
- the material facts based on the relevant evidence presented and representations received
- the individual merits of each case
- the public interest.

The sub-committee must also ensure decisions are compatible with the Human Rights Act 1998, and take account of the council's wider duties to prevent crime under the Crime and Disorder Act 1998 and to promote equalities under the Equalities Act 2010.

The sub-committee can either grant or refuse a licence application where it is appropriate to do so for the promotion of the licensing objectives, and in accordance with its SLP (unless there are good reasons to depart from the SLP). It may impose additional conditions if it is appropriate to do so, and those conditions should be appropriate to those issues raised in representations or volunteered by the applicant.

Giving reasons

Formulating effective reasons for any decision is vital. The sub-committee will need to make clear to parties why they have reached a decision, not just what the decision is. Reasons do not have to be lengthy (see below) but must deal with the main issues: it is important to explain any findings of fact which were necessary to reach the decision. This ensures that a court can judge whether the decision was correctly made.

Case law – full and detailed reasons

Strong reasons are important if an appeal is made. The fuller and clearer the reasons, the more weight they are likely to carry. The Hope and Glory²⁷ case is helpful here:

'Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on.

'In a sense questions of fact, they are not question of the 'heads or tails' variety. They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location... (this) is essentially a matter of judgment rather than a matter of pure fact.'

Reasons must also refer to all representations – including referring back to the officer report. A useful structure to follow is:

- summarise key points from the evidence heard
- explain why a particular approach was taken rather than others, ie why some conditions might or might not have been appropriate
- refer to policy, guidance and licensing objectives as applicable.

If the sub-committee has departed from the SLP or the statutory guidance, there should be good, cogent reasons for this and these should be clearly stated. (For example, the statutory guidance advises that shops and supermarkets should be allowed to sell alcohol during the same times as other goods in the premises. A sub-committee may find it appropriate to limit alcohol sales to particular times to avoid the risk of sales to under-age people or street drinkers.)

²⁷ R (on application of Hope and Glory Public House Ltd) v City of Westminster Magistrates' Court and Others (2011) EWCA Civ 312

Many licensing authorities have standard templates in which to record decisions and reasons. The decision notice also often serves as the minutes of the sub-committee and is retained as a public record.

Examples of reasons

Reasons should articulate which party's evidence was preferred and why. If for example a party provided inconsistent or vague evidence, the decision notice should say so and make reference to that being the reason that their evidence was not preferred over that of other parties present during the hearing who were more precise and consistent in their submissions.

Rather than just saying a condition has been imposed 'to promote the crime prevention licensing objective', they should also articulate how it would do so and why it is appropriate to impose the condition for example:

'The condition imposed requiring CCTV to be installed is considered appropriate to promote the prevention of crime and disorder as the presence of CCTV will deter people from engaging in criminal or disorderly behaviour and assist in providing evidence to the police of those who have been involved in such behaviour so that appropriate action can be taken against them.'

Other examples could include:

'The condition requiring self-closing devices to be fitted to the external doors of the premises is considered appropriate to promote the prevention of public nuisance as this will help to minimise noise breaking out from the premises when people enter or leave the building.'

Roles

The role of the chair of the licensing committee/sub-committee

The role of the chair is not explicitly referred to in the Act or the Section 182 guidance. However it can be helpful to clearly set out expectations of the role of the chair.

Ultimately, the chair is responsible for oversight of the conduct of hearings and make sure they are carried out properly, this includes ensuring that all relevant matters are discussed and that effective decisions are made. The chair is also responsible for deciding whether any individual councillors should be prohibited from sitting on the committee, for example where there is a conflict of interest.

Before a meeting begins, the chair should ensure members have read and understood the papers. At the beginning of a hearing, the chair should introduce members of the (sub) committee and the council officers and ask others present to introduce themselves.

The chair should explain procedures that are intending to be followed, including a maximum period of time each party will be allowed in which to present their case if deemed necessary. The chair should also ensure procedures are followed throughout the hearing.

Following this, the chair should then ask the licensing officer to outline the background to the case, with each party then asked to confirm that this summary is correct. It is the responsibility of the chair to make sure that issues raised in relation to the case are considered at the hearing.

The chair may ask the licensing officer to clarify factual matters as and when they arise and also where necessary seek advice from the legal advisor or governance officer.

Ultimately, the chair should ensure the (sub) committee reach a decision that is based on criteria set out in the Licensing Act and that clear reasons for this decision are provided.

The role of the legal adviser

The legal adviser's role is to guide and provide advice to the sub-committee, whether or not it is requested, for example:

- questions of law – interpreting any legislation
- matters of practice/procedure
- admissibility of evidence

- range of options available to the committee
- any relevant higher court decisions
- drafting and formulation of conditions
- what the Section 182 guidance says.

The advisor may not take part in findings of fact or decision making, and members should not invite views. Legal advisors have an important but limited role to assist in the formulation and recording of reasons, but not the underlying decision. The legal advisor should advise the committee on the law and, where necessary, steer the committee procedurally to ensure that matters progress fairly and impartially. It is therefore important for legal advisors to receive appropriate training before sitting on a licensing committee or sub-committee as they play an important role and can help ensure consistency.

It is recommended that should any legal advice be given that was not raised during the hearing it should be repeated to the parties before a decision is announced so that any contrary arguments to be taken into account can be made.

The role of the licensing officer

The licensing officer is responsible for preparing a report in advance of the hearing, which should collate and summarise representations. The licensing officer should make a judgement around whether representations are frivolous or vexatious. Practice varies between licensing authorities as to the extent and content of the officer report, and the degree of intervention the licensing officer can have at the hearing. However, the professionalism and expertise of the officers should be recognised and they may be able to help in clarifying matters that arise during the course of the hearing that are not set out in the report or the representations.

Following the hearing, the licensing officer must transpose conditions onto the licence. These will include mandatory conditions, any 'conditions consistent with the operating schedule', and any other conditions imposed at the hearing. The key point here is that these conditions need to be enforceable.

If a licensing officer has made representations on behalf of the licensing authority as a responsible authority they should be treated in the same way as other parties to the hearing.

What happens if the committee's decision is challenged?

Process for appeals

Applicants and others may complain using the council's corporate complaints system if they think their application has been poorly handled administratively: they may also complain to the Local Government and Social Care Ombudsman if they remain dissatisfied.

However should they wish to challenge the committee's decision, any party to a hearing has the right to appeal to the Magistrates court within 21 days of being notified of the licensing authority's decision.

The licensing authority is always the respondent to an appeal and the parties at the sub-committee hearing who are not appealing effectively become witnesses on behalf of the licensing authority, should they wish to do so.

The licensing authority will almost always be represented at an appeal hearing, whether by the council's legal services, external legal advisors or a lawyer specialising in licensing law. Whilst the cost of external legal representation can be daunting, Magistrates can and will award costs against the council if they are found to have departed unreasonably from their policy; however, they should not award costs if the council has acted reasonably but came to an erroneous decision. This is backed up in case law.

Magistrates are effectively 'in the shoes' of the licensing authority and are therefore bound in the same way by its policy, ie if they depart from it they must also record their reasons for doing so. The Magistrates cannot however 'challenge' or disagree with the licensing authority's policy. This can only be done by way of a judicial review.

A Magistrates court should assess the appeal solely on the basis of the facts and the licensing authority's licensing policy; they will not find against the authority simply on the basis that they disagree with the conclusion – the assessment is on whether the authority could reasonably and legally reach the conclusion that it did. The key test for the courts is whether the authority's decision was 'wrong'.

As the appeal is a 'hearing de novo' (a fresh hearing) the court may hear evidence of events or changes since the original sub-committee hearing – for example the police may have evidence of further crimes at the premises, or the appellants may have evidence of new, improved operating procedures.

In light of that, there are some very simple steps that licensing authorities can take at each hearing to ensure the authority is in a robust, defensible position if there is an appeal:

- Ensure proper administrative procedure is followed and that all parties are dealt with fairly.
- Avoid any instance of bias or having predetermined the case. If a councillor has campaigned politically on a relevant issue they may ask how the applicant is able to address the particular issue, but must demonstrably show that they consider the response with an open mind.
- Always set out the reasons for decisions. This includes the relevant weight that licensing committee members applied to the evidence presented by different parties; and whether or not they have followed or are departing from the authority's policy. Members may depart from your council policy, but must be clear about your reasons for doing so.

'behind every ground for refusal there have to be adequate reasons, and for those reasons there has to be a proper basis in fact, ie there must be adequate material to substantiate any ground of refusal' *Leisure Inns UK v Perth and Kinross*

It is worth noting that licensing appeals can take a significant length of time to be heard in the Magistrates' courts. Hearings can take months to arrange and premises continue to carry on licensable activities while the appeal process is ongoing.

Pre-appeal negotiations

Negotiations may take place during the period after a sub-committee hearing and an appeal hearing between the appellant and other parties – for example, a premises licence holder may have further discussions with a responsible authority about the way in which they propose to operate the premises. (This is similar to the process following the receipt of representations and prior to the sub-committee hearing).

An agreement may be reached for the operating schedule to be amended or other conditions to be added to the licence and for the appeal to be withdrawn. As the licensing authority is always the respondent to the appeal, it is recommended good practice that the authority's legal advisers or licensing officers consult with the chair and/or sub-committee members and any other party to the appeal about the terms of any possible agreement. The court can then be invited to confirm a consent order agreed between the parties, requiring the licensing authority to issue a licence on the agreed terms, or to remit the appeal back to the sub-committee for its further determination.

Councillor presence at an appeal

Some licensing authorities may wish to call the chair of the licensing committee or relevant sub-committee to give evidence to the court as to why they reached their particular conclusion. Whilst it may be helpful, such reasons should be contained within the committee minutes or determination notice which can be produced in the licensing officers' evidence. It will be a matter of fact in each case how much weight the court puts on a councillor's evidence in this regard, taking into account that the appeal is a new hearing, operating as if the original decision had not been made.

In most cases either the licensing officer will give evidence as to the fact of the sub-committee's determination, or it will be accepted by the court as a matter of public notice.

Responding to issues at licensed premises

It is good practice for officers and responsible authorities to give licensees early warning of any concerns or issues relating to the licensing objectives that are linked to the premises and to offer advice on the need for improvement.

A graduated approach consisting of advice, warnings, the use of action plans or statutory notices is sometimes appropriate depending on the nature and severity of the concern.

However, where there is a failure to respond to warnings or where concerns are particularly serious licensing authorities can be asked to review a licence. It is important to note that the vast majority of licensed premises are responsible businesses and reviews are relatively rare.²⁸

Reviews

A review functions as a safeguard or 'check and balance' for communities in the case where problems associated with the licensing objectives are occurring once a licence has been granted, or varied.

There are four types of reviews which licensing authorities can use depending on the circumstances relating to the request. These are:

- a standard review
- a summary/expedited review
- a review following a closure order
- a review following a compliance order made under the Immigration Act.

For the purpose of this section the focus will be on the standard review which can relate to the failure to promote licensing objectives, or a breach of conditions.

A responsible authority, residents, businesses or councillors, indeed anyone may seek a review of a premises licence and, in the case of a club premises certificate, that includes the members of the club. This can be done at any point following the grant or variation of a licence or certificate. Home Office figures show that the police are responsible for instigating most reviews, and most relate to the 'crime and disorder' objective.

The review process includes a 28-day consultation process to allow for public engagement. In a similar way to a hearing, any relevant material can be considered by the sub-committee and the party applying for the review has to persuade the sub-committee the licensing objectives are being undermined.

The primary purpose of a review is to act as a deterrent to prevent further breaches. It can also prevent any licensable activities which are causing concern from happening in future

There are a range of options open to a sub-committee:

- to modify or add conditions, including reducing hours
- change management – remove the DPS
- suspend all or any of the licensable activities for up to three months
- revoke the licence.

²⁸ As of March 2018, only 611 reviews were completed in England and Wales (Home Office: 2018) www.gov.uk/government/statistics/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2018

Any of these steps needs to be shown to be appropriate and proportionate. Clearly revocation is the most serious of these and will need careful consideration. In most cases, reviews result in the modification or addition of conditions to the licence.

In certain circumstances the police have the power to apply to a Magistrate's Court for a Closure Order, these should not be used lightly and should only be sought where necessary to prevent disorder. Following the making of a Closure Order the licensing authority must complete a review of the Premises Licence within 28 days. The Home Office issues separate guidance²⁹ around police powers to close premises.

Summary reviews

Summary reviews can be made by the police (a police superintendent or above) where premises are associated with serious crime and/or disorder. This would typically be involving violence or money laundering. The Home Office issues guidance which includes issues to take into consideration.³⁰

Summary reviews are fast track reviews within 28 days with the power to impose interim steps within 48 hours of the application pending a full review hearing. Interim steps could be modifying conditions, ceasing the sale of alcohol, removing the DPS or suspending a licence.

These are very much a last resort and not a routine step. Again, the Home Office issues specific guidance around summary reviews and forms are set out in statute.

Prosecution

Either before or in conjunction with a review officers may also consider using other statutory powers, including commencing a prosecution.

Prosecutions must relate to a specific breach of licence condition or specific offence under the Act with each element of the offence needing to be proved beyond reasonable doubt. Prosecutions can only be commenced by a responsible authority and must be started within 12 months of discovery of the offence.

The purpose of a prosecution is punitive and for licensing offences a review (with the threat of revocation or suspension) can often be more of a deterrent.

Range of options open to the court:

- unlimited fine
- imprisonment for up to six months (or suspended sentence)
- forfeit or suspend a personal licence where the defendant is a personal licence holder.

In practice, a case can take a significant amount of time to come to court – if there are issues with the promotion of the licensing objectives which can't be resolved amicably, then review is likely to be the most appropriate response.

²⁹ Home Office (2011) 'Guidance on police powers to close premises under the Licensing Act 2003'

³⁰ www.gov.uk/government/publications/summary-review-application-for-the-review-of-a-premises-licence-under-section-53a-of-the-licensing-act-2003-premises-associated-with-serious-crime-serious-disorder-or-both

Glossary

Designated Premises Supervisor (DPS)

A DPS is the person named on the premises licence as the individual designated to supervise the premises.

Operating schedule

An operating schedule sets out how an applicant for a premises licence (or club premises certificate) will promote the licensing objectives.

Responsible authority (RA)

RAs are statutory bodies who need to be notified of every application for a new premises licence, or variation of an existing licence.

RAs include the police, fire authority, trading standards, health and safety and environmental health.



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We consider requests on an individual basis.

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NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

LICENSING COMMITTEE

22 October 2019

Report Title: LGA Handbook for Councillors – Gambling Act 2005

Submitted by: Head of Environmental Health Services

Portfolio: Finance & Efficiency

Ward(s) affected: All

Purpose of the Report

To inform Members of the guidance document created by the Local Government Association for Locally Elected Members in respect of the Gambling Act 2005

Recommendations

The Committee note the contents of the document.

Reasons

The guidance document is periodically updated by the Local Government Association. The most recent update was in 2018.

1. Background

- 1.1 The Local Government Association (LGA) regularly produce and subsequently update guidance documents on a range of matters that are dealt with by Local Authorities.
- 1.2 The Gambling Act 2005 came into force in 2007. In 2015 the LGA produced the first version of the guidance document “*Gambling regulation: Councillor’s Handbook (England and Wales)*” (handbook). The most recent update was released in 2018. A copy is attached as Appendix A.
- 1.3 The handbook gives an overview or summary of the below areas:
 - The regulatory framework for gambling;
 - The role of councillors;
 - The licensing authority statement of principles;
 - The key issues for the statement of principles;
 - Licensing fees;
 - Protecting vulnerable people;
 - Gambling related harm and problem gamblers;
 - Illegal gambling; and
 - Sector specific issues.

2. Issues

- 2.1 The Gambling Act 2005 is administered and enforced by local authorities and the Gambling Commission. The legislation sets down the roles and responsibilities of local authority officers and elected Members. It also provides for the constitution of the

Licensing Committee and Sub-Committee when dealing with policy and contested applications.

3. **Options**

3.1 To note the handbook issued by the LGA.

4. **Proposal**

4.1 That Members note the handbook issued by the LGA.

5. **Reasons for Preferred Solution**

5.1 Not applicable

6. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

6.1 *The Council's corporate priorities are:*

- Local Services that work for Local People
- Growing our people and places
- A healthy, active and safe borough
- A town centre for all

7. **Legal and Statutory Implications**

7.1 The Council have a statutory duty to administer and enforce the Gambling Act 2005 in line with associated legislation, guidance and policy.

8. **Equality Impact Assessment**

8.1 Not applicable

9. **Financial and Resource Implications**

9.1 Not applicable

10. **Major Risks**

10.1 Not applicable

11. **Sustainability and Climate Change Implications**

11.1 Not applicable

12. **Key Decision Information**

12.1 Not applicable

13. **Earlier Cabinet/Committee Resolutions**

13.1 Not applicable

14. **List of Appendices**

- 14.1 Appendix A –2018 version of LGA Gambling Regulation: Councillor’s Handbook (England and Wales)
- 15. **Background Papers**
- 15.1 Not applicable

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Gambling regulation

Councillor handbook
(England and Wales)

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Foreword

The 2005 Gambling Act was a pivotal point in gambling regulation in the UK. By liberalising previous gambling legislation, it established gambling as a mainstream leisure and social activity. Recent data shows that in the year to December 2017, 45 per cent of people had participated in some form of gambling, almost evenly split between men, 48 per cent, and women 41 per cent.

But even since the Gambling Act was introduced, the gambling landscape has changed significantly. Technological developments mean that significant numbers of people gamble remotely; 18 per cent of those who gambled in 2017 gambled online. This has gone hand in hand with a significant increase in the volume of gambling advertising, particularly linked to sports.

We have also seen significant changes in the physical presence of gambling in our local areas. While much of the concern that accompanied the introduction of the Act centred on the prospect of large scale casinos, in practice it has been patterns of betting shop clustering and the use of fixed odds betting terminals inside those betting premises, that have generated significant political and public concern.

As this handbook was being updated, the Government's consultation in its review of gaming machines and social responsibility measures closed. Having lobbied for several years for a substantial reduction in fixed odds betting terminal (FOBT) stakes, we are hopeful that the review will deliver this and remove high stakes gambling from our high streets.

Originally developed in 2015 to provide an overview of the responsibilities binding on licensing authorities and gambling operators in their areas, this handbook has been updated to coincide with the revision by licensing authorities of their statement of licensing principles by January 2019. The changes introduced two years ago to both statements of principles and the licensing conditions and codes of practice – which sought to tailor local approaches to licensing and strengthen operator social responsibility measures – have begun to embed, and there is now a range of good practice for councils to build on.

Licensing statements, backed up by local area profiles, provide an opportunity for authorities to set out how gambling will be regulated in their areas, and their expectations of operators. They can be used to identify areas where the risk of harm from gambling may be greater due to the particular characteristics of an area, and how these risks can be mitigated. The Local Government Association (LGA) encourages all of its members to ensure they develop statements of principles, area profiles specific to their locality, and to make use of the range of tools that are available.

I hope you find the handbook useful.



Councillor Simon Blackburn

Chair, LGA Safer and Stronger Communities Board

The regulatory framework – an overview

The Gambling Act 2005 (the Act) consolidated and updated previous gambling legislation, creating a framework for three different types of gambling: gaming, betting and lotteries. Gambling can take the form of non-remote gambling, which takes place in a gambling premises, and remote gambling, which is typically undertaken by phone or online. Councils do not have any regulatory responsibilities in relation to remote gambling.

The Department for Digital, Culture, Media and Sport (DCMS) is the lead government department for gambling issues.

The Gambling Commission

The Gambling Commission is responsible for regulating gambling in accordance with the Act, and for issuing operating licences to gambling businesses and personal licences to individuals. In regulating gambling, the Commission is required to have regard to the three licensing objectives for gambling, which are:

- preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being to support crime
- ensuring that gambling is conducted in a fair and open way
- protecting children and other vulnerable persons from being harmed or exploited by gambling.

Principles to be applied by licensing authorities



The Commission is **required to aim to permit gambling**, providing that it is consistent with the licensing objectives.

To help fulfil its role, the Commission attach licence conditions and issue codes of practice relating to how gambling facilities should be provided, and guidance to licensing authorities (district councils and unitary authorities) on how to implement their responsibilities under the Act.

Licensing authorities and types of gambling

Licensing authorities¹ are a key partner in gambling regulation, with a responsibility for overseeing non-remote gambling in their local areas. This involves:

- setting the local framework for gambling through their statement of principles
- considering applications and issuing licences for premises where gambling takes place, with conditions where appropriate
- reviewing or revoking premises licences
- issuing permits for some forms of gambling
- undertaking inspection and enforcement activities, including tackling illegal gambling.

Although betting shops are the most commonly recognised gambling premises, councils are responsible for overseeing gambling in many different types of business:

- betting shops
- bingo halls
- adult gaming centres
- family entertainment centres (FECs)
- casinos
- race-courses and other tracks (defined as sporting venues, eg football or rugby stadiums)
- alcohol licensed premises and clubs that have gaming ('fruit') machinesmembers' clubs with gaming permits.

While most gambling establishments require a premises licence before they are able to operate, licensing authorities issue 'permits' to unlicensed family entertainment centres (uFECs) (typically found in seaside resorts, motorway service stations or airports) and to alcohol licensed premises and clubs.

Licences or permits enable businesses to provide specified maximum numbers and types of gaming machine. There are different types of gaming machines, with varying stakes (the amount allowed to be gambled at one time) and prizes (the amount the machines are allowed to pay out), and some types of machine are only allowed in specific premises. This is outlined in the table in Annex 1. Maximum stakes and prizes are set by the DCMS, and are currently subject to a triennial review. At the time of publication, with the Government's consultation on stakes closing only in January 2018, the majority of stakes and prizes look set to remain unchanged, with the exception of an expected significant reduction in the maximum B2 stake ('FOBTs', commonly found in betting shops) and an increase in prize gaming stakes and prizes.

Like the Gambling Commission, **licensing authorities are bound by a statutory aim to permit** and must grant premises licences so long as applications are in accordance with:

- the Gambling Commission's codes of practice
- the guidance to local authorities
- the licensing authority's own statement of principles
- the three licensing objectives.

Since the Act was introduced, a number of licensing authorities have been frustrated at their limited grounds to refuse premises applications. Authorities that have tried to reject applications – on the basis that there are already clusters of betting shops on their high streets – have generally seen their decisions overturned on appeal. This is partly because the licensing objectives under the Act are different to those under the Licensing Act 2003, in that they do not include public

¹ District and unitary councils

safety or the prevention of public nuisance, creating a very high bar for refusing premises applications on the basis of licensing objectives. More recently, however, Westminster Council refused an application for a premises licence in a street that already had a number of betting shops, on the grounds that it was in an area identified as being at high risk of harm from gambling due to the local characteristics. This demonstrates the importance of having an evidence based local area profile to draw on, and using this to inform the local statement of principles (see page 14).

Planning considerations, the aim to permit and gambling premises

Councils have sometimes sought to use the planning system to prevent further openings of gambling premises (specifically betting shops) where they believe that additional premises will damage local high streets or economies. However, these decisions have been overturned, this time by the Planning Inspectorate, if councils have not been able to evidence that decisions have been reached on the basis of material planning considerations.

Following lobbying by the LGA and others, in 2015 the Government introduced changes to the planning system in England that remove permitted development rights from betting shops and payday loan shops, which are now 'sui generis', ie in a use class of their own. This means that anyone wishing to change the use of an existing building to a betting shop will need to apply for planning permission to do so.

To refuse new planning applications, a council would need to have valid planning grounds; in turn, this is likely to link back to the council's local planning policy and development plan. As with licensing statements, planning decisions will be stronger if they are linked back to evidence based criteria explicitly set out in local plans. The Planning Inspectorate has approved an amendment to Newham Council's local plan whereby small changes to places can now be assessed cumulatively rather than in isolation and which introduces limits to the numbers of betting shops (and other outlets) ensuring they are separated from each other in the street scene. This new policy

criteria also prevents new betting shops from locating in areas where there are already three units of the same use within a 400m radius (typical five minute walk). This is a welcome development.

The LGA would still like to see a statutory brake on the aim to permit included in the licensing framework. However, anecdotal evidence suggests that the planning change has led to a fall in the number of applications for new or relocated premises, and it remains to be seen what impact a reduction in FOBT stakes make have in areas where there are clusters of betting shops. We will continue to keep this area under review.

Under the Act, councils are required to recover the costs of the gambling licensing function, and have discretion to set fees up to specified maximum levels set for England and Wales by the Secretary of State. Fee setting is considered in more detail in the specific section later in this document.

Licensing fees should cover the costs of gambling licensing administration and the compliance/enforcement activity undertaken by a council. As with the Licensing Act 2003, councils have a range of licensing tools that can be used to address issues linked to gambling premises, specifically reviewing existing licences, imposing conditions or – in the most serious cases – revoking licences. However, there is also scope for councils to use other more appropriate powers to tackle certain types of challenges. For example, certain anti-social behaviour powers may be better suited to dealing with anti-social behaviour issues linked to gambling premises. This is considered in more detail in the subsequent section on managing individual premises and enforcement.

Operators

Gambling businesses are required to have an operator licence issued by the Gambling Commission before they can operate in Great Britain. Operator licences can be issued for up to ten different types of gambling activity² and a separate licence is needed for both remote and non-remote gambling of the same types.

An operator licence gives a general authorisation for a business to provide gambling facilities, but a business wishing to provide non-remote gambling facilities in a licensing authority area is required to apply for a premises licence that is specific to the particular premises.

Operators are required to comply with conditions attached to both their operator and individual premises licences. They are also required to adhere to the mandatory provisions in the Gambling Commission's Social Responsibility Code of Practice and take account of the provisions in the Ordinary Code of Practice (although these are not mandatory).

The Licence Conditions and Codes of Practice (LCCP) were updated in April 2015, and have introduced significant new responsibilities for operators in relation to their local premises.

Since April 2016, all non-remote licensees that run gambling premises have been required to assess the local risks to the licensing objectives arising from each of their premises, and have policies, procedures and control measures to mitigate them.

Licensees are required to take into account the licensing authority's statement of principles in developing their risk assessments – licensing authorities can challenge risk assessments if they feel there is evidence that local risks have not been taken into consideration (for example, if there are generic risk assessments for different premises).

Local risk assessments should also be undertaken or reviewed and if necessary updated by operators:

- when applying for a new licence or to vary a premises licence to reflect significant changes
- to local circumstances, including those identified in the statement of principles
- when there are significant changes at the premise which may affect mitigation of local risks.

Operators are advised to share their risk assessments when submitting such applications.

A partnership approach to local regulation

In line with the principles of better regulation, the Gambling Commission are encouraging operators and licensing authorities to work together in partnership. The LGA also recognises the value of this approach, having convened a 'Betting Commission' in 2014 to bring together councils and representatives of the betting shop industry to discuss council concerns about clustering and fixed odds betting terminal (FOBT) machines.

The Betting Commission did not reach agreement on the changes that councils wish to see in relation to council powers in this area, and the LGA policy position remains that councils need stronger powers to shape their local high streets by refusing licences if there is already a concentration of gambling premises in the area.

However, the work of the Betting Commission indicated that there is willingness across the betting shop industry to work collaboratively to tackle local issues linked to betting shops, as evidenced in some of the later case studies in this document.

² The ten types of operator licences are for: casinos; bingo; general betting; pool betting; gaming machines for adult gaming centres; gaming machines for family entertainment centres; gaming machines – technical; gambling software operating; lottery operating.

Role of councillors and the licensing authority

Overview

Under the Act, the licensing authority's responsibilities are delegated to the authority's licensing (or regulatory) committee, which is likely to be made up of non-executive/cabinet councillors.

The licensing committee is likely to be responsible for considering and proposing the authority's gambling policy through developing the statement of principles prior to its approval by full council, and for taking decisions on specific licence applications or issues.

However, two core functions are not delegated and remain the responsibility of the full council:

- a resolution not to issue casino premises licences
- adopting the licensing statement of principles.

Fee-setting is not delegated to the licensing committee by default, but a licensing authority may choose to delegate this function.

Otherwise, fee-setting remains a council function and cannot be delegated to a cabinet or executive committee. As in other areas, fees should be reviewed annually.

Decision-making in respect of individual cases, whether applications for licences or relating to existing licences, may be further delegated from the licensing committee to a sub-committee, or to an officer. Officers may not, however, exercise delegated powers in the following circumstances:

- where an application has been made for: a premises licence; a provisional statement (in relation to a premises expected to be built); a club gaming or club machine permit; or to vary an existing premises licence, and representations have been made

- where an application has been made to transfer a licence, and a representation has been made by the Gambling Commission or a responsible authority
- in the case of a review of an existing premises licence.

Interested parties and responsible authorities

Unlike the Licensing Act 2003 framework, representations may be made by or on behalf of 'interested parties' defined as:

- people living sufficiently close to a premises to be likely to be affected by it
- whose business interests may be similarly affected
- people representing them (eg advocates, neighbours/residents /tenants associations, MPs, councillors, etc).

It is up to the licensing authority to determine whether a person is an interested party with regard to a particular premises or application, and this should be decided on a case-by-case basis. However, the licensing authority's statement of principles should set out the principles the authority will apply in doing so. The Gambling Commission's 'Guidance to licensing authorities' advises that this may include:

- the size of premises (eg, a larger premises might be expected to affect people over a broader geographical area)
- nature of the premises
- distance of the premises to a person making the representation

- the potential impact of the premises, eg number of customers, routes likely to be taken to visit the premises
- the circumstances of the person who lives close to the premises.

The Commission also states that licensing authorities should take a broad interpretation of business interests, to include partnerships, charities, faith groups and medical practices. In respect of gambling businesses themselves, it advises that authorities consider the size and catchment of a premises, and whether the person making the representation has business interests in the catchment area which might be affected.

Representations may also be made by 'responsible authorities', defined under the Act as the:

- licensing authority
- Gambling Commission
- police
- fire and rescue service
- planning authority
- an authority with responsibility for minimising the risk of pollution to the environment or of harm to human health in the area where the premises is situated, ie environmental health
- local safeguarding board
- Her Majesty's Revenue and Customs.

Decision making and conditions

In circumstances where the committee or sub-committee considers specific cases, it sits as a quasi-judicial body and therefore must follow the rules of natural justice – **anyone affected by a decision has a right to be heard and no one should be a judge in his own cause. All decisions should be made without 'fear or favour', however difficult they may be.**

In general, the volumes of applications and cases dealt with in respect of the Act will be significantly less than in relation to alcohol

or taxi licensing. However, in broad terms, committees have similar options available to them when considering an application/issue relating to a gambling premises as they do in relation to alcohol licences and taxis:

- to grant a licence, with or without conditions, or refuse it
- when reviewing a licence
 - do nothing
 - introduce conditions on a premises licence
 - revoke a licence.

Licensing authorities may attach specific conditions to premises licences, in addition to the mandatory and default conditions that apply either because they are set out in the Act or in regulations made by the Secretary of State. In relation to an individual premises, they may also choose to disapply default conditions set out in regulations which would otherwise apply to all premises licences.

The Gambling Commission's Guidance to Licensing Authorities (GLA) advises that premises licence conditions issued by authorities should be:

- relevant to the need to make the proposed building suitable as a gambling facility
- directly related to the premises and the type of licence applied for
- fairly and reasonably related to the scale and type of premises
- reasonable in all other respects.

The GLA also states that 'decisions on conditions should be taken on a case by case basis. [Licensing authorities] must aim to permit the use of premises for gambling and so should not attach conditions that limit their use except where it is necessary in accordance with the licensing objectives, the Commission's codes of practice and guidance, or their own policy statement. Conversely, licensing authorities should not turn down applications for premises licences where relevant objections can be dealt with through the use of conditions.'

Good practice on licensing conditions

In any area of licensing, conditions must not:

- exceed the council's powers set out in the controlling legislation ('ultra vires')
- be unreasonable or disproportionate ('Wednesbury unreasonable')
- be beyond the applicant's powers to comply with
- be for an ulterior motive
- **but must** be clearly stated in order that they can be properly understood to be complied with and enforced.

Both applicants seeking new licences and the holders of existing licences will have the right of appeal to the local magistrates' or crown court if they are aggrieved by the decision of the licensing committee.

Training of councillors

No councillor should be permitted to sit on a licensing committee or sub-committee without having been formally trained. The 2017 post-legislative scrutiny report by the House of Lords Select Committee into the Licensing Act 2003 was emphatic on the need for councillors to receive appropriate levels of training before sitting as a member of a licensing committee or sub-committee.

It is important that training does **not** simply relate to procedures, but also covers the making of difficult and potentially controversial decisions, and the use of case study material can be helpful to illustrate this.

All training should be formally recorded by the council and require a signature from the councillor.

In addition to in-house training, there are a number of independent training providers, including the professional bodies – the National Association of Enforcement and Licensing Officers (NALEO), and the Institute of Licensing (IoL). The LGA has also made available a free online module on regulatory

services for all councillors to use: https://lms.learningnexus.co.uk/ivy_lms/idxlms.htm³

Appearance of bias

While third party lobbying of elected members is legitimate and certain members may make representations to the licensing committee on behalf of 'interested parties', it is crucial for the licensing authority and its committee to ensure that there is neither actual nor an appearance of bias in its decision-making. It should also be remembered that concerns about political lobbying were the basis of the concerns which lead to the first Nolan Committee on Standards in Public Life.

Section 25 of the Localism Act 2011 does not prevent members from publicly expressing a view about an issue or giving the appearance of having a closed mind towards an issue on which they are to adjudicate. However it is recommended that to avoid an appearance of bias the following advice should be observed:

- No member sitting on the licensing sub-committee can represent one of the interested parties or the applicant. If s/he wishes to do so s/he must excuse him/herself from membership of the sub-committee which is considering the application. Case law has also established they should not be in the room for the hearing once an interest has been declared.
- If a member who sits on the licensing sub-committee is approached by persons wishing to lobby him/her as regards the licence application then that member must politely explain that they cannot discuss the matter and refer the lobbyist to his/her ward member or the licensing officer who can explain the process of decision making. If the member who sits on the licensing sub-committee wishes to represent them then s/he will need to excuse him/herself from the licensing sub-committee.
- Members who are part of the licensing

³ To register for log in details to access the e-learning course email elearning@local.gov.uk

sub-committee must avoid expressing personal opinions prior to licensing sub-committee decision. To do so will indicate that the member has made up his/her mind before hearing all the evidence and that their decision may not be based upon the licensing objectives nor the statement of licensing principles.

- Political group meetings should never be used to decide how any members on the licensing sub-committee should vote. The view of the Ombudsman is that using political whips in this manner may well amount to findings of maladministration. It may be advisable that the chair of the licensing sub-committee should state, during proceedings, that no member of the sub-committee is bound by any party whip.
- Councillors must not be members of the licensing sub-committee if they are involved in campaigning on the particular application.
- Other members (ie, those who do not sit on the licensing sub-committee) need to be careful when discussing issues relating to matters which may come before the licensing sub-committee members as this can easily be viewed as bias/pressure and may well open that sub-committee member to accusations of such. While a full prohibition upon discussing such issues with committee members by other members may be impractical and undemocratic, local authorities are advised to produce local guidance for members on how such matters can be dealt with⁴. Such guidance could include a definition of what is viewed as excessive, eg attempting to obtain a commitment as to how the member might vote.

- Members must also be aware of the need to declare any pecuniary or non-pecuniary interests in matters that may come before them, whether these relate to policy issues or to specific applications.
- Members must not pressurise licensing officers to make any particular decisions or recommendations as regards applications.
- Behaviour is also governed by the member's code of conduct which councillors should have regard to, and most authorities also have a member/officer protocol which governs how members and officers should interact and the differences in their roles and responsibilities
- Councillors should consult their monitoring officers for further advice where necessary.

4 'It is undemocratic and impractical to try to prevent councillors from discussing applications with whomever they want; local democracy depends on councillors being available to people who want to speak to them. The likely outcome of a prohibition would be that lobbying would continue but in an underhand and covert way.' (Nolan Committee Report into Standards in Public Life 285 p. 72)

The licensing authority statement of principles

Under section 349 of the Act, licensing authorities are required to prepare a statement of principles that they propose to apply in relation to their regulatory responsibilities in gambling. Statements of principles typically run for a period of three years. There is nothing to prevent an authority from updating its statement more frequently if it wishes to, but the three yearly cycle must still be followed.

In previous years, the LGA has produced a template statement of principles for licensing authorities to adopt. However, following changes to the licensing conditions and codes of practice, reflected in the updated guidance to licensing authorities published in March 2015, we have produced the guidance below to assist licensing authorities in reviewing and considering their statements.

Objective and purpose

The objective of the statement of principles is to provide a vision for the local area and a statement of intent that guides practice: licensing authorities must have regard to their statement when carrying out their licensing functions. The statement cannot create new requirements for applicants outside of the Act, and cannot override the right of any person to make an application under the Act, make representations or seek a review of a licence. However, it can invite people and operators in particular to consider local issues and set out how they can contribute towards positively addressing them.

The updates to the licence conditions and codes of practice in 2015 have had a significant impact on the statement of principles. The **requirement for operators to**

prepare local risk assessments in relation to all their premises from April 2016 means that licensing authorities should now set out their expectations of operators' risk assessments, ideally in their statements.

This provides a real opportunity for councils to reflect local needs and issues in their gambling policies, in a similar way to licensing policy statements prepared under the Licensing Act 2003.

Most licensing authorities will not experience the same volume of applications in gambling as they do in other areas of licensing, but the issues of betting shop clustering and concern over FOBTs have shown that gambling generates extremely strong feeling. While licensing authorities may not have the power to refuse new applications or limit FOBT machines, developing detailed and robust statements of principles that reflect local circumstances will enable them to shape local gambling regulation as much as possible. A statement that reflects local circumstances and risks can help operators to better understand and proactively mitigate the risks to the licensing objectives.

Conversely, as in other areas of licensing, if an authority's statement of principles does not cover a specific issue, it will be in a significantly weaker position if it is ever challenged on a decision on that issue. It is always better to pre-empt legal challenge through a comprehensive statement of principles, and setting out a position in the statement should encourage an applicant to work with the council and community from the start to develop an application that will add to the local area, rather than detract from it.

As noted above, the changes to the LCCP in 2015 provided significant scope for authorities to develop statements of principles that are more closely tailored to their local circumstances. The Gambling Commission has recognised that developing more localised statements of principles will be an iterative process that takes place over time, as different information and more tools become available. However, as licensing authorities undertake the second reviews of their statement since the 2015 changes (with updated statements required by January 2019), the LGA strongly encourages authorities to look at the information and best practice that has been made available to support them, including:

- Geofutures' work with Westminster and Manchester Councils
- the Gambling Commission's licensing authority bulletins, in particular the January 2018 bulletin.

The LGA believes that all licensing authorities should have an up-to-date statement including guidance for operators on risk assessments, as well as an accompanying local area profile.

Process

In developing their statements, the Act requires licensing authorities to consult with:

- local police
- those representing the interests of gambling businesses in their localities
- people likely to be affected by it (or those who represent them).

Authorities may also wish to consult with:

- organisations including faith groups, voluntary and community organisations working with children and young people, organisations working with people who are problem gamblers, such as Gamcare, and advocacy organisations (such as the Citizen's Advice Bureau and trade unions)
- local public health team and mental health teams

- local businesses
- other tiers of local government (where they exist)
- responsible authorities.

It is good practice to clarify in the consultation which aspects of the current statement you are proposing to change.

Cabinet Office guidance on public consultations⁵ state that the time required for a public consultation 'will depend on the nature and impact of the proposal (for example, the diversity of interested parties or the complexity of the issue, or even external events), and might **typically vary between two and 12 weeks**'.

Licensing authorities should look at the views submitted by consultees and consider carefully whether they should be taken into account in finalising their statements. A licensing authority should always be able to give reasons for the decisions it has made following consultation. However, they should ensure that they only consider matters within the scope of the Guidance, Act and Codes of Practice. Even if there is a large response regarding a certain issue, an authority may be unable to deal with the issue under the Gambling Act, although there may be other options for addressing issues raised (eg planning).

Given the requirement to undertake a consultation when the statement of principles is amended, authorities may wish to consider separating their statements into distinct segments (possibly by sector). This would ensure that they need only consult on the section they propose to amend, rather than on the full statement, if changes need to be made.

Licensing authorities are required to publish their statements four weeks prior to them coming into effect, eg on or by 3 January 2019 if the statement takes effect on 31 January 2019. Licensing authorities are required to publish a notice advertising the publication of the statement on or before it comes into effect.

⁵ Cabinet Office 2016: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/492132/20160111_Consultation_principles_final.pdf

Key issues for the statement of principles

Legal requirements

Licensing authorities are required to include within their statements a number of points set out in statutory regulations:

- setting out the three licensing objectives that the statement is intended to uphold
- a commitment to upholding the statutory aim to permit gambling
- a description of the geographical area to which the statement applies (typically a plan of the area)
- a list of those consulted in preparing the statement
- the principles the licensing authority will apply in designating a competent body to advise it about the protection of children from harm and, if already determined, who this body is. In most places, this will be the local safeguarding children board, or following changes brought in under the Children and Social Work Act 2017, the new local multi-agency safeguarding arrangement (see page 23).
- the principles the licensing authority will apply in determining whether someone is an interested party for the purposes of premises licences or applications for them (see page 8)
- the principles to be applied in relation to exchanging information with the Gambling Commission or other bodies with whom licensing authorities are authorised to share information under the Act
- the principles to be applied in exercising inspection functions and instigating criminal proceedings (see page 19).

If the licensing authority has agreed a 'no casino' resolution, this should be included within the statement, alongside details of how (ie by full council) and when the decision was reached. Each licensing authority should publish a separate statement of principles, even where joint arrangements might exist between a number of local authorities.

Local area profiles

The guidance for licensing authorities recommends that, like operators, licensing authorities complete and map their own assessment of local risks and concerns by developing local area profiles to help shape their statements. Although there is no mandatory requirement to do this, the LGA encourages all its members to do so as a matter of best practice. In simple terms, the objective of the profiles is to set out what your area is like, what risks this might pose to the licensing objectives, and what the implications of this are for the licensing authority and operators.

Licensing authorities are advised to keep their local area profiles separate to their statements, to **enable the profiles to be updated without the need to re-consult on amending the full statement of principles. However, the implications of the profiles for their regulatory approaches should be set out in the statement.**

Some councils have expressed concern about whether they have access to information about local risks, or whether there are any local gambling risks to be addressed at all. It may therefore be helpful to start from simple principles, and expect that for many authorities these profiles will develop over a

period of time. Public health colleagues may have useful data to contribute, in addition to that supplied by the police. Additionally, support organisations such as GamCare may be able to provide information about numbers of people accessing treatment for problem gambling in the area.

As stated, the aim of local area profiles is to build up a picture of the locality, and in particular the elements of it that could be impacted by gambling premises. This profile might therefore include reference⁶ to:

- schools, sixth form colleges, youth centres, etc, with reference to the potential risk of under-age gambling
- hostels or support services for vulnerable people, such as those with addiction issues or who are homeless, given the greater risk of problem gambling among these groups
- religious buildings
- any known information about issues with problem gambling
- the surrounding night time economy, and possible interaction with gambling premises
- patterns of crime or anti-social behaviour in the area, and specifically linked to gambling premises
- the socio-economic makeup of the area
- the density of different types of gambling premises in certain locations
- specific types of gambling premises in the local area (eg, seaside resorts may typically have more arcades or FECs).

Crucially, local councillors know and understand their areas as well as anyone, and are well-placed to contribute to the development of local area profiles. The Gambling Commission also recommend engaging with responsible authorities and other organisations that can help build up a profile of both actual and potential local risks in developing local area profiles. This includes organisations involved in public health, mental

health, housing, education, welfare groups and community safety partnerships, and organisations such as Gamcare or equivalent local support organisations.

One issue to consider is whether there is a need to differentiate different parts of the licensing authority area in drawing up local area profiles, depending on the size and nature of the area.

A smaller authority may take the view that there are no reasons to distinguish one part of the borough from any other. In contrast, larger areas may wish to differentiate the area into segments or zones with different characteristics and risks, enabling them to outline different expectations for applications or operators based in each. For example, a larger licensing authority that has a specific geographic area with a higher density or specific type of gambling premises may wish to differentiate this from the rest of the borough. Similarly, smaller authorities may also find this approach suitable, for example if there is a busier town centre and surrounding rural area with a very different profile.

In February 2016, Westminster and Manchester Councils published the outcome of a piece of research⁷ aimed at better understanding the issue of gambling related harm and local area vulnerability to it. The research considered different risk factors related to gambling, and went on to map these factors in terms of the local area. The maps developed by Westminster showing one particular hotspot area in the borough subsequently helped to support the authority's decision to refuse an application for an additional premises in an area with an existing cluster and high local risk factors.

The LGA (which part funded the research) has helped disseminate the findings and tools from the research to other licensing authorities, who may in future want to use these to develop their local area profiles.

⁶ <https://www.geofutures.com/research-2/gambling-related-harm-how-local-space-shapes-our-understanding-of-risk>

⁷ <https://www.westminster.gov.uk/gambling-research>

Expectations of operators

Local area profiles will help the authority to develop its expectations of existing operators and new applicants in the licensing authority area. The statement of principles is the key tool for setting this out clearly, so that operators are clear what is expected of them.

Risk assessments

As an example, the statement of principles is an **opportunity for a licensing authority to set out its expectations of the local risk assessments that operators must now undertake** in respect of all gambling premises. Where authorities do not set out any expectations, it is more difficult for them to raise objections where they are not satisfied with the assessments that operators subsequently prepare.

Operators are **required** to take into account the licensing authority's statement of principles in developing their risk assessments, so authorities should therefore specifically outline the issues they expect operators to cover within their risk assessments. Operators are not automatically required to share their risk assessments with licensing authorities except when they are applying for a new premises licence or to vary an existing one. However, the Gambling Commission is advising operators to do so. Authorities may use the statement of principles to clarify whether or not and how regularly they expect to receive a copy of each premises' risk assessment, and any expectations around risk assessments being kept on the premises to which they relate, rather than at head office.

Authorities will wish to ensure that the risk assessment covers the following broad headings:

- reference to any specific local risks (linked to the local area profile)
- how the operator proposes to mitigate these risks
- how the operator will monitor specific risks.

The statement should also set out if the licensing authority has any specific

expectations of risk assessments for different types of premises. This will be linked to broader expectations of operators (linked to activity and location), as set out below.

The Gambling Commission's January 2018 bulletin contains examples of good practice on setting out expectations for local risk assessments.

Applications and variations

The statement should also set out the licensing authority's expectations of new applications and the issues the authority will take into account in considering applications for new licences, permits or variations in different sectors or parts of the borough, depending on the risks associated with each.

This should include the information that the authority would expect to see as part of any such application, for example minimum standards for a plan and layout of the premises. It could also include a list of required information about staffing arrangements in the premises, or the security features that will be put in place.

Depending on the local area profile, authorities may wish to invite information at application stage about premises' intended participation in local business schemes (eg, if there is a BID) or other specific schemes such as Betwatch, if they are in place locally.

Similarly, authorities could invite applicants to outline specifically how individual premises will be implementing the various voluntary codes of practice that different sectors have developed, as well as the measures mandated in the licensing conditions and codes of practice.

The key point is that the statement is an opportunity to clarify your expectations of businesses in relation to new applications, reducing the input and resources required at the time an application is submitted.

Sector/area specific expectations

The statement should be used to set out the licensing authority's expectations of operators of different types of premises, or (if relevant) of premises in different parts of the licensing authority area. If there are particular risks

associated with certain premises due to the facilities offered or their location, it is legitimate for the statement to set out upfront how it expects operators and premises to address this.

Local licensing guidance – South Leeds alcohol premises

South Leeds is an area of deprivation, with increasing numbers of outlets to buy alcohol, but a decline in the number of pubs. NHS Leeds (as was) and the local community officers had increasing concerns about the availability of alcohol in the area, along with an increase in street drinking, and generalized disorder. The publication of the Joint Strategic Needs Assessment highlighted a disparity in the life expectancy of residents in the area in comparison with other areas in Leeds and the national average. Alcohol misuse is known to be a possible contributory factor for a lowered life expectancy.

The council's South Leeds area team formed the multi-agency South Leeds Alcohol Group with the objective of reducing the health harms in the area which were linked with alcohol. The group consisted of the police, health, community safety, treatment services, planning, environmental health and licensing. The group met monthly to look at a number of approaches. The availability of alcohol was seen as key, but there were not enough on-licensed premises to warrant a cumulative impact policy. The group looked at alternative options and looked towards licensing as a solution.

In 2012, changes to statutory guidance on the Licensing Act enabled councils to require operators to have regard for the local area when making their application. The group therefore developed Local Licensing Guidance specifically for postcode areas of LS10 and LS11 (also known as Inner South Leeds), which has a population of approximately 82,000. The guidance has helped premises ensure that they are able to identify and include appropriate control measures in their applications. Of the five applications received since the development of the guidance that didn't include appropriate control measures, the Health and the Licensing Authority

have negotiated with four premises who subsequently agreed to include additional control measures and a further application was withdrawn prior to hearing. The control measures included matters such as the positioning of alcohol within the store and agreement to display health information.

Similar approaches in gambling could include:

- **Under-age sales**

- If a premises is based near a school or college, the measures might be required to manage a higher risk of attempted under-age sales.
- If the premises is a FEC or UFEC, expectations for how the premises will manage the risk of children and young people understanding different types of machine and/or seeking to access them.

- **Security issues**

- Staffing requirements, if the premises is open late, or located in an area with a busy night time economy or record of crime/anti-social behaviour.
- Whether alcohol is permitted, eg in a premises on a seaside pier.
- Requirement for CCTV, maglocks, door chimes, alarms, etc if there is a history of security incidents in the premises.

- **Signage**

- For example, language requirements if there is a diverse local community where English may not be the first language.
- Clear identification of different types of machine (eg gaming or skill machines) and/or prizes in premises where these may vary.

- **Staff issues**

- Training requirements on particular issues relevant to the premises or area, eg) on different types of machine in a FEC/UFEC.

Another option is operator/premises participation in local schemes or industry best practice schemes (eg Safebet Alliance) designed to promote best practice and tackle

any issues. In the alcohol licensed trade, schemes such as PubWatch, Best Bar None, etc are common practice. This is far less common in relation to gambling, but may also have a role to play in some areas. Authorities could consider this as a default approach in specific areas, or as a first stage enforcement approach in areas where there are particular issues.

In relation to both existing operators and new applicants, the authority may wish to use the statement to outline a set of model licence conditions that operators could adopt if the local area profiles and risk assessments indicate it is necessary. The Gambling Commission's 'Guidance to licensing authorities' includes a helpful set of sample premises licence conditions arranged by security; anti-social behaviour; underage controls; player protection controls. These are listed in Annex 2.

Enforcement approach

Licensing authorities **are required** to set out in their statement the 'principles that they will apply in exercising their inspection function and instigating criminal proceedings' (that is, their approach to enforcement). As a minimum, the statement should outline the authority's intended approach in relation to:

- information sharing and targeting activity
- inspection activity and visits
- dealing with non-compliance by premises
- tackling illegal gambling.

It should be noted that in setting out its approach to inspection and enforcement, the authority will also be providing an outline of the basis for its fee structure, see page 21.

As in other areas of regulatory services, in developing their enforcement strategy, **authorities should adopt a 'better regulation' approach** that recognises the requirements of the statutory regulator's code⁸ and applies the

principles of proportionality and transparency, particularly in terms of consultation and engagement with regulated businesses.

The Gambling Commission is keen for licensing authorities to foster a partnership approach to local regulation, working jointly with local businesses to tackle issues linked to gambling premises. In previous discussions with the betting shop industry, it has been recognised that, despite the differing opinions held about clustering and machine stakes, a partnership approach is likely to be more effective in resolving issues linked to local betting shops. This could include ward councillors; council licensing teams and community safety teams; police licensing and community officers; betting shop managers and betting shop area managers, as well as town centre managers, representatives of the wider business community and other stakeholders listed above.

The Gambling Commission is currently developing guidance on developing Betwatch schemes.

There are different approaches that local areas can take for partnership working:

Ealing Council set up a Betwatch scheme following concerns raised by local residents and councillors about the proliferation of 13 betting shops in Southall town centre and associated crime and disorder and antisocial behaviour. In a single year, there were 89 allegations of crime where a gambling premises was named as the location of the incident in Southall. The Betwatch group drew up action plans for tackling the issues, as well as test purchase failures in three of the premises, and a 'Ban by one, ban by all' approach was introduced. Following the creation of the Betwatch scheme, crime within gambling premises decreased by more than 50 per cent on 2011 levels, alongside a significant reduction in public order offences and criminal damage incidents. Additionally, further underage test purchases took place in 2012 with no failures reported.

When concerns were raised about anti-social behaviour and crime associated

⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf

with bookmakers on Deptford High Street, **Lewisham Council** involved bookmakers in the development of two general business initiatives – the Deptford High Street Charter and Lewisham Borough Businesses Against Crime initiative. Alongside this, individual bookmakers made changes in order to address the problems of anti-social behaviour in and around their premises, including installing external CCTV and signs highlighting that the area is under surveillance; making amendments to remove places where street drinkers would often congregate; setting up new CCTV systems within stores which are regularly monitored; introducing banning orders against some problem individuals; and changing management and staff. This work resulted in a reduction of incidents in and around the bookmakers. Following the work, a local BetWatch scheme has been established.

Two councils have primary authority agreements with major bookmakers and gambling trade associations covering the issue of age verification.⁹ As with any

other primary authority agreement, licensing authorities should therefore have regard to the plan agreed between the company and primary authority in developing their own programmes of activity and inspection. However, the primary authority relationship provides a useful mechanism to feedback general concerns about a particular operator, as the primary authority will have regular contact at senior levels with the operator: authorities should seek to reflect this in their enforcement approach.

Information sharing

To help target their enforcement activity and resources, authorities could use their statements to request that operators/premises share relevant information with them, for example about test purchasing results (subject to the terms of primary authority agreements) or about incidents in premises, which managers are likely to be required to report to head office. A licensing authority might seek

information about numbers of self-excluded gamblers to help it develop its understanding about the risk of problem gambling in its area.

This type of information would help the authority to get a clearer picture of which premises may be experiencing issues, meaning that they can structure their inspection and enforcement activity appropriately.

Inspection activity and visits

The statement should set out the activity the authority intends to undertake as part of its standard (that is, pre-planned) inspection activity, and the issues it will be looking at when it does visit. This will ensure that operators know what to expect in terms of the frequency and nature of licensing authority visits.

The Gambling Commission, working with the Leicester, Rutland and Leicestershire Licensing Forum and Leicestershire Local Economic Partnership, has developed a range of templates to help authorities when they visit gambling premises: www.gamblingcommission.gov.uk/for-licensing-authorities/Licensing-authority-toolkit/Premises-assessments/Premises-assessments-templates.aspx The Commission is encouraging authorities to make use of the templates.

The issues that licensing authorities may cover during their visits include:

- details of training policies and training undertaken by staff
- records of refusals to serve /admit on age grounds (subject to the terms of any primary authority agreements)
- records of any relevant incidents in or outside the premises, eg anti-social behaviour
- approach to managing self-exclusion and numbers of people currently self-excluded
- involvement/impact of any work in local schemes or partnership working with other local businesses
- reviewing paperwork relating to the purchase of games from licensed manufacturers

⁹ The primary authority register is available to search at: <https://primary-authority.beis.gov.uk/par>

- interviews with staff members
- confirming that appropriate signage is in place.

Dealing with non-compliance/risks to the licensing objectives

The statement should outline the steps the authority will take where there are reports of non-compliance, or there have been serious incidents linked to a premises. Authorities should make clear when and how they would expect to work with operators to try to resolve or address problems, and when an issue is so serious that it would expect to move immediately to initiate some form of enforcement action.

Authorities may wish to specifically cover:

- Dealing with test purchase failures (subject to the terms of any primary authority agreements). For example, the authority might require a premises to undertake certain measures to address this and undergo a follow-up test within a specified amount of time. A second failure would be expected to lead to enforcement action.
- Dealing with complaints from residents or neighbours. For example, an authority might have an established process to implement when it receives complaints about specific premises.
- Dealing with anti-social behaviour issues. For example, if an authority becomes aware that a premises is becoming associated with anti-social behaviour issues, it might in the first instance seek to work with the premises to address these through voluntary measures. If this is not successful in resolving the issues, the authority might then consider introducing conditions on the premises licence, or using other tools as appropriate.

The section on enforcement should set out the tools that licensing authorities will consider using to address issues that may be associated with gambling premises, often linked to alcohol and/or anti-social behaviour. Licensing authorities have the option under the Act to review, vary or impose conditions

on a premises licence, but in practice these might not be the most effective tools to use to tackle problems linked to anti-social behaviour. Instead, tools specifically designed to reduce anti-social behaviour¹⁰, such as dispersal powers, community protection notices or new public space protection orders, may have more of an impact. In very, very rare instances, where a premises is being used or likely to be used to commit nuisance or disorder and working with the operator had failed to address this, a closure notice may also be served.

Tackling illegal gambling

The enforcement approach could also set out the authority's approach to illegal gambling, including how the authority intends to monitor the risk of illegal gambling or respond to any information linked to this risk. More information on illegal gambling is available on page 29.

¹⁰ See Home Office guidance on ASB powers: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/670180/2017-12-13_ASB_Revised_Statutory_Guidance_V2_0.pdf

Licensing fees

Unlike fees for alcohol licences under the 2003 Licensing Act, licensing authorities have some discretion to set premises licence fees for gambling establishments. Councils in England and Wales have devolved powers to set fees for premises licence applications and annual fees up to a prescribed maximum fee set out in the table below. Licensing authorities can delegate responsibility for setting fees to their licensing committee or officers.

As with other licensing fees, licensing authorities should set their fees on the basis of cost recovery, so that the income received from fees is 'as nearly as possible' equal to the cost to the authority of administering the Act. Licensing fees should be reviewed annually to ensure that income from licensing fees does not exceed the costs of administering the Act in any single financial year, and income from licensing fees should effectively be ring-fenced to support councils' gambling work.

Licensing authorities are expected to be transparent about the assumptions that they make in setting fees, and will need to have a clear understanding of the costs they incur in carrying out duties under the Act in order to set fees accurately.

Licensing authorities can set fees in relation to the different types of gambling premises licence, and within each class, may set:

- an application fee
- an annual fee; as the first annual fee is payable 30 days after a licence is issued, councils have discretion to set a lower first annual fee to reflect that checks will recently have been made as part of the application process

- a first/annual fee for a premises licence subject to a seasonal condition
- fees to:
 - notify a change of circumstance
 - apply to vary a licence
 - apply to transfer a licence
 - apply for a copy of a licence
 - apply for reinstatement of a licence
 - apply for a provisional statement.

DCMS has previously provided advice¹¹ on the type of costs that licensing authorities should include within their licensing fees. In relation to applications, any costs associated with the licensing authority of receiving, considering and determining the application may be included, including:

- staff costs
- overheads, IT, legal and other central support costs
- initial inspections
- Licensing Committee costs
- the cost of hearings and appeals.

In relation to annual fees, fees should cover:

- regulatory compliance and enforcement costs for the forthcoming year (eg inspection, holding reviews and enforcement activity); this would include any action in relation to illegal gambling, and could also include the cost of providing councillor training on gambling licensing

¹¹ Available on the LGA Gambling and Betting knowledge-hub <https://www.khub.net/>

- the costs associated with processing the annual fee (eg updating computer systems, register of gambling premises licences and processing fee)
- annualised periodic costs incurred by the licensing authority in respect of its three year licensing policy statements.

Licensing authorities that have set their fees close to or at the maximum levels prescribed by government should be able to demonstrate why their fees are at higher levels than those set by other authorities.

This may be because local costs (eg, salaries) are higher, or because they are undertaking a wider range of activities in relation to gambling premises, which can broadly be assessed from licensing authority returns to the Gambling

Commission. This could include an extensive under-age sales programme, or work to tackle illegal gambling.

Again, as with other licensing fees, we are aware that **operators and their trade associations maintain a close eye on fees, and will not be afraid to challenge licensing authorities they believe are over-inflating fees** and/or not using the income solely for the purpose of overseeing gambling regulation.

The LGA has published general guidance on fee setting¹², which licensing authorities may find helpful in determining licensing fees for gambling premises.

¹² <https://local.gov.uk/open-business-lga-guidance-locally-set-licence-fees>

Table of maximum fees for gambling premises

Type of licensed premises	Maximum fee level					
	Application for premises licence	Annual fee	Application to vary a licence	Application to transfer a licence	Application for reinstatement of a licence	Application for provisional statement
Regional casino	15000	15000	7500	6500	6500	15000
Large casino	10000	10000	5000	2150	2150	10000
Small casino	8000	5000	4000	1800	1800	8000
Converted casino		3000	2000	1350	1350	
Bingo	3500	1000	1750	1200	1200	3500
Adult gaming centre	2000	1000	1000	1200	1200	2000
Betting premises (track)	2500	1000	1250	950	950	2500
Family entertainment	2000	750	1000	950	950	2000
Betting premises (other)	3000	600	1500	1200	1200	3000

Source: The Gambling (Premises Licence Fees) (England and Wales) Regulations 2007
SI No 479/2007

Protecting vulnerable people

Protecting children and other vulnerable people from being harmed or exploited by gambling is one of the three licensing objectives. Ensuring that this objective is upheld is one of the core responsibilities licensing authorities must meet.

Children and young people

It is an offence under the Act **to invite, cause or permit** a child (anyone aged under-16) or young person (anyone who is not a child but is aged under-18) to gamble. There are certain exceptions to this; for example participation in a lottery or football pools, or use of a category D gaming machine. It is also an offence **to permit** a child or young person to **enter** a casino, betting premises (other than a racecourse or track) or adult gaming centre. Again, there are exceptions to this, for example children and young people may enter family entertainment centres providing that they cannot access category C machines, and similarly can enter bingo establishments.

Operator responsibilities

The Gambling Commission's codes of practice deal extensively with the issue of access to gambling by children and young people. **The 2015 changes to the LCCP significantly strengthened the responsibilities that are binding on operators in this area.** Specifically, operators and premises are required to:

- Have **policies and procedures designed to prevent underage gambling**, and monitor the effectiveness of them.
- **Ensure that their policies and procedures take account of the structure and layout of their premises.** This is intended to ensure

that issues such as the line of sight between counters and entrances in premises are taken into account. Test purchasing results have indicated that where the line of sight to entrances or gambling facilities is restricted, it is harder to perform successfully. This might particularly be the case in premises with limited staff numbers.

- **Take all reasonable steps to ensure staff understand their responsibilities to prevent** under-age gambling, including the legal prohibitions on children and young people entering gambling premises.
- **Operate a Think 21 policy**, whereby staff check the age of customers who appear to be under 21¹³.

Larger operators and casinos are now required to conduct underage test purchasing or take part in a programme of test purchasing, and provide the results of these exercises to the Gambling Commission. Many of these operators will have a primary authority agreement in place with a council covering age related sales. Smaller operators are advised to monitor the effectiveness of their policies and procedures for preventing underage gambling, but are not specifically required to undertake test purchasing.

Role of licensing authorities

Licensing authorities also have an important role to play in ensuring that operators uphold the licensing objective in relation to children and young people. The Act requires that authorities designate in writing a body to

¹³ This is an ordinary code provision rather than a mandatory social code provision, but in practice it appears to be adopted by all operators. It is also part of the Association of British Bookmakers voluntary code.

advise them on the protection of children from harm, and the principles for choosing this body must be set out in the authority's statement of principles. These principles are likely to include that the body should cover the whole licensing authority area, have sufficient resources, and be accountable to a democratically elected organisation, rather than a particular group. The Gambling Commission's 'Guidance to licensing authorities' states that 'such a body may, but will not necessarily, be the local safeguarding children board'.

It is worth noting that following changes brought in under the Children and Social Work Act 2017, new local multi-agency safeguarding arrangements will replace local safeguarding children boards.

Whoever the licensing authority nominates, the important issue is that it has ongoing engagement with that body in relation to gambling and wider licensing issues, rather than simply nominate them.

Licensing authorities can also use their statements of principles to set out their expectations of operators and individual premises in relation to preventing children and young people as well as other vulnerable people from gambling. This might include specific expectations of premises in the vicinity of schools or sixth form colleges or addiction treatment centres. For example, a council may make specific recommendations relating to line of sight or door chimes in premises where there is a particular risk of children or young people seeking access to gambling.

Thought should also be given to safeguarding outside of premises, for example there could be expectations that unaccompanied children should not be left outside.

Safeguarding tools for operators in Sheffield

Sheffield City Council, like many local authorities, has concerns about the clustering of gambling premises, in particular where these are located in places that might attract children and vulnerable people – near schools, leisure centres or substance misuse treatment

services. As part of the council's licensing project, the Safeguarding Children's Board has developed a number of tools to support partners, including the trade, to understand their safeguarding responsibilities, and signpost to agencies that can offer support where concerns are raised.

Working in partnership with licensees and their staff, the council have produced an advice leaflet and a downloadable risk assessment tool for operators. Engaging with local forums like Licencewatch and neighbourhood community groups meant that the council was able to use existing relationships with the trade to raise the profile of safeguarding in relation to betting shops and encourage operators to undertake a safeguarding risk assessment and know how to report safeguarding concerns. The risk assessment involves operators demonstrating how they have considered the risks in the local context and how they have mitigated these, for example implementing policies around supervision, recording and reporting issues, or discouraging adults leaving children outside premises.

Alongside this, the council is also developing training around safeguarding vulnerable people and the impacts of problem gambling on communities and families, which they hope will supplement existing training betting shop staff already receive around self-exclusion and age verification. As well as supporting the council and other key partners to identify safeguarding issues, the new tools have also been well received by businesses, many of whom have welcomed the opportunity to play a role in the community and make sure that problem gamblers, or those at risk, get the help they need.

Councils should also consider how under age testing programmes can help ensure the licensing objectives are met. Many councils operate their own underage test purchasing through trading standards and/or licensing teams, particularly in response to complaints or intelligence. Larger operators are now responsible for conducting/taking part in under-age testing and sharing these results

with the Gambling Commission. Although these results are not automatically provided to **licensing authorities, licensing authorities may choose to ask for copies of test purchasing results as part of their local risk assessment expectations and use this evidence to help target their own activity in this area** (subject to the terms of any primary authority agreements which have agreed a formal plan in respect of underage sales and testing).

If there is evidence of ongoing failures by premises to prevent under-age gambling, licensing authorities will wish to consider whether it is appropriate to review the relevant licences and potentially include conditions aimed at addressing the issue.

New conditions for operators failing second underage test

A number of independent gambling operators had new conditions attached to their premises licences to strengthen underage gambling controls.

Further to the programme of test purchasing conducted in 2014 by local authorities in partnership with the Gambling Commission, East Lindsey District Council, Brighton and Hove City Council and Hastings Borough Council reviewed premises licences where operators failed to challenge an underage test purchaser for a second time.

Two adult gaming centre operators, a family entertainment centre and a betting shop were subject to premises licence reviews. These operators had submitted improvement plans to their authorities after failing a first test purchase exercise, but the latest re-tests demonstrated that weaknesses in controls had not been remedied.

Examples of the conditions now attached to premises licences include:

- a requirement for the licensee to have a Think 21 or Think 25 policy
- a requirement for regular test purchasing to be undertaken, to ensure the licensee monitors the effectiveness of their controls

- the use of magnetic locks to restrict access to premises
- the use of an infra-red beam system to alert staff to the presence of customers in age-restricted areas
- barriers to reduce the risk of children crossing from family entertainment centre premises into adult gaming centre premises
- re-positioning category D gaming machines away from entrances to adult gaming centre premises, to reduce the attraction of children to those areas
- induction and refresher training for staff.

Operators cooperated with the local authorities during the review processes, and some offered up further measures to strengthen their controls in addition to the formal licence conditions, such as:

- improving staff supervision of customers by moving age-restricted gaming machines to areas in front of manned areas or a staff counter
- assigning a member of staff to have specific duties for supervising the age-restricted area.

In addition to managing the risk of under-age sales, councils could also consider how they can work with premises that may be able to identify children or young people who are truanting or in relation to whom there are safeguarding issues. As societal awareness of child sexual exploitation increases, it may be the case that premises that children and young people legitimately visit have a role to play in understanding and potentially highlighting the risk if they observe any warning signs. Councils and the police are developing training for other types of licensees (eg taxi drivers, takeaway owners) in relation to child sexual exploitation; there may be value in ensuring this type of material is available to staff working in family entertainment centres, for example. Again, the statement of principles can be used to set out any expectations in this area.

Gambling related harm and problem gamblers

The licensing objectives also aim to prevent other vulnerable people from being harmed or exploited by gambling. People who are vulnerable to gambling related harm may risk becoming problem gamblers, where problem gambling is defined as an individual's gambling that disrupts or damages personal, family or recreational pursuits. In a severe form it becomes an addiction which is recognised as a clinical psychiatric diagnosis, 'disordered gambling'.

The 2017 Health Survey for England found that in the previous year 53 per cent of men and 44 per cent of women had gambled, and that problem gambling rates were 1.2 per cent for men and 0.1 per cent for women.

Operator responsibilities

Under the social responsibility code, gambling licensees are required to have and put into effect policies and procedures designed to promote socially responsible gambling that reduces the risk of (or seeks to identify) problem gambling. The requirements on non-remote operators are summarised below:

- **Provision of information on gambling responsibly.** Licensees are required to make information available about how to gamble responsibly and access information/help about problem gambling. This must be displayed prominently throughout premises (eg, posters), next to ATMs and on screens. The information should include:
 - the availability of measures designed to control gambling, eg setting time or monetary limits, timeouts or reality checks
 - options for self-exclusion (see below)
 - options for seeking further help and advice.
- **Fixed odds betting terminals.** Operators providing B2 gaming machines must ensure that they automatically offer users the choice to set time or monetary alerts for both staff and customer. With effect from April 2015, anyone wishing to stake more than £50 on a B2 gaming machine must do so using account based play, or do so via a premises manager. The implications for this requirement are likely to change once the Government's triennial review, which is expected to reduce maximum B2 stakes to between £2-£50, has concluded.
- **Customer interaction.** Licensees are required to have policies and procedures in place governing customer interaction where there are concerns that a customer is displaying signs of problem gambling. These will include the types of behaviour that may trigger an intervention; staff training in this area, and the circumstances when staff may consider refusing services to customers.
- **Layout of premises.** Operators must also ensure that their policies and procedures take account of the structure and layout of the premises. Licensing authorities can also ask for more information when considering premises applications to ensure they are satisfied that there are no impediments to supervision of the premises).
- **Self-exclusion.** Licensees must have procedures for self-exclusion that ensure those individuals who wish to self-exclude from gambling are prevented from participating in gambling. These should include closing customer accounts and

removing individuals from marketing lists. Operators are expected to maintain registers of self-excluded individuals, and apply their procedures either through photo identification or alternative measures. Individuals who self-exclude must also be signpost to counselling and advice.

Since April 2016, self-exclusion schemes have operated on a multi-operator basis, meaning that an individual who self-excludes from one operator should be able to self-exclude from all operators offering the same type of gambling in the same locality. Trade bodies for different sectors of the gambling industry have led on the development of multi-operator self-exclusion arrangements for each sector. Licensing authorities may wish to understand how premises fulfil the requirement to participate in multi-operator schemes as part of their compliance work.

Operators must also ensure that their policies and procedures for customer interaction and self-exclusion take account of the structure and layout of the premises

Alongside the requirements that are binding on gambling operators and premises, **many sections of the industry have developed their own voluntary codes to promote responsible gambling.** However, these codes will only have an impact if they are genuinely implemented by local premises. Licensing committees should question applicants on what practical steps will be put in place under these codes, with particular reference to any local risks or issues that may need addressing. For instance, a premises potentially opening in the vicinity of an addiction treatment centre is likely to need significantly enhanced safeguards around entry and exclusion.

Role of licensing authorities/councils

Licensing authorities will need to consider how they ensure that the objective of protecting children and other vulnerable people from being harmed or exploited by gambling is being met in their area.

In terms of their specific regulatory role for gambling licensing, authorities should think about how the statement of principles, local area profile and local requirements of operators can support the objective. As set out in earlier sections of this document, this can mean taking into account the location of gambling premises in relation to areas that may be deemed to be higher risk in terms of gambling related harm. It will also involve drawing on relevant local data about groups who are vulnerable, such as those with co-morbid addictions, or groups who are known to be more likely to experience issues with problem gambling, for example the homeless.

Developing evidence relating to specific risks and/or areas as part of their work on the statement of principles will help to inform the measures that operators are expected to take to address such risks, if they are above and beyond the mandatory conditions that operators must already adhere to. It can sometimes be challenging to identify this evidence, given that problem gambling is a hidden addiction in comparison to much more visible problems such as alcoholism or drug addiction. However, there is scope for councils to consider a range of data (for example, from public health teams or the Citizens Advice Bureau). Additionally, more evidence is likely to become available following the wider adoption of the methodology underpinning Westminster and Manchester's research into area vulnerability to gambling related harm.

To ensure that their efforts in regard to protecting people from harm are being targeted effectively, licensing authorities should also think about how they can work with local operators to ensure that operators are effectively implementing their responsibilities in this area.

Alongside their licensing role, councils can also think about other ways in which they may be able to support local residents who are experiencing or at risk of gambling related harm. The LGA is clear that problem gambling is not a public health responsibility, in the sense of being one of the issues councils assumed responsibility for treating the public

health function transferred back to local government. However, it is an issue that can impact individual residents, their families or carers and wider communities, and there is scope for councils to provide assistance without assuming responsibility for treatment options.

For example, councils will already be coming into contact with problem gamblers in a variety of contexts – through their work on financial inclusion, housing issues, homelessness, family breakdown and other addiction services. This will not always be apparent in the discussions councils have with individuals in these services. Councils can therefore think about how they can ensure that frontline staff are aware of the issue of problem gambling, can begin to screen for it and know where to signpost people experiencing gambling problems.

Leeds's problem gambling research project

In March 2017, Leeds City Council published the findings of a research project into problem gambling. The research was commissioned by the council's financial inclusion team and involved a review of national and local data and evidence on problem gambling, detailed discussions with gamblers and operators in Leeds and assessing the support services available to problem gamblers in the city.

The project concluded that the gambling market and gambling patterns in Leeds reflect those in other large metropolitan areas. Notably, it concluded that gambling behaviour and problem gambling are not equally distributed across England, with problem gambling rates higher for those living in more northern areas (or London), major urban areas, urban areas which are more densely populated, English metropolitan boroughs, London boroughs, and wards classified as industrial, traditional manufacturing, prosperous and multi-cultural.

The researchers estimated that problem gambling rates in Leeds, at 1.8 per cent, are broadly twice the national average of 0.9 per cent. Rates of at risk gambling appeared to be consistent, at 5-6 per cent. This equates to around 10,000 people in Leeds who are problem gamblers, with a further 30,000 at risk,

roughly the same number of people with drug addictions in the city.

The research revealed that provision of support for problem gamblers was underdeveloped and fragmented. Awareness about problem gambling amongst existing organisations for example those providing support for people with addictions and debt issues was low and gambling addiction was not screened for. Leeds identified various different areas of provision that could link up better, including wider work around debt and the health and wellbeing agenda.

In response to the research the council has been working hard to raise awareness around problem gambling through a publicity campaign targeted at the general public and encouraging self-referrals, as well as training for frontline staff to help them identify people who have potential problem gambling issues, and where to signpost them for support.

The LGA is developing new guidance for councils on problem gambling, drawing on this research.

Support for problem gamblers

GambleAware, formerly known as the Responsible Gambling Trust is an independent charity committed to minimising gambling-related harm through the provision of education, prevention and treatment services, as well as research to broaden understanding of gambling related harm. Funded by donations from the gambling industry, GambleAware supports GamCare (as the main national treatment provider) and gives grants to several other treatment providers including Gordon Moody Association and the National Problem Gambling Clinic in London.

The LGA and others have called for the Government to replace the current system of voluntary donations with a mandatory levy.

Illegal gambling

Licensing authorities are entitled to use income from licensing fees to tackle instances of illegal gambling in their areas. Illegal gambling occurs where gambling takes place without the necessary licences or permits in place, or in a premises that isn't entitled to host a particular type of gambling. The typical types of illegal gambling that licensing authorities are likely to encounter locally are illegal poker clubs and illegally supplied or illegally sited gaming machines.

Poker

Poker can be played legally in casinos, and can also be played in non-domestic/residential venues in certain specified circumstances, where:

- In the case of alcohol licensed premises, no participation fees are levied and stakes and prizes do not exceed those set in statutory regulations.
- In the case of clubs, participation fees, stakes and prizes do not exceed those set in statutory regulations.
- In the case of members' clubs with club gaming permits, participation fees do not exceed those set in statutory regulations; monies are not deducted from stakes or prizes; and clubs are not run wholly or mainly for the purpose of gaming. The Commission advises councils to scrutinise applications for club gaming permits carefully, warning that experience has shown that clubs will go to 'great lengths to disguise the true nature of their activities'.
- Poker takes place on a non-commercial basis that is not for private profit or gain, for example a poker night held to raise money for charity.

As a broad guide, where poker taking place outside of a casino involves a 'rake' (ie a commission fee taken by the person operating the game which exceeds statutory fees), it is possible that the game may be operating illegally.

The Gambling Commission's 'Guidance to licensing authorities' on illegal gambling urges councils not to discount taking action in relation to illegal poker clubs on the basis that they have not received complaints against them. The Commission states that: '[councils are] very unlikely to receive complaints about such clubs, unless it is issues such as local noise and nuisance [as] the people attending the club do so from choice. [However] the club is effectively operating as an illegal casino and none of the protections afforded in a casino are in place, such as personal licence holders and anti-money laundering safeguards'. As in other areas of regulatory services, it may be the case that wilful non-compliance in relation to gambling controls is evidence of a wider disregard for the law and in some cases serious criminal behaviour.

Reigate Social Club and its withdrawal of a club premises certificate and cancellation of a club gaming permit after an investigation into alleged illegal poker

A joint visit was undertaken to a club where illegal poker was allegedly taking place, involving the police, the local authority and the Gambling Commission. The visit identified customers who were not members, poker only being played on the premises and rakes being taken by the house.

The local authority decided to revoke the club premises certificate, which also allowed the club gaming permit to be revoked and the premises were closed.

The first action was therefore to cancel the club-gaming permit. The second action was to withdraw the club premises certificate under section 90 of the Licensing Act 2003. Although there is a right of appeal under s181 and schedule 5 part 2 paragraphs 14 and 15 of the Licensing Act 2003, there is no provision for the certificate to be effectively re-instated pending the appeal. The decision therefore takes effect once the notice is given to the club.

The consequence of that is that paragraph 17(2)(c) of schedule 12 to the Gambling Act comes into effect and this provides that because the club gaming permit was granted under paragraph 10 (i.e. the fast track procedure), it “shall lapse if the club premises certificate on which the application relied ceases to have effect.”

Two months later those involved in the previous club tried to apply for new permission under a new name to reopen the club but the local authority refused the application on the basis of their previous behaviour.

Gaming machines

There are controls relating to both the supply and provision of gaming machines:

- manufacturers and suppliers of gaming machines must be licensed by the Gambling Commission
- a premises wishing to site a gaming machine typically requires a licence or permit, either:
 - an operator licence from the Commission and a premises licence from the licensing authority
 - an alcohol premises licence from the licensing authority
 - a gaming machine permit from the licensing authority.

Gaming machines may be illegally manufactured or supplied in order to avoid tax (machine games duty) and licence fees, and may not have the technical standards required by the Gambling Commission. The Gambling

Commission advises operators and other venues entitled to provide gaming machines to ensure that they only obtain machines from Commission-licensed manufacturers: this might be something that licensing authorities wish to confirm as part of their compliance work in this area.

While the Gambling Commission is responsible for compliance issues relating to the manufacture and supply of machines, licensing authorities are responsible for compliance and enforcement where gaming machines are illegally sited, ie the required licences or permits authorising the machines (or number of them) are not in place. Typically, this issue has tended to occur in relation to pubs, clubs, social clubs and takeaways.

Illegal machines operation in the London Borough of Enfield

In June 2016 Enfield's Licensing Enforcement Team coordinated and led a multiagency, intelligence-led operation designed to address the concerns of residents, businesses and the police about the unlawful activities of a minority of businesses engaging in various types of environmental crime and criminal behaviour. Operation Bandit involved local police, Her Majesty's Revenue and Customs (HMRC) officers and Enfield Council enforcement officers and involved two separate enforcement operations one in June and one in December 2016.

The operation was very successful, as a result:

- Fifteen premises were visited and 29 illegal gaming machines were discovered operating within these businesses. All illegal machines were seized by the police and total of £248 was recovered from these machines.
- All premises received a warning, with one premises undergoing a review of its licence, which was subsequently revoked. Costs of the operation were paid by a premises.
- HMRC will be applying fines to the premises owners for non-payment of duty.

Intelligence and compliance action

Licensing authorities can work with the Gambling Commission in relation to illegal gambling, to draw on their experience and share intelligence. The Commission operates 'local authority compliance events' through which it will alert licensing authorities to intelligence it has received about allegations or evidence of illegal gambling affecting their areas. The Commission and licensing authorities might also receive or uncover evidence or concerns about illegal gambling on, for example, online poker forums, from the police, and from the gambling industry.

The Gambling Commission have developed a range of template letters for dealing with the types of illegal gambling that licensing authorities might experience, which can be accessed on their website.

and every owner has previously been verbally advised concerning the legal position. Initially all unauthorised machines were removed. In the event of further offences of this nature the licensing manager has agreed that the offender will be prosecuted and the matter extensively publicised at a local level.

Lewisham – illegal gaming machines in takeaways

In January 2012, the Commission received information suggesting there may be gaming machines in a number of takeaways in the Lewisham area, without the required licence and/or permit. The Commission forwarded the information to the London Borough of Lewisham under the local authority compliance event (LACE) process. On receipt of the intelligence, the LA took the following action:

- The six venues mentioned were visited. Each was found to have an unauthorised gaming machine.
- Suitable advice was given and all the machines were deactivated on the understanding they will be removed.
- Each was written to and given a formal warning that further offences will result in legal proceedings.
- The six venues were revisited by the enforcement team within fourteen days to ensure compliance.

This is a reoccurring problem. All takeaways in Lewisham are visited on a regular basis,

Sector specific issues

Casinos

Unlike other types of gambling premises, the number of casinos is strictly limited and if a licensing authority does not already have an existing casino or is not a permitted area eligible to launch a competition for a casino licence, it is not currently possible to issue a casino licence for that area.

When the Act was introduced in 2005, 186 casino premises licences issued under previous legislation 'were converted' to the new regime. Converted licences can only be used in the licensing authority area in which it was granted, or its successor authority, but there is scope for these premises to relocate. There are fifty three licensing authority areas that were designated in 1969 as 'permitted areas' entitled to have a casino.¹⁴

Additionally, fifteen English and Welsh licensing authority areas¹⁵ are permitted to issue a casino premises licence under the Act. These areas were selected following open competition; casinos authorised under this route can only be built at the location specified in the application. The Act specifies two

different types of casino licence; for a large or small casino.

As part of its statement of principles, licensing authorities are entitled to pass a 'no casino resolution' or to state that it would welcome a casino if the opportunity to bid for a premises licence were to become available. As outlined above, a 'no casino' resolution must be agreed by the council, rather than delegated to the licensing committee. The Gambling Commission advises that as the overall number and locations of casinos may be varied at some point in the future, it is still appropriate for licensing authorities to consider and determine their approach to casinos. However, when considering any additional work beyond this determination, councils should recognise that the likelihood and timescale of any change to existing numbers and permitted areas is unclear.

Alcohol licensed premises

The Act allows alcohol licensed premises to offer certain types of gambling activity, within certain parameters. In particular, gambling must remain ancillary to the main purpose of the premises, and the exemptions and entitlements are reliant on the premises holding a valid alcohol licence. Licensing authorities should be alert to the possibility of someone seeking an alcohol licence solely for the benefit of the gambling entitlements. . The following policy objectives summarise the key elements that underpin the approach to controlling where gaming machines may be played:

- with very few low risk exceptions, non-remote gambling should be confined to dedicated gambling premises

¹⁴ Permitted areas under the 1968 Act: Birkenhead, Birmingham, Blackpool, Bolton, Bournemouth, Bradford, Brighton, Bristol, Cardiff, Coventry, Derby, Dudley, Great Yarmouth, Hove, Huddersfield, Kingston upon Hull, Leeds, Leicester, Liverpool, London, Luton, Lytham St Annes, Manchester, Margate, Newcastle upon Tyne, Northampton, Nottingham, Plymouth, Portsmouth, Ramsgate, Reading, Ryde, Salford, Sandown/Shanklin, Scarborough, Sheffield, Southampton, Southend-on-Sea, Southport, Stockport, Stoke-on-Trent, Sunderland, Swansea, Teesside/ Middlesbrough, Torbay, Walsall, Warley, West Bromwich and Wolverhampton.

¹⁵ Permitted areas under the 2005 Act: Great Yarmouth, Hull, Leeds, Middlesbrough, Milton Keynes, Newham, Solihull, Southampton (large casinos); Bath and North East Somerset, East Lindsey, Luton, Scarborough, Swansea, Torbay, Wolverhampton (small casinos).

- the distinctions between different types of licensed gambling premises are maintained
- gambling activities are supervised appropriately
- within casino, bingo and betting premises, gaming machines are only made available in combination with the named non-remote activity of the operating licence.

Alcohol licence holders are automatically entitled to make available two gaming machines (category C or D) for use in alcohol licensed premises. To do so, the person holding the licence must notify the licensing authority of their intention to make gaming machines available for use, and pay the prescribed fee. If the person ceases to be the holder of the relevant licence for the premises, the entitlement ceases, and the new holder would subsequently need to apply.

Licensing authorities can make an order that removes the automatic entitlement to two gaming machines under certain circumstances. However, they may also replace the entitlement to two gaming machines by issuing licensed premises gaming machine permits for any number of C or D gaming machines in licence premises.

Where licensing authorities have concerns regarding pubs and the number of machine permits they seek to obtain, their licensing statement of principles can be used to make clear their expectations of alcohol licensed premises and their adherence to the:

- **Code of Practice for gaming machines in alcohol licensed premises**
- **Code of Practice for equal chance gaming in alcohol licensed premises.**

One recent issue in alcohol licensed premises relates to the possibility of bingo in pubs. The Greene King pub chain applied to the Gambling Commission for a bingo operating licence, but was refused a licence. Greene King appealed the refusal but the Upper Tier Tribunal ruled in early 2016 that the Gambling Commission had acted within its powers when it refused to grant Greene King a bingo operating licence to provide commercial bingo in its pubs.

Although this case appears now appears to be resolved, licensing authorities are advised to notify the Gambling Commission if any existing bingo operator licence holder or pub company seek to operate commercial bingo in a pub, or in the event of any other licence applications outside of usual practice.

Family entertainment centres and unlicensed family entertainment centres

Family entertainment centres are premises (other than an adult gaming centre) wholly or mainly used for making gaming machines available for use. These can be either licensed or unlicensed.

An unlicensed family entertainment centre is subject to limited regulation under a uFEC permit, but is only entitled to make Category D machines available (see Annex 1 for an overview of machines, stakes and prizes). The entity making machines available on the premises (the arcade operator) does not need a Commission operating licence. However the entity supplying machines to the business (the machine supplier) must be licensed by the Commission.

A licensed family entertainment centre is entitled to make both Category C and D machines available. It is subject to similar controls to many other gambling businesses – the premises need a full premises licence from the licensing authority and the entity making machines available on the premises requires a Commission operating licence, as does the supplier of the machines.

Only premises that are wholly or mainly used for making gaming machines available may hold an uFEC gaming machine permit or an FEC premises licence. Both a licensed FEC and an uFEC are classified as ‘premises’. Therefore, it is generally not permissible for such premises to correspond to an entire shopping centre, airport, motorway service station or similar: typically, the machines should be in a designated, enclosed area. The Gambling Commission has issued guidance to licensing authorities outlining its view that it is ‘highly undesirable for FEC/uFECs to be granted for entire venues.’ These uFEC permits have to be renewed every 10 years, with a

rolling programme of renewal starting from 2017, which provides an ideal opportunity for licensing authorities to ensure that the premises is still eligible for such a permit.

Licensing authorities must be aware of the distinction between machines that are defined as 'skill with prize' (SWP) machines and gaming machines. SWP machines must not have any mechanism that determines the outcome of the game: the game must operate in a consistent manner, and must be genuinely achievable, providing time and opportunity to win using skill, and not be influenced by chance. A game that contains an element of chance is a gaming machine.

SWPs are not caught as gaming machines and therefore do not count towards the B3 machine allowance in a family entertainment centre, or an alcohol licensed premises, members club, adult gaming centres or bingo premises. They may however be liable for Machine Games Duty and operators should confirm with Her Majesty's Revenue and Customs (HMRC) if they need to be registered.

Some operators have deployed machines as ostensibly SWPs, when in fact they contain elements of chance or other features which would make them properly gaming machines; or indeed contain a function that allows them to be switched between a "skill" game and a gaming machine. In such cases, these machines should be treated as gaming machines.

Checklist for councillors in England and Wales

This list is intended to help you focus on the key issues your authority should consider in developing its approach to local gambling regulation.

- Has the authority mapped local gambling provision/premises in the local area?
- Is the authority aware of any specific gambling related risks in the local area?
How might these be mitigated?
- Has your authority used this to develop a local area profile to support your licensing statement of principles?
- Has the authority set out an approach to preventing gambling by children and young people?
- What is the authority's approach to tackling illegal gambling?
- Has the authority engaged with local public health, addiction and treatment charities, CAB, homeless charities etc about problem gambling in the locality?
- Has the authority engaged with local operators and premises in developing its approach?
- Has the authority clearly set out its expectations of operator local risk assessments?
- Has the authority clearly set out its expectations of operators in relation to children and young people, including in those sectors where children and young people might legitimately frequent premises?
- Has the authority developed and shared with operators its approach to compliance and enforcement?
- Has your authority undertaken any underage sales or broader compliance activity over the past year?
- How might partnership working local operators support the authority's approach to local gambling regulation?
- How might tools and powers outside the Gambling Act support the authority's approach to gambling regulation?
- Can the authority demonstrate how it has reached the fee levels it has set?
- Has the authority ensured that licensing and planning policies share a common approach to new premises for gambling?

Glossary/definitions

Term	Description
2003 Act	The Licensing Act 2003, covering alcohol, late night refreshment and regulated entertainment.
The Act	The Gambling Act 2005.
Betting	Betting is defined as making or accepting a bet on the outcome of a race, competition or other event or process or on the outcome of anything occurring or not occurring or on whether anything is or is not true. It is irrelevant if the event has already happened or not and likewise whether one person knows the outcome or not. (Spread betting is not included within this definition).
Bingo	There are essentially two types of bingo: cash bingo, where the stakes paid make up the cash prizes that can be won and prize bingo, where various forms of prizes can be won, not directly related to the stakes paid.
Book	Running a 'book' is the act of quoting odds and accepting bets on an event, hence the term 'Bookmaker'.
Casino games	A game of chance, which is not equal chance gaming. Casino games includes Roulette and black jack, etc.
Child	For the purposes of the Gambling Act 2005, anyone under the age of 16
Coin pusher or penny falls machine	A machine of the kind which is neither a money prize machine nor a non-money prize machine.
Crane grab machine	A non-money prize machine in respect of which every prize which can be won consists of an individual physical object (such as a stuffed toy) won by a person's success in manipulating a device forming part of the machine so as to separate, and keep separate, one or more physical objects from a group of such objects.
Default condition	These are prescribed in regulations and will be attached to all classes of premises licence, unless excluded by the licensing authority.
Equal chance gaming	Gaming which does not involve playing or staking against a bank.
Fixed odds betting	If a gambler is able to establish what the return on a bet will be when it is placed, (and the activity is not 'gaming' see below), then it is likely to be betting at fixed odds.
Fixed odds betting terminals (FOBTs)	FOBTs are a type of gaming machine which generally appear in licensed bookmakers. FOBTs have 'touch-screen' displays and look similar to quiz machines familiar in pubs and clubs. They normally offer a number of games, roulette being the most popular.

Term	Description
Gaming	Gaming can be defined as ‘the playing of a game of chance for winnings in money or monies worth, whether any person playing the game is at risk of losing any money or monies worth or not’.
Gaming machine	Any type of machine allowing any sort of gambling activity including betting on virtual events but not including home computers even though users can access online gaming websites.
Licensing authority	A district, borough or unitary authority responsible for licensing gambling and other activities.
Licensing objectives	<p>The licensing objectives are three principal goals which form the basis of the Gambling Act. Stakeholders who have an interest in the Act need to try and promote these objectives: The licensing objectives are:</p> <ul style="list-style-type: none"> • preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime • ensuring that gambling is conducted in a fair and open way • protecting children and other vulnerable persons from being harmed or exploited by gambling.
Lottery	A lottery generally refers to schemes under which prizes are distributed by chance among entrants who have given some form of value for their chance to take part. A lottery is defined as either a simple lottery or a complex lottery.
Mandatory condition	A condition which will be set by the Secretary of State (some are set out in the Act and some will be prescribed by regulations) which will be automatically attached to a specific type of premises licence. The licensing authority will have no discretion to alter or remove these conditions.
Money prize machine	A machine in respect of which every prize which can be won as a result of using the machine is a money prize.
Non-money prize machine	<p>A machine in respect of which every prize which can be won as a result of using the machine is a non-money prize. The winner of the prize is determined by:</p> <p>(i) the position in which the coin or token comes to rest after it has been inserted into the machine, together with the position of other coins or tokens which have previously been inserted into the machine to pay a charge for use, or</p> <p>(ii) if the insertion of a single coin to pay the charge for use enables the person using the machine to release one or more tokens within the machine, the position in which such tokens come to rest after being released, together with the position of other tokens which have previously been so released.</p>
Non-remote gambling	Gambling that takes place in a physical premises
Remote gambling	Gambling which people participate in via remote communications, eg telephone, internet etc
Young person	For the purposes of the Gambling Act 2005, anyone who is not a child but is aged under 18.

Annex 1 Gaming machines – allowances, stakes and prizes (as at February 2018)

Category of machine	Maximum stake	Maximum prize
A	Unlimited	Unlimited
B1	£5	£10,000
B2*	£100	£500
B3	£2	£500
B3A	£2	£500
B4	£2	£400
C	£1	£100
D – non-money prize (other than a crane grab machine)	30p	£8
D – non-money prize (crane grab machine)	£1	£50
D – money prize	10p	£5
D – combined money and non money prize (other than a coin pusher or penny falls machine)	10p	£8 (of which no more than £5 may be a money prize)
D – combined money and non-money prize (coin pusher or penny falls machine)	20p	£20 (of which no more than £10 may be a money prize)

*This handbook was updated prior to the conclusion of the Government's review of gaming machines and social responsibility measures, the consultation for which closed in January 2018. The consultation indicated that Government was expected to leave maximum stakes and prizes unchanged, with the exception of B2 stakes, which were expected to be reduced to £50 or below.¹⁶

¹⁶ The category B2 is not actually a traditional slot machine. It refers to a type of gaming machine known as a fixed odds betting terminal (FOBTs). These are a new type of gaming machine which generally appear in licensed bookmakers. FOBTs have 'touch-screen' displays and look similar to quiz machines familiar in pubs and clubs. They normally offer a number of games, roulette being the most popular. Current stakes are listed on the Gambling Commission's website: www.gamblingcommission.gov.uk/for-gambling-businesses/Compliance/Sector-specific-compliance/Arcades-and-machines/Gaming-machine-categories/Gaming-machine-categories.aspx

Machine category								
Premises Type	A	B1	B2	B3	B4	C	D	
Large casino (machine/table ratio of 5-1 up to maximum)		Maximum of 150 machines Any combination of machines in categories B to D (except B3A machines), within the total limit of 150 (subject to machine/table ratio)						
Small casino (machine/table ratio of 2-1 up to maximum)		Maximum of 80 machines Any combination of machines in categories B to D (except B3A machines), within the total limit of 80 (subject to machine/table ratio)						
Pre-2005 Act Casinos (no machine/table ratio)		Maximum of 20 machines categories B to D (except B3A machines), or any number of C or D machines instead						
Betting premises and tracks operated by pool betting			Maximum of 4 machines categories B2 to D					
Bingo Premises					Maximum of 20% of the total number of gaming machines which are available for use on the premises categories B3 or B4	No limit C or D machines		
Adult gaming centre				Maximum of 20% of the total number of gaming machines which are available for use on the premises categories B3 or B4	No limit C or D machines			
Family entertainment centre (with premises licence)						No limit C or D machines		
Family entertainment centre (with Permit)					No limit on category D machines			
Clubs or miners' welfare institutes with permits					Maximum of 3 machines in categories B3A or B4 to D			
Qualifying alcohol licensed premises						1 or 2 machines of category C or D automatic upon notification		
Qualifying alcohol licensed premises with gaming machine permit						Number of category C-D machines as specified on permit		
Travelling fair							No limit on category D machines	
	A	B1	B2	B3	B4	C	D	

Annex 2 Sample of premises licence conditions

www.gamblingcommission.gov.uk/for-licensing-authorities/GLA/Guidance-to-licensing-authorities.aspx

This section provides examples of conditions that have been attached to premises licences by licensing authorities, with some amended for illustrative purposes. Licensing authorities should note that these are not blanket conditions but have been imposed in a number of circumstances to address evidence based concerns. Part 9 of this Guidance to Licensing Authorities (GLA) provides further details on the principles licensing authorities should apply when exercising their discretion to impose premises licence conditions.

The conditions listed below have been grouped under specific headings for ease of reference. There will inevitably be some overlap between those conditions that address different concerns, for example those related to security and to anti-social behaviour.

1. Security

- 1.1 No pre-planned single staffing after 8.00pm and, when this is unavoidable, for a Maglock to be in constant use.
- 1.2 A minimum of two members of staff after 10.00pm.
- 1.3 A minimum of two members of staff will be on duty throughout the whole day.
- 1.4 The premises will have an intruder alarm and panic button.
- 1.5 Maglock systems are employed and access is controlled.
- 1.6 Requirements for full-height security screens to be installed.
- 1.7 A requirement for 50 per cent of the shop frontage to be clear of advertising so that staff have a clear view and can monitor the exterior of the premises.
- 1.8 The premise shall maintain a 'safe haven' to the rear of the counter.
- 1.9 The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of a Metropolitan Police Crime Prevention Officer. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Recordings shall be made available immediately upon the request of police or an authorised officer throughout the preceding 31-day period.
- 1.10 A member of staff from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open to the public. This member of staff must be able to show a member of the police or authorised council officer recent data or footage with the absolute minimum of delay when requested.
- 1.11 A monitor shall be placed inside the premises above the front door showing CCTV images of customers entering the premises.

- 1.12 If at any time (whether before or after the opening of the premises), the police or licensing authority supply to the premises names and/or photographs of individuals which it wishes to be banned from the premises, the licensee shall use all reasonable endeavours to implement the ban through staff training.

2. Anti-social behaviour

- 2.1 The Licensee shall develop and agree a protocol with the police as to incident reporting, including the type and level of incident and mode of communication, so as to enable the police to monitor any issues arising at or in relation to the premises.
- 2.2 The Licensee shall take all reasonable steps to prevent street drinking of alcohol directly outside the premises and to ban from the premises those who do so.
- 2.3 The Licensee shall place a notice visible from the exterior of the premises stating that drinking alcohol outside the premises is forbidden and that those who do so will be banned from the premises.
- 2.4 Notices indicating that CCTV is in use at the premises shall be placed at or near the entrance to the premises and within the premises.
- 2.5 The Licensee shall place and maintain a sign at the entrance which states that 'only drinks purchased on the premises may be consumed on the premises'.
- 2.6 The Licensee shall implement a policy of banning any customers who engage in crime or disorder within or outside the premises.
- 2.7 The Licensee shall install and maintain an ultraviolet lighting system in the customer toilet.
- 2.8 The Licensee shall install and maintain a magnetic door locking system for the customer toilet operated by staff from behind the counter.
- 2.9 Prior to opening the Licensee shall meet with the Crime Prevention Officer in order to discuss any additional measures to reduce crime and disorder.

3. Underage controls

- 3.1 The Licensee shall maintain a bound and paginated 'Think 21 Refusals' register at the premises. The register shall be produced to the police or licensing authority forthwith on request.
- 3.2 Customers under 21 will have to provide ID.
- 3.3 The premises will operate a 'challenge 25' policy and prominent signage and notices will be displayed showing the operation of such policy.
- 3.4 Compulsory third party test purchasing on a twice yearly external system and the results to be reported to the Local Authority and police. In the first twelve months (from the date of the Review) two additional internal test purchase operations to be carried out.¹⁷
- 3.5 A physical barrier (ie a supermarket metal type or similar) acceptable to the licensing authority, and operated in conjunction with the existing monitored alert system, to be put in place within three months from the date of the review.
- 3.6 No machines in the Unlicensed Family Entertainment Centre to be sited within one metre of the Adult Gaming Centre entrance.

4. Player protection controls

- 4.1 Prominent GamCare documentation will be displayed at the premises.

¹⁷ In some cases it will be more practical to request test purchasing to be carried out on a minimum number of occasions (eg at least twice a year) rather than during a specific timeframe (eg once every six months). For example, it would not be practical to impose a condition on premises within a holiday park that requires test purchasing to be carried out 'once every six months' as the park may not be open for business during the winter months.

- 4.2 There shall be no cash point or ATM facilities on the premises.
- 4.3 The Licensee shall train staff on specific issues related to the local area and shall conduct periodic refresher training. Participation in the training shall be formally recorded and the records produced to the police or licensing authority upon request.
- 4.4 New and seasonal staff must attend induction training. All existing staff must attend refresher training every six months.
- 4.5 All notices regarding gambling advice or support information within the vicinity of Chinatown must be translated into both simplified and traditional Chinese.
- 4.6 Infra Red Beam to be positioned across the entrance to the premises. To be utilised whenever:
 - (a) the first member of staff is not positioned within the Cash Box, or
 - (b) the second member of staff is not on patrol.



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NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

LICENSING COMMITTEE

22 October 2019

1. **Report Title:** Review and Update of Responsibilities and Terms of Reference of the Licensing Sub-Committee
- Submitted by:** Head of Environmental Health and Licensing Administration Team Manager
- Portfolio:** Finance and Efficiency
- Ward(s) affected:** All

Purpose of the Report

To request that Members note the contents of the report and recommend that the reviewed and updated responsibilities and terms of reference of the Licensing Sub-Committee are approved by the Constitution Members Working Party and Full Council.

Recommendations

Members are asked:

- a) To note the contents of the report; and
- b) Recommend to the Constitution Members Working Party and Full Council that the contents are approved and included within the Council's Constitution.

Reasons

The Council's Constitution is currently under review and it has been identified that the current Terms of Reference for the Licensing Sub-Committee were not included.

1. **Background**

- 1.1 The Responsibilities of the Council, its Committees and Sub Committees are currently set out at Appendix 1 of the Constitution. The document was last updated in September 2018 and so requires reviewing to reflect the Council's current committee structure and updating generally.

2. **Issues**

- 2.1 The Council should regularly review its Constitution and update the provisions.
- 2.2 Appendix 1 is currently divided into three main sections:
- Appendix 1 sets out the responsibilities of Full Council
 - Annex 1 to Appendix 1 sets out Non executive Statutory Functions
 - Annex 2 to Appendix 1 sets out the Terms of Reference for Committees, Sub Committees and Working Parties of full Council

2.3 The opportunity has been taken to move all the Terms of Reference for Council and all Committees and sub Committees and Working Parties into one Appendix and just keep Annex1. Annex 1 has not been reviewed but was only updated in September 2018.

2.4 The current review identified that the Terms of Reference for the Licensing Sub-Committee were not included in the Constitution. The powers inferred on the Sub-Committee are set down in primary legislation, mainly the Licensing Act 2003 and Gambling Act 2005, and are being included for consistency.

3. **Proposal**

3.1 The proposed Terms of Reference are attached as Appendix 1. The primary role of the Licensing Sub-Committee is to determine contested applications under Licensing Act 2003 and Gambling Act 2005.

3.2 That Members:

- a) Note the contents of the report **(Recommended)**; and
- b) Recommend to the Constitution Members Working Party and Full Council that the contents are approved and included within the Council's Constitution **(Recommended)**.

4. **Reasons for Proposed Solution**

4.1 To include the Terms of Reference for the Licensing Sub-Committee in the Council's Constitution to specify the detailed matters which are delegated to them by legislation.

5. **Options Considered**

5.1 There is an option to do nothing but this would mean continuing to work with an incomplete Constitution which is not good practice and unhelpful to both officers and elected members.

6. **Legal and Statutory Implications**

6.1 All local authorities are required to have a written Constitution which must be kept under regular review and publicised. Any amendments to the Constitution require the approval of Full Council.

7. **Equality Impact Assessment**

7.1 Not applicable

8. **Financial and Resource Implications**

8.1 No significant additional resources will be required in relation to the recommendations.

9. **Major Risks**

9.1 That the Terms of Reference do not reflect up to date legal requirements and /or best practice resulting in challenge to Council decisions and/or reputational damage.

10. **Sustainability and Climate Change Implications**

10.1 There are no direct implications.

11. **Key Decision Information**

11.1 This is not a key decision which requires inclusion on the Cabinet Notice of Decisions/
Forward Plan.

12. **Earlier Cabinet/Committee Resolutions**

12.1 Not applicable

13. **List of Appendices**

13.1 Appendix 1 – Proposed Terms of Reference for the Licensing Sub-Committee

14. **Background Papers**

14.1 Council Constitution

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APPENDIX 1

TERMS OF REFERENCE OF THE COMMITTEES, SUB-COMMITTEES AND WORKING PARTIES OF COUNCIL

LICENSING AND PUBLIC PROTECTION COMMITTEE

The Licensing & Public Protection Committee will be held in two parts, the first part as a Licensing Committee and the second part as a Public Protection Committee.

Note: When determining hackney carriage and private hire licences the committee shall follow the procedure set out ~~in bold text at paragraph 5~~ below.

1. Licensing Committee :

To deal with all matters under the Licensing Act 2003 and Gambling Act 2005 delegated from Full Council including:

- (1) With the exception of the Councils Licensing policy statements under the Licensing Act 2003 and Gambling Act 2005 (upon which it will advise), the licensing committee shall from time to time determine its policy relating to licensing matters after it has consulted with such parties as the law may require and/or whom it considers to be appropriate and it shall cause that policy to be published.
- (2) The Licensing Committee may, from time to time, establish conditions to the extent permitted by the law governing the administration of licensing matters, the conduct and behaviour of licence holders and for technical requirements and specifications, licensed premises and vehicles.
- (3) The Committee shall have delegated powers to consider all applications for licenses or permissions issued on behalf of the Council, including attaching conditions thereto, to consider and determine all applications for review, continuation, transfer, variation, renewal, suspension, closure orders, forfeiture or revocation of all licenses and permissions issued by or on behalf of the Council, including attaching conditions thereto and to consider appeals against terminations or tenancy at will.
- (4) The Committee shall, from time to time, receive reports on the cultural, economic and tourism impact of its work and it shall from time to time, as required by law or as it considers appropriate, make reports of its activity to Cabinet, overview and scrutiny committee and Planning Committee.
- (5) The Committee shall have the delegated powers to set all relevant fees and charges under the Licensing Act 2003, Gambling Act 2005, Scrap Metal Act 2013 and in respect of Sexual Entertainment venues under the Local Government (Miscellaneous Provisions) Act 1982
- ~~(4)~~(6) The Committee may from time to time and to the extent permitted by the law, delegate any of its functions in paragraph 3 above to a body comprising of not less

than 3 elected members drawn from members of the committee, to be known as a ~~licensing panel (sub-committee)~~, Licensing sub –committee a quorum for such ~~panel to sub committee~~ being three members. The committee may establish more than one ~~panel sub-committee~~ and membership ~~of the panel(s)~~ may be rotated as necessary amongst members of the Committee. Terms of Reference for the Licensing sub – committee are at paragraph 2 below.

- (7) The Committee may from time to time and to the extent permitted by the law, delegate any of its functions in paragraph 3 above, to be discharged by an Executive Director. The Executive Director may delegate such powers, duties, responsibilities and functions as he considers appropriate, and to the extent permitted by the law, to officers of the Council.

2. . Licensing Sub- Committee

Except for all matters of Policy and the setting of fees, to undertake all licensing functions, powers and duties conferred by the Licensing Act 2003 and Gambling Act 2005 including the following:

Licensing Act 2003

Where representations on the following applications have been received and not withdrawn to determine applications:

- a) For personal licences
- b) For premises licences and club premises licences
- c) For variation of premises licences and club premises certificates
- d) For transfer of premises licences

In addition the Sub – Committee will:

- e) Review premises licences and club premises certificates
- f) Determine Police or Environmental Health objections to temporary event notices

Gambling Act 2005

Where representations on the following applications have been received and not withdrawn, to determine applications:

- a) For Premises Licences
- b) For Variation of Premises Licences
- c) For Transfer of Premises Licences
- d) For a Provisional Statement

e) For Club Gaming or Club Machine Permits

f) For the cancellation of Club Gaming or Club Machine Permits

In addition the Sub Committee will:

g) Decide whether to give a counter notice to a temporary use notice

h) Take action under Section 202 where the review is heard by the Committee

i) Exercise its power to register pool betting operating licences

j) Exercise its power to grant track betting licences

k) Exercise its power to grant gaming and betting machine licences

l) Exercise its power to register societies wishing to promote lotteries

m) Exercise its power to issue premises licences and to receive temporary use notices

Updated October 2019

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Licensing Sub-Committee

Decision Relating to G News and Booze, 23 George Street, Newcastle-under-Lyme, ST5 1JX - Application for a Review of a Premises Licence

Hearing Date: 14 August 2019

The licensing sub-committee was deferred from the previous meeting on the 30th July 2019 at the request of the Premises Licence Holder to allow his representative to be present.

The licensing sub-committee carefully considered the officer's report and heard the submissions from Trading Standards and then the premises licence holder's representative, Mr Ian Rushton of JL Licence and Retail.

The sub-committee have taken into account the Licensing Act 2003, the guidance issued under Section 182 of the Act and the Council's Statement of Licensing Policy when reaching this decision.

Trading Standards application to review the premises licence at G News and Booze was made on the grounds of the Licensing Objective; 'Protection of Children from Harm' not being met. An agreement had been reached between Trading Standards and the Premises Licence Holder (PLH), prior to the hearing, to include a number of additional conditions upon the licence. Despite the agreement Trading Standards still wished to go ahead with the hearing.

The Premises Licence Holder submitted further documentation at the hearing with the agreement of all parties but Trading Standards stated that they had been unable to validate the authenticity of these documents prior to the hearing.

Trading Standards presented that the Designated Premises Supervisor (DPS) and PLH, Mr Mills, had an unequivocal disregard for the licensing objectives. In the past they had issues with other premises where he held responsibility as either the DPS or PLH and he had a history of not engaging with them when they investigated those issues. They believed that Mr Mills had been untruthful during an Interview under Caution when asked whether he had ever been involved in the running of any other licensed premises.

Trading Standards carried out a test purchase at G News and Booze on the 18th March 2019 which the premises failed. They had also carried out test purchasing at a previous premises at which Mr Mills had been responsible for, which he had also failed.

There had been previous breaches of licence conditions in April 2017 following a visit to G News and Booze, namely non-compliance with CCTV retention conditions and failing to label the products with the store details.

In response to questioning it was established that the store had a Challenge 25 policy already in place, and the volunteer who carried out the test purchase was 16 years old and looked 16. Trading Standards confirmed that the person who carried out the sale had not been prosecuted.

Trading Standards felt that due to the DPS's conduct at the interview under caution, he failed to meet the standards they would expect from someone with the responsibility of a DPS.

They had given him support in the past but due to the failed test purchase and lack of cooperation they did not feel that the imposition of conditions in isolation would suffice and asked the sub-committee to suspend the licence for 3 months and to consider removing Mr Mills as DPS.

The PLH representative, Mr Rushton, addressed the sub-committee admitting that clearly something had gone wrong, that he needed to demonstrate that he had put actions in place. He referred to the documents he submitted at the hearing and accepted that most had been completed on the 10th August 2019 which was only a couple of days before the hearing.

Since he had been instructed, 2 weeks before the meeting, he had remedied the records and updated the licences for the DPS's new home address with both Newcastle and Stoke Councils. He informed the sub-committee that alcohol was only a small part of the business and it was more of a general convenience store.

He believed that the issues could be resolved with the below conditions that had been agreed between the two parties, being imposed upon the Premises Licence:

Suggested as part of the review application:

- 1. A Challenge 25 policy must be adopted and enforced at the premise where all persons who appear to be under the age of 25 must be challenged for acceptable identification to prove they are over the age of 18 prior to the purchase of alcohol.*
- 2. The only acceptable forms of identification must be a valid photo driving licence, valid passport or a valid PASS approved proof of age card.*
- 3. Challenge 25 poster must be displayed at all entrances to the premises, all areas where alcohol is displayed and at the cash till payment area.*
- 4. Posters must be displayed prominently and in sight of customers & staffs.*
- 5. Cash registers in the premises must be fitted with automatic till prompts to ensure that Challenge 25 is implemented at all times.*
- 6. A refusals register with details of all refusals must be maintained at the premise. The register must contain details of the staff member refusing the sale and must be checked on a 2 weekly basis by the Designated Premises Supervisor and signed and dated by the Designated Premises Supervisor.*
- 7. The refusals register or when on the till a print out of refusals must be produced and made available for inspection at the time of the visit by any Responsible Authority.*
- 8. Prior to selling alcohol; all person involved in the sale of alcohol & age restricted products who are not the holder of a Personal Licence must receive initial and regular monthly refresher training by the Designated Premises Supervisor or external training provider with regards to the law in relation to the sale of alcohol & age restricted products and responsible retailing.*
- 9. Such training must be recorded and up to date training records of all such persons must be maintained at the premises and produced and made available for inspection at the time of the visit by any Responsible Authority. Both initial and subsequent refresher training in*

relation to the sale of alcohol & age restricted products must contain a test to be undertaken by the staff member and this test or online certificate must be made available at the time of the visit to any Responsible Authority. Records for each person must be retained for a minimum of 12 months.

Agreed between Trading Standards and the PLH representative prior to the hearing:

- *A due diligence checklist (aimed at preventing any underage sales) shall be kept and be available for inspection by authorised officers.*
- *Notices shall be displayed in the premises where they can be seen clearly to advise customers that it is unlawful for persons under 18 to purchase alcohol or for any persons to purchase alcohol on behalf of a person under 18 years of age.*

He asked that the sub-committee give Mr Mills a final chance. Mr Mills was prepared to undergo further training and Mr Rushton was aware of an underage sales course he could attend which could be completed within 4 to 8 weeks.

The sub-committee deliberated and considered that the issues raised by Trading Standards gave them serious concerns about the abilities of the DPS and that the licensing objective ground of 'Protection of Children from Harm' had not been met. However they did feel that with the additional training as offered by the PLH's representative and the agreed conditions, it could be.

The sub-committee therefore resolved to suspend the licence to enable training for the DPS to be carried out. The licence is to be suspended for a period of 8 weeks or until such a time as the certification of completion could be produced to the Licensing Authority and the agreed conditions (as above) are to be incorporated into the licence, along with an additional condition:

- *A personal licence holder must be on the premises at all times when alcohol is sold*

27th August 2019

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LICENSING SUB-COMMITTEE

Tuesday, 24th September, 2019
Time of Commencement: 11.00 am

Present:

Councillors: Miss J Cooper Hutton R. Wright

Officers: Jayne Briscoe Democratic Services Officer
Matthew Burton Licensing Administration Team
Manager
Julie Moore Licensing Officer
Anne-Marie Pollard Solicitor
Darren Walters Team Leader Environmental
Protection

Also in attendance: Mr Mohmammed Taj Owner of Kashmir Delight who
was accompanied by Shaista
Taj

1. APPOINTMENT OF CHAIR

Resolved: That Councillor Wright be appointed Chair for this meeting

2. APOLOGIES

There were no apologies

3. DECLARATIONS OF INTEREST

There were no declarations of interest

4. REVIEW OF PREMISES LICENCE

Mr Mohammed Taj submitted a new premises application in respect of Kashmir Delight, 15 London Road, Chesterton. The premises required a licence to permit opening until 12 midnight. The Environmental Health department submitted a representation to the application on the grounds of potential for public nuisance, specifically noise and odour from two exhaust stacks.

Mr Taj stated that the premises had operated since 1989 as a takeaway and that there had been no complaints. During the process of submission it was agreed that noise was no longer an issue and that works to the ventilation stack would be undertaken by the applicant to address the concerns of Environmental Health. In this respect the applicant circulated a letter which set out the works which would be undertaken on 25 September to address the odour concerns.

Mr Taj confirmed that he would comply with the conditions proposed by the Environmental Health Department and set out in the report. Mr Taj highlighted the maintenance and cleaning regime and it was considered that if incorporated into a written folder which was kept up to date this would enable the applicant to comply

with the conditions. It was noted that Mr Taj had also agreed conditions with Staffordshire Police.

The Committee considered that the business was well run and determined to grant the licence

Resolved: That the licence be granted in accordance with the conditions agreed previously with the Police and now with Environmental Health and incorporated into the operating schedule

Chair

Meeting concluded at 12.15 pm

LICENSING SUB-COMMITTEE

Wednesday, 2nd October, 2019
Time of Commencement: 2.00 pm

Present: Councillor Stephen Sweeney (Chair)

Councillors: B. Proctor M. Reddish

Officers:	Matthew Burton	Licensing Administration Team Manager
	Geoff Durham	Mayor's Secretary / Member Support Officer
	Emma Rushton Jones	Legal Assistant
	Anne-Marie Pollard	Solicitor
	Claire Ryles	Technical Assistant
	Melanie Steadman	Licensing Assistant
	Darren Walters	Team Leader Environmental Protection

Also in attendance:	Mr G Domleo	Solicitor for the licence holder
	Mr I Lester	Star Pubs and Bars
	Residents:	
	Ms J Madew	
	Mr D Smith	
	Mr D Rogers	
	Ms J Hughes	
	Ms S Asher	

1. APPOINTMENT OF CHAIR

Resolved: That Councillor Stephen Sweeney be appointed as Chair for this meeting.

2. APOLOGIES

There were no apologies.

3. DECLARATIONS OF INTEREST

There were no declarations of interest stated.

4. VARIATION OF A CURRENT PREMISES LICENCE

Mr George Domleo, the Solicitor representing Punch Partnerships Ltd introduced himself and Mr Ian Lester of Star Pubs and Bars.

Mr Domleo advised the Committee that the Jolly Potters would operate under the 'Just Add Talent' Model whereby tenants are put into a premise and were assisted in the running of the business. Mr Lester would visit the premises on a fortnightly basis to ensure that everything was running as it should.

£477,000 would be invested into the site, including a complete refurbishment. The public house would be renamed 'the Malt Kiln'.

There was a proposal to open from 8am every morning for breakfast. There was no proposal to extend the hours for the sale of alcohol or to stay open later at night. Sunday's opening hours to sell alcohol would be changed from 12 noon to 10am.

Further proposals were to show films at the premises and to have a late night refreshment licence which would allow the service of teas or coffees but no food after 11pm.

A meeting was held on 18 September, 2019 where environmental health issues were discussed including noise mitigation measures. There was no evidence to suggest that noise nuisance would be created with the proposed substantive measures. These included patrons being monitored when they were outside; doors and windows being closed when there was any entertainment and after 10pm patrons would only be allowed outside to smoke. Any drinks would remain indoors.

Residents were assured that they would receive the Designated Premises Supervisor's telephone number in order to report any problems. Mr Lester also handed out his business card to the residents to do the same. In addition, the site would hold a complaints log for six months.

Changes had been made to the internal layout including the creation of a double door lobby with self closers on the doors and also, the depth of the lobby had been increased.

The Chair asked why residents did not currently use the premises and was advised that they were in need of investment. Mr Lester informed the Committee that they had not been trading to the licensing conditions and as a result the public had 'voted with their feet'.

The Chair asked Mr Domleo and Mr Lester if they were confident that the works would bring in new people and was advised that a 'new market' was being aimed at – including being family friendly.

Councillor Reddish queried the complaints log of six months and asked what would happen after this period. Mr Domleo advised that after the six months, a new log would be started and any previous complaints would be kept on the system. The residents voiced their concerns which included noise from both inside and outside of the premises.

Local resident Mr Smith asked what measures would be taken to stop noise from escaping and was advised that windows and doors would be kept closed when any entertainment was on and furthermore, any windows that were not currently double glazed would be replaced.

The residents were informed that a 'soft opening' / pre-launch would be held to which the residents would be invited.

The Council's Environmental Protection Officer, Darren Walters referred Members to Appendix Q of the agenda which showed the premises in relation to residential properties – the nearest property being 17-18 metres away.

A plan was circulated at the meeting (and attached to the supplementary agenda) which showed the internal layout of the premises.

Environmental Health had examined the Premises Licence which had revealed the planned refurbishment and which would see a change in the trading format. Mr Walters stated that it would be inappropriate to proceed with a review of the licence at this stage as this was not a Review Hearing.

A Planning Application submitted by Star Pubs and Bars was permitted under delegated powers on Tuesday 1 October. The application was for refurbishment and a new kitchen. Environmental Health had raised concerns on the application including additional patrons, artificial lighting and seating would cause a significant impact. A list of conditions had been agreed with the applicant including ones covering noise and odour control of the ventilation system.

The Committee's attention was drawn to the compiled negotiated conditions dated 30 September which were handed round at the meeting and included on the Supplementary agenda.

Clare Ryles from the Council's Food and Safety Section referred Members to Appendix D on the agenda. At the meeting held on 18 September a number of new conditions had been drawn up. The Committee was again referred to the negotiated conditions.

Within the conditions document, Annex 3 was discussed to amend the existing conditions 1-3.

Ms Ryles referred to condition 1. There was concern about conditioning curtains or window coverings as it was felt that, should these fall or fail for whatever reason, the premises would be in breach of licensing conditions.

Mr Domleo advised that there were no proposals to put any floodlights outside the premises.

The Council's Solicitor Ms Pollard stated that there had been complaints about the lighting. Mr Domleo advised that the previous operators were using flashing lights. However, the new operators would be operating on a more food-based method than entertainment.

Ms Pollard asked how light would be obscured. Mr Domleo stated that there could possibly be window coverings but it would be inadvisable to condition it.

Councillor Reddish asked if the new operators, as a goodwill gesture could use window coverings.

Mr Domleo stated that they would be prepared to attach the suggested condition highlighted in yellow referring to curtains or window coverings. Ms Ryles added that this condition would be 'sensibly' used in that, should the coverings come away from the windows for a genuine reason, there would be no breach of condition.

All parties were happy with the changes to the conditions in Annex 3.

The residents raised further concerns:

Resident Mr Burton (who was not in attendance) referred to indoor and outdoor entertainment and that a tent could be erected. The Committee was advised that the tent was part of the Planning Permission that had been granted and not part of the area which the Licensing Sub-Committee was being asked to consider.

The Committee was advised that Mr Burton would have read about the tent on the application form guidance notes where it suggests that a tent could be indoors.

Concerns were raised about staff coming in to prepare breakfasts for 8am and also, the leaving of drinks inside the premises which could be spiked whilst a person was outside smoking.

A five minute break was held at 3.45pm..... the meeting reconvened at 3.51pm.

Resident Jane Hughes welcomed the conditions that had been attached and asked about entertainment at the premises.

Mr Lester advised that entertainment wouldn't be 'constant' as it would be aimed more at families and as a dining venue.

Mr Smith advised the Committee of the problems that had been encountered at the premises in the past.

The Chair stated that the problems previously encountered were in the past and that the applicants were here proposing to improve the situation.

Ms Hughes asked about summer months and whether air conditioning had been considered if doors and windows were to be kept closed. The Committee was advised that just because it was sunny and warm they would not be able to breach the conditions.

Mr Lester apologised for what the residents had previously had to put up with – which he had not been made aware of until 18 September. After that date the operator had been told to have no entertainment at all.

Residents confirmed that there had been no issues since then.

The Committee was advised that a condition could be added in respect of strobe lighting.

All parties gave a summing up of their reports.

The residents and applicants then left the room while the information was deliberated.

Resolved: That the variation to the current premises Licence be granted subject to the agreed compiled negotiated conditions (30/9/19) being incorporated and a further condition prohibiting the use of strobe lighting at any time.

Chair

Meeting concluded at 4.45 pm

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

PUBLIC PROTECTION COMMITTEE

Date 22nd October 2019

1. **Report Title:** The Air Quality (Taxi and Private Hire Vehicles Database) (England and Wales) Regulations 2019
- Submitted by:** Head of Environmental Health Services & Licensing
Administration Team Manager
- Portfolio:** Finance & Efficiency
- Ward(s) affected:** All

Purpose of the Report

To inform Members of a new statutory requirement being placed on all Local Authorities to submit information to Department for Environment, Food and Rural Affairs (DEFRA) for the purposes of maintaining a database in relation to all Hackney Carriage and Private Hire Vehicles licensed by them.

Recommendation

To note the new statutory provisions of the Air Quality (Taxi and Private Hire Vehicles Database) (England and Wales) Regulations 2019, and associated Statutory Guidance.

That delegated authority is granted to the Head of Environmental Health Services to sign the memorandum of understanding.

1. **Background**

- 1.1 The Air Quality (Taxi and Private Hire Vehicles Database) (England and Wales) Regulations 2019 ("the Regulations") came into force on 1st May 2019. The purpose of the Regulations is to place a statutory duty on all Licensing Authorities in England and Wales to submit specific data to DEFRA on a regular basis for the purpose of creating and maintaining a national database of all licensed vehicles. A copy of the Regulations is attached as Appendix A. The data to be provided and contained in the database is:
- The vehicle registration;
 - The issue date of the licence;
 - The expiry date of the licence;
 - Whether the vehicle is a taxi (Hackney Carriage) or a Private Hire Vehicle (PHV);
 - The name of the issuing Authority;
 - The licence number;
 - Whether the vehicle is Wheelchair Accessible.
- 1.2 On 18th July 2019 DEFRA published statutory guidance (the guidance) to assist licensing authorities in implementing the Regulations. It provides the details of the data that the Council will be required to submit to DEFRA and advice on how the data will be managed in compliance with Data Protection legislation. The background for DEFRA creating the database is contained with the guidance. A copy of the guidance is attached as Appendix B.
- 1.3 The guidance suggests that the database should be ready for local authorities to start submitting data before the end of October 2019, however DEFRA's preferred method of data

transfer, via a fully integrated API, is unlikely to be ready before the end of 2019. DEFRA have produced a draft technical specifications document for data transfer, which have been forwarded to the Council's ICT department for comment.

2. **Issues**

- 2.1 The Council has been identified by DEFRA as one of 61 local authority areas showing exceedances in roadside concentrations of nitrogen dioxide. Each local authority is required to bring these concentrations down to be within legal limits in the shortest possible time.
- 2.2 Clean Air Zones (CAZs) are one measure that local authorities may implement to assist with reducing the concentrations of nitrogen dioxide and they may place a charge on vehicles entering or passing through a specified area. Such local authorities that are proposing to introduce CAZ include Leeds and Birmingham. DEFRA have set out the framework for implementing and operating CAZs. There are four possible categories of CAZ that can be introduced and if charges are implemented then all four categories include taxi and private hire vehicles. The purpose of the database is to assist local authorities, which have introduced a CAZ, in differentiating between licensed taxi/PHVs and personal private vehicles.
- 2.3 DEFRA have produced a Memorandum of Understanding (MoU) document for each local authority to sign up to. The purpose of the MoU is to:

"clarify how the Parties will meet their respective obligations under Data Protection legislation in relation to the processing of Personal Data as necessary to meet the requirements of the Regulations"

The MoU has been forwarded to the Council Data Protection Officer for comment before signing. A copy of the MoU is attached as Appendix C.

3. **Options Considered**

- 3.1 That Members note the new statutory provisions of the Air Quality (Taxi and Private Hire Vehicles Database) (England and Wales) Regulations 2019, and associated Statutory Guidance.

4. **Proposal**

- 4.1 That Members note the new statutory provisions of the Air Quality (Taxi and Private Hire Vehicles Database) (England and Wales) Regulations 2019, and associated Statutory Guidance.
- 4.2 That delegated authority is granted to the Head of Environmental Health Services to sign the memorandum of understanding.

5. **Reasons for Preferred Solution**

- 5.1 The Regulations place a statutory duty upon the Council to submit the specified data to DEFRA on a regular basis for the purpose of creating and maintaining a national database of all licensed vehicles.

6. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

- 6.1 *The Council's corporate priorities are:*

- Local services that work for local people
- Growing our people and places
- A healthy, active and safe borough
- A town centre for all

7. **Legal and Statutory Implications**

- 7.1 The Council will be statutorily obliged to ensure that the required information is send to DEFRA on a regular basis.

8. **Equality Impact Assessment**

- 8.1 Not applicable

9. **Financial and Resource Implications**

- 9.1 The transfer of information should be able to be carried out automatically once set up. The maintenance of the database will be carried out by DEFRA

10. **Major Risks**

- 10.1 Not applicable

11. **Sustainability and Climate Change Implications**

- 11.1 Not applicable

12. **Key Decision Information**

- 12.1 Not applicable

13. **Earlier Cabinet/Committee Resolutions**

- 13.1 Not applicable

14. **List of Appendices**

- 14.1 Appendix A – Copy of the Regulations;
Appendix B - Statutory Guidance
Appendix C – Memorandum of Understanding between DEFRA and licensing authority

15. **Background Papers**

- 15.1 Not applicable

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STATUTORY INSTRUMENTS

2019 No. 885

**ENVIRONMENTAL PROTECTION,
ENGLAND AND WALES**

**The Air Quality (Taxis and Private Hire Vehicles
Database) (England and Wales) Regulations 2019**

Made - - - - 24th April 2019

Coming into force - - 1st May 2019

The Secretary of State makes these Regulations in exercise of the powers conferred by section 87(1), (2)(c) and (j), and (5) of the Environment Act 1995⁽¹⁾ (“the 1995 Act”) and paragraph 5 of Schedule 3 to the Government of Wales Act 2006⁽²⁾.

In accordance with section 87(7) of the 1995 Act⁽³⁾, the Secretary of State has consulted the Environment Agency⁽⁴⁾ and the Natural Resources Body for Wales⁽⁵⁾, such bodies or persons appearing to the Secretary of State to be representative of the interests of local government and of industry as the Secretary of State considers appropriate, and such other bodies or persons as the Secretary of State considers appropriate.

A draft of this instrument has been approved by a resolution of each House of Parliament pursuant to section 87(8) of the 1995 Act.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Air Quality (Taxis and Private Hire Vehicles Database) (England and Wales) Regulations 2019 and come into force on 1st May 2019.

(2) These Regulations extend to England and Wales.

-
- (1) 1995 c.25; section 87(1) was amended by [S.I. 2011/1043](#).
(2) 2006 c. 32. The functions in section 87 of the 1995 Act are exercisable by the Welsh Ministers in relation to Wales by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 ([S.I. 1999/672](#)) and paragraph 30 of Schedule 11 to the Government of Wales Act 2006, but remains exercisable by the Secretary of State under paragraph 5 of Schedule 3 to the Government of Wales Act 2006 for the purpose of implementing any EU obligation of the United Kingdom.
(3) Section 87(7) was amended by [S.I. 2013/755](#).
(4) The Environment Agency was established by section 1 of the 1995 Act.
(5) The Natural Resources Body for Wales was established by article 3 of the Natural Resources Body for Wales (Establishment) Order 2012 ([S.I. 2012/1903](#)).

Interpretation

2.—(1) In these Regulations—

“licensing authority” means a body in England or Wales which has functions under one or more of the licensing provisions;

the “licensing provisions” are—

- (a) section 37 of the Town Police Clauses Act 1847⁽⁶⁾;
- (b) section 6 the Metropolitan Public Carriage Act 1869⁽⁷⁾;
- (c) section 5 of the Plymouth City Council Act 1975⁽⁸⁾;
- (d) section 48 of the Local Government (Miscellaneous Provisions) Act 1976⁽⁹⁾; and
- (e) section 7 of the Private Hire Vehicles (London) Act 1998⁽¹⁰⁾;

“relevant vehicle” means a vehicle licensed under a licensing provision.

Duty to provide taxi and private hire vehicle information

3.—(1) A licensing authority must provide information to the Secretary of State in accordance with this regulation.

(2) The information to be provided is, in relation to every relevant vehicle in respect of which a licence is granted under one of the licensing provisions by that licensing authority—

- (a) the vehicle registration mark of the vehicle;
- (b) the date from which the licence has effect;
- (c) the date on which the licence is due to expire;
- (d) a statement as to whether the vehicle is a taxi or a private hire vehicle;
- (e) such other information the licensing authority holds in relation to the vehicle that may be relevant for the purposes of ensuring the accurate identification of vehicles, having had regard to any guidance issued by the Secretary of State.

(3) The licensing authority must provide the information at least as frequently as once a week.

(4) For the purposes of this regulation—

“private hire vehicle” means a vehicle licensed under section 48 of the Local Government (Miscellaneous Provisions) Act 1976 or section 7 of the Private Hire Vehicles (London) Act 1998;

“taxi” means a vehicle licensed under section 6 of the Metropolitan Public Carriage Act 1869 or section 37 of the Town Police Clauses Act 1847;

“vehicle registration mark” means the mark assigned to the vehicle under section 23 of the Vehicle Excise and Registration Act 1994⁽¹¹⁾.

Database containing the information provided under regulation 3

4.—(1) The Secretary of State may create a database of the information received under regulation 3, in accordance with this regulation.

(6) 1847 c. 89 (10 & 11 Vict). Section 37 was modified by section 15 of the Transport Act 1985 (c. 67).

(7) 1869 c. 115 (32 & 33 Vict). Section 6 was amended by paragraph 5(3) of Schedule 20 to the Greater London Authority Act 1999 (c. 29) and S.I. 2014/560.

(8) 1975 c. xx.

(9) 1976 c. 57. Section 48 was amended by section 4 of, and paragraph 16(1) of Schedule 3 to, the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

(10) 1998 c. 34.

(11) 1994 c. 22.

- (2) An entry in relation to a relevant vehicle in a database under paragraph (1) must include only—
- (a) the name of any licensing authorities with which the relevant vehicle is licensed; and
 - (b) the information provided under regulation 3 in relation to that vehicle.
- (3) The Secretary of State may share the information contained within the database with a licensing authority for the purposes of enforcing measures implemented—
- (a) pursuant to plans prepared under—
 - (i) regulation 26 of the Air Quality Standards Regulations 2010⁽¹²⁾; or
 - (ii) regulation 20 of the Air Quality Standards (Wales) Regulations 2010⁽¹³⁾;
 - (b) by that licensing authority for the purposes of improving air quality in its area.
- (4) For the purposes of paragraph (3) a measure implemented jointly by more than one licensing authority is to be treated as having been implemented by each of the participating licensing authorities.

Thérèse Coffey
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs

24th April 2019

⁽¹²⁾ S.I. 2010/1001.

⁽¹³⁾ S.I. 2010/1433 (W.126).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to England and Wales, make provision about information relating to taxis and private hire vehicles as part of the aim of securing compliance with Articles 13(1) and 23(1) of [Directive 2008/50/EC](#) of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe.

Regulation 3 requires certain bodies to provide to the Secretary of State information relating to each taxi and private hire vehicle which they have licensed to operate.

Regulation 4 enables the Secretary of State to create a database containing the information received under regulation 3, and allows the sharing of that information for the purposes of enforcing measures which have been implemented pursuant to an air quality plan or for the purposes of improving air quality.

A regulatory triage assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is available and is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk. Hard copies can be obtained from the Department for Environment, Food and Rural Affairs, Seacole Building, 2 Marsham Street, London SW1P 4DF.



1. Home (<https://www.gov.uk/>)
2. Air quality: Taxis and Private Hire Vehicles (PHVs) database guidance
(<https://www.gov.uk/government/publications/air-quality-taxis-and-private-hire-vehicles-phvs-database-guidance>)
1. Department
for Environment
Food & Rural Affairs (<https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs>)
2. Welsh
Government (<https://www.gov.uk/government/organisations/welsh-government>)

Statutory guidance

The Air Quality (Taxi and Private Hire Vehicles Database) (England and Wales) Regulations 2019: Statutory guidance

Published 18 July 2019

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2. The law in practice
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1. Introduction

Status of guidance

1.1) This guidance has been issued in order to assist local licensing authorities in the implementation of the Air Quality (Taxi and Private Hire Vehicles Database) (England and Wales) Regulations 2019 (<http://www.legislation.gov.uk/uksi/2019/885/made>) (2019 No. 885) (“the Regulations”).

1.2) It provides advice on the data that licensing authorities must provide in relation to all vehicles operating as taxis and private hire vehicles (PHVs) registered by the authority, the format in which it is transferred and the way in which the data will be handled in compliance with the General Data Protection Regulation (GDPR).

1.3) The Secretary of State may use the data to create a Taxi and PHV Centralised Database (“the database”).

1.4) This statutory guidance is issued under section 88(1) of the Environment Act 1995¹. Licensing authorities (those defined in regulation 2(1) of the Regulations) are under a statutory duty to have regard to this guidance as set out under section 88(2) of the Environment Act 1995.

1.5) It is for licensing authorities to ensure that they have complied with any data protection legislation when implementing their obligations under the Regulations. This document provides some general guidance for assistance but licensing authorities are advised to seek their own legal advice on how their procedures will comply with data protection requirements.

2. The law in practice

Background

2.1) In 2017, the government published the UK plan for tackling roadside nitrogen dioxide concentrations (<https://www.gov.uk/government/publications/air-quality-plan-for-nitrogen-dioxide-no2-in-uk-2017>) followed by a supplement in 2018 (together “the plan”). The plan identified 61 local authorities in England showing exceedances which have been required to carry out feasibility studies and if necessary, develop bespoke plans to bring roadside concentrations of nitrogen dioxide within legal limits in the shortest possible time. The Welsh Government is taking the same approach with two local authorities in Wales.

2.2) Clean Air Zones (“CAZs”) will have a key role to play in delivery of a number of these local plans. The Clean Air Zone Framework (<https://www.gov.uk/government/publications/air-quality-clean-air-zone-framework-for-england>) sets out the minimum requirements for a CAZ and the expected approach to be taken by local authorities when implementing and operating these zones. CAZs are not required to include a charging element. However, where there are no other viable options to reduce air pollution to legally permissible levels in the shortest possible time, some local authorities may decide to introduce zones where vehicle owners are required to pay a charge to enter, or move within, a zone if they are driving a vehicle that does not meet the particular minimum emission standard for their vehicle type in that zone.

The Framework sets out four classes of charging CAZ:

Class A - Buses, coaches, taxis and private hire vehicles (PHVs)

Class B - Buses, coaches, taxis, PHVs and heavy goods vehicles (HGVs)

Class C - Buses, coaches, taxis, PHVs, HGVs and light goods vehicles (LGVs)

Class D - Buses, coaches, taxis, PHVs, HGVs, LGVs, cars (motorcycles and mopeds are optional).

Each vehicle type is expected to reach the following minimum standards:

- Euro 4 for petrol driven vehicles (Euro IV for larger vehicles)
- Euro 6 for diesel driven vehicles (Euro VI for larger vehicles)

Ultra-low emission vehicles with significant zero emission range will never be charged for entering or moving through a CAZ.

2.3) Leeds and Birmingham will be introducing charging CAZs in 2020 (class B and D respectively). A number of other authorities have also consulted on the introduction of a charging CAZ. To implement these schemes, local authorities may need to differentiate between taxis/PHVs and private vehicles. This is because in some cases local authorities will implement CAZs that apply charges to taxis and PHVs and not to private vehicles, or they may wish to set a different level of charge for these vehicles. Licensing authorities only hold information on taxis and PHVs licensed within their own area so are not able to clearly identify and charge a taxi/PHV entering or moving around their charging CAZ which has been licensed by another authority (also known as ‘out of area

vehicles’). If local authorities cannot identify all out of area vehicles then this would undermine their ability to effectively operate CAZs where charging of these vehicles has been determined to be necessary.

2.4) The Regulations therefore require all licensing authorities in England and Wales to submit certain information about their licensed taxis/PHVs to the database. Licensing authorities are responsible for ensuring that the data which they provide is accurate, legitimate and up to date.

Duty to provide taxi and private hire vehicle information

3.—(1) A licensing authority must provide information to the Secretary of State in accordance with this regulation.

(2) The information to be provided is, in relation to every relevant vehicle in respect of which a licence is granted under one of the licensing provisions by that licensing authority—

- (a) the vehicle registration mark of the vehicle;
- (b) the date from which the licence has effect;
- (c) the date on which the licence is due to expire;
- (d) a statement as to whether the vehicle is a taxi or a private hire vehicle;
- (e) such other information the licensing authority holds in relation to the vehicle that may be relevant for the purposes of ensuring the accurate identification of vehicles, having had regard to any guidance issued by the Secretary of State.

(3) The licensing authority must provide the information at least as frequently as once a week.

(4) For the purposes of this regulation—

“private hire vehicle” means a vehicle licensed under section 48 of the Local Government (Miscellaneous Provisions) Act 1976 or section 7 of the Private Hire Vehicles (London) Act 1998;

“taxi” means a vehicle licensed under section 6 of the Metropolitan Public Carriage Act 1869 or section 37 of the Town Police Clauses Act 1847;

“vehicle registration mark” means the mark assigned to the vehicle under section 23 of the Vehicle Excise and Registration Act 1994.

Database containing the information provided under regulation 3

4.—(1) The Secretary of State may create a database of the information received under regulation 3, in accordance with this regulation.

(2) An entry in relation to a relevant vehicle in a database under paragraph (1) must include only—

- (a) the name of any licensing authorities with which the relevant vehicle is licensed; and

(b) the information provided under regulation 3 in relation to that vehicle.

The data licensing authorities will need to provide

2.5) The following diagram shows the taxi and PHV data upload process whilst the table sets out the eight data fields and the rationale as to why the data is required. The database forms part of the wider digital infrastructure that is being developed to support the introduction of charging CAZs.

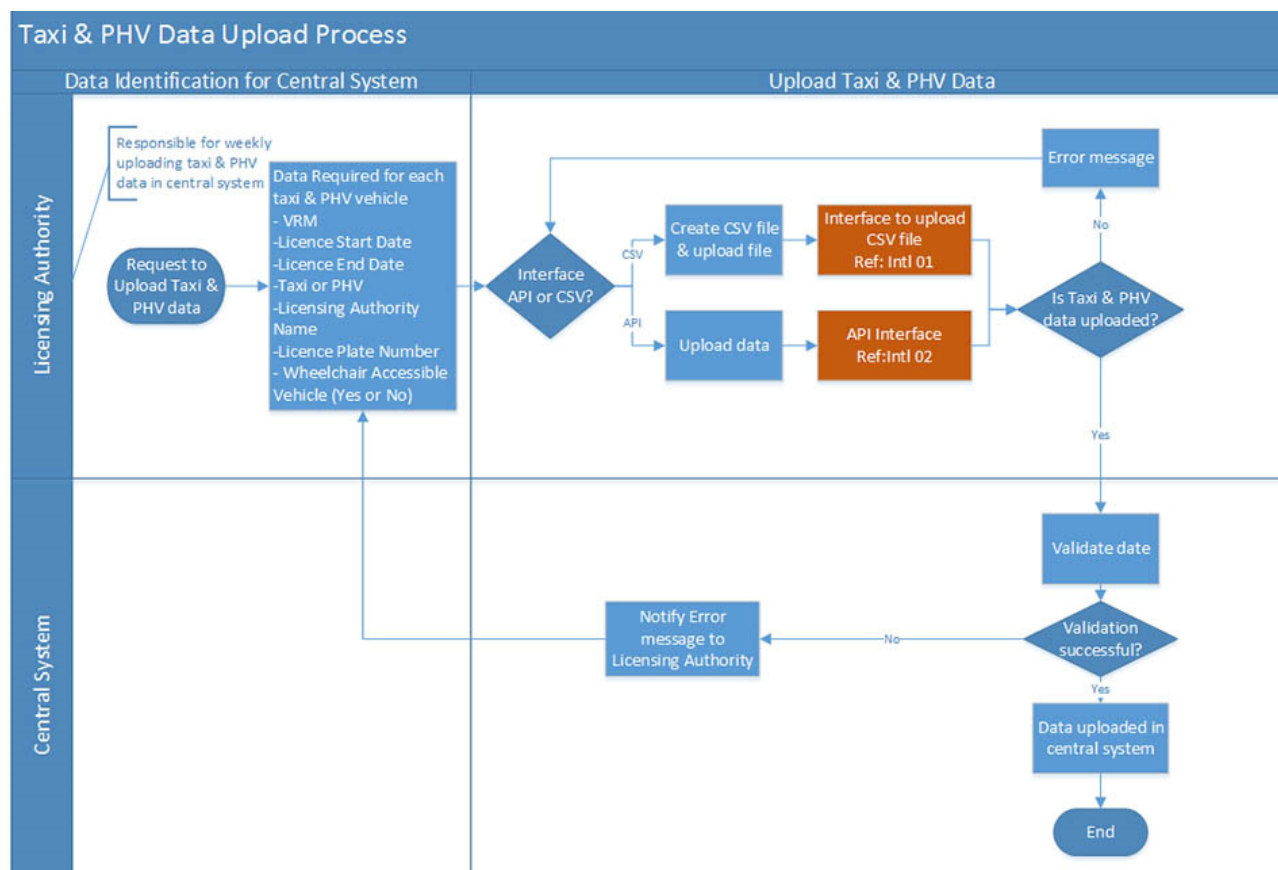


Figure 1: Flow diagram showing the process for uploading taxi and PHV data

Table 1: The data we will be collecting and why the data is required

Number	Data field	Description	Rationale
1	VRM	Vehicle Registration Mark	The vehicle registration mark is used as the primary way of matching a vehicle CAZ entry to a taxi or PHV licence and thereby identifying the vehicle as a taxi or PHV.
2	Start	The date a taxi / PHV licence is valid from	Start date is required to identify the validity of the taxi licence at the time of entrance to a CAZ. This will help support the appeals process.
3	End		

Number	Data field	Description	Rationale
		Expiry date of taxi / PHV licence	End date is required to identify the validity of the taxi licence at the time of entrance to a CAZ. Will also support appeals process
4	Taxi or PHV	A field to denote whether the vehicle is a taxi or private hire vehicle e.g. 'taxi' or 'PHV'	Will allow local authorities to operate local exemptions for taxis and or PHVs when used as private vehicles if they so wish
5	Licensing authority name	The name of the submitting licensing authority	This is required in order to allow a vehicle in the Taxi and PHV Centralised Database to be traced to its originating licensing authority. This will support the appeals process.
6	Licence plate number	The unique reference to the licence number granted (by the Licensing Authority) to a vehicle e.g. PCO 1.	The unique reference to identify a specific licence as granted to a licensed taxi or PHV by a licensing authority. This, along with the VRM will aid identification of a vehicle as part of an appeals process.
7	Wheelchair accessible vehicle (flag)	WAV (Wheelchair Accessible Vehicle)	Although not a legal requirement to capture this information, in practice many licensing authorities do record it as they are encouraged to publish a list of WAVs in accordance with the Equality Act Section 167. Licensing authorities should provide a flag, where possible, to indicate whether a Taxi/PHV is a Wheelchair Accessible Vehicle or not.

Format for transfer of data

2.6) There will be two interfaces for licensing authorities to use when uploading Taxi/PHV data:

- Application Programming Interface (API) – Licensing authorities to integrate directly with the central system and send data asynchronously, as and when a data update is made. We would expect licensing authorities to send the data this way and if they are not able to do so then they should plan how this will be achieved over time. We are aware that a fully integrated API solution is unlikely to be achievable by the end of 2019.

- CSV Upload – A secure area will be provided for the upload of data by licensing authorities. The licensing authority will then authorise themselves (credentials will be provided) to gain access to the secure drop zone and upload their taxi and PHV data.

2.7) A draft technical specification for API and CSV upload is available at Annex A. A final version of the technical specification will be made available later in 2019, ahead of the upload of data by licensing authorities, which is envisaged to start from the end of October 2019.

Frequency of data upload

2.8) The Regulations require data to be sent on a weekly basis as a minimum. Where licensing authorities can provide this on a more frequent basis then they should do so.

2.9) Requests to the API will be limited to 20,000 vehicle details per request. For consumers who wish to supply vehicle data which exceeds this limit, please contact the project team at TaxiandPHVCentralised.Database@defra.gov.uk for further information.

Memorandum of Understanding

2.10) A Memorandum of Understanding (MoU) (see template at Annex B) will be needed between Defra (as the data controller) and the licensing authority before any data can be received. Licensing authorities should sign the MoU and return to TaxiandPHVCentralised.Database@defra.gov.uk as soon as possible.

Appeals against Penalty Charge Notices

2.11) The appeals process is the responsibility of the local authority operating the charging CAZ and must be managed in line with the Traffic Management Act 2004. Licensing authorities may be approached by the local authority who has issued a Penalty Charge Notice (PCN) in relation to a taxi or PHV they have licensed. For example, to check suspension details.

Suspensions

2.12) Where a taxi or PHV licence is suspended, licensing authorities must ensure that data provided to the database is accurate, legitimate and up to date. This includes removing records of those vehicles which have been suspended or revoked by the licensing authority as soon as is practically possible.

2.13) In the case of appeal of a PCN the onus is on the registered keeper to provide proof of the suspension, using the locally issued 'suspension notice'.

3. Data governance

3.1) Licensing authorities are responsible for informing those whom they license of the use of their data. It is for authorities to seek their own legal advice to ensure that their procedures comply with data protection requirements including providing fair processing information to individuals at the point that their personal data is collected. Licensing authorities will need to review their policies on this. This could include written communication with existing licence holders and a change in application forms for new applicants.

3.2) Licensing authorities may wish to consider the use of a statement setting out their policy. This statement should cover the following (and any other information that the licensing authority determines is necessary) –

- whether information on licensees is already publically available
- if data subjects have been informed their information will be shared and how this has been done. This could be by placing a statement in the application form or a privacy notice. Further information can be found at <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-to-be-informed/> (<https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-to-be-informed/>)
- a statement noting applicants' personal data will not be disclosed except in certain circumstances, such as where required by law e.g. in relation to sharing of data to the database
- if applicants have been informed of how their data will be processed as a result of their licence application and ongoing licensing
- date of the last data protection legislation review and when the next review is due

Data management

3.3) In line with the GDPR, Defra will be the Data Controller with responsibility to determine the purpose for which and the manner in which any personal data are, or are to be processed.

3.4) As a minimum the following data management concept must be followed by licensing authorities to ensuring high data quality and comprises five key points:

1. Data quality

- a. They must ensure all data collected is completed in a clear and uncontaminated manner.
- b. Data collected will be accurate and collected legitimately

2. Privacy, security and compliance

a. Privacy, the requirements of the UK's data privacy legislation will apply to all aspects of data processing activities completed by them

- They will complete the MoU (see template at Annex B)
- Data will not be transferred outside of the UK
- The Law Enforcement Directive (LED) as identified within the Data Protection Act 2018 will be used for enforcement purposes
- Data retention – data will be retained for a period of seven years, for revenue purposes. Aggregated data may be retained for historic scientific analysis.
- Aggregated data means information which has been collated for monthly reports.
- Historical aggregated data will be retained indefinitely for scientific purposes.
- Data Subject access requests / FOI to be processed by licensing authority records to be sent to Defra

b. Security

- All administration passwords will be changed on installation and unique to the licensing authority
- Passwords will be reset as per industry standards (ISO 27001)
- All CCTV data storage systems will be penetration and vulnerability tested at least annually, using an Architectural Targeted Operating Model approach.
- Anti-virus software will be up to date at all times
- Authorised user levels will be identified and documented

3. Master data Management

a. Licensing authority will document all processes related to the Regulations. Processes will include, training requirements, administration levels as well as certification to cyber essentials as a minimum, DBS checks for staff working on the system

b. Training in data protection will be completed annually for all staff. Training records held by each licensing authority.

c. Audit and review, will be completed annually, audit reports to be sent to the Defra data protection team at dpo@defra.gov.uk

4. Data Stewardship

a. Defra Data Protection Officer (DPO), Data Protection Manager (DPM) and the Data Protection Subject Matter Expert (SME) may provide guidance from time to time.

5. Data architecture

a. All new hardware will be updated as per manufacturers requirements

b. Software patches will be no more than one version behind the newest issue

-
1. The functions under s.88 (1) of the Environment Act 1995 are exercisable by the Welsh Ministers by virtue of Section 2 and Schedule 1 of The National Assembly for Wales (Transfer of Functions) Order 1999. ↩

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MEMORANDUM OF UNDERSTANDING

Between:

Department of Environment, Food and Rural Affairs (Defra)

AND

[Name of licensing authority]

In respect of:

Provision of taxi and private hire vehicle licensing data as required by the Air Quality (Taxis and Private Hire Vehicles Database) (England and Wales) Regulations 2019

DEFINITIONS

Data Protection Legislation: the GDPR, the LED, the DPA 2018 and any applicable national implementing Laws as amended from time to time, and all applicable Law about the processing of personal data and privacy;

Controller, Processor, Processing, Data Subject, Personal Data, Special Categories of Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by either party under this MoU, and/or actual or potential loss and/or destruction of Personal Data in breach of this MoU, including any Personal Data Breach.

Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

DPA 2018: Data Protection Act 2018

GDPR: the General Data Protection Regulation (*Regulation (EU) 2016/679*)

LED: Law Enforcement Directive (*Directive (EU) 2016/680*)

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

Sub-processor: any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement.

Licensing Authority: the licensing authority who is party to this agreement, [INSERT NAME OF LICENSING AUTHORITY]

Air Quality Regulations: the Air Quality (Taxis and Private Hire Vehicles Database) (England and Wales) Regulations 2019

1. Parties to this Memorandum of Understanding

- 1.1. The Parties to this Memorandum of Understanding (MoU) are the Department of Environment, Food and Rural Affairs (Defra) and the Licensing Authority.

2. Purpose of this MoU

- 2.1. The Purpose of this MoU is to clarify how the Parties will meet their respective obligations under Data Protection Legislation in relation to the processing of Personal Data as necessary to meet the requirements of the Air Quality Regulations. It explains how the parties will co-operate to ensure compliance with all relevant legislation.

3. Description of the Data and method of sharing

- 3.1. The Air Quality Regulations specify the data that The Licensing Authority is required to share with Defra – the Data
- 3.2. The Air Quality Regulations specify the minimum frequency at which the Data must be shared with Defra. The Data must be transmitted to Defra at least once a week and additionally as requested for database development and testing purposes.
- 3.3. The Licensing Authority will transfer the Data to Defra using either an Application Programming Interface (API) or a CSV upload. In executing the transfer, both parties will comply with the security arrangements described in clause 9.

4. The Licensing Authority's legal basis under the GDPR for sharing the Data with Defra

- 4.1. Article 6.1(e) of the GDPR legitimises the processing of personal data that is necessary for compliance with a legal obligation to which the controller is subject.
- 4.2. The Licensing Authority as a Controller is subject to a legal obligation to provide the Data to Defra, and therefore such processing as is necessary to provide the Data is legitimised by Article 6(1)(e).

5. Accountability

- 5.1. Defra is a separate Controller for the Data once received from The Licensing Authority and is responsible as a Controller for complying with Data Protection Legislation in relation to its further processing of the Data.

6. Fairness and transparency

- 6.1. Both parties will provide appropriate privacy notices to data subjects, in accordance with the requirements of the GDPR and all relevant good practice guidance issued by the Information Commissioner's Office. Specifically, The Licensing Authority will inform data subjects that Licensing Authorities are required by Law to share the Data with Defra so that Defra can create a database to support the operation of charging clean air zones by local authorities or other air quality plans.

7. Accuracy of shared data

- 7.1. The Licensing Authority will take all reasonable steps to ensure the accuracy and currency of the Data before it is transmitted to Defra. Where the Licensing Authority becomes aware of inaccuracies in the Data after its transmission to Defra, it will notify Defra of those inaccuracies within one working day of them being discovered and the parties will agree a suitable rectification plan.
- 7.2. Defra will take all reasonable steps to maintain the accuracy and currency of the Data, and will notify The Licensing Authority if it becomes aware of any significant inaccuracies.

8. Retention of shared data

- 8.1. Defra will retain the Data for a period not exceeding seven years for revenue purposes from the date received from The Licensing Authority subject to any relevant exemptions under Data Protection Legislation. Aggregated data may be retained for historic scientific analysis. Aggregated data means information which has been collated for monthly reports. Historical aggregated data will be retained indefinitely for scientific purposes.
- 8.2. At the end of that retention period, Defra will arrange for the secure destruction or deletion of the Data, in accordance with clause 12.

9. Data security

- 9.1. The Licensing Authority will ensure the safe transmission of the Data to Defra, in accordance with the security requirements of Data Protection Legislation and industry good practice.
- 9.2. Defra will ensure that its Processing of the Data meets the requirements of Data Protection Legislation and the HMG Security Policy Framework. These same requirements shall apply to the use by Defra of any Processor.

10. Data subjects rights

- 10.1. Each party will answer any data subject rights requests that are made to them for Data that they are processing as a Controller, in accordance with their obligations under the GDPR.

11. Freedom of Information (FOI) requests.

- 11.1. Each party will answer any FOI requests that they receive for information about: the Data for which they are the Controller; the Air Quality Regulations; or this MoU.
- 11.2. The party who has received the request will consult the other party where disclosure of information could impact on the interest of the other party.
- 11.3. The party who has received the request will take into account the views of the other party before deciding whether or not to disclose the information. Specifically, they will:
- 11.4. Allow the other party a period of at least 5 working days to respond to the consultation;
- 11.5. Not disclose any personal data that would breach Data Protection Legislation; and
- 11.6. Not disclose information that would prejudice either the security of the Data or the security arrangements of the other party.

12. Audit and inspection

- 12.1. Defra reserves the right to carry out a review of The Licensing Authority's compliance with the terms of this MoU, and The Licensing Authority agrees to cooperate fully with any such review. Defra will give 28 days' notice of such a review.
- 12.2. Defra will share with The Licensing Authority the outcome of any audits or reviews that have been carried out on its activities as a Controller, to the extent that they have relevance to the processing of the Data received from The Licensing Authority.

12.3. Defra will notify The Licensing Authority of any audits that are being carried out by the Information Commissioner's Office under Data Protection Legislation, to the extent they have relevance to the processing of the Data received from The Licensing Authority.

13. Data loss event

13.1. In relation to Data received from The Licensing Authority, Defra (dpo@defra.gov.uk) will notify The Licensing Authority immediately of any serious Data Loss Event that meets the threshold for notification to the Information Commissioner's Office or affected Data Subjects. Such notification will be to a contact nominated by the Licensing Authority. Less serious incidents will be reported on a monthly basis.

14. Agreement and signatories

14.1. The parties will review the terms of this MoU on an annual basis, or sooner if necessary to reflect a material change to any of the provisions in this MoU.

14.2. The parties enter into this MoU intending to honour its provisions, but the MoU does not constitute a legally binding contract and it does not affect the obligations that each party has under the legislation referred to in this MoU.

Signed on behalf of:

Defra

Name of licensing authority

.....

.....

[name and position]

[name and position]

Date

Date

.....

.....

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NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

PUBLIC PROTECTION COMMITTEE

Date 22nd October 2019

Report Title: Amendments to Scheme of Delegation for Local Government (Miscellaneous Provisions) Act 1976 and Town Police Clauses Act 1847

Submitted by: Head of Environmental Health Services

Portfolio: Finance & Efficiency

Ward(s) affected: All

Purpose of the Report

To amend and approve the scheme of delegation in respect of taxi and private hire licensing.

Recommendations

That Committee support and recommends to Constitution and Member Support Working group and Council the proposed amendments to the scheme of delegation.

Reasons

A reorganisation of services has resulted in the taxi and private hire licensing services being moved from Regeneration and Development directorate to Operational Services directorate. A review of the current scheme of delegation has been undertaken and changes proposed to make decisions for private hire and hackney carriages consistent, to reflect the changes to the organisational structure and to take into account provisions included in the approved Taxi Policy 2019.

1. Background

- 1.1 Public Protection Committee has many delegated functions including the power to make decisions in respect of hackney carriage and private hire drivers, vehicles and operators which are not in full compliance with the Council's current 'Taxi and Private Hire Policy 2019'
- 1.2 Officers of the Council also have specifically delegated functions for the issuing of licences which are in compliance with the Council's current 'Taxi and Private Hire Policy 2019'. In addition officers have delegated responsibilities to undertake some enforcement activities.
- 1.3 A review of the scheme of delegation has been undertaken to take into account the organisational changes but to also review whether some of these matters can be dealt with more effectively and timely with amendments to the scheme of delegation.

2. Issues

- 2.1 Committee business particularly in respect of the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847 is increasing and therefore a review of arrangements has been undertaken to determine whether these matters can be dealt with more effectively and in a timely manner with specific delegated responsibilities.
- 2.2 In summary the proposed changes include:

- 2.2.1 Change from Executive Director (Regeneration and Development) to Executive Director (Operational Services)
- 2.2.2 Officer delegations for suspension, refusal and revocation of Hackney Carriage and Private Hire Vehicle licenses.
- 2.2.3 Inclusion of enforcement action with immediate effect for clarification.
- 2.2.4 Inclusion of issuing warnings as introduced in the Taxi Policy 2019.

2.3 The proposed scheme of delegation is detailed in the table below:

Line Number	Legislation	Function	Exercised by	Proposed Change, October 2019
	Local Government (Miscellaneous Provisions) Act 1976 (including Town Police Clauses Act 1847)			
443		Power to approve Council policy with regard to hackney carriage and private hire drivers, vehicles and operators	Public Protection Committee	
444		Power to grant, renew and transfer Private Hire and Hackney Carriage: Vehicle licenses, Driver licenses and Operators in compliance with policy	Executive Director (Regeneration and Development) or Head of Environmental Health	Executive Director (Operational Services) or Head of Environmental Health
445		Power to grant, renew and transfer Private Hire and Hackney Carriage: Vehicle licenses, Driver licenses and Operators NOT in compliance with policy	Public Protection Committee or Public Protection Sub Committee	
446		Power to suspend, refuse or revoke Hackney Carriage vehicle licences	Executive Director (Regeneration and Development) or Head of Environmental Health Head of Recycling, Waste & Fleet	Public Protection or Public Protection Sub Committee or Executive Director (Operational Services) or Head of Environmental Health Head of Recycling, Waste & Fleet, Licensing Administration Team Manager & Operations Manager Environmental Services Team Manager
	NEW	Power to suspend, refuse or revoke Hackney Carriage vehicle licences with immediate effect	Executive Director (Regeneration and Development) or Head of Environmental Health Head of Recycling, Waste & Fleet	Public Protection or Public Protection Sub Committee or Executive Director (Operational Services) or Head of Environmental Health Head of Recycling, Waste & Fleet, Licensing Administration Team Manager & Operations Manager, Environmental Services Team Manager
447		Power to suspend Hackney Carriage driver licences	Executive Director (Regeneration and Development) or Head of Environmental Health or Public Protection	Public Protection or Public Protection Sub Committee or Executive Director (Operational Services) or Head of Environmental Health
448		Power to refuse or revoke Hackney Carriage driver licences	Public Protection or Public Protection Sub Committee or Executive Director (Regeneration and Development) or Head of Environmental Health	Public Protection or Public Protection Sub Committee or Executive Director (Operational Services) or Head of Environmental Health
	NEW	Power to refuse or revoke Hackney Carriage driver	Public Protection or Public Protection Sub Committee	Public Protection or Public Protection Sub Committee

		licences with immediate effect	or Executive Director (Regeneration and Development) or Head of Environmental Health	or Executive Director (Operational Services) or Head of Environmental Health
449		Power to suspend Private Hire, driver licenses and operators licenses	Public Protection or Public Protection Sub Committee or Executive Director (Regeneration and Development) or Head of Environmental Health	Public Protection or Public Protection Sub Committee or Executive Director (Operational Services) or Head of Environmental Health
450		Power to refuse or revoke Private Hire driver licenses and operators licenses	Public Protection or Public Protection Sub Committee or Executive Director (Regeneration and Development) or Head of Environmental Health	Public Protection or Public Protection Sub Committee or Executive Director (Operational Services) or Head of Environmental Health
	NEW	Power to refuse or revoke Private Hire driver licenses and operators licenses with immediate effect	Public Protection or Public Protection Sub Committee or Executive Director (Regeneration and Development) or Head of Environmental Health	Public Protection or Public Protection Sub Committee or Executive Director (Operational Services) or Head of Environmental Health
451		Power to refuse, suspend or revoke Private Hire Vehicle licenses	Public Protection or Public Protection Sub Committee Executive Director (Regeneration and Development) or Head of Environmental Health and/or Head of Recycling, Waste & Fleet Services	Public Protection or Public Protection Sub Committee or Executive Director (Operational Services) or Head of Environmental Health and/or Head of Recycling, Waste & Fleet Services, Licensing Administration Team Manager & Operations Manager, Environmental Services Team Manager
	NEW	Power to refuse, suspend or revoke Private Hire Vehicle licenses with immediate effect	Public Protection or Public Protection Sub Committee Executive Director (Regeneration and Development) or Head of Environmental Health and/or Head of Recycling, Waste & Fleet Services	Public Protection or Public Protection Sub Committee or Executive Director (Operational Services) or Head of Environmental Health and/or Head of Recycling, Waste & Fleet Services, Licensing Administration Team Manager & Operations Manager, Environmental Services Team Manager
452		Hackney Carriage fares and numbers.	Public Protection Committee	
453		Power to authorise prosecution proceedings for Hackney Carriage and Private Hire vehicles, drivers and Operators	Executive Director (Regeneration and Development) or Head of Environmental Health Services	Executive Director (Operational Services) or Head of Environmental Health Services
454		Provision of information and production of documents Hackney Carriages and Private Hire vehicles Sect. 50, 53, 53A & 56	Executive Director (Regeneration and Development) or Head of Environmental Health Services	Executive Director (Operational Services) or Head of Environmental Health Services
455		Return of identification plate or disc on revocation or expiry of licence etc., Sect.58. Sect 60 & 61 Sect 62 & 62A.	Executive Director (Regeneration and Development) or Executive Director (Operational Services) or Head of Environmental Health Services	Executive Director (Operational Services) or Head of Environmental Health Services
456		Inspection and Testing of Hackney Carriages and Private Hire vehicles for fitness. Sect. 68	Executive Director (Regeneration and Development) or Executive Director (Operational Services) or Head of Environmental Health Services or Head of Recycling, Waste & Fleet Services	or Executive Director (Operational Services) or Head of Environmental Health and/or Head of Recycling, Waste & Fleet Services, Licensing Administration Team Manager & Operations Manager, Environmental

				Services Team Manager
457		Action in respect of obstruction of authorised officers	Executive Director (Regeneration and Development) or Head of Environmental Health Services	Executive Director (Operational Services) or Head of Environmental Health Services
	NEW	Issue a warning to dual driver		Executive Director (Operational Services) or Head of Environmental Health Services, Licensing Administration Team Manager, Environmental Services Team Manager

3. **Options Considered**

- 3.1 There are numerous options available in respect to the scheme of delegation. These would include:
- 3.1.1 Delegate all functions to Public Protection and Sub Committees;
 - 3.1.2 Delegate all functions to Officers;
 - 3.1.3 Create delegations for Committee, Sub-committee and Officers commensurate with roles and responsibilities.

4. **Proposal**

- 4.1 That Committee support and recommends to the Constitution and Member Support Working group and Council the proposed amendments to the scheme of delegation.

5. **Reasons for Preferred Solution**

- 5.1 To enable committee to determine applications in the most effective and practical manner.
- 5.2 To ensure that the council continue to provide safe transport for those wishing to use private hire and Hackney Carriage vehicles.

6. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

- 6.1 In line with the Council's objectives –
- Local services that work for local people
 - Growing our people and places
 - A healthy, active and safe borough
 - A town centre for all

7. **Legal and Statutory Implications**

- 7.1 The Local Government Act 1972, section 101 allows the Council to arrange for a Committee, sub-committee or an officer or another local authority to carry out its powers and duties.

8. **Equality Impact Assessment**

- 8.1 The meetings will be undertaken to accord with the Human Rights Act 1998, Article 6(1) guarantees an applicant a fair hearing and Article 14 guarantees no discrimination.

9. **Financial and Resource Implications**

- 9.1 There will be no direct financial costs associated with the proposals.

10. **Major Risks**

10.1 There are no major risks associated with this report

11. **Sustainability and Climate Change Implications**

11.1 Not applicable

12. **Key Decision Information**

12.1 Not applicable

13. **Earlier Cabinet/Committee Resolutions**

11.1 Council meeting 4th June 2014

11.2 Council Meeting 16th May 2018

14. **List of Appendices**

14.1 None

15. **Background Papers**

15.1 Not applicable

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NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

PUBLIC PROTECTION COMMITTEE

Date 22nd October 2019

1. **Report Title:** Vehicle Door Signage
- Submitted by:** Head of Environmental Health Services & Licensing
Administration Team Manager
- Portfolio:** Finance & Efficiency
- Ward(s) affected:** All

Purpose of the Report

For Members to determine and approve the final signage that all Hackney Carriage and Private Hire Vehicles will have to display from 1st November 2019.

Recommendations

To approve the sizing, wording and design of the signage to be displayed by all Hackney Carriage and Private Hire Vehicles

1. **Background**

- 1.1 On 20th August 2019 the Committee approved the content of the Council's new Taxi Licensing Policy and that it be implemented from 1st November 2019 subject to two sections which come into force on 1st January 2020.
- 1.2 The approved licence conditions for both Hackney Carriage and Private Hire Vehicles state that the vehicle must display Council approved signage on their rear passenger doors and examples of the signage that might be used were included in the policy document at Appendix L. The signage at Appendix L was only intended to be as an example and now requires Committee to determine the final design. The proposed Hackney Carriage sign is A3 in size and the Private Hire sign is half of A3. Samples will be available at the meeting. A copy of the examples included in the Policy are attached as Appendix 1.

2. **Issues**

- 2.1 The conditions of the Taxi Licensing Policy come into force on 1st November 2019 and to enable proprietors to be compliant the Council must determine what signage is to be displayed.
- 2.2 The signs in Appendix 1 are only examples. The Committee may determine any size, shape, design and wording for the final approved signage. A number of additional designs have been obtained and are attached at Appendix 2. Samples of these will be available at the meeting in two sizes, the half A3 size as stated above and 155mm x 50mm, which is the same size as the signs used by Stoke-on-Trent City Council for their licensed vehicles. A copy of the signage used by Stoke is attached as Appendix 3 for information.

3. **Options Considered**

3.1 That Members consider the options outlined below:

- To approve one of the Hackney Carriage designs from the examples in Appendices 1 and 2 to be the final approved design; **(RECOMMENDED)**; or
- To approve an alternative design; and
- To approve one of the Private Hire designs from the examples in Appendices 1 and 2 to be the final approved design; **(RECOMMENDED)**; or
- To determine an alternative design; and
- To approve that the signage should be half A3 lengthways in size; or
- To approve that signage should be 155mm x 50mm in size **(RECOMMENDED)**; or
- To approve an alternative size for the signage.

4. **Proposal**

4.1 That Members approve the final Hackney Carriage and Private Hire Vehicle rear passenger door signage.

5. **Reasons for Preferred Solution**

5.1 To enable the Council to supply the trade with the relevant signage prior to the implementation date of the Taxi Licensing Policy.

6. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

6.1 *The Council's corporate priorities are:*

- Local services that work for local people
- Growing our people and places
- A healthy, active and safe borough
- A town centre for all

7. **Legal and Statutory Implications**

7.1 Not applicable

8. **Equality Impact Assessment**

8.1 Not applicable

9. **Financial and Resource Implications**

9.1 The initial cost of the signage will be covered from the existing Licensing Budget. The Council have the option of recovering the cost of the signage through the Fees & Charges.

10. **Major Risks**

10.1 Not applicable

11. **Sustainability and Climate Change Implications**

11.1 Not applicable

12. **Key Decision Information**

12.1 Not applicable

13. **Earlier Cabinet/Committee Resolutions**

13.1 Licensing & Public Protection Committee – 18th September 2018
Licensing & Public Protection Committee – 11th December 2018
Licensing & Public Protection Committee – 11th June 2019
Licensing & Public Protection Committee – 20th August 2019

14. **List of Appendices**

14.1 Appendix 1 – Taxi Licensing Policy Appendix L – Example signage
Appendix 2 – Examples of potential designs
Appendix 3 – Copies of Stoke Licensing signage

15. **Background Papers**

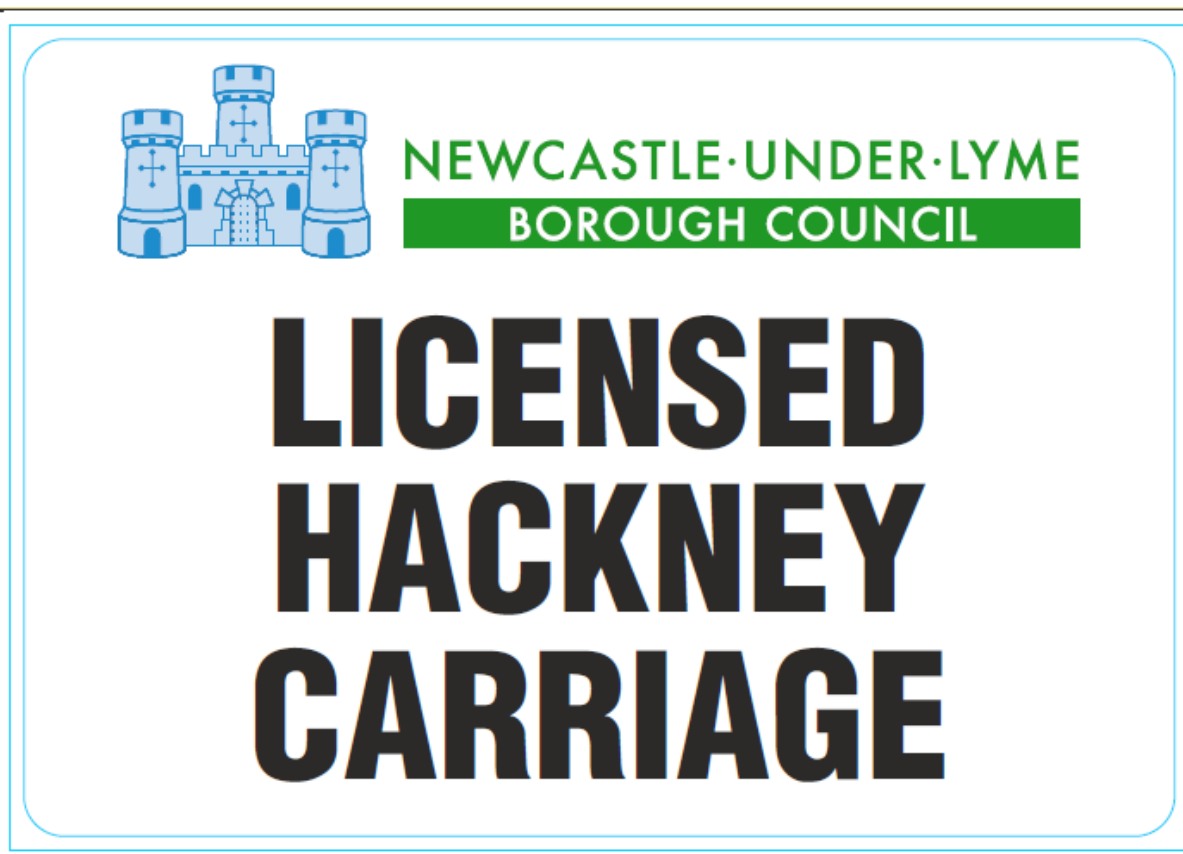
15.1 Taxi & Private Hire Licensing Policy 2019-2021

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APPENDIX L

Vehicle Door Signage

Example for HCV:



Example for PHV:



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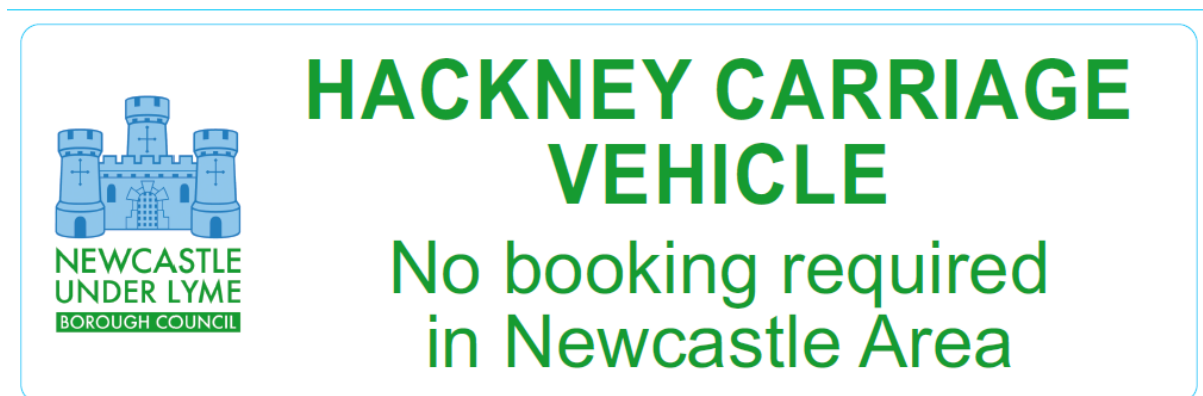
Appendix 2 – Alternative designs for Newcastle Signage

Examples for Hackney Carriages:

1.



2.



3.



Examples for Private Hire Vehicles:

1. This is the same as in Appendix L in the policy



- 2.



- 3.



Appendix 3 – Stoke-on-Trent Taxi and Private Hire Signage

Hackney Carriage:



**JUMP IN - NO
BOOKING REQUIRED**



Private Hire:



**ILLEGAL HIRE IF
NOT PRE-BOOKED**



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of the Local Government Act 1972.

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