



**Please ask for:** Wendy Rowe  
**Extension No.:** 4584  
**Email:** [wendyrowe@cannockchasedc.gov.uk](mailto:wendyrowe@cannockchasedc.gov.uk)

20 August 2024

Dear Councillor,

**Licensing and Public Protection Committee**

**10.00am, Thursday 29 August 2024**

**Council Chamber, Civic Centre, Cannock**

You are invited to attend this meeting for consideration of the matters itemised in the following Agenda.

Yours sincerely,

**T. Clegg**  
**Chief Executive**

To: Councillors:

Cartwright, S. (Chair)  
Todd, D. (Vice-Chair)

Aston, J.	Freeman, M.
Elson, J.	Jones, V.
Fisher, P.	Sutherland, M.
Fitzgerald, A.	Wilson, L.

# Agenda

## Part 1

**1. Apologies**

**2. Declarations of Interests of Members in Contracts and Other Matters and Restriction on Voting by Members**

To declare any interests in accordance with the Code of Conduct and any possible contraventions under Section 106 of the Local Government Finance Act 1992.

**3. Minutes**

To approve the Minutes of the previous meeting held on 26 June 2024 (enclosed).

**4. Street Trading Policy Consultation**

Report of the Head of Regulatory Services (Item 4.1 - 4.25).

**5. Street Pavement Licences**

Report of the Head of Regulatory Services (Item 5. - 5.40).

**6. Revised Guidance on Suitability of Applicants and Licensees for the Hackney Carriage and Private Hire Trades Consultation**

Report of the Head of Regulatory Services (Item 6.1 - 6.42).

**Cannock Chase Council**  
**Minutes of the Meeting of the**  
**Licensing and Public Protection Committee**  
**Held on Wednesday 26 June 2024 at 2:00pm**  
**In the Civic Centre, Cannock**

**Part 1**

**Present:** Councillors

Cartwright, S. (Chair)

Todd, D. (Vice-Chair)

Aston, J.

Freeman, M.

Elson, J. (Substitute)      Lyons, N. (Substitute)

Fisher, P.

Sutherland, M.

Fitzgerald, A.

Wilson, L.

**1. Apologies**

Apologies for absence were received from Councillors V. Jones and L. Bishop.

Notification had been received that Councillor J. Elson would be substituting for Councillor L. Bishop and Councillor N. Lyons would be substituting for Councillor V. Jones.

**2. Declarations of Interest of Members in Contracts and Other Matters and Restrictions on Voting by Members**

No declarations of interests were received.

**3. Minutes**

The Minutes of the meeting held on 13 September 2023 were approved as a correct record.

**4. Exclusion of the Public**

**Resolved:**

That the public be excluded from the remainder of the meeting because of the likely disclosure of exempt information as defined in Paragraph 2, Part 1, Schedule 12A of the Local Government Act 1972 (as amended).

**Cannock Chase Council**  
**Minutes of the Meeting of the**  
**Licensing and Public Protection Committee**  
**Held on Wednesday 26 June 2024 at 2:00pm**  
**In the Civic Centre, Cannock**

**Part 2**

**5. Review of Hackney Carriage / Private Hire Driver**

Consideration was given to the Not for Publication Report of the Head of Regulatory Services (Item 5.1 – 5.29).

The Chair invited all those present to introduce themselves and then confirmed the procedure for the Hearing.

The Officer representing the Licensing Authority presented the Council's case by taking the Committee, the Driver and Driver's Legal Representative through the report, outlining the relevant issues for consideration.

The Driver, the Driver's Legal Representative, Members of the Committee, and the Legal Advisor to the Committee were then afforded the opportunity to ask questions of the Officer representing the Licensing Authority. Questions were asked by the Driver's Representative.

At this point, the Officer representing the Licensing Authority showed CCTV footage to all present. Following this, Members of the Committee then asked questions of the Officer representing the Licensing Authority.

The Driver's Legal representative then presented their case to the Committee. At this point it was agreed that the CCTV footage be shown again by the Officer representing the Licensing Authority. The Driver's representative explained the footage in further detail.

The Officer of the Licensing Authority, Members of the Committee, and the Legal Advisor to the Committee were then afforded the opportunity to ask questions of the Driver. Questions were asked by Members of the Committee and the Officer of the Licensing Authority. At this point, Members requested to see the CCTV footage again which was shown by the Officer representing the Licensing Authority.

The Officer representing the Licensing Authority and the Driver were then afforded the opportunity to sum up their respective cases. Summation was provided by the Officer of the Licensing Authority and the Driver's Legal Representative.

The Committee then deliberated in private, accompanied by the Council's Legal Advisor and Secretary to the Committee. The Officer representing the Licensing Authority, the Driver and Driver's Legal Representative left the room during the deliberations.



At the conclusion of the deliberations, the Officer representing the Licensing Authority, the Driver and the Driver's Legal Representative returned to the room, and the Chair announced the decision of the Committee, as follows:

**Resolved:**

That:

- (A) The Committee considered that the driver's conduct and behaviour fell short of those deemed acceptable for a licensed driver.
- (B) A written warning would be placed on the Driver's record for 12 months from 26 June 2024.
- (C) The Driver must complete a Driver Assessment Course, and this must be booked within 8 weeks of 26 June 2024, with completion to follow at a later date, and proof of booking and subsequent completion of the course would need to be submitted to the Licensing Unit.

**Reasons for Decisions:**

On 26 June 2024 the Committee considered whether the driver was a fit and proper person to hold a hackney carriage and private hire driver's licence.

The Committee referral was made in relation to an incident that raised concerns about the fitness and propriety of the driver to be a licensed hackney carriage and private hire driver with the Council, as the Licensing Authority.

On 3 October 2024 a complaint was made to the Council's Licensing Unit. The referral related to an incident which occurred on 25 September 2023. Due to the nature of the incident a referral was made to the Committee as Officers were unable to deal with this matter under their delegated powers.

The Committee met and considered the Not for Publication Report of the Head of Regulatory Services together with written evidence and CCTV footage of the incident.

During the hearing, the driver expressed distress and remorse over what the CCTV showed and accepted that he was required to behave better than he did in view of his position.

It was noted that the driver had previously not come to the attention of the Licensing Authority or Committee and demonstrated remorse for his actions.

The Committee carefully considered the written, recorded, and oral evidence put forward. However, the behaviour displayed on 25 September 2023 was not that of a fit and proper person to hold a hackney carriage and private hire driver's licence.

The meeting closed at 3:45pm

---

**Chair**

**CANNOCK CHASE COUNCIL**

**LICENSING & PUBLIC PROTECTION COMMITTEE**

**29 AUGUST 2024**

**REPORT OF THE HEAD OF REGULATORY SERVICES**

**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982- SCHEDULE 4**

**STREET TRADING POLICY**

**1. Reason for referral:**

- 1.1 Members are asked to note that the Council's Street Trading Policy has recently been updated and is currently out for public consultation. The policy has not been updated since October 2017 and is in need of revision in order to ensure that it remains relevant, enforceable and fit for purpose.

**2. The consultation process:**

- 2.1 The consultation process will take place between 19 August and 15 September 2024 and once adopted by full Council in Autumn 2024, the policy will help ensure that the Council is administering and enforcing its functions in accordance with the legislative requirements.

**3. The scope of the Policy and policy objectives:**

- 3.1 The purpose of the Policy is to help create a street trading environment that compliments premises-based trading, provides greater consumer choice and seeks to enhance the character, ambience and safety of town centres and wider local environments.
- 3.2 The Street Trading Policy is intended to be applied to all street trading activities within the Cannock Chase Council District and includes those who trade in the town centres. It also includes those who trade on industrial estates and business parks as well as ice cream vans and those traders who travel the district selling goods (including food stuffs, sandwiches and coffee etc.).
- 3.3 The Policy is also intended to:
- Provide clear guidance to officers, members and businesses in all matters relating to street trading.
  - Promote and protect public safety
  - Promote high standards of food safety
  - Contribute to safe and vibrant town centres
  - Promote good behaviour and professional conduct

A copy of the revised draft policy for consultation is attached as Annex 1 to this Report.

**4. The proposed policy changes:**

- A proposed change of policy will now require a food hygiene rating of 5 (very good) before a street trading consent can be issued to any business that sells food.
- The Policy will not apply to Cannock Shopping Centre in Market Hall Street, Cannock, or the McArthur Glen West Midlands Designer Outlet in Cannock. Nor will the policy apply to land and parks owned and managed by Cannock Chase Council.
- The Policy update provides clarity around the provision of street markets held within the district which will require a street trading consent from the Council's Licensing Unit. This includes street markets which form part of larger fetes, festivals or carnivals etc.
- It is proposed to permit businesses to street trade in town centres during the evening under controlled circumstances where they are trading in direct association with licensed town centre premises.
- Removal of requirement for existing street traders to notify the Council's Licensing Unit of their attendance at organised events.
- There are 22 proposed changes to the street trading policy, many of them are very minor changes. A full list of changes made to the revised street trading consultation document is provided on the Policy Changes Documents attached as Annex 2 to this Report.

The Council will continue to apply a 3-tier fee structure to its Street Trading Policy.

**5. Members are therefore asked to:**

- 5.1 Note that consultation on the proposed Policy will take place over 4 weeks between 19 August and 15 September 2024.
- 5.2 Consider the revised policy document and be prepared to make comment on the proposed changes as part of the consultation process.
- 5.3 Note that a report on the revised policy will be taken to full Council in the Autumn of 2024.

**6. Relevant Documents / Annexes:**

**Annex 1:** Revised Street Trading Policy Consultation Draft

**Annex 2:** Policy Changes Document

**7. Further information available from:**

- 7.1 David Prosser-Davies  
Environmental Health Manager

Phone: 01543 464202

Email: [davidprosser-davies@cannockchasedc.gov.uk](mailto:davidprosser-davies@cannockchasedc.gov.uk)



# **Cannock Chase District Council**

## **Street Trading Policy**

Consultation Draft August 2024

## Contents

Section		Page
	Contents	1
1	Introduction and scope of the policy	2
2	Consultation on submitted applications	3
3	Exchange of information and data protection	3
4	Equality and diversity	4
5	Definitions of terms used in these guidelines	4
6	Exclusions from the policy	5
7	Procedure for determining street trading consent applications	6
8	Submission of the application	6
9	Fee structure	8
10	Site assessment	8
11	Inspection of the street trading unit	9
12	Determination of the application	10
13	Approval of applications	12
14	Issue of street trading consents	13
15	Refusal of applications for street trading consent	13
16	Decision not to renew or to revoke a street trading consent.	14
17	General information on street trading consents	14
18	Enforcement principles	16
19	Complaints against the service	16
	Notes for applicants	17
Annex 1	Procedure for determining street trading consent applications	18
Annex 2	Fair Processing Notice	19

## AMENDMENT RECORD

Amendment No.	Date of Amendment	Revision made
1	October 2021	Minor changes in order to ensure that the policy remains relevant and up to date.
2	2024 Consultation August 2024	Revision of the Policy in order that it reflect good practice, ensures compliance with legislation and remains relevant and up to date.

## 1. Introduction and scope of the policy

- 1.1 This Policy will be applied to all street trading activities within the Cannock Chase District Council area. This includes town centre traders and those who trade on industrial estates and business parks as well as ice cream vans and those traders who travel the district selling goods (including ice cream, sandwiches and coffee etc.).
- 1.2 The Policy is intended to assist in the consistency of decision making and enforcement. The aim is to ensure that the Council acts consistently in their dealing with street trading and that traders operate within the law and act fairly in their dealings with the public.
- 1.3 Each street trading application will be considered on its own merits so that individual circumstances may be considered and exception may be made where appropriate.
- 1.4 The Policy is intended to be read in conjunction with Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.
- 1.5 With the exceptions outlined in Section 6 of this policy, the whole of the Cannock Chase District Council area and every street within it is designated as a Consent Street. The scope of the Policy includes private land to which the public have access without payment. It is intended that no street trading may take place within the Cannock Chase area without obtaining the appropriate Street Trading Consent. The Council does not issue Street Trading Licences.
- 1.6 Street traders selling foodstuffs (including burgers, breakfasts, sandwiches, ice cream and coffee etc.) must hold a food hygiene rating of at least 5 for their business before any street trading consent can be issued.
- 1.7 There are several exemptions to this street trading policy as well as some activities which are out of scope. Details can be found in Section 6 of this Policy.
- 1.8 Those who street trade within the Cannock Chase District without appropriate Consent will be dealt with having regard to the Environmental Health Service Enforcement Policy which is available at: <http://www.cannockchasedc.gov.uk/residents/environmental-health/environmental-health-enforcement-policy>
- 1.9 For the avoidance of doubt, no living thing shall be sold on any street. Nor shall any second hand electrical goods, counterfeit goods, DVD's or similar merchandise be sold on any street. Only those items specifically permitted by the Street Trading Consent may be sold by the consent holder.
- 1.10 Utility providers and those who are simply promoting goods, services or events where no sales of goods takes place, will not require street trading permission from the Council.

## 2. Consultation on submitted applications

2.1 Before a Street Trading application or renewal application can be granted, the Council will consult with appropriate organisations and agencies. In particular, the following organisations or agencies may be consulted:

- Staffordshire Police
- Staffordshire Fire & Rescue Service
- Staffordshire County Council Development Services Directorate (Highways)
- Staffordshire County Council Trading Standards
- CCDC Food & Safety Team
- CCDC Environmental Protection Team
- CCDC Planning Department
- CCDC Property Services Department
- Any appropriate Parish or Town Council
- Chamber of Commerce
- Other Local Authorities

2.2 The above list is not exhaustive and others may be consulted as appropriate. Written observations will be sought within a **7 working day period** and responses will be taken into consideration when determining an application. In some cases, where applications are made for street trading upon highways such as main roads etc., it may be necessary to extend the consultation period to **14 working days**.

## 3. Exchange of information and data protection

3.1 When an individual or an organisation provides information to the Council, it is held in accordance with the General Data Protection Regulations 1998. Data provided to the Council is used for processing applications, recording consent holders permissions and for regulatory and enforcement purposes.

3.2 The Council may share data with other departments and partners of the Council and other agencies where required by the licensing/registration procedure, and for regulation /enforcement but data will not otherwise be passed on to any other party. The Council's Fair Processing Notices can be found at Annex 2 of this Policy and here: <https://www.cannockchasedc.gov.uk/council/about-us/data-protection/data-protection-privacy-notices>

3.3 The Council is required to disclose certain information under the Freedom of Information Act and some information may also be held on a publicly available register or posted onto the Council website however, personal data will be protected unless it is also official business data (e.g. a trader whose registered business address is also his home).

3.4 The Council has a duty to protect the public funds it administers and to this end, may use the information provided for the prevention and detection of fraud. It may also share information with other bodies responsible for auditing or administering public funds for these purposes, e.g. UK National Fraud Initiative.

3.5 The Council holds and uses data in accordance with the General Data Protection Regulations 1998. Stakeholders should be aware that information provided to the Council may be used and shared with other departments and agencies in order to assist in the prevention and detection of crime and to protect public funds.

## **4. Equality and diversity**

4.1 Through policies and service delivery, the Council's main aims for ensuring equality and diversity are to:

- Eliminate unlawful discrimination
- Promote equality of opportunity
- Promote good relations between diverse communities

4.2 A link to the Council's Equalities and Diversities Policy can be found here:  
<https://www.cannockchasedc.gov.uk/council/about-us/equality-diversity-and-inclusion>

## **5. Definitions of terms used in these guidelines**

5.1 Within the terms of the Cannock Chase District Council's Street Trading Consent Scheme, the following definitions apply:

The Council:	Cannock Chase District Council
Street Trading:	The selling or exposing or offering for sale of any article (including a living thing) in any street.
Street:	Includes: (a) any road, footway, or other area to which the public have access without payment; (b) a service area as defined in section 329 of the Highways Act 1980, and also includes any part of a street.
Consent Street:	Means a street in which street trading is prohibited without the consent of the Council.
Consent:	Consent to trade on a street granted by the Council, pursuant to Paragraph 7, Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.



Consent Holder:	The person or company who having made appropriate application and to whom the Consent to trade has been granted by the Council.
Authorised Officer:	An Officer of the Council authorised by it to act in accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1982.
Recognised organisations:	Means district, town and parish councils as well trade associations and organisers of established events held on Council owned parks and land.

## 6. Exclusions from the policy

- 6.1 This Policy does not apply to those trading with the benefit of a Pedlars Certificate granted under the Pedlars Act 1871 & 1881; nor does it apply to roundsmen or mobile canteens which are dedicated to a work site to which the public have no access.
- 6.2 This policy is not intended for those who are simply promoting services or events within the Cannock Chase area. Further, it will not apply to specific areas of private land known as the Cannock Shopping Centre in Market Hall Street, Cannock and the McArthur Glen West Midlands Designer Outlet in Cannock. The Policy will not apply to land and parks owned by Cannock Chase Council.
- 6.3 Street trading consents issued to ice cream vans and similar traders will allow operators to trade throughout the Cannock Chase District. This will include any private land where consent holders are invited to trade at organised events etc. No additional charge will be made. The Consent will not however, permit operators to trade within Council owned land or parks.
- 6.4 Council owned parks and open spaces may be subject to a separate franchise agreement with the Parks and Open Spaces Department. Any persistent non-compliance with this policy requirement may result in the revocation or non-renewal of a street trading consent.
- 6.5 Street markets will always require street trading consent from the Council's Licensing Unit. This will include any street market which is part of a larger fete, festival or carnival etc which are managed by a recognised or non-recognised organisations.
- 6.6 Where there is no street market at events controlled by recognised organisations, individual food traders will not normally require street trading consent.
- 6.7 Registered food traders e.g. fast food catering units such as ice cream vans etc trading as individuals at any event organised by a non-recognised organisation, ( see Paragraph 5.1 ) will require street trading consent.

- 6.8 Event organisers must notify the Licensing Unit 3 months in advance of any proposed event so as to ensure referral to the Council Safety Advisory Group (SAG) where appropriate.
- 6.9 Where organised events are intended to take place within Council owned parks, permission must be sought from the Council's Parks and Open Spaces Department. Where the organised event is intended to take place on other Council owned land, permission must be sought from the Council's Property Services Department. Permission must be obtained before the event takes place. Both can be contacted on 01543 462621.
- 6.10 Individual traders who wish to trade upon Council owned parks or land will also need to seek similar permission from either the Council's Parks and Open Spaces Department or the Council's Property Services Departments.
- 6.11 Organisers must ensure that their events are notified to the Staffordshire Police Force Events and Operations. They are contactable at: [events@staffordshire.police.uk](mailto:events@staffordshire.police.uk)

## **7. Procedure for determining street trading consent applications**

- 7.1 The application approval procedure stages are set out at Annex 1 of this Policy.
- 7.2 Applicants who are considering street trading for the longer term, may wish to consider becoming a market trader at one of the Council's markets. More information can be obtained from the Council's Property Services Department.  
[PropertyServices@cannockchasedc.gov.uk](mailto:PropertyServices@cannockchasedc.gov.uk)

## **8. Submission of the application**

- 8.1 An application for a Street Trading Consent must be made in writing to the Council. The Application form is available online at:  
<http://www.cannockchasedc.gov.uk/business/licensing-permits/application-forms-licensing>
- 8.2 When making application for street trading consent, the following documents and information will be required:
- (a) A completed and signed application form.
  - (b) The appropriate fee as for the period of trading applied (see Section 9 of this Policy.) Please note that cash payments cannot be accepted.
  - (c) An original copy of the certificate of insurance that covers the street trading activity for third party and public liability risks with a minimum cover of £5,000,000 (Five million pounds).
  - (c) A recent passport size photograph of the applicant.
  - (d)

(e) A recent Basic Disclosure from the Disclosure and Barring Service (DBS). This is to ensure that the Council properly exercises its duty under s17 of the Crime and Disorder Act 1998 and to ensure applicants' propriety in respect of unspent convictions for matters such as theft or fraud. The Certificate must be issued by DBS within a reasonable period of the initial application (3 to 6 months) being made to the Council and will need to be renewed from time to time.

(f) For traders applying to trade on private land, a letter from the land owner giving their permission for the applicant to trade on their land.

Where the Council considers it appropriate, the following must also be provided:

(g) Where the proposed street activity is from a fixed position outside any of the three town centres (Cannock, Hednesford or Rugeley), a copy of a map of at least 1:1250 scale is required. The map should clearly identify the proposed site position by marking the site boundary with a red line.

(h) Details of the local authority with which the applicant has registered their food business and the date of the last food hygiene inspection and the food hygiene rating.

(i) A photograph of the pitch/stall/vehicle etc.

(j) A completed risk assessment where a large or complex street trading event is proposed. The risk assessment must be completed by a competent person.

(k) Evidence that the applicant is entitled to reside and work within the UK

(l) Certificate of Inspection for LPG and gas appliances.

(m) If a portable generator is to be used, it must be a silent generator. Details of the make and model should be provided on the application form.

8.3 A new applicant for an initial Street Trading Consent should give a minimum of 15 working days' notice of the application. This will allow for a proper consultation period to be undertaken.

8.4 Applicants should have a reasonable command of the English language and be aware that false statements or misrepresentation may result in the refusal of the application or revocation of the Street Trading Consent.

8.5 Where appropriate, shorter term consents may also be issued on either a daily, weekly or monthly basis. Where new applicants intend to trade in non-established goods or within an area new to them, they will be encouraged by the Council to apply for the minimum duration and thereafter on a basis that meets the requirements.

8.6 Short term consents will be encouraged by the Council, particularly where new applicants intend to trade in non-established goods or within an area which is new to them.

- 8.7 Support for new businesses or for business growth may be available from the Council's Planning and Economic Development Department at: [EconDev@cannockchasedc.gov.uk](mailto:EconDev@cannockchasedc.gov.uk)
- 8.8 Consents will expire on the date specified and care should be taken to ensure that applications for renewal are submitted in sufficient time for a proper consultation to take place and a new Consent to be issued. The Street trading fee structure reflects the possibility of consents being granted for a trial period.
- 8.9 Renewals will normally take 5 working days unless the consent holder has been the subject of complaint to the Council, in which case a further consultation with appropriate agencies may be required and the time for processing the application may be extended.

## 9. Fee structure

- 9.1 The Council will employ a three tiered fee structure in the administration of its Street Trading Policy. Please note that cash payments cannot be accepted.

### Tier 1

Encompasses all those who are street trading within the District as a whole or those on private land to which the public have access without payment. The fee payable to trade within this environment is a one off fee per annum. This includes those who trade on industrial estates, ice cream vans and others who travel within the Cannock Chase District selling goods (including foodstuffs) and are not defined as rounds men.

### Tier 2

Includes all those who street trade on highways land such as main roads, side roads and laybys. The fee payable to trade within this environment is payable on a daily basis.

### Tier 3

Is available for those who wish to street trade within the town centres. The fee to trade within this environment is payable on a daily basis.

- 9.2 All street trading fees are reviewed on an annual basis and are published on the Council's website under "Fees and Charges".
- 9.3 Registered charities and non-profit making organisations who wish to street trade, may be exempt from paying a fee. A written request for a fee exemption must be provided to the Licensing Unit on the Charity's letter headed paper which must be signed by a responsible person such as a Director or Trustee of the Charity.

## 10. Site assessment

- 10.1 Street Trading Consents from static locations will **not** normally be granted where there is one or more of the following:

- A valid objection;
- A significant detrimental effect on road safety would arise either from the siting of the trading activity itself, or from customers visiting or leaving the site;
- Where there are concerns over the recorded level of personal injury accidents in the locality where the street trading activity is proposed to be sited;
- There would be a loss of amenity caused by traffic, noise, litter, rubbish, vermin, odour or fumes;
- There is already adequate like provision in the immediate vicinity of the site to be used for street trading purposes;
- There is a conflict with a Traffic Order such as waiting restrictions;
- The proposed site/pitch obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use for street trading purposes;
- The proposed trading site/pitch would obstruct the safe passage of users of the footway or carriageway;
- The site/pitch interferes with sight lines for any road users such as at road junctions, or pedestrian crossing facilities;
- The proposed site/pitch does not allow the Consent Holder, staff or customers to park in a safe manner;
- The street trading activity is proposed to be carried out after dusk and the site is not adequately lit to allow safe access and egress from the site for both customers and staff.

## **11. Inspection of the street trading unit**

- 11.1 The vehicle, van, trailer, stall or other unit to be used for the proposed street trading activity may need be inspected by an authorised officer of the Council prior to the issue of any street trading consent. This will particularly be the case where officers from the Food Safety Team need to inspect trailers etc. from which it is proposed to sell food items.
- 11.2 The vehicle, van, trailer, stall or other unit used for the street trading activity shall comply in all respects with the legal requirements relating to the type of street trading activity proposed. Where issued, the street trading consent holder or food business operator must clearly display their food hygiene rating sticker upon the consented mobile unit.
- 11.3 Any vehicle, van, trailer, stall or other unit to be used shall comply with the following legislation and any other regulations made thereunder or relating to or modification or re-enactment:
- Food Safety Act 1990
  - General Food Regulations 2004
  - Food Safety & Hygiene (England) Regulations 2013
  - Regulation (EC) No.852/2004.
  - Health and Safety at Work etc. Act 1974
  - Environmental Protection Act 1990.
  - Licensing Act 2003
  - Health Act 2006

## 12. Determination of the application

12.1 Council officers, using delegated powers, will use the criteria listed below to determine any street trading application. The criteria will assist in the determination of what is in the best interests of the Council when making a decision but is not exhaustive in this respect.

12.2 Any objections received will be considered against these criteria. All of the said criteria should normally be satisfied with appropriate weight applied to the criteria listed. Each case will be assessed on its own merits.

- a) **Public Safety:** The location of the proposed street trading activity shall not present a substantial risk to the public in terms of road safety, obstruction and fire hazard. The term "public" refers to customers availing themselves of any street trading activity, as well as other members of the public using the street. In particular, reference will be made to the guidelines set out in Section 10 on site assessment criteria.
- b) **Public Order:** The street trading activity should not present a risk to good public order in the locality in which it is situated. Observations and comments from Staffordshire Police will be taken into consideration.
- c) **Avoidance of Nuisance:** The street trading activity must only take place in the area designated by the Licensing Unit. This will normally be by means of a plan provided with the street trading consent.

Trading must not cause unnecessary obstruction and must not present a significant risk of nuisance from noise, rubbish, potential for the harbourage of vermin, smells or fumes to households and businesses in the vicinity of the proposed street trading site. Observations from Council licensing officers, other enforcement officers and the Police shall be taken into consideration.

Traders should be aware that the Health Act 2006 prohibits smoking within substantially enclosed premises. Where a vehicle, van, trailer, stall or other unit used for street trading is not substantially enclosed, the Council strongly discourages smoking within them. This will help avoid unnecessary complaints.

- d) **Visual Amenity:** The Council expects a high standard of presentation and appearance from its street traders. Tables or stalls used for street trading shall not normally be more than 4 metres in length and 1 metre in width. The size of specialist or bespoke stalls will be considered on their own merit.

The stall shall be covered with an appropriate clean and non-patterned sheet or other covering in order to ensure they are not cause for complaint to the Council because of the poor visual amenity they afford.

No items shall be placed on the floor or within half a metre of it. Bread trays/baskets or similar containers must not be used to provide storage, shelving, support or display for goods. Any items placed next to the stall or table must be immediately adjacent to it.

- e) **Needs of the Area:** The sufficiency of other trading outlets will be taken into consideration in relation to:
- The presence of like outlets (mobile or otherwise) already existing in the immediate locality of the proposed street trading site. This is normally a distance of 50 metres within town centres but may be much further in other areas such as on roadsides or industrial estates.
  - The general needs of a locality, where no comparable outlets exist.

Under normal circumstances, no two street traders selling the same goods will be permitted to trade in the same location on the same day. Where problems arise, applicants may have to demonstrate to the Council the need for the proposed street trading activity in relation to the 2 bullet points above.

There is limited space available for street trading within the district town centres. The trading spaces vary in size, shape and suitability for a variety of different types of stalls etc. Therefore, it might be necessary to refuse an application because an appropriately sized trading pitch is not available. For this reason, it is important that all consent holders trade in the position allocated to them.

Consent holders may be asked to move their trading position from time to time if it is considered necessary to do so by the Council. On occasions, this may be with immediate effect. Traders are also encouraged to work with other traders when setting up should there be an event taking place or an unusual vehicle, van, trailer, stall or unit, for example, where a children's fairground ride is present in the town centre.

- f) **Compliance with legal requirements:** The proposed street trading activity should only be carried out from a trading unit which complies with the relevant legislation set out in Section 11 of this Street Trading Policy.
- g) **Consultee Observations:** In relation to points (a) – (e) above, consideration will also be given to written observation from consultees. Any objections made to the proposed street trading activity will be considered in terms of relevancy and appropriateness to the application that has been made.
- h) **Permitted Trading Hours:** The Council will generally only permit street trading between 0700 hours and 1700 hours on any day. The Council, however, retains the right to specify permitted hours of trading that are less than those given above if local circumstances dictate. The individual needs of the applicant will be

considered on every occasion and in particular where evening events such as turning on the Christmas lights are taking place within the town centres.

Where appropriate, the Licensing Unit will consider applications by individuals for street trading during the evening time. Any proposed street trading must be within a town centre and be connected to an open licensed premises outside of which the street trading must take place. This necessary connection to a licensed premises is intended to help prevent public nuisance and ensure the safety and security of the trader as well as the patrons and the public.

Street trading late at night will be assessed in terms of the criteria detailed above as well as the requirements of the Licensing Act 2003 in relation to late night refreshment between the hours of 23.00 hours and 05.00 hours.

- i) **Market days:** Street Markets will take priority over street trading consent holders.

Cannock: A large street market visits Cannock town centre every Tuesday and Friday and no individual street traders are permitted to trade in Cannock town centre on those days except for a very small number of already established food traders.

Any trader who wishes to enquire about trading in Cannock on a Tuesday or Friday should contact the market provider Bescot Promotions Ltd, either by telephone on 07875 655875 or by email at [info@bescotpromotions.co.uk](mailto:info@bescotpromotions.co.uk)

Rugeley: A street market visits Rugeley town centre every Thursday and one Saturday of every month. No individual street traders are permitted to trade in Rugeley town centre on those days.

Should other independent street market providers wish to visit any of the town centres, care will be taken to ensure that both street traders and market traders can be accommodated wherever possible.

## 13. Approval of applications

- 13.1 Council officers, using their delegated powers may approve or refuse applications using the criteria contained within these guidelines.
- 13.2 On approving an application, the Council will issue a Street Trading Consent to which conditions will be attached. The consent will also contain specific terms such as days, hours and place that street trading is permitted as well as the goods that may be sold.
- 13.3 Care must be taken by the applicant when listing the goods which are to be sold. **No goods may be sold or displayed which are not specified on the Street Trading Consent.**



- 13.4 Changes to the consented goods may require a new application to be made and further consultation to be sought. Minor amendments such as the addition of related items to the Consent may be made however, the current administration fee will be charged.
- 13.5 Standard conditions are attached to all street trading consents however, additional conditions may be attached where it is appropriate to do so.
- 13.6 The conditions attached to the Consent or printed upon the back of it, form part of the Council approval. The conditions must be complied with at all times. Failure to do so could lead to the Street Trading Consent being either revoked, or not renewed.
- 13.7 Consent holders are encouraged to take time to familiarise themselves with the conditions attached to their Street Trading Consent.

## **14. Issue of street trading consents**

- 14.1 Street trading consents for any particular pitches in town centres and industrial estates/business parks will be issued for a maximum period of 12 months. Consents may be issued on an annual basis and invoiced on a quarterly basis. In some circumstances they may also be paid for in monthly or bi-monthly instalments.
- 14.2 A Street Trading Consent will normally be issued for a minimum of four days during a one month period. Non-payment of fees or instalments will lead to the Consent being revoked.
- 14.3 Where the Consent has expired and an application has not been submitted for renewal at least 5 days earlier, a new application will have to be made. In such cases, the applicant may be required to go through the full consultation process outlined in this Policy.
- 14.4 Normally, street trading consents will be posted to the applicant. By agreement in other cases, the Consent can be collected from the Civic Centre on the morning of the day of trading.
- 14.5 Street trading consents may be revoked without notice if it is considered in the best interests of the Council to do so.

## **15. Refusal of applications for street trading consent**

- 15.1 If the application for a Street Trading Consent is refused, the applicant will be notified in writing of the decision and the reason for the refusal within 7 working days.
- 15.2 The Local Government (Miscellaneous Provisions) Act 1982 does not facilitate any legal appeal against the decision of the Council in relation to the refusal of a Street Trading Consent. Any decision to refuse an application will involve consideration of what is in the best interests of the Council. Council officers will use this policy as well as the criteria given

in Section 12 in determining what is in the best interests of the Council. Any person aggrieved by a decision of the Council may seek a Judicial Review of the decision.

## 16. Decision not to renew or to revoke a street trading consent.

- 16.1 Complaints which relate to nuisance, obstruction or non-compliance with legislation or Council policy will be taken into account when considering renewal or revocation of a street trading consent.
- 16.2 If Council officers determine not to renew or to revoke an existing Street Trading Consent, the applicant/consent holder will be notified in writing of the decision within 7 working days giving reasons for not renewing or revoking the Consent.
- 16.3 The Local Government (Miscellaneous Provisions) Act 1982 does not facilitate any legal appeal against the Council in relation to a decision not to renew or to revoke a Street Trading Consent. However, any person aggrieved by a decision of the Council may seek a Judicial Review of the decision.

## 17. General information on street trading consents

- 17.1 **Reimbursement of Fee:** Fees will not normally be reimbursed to consent holders because they are unable to trade on a given day. Fees may be reimbursed where traders cease to trade and surrender their Consent to the Council. Any reimbursement will be from the date the Consent is surrendered to the Council. A small administration fee may be deducted from the final settlement. Refund of any fee paid to the Council in connection with the granting of a Street Trading Consent will be based on the number of trading days remaining, divided by the daily fee paid, less an administration fee.
- 17.2 **Alcohol:** The sale of alcohol will not normally be permitted by Street Trading Consent. Occasional permission may be sought however, under the authority of a Temporary Event Notice (TEN) in respect of the sale or supply of alcohol as part of community events. The TEN should be served by the individual street trader or stall holder rather than the market organiser and forms are available from the Gov.uk website.
- 17.3 **Persons under the age of 17 years:** In accordance with the Local Government (Miscellaneous Provisions) Act 1982, the Council is unable to grant a Street Trading Consent to any person under the age of 17 years.
- 17.4 **Access/inspection by Council and Police Officers:** Consent holders must allow access to authorised officers of the Council and police officers at all reasonable times for the purposes of assessing and ensuring compliance with the Street Trading Consent.
- 17.5 **Street Trading Consents:** The conditions attached to all street trading consents stipulate that a Consent Holder shall not transfer, assign, sub-let or part with his interest or possession of a Street Trading Consent. The Consent Holder will normally be expected to

be in attendance at his/her vehicle, van, trailer, stall, unit or other device used for street trading at all times when the Consent is valid. Consents are non-transferable and no sub-letting is permitted.

- 17.6 **Variation of conditions:** The Council may at any time vary the conditions of a Street Trading Consent if it is considered necessary.
- 17.7 **Complaints:** Consent holders are expected to conduct themselves in a clean, honest and business-like manner. Any complaint made by any person to the Consent Holder about their business must be referred to the Council's Licensing Unit as soon as possible after it is made.
- 17.8 **Display of Permits:** The Street Trading Consent which details the permit holders name **MUST** be clearly displayed on the vehicle, van, trailer, stall or other device used for street trading. Failure to comply may result in consents being revoked or not renewed. The address of the consent holder, along with a photograph of themselves will be printed on the rear of the Consent issued and must be made available for inspection by the police or other authorised officers upon requested.
- 17.9 **Litter and Waste Disposal:** Provision must be made for the proper disposal of waste. There shall be no discharge to drains and no unauthorised depositing of either solid or liquid matter. Street traders should actively prevent windblown or other litter occurring and must not use public litter bins to dispose of their waste.
- 17.10 **Vehicles:** are only permitted to stay within the town centre if they form part of the Street Trading Consent. Traders should be aware that some town centres are pedestrianised and that vehicle movement must therefore be kept to an absolute minimum. Every effort should be made to enter and leave the town centres before and after the area becomes busy and generally, vehicle movements for the unloading and loading of goods should not take place between the hours of 09.00hrs and 16.30hrs.
- 17.11 It must be noted that the Street Trading Consent does not override existing Traffic Regulation Orders and all vehicles must be parked safely and not upon double yellow lines etc. If the vehicle does not form part of the Street Trading Consent then it must be legally parked elsewhere.
- 17.12 If the vehicle itself is licensed, for example as an Ice Cream Van, then the Council may wish to ensure that the vehicle is taxed and has an appropriate MOT.
- 17.13 **Highways:** It is not permitted under any circumstances to damage the highway, for example, by hammering into it to provide securing points. Further, it is not permitted to secure notices or advertising boards to street furniture or highway infrastructure by means of chains etc.
- 17.14 **Planning:** All applicants are encouraged to seek advice from the Planning Department on the proposed location of their Pitch. Street trading consent does not override the need for planning permission. More information at: [DevelopmentControl@cannockchasedc.gov.uk](mailto:DevelopmentControl@cannockchasedc.gov.uk)

## 18. Enforcement principles

18.1 The Council will endeavour to avoid duplication with other regulatory regimes and will work closely with other agencies. The aim is to promote the policy objectives by targeting known high risk premises following Government guidance around better regulation.

18.2 In carrying out its enforcement duties relating to the inspection of premises and the powers to institute criminal proceedings in respect of certain offences under the Act, the Council will have regard to the Regulators Code and our aim will be:

- **Proportionate:**  
Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.
- **Accountable:**  
Regulators must be able to justify decisions, and be subject to public scrutiny.
- **Consistent:**  
Rules and standards must be joined up and implemented fairly.
- **Transparent:**  
Regulators should be open and keep regulations simple and user friendly.
- **Targeted:**  
Regulation should be focused on the problem and minimise side effects.

18.3 The Council will adopt a risk-based inspection programme in line with Government recommendations around better regulation and the principles of the Regulators Code which can be found here: <https://www.gov.uk/government/publications/regulators-code>

18.4 This Policy will be applied to all street trading activities within the Cannock Chase District Council area. It is intended to assist in the consistency of decision making and enforcement. The aim is to ensure that the Council acts consistently in their dealing with street trading and that traders operate within the law and act fairly in their dealings with the public. Our contact details are given below:

Licensing Unit, Civic Centre, Box 28, Beecroft Road, Cannock, Staffordshire, WS11 1BG  
Phone: 01543 462621 Email: [licensingunit@cannockchasedc.gov.uk](mailto:licensingunit@cannockchasedc.gov.uk)

## 19. Complaints against the service

19.1 The Council has a Corporate Complaints Procedure copies of which are available from the Council Offices or on the Council's website [www.cannockchasedc.gov.uk](http://www.cannockchasedc.gov.uk).

## **NOTES FOR APPLICANTS**

The Council will normally attach Standard Conditions to a street trading consent.

### **Fees and Charging Structure**

The 3 tier fee structure is outlined within Section 9 of the Policy. The fees are reviewed in April each year. Applications must be accompanied by the full fee. Consent will not be issued for longer than 12 calendar months.

### **Exemptions from consent street charging fees**

Street trading consents issued to registered charities and non-profit making organisations may be exempt from the consent street trading charges (see Section 9 relating to fee structure).

### **Safe Use of Liquefied Petroleum Gas (LPG) in mobile catering units**

Industry guidance notes are available on the safe use of LPG and applicants will be expected to comply with the advice contained therein. Applicants must have a recent Certificate of Inspection for LPG and gas appliances.

### **Electricity**

Mains electricity is not readily available within the town centres. Special requests for use of this facility at a daily rate must be made to the Council at the time of application. Only quiet running generators may be used to provide power.

### **Noise**

The operators of ice cream vans must comply with the Code of Practice on Noise from Ice Cream Van Chimes etc. 2013. Sound amplification will not be permitted unless in relation to matters specified in the Control of Pollution Act 1974 and in compliance with Codes of Practice. Further advice may be sought via the Council's Licensing Unit.

### **Enforcement Policy – Refusal or Revocation**

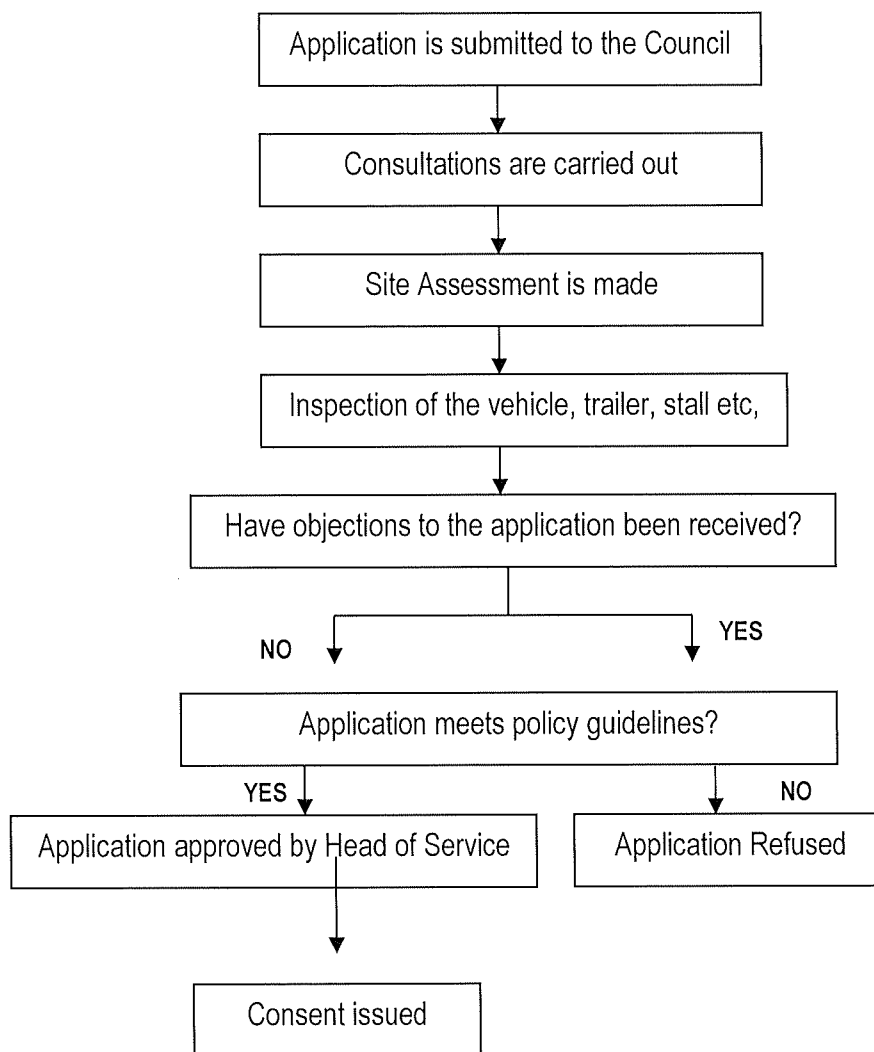
The following grounds will be considered for refusing an application or revoking a Consent:-

1. It is in the best interest of the Council to do so.
2. That the applicant/consent holder has, without reasonable excuse, failed to avail themselves of a previous or current street trading consent.
3. That there is not enough space in the street for the applicant/consent holder to engage in the trading in which he desires to trade without causing undue interference or inconvenience to persons using the street. This is a relevant consideration even if the circumstances have arisen since the granting of a consent.
4. That the applicant/consent holder has failed to comply with the conditions of the consent or any statutory requirement relevant to street trading (e.g. hygiene or safety requirements).
5. That the applicant/consent holder is unsuitable to hold a Consent by reason of having been convicted of a relevant offence.
6. That the consent holder's vehicle, van, trailer, stall or other device has been the focus for incidents involving public disorder or nuisance.

ANNEX 1

**PROCEDURE FOR DETERMINING STREET TRADING CONSENT APPLICATIONS**

The application and approval procedure comprises of the following stages:



ANNEX 2

FAIR PROCESSING NOTICE

HOW WE USE YOUR PERSONAL INFORMATION:

At Cannock Chase District Council we take your privacy seriously and will only keep and use your personal information for reasons that the law requires or allows. We are a data controller for the personal information we hold about you in relation to the processing and renewals of your Licences. In order to comply with data protection legislation, we want to be sure you understand how we use this information.

The purpose for which your data will be used is to establish your identity and other necessary information about you which will help us determine your fitness, propriety and suitability to hold a licence or other authorisation with this authority.

If you are a hackney carriage/private hire driver, we may also use your data to enable the maintenance of a national revocations and refusals register (NR3) to strengthen hackney carriage / private hire vehicle licensing for the benefit and safety of passengers and drivers. The introduction of this NR3 register will help other licensing authorities to make decisions on whether or not you are a fit and proper person to hold a licence with that authority. This is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the licensing authority.

The recipients or categories of recipients of the personal data in the case of the NR3 National Register of Refusals or Revocations will be the National Anti-Fraud Network and Licensing Authorities

The following is a generic, non-exhaustive list of relevant legislation which may apply to your particular licensing application or renewal. The information we collect about you will permit us to process your application in compliance with the legislation.

- Licensing Act 2003
- Gambling Act 2005
- The Local Government (Miscellaneous Provisions) Act 1976 & 1982
- The Town Police Clauses Act 1847
- Animal Welfare Act 2006
- Dangerous Wild Animals Act 1976
- House to House Collections Act 1939
- Scrap Metal Dealers Act 2013

Cannock Chase District Council is required by law to protect the public funds it administers. We may share information provided to us with other agencies involved in licence processing or licensing enforcement where the law requires or permits us to do so.

We may share information about you for the purposes of auditing and administering public funds, preventing and detecting fraud and the prevention and detection of crime. Otherwise, we will only share your data if you ask us to. We only keep this data for the time specified in our retention schedule or as required by law. In the case of your personal data which is held on the NR3 data base the retention period will be 25 years

Data protection law provides you with certain rights, however not all of these rights will be available to you in all situations, particularly where we process your information as part of one of our statutory duties. Where we are under a legal duty to use data for a particular purpose you will not have the right to prevent it being used in that way.

A full list of the rights you may have, under data protection law, is given in the 'Your Rights' section of this webpage. For specific enquiries regarding personal data which we process you can contact the Data Protection Officer on email: [infomanager@cannockchasedc.gov.uk](mailto:infomanager@cannockchasedc.gov.uk) or at Civic Centre, PO Box 28, Beecroft Road, Cannock, Staffordshire, WS11 1BG.

If you wish to complain about how your personal information has been handled by Cannock Chase District Council then please contact the Data Protection Officer in the first instance using the details above. If you are not satisfied you can submit a formal complaint to the Council via our website. [www.cannockchasedc.gov.uk](http://www.cannockchasedc.gov.uk)

Finally you can complain to the Information Commissioner's Office at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF, Tel: 0303 123 1113 or you can visit their website at [www.ico.org.uk](http://www.ico.org.uk)

You can also find details of how we handle your personal information by visiting [www.cannockchasedc.gov.uk/DataProtection](http://www.cannockchasedc.gov.uk/DataProtection)



**CHANGES TO CANNOCK CHASE DISTRICT COUNCIL'S STREET TRADING POLICY 2024**

PAGE / PARAGRAPH / SECTION	AMENDMENTS TO EXISTING POLICY	REASON
Page 1		
Page 2, Paragraph 1.5	Update of policy Amendment Record to highlight the changes made. All paragraphs are now numbered. Reference to an additional policy exemption in Section 6 and confirmation that the Council does not issue street trading licences.	For information and clarification.
Page 2, Paragraph 1.6	The Council now requires street traders who sell food to have a food hygiene rating of 5.	To ensure high standards of food hygiene.
Page 3, Section 3.1 & 3.5	Change wording from Data Protection Act 1998 to General Data Protection Regulations 1998	To reflect changes to current legislation.
Page 3, Paragraph 3.2	Addition of a weblink to the Fair Processing Notice	For information and compliance with legislation
Page 3, Paragraph 3.3	Changes to the wording in connection with the use of information/data provided to and by the Council	To ensure the policy remains relevant and to reflect current legislation.
Page 5, Paragraph 5.1	Change to the definition of "recognised organisation"	To ensure the policy remains relevant.
Page 5, Paragraph 6.2	Confirmation that the McArthur Glen Designer Outlet is exempted from the Council policy	For the avoidance of doubt and to ensure the policy remains relevant.
Page 5, Paragraph 6.3	Removal of the requirement to notify the Council where a consent holder attends an organised event.	In order to ensure the policy remains relevant and enforceable.
Page 5, Paragraphs 6.5	Confirmation that street markets will always require street trading consent. This includes markets which are part of a larger events managed by recognised organisations.	For clarification and the avoidance of doubt as well as ensuring compliance with legislation.

Page 5, Paragraph 6.6	Confirmation that where there is no street market at an event controlled by a recognised organisation, individual food traders will not normally require street trading consent	For clarification and the avoidance of doubt.
Page 5, Paragraph 6.7	Confirmation that food traders at events managed by non-recognised organisations will normally require a street trading consent.	To reflect good practice and make stakeholders aware of Council expectations.
Page 6, Paragraph 6.11	Change to the Staffordshire Police contact details for use by event organisers	To ensure the policy remains relevant.
Page 7, 8.2 (e)	Change to requirement for applicants to provide disclosure from the Disclosure & Barring Service	To reflect legislative changes and ensure the policy remains relevant.
Page 12, Paragraph (h)	Additional information on street trading during the evening in association with a licensed premises.	To ensure the policy remains relevant and enforceable.
Page 12, Paragraph (i)	Additional and updated information on street markets in Cannock & Rugeley	To ensure the policy remains relevant.
Page 13, Section 14.2	Removal of reference to payment by cheque.	To ensure the policy remains relevant.
Page 14, Paragraph 16.1	Confirmation that complaints of nuisance, obstruction and non-compliance will be consider upon application for renewal or revocation of a street trading consent.	For the avoidance of doubt and to ensure the policy remains enforceable.
Page 14, Paragraph 17.2	Clarification of the requirement to serve a Temporary Event Notice and who should serve the TEN	For clarification, the avoidance of doubt and compliance with legislation.
Page 17	Change to the provision and use of the electricity supply within the town centres	For clarification and the avoidance of doubt.
Page 19	Addition of the Fair Processing Notice as Annex 2 to the policy.	For information and compliance with legislation

Consultation: August 2024

**CANNOCK CHASE COUNCIL**  
**LICENSING & PUBLIC PROTECTION COMMITTEE**

**29 AUGUST 2024**

**HEAD OF REGULATORY SERVICES**

**PAVEMENT LICENSING PROCEDURE**

**1. Reason for referral:**

- 1.1 Members are asked to note that on 31 March 2024, The Levelling Up and Regeneration Act 2023 (the 2023 Act) made permanent the provisions set out in the Business and Planning Act 2020 for pavement licences.

The Business and Planning Act 2020 was brought in as emergency legislation during the COVID Pandemic. This Act removed the requirement for planning permission for removable furniture temporarily placed on the highway adjacent to hospitality sector premises (such as cafes, restaurants, and bars) and streamlined the process by reducing the consultation and determination periods, making it quicker, easier and cheaper for businesses to obtain pavement café licences.

- 1.2 This now permanent regime retains the key features of the 2020 process, but also incorporates some changes to ensure the long-term sustainability of the model.

The purpose of the 2023 Act is to provide an easier and cheaper route for businesses such as cafes, restaurants and bars to secure a licence to place furniture on the highway. This will provide much needed income for businesses and protect as many hospitality jobs as possible, particularly during times of increasing living costs.

- 1.3 In order to effectively perform this function, the Council requires a procedure framework for this new permanent licensing regime to be implemented. This report explains to elected members and officers how the Council, through this Committee, will administer this important licensing function.

- 1.5 Currently the Council, through the Environmental Health Licensing Unit, issues :

- 10 x Pavement Licences (issued under Business and Planning Act 2020)

**2. Procedure Objectives:**

- 2.1 The procedure seeks to achieve the following objectives:

- Promoting and protecting public safety;
- Ensuring health and safety;
- Equality and accessibility in service provision;
- Promotion of economic recovery and growth.
- Provide an al fresco / continental style dining / drinking experience in the town centres.
- Increase potential footfall for both the local daytime & nighttime economies.
- Encourage new visitors to the local area

### **3. Guidance notes for local authorities**

3.1 Specific Pavement Licensing guidance notes have been issued by the Department for Levelling Up Housing & Communities, outlining the key areas which have been summarised below (see Annex 1 for the full Government guidance notes) :

#### **1. Pavement licences**

##### **What is a pavement licence?**

A pavement licence is a licence granted, or deemed to have been granted, by the local authority, which allows the licence-holder to place removable furniture over certain highways adjacent to the premises in relation to which the application was made, for certain purposes.

##### **What is the purpose of the Business and Planning Act 2020 process for pavement licences?**

The Business and Planning Act process provides a streamlined and cheaper route for businesses such as cafes, restaurants, and bars to secure a licence to place furniture on the highway. This will provide much needed income for businesses and protect as many hospitality jobs as possible, particularly during times of increasing living costs.

##### **How does the Levelling Up and Regeneration Act 2023 change the pavement licensing regime?**

The 2023 Act makes permanent the pavement licensing regime under the Business and Planning Act 2020, with a number of changes. The 2023 Act introduces a standard fee cap for both new and renewal of licences as well as increased consultation and determination periods, lengthens the maximum duration of licences and provides local authorities with new powers to remove unlicensed furniture.

##### **How does the process for pavement licences work?**

Permission to place objects or structures on the highway are otherwise granted primarily under Part 7A of the Highways Act 1980. The fee for the Highways Act process varies between local authorities, and there is a minimum 28 calendar day consultation period. The Business and Planning Act process provides a cheaper, easier, and quicker way for businesses to obtain a licence.

##### **Which businesses are eligible?**

A business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a licence. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours including where such uses form an ancillary aspect of another use, for example supermarkets, or entertainment venues which sell food and drink.

A licence permits the business to use furniture placed on the highway to sell or serve food or drink and/or allow it to be used by people for consumption of food or drink supplied from, or in connection with the use of the premises.

### **Which businesses are ineligible?**

Businesses that do not use their premises for the sale of food or drink, for example salons, are ineligible. Though they can apply for permission to place furniture on the pavement under the Highways Act 1980.

### **What furniture can be permitted by a licence?**

The furniture which may be placed on the pavement includes:

- counters or stalls for selling or serving food or drink;
- tables, counters or shelves on which food or drink can be placed;
- chairs, benches or other forms of seating; and
- umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink.

This furniture is required to be removable and related to the serving, sale and consumption of food or drink. Local authorities should be pragmatic when determining what is 'removable' but in principle this means it is not a permanent fixed structure, and is able to be moved easily, and stored away at night.

### **What furniture is not permitted by a licence?**

Furniture that is not removable and is used in connection with the outdoor selling or consumption of food or drink are not permitted by a pavement licence issued under The Business and Planning Act 2020. Applicants that wish to place non-removable furniture onto the highway for consumption of food or drink must apply to this Authority for permission under the Highways Act 1980.

Advertising boards (A-Boards) are not included in the definition of furniture within the pavement licensing regime. Staffordshire County Council currently regulate A-Boards under the Highways Act 1980. This Act provides them with powers to remove the A-Boards if they are causing a danger or potential risk on the highway.

### **How much do applications cost?**

Fees will be set locally, and it is for the licensing authority to determine the appropriate charge. Fees are capped at a maximum of £500 for first time applications and £350 for renewals.

The Council's Licensing Unit has determined that a fee of £200 will be applied to new applications and renewals. This is deemed sufficient to enable recovery of costs and will be reviewed annually.

### **Are there any exclusions from this provision?**

Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980. Generally, these are footways restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited.

### **Where does this new process apply?**

This process applies to England only, including London and other areas where statutory regimes other than the regime in the Highways Act 1980 may be relevant to the grant of licences for street furniture.

**How does this interact with other regulatory process, such as alcohol licensing?**

The grant of a pavement licence only permits the placing of furniture on the highway. A pavement licence does not negate the need to obtain approvals under other regulatory frameworks, such as the need for a licence to sell alcohol, and the need to comply with registration requirements for food businesses.

**Does the applicant need planning permission as well as the licence?**

No. Once a licence is granted, or deemed to be granted, the applicant will also benefit from deemed planning permission to use the land for anything done pursuant to the licence while the licence is valid.

**2. Duration**

**How long are pavement licences valid for?**

If a local authority determines an application before the end of the determination period (which is 14 calendar days, beginning with the first day after the end of the public consultation period, excluding public holidays), the authority can specify the duration of the licence. To help support local businesses and give them more certainty, the expectation is that local authorities are pragmatic and will grant licences the maximum 2 years, unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space.

This Council will issue licences for the maximum 2 years, unless there is good reason not to.

**When did the permanent pavement licensing come into force?**

The permanent pavement licensing regime and changes provided for in Levelling Up and Regeneration Act came into effect on 31 March 2024

**3. Applications**

**What information does an applicant need to provide?**

An application to the local authority must:

- specify the premises and, the part of the relevant highway to which the application relates;
- specify the purpose (or purposes) for which the furniture will be used which must be for use by the licence-holder to sell or serve food or drink, and/or for use by other people for the consumption of food or drink. In both cases the food or drink must be supplied from, or in connection with relevant use of the premises;
- specify the days of the week on which and the hours between which it is proposed to have furniture on the highway;
- describe the type of furniture to which the application relates, for example: tables, chairs, and/or stalls;
- specify the date on which the application is made;
- contain or be accompanied by such evidence of public liability insurance in respect of anything to be done pursuant to the licence as the authority may require; and
- contain or be accompanied by such other information or material as the local authority may require, for example how national and local conditions have been satisfied.

This Authority will require applications to be submitted on-line using the prescribed form which is attached to this report is Annex 2.

### **What other information may the local authority require?**

Local authorities may require the applicant to provide other information or material to help them make a swift determination. This could be included in their standard application form. Publicising information requirements, and applicants ensuring that they have provided all relevant information to meet these requirements, is beneficial to all parties involved in the process and can speed up decision making.

Examples of the information a local authority might require include:

- a plan showing the location of the premises shown by a red line, so the application site can be clearly identified (some authorities may require this on an OS Base Map);
- a plan clearly showing the proposed area covered by the licence in relation to the highway, if not to scale, with measurements clearly shown;
- the proposed duration of the licence (for e.g. 3 months, 6 months, a year etc.);
- evidence of the right to occupy the premises e.g. the lease;
- contact details of the applicant;
- photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied;
- evidence that the applicant has met the requirement to give notice of the application (for example photograph);
- (if applicable) reference of existing pavement licence currently under consideration by the local authority
- any other evidence that shows how the furniture to be introduced is in accordance with national guidance regarding accessibility (such as use of good colour contrast, suitable physical barriers around chairs and tables and or other appropriate measures); and
- any other evidence needed to demonstrate how any local and national conditions will be satisfied, including the 'no-obstruction' national condition.

### **What are the transitional arrangements?**

Existing pavement licences granted under the Business and Planning Act 2020, prior to the commencement date, will remain valid until the expiration date on the licence, given to them by the licensing authority. Once this has expired, businesses will need to apply for a new licence. Licensing authorities should treat this as a renewal application if it is made by the licence-holder, it is in respect of the same premises and it is on the same terms as the expired licence.

Licences determined before the 31 March 2024 will be subject to the enforcement powers set out in the permanent regime.

Any pavement licence that was granted under the Business and Planning Act 2020 before the commencement date with no limit on its duration, or that was deemed to be granted will expire 2 years from the commencement date.

Any permission that was granted by a council under the Highways Act 1980 before the commencement date will continue under that legislation.

**How should applications for renewals of licences granted under the temporary provisions be submitted?**

To obtain a licence for any period after 31 March 2024, a new application will need to be made even if the premises already had a licence until 31 March 2024.

**Can licensable activities still be granted under the Highways Act?**

Any licence applications for activities in England licensable under pavement licensing legislation in the Business and Planning Act 2020 must be granted under the Business and Planning Act 2020 (as amended by section 229 of and schedule 22 to the Levelling Up and Regeneration Act). They should not be granted under the Highways Act 1980.

Applicants will still need to apply for permission to carry out activities not licensable under the Pavement Licensing regime, under the Highways Act 1980. Example of such activities include the placement of furniture that is not removeable.

**4. National conditions**

**The 2020 Act sets out two conditions which apply to pavement licences which are granted or deemed to be granted; these are: a no-obstruction condition and a smoke-free seating condition.**

- The no-obstruction condition is a condition that the licence must not have the effects set out in section 3(6) of the 2020 Act. When determining whether furniture constitutes an unacceptable obstruction in light of the no-obstruction condition, the provisions require that local authorities consider the needs of disabled people.
- The national smoke-free seating condition seeks to ensure customers have greater choice, so that both smokers and non-smokers are able to sit outside.

**5. Determining the application**

**What happens once the information is submitted to the local authority?**

Once the information is submitted to the local authority, the authority has 28 days from the day after the application is made (excluding public holidays) to consult on and determine the application. This consists of 14 calendar days for public consultation, and then 14 calendar days to consider and determine the application after the consultation.

If the local authority does not determine the application within the 14-day determination period, the application will be deemed to have been granted subject to any local conditions published by the local authority before the application was submitted.

**What will a local authority consider when deciding whether to grant a pavement licence?**

The local authority will need to consider a number of factors, when determining whether to approve the application. These include whether local conditions might be needed to make it possible to approve an application which would otherwise be unacceptable.



### **How can local authorities consider security?**

When considering public health and safety, local authorities should seek to ensure a balanced consideration for security implications, particularly the risk to groups of people from interaction with hostile vehicles, and the creation of large crowds in new public spaces. The impact of several pavement licences in an area may result in larger, distributed, or dense crowds of people. Local authorities should factor this into the security planning process and ensure the overall security arrangements for an area are adapted as appropriate. Examples of appropriate measures could include increased CCTV surveillance, manned guarding, vehicle security barriers and ACT (Action Counters Terrorism) training for businesses. Find more information about ACT Awareness Products.

### **Can local authorities impose conditions which are not published?**

Yes. When they grant a licence, local authorities may impose reasonable conditions whether or not they are published upfront. There is an expectation these will be supported by a clear justification for the need of a condition, such as evidence raised during the consultation, which is in addition to any published local conditions. A copy of this Council's conditions are attached as Annex 3 to this report.

### **What are the outcomes of an application?**

If the local authority determines the application before the end of the determination period, the local authority can:

- grant the licence in respect of any or all of the purposes specified in the application,
- grant the licence for some or all of the part of the highway specified in the application, and impose conditions, or
- refuse the application.

### **Is there a route to appeal a decision?**

There is no statutory appeal process for these decisions, however, councils may wish to consider the scope for an internal review process, for example permitting appeals to their Licensing committee.

## **6. Consultation**

### **What steps should an applicant take to engage with their community?**

The applicant is required to affix a notice to the premises, so it is easily visible and legible to the public on the day they submit the application to the local authority. They must ensure the notice remains in place for the duration of the public consultation period which is the period of 14 days beginning with the day after the day the application is submitted to the authority.

### **What must a notice contain?**

The notice must be in the form which the local authority prescribes. An example of this Council's required Notice is attached as Annex 4 to this report.

### **What information may local authorities require to be displayed on the site notice?**

- The local authority may require that other information is included in the notice such as:
- the statutory provisions under which the application is made;
- description of the proposed use of the furniture;
- address of the premises and name of the business;

- website for the council where the application and any accompanying material can be viewed during the consultation period;
- address (which might be an email address) to which representations should be sent during the consultation period.

#### **Who must local authorities consult?**

The local authority must consult the highways authority to which the application relates, if they are not the highways authority; this is usually the County Council. For security advice, local authorities should consult Police Licensing Teams, Designing Out Crime Officers or Counter Terrorism Security Advisors. The authority must also consult such other persons as the local authority considers appropriate.

#### **How can members of the public make representations about the application?**

Members of the public can contact the council to make representations. Local authorities must take into account representations received from members of the public during the public consultation period, which is the period of 14 days starting the day after the application is submitted. In order to promote accessibility to those unable to access printed notices, Local authorities are encouraged to consider using digital methods of publicity. Notices of applications received will be posted on the Council's website.

### **7. Enforcement**

#### **In what circumstances can the local authority enforce or revoke a licence?**

If a condition imposed on a licence (either by the local authority or nationally) is breached, the local authority will be able to issue a notice requiring the breach to be remedied. If the licence-holder fails to do so, the local authority may amend the licence, with the consent of the licence-holder, revoke the licence or itself take steps to remedy the breach and can take action to recover any costs of so doing. Local authorities are encouraged to regularly review licences and enforce any breaches.

#### **The authority may revoke a licence, or amend it with the consent of the licence holder, in the following circumstances:**

1. If it considers that the highway is no longer suitable for the use as granted by or deemed to be granted by the licence. For example, the licensed area (or road adjacent) is no longer to be pedestrianised.
2. Or if there is evidence that:
  - there are risks to public health or safety – for example where it comes to light that there are significant security risks which have not been sufficiently considered, or addressed in a proportionate fashion (this should be reassessed as necessary, particularly in the event of changes to the terrorism threat level);
  - this use of the highway is causing an unacceptable obstruction, breaching the no-obstruction condition – for example, the arrangement of street furniture prevents disabled people, older people or wheelchair users to pass along the highway or have normal access to the premises alongside the highway; or

- the use is causing, or risks causing, anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up.

**The local authority may revoke a licence in the following circumstances:**

1. For a breach of condition, (whether a remediation notice has been issued or not)
2. It comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or
3. The applicant did not comply with the requirement to affix the notice to notify the public of the application or secure that the notice remains in place until the end of the public consultation period.

It is good practice for local authorities to give reasons where these powers are used.

**When can furniture be removed?**

In cases where furniture which would normally be permitted by a pavement or other licence has been placed on a relevant highway without the required licence, local authorities can give notice requiring the business to remove the furniture before a date specified and to refrain from putting furniture on the highway unless they gain a licence.

If furniture continues to be placed on the highway, in violation of the notice, the authority may remove and store the furniture, recover the costs from the business for the removal and storage of the furniture and refuse to return the furniture until those costs have been paid. If within 3 months of the notice, the costs are not paid, the authority can dispose of the furniture by sale or other means and retain the proceeds.

**5. Members are therefore asked to:**

- 5.1 Note the content of the Government guidance and conditions etc on Pavement Licences.
- 5.2 Consider the new permanent provisions for Street Pavement Licensing and be prepared to make comments on the new procedures during the L&PPC meeting on 29 August 2024.
- 5.3 Note that a report on this matter will be taken to full Council in the Autumn of 2024.

**6. Relevant Documents/Annexes:**

- 6.1 Annex 1: Government Guidance (Contains National Conditions)
- Annex 2: CCDC Pavement Licence Application Form
- Annex 3: CCDC Pavement Licence Conditions
- Annex 4: CCDC Pavement Licence Notice Template

**7. Further information available from:**

- 7.1 David Prosser-Davies (Environmental Health Manager)  
Phone: 01543 464202  
Email: [davidprosser-davies@cannockchasedc.gov.uk](mailto:davidprosser-davies@cannockchasedc.gov.uk)

[Home](#) > [Housing, local and community](#) > [Planning and building](#)  
> [Planning system](#) > [Pavement licences: guidance](#)

[Ministry of  
Housing,  
Communities &  
Local Government](#)

[Department for  
Levelling Up,  
Housing &  
Communities](#)

Guidance

# Pavement licences: guidance

Published 2 April 2024

## Applies to England

### Contents

1. Pavement licences
2. Duration
3. Applications
4. National conditions
5. Determining the application
6. Consultation
7. Enforcement
8. Annex



© Crown copyright 2024

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gov.uk](mailto:psi@nationalarchives.gov.uk).

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at <https://www.gov.uk/government/publications/pavement-licences-guidance/pavement-licences-guidance>

# 1. Pavement licences

## 1.1 What is a pavement licence?

A pavement licence is a licence granted by the local authority, or deemed to have been granted, which allows the licence-holder to place removable furniture over certain highways adjacent to the premises in relation to which the application was made, for certain purposes. The Levelling Up and Regeneration Act 2023 makes permanent the provisions set out in the Business and Planning Act (BPA) 2020 that streamlined the process to allow businesses to secure these licences quickly. Licences that are deemed to have been granted, should remain in place for such period as the local authority may specify in the licence, with a maximum limit of two years. Existing licences with no end date are extended to 2 years from the commencement date. Where a pavement licence is granted, clear access routes on the highway will need to be maintained, taking into account the needs of all users, including disabled people.

## 1.2 What is the purpose of the Business and Planning Act 2020 process for pavement licences?

The Business and Planning Act process provides a streamlined and cheaper route for businesses such as cafes, restaurants, and bars to secure a licence to place furniture on the highway. This will provide much needed income for businesses and protect as many hospitality jobs as possible, particularly during times of increasing living costs.

## 1.3 What does the Levelling Up and Regeneration Act do to the pavement licensing regime?

The Levelling Up and Regeneration Act makes permanent the pavement licensing regime under the Business and Planning Act 2020, with a number of changes. The Levelling Up and Regeneration Act introduces a standard fee cap for both new and renewals of licences as well as increased consultation and determination periods, lengthens the maximum duration of licences and provides local authorities with new powers to remove unlicensed furniture.

## **1.4 How does the process for pavement licences work?**

Permission to place objects or structures on the highway are otherwise granted primarily under Part 7A of the Highways Act 1980. The fee for the Highways Act process varies between local authorities, and there is a minimum 28 calendar day consultation period. The Business and Planning Act process provides a cheaper, easier, and quicker way for businesses to obtain a licence. The fee for applying for a licence under the Business and Planning Act process is capped at £500 for first time applications and £350 for renewals and the public consultation period is 14 days (excluding public holidays), starting the day after the application is sent electronically to the authority.

If the local authority does not determine the application before the end of the determination period (which is 14 days beginning with the first day after the end of the public consultation period, excluding public holidays), the licence is deemed to have been granted for two years and the business can place the proposed furniture such as tables and chairs within the area set out in the application for the purpose or purposes proposed.

## **1.5 What businesses are eligible?**

A business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a licence. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours including where such uses form an ancillary aspect of another use, for example supermarkets, or entertainment venues which sell food and drink.

A licence permits the business to use furniture placed on the highway to sell or serve food or drink and/or allow it to be used by people for consumption of food or drink supplied from, or in connection with the use of the premises.

Businesses that do not use their premises for the sale of food or drink, for example salons, are ineligible. Though they can apply for permission to place furniture on the pavement under the Highways Act 1980.

## **1.6 What furniture can be permitted by a licence?**

The furniture which may be placed on the pavement include:

- counters or stalls for selling or serving food or drink;
- tables, counters or shelves on which food or drink can be placed;

- chairs, benches or other forms of seating; and
- umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink.

This furniture is required to be removable and related to the serving, sale and consumption of food or drink. Local authorities should be pragmatic when determining what is 'removable' but in principle this means it is not a permanent fixed structure, and is able to be moved easily, and stored away at night.

## **1.7 What furniture is not permitted by a licence?**

Furniture that is not removable and used in connection with the outdoor selling or consumption of food or drink are not permitted by a pavement licence.

Advertising boards are not included in the definition of furniture within the pavement licensing regime. As well as needing consent under the Highways Act 1980, advertising boards also require express advertising consent under the Town and Country Planning Regulations 2007.

Applicants that wish to place non-removable furniture onto the highway must apply for permission under the Highways Act 1980.

## **1.8 How much do applications cost?**

Fees will be set locally, and it is for the licensing authority to determine the appropriate charge. Fees are capped at a maximum of £500 for first time applications and £350 for renewals.

## **1.9 Are there any exclusions from this provision?**

Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980. Generally, these are footways restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited. Highways maintained by Network Rail or over the Crown land are exempt (so a licence cannot be granted).

A pavement licence does not grant the right to permanently close a road. To do so, a pedestrian planning order made under section 249(2) or 249(2A) of the Town and Country Planning Act 1990, extinguishing the right to use vehicles on the highway, is required.



## 1.10 Where does this new process apply?

This process applies to England only, including London and other areas where statutory regimes other than the regime in the Highways Act 1980 may be relevant to the grant of licences for street furniture.

## 1.11 Which authority can exercise pavement licence functions?

Under section 101 of the Local Government Act 1972, local authorities may arrange for the discharge of their functions by a committee, a sub-committee, or an officer of the authority, or by any other local authority. This means that the executive of a local authority can delegate decisions to a committee, or officer of the authority. They may also wish to delegate the functions to another authority, for example to a County Council in a two-tier area.

## 1.12 How does this interact with other regulatory process, such as alcohol licensing?

It is important to note the grant of a pavement licence only permits the placing of furniture on the highway. A pavement licence does not negate the need to obtain approvals under other regulatory frameworks, such as the need for a licence to sell alcohol, and the need to comply with registration requirements for food businesses.

Temporary amendments to the Licensing Act 2003, under the Business and Planning Act 2020, allow the sale of alcohol by eligible holders of an on-sale licence for consumption off the premises without needing to apply for a variation of their licence. These temporary amendments apply if the premises had a licence that permitted sales of alcohol only for consumption on the premises on 22 July 2020, and the premises still retain that licence. More details can be found in the [guidance accompanying the Business and Planning Act 2020](https://www.gov.uk/government/publications/guidance-for-temporary-alcohol-licensing-provisions-in-the-business-and-planning-bill) (<https://www.gov.uk/government/publications/guidance-for-temporary-alcohol-licensing-provisions-in-the-business-and-planning-bill>). This is currently in place until 31 March 2025. It will remain legally independent and separate from the pavement licences process.

Local authorities must have regard to the Public Sector Equality Duty, under the Equality Act 2010 when devising and implementing the new licensing regime, which includes the need to have due regard to eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under the Act. Any businesses which apply for a pavement licence will also need to

have regard to their own duties under the Equality Act 2010, such as their duty under section 29 of the Act not to discriminate in providing their service and the duty to make reasonable adjustments.

### **1.13 Does the applicant need planning permission as well as the licence?**

No. Once a licence is granted, or deemed to be granted, the applicant will also benefit from deemed planning permission to use the land for anything done pursuant to the licence while the licence is valid.

## **2. Duration**

### **2.1 How long are pavement licences valid for?**

If a local authority determines an application before the end of the determination period (which is 14 calendar days, beginning with the first day after the end of the public consultation period, excluding public holidays), the authority can specify the duration of the licence. To help support local businesses and give them more certainty, the expectation is that local authorities are pragmatic and will grant licences the maximum 2 years, unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space.

If a licence is 'deemed' granted because the authority does not make a decision on an application before the end of the determination period, then the licence will be valid for two years starting with the first day after the determination period. However, if, when implemented, a licence that has been deemed granted does not meet the conditions set out in the legislation or any local conditions, it can be revoked at any time on the grounds that it has breached the conditions.

### **2.2 When will the permanent pavement licensing come into force?**

The permanent pavement licensing regime and changes provided for in Levelling Up and Regeneration Act will come into effect on 31 March 2024 (the commencement date). This means that local authorities are able to grant pavement licences to new applicants under this regime effectively immediately from this date.

## **2.3 How long will the pavement licensing process set out in the Business and Planning Act be in place?**

The process set out in the Business and Planning Act is made permanent as amended by the Levelling Up and Regeneration Act.

# **3. Applications**

## **3.1 What information does an applicant need to provide?**

An application to the local authority must:

- specify the premises and, the part of the relevant highway to which the application relates;
- specify the purpose (or purposes) for which the furniture will be used which must be for use by the licence-holder to sell or serve food or drink, and/or for use by other people for the consumption of food or drink. In both cases the food or drink must be supplied from, or in connection with relevant use of the premises;
- specify the days of the week on which and the hours between which it is proposed to have furniture on the highway;
- describe the type of furniture to which the application relates, for example: tables, chairs, and/or stalls;
- specify the date on which the application is made;
- contain or be accompanied by such evidence of public liability insurance in respect of anything to be done pursuant to the licence as the authority may require; and
- contain or be accompanied by such other information or material as the local authority may require, for example how national and local conditions have been satisfied.

Local authorities may require applications to be made on a standard application form.

### **3.2 What other information may the local authority require?**

Local authorities may require the applicant to provide other information or material to help them make a swift determination. This could be included in their standard application form. Publicising information requirements, and applicants ensuring that they have provided all relevant information to meet these requirements, is beneficial to all parties involved in the process and can speed up decision making. Any requirements imposed should be reasonable and should be kept as minimal as possible. Examples of the information a local authority might require include:

- a plan showing the location of the premises shown by a red line, so the application site can be clearly identified (some authorities may require this on an OS Base Map);
- a plan clearly showing the proposed area covered by the licence in relation to the highway, if not to scale, with measurements clearly shown;
- the proposed duration of the licence (for e.g. 3 months, 6 months, a year etc.);
- evidence of the right to occupy the premises e.g. the lease;
- contact details of the applicant;
- photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied;
- evidence that the applicant has met the requirement to give notice of the application (for example photograph);
- (if applicable) reference of existing pavement licence currently under consideration by the local authority
- any other evidence that shows how the furniture to be introduced is in accordance with national guidance regarding accessibility (such as use of good colour contrast, suitable physical barriers around chairs and tables and or other appropriate measures); and
- any other evidence needed to demonstrate how any local and national conditions will be satisfied, including the 'no-obstruction' national condition.

### **3.3 What are the transitional arrangements?**

Existing pavement licences granted under the Business and Planning Act 2020, prior to the commencement date, will remain valid until the expiration date on the licence, given to them by the licensing authority. Once this has expired, businesses will need to apply for a new licence. Licensing authorities should treat this as a renewal application if it is made by the licence-holder, it is in respect of the same premises and it is on the same terms as the expired licence.

Licences determined before the 31 March 2024 will be subject to the enforcement powers set out in the permanent regime.

Any pavement licence that was granted under the Business and Planning Act 2020 before the commencement date with no limit on its duration, or that was deemed to be granted will expire 2 years from the commencement date. Any permission that was granted by a council under the Highways Act 1980 before the commencement date will continue under that legislation.

Applications made (and submitted to the local authority) on or before 30 March 2024 but determined on or after 31 March 2024 will be subject to a 7-day consultation, 7-day determination period. The maximum fee that can be charged for applications during this timeframe is £100. However, these licences can be granted for up to 2 years.

### **3.4 How should applications for renewals of licences granted under the temporary provisions be submitted?**

To obtain a licence for any period after 31 March 2024, a new application will need to be made even if the premises already had a licence until 31 March 2024.

An application will need to have been made after the commencement date for it to be treated as a renewal. Local authorities are encouraged to take a proportionate approach to information requirements for businesses seeking a new pavement licence where a licence has existed, so that this is as convenient as possible for businesses and members of the public. An example of a proportionate approach could be allowing applicants to re-use application material from their original application, updating where relevant to ensure they still comply with local and national conditions.

Businesses who have had a licence under the previous regime and are seeking a new licence should be treated as a renewal application if it is made by the licence-holder, it is in respect of the same premises and it is on the same terms as the expired licence.

### **3.5 Can licensable activities still be granted under the Highways Act?**

Any licence applications for activities in England licensable under pavement licensing legislation in the Business and Planning Act 2020 must be granted under the Business and Planning Act 2020 (as amended by section 229 of and schedule 22 to the Levelling Up and Regeneration Act). They should not be granted under the Highways Act 1980.

Applicants will still need to apply for permission to carry out activities not licensable under the Pavement Licensing regime, under the Highways Act 1980. Example of such activities include the placement of furniture that is not removeable, such as bolted to the ground or cannot be reasonably removed, or placement of furniture other than tables, chairs or stools on the highway.

### **3.6 What happens if an applicant has already made an application under the Highways Act 1980 regime?**

It remains open for an applicant to apply for permission to place furniture on the highway under the Highways Act 1980. If the applicant has applied for permission under the Highways Act before the commencement date, but the Highways Authority has not determined the application, the applicant can instead apply for a pavement licence under the Business and Planning Act 2020. In those circumstances the pending application will be deemed to have been withdrawn. If the fee for the pending application was paid the authority will not be permitted to charge a fee for the new application for a pavement licence.

From the commencement date, a council may not grant an applicant permission to do anything which is capable of being authorised by a pavement licence under the Business and Planning Act 2020.

### **3.7 What happens if an applicant has already made an application under the Business and Planning Act 2020 regime?**

Licences applied for prior to the commencement date, but not yet determined by the local authority until after the commencement date, will be subject to the 7-day consultation and 7-day determination period. Though the maximum duration a local authority can grant the licence can be up to 2 years.



## 4. National conditions

The 2020 Act sets out two conditions which apply to pavement licences which are granted or deemed to be granted; these are: a no-obstruction condition and a smoke-free seating condition. These apply only to licences granted under the Business and Planning Act 2020, not existing licences permitted under Part 7A of the Highways Act 1980, or other relevant legislation.

### 4.1 How can the local authority and applicant consider the needs of disabled people when considering whether the requirements of the no-obstruction condition are met?

The no-obstruction condition is a condition that the licence must not have the effects set out in section 3(6) of the 2020 Act. When determining whether furniture constitutes an unacceptable obstruction in light of the no-obstruction condition, the provisions require that local authorities consider the needs of disabled people. In order to do this, authorities should consider the following matters when setting conditions, determining applications (in the absence of local conditions), and when considering whether enforcement action is required:

- Section 3.2 of [Inclusive Mobility](https://www.gov.uk/government/publications/inclusive-mobility-making-transport-accessible-for-passengers-and-pedestrians) (<https://www.gov.uk/government/publications/inclusive-mobility-making-transport-accessible-for-passengers-and-pedestrians>) - gives advice on the needs of particular pavement users sets out a range of recommended widths which would be required, depending on the needs of particular pavement users. Section 4.2 of Inclusive Mobility sets out that footways and footpaths should be as wide as practicable, but under normal circumstances a width of 2000mm is the minimum that should be provided, as this allows enough space for two wheelchair users to pass, even if they are using larger electric mobility scooters. Local authorities should take a proportionate approach if this is not feasible due to physical constraints. A minimum width of 1500mm could be regarded as the minimum acceptable distance between two obstacles under most circumstances, as this should enable a wheelchair user and a walker to pass each other.
- any need for a barrier to separate furniture from the rest of the footway so that the visually impaired can navigate around the furniture, such as colour contrast and a tap rail for long cane users. In some cases, it may be appropriate to use one or more rigid, removable objects to demarcate the area to which the licence applies, for example wooden tubs of flowers. However, as these are not necessary for the consumption of food, this will need to be balanced to ensure any barriers do not inhibit other street users, such as the mobility impaired, as such barriers may create a further obstacle in the highway. Advertising boards are not included in the definition of

furniture within the pavement licensing regime, therefore, should not be used as a barrier;

- any conflict of street furniture with the principal lines of pedestrian movement particularly for disabled people, older people and those with mobility needs. The positioning of furniture should not discourage pedestrians from using the footway or force pedestrians into the highway. The available route must be entirely clear for pedestrians to use and not be impeded with tables and chairs;
- the cumulative impact of multiple pavement licences in close proximity to each other and if there is specific evidence that this may create a build-up furniture in a particular area and potentially cause obstruction on the footway for certain pavement users, such as disabled people;
- so that where possible furniture is non-reflective and of reasonable substance such that it cannot easily be pushed or blown over by the wind, and thereby cause obstruction – for example, the local authority could refuse the use of plastic patio furniture, unless measures have been taken to ensure it is kept in place.

Section 149 of the Equality Act 2010 places duties on local authorities, to have due regard to: the need to eliminate unlawful discrimination, advance equality of opportunity between people who share a protected characteristic and those who do not and foster or encourage good relations between people who share a protected characteristic and those who don't.

## **4.2 What is reasonable provision for seating where smoking is not permitted?**

The national smoke-free seating condition seeks to ensure customers have greater choice, so that both smokers and non-smokers are able to sit outside.

It is important that businesses can cater to their customers' preferences. The Business and Planning Act 2020 imposes a smoke-free seating condition in relation to licences where seating used for the purpose of consuming food or drink has been, (or is to be) placed on the relevant highway. The condition requires a licence-holder to make reasonable provision for seating where smoking is not permitted. This means that where businesses provide for smokers, customers will also have the option of sitting in a non-smoking area. Ways of meeting this condition could include:

- Clear 'smoking' and 'non-smoking' areas, with 'no smoking' signage displayed in designated 'smoke-free' zones in accordance with Smoke-free (Signs) Regulations 2012.
- No ash trays or similar receptacles to be provided or permitted to be left on furniture where smoke-free seating is identified.



- Licence holders should provide a minimum 2m distance between non-smoking and smoking areas, wherever possible.

Further, business must continue to have regard to smoke-free legislation under The Health Act 2006, and the subsequent Smoke-free (Premises and Enforcement) Regulations 2006.

### **4.3 Where an authority has set a local condition covering the same matter as a national condition, which take precedence?**

Where a local authority sets a local condition that covers the same matter as set out in national conditions, then the locally set condition would take precedence over the national condition where there is reasonable justification to do so.

## **5. Determining the application**

### **5.1 What happens once the information is submitted to the local authority?**

Once the information is submitted to the local authority, the authority has 28 days from the day after the application is made (excluding public holidays) to consult on and determine the application. This consists of 14 calendar days for public consultation, and then 14 calendar days to consider and determine the application after the consultation.

If the local authority does not determine the application within the 14-day determination period, the application will be deemed to have been granted subject to any local conditions published by the local authority before the application was submitted.

### **5.2 What will a local authority consider when deciding whether to grant a pavement licence?**

The local authority will need to consider a number of factors, when determining whether to approve the application. These include whether local conditions might be needed to make it possible to approve an application which would otherwise be unacceptable.

The Secretary of State may specify conditions for pavement licences, in Regulations (although to date there has not been a need to do so). This is in addition to the statutory 'no obstruction' condition referred to in sections 5(4) and 3(6) of the Business and Planning Act 2020 Act and 'smoke-free' seating condition.

Authorities are encouraged to publish local conditions subject to which they propose to grant pavement licences so that applicants and those making representations are aware of them. When considering their powers in relation to local conditions they should bear in mind the requirements of the no-obstruction condition and the smoke-free seating condition. They should also take into account any national conditions which may be specified in the future in Regulations.

When setting local conditions and determining applications, issues authorities will also want to consider include:

- public health and safety including security – for example, any reasonable crowd management measures needed as a result of a licence being granted;
- public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour, and litter;
- accessibility – taking a proportionate approach to considering the nature of the site in relation to which the application for a licence is made, its surroundings, and its users, taking account of:
- considerations under the no-obstruction condition including the cumulative impact of multiple pavement licences in close proximity, in particular considering the needs of disabled people
- any other temporary measures in place that may be relevant to the proposal, for example, the reallocation of road space. This could include pedestrianised streets and any subsequent reallocation of this space to vehicles;
- whether there are other permanent street furniture or fixed structures in place on the footway that already reduce access; and
- other users of the space, for example if there are high levels of pedestrian or cycle movements.

### **5.3 How can local authorities consider security?**

When considering public health and safety, local authorities should seek to ensure a balanced consideration for security implications, particularly the risk to

groups of people from interaction with hostile vehicles, and the creation of large crowds in new public spaces. The impact of several pavement licences in an area may result in larger, distributed, or dense crowds of people. Local authorities should factor this into the security planning process and ensure the [overall security arrangements for an area are adapted as appropriate](https://www.protectuk.police.uk/) (<https://www.protectuk.police.uk/>). Examples of appropriate measures could include increased CCTV surveillance, manned guarding, vehicle security barriers and ACT (Action Counters Terrorism) training for businesses. Find more information about [ACT Awareness Products](https://www.protectuk.police.uk/catalogue/) (<https://www.protectuk.police.uk/catalogue/>).

Local authorities should consider consulting with Police Licensing Teams, Designing Out Crime Officers and Counter Terrorism Security Advisors for relevant advice.

Additional [guidance is available for managing the most common security implications](https://www.protectuk.police.uk/user/login?destination=/advice-and-guidance/risk/pavement-licences-how-can-local-authorities-consider-security) (<https://www.protectuk.police.uk/user/login?destination=/advice-and-guidance/risk/pavement-licences-how-can-local-authorities-consider-security>) and how to protect crowds and [queues of people](https://www.cpni.gov.uk/system/files/documents/cd/70/CPNI%20and%20NaCTSO%20Advice%20Note%20-%20Protecting%20pedestrian%20queues%20from%20Vehicle%20As%20a%20Weapon%20Attack%2015%20Sept%202020%20V02.pdf) (<https://www.cpni.gov.uk/system/files/documents/cd/70/CPNI%20and%20NaCTSO%20Advice%20Note%20-%20Protecting%20pedestrian%20queues%20from%20Vehicle%20As%20a%20Weapon%20Attack%2015%20Sept%202020%20V02.pdf>). This includes information on suggested Counter Terrorism licence considerations, which local authorities are encouraged to consider when determining pavement licence applications.

## **5.4 Can local authorities impose conditions which are not published?**

Yes. When they grant a licence, local authorities may impose reasonable conditions whether or not they are published upfront. There is an expectation these will be supported by a clear justification for the need of a condition, such as evidence raised during the consultation, which is in addition to any published local conditions. Conditions might, for example, limit the maximum number of chairs and tables, or type of furniture, time and days of operation with justification for this. Conditions imposed by the local authority should be proportionate and tailored to the applicant's premises.

## **5.5 How can local authorities and applicants maintain outdoor spaces safely, following confirmation of the removal of social distancing measures?**

There are no COVID-19 restrictions in the UK and since 19 July 2021, social distancing guidance no longer applies. This means that local authorities and businesses are not expected to adhere to COVID-19 regulations and do not need to implement social distancing (2m or 1m+) and the public do not need to keep apart from people they don't live with. However local authorities and businesses may wish to consider that some people may make a personal choice and limit their close contact with others. Businesses still have a legal duty to manage risks to those affected by their business. The way to do this is to carry out a health and safety risk assessment and to take reasonable steps to mitigate the risks businesses identify from the assessment.

## **5.6 What are the outcomes of an application?**

If the local authority determines the application before the end of the determination period, the local authority can:

- grant the licence in respect of any or all of the purposes specified in the application,
- grant the licence for some or all of the part of the highway specified in the application, and impose conditions, or
- refuse the application.

To the extent that conditions imposed on a licence by the local authority do not have the effects specified in the statutory conditions (see [paragraph 4.1](#) and [paragraph 4.2](#)) the licence is granted subject to those requirements.

## **5.7 Is there a route to appeal a decision?**

There is no statutory appeal process for these decisions, however, councils may wish to consider the scope for an internal review process, for example permitting appeals to their Licensing committee.

# **6. Consultation**

## **6.1 What steps should an applicant take to engage with their community?**



The applicant is required to affix a notice to the premises, so it is easily visible and legible to the public on the day they submit the application to the local authority. They must ensure the notice remains in place for the duration of the public consultation period which is the period of 14 days beginning with the day after the day the application is submitted to the authority. When counting 'days' public holidays are not included. Applicants are encouraged to keep evidence of this. Applicants are encouraged to engage with any services operated in the vicinity for vulnerable customers, for example, care home or disability organisations nearby where individuals may be at particular risk.

## **6.2 What must a notice contain?**

The notice must:

- be in the form which the local authority prescribes, if it prescribes one;
- state that the application has been made and the date on which it was made;
- indicate that representations relating to the application may be made to that local authority during the public consultation period and when that period comes to an end; and
- contain such other information or material as that local authority may require, for example a description of how the applicant will adhere to the national conditions.

The applicant is encouraged to talk to neighbouring businesses and occupiers prior to applying to the local authority, and so take any issues around noise, and nuisance into consideration as part of the proposal.

## **6.3 What information may local authorities require to be displayed on the site notice?**

The local authority may require that other information is included in the notice such as:

- the statutory provisions under which the application is made;
- description of the proposed use of the furniture;
- address of the premises and name of the business;
- website for the council where the application and any accompanying material can be viewed during the consultation period;
- address (which might be an email address) to which representations should be sent during the consultation period.

A template site notice local authorities may wish to adapt is contained in [Annex A \(https://www.gov.uk/government/publications/pavement-licences-draft-guidance\)](https://www.gov.uk/government/publications/pavement-licences-draft-guidance).

## **6.4 Who must local authorities consult?**

The local authority must consult the highways authority to which the application relates, if they are not the highways authority; this is usually the County Council in a two-tier area. Transport for London is the highway authority for some roads in London. For security advice, local authorities should consult Police Licensing Teams, Designing Out Crime Officers or Counter Terrorism Security Advisors. The authority must also consult such other persons as the local authority considers appropriate.

## **6.5 How can members of the public make representations about the application?**

Members of the public can contact the council to make representations. Local authorities must take into account representations received from members of the public during the public consultation period, which is the period of 14 days starting the day after the application is submitted. In order to promote accessibility to those unable to access printed notices, Local authorities are encouraged to consider using digital methods of publicity. They should also consider the needs of those who may find it more difficult to access online publications and should consider ensuring that all formats of consultation are available at the same time, so that all representations can be considered equally.

## **6.6 How must local authorities publicise the application and seek representations from local communities and other stakeholders?**

The local authority is required to publish the application and any information or material which the applicant has submitted with it to meet the requirements of the authority, in such a manner as it considers appropriate, for example, on their website or via an online portal.

The local authority is also required to publicise the fact that representations may be made during the public consultation period and when that period comes to an end. Local authorities might consider using digital methods of publicity,

such as automatic notices, which members of the public can opt in to receive. In deciding what steps to take local authorities should consider the needs of those who may find it more difficult to access online publications.

When publishing applications and publicising the fact that representations can be made, authorities will need to have regard to their duties under the Equality Act 2010 and will need to meet the requirements in the Public Sector Bodies (Websites and Mobile Applications) (No 2) Accessibility Regulations 2018, and therefore ensure that these are made accessible.

## **7. Enforcement**

### **7.1 In what circumstances can the local authority enforce or revoke a licence?**

If a condition imposed on a licence (either by the local authority or nationally) is breached, the local authority will be able to issue a notice requiring the breach to be remedied. If the licence-holder fails to do so, the local authority may amend the licence, with the consent of the licence-holder, revoke the licence or itself take steps to remedy the breach and can take action to recover any costs of so doing. Local authorities are encouraged to regularly review licences and enforce any breaches.

The authority may revoke a licence, or amend it with the consent of the licence holder, in the following circumstances:

1. If it considers that the highway is no longer suitable for the use as granted by or deemed to be granted by the licence. For example, the licenced area (or road adjacent) is no longer to be pedestrianised.
2. Or if there is evidence that:
  - there are risks to public health or safety – for example where it comes to light that there are significant security risks which have not been sufficiently considered, or addressed in a proportionate fashion (this should be reassessed as necessary, particularly in the event of changes to the terrorism threat level);
  - this use of the highway is causing an unacceptable obstruction, breaching the no-obstruction condition – for example, the arrangement of street furniture prevents disabled people, older people or wheelchair users to pass along the highway or have normal access to the premises alongside the highway; or

- the use is causing, or risks causing, anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up.

The local authority may revoke a licence in the following circumstances:

1. For a breach of condition, (whether a remediation notice has been issued or not) or
2. It comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or
3. The applicant did not comply with the requirement to affix the notice to notify the public of the application or secure that the notice remains in place until the end of the public consultation period.

It is good practice for local authorities to give reasons where these powers are used.

## **7.2 When can furniture be removed?**

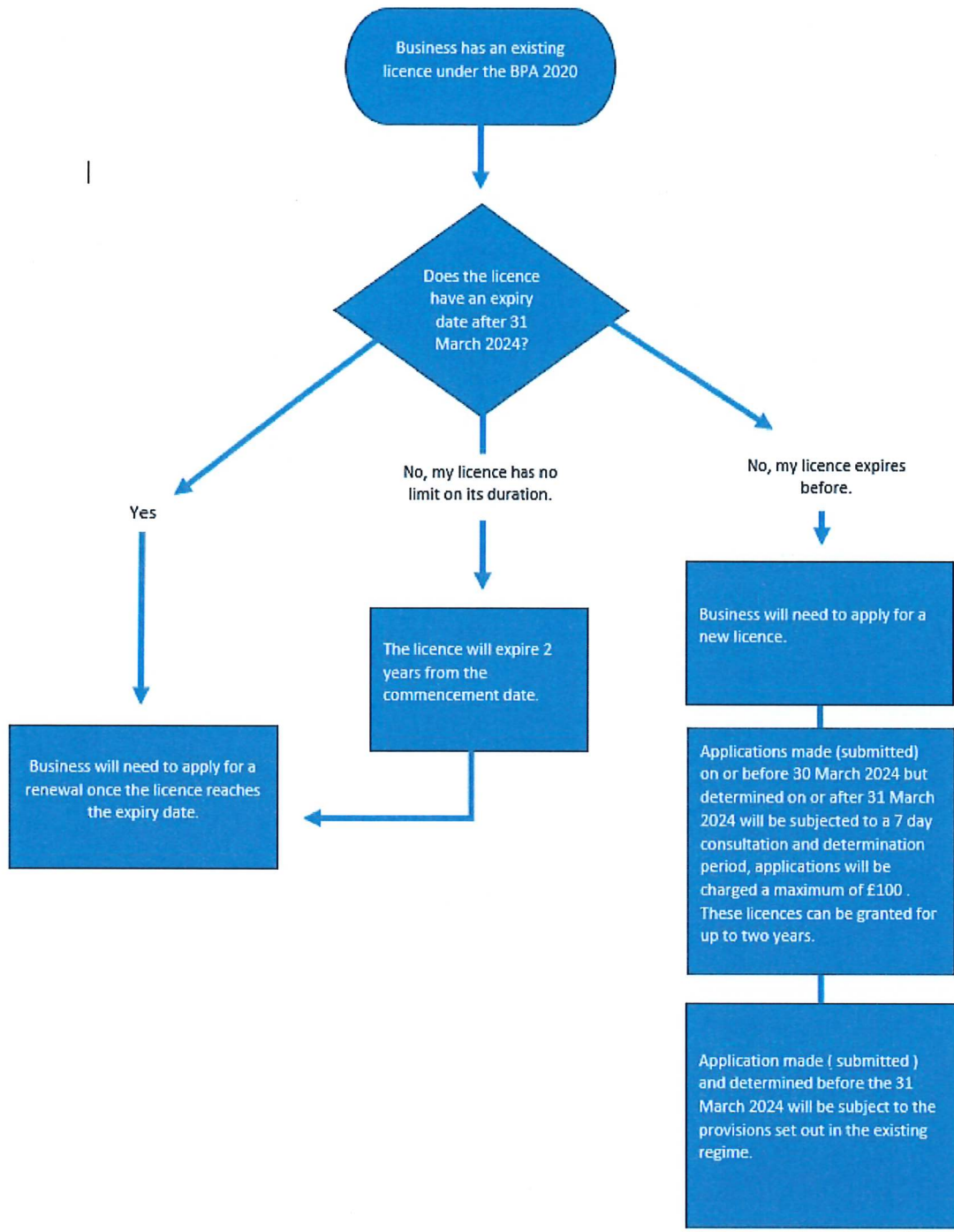
In cases where furniture which would normally be permitted by a pavement or other licence has been placed on a relevant highway without the required licence, local authorities can give notice requiring the business to remove the furniture before a date specified and to refrain from putting furniture on the highway unless they gain a licence.

If furniture continues to be placed on the highway, in violation of the notice, the authority may remove and store the furniture, recover the costs from the business for the removal and storage of the furniture and refuse to return the furniture until those costs have been paid. If within 3 months of the notice, the costs are not paid, the authority can dispose of the furniture by sale or other means and retain the proceeds.

# **8. Annex**

## **8.1 Transitional arrangements flowchart**





**Accessible version**

Business has an existing licence under the BPA 2020

Does the licence have an expiry date after 31 March 2024?

**If yes:**

Business will need to apply for a renewal once the licence reaches the expiry date.

**If no, my licence has no limit on its duration**

The licence will expire 2 years from the commencement date.

Business will need to apply for a renewal once the licence reaches the expiry date.

**If no, my licence expires before:**

Business will need to apply for a new licence

Applications made (submitted) on or before 30 March 2024 but determined on or after 31 March 2024 will be subjected to a 7 day consultation and determination period, applications will be charged a maximum of £100 . These licences can be granted for up to 2 years.

Application made (submitted) and determined before the 31 March 2024 will be subject to the provisions set out in the existing regime.

**OGI**

All content is available under the Open Government Licence v3.0, except where otherwise stated

© Crown copyright



**BUSINESS AND PLANNING ACT 2020**

**APPLICATION FOR A PAVEMENT LICENCE**

***Before completing this form, please ensure you are familiar with the requirements detailed in the Pavement Licence guidance.***

You must provide a plan showing the location of the premises and the proposed area to be licensed in relation to the highway (including barriers, position of furniture etc.)

I/we .....apply for a pavement licence and submit the following particulars (***please use BLOCK CAPITALS***):

1. Applicant's Full Name:	
2. Trading Name (if any):	
3. Address of Premises:	
4. Type of Business (wine bar, sandwich bar, etc.):	
5. Telephone No: Email :	
6. General Description of food/drink to be served (e.g. alcoholic beverages / hot meals, etc.):	
7. State area of use on the highway (must be adjacent to your premises)	

**Note: Applicants are required to supply a specification for all items proposed. This should be supported by photographs, sketches, clear photocopies and/or technical details (dimensions / colours / materials etc.).**

**Opening Hours:**

Monday to Thursday - From ..... To .....  
Friday to Sunday – From ..... To .....

**Days / Hours that it is proposed to put furniture on the highway:**

Hours after 22.00hrs will require approval from Licensing Unit  
(Security and other additional measures may be required)

<b>Monday</b>	From:	To:
<b>Tuesday</b>	From:	To:
<b>Wednesday</b>	From:	To:
<b>Thursday</b>	From:	To:
<b>Friday</b>	From:	To:
<b>Saturday</b>	From:	To:
<b>Sunday</b>	From:	To:

**DETAILS OF PROPOSED STREET FURNITURE**

Proposed No. Of Tables or Counters/Stalls

Proposed No. Of Chairs/Benches

Please give a full description of all proposed furniture (continue on a separate sheet if necessary)

**DETAILS OF PROPOSED BARRIERS *\*this must include measurements of how far in front of the premises the proposed area will be***

Please give a full description of the proposed barriers – include measurements from the front of the premises to how far out the proposed area will be (continue on a separate sheet if necessary)

DETAILS OF SERVICING ARRANGEMENTS

Please give details of customer toilet facilities and also furniture storage facilities (continue on a separate sheet if necessary)

**Note: Once you have submitted your application and plan you cannot increase the amount of furniture you put out, you must stay within the capacity stated and it must be proportionate to the size of your premise. If changes are required, a fresh application will need to be made and consulted upon.**

**You must also include in this application:**

- Payment of the relevant fee (online or call 01543 462621)
- A copy or photograph of the notice being displayed at the premises
- Evidence of public liability insurance for the area to be used

**Date:** \_\_\_\_\_

**Signed:** \_\_\_\_\_

For more information, please visit:

[www.cannockchasedc.gov.uk/business/licensing-permits/application-forms/licensing](http://www.cannockchasedc.gov.uk/business/licensing-permits/application-forms/licensing)

**How we use your personal information:** The information that you have provided on this form will be used by Cannock Chase District Council, who are the data controller, for the processing of your application and providing you with a licence.

We will only share your information with/ or on The Public Register, The Home Office, other Government agencies, Council departments and Enforcement agencies and the National Fraud Initiative when necessary or where the law otherwise requires or allows us to do so.

For further information, please see [www.cannockchasedc.gov.uk/council/about-us/data-protection/data-protection-privacy-notices](http://www.cannockchasedc.gov.uk/council/about-us/data-protection/data-protection-privacy-notices)

**Cannock Chase District Council**  
**Pavement Licence Business and Planning Act 2020**  
**(confirmed by the Levelling Up & Regeneration Act 2023**  
**(LURA 2023))**

**Terms and Conditions**

- 1 This Licence is granted under the Business and Planning Act 2020 ("The Act") and issued to the licence holder by Cannock Chase District Council for the period stated on the Licence.
- 2 The licence holder must ensure that the pavement is wide enough to accommodate a street café and maintain a minimum 1.5m width of unobstructed pavement for passing pedestrians, prams, and wheelchairs.
- 3 The grant of this Licence does not imply an exclusive right of use of the area. The Licence Holder should be aware that Cannock Chase District Council and others (e.g. emergency services, statutory undertakers) will need access at various times (including emergencies) for maintenance, installation, special events, improvements etc, therefore operations under this Licence may need to cease for a period of time.
- 4 When special events take place in Cannock, Rugeley or Hednesford town centres, it is expected that the furniture be removed for the duration of the event. This will mean that the operations allowed under this Licence will need to cease for that period of time and reasonable notice will be given where practicable. On such occasions Cannock Chase District Council will not be liable, and will not compensate the Licence holder, for any losses whatsoever.
- 5 The Licence Holder shall not allow their seating and other furniture to be placed outside of the area marked with the red line on the attached plan. The Licensed Area shall be used solely for the purpose of consuming refreshments. The Licence holder shall not allow any unauthorised obstructions to be placed in the Licensed Area or on the public highway.
- 6 The Licence Holder shall at all times be responsible for compliance with the terms and conditions of this Licence and any applicable legislation or statutory guidance in place at that time.
- 7 The Licence Holder must have Public Liability Insurance for the amount of £5,000,000 (5 million pounds) in respect of any one incident. This insurance must indemnify Cannock Chase District Council against all claims for injury, damage or loss to users of the public highway, arising from the use of the highway for the licensed purpose.



- 8 If for whatever reason and/or period of time the required public liability insurance policy is not in force, Cannock Chase District Council shall be deemed to have withdrawn this Licence for the period during which the said policy is not in force and the Licence Holder may be held liable for obstruction of the highway and prosecution under Section 137 of the Highways Act 1980.
- 9 The Licence Holder must remove all furniture from the pavement
  - (a) as stated on the Licence.
  - (b) immediately if required by reasonable request at any time by an officer or agent of the Council or the Emergency Services.
  - (c) as necessary to permit works in, or the use of, the highway by the Council, Emergency Services, and any service undertakers.
- 10 The Licensed Area may only be used during the times and days stated on the Licence.
- 11 You must ensure you have sufficient SIA Registered door staff to cover all licensable areas.
- 12 The licensed area shall be clearly identifiable, and all furniture may only be positioned in accordance with the Plan attached to this Licence.
- 13 The licensed area should keep within the width of the shop frontage.
- 14 The Licensed Area shall be protected by barriers of a sturdy design and must include a 100mm high tapping rail positioned at or near ground level.
- 15 Plastic/polycarbonate glasses must be used. No glass bottles are to be used in the licensed area.
- 16 The licence holder is required to make reasonable provision for seating where smoking is not permitted therefore provide customers the option of sitting in a non-smoking area.
- 17 Only tables, chairs, and benches and certain other types of furniture will be permitted. This includes:
  - furniture such as counters or stalls for selling or serving food and drink and tables, counters or shelves on which food or drink can be placed.
  - barriers, umbrellas, heaters and other items associated with consuming food and drink outside.

- 18 The Licence Holder shall ensure that the street amenity area is kept clean and free from litter and detritus at all times.
- 19 Waste from the Licence Holder's operation must **not** be disposed of in any highway litter bins.
- 20 The Premises Licence Holder is responsible for ensuring drinkers stay within their defined area whilst drinking alcohol, they must not leave the area with a drink in their hands as this will result in a breach of the Public Space Protection Order (PSPO)
- 21 No amplified music or sports commentary is permitted to be played in the Licensed Area.
- 22 No barbecues, fire pits or naked flames are permitted in the licensed area.
- 23 Cannock Chase District Council reserves the right to revoke this Licence at any time if any of the above terms and conditions are not fulfilled and maintained.
- 24 A copy of the Licence provided must be displayed in a prominent public position on the premises preferably in the window so it can be clearly seen.
- 25 No alcohol shall be consumed within the licensed area except in compliance with the Licence holder's premises licence conditions or other authorisation under the Licensing Act 2003.
- 26 Use of the licensed area must not interfere with highway drainage arrangements.
- 27 Furniture in the licensed area must not be erected or positioned in such a manner as to:
  - (a) Impede the safe passage of vehicles, cyclists or pedestrians along the public highway;
  - (b) Prevent access to bus stops, taxi ranks or other premises frontages;
  - (c) Cover any signs or markings relevant to the highway;
  - (d) Obscure any signs, especially on or near junctions;
  - (e) Obscure the visibility of users of the highway on or near junctions;
  - (f) Prevent access to any service covers or apparatus;
  - (g) Be placed on or near to tactile paving and dropped kerbs;
  - (h) Be permanent fixtures or involve the excavation of, or the fixing of anything to, the highway, highway structures, or highway furniture which must be left entirely undisturbed.



- 28 The Licence Holder shall make no claims or charges against Cannock Chase District Council in the event of loss or damage of property in any way from whatever cause, except where the same is attributable to negligence on the part of the Council, its officers or agents.
- 29 Cannock Chase District Council is empowered to remove and store or dispose of furniture from the highway, at the cost of the licensee, if it is left there outside the Licensed Hours, or should any terms or conditions of this Licence be breached. The Council will not be responsible for its safekeeping.
- 30 Any costs incurred as a result of damage to the highway, due to the positioning of barriers, tables or chairs, will be recovered in full from the Licence Holder by the Council.

**Advisory Note:**

If it appears to Cannock Chase District Council that the Licence holder to whom the Council has granted permission under the Act has committed any breach of the terms and conditions of that Licence, they may serve a notice on the Licence Holder requiring them to take such steps to remedy the breach as are specified in the notice within such time as is specified.

The new pavement licensing provisions under the LURA 2023 grants local authorities' new enforcement powers. The authority may revoke a licence or amend it with the consent of the licence holder in certain circumstances.

**Address for Correspondence:**

The Licensing Unit, Cannock Chase District Council, Civic Centre, Beecroft Road, Cannock, Staffordshire, WS11 1BG

Email: [licensingunit@cannockchasedc.gov.uk](mailto:licensingunit@cannockchasedc.gov.uk)



## BUSINESS AND PLANNING ACT 2020

### PUBLIC SITE NOTICE

### FOR A PAVEMENT LICENCE

**NOTICE IS HEREBY GIVEN** that:

**I / We** *{{company name}}*

**of** *{{shop/pub/restaurant and address}}*

**on** *{{ date }}* has made an application for a ***Pavement Licence***

**for** e.g. *outdoor seating to the front of the premises for serving hot food and drink*

Any persons wishing to make comments can do so in writing to The Licensing Unit, Cannock Chase District Council, Civic Centre, Beecroft Road, Cannock, Staffordshire, WS11 1BG or electronically to [licensingunit@cannockchasedc.gov.uk](mailto:licensingunit@cannockchasedc.gov.uk) **within** 14 calendar days from the date of this notice.

Applications can be viewed at:

<https://www.cannockchasedc.gov.uk/business/licensing-permits>

**Signed:**

**Date Notice Placed:**

CANNOCK CHASE COUNCIL

LICENSING & PUBLIC PROTECTION COMMITTEE

29 AUGUST 2024

REPORT OF HEAD OF REGULATORY SERVICES

HACKNEY CARRIAGE/PRIVATE HIRE DRIVER, VEHICLE AND OPERATOR POLICY

GUIDANCE ON DETERMINING THE SUITABILITY OF APPLICANTS AND LICENSEES IN THE TAXI AND PRIVATE HIRE INDUSTRY.

**1. Reason for referral:**

- 1.1 Members are asked to note that the Institute of Licensing (IoL) is currently consulting on a revision of its *Guidance on determining the suitability of applicants and licensees in the taxi and private hire industry*. The Consultation runs from 10 July to 30 September 2024.
- 1.2 Through their work on this Committee, members will be aware of the Council's Taxi and Private Hire Licensing function and its primary purpose of ensuring public safety. The IoL Guidance, which was originally produced in April 2018, is designed to assist licensing and public protection committees in determining the suitability of drivers where their discretion is engaged.
- 1.3 The IoL Guidance is important as it forms an integral part of the Council's Hackney Carriage and Private Hire Driver, Vehicle and Operator Licensing Policy.

**2. The consultation document**

- 2.1 The overriding aim of any Licensing Authority when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators, must be the protection of the public and others who use (or can be affected by) Taxi and Private Hire services. It is a regulated activity, and the purpose of regulation is to ensure, so far as possible, that those engaging in this activity are suitable persons to do so. Entry requirements are necessarily high to ensure the safety of the public, and the reputation of those who are themselves licensed.
- 2.2 The IoL document is intended to provide guidance on determining suitability, taking into account the character of the applicant or licensee. It can then be used by local authorities as a basis for their own policies: in particular the Guidance considers how regard should be had to the previous history of the applicant or licence holder and its relevance to their 'fitness and propriety' or 'character'. As with any guidance it should not be slavishly followed but it provides a starting or reference point from which decisions can be made taking into account the particular merits of each case.

2.3 A licensing authority policy can take a 'bright line approach' and say "never" in a policy, but the approach remains a policy, and as such does not amount to fettering of the discretion of the authority. Each case will always be considered on its merits having regard to the policy, and the licensing authority can depart from the policy where it considers it appropriate to do so. This will normally happen where the licensing authority considers that there are exceptional circumstances which warrant a different decision.

### **3. Key Areas of the revised guidance document:**

3.1 The Guidance covers several key areas including:

#### **Chapter 1**

Introduction to the Hackney Carriage and private hire trades.

#### **Chapter 2**

An overview of Offenders, Offending, re-offending and risk of harm

- Including matters which Members should focus on when making decisions around an individual's fitness and propriety.

#### **Chapter 3**

An overview of taxi and private hire licensing

- Taxi and Private Hire Drivers
- Private Hire Operators
- Taxi and Private hire Vehicles

#### **Chapter 4**

Guidance on Determination

- Pre application requirements
- Vehicles
- Drivers
- Operators

3.2 A copy of the loL consultation document is attached to this Report as Annex 1.

### **4. Members are therefore asked to:**

4.1 Note that the loL are currently consulting on a revision of the *Guidance on determining the suitability of applicants and licensees in the taxi and private hire industry*.

4.2 Consider the contents of the consultation document and be prepared to make comment during the L&PPC on 29 August 2024. Specifically, Members are asked to comments on all 4 chapters of the document and consider whether there is:

- anything Members feel should be removed from any of the chapters;
- anything Members feel should be added to any of the chapters;
- any additional comments Members may wish to make.

4.3 Note that the comments made during the L&PPC on 29 August 2024 will form the Council's response to the IoL consultation to be submitted by the Council's Senior Licensing Officer.

**5. Relevant Documents/Annexes:**

5.1 Annex 1: IoL Consultation document, *Guidance on determining the suitability of applicants and licensees in the taxi and private hire industry.*


**6. Further information available from:**

6.1 David Prosser-Davies  
Environmental Health Manager

Phone: 01543 464202

Email: [davidprosser-davies@cannockchasedc.gov.uk](mailto:davidprosser-davies@cannockchasedc.gov.uk)

# Consultation: IoL Suitability Guidance Review:

 Institute of Licensing

Guidance on determining the suitability of applicants and licensees in the taxi and private hire industry

July 2024



# Contents

Terminology.....	2
Chapter 1: Introduction.....	3
Chapter 2: Offenders, Offending, Re-offending and Risk of Harm - An Overview.....	5
Chapter 3: ‘Taxi’ Licensing Overview.....	15
Taxi Drivers.....	17
Private Hire Operators.....	22
Vehicle Proprietors.....	24
Chapter 4: Guidance on Determination.....	25
Pre-application requirements.....	26
Vehicles:.....	26
Drivers:.....	26
Operators:.....	26
Drivers.....	30
Crimes resulting in death.....	30
Exploitation and criminal harassment.....	30
Offences involving violence.....	30
Public Order Offences.....	31
Possession of a weapon.....	31
Sex and indecency offences.....	31
Dishonesty.....	31
Alcohol Misuse or Dependency.....	31
Drugs Misuse or Dependency.....	31
Discrimination.....	32
Motoring Offences.....	32
Behaviours.....	33
Private Hire Operators.....	34
Vehicle proprietors.....	34
Appendix - Guidance on Recording Decisions, Reasons and NR3S Criteria.....	36

## Terminology

This Guidance follows the approach to terminology used by the Department for Transport (DfT) in its Best Practice Guidance:

Vehicles licensed under section 37 of the Town Polices Clauses Act 1847 and section 6 of the Metropolitan Carriage Act 1869 are referred to in that legislation as 'hackney carriages'. This term is also used in older regulations. In more recent legislation the term 'taxi' is used.

In this document 'taxi' means a hackney carriage. It does not include private hire vehicles (PHVs).

When referring to both types, the term "taxi and private hire" is used.



---

## Chapter 1: Introduction

---

- 1.1 This guidance was originally produced by the Institute of Licensing in April 2018 and this edition follows an extensive consultation and review. As previously, it has been produced by the Institute working in partnership with the Local Government Association (LGA), Welsh Local Government Association (WLGA), Lawyers in Local Government (LLG) and the National Association of Licensing and Enforcement Officers (NALEO). We are grateful to all those organisations for their contributions.
- 1.2 The overriding aim of any Licensing Authority when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators, must be the protection of the public and others who use (or can be affected by) Taxi and Private Hire services. It is a regulated activity, and the purpose of regulation is to ensure, so far as possible, that those engaging in this activity are suitable persons to do so. Entry requirements are necessarily high to ensure the safety of the public, and the reputation of those who are themselves licensed<sup>1</sup>.
- 1.3 The relevant legislation provides that any person must satisfy the authority that they are a fit and proper person to hold a licence and that is a test to be applied after any applicant has gained any reasonably required qualifications<sup>2</sup>. It is the final part of the process of an application when the decision is made, whether by a committee, sub-committee or an officer under a Scheme of Delegation. It involves a detailed examination of their entire character in order to make a judgement as to their fitness and propriety.
- 1.4 If a licensee falls short of the fit and proper standard at any time, the licence should be revoked or not renewed on application to do so.
- 1.5 There is some Statutory guidance as to how such decisions should be approached or what matters are relevant or material to a decision contained in the DfT *Statutory Taxi and Private Hire Vehicle Standards* and *Taxi and Private Hire Vehicle Licensing best practice guidance for licensing authorities in England* but it is not comprehensive. This guidance complements that together with the LGA's *Taxi and Private Hire Licensing Councillor's Handbook* and any further Government guidance. Local authorities in England should be complying with the requirements of the *Taxis and Private Hire Vehicles (Safeguarding and Road Safety) Act 2022* which requires use of the NR3S database hosted by the National Anti-Fraud Network. Such use is currently advisory in Wales. It is gratifying and seen as an

---

<sup>1</sup> See paras 3.2 of *Statutory Taxi and Private Hire Vehicle Standards* Department for Transport 2020 (available at <https://www.gov.uk/government/publications/statutory-taxi-and-private-hire-vehicle-standards> and 3 of *Taxi and Private Hire Vehicle Licensing best practice guidance for licensing authorities in England* Department for Transport revised in 2023 (available at <https://www.gov.uk/government/publications/taxi-and-private-hire-vehicle-licensing-best-practice-guidance>) and the Welsh Government Guidance Document *Taxi and Private Hire Vehicles: licensing guidance* revised in July 2023 (available at [Taxi and private hire vehicles: licensing guidance \[HTML\] | GOV.WALES](#))

<sup>2</sup> Except vehicle proprietors. In those cases, there is no "fit and proper" requirement, but the authority has an absolute discretion over granting a licence.

endorsement of the previous edition of this document that the DfT accepted the suggested convictions guidance, almost in its entirety.

- 1.6 This document is intended to provide guidance on determining suitability, taking into account the character of the applicant or licensee. It can then be used by local authorities as a basis for their own policies: in particular it considers how regard should be had to the antecedent history of the applicant or licence holder and its relevance to their 'fitness and propriety' or 'character'. As with any guidance it should not be slavishly followed but it provides a starting or reference point from which decisions can be made taking into account the particular merits of each case.
- 1.7 A licensing authority policy can take a 'bright line approach' and say "never" in a policy, but it remains a policy, and as such does not amount to any fetter on the discretion of the authority. Each case will always be considered on its merits having regard to the policy, and the licensing authority can depart from the policy where it considers it appropriate to do so. This will normally happen where the licensing authority considers that there are exceptional circumstances which warrant a different decision. This approach was endorsed by the High Court in *R (on the application of Nicholds) v Security Industry Authority*<sup>3</sup>.
- 1.8 In Chapter 2 this Guidance explores the current thinking behind an individual's tendencies to reoffend. It is clear that this is not an exact science and that there is no meaningful and precise statistical evidence that can assist in the setting of policy. Given the important function of licensing to protect the public, any bar should be set at the highest level which is reasonable, albeit subject to the exercise of discretion as is set out in paragraph 1.7 and Chapters 3 and 4.
- 1.9 This Guidance contains no detailed list of offences. All offences are allocated to a general category such as 'dishonesty' or 'drugs'. This prevents it being argued that a specific offence is not covered by the Policy as it 'is not on the list' and also prevents arguments that a firearm is more serious than a knife and should lead to differentiation. In each case, appropriate weight should be given to the evidence provided.
- 1.10 This Guidance cannot have the force of legislation, new or amended; the need for which is both abundantly clear to, and fully supported by the Institute and the other organisations working with it. It is intended to help local authorities achieve greater consistency so that applicants are less able to shop between authorities. It is acknowledged that this cannot be fully achieved without the imposition of national minimum standards.
- 1.11 In preparing this document the Institute's Working Party has consulted with and considered the issues from all perspectives including, Councillors, Licensing Officers, Lawyers, the Taxi and Private Hire Trades, Academics, the Probation Service and the Police.

<sup>3</sup> [2006] EWHC (Admin), [2007] 1 WLR 2027 Admin Crt

---

## Chapter 2: Offenders, Offending, Re-offending and Risk of Harm - An Overview

---

- 2.1 The aim of local authority licensing of the taxi and PHV trades is to protect the public.<sup>4</sup> With this in mind, Public Protection must be at the forefront of the decision maker's mind when determining whether an individual is considered a "fit and proper person" to hold a licence.
- 2.2 This section aims to provide a brief overview of public protection, how to determine risk and factors to be considered when an applicant seeks to demonstrate a change in their offending behaviour. While all offending behaviour can be considered when it comes to fitness and propriety, the unique position that licensed taxi and private hire drivers occupy in terms of their occupation and the opportunities and risks that come with such employment mean that some focus and understanding of the nature and character of violent and sexual offences is valuable as such offences are often important as indicators that an individual might present a risk of serious harm to other people.
- 2.3 The licensing process places a duty on the local authority to protect the public. Given the nature of the role, it is paramount that those seeking a living in the trades meet the required standards. As the previous offending behaviour can be considered as a predictor in determining potential future behaviour as well as culpability, it is essential that the decision maker(s) considers all relevant factors including previous convictions, cautions and complaints and the time elapsed since these were committed. The wider and broader the evidence base that can be considered, the better the judgement is likely to be.
- 2.4 Crime tends to emerge in teen years, and many people commit offences but do not find themselves persistently involved in crime and criminality. Those who do become more frequent offenders tend to share several risk factors: associations with delinquent peers; school/employment problems; family problems; certain types of mental health problems; and alcohol/substance abuse are the most important predictors of persistence in crime. The predictors of persistence in crime highlight the multiple causes of persistent antisocial behaviour, and how antisocial behaviour and attitudes can be quite deep rooted. While people who commit crime can and do change and reform, there is also useful predictive value in previous conduct, as past behaviour is often a good indicator of underlying attitudes and potential future conduct.
- 2.5 There has been extensive research into the reasons behind why some individuals commit crimes, why some learn from their mistakes and stop offending whilst others find themselves in a cycle of repeat offending. Several theories have evolved over many years, offering insight into the reasons behind offending behaviour. One common theme is that no two crimes are the same and that risk cannot be eliminated, or the future predicted. While this is true, such points should not be used to downplay the vital role that disbarring people of bad character from roles and occupations which provide heightened

---

<sup>4</sup> DfT 'Taxi and Private Hire Licensing – Best Practice Guidance, Section 3

opportunity for them to harm plays. What can be done, is to examine each case on its individual merits, and look at the risks involved along with any change in circumstances since any offences were committed to assist in making the decision.

- 2.6 A key factor when considering an application from an individual with any convictions, cautions or complaints recorded is public protection. This includes assessing the risk of re-offending and the risk and scale of harm.<sup>5</sup> Risk assessment tools are regularly employed by those who are responsible for managing individuals who have committed offences in the criminal justice system. Local Authorities are not always privy to this information, so it is important when they are making decisions around suitability that they have an understanding of offending behaviour and risk of re-offending in generic terms.
- 2.7 Flaud<sup>6</sup> noted that risk is in principle, a matter of fact, but danger is a matter of judgment and opinion. He goes on to note that risk may be said to be the likelihood of an event occurring; danger may be the degree of damage (harm) caused should that event take place.<sup>7</sup>
- 2.8 In the Criminal Justice system, His Majesty's Prison and Probation Service refers to risk in two dimensions. That being the likelihood that an offence will occur, and the impact / harm of the offence should it happen. Generally, when making a decision around probability and likelihood of re-offending, consideration is needed towards both static and dynamic factors. While no risk assessment can be infallible, there has been a growing recognition for the need to make justifiable and defensible decisions based on public protection.
- 2.9 Understanding the person, their history (including any offending) and their patterns of behaviour and establishing both risk factors related to future offending and protective factors which reduce the risk of future offending is at the centre of managing risk. Risk Factors are aspects of an individual offender's life that have inclined them towards harmful behaviour. Protective factors are the features of an individual's life that may incline them away from harmful behaviour.
- 2.10 Static factors are historical and do not change such as age, and previous convictions. These can be used as a basis for actuarial assessments and are core in considering an individual's potential to reoffend in future.<sup>8</sup> For example, about half imprisoned adults are reconvicted within two years of release from custody. It is also widely accepted that persons with a large number of previous offences have a higher rate of proven reoffending than those with fewer previous convictions.<sup>9</sup> In 2022 adults released

<sup>5</sup> Kemshall, H. (2008). *Understanding the Management of High Risk Offenders* (Crime and Justice). Open University Press

<sup>6</sup> Flaud, R. (1982). Cited in, Gendreau, P., Little, T. and Goggin, C. (1996). A meta-analysis of the predictors of adult offender recidivism: what works! *Criminology*, 34, 557-607.

<sup>7</sup> Gendreau, P., Little, T. and Goggin, C. (1996). A meta-analysis of the predictors of adult offender recidivism: what works! *Criminology*, 34, 557-607.

<sup>8</sup> Craig, L. A. and Browne, K. B (2008). *Assessing Risk in Sex Offenders: A Practitioner's Guide* Paperback.

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

from custody or starting a court order had a proven reoffending rate of 33.4% within a year of their conviction in court or release from prison.<sup>10</sup>

- 2.11 Dynamic factors are considered changeable and can vary over time. They include attitudes, cognitions and impulsivity.<sup>11</sup> Behaviour can also be a factor in assessing risk, and behavioural changes can be used in making risk assessments. It is documented that the greater their unmet need, the more likely an individual is to re-offend. When considering whether an individual has been rehabilitated or is a risk, it is important to have regard towards the motivation behind their offending, and the dynamic risk factors present at the time of offences against the steps taken to address such factors, thus reducing the risk of re-offending.
- 2.12 It is of note that problems and/or needs are more frequently observed in offender populations than in the general population.<sup>12</sup> Many of these factors are interlinked and embedded in an individual's past experiences. These factors can impact upon that person's ability to change their behaviour, particularly if the areas identified have not been addressed or support has not been sought. Needs will vary from individual to individual and will rely upon their level of motivation and the nature of the offence committed. However, we also ought to recognise that, and at core, known previous behaviour is the best predictor of future behaviour bar none. Good risk assessment is evidence based and uses statistical evidence, understands offence type and risk factors, but also is individualised and takes account of factors that can reduce or increase an individual's risk. It is also holistic and takes account of behaviour in a range of contexts and a good understanding of the whole person at the centre of the assessment. It also requires a somewhat critical and sceptical attitude and doubt towards emotional claims and assertions of change. Often persistent offenders will claim that they have stopped offending only to be reconvicted. These are assertions from the subject that are challenged by contradictory behaviours.
- 2.13 Whether a person who has offended is a risk in the future is a complex debate and has given rise to extensive publications, theories and changes in legislation, with many focusing upon the need for more rehabilitation projects as a means of reducing re-offending rates. Central to the rehabilitation of offenders is the concept of criminogenic needs. This has been described in criminal justice as "any area where the offender has needs or deficits, in which a reduction in the need or deficit would lead to a reduction in the risk of re-conviction. An individual's ability to address and reduce such needs relies heavily upon their motivation to change and desist and often takes place over a period of time".<sup>13</sup>

---

<sup>10</sup> Proven reoffending statistics: April to June 2022 - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>11</sup> McGuire, J. (2008). A review of effective interventions for reducing aggression and violence. *Philosophical Transactions of the Royal Society B: Biological Sciences*, 363(1503), 2577-2597

<sup>12</sup> Nash, M. (1999) *Police, Probation and Protecting the Public*. London: Blackwell Press.

<sup>13</sup> National Offender Management Service (2016). *Public Protection Manual Edition. Proven Reoffending Statistics Quarterly Bulletin, October 2015 to December 2015*

- 2.14 Kurlychek, 2007 in her study noted that “a person who has offended in the past has been found to have a high probability of future offending, but this risk of recidivism is highest in the time period immediately after arrest or release from custody and, thereafter, decreases rapidly and dramatically with age”.<sup>14</sup> In contrast though, one of the few long-term studies (The Sheffield Desistance Study)<sup>15</sup> which examined the lives of 113 men aged 19–22 years over four years. Their subsequent convictions over the next ten years generally demonstrate a pattern of continuing convictions, but with major crime-free gaps suggesting with some very persistent offenders, desistance, if seen as continuing cessation from crime, may not be fulfilled.
- 2.15 A consistent finding in criminological literature is that many male offenders tend to desist from crime over time, and risk of offending even for those previously convicted reduces once individuals reach the aged 30 years and over.<sup>16</sup> It is well documented that the change occurs for various reasons; for example, as a result of successful treatment, natural maturation or the development of positive social relationship.<sup>17</sup> Female offenders are also considered more likely to desist from offending as they mature. The peak age of reported offending for females is 14 compared to 19 for males.<sup>18</sup> It is true that generally many people do age out of crime, but we should be careful not to count all crime as the same. Serious sexual and violent offences may not be the same as acquisitive offences.
- 2.16 Some people are convicted of crime and will not be further convicted. The Rehabilitation of Offenders Act (1974) aims to help some offenders re-enter the workforce and makes some convictions spent after a determined period. For people who have been involved in persistent and more serious offending, it is a difficult and complex process, likely to involve lapses and relapses. Some criminal convictions, especially those attracting lengthy prison sentences are not considered spent. Some individuals may never desist from crime.<sup>19</sup> As a result, it is important for individuals to evidence change in their behaviour before they can be considered to present a low risk of re-offending. Often the only way of achieving this is through lapse of significant time.
- 2.17 Typically, the longer the time elapsed since an offence has been committed, the more likely the individual has desisted from crime. It is noted that the more a life is lived crime-free, the more one comes to see the benefits of desistance.<sup>20</sup> Demonstrating a change in offending behaviour and an ability to make effective choices takes time and comes with

<sup>14</sup> Kurlychek, M C, Brame, R (2007). Scarlet letters and recidivism: Does an old criminal record predict future offending? University of South Carolina.

<sup>15</sup> Bottoms, A.E. & Shapland, J. (2016) Learning to desist in early adulthood: the Sheffield Desistance Study. In: J. Shapland, S. Farrall & A.E. Bottoms (Eds.) Global perspectives on desistance: reviewing what we know, looking to the future. Abingdon: Routledge or Shapland, J. (2022) Once convicted? The long-term pathways to desistance. *The Howard Journal of Crime and Justice*, 61, 271–288. <https://doi.org/10.1111/hojo.12473>

<sup>16</sup> Serin, R, C. and Lloyd, C.D (2008). Examining the process of offender change: the transitions to crime desistance. 347-364.

<sup>17</sup> Nash, M. (1999) Police, Probation and Protecting the Public. London: Blackwell Press.

<sup>18</sup> Trueman, C.N. (2015). Women and Crime. The History Learning Site. Ingatestone: Essex.

<sup>19</sup> Farrell, S (2005). Understanding Desistance from Crime: Emerging Theoretical Directions in Resettlement and Rehabilitation (Crime and Justice) Paperback.

<sup>20</sup> Maguire, M., Morgan, R. and Reiner, R. (2002). The Oxford Handbook of Criminology. 3rd Edition. Oxford: Oxford University Press.

some ambiguity for those who have committed offences. A study in 2007 looking into previous convictions and the links to re-offending concluded that “individuals who have offended in the distant past seem less likely to re-offend or offend again than individuals who have offended in the recent past”.<sup>21</sup> This is likely substantively true, and yet there are some categories of crime, and some crime types, perhaps particularly sexual offences, where caution is very much needed, because those crimes are so much less frequently taken through the justice system successfully and the offence may illustrate more complex attitudinal and behavioural and thinking patterns. For general offences (not violence and sexual offences), some academics have suggested that a period of around seven years is when the risk of offending for convicted offenders and non-convicted population becomes the same.<sup>22</sup>

- 2.18 Although it is not possible to determine the future behaviour of an individual, taking steps to reduce risk and protect the public can be achieved by following correct processes and guidance. Having regard to an individual’s previous behaviour and their potential to cause harm as a result of the choices they have made plays a significant part when deciding whether to grant a licence. Being able to evidence change in behaviour will involve consideration of the circumstances at the time of the offence, steps taken to address any issues identified and that person’s ability to sustain such change. This can be a long process that can only be achieved over time.
- 2.19 Offences where taxi and private hire drivers are victims are much more frequent than offences by such drivers. Taxi and private hire drivers are often in situations where they face victimisation in terms of violence, threat, assault and false allegations. It must be recognised that taxi and private hire drivers have access to people who are vulnerable because of their situation, very often as a sole individual unsupervised in a vehicle. A small minority of people may seek to abuse their positions, or even secure positions because of the potential to take advantage of passengers’ trust and vulnerability.
- 2.20 It is estimated that 23.5 per cent of males in England and Wales in the age range 10 – 52 in 2006 had had a previous a conviction. For adult males aged between 18 and 52 the figure is 28.2 per cent. Almost a third of all adult males in the UK have a criminal conviction. However, often individuals will come to light and be recognised because of patterns of behaviour, not always criminal behaviour. It ought to be remembered that a great deal of criminal behaviour in some categories may never come to be known about by authorities, and it is widely accepted that, for example, violence against women and girls, domestic violence and sexual crimes tend to be the most under reported and least convicted.

---

<sup>21</sup> Kurlychek, M C, Brame, R (2007). Scarlet letters and recidivism: Does an old criminal record predict future offending? University of South Carolina.

<sup>22</sup> Soothill, K and Francis, B (2009) *When do ex-offenders become like non-offenders?* Howard Journal of Criminal Justice, 48 (4). pp. 373-387. ISSN 0265-5527

- 2.21 According to ONS crime statistics for England and Wales<sup>23</sup>, 20% of women (1 in 5) and 4% of men will experience sexual violence in their lifetime. It is vital that it is recognised that a great deal, and likely most, of the sexual abuse may never be reported. It has been suggested that some 40% of adults who are raped will not report, and unreported childhood cases are likely much higher. The Crime Survey for England and Wales (CSEW) estimated that 1.1 million adults aged 16 years and over experienced sexual assault in the year ending March 2022 (798,000 women and 275,000 men).
- 2.22 It is claimed that only some 10-15% of sexual offences are reported to the police in any year, and even when reported, sexual crimes are amongst the hardest to prove. In 2018 less than 1 in 65 reports of rape (1.5%) resulted in a charge or summons. However, according to CSEW statistics for the year ending March 2022, sexual offences recorded by the police were at the highest level recorded. In May 2021, there were 95,844 people on the sex offenders register in England and Wales, yet based on the accessing of Child Sexual Exploitation material the UK's National Crime Agency estimate that there could be between some 550,000 and 850,000 people in the UK who pose varying forms of sexual risk to children. While there is no consensus about the pathways between non-contact and contact offending, it seems sensible to consider even one incidence of possession of child sexual exploitation material must be seen as a risk flag.
- 2.23 There are a range of crimes that can be considered as sexual offences, including non-consensual crimes such as rape or sexual assault, crimes against children including child sexual abuse or grooming, and crimes that exploit others for a sexual purpose, whether in person or online. Crimes can occur between strangers, friends, acquaintances, current or ex-partners, or family members. The passage of time does not prevent the effective prosecution of sexual offences, and an increasing number of cases referred to the CPS by police feature allegations of a non-recent nature.
- 2.24 There is also complexity added to the category of sexual offences as there can be a sexual component in offences that may not be categorised primarily as a sexual offence, and the category runs a full gambit from sexually motivated homicides to non-contact internet offending in the form of possession of Child Sexual Exploitation material.
- 2.25 Sexual offences are prosecuted as part of the CPS Violence Against Women and Girls (VAWG) Strategy. This is an overarching framework to address crimes that have been identified as being committed primarily but not exclusively by men against women, but we ought not forget that men also commit sexual offences against men and boys. Reynhard Sinaga, a postgraduate student jailed for life in 2020 is who is thought to be the UK's "most prolific rapist"<sup>24</sup> was convicted of 136 rapes in Manchester and is believed by police to have assaulted over 200 men. There is a huge variation in sexual offenders, and there is a range of complex factors in their offending, which can vary hugely and

---

<sup>23</sup>

<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingdecember2023#overall-estimates-of-crime>

<sup>24</sup> <https://www.judiciary.uk/wp-content/uploads/2020/12/McCann-Sinaga-Shah-judgment-111220.pdf>



significantly. are no longer crimes due to changes in legislation since their conviction. For example, alterations in the age of consent that existed for gay men.

- 2.26 There is no singular type when it comes to sexual offending, and there are many gaps in knowledge. We know that most sexual offenders are men. Sex offenders constitute a diverse population of individuals and can be classified into types based upon characteristics and motivations of offending. The most common classification systems are those differentiating between types of rapists, child molesters, female sex offenders, juvenile sex offenders and cyber-sex offenders. There is also sometimes a division between non-contact (online) and contact offending, and discussions about whether the former is a pathway to the latter. It is often said that reoffending amongst sexual offenders is lower than that of general offenders, but we need to be careful to also frame that with the general knowledge we have about the complexity and difficulty in securing convictions for sexual offences generally.
- 2.27 Sex offenders constitute a similarly diverse group of individuals who begin offending for a range of reasons. Many offenders do not fit into discrete categories. Like violent offenders, sexual offenders have unique personal and criminal histories, and the attitudes and beliefs that support their deviant behaviour can vary. There is no clear-cut profile of a sex offender. Some offenders were sexually abused as children, but others have no such history. Some are unable to function sexually with adult partners and so prey on children, while others also have sexual relations with adults. Research shows that sexual offenders exhibit a variety of characteristics. Abusive people, including sexual offenders, typically think they are unique, they are different from other people, they have a sense of entitlement and do not have to follow the same rules everyone else. Rather than being unique, abusers and sexual offenders often have a lot in common with one another, including their patterns of thinking and behaving. They are also often highly manipulative of other people and situations and will employ a range of tactics that can include lying, upsetting others or intimidating them with threats. Equally, they may attempt to charm people, engender feelings of sympathy to manipulate, feign interest or concern, or attempt to elicit sympathy. Sex offenders when compared to other offenders generally:
- Are more likely to deny their behaviour and guilt, can lack empathy (and victim) empathy and ability to understand or see things from the point of view of others.
  - Have inappropriate or be very fixed in attitudes and character, including attitudes to sex.
  - Put themselves in places and situations where vulnerable victims are present. (Offenders may frequent an arcade or join a social media site or gaming platform where they will regularly be engaging with youth on a peer level or attempt to become a taxi or private hire driver" as referred to in the Telford report)<sup>25</sup>.

---

<sup>25</sup> Para 4.193 Report of the Independent Inquiry Telford Child Sexual Exploitation available at <https://www.iitcse.com/>

- The motivations to sexually offend can vary from offender to offender and offence to offence, but the specific deviant sexual motivations including paraphilias (a persistent and recurrent sexual interests, urges, fantasies, or behaviours of marked intensity involving objects, activities, or even situations that are atypical in nature) are often apparent. However sexual offenders will commit nonsexual offences.
- 2.28 Like sexual offenders, violent offenders are a diverse population, whose offences generally tend to be either expressive (a loss of control and anger) or instrumental (violence that is used to acquire or gain something, including some forms of acquisitive violence). We know that men commit far more violent offences than women and a very small group (less than 5% of the male population tend to commit around 50-70% of violent crime.<sup>26</sup> Often the most persistent violent offenders commence offending early in life and are characterised by criminal versatility, but because of their overt nature, much violence (with exceptions around domestic and intimate partner violence) has tended to be detected and prosecuted. Serious violence tends to result in conviction.
- 2.29 The risk of harm is not always linked to the offences committed previously, as persistent and repeat offenders often escalate or fluctuate in terms of the severity of crimes and the type of offences that they commit, and offenders often are not specialist and do not restrict themselves to one sort of crime.
- 2.30 Criminal versatility and a diversity of criminal offence types can also be indicative of underlying antisocial attitudes. Previous behaviour is a good indicator of future risks. Any conviction for a serious violent or sexual offence suggests at a degree of risk to the public that is heightened over those who have no convictions.
- 2.31 Beyond a very narrow core of hard cases, there are issues in both the boundaries of what constitutes the kind of behaviour that can be considered dangerous, which is open to dispute, and to what degree of likelihood of future risk should be required before an individual can be said to present a danger of future offending and subject to restrictions?
- 2.32 What is vital when considering violent and sexual offences are the access and opportunity that the offender requires to attempt to commit any offence. This is the focus of situational and administrative criminology. Situational crime prevention (SCP) is an applied criminological paradigm founded on two distinct, complementary conceptions of criminal situations. The first is the rational choice and the second is the routine activities perspectives.<sup>27</sup>
- 2.33 SCP approaches consider criminal situations and understand that crime occurrences are essentially 'opportunities' that arise when an already motivated or criminally disposed

<sup>26</sup> Moffitt, T. E. (1993). Adolescence-limited and life-course-persistent antisocial behaviour: A developmental taxonomy. *Psychological Review*, 100(4), 674–701. <https://doi.org/10.1037/0033-295X.100.4.674>

<sup>27</sup> Cornish, Derek B., and Ronald V. Clarke. "Crime as a rational choice." *Criminological theories: Bridging the past to the future* (2002): 77-96, and *Social Change and Crime Rate Trends: A Routine Activity Approach*, Lawrence E. Cohen and Marcus Felson Vol. 44, No. 4 (Aug., 1979)

offender, having rationally weighed up in terms of effort, risk, and reward decides to commit an offence. All else being equal, a crime is more likely to be committed when it requires little effort, when the would-be offender judges that there is a low risk of that crime being detected and punished, and when they anticipate they will meet their intended outcome. Core to the crime is a suitable target being available, there is the lack of a suitable guardian to prevent the crime from happening, and a motivated offender is present.

- 2.34 Licensing is a form of safeguarding and risk management. By virtue of the role and function of what opportunities and privileges a taxi or private hire drivers' licence affords, there can be a great deal of opportunity to access people who are situationally vulnerable, particularly those in the night-time economy. John Worboys (also known as John Radford) the British convicted serial sex offender, known as the Black Cab rapist, was convicted in 2009 for attacks on 12 women committed between 2007 and 2008. In 2019, he was convicted for attacks on four more women, the earliest of which took place in 2000. Police say he may have had more than 100 victims while operating in London and Dorset.
- 2.35 The taxi trade and licensing has also featured as part of the backdrop of discussions of Child Sexual Exploitation in a number of English towns. These crimes have frequently been discussed as the product of 'grooming gangs'. While this term has been controversial, the night-time economy (NTE) and particularly take aways, taxi and private hire companies and children's homes all also featured as part of the situational and social context of offending across a number of English towns such as Telford, Rotherham, Bradford, Luton, and Rochdale. Specifically vulnerable, young white females were predominately the victims of Bangladeshi and Pakistani male perpetrators', some of whom were employed as taxi drivers.
- 2.36 While the term 'grooming gangs' has become a contentious one bringing often unhelpful claims and counterclaims, the reality is that much Child Exploitation (CE), including Child Sexual Exploitation and Child Criminal Exploitation happens when vulnerable young people (under the age of 18) are encouraged, forced or manipulated into criminal or sexual acts. While not all victims of CE and CSE are vulnerable by virtue of factors other than age, many victims have a range of heightened vulnerabilities. These can include problems at home, statutory care experiences, trauma, emotional and physical neglect, experiences with a family member with mental health or substance use disorders, experiences of domestic violence and abuse, poverty, experiences or racism and discrimination and experiences of violence in the community. Those in the taxi and private hire trades can also gain useful local knowledge and insight around concerns about exploitation and can be extremely useful in crime prevention and encouraging and promoting community safety.
- 2.37 Individuals applying for or renewing taxi and private hire driver's licences are subject to an enhanced DBS with barred lists check. There are debates as to whether taxi and private hire driving should become a regulated activity within the provisions of the Safeguarding Vulnerable Groups Act 2006.

2.38 When making decisions around individuals being 'fit and proper' it is important that too much stock is not placed on individual testimony or evidence that cannot be substantiated. Rather, a focus should be on:

- What further offence(s) might the individual commit or exhibit?
- Would they cause serious harm?
- Who might the victim(s) be? Can they be accessed via occupational role?
- What features might contribute to serious harm (the risk factors)?
- What might protect against serious harm (the protective factors) and are they able to be guaranteed?
- How probable is a high-risk scenario (likelihood)?
- How quickly could a further serious harm take place (imminence)?

2.39 Focusing on questions of access and opportunity and seeing licensing as a mechanism of safeguarding is vital when deciding if someone should be -licensed. While refusal of a licence is a restriction for the individual, it is also a method of situational safeguarding that can serve to prevent future victims.

---

## Chapter 3: 'Taxi' Licensing Overview

---

- 3.1 Taxis and private hire vehicles are used by almost everyone in our society occasionally, but they are used regularly by particularly vulnerable groups: children; the elderly; disabled people; and the intoxicated, and a taxi or private hire driver has significant power over a passenger who places themselves, and their personal safety, completely in the driver's hands.
- 3.2 Local authorities (districts, unitaries and Welsh Councils) and TfL are responsible for taxi and private hire licensing.
- 3.3 The principal legislation is the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976. The purpose of taxi and private hire licensing is detailed in the DfT *"Taxi and Private Hire Licensing best practice guidance for licensing authorities in England"* para 3. which states:

"The primary and overriding objective of licensing [the taxi and PHV trades] must be to protect the public."

Supported by para 3.2 of the DfT Statutory Taxi and Private Hire Vehicle Standards which states:

"When formulating a taxi and private hire vehicle policy, the primary and overriding objective must be to protect the public."

And acknowledged in part 1 of the Welsh Government Guidance document "Taxi and Private Hire Vehicles: Licensing Guidance" which states:

"The licensing regime needs to be updated to remedy the current problems; ensure that the taxi and PHV licensing system is fit for modern Wales; and promote public safety."

- 3.4 Within the two licensing regimes, there are 5 types of licence: taxi vehicle; private hire vehicle; taxi driver; private hire driver and private hire operator.

## CONSULTATION: IoL Suitability Guidance Review

- 3.5 In relation to all these licences, the authority has a discretion over whether to grant. Whilst there is some guidance issued by the DfT,<sup>28</sup> there are no national standards.<sup>29</sup>
- 3.6 Drivers and operators cannot be granted a licence unless the authority is satisfied that they are a “fit and proper person” to hold that licence (see Local Government (Miscellaneous Provisions) Act 1976 ss 51 and 59 in respect of drivers; s55 in respect of operators).
- 3.7 There are no statutory criteria for vehicle licences; therefore, the authority has an absolute discretion.
- 3.8 In each case, it is for the applicant or licensee to satisfy the licensing authority that they are “fit and proper”, not for the authority to prove that they are not.
- 3.9 The authority has powers to grant or refuse a licence, renew or refuse to renew it on application and, during the currency of the licence, suspend or revoke it.
- 3.10 What is the role of these powers, and how do authorities determine an application, or take action against a licence? Each Licensing Authority should adopt a cohesive Taxi Licensing Policy<sup>30</sup> If a matter or situation is not addressed or covered by the Policy, that does not mean that matter cannot be taken into account by the Authority: in such circumstances the Authority will have to consider the issue from first principles, as if it had not adopted any policy on this topic.
- 3.11 Whenever a decision is made by a licensing authority (whether that is by Councillors or Officers), full and detailed reasons for that decision must be given<sup>31</sup>. This requirement is not just for refusals. It is important that all decisions are recorded correctly, and reasons given. This will include grants (on first application and renewals), addition of conditions, suspension, revocations and refusals. To assist decision makers, an example of a Decision Notice is contained in the Appendix to this Guidance.

---

<sup>28</sup> “Statutory Taxi and Private Hire Vehicle Standards” Department for Transport 2020 (available at <https://www.gov.uk/government/publications/statutory-taxi-and-private-hire-vehicle-standards> and 3 of “Taxi and Private Hire Vehicle Licensing best practice guidance for licensing authorities in England” Department for Transport revised in 2023 (available at <https://www.gov.uk/government/publications/taxi-and-private-hire-vehicle-licensing-best-practice-guidance>)]

<sup>29</sup> The Government has stated that it will introduce national standards for taxi and private hire licences. However, at the time of writing (May 2024) this will be after the next General Election. In Wales, Welsh Government has consulted on new legislation, but again this is awaited.

<sup>30</sup> see Para 3.1 Dft Statutory Standards

<sup>31</sup> This was made clear by the Court of Appeal in *R (app Hope and Glory Public House Ltd) v Westminster City Magistrates’ Court* [2011] EWCA Civ 31, [2011] 3 All ER 579, CA.

## Taxi & Private Hire Drivers

- 3.12 There are two different occupations: taxi drivers and private hire drivers. In each case there are identical statutory criteria to be met before a licence can be granted. Many authorities grant “dual” or “combined” licences to cover both occupations.
- 3.13 An applicant must hold a full DVLA or equivalent driver’s licence, have the right to work in the UK, comply with tax conditionality requirements and be a “fit and proper” person<sup>32</sup>.
- 3.14 The driving licence element is a question of fact. Although there are some issues with foreign driving licences, ultimately a person either has, or does not have a driving licence.
- 3.15 An applicant must have the right to remain, and work in the UK<sup>33</sup>. Again, this is ultimately a question of fact, and the local authority should follow the guidance issued by the Home Office.<sup>34</sup>
- 3.16 The tax conditionality rules require any driver applying to renew their licence to demonstrate they are registered for tax with HMRC; new applicants must acknowledge that they will be required to register with HMRC.<sup>35</sup>
- 3.17 Those requirements are all questions of fact. It is the whole issue of “fit and proper” that causes local authorities the most difficulties. It has never been specifically judicially defined but it was mentioned in *Leeds City Council v Hussain*<sup>36</sup>. Silber J said:
- “... the purpose of the power of suspension is to protect users of licensed vehicles and those who are driven by them and members of the public. Its purpose [and], therefore [the test of fitness and propriety], is to prevent licences being given to or used by those who are not suitable people taking into account their driving record, their driving experience, their sobriety, mental and physical fitness, honesty, and that they are people who would not take advantage of their employment to abuse or assault passengers.”
- 3.18 This is reflected in a test suggested by the DfT Statutory guidance (although it is not a statutory test):

<sup>32</sup> Local Government (Miscellaneous Provisions) Act 1976. Section 51(1) covers private hire drivers, and section 59(1) covers taxi drivers.

<sup>33</sup> Local Government (Miscellaneous Provisions) Act 1976 S51(1)(a)(ii) in respect of private hire drivers and S59(1)(a)(ii) in respect of taxi drivers.

<sup>34</sup> “Guidance for Licensing Authorities to Prevent Illegal Working in the Taxi and Private Hire Sector in England and Wales” - Home Office, October 2023 available at <https://www.gov.uk/government/publications/licensing-authority-guide-to-right-to-work-checks>

<sup>35</sup> <https://www.gov.uk/guidance/complete-a-tax-check-for-a-taxi-private-hire-or-scrap-metal-licence>

<sup>36</sup> [2002] EWHC 1145 (Admin), [2003] RTR 199 Admin Crt

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?<sup>37</sup>

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

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

3.21 The local authority has the power to require an applicant to provide:

“such information as they may reasonably consider necessary to enable them to determine whether the licence should be granted and whether conditions should be attached to any such licence.”<sup>38</sup>

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

3.22 Some of these are mandatory, such as Enhanced DBS Certificates, Proof of right to work, Tax conditionality on renewal. Others are universally required such as medical assessments<sup>39</sup>. Some authorities may require further information such as:

- sign-up to the DBS update service;
- Knowledge tests;
- Driving tests;
- Disability awareness/training;
- Periodic signed declarations;
- Spoken and written English tests;
- CSAE (child sexual abuse and exploitation) awareness/training;
- County lines awareness/training.
- Relevant taxi qualifications
- NR3S search (conducted by the licensing authority)

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

<sup>37</sup> <https://www.gov.uk/government/publications/statutory-taxi-and-private-hire-vehicle-standards/statutory-taxi-and-private-hire-vehicle-standards#decision-making:~:text=5.4%20Fit%20and%20proper%20test>

<sup>38</sup> Local Government (Miscellaneous Provisions) Act 1976 s57(1)

<sup>39</sup> See Local Government (Miscellaneous Provisions) Act 1976 s57(2)



- 3.24 In making the decision, as to whether an applicant is, or remains a fit and proper person, the licensing authority can take into account any information which is relevant to determining that question. This can include information obtained by the LADO (the Local Authority Designated Officer). The LADO is a statutory appointment under the Children Act 1989 whose role is to oversee and manage investigations following allegations being made against individuals who work or come into contact with children regularly. Their role is described in detail in *Working Together to Safeguard Children 2023*. The basis of the lawfulness of the sharing of LADO information is that it is being used by the Licensing Authority for the same purpose as it was obtained by the LADO, namely safeguarding.
- 3.25 Both taxi and private hire drivers are exempt from the provisions of the Rehabilitation of Offenders Act 1974. This means that there are no “spent” convictions and that any and all criminal convictions (apart from “protected convictions” and “protected cautions” where they have been declared<sup>40</sup>) can be taken into account by the local authority in assessing safety and suitability, but only relevant spent convictions should be considered by the decision maker<sup>41</sup>.
- 3.26 All Applicants/Licensees should be required to obtain an Enhanced DBS Certificate with Adult and Children Barred Lists checks<sup>42</sup> and to provide this to the Licensing Authority. This must be for “other workforce” + “taxi”. Where a driver undertakes school contract work for an Education Authority (EA), they must obtain a different, separate Enhanced DBS Certificate to provide to the Education Authority, because that activity is “regulated activity” within the meaning of the Safeguarding Vulnerable Groups Act 2006, whereas “normal” private hire and taxi driving is not. The EA Enhanced DBS is for “Child Workforce”. A Licensing Authority cannot accept a Child Workforce DBS, and an Education Authority cannot accept an Other Workforce + Taxi DBS.<sup>43</sup> Licensees should also be required to maintain their Certificates through the DBS Update Service throughout the currency of their licence.
- 3.27 If any applicant has, in the 10 years before the application is made, spent 12 months or more (whether continuously or in total) in the last 10 years, while aged 18 or over living outside the United Kingdom, evidence of a criminal record check from the country/countries covering the relevant period should be required. Where an applicant is unable to provide a satisfactory criminal record check, a licence will not be granted.

<sup>40</sup> “Protected convictions” and “protected cautions” are generally minor and elderly matters that do not appear on any DBS Certificates.

<sup>41</sup> See *Adamson v Waveney District Council* [1997] 2 All ER 898 QBD

<sup>42</sup> “For Taxi [driver] Licensing purposes the correct level of check is always the Enhanced level check, with the Adults and Children’s Barred list check. Other Workforce should always be entered at X61 line 1 and Taxi Licensing should be entered at X61 line 2” - para 6.2 “*Statutory Taxi and Private Hire Vehicle Standards*” Department for Transport 2020 (available at <https://www.gov.uk/government/publications/statutory-taxi-and-private-hire-vehicle-standards>).

<sup>43</sup> This is because School Transport is “regulated activity” within the Safeguarding Vulnerable Groups Act 2006, whilst general taxi and private hire driving is not.

- 3.28 Local authorities should have a policy to provide a baseline for the impact of any convictions, cautions or other matters of conduct which concern a person's safety and suitability<sup>44</sup>. This may be 'never' due to the type of offence/behaviour and the risk of re-offending capability as a taxi driver.
- 3.29 The character of the driver in its entirety must be the paramount consideration when considering whether they should be licensed. It is important to recognise that local authorities are not imposing any additional punishment in relation to previous convictions or behaviour. They are using all the information that is available to them to make an informed decision as to whether or not the applicant or licensee is or remains a fit and proper person to hold such a licence.
- 3.30 There are occasions where unsuitable people have been given licences by local authorities, or if refused by the authority, have had it granted by a court on appeal.
- 3.31 Often this is because of some perceived hardship. Case law makes it clear that the impact of losing (or not being granted) a driver's licence on the applicant and their family is not a consideration that can be taken into account<sup>45</sup>. This then leads to the question of whether the stance taken by some local authorities is robust enough to achieve that overriding aim of public protection.
- 3.32 However, all too often local authorities depart from their policies and grant licences (or do not take action against licensees) without clear and compelling reasons. It is vital that those making these decisions, whether they are Councillors or Officers, recognise that the policy, whilst remaining a policy and therefore the Authority's own guidelines on the matter, is the baseline for acceptability. The policy should only be departed from in exceptional circumstances and for justifiable reasons which should be carefully and comprehensively recorded. Licensing Authorities should monitor their decisions on an annual basis and examine how often they depart from the policy.<sup>46</sup>
- 3.33 One common misunderstanding is that if the offence was not committed when the driver was driving a taxi, it is much less serious, or even if it was in a taxi but not when passengers were aboard. This is not relevant: speeding is dangerous, irrespective of the situation; drink driving is dangerous, irrespective of the situation; bald tyres are dangerous, irrespective of the situation. All these behaviours put the general public at risk. Violence is always serious. The argument that it was a domestic dispute, or away from the taxi, is irrelevant. A person who has a propensity to violence has that potential in every situation. Sexual offences are always serious. A person who has in the past abused their position

---

<sup>44</sup> See para 5.15 "Statutory Taxi and Private Hire Vehicle Standards" Department for Transport 2020 (available at <https://www.gov.uk/government/publications/statutory-taxi-and-private-hire-vehicle-standards>)

<sup>45</sup> *Leeds City Council v Hussain* [2002] EWHC 1145 (Admin), [2003] RTR 199 Admin Crt and *Cherwell District Council v Anwar* [2011] EWHC 2943 (Admin), [2012] RTR 15 Admin Crt

<sup>46</sup> See para 3.5 of DfT Statutory Standards

(whatever that may have been) to assault another sexually has demonstrated completely unacceptable standards of behaviour. Predators want taxi drivers' licences as it gives them easy access to victims.<sup>47</sup> It should be noted that a licensing authority cannot prevent a person who has been refused a licence (or had it revoked) from re-applying to that, or any other, authority.

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

<sup>47</sup> Telford report volume 3 para 4.193: ‘That is in my view a significant result and one which is more likely to be attributable to some feature of the job which is attractive to perpetrators, rather than to chance. The obvious feature that a CSE perpetrator would find attractive is that taxi drivers hold a position of responsibility to the public; people tend to trust them. It also shows why an effective system of licensing and enforcement is vital, and why the public must know about the standards they are entitled to expect: they must know how to complain and must be able to make a complaint easily and quickly.’ Report of the Independent Inquiry Telford Child Sexual Exploitation available at <https://www.iitcse.com/>

own policies, the public cannot have complete confidence in taxi drivers. This is detrimental to all involved.

- 3.38 In England, when any action is taken in relation to a drivers' licence: refusal to grant or renew, revocation or suspension, the authority must apply the legal test to determine if this action must be entered by that authority on the NR3S database in accordance with the Taxi and Private Hire Licensing (Safeguarding and Road Safety) Act 2022. It is recommended in DfT Guidance that this action is also undertaken in Wales. any new applicant against the database. There is no mechanism for a driver to surrender or hand in their licence to avoid suspension or revocation, and thus avoid such an entry being made. In such circumstances, licensing authorities must make decisions to revoke, suspend or not renew. This will ensure the NR3S Database is accurate.<sup>48</sup> Neither can a failed applicant for a licence avoid the recording of a refusal.

## Private Hire Operators

- 3.39 A private hire operator ("PHO") is the person who takes a booking for a private hire vehicle ("PHV"), and then dispatches a PHV driven by a licensed private hire driver ("PHD") to fulfil that booking. All three licences (PHO, PHV and PHD) must have been granted by the same authority<sup>49</sup>. A local authority cannot grant a PHO licence unless the applicant has the right to work in the UK, on renewal meets the HMRC Tax Conditionality requirements, and is a fit and proper person<sup>50</sup>.
- 3.40 As with taxi drivers the role of the PHO and their staff goes far beyond simply taking bookings and dispatching vehicles. In the course of making the booking and dispatching the vehicle and driver, the PHO will obtain significant amounts of personal information. e.g. periods away from home, destinations, regular journeys. It is therefore vital that a PHO and their staff are as trustworthy and reliable as a driver, notwithstanding their slightly remote role. Taxis can also be pre-booked, but local authorities should be mindful that where that booking is made by anybody other than a taxi driver, there are no controls or vetting procedures in place in relation to the person who takes that booking and holds that personal information.
- 3.41 How then does a local authority satisfy itself as to the "fitness and propriety" or "safety and suitability" of the applicant or licensee?
- 3.42 The decision is made by the licensing authority. Each authority can decide by whom those decisions are made: under their Scheme or Schedule of Delegations (contained in the

<sup>48</sup> See Journal of Licensing (2019) 24 JoL 46

<sup>49</sup> See *Dittah v Birmingham City Council, Choudhry v Birmingham City Council* [1993] RTR 356 QBD

<sup>50</sup> Section 55(1) Local Government (Miscellaneous Provisions) Act 1976

Council's Constitution) they can be made by Councillors sitting on a Committee or Subcommittee, or by officers.

- 3.43 Spent convictions, but not protected convictions, can be taken into account when determining suitability for a licence, and these must be declared on the application form. In addition, the applicant (or licensee on renewal) should be asked to obtain and then provide a Basic Disclosure from the Disclosure and Barring Service.
- 3.44 Although this is by no means a perfect system, it does give local authorities a reasonable basis for making an informed decision as to fitness and propriety of an applicant or existing licensee.
- 3.45 To enable consistent and informed decisions to be made, it is important to have a working test of fitness and propriety for PHOs and in the absence of a DfT test, this is suggested:
- “Without any prejudice, and based on the information before you, would you be comfortable providing sensitive information such as holiday plans, movements of your family or other information to this person, and feel safe in the knowledge that such information would not be used or passed on for criminal or unacceptable purposes?”<sup>51</sup>
- 3.46 There is a further point to consider in relation to PHOs and that concerns the staff used on the telephones and radios. A condition should be imposed on a PHO licence requiring them to have a policy to undertake checks on those they engage (whether as employees, workers or independent contractors) within their business to satisfy themselves that they are fit and proper people to undertake that task using the same criteria as the licensing authority used in relation to the PHO. The PHO must then retain that information to demonstrate that compliance to the local authority. Any failure on the part of the PHO to either comply with this requirement, or act upon information that they obtain (thereby allowing unsuitable staff to work in positions of trust), would then have serious implications on the continuing fitness and propriety of the PHO.
- 3.47 Care should be taken in circumstances where a PHO Licence is sought in the name of a limited company, partnership or other business structure that all the requirements applicable to an individual applicant are made of each director or partner of the applicant organisation<sup>52</sup>. Only by so doing can a decision be made as to the fitness and propriety of the operating entity. In these circumstances, a condition should be imposed on the PHO licence requiring notification to the licensing authority of any changes in membership any partnership or directors or secretary of a limited company. Such notification must be made within 7 days of the alteration and be accompanied by a Basic DBS for every new person.

<sup>51</sup> This is a slightly modified version of the suggested test in Button on Taxis – Licensing Law and Practice 4<sup>th</sup> Ed Bloomsbury Professional at para 12.35

<sup>52</sup> See s57(1)(c) of the 1976 Act.

## Vehicle Proprietors

- 3.48 Similar considerations apply to the vehicle proprietors, both taxi and private hire. Although the vehicle proprietor may not be driving a vehicle (and if they are they will be subject to their own fitness and propriety test to obtain a driver's licence), they clearly have an interest in the use of the vehicle. They will also be responsible for the maintenance of the vehicle, and vehicles that are not properly maintained have a clear impact on public safety. Where any insurance replacement vehicle is involved, special considerations may apply.
- 3.49 Taxis are used to transport people in many circumstances, and are seen everywhere across the United Kingdom, at all times of the day and night, in any location. Therefore, taxis could provide a transportation system for illegal activities or any form of contraband, whether that is drugs, guns, illicit alcohol or tobacco, or people who are involved in or are the victims of illegal activity, or who may be at risk of being, or are being, abused, exploited or enslaved.
- 3.50 In relation to both taxis and private hire vehicles, the local authority has an absolute discretion over granting the licence<sup>53</sup> and should therefore ensure that both their enquiries and considerations are robust. It is much more involved than simply looking at the vehicle itself and it is equally applicable on applications to transfer a vehicle as on grant applications.
- 3.51 Again, this is not an exempt occupation for the purposes of the 1974 Act, but exactly the same process can be applied as for private hire operators – Basic DBS, statutory declaration and consideration of spent convictions (but not protected convictions or protected cautions) on initial application and every subsequent renewal. This can then be used in the light of a similar policy in relation to suitability as the authority will already have for drivers and PHOs. This will not be required for proprietors who are already licensed as drivers and are registered with the DBS update service.
- 3.52 in the absence of a DfT test, this is suggested as a suitable test:
- “Without any prejudice, and based on the information before you, would you be comfortable allowing this person to have control of a licensed vehicle that can travel anywhere, at any time of the day or night without arousing suspicion, and be satisfied that they would not allow it to be used for criminal or other unacceptable purposes, and be confident that they would maintain it to an acceptable standard throughout the period of the licence?”<sup>54</sup>

<sup>53</sup> S37 of the 1847 Act in relation to taxis; section 48 of the 1976 Act to private hire vehicles.

<sup>54</sup> This is a slightly modified version of the suggested test in Button on Taxis – Licensing Law and Practice 4<sup>th</sup> Ed Bloomsbury Professional at para 8.98

---

## Chapter 4: Guidance on Determination

---

- 4.1 This Guidance is not binding on licensing authorities. They are all independent bodies, and it is for them to determine their own standards.
- 4.2 This Guidance is issued to enable licensing authorities, as the regulators of taxi and private hire drivers, vehicles and operators, to set standards that protect the public, and uphold the reputation of the trade and those licensed to work in it. As with any regulated activity, absolute certainty of safety cannot be achieved, and there will always be a tension between those regulated, and the regulators. The aim of this Guidance is to enable regulators to protect the public, whilst not preventing the vast majority of decent, law-abiding applicants and licensees to obtain and retain those licences. The 'public' is not restricted to passengers. It encompasses everyone: passengers, other road users and, of course, drivers.
- 4.3 As is clear from the Chapter 2: Offenders, Offending, Re-offending and Risk of Harm - An Overview above, there is no evidence which can provide precise periods of time which must elapse after a crime before a person can no longer be considered to be at risk of reoffending, but the risk may reduce over time. In light of that, the suggested timescales below are intended to reduce the risk to the public to an acceptable level.
- 4.4 Many members of our society use, and even rely on, taxis and private hire vehicles to provide transportation services. This is especially true of disabled and vulnerable people. This can be on a regular basis, or only occasionally, but in all cases passengers, other road users and society as a whole must have confidence in the safety and suitability of the driver, the vehicle itself and anyone involved with the booking process.
- 4.5 Ideally, all those involved in the taxi and private hire trades (taxi and private hire drivers, taxi and private hire vehicle owners and private hire operators) would be persons of the highest integrity. In many cases that is true, and the vast majority of those involved in these trades are decent, upstanding, honest and hard-working individuals. Unfortunately, as in any occupation or trade, there are those who fail to conform to those standards.
- 4.6 The purpose of this document is to offer guidance on how licensing authorities can determine whether a particular person is safe and suitable either to be granted a licence in the first place or to retain such a licence. As outlined above, a policy can be robust, and if necessary, say never, and each case is then considered on its own merits in the light of that policy.

## Pre-application requirements

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

### Vehicles:

- Basic DBS checks and overseas checks;
- Specifications e.g. minimum number of doors, minimum seat size, headroom, boot space, comfort and any similar considerations
- Mechanical tests and tests of the maintenance of the vehicle e.g. ripped seats etc;
- Emission limits/vehicle age limits;
- Wheelchair accessibility requirements.
- Electric Vehicles may have additional considerations

### Drivers:

- Enhanced DBS checks (Other Workforce + Taxi) with update service and overseas checks;
- Checks made to the National Anti-Fraud Network NR3S database on refusals, revocations, and suspensions of taxi and private hire licences;
- Medical checks (Group 2 Standard as a minimum);
- Knowledge of the geographic area;
- Spoken and written English tests;
- Disability awareness training;
- Child sexual exploitation and safeguarding training;
- Right to work checks;
- Tax conditionality checks.

It should be noted that records only remain on the NR3S database for a period of 11 years after which they must be removed under S 4(3)(b) of Taxis and Private Hire Vehicles (Safeguarding and Road Safety) Act 2022. This means that there will no longer be any record of whatever caused the entry to be made. This is unsatisfactory because any subsequent search will not reveal anything and is therefore worthless. It is believed that the period is set at 11 years to prevent a conviction that has become protected being revealed. The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013 (SI 2013/1198) contains a long list of offences that will never become protected so it is some comfort that they will be disclosed on an Enhanced DBS in the normal way.

### Operators:

- Basic DBS checks and overseas checks;
- Details of their vetting procedures for their staff;



- Knowledge of the licensing area;
  - CSAE and County Lines Training for operator and staff
  - Right to work checks;
  - Tax conditionality checks.
- 4.8 The licensing authority sets its own application requirements which will be detailed in its licensing policy.
- 4.9 In relation to each of these licences, the licensing authority has discretion as to whether or not to grant the licence.
- 4.10 Drivers and operators cannot be granted a licence unless the authority is satisfied that they are a “fit and proper person” to hold that licence (see Local Government (Miscellaneous Provisions) Act 1976 ss 51 and 59 in respect of drivers; s55 in respect of operators).
- 4.11 There are no statutory criteria for vehicle licences, therefore the authority has an absolute discretion over whether to grant either a taxi or private hire proprietor’s licence.
- 4.12 “Fit and proper” means that the individual (or in the case of a private hire operator’s licence, the limited company together with its directors and secretary, or all members of a partnership<sup>55</sup>) is “safe and suitable” to hold the licence.
- 4.13 In determining safety and suitability the licensing authority is entitled to take into account all matters concerning that applicant or licensee. They are not simply concerned with that person’s behaviour whilst working in the taxi or private hire trade. This consideration is far wider than simply criminal convictions or other evidence of unacceptable behaviour, and the entire character of the individual will be considered. This can include, but is not limited to, the individual’s attitude and temperament.
- 4.14 Convictions for attempt or conspiracy will be regarded as convictions for the substantive crime. A caution is regarded in exactly the same way as a conviction<sup>56</sup>. Fixed penalties and community resolutions will also be considered in the same way as a conviction<sup>57</sup>.
- 4.15 It is important to recognise that matters which have not resulted in a criminal conviction (whether that is the result of an acquittal, a conviction being quashed, decision not to prosecute, bailed, released under investigation or where an investigation is continuing) can and will be taken into account by the licensing authority<sup>58</sup>. In addition, complaints and or investigations where there was no police involvement will also be considered. Within

<sup>55</sup> Section 57(2)(c) of the Local Government (Miscellaneous Provisions) Act 1976 allows a local authority to consider the character of a company director or secretary, or any partner.

<sup>56</sup> This is because a caution can only be imposed following an admission of guilt, which is equivalent to a guilty plea on prosecution.

<sup>57</sup> This is because payment of a fixed penalty indicates acceptance of guilt, and a community resolution can only be imposed following an admission of guilt.

<sup>58</sup> See *R v Maidstone Crown Court, ex p Olson* [1992] COD 496, QBD; *McCool v Rushcliffe Borough Council* [1998] 3 All ER 889, QBD; and *Leeds City Council v Hussain* [2002] EWHC 1145 (Admin), [2003] RTR 199 Admin Crt.

this document, any reference to "conviction" will also include matters that amount to criminal behaviour, but which have not resulted in a conviction.

- 4.16 In the case of any new applicant who has been charged with any offence and is awaiting trial, the determination may be deferred until the trial has been completed or the charges withdrawn. Where an existing licensee is charged, it will be for the licensing authority to decide what action to take in the light of these guidelines.
- 4.17 In all cases, the licensing authority will consider the conviction or behaviour in question and what weight should be attached to it, and each and every case will be determined on its own merits, and in the light of these guidelines.
- 4.18 Any offences committed, or unacceptable behaviour reported whilst driving a taxi or private hire vehicle, concerning the use of a taxi or private hire vehicle, or in connection with an operator of a private hire vehicle will be viewed as aggravating features, and the fact that any other offences were not connected with the taxi and private hire trades will not be seen as mitigating factors.
- 4.19 As the licensing authority will be looking at the entirety of the individual, in many cases safety and suitability will not be determined by a specified period of time having elapsed following a conviction or the completion of a sentence. Time periods are relevant and weighty considerations, but they are not the only determining factor.
- 4.20 In addition to the nature of the offence or other behaviour, the quantity of matters and the period over which they were committed will also be considered. Patterns of repeated unacceptable or criminal behaviour are likely to cause greater concern than isolated occurrences as such patterns can demonstrate a propensity for such behaviour or offending.
- 4.21 Most applicants or licensees will have no convictions and that is clearly the ideal situation. In relation to other people, it is accepted that human beings do make mistakes and lapse in their conduct for a variety of reasons, and it is further accepted that many learn from experience and do not go on to commit further offences. Accordingly, in many cases an isolated conviction, especially if committed some time ago, may not prevent the grant or renewal of a licence.
- 4.22 It is also important to recognise that once a licence has been granted, there is a continuing requirement on the part of the licensee to maintain their safety and suitability. The licensing authority has powers to take action against the holder of all types of licence (drivers, vehicles and operators) and it must be understood that any convictions or other actions on the part of the licensee which would have prevented them being granted a licence on initial application will lead to that licence being revoked.
- 4.23 Any dishonesty by any applicant or other person on the applicant's behalf which is discovered to have occurred in any part of any application process (e.g. failure to declare

## CONSULTATION: IoL Suitability Guidance Review

convictions, false names or addresses, falsified references) will result in a licence being refused, or if already granted, revoked and may result in prosecution.

- 4.24 Although the direct impact on the public varies depending upon the type of licence applied for or held, to maintain public confidence in the integrity of the taxi and private hire licensing regimes, it is suggested that the same standards are applied to all licences, except motoring convictions in relation to a private hire operator.
- 4.25 This Guidance suggests minimum periods of time that should elapse between the date of conviction or completion of the sentence (whichever is later) and the grant of a licence. Those periods are for single convictions. Where a person has more than one conviction, and can be seen as a persistent offender, this will raise serious questions about their safety and suitability. Convictions do become less important over time (hence the time periods) but multiple convictions or continued offending over any period of time will always be of significant concern to a licensing authority. The licensing authority is looking for safe and suitable individuals, and once a pattern or trend of repeated offending is apparent, a licence will not be granted or renewed.
- 4.26 Where an applicant/licensee is convicted of an offence, or has evidence of unsuitable behaviour, which is not detailed in this guidance, the licensing authority will take that conviction and/or behaviour into account and use these guidelines as an indication of the approach that should be taken.
- 4.27 These guidelines do not replace the duty of the licensing authority to refuse to grant a licence where they are not satisfied that the applicant or licensee is a fit and proper person. Where a situation is not covered by these guidelines, the authority must consider the matter from first principles and determine the fitness and propriety of the individual. It must be remembered that these are guidelines. It is for each authority to determine and adopt its own previous convictions policy, and then determine applications in the light of that policy.
- 4.28 It must always be borne in mind that these are Guidelines, not fixed periods, and if there are “truly exceptional circumstances”<sup>59</sup> the time periods can be reduced in individual cases. Such instances should only be for “truly exceptional circumstances” and not frequent occurrences. The decision makers must consider each case on its own merits, taking into account all factors, including the need to protect the public, the circumstances and effect of the offence, and any mitigation that has been offered. However, the conviction itself cannot be reconsidered<sup>60</sup>.

<sup>59</sup> DfT Statutory Standards Guidance para 5.15

<sup>60</sup> *Nottingham City Council v Farooq (Mohammed)* Times, October 28, 1998 QBD

## Drivers

- 4.29 As the criteria for determining whether an individual should be granted or retain a taxi driver's licence are identical to the criteria for a private hire driver's licence, the two are considered together.
- 4.30 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.
- 4.31 As stated above, where an applicant persistently offends, which shows a pattern or tendency irrespective of time since the convictions, serious consideration will need to be given as to whether they are a safe and suitable person.
- 4.32 In relation to single convictions, the time periods detailed in the following paragraphs should elapse following completion of the sentence (or the date of conviction if a fine was imposed) before a licence will be granted. For motoring offences see the paragraphs headed 'Motoring Offences' below.

### Crimes resulting in death

- 4.33 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 and criminal harassment

- 4.34 Where an applicant or licensee has been convicted of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment or criminal harassment of another individual irrespective of whether the victim or victims were adults or children, they will not be licensed. This includes slavery, child sexual exploitation, grooming, psychological, emotional or financial abuse, stalking without violence, but this is not an exhaustive list.

### Offences involving violence

- 4.35 Violence includes situations where the victim is put in fear, alarm or distress without any physical contact. It is accepted that the concept of "violence" is wide, but any such behaviour will be of concern. This Guidance does not differentiate between different levels of violence. It will be for the licensing authority to determine whether there is any justification for departing from this time period, dependant of the facts of a particular case.

## CONSULTATION: IoL Suitability Guidance Review

- 4.36 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. Where the offence of violence was committed against a child or vulnerable adult a licence will never be granted.

## Public Order Offences

- 4.37 Where an applicant has a conviction for a public order offence or similar that is not in itself an act of violence, a licence will not be granted for a period of 5 years

## Possession of a weapon

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

## Sex and indecency offences

- 4.39 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. This includes any sexual harassment
- 4.40 In addition to the above, the licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any 'barred' list.

## Dishonesty

- 4.41 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.

## Alcohol Misuse or Dependency

- 4.42 Where an applicant has any conviction for, or related to drunkenness not in a motor vehicle, a licence will not be granted until at least 5 years have elapsed since the completion of the sentence imposed. If the applicant has a number of convictions for drunkenness and or there are indications of a medical problem associated with possible misuse or dependence, the applicant will also be subject to additional medical testing/assessment before the application is considered. If the applicant was found to be dependent on alcohol, a licence will not be granted unless at least 5 years have elapsed since the dependency ceased.

## Drugs Misuse or Dependency

- 4.43 Where an applicant has any conviction for, or related to, the production, import, trade in or supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

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

#### Discrimination

- 4.45 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 Offences

- 4.46 Taxi and private hire drivers are professional drivers charged with the responsibility of carrying the public. Any motoring conviction can demonstrate a lack of professionalism and will be considered seriously. A single occurrence of a traffic offence may not prohibit the grant of a licence or result in action against an existing licence. Subsequent convictions suggest the fact that the licensee may not take their professional responsibilities seriously and may therefore not be a safe and suitable person to be granted or retain a licence.
- 4.47 Where an applicant has a conviction for drink driving or driving under the influence of drugs or failing to provide a specimen in relation to a driving matter, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence or driving ban imposed. With drug offences, any applicant may also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.
- 4.48 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 disqualification imposed, whichever is the later.
- 4.49 Penalty points applied to a DVLA driving licence remain active for either 3 or 10 years, which may be from the date of the offence or the date of conviction depending upon the offence as detailed in "Penalty points (endorsements)"<sup>61</sup>. They may be removed from the licence after 4 or 11 years. That action does not remove the offence that led to the points being imposed. Penalty points (and the underlying offence) will be relevant and taken into consideration for 4 or 11 years from the date of the conviction, or the date of the offence depending on the type of offence (see "Penalty points (endorsements)"<sup>62</sup>).
- 4.50 By attaining 7 or more penalty points on their DVLA licence a driver is demonstrating they may not be fit and proper and the authority should assess their suitability. It is suggested part of the assessment is to undertake a driver awareness course and/or pass a driver assessment, with no more than 8 minor infringements, within 2 months of notice from the

---

<sup>61</sup>Available at: <https://www.gov.uk/penalty-points-endorsements/how-long-endorsements-stay-on-your-driving-licence>

<sup>62</sup>Available at: <https://www.gov.uk/penalty-points-endorsements/how-long-endorsements-stay-on-your-driving-licence>

authority they are considering the suitability of the licence holder. Failure to do so strongly suggests the driver is not fit and proper and not be licensed until a period of 12 months has passed with no further convictions.

- 4.51 Any offence which resulted in injury to any person or damage to any property (including vehicles), or any insurance offence then a licence will not be granted until at least 7 years have elapsed since the completion of any sentence.
- 4.52 Any driver who has accumulated 12 or more points on their DVLA licence and has not been disqualified under the totting up procedure by a court as a result of making exceptional hardship arguments shall not be able to advance such arguments before the licensing authority as they are not a relevant consideration in determining what action the authority should take. Any such driver will not be licensed for a period of 5 years from the date of the accumulation of 12 or more points.
- 4.53 Any driver who has been disqualified as a result of “totting-up”, which erases the points when the licence is restored, will not be licensed for a period of 5 years from the date of the disqualification.
- 4.54 Drivers who commit parking, obstruction and other such motoring offences that do not attract penalty points are not displaying a professional approach to their work. Persistent offenders should be reported to their licensing authority who may consider a period of suspension depending on the severity and frequency of the incidents reported.

#### Behaviours

- 4.55 Driver behaviours that fall short of criminal behaviour but are indicators of more sinister behaviour need to be addressed to maintain confidence in the taxi trades and to stop unwanted behaviours before they evolve into criminal acts.
- 4.56 Behaviours such as
- Asking a passenger for their contact or social media details
  - Asking personal or intimate questions
  - Hugging passengers or invade their personal space

This is more important if the passenger is a lone vulnerable individual.

- 4.57 Except in the most serious of cases, drivers should be given a warning in the first instance, if appropriate sent on refresher safeguarding training and explained how the behaviour maybe perceived by a vulnerable passenger.
- 4.58 If the behaviour, on the balance of probability, is repeated and considered to be predatory in nature then any applicant should not be licensed for a period of at least 10 years.

- 4.59 Where an applicant or licence holder has a conviction for an offence contrary to any legislation relating to taxi or private hire activity a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

## Private Hire Operators

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

## Vehicle proprietors

- 4.64 Vehicle proprietors (both taxi and private hire) have two principal responsibilities.
- 4.65 Firstly, they must ensure that the vehicle is maintained to an acceptable standard at all times.
- 4.66 Secondly, they must ensure that the vehicle is not used for illegal or illicit purposes.
- 4.67 As stated above, where an applicant has more than one conviction, serious consideration will need to be given as to whether they are a safe and suitable person to be granted or retain a vehicle licence.



CONSULTATION: IoL Suitability Guidance Review

---

- 4.68 As public trust and confidence in the overall safety and integrity of the private hire system is vital, the same standards will be applied to proprietors as those applied to drivers, which are outlined above.

## Appendix - Guidance on Recording Decisions, Reasons and NR3S Criteria

It is important all decisions including reasons are recorded and supplied to the licence holder or applicant. The following template may assist

Directorate:	The Directorate or department that oversees licensing matters in your authority.
Decision Maker	This will be either the committee/ sub-committee or officer under delegated powers
Subject	Name of licence holder
Delegated Powers Reference	If decision under delegated authority quote relevant section of the scheme here.
Decision	State in simple terms the decision and whether immediate effect. e.g. Revoked with immediate effect
Detail	Provide the facts in this section, not your views or thoughts. List the evidence you considered
Reason	<p>Now explain your findings here, where there are conflicting accounts explain here the account you prefer and the reasons why. Refer to your policy and how you have applied it. Cover all of the options open to you and why others were discounted and why the option was chosen. Demonstrate consideration of the pieces of legislation listed in the 'Other' section below</p> <p>Include consideration whether the action is to have immediate effect and explain the reasons for this.</p>
NR3S	<p>The Taxis and Private Hire Vehicles (Safeguarding and Road Safety) Act 2022 imposes a duty on licensing authorities to record details, to the NR3S Register, of any refusal, revocation and/or suspension that meet the following criteria (tick all that apply):-</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> has committed a sexual offence (whether or not the person was charged with, prosecuted for or convicted of the offence);</li> <li><input type="checkbox"/> has harassed another person;</li> <li><input type="checkbox"/> has caused physical or psychological harm to another person;</li> </ul>

## CONSULTATION: IoL Suitability Guidance Review

	<p><input type="checkbox"/> has committed an offence that involves a risk of causing physical or psychological harm to another person (whether or not the person was charged with, prosecuted for or convicted of the offence);</p> <p><input type="checkbox"/> has committed an offence under section 165, 168 or 170 of the Equality Act 2010 (whether or not the person was charged with, prosecuted for or convicted of the offence);</p> <p><input type="checkbox"/> has done anything that, for the purposes of the Equality Act 2010, constitutes unlawful discrimination or victimisation against another person;</p> <p><input type="checkbox"/> has threatened, abused or insulted another person;</p> <p><input type="checkbox"/> poses a risk to road safety when driving;</p> <p><input type="checkbox"/> may be unsuitable to hold a driver's licence for other reasons relating to—</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> the safeguarding of passengers, or</li> <li><input type="checkbox"/> road safety.</li> </ul> <p>The Act also imposes a duty to search NR35 Register before making a decision on a person's application for, or for the renewal of, a driver's licence. Further information can be found at <a href="http://www.nafn.gov.uk">www.nafn.gov.uk</a></p>
Other	<p>I have fully considered the relevant legislation including The Equality Act, Crime and Disorder Act, Human Rights Act, the Local Government (Miscellaneous Provisions) Act 1976 (this is not an exhaustive list).</p> <p>I am duly authorised to make this decision.</p>

Declared Officer / Member Interests				
Details of consultation undertaken if appropriate		Yes	No	Date
	Executive Member			
	Director			
	Chair of Lic Committee			
Contact Person		Contact No		
Authorised Signatory		Date		



Institute of Licensing  
Ridgeway  
Upper Milton  
Wells  
Somerset  
BA5 3AH

[www.instituteoflicensing.org](http://www.instituteoflicensing.org)  
01749 987 333  
[info@instituteoflicensing.org](mailto:info@instituteoflicensing.org)

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