

South Hams Licensing Committee



Title:	Agenda										
Date:	Thursday, 24th November, 2016										
Time:	2.00 pm										
Venue:	Cary Room - Follaton House										
Full Members:	<p style="text-align: center;">Chairman Cllr May Vice Chairman Cllr Holway</p> <p><i>Members:</i></p> <table style="margin-left: auto; margin-right: auto;"> <tr> <td>Cllr Baldry</td> <td>Cllr Foss</td> </tr> <tr> <td>Cllr Blackler</td> <td>Cllr Hitchins</td> </tr> <tr> <td>Cllr Brown</td> <td>Cllr Hopwood</td> </tr> <tr> <td>Cllr Cane</td> <td>Cllr Pringle</td> </tr> <tr> <td>Cllr Cuthbert</td> <td>Cllr Rowe</td> </tr> </table>	Cllr Baldry	Cllr Foss	Cllr Blackler	Cllr Hitchins	Cllr Brown	Cllr Hopwood	Cllr Cane	Cllr Pringle	Cllr Cuthbert	Cllr Rowe
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Cllr Brown	Cllr Hopwood										
Cllr Cane	Cllr Pringle										
Cllr Cuthbert	Cllr Rowe										
Interests – Declaration and Restriction on Participation:	Members are reminded of their responsibility to declare any disclosable pecuniary interest not entered in the Authority's register or local non pecuniary interest which they have in any item of business on the agenda (subject to the exception for sensitive information) and to leave the meeting prior to discussion and voting on an item in which they have a disclosable pecuniary interest.										
Committee administrator:	Member.Services@swdevon.gov.uk										

1. Minutes	1 - 14
To approve as a correct record and authorise the Chairman to sign the minutes of the meeting of the Licensing Committee held on 26 May and the Licensing Sub-Committee meetings held during the period 25 April 2016 to 5 October 2016.	
2. Urgent Business	
brought forward at the discretion of the Chairman;	
3. Division of Agenda	
to consider whether the discussion of any item of business is likely to lead to the disclosure of exempt information;	
4. Declarations of interest	
Members are invited to declare any personal or disclosable pecuniary interests, including the nature and extent of such interests; they may have in any items to be considered at this meeting;	
5. Licensing of Taxi Drivers Policy	15 - 64
6. Taxi Fare Setting Formula and Policy	65 - 78
7. Delegation of Powers for Determination of Certain Licensing Functions	79 - 96
8. Licensing of Pleasure Boats and Pleasure Boatmen	97 - 130
9. Summary of Licenses Issued between 1 October 2015 and 30 September 2016	131 - 134
10. Exclusion of Public and Press	

- to consider the following resolution to exclude the public and press:-

"That in accordance with Section 100(A)(4) of the Local Government Act 1972, the public and press be excluded from

the meeting during consideration of the following item of business in order to avoid the likely disclosure to them of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A to the Act”;

- 11. Report the Facts Regarding the Suspension of a Driver Licence, as Authorised by the Community Of Practice Lead for Environmental Health, in a Matter of Urgency** **135 - 142**

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MINUTES OF THE MEETING OF THE LICENSING COMMITTEE HELD AT FOLLATON HOUSE, TOTNES ON THURSDAY 26 MAY 2016

MEMBERS

* Cllr D W May - Chairman

* Cllr T R Holway - Vice-Chairman

* Cllr K Baldry	∅ Cllr R J Foss
* Cllr J I G Blackler	* Cllr P W Hitchins
* Cllr D Brown	* Cllr N A Hopwood
* Cllr B F Cane	* Cllr K Pringle
* Cllr P K Cuthbert	* Cllr Rowe

* Denotes attendance

∅ Denotes apology for absence

Also in attendance:

Cllr K R H Wingate

Officers in attendance and participating:

All Agenda Items: Licensing Specialist, Senior Specialist – Environmental Health, Solicitor and Senior Case Manager Democratic Services

L.01/16 **MINUTES**

The minutes of the meeting of the Licensing Committee held on 12 November 2015 and the Licensing Sub-Committee held on 24 March 2016 were all confirmed as a correct record and signed by the Chairman.

L.02/16 **DECLARATIONS OF INTEREST**

Members were invited to declare any interests in the items of business to be considered during the course of the meeting, but none were made.

L.03/16 **EXCLUSION OF THE PUBLIC AND PRESS**

RESOLVED

“That in accordance with Section 100(A)(4) of the Local Government Act 1972, the public and press be excluded from the meeting during consideration of the following items of business in order to avoid the likely disclosure to them of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A to the Act”

L.04/16

TO DETERMINE WHETHER TO GRANT A HACKNEY CARRIAGE DRIVER LICENCE, IN EFFECT TO DETERMINE WHETHER AN APPLICANT FOR A HACKNEY CARRIAGE DRIVERS LICENCE CAN BE DEEMED A 'FIT AND PROPER' PERSON IN LIGHT OF PREVIOUS CRIMINAL CONVICTIONS

Consideration was given to an exempt report which sought to determine whether an applicant was a 'fit and proper' person to hold a Hackney Carriage Driver Licence with this Authority in accordance with section 59 of the Local Government (Miscellaneous Provisions) Act 1976.

The Licensing Specialist introduced the report. The Applicant was in attendance at the meeting and was given the opportunity to address the Committee. Some Members asked questions of the Applicant and the Licensing Specialist.

(At this point, the Hackney Carriage Driver was asked to leave the meeting to enable the Committee to make a decision. The Solicitor remained in the meeting).

The Decision

The Chairman then proceeded to announce the decision as follows:

Members of the Licensing Committee have considered very carefully your application for a Hackney Carriage Driver Licence.

- We have read the Licensing Officer's report, which you have had sight of.
- We have read the details on the Disclosure and Barring certificate, taking into consideration the nature of the offences and when these were committed.
- We have listened very carefully to what you have told us this afternoon and read the references provided.
- The main priority of the licensing regime is to ensure public safety. As this is a civil matter, the evidence of proof is based on the balance of probabilities, the onus being on yourself to satisfy the Authority that you are a 'fit and proper person' to continue to drive a Hackney Carriage or Private Hire Vehicle.

The Committee has decided to REFUSE the renewal of your Joint Hackney Carriage and Private Hire Driver Licence. This decision is based on:

- The information provided on your Disclosure and Barring Service certificate suggests that you are not a 'fit and proper' person to hold a Hackney Carriage Driver Licence.
- This is due to the seriousness of the offences and the number of offences recorded.
- The period of time over which the offences took place.
- The most recent offence was less than three years ago with a serious sentence given.

(Meeting commenced at 2.00 pm and concluded at 2.50 pm).

Chairman

**MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE HELD AT
FOLLATON HOUSE, TOTNES ON MONDAY 25 APRIL, 2016**

Present: Cllrs Dan Brown, David May and Tom Holway
Sue Nightingale, Solicitor
Naomi Wopling, Specialist – Licensing
Kathryn Trant, Senior Case Manager

Also in attendance and participating:

Ms Claire Bishop – Applicant
Mr Ryan Hooper – representing the landowner and supporting the application

LSC15/15 **APPOINTMENT OF CHAIRMAN**

RESOLVED

That Cllr May be appointed Chairman for the duration of the meeting.

LSC.16/15 **DECLARATIONS OF INTEREST**

Members and officers were invited to declare any interests in the items of business to be considered during the course of the meeting but none were made.

LSC.17/15 **TO DETERMINE AN APPLICATION FOR A NEW PREMISES LICENCE FOR GASTROBUS TREATS, BANTHAM, KINGSBRIDGE**

The Sub-Committee considered a report that sought to determine an application for a new premises licence at Gastrobus Treats, Bantham Beach Car Park, Bantham, Kingsbridge.

The Licensing Specialist introduced the report and outlined the details of the application, including the agreed conditions as set out in Appendix C of the presented report. She also advised that as a result of concerns expressed, the Authority had also consulted with the Coastguard who had no objection to the application as it presented no greater risk than other beachfront or seafront premises.

1. Address by the Applicant and Supporter

The Applicant and supporter outlined the designated area and confirmed that the buses would always be parked in the same place but may be turned in direction, according to the weather. The security arrangements were explained. In addition, the applicant set out how new stock would be transported to the buses during the day.

(At 10.25am, the Sub-Committee adjourned in the presence of Mrs Nightingale to consider the application and reconvened at 10.35am).

2. The Decision

In announcing the Sub-Committee decision, the Chairman read out the following statement:

We have considered the application for a new premises licence.

We have considered the Statement of Licensing Policy, the government guidance and our obligations that relate to the promotion of the licensing objectives.

We have read carefully the written representations from parties not present today and have read carefully representations received from parties present plus additional statements from persons here today. We have also considered the additional conditions proposed by the Police and accepted by the Applicant.

It is our decision to grant this application subject to the additional conditions proposed by the Police being incorporated into the operating schedule. We have determined the changes to be appropriate to achieve the licensing objectives.

In addition to being appropriate the Committee also believe the amendment(s) to be necessary.

Chairman

**MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE HELD AT
FOLLATON HOUSE, TOTNES ON MONDAY 27 JUNE 2016**

Present: Cllrs Keith Baldry, Tom Holway and David May
Sue Nightingale, Solicitor
Darryl White, Senior Specialist – Democratic Services
Naomi Wopling, Specialist – Licensing

Also in attendance and participating:

Cllr John Green – local Ward Member
Mr James Kershaw – Senior Specialist – Environmental Health and Licensing
Legal representatives acting on behalf of Morrisons
Mr Jack Paterson – objecting resident (also representing Totnes and District
Traffic and Transport Forum)

LSC.01/16 **APPOINTMENT OF CHAIRMAN**

RESOLVED

That Cllr May be appointed Chairman for the duration of the meeting.

LSC.02/16 **DECLARATIONS OF INTEREST**

Members and officers were invited to declare any interests in the items of business to be considered during the course of the meeting. These were recorded as follows:

Cllr D W May declared a personal interest in agenda item 4: 'Application for a New Premises Licence for Morrisons Petrol Filling Station, Totnes' (Minute LSC.03/16 below refers) by virtue of owning a garage and remained in the meeting and took part in the debate and vote thereon. For clarity, Cllr May informed those present that his garage was for repairs only and did not sell any fuel.

LSC.03/16 **TO DETERMINE AN APPLICATION FOR A NEW PREMISES LICENCE FOR MORRISONS PETROL FILLING STATION, TOTNES**

The Sub-Committee considered a report that sought to determine an application for a new Premises Licence at Morrisons Petrol Filling Station, Totnes TQ9 5JR.

The Licensing Specialist introduced the report and outlined the details of the application as stated in the application form at Appendix A of the presented agenda report. In particular, the Licensing Specialist advised that the application sought approval for the sale of alcohol for consumption off the premises to be available twenty-four hours a day, seven days a week and for the provision of late night refreshments Monday to Sunday from 23:00 to 05:00.

1. Address by the Applicant's representative

The representative outlined the rationale behind the application and, in so doing, made particular reference to:

- the reputation of Morrisons. Despite having over 11 million customer transactions each week, the representatives stressed that the organisation had never been prosecuted in accordance with any offence relating to the Licensing Act 2003. Furthermore, Morrisons had never seen a review into an existing licence being invoked by any local authority;
- the proposed operating hours. The Sub-Committee was informed that, at this stage, the organisation was proposing to operate from 6.00am to midnight. In addition, the application was only seeking provision to open '24/7' to prevent Morrisons from having to submit an additional application in the event that the organisation should wish to increase its operating hours;
- the planning application. It was noted that a planning application had also been submitted to the local authority that sought to almost double in size the filling station store. As a consequence, the organisation was projecting that customer footfall for convenient use would almost double whereas fuel sales would remain fairly constant;
- the store plans being well designed. In highlighting the proposed layout, the representatives confirmed that full CCTV provision would be in place. Whilst not a significant part of the business, alcohol sales were nonetheless important and assurances were given that spirits would only be available from behind the sales counter;
- members of staff. When questioned, the representatives confirmed that there would never be fewer than two members of staff on site during operating hours, with at least one of these being a personal licence holder. Furthermore, all staff members undertook a rigorous training programme and the organisation had adopted the 'Challenge 25' policy, the electronic refusal register and till prompts;
- the objections raised. To offset the objections and concerns raised, the representatives highlighted that:
 - o there had been no anti-social behaviour related complaints ever raised at this site;
 - o there was no evidence to suggest that by being able to drive to the site would lead to an increase in drink driving;
 - o a condition would be imposed whereby the sale of individual cans of alcohol would not be allowed;
 - o alcohol would be displayed in the full view of the tills;
 - o subject to inclusion of the additional conditions, the Police had raised no objections;
 - o the organisation had a policy whereby they did not display advertisements promoting the sale of cheap alcohol;
 - o in line with the 'Thwaites Case', there was no real evidence to justify refusal of the application;

At this point, the Sub-Committee was invited to ask questions of the representatives. In so doing, the following points were raised:

- (a) It was confirmed that members of staff received appropriate training in conflict resolution. In recognising the importance of duty of care to staff, panic buttons were installed under the counter and only a limited amount of cash was kept in the tills;
- (b) The Committee was also informed that hot food and drinks would not be consumed on the premises.

2. Address by the Objecting Resident

The objecting resident addressed the Sub-Committee and, in addition to the points made in his formal representations (as outlined in Appendix B of the presented agenda report), made specific reference to:-

- (i) the public safety concerns arising from a high footfall of pedestrians in the vicinity of a petrol filling station;
- (ii) it being inevitable that the proposals would lead to an increase in the volume of litter generated. In reply, the applicants' representatives gave assurances that staff were required to undertake frequent on-site litter pick-ups. Once beyond the premises, Members were advised that the level of responsibility on Morrisons diminished dramatically;
- (iii) the need and demand for a '24/7' operation in this area being questionable.

3. Address by Environmental Health (on behalf of the Licensing Authority)

The Senior Specialist – Environmental Health and Licensing advised that he had some concerns over whether the application truly supported the licensing objectives and he therefore welcomed the fact that it had been presented to the Sub-Committee for determination.

Confirmation was given to the Sub-Committee that no noise complaints had been received in relation to this application site and the nearest neighbouring properties were 45 metres away. Furthermore, most of the noise generated at this site related to the petrol pumps and car washing facilities and not the store.

(At 2.55pm, once all parties were satisfied that they had no further issues to raise or clarify, the Sub-Committee adjourned in the presence of Mrs Nightingale to consider the application. Following their deliberations, the meeting was then reconvened at 3.20pm).

4. The Decision

In announcing the Sub-Committee decision, the Chairman read out the following statement:

“We have considered the application for a new premises licence.

We have considered the Statement of Licensing Policy, the government guidance and our obligations that relate to the promotion of the licensing objectives.

We have read carefully the written representations from parties not present today and have read carefully representations received from parties present plus additional statements from persons here today. We have also considered the additional conditions proposed by the Police and accepted by the Applicant.

It is our decision to grant this application subject to the following changes being incorporated into the operating schedule. We have determined the changes to be APPROPRIATE to achieve the licensing objectives:

Supply of alcohol for consumption off the premises between 6.00am and midnight in accordance with paragraph 6.4 of the Council’s Licensing Policy and that this is appropriate to the amenity of the area, to prevent public nuisance. And that the licence is subject to all the conditions offered by the Applicant AND the conditions proposed by the Police at page 39 of the published agenda papers.

In addition to being APPROPRIATE, the Committee also believe the amendment(s) to be necessary.

Thank you all.”

Chairman

**MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE HELD AT
FOLLATON HOUSE, TOTNES ON WEDNESDAY 5 OCTOBER, 2016**

Present: Cllrs Keith Baldry, Nicky Hopwood and David May
Sue Nightingale, Solicitor
Naomi Wopling, Specialist – Licensing
Kathryn Trant, Senior Case Manager

Also in attendance and participating:

Mr Chris Roberts – Designated Premises Supervisor
Mr Graham Eva – representing the Applicant
Mr Robin Griffin – resident of Hope Cove
Ms Sarah Harcombe – representing Environmental Health
Ms Anna Pooley – representing Environmental Health

LSC.04/16 **APPOINTMENT OF CHAIRMAN**

RESOLVED

That Cllr May be appointed Chairman for the duration of the meeting.

LSC.05/16 **DECLARATIONS OF INTEREST**

Members and officers were invited to declare any interests in the items of business to be considered during the course of the meeting but none were made.

LSC.06/16 **TO DETERMINE AN APPLICATION TO VARY A PREMISES LICENCE FOR THE HOPE AND ANCHOR, HOPE COVE**

The Sub-Committee considered a report that sought to determine a request for variations to the premises licence at The Hope and Anchor, Hope Cove.

The Licensing Specialist introduced the report and outlined the details of the application as stated in the application form at Appendix A of the presented report. The details of the current licence were set out in Appendix B of the presented report. Appendix C set out the representations received and Appendix D the list of conditions agreed with the Police Authority.

The Licensing Specialist went on to outline the further information submitted in relation to the application, and the proposed amendments to the application as a result of representations received. She explained to the Sub Committee that the application included a request for live and amplified music to be played outside until 8pm, although this request may be considered unnecessary as

the Live Music Act 2012 allowed live and amplified music to be played until 11pm.

1. Address by the Applicant's representative

The representative outlined the rationale behind the application in respect of each element.

2. Address by the resident

The resident outlined to the Sub Committee his relationship with Hope Cove and referred to the village as a precious safe haven. He specifically responded to points within the application and stated his concerns, particularly regarding noise. He concluded by asked the Sub Committee to maintain the village as a family haven and not a party venue.

3. Address by Environmental Health

The representatives from Environmental Health outlined their objections and concerns with the application. The request for amplified music was not supported. In respect of sales of alcohol to residents and their guests, the amendment to remove guests was welcomed and whilst not suggesting that this element was not supported, there were still some concerns.

Following the statements made by all those in attendance, the Sub Committee asked a number of questions to ensure clarity.

(At 3.00pm, the Sub-Committee adjourned in the presence of Mrs Nightingale to consider the application and reconvened at 3.45pm).

4. The Decision

In announcing the Sub-Committee decision, the Chairman read out the following statement:

We have considered the application to vary the premises licence.

We have considered the Statement of Licensing Policy, the government guidance and our obligations that relate to the promotion of the licensing objectives.

We have read carefully the written representations from parties not present to day and have read carefully representations received from parties present plus additional statements from persons her today. We have also considered the additional conditions proposed by the Police and accepted by the Applicant.

It is our decision to grant this application in part, subject to the following changes being incorporated into the operating schedule. We have determined the changes to be appropriate to achieve the licensing objectives:

- ***Application to alter the internal area within which entertainment may take place has been granted.***
- ***Application to allow amplified regulated entertainment to take place in the external areas between midday and 8pm has been refused as it would not address the licensing objectives, particularly the prevention of public nuisance, and the Live Music Act 2012 means that conditions relating to these activities are unenforceable during the requested hours.***
- ***Application to change the commencement hour for the sale of alcohol to 8am has been granted for residents only.***
- ***Application to allow purchase of alcohol by residents of the premises until 1am and until 3am on New Year's Day has been granted.***
- ***Application to allow residents to be on the premises 24hrs a day has been granted.***

In addition to being appropriate the Committee also believe the amendments to be necessary."

Chairman

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Report to: **Licensing Committee**
Date: **24 November 2016**
Title: **LICENSING OF TAXI DRIVERS POLICY**
Portfolio Area: **Customer First**

Wards Affected: **All**

Relevant Scrutiny Committee:

Urgent Decision: **N** Approval and clearance obtained: **Y / N**

Date next steps can be taken:
(e.g. referral on of recommendation or implementation of substantive decision)

Author: **James Kershaw** Role: **Senior Specialist
Environmental Health**

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RECOMMENDATIONS

That the Licensing Committee RECOMMEND to Council that the draft Taxi Driver Licensing Policy, is adopted at the meeting on 15 December 2016, for implementation on the 1st January 2017.

1. Executive summary

- 1.1. South Hams District Council as the Licensing Authority has the power to issue licences to drivers of Hackney Carriages and Private Hire Vehicles, whom they deem as being fit and proper.

There is no legal definition of what makes a driver a fit and proper person, and it is therefore down to the licensing authority to determine what qualifications they require an applicant to meet in order to be licensed. This policy seeks to set the minimum requirements we will seek from new and existing drivers.

- 1.2. The Council's current policy and driver handbook was issued in 1999, and is therefore out of date. Ideally a policy of this importance should be reviewed every 3-5 years.
- 1.3. There have also been a number of national incidents in relation to the safeguarding of children and vulnerable adults in the past few years associated with the taxi trade. This policy seeks to ensure that all of our drivers are aware of these issues and know how to act to combat child sexual exploitation, and other criminal activities.

2. Background

- 2.1. In South Hams we currently have 131 Hackney Carriage Drivers and 15 Private Hire Drivers licensed. A licence lasts for between 1 and 3 years. All new drivers are required to provide confirmation of their ability to hold a licence by demonstrating that:-
 - They have held a drivers licence for at least 12 months
 - They have an acceptable criminal record through providing an Enhanced Disclosure and Barring Service certificate.
 - That they meet the Group 2 medical standards
 - Pass a knowledge test demonstrating a good understanding of the local area.
- 2.2. Our current policies are outdated and do not offer adequate protection to users of the taxi service or the taxi drivers themselves, when considering changes to legislation.
- 2.3. Our policy must ensure compliance with Article 13 (2) of Directive 2006/123/EC, given domestic effect by regulation 18(4) of the Provision of Services Regulation 2009 SI No 2999, in that the 'authorisation procedures and formalities' for applicants 'shall not be dissuasive...and any charges which the applicants may incur from their application shall be reasonable and proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of the procedures'.

When drafting the policy, we have taken into account best practice from other authorities in the wake of the recent incidents surrounding the taxi industry elsewhere in the Country.

The Policy has also been out for public consultation, meetings have been held with the taxi trade, and the policy was sent to various local and national representatives for comments. Comments received and alterations made to the policy can be viewed in Appendix A.

3. Outcomes/outputs

- 3.1. This report seeks that the Committee recommend to the Council at the meeting on the 15 December that the Taxi Driver Licensing Policy be adopted for implementation on the 1 January 2017.
- 3.2. We will assess the impact of the policy by reporting to the committee at the annual meeting the number of applications received that have been

successful/refused, the number of penalty points issued in a 12 month period, the decisions taken by committee in relation to drivers brought to them in the previous 12 months, and the number of successful appeals brought against Council decisions.

The policy will be reviewed in at least 5 years' time, but sooner should circumstances require it.

4. Options available and consideration of risk

- 4.1. When considering an application for a Driver Licence the Council must ensure that the driver is a "Fit and Proper" person to hold a licence. A person aggrieved by refusal, suspension or revocation of a driver licence can appeal to the Magistrates Court within 21 days of that decision.

Decisions made by the Council need to be defensible. This policy seeks to set a minimum standard that we will expect our licensed drivers to meet. However, notwithstanding this Policy, the Licensing Authority will consider each application and enforcement action on its own merits.

- 4.2. The importance of the taxi trade in providing an essential service in a rural community such as the South Hams is recognised, and imposing unduly stringent restrictions may adversely impact the adequate supply of taxis.

Therefore the policy seeks to strike a decent balance between protecting the safety of taxi users and ensuring that the policy does not unnecessarily restrict the ability of applicants to obtain a licence.

- 4.3. When drafting the policy a public consultation was held from the 5th September for a period of 6 weeks. During this period the Environmental Health Community of Practice held meetings with the taxi trade on the 13th and 15th September. The feedback from this consultation and amendments made to the draft policy can be viewed in the appendices.

However based on the feedback received the following amendments were made and paragraphs considered;

Para. 5.9: The requirement for all drivers to hold a UK driving licence within 12 months of being granted a Taxi driver licence is above and beyond the requirements of U.K. law, however it is felt appropriate to require this as we cannot view the penalty point records on foreign licences.

Para. 5.10: There were concerns raised over the knowledge test content by drivers with them believing that requiring knowledge of the full district is unreasonable especially with the introduction of GPS etc. We agree with some of the comments but feel that a knowledge test should remain part of our policy but we will endeavour to work on the content of the test.

Para. 5.14: During the consultation period the DVSA announced the suspension of their testing from the 1st January 2017. This would affect all Devon licensing authorities who require new drivers to pass this test before being licensed. The Licensing officers across Devon are in collective negotiations with several providers including the Devon Travel Academy which is run by Devon and Somerset Fire and Rescue Service. The location of this training is likely to be Westpoint Exeter but could be held at any fire station as long as there are enough bookings to warrant it.

Para. 5.17: We have received comments in relation to the frequency of training and whether we would accept training provided by other organisations.

In relation to the frequency of training, other organisations stipulate for other occupations that training should be undertaken every 3-5 years. It is envisaged that the driver policy will be reviewed every 5 years and therefore we can review the content during this review.

In regards to other providers, officers have concerns over the content of these courses and therefore believe drivers should be required to attend our sessions.

Para 5.20: There were a number of concerns raised about requiring drivers to use our nominated medical assessors, mainly due to the location of this assessor being in Plymouth. We have been unable to finalise discussions with the provider and therefore have amended the policy to allow drivers to continue to use their own GP's as well as using our nominated provider should they wish.

Para. 5.21: Comments have been received regarding the frequency of medicals, and the fact that there is no requirement for a medical after an initial application until the age of 45. This policy is in line with the DVSA standards for HGV and Bus drivers and therefore we feel it is appropriate to continue with this frequency.

It is the responsibility of the driver to inform the Licensing Authority of any medical conditions which may impact on their ability to drive, should we receive notification then we would require the driver to provide a medical assessment in a timely manner.

Para. 6.7: Following feedback the requirements for certificates of good conduct have been amended to take into account the impact that the proposals may have had on the children of armed service personnel who may have lived in many different countries. The policy therefore now only applies to countries lived in since the age of 18 rather than 10.

Chapter 9.0: The consultation has shown support for the introduction of a penalty points system, as long as the points are awarded in a fair and consistent manner. The Council intends to do this and we will report the points awarded in the previous 12 month period as part of the annual report to the committee.

Appendix B Para. 4: Following concerns about the requirement for drivers to hand lost property into a police station within 48 hours of it being discovered, the policy has been amended to allow discretion by the driver as to what items of lost property should be kept and how to ensure it is reunited with the passenger.

Appendix B Para. 9: It was felt inappropriate to stop drivers from eating or drinking in their vehicles and therefore this was removed from the policy.

Also drivers were concerned over the wording about inappropriate conversations and therefore this was amended to make the policy more general.

Appendix D: Concerns have been raised over the frequency of appointments available for new drivers to undertake the knowledge test being once a month. Unfortunately it is felt with current resource levels we are unable to guarantee a greater number of days. We will always endeavour to be flexible with appointments and therefore we have included the word "normally" to the policy to allow for discretion of the officers.

5. Proposed Way Forward

- 5.1. This report seeks that the Committee recommend to the Council at the meeting on the 15th December that the Taxi Driver Licensing Policy be adopted for implementation on the 1st January 2017

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance		<p>The Town Police Clauses Act 1847 gave the Local Authority the power to grant licences to Hackney Carriages for the purpose of plying for hire within the district.</p> <p>The Local Government (Miscellaneous Provisions) Act 1976 amended the powers above to state that a licence can only be granted to someone who is a fit and proper person and has held authorisation to drive a motorcar (drivers licence) for at least 12 months.</p> <p>There is no definition of what someone fit and proper and this policy will help to ensure consistency when determining applications and other determinations such as when to suspend or revoke a licence.</p>

		<p>Whilst we may have a policy each application will still need to be determined on its own merits.</p>
Financial		<p>The policy does not have direct financial impacts on the authority. There will be an increase in obtaining a licence due to the additional requirements that applicants will need to meet, however this is at their expense.</p> <p>We will in due course need to review our licensing fees to ensure that they are in line with the decision made in the European Court of Justice in the Hemming & others v Westminster City Council case. Which states that licensing fees should be set at a level that does not dissuade applicants and is at most the cost of the procedure of issuing a licence.</p>
Risk		<p>A determination by a licensing authority to refuse, revoke or suspend a licence can be appealed as can conditions attached to a licence. An appeal is made to the magistrates.</p> <p>Failure to having made a determination that is defensible could lead to costs being awarded against us.</p> <p>As has been found across the country where the taxi trade has been implicated in criminal actions there has been a negative reputational impact on those licensing authorities. The proposed policy has been developed taking into account learning from these scandals and other good practice.</p>
Comprehensive Impact Assessment Implications		
Equality and Diversity		<p>The policy will hopefully have a positive impact on equality and diversity by promoting good practice in disability awareness amongst the taxi trade.</p>
Safeguarding		<p>The policy will hopefully have a positive impact on safeguarding by ensuring that an essential trade are well regulated, and drivers who have access to vulnerable children and adults are aware of the signs of abuse and how to report these.</p>

Community Safety, Crime and Disorder		A positive impact by ensuring that drivers who have access to sensitive information about people and their homes are thoroughly vetted.
Health, Safety and Wellbeing		No overarching concerns foreseen
Other implications		None foreseen

Supporting Information

Appendices:

Consultation feedback
Draft Taxi Driver Policy

Background Papers:

Taxi and PHV Licensing Councillors Handbook (England and Wales), Local Government Association

Taxi and Private Hire Vehicle Licensing: Best Practice Guidance, Department for Transport, 2010.

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Consultation Feedback on Taxi Driver Licensing Policy

Response from Anonymous member of the public

<u>Paragraph No.</u>	<u>Comments</u>
5.20	<p>An applicant should be able to see their own GP for a medical examination.</p> <p>An obligation to use a Licensing Authority approved medical centre questions: a) the integrity of the applicant's GP (should that GP be happy to see their patient for a medical examination), b) a compromise of Patients' Rights including opting out of the requirement to submit medical history data to another qualified person and the right of a patient to see their own GP.</p> <p>This is also likely to cause inconvenience to the applicant through time and cost of attending the Licensing Authority approved centre. Suggested to be in Plymouth and used by SHDC employees for required medical examinations, this could raise questions of a conflict of interest as applicants are not Council employees.</p>
<u>9c) p.26</u>	<p>As the driver is responsible for the upkeep and cleanliness of the vehicle, they should not be prohibited from staying nourished and hydrated within the vehicle. E.g. in cases of bad weather, traffic jams in hot weather, medical requirements (e.g. Diabetes) etc.</p>
<u>9g) p.27</u>	<p>This should be reworded to: "Drivers should use common sense when initiating conversation so as not to broach subjects which may cause offence."</p>

Response from Ivybridge Town Council

Set out below is the response to the consultation document:

The courts take a disapproving view of a taxi driver carrying anything that may be used as a weapon albeit as a perceived safety measure.

Appendix A of the draft policy – Hackney Carriage and Private Hire Leasing Criminal Convictions Policy (Section 6) covers many levels of convictions including actual body harm (ABH) and common assault. Section 7 includes convictions for possessing a weapon. In other words the appendix covers convictions rather than giving advice.

However, Appendix B Section 9 deals with the Conduct of Drivers. Perhaps it could include a paragraph to the effect that **the driver must not have about his or her person or within the vehicle anything that could be construed as a weapon.** This would tie in with the theme of the appendix.

Response from Sampford Courtenay Parish Council

Dear Sir/Madam

Travelling regularly around mainland (EU) Europe it's noticeable how many countries such as France adopt a simple **standardised** policy for taxi identification.

The roof of the vehicle has bright red display light for 'in use' and a green one for 'available for hire'. They are clearly visible, always located on the same part of the vehicle roof and offer real clarity regarding availability and what the vehicle is. Here in the UK we appear to have a mix of orange and other displays, i.e. not a uniform means of clear identification.

Perhaps this policy could be adopted in our districts?

Response from a Tavistock based Taxi Firm

PARAGRAPH No		
5.10	COMMENTS	Any knowledge tests must be set against a specific working area or routes. To expect an applicant to know everywhere within west devon is unreasonable and unpractical. If the general working area is either Tavistock or Okehampton then that is the area to be concentrated on. More so for new independent operators as drivers for larger companies will have office control for guidance.
5.13 – 5.16	COMMENTS	Timescale is of utmost importance when recruiting new drivers. Currently taking upto 4 weeks and beyond is restrictive. The DSA are removing the taxi driving assessment test and being expected to take all the PATS courses and safeguarding courses not only takes time, as I suspect there will be limited dates within the month to do these, but they will also mean traveling to the nearest location to get them done. There needs to be regular dates that coincide with each other to make the licencing process a quick as possible and as affordable as possible.
5.21	COMMENTS	If a driver gets initially licenced at 25, potentially not requiring a medical for a further 20 years? I think 5 yr intervals are enough and those over 65 should be subject to a medical every year unless the doctor thinks otherwise. I have two over 65 who are fitter than the younger ones!!
9	COMMENTS	Penalty points are a good idea as long as it is operated correctly

AP A 9.1	COMMENTS	<p>Take lost property to a police station within 24 hrs... where?</p> <p>Tavistock police station does not accept lost property and you have to take it to Plymouth. Having to do that, potentially a few times a week is not practical. Perhaps if there is not a local police station WDBC can hold it at their offices!</p>
AP B 9c	COMMENTS	<p>The driver shall not eat or drink in the vehicle? Its my vehicle!! As long as its clean and tidy why cant we eat when waiting for fares? People complain now that there are not many taxis at dinner time, this will make it worse</p>
AP D step 2	COMMENTS	<p>Tests held one day per month?</p> <p>This needs to be more frequent.</p>

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**South Hams
District Council**

DRAFT
**Hackney Carriage and Private Hire
Licensing Policy**

Date of commencement: **XX.XX.XXXX**

Version no. 1.0
Date of Review: **XX.XX.XXXX**

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Preface

This section does not form part of the policy and is for information purposes only.

This Policy will guide the Council, as the “Licensing Authority” when considering applications under the Town Police Clauses Act 1847, Town Police Clauses Act 1889 and Local Government (Miscellaneous Provisions) Act 1976, as amended, which places on South Hams District Council the duty to carry out their licensing functions in respect of hackney carriages and private hire vehicles.

This is a general guide that has been prepared for the assistance and guidance of Hackney Carriage and Private Hire Drivers and any other person with an interest in Hackney Carriage and Private Hire licensing in the South Hams area. It does not stand on its own and South Hams District Council, its Officers and Agents, do not accept any responsibility for any loss caused by any person acting as a result of the material enclosed here.

If you have any questions or queries about this document:

Write to us at:

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Devon
TQ9 5NE

Or contact us by email or via our website on:

Phone: 01803 861 234

Email: licensing@swdevon.gov.uk

Website: www.southhams.gov.uk

Foreword

Hackney carriages and private hire vehicles are an important mode of local transport, and as such have a specific role to play in a united transport system. They are able to provide safe, secure and comfortable transport, providing an on-request door-to-door service in various circumstances, including where public transport may not be available (e.g. in very rural areas), or for those with mobility difficulties.

The aim of the Policy is to control the provision of a robust taxi and private hire licensing system, which makes sure the public travel safely, receive a good level of service and drivers and operators are not overloaded by unnecessary conditions.

In setting out its Policy, the Licensing Authority seeks to promote the following objectives:

- **The safety and health of drivers and the public;**
- **Vehicle safety, comfort and access;**
- **To prevent crime and disorder and to protect the public;**
- **To encourage environmental sustainability.**

Public safety is vital, and the authority seek to make sure through licensing that all taxi and private hire vehicles are fit for purpose and that their drivers and/or operators are fit and proper persons.

This policy provides information and guidance to licence applicants, clarity for licensed vehicle owners, drivers and operators and the public as to the way that the Licensing Authority will undertake its licensing functions. In addition, the policy document looks to help the Licensing Authority in reaching a decision on a particular application or a particular enforcement issue, setting out those matters that will normally be taken into account.

This Policy will be reviewed periodically to take into account information gathered over a period of time, together with the outcomes of any updates in legislation or associated government guidance. Supporting appendices to the Policy may be updated from time to time, and therefore, applicants and all other interested persons are advised to contact the Licensing Department for up-to-date information.

In the preparation and publication of this policy the Licensing Authorities have had regard to the following:

- Guidance issued by the Department for Transport (“Taxi and Private Hire Vehicle Licensing: Best Practice Guidance” – Edition March 2010).
- Law Commission Taxi and Private Hire Services Paper No 347 – May 2014
- Local Government Association Taxi and PHV Licensing Councillor’s Handbook (England and Wales) – March 2015
- Benchmarking with other Authorities
- Consultation with Taxi Trade
- Licensing Objectives.

Nothing in this policy document should be regarded or interpreted as an indication that any requirement of licensing or other law may be overridden.

1. Introduction

- 1.1 This Policy is written pursuant to the provisions of the Town Police Clauses Act 1847, Town Police Clauses Act 1889, Local Government (Miscellaneous Provisions) Act 1976, as amended, Transport Acts of 1980 and 1985, which places on The Council the duty to carry out their licensing functions in respect of hackney carriages and private hire vehicles.
- 1.2 It is recognised that other legislation exists which impacts on taxi licensing, such as the Equality Act 2010 and therefore, aspects of this Policy pay regard to these additional legislative requirements.
- 1.3 It is intended that the Policy will take effect from **XX XX XXXX**.
- 1.4 The Policy relates to hackney carriage and private hire licensing of drivers and operators.
- 1.4 The purpose of this Policy is to assist the Licensing Authority in reaching a decision on any particular application, and in setting out those matters that are normally taken into account. Additionally, the document seeks to provide clear advice for licence holders in terms of the standards expected, and also to provide general advice to service users and the general public.
- 1.5 The Policy is subject to review every five years. Any major changes to policy made between review periods will be preceded by public consultation.

Licensing Authority Area



2 Licensing Objectives & Related Legislation

2.1 The Licensing Authorities are committed to ensuring the provision of a professional hackney carriage and private hire service, by continued monitoring and improvement of standards and procedures, and seeks to promote the following objectives when considering applications, or when assessing the extension of an existing licence:

- **The safety and health of drivers and the public;**
- **Vehicle safety, comfort and access;**
- **To prevent crime and disorder and to protect the public;**
- **To encourage environment sustainability.**

2.2 In promoting these objectives, considerations such as those set out at paragraphs 2.3 and 2.4 will be taken into account by the Licensing Authority, and applicants and licence holders will be expected to continuously show they can meet or exceed specifications set by the Licensing Authority.

2.3 Safety and Health of Driver and the Public:

- Consideration of history of convictions and cautions;
- Driver training, qualification and performance;
- Health and fitness of applicant for driver licence, or existing licence holder;
- Regular driver health checks;
- Knowledge of South Hams District Council area.

2.4 Vehicle Safety, Comfort and Access:

- Standards of vehicle appearance and comfort;
- Use and location of ranks;
- Provision of disabled facilities;
- Provision for all age groups;
- Provision of safe and comfortable premises for customers to use if applicable.

2.5 To Prevent Crime and Disorder and to Protect the Public:

- Vetting, qualification, training and monitoring of licence holders;
- Operating rules and disciplinary processes;
- Measures to prevent noise and light nuisance from taxi activities;
- Commitment to work with Licensing Authority, Police and other statutory authorities.

2.6 The Licensing Authority is aware that applying licensing requirements which are unduly severe may unreasonably limit the supply of taxi and private hire services, and can lead to negative safety implications. Therefore, the Licensing Authority has considered each of its licensing requirements in relation to the proportion of risk it aims to address.

2.7 The Licensing Authority also recognises that the licensing function is only one means of securing the delivery of the above objectives. The Licensing Authority will therefore continue to work in partnership with other stakeholders, such as the Police, Crime & Disorder Partnerships and the Vehicle and Operator Services Agency (VOSA) towards the promotion of the objectives.

2.8 In undertaking its licensing function, the Licensing Authority will have regard to the following legislation:

- Town and Police Clauses Act 1847
- Town Police Clauses Act 1889
- Transport Act 1980 & 1985
- Road Traffic Acts
- The Local Government (Miscellaneous Provisions) Act 1976, as amended
- Disability Discrimination Act 1995, as amended
- Environmental Protection Act 1990
- Health Act 2006
- The Smoke-free (Premises and Enforcement) Regulations 2006
- The Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007
- The Equality Act 2010
- The European Convention on Human Rights, which is applied by the Human Rights Act 1998
- The Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000
- The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002

2.6 The Licensing Authority will also have regard to other legislation, strategies, policies and a range of guidance in its decision-making.

3. Consultation

3.1 Before determining this Policy, the Licensing Authority has consulted with numerous persons and organisations including the following:

- Taxi Trade within the South Hams area
- Taxi Trade Representative/s
- Department for Transport (including VOSA)
- Devon County Council Highways Transport Services
- Driving Standards Agency
- Chief Officer of Police, Devon & Cornwall Constabulary
- Town and Parish Councils in West Devon Borough Council Area
- Citizens Advice Bureau
- Age UK
- Local and National Representatives of Child Safety Groups
- Living Options Devon
- Local and National Representatives of Disability Groups
- Home Office

3.2 Consultees were permitted to make representations in writing or via electronic means e.g. email response. All consultation responses have been taken into account when finalising the policy.

4. Departure from Policy

4.1 In exercising its discretion in carrying out its functions, the Licensing Authority will have regard to this Policy and the objectives set out within. However, notwithstanding this Policy, the Licensing Authority will consider each application and enforcement action on its own merits.

4.2 Where it is necessary for the Licensing Authority to depart significantly from this Policy, clear and substantive reasons for doing so will be given. Such a decision will not set a precedent for other applications of a similar nature.

PART ONE – Hackney Carriage and Private Hire Drivers

5. Drivers' Licensing Requirements

5.1 Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 require that a district council will not grant a licence to drive a private hire or hackney carriage vehicle unless they are satisfied that the applicant is a 'fit and proper person' to hold a driver's licence.

5.2 The term 'fit and proper person' for the purposes of hackney carriage and private hire licensing is not legally defined. However, in deciding whether a person is fit and proper' to hold a licence, the Licensing Authority will use the test of:

Would you allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter, or any other person for whom they care, to get into a licensed vehicle with the applicant alone?

The wording of this test originates from Button, J. T. H. (1999), Taxis – Licensing Law and Practice, Butterworths, London.

5.3 When determining whether a person is "fit and proper", the Licensing Authority will consider the applicant's knowledge of the local area and matters related to the work of a licensed driver; their driving experience; driving qualifications; medical fitness; criminal record; previous history as a licensed driver or operator; any other matter considered relevant to the protection of the public or driver. In addition, the Licensing Authority may also consider further information from other sources, including the Police, other Licensing Authorities and Statutory Agencies.

5.4 A driver will be required to maintain their ability to be a 'fit and proper person' while licensed and must report any driving offences, changes to medical conditions, civil or criminal offences for which they have been interviewed or charged.

5.5 If the Licensing Authority suspects that a driver may no longer meet the standards required, Officers may need to conduct further enquiries to verify any information provided as to the fitness of a person to hold a licence. By submitting an application for a licence or holding a licence, the applicant gives their consent to the release of data where necessary.

5.6 Applicants should note that to make a false statutory declaration is a serious criminal offence, punishable upon conviction by imprisonment for a term not exceeding two years or to a fine to be decided by the court or both. This statutory declaration may in certain circumstances, be forwarded to the police for examination.

Dual Driver Licences

5.7 The Licensing Authority issues a dual Hackney Carriage and Private Hire driver licence to give the holder the flexibility to drive either type of vehicle. Licence holders are required to obey with any conditions or byelaws that are relevant to the work they are carrying out at any time, which will be dependent on the licensed vehicle being used.

Driver Knowledge and Proficiency

- 5.8 Hackney carriage and private hire drivers must hold a valid full UK driving licence (licence issued in accordance with Part III of the Road Traffic Act 1972 (as amended)) and this licence must have been held for no less than 12 months at the time of application.
- 5.9 An applicant who meets the licensing requirements by benefit of an acceptable non-UK driving licence must obtain a full UK driving licence within 12 months of issue of the hackney carriage/private hire driver licence.
- 5.10 Hackney Carriage and Private Hire drivers are expected to have a good working knowledge of the South Hams and the surrounding area, as well as the Highway Code and relevant legislation. Applicants will be tested on their knowledge of the above and must pass a test to a set standard. The test will be conducted in English only at the Council Offices. Failure to attend without prior notice will mean forfeiture of any monies paid. Oral tests will only be conducted under exceptional circumstances which can be discussed when initially applying.
- 5.11 Applicants must demonstrate an adequate and reasonable level of spoken English and be able to converse with authorised officers and members of the public. The purpose of the requirement is to ensure that members of the public and drivers are safeguarded by making sure that licensed drivers can communicate and give and understand most instructions. Applicants who cannot demonstrate an adequate or reasonable level of spoken English and/or a suitable qualification will be required to undertake an independent assessment of their spoken English. The procedure for the English assessment is detailed at Appendix E.
- 5.12 If the Licensing Authority has concerns that an existing driver cannot demonstrate an adequate or reasonable level of spoken English and/or a suitable qualification may be referred to the Licensing Committee with the recommendation that they undertake an independent assessment of their spoken English.
- 5.13 Hackney carriage and private hire drivers, as a profession, have a responsibility for the safe transportation of fare-paying passengers. Therefore, the Licensing Authority as part of its application procedure requires that an assessment of the drivers' ability must be obtained by all new applicants. Similarly, where an existing licensed driver receives an endorsement/s or penalty points the Licensing Authority may require that person to undertake the same assessment.
- 5.14 The driving assessment would be achieved by successful completion of a standard taxi driving assessment, as approved by the Licensing Authority. The test is reflective of modern driving practices; the standard is set at a level suitable for the full driving licence holder, which is therefore of a higher level than the learner driver test.
- 5.15 It is a requirement that all applicants for new or renewal applications must have completed a Passenger Assistance Training Scheme (PATS) training course with a certificated trainer, as approved by the Licensing Authority. A certificate to prove that the course has been completed must be presented with the application.
- 5.16 As part of the Councils' commitment to protecting the safety of those most vulnerable in our communities, and recognising the important role that taxi drivers play as eyes and ears within the community there is an additional requirement that all driver renewal

applications shall be accompanied by evidence that the applicant has attended a Safeguarding Awareness Workshop relating to Children and Vulnerable Adults.

- 5.17 All new drivers must attend a Safeguarding Awareness Workshop within 12 months of their licence being granted. Failure to do so will result in the licence being suspended or not renewed.
- 5.18 The Licensing Authority, at its discretion, may require specific training to be undertaken by an applicant or a licensed driver where considered suitable.

Medical Examination and Exemptions

- 5.19 The Licensing Authority requires that all new drivers complete a medical examination prior to making an application, and will require further medical assessments as detailed below. The medical examination will make sure that the applicant/licence holder satisfies all the requirements of the DVLA Group II medical standards of fitness to drive.
- 5.20 The medical assessment may be undertaken by either a Licensing Authority approved medical centre or the driver's own GP surgery. The applicant will be responsible for making sure that their medical records are available to the medical practitioner so that the medical assessment can be completed. A medical certificate in the agreed format must be provided to the Licensing Authority following the assessment, no older than three months at the time of the application being completed.
- 5.21 The requirements for applicants/licensed drivers regarding medical examination are as follows:
- Upon new driver application
 - Every 5 years from the age of 45 years (*in intervening years, licence holders are required to declare that there has been no change in their medical standard*)
 - Every year where the driver is aged 65 years or over.
 - Or any time as required by the Licensing Authority or medical practitioner
- 5.22 Drivers who suffer from certain medical conditions may be required to provide more frequent medical assessments in relation to the specific medical condition.
- 5.23 Where there is any doubt as to the medical fitness of the applicant, the Licensing Authority may ask the applicant to take further medical examination at a Licensing Authority approved medical centre at the applicant's/licence holder's own expense.
- 5.24 Where there remains any doubt about the medical fitness of the applicant/licence holder, following the additional assessment described in the previous paragraph, the Licensing Authority will review the medical evidence. They will then make a final decision as to the suitability of the applicant/licence holder to drive a hackney carriage or private hire vehicle in light of the medical evidence available.
- 5.25 All licence holders are required to inform their Licensing Authority of any illness, condition or any other matter that affects their ability to drive.
- 5.26 Exemption from carrying guide, hearing and certain other assistance dogs accompanying disabled persons, can only be sought on medical grounds. Therefore, applicants will need to show any allergies or phobias by providing medical evidence to the Licensing Authority.

- 5.27 It is important that applications for the exemption are made before taking a medical examination.
- 5.28 If an application for exemption is successful, the Licensing Authority will issue the driver with a Notice of Exemption. This Exemption must be exhibited in the vehicle by fixing it, facing outwards, either on the windscreen or in a prominent position on the dashboard.
- 6. Disclosure Barring Service (DBS), Criminal Disclosures, and Certificates of Good Conduct**
- 6.1 Due to the nature of their role, Hackney Carriage and Private Hire drivers are included as 'exceptions' from the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Therefore, all applicants and licensed drivers must reveal on their application form any caution or conviction, even if it is 'spent' for other purposes. All offences will appear on an Enhanced Disclosure and Barring Service (DBS) certificate. There are certain circumstances where old or minor cautions and convictions may be 'protected' and will not appear on a DBS certificate, more information on this can be found in the 'DBS Filtering Guide' available on the DBS website.
- 6.2 The Licensing Authority requires that all new applicants submit to a DBS check upon application for a Hackney Carriage and Private Hire driver licence. The check must be made through the Licensing Authority's electronic DBS checking service.
- 6.3 All new applicants and current licence holders must subscribe to the DBS Update Service for the required annual fee as set by the DBS. If the subscription remains up-to-date, the licence holder will not be required to complete another DBS application unless there are changes to their criminal record status
- 6.4 If the applicant has subscribed to the 'Update Service', their subscription is up-to-date and written authorisation to do so has been given, the Licensing Authority will be able to access the online Update Service to carry out a 'Status Check'. The status will be checked annually, but may be completed at any time if there is reason to do so. For example, if there is the reasonable belief that the licence holder has obtained a criminal conviction which has not been notified to the Licensing Authority.
- 6.5 If the subscription lapses, the next time a DBS check is required a new DBS application must be completed, including the full DBS application fee.
- 6.6 Applicants will be required to prove that they have the correct permissions in place to work in the UK, before being granted a licence. Applicants will be required to provide, amongst other documents, a birth certificate or valid passport. Additional proof of identity will be required for the enhanced DBS check, the full requirements of which may be found on the DBS website. The Licensing Authority will operate its application procedures in line with guidance issued by the UK Border Agency on Prevention of Illegal Working and its associated Code of Practice.
- 6.7 For new driver applications, if you have lived outside of the UK for a continuous period of 6 months or more at any time since your eighteenth birthday, you must obtain a Certificate of Good Conduct which must be under 6 months old. A Certificate of Good Conduct (or equivalent) authenticated and translated by the relevant embassy is required. The GOV.UK website provides information about obtaining these certificates, or similar documents from other countries.

- 6.8 Failure to inform the Licensing Authority, without delay, of any convictions, cautions and fixed penalty notices during the licensing application and/or licensing period (i.e. once the licence is granted) may result in the application being refused or the licence being suspended or revoked. Similarly, where convictions, cautions or fixed penalty notices are notified, depending on the nature of the incident, this may result in suspension or revocation of the driver licence.
- 6.9 All applicants for the grant/renewal of a licence requiring a DBS check, or by request during the licence period, shall be responsible for the costs of gaining the DBS certificate.

DVLA Licence Checking

- 6.12 The Licensing Authority will need an applicant to sign a mandate form in order that a DVLA licence check can be carried out at any time while licensed as a Hackney Carriage and Private Hire driver. This will allow the Licensing Authority to access information relating to DVLA driving licence entitlements and endorsements.

7. Relevance of Convictions, Cautions, Fixed Penalties and other relevant information

- 7.1 When considering convictions and cautions recorded against an applicant or an existing licence holder, the Licensing Authority will have regard to the “Convictions & Cautions Policy” set out in **Appendix A**.
- 7.2 In assessing whether an applicant or licence holder is a ‘fit and proper’ person to hold a licence, the Licensing Authority will consider each case on its own merit.
- 7.3 The Licensing Authority will take account of cautions, whether spent or unspent, fixed penalty notices and other information, but only if they are relevant to an application for a licence or impact on the continuance of an existing driver licence. Upon receipt of the Disclosure and Barring Service check, the Licensing Authority will consider whether any, or all, of the spent convictions have any real relevance to the issue of whether the applicant or licence holder is a fit and proper person to hold a licence. In certain cases, the matter may be referred to the Licensing Committee for a decision.
- 7.4 The Licensing Authority will have regard to fixed penalties when considering if an applicant is a fit and proper person. Failure to inform the Licensing Authority of any fixed penalty notices obtained during the application or licence period may result in possible refusal of the application or suspension or withdrawal of the licence.
- 7.5 In relation to cautions, the Licensing Authorities will have regard to the nature of the incident when considering its relevance to an application or continuance of an existing driver licence.
- 7.6 In relation to previous convictions, the Licensing Authority will have regard to the following:
- Whether the conviction/s are spent or unspent;
 - The nature of the offence/s;
 - The age of the offence/s;
 - The apparent seriousness, as gauged by the penalty applied.

- 7.7 In general terms, the more recent, serious and relevant to the Licensing Authority's licensing objectives the offence is, the less likely the application will be granted or that an existing licence will be permitted to remain in effect.

8 Grant and Renewal of Driver Licences

New Applications

- 8.1 The Licensing Authority will normally issue a three-year licence unless a reasonable request for a licence of a shorter period is made. The Licensing Authority retain discretion to issue licences of a shorter period if it considers appropriate.

Renewal Applications

- 8.2 The Licensing Authority will normally issue a three-year licence upon renewal, unless a reasonable request for a licence for a shorter period is made. The Licensing Authority retains discretion to issue licences of a shorter period if it considers this to be reasonable given the individual circumstances.
- 8.3 Applications must be made on the specified application form, which is available to download from the Council's website or upon request to the Licensing Team. The Licensing Authority will not accept the application as being served until all prescribed supporting documentation is provided.
- 8.4 Although there is no statutory duty placed on the Council to issue reminders, holders of existing driver licences will be reminded in advance of their licence expiring and the requirement to renew. It is recommended that drivers note their licence expiry date and apply to renew in good time. It remains the licence holder's responsibility to ensure that licences are renewed in time.
- 8.5 The reminder service is not a statutory requirement. Failure to receive a reminder is not a valid reason for not renewing a licence in time or for supplying the Council with a required document.
- 8.6 Failure to renew a licence before the expiry date will result in the applicant being required to make an application for the grant of a new licence and comply with all the associated requirements of the new application process. If the licence renewal is submitted late as a result of exceptional circumstances it may be accepted. 'Exceptional' in this instance will only apply where failure to renew on time is due to unforeseen circumstances, for example where the applicant has been unable to apply due to an emergency situation.

9. Code of Good Conduct and Penalty Point System

- 9.1 The Licensing Authority has introduced a Code of Good Conduct for Hackney Carriage and Private Hire drivers, which serves to promote the Licensing Authority's licensing objectives. Failure to meet with these standards may lead to the Licensing Authority determining that a licensed driver is no longer a 'fit and proper' person to hold a licence.
- 9.2 The Code is provided at **Appendix B** and should be read together with the other statutory and policy requirements in this document. By accepting a licence from the Licensing Authority, licensed drivers will be deemed to have read and accepted the Council's Code of Good Conduct, therefore agreeing to follow its contents.

Penalty Point System

- 9.3 The introduction of the Penalty Points System is to provide an effective enforcement process for Licensing Officers in respect of Hackney Carriage and Private Hire Driver and Vehicle Licence holders who are found to be in breach of local or national conditions and policies relating to the licensing functions.
- 9.4 The emphasis of the Penalty Points System is to increase and guarantee the safety and wellbeing of members of the public as well as compliance with legal requirements. The system is only intended to ensure compliance by those licence holders who it is proved have breached or are in breach of the rules and regulations that they should be complying with.
- 9.5 The system operates in line with penalty points endorsed on a driving licence and that where 12 unspent penalty points are accumulated this will result in automatic referral to a Licensing Committee. Where a referral is made to a Licensing Committee, it will be that Committee's decision on what further action if any should be taken.
- 9.6 Where penalty points are administered by an Officer and the licence holder wishes to dispute the matter, the licence holder may request for the matter to be referred to a Licensing Committee.
- 9.7 Any licence holder has the right to appeal against a Licensing Committee decision to the Magistrates Court within 21 days of notification of the Committee's decision.
- 9.8 Details on when penalty points may be given are found at **Appendix C**.
- 9.9 The issuing of penalty points does not preclude the Licensing Authority from taking further enforcement action where there has been a breach of any of the regulations of the Local Government (Miscellaneous Provisions) Act 1976 or the Town Police Clauses Acts

10. Smoking

- 10.1 Smoking in a smoke-free place is prohibited under the Health Act 2006. A 'smoke-free place' includes a licensed Hackney Carriage or Private Hire vehicle. In the context of the Health Act, smoking relates to the smoking of cigarettes and other tobacco products.
- 10.2 The driver of a licensed vehicle must not smoke in the vehicle at any time, including when the vehicles is being used for social, domestic and pleasure purposes.
- 10.3 The driver of a licensed vehicle must not allow any other person or fare-paying passengers to smoke in a licensed vehicle.
- 10.4 This also includes a ban on electronic inhaler type cigarettes or vaporisers, which mimic the action of smoking.

APPENDIX A

Hackney Carriage and Private Hire Licensing Criminal Convictions Policy

1. Introduction

- 1.1 The purpose of this policy is to provide guidance on the criteria taken into account by the Licensing Authority when deciding whether or not an applicant or an existing licence holder is a fit and proper person to hold a hackney carriage and/or private hire driver or operator licence.
- 1.2 The prime aim of the licensing authority is to protect the safety of the public. The licensing authority is concerned to ensure:
- That a person is a fit and proper person
 - That the person does not pose a threat to the public
 - That the public are safeguarded from dishonest person
 - The safeguarding of children, young persons and vulnerable adults
- 1.3 This policy provides guidance to any person with an interest in taxi and private hire licensing. In particular, but not exclusively:
- Applicants for drivers' licences
 - Existing licensed drivers whose licences are being reviewed
 - Licensing officers
 - Members of the licensing committee/ panel (or other relevant decision making body)
 - Magistrates hearing appeals against local authority decisions
- 1.4 Where officers under the Council's Scheme of Delegation, have powers to grant licences, they will use these guidelines when making a decision to grant a licence. In all other cases, applications for licences will be referred to the licensing committee/panel (or other relevant decision-making body). While officers and the committee/panel will have regard to the guidelines contained in the policy, each case will be considered on its individual merits and, where the circumstances demand, the committee/officer may depart from the guidelines.

2. General policy

- 2.1 There may be occasions where it is appropriate to depart from the guidelines, for example where the offence is a one-off occasion or there are mitigating circumstances or alternatively where there are many or continuous offences which may show a pattern of offending and unfitness.
- 2.2 A person with a conviction for a serious offence need not be automatically barred from obtaining a licence, but would normally be expected to:
- a. Remain free of conviction for an appropriate period; and
 - b. Show adequate evidence that he or she is a fit and proper person to hold a licence (the onus is on the applicant to produce such evidence). Simply remaining free of conviction may not generally be regarded as satisfactory evidence that a person is a fit and proper person to hold a licence.

- 2.3 Where an applicant has been convicted of a criminal offence, the licensing authority cannot review the merits of the conviction [Nottingham City Licensing Authority v. Mohammed Farooq (1998)].

3. Appeals

- 3.1 Any applicant refused a driver's licence on the grounds that the licensing authority is not satisfied he is a fit and proper person to hold such a licence has a right to appeal to the Magistrates' Court within 21 days of the notice of refusal [Local Government Miscellaneous Provisions Act 1976, s 77 (1)].

4. Powers

- 4.1 Section 61 and Section 62 of the Local Government Miscellaneous Provisions Act 1976 allow the licensing authority to suspend, revoke or refuse to renew a licence if the application/licence holder has been convicted of an offence involving dishonesty, indecency, violence; failure to comply with the provisions of the Town Police Clauses Act 1847; failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976; or any other reasonable cause.
- 4.2 The Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002, allows the licensing authority to take into account all convictions recorded against an applicant or the holder of a private hire vehicle or hackney carriage driver's licence, whether spent or not. Therefore the licensing authority will have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending.
- 4.3 In this policy the term "disqualification" refers to the period served, in order to take account of the fact that a court may reduce the period of disqualification from driving. An applicant must provide evidence in advance to prove that the court agreed a reduction in the period of disqualification.

5. Consideration of disclosed criminal history

- 5.1 Under the provisions of Sections 51, 55, and 59, Local Government (Miscellaneous Provisions) Act 1976, the licensing authority is required to ensure that an applicant for the grant or renewal of a hackney carriage and/or a private hire vehicle drivers' licence and/or private hire vehicle operator's licence is a 'fit and proper' person to hold such a licence. However, if an applicant has any convictions, warnings, cautions or charges awaiting trial, the licensing authority will look into:
- How relevant the offence(s) are to the licence being applied for
 - How serious the offence(s) were
 - When the offence(s) were committed
 - The date of conviction
 - Circumstances of the individual concerned
 - Sentence imposed by the court
 - The applicant's age at the time of conviction
 - Whether they form part of a pattern of offending
 - Any other character check considered reasonable (e.g. personal references)
 - Any other factors that might be relevant
- 5.2 Existing holders of drivers' licences are required to notify the licensing authority in writing within twenty-eight days of receiving a driving licence endorsement, fixed

penalty notice or criminal conviction (including cautions).

- 5.3 Applicants can discuss further what effect a caution/conviction may have on any application by contacting the licensing officer in confidence for advice.
- 5.4 The licensing authority conducts disclosures from the Disclosure and Barring Service (DBS) of any applicant for a driver licence. The licensing authority follows the DBS's Code of Practice on the fair use and storage of disclosure information. A copy is available on request.
- 5.5 Applicants applying for the grant or a renewal of a drivers' licence will be required to get a disclosure at their own expense. The licensing authority stands by the DBS's Policy on the secure storage, handling, use, retention and disposal of disclosure information, which is available on request.
- 5.6 More information about the DBS can be found on their website.
- 5.7 The licensing authority is also permitted to use other records and information that may be available to it in deciding applications or an entitlement to continue holding a licence. This may include information held by the licensing authority or other licensing authorities, and information disclosed by the police.
- 5.8 It is an offence for any person, knowingly or recklessly, to make a false declaration or to omit any material particular in giving information required by the application for a licence. Where an applicant has made a false statement or a false declaration on their application for the grant or renewal of a licence, the licence will normally be refused.

6 Serious offences involving violence

- 6.1 Licensed drivers have close regular contact with the public. A firm line is to be taken with those who have convictions for offences involving violence. An application will normally be refused if the applicant has a conviction for an offence that involved the loss of life.
- 6.2 In other cases anyone of a violent disposition will normally be refused to be licensed until at least 3 years free of such conviction. However, given the range of the offences that involve violence, consideration must be given to the nature of the conviction.
- 6.3 Unless there are exceptional circumstances a licence will not normally be granted where the applicant has a conviction for an offence such as:
- Murder
 - Manslaughter
 - Manslaughter or culpable homicide while driving
 - Terrorism offences
 - Or any similar offences (including attempted or conspiracy to commit) offences which replace the above
- 6.4 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s) which replace the offences below and the conviction is less than 10 years prior to the date of application:
- Arson
 - Malicious wounding or grievous bodily harm which is racially aggravated
 - Actual bodily harm which is racially aggravated
 - Grievous bodily harm with intent

- Robbery
- Possession of firearm
- Riot
- Assault Police
- Common assault with racially aggravated
- Violent disorder
- Resisting arrest
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

6.5 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s) which replace the offences below and the conviction is less than 5 years prior to the date of application:

- Racially-aggravated criminal damage
- Racially-aggravated offence
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

6.6 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s) which replace the offences below and the conviction is less than 3 years prior to the date of application:

- Common assault
- Assault occasioning actual bodily harm
- Affray
- S5 Public Order Act 1986 offence (harassment, alarm or distress)
- S.4 Public Order Act 1986 offence (fear of provocation of violence)
- S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
- Obstruction
- Criminal damage
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

6.7 A licence will not normally be granted if an applicant has more than one conviction in the last 10 years for an offence of a violent nature.

6.8 In the event of a licence being granted, not revoked or suspended, a strict warning both verbally and in writing should be administered.

7. Possession of a weapon

7.1 If an applicant has been convicted of possession of a weapon or any other weapon related offence, this will give serious concern as to whether the person is fit to transport the public.

7.2 Depending on the circumstances of the offence, an applicant should be free of conviction for 3 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), before a licence is granted.

8. Sex and indecency offences

8.1 As licensed drivers often carry unaccompanied and vulnerable passengers, applicants with convictions for sexual offences must be closely examined. Those with convictions for the more serious sexual offences will generally be refused. For other offences,

applicants will be expected to show a substantial period (normally at least 5 years) free of conviction for such offences before a licence will be granted.

- 8.2 (a) Unless there are exceptional circumstances, an application will normally be refused where the applicant has a conviction for an offence such as:
- Rape
 - Assault by penetration
 - Offences involving children or vulnerable adults
 - Or any similar offences (including attempted or conspiracy to commit) offences which replace the above
- 8.3 (b) Before an application is allowed, an applicant should be free of conviction for at least 10 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), if he/she has a conviction for an offence such as:
- Sexual assault
 - Indecent assault
 - Possession of indecent photographs, child pornography etc.
 - Exploitation of prostitution
 - Trafficking for sexual exploitation
 - Or any similar offences (including attempted or conspiracy to commit) offences which replace the above
- 8.4 (c) Before a licence is granted, an applicant should be free of conviction for at least 3 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), if he/she has a conviction for an offence such as:
- Indecent exposure
 - Soliciting (kerb crawling)
 - Or any similar offences (including attempted or conspiracy to commit) offences which replace the above
- 8.5 In addition to the above the licensing authority will not normally grant a licence to any applicant who is currently on the Sex Offenders Register.
- 8.6 A licence will not normally be granted if an applicant has more than one conviction for a sex or indecency offence.

9. Dishonesty

- 9.1 A licensed PHV or taxi driver is expected to be a trustworthy person. They deal with cash transactions and valuable property may be left in their vehicles. Taxi drivers are required to deal with such property in accordance with the standards set out in Appendix B in relation to lost property. PHV drivers must pass lost property to the operator. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in licensed drivers. Furthermore, it is fairly easy for a dishonest driver to defraud the public by demanding more than the legal or agreed fare, etc. Overseas visitors can be confused by our currency and may be vulnerable to a dishonest driver. For all these reasons, a serious view is taken of any conviction involving dishonesty.
- 9.2 In general, a minimum period of 3 years free of conviction or at least 3 years from completion of sentence (whichever is longer) should be required before granting a licence. Offences involving dishonesty include:
- theft
 - burglary

- fraud
- benefit fraud
- handling or receiving stolen goods
- forgery
- conspiracy to defraud
- obtaining money or property by deception
- other deception
- taking a vehicle without consent
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

10. Drugs

- 10.1 A serious view is taken of any drug related offence. The nature and quantity of the drugs, whether for personal use or supply are issues which should be considered.
- 10.2 A licence will not normally be granted where the applicant has a conviction for an offence related to the supply of drugs and has not been free of conviction for 5 years.
- 10.3 A licence will not normally be granted where the applicant has more than one conviction for offences related to the possession of drugs and has not been free of conviction for 5 years.
- 10.4 An application from an applicant who has an isolated conviction for an offence related to the possession of drugs within the last 3-5 years may be granted a licence, but consideration should be given to the nature and quantity of the drugs.
- 10.5 If there is evidence of persistent drugs use, misuse or dependency a specialist medical examination (in accordance with DVLA Group 2 medical standards) may be required before the licence is granted. If the applicant was an addict then they would normally be required to show evidence of 5 years free from drug taking after detoxification treatment.

11 Driving offences involving the loss of life

- 11.1 A very serious view is to be taken of any applicant who has been convicted of a driving offence that resulted in the loss of life.

A licence will not normally be granted unless the applicant is free of conviction for 7 years or (or at least 3 years must have passed since the completion of the sentence, whichever is longer) if he has a conviction for:

- Causing death by dangerous driving
- Causing death by careless driving whilst under the influence of drink or drugs
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

- 11.2 Before a licence is granted, an applicant should be free of conviction for 3 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), if he has a conviction for:

- Causing death by careless driving
- Causing death by driving: unlicensed, disqualified or uninsured drivers

12 Drink driving/driving under the influence of drugs

- 12.1 As licensees are professional vocational drivers, a serious view is taken of convictions for driving, or being in charge of a vehicle while under the influence of drink or drugs. An isolated incident would not necessarily exclude an applicant from proceeding on the restoration of his DVLA driving licence but s/he should be warned as to the significant risk to his/her licence status in the event of re-offending. More than one conviction for these offences raises major doubts as to the applicant's fitness to drive the public and would generally cause an application to be refused. At least 3 years, after the restoration of the driving licence following a drink-drive conviction should pass before an application will be considered. If there is any suggestion that the applicant is alcohol or drug dependent, a satisfactory special medical report must be provided before the application can be allowed to proceed.

13 Outstanding charges or summonses

- 13.1 If the individual is the subject of an outstanding charge or summons their application can continue to be processed, but the application will need to be reviewed at the conclusion of proceedings. Where information is received through the Notifiable Occupations Scheme on existing licence holders, consideration will be made at committee.
- 13.2 If the outstanding charge or summons involves a serious offence and the individual's conviction history indicates a possible pattern of unlawful behaviour or character trait, then in the interests of public safety the application may be put on hold until proceedings are concluded or the licence may be refused.
- 13.3 A suspension or withdrawal of the licence of a driver takes effect at the end of the period of 21 days beginning with the day on which notice is given to the driver. If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver includes a statement that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver. [Road Safety Act 2006, s 52, 2A&2B]

14 Non-conviction information

- 14.1 If an applicant has, on more than one occasion, been arrested or charged, but not convicted, for a serious offence which suggests he could be a danger to the public, consideration should be given to refusing the application. Such offences would include serious violent offences and serious sex offences.
- 14.2 In assessing the action to take, the safety of the travelling public must be the paramount concern.

15 Cautions

- 15.1 Admission of guilt is required before a caution can be issued. Every case will be considered on its own merits including the details and nature of the offence.

16 Pending Investigation

- 16.1 The Licensing Authority may, at its discretion, revoke a driver's licence where it deems it necessary to do so pending an investigation by either the Licensing Authority or the

Police. This decision will only be taken where it is thought necessary in the interest of public safety.

17 Licensing offences

- 17.1 Certain offences under taxi legislation such as plying for hire, overcharging and refusing to carry disabled persons would normally prevent a licence being granted or renewed until a period of 3 years has passed.

18 Insurance offences

- 18.1 A serious view will be taken of convictions of driving or being in charge of a vehicle without insurance. An isolated incident in the past will not necessarily stop a licence being granted provided he/she has been free of conviction for 3 years; however strict warning should be given to future behaviour. More than one conviction for these offences would normally prevent a licence being granted or renewed.
- 18.2 At least three years should pass (after the restoration of the DVLA driving licence), before a licence would normally be granted for a hackney carriage or private hire drivers licence. An operator found guilty of aiding and abetting the driving of passengers for hire and reward while without insurance will have his/her operators' licence revoked immediately and prevented from holding a licence for three years.

19 Overseas residents

- 19.1 If an applicant has spent six continuous months or more overseas the licensing authority will expect to see evidence of a criminal record check from the country/countries covering the period.

20 Licences issued by other licensing authorities

- 20.1 Applicants who hold a licence with one licensing authority should not automatically assume that their application will be granted by another. Each case will be decided on its own merits.

21 Summary

- 21.1 To summarise, a criminal history in itself may not automatically result in refusal and a current conviction for a serious crime need not bar an applicant permanently from becoming licensed. As the preceding paragraphs indicate, in most cases, an applicant would be expected to remain free from conviction for 3 to 10 years, according to circumstances, before an application can be considered. However, there may be occasions when an application can be allowed before 3 years free from conviction have elapsed.
- 21.2 Any person who has committed an offence and has to wait before an application is positively considered is more likely to value their licence and act accordingly.
- 21.3 While it is possible that an applicant may have a number of convictions that, individually, meet the above guidelines, the overall offending history must be considered when assessing an applicant's suitability to be licensed. A series of offences over a period of time is more likely to give cause for concern than an isolated minor conviction. Obviously some discretion can be afforded if an offence disclosed is isolated and there are mitigating circumstances, but the prime concern is the protection of the public.

20 Appeals

- 20.1 Any applicant refused a driver's licence or where a licensed driver's licence is suspended or revoked on the grounds that the Licensing Authority is not a fit and proper person to hold such a licence, there is a right of appeal to this decision to the Magistrates' Court within 21 days of the notice of refusal, suspension or revocation.

21 Principles of the Rehabilitation of Offenders Act 1974 (as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012)

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

21.7 Sentence Rehabilitation Period

Custodial sentence over 4 years	Never spent
Custodial sentence over 30 up to 48 months	7 years
Custodial sentence over 6 up to 30 months	4 years
Custodial sentence less than 6 months	2 years
Community Order	1 year

Buffer period for adults, this applies from the end date of the sentence.

The following are the rehabilitation periods for sentences that do not have a buffer period and runs from the date of conviction:

Fine	1 year
Conditional discharge	Period of order
Absolute discharge	None
Conditional caution	3 months or when caution stops to having effect
Simple caution	Spent immediately
Compensation order	On the discharge of the order
Binding over, Attendance centre and Hospital order	Period of order

Once a conviction becomes spent it remains spent even if a person is convicted of other offences.

APPENDIX B

Hackney Carriage & Private Hire Driver Code of Conduct

The Council expects Hackney Carriage and Private Hire Drivers to follow the following;

In this code of good conduct 'the Council' means South Hams Council, 'Driver' means a person holding a Hackney Carriage and Private Hire Drivers licence issued by the Council and 'Vehicle' means a Hackney Carriage or Private Hire Vehicle licensed by the Council.

Notes: Failure to follow the Hackney Carriage and Private Hire Drivers Code of Conduct may result in penalty points being issued, suspension or revocation of the licence pursuant to S.61 of the Local Government (Miscellaneous Provisions) Act 1976.

1. Identification of drivers

- a) The driver will at all times whilst using a Hackney Carriage/Private Hire vehicle wear or display their Hackney Carriage and Private Hire Drivers badge in such a position and manner that is plainly visible.
- b) The badge must be shown, if requested, to the hirer of the vehicle or to any 'authorised officer' of the Council or Police Officer, as defined in the Local Government (Miscellaneous Provisions) Act 1976.

2. Hackney Carriage/Private Hire Vehicle

The driver shall not use a Hackney Carriage/Private Hire vehicle unless it conforms with South Hams District Council's Hackney Carriage and Private Hire vehicle conditions (see page **XX** onwards).

3. Hackney Carriage and Private Hire Drivers Licence (badge)

- a) The driver will be issued with a Hackney Carriage/Private Hire Drivers licence and identification badge. These documents remain the property of South Hams District Council.
- b) At the request of an authorised officer of the Council, the licence and/or identification badge must be returned to the Licensing Department.
- c) The driver shall upon the expiry date (without prior renewal to that expiry date), revocation or suspension of the licence, return the licence and driver's identification badge to the Council immediately.

4. Lost property

- a) The driver should carefully search the vehicle for any property which may have accidentally been left behind after each journey. Driver discretion will be required as to whether the item left behind is likely to have significant monetary or sentimental value.
- b) If the driver has found items of such nature accidentally left in their vehicle they must notify their operator. If the passenger contacts the operator or the Council, the driver must arrange for the passenger to collect the goods within 48 hours, alternatively, hand in to the nearest police station.

5. Licence plate

- a) The driver will make sure that the Hackney Carriage/Private Hire Vehicle licence (plate) is securely fixed to the rear of the vehicle at all times, whether working as a Hackney Carriage/Private Hire vehicle or not.
- b) The driver will make sure that the Hackney Carriage/Private Hire Vehicle licence (plate) is not hidden or damaged and is kept clean so that it is clearly visible at all times.

6. Convictions, cautions and fixed penalties

- a) Following any conviction or the issue of a fixed penalty notice which results in penalty points being endorsed on the licence holder's DVLA driving licence, the licence holder must notify the licensing authority within 5 working days of the endorsement of the licence.

A further Taxi driving test may be requested by a Licensing Officer if there is a complaint regarding the standard/quality of their driving.

- b) In the event of a conviction before a court resulting in disqualification from driving, a licensed driver shall immediately inform the licensing authority and surrender their driver licence.

7. Change of address

- a) The driver will notify the Council in writing of any change of address during the period of the licence within 5 working days of such change taking place.
- b) The driver's DVLA driving licence must be registered at the driver's current address.

8. Accidents

The driver shall inform the Council in writing or by telephone within 72 hours of any vehicle accident in which the driver is involved (whilst driving a Hackney Carriage/Private Hire Vehicle).

9. Conduct of driver

- a) The driver shall at all times be clean and respectable in their dress and person and behave in a civil and orderly manner.
- b) The driver shall at all times take all reasonable steps to make sure the safety of passengers carried in, entering or leaving the vehicle.
- c) The driver shall not smoke in the vehicle or allow any passengers to smoke in the vehicle (this includes the use of electronic cigarettes / vaporisers).
- d) The driver shall not play any audio (other than for the purposes of sending/receiving messages from the Operators base) that is loud, offensive or that causes a nuisance to the hirer.
- e) While driving, the driver shall not use their hand-held mobile phone, PDA or any other device.
- f) Drivers should not begin any conversations with a passenger that is likely to cause offence.

g) Drivers should not possess in their taxis any item that could be construed as an offensive weapon.

10. Passengers

a) The driver shall not carry more than the number of passengers, including babies and children, stated on the Hackney Carriage/Private Hire Vehicle licence.

b) The driver shall not allow any child under 12 years of age or under 1.35 metres in height to be carried in the front of the vehicle.

c) The driver shall not at any time by calling out or otherwise pester any person to hire their vehicle.

d) The driver shall not rank unlawfully.

e) The driver shall not permit any person to be carried in the vehicle without the consent of the hirer.

11. Written receipts

The driver shall, if requested by the hirer, provide them with a written receipt for the fare paid.

12. Carrying animals

a) The driver shall not carry any animals, which belong to, or are in the custody of him/her, in the vehicle when it is being hired.

b) The driver must (unless in possession of an exemption certificate) accept bookings made by, or on behalf of, a disabled person who is accompanied by a guide, hearing or assistance dog.

c) The driver must (unless in possession of an exemption certificate) accept a booking by a person who will be accompanied by such a disabled person.

d) The driver must not make an additional charge for carrying the passenger's assistance dog.

e) A driver who has a proven medical condition that prevents him/her from carrying an assistance dog in their vehicle must obtain a Driver Exemption Certificate (from the Council on production of medical evidence of the condition). This Certificate must be clearly displayed at all times when driving the Hackney Carriage Vehicle. The driver is responsible for informing their Operator (if applicable) and the Council if they have a medical condition affecting their ability to carry assistance dogs during the period of their licence.

13. Health of a driver

a) The driver must inform the Council without delay about the start or worsening of any health condition likely to cause them to be a source of danger to the public when driving either now or in the future. Examples are contained in the DVLA Medical Notification Guidance and include, but not limited to:

- giddiness
- fainting

- blackouts
- Epilepsy
- strokes
- Multiple Sclerosis
- Parkinson's Disease
- heart disease
- Angina
- coronaries
- high blood pressure
- Arthritis
- disorder of vision
- mental illness
- alcoholism
- drug taking
- loss of limb or loss of use of limb
- Diabetes

b) Drivers who are in doubt about whether or not their health condition is one which should be reported should consult their Doctor and refer to the DVLA (Group 2) Medical Rules and Standards which are updated every 6 months.

c) All applicants must submit a Certificate of Fitness which must be undertaken at the Council's approved medical centre. When a driver reaches the age of 45, a further Certificate of Fitness is required, then every 5 years until they reach the age of 65 and then annually.

d) The Licensing Office may at any time request the driver be referred to the Councils approved medical centre for a further medical examination.

14. Renewal of licences

a) Applications to renew a Hackney Carriage/Private Hire Driver licence must be made before the end of the current licence and must be submitted on the appropriate application forms. It is advisable to make an application at least 30 days in advance to ensure that there is no delay or break in licence period.

b) All current Hackney Carriage/Private Hire Drivers licence holders are required to have a DBS check and maintain a subscription to the 'DBS Update Service' for the period of their licence. This will be carried out at the time of submission or renewal application.

c) All current Hackney Carriage Drivers licence holders are to have their DVLA/EU drivers licence checked with the DVLA annually.

Note: Expired licences cannot be renewed. You will be required to successfully complete the new driver application procedure before a badge will be issued.

15. Seat belt regulations

Hackney Carriage drivers are exempt by virtue of Regulations 5(h) of the Motor Vehicles (Wearing of Seat Belts) Regulations 1982, providing they are seeking hire, answering a call for hire or carrying a passenger, and the vehicle is carrying a plate showing it a licensed Hackney Carriage.

16. Child restraints

- a) If the correct child restraint is not available then a child under 3 years of age may travel unrestrained in the rear of a Hackney Carriage/Private Hire vehicle.
- b) If the correct child restraint is not available then a child aged 3 to 11 and less than 1.35 metres (approx. 4ft 5ins) may use an adult belt when travelling in a Hackney Carriage/Private Hire vehicle.

17. Certificate of insurance

- a) The driver will be responsible for ensuring that they have valid insurance to use their vehicle for Hackney Carriage or Private Hire purposes.

Note: The conditions concerning insurance of motor vehicles are contained in part 6 of the Road Traffic Act 1988.

18. Obstruction of an authorised officer

Any person who:-

- a) wilfully obstructs an authorised officer or constable acting in pursuance of this Act; or
- b) without reasonable excuse fails to obey any requirement properly made to him by such officer or constable; or
- c) without reasonable cause fails to give an officer or constable acting any other assistance or information which he may reasonably require of such person for the purposes of the performance of his functions under this part of the Act or the Act of 1847; shall be guilty of an offence.

Note: The Hackney Carriage/Private Hire Driver's licence is subject to the penalty points system and the licence holder is required to read and comply with the provisions of the system at all times - see penalty points system at **Appendix C**.

APPENDIX C

Penalty Points System

Offence/Cause	Penalty/Points	Person Responsible	Period to Stay on File
1. Failure to wear or clearly display HC/PH driver licence	3	Driver	12 months
2. Failure to display HC/PH vehicle licence (plate) correctly	3	Driver	12 months
3. Failure to produce Insurance Certificate within 5 working days on request	3	Driver/Proprietor	12 months
4. Failure to produce Certificate of Compliance within 5 working days on request	3	Driver/Proprietor	12 months
5. Failure to produce DVLA Driving Licence within 5 working days on request	3	Driver	12 months
6. Failure to notify the Licensing Authority of a change of address within 5 working days	3	Driver	12 months
7. Failure to notify the Licensing Authority of damage to vehicle within 3 working days.	3	Driver	12 months
8. Failure to notify the Licensing Authority of vehicle involved in a Road Traffic Accident within 3 working days.	3	Driver	12 months
9. Failure to notify the Licensing Authority of a change of use of a motor vehicle within 5 working days	3	Proprietor	12 months
10. Failure to notify the Licensing Authority of a transfer or purchase of vehicle within 5 working days	3	Proprietor	12 months
11. Upholstery and/or exterior in an unreasonable condition	3	Driver	12 months
12. Failure to display no smoking stickers	3	Driver	12 months
13. Defective Tyres	3 points per defective tyre and or stop notice	Driver	12 months
14. Private Hire Vehicle parking in or at a Hackney Carriage stand	3	Driver	12 months

15. Hackney Carriage Vehicle leaving vehicle unattended in or at a Hackney Carriage stand	3	Driver	12 months
16. Charging more than displayed on the taxi meter (if fitted)	3	Driver	12 months
17. Failure to obey an Officers request	3	Driver	12 months
18. Not displaying Tariff on Meter (where applicable)	6	Driver	12 months
19. Refusal to carry guide dogs, hearing dogs or service dogs (unless exempt)	6	Driver	12 months
20. Making a surcharge for the carriage of wheelchairs	6	Driver	12 months
21. No valid Insurance Certificate	6 and or referral to Licensing Committee	Driver	36 months
22. No valid Certificate of Compliance (MOT)	6 and or referral to Licensing Committee	Driver	36 months
23. Failure to notify the Licensing Authority of a motoring conviction within 5 working days	6 and or referral to Licensing Committee	Driver	18 months
24. Failure to notify the Licensing Authority of a criminal conviction or caution within 5 working days	6 and or referral to Licensing Committee	Driver	18 months
25. Carrying excess passengers	6 and or referral to Licensing Committee	Driver	18 months
26. Being aggressive, and or, using threatening and abusive language towards Licensing Officers	6 and or referral to Licensing Committee	Driver	18 months
27. Any other reasonable cause Section 60 Local Government Miscellaneous Provisions Act 1976	6 and or referral to Licensing Committee	Driver	12 months
28. Failure to attend a Licensing Committee when informed, or requested to do so	1 – 6 for Licensing Committee to determine	Driver	12 months
29. Appearance before a Licensing Committee reference allegations of misconduct	1 – 12 for Licensing Committee to determine	Driver	12 months

APPENDIX D

Hackney Carriage & Private Hire Driver Licensing Application Process

The information below details the Licensing Authority's compulsory requirements for new and renewal Hackney Carriage and Private Hire driver licence applications. The following is given as guidance only as to the processes followed and documents required. If an applicant has specific queries they should contact the Licensing Team.

Please note that a driver's licence badge issued by South Hams District Council will allow you to drive only vehicles that are licensed by South Hams District Council.

Please note that as an applicant or driver licensed by South Hams District Council, you will be required to visit our Totnes office in person during the application process and on occasion whilst you hold a licence for the purposes of inspection, production of paperwork or for any other reason.

Applications for new drivers

The application process will involve you meeting a number of requirements at an additional cost. The steps laid out below are a suggestion of how you may wish to continue to gain all documents necessary to make a valid application:

Overview

- Application form
- One passport sized photograph
- Taxi driving test certificate
- Valid passport, birth certificate, or other proof of entitlement to work in the UK
- DBS certificate process through the electronic DBS check provider
- Overseas criminal record check (Certificate of Good Conduct) issued within the last 6 months – where applicable.
- DVLA driving licence photo card (old style paper licences issued before 1998)
- DVLA check mandate form
- Group II medical certificate issued by the designated medical assessment centre or your own GP within the last 3 months
- Passenger Assistance Training Scheme certificate
- Completion of the Licensing Authority Knowledge Test
- Required fee

Step 1:

Hackney Carriage and Private Hire driver application form

This form requires you to detail any previous convictions and medical issues that you may have that may impact on your ability to obtain a licence in agreement with the Licensing Authority's policies. By submitting this information before completing the other required steps, we are able to give you an early view of whether your application will be successful or not.

As part of our checks we will require you to provide identification to prove your right to work in the UK, as a minimum requirement we will need to see your passport or birth certificate. The Licensing Authority will operate its application procedures in line with guidance issued by the UK Border Agency on Prevention of Illegal Working and its associated Code of Practice.

Step 2:

Sit and pass the knowledge test.

The knowledge test assesses your knowledge of the local area, the Highway Code, numeracy and the legislation which is relevant to you as a licensed driver. Tests will normally be held on one day per month at the Council offices in Totnes. Applicants may arrange to sit the test on an alternative day at West Devon Borough Council offices in Tavistock if more convenient.

You will need to bring documents to show evidence of your entitlement to work in the UK (valid passport, birth certificate or other proof of entitlement) and proof of address, with you to your knowledge test. Without these documents you will not be able to sit the test.

We only accept and process applications that have successfully completed these tests. The fee for the test must be paid before the test can be taken. The cost of the test is non-refundable and the same fee is payable to re-sit a failed test.

Step 3:

Apply for Enhanced DBS check and DVLA mandate form

Enhanced DBS checks are undertaken through an electronic checking service. You will need to provide the required identification documents as listed on the DBS website to us so that the check may be submitted. Alternatively you may take your documents to a Crown Post Office to be verified.

The DBS certificate must be presented to us within three months of being issued. You must sign up to the DBS Update Service within **nineteen days** of your certificate being issued. If this is not done, you will be required to submit a new DBS check 12 months after the issue of the licence including payment of the full DBS fee.

If you have any convictions, cautions or fixed penalty notices which fall within the Council's convictions policy, the application will be determined by the Licensing Committee.

A DVLA mandate form must be completed and signed so that we are able to check your DVLA record at any time during your licence period.

Step 4:

Provide Certificate of Good Conduct (where applicable)

If you have lived outside of the UK for a continuous period of 6 months or more at any time since your tenth birthday, you must obtain a Certificate of Good Conduct which must be under 6 months old. You must contact your Consulate for more information on this, not the licensing department. Asylum seekers who hold a Home Office issued application registration document together with a positive verification letter from the Home Office's Employer Checking Service stating that the named individual is permitted to work in the UK will be exempt from the requirement to submit a recent certificate of good conduct. We will

require to see any Certificate of Good Conduct that you may have regardless of the age of the document.

Step 5:

Sit the Taxi driver test as provided by the Licensing Authority approved provider

A certificate showing successful completion of the practical taxi test must be provided. You do not require the wheelchair assessment. You can book your test online at the DVSA website. If you have any queries regarding this element, you must contact the DVSA and not the licensing department. The DSA test may be undertaken at any of the DVSA test centers.

Step 6:

Obtain the Passenger Assistance Training Scheme certificate

It is a requirement that all applicants for new or renewal applications must have completed a Passenger Assistance Training Scheme (PATS) training course with a certificated MiDAS trainer which will include modules A, B1, B2, C1, C2. A certificate to prove that the course has been completed must be presented with the application

Step 7:

Group II Medical Certificate

Contact your own GP or the Council's appointed medical assessment provider to arrange a Group II medical examination. Group II medical guidance can be found online at GOV.UK. You will need to provide the medical assessor with your medical record for the assessment to be completed.

Step 8:

Passport sized photograph

Provide one passport sized photograph of yourself. It must be in colour, clear. If you wear glasses for driving, you must wear the glasses in your photograph. Get your passport ready (or other proof of entitlement to work in the UK) as well as your full EU or UK driving licence, which you must have held for at least 12 months.

Step 9:

All steps completed

Once you have received your Enhanced DBS certificate and all other steps have been completed, you can call into our offices on any weekday between 9am and 5pm to submit your application and to make payment.

Please note that you will need to supply all your original certificates which will be returned to you once your application has been processed.

We do not accept incomplete applications under any circumstances.

We will contact you on the telephone number or email address given in your application to let you know when the licence has been issued, or if there are any issues with your

application. If your application is approved you will be sent your driver licence certificate and identification badge by post.

Applications for renewal of driver licence

Applications for renewals must be received by the Council prior to the expiry date of the licence to ensure that the licence does not lapse.

If a licence lapses, the driver will be required to apply for a new driver licence by meeting all the criteria listed in the previous section relating to applications for new driver licences. If the licence renewal is submitted late as a result of exceptional circumstances it may be accepted. 'Exceptional' in this instance will only apply where failure to renew on time is due to unforeseen circumstances, for example where the applicant has been unable to apply due to an emergency situation

Overview

- Application form
- One passport sized photograph
- DBS certificate processed through the electronic DBS check provider – **unless signed up to the DBS Update Service**
- Overseas criminal record check (Certificate of Good Conduct) issued within the last 6 months – **where applicable**.
- Copy of DVLA driving licence photo card (old style paper licence issued before 1998)
- DVLA check mandate form (if required)
- Group II medical certificate issued by the designated medical assessment centre or your own GP within the last 3 months (if required)
- Required fee

Further details relating to the above requirements may be found in the previous new driver application section.

Unless a new Enhanced DBS check is required, the renewal application may be submitted by post or handed in to the Council offices. If a new DBS check is required, you will need to contact the Licensing Team to make an appointment (Tuesdays or Thursdays from 9am to 5pm).

If the documentation is complete, the application will be accepted. If any of the required documentation is not submitted then the application may not be processed.

The successful completion of this procedure will be indicated by the issue of a Hackney Carriage and Private Hire driver licence.

Suspension / revocation / refusal to renew

The Licensing Authority has the power to suspend, revoke or refuse to renew a licence.

If considered necessary in the interest of public safety, a suspension or revocation may take immediate effect.

APPENDIX E

Spoken English Assessment Test Procedure

(Guidance for Officers and new Applicants)

1. It is a requirement of South Hams District Council that ALL new applicants for both Hackney Carriage and Private Hire Driver licenses can demonstrate an adequate and reasonable level of spoken English.
2. The purposes of this requirement are:
 - Ensure that members of the public are safeguarded by ensuring licensed drivers can competently communicate and give and understand most instructions.
 - Ensure that applicants are safeguarded by ensuring licensed drivers can competently communicate and give and understand most instructions.
 - Ensure impartiality and fairness in determining applications.
 - Accommodate all eligible applications.
3. The criteria for all new applicants for Hackney Carriage and Private Hire Driver licences are:
 - (a) Applicants for whom English is not their first language may be asked to provide evidence of having gained a qualification that was taught and assessed in English.
 - (b) Applicants who have some difficulty understanding spoken advice on the telephone or face to face and who have similar issues expressing themselves in English will be asked to provide a certificate showing the successful completion of a course of study or qualification in any subject or skill that was taught and assessed in English. (Examples are but not limited to, GCSE's, 'O Levels' GCE, NVQ, BTEC, RFQ, City and Guilds or similar, Degree, HND, HNC etc or a qualification equivalent to any previously listed issued by a recognised examining body in an English speaking country other than the UK). The weight given to the subject and grade achieved will be assessed on a case by case basis.
 - (c) Applicants who cannot demonstrate an adequate or reasonable level of spoken English and/or a suitable qualification will be required to undertake an independent assessment of their spoken English.
 - (d) Applicants who are clearly fluent English speakers will require no further assessment and may proceed with their application in full.
4. The initial assessment of all new applicants' level of spoken English, whether on the telephone or in person will be made by a Case Manager. Where in the opinion of the Case Manager the applicant does not have an adequate or reasonable level of spoken English the applicant will be informed of the spoken English requirement and procedure.
5. Applicants who have difficulty in clearly expressing themselves and who cannot produce a suitable qualification listed above will be referred to the Licensing

Specialist who will make a second assessment and if necessary advise the applicant of the requirement to undertake the spoken English assessment test.

6. The Licensing Specialist's decision is final.

TAKING THE TEST

7. The spoken English assessment test is a pre-application requirement undertaken at the applicant's own expense at a cost of £40.00 (payable before the test is taken) and must be successfully completed before proceeding with the full application procedure.
8. The applicant will be required to submit a completed application form (no fee to be paid at that time) together with photographic proof of identification i.e. passport and/or driving licence. A photograph will also be taken of the applicant at the time of submission of the application form and the applicant's identity will also be confirmed at the time of taking the test.
9. Tests will be taken in a South Hams or West Devon Council building. (Totnes or Tavistock)
10. If the applicant has a mobile telephone it must be switched off to avoid any interruptions.
11. Applicants will be told that the tests are recorded by the test provider and any attempt to cheat, for example by using their mobile telephone to attempt to get a fluent English speaker to complete the test will be detected by the system and the applicant will be automatically failed and will not be permitted to undertake another test or proceed with their application.
12. Test dates will depend on demand and room booking availability.

TEST PROCESS

13. On the day of the test, the applicant will be escorted to the designated room by a Case Manager. The Case Manager will dial the number to the test provider and pass the telephone to the applicant and leave the room.
14. The English test assessment consists of a 15 minute exercise, taken by telephone during which applicants will be tested on various aspects of their speaking and listening ability.
15. The assessment is provided by a specialist education and testing company and consists of:
 1. Repeating back sentences that are read to the applicant over the phone.
 2. Answering simple questions asked over the phone.
 3. Constructing sentences from fragments read to the applicant over the phone (sentences divided into 3 or 4 parts)
 4. Answering open questions asked over the phone (speaking for up to 30 seconds per question).

16. The test is entirely automated, and questions will be asked by a variety of voices.
17. All of the questions will relate to normal life and the applicant's day-to-day activities; there are no trick questions.
18. The applicant will also be graded separately on sentence usage, vocabulary, fluency and pronunciation, all of which contribute to the overall score.
19. At the end of the test the Case Manager will contact the test provider via the website, access the applicant's result, a report will be produced (a copy of which will be provided to the applicant) with a score indicating their overall ability.
20. The test scoring will be set at CEFR Level B2.
21. For licensing purposes, the Council will require applicants to score at least **56** out of **80**. This indicates a good overall ability in use of the English language, where applicants will be able to speak fluently on a range of everyday topics and be able to give and understand most instructions.
22. When passed, the pass certificate will be downloaded direct from the test providers website the same day and provided to the applicant.
23. Failure to pass the minimum CEFR level B2 (56 out of 80) will require a further test to be taken.
24. There is no right of appeal where the applicant has failed to attain the minimum pass level of 56.
25. Unsuccessful applicants should be given an information sheet with the contacts of local colleges and courses where they may undertake further study to improve their spoken English. All training will be done at the applicant's own expense.
26. No person may re-sit the test within 28 days of taking a previous test.
27. Returning applicants may demonstrate a reasonable standard of spoken English either through the production of a certificate demonstrating the successful completion of an accredited spoken English qualification at level 1 or above, or successfully completing the spoken English assessment test detailed above.
28. Applicants choosing to re-take the spoken English assessment test will have to pay the required fee.

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Agenda Item 6

Report to: **Licensing Committee**
Date: **24 November 2016**
Title: **TAXI FARE SETTING FORMULA AND POLICY**
Portfolio Area: **Customer First**

Wards Affected: **All**

Relevant Scrutiny Committee:

Urgent Decision: **N** Approval and clearance obtained: **Y / N**

Date next steps can be taken:
That the recommendations are made to Full
Council on 15th December

Author: **James Kershaw** Role: **Senior Specialist
Environmental Health and
Licensing**

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RECOMMENDATIONS

- 1. That the Committee consider the policy and associated formula for setting taxi fares in the South Hams and that approval be given to the use of the South Hams average annual wage as the basis for this formula;**
- 2. That the Committee RECOMMEND to Council that the draft Maximum Chargeable Fare Setting Policy be adopted; and**
- 3. That the Committee RECOMMEND to Council that the constitution be amended to delegate to the Community of Practice lead for Environmental Health the authority to use the approved formula to set the cost per mile for taxi fares.**

1. Executive summary

- 1.1 Under the Local Government (Miscellaneous Provisions) Act 1976 Section 65, the Council has the power to set the fares charged within its area by Hackney Carriage (taxi) drivers.
- 1.2 The fares were last reviewed in 2012, it appears to now be an appropriate time to review the fares and adopt a logical and clear method to set these fares.
- 1.3 Drivers have regularly requested that the cost of the fares be increased, however it is recognised that raising them too greatly may adversely impact the ability of vulnerable users to be able to afford this essential service.

2. Background

- 2.1 South Hams District Council have set a maximum chargeable fare for taxis under the Local Government (Miscellaneous Provisions) Act 1976 Section 65. This in effect caps the salary of taxi drivers.
- 2.2 There has been no review of the taxi fares since 2012, but there has been an approximate 4% increase in the consumer price index (CPI) during this period. On this basis it can be argued that the charges are significantly lower than is appropriate.
- 2.3 There is on a monthly basis published a national rank of taxi fares, currently South Hams are 226th out of 365 for the cost of a 2 mile journey. Due to the rural nature of the South Hams it would be expected that our fares would be higher than urban areas, where there would be less dead mileage (the amount of mileage spent driving without a passenger in the vehicle i.e. non-earnable mileage).
- 2.4 The Council recognises that the fares must be set at a level which allows taxi drivers to be able to earn a reasonable wage whilst protecting the most vulnerable in society who rely on taxis due to the lack of alternative forms of public transport.

3. Outcomes/outputs

- 3.1 The Council needs a mechanism for regularly reviewing the maximum chargeable fares in a manner that is fair and transparent to both the taxi trade and the public who use them. The proposed policy and formula seeks to achieve this.
- 3.2 Delegated authority should be provided to the Community of Practice lead for Environmental Health to instigate the review mechanism, propose the fares to be set and commence the statutory consultation period based on the formula in an approved policy.

Where there is an objection to the proposed fare during the statutory consultation period, the matter would be brought to the

Licensing Committee to review the objection and make a determination of the fare to be set.

4. Options available and consideration of risk

- 4.1 The formula is based around the average annual earnings figure for a full time employee in the South Hams. This figure was taken from the Annual Survey of Hours and Earnings, Office of National Statistics and was £22,516 on the 1st April 2016.

Using the proposed formula the calculation would be as follows:
 $(22,516 + 12,480 + 1300 + 363) \div 18,000 = £2.04$ per mile

Currently the fare is set at £1.85 per mile.

- 4.2 Alternatively other Councils use the Government's April published annual average earnings figure, which was £27,456. Using this figure the cost per mile would be: £2.31 per mile.

During discussions with the taxi trade on the 13th September 2016 they suggested that the dead mileage rate should be 50% and not 40%, this would lead to a cost of £2.44 per mile.

Both of these suggestion would lead to a mileage rate significantly above the current cost per mile and may be considered to have an overly negative impact on those who most rely on the taxi service. We could however amend other elements of the fare table to make up for the high dead mileage rate such as increasing the fare 2 tariff rate and the pre-booking fee as discussed below.

It was also suggested that we include a cost to cover going on training courses, paying for medicals as necessary and DBS checks. We would also like to encourage drivers to go on additional training such as first aid courses etc. This seems wholly reasonable and an additional amount of £500/year would average this out. This would lead to a mileage rate of £2.06 mile, therefore the draft policy and formula has been amended to include this amount.

- 4.3 Based on the feedback it is proposed that we re-consult the taxi trade on some other fares. It is suggestible that we base Tariff 2 on the same formula as Tariff 1, but we would suggest that this be amended so that the uplift for the unsociable hours be increased to a 50% surcharge instead of the current 33% on the mileage and flag drop rate. This proposal would increase the running mile rate to £3.09, and a two-mile comparator to £8.55, based on other proposed changes to the fare table as set out below.

It was also proposed that there should be an increase in the booking fare, currently they can charge £1 for driving to a pick up. It would be proposed to increase this to £5 where the pickup point is 2 miles from the nearest taxi rank.

The final suggestion was the soiling charge, currently this is set at £80, and based on the both the current costs of valeting a vehicle and the lost earning time this should be increased to £100.

The proposed fare table is in Appendix B.

- 4.4 It is felt appropriate to grant delegated authority to the Community of Practice Lead so that the fares can be regularly reviewed, however the Committee may wish to retain this power, however this leads to the need for a separate panel to review any objections received to the statutory consultation.

The proposed formula and policy has been consulted on with the trade during the most recent Taxi Trade meetings held in September. In general the drivers were satisfied with the proposed funding formula.

5. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance		<p>The legal background is that Section 65 of the Local Government (Miscellaneous Provisions) Act 1976 enables a district council to set the fares charged within its area by hackney carriage (taxi) drivers for various distances over which paying passengers are conveyed, as well associated charges, as explained below.</p> <p>In accordance with those legal provisions, proposed taxi fare increases must be advertised in the local press - and made available in the Council Offices - for a period of 14 days to allow for any objections to be made. If no objections are received, or any that are made are subsequently withdrawn, the proposed new fares become effective from the date specified in the notice.</p> <p>If any objections are received which are not withdrawn, the new fares will not automatically take effect. In that case, to allow time for consideration of the objections, a new operative date for the fares must be set, which shall be no later than two months after the date of the close of the statutory objection period stated in the public notice. During this period objections would be</p>

		considered and, if appropriate, the proposed fare tariff modified accordingly.
Financial		No implications to South Hams District Council.
Risk		Should we set the fare too low this may adversely affect the supply of taxis in the area. Whilst setting the fare too high may have a negative impact on the vulnerable users of this essential service.
Comprehensive Impact Assessment Implications		
Equality and Diversity		There is a potential negative impact on protected groups including the disabled who rely on taxis as a principle form of transport. This impact is mitigated by ensuring that the proposed formula is based on local conditions.
Safeguarding		There is a potential negative impact on vulnerable adults and children who rely on taxis as a principle form of transport. This impact is mitigated by ensuring that the proposed formula is based on local conditions. However by including an amount to allow for additional driver training this will allow for additional safeguarding training to be undertaken.
Community Safety, Crime and Disorder		None
Health, Safety and Wellbeing		None
Other implications		None

Supporting Information

Appendices:

Appendix A: Feedback on proposals

Appendix B: Current and proposed fare tables based on the comments and proposed formula.

Background Papers:

None

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Taxi meeting minutes – South Hams 13.9.16

- Dead mileage – 40% isn't enough, should be nearer to 50%. Will check with HMRC.
- Call out charge increase from £1 to £5.
- Soiling charge increase from £80 to at least £100.
- Non-payers of fees causes problems. Perhaps could be a group 'name and shame'.
- Removal of high fuel cost surcharge.
- Tariff 3 proposals.
- The automatic ten year end of vehicle rule shouldn't apply to better quality vehicles.
- Consultation with public? How much weight is given to drivers' views as opposed to parish councils. They were encouraged to visit parish council meetings.
- Medical provider – majority preferred to use own doctors due to distance to Plymouth and the fact that not own doctor used.
- Payment for DVSA tests will generally be at driver expense unless extenuating circumstances when a re-test is required.
- Certificate of Good Behaviour from consulate – suggestion should be from the age of 18 or 21 yrs and for new drivers for first DBS check undertaken.
- Equality Act 2010 is in force with certain aspects applicable – those with a wheelchair accessible vehicle must help people in with wheelchairs. The aspect relating to all taxi drivers is not in force.
- Knowledge test query relating to area tested upon. This will potentially include out of area destinations but information would be provided beforehand.
- CSE training – it was raised that there was similar training provided by Devon County Council which may be suitable and could potentially be used.
- Code of good conduct re lost property – it was raised that handing this in to the police was difficult. If valuable a card would be handed to the bank? Other property may be discarded?
- Penalty points would work on a 12month basis with them being cleared at the end of the year – although would take in to consideration if a number of points were being collected every year.
- Issues with police being available to help drivers.
- Illegal taxi drivers – picking up around Malborough, Salcombe, Kingsbridge etc – taking 'friends'. They will give us info about this. Publicity to members of the public about using unlicensed vehicles and drivers.
- Eating and drinking in the vehicle and leaving taxis unattended on the rank eg if going to toilet – this will not be dealt with arbitrarily, some discretion would be given.
- Changes to ranks – increase the space in Totnes. Totnes drivers to provide a drawing of proposal. Other areas would like the ranks looked at.
- No Civil Enforcement Officers are seen around Kingsbridge rank.
- Conversations about controversial topics – amended to use 'common sense'? It was confirmed that it would be judged on case by case basis and with discretion.
- Audio recordings – we would check this, but unlikely to be permitted.
- No mandatory regulations about CCTV and/or audio use.
- Appeal against the points would be to the licensing committee, but after that it would have to be a Judicial Review to the High Court.

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South Hams District Council – Fare Setting Method Policy

It is important to be able to regularly review the maximum taxi fares for the District and to have a fair and robust method for doing so. Having reviewed a number of different policies from around the country, a method has been devised that can be used to determine whether any fare increase is necessary and balanced.

The method seeks to measure the true costs of providing taxis and the 'cost per mile' figure necessary to safeguard the sustainability for this valuable public service.

It has been decided that the most reliable method of gaining up-to-date motoring costs, is to use those published regularly by the Automobile Association (AA) or other reliable sources.

The calculation will be as follows:

1. The annual average earnings figure for a full time employee for South Hams¹
2. Average of the AA pence per mile total for standing charges and running costs in respect of petrol cars £25,000 to £32,000 and for diesel cars £26,000 to £36,000 both based on an average of 30,000 miles per annum.
3. Additional taxi insurance premium, over and above the AA insurance figure.
4. The cost of a council taxi driver badge and vehicle licence, and an allowance for: training, medicals, and DBS checks.
5. Earnable mileage figure, it is thought that given the nature of Hackney Carriage work in a large rural area like South Hams, then this figure should be set at 60% of the total annual mileage, in this case 18,000. 40% is also the figure that is generally considered reasonable by HMRC for the amount of "dead" mileage.

$$(1+2+3+4) \div 5$$

Earnings

The cost of running a taxi includes the drivers' earnings and this factor must be taken into account when setting the fare tariff. There is no reliable information on the earnings of taxi drivers and it is therefore proposed that the South Hams average wage should be used.

¹ <http://www.neighbourhood.statistics.gov.uk/HTMLDocs/dvc126>

Vehicle Costs

The AA publishes regularly estimated vehicle standing charges and running costs based upon the fuel type and average mileage of a vehicle. This is a detailed index and consists of costs for road tax, insurance, depreciation, subscriptions, fuel, oil, tyres, servicing, repairs and replacements for a variety of vehicle types and distances travelled.

The formula above takes the average of the total of standing charges and running costs in pence per mile for petrol cars £25,000 - £32,000 pounds when new and for diesel cars £26,000 to £36,000. This would be 43.80² and 39.42³ giving an average of 41.61 pence per mile. The average figure is taken in order to reflect the mixed fuel nature of the current taxi fleet.

As it is more expensive to insure a taxi than ordinary private motoring insurance, it is proposed that an extra cost above the AA figures be added. We have assumed a reasonable figure of approximately £1,300 on top of the average cost is appropriate.

The AA document includes a subscription fee, this is the cost of annual AA membership. This will be left in as it is assumed all drivers will have some form of breakdown cover.

The costs of council drivers and vehicle licences will also be added into the calculation.

Currently £228 (vehicle) + £135 (driver) but subject to review.

Legal Process for Fares Setting

Legally 'Section 65 of the Local Government (Miscellaneous Provisions) Act 1976' enables a district council to set the fares charged within its area by hackney carriage (taxi) drivers for various distances over which paying passengers are conveyed, as well associated charges, as explained below.

In agreement with those legal provisions, proposed taxi fare increases must be advertised in the local press - and made available in the council offices - for a period of 14 days to allow for any objections to be made. If no objections are received, or any that are made are then withdrawn, the proposed new fares become effective from the date specified in the notice.

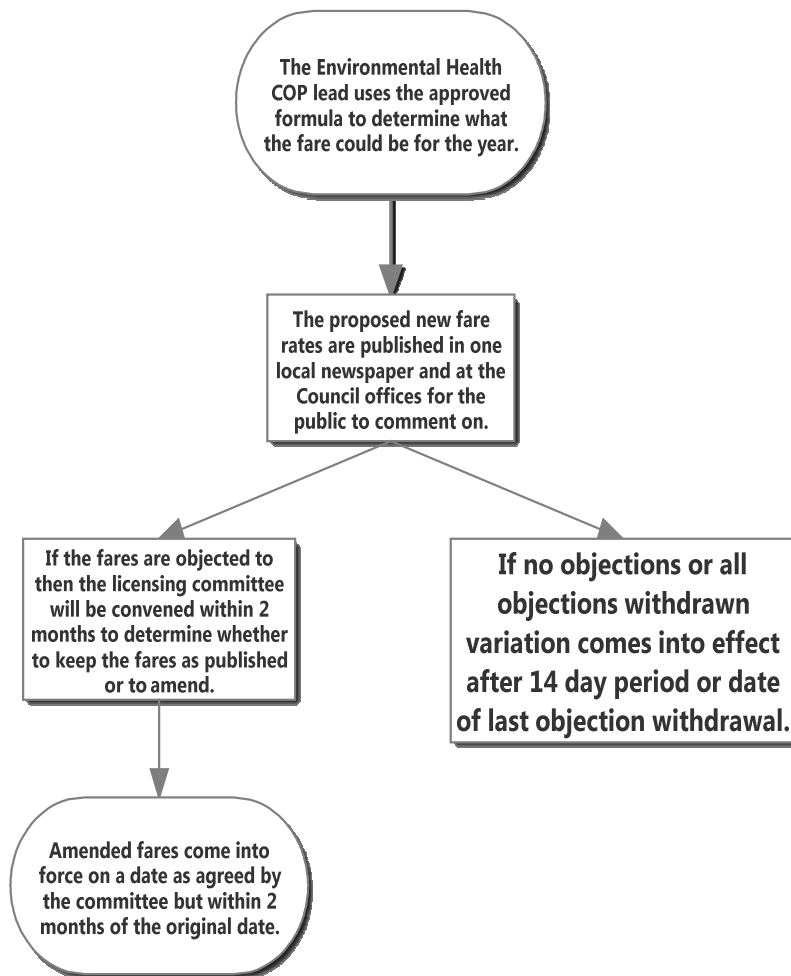
If any objections are received which are not withdrawn, the new fares will not automatically take effect. In that case, to allow time for attention to the objections, a new working date for the fares must be set, which shall be no later than two months after the date of the close of the statutory objection period stated in the public notice. During this period objections would be considered and, if appropriate, the proposed fare tariff modified accordingly.

Current comparative taxi fare levels for all taxi licensing authorities in the country are published each month in a national trade magazine.

² AA Motoring Costs petrol cars version 2 July 2014

³ AA Motoring Costs diesel cars 2014

Process for setting the maximum chargeable fare in accordance with Section 65 Local Government (Miscellaneous Provisions) Act 1976



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SOUTH HAMS DISTRICT COUNCIL - MOTOR HACKNEY CARRIAGE FARES (w.e.f. 1st January 2017)

The proprietor or driver of a hackney carriage shall be entitled to demand and take for hire of the carriage the rate of fare prescribed by the following table, the rate of fare being calculated by distance, except that if the distance travelled is more than five miles from the point where the hirer commences the hiring, the hirer and proprietor may agree at the commencement of the hiring to engage by time.

Provided always that where a hackney carriage furnished with a taxi meter shall be hired by distance the proprietor or driver thereof shall not be entitled to demand and take a fare greater than that recorded on the face of the taximeter, save for any extra charges authorised by the following table which it may not be possible to record on the face of the taximeter.

Tariff 1 – Applies Monday to Saturday for hirings commenced between 7 am and 11 pm.

Tariff 2 – Applies Sundays and Bank Holidays where the hirings commenced between 7am and 11pm and on all times where the hiring commences between 11pm and 7am and where the hiring commences between 7pm on 24th December & 7am on 27th December and between 7pm on 31st December and 7am on 2nd January.

Tariff 3 – For eight passenger seat vehicles where the hirer specifically requests such a Vehicle. Each seat to be equipped with a three anchorage point seat belt. Applies on any day for 24 hours.

<u>DISTANCE AND TIME</u>	Tariff 1	Tariff 2	Tariff 3
For any distance up to 804.65m (880 yds)	£2.75	£4.00	£3.70
For each subsequent 155.45m (170 yds)	20p	30p	30p
Waiting time per minute	20p	30p	30p

Note: Waiting time is automatically included in the metered fare.

EXTRA CHARGES

For each article of luggage or other article conveyed outside the passenger compartment of the carriage 25p

For each person in excess of one. Two children between the ages of 3 years and 6 years shall be regarded as one person. A child under 3 years shall not be reckoned 25p

For each animal carried (assistance dogs – free) 25p

For the fouling of the interior or exterior of the Carriage £100.00

BOOKING CHARGES

For each hiring which requires the driver to drive to the hirer's designated pick up point, where the point is greater than 2 miles from the nearest rank. £5.00

NOTE: These are the maximum charges, the driver may charge less. The fare for any hiring with a destination outside the Licensing Area, can be negotiated with the driver BEFORE the commencement of the journey or run on the meter.

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Agenda Item 7

Report to: **Licensing Committee**
Date: **24 November 2016**
Title: **DELEGATION OF POWERS FOR
DETERMINATIONS OF CERTAIN LICENSING
FUNCTIONS**
Portfolio Area: **Customer First**
Wards Affected: **All**
Relevant Scrutiny Committee: **N/A**

Urgent Decision: **N** Approval and clearance obtained: **N/a**

Date next steps can be taken: Referral to Full Council, 15th December 2016

Author: **Ian Luscombe** Role: **Community of Practice Lead
- Environmental Health**
Catherine Bowen **Community of Practice
Lead - Legal**

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RECOMMENDATION

That the Licensing Committee RECOMMEND that the Council adopts the amendments proposed to the Constitution in relation to the delegation of powers for the determination of licensing decisions, as attached at Appendix A.

1. **Executive summary**

- 1.1. The Council as the Licensing Authority is involved in the determination of many different licensing functions including caravan sites, premises licences with and without alcohol, houses in multiple occupation, dangerous wild animal licensing, taxi licensing and many others.
- 1.2. The current Constitution allows certain licensing functions to be delegated to the Community of Practice Lead for Environmental Health, sub-committees and full licensing committee. At times it is unclear on whom has the power to grant, refuse, and revoke many of the different licences that we currently issue and as such there is the potential for confusion leading to appeals.
- 1.3. The proposed amendments (attached at Appendix A) seek to clarify the delegation of powers so that the Committee only makes decisions on licences that have minimal technical input and the basis of the determination should be quasi-judicial.
- 1.4. The remainder of the determinations which are either wholly technical or simply procedural will be delegated to the Community of Practice Lead for Environmental Health.

2. **Background**

- 2.1. The current Constitution does not stipulate which decisions the Committee can lawfully make under the various legislation that we enforce. The proposal seeks to clarify which types of applications and licences the Committee will determine to refuse, revoke, or suspend, and which will be delegated to the Community of Practice Lead for Environmental Health, other officers or the sub-committee.

3. **Outcomes/outputs**

- 3.1. In its current format the constitution is unclear and as such could, potentially, lead to appeals being made by applicants or licence holders on the basis that they don't believe the determination made was lawful. Appeals in regards to licensing decisions are generally to a Magistrates Court.
- 3.2. The changes to the Constitution will allow decisions made by the Council to be made in accordance with a clearer constitutional basis and also provide clarity to applicants as to how their applications will be determined.
- 3.3. The main changes to the existing scheme are;

a. Taxi licensing - Currently if a vehicle is deemed unfit or unsafe at renewal or contrary to policy this would have to come to a full Committee, it is proposed that the power to determine the suitability of a vehicle would rest with the Community of Practice Lead for Environmental Health.

b. Animal Boarding licenses - Currently the constitution is unclear on who has the power to refuse a licence to which no objection has been received, such as animal boarding licences, pet shop licences, caravan site licences etc. The proposed constitutional changes provides greater clarity over which applications will be considered by the Committee and which will be determined by officers. Licences that require consultation with the public before issuing a licence and where objections are received, will be heard by the Committee.

c. Taxi Licensing- The proposed changes to the Delegation Scheme provide greater clarity and transparency over actions that can be taken in an emergency (for example, as occurred earlier this year in West Devon where there was a requirement to suspend a Taxi driver following notification from the Police of a serious allegation).

d. General – The proposed changes to the Delegation Scheme remove the right of appeal of officer decisions to committee, this is inappropriate as appeal against a decision should be to Magistrates Court or higher.

e. Taxi Licensing - The draft constitution seeks to change the power to determine vehicle licences from committee to the Community of Practice lead for Environmental Health.

3.4. In order to enable the Committee to determine whether the delegation of powers is too restrictive or otherwise, Officers will provide to the Committee, on an annual basis, an update report on the number of licensing applications received, the number approved/ refused/revoked in a year. The Committee may review, and recommend any changes to the Delegation Scheme in the future.

4. **Options available and consideration of risk**

- 4.1. The Council may choose not to change the delegation of powers. This may, potentially, lead to Committee decisions being challenged and decisions not being reached in the most efficient and appropriate way.
- 4.2. If decisions are made that are not fully and clearly supported by the delegation of powers the Council may be challenged and risk financial and reputational harm if a decision is successfully appealed.
- 4.3. Activity that requires a Licence may not be appropriately regulated and give rise to increased risk to public safety, harm to vulnerable children, public nuisance and crime and disorder (the four licensing objectives), or fail to safeguard the health and safety of the public from licensed activities.
- 4.4. Opinion has been sought from the Councils legal services team who support the intention to amend the delegation of powers.

5. **Proposed Way Forward**

- 5.1. That the Licensing Committee recommends to Council that the amendments proposed to the Constitution in relation to the delegation of powers for the determination of licensing decisions be adopted.
- 5.2. The Council will have an appropriate and clear constitution to support decisions as a Licensing Authority made under licensing legislation.
- 5.3. The Council will reduce the risk of decisions being appealed due to lack of clarity in the existing constitution.
- 5.4. The decision making process will be more efficient and appropriate where determination is based on technical, procedural or quasi-judicial requirements

6. **Implications**

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance		<p>The Council has a statutory duty as the Licensing Authority to consider applications made to it under a broad range of legislation. The Council must ensure that all decisions made by it are fair and consistent and comply with the Constitution of the Council</p> <p>The Council is required to have a Delegation Scheme setting out the roles and responsibilities of Council, its Committees and its officers. These are set out in Part 3 of the Council's Constitution.</p> <p>The Constitution of the Council includes the scheme of delegation for Licensing which sets out the powers of the Councils Officers and committee in resolving issues related to Licensing.</p>
Financial		<p>The financial implications of the report are that there will be a reduction in the risk of the Council receiving financial penalty should a decision that it makes be successfully appealed on the basis that the delegation of powers did not support the decision that had been made.</p>
Risk		<p>The risk to the Council is that we will continue to make decisions that do not appear to be fully supported by the Constitution across a number of areas of Licensing ie taxi's , premises licenses , dog boarding etc. If the Council is challenged on a decision then we may lose the case on appeal and incur reputational penalty and possibly compensation claims.</p> <p>Another risk is that an activity that the Council should control using the licensing legislation will not control the activity and expose the public to risk of increased harm.</p>
Comprehensive Impact Assessment Implications		
Equality and Diversity		No impact
Safeguarding		<p>The safety of the public including the safeguarding of vulnerable persons is a fundamental determinant for a number of licences. Ensuring decisions are defensible will ensure that licences are not granted</p>

		that jeopardise this fundamental licensing objective.
Community Safety, Crime and Disorder		Community safety and crime and disorder public is a fundamental determinant for a number of licences.
Health, Safety and Wellbeing		The Licensing constitution will enable the Council to make decisions that ensure that the four Licensing Objectives are met.
Other implications		None

Supporting Information

Appendices:

Appendix A: proposed amended Delegation Scheme for Licensing

Background Papers:

None

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iv) Licensing

Responsibilities

Licensing Committee

To be responsible for all of the Council's licensing functions

- To review and recommend to Council:
 - the Licensing Statement of Policy
 - the Gambling Statement of Principles
 - the Policy not to permit casinos
- To review and be responsible for all other Licensing Policies
- To determine whether to refuse the grant of a Hackney Carriage / Private Hire Driver or Private Hire Operator License application.
- To determine whether to refuse to grant a licence for the following licensing functions ;
 - Street Trading Licence (South Hams)
 - Zoo Licensing
 - Sex Establishments
 - Houses in Multiple Occupation
- To determine such other applications as referred to the P&L Committee by the Community of Practice Lead for Environmental Health.

Licensing sub-committee

a) Licensing sub-committees have the following responsibilities in relation to functions under the **Licensing Act 2003**:

- Applications for personal licences - if there is a police objection
- Applications for personal licences with unspent convictions – all cases
- Review of personal licences – if there is a police objection
- Applications for premises licence/club premises certificate – if a relevant representation is made
- Applications for provisional statement – if a relevant representation is made

- Application to vary premises licence/club premises certificate - if a relevant representation is made
- Applications to vary designated premises supervisor – if police objection made
- Applications for transfer of premises licence – if police objection
- Applications for interim authorities – if a police objection
- Applications to review premises licence/club premises certificate – all cases
- Decision to object when Council is a consultee and not relevant authority - all cases
- Determination of a police or Environmental Health objection to a temporary event notice - all cases

b) Licensing sub-committees have the following responsibilities in relation to the **Gambling Act 2005**:

- Application for **premises licence**: if a relevant representation has been made and not withdrawn
- Application for a **variation** to a licence: if a representation has been made and not withdrawn
- Application for a **transfer** of a licence: where representations have been received from the Gambling Commission
- Application for a **provisional statement**: if a representation has been made and not withdrawn
- **Review** of a premises licence
- Application for **club gaming/club machine permits**: where objections have been made and not withdrawn, or where refusal proposed
- **Temporary use notice**: Decision to give a counter notice, or where objection notice received
- **Fees**

Community of Practice Lead for Environmental Health

Shall have the delegated authority:

To determine whether to refuse to grant an application for Hackney Carriage or Private Hire Vehicle Licence.

To determine in consultation with the Chair and Vice-chair of the P&L Committee whether to revoke a Hackney Carriage or Driver licence in situations of urgency ('urgency' to be determined by the Community of Practice Lead for Environmental Health).

To refer such applications which, in the opinion of the Community of Practice Lead for Environmental Health, should be determined by the Licensing Committee.

To determine applications for Licences under the following areas of work not previously delegated to other committees or individuals;

- Public Health (e.g. Animal Boarding Establishments, Dangerous Wild Animals, Pet Shop, Riding Establishments, Skin Piercing and other special treatments).
- Public Safety (e.g. Alcohol and entertainment licences, personal licences, club premises certificates, Hypnotism licences, Gambling licences etc.)
- Housing (e.g. Selective licensing of residential accommodation, Licensing of houses in multiple occupation, Licensing of camping sites, Licensing of caravan sites)
- Environmental (e.g. Environmental Permits, Licensing of scrap metal dealers)

To investigate complaints relating to licensed and licensable activities with the relevant powers of entry in order to undertake these investigation.

To instigate informal or formal action in order to resolve complaints or unlicensed activities and take appropriate action or remedy.

To undertake formal consultations on amendments to policy, (or fares in accordance with the Maximum Chargeable Fare setting policy South Hams only)

Authority **to suspend licences** in situations of urgency where there are reasonable grounds to do so (where urgency is determined by the Community of Practice Lead for Environmental Health)

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Current vs. Proposed constitution arrangements

iv) Licensing

Responsibilities

To be responsible for all of the Council's licensing functions

Current	Proposed	Reason
<ul style="list-style-type: none">• To review and recommend to Council:<ul style="list-style-type: none">○ the Licensing Statement of Policy○ the Gambling Statement of Principles○ the Policy not to permit casinos • To determine the revocation of any licence.	<ul style="list-style-type: none">• To review and recommend to Council:<ul style="list-style-type: none">○ the Licensing Statement of Policy○ the Gambling Statement of Principles○ the Policy not to permit casinos	No change

<ul style="list-style-type: none">• To review and be responsible for all other Licensing Policies	<ul style="list-style-type: none">• To review and be responsible for all other Licensing Policies	No change
<ul style="list-style-type: none">• To determine the revocation and suspension of Hackney Carriage / Private Hire Driver or Vehicle Licenses	<ul style="list-style-type: none">• To determine to revoke or suspend a Hackney Carriage/Private Hire Driver or Private Hire Operator Licence.	Slight wording change and removed mention of vehicles as this is proposed to be dealt with by officers.

<ul style="list-style-type: none"> To determine all licensing applications for all licensing functions (except in relation to the licensing functions under the Licensing Act 2003 and the Gambling Act 2005 see below) to which an objection has been received and not withdrawn or satisfactorily addressed by the applicant; 	<ul style="list-style-type: none"> To determine whether to refuse to grant a licence for the following licensing functions ; Street Trading Licence (South Hams) Zoo Licensing Sex Establishments Houses in Multiple Occupation 	<p>Removes ambiguity about applications where there is no remit for a member of the public to object but may need to be refused based on failing to meet specified criteria. These types of applications are listed due to their political, financial and social impact.</p>
	<ul style="list-style-type: none"> To determine such other applications as referred to the P&L Committee by the Community of Practice Lead for Environmental Health. 	<p>Due to the delegation of powers to CoP Lead it was felt appropriate to introduce this measure to allow applications which become contentious to be brought to the committee.</p>

Licensing sub-committee

Current	Proposed	Reason
<p>a) Licensing sub-committees have the following responsibilities in relation to functions under the <u>Licensing Act 2003</u>:</p> <ul style="list-style-type: none"> Applications for personal licences - if there is a police objection 	<p>a) Licensing sub-committees have the following responsibilities in relation to functions under the <u>Licensing Act 2003</u>:</p> <ul style="list-style-type: none"> Applications for personal licences - if there is a police objection 	<p>No changes proposed</p>

<ul style="list-style-type: none"> • Applications for personal licences with unspent convictions – all cases • Review of personal licences – if there is a police objection • Applications for premises licence/club premises certificate – if a relevant representation is made • Applications for provisional statement – if a relevant representation is made • Application to vary premises licence/club premises certificate - if a relevant representation is made • Applications to vary designated premises supervisor – if police objection made • Applications for transfer of premises licence – if police objection • Applications for interim authorities – if a police objection • Applications to review premises licence/club premises certificate – all cases • Decision to object when Council is a consultee and not relevant authority - all cases • Determination of a police or Environmental Health objection to a temporary event notice - all cases 	<ul style="list-style-type: none"> • Applications for personal licences with unspent convictions – all cases • Review of personal licences – if there is a police objection • Applications for premises licence/club premises certificate – if a relevant representation is made • Applications for provisional statement – if a relevant representation is made • Application to vary premises licence/club premises certificate - if a relevant representation is made • Applications to vary designated premises supervisor – if police objection made • Applications for transfer of premises licence – if police objection • Applications for interim authorities – if a police objection • Applications to review premises licence/club premises certificate – all cases • Decision to object when Council is a consultee and not relevant authority - all cases • Determination of a police or Environmental Health objection to a temporary event notice - all cases 	
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<p>b) Licensing sub-committees have the following responsibilities in relation to the <u>Gambling Act 2005</u>:</p> <ul style="list-style-type: none"> • Application for premises licence: if a relevant representation has been made and not withdrawn • Application for a variation to a licence: if a representation has been made and not withdrawn • Application for a transfer of a licence: where representations have been received from the Gambling Commission • Application for a provisional statement: if a representation has been made and not withdrawn • Review of a premises licence • Application for club gaming/club machine permits: where objections have been made and not withdrawn, or where refusal proposed • Temporary use notice: Decision to give a counter notice, or where objection notice received • Fees 	<p>b) Licensing sub-committees have the following responsibilities in relation to the <u>Gambling Act 2005</u>:</p> <ul style="list-style-type: none"> • Application for premises licence: if a relevant representation has been made and not withdrawn • Application for a variation to a licence: if a representation has been made and not withdrawn • Application for a transfer of a licence: where representations have been received from the Gambling Commission • Application for a provisional statement: if a representation has been made and not withdrawn • Review of a premises licence • Application for club gaming/club machine permits: where objections have been made and not withdrawn, or where refusal proposed • Temporary use notice: Decision to give a counter notice, or where objection notice received • Fees 	<p>No changes proposed</p>
<p>c) Licensing sub-committees have the following responsibilities in relation to the Hackney Carriage / Private Hire Driver or Vehicle Licences:</p>		<p>Deleted as replicates provisions in Licensing Committee and CoP responsibilities</p>

<ul style="list-style-type: none"> Review, revocation or suspension of licences Refusal to renew licences		
d) To determine appeals from officers' decisions where required.		Deleted as this is not appropriate, appeals by officers should be to the magistrates or other court as specified by the legislation.
e) Officers shall have delegated authority to suspend licences in situations of urgency where there are reasonable grounds to do so		This has now been moved to the new paragraphs in relation to delegation to CoP lead.

Community of Practice Lead for Environmental Health

Current	Proposed	Reason
This is the responsibility of Licensing Committee	Shall have the delegated authority: <ul style="list-style-type: none"> To determine whether to refuse to grant an application for Hackney Carriage or Private Hire Vehicle Licence. 	Determinations of whether a vehicle meets our policy are technical in nature and do not require a quasi-judicial process to assess the acceptability.
Not in current constitution. All revocations must go through committee.	<ul style="list-style-type: none"> To determine in consultation with the Chair and Vice-chair of the P&L Committee whether to revoke a Hackney Carriage or Driver licence in situations of urgency ('urgency' to be determined by the Community of Practice Lead for Environmental Health). 	Recently we had to revoke a licence in urgency due to concerns over the safety of the public. This had to be done by the Head of Paid Service using his emergency powers, otherwise the driver would have had to be brought in front of committee,

		possibly many weeks after the concerns were first raised.
Not in current constitution	<ul style="list-style-type: none"> To refer such applications which, in the opinion of the Community of Practice Lead for Environmental Health, should be determined by the Licensing Committee. 	Due to the delegation of powers to CoP Lead it was felt appropriate to introduce this measure to allow applications which become contentious to be brought to the committee.
Not in current constitution	<ul style="list-style-type: none"> To determine applications for Licences under the following areas of work not previously delegated to other committees or individuals; <ul style="list-style-type: none"> Public Health (e.g. Animal Boarding Establishments, Dangerous Wild Animals, Pet Shop, Riding Establishments, Skin Piercing and other special treatments). Public Safety (e.g. Alcohol and entertainment licences, personal licences, club premises certificates, Hypnotism licences, Gambling licences etc.) Housing (e.g. Selective licensing of residential accommodation, Licensing of houses in multiple occupation, 	These changes are necessary to clarify which applications can be determined by the CoP lead without referring to Committee. The current constitution is not clear on whether an officer can refuse an application where no objection has been received but it would be contrary to policy.

	<p>Licensing of camping sites, Licensing of caravan sites)</p> <ul style="list-style-type: none"> ○ Environmental (e.g. Environmental Permits, Licensing of scrap metal dealers) 	
Contained in next section of constitution on delegation to Senior Officers	<ul style="list-style-type: none"> ● To investigate complaints relating to licensed and licensable activities with the relevant powers of entry in order to undertake these investigation. 	Sets service standards expected of the Environmental Health Community of Practice.
Contained in next section of constitution on delegation to Senior Officers	<ul style="list-style-type: none"> ● To instigate informal or formal action in order to resolve complaints or unlicensed activities and take appropriate action or remedy. 	Not explicitly shown in the current constitution.
Contained in next section of constitution on delegation to Senior Officers	<ul style="list-style-type: none"> ● To undertake formal consultations on amendments to policy, (or fares in accordance with the Maximum Chargeable Fare setting policy South Hams only) 	Not explicitly shown in the current constitution.
<p>Taken from Licensing Sub-Committee section above: “e) Officers shall have delegated authority to suspend licences in situations of urgency where there are reasonable grounds to do so”</p>	<ul style="list-style-type: none"> ● Authority to suspend licences in situations of urgency where there are reasonable grounds to do so (where urgency is determined by the Community of Practice Lead for Environmental Health 	Moved from Committee delegation section to delegation to Community of Practice Lead, with slight rewording.

Agenda Item 8

Report to: **Licensing Committee**
Date: **24th November 2016**
Title: **To recommend for adoption by full Council a policy in relation to the licensing of pleasure boats and pleasure boatmen.**
Portfolio Area: **Customer First**

Wards Affected: **All**

Relevant Scrutiny Committee:

Urgent Decision: **N** Approval and clearance obtained: **Y / N**

Date next steps can be taken: referral on of recommendation of approval to Full Council on Thursday 15th December 2016

Author: James Kershaw Role: **Senior Specialist Environmental Health Marine Officer**
Adam Parnell

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Recommendations: Needs to be clear and concise

1. That the Licensing Committee recommend to full council on the 15th December, for adoption the South West Regional Ports Associations guidelines for the licensing of Pleasure Boats and Pleasure Boatmen licences.
2. That the committee recommend to full council that the constitution be amended so that the power to grant, withhold, revoke or suspend Pleasure Boat and Pleasure Boatmen Licences is delegated to the Marine Officer

1. **Executive summary**

- 1.1. The Council under the Public Health Acts Amendment 1907 has the power to grant licences for pleasure boats and pleasure vessels to be let for hire or to be used for carrying passengers, and also to license the person in charge of or navigating such boats and vessels.
- 1.2. A licence should only be granted to a vessel that is safe, and a person who is capable of operating such a vessel.
- 1.3. The South West Regional Ports Association (SWRPA) have produced guidelines on determining the suitability of applicants for a pleasure boat and pleasure boatmen licence.
- 1.4. The report seeks to adopt these guidelines as the formal guidance that we as the Licensing Authority will use to consider licence applications.
- 1.5. The report seeks to delegate power to determine licences to the Marine Officer.

2. **Background**

- 2.1. The Council, as the Licensing Authority, has the power to grant licences for the operation of Pleasure Boats and for Pleasure Boatmen. These should only be granted to persons whom we are satisfied are competent and capable of handling such a vessel. In relation to vessels, the licensing authority must ensure that they are safe for the passengers or users.
- 2.2. SWRPA is a forum of Harbour Masters who operate in the South West region (including Dorset, Devon and Cornwall).

This forum has produced a set of guidelines in relation to the licensing of vessels and operators. As these guidelines are now adopted good practice by this forum it is now essential that we adopt them as the licensing authority.

- 2.3. The expertise in issuing these licences and the interpretation of the guidelines is held by the Marine Officer. It is therefore appropriate to delegate authority to the Marine Officer to grant, refuse, suspend or revoke these licences.
- 2.4. Currently Salcombe Harbour Authority issues licences on behalf of the Licensing Authority, and there is no proposal for this to change.

3. Outcomes/outputs

- 3.1. This report seeks to adopt the SWRPA licences for Boats and Boatmen guidelines as the policy that the Licensing Authority will use to determine whether to grant, withhold, revoke or suspend a Pleasure Boat or Pleasure Boatmen licence.
- 3.2. The report also seeks to delegate authority for making such determinations to the Marine Officer. Appeals against such determinations can be made to a court after 48 hours of such determination and having given 24 hours' written notice of an appeal with details of the grounds of appeal. Where an appeal is successful the Court may apportion costs to the appellant. It is therefore important that any determinations are defensible and based on sound judgments. The SWRPA guidelines, being recognised good practice, should provide a consistent and defensible basis for any determination.

4. Options available and consideration of risk

- 4.1. Because the Public Health Act directs that Councils "may" grant licences, the Council could choose not to licence any vessels, however there are many such vessels operating in the South Hams area and these licences provide a comprehensive control measure to mitigate the risks of boats being unseaworthy and/or their operators lacking basic competencies.
- 4.2. Alternatively the Council could devise alternative guidelines for the licensing of such vessels, however as these are deemed as good practice it is not believed to be a good use of resources to carry out this work.
- 4.3. Article 13 (2) of Directive 2006/123/EC, given domestic effect by regulation 18(4) of the Provision of Services Regulation 2009 SI No 2999, provides that the 'authorisation procedures and formalities' for applicants 'shall not be dissuasive...and any charges which the applicants may incur from their application shall be reasonable and proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of the procedures'.
- 4.4. As such all guidelines that we insist applicants must follow should accord with these regulations. The guidelines are good practice and only require such measures as deemed necessary to ensure the safety of users of such vessels, and as such should accord with the regulations.

5. Proposed Way Forward

- 5.1. That the committee recommend for adoption by the Council the SWRPA guidelines for determining Pleasure Boat and Pleasure Boatmen licences.
- 5.2. That the committee recommend to the Council that the constitution be amended so that the power of determination to grant, withhold, suspend or revoke a licence is delegated to the Marine Officer.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance		<p>The Public Health Acts Amendment Act 1907 section 94 states:-</p> <p>94.— Power to license pleasure-boats.</p> <p><i>(1) The local authority may grant upon such terms and conditions as they may think fit licences for pleasure boats and pleasure vessels to be let for hire or to be used for carrying passengers for hire, and to the persons in charge of or navigating such boats and vessels, and may charge for each type of licence such annual fee as appears to them to be appropriate.</i></p> <p><i>(2) Any such licence may be granted for such period as the local authority may think fit, and may be suspended or revoked by the local authority whenever they shall deem such suspension or revocation to be necessary or desirable in the interests of the public: Provided that the existence of the power to suspend or revoke the licence shall be plainly set forth in the licence itself.</i></p> <p><i>(3) No person shall let for hire any pleasure boat or pleasure vessel not so licensed or at any time during the suspension of the licence for the boat or vessel, nor shall any person carry or permit to be carried passengers for hire in any pleasure boat or vessel unless—</i></p> <p><i>(a) the boat or vessel is so licensed and the licence is not suspended; and</i></p> <p><i>(b) the person in charge of the boat or vessel and any other person navigating it is so licensed and his licence is not suspended and the conditions of his licence are complied with</i></p> <p><i>(4) A licence under this section shall not be required for any boat or vessel duly licensed by or under any regulations of the Board of Trade¹ or for a person in charge of or navigating such a boat or vessel.</i></p> <p><i>(5) No person shall carry or permit to be carried in any pleasure boat or pleasure vessel a greater number of passengers for hire than shall be specified in the licence applying to such boat or vessel, and every owner of any such boat or vessel shall, before permitting the same to be used for carrying passengers for hire, paint or cause to be painted, in letters and figures not less than one inch in height and three-quarters of an inch in breadth, on a conspicuous part of the said boat or vessel, his own name and also the number of persons which it is licensed to carry, in the form “Licensed to carry persons.”</i></p> <p><i>(6) Every person who shall act in contravention of the provisions of this section shall for each offence be liable to a penalty not exceeding level 3 on the standard scale but a</i></p>

		<p><i>person shall not be guilty of an offence under this subsection by reason of his failure to comply with such conditions as are mentioned in subsection 3(b) of this section if it is shown that there is a reasonable excuse for the failure.</i></p> <p><i>(7) Any person deeming himself aggrieved by the withholding, suspension, or revocation of any licence under the provisions of this section may appeal to a petty sessional court held after the expiration of two clear days after such withholding, suspension, or revocation: Provided that the person so aggrieved shall give twenty-four hours' written notice of such appeal, and the ground thereof, to the designated officer for the court, and the court shall have power to make such order as they see fit and to award costs, such costs to be recoverable summarily as a civil debt.</i></p> <p><i>(8) No licence under this section shall be required in respect of pleasure boats and pleasure vessels on any inland waterway owned or managed by Canal & River Trust.</i></p> <p><i>(9) In subsection (1) and (3) of this section "let for hire" means let for hire to the public.</i></p>
Financial		<p>The Council can charge an annual fee for issuing such licences at such a rate as we see as being appropriate. However recent case law in the European Court; Hemming & others v Westminster City Council; has stated that licensing fees should accord to Article 13 (2) of Directive 2006/123/EC, given domestic effect by regulation 18(4) of the Provision of Services Regulation 2009 SI No 2999, provides that the 'the cost of the authorisation procedures in question ... shall not exceed the cost of the procedures'.</p> <p>It is recognised that the introduction of a new licencing regime may be unwelcome for small marine-oriented businesses.</p>
Risk		<p>When granting licenses for Pleasure Boats and Pleasure Boatmen the Council needs to be satisfied that the safety of the public is protected and that all applicants are treated in a fair and consistent manner.</p> <p>The SWRPA guidelines provide a balance between protecting the public and ensuring a consistent approach.</p> <p>If decisions were unsound then any person aggrieved by such a decision could appeal and a court may find against the authority and award costs against us. By adopting the guidance which is</p>

		good practice across a number of licensing authorities this would limit the risk of a court finding our decision as being unsound.
Comprehensive Impact Assessment Implications		
Equality and Diversity		None foreseen
Safeguarding		None foreseen
Community Safety, Crime and Disorder		Possibly an increase initially in enforcement action to regularise the licensing standards and unlicensed activities.
Health, Safety and Wellbeing		None foreseen
Other implications		None

Supporting Information

Appendices:

South West Regional Ports Association Licences for Boats and Boatmen Guidelines

Background Papers:

None

SOUTH WEST REGIONAL PORTS ASSOCIATION

LICENCES FOR BOATS & BOATMEN GUIDELINES

LICENCES FOR BOATS AND BOATMEN - GUIDELINES

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SECTION 1

INTRODUCTION

These guidelines have been prepared by the South West Regional Ports Association (SWRPA) for use by Licensing Authorities under Section 94 of the Public Health Acts Amendment Act 1907 (as amended) or Harbour Bylaws should it so wished. They supersede all previous issues.

This document deliberately mirrors the guidance prepared by the Solent and Southern Harbour Masters' Association (SASHMA) for their members, with an aspiration that such guidance may become unified at some point in the future.

Section 94 of the Public Health Acts Amendment Act 1907 (as amended) authorises Local Authorities to grant licences for pleasure boats and pleasure vessels to be let for hire or to be used for carrying passengers for hire and also for persons in charge of navigating such vessels. The text of Section 94 of the Act is given in Section IV below. In addition, certain authorities have bylaws regulating pleasure boats and vessels and those in charge of or navigating such boats or vessels.

These guidelines use the **MCA Inland Waters Small Passenger Boat Code (IWSPBC)** as the criteria for the issue of a licence under the Public Health Acts. This Code can be obtained from the Maritime and Coastguard Agency (MCA) web site www.mcga.gov.uk

Applications for the granting or renewal of a Local Authority Boat Licence under the above act will be required to:

- 1 Hold an appropriate commercially endorsed licence as listed in the IWSPBC or a Boatman's/Waterman's Licence issued by the Local Authority
- 2 Operate the vessel from the Jurisdiction of the Local Authority. A licensing Authority may undertake to license vessels under these guidelines for another Authority by mutual agreement between appropriate person(s).
- 3 Produce written verification that the vessel is constructed to the EU Recreational Craft Directive, or the Code for the design, Construction and Operation of Hire boats, a copy of which may be obtained from the MCA website, and/or comply with the requirements of Section 4 and Annexes 8 and 9 of the IWSPBC
- 4 Upon first survey and at periods not exceeding 5 years, written confirmation of satisfactory survey of the underwater hull.
- 5 Comply with the requirements of Annexes 4 and 5 of the IWSPBC with regard to Safety Management and Risk Assessment.

A licensee will be required to maintain public liability insurance for a minimum of £3 million for any one accident and employer's liability insurance where applicable.

A Local Authority boat licence:

- 1 Is granted to the owner of the boat
- 2 Will not normally be transferable
- 3 May have additional conditions cited on the licence in regard to weather or any other condition at the discretion of the Local Authority issuing the licence.
- 4 Is valid for a period of 12 months only

SCOPE

The guidelines concern the safety of craft and their passengers and are limited to vessels up to 24m Load Line length carrying no more than 12 passengers operating in Category A, B, C and D waters, and other inland waters. These guidelines do **not** apply to: passenger ships; vessels which proceed to sea, or police vessels. Each of these is instead subject to one of the following:

- Safety code for passenger ships operating solely in UK Categorised waters (MSN 1823(M))
- Code of practice for the safety of small workboats and pilot boats
- Code of practice for the safety of small vessels in commercial user for sport or pleasure operating from a nominated departure point (NDP)
- Code of practice for the safety of small commercial motor vessels
- Code of practice for the safety of small commercial sailing vessels
- The Police Boat Codes, Amendment 3 (PCB 3)

This Code also does **not** apply to ships which satisfy the formula defined in the HSC Code and are capable of operating at speeds of 20 knots or more. Such ships shall comply with the HSC Code. Neither does it apply to fishing vessels.

REVIEW

These guidelines should be reviewed at least annually to ensure that updates to legislation, non-statutory codes and best practice are swiftly incorporated herein.

SECTION 2

Members of the South West Regional Ports Association

Axmouth
A& P Falmouth
Appledore Fish Quay
Bideford
Bridgewater
Bridport
Bristol Port Company
Brixham (part of Torbay Harbours)
Bude
Charlestown, St Austell
Dart Harbour and Navigation Authority
Exeter River and Canal
Falmouth
Fowey
Gloucester
Hayle
Ilfracombe
Imerys (Fowey docks)
Looe
Lyme Regis
Mevagissey
Mousehole
Newlyn
Newquay
Padstow
Paignton (part of Torbay harbours)
Penryn
Penzance
Plymouth – ABP Millbay Docks
Plymouth – Cattewater Harbour
Plymouth – City Council Harbour
Plymouth – Sutton Harbour
Polperro
Poole
Portland
River Yealm
Salcombe
St Ives
St Mary's, Isles of Scilly
St Mawes
Teignmouth
Torquay (part of Torbay Harbours)
Truro
Weymouth

SECTION 3

List of Authorities licensing under the Public Health Acts

Cornwall Unitary Council

Councils in Devon

East Devon
Exeter
North Devon
Plymouth
South Hams
Teignbridge
Torbay
Torridge

Councils in Dorset

Poole Borough Council

Council of the Isles of Scilly

Harbour Commissioners

Dartmouth (on behalf of South Hams)
Falmouth
Fowey
Padstow

SECTION 4

SECTION 94 OF THE PUBLIC HEALTH ACTS AMENDMENT ACT 1907

94.— Power to license pleasure-boats.

(1) *The local authority may grant upon such terms and conditions as they may think fit licences for pleasure boats and pleasure vessels to be let for hire or to be used for carrying passengers for hire, and to the persons in charge of or navigating such boats and vessels, and may charge for each type of licence such annual fee as appears to them to be appropriate.*

(2) *Any such licence may be granted for such period as the local authority may think fit, and may be suspended or revoked by the local authority whenever they shall deem such suspension or revocation to be necessary or desirable in the interests of the public:*

Provided that the existence of the power to suspend or revoke the licence shall be plainly set forth in the licence itself.

(3) *No person shall let for hire any pleasure boat or pleasure vessel not so licensed or at any time during the suspension of the licence for the boat or vessel, nor shall any person carry or permit to be carried passengers for hire in any pleasure boat or vessel unless—*

- (a) the boat or vessel is so licensed and the licence is not suspended; and*
- (b) the person in charge of the boat or vessel and any other person navigating it is so licensed and his licence is not suspended and the conditions of his licence are complied with*

(4) *A licence under this section shall not be required for any boat or vessel duly licensed by or under any regulations of the Board of Trade¹ or for a person in charge of or navigating such a boat or vessel.*

(5) *No person shall carry or permit to be carried in any pleasure boat or pleasure vessel a greater number of passengers for hire than shall be specified in the licence applying to such boat or vessel, and every owner of any such boat or vessel shall, before permitting the same to be used for carrying passengers for hire, paint or cause to be painted, in letters and figures not less than one inch in height and three-quarters of an inch in breadth, on a conspicuous part of the said boat or vessel, his own name and also the number of persons which it is licensed to carry, in the form "Licensed to carry persons."*

(6) *Every person who shall act in contravention of the provisions of this section shall for each offence be liable to a penalty not exceeding level 3 on the standard scale but a person shall not be guilty of an offence under this subsection by reason of his failure to comply with such conditions as are mentioned in subsection 3(b) of this section if it is shown that there is a reasonable excuse for the failure.*

(7) *Any person deeming himself aggrieved by the withholding, suspension, or revocation of any licence under the provisions of this section may appeal to a petty sessional court held after the expiration of two clear days after such withholding, suspension, or revocation:*

Provided that the person so aggrieved shall give twenty-four hours' written notice of such appeal, and the ground thereof, to the designated officer for the court, and the

¹ Now the MCA.
Version 1.0

court shall have power to make such order as they see fit and to award costs, such costs to be recoverable summarily as a civil debt.

(8) No licence under this section shall be required in respect of pleasure boats and pleasure vessels on any inland waterway owned or managed by Canal & River Trust.

(9) In subsection (1) and (3) of this section “let for hire” means let for hire to the public.

SECTION 5

AREAS OF OPERATION & WEATHER STATES

Areas of operation

The Merchant Shipping (Categorisation of Waters) Regulations, and Merchant Shipping Notice No MSN 1837 (M), should be consulted for a full list of areas.

Weather States

Rough/ very rough weather - Sea State 4 or above (wave height 1.2 to 2.0m)

Very Rough Weather - Sea State 5 (wave height 2.0m or more)

These sea states have been set because their likely wave height approaches that specified within the above MSN for Cat C or Cat D waters.

SECTION 6

GENERAL PRINCIPLES

Annual Hull Survey

A licensed boat shall be surveyed annually by the licensing authority's surveyor or by a surveyor approved by the licensing authority, including an appropriate out-of-water examination of the hull at least every five years (more frequently for wooden hulls) and this should be documented. No licence shall be issued in respect of any boat until the surveyor is satisfied that the boat is of sound construction, has adequate stability and is in a fit state and equipped to operate within its designated area.

The surveyor shall examine and report on the structural condition of the hull and shall examine and report on the propulsion machinery, the electrical and pumping installations - but only in so far as these affect the seaworthiness of the boat.

It is recommended that the surveyor is guided by the relevant provisions of paragraph 4-12 of the SCV Code and of the IWSPBC.

The licensing authority shall maintain a list of approved surveyors, whom it is recommended shall have adequate professional indemnity insurance cover.

Reporting Procedure:

The operator or skipper of every licensed boat shall before proceeding to sea, inform the coastguard, harbour master, port authority or other responsible body or nominated agent registered and approved by the licensing authority, stating the name of the boat, its destination, the number of persons on board the boat and the approximate time of its return.

Insurance:

All licensed boats shall carry adequate passenger liability and third party insurance cover.

Drug and Alcohol Policy:

The operator should have in place a Drug and Alcohol Policy, which should include a statement that no crew member is to be under the influence of alcohol or drugs while in charge of, or operating on, the vessel, or when preparing to take charge of the vessel.

Safety Management System:

With reference to para 2.6 and annex 4 of the IW Code, the following note is intended to act as a simplified guide for licensing authorities:-

All operators should provide a documented Safety Management System to ensure that best practice is adhered to at all times. Attention is drawn to the Inland Waters Small Passenger Boat Code, which contains advice on the setting up of a S.M.S.

The system should contain:

- The operators Health and Safety protection policy.
- Documented lines of communication between those with responsibilities in the operation. This should contain a clear statement to the effect that the skipper has final authority for the safety of the vessel.
- Procedures for the safe operation of the vessel. This can include, but not be limited to, equipment testing checklists, bunkering checklists, pre-departure checklists, passenger safety briefing.
- Operators to ensure that their passengers/hirers are fully conversant with the usage and stowage position of all safety appliances onboard and the wearing of lifejackets is to be demonstrated. Verbal instructions must be given to all passengers and hirers as per recommendations. The stowage position of the lifejackets is to be clearly marked and readily accessible.
- Emergency response procedures.
- Accident reporting procedures.
- Crew training records/records of musters and drills carried out.
- Instructions for the use of life saving apparatus, fire fighting apparatus, Navigational and safety equipment carried.
- Maintenance records including service records for life saving apparatus, fire fighting apparatus, engines, electrical installation, etc.

All licensed boatmen are required to leave ashore with a reliable person, the number of passengers onboard, separated into males, females and children under sixteen years of age. Details of where these records are kept and the shore contact, are to be left with the Harbour Master.

For self-hires, the licensed hirer will be required to record the name of the persons using the craft, separated into males, females and children. This information is to be retained by the hirer until the hire is complete.

SECTION 7

LICENCING GUIDANCE

The spectrum of different vessels which may be licenced makes a 'one size fits all' approach impractical; the following guidance is provided to assist licencing authorities determine what factors to consider during the licencing process.

Beach floats Pedaloos	Licence the operator Restrict area of operation (eg not allowed in areas of strong tidal currents or waterways) Operator to provide safety boat, the cox'n of which is to be a licenced boatman, or means of retrieving floats/pedaloos
Surfboard/bodyboard hire	Licence the operator Encourage operator to provide safety boat, the cox'n of which is to be a licenced boatman, or have alternative means of retrieving surfers Consider restricting area of use to within visual range of operator and/or lifeguard if practicable Encourage participants especially children to wear buoyancy aid
Canoes Stand Up Paddleboards (SUPs)	Licence the operator. SUP operators should be encouraged to adopt the 'BSUPA code of conduct' once it has been published. Operator to provide safety boat, the cox'n of which is to be a licenced boatman (safety boat not required in sheltered waters) All participants encouraged to wear buoyancy aids or life jackets, particularly novices Canoes to have sufficient internal buoyancy to remain afloat when filled with water Canoe or SUP to have leash, handrail or rope (as appropriate) to which participant can hold onto in the event of entering the water/capsize Restrict area of operation (eg not allowed in areas of strong tidal currents or waterways)
Power surfboard	Licence the operator Restrict use to areas free of bathers Users to wear life jackets or buoyancy aids
Windsurf or sail board	Licence the operator, who should be RYA qualified Operator to provide safety boat, the cox'n of which is to be a licenced boatman Participants to wear life jackets or buoyancy aids Each board to carry some form of safety signalling device (eg radio or other apparatus) Restrict use to areas free of bathers
Hovercraft	Licence the operator, who must hold a Certificate of Competence by the Hover Club of Great Britain Limited Operator to provide safety boat, the cox'n of which is to be a licenced boatman Users to wear life jackets or buoyancy aids Fan(s) to be safely screened Each craft to be fitted with control system which automatically throttles back Hovercraft registration certificate, plus CAA Hovercraft Safety Certificate MCA hovercraft operating permit
Self-drive motorboats	Licence the operator Operator to provide safety boat, the cox'n of which is to be a licenced boatman Restrict to areas free of bathers Motorboats to be fitted with propeller safety guard

	<p>All participants to wear buoyancy aids or life jackets</p> <p>Every user to be given safety instruction prior to taking control of the craft, to include areas of use, means of attracting attention in case of difficulty, navigational orientation (eg explanation of buoyage in the area etc) and Col Regs</p>
<p>Personal water craft (PWC) eg jet ski, flyboard</p>	<p>Licence the operator</p> <p>Restrict use to areas absolutely free of bathers and other water users (although it may be permissible to allow jet skis and water-skiers may use the same designated area)</p> <p>Operator to provide safety boat, the cox'n of which is to be a licenced boatman</p> <p>Users to wear life jackets or buoyancy aids</p> <p>Every user to be given safety instruction prior to taking control of the craft</p> <p>See also notes in Section 11</p>
<p>Water skiing</p>	<p>Operator and each boat to be licenced</p> <p>Operator should hold British Waterski and Wakeboard (BWSW) Coach Licence and conform to codes of practice</p> <p>At least 2 people in the boat when towing a person on skis (driver and observer) when towing a person on skis</p> <p>Boat driver should hold at least Ski Boat Driver Level 2 or equivalent</p> <p>Restrict use to areas absolutely free of bathers and other water users (although it may be permissible to allow jet skis and water-skiers may use the same designated area)</p> <p>Area of take off and drop off to be marked and direction of circulation to be specified</p> <p>Every participant to wear life jacket or buoyancy aid</p>
<p>Parascending/parasailing</p>	<p>Operator and each boat to be licenced</p> <p>Boat cox'n to be licenced</p> <p>At least 2 people in the boat (driver and observer) when towing a person</p> <p>Every participant to wear life jacket or buoyancy aid</p> <p>Restrict to areas absolutely free of bathers</p>
<p>Kite Surfing</p>	<p>Operator to be licenced</p> <p>Operator to provide safety boat, the cox'n of which is to be a licenced boatman</p> <p>Restrict to areas free of bathers</p> <p>Participants to wear life jacket or buoyancy aid</p>
<p>Water taxi carrying no more than 12 passengers</p>	<p>Licence the boat and boatman</p>

Notes

Operators should be required to display notices stating

“No person should attempt to use one of these craft unless he or she can swim at least 40 metres fully clothed”

Safety boats. Where a safety boat is required is must either be afloat or ready for immediate launch.

Life jackets and buoyancy aids must be CEN or MCA approved.

SECTION 8

BOAT INSPECTION CHECKLIST

Boat Name:	
Date:	
Category:	

- * MCA Inland Water Small Passenger Boat Code
- * MS (Boatmaster's Qualifications, Crew and Hours of Work) Regulations 2015

		Ref. *	Remarks
Third party Liability Insurance for £3M			
Skipper			
Category A/B	Category C/D		
Skipper to have an appropriate Qualification or demonstrate to Operator that competent and Local experience. Recommended minimum qualifications: MCA BMLT2L1 /RYA Inland Helm + 12 months experience/ RYA power boat level 2 + 12 months experience/ Waterman's license issued by competent authority	Skipper to have as minimum MCA BML T2L2/ RYA Coastal/Day skipper + commercial endorsement + 12 months experience/ RYA power boat level 2 + commercial endorsement + 12 months experience/ Waterman's/Boatman's License issued by competent authority	26.1 26.2	
1-day short range VHF certificate. If VHF fitted	1-day short range VHF certificate. If VHF fitted	26.3	
Medical certificate: ML5/ENG1/ CAA commercial pilots license DVLA group 2 drivers license HSE diving medical certificate	Medical certificate: ML5/ENG1/ CAA commercial pilots license DVLA group 2 drivers license HSE diving medical certificate	26.4	
Evidence of satisfactory colour Vision if not marine medical	Evidence of satisfactory colour Vision if not marine medical	26.5	
Basic Sea Survival certificate	Basic Sea Survival certificate	26.6	
First Aid			
Elementary/ RYA Small Craft First Aid Certificate/ HSE approved/ Ambulance service First Aid certificate.	Elementary/ RYA Small Craft First Aid Certificate/ HSE approved/ Ambulance service First Aid certificate.	30.1	To be held by Skipper or other member of the crew
Validity 5 years		30.2	

RYA small craft first aid is valid for 3 years

Construction and Structural Strength		
On first survey: Post 1998, EC Recreational Craft Directive 94/25/EC builders CE plate Cat A/B waters design cat. D. Cat. C/D waters, design cat C	3.4.3	
Max No of persons.	3.4.3	
Hull Id No. (starboard side transom + hidden location)	3.4.3	
Owner's Manual – declaration of conformity & stability/ loading data Safe operation of boat info/ equipment positions	3.4.3	
Pre 1998 boats on first application: Survey by appropriate surveyor that boat is IAW this code/Code for Design, Construction, Operation of Hire Boats Code, or builders certificate with evidence that the boat is appropriately constructed for the area of intended operation.	4.1	
Vessels holding existing license in SASHMA areas: Recent history of safe operation in required operating area.	4.5	
Weed hatch if fitted: 150mm above waterline and watertight	4.6	
Hull/shell fittings/steering/propulsion to have documented Out of water examination by competent person at least every 5 years	4.7	
Water freeing arrangements/drainage		
If water may be trapped – min. 2 freeing ports (1 each Side) of Area: Cat. A/B 65 sq. cm/ Cat C 135 sq. cm/ Cat D 225 sq. cm	6.1.1	
Machinery		
Fit for purpose for intended service. Materials fire resistant or otherwise protected	7.1.1	
Moving parts/hot surfaces/other hazards protected for normal movement around vessel.	7.1.1	
Sufficient fuel capacity for area of operation.	7.1.2	
Fuel tank vents to have flame gauze and be at or above filling plate level and no danger of fuel/vapour escape.	7.1.2	
Engines in dedicated compartment remote from operator then shut off fitted in feed pipe as close to tank as possible.	7.1.3	
Outboard petrol tanks to have quick connection shut off device.	7.1.3	
Reliable starting mechanism. If by battery then battery charger fitted. Cat C/D then duplicate battery + change over switch.	7.1.5	
Inflatable boats & open boats able to reach planing speed: if remote throttle controls - then fitted with kill cord.	7.1.7	

Diesel engines		
If fuel tank has sight glass then self closing v/v to prevent spillage Portable fuel storage unit to be metal & means to contain spills & direct overside drainage of spills.	7.2.2	
Located on deck & away from heat source & build up of vapour. Separate from LPG	7.2.2	
Containers stored upright, secured & labelled (haz. Etc). Not to impede movement around vessel or escape routes.	7.2.2	
Petrol engines		
To be suitable outboard.	7.3.1	
Fuel filling lines flexible hoses – connections leak proof and easily accessible for inspection.	7.3.1	
Fuel Tanks non-corrosive material. Secured low down as practicable. Joints/seams to be welded/brazed/close riveted – no solder. No Glass/plastic sight gauges – indicators to not allow escape of fuel if damaged. Dipsticks if fitted to be via gas tight fittings.	7.3.1	
Tanks bonded to deck filling plate & earth point in contact with water surrounding hull. Tanks > 2.5l within 1m of engine/heat source to be protected by Fire resistant baffle.	7.3.1	
Fuel drawn through top/near top of tank, except gravity feed to ensure no fuel dump if tank damaged. Fuel filters marine use and fire resistant. Flame trap/air filter to be fitted to air intake.	7.3.1	
Feed pipes suitable material, Adequately supported/Clear of exhaust/heat sources.	7.3.1	
Vessels may have < 5HP auxiliary engine with integral fuel tank if provided with filling precautions sign.	7.3.2	
Other than inflatable boats – permanent tank any spillage to drain overboard. Or portable tank < 27l.	7.3.3	
Hydrocarbon detector in enclosed locations liable to vapour build up.	7.3.4	
Spare portable petrol containers not to be carried unless essential. If so, marked (haz etc.), secured on deck, easily jettisoned, spillage to drain Overboard. Away from LPG. Not impede normal movement or on Escape routes. Alternatively in fire resistant locker, Overside drainage.	7.3.5 7.3.6	
Small Vessels may have 5l container in deck locker vapour tight to interior/Not able to open from interior/drain overboard & ventilated to Atmosphere.	7.3.7	
Electrical Installation		
Electrical equipment away from areas liable to hydrocarbon gas build up.	8.3	
Centralised lighting to have back up – may be torches sufficient to exit to open deck/deploy LSA/illuminate rescue equipment/work on essential machinery.	8.4	

Batteries firmly secured. If charging output > 0.2kW, batteries in well ventilated space. If >2.0kW well ventilated dedicated compartment. If natural ventilation then risk assessment to prove low risk to life.	8.5.1 8.5.2	
Battery operated safety critical equipment to have back up.	8.5.4	
Steering Gear/ Steering Position		
Effective steering system with emergency arrangements.	9.1 9.3	
Helmsman clear view.	9.2	
Bilge Pumping/ Draining		
Powered or hand pump – allow any compartment to be drained. Holding tank for oily bilge water. Auto start recommended except in areas where potential pollutants, no drawing from oil tight areas beneath engine/gearbox.	10.1 10.3	
Category A/B open vessels bucket/bailer	10.2	
Bilge alarms if fitted to give audible/visual warning at control position	10.4.2	

Anchors and Cables		
Anchor with min. 4m chain.	20.1	
20m continuous length of rope, suitable for towing.	2.3	

Life Saving Equipment			
Category A/B	Category C/D		
One lifebuoy 18m line + light at night May have throw line as alternative If lifejackets worn then not required	2 lifebuoys, 1 with 18m line + light at night. If lifejackets worn by all then not required	13.1	
Lifejackets not required unless Vulnerable people – risk assessment must be provided	Enough for all on board. Solid buoyancy or inflatable. Not to rely solely on oral inflation. EN 396 150N (ISO 12402-3) or EN 399 275N. (ISO 12402-2) Lights if used at night. Serviced annually if regularly used, bi annually as minimum if not	13.2	
Category A/B/C	Category D		
Life raft not required	Liferaft for all on board. MCA/ISO 9650 Approved. SOLAS 'B' pack or MCA 'E' pack containing:		
	Buoyant line with buoyant quoit	13.3	
	2 buoyant folding safety knives + lanyards stowed near painter	13.3.3	
	Buoyant bailer + lanyard	13.3.3	
	2 sponges	13.3.3	
	sea anchor attached to raft	13.3.3	
	2 buoyant paddles	13.3.3	
	1 st Aid kit in waterproof case	13.3.3	
	Whistle	13.3.3	
	2 Red hand flares	13.3.3	
	Puncture repair outfit + bellows	13.3.3	
	Equipment not attached to raft may be packed in raft by authorised person and contents listed on certificate or stowed in grab bag in prominent Position.	13.3.4	
	Liferaft stowed on deck + hydrostatic Release or in readily accessible and	13.3.5	

	Dedicated locker opening onto deck.		
	Maintained at manufacturers required intervals	13.5	
	Instruction/maintenance manual	13.4.1	
	If the flares and Buoyant line with buoyant quoits are sealed within the life raft, then the equivalent should be also carried in an accessible place on the vessel.	2.3	
	2 orange smoke floats	2.3	

Fire Safety		
Machinery compartments to ensure retention of released Fire Fighting Extinguishing medium to extinguish fire.	14.1	
Insulation non-combustible and impervious to oil.	14.2	
Means provided so as to keep machinery clean + means to contain oil spillage	14.3	
Recommended that fixtures and fittings to be fire retardant	14.5	
Galleys/sleeping accommodation fitted with smoke/heat detectors	14.6 14.7	
LPG installations annual inspection by competent person	14.4	

Means of Escape		
Means of escape such that no single event cuts off all escape routes. Account taken of numbers and restrictions on use of escapes.	14.8.1	
2 means of escape from: each sleeping compartment or other at risk accommodation	14.8.1	
2 means of escape from machinery space unless only occasionally visited and exit allows ready escape, or person always within 5m of exit	14.8.1	
Existing vessels with single means of escape from accommodation to have fire detectors as necessary for early warning.	14.8.2	

Fire Fighting Appliances		
Open/partially decked with no engine/ cookers/ heating/lighting etc, No fire extinguisher required.	15.1	
Inboard engine space to have remotely operated system either manual or automatic. May be portable extinguisher operable from outside the space, through fire hole. Extinguisher suitable for size of space but minimum rating 5A/34B.	15.2	
Cat A if outboard then 1 x suitable fire extinguisher		
Cat B/C/D Vessels >6m LOA, hand/powerd pump + hose/nozzle to give 1 jet of Water to any part of vessel, or 1	15.5	

multi-purpose extinguisher min. rating 13A/113B kept outside engine space or more in number giving an equivalent rating		
1 multi - purpose fire extinguisher min. rating 5A/34B at each exit from accommodation to deck but min. 2 extinguishers.	15.6	
Fire blanket in Galley/cooking area between door and stove.	15.7	
Fire bucket with lanyard	15.5	
Emergency Response Plan.	19.7	
Navigational Equipment		
Navigation lights IAW International Collision Regs.	17.1	
Efficient sound signalling equipment.	17.4	
Waterproof signalling torch	19.6	
Boat Hook	19.6	
Day shapes (anchor ball, cone for sailing vessels motoring etc....)		
Category C/D		
Magnetic compass with deviation card or Fluxgate compass + back up supply, with deviation card if not internal calibration.	19.1 19.2	
Current chart/publications/tide tables for area of operation.	19.3	
Radar reflector/transponder	19.4	
Sailing vessels to have means of clearing rigging if dis-masted.	19.5	
Communication Equipment		
VHF fixed or mobile (recommended VHF DSC) + license.	16.1	
Portables to be waterproof or in waterproof pouch.	16.3	
Emergency communications card - easily accessible	16.4	
Accommodation		
Sufficient handholds/grab rails fitted within accommodation for safe movement around vessel.	21.1	
Furniture/heavy equipment securely fastened	21.2	
Stowage Lockers to have secure fastening.	21.3	
Means of escape clearly marked and free from obstruction.	21.4	
Enclosed spaces adequately ventilated	21.5	

Protection of Personnel		
Areas frequented by passengers to be enclosed or guard-rails/wires To min. ht. 1000mm. Maybe reduced in Cat A/B if passengers seated	22.1	
If impedes working of vessel then arrangements giving equivalent safety	22.3	
Cat. C/D – 2 safety harnesses and means of securing.	22.5	
Surface of working deck to be non slip/ Inflatable boats, upper surface of tubes non-slip finish.	22.6	
Appropriate First Aid Kit stowed in accessible place.	23	
Tenders (Dinghies)		
If carried, should be marked with carrying capacity and name of vessel	24	
Prevention of Pollution		
Sanitation system to be capable of being sealed or made inoperable.	25.2	
Oil tight tray fitted beneath engine/gearbox to prevent leakage. Sides of tray as high as practicable. Not required if oil tight structure fitted fore & aft of engine. No bilge pump to draw from oil tight area.	25.4	

SECTION 9

LICENCES FOR BOATMEN

General

Any person having charge of a boat for the purpose of carrying passengers for hire shall be in possession of a current Boatman's Licence or an acceptable alternative licence as prescribed in the IWSPBC section 26.2.4 or Part 2 (Boatmasters Licences) of the Merchant Shipping (Boatmasters' Qualifications, Crew and Hours of Work) Regulations 2015.

Examiners should be appointed by the Harbour Master of the appropriate port or a MCA/RYA Yachtmaster Examiner.

Minimum Age

The minimum age for granting a Boatman's Licence shall be 18 years.

Duration

Licences shall be granted for a period of no longer than 5 years or until the holder reaches the age of 65 whichever period is shorter. Licences issued to persons of 64 years or over will be valid for three years or until the holder reaches the age of 75 whichever period is shorter. Licences issued to persons of 74 years and over will be valid for one year.

Exemption

Persons holding a current MCA Certificate of Competency for Deck Officers, an RYA Yacht master, MCA Boatmaster's License of an appropriate grade and for the appropriate area, or RYA Yachtmaster Coastal/Day Skipper/Advanced Powerboat or Powerboat level Certificate, with Commercial Endorsement, and 12 months relevant experience, or other higher qualifications, shall be exempt from all parts of the examination except that some licensing authorities may wish to examine all applicants on local knowledge.

Endorsements

The Boatman's Licence may be endorsed to give limitations with regard to area of operation, category of craft or other service at the discretion of the Examining Officer.

Medical Fitness

Licensed Boatmen should be in possession of an ML5 medical certificate or equivalent as prescribed in regulation 26.4 of the IWSPBC. Merchant Shipping Notices provide details of General Practitioners who will issue Medical Certificates complying with MCA requirements. Note that if an ML5 form is used to ascertain medical fitness the referral process contained therein cannot be employed – the MCA will return referrals to the licencing authority and it will be for them to determine whether or not the applicant is medically fit to hold a Boatmans' licence.

VHF Licence

A person wishing to have charge of a vessel fitted with VHF Radio is to produce a certificate of competence and authority to operate a VHF radio. The licence must be the Short Range Certificate (SRC) if the vessel's radio is DSC capable.

Basic Sea Survival Course

Licensed boatmen shall hold an approved Basic Sea Survival Course Certificate as prescribed by regulation 26.6 of the IWSPBC.

First Aid Certificate

Licensed Boatmen shall hold an appropriate First Aid certificate as prescribed by regulation 30 of the IWSPBC

SECTION 10

SYLLABUS FOR EXAMINATION FOR A BOATMAN'S LICENCE

International Regulations for Preventing Collision at Sea

Full knowledge and practical application of the steering and sailing rules Part B. Section 1 (rules 4-9) and Part B, Sections II and III and a general knowledge of all other rules.

Distress Signals

Knowledge of the contents of Annex IV of the International Regulations for Preventing Collisions at Sea and the operation of the signals and equipment carried in the boat or boats for which the candidate is being examined.

Navigation

Compass: The candidate should be required to demonstrate his ability to steer a compass course. He should have an elementary knowledge of the effects of metal in the vicinity of the compass and a working knowledge of the application of deviation and variation.

Tides: Use of the tidal stream atlas and tide tables for calculation of tidal heights and dept of water for standard and secondary ports.

Chart Work:

- i) Plotting positions
- ii) Working up course to steer
- iii) Common chart symbols

Uniform System of Buoyage

Candidates should demonstrate a working knowledge of the System.

Local Knowledge

Byelaws, General directions, harbour directions

Port Authority VHF channels

Sources for LNTM's

Local traffic regulations

Local sea marks, to include buoyage, lights, leading lights and marks.

Local dangers to navigation: Minimum and maximum depths over banks or obstructions, currents and abnormal tidal streams.

Local safe landing places in differing weather conditions.

A general knowledge of the times and heights of spring tides and abnormal tides.

Safe compass courses in or out of local harbours.

Any other items of local knowledge which the examiners may consider to be necessary.

Boat Handling

Effects of windage on hull and rig.

Propeller and rudder effects.

Berthing and unberthing.

Mooring. (No motoring against spring while embarking / disembarking)

Use of warps.

General helmsmanship.

Use of anchors.

Emergencies

Procedures and instructions to passengers in the following cases: -

Man overboard.

Fire.

Beaching or stranding.

Engine breakdown.

Collision.

Abandoning ship or sinking.

Heavy weather.

Restricted visibility.

Weather Reports

Ability to obtain and understand weather reports.

Ropework

Knots, hitches, bends and splices in general use.

First Aid

Simple first aid, including resuscitation

Distress and Rescue

A knowledge of the Distress and Rescue section of the Annual Notices to Mariners. (Any local Protocols).

Note:

The syllabus may be varied to reflect a particular limitation on area of operation intended by the applicant and the licence suitably endorsed.

SECTION 11

LICENCES TO LET SMALL BOATS FOR HIRE

SMALL VESSELS WITH LIMITED AREA OF OPERATION AND COMMERCIALY OPERATED PLEASURE CRAFT USED FOR LEISURE ACTIVITIES FROM A BEACH OR HARBOUR

Category 1A - Small boats hired out, not in charge of a licensed boatman, excluding beach and other craft referred to in Categories 1B and 1C, suitable only for operations in sheltered waters or close to the shore.

Category 1B - Hire Boats capable of a speed of 17 knots or over whether or not in charge of a licensed boatman, (e.g. speedboats, jet skis, etc).

Category 1C - Craft other than those listed in Categories 1A and 1B of the type operated from the beach (such as pedalos, floats and other such craft adapted to go in the water) hired out and not in charge of a licensed boatman.

Boats under this category should operate under the Guidelines contained in The MCA IIWSPBC Annex 5.

Areas of Operation:

Normal Weather. Close to shore: - Limits to be determined by the licensing authority.

Rough/Very Rough Weather – Sea State 4 or above (Wave Height >1.2m) not to operate.

General

No person shall let for hire or reward any licensed vessel in Categories 1A, 1B (when not in charge of a licensed boatman) or 1C without having first obtained a licence from the Local Authority (herein called a Licence to Let Boats for Hire).

Marking and Inspection

Every vessel before being let for hire or reward shall have exhibited in some conspicuous part the forenames and surname of the licensed owner and the total number of person allowed to be carried. The Licence to Let Boats for Hire may be suspended if at any time an authorised Officer of the Local Authority shall be of the opinion that any of the vessels on hire is unfit to carry passengers.

Persons in Charge

The Licensee shall be responsible that no motor boat, mechanically propelled boat or sailing boat shall be let for hire or reward unless a competent person(s) be placed in charge thereof by the licence holder and remain in charge so long as the hire shall last. Such competent person should hold a nationally recognised qualification for the activity concerned, i.e. water sports instructors certificate. Additionally, the Licensee may require a Local Authority Licence/concession to operate.

Towing craft should have a minimum of two crew at all times, one to navigate and one to observe the tow.

Inflatable tows should be capable of supporting 110% of the manufacturers maximum weight limit with any one separate inflatable compartment punctured or otherwise deflated.

Persons under 8 years of age must be accompanied by an adult at all times.

In cases where vessel(s) let for hire are remote from the competent person, then the licensee shall ensure that there are sufficient competent persons to maintain visual contact with the hired vessel(s) at all times and provide sufficient means of immediate rescue in the event of an incident.

The Licensee shall ensure that the equipment is maintained in a proper state and that hirers are provided with sufficient information about the craft and it's equipment to enable it to be used safely for the intended purpose and that hirers are competent for the intended operation, Paragraph 1 of "Persons in Charge" defines competency in terms of required qualifications. This paragraph does not.

The licensee shall ensure that procedures are in place to alert the emergency services in the event of an incident, report and record to the licensing authority all incidents that have or could have led to injury.

PERSONAL WATERCRAFT (PWC)

In addition to the above, in the case of PWC, the licensee shall ensure that the hirer be aged 16 or over and be in possession of a valid driving license, an appropriate marine qualification or a nationally recognised qualification for the activity involved.

No person under 8 years old should be allowed to accompany the hirer.

PWC should not be hired for towing activities.

Summary of New / Variation of premises licences and club premises certificates issued between 1 October 2015 to 30 September 2016

Date Received	Name of Premises	Type of Application	Outcome
5/10/15	Fortescue Inn	Minor variation	Granted by officer
13/10/15	Morrisons, Totnes	Variation	Granted by Sub-Committee
22/10/15	Morrisons, Kingsbridge	Variation	Granted by Sub-Committee
23/12/15	The Cove, Hope Cove	Minor variation	Refused by officer
20/01/16	Co-operative, Ivybridge	Minor variation	Granted by officer
22/01/16	Dartington Village Stores	Variation	Granted by officer
30/01/16	Ashburton Football Club	New Premises Licence	Granted at Sub-Committee
02/02/16	Thurlestone Hotel and Village Inn, Thurlestone	Variation	Granted by officer
02/02/16	The Cove, Hope Cove	Variation	Granted by Sub-Committee
26/02/16	Gastrobus Treats, Bantham	New Premises Licence	Granted by Sub-Committee
11/03/16	Staverton Bridge Nursery, Dartington	New Premises Licence	Granted by officer with agreed amendments
18/03/16	The Bear and Blacksmith, Stokenham	Minor variation	Granted by officer
21/03/16	Endsleigh Garden Centre, Ivybridge	Variation	Granted by officer with agreed amendments
30/03/16	Smithaleigh Service Station, Lee Mill	New Premises Licence	Granted by officer with agreed amendments
31/03/16	Co-operative, Ivybridge	Variation	Granted by officer
04/04/16	Dartbridge Inn	Minor variation	Granted by officer
04/04/16	Salcombe Gin Distillery, Salcombe	New Premises Licence	Granted by officer
06/04/16	Bantham Village Stores	New Premises Licence	Granted by officer with agreed amendments
12/04/16	Kingsbeer Festival, Kingswear	New Premises Licence	Granted by officer with agreed amendments
25/04/16	Shilstone, Modbury	Minor variation	Refused by officer
05/05/16	Morrisons Petrol Station, Totnes	New Premises Licence	Granted by Sub-Committee
10/05/16	Broadleigh Farm Caravan Park, Stoke Gabriel	Minor variation	Granted by officer
16/05/16	Hollowcombe Farm, Ermington	Minor variation	Granted by officer
09/06/16	Hillfield Village, Hillfield, Dartmouth	New Premises Licence	Granted by officer with agreed amendments
10/06/16	Nkuku, Harbetonford	New Premises Licence	Granted by officer

20/06/16	Saveurs, Totnes	New Premises Licence	Granted by officer
04/07/16	Salcombe Gin Distillery, Salcombe	Variation	Granted by officer with agreed amendment
06/07/16	The Quay, Kingsbridge	New Premises Licence	Granted by officer with agreed amendments
10/07/16	Old Mill Café, Wembury	New Premises Licence	Granted by officer
12/07/16	Riverford Farm Pumpkin Day, Buckfastleigh	New Premises Licence	Granted by officer with agreed amendments
14/07/16	Morrisons, Totnes	Minor variation	Granted by officer
01/08/16	Woods, Totnes	Minor variation	Granted by officer
26/08/16	Hope and Anchor, Hope Cove	Variation	Granted in part by Sub-Committee
05/09/16	Plymstock Albion Oaks RFC, Plymstock	New Premises Licence	Granted by officer
05/09/16	Manna from Devon Cookery School, Kingswear	New Premises Licence	Granted by officer with agreed amendments
08/09/16	Totnes Brewing Company, Totnes	New Premises Licence	Granted by officer with agreed amendments
21/09/16	Seahorse, Dartmouth	Variation	Granted by officer
29/09/16	Trehill Arms, Ivybridge	Minor variation	Granted by officer

Issue of licences/Amendments under Licensing Act 2003, Gambling Act 2005 and The Local Government (miscellaneous provisions) Act 1982 in the period 1st October 2015 to 30th September 2016

Transfer of Premises Licence	25	Issued by officer
Change of designated premises supervisor	37	Issued by officer
Personal Licences new	104	Issued by officer
Temporary Event Notices	662	Issued by officer

Gambling Act 2005

Category C & D Machines New	1	Issued by Officer
Small Society Lotteries	8	Issued by Officer
Occasional use Notice	4	Issued by Officer

The Local Government Miscellaneous Provisions Act 1982

<u>Hackney Carriage Licences</u>		
Drivers	131	Issued by Officer
Vehicles	118	Issued by Officer
<u>Private Hire Licences</u>		
Drivers	15	Issued by Officer
Vehicles	14	Issued by Officer
Operators	7	Issued by Officer

Miscellaneous Licensing

Animal Boarding Establishments	28	Issued by Officer
Pet Shop Licences	6	Issued by Officer
Riding Establishments	10	Issued by Officer
Skin Piercing Licences Person (New)	0	
Skin Piercing Licence Premises (New)	2	Issued by Officer
Scrap Metal Dealer Site (New)	0	
Scrap Metal Dealer Mobile Collector (New)	0	

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