



**North Tyneside Council**

# Regulation and Review Committee

20 February 2019

**Thursday 28 February 2019** Room 0.02, Council Chamber, Quadrant, The Silverlink North, Cobalt Business Park, North Tyneside **commencing at 6.00pm**

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<b>1. Apologies for Absence</b>	
To receive apologies for absence from the meeting	
<b>2. Appointment of Substitute Members</b>	
To be notified of the appointment of any Substitute Members.	
<b>3. To Receive any Declarations of Interest and Notification of any Dispensations Granted</b>	
You are invited to declare any registerable and/or non-registerable interests in matters appearing on the agenda, and the nature of that interest.	
Please complete the Declarations of Interests card available at the meeting and return it to the Democratic Services Officer before leaving the meeting.	
You are also invited to disclose any dispensation from the requirement to declare any registerable and/or non-registerable interests that have been granted to you in respect of any matters appearing on the agenda.	

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<p>To confirm the minutes of the Committee meeting held on 15 November 2018 and to note the minutes of the Panel meetings held on 29 November 2018, 10 January 2019 and 14 February 2019.</p>	
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<p>To receive a report on the recently published draft Statutory Guidance for Licensing Authorities in relation to taxis and private hire vehicles.</p>	

**To All Members of the Regulation and Review Committee**

Councillor Jim Allan	Councillor Janice Mole
Councillor Alison Austin	Councillor Tommy Mulvenna
Councillor Karen Bolger	Councillor Kate Osborne
Councillor Debbie Cox	Councillor John O'Shea
Councillor Peter Earley	Councillor Alan Percy
Councillor John Hunter (Deputy Chair)	Councillor Margaret Reynolds
Councillor Gary Madden	Councillor Lesley Spillard
Councillor Maureen Madden	Councillor John Stirling (Chair)
Councillor David McMeekan	Councillor Judith Wallace

## Regulation and Review Committee

15 November 2018

Present: Councillor J Stirling (Chair)  
Councillors J Allan, A Austin, K Bolger, T Brady, D Cox,  
P Earley, John Hunter, G Madden, M Madden, D McMeekan,  
J Mole, T Mulvenna, J O'Shea, A Percy, M Reynolds  
and L Spillard.

### **RQ38/11/18 Apologies for Absence**

Apologies for absence were submitted on behalf of Councillors K Osborne and J Wallace.

### **RQ39/11/18 Substitute Members**

Pursuant to the Council's Constitution the appointment of the following substitute member was reported:

Councillor T Brady for Councillor K Osborne.

### **RQ40/11/18 Declarations of Interest and Dispensations**

There were no declarations of interest or dispensations reported.

### **RQ41/11/18 Minutes**

**Resolved** that the minutes of the meeting of the Regulation and Review Committee held on 20 September 2018 be confirmed as a correct record and signed by the Chair and the minutes of the Regulation and Review panel meetings held on 11 October and 23 October 2018 be noted.

### **RQ42/11/18 Annual Review of the Council Policy on Covert Surveillance**

The Regulation of Investigatory Powers Act 2000 (RIPA) placed covert surveillance on a statutory basis. RIPA enabled certain public authorities, including the Authority, to carry out surveillance operations with statutory protection from legal challenge; this protection was often referred to as the "RIPA shield". North Tyneside Council had adopted a Covert Surveillance Policy to ensure:

- a) the Authority complied with the RIPA Act, Codes of Practice, and guidance from the Investigatory Powers Commissioner's Office (IPCO);
- b) gave effect to the rights of citizens to respect for their private and family lives (pursuant to the Human Rights Act 1998); and
- c) protected the Authority from legal challenge when undertaking surveillance.

To ensure that there was appropriate oversight of the use of the powers by elected

15 November 2018

members the Policy required that:

- An annual report covering the Authority's use of RIPA powers be presented to Cabinet along with a review of the Policy for the coming year.
- Reports were presented to the Regulation and Review Committee on the use of the powers. The Committee's role was to look at compliance, oversight and the use of RIPA and also to determine whether the Policy remained fit for purpose and if not to recommend changes to Cabinet.
- The Elected Mayor received regular updates from the Senior Responsible Officer regarding the Authority's use of the RIPA powers.

The Policy has been subject to an annual review since initial adoption and Cabinet on 26 November 2018 would be considering an updated Policy.

The current Policy had been agreed by Cabinet in November 2017. Following a review of the Policy, a draft copy of the revised draft policy was presented for members' consideration to determine whether the Policy, as amended, remained fit for purpose. Minor typographical amendments had been made but no substantive changes had been proposed.

Regulation and Review Committee was requested to consider the revised draft policy and to recommend the Policy to Cabinet for adoption.

It was explained that since 1 November 2012 there had been no authorisations granted and no report other than the annual review to the Committee had been required. Should an authorisation be granted it would be reported to the next available meeting of the Committee to ensure the requirements for elected member oversight of the use of the Authority's RIPA powers had been discharged.

RIPA provisions could only be used to authorise surveillance activities to detect and prevent serious crime and the two authorising officers of the Authority were required to seek judicial approval from the Magistrates' Courts before any surveillance was undertaken. The Authority had a Central Register of all RIPA and non-RIPA surveillance activity which was maintained and monitored by Law and Governance. As an organisation which used RIPA the Authority was subject to regular inspections by the Investigatory Powers Commissioner's Office (IPCO).

In response to questions, the implications of the RIPA legislation for subject access requests under Freedom of Information regulations and the implications and potential pitfalls of using social media to monitor people was explained to the Committee. Also how any information/data collected by the Authority can only be used for the purpose for which it was collected and cannot be used to create profiles of people was explained. For example, CCTV in the Council's buildings had been installed for safety and the prevention of crime and could therefore not be used as evidence for a disciplinary matter unrelated to those purposes. If any Members had any safeguarding concerns regarding online bullying or grooming these should be reported through the Council's Front Door Service (Tel: 0345 2000 109).

**Resolved** that (1) the Authority's draft policy on covert surveillance be noted; and (2) the proposed policy be recommended to Cabinet for adoption at its meeting on 26 November 2018.

## **Regulation and Review Committee Panel**

**29 November 2018**

Present: Councillor J Stirling (Chair)  
Councillor John Hunter, J Mole, L Spillard and K Osborne

### **RQ43/11/18 Apologies for Absence**

There were no apologies for absence reported.

### **RQ44/11/18 Declarations of Interest and Dispensations**

There were no declarations of interest or dispensations reported.

### **RQ45/11/18 Exclusion Resolution**

**Resolved** that under Section 100A (4) of the Local Government Act 1972 (as amended) and having applied a public interest test in accordance with Part 2 of Schedule 12A the press and public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A to the Act.

### **RQ46/11/18 Hackney Carriage and Private Hire Drivers Licences Appeal – Mr P**

The Committee received a report by the Senior Manager, Technical Services which outlined the background to an appeal by Mr P against the decision by the Authority to refuse to renew his Hackney Carriage and Private Hire Driver Licences on the grounds that it was not satisfied that he was a fit and proper person to hold these licences.

Mr P attended the meeting and was accompanied by a representative, Mr H.

A Licensing Officer presented the report to the Committee which included information on Mr P's application, his criminal record and the reasons for the refusal. The appeal form submitted by Mr P was also included.

Mr P and Mr H were given the opportunity to ask questions of the Licensing Officer.

Members asked questions of the Licensing Officer.

Mr H then addressed the Committee on Mr P's behalf. Mr H also read out and then circulated a reference from Mr P's current employer. Mr P then answered questions from Members.

Following a summing up from the Licensing Officer and Mr H, all parties left the meeting to enable consideration of the matter to be undertaken in private.

The options available to the Committee were to:

- a) Uphold the appeal and agree to renew the licences; or
- b) Dismiss the appeal and refuse to renew the licences.

The Committee considered that it was an established principle that a licence was a privilege and not a right and its main concern was the need to maintain high standards amongst licensed drivers and to ensure the protection of the travelling public.

In determining its response the Committee had regard to Section 51 of the Local Government (Miscellaneous Provisions) Act 1976 and the Council's Hackney Carriage and Private Hire Licensing Policy, in particular Chapter 7 which made reference to convictions, cautions, conduct and medical fitness.

**Resolved** that Mr P's appeal be upheld and his Hackney Carriage and Private Hire Driver licences renewed with a warning as to his future conduct. The Committee considered the circumstances warranted a departure from the Policy and was satisfied that Mr P was a fit and proper person to hold both licences from this Authority.

### **RQ47/11/18 Hackney Carriage and Private Hire Driver Licences Disciplinary Referral – Mr R**

The Committee considered a report by the Senior Client Manager, Technical and Regulatory Services which outlined the background to a referral relating to the holder of both a Hackney Carriage and a Private Hire Vehicle drivers licence, Mr R.

The Committee was requested to determine whether any disciplinary action was required and to assess Mr R's continued suitability to carry out the duties of a licensed driver.

A Licensing Officer and Mr R, accompanied by his representative Mr W, attended the meeting.

The Licensing Officer presented the report to the Committee which included information on the reason for the referral and Mr R's criminal and licensing record. The Licensing Officer then answered questions from Members of the Committee.

Mr R and Mr W on his behalf were given the opportunity to ask questions of the Licensing Officer.

Mr W then addressed the Committee on behalf of Mr R.

Members of the Committee asked questions of Mr R and sought clarification on a number of matters.

Following a summing up from the Licensing Officer and Mr W, all parties left the meeting room to enable consideration of the matter to be undertaken in private.

The options available to the Committee were to:

- take no action;
- issue a warning as to the driver's future conduct;

- suspend the driver's licence; or
- revoke the driver's licence.

The Committee considered that it was an established principle that a licence was a privilege and not a right and seriously considered all the options available to it.

In determining its response the Committee took into account all that had been presented and contained within the papers submitted to the meeting and had regard to Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 and the Council's Hackney Carriage and Private Hire Licensing Policy, in particular chapter 7 which makes reference to convictions, cautions, conduct and medical fitness.

**Resolved** that both Mr R's Hackney Carriage and Private Hire Driver licences be revoked as the Committee was no longer satisfied that he was a fit and proper person to hold these licences from this Authority.

### **RQ48/11/18 Private Hire Drivers Licence Disciplinary Referral – Mr B**

The Committee considered a report by the Senior Client Manager, Technical and Regulatory Services which outlined the background to a referral relating to the holder of a Private Hire Vehicle Drivers Licence, Mr B.

The Committee was requested to determine whether any disciplinary action was required and to assess Mr B's continued suitability to carry out the duties of a licensed driver.

A Licensing Officer and Mr B accompanied by a representative, Mr W, attended the meeting.

The Licensing Officer presented the report and answered questions from Members of the Committee.

Mr B and his representative were given the opportunity to ask questions of the Licensing Officer.

Mr B's representative then addressed the Committee.

Members of the Committee asked questions of Mr B and his representative and sought clarification on a number of matters, including the application of regulations to private land.

Following a summing up from the Licensing Officer and Mr B's representative, all parties left the meeting room to enable consideration of the matter to be undertaken in private.

The options available to the Committee were to:

- take no action;
- issue a warning as to the driver's future conduct;
- suspend the driver's licence; or
- revoke the driver's licence.

The Committee considered that it was an established principle that a licence was a privilege and not a right and seriously considered all the options available to it.

In determining its response the Committee took into account all that had been presented and contained within the papers submitted to the meeting and had regard to Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 and the Council's Hackney Carriage and Private Hire Licensing Policy, in particular chapter 7 which makes reference to convictions, cautions, conduct and medical fitness.

**Resolved** that (1) Mr B's private hire driver's licence be revoked as the Committee was no longer satisfied that he was a fit and proper person to hold a licence from this Authority; (2) The Licensing Section identify all places in the borough which are private land but are also places where members of the public would expect to find a taxi rank and ascertain if the landowners are aware that this is unregulated and offer advice on what steps they could take to ensure the safety of their patrons/visitors; and (3) Information on which places do fall into the category described above and what steps have been taken or are to be taken on the matter, to be reported back to all Members of the Regulation and Review Committee.

(At this point in the proceedings Councillor Osborne left the meeting room and took no further part in the decision making).

### **RQ49/11/18 Private Hire Drivers Licence Appeal – Mr L**

The Committee received a report by the Senior Manager, Technical Services which outlined the background to an appeal by Mr L against the decision by the Licensing Authority to refuse to renew his Private Hire Drivers Licence on the grounds that it was not satisfied that he was a fit and proper person to hold such a licence.

Mr L attended the meeting and was accompanied by a colleague, Mr H.

A Licensing Officer presented the report to the Committee which included information on Mr L's application, his criminal record and the reasons for the refusal. The appeal form submitted by Mr L was also included.

Mr L and Mr H were given the opportunity to ask questions of the Licensing Officer.

Members asked questions of the Licensing Officer.

Mr H then addressed the Committee on Mr L's behalf. Mr L and Mr H then answered questions from Members.

Following a summing up from the Licensing Officer and Mr H, all parties left the meeting to enable consideration of the matter to be undertaken in private.

The options available to the Committee were to:

- a) Uphold the appeal and agree to renew the licence; or
- b) Dismiss the appeal and refuse to renew the licence.

The Committee considered that it was an established principle that a licence was a privilege and not a right and its main concern was the need to maintain high standards amongst licensed drivers and to ensure the protection of the travelling public.



In determining its response the Committee had regard to Section 51 of the Local Government (Miscellaneous Provisions) Act 1976 and the Council's Hackney Carriage and Private Hire Licensing Policy, in particular Chapter 7 which made reference to convictions, cautions, conduct and medical fitness.

**Resolved** that Mr L's appeal be upheld and his Private Hire Driver's licence renewed. The Committee considered the circumstances warranted a departure from the Policy and was satisfied that Mr L was a fit and proper person to hold a licence from this Authority.

## **Regulation and Review Committee Panel**

**10 January 2019**

Present: Councillor J Stirling (Chair)  
Councillor J Allan, P Earley, T Mulvenna and J O'Shea.

### **RQ50/01/19 Apologies for Absence**

There were no apologies for absence reported.

### **RQ51/01/19 Declarations of Interest and Dispensations**

There were no declarations of interest or dispensations reported.

### **RQ52/01/19 Exclusion Resolution**

**Resolved** that under Section 100A (4) of the Local Government Act 1972 (as amended) and having applied a public interest test in accordance with Part 2 of Schedule 12A the press and public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A to the Act.

### **RQ53/01/19 Private Hire Drivers Licence Appeal – Mr G**

The Committee received a report by the Senior Manager, Technical Services which outlined the background to an appeal by Mr G against the decision of the Authority to refuse to renew his Private Hire Driver Licence on the grounds that it was not satisfied that he was a fit and proper person to hold this licence.

Mr G attended the meeting and was accompanied by a representative, Mr W.

A Licensing Officer presented the report to the Committee which included information on Mr G's application, his criminal and licensing record with the Authority and the reason for the refusal. The appeal form submitted by Mr G was also included.

Mr W asked questions of the Licensing Officer.

Members asked questions of the Licensing Officer.

Mr W then addressed the Committee on Mr G's behalf. Mr W and Mr G then answered questions from Members.

Following a summing up from the Licensing Officer and Mr W, all parties left the meeting to enable consideration of the matter to be undertaken in private.

The options available to the Committee were to:

- a) Uphold the appeal and agree to renew the licence; or
- b) Dismiss the appeal and refuse to renew the licence.

The Committee considered that it was an established principle that a licence was a privilege and not a right and its main concern was the need to maintain high standards amongst licensed drivers and to ensure the protection of the travelling public.

In determining its response the Committee had regard to Section 51 of the Local Government (Miscellaneous Provisions) Act 1976 and the Council's Hackney Carriage and Private Hire Licensing Policy, in particular Chapter 7 which made reference to convictions, cautions, conduct and medical fitness.

**Resolved** that Mr G's appeal be upheld and his Private Hire Driver licence renewed with a warning as to his future conduct. The Committee considered the circumstances warranted a departure from the Policy and was satisfied that Mr G was a fit and proper person to hold a licence from this Authority.

#### **RQ54/01/19 Combined Hackney Carriage and Private Hire Driver Licence Disciplinary Referral – Mr P**

The Committee considered a report by the Senior Client Manager, Technical and Regulatory Services which outlined the background to a referral relating to the holder of a Combined Hackney Carriage and Private Hire Vehicle drivers licence, Mr P.

The Committee was requested to determine whether any disciplinary action was required and to assess Mr P's continued suitability to carry out the duties of a licensed driver.

A Licensing Officer and Mr P attended the meeting.

The Licensing Officer presented the report to the Committee which included information on the reason for the referral and Mr P's criminal and licensing record. The Licensing Officer then answered questions from Members of the Committee.

Mr P was given the opportunity to ask questions of the Licensing Officer.

Mr P then addressed the Committee.

Members of the Committee asked questions of Mr P and sought clarification on a number of matters.

Following a summing up from the Licensing Officer and Mr P, all parties left the meeting room to enable consideration of the matter to be undertaken in private.

The options available to the Committee were to:

- take no action;
- issue a warning as to the driver's future conduct;
- suspend the driver's licence; or
- revoke the driver's licence.

The Committee considered that it was an established principle that a licence was a privilege and not a right and seriously considered all the options available to it.

In determining its response the Committee took into account all that had been presented and contained within the papers submitted to the meeting and had regard to Section 51 of the Local Government (Miscellaneous Provisions) Act 1976 and the Council's Hackney Carriage and Private Hire Licensing Policy, in particular chapter 7 which makes reference to convictions, cautions, conduct and medical fitness.

The Committee determined that due to the circumstances of the case a suspension would act as a sufficient deterrent to avoid repetition and was an effective way of giving Mr P time to reflect on the actions he took when working as a licensed driver; his responsibilities towards his passengers and other road users; and remind himself of the Highway Code and the conditions of his licence.

**Resolved** that Mr P's Combined Hackney Carriage and Private Hire Driver licence be suspended for a period of four weeks.

### **RQ55/01/19 Hackney Carriage Vehicle Proprietor's Licence – Appeal against a condition of the licence**

The Committee considered a report by the Senior Client Manager, Technical and Regulatory Services which outlined the background to an appeal by Mr B against the imposition of condition 5 as currently worded to his hackney carriage proprietor's licence.

Condition 5 of the Standard Conditions under the heading Door Decals states 'There shall be attached centrally to each front door of the vehicle the appropriate hackney carriage or private hire vehicle decals supplied by the Authority. The decals must be securely affixed or in the case of Hackney Carriage Vehicles permanently affixed to the vehicle and these must be maintained in a satisfactory condition and be legible'.

Mr B's appeal case was that door decals for Hackney Carriages should be the removable for when the vehicle was being used for weddings and funerals, executive work and at times when it was being used as a "private vehicle" and not be permanently affixed as required by the Authority's Policy.

A Licensing Officer and Mr B attended the meeting.

The Committee was informed by the Licensing Officer that powers relating to the licensing of hackney carriages were contained in the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976. Section 47(1) of the Local Government (Miscellaneous Provisions) Act 1976 allows a district council to attach to the grant of a licence any conditions as it may consider reasonably necessary. Section 47(2) allows a district council to require a hackney carriage licensed by it to be of such a design and appearance or bear such distinguishing marks as shall clearly identify it as a Hackney Carriage.

Chapter 2 of the Authority's Hackney Carriage and Private Hire Licensing Policy makes reference to Vehicle Licences and conditions and states 'General conditions are attached to a hackney carriage vehicle proprietor's licence relating to the identification of the vehicle and safety issues.'

Condition 5 had been approved following a consultation exercise which included the issue of door decals and how they were fitted to vehicles. The majority of respondents agreed with the proposal to permanently affix door decals to hackney carriages.

The decision to distinguish between Private Hire and Hackney Carriages was made because of the exemptions afforded to Private Hire vehicles by section 75(3) of the Local Government (Miscellaneous Provisions) Act 1976, whereby the plate and decals can be removed from a Private Hire vehicle providing it is carrying out, exclusively, executive type work. This exemption does not apply to Hackney Carriages.

The Committee was informed that after being granted a Hackney Carriage Vehicle Proprietor's licence Mr B had written to the Authority requesting condition 5 be 'rescinded' because it was 'unfair' as private hire vehicles were able to remove their decals for executive work and the same should be possible for hackney carriages. Mr B was informed that he had the right of appeal against the conditions within 21 days of the issue of the licence; which he subsequently did.

Before concluding his presentation, the Licensing Officer reminded the Committee that it had discretion and may depart from the Policy if it considered there were compelling reasons to do so. The Committee must act in accordance with the law and may only agree to the grant of a licence where it was satisfied that any conditions attached to the grant of the licence were reasonably necessary.

After Members had asked questions, Mr B addressed the Committee.

Mr B explained why he thought the distinction between private hire and hackney carriages regarding permanently fixed decals was unnecessary; that he would like to undertake executive work; the impact this condition had on his ability to work weddings and funerals; and the impact the condition had on his family life.

Members asked questions and sought clarification on a number of matters. The Committee was reminded that the decision before them today was for Mr B's vehicle only and would not be a change to the Authority's Policy.

The Licensing Officer and Mr B then summed up their respective cases.

All parties then left the meeting room to allow the Committee to consider its decision in private.

The Committee had the following options.

- a) Uphold the appeal and permit the door decals to be mounted on magnets for Mr B's vehicle; or
- b) Dismiss the appeal and not permit the decals to be mounted on magnets for Mr B's vehicle.

In determining its response the Committee had regard to the Authority's Hackney Carriage and Private Hire Licensing Policy and considered all that had been presented at the meeting and contained within the papers.

The Committee considered in turn the different circumstances in which Mr B proposed he would not use the door decals and determined as follows:

- a) A Hackney Carriage cannot undertake executive work; the exemption under section 75(3) of the Local Government (Miscellaneous Provisions) Act 1976 for executive work is for Private Hire Vehicles only.
- b) It was noted that the exemptions in section 75 (1)(c) and (cc) of the Local Government (Miscellaneous Provisions) Act 1976 applies to Hackney Carriages for weddings and funerals meaning Mr B was permitted to remove or cover up decals and remove the roof sign when the vehicle was hired to be used for weddings or funerals. The plate would still need to be displayed under the requirements of the Town Police Clauses Act 1847. Whilst acknowledging that for a wedding or funeral the removal of the decals would improve the cosmetic appearance of the car and that magnetic decals were preferable because once the existing decals were removed they could not be used again, these were not sufficient grounds to justify a departure from the Policy.
- c) With regard to the use of the vehicle for personal journeys, the Members sympathised and understood the difficulties which could arise when waiting for family or friends; however it was an inconvenience which came with the privilege of a Hackney Carriage Proprietor's licence and the law has been clearly interpreted by the Courts as meaning that a hackney carriage is a hackney carriage at all times of the day whether the vehicle is being used for work or not.

The Committee considered all the options available to it but was satisfied that the imposition of condition 5 complied with the requirements of section 47 of the Local Government (Miscellaneous Provisions) Act 1976 and the distinction between private hire vehicles and hackney carriages was reasonable and necessary and that nothing put forward at the meeting justified a departure from the Policy in relation to this matter at this time.

**Resolved** that the appeal against the imposition of condition 5 (decals should be permanently affixed) for the reasons set out above be dismissed.

# Regulation and Review Committee Panel

**14 February 2019**

Present: Councillor J Stirling (Chair)  
Councillor J Mole, T Mulvenna and J O'Shea.

## **RQ56/02/19 Apologies for Absence**

Apologies for absence were recorded for Councillor John Hunter.

## **RQ57/02/19 Declarations of Interest and Dispensations**

There were no declarations of interest or dispensations reported.

## **RQ58/02/19 Exclusion Resolution**

**Resolved** that under Section 100A (4) of the Local Government Act 1972 (as amended) and having applied a public interest test in accordance with Part 2 of Schedule 12A the press and public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A to the Act.

## **RQ59/02/19 Private Hire Vehicle Proprietor's Licence – Appeal**

The Committee considered a report by the Senior Client Manager, Technical and Regulatory Services which outlined the background to an appeal by Mr T against the decision of the Licensing Authority to refuse to issue a private hire vehicle proprietor's licence for his motor vehicle as it did not meet the Authority's specification for vehicles.

A Licensing Officer and Mr T attended the meeting.

The Committee was informed by the Licensing Officer that Mr T's licence had been refused due to the level of tint on the rear windscreen and rear passenger windows. It was explained that powers relating to the licensing of private hire vehicles was contained in Section 48 of the Local Government (Miscellaneous Provisions) Act 1976. Under this section a district council may grant a licence to use a vehicle as a private hire vehicle provided it is satisfied:

(a) that the vehicle is –

- (i) suitable in type, size and design for use as a private hire vehicle;
- (ii) not of such design and appearance as to lead any person to believe that the vehicle is a hackney carriage;
- (iii) in a suitable mechanical condition;
- (iv) safe, and

(v) comfortable

A district council may attach to the grant of a licence under this section any conditions as they consider reasonably necessary.

Chapter 2 of the Authority's Hackney Carriage and Private Hire Licensing Policy covers vehicle licences and paragraph 71 refers to tinted windows:

"The windows (excluding the windscreen which must have a minimum light transmission of 75%) of any vehicle shall not have been treated so that less than the percentages detailed below of light is transmitted through it:

- 70% minimum light transmission for front side windows
- 34% for all other windows

Licensing Officers are able to exercise their discretion as to the suitability of a vehicle where the light transmittance of the windows is below 34%. This discretion however does not apply to the front windscreen or the front side windows".

Mr T had indicated on his application for a private hire proprietor's licence that his vehicle had tinted windows. The windows were measured and the tint for the rear side windows was 18.7% and for the rear window was 25%. These levels were considered too far below the permitted level for Licensing Officers to use their discretionary powers to approve the vehicle. A licence for the vehicle was refused as the glass fitted to the rear side windows and rear screen was far below the standard required by the Policy, which was primarily designed to ensure as far as possible the safety of customers using licensed vehicles.

An appeal against this decision was made by Mr T.

Before concluding his presentation, the Licensing Officer reminded the Committee that it had discretion and may depart from the Policy if it considered there were compelling reasons to do so. The Committee must act in accordance with the law and may only agree to the grant of a licence where it was satisfied that any conditions attached to the grant of the licence were reasonably necessary.

After Members had asked questions and sought clarification on a number of matters from Mr T and the Licensing Officer, Mr T addressed the Committee.

Mr T explained why he thought an exemption could be made for his vehicle. This included that the windows were factory fitted; that he believed Newcastle City Council would grant the licence; and that the tint would increase the comfort of his passengers and reduce exhaust emissions.

Members asked questions and sought clarification on a number of matters.

The Members, supporting officers, the Licensing Officer and Mr T then left the meeting room to inspect the vehicle. The vehicle was viewed from all angles, close up and from a distance, and with and without someone sitting in the rear of the vehicle. Members also observed another vehicle from the same manufacturer of Mr T's car with tinted windows parked nearby.

The Licensing Officer and Mr T then summed up their respective cases and then left the



meeting room to allow the Committee to consider its decision in private.

The Committee had the following options.

- a) Uphold the appeal and issue the vehicle with a private hire proprietor's licence; or
- b) Dismiss the appeal and not issue the vehicle with a private hire proprietor's licence.

In determining its response the Committee had regard to the Local Government (Miscellaneous Provisions) Act 1976 and the Authority's Hackney Carriage and Private Hire Licensing Policy and considered all that had been presented at the meeting, contained within the papers and that they had observed. The Committee seriously considered both options available to it.

**Resolved** that the appeal against the refusal to licence Mr T's vehicle be dismissed.

Reason: The Committee was satisfied that the imposition of a minimum tint for windows complied with the requirements of section 47 of the Local Government (Miscellaneous Provisions) Act 1976 and was reasonable and necessary to ensure the safety of the travelling public.

The decision to refuse to licence the vehicle due to the level of the tint on its rear windscreen and rear passenger windows being below the minimum standard required by the Authority's Policy of 34% was also reasonable and appropriate. The light transmission limit was placed on the windows in the interest of public safety and the overriding consideration of the licensing regime was the safety of the public. Nothing put forward at the meeting justified a departure from the Policy in relation to this matter at this time.

The Committee accepted that Newcastle City Council might licence the vehicle but each licensing authority had to apply its own policies, as it considered appropriate, for the safety and comfort of passengers.

# North Tyneside Council Report to Regulation and Review Committee Date: 28 February 2019

## ITEM 5

Title: Consultation on  
Draft Statutory Guidance  
for Licensing Authorities

Report from Service Area: Environment, Housing and Leisure

Report Authors: Colin MacDonald  
Senior Manager, Technical & Regulatory Services  
Tel: (0191) 643 6620

Joanne Lee, Public Protection Manager  
Tel: (0191) 643 6901

Wards affected: All

## PART 1

### 1.1 Purpose

The purpose of the report is to advise Committee of the current consultation that is underway on Statutory Guidance for Licensing Authorities released by The Department for Transport earlier this month in relation to the licensing of taxis, private hire vehicles, drivers and private hire operators.

### 1.2 Recommendations

The Committee is recommended to:

- I. Note the consultation on the Statutory Guidance for Licensing Authorities and express its views, if any, on the contents of the draft Guidance through the Chairman of the Committee to the Cabinet Member for Community Safety and Engagement.

### 2.0 Background Information

2.1 The Department for Transport (DFT) is seeking views on proposed recommendations contained in a draft Statutory Guidance to Licensing Authorities on how their licensing powers should be exercised when licensing vehicles, drivers and operators in order to safeguard the public including children and vulnerable adults. This is the first Statutory Guidance in relation to hackney carriage and private hire licensing published by a Secretary of State using the powers to publish such Guidance using their powers under the Policing and Crime Act 2017.

2.2 The DFT has stated that it expects that the recommendations made in the final version of the Statutory Guidance will be implemented by Licensing Authorities unless there is a compelling local reason not to do so.

2.3 Many of the areas covered by the consultation are already in operation in North Tyneside. There are however new issues that the DFT are proposing to be introduced and are seeking views on. These include:

- a) all licence holders should be required to subscribe to the Disclosure and Barring Service (DBS) update service;
- b) appropriate DBS checks to be conducted every 6 months;
- c) Licensing Authorities should make referrals to the DBS when it considers that an applicant or licence holder is thought to present a potential risk of harm to the public;
- d) Licensing Authorities should produce guidance for passengers on making complaints directly to the Licensing Authority that must be displayed in licensed vehicles;
- e) Licensing Authorities should consider whether an applicant for a licence is able to communicate in English orally and in writing with customers;
- f) PHV operators should, as a condition of licensing, be required to keep a register of all staff that will take bookings or dispatch vehicles and PHV operators should be required to evidence that they have had sight of a basic DBS check on all individuals listed on the register;
- g) PHV operators should be required to provide to the Licensing Authority their policy on employing ex-offenders that will take bookings or dispatch vehicles as a condition of their licence;
- h) PHV operators may not use a driver who does not hold a PHV licence (but may hold a PCV licence) to use a public service vehicle to carry out a PHV booking;
- i) Licensing Authorities should carefully consider potential public safety benefits and potential privacy issues when considering mandating that taxis and PHVs have CCTV installed; and
- j) Annex A of the draft statutory guidance provides a list of offences to aid consistency in the 'fit and proper' assessment for licences.

### 3.0 Consultation

The consultation on the draft Statutory Guidance runs for 12 weeks from 12 February 2019 to 22 April 2019. A response on behalf of the Authority will be prepared and submitted to the DFT by the Cabinet Member for Community Safety and Engagement under the delegation given to her to do so.

Members of the Authority are entitled to submit a response to the consultation on their own behalf should they wish to do so.

### 4.0 Appendices:

- Appendix 1 [Consultation on Statutory Guidance for Licensing Authorities – Moving Britain Ahead](#)
- Appendix 2 [Consultation on Statutory Guidance for Licensing Authorities, February 2019, consultation version](#)
- Appendix 3 [Consultation response form](#)

## **5.0 Contact Officers:**

Colin MacDonald, Senior Manager, Technical & Regulatory Services, Tel: 0191 643 6620

Joanne Lee, Public Protection Manager, Tel: 0191 643 6901

Alan Burnett, Principal Trading Standards & Licensing Officer, Tel: 0191 643 6621

## **6.0 Background Information:**

The following background papers have been used in the compilation of this report and are available for inspection at the offices of the author of the report.

North Tyneside Council Hackney Carriage and Private Hire Licensing Policy  
<https://my.northtyneside.gov.uk/category/931/hackney-carriage-and-private-hire-licensing-policy>

[Local Government \(Miscellaneous Provisions\) Act 1976](#)

[Town and Police Clauses Act 1847](#)

## **PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING**

### **2.1 Finance and Other Resources:**

There are no financial implications for the Authority arising directly from this report.

### **2.2 Legal**

The power to issue the proposed Statutory Guidance is contained within Section 177 of the Policing and Crime Act 2017. This section requires the Secretary of State to consult with the following before publishing the Statutory Guidance:

- a. The National Police Chiefs' Council,
- b. Persons who appear to the Secretary of State to represent the interests of public authorities who are required to have regard to the guidance,
- c. Persons who appear to the Secretary of State to represent the interests of those whose livelihood is affected by the exercise of the licensing functions to which the guidance relates, and
- d. Such other persons as the Secretary of State considers appropriate.

### **2.3 Consultation/Community Engagement:**

The consultation runs from 12 February 2019 to 22 April 2019. A consultation response on behalf of North Tyneside Council will be submitted to the Department for Transport within this period.

### **2.4 Human Rights:**

There are no human rights issues arising directly arising from this report.

**2.5 Equalities and Diversity:**

There are no equality and diversity implications arising directly from this report.

**2.6 Risk Management:**

There are no significant risk management implications to the Authority arising directly from this report.

**2.7 Crime and Disorder:**

It is not considered that there are any crime and disorder implications arising directly from this report.

**2.8 Environment and Sustainability:**

It is not considered that there are any environment and sustainability implications arising directly from this report.

# Taxi and Private Hire Vehicle Licensing: Protecting Users

## Consultation on Statutory Guidance for Licensing Authorities

**Moving Britain Ahead**

DfT-2019-01

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# Foreword

In recent years the taxi and private hire vehicle (PHV) industry has been subject of intense scrutiny as a result of failings in taxi and PHV licensing. Some authorities failed to ensure that individuals were 'fit and proper' to be issued a taxi or PHV licence and failed to take action when concerns were raised about the involvement of licensees in the abuse and exploitation of some of the most vulnerable in our society.

Above all else the taxi and PHV services provided to the public must be safe. Government will play its part, but the importance of local government in achieving this cannot be overstated. Government enables the legislative framework but it is the licensing authorities which set the standards and requirements and crucially make the decisions that can bring about the services the public deserve.

A key element of safety is ensuring that taxi and PHV drivers are properly assessed against robust standards and that this is the case regardless of where they are licensed. The granting of a licence must however not be seen as the end of the process but the beginning; licensees must continue to adhere to the high standards or risk having their licence revoked.

The excellent work undertaken in Rotherham following the identification of its past failings evidences what can be achieved with the powers licensing authorities currently have. We have recognised that not all licensing authorities are as proactive as others in raising standards. To address this, the Policing and Crime Act 2017 enables the issuing of statutory guidance to protect children and vulnerable adults, and by extension all passengers, when using these services.

Some of the recommendations proposed in the guidance would impose additional burdens on the trade. While I would sooner that such measures were not needed, the lessons from the Casey and Jay reports and the impact on the lives of those affected by these failures must not – and will not - be forgotten. To do otherwise would compound the harm and injustice done.

I hope that all authorities will adopt the Department's recommendations and bring about high common standards, and increased sharing of information and enforcement powers. There has long been a call for national standards to achieve greater consistency in licensing and in particular with respect to safety. Government, with the collaboration of all licensing authorities, can effectively bring this about without the delay of Parliament considering new legislation.

The Department has already undertaken to monitor the adoption of the recommendations made in the final version of the statutory guidance. While the measures in the final statutory guidance issued will be recommendations, these are the result of extensive discussions with a range of stakeholders and careful consideration. I will be asking licensing authorities that do not adopt these why they have not done so.



**Nusrat Ghani MP**

Parliamentary Under Secretary of State for Transport

# What we are consulting on

## Introduction

- 1 We are seeking views on proposed recommendations contained in draft statutory guidance to taxi and private hire vehicle (PHV) licensing authorities on how their licensing powers can be exercised in order to safeguard children and vulnerable adults. The power to issue this guidance comes from Section 177 of the Policing and Crime Act 2017.
- 2 This consultation will run for 10 weeks, from 12 February 2019 until 23:45 on 22 April 2019.

## Who this consultation is aimed at

- 3 Section 177 of the Policing and Crime Act requires the Secretary of State to consult the following:
  - a. the National Police Chiefs' Council,
  - b. persons who appear to the Secretary of State to represent the interests of public authorities who are required to have regard to the guidance,
  - c. persons who appear to the Secretary of State to represent the interests of those whose livelihood is affected by the exercise of the licensing functions to which the guidance relates, and
  - d. such other persons as the Secretary of State considers appropriate.
- 4 This consultation has therefore been drawn to the specific attention of the National Police Chiefs' Council, the Local Government Association, the National Association of Licensing Enforcement Officers, the Institute of Licensing, and a range of trade representative bodies and publications of which the Department is aware across the country.
- 5 This is a public consultation and we are keen to hear from any other groups or individuals with an interest.

## Our approach

- 6 The recommendations in the draft statutory guidance are the result of extensive engagement and detailed discussion with a range of bodies including representatives of licensing authorities, regulators, operators and drivers, and detailed consideration by the Department for Transport.
- 7 While there is a widespread consensus amongst stakeholders that common core standards are required to regulate better the taxi and PHV sector, government does

not currently have the legislative power to introduce national standards. The Department however expects the recommendations made in the final version of this statutory guidance to be implemented by licensing authorities unless there is compelling local reason not to. This consultation does not seek to discuss the merits of statutory guidance as opposed to legislation to mandate standards. Should Parliament pass legislation in the future to enable national taxi and PHV standards, the recommendations contained in both the statutory and best practice guidance will naturally be the starting point for considering what these might be.

- 8 All local authorities and district councils that provide childrens' and other types of services have a statutory duty to make arrangements to ensure that their functions, and any services that they contract out to others, are discharged having regard to the need to safeguard and promote the welfare of children. This means that licensing authorities should have in place arrangements that reflect the importance of safeguarding and promoting the welfare of children. This includes clear whistleblowing procedures, safe recruitment practices and clear policies for dealing with allegations against people who work with children, as set out in the Working Together to Safeguard Children<sup>1</sup> statutory guidance.
- 9 **Although it remains the case that licensing authorities must reach their own decisions, both on overall policies and on individual licensing matters in light of the relevant law, it may be that this guidance might be drawn upon in any legal challenge to an authority's practice; any failure to adhere to the guidance without sufficient justification could be detrimental to the authority's defence.** This guidance does not purport to give a definitive statement of the law and any decisions made by a licensing authority remain a matter for that authority.
- 10 The draft statutory guidance reflects the significant changes in the industry and lessons learned from experiences in local areas since the Department's best practice guidance was last updated in 2010. This includes extensive advice on checking the suitability of individuals and operators to be licensed; safeguarding children and vulnerable adults, the Immigration Act 2016, the Disclosure and Barring Service checks and Common Law Police Disclosure (which replaced the Notifiable Occupations Scheme).
- 11 This guidance replaces relevant sections of the best practice guidance issued by the Department in 2010. A consultation on revised best practice guidance, which focuses on recommendations to licensing authorities to assist them in setting appropriate standards (other than those relating to passenger safety) to enable the provision of services the public demand, will be launched at a later date.

<sup>1</sup> <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

# Consultation proposals

- 12 The draft statutory guidance accompanies this consultation document.

## Terminology

Taxis are referred to in legislation, regulation and common language as 'hackney carriages', 'black cabs' and 'cabs'. The term '**taxi**' is used throughout the draft statutory guidance and consultation document and refers to all such vehicles. Taxis are able to be hired by hailing on the street or at a rank.

Private hire vehicles (PHVs) include a range of vehicles including minicabs, executive cars, chauffeur services, limousines and some school and day centre transport services. All PHV journeys must be pre-booked via a licensed PHV operator. The term **PHV** is used throughout the draft statutory guidance and this consultation document to refer to all such vehicles.

# Consultation questions

- 13 The Department has carefully considered the recommendations proposed in the draft statutory guidance but these are of course subject to change following this consultation. While it is useful to have indications of the quantity of respondents that agree or disagree with these proposals, the Department wants to ensure that the final recommendations are informed by all available evidence and suggestions where these can be improved. We are specifically interested in ideas and proposals that:
  - are based on evidence
  - support the Government's aim to protect children and vulnerable adults from harm when using taxis and PHVs
- 14 There are 30 questions relating to the guidance, most of these ask for quantifiable (agree, disagree or no opinion) and qualitative (comments) responses.
- 15 Ahead of the consultation questions we would like to collect some information about you and your use of and/or role in the taxi and PHV trade. This information will be used to help to give context to the responses we receive from individuals and organisations. Only questions marked with an \* are mandatory.
- 16 The consultation questions and a response form are available at:  
<https://www.smartsurvey.co.uk/s/taxis-licence/>

# Confidentiality and data protection

- 17 The Department for Transport (DfT) is carrying out this consultation to gather views and evidence on measures for inclusion within the statutory guidance issued to taxi and PHV licensing authorities. This consultation and the processing of personal data that it entails is necessary for the exercise of our functions as a government department. If your answers contain any information that allows you to be identified, DfT will, under data protection law, be the Controller for this information.
- 18 As part of this consultation we are asking for your name and email address. This is in case we need to ask you follow-up questions about any of your responses. **You do not have to give us this personal information.** If you do provide it, we will use it only for the purpose of asking follow-up questions.
- 19 We may contract a third party to analyse the responses we receive to the consultation. If you provide your contact details, we may share this information with a contractor in case they need to contact you regarding your consultation response.
- 20 DfT's privacy policy has more information about your rights in relation to your personal data, how to complain and how to contact the Data Protection Officer. You can view it at <https://www.gov.uk/government/organisations/department-for-transport/about/personal-information-charter>.
- 21 DfT's privacy policy has more information about your rights in relation to your personal data, how to complain and how to contact the Data Protection Officer. You can view it at <https://www.gov.uk/government/organisations/department-for-transport/about/personal-information-charter>.
- 22 Your information will be kept securely and destroyed within 12 months after the consultation has been completed. Any information provided through the online questionnaire will be moved from their system to our internal systems within 2 months of the consultation end date.

# How to respond

The consultation period began on 11 February 2019 and will run until 23:45 on 22 April 2019. Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found at <https://www.gov.uk/dft#consultations> or you can contact [Taxis@DfT.GOV.UK](mailto:Taxis@DfT.GOV.UK) if you need alternative formats (Braille, audio CD, etc.).

**Please respond to the consultation at:**

<https://www.smartsurvey.co.uk/s/taxis-licence/>

Alternatively, please send consultation responses to:

SG-Consultation2019@DfT.GOV.UK

Department for Transport

Buses and Taxis Division (Statutory Guidance Consultation 2019)

Great Minster House

33 Horseferry Road

London

SW1P 4DR

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

## Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure



of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

# What will happen next

A summary of responses, including the next steps, will be published within three months of the consultation closing. Paper copies will be available on request.

If you have questions about this consultation please contact:

Paul Elliott

Taxis@DfT.GOV.UK

Buses and Taxis Division

Department for Transport

Great Minster House

33 Horseferry Road

London

SW1P 4DR

# Consultation principles

The consultation is being conducted in line with the Government's key consultation principles, further information is available at <https://www.gov.uk/government/publications/consultation-principles-guidance>

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

Consultation Co-ordinator  
Department for Transport  
Zone 1/29 Great Minster House  
London SW1P 4DR  
Email [consultation@DfT.GOV.UK](mailto:consultation@DfT.GOV.UK)

# **Taxi and Private Hire Vehicle Licensing: Protecting Users**

## **Statutory Guidance for Licensing Authorities**



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# 1. Introduction

- 1.1 The Department first issued Best Practice Guidance to assist those licensing authorities in England and Wales that have responsibility for the regulation of the taxi and private hire vehicle (PHV) trades in 2006. Following consultation with stakeholders, taking into account their feedback on the original version, the Guidance was revised and updated in 2010.
- 1.2 There is evidence to support the view that taxis and PHVs are a high-risk environment. In terms of risks to passengers, this can be seen in the number of sexual crimes reported which involve taxi and PHV drivers. Data from Greater Manchester<sup>1</sup> and Merseyside<sup>2</sup> on reported sexual assaults suggest that, if similar offence patterns are applied across England, 623 sexual assaults per year are reported. These figures do not however account for the under reporting of crime which is estimated to be as high as 83% in the Crime Survey for England and Wales<sup>3</sup>.
- 1.3 The Policing and Crime Act 2017 enables the Secretary of State for Transport to issue Statutory Guidance on exercising taxi and PHV licensing functions to protect children and vulnerable individuals who are over 18 from harm when using these services. For the purposes of this guidance, a child is defined as anyone who has not yet reached their 18th birthday; and the term “vulnerable individual” has the same meaning as the definition of a ‘vulnerable adult’ for the purpose of section 42 of the Care Act 2014<sup>4</sup>, which applies where a local authority has reasonable cause to suspect that an adult in its area (whether or not ordinarily resident there):
- (a) has needs for care and support (whether or not the authority is meeting any of those needs),
  - (b) is experiencing, or is at risk of, abuse or neglect, and
  - (c) as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it.
- 1.4 There is consensus that common core minimum standards are required to regulate better the taxi and PHV sector, and the recommendations in this document are the result of detailed discussion and consideration. **The Department therefore expects these recommendations to be implemented unless there is compelling local reason not to.**

1 [https://www.whatdotheyknow.com/request/sex\\_attacks\\_2](https://www.whatdotheyknow.com/request/sex_attacks_2)

2 [https://www.whatdotheyknow.com/request/taxi\\_private\\_hire\\_related\\_rapes#incoming-286178](https://www.whatdotheyknow.com/request/taxi_private_hire_related_rapes#incoming-286178)

3 <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesinenglandandwales/yearendingmarch2017#main-points>

4 <http://www.legislation.gov.uk/ukpga/2014/23/section/42/enacted>



- 1.5 It should be noted that as policing and criminal justice is not a devolved matter, the Statutory Guidance issued under the Policing and Crime Act 2017 will continue to have effect in Wales although responsibility for taxis and PHVs was devolved to the Welsh Assembly in April 2018. Should the Welsh Government introduce legislation to regulate the sector, this guidance would however cease to apply.
- 1.6 All local authorities and district councils that provide children’s and other types of services, including licensing authorities, have a statutory duty to make arrangements to ensure that their functions and any services that they contract out to others are discharged having regard to the need to safeguard and promote the welfare of children. This means that licensing authorities should have in place arrangements that reflect the importance of safeguarding and promoting the welfare of children. This includes clear whistleblowing procedures, safe recruitment practices and clear policies for dealing with allegations against people who work with children, as set out in the *Working Together to Safeguard Children*<sup>5</sup> statutory guidance.
- 1.7 This new Statutory Guidance reflects the significant changes in the industry and lessons learned from experiences in local areas since the Department’s Best Practice Guidance was last updated. This includes extensive advice on checking the suitability of individuals and operators to be licensed; safeguarding children and vulnerable adults; the Immigration Act 2016 and Common Law Police Disclosure (which replaced the Notifiable Occupations Scheme).
- 1.8 This Statutory Guidance replaces relevant sections of the Best Practice Guidance issued by the Department in 2010. A consultation on revised Best Practice Guidance, which focuses on recommendations to licensing authorities to assist them in setting appropriate standards (other than those relating to passenger safety) to enable the provision of services the public demand, will be taken forward once the final Statutory Guidance has been issued.

### Terminology

Taxis are referred to in legislation, regulation and common language as ‘hackney carriages’, ‘black cabs’ and ‘cabs’. The term ‘**taxi**’ is used throughout this guidance and refers to all such vehicles. Taxis are able to be hired immediately by hailing on the street or at a rank.

Private hire vehicles (PHVs) include a range of vehicles including minicabs, executive cars, chauffeur services, limousines and some school and day centre transport services. All PHV journeys must be pre-booked via a licensed PHV operator and are subject to a ‘triple licensing lock’ i.e. the operator fulfilling the booking must use vehicles and drivers licensed by the same authority as that which granted its licence. The term **PHV** is used throughout this guidance to refer to all such vehicles.

<sup>5</sup> <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

## 2. Statutory Guidance

### Consideration of the Statutory Guidance

- 2.1 The Government set out in the Modern Crime Prevention Strategy<sup>6</sup> the evidence that where Government, law enforcement, businesses and the public work together on prevention, this can deliver significant and sustained cuts in certain crimes. That is good news for victims and communities and it makes clear economic sense too.
- 2.2 The Strategy committed to protect children and young people from the risk of child sexual abuse and exploitation (CSAE), by working with local authorities to introduce rigorous taxi and PHV licensing regimes. Both the Jay<sup>7</sup> and Casey<sup>8</sup> reports on CSAE highlighted examples of taxi/PHV drivers being directly linked to children that were abused, including instances when children were picked up from schools, children's homes or from family homes and abused, or sexually exploited.
- 2.3 The Casey Report made clear that weak and ineffective arrangements for taxi and PHV licensing had left the children and public at risk. The Department for Transport has worked with the Home Office, Local Government Association (LGA), personal safety charities, trade unions and trade bodies, holding workshops, forums, and sharing evidence and good practice with local authorities to assist in the formulation of this Statutory Guidance.
- 2.4 This Statutory Guidance is published by the Secretary of State for Transport under section 177(1) of the Policing and Crime Act 2017 following consultation in accordance with section 177(5).
- 2.5 The Guidance sets out a framework of policies that, under section 177(4), licensing authorities “**must have regard**” to when exercising their functions. These functions include developing, implementing and reviewing their taxi and PHV licensing regimes. “Having regard” is more than having a cursory glance at a document before arriving at a preconceived conclusion.
- 2.6 “Having regard” to guidance requires public authorities, in formulating a policy, to give considerations the weight which is proportionate in the circumstances. **Given that this is statutory guidance issued directly to address the safeguarding of the public and the potential impact of failings in this area, the importance of thoroughly considering these recommendations cannot be overestimated.** It is not a question of box ticking; the recommendations must be considered rigorously and with an open mind.
- 2.7 Although it remains the case that licensing authorities must reach their own decisions, both on overall policies and on individual licensing matters in light of the relevant law, it may be that this Guidance might be drawn upon in any legal

<sup>6</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/509831/6.1770\\_Modern\\_Crime\\_Prevention\\_Strategy\\_final\\_WEB\\_version.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509831/6.1770_Modern_Crime_Prevention_Strategy_final_WEB_version.pdf)

<sup>7</sup> [https://www.rotherham.gov.uk/downloads/file/1407/independent\\_inquiry\\_cse\\_in\\_rotherham](https://www.rotherham.gov.uk/downloads/file/1407/independent_inquiry_cse_in_rotherham)

<sup>8</sup> <https://www.gov.uk/government/publications/report-of-inspection-of-rotherham-metropolitan-borough-council>

challenge to an authority's practice, and that any failure to adhere to the Guidance without sufficient justification could be detrimental to the authority's defence. **In the interest of transparency however, the Department encourages all licensing authorities to publish their consideration of the recommendations contained in this Guidance and the policies and delivery plans that stem from these. The Department has already undertaken to monitor the effectiveness of the Statutory Guidance in achieving an appropriately high level of standards in taxi and PHV licensing with regard to the protection of passengers.**

- 2.8 This Guidance does not purport to give a definitive statement of the law and any decisions made by a licensing authority remain a matter for that authority.

### Licensing policy

- 2.9 The Department encourages licensing authorities to create a cohesive policy document that brings together all their procedures on taxi and PHV licensing. This should include but not be limited to policies on convictions, a 'fit and proper' person test, licence conditions and vehicle standards.
- 2.10 When formulating a taxi and PHV policy, the primary and overriding objective must be to protect the public. The importance of ensuring that the licensing regime protects the vulnerable cannot be overestimated. This was highlighted in the report by Dame Louise Casey CB of February 2015 on safeguarding failings<sup>9</sup>.

*"It will be evident from this report that in many cases the activities of perpetrators take place in spheres which are regulated by the Council – taxis have been the focus of particular concern. Persistent and rigorous enforcement of the regulatory functions available to the council, including the placing of conditions on private hire taxi operator licences where appropriate, would send a strong signal that the trade is being monitored and would curtail the activities of opportunistic perpetrators whereby taxi drivers have solicited children to provide sex in return for cigarettes, alcohol or a fare free ride."*

- 2.11 The long-term devastation caused by CSAE was summarised in the same report:

*"Victims suffer from suicidal feelings and often self-harm. Many become pregnant. Some have to manage the emotional consequences of miscarriages and abortions while others have children that they are unable to parent appropriately. The abuse and violence continues to affect victims into adulthood. Many enter violent and abusive relationships. Many suffer poor mental health and addiction."*

9

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/401125/46966\\_Report\\_of\\_Inspection\\_of\\_Rotherham\\_WEB.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/401125/46966_Report_of_Inspection_of_Rotherham_WEB.pdf)

- 2.12 Rotherham Metropolitan Borough Council ('Rotherham Council') provides an example of how the systematic review of policies and procedures and the implementation of a plan to drive improvements in practice can result in a well-functioning taxi and PHV sector that is rebuilding local confidence in the industry. The history of past failings here and elsewhere are well known, but it is the transparency and resolution that Rotherham Council has demonstrated and the high standards they now require that are rebuilding public confidence.
- 2.13 One of the key lessons learned is that it is vital to review policies and reflect changes in the industry both locally and nationally. It is therefore recommended that licensing authorities regularly review their licensing policies and their performance, but should also consider interim reviews should there be significant issues arising in their area.

### Fit and proper test

- 2.14 Licensing authorities have a duty to ensure that any person to whom they grant a taxi or PHV driver's licence is a 'fit and proper' person to be a licensee. It may be helpful when considering whether an applicant or licensee is fit and proper to pose oneself the following question:

**Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?**

- 2.15 If, on the balance of probabilities, the answer to the question is 'no', the individual should not hold a licence.
- 2.16 Licensing authorities have to make difficult decisions but (subject to the points made in paragraph 2.19 below) the safeguarding of the public is paramount. All decisions on the suitability of an applicant or licensee should be made on the balance of probability. This means that **an applicant or licensee should not be 'given the benefit of doubt'**. If the committee or delegated officer is only "50/50" as to whether the applicant or licensee is 'fit and proper', they should not hold a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can therefore include information that goes beyond criminal convictions.

### Administration of the licensing framework

- 2.17 A policy is only as effective as the way it is administered. The taxi and PHV licensing functions of local councils are non-executive functions i.e. they are functions of the council rather than the executive (such as the Cabinet). The functions include the determination of licence applications, reviews and renewals, along with the attachment of conditions where considered appropriate. The function may be delegated to a committee, a sub-committee or an officer – which should be set out within a clear scheme of delegation.
- 2.18 It is essential that all those involved in the determination of licensing matters have received sufficient training and are adequately resourced to allow them to discharge the function effectively and correctly. The Department for Transport

supports the recommendation of the LGA that, as a minimum, training should cover licensing procedures, natural justice, understanding the risks of CSAE and disability and equality awareness in addition to any other issues deemed appropriate. Training should not simply relate to procedures, but should also cover the making of difficult and potentially controversial decisions – the use of case study material can be helpful to illustrate this. All training should be formally recorded by the licensing authority and require a signature from the person that has received the training. Training is available from a number of organisations including the Institute of Licensing and the LGA can assist in the development of training packages.

2.19 Public safety is the paramount consideration but the discharge of licensing functions must be undertaken in accordance with the following general principles:

- policies should be used as internal guidance, and should be supported by a member/officer code of conduct.
- any implications of the Human Rights Act should be considered.
- the rules of natural justice should be observed.
- decisions must be reasonable and proportionate.
- where a hearing is required it should be fairly conducted and allow for appropriate consideration of all relevant factors.
- decision makers must avoid bias (or even the appearance of bias) and predetermination.

2.20 It is recommended that councils operate with a Regulatory Committee or Board that is convened at periodic intervals to determine licensing matters, with individual cases being considered by a panel of elected and suitably trained councillors drawn from a larger Regulatory Committee or Board. This model is similar to that frequently adopted in relation to other licensing matters. To facilitate the effective discharge of the functions, less contentious matters can be delegated to appropriately authorised council officers via a transparent scheme of delegation.

2.21 It is considered that this approach also ensures the appropriate level of separation between decision makers and those that investigate complaints against licensees, and is the most effective method in allowing the discharge of the functions in accordance with the general principles referred to in 2.19. In particular, the Committee/Board model allows for:

- Each case to be considered on its own merits. It is rare for the same councillors to be involved in frequent hearings – therefore the councillors involved in the decision making process will have less knowledge of previous decisions and therefore are less likely to be influenced by them. Oversight and scrutiny can be provided in relation to the licensing service

generally, which can provide independent and impartial oversight of the way that the functions are being discharged within the authority.

- Clear separation between investigator and the decision maker – this demonstrates independence, and ensures that senior officers can attempt to resolve disputes in relation to service actions without the perception that this involvement will affect their judgement in relation to decisions made at a later date.

2.22 Avoidance of bias or even the appearance of bias is vital to ensuring good decisions are made and instilling and/or maintaining confidence in the licensing regime by passengers and licensees. Unlike officers, elected members are not usually involved in the day to day operation of the service and as such do not have relationships with licence holders that may give the impression that the discharge of a function is affected by the relationship between the decision maker and the licence holder.

2.23 Some licensing authorities may decide to operate a system whereby all matters are delegated to a panel of officers, however this approach is not recommended and caution should be exercised. Decisions must be, and be seen to be, made objectively, avoiding any bias. In addition, it may be more difficult to demonstrate compliance with the principles referred to above due to the close connection between the officers on the panel, and those involved in the operational discharge of the licensing functions.

2.24 Regardless of which approach is adopted, all councils should consider arrangements for dealing with serious matters that may require the immediate revocation of a licence. It is recommended that this role is delegated to a senior officer/manager with responsibility for the licensing service.

## Whistleblowing

2.25 The past failings of licensing regimes must never be repeated. The Department has carefully considered the measures contained in this Guidance and believe that these should be put in to practice and administered appropriately to mitigate the risk posed to the public. The purpose of this Guidance is to protect children and vulnerable adults, and by extension the wider public, when using taxis and PHVs. However, it is in the application of these policies (and the training and raising of awareness among those applying them) that protection will be provided. Where there are concerns that policies are not being applied correctly, it is vital that these can be raised, investigated

and remedial action taken if required. It is therefore recommended that licensing authorities have effective internal procedures for staff to raise concerns and procedures in place for any concerns to be dealt with openly and fairly.

A report into the licensing of drivers by South Ribble Borough Council highlights the implications of not applying the agreed policies. In early August 2015, concerns were raised regarding decisions to renew the licences of drivers where there were potential incidents of child sexual exploitation. An internal review concluded that there had been failings in local investigatory procedures which might have affected the ability of the General Licensing Committee to make proper decisions, and information sharing with the police and data recording was not satisfactory.

2.26 The external investigation in South Ribble concluded *“that there had been a lack of awareness and priority given to safeguarding and the safety of taxi [and PHV] passengers in the manner in which licensing issues were addressed”*. We are pleased to note that the report concludes<sup>10</sup>, *“The Council have been active at every stage in responding to issues and concerns identified. It has taken steps to address operational issues in the licensing function and has engaged fully with other agencies in so doing. In the light of the above, it is not necessary to make any further recommendations.”*

2.27 It is hoped that all licensing authorities will have learnt from these mistakes but to prevent a repeat, local authorities should ensure they have an effective ‘whistleblowing’ policy and that all staff are aware of it. If a worker is aware of, and has access to, effective internal procedures for raising concerns then ‘whistleblowing’ is unlikely to be needed.

2.28 The Public Interest Disclosure Act 1988 (PIDA), commonly referred to as whistleblowing legislation, provides protection for those that have a reasonable belief of serious wrongdoing, including failure to comply with professional standards, council policies or codes of practice/conduct. The PIDA is part of employment law. In the normal course of events, if a worker reveals information that his employer does not want revealed it may be a disciplinary offence. If someone leaked their employer’s confidential information to the press, they might expect to be dismissed for that. The PIDA enables workers who ‘blow the whistle’ about wrongdoing to complain to an employment tribunal if they are dismissed or suffer any other form of detriment for doing so. It is a qualified protection and certain conditions would have to be met for the worker to be protected.

### **Implementing changes to licensing policy and requirements**

2.29 It is important to remember that any changes in licensing requirements should be followed by a review of the licences already issued. If the need to change licensing requirements has been identified, this same need is applicable to those already in possession of a licence. That is not however to suggest that licences should be automatically revoked overnight, for example if a vehicle specification is changed it is proportionate to allow those that would not meet

10 [http://www.southribble.gov.uk/sites/default/files/FINAL\\_REPORT\\_JUNE\\_2016.pdf](http://www.southribble.gov.uk/sites/default/files/FINAL_REPORT_JUNE_2016.pdf)

the criteria to have the opportunity to adapt or change their vehicle. The same pragmatic approach should be taken to driver licence changes - if requirements are changed to include a training course or qualification, a reasonable time should be allowed for this to be undertaken or gained. The implementation schedule of any changes that affect current licence holders must be transparent and communicated promptly and clearly.

- 2.30 Where a more subjective change has been introduced, for example an amended policy on previous convictions, licensing authority must still consider each case on its own merits. Where there are exceptional, clear and compelling reasons to deviate from a policy, licensing authorities are able to do so. Licensing authorities should record the reasons for any deviation from the policies in place.

## The Disclosure and Barring Service

- 2.31 The Disclosure and Barring Service (DBS) provides access to criminal record information through its disclosure service for England and Wales. The DBS also maintains the lists of individuals barred from working in regulated activity with children or adults. The DBS makes independent barring decisions about people who have harmed, or where they are considered to pose a risk of harm to a child or vulnerable person within the workplace. The DBS enables organisations in the public, private and voluntary sectors to make safer employment decisions by identifying candidates who may be unsuitable for certain work, especially that which involves vulnerable groups including children. Licensing authorities are entitled to request an enhanced criminal record certificate with check of the barred lists from the DBS for all driver licence holders or applicants.
- 2.32 The DfT's 2018 survey of taxi and PHV licensing authorities<sup>11</sup> shows that all licensing authorities in England and Wales have a requirement that an enhanced DBS check is undertaken at first application or renewal. The Department considers that all licensing authorities should also request a check of the barred lists in addition to the enhanced DBS check, for individuals applying for or renewing taxi and PHV driver licences.
- 2.33 Enhanced certificates with check of the barred lists include details of spent and unspent convictions recorded on the Police National Computer (PNC), any additional information which a chief officer of police believes to be relevant and ought to be disclosed, as well as indicating whether the individual is barred from working in regulated activity with children or adults. The filtering rules allow for certain old and minor convictions to be removed from a DBS certificate after an appropriate period has passed, but they do not allow filtering where an individual has more than one conviction, has received a custodial sentence or has committed a specified serious offence such as those involving child sexual abuse. Full details of the filtering rules, and those offences which may never be filtered, are available from the DBS<sup>12</sup>. As well as convictions and cautions, an

<sup>11</sup> <https://www.gov.uk/government/statistics/taxi-and-private-hire-vehicle-statistics-england-2018>

<sup>12</sup> <https://www.gov.uk/government/collections/dbs-filtering-guidance>



enhanced certificate may include additional information which a chief police officer reasonably believes is relevant and ought to be disclosed. Chief police officers must have regard to the detailed statutory guidance<sup>13</sup> when considering disclosure. The information provided at each level of DBS checks is summarised in table 1.

- 2.34 It should be noted that licensing authorities must not seek to circumvent the legitimate filtering of previous criminal convictions and other information held by the DBS. The appropriate way of accessing an individual's criminal records is through an enhanced DBS and barred lists check.
- 2.35 Whilst data protection legislation<sup>14</sup> gives individuals (or data subjects) a 'right of access' to the personal data that an organisation holds about them, you must not require an individual to exercise their subject access rights so as to gain information about any convictions and cautions. This is an offence under data protection legislation.
- 2.36 Driving a taxi or PHV is not, in itself, a regulated activity. This means that an individual subject to barring would not be legally prevented from being a taxi or PHV driver but the licensing authority should take an individual's barred status into account alongside other information available. It is the Department's opinion that, in the interests of public safety, licensing authorities should not, as part of their policies, issue a licence to any individual that appears on either barred list. Should a licensing authority consider there to be exceptional circumstances which means that, based on the balance of probabilities they consider an individual named on a barred list to be 'fit and proper', the reasons for reaching this conclusion should be recorded.
- 2.37 Drivers working under an arrangement to transport children may be working in 'regulated activity' as defined by the Safeguarding Vulnerable Groups Act 2006<sup>15</sup>. It is an offence to knowingly allow a barred individual to work in regulated activity. The guidance on home-to school travel and transport<sup>16</sup> issued by the Department for Education should be considered alongside this document. Please see DBS guidance on driver eligibility and how to apply.

13 <https://www.gov.uk/government/publications/statutory-disclosure-guidance>

14 the full range of data protection legislation, not just the Data Protection Act 2018 or General Data Protection Regulation (GDPR)

15 <https://www.legislation.gov.uk/ukpga/2006/47/contents>

16 <https://www.gov.uk/government/publications/home-to-school-travel-and-transport-guidance>

INFORMATION INCLUDED IN CRIMINAL RECORD CHECKS				
Information included	Type of check			
	Basic	Standard DBS	Enhanced DBS	<b>Enhanced DBS (including barred list check)</b>
Unspent convictions	Yes	Yes	Yes	<b>Yes</b>
Unspent cautions <sup>1</sup>	Yes	Yes	Yes	<b>Yes</b>
Spent convictions <sup>2</sup>	No	Yes	Yes	<b>Yes</b>
Spent cautions <sup>1&amp;2</sup>	No	No	Yes	<b>Yes</b>
Additional police Information <sup>3</sup>	No	No	Yes	<b>Yes</b>
Barred list(s) Information <sup>4</sup>	No	No	No	<b>Yes</b>

Table 1

1. Cautions include reprimands and warnings, but not fixed penalty notices, penalty notices for disorder or any other police or other out-of-court disposals.
2. Spent convictions and cautions that have become protected under the Rehabilitation of Offenders Act 1974 (Exceptions Order) 1975, as amended, are not disclosed on any level of certificate. Further guidance is available at <https://www.gov.uk/government/publications/dbs-filtering-guidance/dbs-filtering-guide>.
3. This is any additional information held by the police which a chief police officer reasonably believes to be relevant and considers ought to be disclosed.
4. This is information as to whether the individual concerned is included in the children's or adults' barred lists maintained by the Disclosure and Barring Service (DBS).

## DBS update service

- 2.38 Licensing authorities should make use of the DBS update service. This subscription service allows licensees to keep their DBS certificates up to date online and, with the individual's consent, allows licensing authorities (as a nominee) to check the status of a certificate online at any time. Subscription to the service removes the need for repeat checks, reduces the administrative burden and mitigates potential delays in relicensing. Licensees should be required to evidence continuous registration and nomination throughout the period of the licence.
- 2.39 The DBS will search regularly to see if any relevant new information has been received since the certificate was issued. The frequency varies depending on the level and type of DBS certificate. For criminal conviction and barring information, the DBS will search for updates on a weekly basis. For non-conviction information, the DBS will search for updates every nine months. Licensing Authorities should therefore consider routinely checking the DBS certificates of their licence holders, for example every six months.
- 2.40 Licensing authorities are able to request large numbers of status checks on a daily basis. The DBS has developed a Multiple Status Check facility that can be accessed via a web service. The Multiple Status Check facility enables organisations to make an almost unlimited number of Status Checks simultaneously. Further information on the Multiple Status Check facility is available from the DBS.<sup>17</sup> As discussed above, for taxi and PHV driver licensing purposes the recommended level of check is always the enhanced level with check of the adult and children Barred lists. Other Workforce should always be entered at X61 line 1 and Taxi Licensing should be entered at X61 line 2.

## Licensee self-reporting

- 2.41 As discussed above, the DBS update service is a valuable tool in discharging a licensing authority's duty to ensure that licence holders are fit to hold a licence. However, the routine checking of the DBS record should be in addition to a requirement that licence holders notify the issuing authority within 48 hours of an arrest and release, charge or conviction of any motoring offence, or any offence involving dishonesty, indecency or violence. An arrest for any of the offences within this scope should result in a review by the issuing authority as to whether the licence holder is fit to continue to do so. This must not however be seen as a direction that a licence should be withdrawn; it is for the licensing authority to consider what, if any, action in terms of the licence should be taken based on the balance of probabilities.
- 2.42 Importantly, a failure by a licence holder to disclose an arrest that the issuing authority is subsequently advised of, would be a breach of a licence condition and might therefore be seen as behaviour that questions honesty and

<sup>17</sup> <https://www.gov.uk/government/publications/dbs-update-service-multiple-status-checking-guide>

therefore the suitability of the licence holder regardless of the outcome of the initial allegation.

## Referrals to DBS and the police

2.43 In some circumstances it may be appropriate under the Safeguarding Vulnerable Groups Act 2006 for licensing authorities to make referrals to the DBS; for example, a decision to refuse or revoke a licence as the individual is thought to present a risk of harm to a child or vulnerable adult, should be referred to the DBS. The power for the licensing authority to in this context arises from the undertaking of a safeguarding role. Further guidance has been provided by the DBS<sup>18</sup>.

2.44 The Department recommends that licensing authorities should make a referral to the DBS when it is thought that:

- an individual has harmed or poses a risk of harm to a child or vulnerable adult;
- an individual has satisfied the 'harm test'; or
- received a caution or conviction for a relevant offence and;
- the person they are referring is, has or might in future be working in regulated activity;
- the DBS may consider it appropriate for the person to be added to a barred list.

2.45 These referrals may result in the person being added to a barred list and enable other licensing authorities to consider this should further applications to other authorities be made. Further information on referrals to DBS is available<sup>19</sup>.

2.46 To aid further the quality of the information available to all parties that have a safeguarding duty, a revocation or refusal on public safety grounds should also be advised to the police.

## Overseas convictions

2.47 **The DBS cannot access criminal records held overseas.** Therefore, a DBS check may not provide a complete picture of an individual's criminal record where there have been periods living or working overseas. A licensing authority should ensure they have access to all the information available to them when making a decision whether to grant a licence, particularly when an applicant has previously lived outside the UK. It should be noted that it is the character of the applicant as an adult that is of interest, therefore a period outside the UK before

18 <https://www.gov.uk/government/publications/dbs-barring-referrals-local-authority-referral-duty-and-power/referral-duty-and-power-for-local-authorities-and-regulatory-bodies#local-authorities-as-regulated-activity-providers>

19 <https://www.gov.uk/guidance/making-barring-referrals-to-the-dbs>

the age of 18 may not be relevant. For information on applying for overseas criminal record checks or 'Certificates of Good Character' please see the Home Office guidance<sup>20</sup>. Licensing authorities should seek criminal records information from overseas when an applicant has previously lived outside the UK for a period of more than three continuous months to properly assess risk and support the decision making process.

- 2.48 Where an individual is aware that they have committed an offence overseas which may be equivalent to those listed, they should seek independent expert or legal advice to ensure that they provide information that is truthful and accurate.

## Conviction policy

- 2.49 In considering an individual's criminal record, licensing authorities must consider each case on its merits, but they should take a particularly cautious view of any offences against individuals with special needs, children and other vulnerable groups, particularly those involving violence, those of a sexual nature and those linked to organised crime. In order to achieve consistency, and to mitigate the risk of successful legal challenge, licensing authorities should have a clear policy for the consideration of criminal records. This should include, for example, which offences would prevent an applicant from being licenced regardless of the period elapsed in all but truly exceptional circumstances. In the case of lesser offences, a policy should consider the number of years the authority will require to have elapsed since the commission of particular kinds of offences before they will grant a licence.

- 2.50 Engagement with licensing authorities identified that greater direction from the Department was sought and in some cases required. The Department did not make specific recommendations regarding the assessment of convictions in the 2010 update of the Best Practice Guidance. In response to concerns raised by stakeholders and to assist in greater consistency in licensing, Annex A provides the Department's recommendations on this issue. This draws on the work of the Institute of Licensing, in partnership with the LGA, the National Association of Licensing Enforcement Officers (NALEO) and Lawyers in Local Government, in publishing its guidance on determining the suitability of taxi and PHV licensees<sup>21</sup>. These periods should be taken as a minimum before a licence should be granted or renewed in all but truly exceptional circumstance. The Department's view is that this places passenger safety as the priority while enabling past offenders to sufficiently evidence that they have been successfully rehabilitated so that they might obtain a licence. Authorities are however reminded that each case must be considered on its own merits, and applicants are entitled to a fair and impartial public hearing of their application if required.

## Common Law Police Disclosure

- 2.51 The DBS is not the only source of information that should be considered as part of a fit and proper assessment for the licensing of taxi and PHV drivers.

<sup>20</sup> <https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>

<sup>21</sup> [https://instituteoflicensing.org/documents/Guidance\\_on\\_Suitability\\_Web\\_Version\\_\(16\\_May\\_2018\).pdf](https://instituteoflicensing.org/documents/Guidance_on_Suitability_Web_Version_(16_May_2018).pdf)

Common Law Police Disclosure ensures that where there is a public protection risk, the police will pass information to the employer or regulatory body to allow them to act swiftly to mitigate any danger.

- 2.52 Common Law Police Disclosure replaced the Notifiable Occupations Scheme (NOS) in March 2015 and focuses on providing timely and relevant information which might indicate a public protection risk. Information is passed on at arrest or charge, rather than on conviction which may be some time after, allowing any measures to mitigate risk to be put in place immediately.
- 2.53 The new procedure provides robust safeguarding arrangements while ensuring only relevant information is passed on to employers or regulatory bodies. We would therefore strongly recommend that licensing authorities maintain close links with the police to ensure effective and efficient information sharing procedures and protocols are in place and are being used.

## Other information

- 2.54 The LGA's Councillors' Handbook on taxi and private hire vehicle (PHV) licensing<sup>22</sup> advises that those responsible for licensing should "*communicate regularly with licensing committees and officers in neighbouring councils to ensure critical information is shared and that there is a consistency and robustness in decision-making. By working together, local government can make sure that this vital service is safe, respected, and delivering for local communities.*"
- 2.55 The police are an invaluable source of intelligence when assessing whether a licensing applicant is a 'fit and proper' person. It is vital that licensing authorities have a partnership with the police service to ensure that appropriate information is shared as quickly as possible. As part of building an effective working relationship between the licensing authority and the police we strongly recommend that action taken as a result of information received is fed-back to the police. Increasing the awareness among police forces of the value licensing authorities place on the information received, particularly on non-conviction intelligence, will assist furthering these relationships and reinforce the benefits of greater sharing of information.
- 2.56 This relationship can be mutually beneficial, assisting the police to prevent crime. The police can gain valuable intelligence from drivers and operators, for example, the identification of establishments that are selling alcohol to minors or drunks, or the frequent transportation of substance abusers to premises.
- 2.57 As has been stated elsewhere in this guidance, obtaining the fullest information minimises the doubt as to whether an applicant or licensee is 'fit and proper'. An obvious source of relevant information is any previous licensing history. Applicants should therefore be required to disclose if they hold or have previously held a licence with another authority. An applicant should also be required to disclose if they have had an application for a licence refused, or a licence revoked or suspended by any other licensing authority. For this process

22 <https://www.local.gov.uk/councillor-handbook-taxi-and-phv-licensing>

to be beneficial, all licensing authorities must keep a complete and accurate record as to the reasons for refusal, suspension or revocation of a licence in order that this might be shared if requested and appropriate to do so.

- 2.58 The LGA's Taxi and PHV licensing Councillors' handbook<sup>23</sup> advises that Councils should meet or communicate regularly with licensing committees and officers in neighbouring councils to ensure critical information is shared. While this approach may aid consistency and robustness in decision-making within regions, it has obvious inherent limitations as it is unlikely such protocols could be established between all licensing authorities. The LGA commissioned the National Anti-Fraud Network to develop a national register of taxi and PHV driver licence refusals and revocations (the register is known as 'NR3'). The use of tools such as NR3 by licensing authorities to share information on a more consistent basis would mitigate the risk of non-disclosure of relevant information by applicants.
- 2.59 Data protection legislation provides exemption from the rights of data subjects for the processing of personal data in connection with regulatory activities. This includes taxi and PHV driver licensing. The exemption applies only to information processed for the core regulatory activities of appropriate organisations; it may not be used in a blanket manner. The exemption applies only to the extent that the application of the rights of data subjects to the information in question would be likely to prejudice the proper discharge of the regulatory functions. The Information Commissioner's Office has published guidance to assist organisations to fully understand their obligations and suggest good practice<sup>24</sup>.
- 2.60 If notification under paragraph 2.57 or 2.58 of a refused or revoked license is disclosed, the relevant licensing authority should be contacted to establish when the licence was refused, suspended or revoked and the reasons why. The information disclosed can then be taken into account in determining the applicant's fitness to be licensed. The relevance of the reason for refusing/revoking a licence must be considered. For example, if any individual was refused a licence for failing a local knowledge test, it does not have any safeguarding implications. Conversely, a revocation or refusal connected to indecency would.
- 2.61 Should a licensing authority receive information that a licence holder did not disclose the information referred to in paragraph 2.57, for example by checking the NR3 register, the authority should consider whether the non-disclosure represents dishonesty and should therefore review whether the licence holder remains 'fit and proper'.

### Multi-agency Safeguarding Hub (MASH)

- 2.62 Multi-Agency Safeguarding Hubs are a way to improve the safeguarding response for children and vulnerable adults through better information sharing and high quality and timely safeguarding responses. MASHs (or similar models)

<sup>23</sup> <https://www.local.gov.uk/councillor-handbook-taxi-and-phv-licensing>

<sup>24</sup> <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/>

should operate on three common principles: information sharing, joint decision making and coordinated intervention.

2.63 The Home Office report on Multi Agency Working and Information Sharing<sup>25</sup> recommended that effective multi-agency working still needs to become more widespread. The Children's Commissioner's 2013 Inquiry into Child Sexual Exploitation in Gangs and Groups<sup>26</sup> found that both police and local authorities still identified the inability to share information as a key barrier to safeguarding children from sexual abuse and exploitation.

2.64 The Department recommends all licensing authorities should establish a means to facilitate the objectives of a MASH. As has been emphasised throughout this guidance, one of the most effective ways to minimise the risk to children and vulnerable adults when using taxis and PHVs is to ensure that decisions on licensing individuals are made with the fullest knowledge possible.

### Complaints against licensees

2.65 The LGA recommends that all councils should have a robust system for recording complaints, including analysing trends across the whole system as well as complaints against individual licensees<sup>27</sup>. Licensees with a high number of complaints made against them should be contacted by the licensing authority and concerns raised with the driver and operator (if appropriate). Further action in terms of the licence holder must be determined by the licensing authority, which could include no further action, the offer of training, a formal review of the licence, or formal enforcement action.

2.66 Licensing authorities should produce guidance for passengers on making complaints directly to the licensing authority that **must** be available on their website and displayed in licensed vehicles. This is likely to result in additional work for the licensing authority but has the advantage of ensuring consistency in the handling of complaints. Currently, it is more likely that a complaint against a taxi driver would be made directly to the licensing authority whereas a complaint against a PHV driver is more likely to be made to the operator. An effective partnership in which operators can share concerns regarding drivers is also encouraged. A systematic recording of complaints will provide a further source of information to consider when renewing a licence for a driver or operator or identify problems during the period of the licence.

2.67 Importantly, this approach will assist in the directing of complaints and information regarding the behaviour of drivers who may be carrying a passenger outside of the area in which the driver is licensed to the authority that issued the licence. In order for this to be effective licensing authorities must ensure that drivers are aware of a requirement to display information on how to complain and take appropriate sanctions against those that do not comply with this requirement.

25 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/338875/MASH.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/338875/MASH.pdf)

26 [https://www.childrenscommissioner.gov.uk/wp-content/uploads/2017/07/If\\_only\\_someone\\_had\\_listened.pdf](https://www.childrenscommissioner.gov.uk/wp-content/uploads/2017/07/If_only_someone_had_listened.pdf)

27 <https://www.local.gov.uk/councillor-handbook-taxi-and-phv-licensing>



2.68 CCTV footage of an incident can provide an invaluable insight, providing an 'independent witness' to an event. This can assist in the decision whether to suspend or revoke a licence. The potential benefits of mandating CCTV in vehicles is discussed in paragraphs 2.104 - 2.106.

### Duration of licences

2.69 The Local Government (Miscellaneous Provisions) Act 1976 (as amended) sets a standard length at three years for taxi and PHV drivers and five years for PHV operators. Any shorter duration should only be issued when the licensing authority thinks it is appropriate in the specific circumstances of the case. Such circumstances could include where the licensing authority considers that a probationary period is necessary or where required (e.g. when the licence holder's leave to remain in the UK is time-limited) or when the licence is only required to meet a short-term demand.

2.70 A previous argument against this length of licence was that a criminal offence might be committed, and not notified, during this period; this can of course also be the case during the duration of a shorter licence. This risk can be mitigated by requiring licensees to subscribe to the DBS update service as discussed in paragraphs 2.38 – 2.40 and authorities to undertake regular interim checks. To help authorities monitor licensees' suitability, police forces should inform licensing authorities when they believe a licensee presents a risk to the travelling public. Paragraphs 2.51 - 2.53 provide further information about this process.

### Safeguarding awareness

2.71 Licensing authorities should consider the role that those in the taxi and PHV industry can play in spotting and reporting the abuse, exploitation or neglect of children and vulnerable adults. As with any group of people, it is overwhelmingly the case that those within the industry can be an asset in the detection and prevention of abuse or neglect of children and vulnerable adults. However, this is only the case if they are aware of and alert to the signs of potential abuse and know where to turn to if they suspect that a child or vulnerable adult is at risk of harm or is in immediate danger.

2.72 It is the Department's recommendation that licensing authorities provide safeguarding advice and guidance to the trade and that taxi and PHV drivers are required to undertake safeguarding training. This is often produced in conjunction with the police and other agencies. These programmes have been developed to help drivers and operators:

- provide a safe and suitable service to vulnerable passengers of all ages;
- recognise what makes a person vulnerable; and
- understand how to respond, including how to report safeguarding concerns and where to get advice.

2.73 In February 2018, the Department for Education (DFE) launched phase 3 of its nationwide campaign – ‘Together we can tackle child abuse’. Building on phases 1 and 2, which ran in 2016 and 2017, it aims to increase public understanding of how to recognise and report child abuse and neglect. The DfE has developed an online toolkit<sup>28</sup> of material for local authorities, charities and other organisations to use to support the campaign.

### Other forms of exploitation – ‘County lines’ drug trafficking

2.74 Victims of exploitation may not appear as such at first sight. 74% of police forces noted the exploitation of vulnerable people (including children) by gangs and organised criminal networks involved in trafficking illegal drugs within the UK<sup>29</sup> to move and store drugs and money across the country, often from urban areas to regional locations. They will frequently use coercion, intimidation, violence (including sexual violence) and weapons. This gang activity (known as county lines), and the associated violence, drug dealing and exploitation has a devastating impact on young people, vulnerable adults and local communities.

2.75 The National Crime Agency’s updated annual threat assessment of county lines reported that county lines groups are using taxis and PHVs as a method of transportation. In that assessment, 33% of police forces in England and Wales (14 forces) reported use of taxis and PHVs to transport drug couriers between markets. These couriers are often young people who have been exploited and may be victims of trafficking; the typical age range is 15-17 years old, but may be much younger. They may have vulnerabilities besides their age, such as broader mental health issues, disrupted or chaotic homes, substance misuse issues or reported as missing.

2.76 Safeguarding awareness training should include the ways in which drivers can help to identify county lines exploitation. Firstly, they should be aware of the following warning signs:

- young people, sometimes as young as 12, travelling in taxis alone;
- travelling at unusual hours (during school time, early in the morning or late at night);
- travelling long distances ;
- unfamiliar with the local area or do not have a local accent;
- paying for journeys in cash or prepaid.

<sup>28</sup> <https://tacklechildabuse.campaign.gov.uk/>

<sup>29</sup> <http://www.nationalcrimeagency.gov.uk/news/1247-latest-threat-update-estimates-at-least-720-county-lines-drug-dealing-lines>

2.77 The Home Office is working with partners to raise awareness of county lines and has produced promotional material that can be used by taxi and PHV companies.<sup>30</sup>

2.78 Drivers (or any person) should be aware of what to do if they believe a child or vulnerable person is at risk of harm. If the risk is immediate they should contact the police otherwise they should:

- use the local safeguarding process, the first step of which is usually to contact the safeguarding lead within the local authority;
- call Crime Stoppers on 0800 555 111.

### Language proficiency

2.79 Authorities should consider whether an applicant would have any problems in communicating with customers because of language difficulties. Licensing authorities have the freedom to specify the level of proficiency, but it is recommended to cover both oral and written English language skills necessary to fulfil their duties, including in emergency and other challenging situations. This should include:

- conversing with passengers to demonstrate an understanding of the desired destination, an estimation of the time taken to get there and other common passenger requests;
- providing a customer with correct change from a note or notes of higher value than the given fare, and doing so with relative simplicity;
- providing a legibly written receipt upon request.

### Enforcement

2.80 Implementing an effective framework for licensing authorities is essential to a well-functioning taxi and PHV sector. These steps will help prevent the licensing of drivers that are not deemed 'fit and proper' but does not ensure that those already licensed continue to display the behaviours and standards expected.

2.81 We have discussed the benefits of licensing authorities working collaboratively in regard to the sharing of information, and this can equally apply to enforcement powers. An agreement between licensing authorities to jointly authorise officers enables the use of enforcement powers regardless of which authority within the agreement the officer is employed by and which issued the licence. Together with increased clarity for the public on complaining, these measures will mitigate the opportunities for drivers to evade regulation. Such an agreement will enable those authorities to take action against vehicles and

<sup>30</sup>[https://www.gov.uk/government/publications/county-lines-posters-for-taxi-and-private-vehicle-hire-staff?utm\\_source=HO&utm\\_campaign=LA](https://www.gov.uk/government/publications/county-lines-posters-for-taxi-and-private-vehicle-hire-staff?utm_source=HO&utm_campaign=LA)

drivers that are licensed by the other authority when they cross over boundaries. A model for agreeing joint authorisation is contained in the LGA Councillors' handbook<sup>31</sup>.

2.82 It is not reasonable to expect drivers to adhere to a policy unless they are properly informed of what is expected of them and the repercussions for failing to do so. Some licensing authorities operate a points-based system, which allows minor breaches to be recorded and considered in context while referring those with persistent or serious breaches to the licensing committee. This has the benefit of consistency in enforcement and makes better use of the licensing committee's time.

2.83 The Department suggest that there should be a clear, simple and well-publicised process for the public to make complaints about drivers and operators. This will provide a further source of intelligence when considering the renewal of licences and of any additional training that may be required. It is then for the licensing authority to consider if any intelligence indicates a need to suspend or revoke a licence in the interests of public safety.

### Suspension and revocation of driver licences

2.84 Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 provides a licensing authority with the ability to suspend or revoke a driver's licence on the following grounds:-

(a) that he has since the grant of the licence—

(i) been convicted of an offence involving dishonesty, indecency or violence; or

(ii) been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this Part of this Act;

(aa) that he has since the grant of the licence been convicted of an immigration offence or required to pay an immigration penalty; or

(b) any other reasonable cause

2.85 Licensing authorities have the option to suspend or revoke a licence should information be received that causes concern over whether a driver is a fit and proper person. Where the licence holder has been served an immigration penalty or convicted of an immigration offence the licence should be revoked immediately. Guidance for licensing authorities to prevent illegal working in the taxi and PHV sector has been issued by the Home Office<sup>32</sup>. As with the initial decision to license a driver, this determination must be reached based on the balance of probabilities, not on the burden of beyond reasonable doubt.

2.86 Before any decision is made, the licensing authority must give full consideration to the available evidence and the driver should be given the

<sup>31</sup> <https://www.local.gov.uk/councillor-handbook-taxi-and-phv-licensing>

<sup>32</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/613415/A\\_Licensing\\_Authority\\_guide\\_to\\_right\\_to\\_work\\_checks\\_-\\_England\\_and\\_Wales.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/613415/A_Licensing_Authority_guide_to_right_to_work_checks_-_England_and_Wales.pdf)

opportunity to state his or her case. If a period of suspension is imposed, it cannot be extended or changed to revocation at a later date.

- 2.87 A decision to revoke a licence does not however prevent the reissuing of a licence should further information be received that alters the balance of probability decision previously made. The decision to suspend or revoke was based on the evidence available at the time the determination was made. New evidence may, of course, become available later.
- 2.88 New evidence may be produced at an appeal hearing that may result in the court reaching a different decision to that reached by the council or an appeal may be settled by agreement between the licensing authority and the driver on terms which, in the light of new evidence, becomes the appropriate course. If, for example, the allegations against a driver were now, on the balance of probability, considered to be unfounded, a suspension could be lifted or, if the licence was revoked, an expedited re-licensing process used.
- 2.89 A suspension may still be appropriate if it is believed that a minor issue can be addressed through additional training. In this instance the licence would be returned to the driver once the training has been completed without further consideration. This approach is clearly not appropriate where the licensing authority believes that, based on the information available at that time, on the balance of probability it is considered that the driver presents a risk to public safety.

### **Criminal record checks for PHV operators**

- 2.90 As with driver licensing, the objective in licensing PHV operators is to protect the public, who may be using operators' premises and trusting that the drivers and vehicles they dispatch are above all else safe. It is important therefore that licensing authorities are assured that the operators they license also pose no threat to the public and have no links to serious criminal activity. Although an operator may not have direct contact with passengers, they are still entrusted to ensure that the drivers and vehicles used to fulfil a booking are appropriately licensed and so 'fit and proper'. PHV operators are also frequently provided with sensitive information such as periods when a home may be vacated as the residents are on holiday. Those making licensing decisions should consider whether they would be content for an applicant to hold sensitive information and are confident that this would not be misused.
- 2.91 PHV operators (as opposed to PHV drivers) are not eligible for standard or enhanced criminal records checks. We recommend that licensing authorities request a criminal conviction certificate (Basic disclosure) from the DBS. Any individual may apply for a Basic check and the certificate will disclose any unspent convictions recorded on the PNC. Licensing authorities should consider whether an applicant or licence holder with a conviction for offences detailed in Annex A (other than those relating to driving) meet the 'fit and proper' threshold.
- 2.92 PHV operator licences may be applied for by a company or partnership; licensing authorities should apply the 'fit and proper' test to each of the directors or partners in that company or partnership. For this to be effective PHV

operators should be required to advise the licensing authority of any changes to the directors or partners.

- 2.93 Individuals, directors or partners granted a PHV operator licence should be required to subscribe to the DBS update service as a condition of licensing and licensing authorities should consider routinely checking the DBS certificates of their licence holders, for example every six months
- 2.94 As explained earlier in the context of driver licensing, the **DBS cannot access criminal records held overseas**. Therefore, a DBS check may not provide a complete picture of an individual's criminal record where there have been periods living or working overseas. A licensing authority should ensure they have access to all the information available to them when making a decision whether to grant a licence, particularly when an applicant has previously lived outside the UK. It should be noted that it is the character of the applicant as an adult that is of interest, therefore a period outside the UK before the age of 18 may not be relevant. For information on applying for overseas criminal record checks or a 'Certificate of Good Character' please see the Home Office guidance<sup>33</sup> on criminal record checks for overseas applicants. Licensing authorities should seek criminal records information from overseas when an applicant has previously lived outside the UK for a period of more than three continuous months to properly assess risk and support the decision making process.
- 2.95 Where an individual is aware that they have committed an offence overseas which may be equivalent to those listed in Annex A, they should seek independent expert or legal advice to ensure that they provide information that is truthful and accurate.

### PHV Operators - ancillary staff

- 2.96 PHV drivers are not the only direct contact that PHV users have with PHV operators' staff, for example a person taking bookings (be it by phone or in person). A vehicle controller decides which driver to send to a user, a position that could be exploited by criminals. It is therefore appropriate that all staff that have contact with PHV users and the dispatching of vehicles should not present an undue risk to the public or the safeguarding of children and vulnerable adults.
- 2.97 Licensing authorities should be satisfied that PHV operators can demonstrate that all staff that have contact with the public and/or oversee the dispatching of vehicles do not pose a risk to the public. Licensing authorities should request that, as a condition of granting an operator licence, a register of all staff that will take bookings or dispatch vehicles is kept. The operator should be required to evidence that they have had sight of a Basic DBS check on all individuals listed.
- 2.98 Operators or applicants for a licence should also be required to provide their policy on employing ex-offenders in roles that would be on the register as above. As with the threshold to obtaining a PHV operators' licence, those with a

33 <https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>

conviction for offences detailed in Annex A (other than those relating to driving) may not be suitable to handle the sensitive information the public may provide (e.g. that their home is likely to be empty between certain dates) or to decide who is sent to carry a child or vulnerable adult unaccompanied in a car.

2.99 Those granted an operator licence should be required to maintain a register of staff that take bookings and/or control vehicles and ensure that Basic DBS checks are conducted on any individuals added to the register and that this is compatible with their policy on employing ex-offenders.

### **PHV Operators – Use of passenger carrying vehicles (PCV) licensed drivers**

2.100 Members of the public are entitled to expect when making a booking with a PHV operator that they will receive a PHV licensed vehicle and driver. The use of a driver who holds a PCV licence and the use of a public service vehicle (PSV) such as a minibus to undertake a PHV booking should not be permitted as a condition of the PHV operator's licence. Drivers of PSVs who are PCV licence holders are not subject to the same checks as PHV drivers, as the work normally undertaken, i.e. driving a bus or coach, does not present the same risk to passengers.

### **PHV Operators - record keeping**

2.101 Section 56 of the Local Government (Miscellaneous Provisions) Act 1976<sup>34</sup> requires PHV operators to keep records of the particulars of every booking invited or accepted, whether it is from the passenger or at the request of another operator. The particulars to be recorded may be specified by the licensing authority as a condition of the operator licence. The Department recommend that this information should include:

- the name of the passenger;
- the time of the request;
- the pick-up point;
- the destination;
- the name of the driver;
- the driver's licence number;
- the vehicle registration number of the vehicle.

2.102 This information will enable the passenger to be traced if this becomes necessary and should improve driver security and facilitate enforcement. It is suggested that six months is generally appropriate as the length of time that records should be kept.

<sup>34</sup> <http://www.legislation.gov.uk/ukpga/1976/57>

2.103 PHV operators have a duty under data protection legislation to protect the information they record. The Information Commissioner's Office provides comprehensive on-line guidance on registering as a data controller and how to meet their obligations.

### **In-vehicle visual and audio recording – CCTV**

2.104 Government has acknowledged the potential risk to public safety when passengers travel in taxis and PHVs. In 2012 the Government enabled licensing authorities to undertake enhanced DBS checks. The Department appreciates that all licensing authorities have recognised the risk posed by the very small minority of licensed drivers and undertake this level of check. It is unfortunately the case that no matter how complete the information available to licensing authorities is, nor how robust the policies in place are and the rigor with which they are applied, it will never remove the possibility of harm to passengers by drivers. The Department's view is that CCTV can provide additional deterrence to prevent this and investigative value when it does. The use of CCTV can provide a safer environment for the benefit of taxi/PHV passengers and drivers by:

- deterring and preventing the occurrence of crime;
- reducing the fear of crime;
- assisting the police in investigating incidents of crime;
- assisting insurance companies in investigating motor vehicle accidents.

2.105 While only a small minority of licensing authorities have so far mandated all vehicles to be fitted with CCTV systems, the experience of those authorities that have has been positive for both passengers and drivers. In addition, the evidential benefits of CCTV may increase the level of reporting of sexual offences. According to the Crime Survey for England and Wales<sup>35</sup> only 17% of victims report their experiences to the police, 28% of rape or sexual assault victims indicated that a fear they would not be believed as a factor in them not reporting the crime. The evidential benefits CCTV could provide are therefore an important factor when considering CCTV in vehicles.

2.106 The mandatory installation of CCTV in vehicles may deter people from seeking a taxi or PHV licence with the intent of causing harm. Those that gain a licence and consider perpetrating an opportunistic attack against a vulnerable unaccompanied passenger may be deterred from doing so. It is however unfortunately the case that offences may still occur even with CCTV operating.

2.107 CCTV systems that are able to record audio as well as visual data may also help the early identification of drivers that exhibit inappropriate behaviour toward passengers. Audio recording should be both overt and targeted i.e. only when



passengers (or drivers) consider it necessary and all parties should be made aware that a recording is being made. The recording of audio should be used to provide an objective record of events such as disputes or inappropriate behaviour and must not be continuously active by default and should recognise the need for privacy of passengers' private conversations between themselves. Activation of the audio recording capability of a system might be instigated when either the passenger or driver operates a switch or button.

- 2.108 It is important to note that, in most circumstances, a licensing authority which mandates the installation of CCTV systems in taxis and PHV will be responsible for the data – the data controller. It is important that data controllers fully consider concerns regarding privacy and licensing authorities should consider how systems are configured, should they mandate CCTV (with or without audio recording). For example, vehicles may not be exclusively used for business, also serving as a car for personal use - it should therefore be possible to manually switch the system off (both audio and visual recording) when not being used for hire.
- 2.109 Imposition of a blanket requirement to attach CCTV as a condition to a licence is likely to give rise to concerns about the proportionality of such an approach and will therefore require an appropriately strong justification and must be kept under regular review.
- 2.110 The Home Office '*Surveillance Camera Code of Practice*'<sup>36</sup> advises that government is fully supportive of the use of overt surveillance cameras in a public place whenever that use is:
- in pursuit of a legitimate aim;
  - necessary to meet a pressing need;
  - proportionate;
  - effective, and;
  - compliant with any relevant legal obligations
- 2.111 The Code also sets out 12 guiding principles which, as a 'relevant authority' under the Protection of Freedoms Act 2012<sup>37</sup>, licensing authorities must have regard to. It must be noted that, where a licence is granted subject to CCTV system conditions, the licensing authority assumes the role and responsibility of 'System Operator'. The role requires consideration of all guiding principles in this code. The failure to comply with these principles may be detrimental to the use of CCTV evidence in court as this may be raised within disclosure to the Crown Prosecution Service and may be taken into account.

<sup>36</sup> <https://www.gov.uk/government/publications/surveillance-camera-code-of-practice>

<sup>37</sup> [Section 33\(5\) of the Protection of Freedoms Act 2012](#)

- 2.112 The Surveillance Camera Commissioner (SCC) has provided guidance on the Surveillance Camera Code of Practice in its '*Passport to Compliance*'<sup>38</sup> which provides guidance on the necessary stages when planning, implementing and operating a surveillance camera system to ensure it complies with the code. The Information Commissioner's Office<sup>39</sup> (ICO) has also published a code of practice which, in this context, focuses on the data governance requirement associated with the use of CCTV such as data retention and disposal, which it is important to follow in order to comply with the data protection principles. The SCC provides a self-assessment tool<sup>40</sup> to assist operators to ensure compliance with the principles set of in the Surveillance Camera Code of Practice. The SCC also operate a certification scheme<sup>41</sup>; authorities that obtain this accreditation are able to clearly demonstrate that their systems conform to the SCC's best practice and are fully compliant with the Code and increase public confidence that any risks to their privacy have been fully considered and mitigated.
- 2.113 The Data Protection Act 2018<sup>42</sup> regulates the use of personal data. Part 2 of the Data Protection Act applies to the general processing of personal data, and references and supplements the General Data Protection Regulation. Licensing authorities, as data controllers, must comply with all relevant aspects of data protection law. Particular attention should be paid to the rights of individuals which include the right to be informed, of access and to erasure. The ICO has provided detailed guidance<sup>43</sup> on how data controllers can ensure compliance with these.
- 2.114 It is a further requirement of data protection law that before implementing a proposal that is likely to result in a high risk to the rights and freedoms of people, an impact assessment on the protection of personal data shall be carried out. The ICO recommends in guidance<sup>44</sup> that if there is any doubt as to whether a Data Protection Impact Assessment (DPIA) is required one should be conducted to ensure compliance and encourage best practice. A DPIA will also help to assess properly the anticipated benefits of installing CCTV (to passengers and drivers) and the associated privacy risks; these risks might be mitigated by having appropriate privacy information and signage, secure storage and access controls, retention policies, training for staff how to use the system, etc. Licensing authorities should consult on this issue to identify if there are local circumstances which indicate that the installation of CCTV in vehicles would have either a positive or an adverse net effect on the safety of taxi and PHV users, including children or vulnerable adults.
- 2.115 It is essential to ensure that all recordings made are secure and can only be accessed by those with legitimate grounds to do so. This would normally be the police if investigating an alleged crime or the licensing authority if investigating a complaint or data access request. Encryption of the recording to which the

38 <https://www.gov.uk/government/publications/passport-to-compliance>

39 <https://ico.org.uk/media/for-organisations/documents/1542/cctv-code-of-practice.pdf>

40 <https://www.gov.uk/government/publications/surveillance-camera-code-of-practice-self-assessment-tool>

41 <https://www.gov.uk/government/publications/surveillance-camera-code-of-practice-third-party-certification-scheme>

42 <http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>

43 <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/>

44 <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/security/>

licensing authority, acting as the data controller, holds the key, mitigates this issue and protects against theft of the vehicle or device. It is one of the guiding principles of data protection legislation, that personal data (including in this context, CCTV recordings and other potentially sensitive passenger information) is handled securely in a way that 'ensures appropriate security', including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

- 2.116 All passengers must be made aware if CCTV is operating in a vehicle. As well as clear signage in vehicles, information on booking systems should be introduced. This might be text on a website, scripts or automated messages on telephone systems.

### **Stretched Limousines**

- 2.117 Licensing authorities are sometimes asked to license small (those constructed or adapted to carry fewer than nine passengers) limousines as PHVs. It is suggested that licensing authorities should approach such requests on the basis that these vehicles – where they have fewer than nine passenger seats - have a legitimate role to play in the private hire trade, meeting a public demand. Indeed, the Department's view is that it is not a legitimate course of action for licensing authorities to adopt policies that exclude limousines as a matter of principle thereby excluding service from the scope of the PHV regime and the safety benefits this provides. A blanket policy of excluding limousines may create an unacceptable risk to the travelling public, as it may lead to higher levels of unsupervised operation. Public safety considerations are best supported by policies that allow respectable, safe operators to obtain licences on the same basis as other private hire vehicle operators.
- 2.118 Stretched large limousines which clearly have more than eight passenger seats should not in most circumstance be licensed as PHVs because they are outside the licensing regime for PHVs. However, under some circumstances the Individual Vehicle Approval (IVA) regime accepts vehicles with space for more than eight passengers, particularly where the precise number of passenger seats is hard to determine. In these circumstances, if the vehicle has obtained an IVA certificate, the authority should consider the case on its merits in deciding whether to license the vehicle under the strict condition that the vehicle will not be used to carry more than eight passengers, bearing in mind that refusal may encourage illegal private hire operation.

### **Consultation at the local level**

- 2.119 It is good practice for licensing authorities to consult on any significant proposed changes in licensing rules. Such consultation should include not only the taxi and PHV trades but also groups likely to be the trades' customers. Examples are groups representing disabled people, Chambers of Commerce, organisations with a wider transport interest (e.g. the Campaign for Better Transport and other transport providers), women's groups, local traders, and the local multi-agency safeguarding arrangements. It may also be helpful to consult

with night-time economy groups (such as Pubwatch) if the trade is an important element of dispersal from the local night-time economy's activities.

2.120 Any decision taken to alter the licensing regime is likely to have an impact on the operation of the taxi and PHV sector in neighbouring areas; it would therefore be good practice to engage with these to identify any concerns and issue that might arise from a proposed change. Many areas convene regional officer consultation groups or, more formally, councillor liaison meetings; the Department considers this approach to be good practice.

## Annex A – Previous convictions guidance

Legislation specifically identifies offences involving dishonesty, indecency or violence as a concern when assessing whether an individual is 'fit and proper' to hold a taxi or PHV licence. The following recommendations to licensing authorities on previous convictions reflect this.

Authorities must consider each case on its own merits, and applicants/licensees are entitled to a fair and impartial public hearing of their application if required. The periods given below should be taken as a minimum before a licence should be granted or renewed in all but truly exceptional circumstance. The Department's view is that this places passenger safety as the priority while enabling past offenders to sufficiently evidence that they have been successfully rehabilitated so that they might obtain or retain a licence.

### Crimes resulting in death

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

### Exploitation

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

### Offences involving violence

Where an applicant has a conviction for an offence of violence, or connected with any offence of violence, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

### Possession of a weapon

Where an applicant has a conviction for possession of a weapon or any other weapon related offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

### Sex and indecency offences

Where an applicant has a conviction for any offence involving or connected with illegal sexual activity or any form of indecency, a licence will not be granted.

In addition to the above, the licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any barred list.

### Dishonesty

Where an applicant has a conviction for any offence of dishonesty, or any offence where dishonesty is an element of the offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

### Drugs

Where an applicant has any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a

licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

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

### **Discrimination**

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

### **Motoring convictions**

Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the granting of a licence. However, applicants with multiple motoring convictions may indicate that an applicant does not exhibit the behaviours of a safe road user and one that is suitable to drive professionally.

Any motoring conviction of a licensed driver demonstrates that the licensee may not take their professional responsibilities seriously. However, it is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence may not necessitate the revocation of a taxi or PHV driver licence providing the authority considers that the licensee remains a fit and proper person to retain a licence.

### **Drink driving/driving under the influence of drugs/using a hand-held telephone or hand held device whilst driving**

Where an applicant has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence or driving ban imposed. In the case of driving under the influence of drugs, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

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

## Annex B - Staying safe: guidance for passengers

Licensing authorities should provide guidance to assist passengers in identifying licensed vehicles and the increased risks of using unlicensed vehicles. The guidance might include advice on:

- how to tell if a taxi or private hire vehicle is licensed.

Educate the public in the differences between taxis and PHVs e.g.:

- a taxi can be flagged down or pre-booked.
- a PHV that has not been pre-booked should not be used as it will not be insured and may not be licensed.
- what a PHV should look like e.g. colour, signage, licence plates etc.
- the benefit of pre-booking a return vehicle before going out.
- arrange to be picked up from a safe meeting point.
- requesting at the time of booking what the fare is likely to be.

When using a private hire vehicle, passengers should always:

- book with a licensed operator.
- confirm their booking with the driver when s/he arrives.
- note the licence number.
- sit in the back, behind the driver.
- let a third party know details of their journey.

When using a taxi, passengers should where possible:

- use a taxi rank and choose one staffed by taxi marshals if available.

# Taxi and private hire vehicle licensing: protecting users

## 1. Introduction

Thank you for taking the time to read the consultation document and to respond to the questions. Your answers will help us to firm up statutory guidance to taxi and private hire vehicle (PHV) licensing authorities on how their licensing powers can be exercised in order to safeguard children and vulnerable adults.

The easiest way to respond to this consultation is online:

<https://www.smartsurvey.co.uk/s/taxis-licence/>

The online version allows you to save your response and continue it later and to save or print off a copy for your records.

### Confidentiality and data protection

The Department for Transport (DfT) is carrying out this consultation to gather views and evidence on measures for inclusion within the statutory guidance issued to taxi and PHV licensing authorities. This consultation and the processing of personal data that it entails is necessary for the exercise of our functions as a government department. If your answers contain any information that allows you to be identified, DfT will, under data protection law, be the controller for this information.

As part of this consultation we're asking for your name and email address. This is in case we need to ask you follow-up questions about any of your responses. You do not have to give us this personal information. If you do provide it, we will use it only for the purpose of asking follow-up questions.

We may contract a third party to analyse the responses we receive to the consultation. If you provide your contact details, we may share this information with a contractor in case they need to contact you regarding your consultation response.

DfT's privacy policy has more information about your rights in relation to your personal data, how to complain and how to contact the Data Protection Officer. You can view it at <https://www.gov.uk/government/organisations/department-for-transport/about/personal-information-charter>.

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Your information will be kept securely and destroyed within 12 months after the consultation has been completed. Any information provided through the online questionnaire will be moved from their system to our internal systems within 2 months of the consultation end date.

Find out more about the [Department for Transport's data protection and privacy policy](#).



## 2. Personal details

1. Your name and email address. We will only use this if we need to contact you to ask about any of your responses.

Your name

Your email

### 3. About you

#### 2. Are you responding: \*

as an individual?

as a taxi driver?

as a PHV driver?

as a taxi intermediary?

as a PHV operator?

a licensing authority

the police

other (specify)?

## 4. Administration of the licensing framework

**3. The draft statutory guidance recommends that all those involved in the determination of licensing matters should receive training covering licensing procedures, natural justice, child sexual abuse and exploitation, disability and equality in addition to any other issues deemed locally appropriate (paragraph 2.18). Do you agree with the recommendation?**

Yes

No

No opinion

Comment below if you want to explain your answer.

**4. The draft statutory guidance recommends a council structure for dealing with licensing matters (paragraphs 2.20-2.24). Do you agree with this proposed structure?**

Yes

No

No opinion

Comment below if you want to explain your answer.

## 5. Implementing changes to the licensing policy and requirements

5. The draft statutory guidance recommends that all issued licences should be reviewed following changes in licensing policy (paragraph 2.29). Do you agree with this recommendation?

Yes

No

No opinion

Comment below if you want to explain your answer.

## 6. The Disclosure and Barring Service

**6. The draft statutory guidance recommends that all drivers should be subject to an enhanced Disclosure and Barring Service (DBS) with barred lists check for individuals applying for or renewing taxi and PHV driver licences (paragraph 2.32). Do you agree with this recommendation?**

Yes

No

No opinion

Comment below if you want to explain your answer.

**7. The draft statutory guidance recommends that all licence holders should be required to subscribe to the DBS update service (paragraph 2.38). Do you agree with this recommendation?**

Yes

No

No opinion

Comment below if you want to explain your answer.

**8. The draft statutory guidance recommends that appropriate DBS checks are conducted every 6 months (paragraph 2.39). Do you agree with this recommendation?**

Yes

No

No opinion

Comment below if you want to explain your answer.

## 7. Licensee self-reporting

9. The draft statutory guidance recommends that drivers and operators should be required to notify the issuing authority within 48 hours upon arrest and release, charge or conviction of any motoring offence or any offence involving dishonesty, indecency or violence (paragraph 2.41). Do you agree with this recommendation?

Yes

No

No opinion

Comment below if you want to explain your answer.

## 8. Referrals to DBS and the police

10. The draft statutory guidance recommends that licensing authorities should make referrals to the DBS when it considers that an applicant or licence holder is thought to present a potential risk of harm to the public (paragraph 2.43). Do you agree with this recommendation?

Yes

No

No opinion

Comment below if you want to explain your answer.

## 9. Overseas convictions

11. The draft statutory guidance recommends that a check of overseas criminality information or 'Certificate of Good Character' should be required, when an individual has spent a period of more than 3 continuous months outside the UK when over the age of 18 (paragraph 2.47). Do you agree with this recommendation?

Yes

No

No opinion

Comment below if you want to explain your answer.



## 10. Other information

**12. The draft statutory guidance recommends that licensing authorities should require applicants / licensees to disclose if they have been licensed elsewhere, or have had an application for a licence refused, or have had a licence revoked or suspended by any other licencing authority (paragraph 2.57). Do you agree with this recommendation?**

Yes

No

No opinion

Comment below if you want to explain your answer.

**13. The draft statutory guidance recommends that licensing authorities should use tools such as the national register of taxi and PHV driver licence refusals and revocations (NR3) to improve information sharing (paragraph 2.58). Do you agree with this recommendation?**

Yes

No

No opinion

Comment below if you want to explain your answer.

**14. The draft statutory guidance recommends that the authority considering the application / renewal should consult and consider other licensing decisions in its assessment, when an applicant / licensee discloses they: have had an application refused, or had a licence revoked or suspended elsewhere (paragraph 2.60). Do you agree with this recommendation?**

Yes

No

No opinion

Comment below if you want to explain your answer.

## 11. Multi-agency safeguarding hub (MASH)

15. The draft statutory guidance recommends that multi-agency safeguarding hubs (or similar) should be established by licensing authorities to improve the sharing of relevant information (paragraph 2.64). Do you agree with this recommendation?

Yes

No

No opinion

Comment below if you want to explain your answer.

## 12. Complaints against drivers and operators

16. The draft statutory guidance recommends that licensing authorities should produce guidance for passengers on making complaints directly to the licensing authority that must be displayed in licensed vehicles (paragraph 2.66). Do you agree with this recommendation?

Yes

No

No opinion

Comment below if you want to explain your answer.

## 13. Safeguarding awareness

17. The draft statutory guidance recommends that all licensing authorities should require drivers to undertake safeguarding training as a condition of licensing (paragraph 2.72). Do you agree with this recommendation?

Yes

No

No opinion

Comment below if you want to explain your answer.

## 14. Language proficiency

18. The draft statutory guidance recommends that all licensing authorities should consider whether an applicant for a licence is able to communicate in English orally and in writing with customers (paragraph 2.79). Do you agree with this recommendation?

Yes

No

No opinion

Comment below if you want to explain your answer.

## 15. Enforcement

19. The draft statutory guidance recommends that licensing authorities should, where the need arises, jointly authorise officers from other authorities so that compliance and enforcement action can be taken against licensees from outside their area (paragraph 2.81). Do you agree with this recommendation?

Yes

No

No opinion

Comment below if you want to explain your answer.

## 16. Criminal record checks for PHV operators

20. The draft statutory guidance recommends that PHV operators (applicants or licensees) should be subject to a basic DBS check (paragraph 2.91). Do you agree with this recommendation?

Yes

No

No opinion

Comment below if you want to explain your answer.

## 17. PHV operators - ancillary staff

**21. The draft statutory guidance recommends that PHV operators should, as a condition of licensing, be required to keep a register of all staff that will take bookings or dispatch vehicles (paragraph 2.97). Do you agree with this recommendation?**

Yes

No

No opinion

Comment below if you want to explain your answer.

**22. The draft statutory guidance recommends that PHV operators should be required to evidence that they have had sight of a basic DBS check on all individuals listed on the above register (paragraph 2.97). Do you agree with this recommendation?**

Yes

No

No opinion

Comment below if you want to explain your answer.

**23. The draft statutory guidance recommends that PHV operators should be required to provide to the licensing authority their policy on employing ex-offenders that will take bookings or dispatch vehicles as a condition of licensing (2.98). Do you agree with this recommendation?**

Yes

No

No opinion

Comment below if you want to explain your answer.



## 18. PHV operators - use of passenger carrying vehicles (PCV) licensed drivers

24. The draft statutory guidance that a PHV operator may not use a driver who does not hold a PHV licence (but may hold a PCV licence) to use a public service vehicle to carry out a PHV booking. This would be a condition of the operator's licence (paragraph 2.100). Do you agree with this recommendation?

Yes

No

No opinion

Comment below if you want to explain your answer.

## 19. PHV operators – record keeping requirements

25. The draft statutory guidance recommends that PHV operators should, as a condition of licensing, be required to record the information detailed in paragraph 2.101. Do you agree with this recommendation?

Yes

No

No opinion

Comment below if you want to explain your answer.

## 20. In-vehicle visual and audio recording - CCTV

26. The draft statutory guidance recommends that licensing authorities should carefully consider potential public safety benefits and potential privacy issues when considering mandating that taxis and PHVs have CCTV installed (paragraphs 2.104 to 2.109). Do you agree with this recommendation?

Yes

No

No opinion

Comment below if you want to explain your answer.

27. The draft statutory guidance recommends that CCTV recordings in taxis and PHVs should be encrypted and accessible only by licensing authority officials (if acting a data controller), the police or when subject to a data subject access request (paragraph 2.114). Do you agree with this recommendation?

Yes

No

No opinion

Comment below if you want to explain your answer.

## 21. Stretched limousines

28. The draft statutory guidance recommends that licensing authorities should consider licensing vehicles with an Individual Vehicle Approval certificate, even if the passenger capacity is unclear, but under the strict condition that the vehicle will not be used to carry more than 8 passengers (paragraph 2.118). Do you agree with this recommendation?

Yes

No

No opinion

Comment below if you want to explain your answer.

## 22. Previous convictions guidance

**29. The draft statutory guidance recommends that the Department for Transport should issue guidance on the assessment of previous convictions (paragraph 2.50). Do you agree with this recommendation?**

Yes

No

No opinion

Comment below if you want to explain your answer.

**30. Annex A of the draft statutory guidance provides a list of offences to aid consistency in the 'fit and proper' assessment for licences. Do you think that the list provides enough detail to do this?**

Yes

No

No opinion

Comment below if you want to explain your answer.

**31. Are there any offences that should be added to the list in Annex A?**

Yes

No

No opinion

## 23. Other offences

32. If you answered yes, please list the offence(s) and the period you consider appropriate to prevent the granting of a licence under most circumstances.

## 24. Impact assessment

**33. Do you have data relating to alleged offences committed in licensed vehicles either against or by passengers? If you have and are prepared to share this with us please add to your response.**

**34. If have any comments or other data that may be relevant to the Impact Assessment please provide this.**

## Ways to respond

Email this completed document to:

[SG-Consultation2019@dft.gov.uk](mailto:SG-Consultation2019@dft.gov.uk)

Or post it to:

Department for Transport  
Buses and Taxis Division (Statutory Guidance 2018 Consultation)  
Great Minster House  
33 Horseferry Road  
London  
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