



## AGENDA

### GENERAL LICENSING COMMITTEE MEETING

Date: Thursday, 21 January 2021

Time: 7.00pm

Venue: Virtual Meeting Via Skype\* - the public proceedings of the meeting will be broadcast live and recorded for playback on the Swale Borough Council website.

Link: [Click here for webcast channel](#)

Membership:

Councillors Cameron Beart, Derek Carnell (Chairman), Roger Clark, Richard Darby, Mark Ellen, Simon Fowle, Lee McCall, Paul Stephen, Eddie Thomas and Tony Winckless (Vice-Chairman).

Quorum = 4

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Pages

#### Information for the Public

\*Members of the press and public can listen to this meeting live. Details of how to join the meeting will be added to the website after 4pm on Wednesday 20 January 2021.

#### Privacy Statement

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1. Apologies for Absence and Confirmation of Substitutes

2. Minutes

To approve the Minutes of the [Meeting](#) held on 20 February 2020 (Minute Nos. 536 – 542) and the [Extraordinary Meeting](#) held on 3 August 2020 (Minute Nos. 32 – 35) as correct records, and to accept the minutes of the Licensing Sub-Committee meetings held on:

[18 February 2020 10am](#) Minute Nos. 526 - 530

[18 February 2020 11.30am](#) Minute Nos. 531 - 535

[24 August 2020](#) Minute Nos. 47 - 50

3. Declarations of Interest

Councillors should not act or take decisions in order to gain financial or other material benefits for themselves or their spouse, civil partner or person with whom they are living with as a spouse or civil partner. They must declare and resolve any interests and relationships.

The Chairman will ask Members if they have any interests to declare in respect of items on this agenda, under the following headings:

(a) Disclosable Pecuniary Interests (DPI) under the Localism Act 2011. The nature as well as the existence of any such interest must be declared. After declaring a DPI, the Member must leave the meeting and not take part in the discussion or vote. This applies even if there is provision for public speaking.

(b) Disclosable Non Pecuniary (DNPI) under the Code of Conduct adopted by the Council in May 2012. The nature as well as the existence of any such interest must be declared. After declaring a DNPI interest, the Member may stay, speak and vote on the matter.

(c) Where it is possible that a fair-minded and informed observer, having considered the facts would conclude that there was a real possibility that the Member might be predetermined or biased the Member should declare their predetermination or bias and then leave the meeting while that item is considered.

**Advice to Members:** If any Councillor has any doubt about the existence or nature of any DPI or DNPI which he/she may have in any item on this agenda, he/she should seek advice from the Monitoring Officer, the Head of Legal or from other Solicitors in Legal Services as early as possible, and in advance of the Meeting.

4. Public Session

The Council operates a scheme of public speaking at meetings of the General Licensing Committee. Requests to speak at the meeting must be registered with Democratic Services by 4.30pm on Friday 15 January 2021 and must be related to an item on the agenda. Each speaker has a maximum of three minutes to speak.

5. Restricted Private Hire Drivers' Licence

5 - 18

6. Taxi Tariff

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| 7. | National Taxi Standards | 27 - 92  |
| 8. | Street Trading Policy   | 93 - 144 |

**Issued on Monday, 11 January 2021**

The reports included in Part I of this agenda can be made available in **alternative formats**. For further information about this service, or to arrange for special facilities to be provided at the meeting, **please contact DEMOCRATIC SERVICES on 01795 417330**. To find out more about the work of this Committee please visit [www.swale.gov.uk](http://www.swale.gov.uk)

**Chief Executive, Swale Borough Council,  
Swale House, East Street, Sittingbourne, Kent, ME10 3HT**

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<b>General Licensing Committee Meeting</b>	
<b>Meeting Date</b>	21 <sup>st</sup> January 2021
<b>Report Title</b>	Restricted Private Hire Drivers Badge
<b>Cabinet Member</b>	Cllr Richard Palmer, Cabinet Member for Communities
<b>SMT Lead</b>	Nick Vickers, Chief Financial Officer
<b>Head of Service</b>	Della Fackrell, Resilience & Licensing Manager
<b>Lead Officer</b>	Christina Hills, Licensing Officer
<b>Key Decision</b>	No
<b>Classification</b>	<b>Open</b>
<b>Recommendations</b>	<ol style="list-style-type: none"> <li>1. Members to consider introducing a new category of Private Hire Drivers' licence being a restricted licence for school run contracts only, without the need to undertake the elements of the current Street Knowledge Test relating to routes and locations</li> <li>2. Members to consider removing the requirement of testing knowledge of routes and locations for all applicants sitting the current Street Knowledge Test to obtain a Private Hire Drivers' licence</li> </ol>

## **1 Purpose of Report and Executive Summary**

- 1.1 This report requests Members to consider whether they wish to instruct officers to introduce a new category of Private Hire Drivers' licence being a restricted licence for school run contracts only. Applicants for this licence would not need to undertake the part of the current Street Knowledge test relating to questions on routes and locations in the borough.
- 1.2 Members are also asked to consider whether they would wish to remove this element of the Street Knowledge test for applicants applying to become a Private Hire Driver for normal private hire work

## **2 Background**

- 2.1 The overarching aim of the taxi and private hire licensing regime is to protect the public by ensuring that all drivers, vehicles and operators are licensed and regulated by local authorities in accordance with statutory provisions, primarily set out in the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 and, where they exist, local policy requirements.

- 2.2. The licensing framework is intended to ensure that the travelling public can be confident that all licensed drivers are 'fit and proper' persons to hold such a licence.
- 2.3 Policy requirements that are unduly stringent could restrict the availability of taxi and private hire services, and consequently be detrimental to public safety. It is therefore important to try and ensure that policy requirements are justified by the risks they aim to address and balanced against potential negative outcomes. A successful balance will help the taxi and private hire trade develop successfully whilst providing safety and assurance to the public.
- 2.4 Currently, as part of the assessment into whether an applicant is 'fit and proper' there is a requirement that they undertake a Street Knowledge Test (SKT) and pass to a standard as set out in Appendix G of the current Swale BC Hackney Carriage and Licensing Policy which is shown as **Appendix I**.
- 2.5 Members will note that applicants are tested on the following elements:
- Routes – The shortest journey between 2 points within a specific area i.e. Faversham, Sittingbourne or Isle of Sheppey
  - Routes – The shortest journey between 2 points throughout the whole of the borough of Swale
  - Name of street where a key landmark is situated
  - Hackney Carriage and Private Hire Law and the Highway Code including road signs
  - Swale Council Taxi Policy
  - Safeguarding of children and vulnerable adults
  - Basic numeracy

There are 2 pass marks. A higher one for the grant of a dual hackney carriage/private hire licence and a lower one for private hire only.

- 2.6 Hackney Carriage drivers are licensed for immediate hire and reward and can ply for hire from a taxi rank or be hailed in the street whilst Private Hire drivers can only carry passengers on a journey that has been pre-booked through a taxi office.
- 2.7 In Swale there are 350 licensed hackney carriage/private hire drivers and 1 private hire driver.
- 2.8 The licensing team received an email in July 2020 from a Swale licensed Private Hire Operator from Sittingbourne Cabs requesting that consideration be given to the relaxation of some of the requirements of the SKT in relation to the elements relating to knowledge of routes and landmarks within the borough in regards to the licensing of Private Hire Drivers. This email is shown as **Appendix II**.

2.9 The reason for the request is because the operator has contracts with KCC School Transport to provide 'school runs' of vulnerable children to and from their place of education. The operator is finding it difficult to provide sufficient drivers in order to fulfil his current contracts or to grow his business by applying for more contracts, which he states, is due to the SKT being too stringent so that not all applicants who sit the test actually pass it.

2.10 The table below shows the number of Street Knowledge Tests undertaken in 2018 and 2019 and the number that achieved a pass mark. Whilst there have been some SKT's undertaken in 2020 they have been severely curtailed due to the current Covid-19 situation.

<b>2018</b>	Sat	Passed	<b>2019</b>	Sat	Passed
January	2	1	January	4	1
February	5	2	Feb	0	0
March	1	1	Mar	2	0
April	2	2	April	3	1
May	2	0	May	6	1
June	3	2	June	6	2
July	2	2	July	7	1
August	6	0	August	8	3
September	3	0	September	8	2
October	7	2	October	5	0
November	6	3	November	6	4
December	4	0	December	6	1

2.11 It is the operator's contention that as these contracts involve only one route to and from a school; a licensed driver would not need to have in-depth knowledge of the roads of the borough or indeed any landmarks.

2.12 He therefore requests that consideration is given to there being a new type of Restricted Private Hire Drivers' licence to be issued to applicants who pass all elements of the SKT but with the exception that questions of routes and landmarks are not included.

2.13 The operator also requests that consideration is given to whether an applicant for an ordinary Private Hire Drivers licence also needs to complete this part of the SKT.

2.14 The operator states in his email that he is aware that other authorities licence Private Hire drivers without the need for a Street Knowledge test to be undertaken and that some allow up to 2 years before then requiring the driver to undertake a Street Knowledge test.

2.15 Attached as **Appendix III** is the current position regarding SKT's in Kent which shows that only the shared service of Gravesham & Medway councils issue

Restricted Private Hire Licences for school run contracts and, in the case of Medway for executive hire work as well. Those drivers licensed in such a manner must also licence a vehicle that is to be used solely for restricted private hire work of the manner described and could not use an ordinary licensed private hire vehicle. A Google search has revealed very few other authorities within the country that permit a Private Hire driver to be licensed without a Street Knowledge test and their caveats are also detailed in the Appendix.

### **3 Proposals**

- 3.1 Having taken all matters into consideration as described above, the licensing team can see the merit in having in a Restricted Private Hire Drivers' licence, for school run contracts only, particularly at the current time when the pandemic has had an adverse affect on the taxi trade and therefore requests that Members consider approving this new category of licence.
- 3.2 Licensing officers would however request that licences of this type be granted on a yearly basis and on production of evidence of a KCC school run contract. This would be to try to minimise the risk of an Operator using the holder of a Restricted Private Hire Drivers' licence to undertake normal private hire work which would negate their insurance. Licensing officers would need to examine Operators booking records on a regular basis to ensure there was no abuse of the system.
- 3.2 Licensing officers do however have reservations about relaxing the requirement for applicants for a normal private hire drivers' licence to undertake a SKT without questions on routes and locations. Whilst it is recognised that as these journeys are pre-booked and therefore the route can be planned or entered into a Sat-Nav there will be times when, due to for example traffic problems, an alternative route would need to be used and the passenger could be disadvantaged if a driver did not know of an alternative route.

### **4 Alternative Options**

- 4.1 Members could decide that the current knowledge test is necessary for licensing new applicants for a Swale drivers licence to ensure that an applicant is 'fit and proper'.

### **5 Consultation Proposed**

- 5.1 None at the present time. It is intended that this provision will be included within the revision of the entire Swale Hackney Carriage and Private Hire policy that will take place and be consulted upon later in 2021.
- 5.2 If Members are minded to approved the introduction of a Restricted Private Hire Drivers' Licence in the interim it can be on a trial basis until the new policy becomes effective.

## 6 Implications

Issue	Implications
Corporate Plan	The service is an important regulatory function undertaken to ensure the safety of the travelling public of the Borough and supports the achievement of corporate priorities, including “A council to be proud of”.
Financial, Resource and Property	The introduction of a new category of Private Hire Driver licence will not place any new financial resource implications on the Council
Legal and Statutory	Provisions contained within the Local Government (Miscellaneous Provisions) Act 1976 and subsequent amending legislation require a licensing authority to ensure the persons issued licences to drive hackney carriage and private hire vehicles are ‘fit and proper’ with suitable skills and abilities to be able to provide a passenger service to the community
Crime and Disorder	There are obvious links to community safety in ensuring an adequate supply of properly licensed taxis as a safe mode of transport for the public, particularly when other public transport is unavailable.
Environmental Sustainability	None identified
Health and Wellbeing	None identified
Risk Management and Health and Safety	There is the risk that Private Hire Operators could use a driver licensed for restricted school run work only to undertake a normal private hire journey thus negating their insurance. This can be mitigated by stringent enforcement by the licensing team
Equality and Diversity	The proposed change to the taxi licensing regime does not have the potential to cause negative impact or discriminate against different groups in the community
Privacy and Data Protection	Normal data protection and privacy rules will apply

## 7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Appendix G of the current Swale BC Hackney Carriage and Licensing Policy relating to Street Knowledge Tests
- Appendix II: Email dated 28 July 2020 from Sittingbourne Cabs

- Appendix III: Benchmarking of Street Knowledge Test requirements with other authorities

## **8 Background Papers**

None

**APPENDIX G****DRIVER KNOWLEDGE TESTS****1. Introduction**

- 1.1** In order to maintain the high standards, the Council expects of its licensed drivers operating within the Borough, all new applicants who are applying for a Swale Borough Council drivers licence are required to pass a Knowledge Test.
- 1.2** Before an individual applies to sit the Knowledge Tests they should be satisfied that they can fulfil all other Council requirements to become a licensed driver.
- 1.3** It is recommended that an individual should not obtain a Disclosure and Barring Service Enhanced Check or a medical until they pass the Knowledge Test. If an applicant completes an Enhanced DBS Check or medical before they have successfully passed the Knowledge Test, they may be required to provide an updated document before their licence is issued, the final decision will be with the Licensing Manager.
- 1.4** Each element of the test must achieve the required pass mark. . If applying for a Private Hire only licence then the applicant will have a reduced pass rate on Section A to C as outlined in the table below.

	<b>Knowledge Test for Dual Applicants – Minimum percentage for each section</b>	<b>Knowledge Test for Private Hire Only Applicants – Minimum percentage for each section</b>
<b>Section A: Shortest journey between two points within a specific area i.e. Faversham, Sittingbourne or Isle of Sheppey</b>	80%	60%
<b>Section B: Shortest journey between two points throughout the whole borough of Swale</b>	80%	60%
<b>Section C : Name of street key landmarks are situated on</b>	80%	60%
<b>Section D: Hackney Carriage and Private Hire Law and Highway Code</b>	80%	80%
<b>Section E: Swale Borough Council Local Policy</b>	80%	80%
<b>Section F: Safeguard of vulnerable adults and children</b>	100%	100%
<b>Section G: Basic arithmetic</b>	80%	80%

- 1.5** Any number of tests may be taken, however priority will be given to new applicants for available places. A waiting list may therefore be applicable.

- 1.6** All questions are held on a data base and selected at random; therefore, no test paper will ever be the same as any other and there are no specimen tests for view or study.
- 1.7** Any person found cheating will be disqualified from the test and another application will not be accepted for a period of two years.
- 1.8** Knowledge Tests will be held on the first Tuesday in each month and the applicant will only be eligible to sit the test following a completed application form and the relevant payment which must be submitted to the Licensing Department 6 working days in advance. If there is high demand for the Knowledge Test, additional tests may be arranged.
- 1.9** The outcome and decision made by the authorised officer regarding a Knowledge Test is final. Appeals can only be made in exceptional circumstances where the results will be considered by the Licensing Manager.
- 1.10** The applicant will not be permitted to use any additional resources when sitting the test.

## **2. The Knowledge Test**

### **2.1** The test will consist of six sections:

- a) Section A: Questions requiring the shortest route by distance between a pick-up point and destination in the Swale area. (Dual Licence only)
- b) Section B: Questions relating to the locations of prominent buildings, such as schools, churches, hotels, public houses, restaurants and places of interest (Dual Licence only).
- c) Section C: Multiple choice questions relating to applicants' knowledge and understating of the law in respect of hackney carriage and private hire licensing.
- d) Section D: Multiple choice questions relating to applicants' knowledge and of Swale Borough Council's Local Policy.
- e) Section E: Multiple choice questions relating to the Highway Code
- f) Section F: Multiple choice questions relating to applicants' knowledge and understating of safeguarding vulnerable adults and children. A short video or presentation will be made available before completing this section, to demonstrate to applicants what is expected of them.
- g) Section G: Multiple choice questions relating to basic arithmetic when handling customer's money.

**From:** sittingbournecabs@btinternet.com <sittingbournecabs@btinternet.com>

**Sent:** 28 July 2020 17:10

**To:** Taxis (SBC) <taxis@swale.gov.uk>

**Subject:** Sittingbourne Cabs School contracts / Private Hire

Hi, All

I would like to bring to your attention the need for our business to recruit more drivers specifically in private hire to specialize in school contracts, these part-time drivers would only do set routes for schools only, we have had a lot of interest from people to do just this, transporting students who have various special needs to their schools is the core of our business we adopt a driver and escort allocated route on a permanent basis and meet with students and parents/carers prior to the start of the term so they can get to know them and work out how best to resolve any potential issues. This all helps with a smooth transition and we get a lot of good feedback from parents providing a permanent driver and escort.

Unfortunately the process currently to obtain a private hire badge through the knowledge test is proving to be very difficult, especially the 3 sections on routes part of the test, a vast majority of people who had shown interest in the part-time schools only have not pursued to take the test once they have been made aware of the process involved learning routes, and those who have tried the knowledge test have failed in the routes section and do not bother to re-sit, this has been a problem for us over the last year or so, would a routes section on the knowledge test be necessary for doing school runs only in fact would it be needed for any Private hire licence when its all pre-booked, there are councils that already supply Private Hire badges without doing a knowledge test & they have 1 or 2 years to learn before completing the knowledge test, when your competing with companies licenced in another borough that hands out private hire badges and can supply as many drivers as they can and working in Swale they have an unfair advantage against us, please contact me to discuss at any time.

*I would like to propose to the licencing committee to retract sections A, B & C from the knowledge test for Private Hire only.*

I look forward to your imminent reply

Kindest Regards  
Sittingbourne Cabs

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<b>REQUIREMENTS FOR LICENSING PRIVATE HIRE DRIVERS IN KENT</b>		
<b>Authority</b>	<b>Restricted Private Hire licence issued</b>	<b>Street Knowledge Test requirements for licensing a Private Hire Driver</b>
Ashford	No	Verbal test lasting 45 mins (hackney carriage is 2 hours) Includes knowledge test of area
Canterbury	No	Same SKT for hackney carriage and private hire drivers Questions on: Routes Landmarks Policy Highway Code Road Signs Safeguarding
Dartford	No	50 minute test Questions on: Numeracy Routes Locations English proficiency Safeguarding Disability awareness Driving test also required
Dover	No	Same test for hackney carriage and private hire drivers. Questions on: Routes Locations English proficiency Safeguarding Driving test
Folkestone & Hythe	No	Different test for hackney carriage and private hire drivers. Private Hire SKT - Questions on: Places Law and Conditions Highway Code
Gravesham	Yes Can only be used for KCC school run contracts and must use a private hire vehicle that is issued with a	25 minute test for Restricted Private Hire Driver doing school runs only - Questions on: Highway Code Law

	<p>Restricted Private Hire Plate to be used for school contracts only and not normal private hire work.</p> <p>Nearly all drivers in Gravesham are owner/operators</p>	<p>Policy</p> <p>Safeguarding</p> <p>Driving test</p>
Maidstone	No	<p>Same test for hackney carriage and private hire drivers. Lower pass mark for private hire.</p> <p>Questions on:</p> <p>Routes</p> <p>Locations</p> <p>Policy</p> <p>Highway Code</p> <p>Safeguarding</p> <p>Customer Care</p> <p>Driving Test</p>
Medway	<p>Yes</p> <p>Can only be used for KCC school run contracts and executive car hire work only</p>	<p>25 minute test for Restricted Private Hire Driver and Executive Car Hire work -</p> <p>Questions on:</p> <p>Highway Code</p> <p>Law</p> <p>Policy</p> <p>Safeguarding</p> <p>Driving test</p>
Sevenoaks	No	<p>Same test for hackney carriage and private hire applicants -</p> <p>Questions on:</p> <p>Routes</p> <p>Locations</p> <p>Policy</p> <p>Highway Code</p> <p>Road signs</p> <p>Generic policy</p> <p>Numeracy</p> <p>Safeguarding</p> <p>Driving Test</p>
Swale	No	<p>Same test for hackney carriage and private hire applicants. Lower pass mark for private hire drivers</p> <p>Questions on:</p> <p>Routes</p> <p>Locations</p> <p>Policy</p> <p>Highway Code</p> <p>Road signs</p> <p>Generic policy</p>

		Numeracy Safeguarding
Thanet	No	Same test for hackney carriage and private hire applicants Questions on: Routes Locations Highway Code
Tonbridge & Malling	No	Same test for hackney carriage and private hire drivers. Lower pass mark for private hire. Questions on: Routes Places of Interest Local amenities, sports and leisure facilities Locating towns and villages on a map Maths and English Current policy and legislation
Tunbridge Wells	No	Same test for hackney carriage and private hire drivers. Lower pass mark for private hire. Questions on: Routes Locations Policy Highway Code Numeracy Customer Care Safeguarding Driving Test required

<b>REQUIREMENTS FOR LICENSING RESTRICTED PRIVATE HIRE DRIVERS ELSEWHERE IN THE COUNTRY</b>		
Rochford	Yes. Can only be used for school run contract. Private Hire vehicle to be used which is not fitted with a taximeter	Knowledge test on Council's licence conditions and Highway Code
Southend	Yes. For airport runs, theatre nights and general out of town bookings at an agreed fare in advance of the journey and at the time of booking	Does not require a Street Knowledge Test

Bracknell Forest	Yes. For school run contracts only. Called a Home to School transport driver licence.	Knowledge test on: Legislation Council conditions and byelaws Highway Code
East Hants Council	Yes. For school run contracts only	Knowledge test on: Routes Literacy and numeracy Highways Code Role of a driver

<b>General Licensing Committee Meeting</b>	
<b>Meeting Date</b>	21st January 2021
<b>Report Title</b>	Review of Taxi Tariff
<b>Cabinet Member</b>	Cllr Richard Palmer, Cabinet Member for Communities
<b>SMT Lead</b>	Nick Vickers, Chief Financial Officer
<b>Head of Service</b>	Della Fackrell, Resilience & Licensing Manager
<b>Lead Officer</b>	Christina Hills, Licensing Officer
<b>Key Decision</b>	No
<b>Classification</b>	<b>Open</b>
<b>Recommendations</b>	<ol style="list-style-type: none"> <li>1. That Members determine whether they wish officers to proceed with the process to amend the current maximum scale of fares for licensed hackney carriages operating within the borough (taxi tariff)</li> <li>2. If Members determine that the taxi tariff is to be amended that officers return to a future meeting of the General Licensing Committee so that Members can approve the proposals prior to formal consultation</li> </ol>

## 1 Purpose of Report and Executive Summary

- 1.1 This reports requests Members to consider whether they wish to instruct officers to proceed with the process of proposing amendments to the taxi tariff after taking into account responses received from an initial consultation with the taxi trade to gauge whether there was any support for a change to taxi fares.

## 2 Background

- 2.1 It is at the discretion of the Council as licensing authority to set a meter tariff for licensed hackney carriages if it chooses to do so.
- 2.2 Councils are not obliged to set a maximum fare for their area, they could decide instead to rely on market forces to establish the going rate and at the same time promote competition.
- 2.3 In the past Swale BC has chosen to set a tariff which represents the maximum fee that can be charged. The current tariff became effective on 11<sup>th</sup> August 2018 and is attached as **Appendix I**.

- 2.4 At a meeting of the General Licensing Committee on 12<sup>th</sup> July 2018 when the latest taxi tariff was approved, there was a commitment that Members would review the timescale for future taxi tariff reviews every two years.
- 2.5 The setting of fares applies only to hackney carriages and not to private hire drivers who can charge their own rates as statute allows.
- 2.6 Any driver has the option of charging less than any tariff that is set, as the tariff is the maximum that can be charged but is not obligatory.
- 2.7 Private Hire and Taxi magazine, a monthly magazine for the trade and licensing authorities, regularly publishes a 'league table' of tariffs set by licensing authorities (including Transport for London in relation to "Black Cabs") from the highest to lowest based on the cost of a 2 mile journey. To assist Members the latest figures published on October 2020 relating to all Kent authorities is attached as **Appendix II**.

### **3 Proposals**

- 3.1 Following a consultation with the taxi trade i.e. drivers and operators, there is a need to determine what changes, if any, should be made to the existing taxi tariff.
- 3.2 If Members decide that the current taxi tariff is to be amended, officers will set about the process of revising the fares taking into account the legal requirements in setting a taxi tariff and present their proposals to a future meeting of the General Licensing Committee.

### **4 Alternative Options**

- 4.1 Members could decide that the current taxi tariff is fair and reasonable and to leave it as it is.
- 4.2 Members could decide that the current taxi tariff should be amended.
- 4.3 Members could decide not to set a taxi tariff at all and let hackney carriage drivers set their own fares.

### **5 Consultation Undertaken or Proposed**

- 5.1 A consultation exercise of 3 weeks was undertaken with the taxi trade that ran between 13<sup>th</sup> October 2020 and 31<sup>st</sup> October 2020.
- 5.2 The consultation was conducted by providing the taxi trade with a link to a Survey Monkey. The question asked was:
  - Do you think that the taxi tariff should be increased at this time:

- Yes
  - No
- 5.3 The method of consultation was via a Taxi newsletter sent electronically through our database and for those individuals without an email address, by post. In total 350 drivers and operators were notified of this consultation.
- 5.4 A total of 33 responses were received via Survey Monkey, of these the responses were:
- Taxi tariff to be increased – 11  
Leave taxi tariff as it is – 22
- There was also 1 postal vote received that was in favour of an increase to the taxi tariff.
- 5.5 This means that 90% of the taxi trade did not respond.

## 6 Implications

Issue	Implications
Corporate Plan	The service is an important regulatory function undertaken to ensure the safety of the private hire and hackney carriage vehicles used in the Borough and supports the achievement of corporate priorities, including “A council to be proud of”
Financial, Resource and Property	Should Members decide that the taxi tariff should be amended there would be the need for public consultation on the proposals which would be met from within existing licensing budgets.  The cost of re-calibrating individual meters would be met by licensed drivers and operators.
Legal and Statutory	The authority for the Council to fix fares for hackney carriages is given under Section 65 of the Local Government (Miscellaneous Provisions) Act 1976. When a Council makes or varies a table of fares (Which may be by time and/or distance) it must publish in one local newspaper a notice setting out the table of fares, or variations to the table, specifying the period (not less than 14 days) within which objections to the table or variations can be made.  A copy of the proposed tariff must be available at the Council’s offices for the public to inspect, free of charge, at all reasonable hours.

	<p>If there are no objections the amended fares come in to effect as specified in the Notice.</p> <p>If there are objections the Council must set a further date, within two months after the first date specified, on which the table is to come into force with or without modification, as decided. Any such modification would be dealt with by the Cabinet Member for Safer Families and Communities and the Chair of the General Licensing Committee.</p>
Crime and Disorder	There are obvious links to community safety in ensuring an adequate supply of properly licensed taxis as a safe mode of transport for the public, particularly when other public transport is unavailable.
Environmental Sustainability	None identified
Health and Wellbeing	None identified
Risk Management and Health and Safety	An unreasonable increase in the level of fares could be a source of resentment amongst the travelling public. Equally an unreasonably low increase or no increase could be a source of resentment amongst the trade. The current Coronavirus pandemic could enhance these feelings
Equality and Diversity	None identified
Privacy and Data Protection	None identified

## 7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Current Swale taxi tariff
- Appendix II: Benchmarking of taxi tariffs within Kent

## 8 Background Papers

Local Government (Miscellaneous Provisions) Act 1976.



**HACKNEY CARRIAGE  
FARES TABLE**

Applicable to journeys within the Swale Borough Council area  
from 11<sup>th</sup> August 2018

<b>Fares for Distance</b>
---------------------------

**MILEAGE:**

(a) If the distance does not exceed 219 yards (200 metres) for the whole distance £3.00

(b) If the distance exceeds 219 yards (200 metres) – for the first 219 yards £3.00

For each subsequent 87 yards (80 metres) or uncompleted part thereof £0.10

**WAITING TIME:**

For each period of 1 minute or uncompleted part thereof £0.35

**EXTRA CHARGES:**

For hiring's begun between 11pm and 6am and for Bank Holidays (including Easter Sunday) and between 6pm and 11pm on 24<sup>th</sup> December (excluding 11pm 24<sup>th</sup> December to 6am 27<sup>th</sup> December and 6pm 31<sup>st</sup> December to 6am on 1<sup>st</sup> January).....+50% of above charges

The fares for distance will be DOUBLED between 11pm on 24<sup>th</sup> December and 6am on 27<sup>th</sup> December and between 6pm 31<sup>st</sup> December and 6am on 1<sup>st</sup> January.

A charge of up to £50 will be applied for the soiling of a vehicle should it be soiled to the extent that it has to be taken out of service to be cleaned.

For additional passengers in excess of 4, or for a specific request to hire a vehicle with more than 4 passenger seats (excluding wheelchair users accompanied by less than 4 other passengers) + 50%

When this Hackney Carriage is hired by distance it is an offence for the proprietor or driver to demand and take a fare greater than that shown on the taximeter. Any discount given to the customer must be discounted from the amount shown on the meter.

**FARES FOR TIME**

If the Hackney Carriage is hired by time the fare shall be agreed with the hirer at the commencement of the hiring

**COMPLAINTS**

If you have any complaints about this vehicle or driver please write to the Head of Service Delivery, Swale Borough Council, Swale House, East Street, Sittingbourne Kent ME10 3HT

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<b>Taxi Tariffs</b>			
<b>Council</b>	<b>Position in Country Wide League Table</b>	<b>Fare @ 2 miles</b>	<b>Last increase</b>
Tunbridge Wells	17	£7.20	2019
Dartford	18	£7.10	2018
Sevenoaks	22	£7.06	2019
Tonbridge & Malling	27	£7.00	2017
Gravesham	41	£6.80	2020
<b>Swale</b>	<b>46</b>	<b>£6.80</b>	<b>2018</b>
Medway	67	£6.60	2014
Ashford	78	£6.50	2019
Maidstone	80	£6.50	2017
Canterbury	84	£6.40	2019
Folkestone & Hythe	133	£6.20	2012
Dover	167	£6.00	2012
Thanet	294	£5.40	2015

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<b>General Licensing Committee Meeting</b>	
<b>Meeting Date</b>	21 January 2021
<b>Report Title</b>	DfT Statutory Taxi and Private Hire Vehicle Standards
<b>Cabinet Member</b>	Cllr Richard Palmer, Cabinet Member for Communities
<b>SMT Lead</b>	Nick Vickers, Chief Financial Officer
<b>Head of Service</b>	Della Fackrell, Resilience & Licensing Manager
<b>Lead Officer</b>	Christina Hills, Licensing Officer
<b>Key Decision</b>	No
<b>Classification</b>	<b>Open</b>
<b>Recommendations</b>	<ol style="list-style-type: none"> <li>1. That Members note the new statutory guidance which the Licensing Authority will have regard to until it is fully incorporated into the councils Hackney Carriage and Private Hire Licensing Policy.</li> <li>2. Members to consider the draft revisions to the Hackney Carriage and Private Hire Licensing Policy to be implemented before a more extensive revision to the policy later in 2021.</li> <li>3. Members to note the policy consultation process as outlined and provide any comments in respect of the same.</li> </ol>

## 1 Purpose of Report and Executive Summary

- 1.1 To inform Members of the new Department for Transport (DfT) Statutory Taxi and Private Hire Vehicle Standards ahead of full implementation within current Swale Hackney Carriage and Private Hire Licensing Policy 2018-2021.

## 2 Background

- 2.1 The Secretary of State for Transport issued new Statutory Taxi and Private Hire Vehicle Standards to licensing authorities in July 2020 which are aimed at safeguarding children and vulnerable adults. The Statutory Standards set out a range of robust measures to protect taxi and private hire vehicle passengers, particularly those most vulnerable. There is now an expectation that government and licensing authorities must work together to ensure that, above all else, the taxi and private hire vehicle services the public use are safe. The Statutory Standards are shown at **Appendix I**.
- 2.2 The DfT stated that it will monitor licensing authorities' responses to the Statutory Standards. The Department is aware of the challenges caused by the current

coronavirus pandemic and is mindful of this although the Secretary of State is asking that all licensing authorities provide an update to the Department of their consideration of the standards by 31 January 2021. Therefore, it expects these recommendations to be implemented unless there is a compelling local reason for not doing so.

- 2.3 Licensing authorities have a legal duty, under section 177 of the Police and Crime Act 2017, to have regard to the Statutory Standards. It has been declared that in the interests of transparency, all licensing authorities should publish their consideration of the measures contained in the Standards and their policies. The update will enable government bodies to engage with those authorities that do not adopt the Standards and seek from them a rationale for failing to act to protect passengers.
- 2.4 The Government will shortly consult on revised best practice guidance that will reflect the enormous changes that the industry has undergone in recent years and make clear recommendations on the measures licensing authorities should consider to enable the trade to react to the demands of passengers. If time frames permit this will be incorporated into Swale BC's taxi policy which will be subject to a thorough revision later in 2021.

### **3 Proposals**

- 3.1 Officers have had the opportunity to complete an assessment of the Statutory Standards and a summary of the full document is shown as **Appendix II**.
- 3.2 The assessment outlines the key points included within the Statutory Standards, the council's current position regarding these points and identifies the changes that will need to be made to the current taxi policy.
- 3.3 The proposed changes to the current policy are shown as **Appendix III** and it is these changes that will require consultation. It is proposed that Swale BC incorporates them into the current taxi policy. This course of action will meet the requirements for an update to be provided to the DfT by 31<sup>st</sup> January 2021.

### **4 Alternative Options**

- 4.1 An alternative option would be to continue to rely on the current Hackney Carriage and Private Hire Licensing Policy; however this does not incorporate the Statutory Taxi and Private Hire Vehicle Standards which the DfT expect all local authorities to have regard of.

### **5 Consultation Undertaken or Proposed**

- 5.1 A consultation of at least four weeks is proposed. Methods of consultation will be via the council's website, by direct email and mail shots and in the case of Swale licensed drivers and operators by Survey Monkey.

5.2 It is proposed to consult with the following:

- All current hackney carriage/private hire driver licence holders
- All current private hire operator licence holders
- Kent Police
- Swale Community Safety Unit
- KCC Schools Contracts Department
- Borough Councillors
- Parish Councillors
- Members of the public

5.3 All incoming responses will be collated and entered onto a grid for consideration.

5.4 The Resilience and Licensing Manager in consultation with licensing officers will conduct an evaluation of each response and give a recommendation as to whether or not to amend the policy statement and, if so, to what extent.

5.5 The grid and recommendations will be put before a future meeting of the General Licensing Committee for consideration and inclusion of any amendments within the existing Swale BC Hackney Carriage and Private Hire Licensing Policy 2018 – 2021.

## 6 Implications

Issue	Implications
Corporate Plan	The service is an important regulatory function undertaken to ensure safety of the private hire and hackney carriage vehicles used in the Borough and supports the achievement of corporate priorities, including “A council to be proud of”.
Financial, Resource and Property	The cost of consultation and publishing an updated policy will be met from within existing budgets.  The Hackney Carriage and Private Hire Licensing Policy is not envisaged to place any new financial pressures on the Council although there are implications for extra work within the licensing team.
Legal and Statutory	There is no legal requirement for a policy, however it is best practice. This is different to other licensing regimes where a policy is a legal requirement.  Rights of appeal are granted to all applicants and licensees who are aggrieved by any licensing decisions.  Under the Human Rights Act 1998 Members must consider the hackney carriage and private hire drivers’ ‘enjoyment of possession’ under Article 1 of the First Protocol – Protection of

	<p>Property and in determining a policy regarding the licensing of these individuals must balance this right with the need to protect the public.</p> <p>The authority must report to the Department of Transport by 31 January 2021 on its actions to consider and implement the statutory guidance.</p>
Crime and Disorder	There are obvious links to community safety in ensuring an adequate supply of properly licensed taxis as a safe mode of transport for the public, particularly when other public transport is unavailable and ensuring the safety of drivers and the trade.
Environmental Sustainability	No implications have been identified
Health and Wellbeing	No implications have been identified
Risk Management and Health and Safety	Whilst each individual application will be judged on its own merits, a documented policy ensures a transparent and consistent approach to licensing that reduces the opportunity for challenge through the Courts. Challengers to a particular decision are more likely to fail if the Council can demonstrate that it has adhered to its published policy and there was no reason to depart from it. Any departure from the policy will be based on material evidence and will be documented giving clear and compelling reasons for such departure.
Equality and Diversity	The hackney carriage and private hire licensing policy affects all persons equally
Privacy and Data Protection	No implications have been identified

## 7 Appendices

- 7.1 The following documents are to be published with this report and form part of the report:
- Appendix I: Department for Transport (DfT) Statutory Taxi and Private Hire Vehicle Standards
  - Appendix II: Summary of assessment of the Statutory Standards
  - Appendix III: Proposed changes to the current Swale BC Hackney Carriage and Private Hire Licensing Policy 2018 - 2021

## 8 Background Papers

None



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Department  
for Transport

# Statutory Taxi & Private Hire Vehicle Standards

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# 1. Introduction

- 1.1 There is evidence to support the view that taxis and private hire vehicles are a high-risk environment. In terms of risks to passengers, this can be seen in abuse and exploitation of children and vulnerable adults facilitated and in some cases perpetrated by the trade and the number of sexual crimes reported which involve taxi and private hire vehicle drivers. Links between the trade and child sexual abuse and exploitation have been established in many areas and other investigations continue. Data on reported sexual assaults by taxi and private hire vehicle drivers evidence the risk to passengers; data from [Greater Manchester](#) and [Merseyside](#) suggest that, if similar offence patterns are applied across England, 623 sexual assaults per year are reported. These figures do not however account for the under reporting of crime which is estimated to be as high as 83 percent in the [Crime Survey for England and Wales](#).
- 1.2 The Policing and Crime Act 2017 enables the Secretary of State for Transport to issue statutory guidance on exercising taxi and private hire vehicle licensing functions to protect children and vulnerable individuals who are over 18 from harm when using these services. For the purposes of this document, a child is defined as anyone who has not yet reached their 18th birthday; and the term “vulnerable individual” has the same meaning as the definition of a ‘vulnerable adult’ for the purpose of section 42 of the [Care Act 2014](#), which applies where a local authority has reasonable cause to suspect that an adult in its area (whether or not ordinarily resident there):
- (a) has needs for care and support (whether or not the authority is meeting any of those needs),
  - (b) is experiencing, or is at risk of, abuse or neglect, and
  - (c) as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it.
- 1.3 Whilst the focus of the Statutory Taxi and Private Hire Vehicle Standards is on protecting children and vulnerable adults, all passengers will benefit from the recommendations contained in it. There is consensus that common core minimum standards are required to regulate better the taxi and private hire vehicle sector, and the recommendations in this document are the result of detailed discussion with the trade, regulators and safety campaign groups. **The Department therefore expects these recommendations to be implemented unless there is a compelling local reason not to.**
- 1.4 It should be noted that as policing and criminal justice is not a devolved matter, the Statutory Taxi and Private Hire Vehicle Standards issued under the Policing and Crime Act 2017 will continue to have effect in Wales although responsibility for taxi and private hire vehicle policy was devolved to the Welsh Assembly in April 2018. Should the Welsh Government introduce legislation to regulate on these issues, the standards in this document would, cease to apply.

- 1.5 All local authorities and district councils that provide children's and other types of services, including licensing authorities, have a statutory duty to make arrangements to ensure that their functions and any services that they contract out to others are discharged having regard to the need to safeguard and promote the welfare of children. This means that licensing authorities should have in place arrangements that reflect the importance of safeguarding and promoting the welfare of children. This includes clear whistleblowing procedures, safe recruitment practices and clear policies for dealing with allegations against people who work with children, as set out in the [Working Together to Safeguard Children](#) statutory guidance.
- 1.6 The Statutory Taxi and Private Hire Vehicle Standards reflect the significant changes in the industry and lessons learned from experiences in local areas since the 2010 version of the Department's Best Practice Guidance. This includes extensive advice on checking the suitability of individuals and operators to be licensed; safeguarding children and vulnerable adults; the Immigration Act 2016 and Common Law Police Disclosure (which replaced the Notifiable Occupations Scheme).
- 1.7 The standards in this document replace relevant sections of the Best Practice Guidance issued by the Department in 2010, where there is a conflict between the Statutory Taxi and Private Hire Vehicle Standards and the Best Practice Guidance the Department issue on taxi and private hire vehicle licensing, the standards in this document take precedence.

## Terminology

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

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

## 2. Consideration of the Statutory Taxi and Private Hire Vehicle Standards

- 2.1 The past failings of licensing regimes must never be repeated. The Department has carefully considered the measures contained in the Statutory Taxi and Private Hire Vehicle Standards and recommend that these should be put in to practice and administered appropriately to mitigate the risk posed to the public. The purpose of setting standards is to protect children and vulnerable adults, and by extension the wider public, when using taxis and private hire vehicles.
- 2.2 The Government set out in the [Modern Crime Prevention Strategy](#) the evidence that where Government, law enforcement, businesses and the public work together on prevention, this can deliver significant and sustained cuts in certain crimes. That is good news for victims and communities and it makes clear economic sense too. Educating the public on the risks of using unlicensed drivers and vehicles, how to identify the licensed trade and appropriate measure to take when using these services will protect help all passengers, more information is annexed to this document (Annex - Staying safe: guidance for passengers).
- 2.3 The Strategy committed to protect children and young people from the risk of child sexual abuse and exploitation (CSAE), by working with local authorities to introduce rigorous taxi and private hire vehicle licensing regimes. Both the [Jay](#) and [Casey](#) reports on CSAE highlighted examples of taxi/private hire vehicle drivers being directly linked to children that were abused, including instances when children were picked up from schools, children's homes or from family homes and abused, or sexually exploited.
- 2.4 The Casey Report made clear that weak and ineffective arrangements for taxi and private hire vehicle licensing had left the children and public at risk. The Department for Transport has worked with the Home Office, Local Government Association (LGA), personal safety charities, trade unions and trade bodies,

holding workshops, forums, and sharing evidence and good practice with local authorities to assist in the setting of the standards.

- 2.5 This document is published by the Secretary of State for Transport under section 177(1) of the Policing and Crime Act 2017 following consultation in accordance with section 177(5).
- 2.6 The document sets out a framework of policies that, under section 177(4), licensing authorities “**must have regard**” to when exercising their functions. These functions include developing, implementing and reviewing their taxi and private hire vehicle licensing regimes. “Having regard” is more than having a cursory glance at a document before arriving at a preconceived conclusion.
- 2.7 “Having regard” to these standards requires public authorities, in formulating a policy, to give considerations the weight which is proportionate in the circumstances. **Given that the standards have been set directly to address the safeguarding of the public and the potential impact of failings in this area, the importance of thoroughly considering these standards cannot be overstated.** It is not a question of box ticking; the standards must be considered rigorously and with an open mind.
- 2.8 Although it remains the case that licensing authorities must reach their own decisions, both on overall policies and on individual licensing matters in light of the relevant law, it may be that the Statutory Taxi and Private Hire Vehicle Standards might be drawn upon in any legal challenge to an authority’s practice, and that any failure to adhere to the standards without sufficient justification could be detrimental to the authority’s defence. **In the interest of transparency, all licensing authorities should publish their consideration of the measures contained in Statutory Taxi and Private Hire Vehicle Standards, and the policies and delivery plans that stem from these.** The Department has undertaken to monitor the effectiveness of the standards in achieving the protection of children and vulnerable adults (and by extension all passengers).
- 2.9 The Statutory Taxi and Private Hire Vehicle Standards does not purport to give a definitive statement of the law and any decisions made by a licensing authority remain a matter for that authority.

### 3. Administering the Licensing Regime

#### Licensing policies

- 3.1 The Department recommends all licensing authorities make publicly available a cohesive policy document that brings together all their procedures on taxi and private hire vehicle licensing. This should include but not be limited to policies on convictions, a 'fit and proper' person test, licence conditions and vehicle standards.
- 3.2 When formulating a taxi and private hire vehicle policy, the primary and overriding objective must be to protect the public. The importance of ensuring that the licensing regime protects the vulnerable cannot be overestimated. This was highlighted in the [report by Dame Louise Casey CB](#) of February 2015 on safeguarding failings.

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

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

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

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

## Duration of licences

- 3.6 A previous argument against issuing licences for more than a year was that a criminal offence might be committed, and not notified, during this period; this can of course also be the case during the duration of a shorter licence. This risk can be mitigated for drivers by authorities to undertaking regular interim checks. To help authorities monitor licensees' suitability, licensing authorities should engage with their police force to ensure that when the police believe a licensee presents a risk to the travelling public they use their Common Law Police Disclosure powers (see paragraphs 4.9 - 4.11) to advise them.
- 3.7 The Local Government (Miscellaneous Provisions) Act 1976 (as amended) sets a standard length at three years for taxi and private hire vehicle drivers and five years for private hire vehicle operators. Any shorter duration licence should only be issued when the licensing authority thinks it is appropriate in the specific circumstances of the case, if a licensee has requested one or where required (e.g. when the licence holder's leave to remain in the UK is time-limited) or when the licence is only required to meet a short-term demand; they should not be issued on a 'probationary' basis.

## Whistleblowing

- 3.8 It is in the application of licensing authority's policies (and the training and raising of awareness among those applying them) that protection will be provided. Where there are concerns that policies are not being applied correctly, it is vital that these can be raised, investigated and remedial action taken if required. **Licensing authorities should have effective internal procedures in place for staff to raise concerns and for any concerns to be dealt with openly and fairly.**

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

- 3.9 The external investigation in South Ribble concluded “that there had been a lack of awareness and priority given to safeguarding and the safety of taxi [and private hire vehicle] passengers in the manner in which licensing issues were addressed”. We are pleased to note that the [report](#) concludes, “The Council have been active at every stage in responding to issues and concerns identified. It has taken steps to address operational issues in the licensing function and has engaged fully with other agencies in so doing. In the light of the above, it is not necessary to make any further recommendations.”
- 3.10 It is hoped that all licensing authorities will have learnt from these mistakes but to prevent a repeat, **local authorities should ensure they have an effective ‘whistleblowing’ policy and that all staff are aware of it.** If a worker is aware of, and has access to, effective internal procedures for raising concerns then ‘whistleblowing’ is unlikely to be needed.
- 3.11 The Public Interest Disclosure Act 1998 (PIDA), commonly referred to as whistleblowing legislation, provides protection for those that have a reasonable belief of serious wrongdoing, including failure to comply with professional standards, council policies or codes of practice/conduct. The PIDA is part of employment law. In the normal course of events, if a worker reveals information that his employer does not want revealed it may be a disciplinary offence. If someone leaked their employer’s confidential information to the press, they might expect to be dismissed for that. The PIDA enables workers who ‘blow the whistle’ about wrongdoing to complain to an employment tribunal if they are dismissed or suffer any other form of detriment for doing so. It is a qualified protection and certain conditions would have to be met for the worker to be protected. More information is available online for [employees](#) and [employers](#).

### Consultation at the local level

- 3.12 Licensing authorities should consult on proposed changes in licensing rules that may have significant impacts on passengers and/or the trade. Such consultation should include not only the taxi and private hire vehicle trades but also groups likely to be the trades’ customers. Examples are groups representing disabled people, Chambers of Commerce, organisations with a wider transport interest (e.g. the Campaign for Better Transport and other transport providers), women’s groups, local traders, and the local multi-agency safeguarding arrangements. It may also be helpful to consult with night-time economy groups (such as Pubwatch) if the trade is an important element of dispersal from the local night-time economy’s activities.
- 3.13 Any decision taken to alter the licensing regime is likely to have an impact on the operation of the taxi and private hire vehicle sector in neighbouring areas; and **licensing authorities should engage with these areas to identify any concerns and issues that might arise from a proposed change.** Many areas convene regional officer consultation groups or, more formally, councillor liaison meetings; this should be adopted by all authorities.

### Changing licensing policy and requirements

- 3.14 **Any changes in licensing requirements should be followed by a review of the licences already issued.** If the need to change licensing requirements has been identified, this same need is applicable to those already in possession of a licence. That is not however to suggest that licences should be automatically revoked overnight, for example if a vehicle specification is changed it is proportionate to allow those that would not meet the criteria to have the opportunity to adapt or change their vehicle. The same pragmatic approach should be taken to driver licence changes - if requirements are changed to include a training course or qualification, a reasonable time should be allowed for this to be undertaken or gained. The implementation schedule of any changes that affect current licence holders must be transparent and communicated promptly and clearly.
- 3.15 Where a more subjective change has been introduced, for example an amended policy on previous convictions, a licensing authority must consider each case on its own merits. Where there are exceptional, clear and compelling reasons to deviate from a policy, licensing authorities should consider doing so. Licensing authorities should record the reasons for any deviation from the policies in place.

## 4. Gathering and Sharing Information

- 4.1 Licensing authorities must consider as full a range of information available to them when making a decision whether to grant a licence and to meet their ongoing obligation to ensure a licensee remains suitable to hold a licence.

### The Disclosure and Barring Service

- 4.2 The Disclosure and Barring Service (DBS) provides access to criminal record information through its disclosure service for England and Wales. The DBS also maintains the lists of individuals barred from working in regulated activity with children or adults. The DBS makes independent barring decisions about people who have harmed, or where they are considered to pose a risk of harm to a child or vulnerable person within the workplace. The DBS enables organisations in the public, private and voluntary sectors to make safer employment decisions by identifying candidates who may be unsuitable for certain work, especially that which involves vulnerable groups including children.
- 4.3 Enhanced certificates with a check of the barred lists include details of spent and unspent convictions recorded on the Police National Computer (PNC), any additional information which a chief officer of police believes to be relevant and ought to be disclosed, as well as indicating whether the individual is barred from working in regulated activity with children or adults. Spent convictions and cautions are disclosed on standard and enhanced certificates according to rules set out in legislation. Convictions which resulted in a custodial sentence, and convictions or cautions for a specified serious offence such as those involving child sexual abuse will always be disclosed on a standard or enhanced certificate. Full details of the disclosure rules, and those offences which will always be disclosed, are available from the [DBS](#). As well as convictions and cautions, an enhanced certificate may include additional information which a chief police officer reasonably believes is relevant and ought to be disclosed. Chief police officers must have regard to the [statutory guidance](#) issued by the Home Office when considering disclosure. A summary of the information provided at each level of DBS checks is annexed to this document (Annex – Disclosure and Barring Service information).
- 4.4 It should be noted that licensing authorities must not circumvent the DBS process and seek to obtain details of previous criminal convictions and other information that may not otherwise be disclosed on a DBS certificate. Whilst data protection legislation (not just the Data Protection Act 2018 or General Data Protection Regulation (GDPR)) gives individuals (or data subjects) a 'right of access' to the personal data that an organisation holds about them, it is a criminal offence to require an individual to exercise their subject access rights so as to gain information about any convictions and cautions. This could potentially lead to the authority receiving information to which it is not entitled. The appropriate way of accessing an individual's criminal records is through an enhanced DBS and barred lists check.

## The Disclosure and Barring Service Update Service

- 4.5 Subscription to the DBS Update Service allows those with standard and enhanced certificates to keep these up to date online and, with the individual's consent, allows nominees to check the status of a certificate online at any time. Subscription to the service removes the need for new certificates to be requested, reduces the administrative burden and mitigates potential delays in relicensing.
- 4.6 The DBS will search regularly to see if any relevant new information has been received since the certificate was issued. The frequency varies depending on the type of information; for criminal conviction and barring information, the DBS will search for updates on a weekly basis. For non-conviction information, the DBS will search for updates every nine months.
- 4.7 Licensing authorities are able to request large numbers of status checks on a daily basis. The DBS has developed a Multiple Status Check Facility (MSCF) that can be accessed via a web service. The MSCF enables organisations to make an almost unlimited number of Status Checks simultaneously. Further information on the MSCF is available from the [DBS](#).
- 4.8 Should the MSCF advise that new information is available the DBS certificate should no longer be relied upon and a new DBS certificate requested.

### Common Law Police Disclosure

- 4.9 The DBS is not the only source of information that should be considered as part of a fit and proper assessment for the licensing of taxi and private hire vehicle drivers. Common Law Police Disclosure ensures that where there is a public protection risk, the police will pass information to the employer or regulatory body to allow them to act swiftly to mitigate any danger.
- 4.10 Common Law Police Disclosure replaced the Notifiable Occupations Scheme (NOS) in March 2015 and focuses on providing timely and relevant information which might indicate a public protection risk. Information is passed on at arrest or charge, rather than on conviction which may be some time after, allowing any measures to mitigate risk to be put in place immediately.
- 4.11 This procedure provides robust safeguarding arrangements while ensuring only relevant information is passed on to employers or regulatory bodies. **Licensing authorities should maintain close links with the police to ensure effective and efficient information sharing procedures and protocols are in place and are being used.**

### Licensee self-reporting

- 4.12 Licence holders should be required to notify the issuing authority within 48 hours of an arrest and release, charge or conviction of any sexual offence, any offence involving dishonesty or violence and any motoring offence. An arrest for any of the offences within this scope should result in a review by the issuing authority as to whether the licence holder is fit to continue to do so. This must not

however be seen as a direction that a licence should be withdrawn; it is for the licensing authority to consider what, if any, action in terms of the licence should be taken based on the balance of probabilities. Should an authority place an obligation on licensees to notify under these circumstances, authorities should also ensure appropriate procedures are in place to enable them to act in a suitable timeframe if and when needed.

- 4.13 Importantly, a failure by a licence holder to disclose an arrest that the issuing authority is subsequently advised of might be seen as behaviour that questions honesty and therefore the suitability of the licence holder regardless of the outcome of the initial allegation.

### Referrals to the Disclosure and Barring Service and the Police

- 4.14 In some circumstances it may be appropriate under the Safeguarding Vulnerable Groups Act 2006 for licensing authorities to make referrals to the DBS. **A decision to refuse or revoke a licence as the individual is thought to present a risk of harm to a child or vulnerable adult, should be referred to the DBS.** The power for the licensing authority to make a referral in this context arises from the undertaking of a safeguarding role. Further guidance has been provided by the [DBS](#).

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

- an individual has harmed or poses a risk of harm to a child or vulnerable adult;
- an individual has satisfied the '[harm test](#)'; or
- received a caution or conviction for a relevant offence and;
- the person they are referring is, has or might in future be working in regulated activity;

if the above conditions are satisfied, the DBS may consider it appropriate for the person to be added to a barred list.

- 4.16 These referrals may result in the person being added to a barred list and enable other licensing authorities to consider this should further applications to other authorities be made. Further information on referrals to DBS is [available](#).

## Working with the Police

- 4.17 The police are an invaluable source of intelligence when assessing whether a licensing applicant is a 'fit and proper' person. It is vital that licensing authorities have a partnership with the police service to ensure that appropriate information is shared as quickly as possible. As part of building an effective working relationship between the licensing authority and the police, **action taken by the licensing authority as a result of information received should be fed-back to the police.** Increasing the awareness among police forces of the value licensing authorities place on the information received, particularly on non-conviction intelligence, will assist furthering these relationships and reinforce the benefits of greater sharing of information.
- 4.18 This relationship can be mutually beneficial, assisting the police to prevent crime. The police can gain valuable intelligence from drivers and operators, for example, the identification of establishments that are selling alcohol to minors or drunks, or the frequent transportation of substance abusers to premises.
- 4.19 To aid further the quality of the information available to all parties that have a safeguarding duty, a revocation or refusal on public safety grounds should also be advised to the police.

## Sharing licensing information with other licensing authorities

- 4.20 As has been stated elsewhere in this document, obtaining the fullest information minimises the doubt as to whether an applicant or licensee is 'fit and proper'. An obvious source of relevant information is any previous licensing history. **Applicants and licensees should be required to disclose if they hold or have previously held a licence with another authority. An applicant should also be required to disclose if they have had an application for a licence refused, or a licence revoked or suspended by any other licensing authority.** Licensing authorities should explicitly advise on their application forms that making a false statement or omitting to provide the information requested may be a criminal offence.
- 4.21 The LGA's Councillors' [Handbook on taxi and private hire vehicle licensing](#) advises that those responsible for licensing should "*communicate regularly with licensing committees and officers in neighbouring councils to ensure critical information is shared and that there is a consistency and robustness in decision-making. By working together, local government can make sure that this vital service is safe, respected, and delivering for local communities.*". While this approach may aid consistency and robustness in decision-making within regions, it has obvious inherent limitations as it is unlikely such protocols could be established between all licensing authorities. The LGA commissioned the National Anti-Fraud Network to develop a national register of taxi and private hire vehicle driver licence refusals and revocations (the register is known as 'NR3'). **Tools such as NR3 should be used by licensing authorities to share information on a more consistent basis to mitigate the risk of non-disclosure of relevant information by applicants.**

- 4.22 For these processes to be beneficial, all licensing authorities must keep a complete and accurate record as to the reasons for refusal, suspension or revocation of a licence in order that this might be shared if requested and appropriate to do so.
- 4.23 Data protection legislation provides exemption from the rights of data subjects for the processing of personal data in connection with regulatory activities. This includes taxi and private hire vehicle licensing. The exemption applies only to information processed for the core regulatory activities of appropriate organisations; it may not be used in a blanket manner. The exemption applies only to the extent that the application of the rights of data subjects to the information in question would be likely to prejudice the proper discharge of the regulatory functions. The Information Commissioner's Office has published [guidance](#) to assist organisations to fully understand their obligations and suggest good practice.
- 4.24 If notification under paragraph 4.20 or 4.21 of a refused or revoked licence is disclosed, the relevant licensing authority should be contacted to establish when the licence was refused, suspended or revoked and the reasons why. In those circumstances, the relevant licensing authority must consider whether it should disclose any information in relation to the previous decision, consistent with its obligations under data protection legislation. If information is disclosed, it can then be taken into account in determining the applicant's fitness to be licensed. The relevance of the reason for refusing/revoking a licence must be considered. For example, if any individual was refused a licence for failing a local knowledge test, it does not have any safeguarding implications. Conversely, a revocation or refusal connected to indecency would. Licensing authorities should not simply replicate a previous decision, authorities must consider each application on its own merits and with regard to its own policies.
- 4.25 Should a licensing authority receive information that a licence holder did not disclose the information referred to in paragraph 4.20, for example by checking the NR3 register, the authority should consider whether the non-disclosure represents dishonesty and should review whether the licence holder remains 'fit and proper'.

### **Multi-agency Safeguarding Hub (MASH)**

- 4.26 Multi-Agency Safeguarding Hubs are a way to improve the safeguarding response for children and vulnerable adults through better information sharing and high quality and timely safeguarding responses. MASHs (or similar models) should operate on three common principles: information sharing, joint decision making and coordinated intervention.
- 4.27 The Home Office report on [Multi Agency Working and Information Sharing](#) recommended that effective multi-agency working still needs to become more widespread. The Children's Commissioner's 2013 [Inquiry into Child Sexual Exploitation in Gangs and Groups](#) found that both police and local authorities still identified the inability to share information as a key barrier to safeguarding children from sexual abuse and exploitation.

4.28 All licensing authorities should operate or establish a means to facilitate the objectives of a MASH (i.e. the sharing of necessary and relevant information between stakeholders). As has been emphasised throughout this document, one of the most effective ways to minimise the risk to children and vulnerable adults when using taxis and private hire vehicles is to ensure that decisions on licensing individuals are made with the fullest knowledge possible.

### Complaints against licensees

4.29 Complaints about drivers and operators provide a source of intelligence when considering the renewal of a licence or to identify problems during the period of the licence. Patterns of behaviour such as complaints against drivers, even when they do not result in further action in response to an individual complaint, may be indicative of characteristics that raise doubts over the suitability to hold a licence. **All licensing authorities should have a robust system for recording complaints, including analysing trends across all licensees as well as complaints against individual licensees.** Such a system will help authorities to build a fuller picture of the potential risks an individual may pose and may tip the 'balance of probabilities' assessment that licensing authorities must take.

4.30 Licensees with a high number of complaints made against them should be contacted by the licensing authority and concerns raised with the driver and operator (if appropriate). Further action in terms of the licence holder must be determined by the licensing authority, which could include no further action, the offer of training, a formal review of the licence, or formal enforcement action.

4.31 To ensure that passengers know who to complain to, licensing authorities should produce guidance for passengers on making complaints directly to the licensing authority that should be available on their website. Ways to make complaint to the authority should be displayed in all licensed vehicles. This is likely to result in additional work for the licensing authority but has the advantage of ensuring consistency in the handling of complaints. Currently, it is more likely that a complaint against a taxi driver would be made directly to the licensing authority whereas a complaint against a private hire vehicle driver is more likely to be made to the operator. An effective partnership in which operators can share concerns regarding drivers is also encouraged.

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

4.33 In terms of investigating complaints CCTV footage of an incident can provide an invaluable insight, providing an 'independent witness' to an event. This can assist in the decision whether to suspend or revoke a licence. The potential benefits of mandating CCTV in vehicles is discussed in paragraphs 7.7 - 7.12.

### Overseas convictions

- 4.34 The DBS cannot access criminal records held overseas, only foreign convictions that are held on the Police National Computer may, subject to the disclosure rules, be disclosed. Therefore, a DBS check may not provide a complete picture of an individual's criminal record where there have been periods living or working overseas; the same applies when an applicant has previously spent an extended period (three or more continuous months) outside the UK. It should however be noted that some countries will not provide an 'Certificate of Good Character' unless the individual has been resident for six months or more
- 4.35 Licensing authorities should seek or require applicants to provide where possible criminal records information or a 'Certificate of Good Character' from overseas in this circumstance to properly assess risk and support the decision-making process (. It is the character of the applicant as an adult that is of particular interest, therefore an extended period outside the UK before the age of 18 may be less relevant. As with all licensing decisions, each case must be considered on its own merits. For information on applying for overseas criminal record information or 'Certificates of Good Character' please see the Home Office [guidance](#).
- 4.36 Where an individual is aware that they have committed an offence overseas which may be equivalent to those listed in the annex to this document (Annex – Assessment of previous convictions), licensing authorities should advise the applicant to seek independent expert or legal advice to ensure that they provide information that is truthful and accurate.

## 5. Decision Making

### Administration of the licensing framework

- 5.1 A policy is only effective if it is administered properly. The taxi and private hire vehicle licensing functions of local councils are non-executive functions i.e. they are functions of the council rather than the executive (such as the Cabinet). The functions include the determination of licence applications, reviews and renewals, along with the attachment of conditions when considered appropriate. The function may be delegated to a committee, a sub-committee or an officer – which should be set out within a clear scheme of delegation. In London the taxi and private hire vehicle licensing function is undertaken by Transport for London.
- 5.2 Licensing authorities should ensure that all individuals that determine whether a licence is issued or refused are adequately resourced to allow them to discharge the function effectively and correctly.

### Training decision makers

- 5.3 **All individuals that determine whether a licence is issued should be required to undertake sufficient training.** As a minimum, training for a member of a licensing committee should include: licensing procedures, natural justice, understanding the risks of CSAE, disability and equality awareness and the making of difficult and potentially controversial decisions. Training should not simply relate to procedures, but should include the use of case study material to provide context and real scenarios. All training should be formally recorded by the licensing authority and require a signature from the person that has received the training. Training is available from a number of organisations including the Institute of Licensing and Lawyers in Local Government; the LGA may also be able to assist in the development of training packages.
- 5.4 Public safety is the paramount consideration but the discharge of licensing functions must be undertaken in accordance with the following general principles:
- policies should be used as internal guidance, and should be supported by a member/officer code of conduct.
  - any implications of the Human Rights Act should be considered.
  - the rules of natural justice should be observed.
  - decisions must be reasonable and proportionate.
  - where a hearing is required it should be fairly conducted and allow for appropriate consideration of all relevant factors.
  - decision makers must avoid bias (or even the appearance of bias) and predetermination.
  - data protection legislation.

5.5 When a decision maker has a prejudicial interest in a case, whether it be financial or a personal relationship with those involved they should declare their interest at the earliest opportunity; this must be prior to any discussions or votes and, once declared, they must leave the room for the duration of the discussion or vote.

### The regulatory structure

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

5.7 It is considered that this approach also ensures the appropriate level of separation between decision makers and those that investigate complaints against licensees, and is the most effective method in allowing the discharge of the functions in accordance with the general principles referred to in 5.4. In particular, the Committee/Board model allows for:

- Each case to be considered on its own merits. It is rare for the same councillors to be involved in frequent hearings – therefore the councillors involved in the decision making process will have less knowledge of previous decisions and therefore are less likely to be influenced by them. Oversight and scrutiny can be provided in relation to the licensing service generally, which can provide independent and impartial oversight of the way that the functions are being discharged within the authority.
- Clear separation between investigator and the decision maker – this demonstrates independence, and ensures that senior officers can attempt to resolve disputes in relation to service actions without the perception that this involvement will affect their judgement in relation to decisions made at a later date.

5.8 Avoidance of bias or even the appearance of bias is vital to ensuring good decisions are made and instilling and/or maintaining confidence in the licensing regime by passengers and licensees.

5.9 Unlike officers, elected members are not usually involved in the day to day operation of the service and as such do not have relationships with licence holders that may give the impression that the discharge of a function is affected by the relationship between the decision maker and the licence holder.

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

connection between the officers on the panel, and those involved in the operational discharge of the licensing functions.

- 5.11 Whether the structure proposed is introduced or an alternative model is more appropriate in local circumstances, the objective should remain the same - to separate the investigation of licensing concerns and the management of the licence process. Regardless of which approach is adopted, **all licensing authorities should consider arrangements for dealing with serious matters that may require the immediate revocation of a licence.** It is recommended that this role is delegated to a senior officer/manager with responsibility for the licensing service.

### Fit and proper test

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

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

- 5.13 If, on the balance of probabilities, the answer to the question is 'no', the individual should not hold a licence.
- 5.14 Licensing authorities have to make difficult decisions but (subject to the points made in paragraph 5.4) the safeguarding of the public is paramount. All decisions on the suitability of an applicant or licensee should be made on the balance of probability. This means that an applicant or licensee should not be 'given the benefit of doubt'. If the committee or delegated officer is only "50/50" as to whether the applicant or licensee is 'fit and proper', they should not hold a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction.

### Criminal convictions and rehabilitation

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

- 5.16 Annexed to this document are the Department's recommendations on the assessment of previous convictions (Annex – Assessment of previous convictions). This draws on the work of the Institute of Licensing, in partnership with the LGA, the National Association of Licensing Enforcement Officers (NALEO) and Lawyers in Local Government, in publishing its guidance on determining the suitability of taxi and private hire vehicle licensees.
- 5.17 These periods should be taken as a starting point in considering whether a licence should be granted or renewed in all cases. The Department's view is that this places passenger safety as the priority while enabling past offenders to sufficiently evidence that they have been successfully rehabilitated so that they might obtain a licence. Authorities are however reminded that applicants are entitled to a fair and impartial consideration of their application.

## 6. Driver Licensing

### Criminality checks for drivers

- 6.1 Licensing authorities are entitled to request an enhanced criminal record certificate with check of the barred lists from the DBS for all driver licence holders or applicants. The DfT's 2019 [survey of taxi and private hire vehicle licensing authorities](#) shows that all licensing authorities in England and Wales have a requirement that an enhanced DBS check is undertaken at first application or renewal.
- 6.2 All individuals applying for or renewing a taxi or private hire vehicle drivers licence licensing authorities should carry out a check of the children and adult Barred Lists in addition to being subject to an enhanced DBS check (in section x61 of the DBS application 'Other Workforce' should be entered in line 1 and 'Taxi Licensing' should be entered at line 2). All licensed drivers should also be required to evidence continuous registration with the DBS update service to enable the licensing authority to routinely check for new information every six months. Drivers that do not subscribe up to the Update Service should still be subject to a check every six months.
- 6.3 Driving a taxi or private hire vehicle is not, in itself, a regulated activity for the purposes of the barred list. This means that an individual subject to barring would not be legally prevented from being a taxi or private hire vehicle driver but the licensing authority should take an individual's barred status into account alongside other information available. **In the interests of public safety, licensing authorities should not, as part of their policies, issue a licence to any individual that appears on either barred list.** Should a licensing authority consider there to be exceptional circumstances which means that, based on the balance of probabilities they consider an individual named on a barred list to be 'fit and proper', the reasons for reaching this conclusion should be recorded.
- 6.4 Drivers working under an arrangement to transport children may be working in 'regulated activity' as defined by the [Safeguarding Vulnerable Groups Act 2006](#). It is an offence to knowingly allow a barred individual to work in regulated activity. The [guidance on home-to-school travel and transport](#) issued by the Department for Education should be considered alongside this document. Please see [guidance](#) on driver DBS eligibility and how to apply.

### Safeguarding awareness

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

6.6 All licensing authorities should provide safeguarding advice and guidance to the trade and should require taxi and private hire vehicle drivers to undertake safeguarding training. This is often produced in conjunction with the police and other agencies. These programmes have been developed to help drivers and operators:

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

6.7 Since 2015, the Department for Education (DfE) has run a nationwide campaign – *‘Together, we can tackle child abuse’* which aims to increase public understanding of how to recognise the signs to spot and encourage them to report child abuse and neglect. The DfE continues to promote and raise awareness of the campaign materials through its [online toolkit](#), for local authorities, charities and organisations for use on their social media channels.

### **‘County lines’ exploitation**

6.8 County lines is a term used to describe gangs and organised criminal networks involved in exporting illegal drugs (primarily crack cocaine and heroin) into one or more importing areas [within the UK], using dedicated mobile phone lines or other form of “deal line”.

6.9 Exploitation is an integral part of the county lines offending model with children and vulnerable adults exploited to transport (and store) drugs and money between locations. Children aged between 15-17 make up the majority of the vulnerable people involved in county lines, but they may also be much younger. We know that both girls and boys are groomed and exploited and offenders will often use coercion, intimidation, violence (including sexual violence) and weapons to ensure compliance of victims. Children exploited by county lines gangs may have vulnerabilities besides their age, such as broader mental health issues, disrupted or chaotic homes, substance misuse issues, being excluded from school or frequently going missing.

6.10 The National Crime Agency’s 2018 county lines threat assessment set out that the national road network is key to the transportation of county lines victims, drugs and cash; with hire vehicles being one of the methods used for transportation between locations.

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

- Children and young people travelling in taxis or private hire vehicles alone;

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

6.12 The Home Office is working with partners to raise awareness of county lines and has provided [material](#) to help taxi and private vehicle hire staff to identify victims and report concerns to protect those exploited through this criminal activity.

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

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

### Language proficiency

6.14 A lack of language proficiency could impact on a driver's ability to understand written documents, such as policies and guidance, relating to the protection of children and vulnerable adults and applying this to identify and act on signs of exploitation. Oral proficiency will be of relevance in the identification of potential exploitation through communicating with passengers and their interaction with others.

6.15 A licensing authority's test of a driver's proficiency should cover both oral and written English language skills to achieve the objectives stated above.

## 7. Vehicle Licensing

7.1 As with driver licensing, the objective of vehicle licensing is to protect the public, who trust that the vehicles dispatched are above all else safe. It is important therefore that licensing authorities are assured that those granted a vehicle licence also pose no threat to the public and have no links to serious criminal activity. Although vehicle proprietors may not have direct contact with passengers, they are still entrusted to ensure that the vehicles and drivers used to carry passengers are appropriately licensed and so maintain the safety benefits of the licensing regime.

### Criminality checks for vehicle proprietors

7.2 Enhanced DBS and barred list checks are not available for vehicle licensing. **Licensing authorities should require a basic disclosure from the DBS and that a check is undertaken annually.** Any individual may apply for a basic check and the certificate will disclose any unspent convictions recorded on the Police National Computer (PNC). Licensing authorities should consider whether an applicant or licence holder with a conviction for offences provided in the annex to this document (Annex – Assessment of previous convictions), other than those relating to driving, meet the ‘fit and proper’ threshold.

7.3 However, it is important that authorities acknowledge that in many cases individuals that license a vehicle may already be licensed as a driver. An authority which undertakes the biannual DBS checks recommended for its drivers should not require those seeking to licence a vehicle to provide a basic DBS check as part of the application process; a basic DBS would not provide any information in addition to that disclosed under the enhanced DBS and barred lists check used for the driver assessment. In these circumstances, the authority should instead rely on the fact that the applicant is considered as fit and proper to hold a driver licence when considering their suitability to hold a vehicle licence. Should the individual cease to hold a driver licence a basic certificate should be required immediately.

7.4 A refusal to license an individual as a driver or to suspend or revoke a driver licence does not automatically mean that that individual cannot be issued or continue to hold a vehicle or private hire vehicle operator licence; these decisions must be independent of a driver licence refusal and based on the appropriate information i.e. it should not consider information that would only be available via an enhanced DBS check but instead that which would be disclosed on a basic check. DBS certificate information can only be used for the specific purpose for which it was requested and for which the applicant’s full consent has been given.

7.5 Private hire vehicle operator and vehicle licences may be applied for by a company or partnership; licensing authorities should apply the ‘fit and proper’ test to each of the directors or partners in that company or partnership. For this to be effective private hire vehicle operators and those to whom a vehicle licence should be required to advise the licensing authority of any change in directors or partners.

7.6 As explained earlier in the context of driver licensing, the DBS cannot access criminal records held overseas so other checks must be considered where and applicant has lived or worked overseas (see paragraph 4.34 - 4.36).

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

7.7 Government has acknowledged the potential risk to public safety when passengers travel in taxis and private hire vehicles. It is unfortunately the case that no matter how complete the information available to licensing authorities is when assessing whether to issue any taxi or private hire vehicle licence, nor how robust the policies in place are and the rigor with which they are applied, it will never completely remove the possibility of harm to passengers by drivers.

7.8 The Department's view is that CCTV can provide additional deterrence to prevent this and investigative value when it does. The use of CCTV can provide a safer environment for the benefit of taxi/private hire vehicle passengers and drivers by:

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

7.9 All licensing authorities should consult to identify if there are local circumstances which indicate that the installation of CCTV in vehicles would have either a positive or an adverse net effect on the safety of taxi and private hire vehicle users, including children or vulnerable adults, and taking into account potential privacy issues.

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

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

7.12 CCTV systems that are able to record audio as well as visual data may also help the early identification of drivers that exhibit inappropriate behaviour toward passengers. Audio recording should be both overt (i.e. all parties should be aware when recordings are being made) and targeted (i.e. only when passengers (or

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

- 7.13 Imposition of a blanket requirement to attach CCTV as a condition to a licence is likely to give rise to concerns about the proportionality of such an approach and will therefore require an appropriately strong justification and must be kept under regular review. More information and guidance on assessing the impacts of CCTV and on an authority mandating CCTV is annexed to this document (Annex – CCTV guidance).

### Stretched Limousines

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

## 8. Private Hire Vehicle Operator Licensing

8.1 As with driver licensing, the objective in licensing private hire vehicle operators is to protect the public, who may be using operators' premises and trusting that the drivers and vehicles dispatched are above all else safe. It is important therefore that licensing authorities are assured that those that are granted a private hire vehicle operator also pose no threat to the public and have no links to serious criminal activity. Although private hire vehicle operators may not have direct contact with passengers, they are still entrusted to ensure that the vehicles and drivers used to carry passengers are appropriately licensed and so maintain the safety benefits of the driver licensing regime.

### Criminality checks for private hire vehicle operators

8.2 Enhanced DBS and barred list checks are not available for private hire vehicle operator licensing. **Licensing authorities should request a basic disclosure from the DBS and that a check is undertaken annually.** Any individual may apply for a basic check and the certificate will disclose any unspent convictions recorded on the Police National Computer (PNC). Licensing authorities should consider whether an applicant or licence holder with a conviction for offences provided in the annex to this document (Annex – Assessment of previous convictions), other than those relating to driving, meet the 'fit and proper' threshold.

8.3 However, it is important that authorities acknowledge that in many cases individuals that license as a private hire vehicle operator may already be licensed as a driver. An authority which undertakes the biannual DBS checks recommended for its drivers should not require those seeking a private hire vehicle operator licence to provide a basic DBS check as part of the application process; a basic DBS would not provide any information in addition to that disclosed under the enhanced DBS and barred lists check used for the driver assessment. In these circumstances, the authority should instead rely on the fact that the applicant is considered as fit and proper to hold a driver licence when considering their suitability to hold a vehicle licence. Should the individual cease to hold a driver licence a basic certificate should be required immediately

8.4 Refusal to license an individual as a driver or to suspend or revoke a driver licence does not automatically mean that that individual cannot be issued or continue to hold a private hire vehicle operator licence; this decision must be independent of a driver licence refusal and based on the appropriate information i.e. it should not consider information that would only be available via an enhanced DBS check but instead that which would be disclosed on a basic check. DBS certificate information can only be used for the specific purpose for which it was requested and for which the applicant's full consent has been given.

8.5 A private hire vehicle operator licence may be applied for by a company or partnership; licensing authorities should apply the 'fit and proper' test to each of the directors or partners in that company or partnership. For this to be effective

private hire vehicle operators should be required to advise the licensing authority of any change in directors or partners.

- 8.6 As explained earlier in the context of driver licensing, the DBS cannot access criminal records held overseas. Further information on assessing the suitability of those that have spent extended periods in overseas is provided in paragraphs 4.34 - 4.36.

### Booking and dispatch staff

- 8.7 Private hire vehicle drivers are not the only direct contact that private hire vehicle users have with private hire vehicle operators' staff, for example a person taking bookings (be it by phone or in person). A vehicle dispatcher decides which driver to send to a user, a position that could be exploited by those seeking to exploit children and vulnerable adults. It is therefore appropriate that all staff that have contact with private hire vehicle users and the dispatching of vehicles should not present an undue risk to the public or the safeguarding of children and vulnerable adults.
- 8.8 Licensing authorities should be satisfied that private hire vehicle operators can demonstrate that all staff that have contact with the public and/or oversee the dispatching of vehicles do not pose a risk to the public. **Licensing authorities should, as a condition of granting an operator licence, require a register of all staff that will take bookings or dispatch vehicles is kept.**
- 8.9 Operators should be required to evidence that they have had sight of a Basic DBS check on all individuals listed on their register of booking and dispatch staff and to ensure that Basic DBS checks are conducted on any individuals added to the register and that this is compatible with their policy on employing ex-offenders. DBS certificates provided by the individual should be recently issued when viewed, alternatively the operator could use a ['responsible organisation'](#) to request the check on their behalf. When individuals start taking bookings and dispatching vehicles for an operator they should be required, as part of their employment contract, to advise the operator of any convictions while they are employed in this role.
- 8.10 The register should be a 'living document' that maintains records of all those in these roles for the same duration as booking records are required to be kept, this will enable cross-referencing between the two records. A record that the operator has had sight of a basic DBS check certificate (although the certificate itself should not be retained) should be retained for the duration that the individual remains on the register. Should an employee cease to be on the register and later re-entered, a new basic DBS certificate should be requested and sight of this recorded.
- 8.11 Operators may outsource booking and dispatch functions but they cannot pass on the obligation to protect children and vulnerable adults. Operators should be required to evidence that comparable protections are applied by the company to which they outsource these functions.

8.12 Licensing authorities should also require operators or applicants for a licence to provide their policy on employing ex-offenders in roles that would be on the register as above. As with the threshold to obtaining a private hire vehicle operators' licence, those with a conviction for offences provided in the annex to this document (Annex – Assessment of previous convictions), other than those relating to driving, may not be suitable to decide who is sent to carry a child or vulnerable adult unaccompanied in a car.

## Record keeping

8.13 Section 56 of the [Local Government \(Miscellaneous Provisions\) Act 1976](#) requires private hire vehicle operators to keep records of the particulars of every booking invited or accepted, whether it is from the passenger or at the request of another operator. **Licensing authorities should as a minimum require private hire vehicle operators to record the following information for each booking:**

- the name of the passenger;
- the time of the request;
- the pick-up point;
- the destination;
- the name of the driver;
- the driver's licence number;
- the vehicle registration number of the vehicle;
- the name of any individual that responded to the booking request;
- the name of any individual that dispatched the vehicle.

8.14 This information will enable the passenger to be traced if this becomes necessary and should improve driver security and facilitate enforcement. It is suggested that booking records should be retained for a minimum of six months.

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

## Use of passenger carrying vehicles (PCV) licensed drivers

8.16 PCV licensed drivers are subject to different checks from taxi and private hire vehicle licensed drivers as the work normally undertaken, i.e. driving a bus, does not present the same risk to passengers. Members of the public are entitled to expect when making a booking with a private hire vehicle operator that they will receive a private hire vehicle licensed vehicle and driver. **The use of a driver who holds a PCV licence and the use of a public service vehicle (PSV) such**

**as a minibus to undertake a private hire vehicle booking should not be permitted as a condition of the private hire vehicle operator's licence without the informed consent of the booker.**

- 8.17 Where a private hire vehicle is unsuitable, for example where a larger vehicle is needed because more than eight passenger seats required or to accommodate luggage, the booker should be informed that a PSV is necessary, and that a PCV licenced driver will be used who is subject to different checks and not required to have an enhanced DBS check.

## 9. Enforcing the Licensing Regime

9.1 Implementing an effective framework for licensing authorities to ensure that as full a range of information made available to suitably trained decision makers that are supported by well-resourced officials is essential to a well-functioning taxi and private hire vehicle sector. These steps will help prevent the licensing of those that are not deemed 'fit and proper' but does not ensure that those already licensed continue to display the behaviours and standards expected.

### Joint authorisation of enforcement officers

9.2 Licensing authorities should, where the need arises, jointly authorise officers from other authorities so that compliance and enforcement action can be taken against licensees from outside their area. An agreement between licensing authorities to jointly authorise officers enables the use of enforcement powers regardless of which authority within the agreement the officer is employed by and which issued the licence. This will mitigate the opportunities for drivers to evade regulation. Such an agreement will enable those authorities to take action against vehicles and drivers that are licensed by the other authority when they cross over boundaries. A model for agreeing joint authorisation is contained in the [LGA Councillors' handbook](#).

### Setting expectations and monitoring

9.3 Licensing authorities should ensure that drivers are aware of the policies that they must adhere and are properly informed of what is expected of them and the repercussions for failing to do so. Some licensing authorities operate a points-based system, which allows minor breaches to be recorded and considered in context while referring those with persistent or serious breaches to the licensing committee. This has the benefit of consistency in enforcement and makes better use of the licensing committee's time.

9.4 The provision of a clear, simple and well-publicised process for the public to make complaints about drivers and operators will enable authorities to target compliance and enforcement activity (see paragraphs 4.29 - 4.33). This will provide a further source of intelligence when considering the renewal of licences and of any additional training that may be required. It is then for the licensing authority to consider if any intelligence indicates a need to suspend or revoke a licence in the interests of public safety.

### Suspension and revocation of driver licences

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

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

- (i) been convicted of an offence involving dishonesty, indecency or violence; or
- (ii) been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this Part of this Act;
- (aa) that he has since the grant of the licence been convicted of an immigration offence or required to pay an immigration penalty; or
- (b) any other reasonable cause

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

9.7 Before any decision is made, the licensing authority must give full consideration to the available evidence and the driver should be given the opportunity to state his or her case. If a period of suspension is imposed, it cannot be extended or changed to revocation at a later date.

9.8 A decision to revoke a licence does not however prevent the reissuing of a licence should further information be received that alters the balance of probability of a decision previously made. The decision to suspend or revoke was based on the evidence available at the time the determination was made. New evidence may, of course, become available later.

9.9 New evidence may be produced at an appeal hearing that may result in the court reaching a different decision to that reached by the council or an appeal may be settled by agreement between the licensing authority and the driver on terms which, in the light of new evidence, becomes the appropriate course. If, for example, the allegations against a driver were now, on the balance of probability, considered to be unfounded, a suspension could be lifted or, if the licence was revoked, an expedited re-licensing process used.

9.10 A suspension may still be appropriate if it is believed that a minor issue can be addressed through additional training. In this instance the licence would be returned to the driver once the training has been completed without further consideration. This approach is clearly not appropriate where the licensing authority believes that, based on the information available at that time, on the balance of probability it is considered that the driver presents a risk to public safety.

## Annex – Assessment of Previous Convictions

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

**Authorities must consider each case on its own merits, and applicants/licensees are entitled to a fair and impartial consideration of their application.** Where a period is given below, it should be taken to be a minimum in considering whether a licence should be granted or renewed in most cases. The Department's view is that this places passenger safety as the priority while enabling past offenders to sufficiently evidence that they have been successfully rehabilitated so that they might obtain or retain a licence.

### Crimes resulting in death

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

### Exploitation

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

### Offences involving violence against the person

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

### Possession of a weapon

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

### Sexual offences

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

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

### Dishonesty

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

## Drugs

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

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

## Discrimination

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

## Motoring convictions

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

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

## Drink driving/driving under the influence of drugs

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

## Using a hand-held device whilst driving

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 five years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

## Annex – Disclosure and Barring Service information

Table 1: Information included in criminal record checks

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

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

## Annex – CCTV Guidance

It is important to note that, in most circumstances, a licensing authority which mandates the installation of CCTV systems in taxis and private hire vehicles will be responsible for the data – the data controller. It is important that data controllers fully consider concerns regarding privacy and licensing authorities should consider how systems are configured, should they mandate CCTV (with or without audio recording). For example, vehicles may not be exclusively used for business, also serving as a car for personal use - it should therefore be possible to manually switch the system off (both audio and visual recording) when not being used for hire. Authorities should consider the Information Commissioner's view on this matter that, in most cases, a requirement for continuous operation is unlikely to be fair and lawful processing of personal data.

The Home Office '[Surveillance Camera Code of Practice](#)' advises that government is fully supportive of the use of overt surveillance cameras in a public place whenever that use is:

- in pursuit of a legitimate aim;
- necessary to meet a pressing need;
- proportionate;
- effective, and;
- compliant with any relevant legal obligations

The Code also sets out 12 guiding principles which, as a 'relevant authority' under section 33(5) of the [Protection of Freedoms Act 2012](#), licensing authorities must have regard to. It must be noted that, where a licence is granted subject to CCTV system conditions, the licensing authority assumes the role and responsibility of 'System Operator'. The role requires consideration of all guiding principles in this code. The failure to comply with these principles may be detrimental to the use of CCTV evidence in court as this may be raised within disclosure to the Crown Prosecution Service and may be taken into account.

The Surveillance Camera Commissioner (SCC) has provided guidance on the Surveillance Camera Code of Practice in its '[Passport to Compliance](#)' which provides guidance on the necessary stages when planning, implementing and operating a surveillance camera system to ensure it complies with the code. The Information Commissioner's Office (ICO) has also published a [code of practice](#) which, in this context, focuses on the data governance requirement associated with the use of CCTV such as data retention and disposal, which it is important to follow in order to comply with the data protection principles. The SCC provides a [self-assessment tool](#) to assist operators to ensure compliance with the principles set out in the Surveillance Camera Code of Practice. The SCC also operate a [certification scheme](#); authorities that obtain this accreditation are able to clearly demonstrate that their systems conform to the SCC's best practice and are fully compliant with the Code and increase public confidence that any risks to their privacy have been fully considered and mitigated.

The [Data Protection Act 2018](#) regulates the use of personal data. Part 2 of the Data Protection Act applies to the general processing of personal data, and references and supplements the General Data Protection Regulation. Licensing authorities, as data controllers, must comply with all relevant aspects of data protection law. Particular attention should be paid to the rights of individuals which include the right to be informed, of access

and to erasure. The ICO has provided detailed [guidance](#) on how data controllers can ensure compliance with these.

It is a further requirement of data protection law that before implementing a proposal that is likely to result in a high risk to the rights and freedoms of people, an impact assessment on the protection of personal data shall be carried out. The ICO recommends in [guidance](#) that if there is any doubt as to whether a Data Protection Impact Assessment (DPIA) is required one should be conducted to ensure compliance and encourage best practice. A DPIA will also help to assess properly the anticipated benefits of installing CCTV (to passengers and drivers) and the associated privacy risks; these risks might be mitigated by having appropriate privacy information and signage, secure storage and access controls, retention policies, training for staff how to use the system, etc.

It is essential to ensure that all recordings made are secure and can only be accessed by those with legitimate grounds to do so. This would normally be the police if investigating an alleged crime or the licensing authority if investigating a complaint or data access request. Encryption of the recording to which the licensing authority, acting as the data controller, holds the key, mitigates this issue and protects against theft of the vehicle or device. It is one of the guiding principles of data protection legislation, that personal data (including in this context, CCTV recordings and other potentially sensitive passenger information) is handled securely in a way that 'ensures appropriate security', including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

All passengers must be made fully aware if CCTV is operating in a vehicle. Given that audio recording is considered to be more privacy intrusive, it is even more important that individuals are fully aware and limited only to occasions when passengers (or drivers) consider it necessary. The recording of audio should be used to provide an objective record of events such as disputes or inappropriate behaviour and must not be continuously active by default and should recognise the need for privacy of passengers' private conversations between themselves. Activation of the audio recording capability of a system might be instigated when either the passenger or driver operates a switch or button. As well as clear signage in vehicles, information on booking systems should be introduced. This might be text on a website, scripts or automated messages on telephone systems; the Information Commissioner's Office (ICO) has issued guidance on privacy information and the right to be informed on its website.

## Annex - Staying Safe: Guidance for Passengers

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

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

Educate the public in the differences between taxis and private hire vehicles e.g.:

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

When using a private hire vehicle, passengers should always:

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

When using a taxi, passengers should where possible:

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

## Statutory Taxi & Private Hire Vehicle Standards

The Statutory Taxi and Private Hire Vehicle Standards document sets out a framework of policies that licensing authorities “*must have regard*” to when exercising their functions. The following table sets out the options for this licensing authority.

	Heading	National Standards Requirement	Current Position
1	Policies	There should be a cohesive policy document that brings together all procedures on taxi and private hire vehicle licensing. This should include but not be limited to policies on convictions, a ‘fit and proper’ person test, licence conditions and vehicle standards	<p>Swale adopted its latest Hackney Carriage and Private Hire Licensing Policy to become effective on 1<sup>st</sup> July 2018 and has kept it fully under review since it’s introduction. Minor amendments to the policy have been agreed by the Resilience and Licensing Manager in liaison with the relevant Cabinet Member and Chair of Licensing Committee as agreed at a meeting of the General Licensing Committee of 19 April 2018. More major amendments i.e. the adoption of the NR3 Register were subject to full public consultation prior to formal adoption by the General Licensing Committee on 9 April 2019.</p> <p>It is recommended that amendments to this policy as required by these National Standards be consulted upon in January 2021.</p> <p>A more robust revision of the policy will be undertaken later in 2021.</p>
2	Duration of licences	The Local Government (Miscellaneous Provisions) Act 1982 (as amended) sets a standard length at 3 years for taxi and private hire vehicle drivers and 5 years for private hire operators.	Swale grants one, three and five year licences in line with the legislation and the current taxi policy.

		Any shorter duration licence should only be issued when the licensing authority thinks it is appropriate in the specific circumstances of the case.	One year licences are granted where the licensed driver is over 70 years old and where a medical is required annually.  It is not proposed to amend current procedures
3	Whistleblowing	It is in the application of licensing authority's policies (and the training and awareness among those applying them) that protection will be provided. Where there are concerns that policies are not being applied correctly, it is vital that these can be raised, investigated and remedial action taken if required. Licensing authorities should have effective internal procedures in place for staff to raise concerns and for any concerns to be dealt with openly and fairly. Local authorities should ensure they have an effective 'whistleblowing' policy and that all staff are aware of it.	Swale has an up to date whistleblowing policy. All licensing staff are aware of this policy
4	Consultation at local level	Licensing authorities should consult on proposed changes in licensing rules that may have significant impacts on passengers and/or the trade. Such consultation should include not only the taxi and private hire vehicle trades but also groups likely to be the trades' customers.	Swale introduced its current taxi policy after a full and comprehensive consultation with the taxi trade and general public alike. Any major change to an existing policy during its 'lifetime' will also be subject to full consultation
5	Working with the police	Action taken by the licensing authority as a result of information received should be fed-back to the police.  The police should be told of all refusals and revocations on public safety grounds.  Licence holders should be required to notify the licensing authority within 48 hours of an arrest and release. Charge or conviction of any sexual	The licensing team work in close liaison with Kent police licensing and the CSU unit of Swale BC and will inform them of any action taken against licensed drivers or operators.  A joint Licensing Compliance and Enforcement Protocol is in place covering all relevant licensing functions and all related topics, in as much as it applies to each individual organisation in Kent and Medway. These include, but are not exclusive to; Kent Police, Kent Fire & Rescue

		offence, any offence involving dishonesty or violence and any motoring offence.	<p>Service, Kent County Council Trading Standards, Gambling Commission, Securities Industry Authority, Public Health, Social Services, Licensing Operations at the Local Authorities in Kent and Medway.</p> <p>The current Swale taxi policy requires a driver to notify the council of any conviction within 7 days so this needs to be amended in line with the standard.</p>
6	Sharing licensing information with other licensing authorities and NR3 Database	Tools such as NR3 should be used by licensing authorities to share information on a more consistent basis to mitigate the risk of non-disclosure of relevant information by applicants.	Swale has adopted NR3 (National Register of Taxi Licence Revocations and Refusals) and it is included as Appendix R in the current taxi policy
7	Complaints against licensees	All licensing authorities should have a robust system for recording complaints, including analysing trends across all licensees as well as complaints against individual licensees	<p>All complaints received are logged and investigated, normally by 2 licensing officers, and the decision as to what action to be taken made after discussion with the Resilience and Licensing Manager. If penalty points are imposed on a drivers taxi licence with Swale then there is a 21 day appeal period in order to ensure absolute fairness in the action taken.</p> <p>The licensing team use a database called Uniform where all actions are recorded to ensure that nothing can be overlooked.</p> <p>Details of how to complain to the licensing team are included on the tariff card which is displayed in all hackney carriages. Details will be made available on the Swale website.</p>
8	Overseas convictions	Licensing authorities should seek or require applicants to provide where possible criminal	The Council requires that all overseas applicants who have resided in this country for less than five years obtain a Certificate of Good Conduct from their relevant

		records information on a 'Certificate of Good Conduct'	embassy or consulate, at the applicant's expense, authenticated, translated and sealed by the embassy or consulate
9	Decision making administration of the licensing framework	Licensing authorities should ensure that all individuals that determine whether a licence is issued or refused are adequately resourced to allow them to discharge the function effectively and correctly. Training decision makers. All individuals that determine whether a licence is issued should be required to undertake sufficient training	All Licensing officers have undertaken accredited training provided by the Institute of Licensing. Refresher/advanced courses in the Taxi and PH are attended.
10	Immediate revocation	Regardless of which approach is adopted, all licensing authorities should consider arrangements for dealing with serious matters that may require the immediate revocation of a licence.	Powers delegated to the Resilience and Licensing Manager allow for this serious course of action if required and if so urgent that it may not wait for Licensing sub-committee. Further reporting would then be provided to the Chair of the Licensing Committee and relevant Cabinet Member on those urgent measures.
11	Fit and proper test	Licensing authorities have a duty to ensure that any person to whom they grant a taxi or private hire vehicle driver's licence is a 'fit and proper' person to be a licensee. It may be helpful when considering whether an applicant or licensee is fit and proper to pose oneself the following question: Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night? If, on the balance of probabilities, the answer to the question is 'no', the individual should not hold a licence.	This Council requires applicants for a licence to satisfy all necessary requirements for reasons of public protection. The current Swale taxi policy states:  The licensing authority will issue a licence to an applicant provided the applicant is assessed 'fit and proper'. The authority will consider amongst other things: the applicants' relevant skills, knowledge, experience, qualifications, medical fitness, criminal record, offences and prosecutions and previous history as a licence holder.  The offences, convictions, prosecutions or cautions which the Council consider to be relevant when considering an application for the grant or renewal of a

			licence are shown in Appendix E of the policy. The licensing authority will consider each case on its merits.
12	Driver licensing criminality checks	All licensed drivers should be required to evidence continuous registration with the Disclosure & Barring Service (DBS) update service to enable the licensing authority to routinely check for new information every six months. Drivers that do not subscribe to the Update Service should still be subject to a check every six months	<p>This Council like many carries out DBS checks every 3 years. Whilst we have actively encouraged drivers to sign up to the update service the number that have done so remains relatively small</p> <p>It is recommended that the taxi policy be amended to make it a mandatory requirement for all drivers to sign up to the DBS update service and to give Swale licensing team the authority to access their records by providing their unique log in number..</p> <p>The benefit to drivers is that the cost for them to sign up to the online checking facility will be £13 per year as opposed to £88 per year if DBS checks were to be conducted every six months using the existing manual method.</p> <p>It should be noted that conditions can be applied to private hire drivers licences but not hackney carriage drivers licences however, all drivers with Swale hold a dual drivers licence so the amendments to policy will affect them</p> <p>As an enhanced DBS check has to firstly be carried out before a driver can then apply to join the update service,</p> <p>There are 350 licensed drivers with Swale of which 233 will need to renew their Swale driving licence during 2021 and hence submit a DBS check at the same time. From discussions with officers from other local authorities in Kent who represent the south-east on various LGA</p>

			forums it seems unlikely that government will allow local authorities to 'phase-in' the requirement for 6 monthly DBS checks so this will involve considerable work for the very small licensing team to carry out these checks, to update our records accordingly and to then carry out the DBS checks every six months
13	Criminality Checks for Private Hire Vehicle Operators	<p>It is important that licensing authorities are assured that those granted a vehicle licence also pose no threat to the public and have no links to serious criminal activity. Although vehicle proprietors may not have direct contact with passengers, they are still entrusted to ensure that the vehicles and drivers used to carry passengers are appropriately licensed and so maintain the safety benefits of the licensing regime.</p> <p>Criminality checks for vehicle proprietors. Licensing authorities should require a basic disclosure from the DBS and that a check is undertaken annually.</p> <p>Criminality checks for private hire vehicle operators. Licensing authorities should request a basic disclosure from the DBS and that a check is undertaken annually.</p> <p>Licensing authorities should, as a condition of granting an operator licence, require a register of all staff that will take bookings or dispatch is kept.</p>	<p>Most Private Hire Operators are themselves licensed as a Swale driver and have undergone enhanced DBS checking.</p> <p>The taxi policy will need to be amended so that on the rare occasion that a Private Hire Operators licence is applied for where the applicant is not a driver a basic DBS check is undertaken every year during the 5 year duration of the Operator's licence.</p> <p>The taxi policy will also need to be amended to reflect the requirements regarding booking and dispatch staff</p>

14	Safeguarding awareness	All licensing authorities should provide safeguarding advice and guidance to the trade and should require taxi and private hire vehicle drivers to undertake safeguarding training	<p>All new driver applicants undergo safeguarding training as part of the Street Knowledge Test (Appendix G of the taxi policy) which they must achieve a 100% pass rate.</p> <p>It had been intended to provide this training to all existing drivers but it has not been possible to arrange such training due to the impact of Covid-19 meaning it is not possible to train groups of individuals. This will be re-visited when we are in a position to do so</p>
15	Language proficiency	A lack of language proficiency could impact on a driver's ability to understand written documents, such as policies and guidance, relating to the protection of children and vulnerable adults and applying this to identify and act on signs of exploitation. Oral proficiency will be of relevance in the identification of potential exploitation through communicating with passengers and their interaction with others. A licensing authority's test of a driver's proficiency should cover both oral and written English language skills to achieve the objectives stated above.	This Council believes that the current knowledge test that all applicants must pass adequately tests language proficiency. Applicants are unable to pass the test without a good grasp of written and spoken English. Licensing Officers will interview potential drivers upon application to determine whether their spoken English is adequate before beginning the process to become a Swale licensed driver.
16	In-vehicle visual and audio recording – CCTV	<p>The Department's view is that CCTV can provide additional deterrence to prevent this and investigative value when it does. The use of CCTV can provide a safer environment for the benefit of taxi/private hire vehicle passengers and drivers by:</p> <ul style="list-style-type: none"> <li>• deterring and preventing the occurrence of crime.</li> <li>• reducing the fear of crime.</li> <li>• assisting the police in investigating incidents of crime.</li> <li>• assisting insurance companies in investigating motor vehicle accidents.</li> </ul>	<p>The Council have been awaiting clearer national guidance on CCTV.</p> <p>To date we have not made the installation of CCTV mandatory and there has been no formal reporting or investigation by police for incidents within licensed vehicles.</p> <p>Costs for the installation of in-car CCTV is met by the vehicle owner and can be prohibitive if CCTV is installed to the standard to provide sufficient evidential quality in a court of law</p>

		All licensing authorities should consult to identify if there are local circumstances which indicate that the installation of CCTV in vehicles would have either a positive or an adverse net effect on the safety of taxi and private hire vehicle users, including children or vulnerable adults, and taking into account potential privacy issues.	It is now a mandatory requirement that the Data controller is a responsibility of the Council.  It is therefore proposed to explore this subject as part of the more wide-ranging policy revision that will be undertaken later in 2021
17	Enforcing the licensing regime	Implementing an effective framework for licensing authorities to ensure that as full a range of information made available to suitably trained decision makers that are supported by well-resourced officials is essential to a well-functioning taxi and private hire vehicle sector. These steps will help prevent the licensing of those that are not deemed 'fit and proper' but does not ensure that those already licensed continue to display the behaviours and standards expected	All Licensing officers have undertaken accredited training provided by the Institute of Licensing and staff resourcing is kept under review by managers.
18	Joint authorisation of enforcement officers	Licensing authorities should, where the need arises, jointly authorises officers from other authorities so that compliance and enforcement action can be taken against licensees from outside their area. An agreement between licensing authorities to jointly authorise officers enables the use of enforcement powers regardless of which authority within the agreement the officer is employed by and which issued the licence	Joint enforcement work with our neighbouring local authorities and KCC School Contracts has been undertaken as the need has arisen but thus far no formal Memorandum of Understanding has been agreed with any of them
19	Setting expectations	Licensing authorities should ensure that drivers are aware of the policies that they must adhere and are properly informed of what is expected of them and the repercussions for failing to do so. Some licensing authorities operate a points based	This Council requires applicants for a licence to satisfy all necessary requirements for reasons of public protection in its policy and officers have frequent contact with licensees.

		<p>system, which allows minor breaches to be recorded and considered in context while referring those with persistent or serious breaches to the licensing committee. This has the benefit of consistency in enforcement and makes better use of the licensing committee's time. Intelligence when considering the renewal of licences and of any additional training that may be required. It is then for the licensing authority to consider if any intelligence indicates a need to suspend or revoke a licence in the interests of public safety.</p>	<p>Repeated reports or complaints against a driver can already be identified to lead to proportionate action. This can include the imposition of 'penalty points' (Appendix I of the current taxi policy). Any driver who accrues more than 11 penalty points within ay 36 month rolling basis will need to appear before a hearing of the Licensing Sub-Committee where members will decide on the appropriate enforcement action to be taken.</p>
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**Table of Amendments and Insertions to the Swale BC Hackney Carriage and Private Hire Licensing Policy 2018 - 2021 to take into account the DfT Statutory Taxi and Private Hire Vehicle Standards**

Policy Section No and Title	Current wording within policy	Amended or inserted wording to be used within policy
<p><b>1. Introduction</b></p>	<p><b>1.3 Background to Policy</b></p> <p><b>1.3.1</b> The Department of Transport (DfT) has national responsibility for hackney carriage and private hire legislation in England and Wales.</p> <p><b>1.3.2</b> In 2006 the DfT produced a Best Practice Guidance to assist local authorities with the regulation of the hackney carriage and private hire trades. It was directed at local authorities “to decide for themselves the extent to which they wish to make use of it or adapt it to suit their own purposes”. There was recognition, within the document, that is for individual licensing authorities to reach their own decisions both on overall policies and on individual licensing matters, in the light of their own views of the relevant considerations.</p> <p><b>1.3.3</b> In 2010 the DfT’s Guidance was updated and this policy revision takes the 2010 version into account.</p>	<p><b>Insert</b></p> <p><b>1.3.4</b> In July 2020, the DfT issued Statutory Taxi and Private Hire Vehicle Standards to which all Licensing Authorities must have regard in carrying out their licensing function. Whilst the focus of these standards is on protecting children and vulnerable adults, they are intended to benefit all passengers; primarily through ensuring the fitness and propriety of applicants and licence holders. The national standards reflect the significant changes in the industry and lessons learned from experiences in local areas since the Best Practice Guidance, and consequently replace relevant sections; where there is a conflict between the national standards and the Best Practice Guidance, the national standards take precedence.</p>
<p><b>3.6 Disclosure and Barring Service Criminal Records Checks</b></p>	<p><b>3.6.3</b> It is the Council’s view that the public expects all reasonable precautions to be taken when determining whether to grant a licence to</p>	<p><b>Amendment:</b></p> <p><b>3.6.3</b> It is the Council’s view that the public expects all reasonable precautions to</p>

drive a hackney carriage or private hire vehicles and, as drivers are exempt from the Rehabilitation of Offenders Act 1974; an Enhanced Disclosure should continue to be the requirement for new drivers and every three years thereafter. The Council may request another disclosure at any time if a further check is considered necessary.

**3.6.5** Licences will not be issued until such times as the Council has sight of a satisfactory returned DBS check. Applicants are therefore encouraged to sign up to the DBS Update Service when applying for their enhanced DBS. Swale Council will not issue temporary badges as a result of delayed checks. It will be the driver's responsibility to make sure they have joined the DBS Update Service to be able to renew their licence on time.

be taken when determining whether to grant a licence to drive a hackney carriage or private hire vehicles and, as drivers are exempt from the Rehabilitation of Offenders Act 1974.

The DfT national standards recommend that an enhanced DBS check should routinely be carried out via the DBS Update Service every six months.

**Insertions and numbers within this section to be amended as necessary**

**3.6.4** All new applicants are to provide a completed Enhanced DBS Disclosure Application when they have successfully passed the Street Knowledge Test (if applicable) and register for the DBS Update Service upon receipt of their Certificate, which will be sent to them by the DBS and give the Council ongoing permission and the information required to check the status of their certificate every six months or otherwise as considered appropriate.

**3.6.5** All existing drivers who are not already registered with the DBS Update Service to provide a current (less than 3 months old at the date of application) Enhanced DBS Disclosure Certificate, register for the DBS Update Service and give the Council ongoing permission and the information required to check the status of their certificate every six months or otherwise

		<p>considered necessary by no later than 1st September 2021 unless their Swale taxi licence and DBS is due during 2021 in which case it can be done at the time of renewal. Any driver who fails to do so will be subject to suspension or other enforcement intervention as appropriate.</p> <p><b>3.6.7</b> Once a driver has registered for the Update Service they must remain registered, and give the Council permission to check the status of their certificate as considered necessary, for the duration of their time as a licensed driver with the Council.</p> <p><b>3.6.8</b> Anyone who fails to register for the Update Service or maintain continuous registration as required will be subject to enforcement action, including suspension until such times as the situation has been rectified to the Council's satisfaction i.e. until they have applied for a further Enhanced DBS check through the Council at their own expense in order that they can apply/reapply to join the Update Service within the required timescales as set out by the DBS.</p> <p><b>3.6.9</b> The Council will check on the status of a drivers' DBS certificate via the Update Service as part of the renewal application process, and at any other time considered appropriate during the validity of that persons licence.</p>
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		<p><b>3.6.10</b> Where a status check reveals that the individual's certificate remains current, that person's criminal record check will ordinarily be deemed as satisfactory.</p> <p><b>3.6.11</b> Where a status check reveals that the individual's certificate is no longer current, that person's criminal records check will be deemed as unsatisfactory, they may be subject to enforcement intervention, and they will need to apply for a new Enhanced DBS check through the Council and provide their Certificate to the Council.</p> <p><b>3.6.12</b> Details of how to sign up to the Update Service can be found on the GOV.UK website. Applicants are responsible for paying all fees.</p> <p><b>3.6.13</b> If the licence is granted and relevant information is later revealed on a disclosure certificate that had not been notified to the council by the licence holder then that licence will be subject to enforcement action and review.</p> <p><b>3.6.14</b> The council may, at any point throughout the duration of this Policy, specify (by way of updating the relevant sections on its website) the way in which applicants can/must apply for their DBS certificates (e.g. via a 3<sup>rd</sup> party). Applicants will continue to be responsible for all costs associated with this.</p>
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<p><b>3.7 Relevance of Offences, Convictions, Prosecutions and Cautions</b></p>	<p>Not included within current policy except under Appendix I – Penalty Points Tariff:</p> <p>Maximum Penalty Points 10 -12:</p> <p>Failure of a licence holder to disclose offence, conviction, prosecution or cautions within seven days</p>	<p><b>Insertion</b></p> <p><b>3.7.7.</b> Licence holders are required by this Authority to notify the Licensing Team within 48 hours of an arrest and release, charge or conviction of any sexual offence, any offence involving dishonesty or violence and any motoring offence. An arrest for any of the offences within this scope (with the exception of one-off minor traffic offences) will result in a review by this Authority as to whether the licence holder is fit to continue to hold a licence. This will not however be seen as a direction that a licence should be withdrawn; it is for the Licensing Authority to consider what, if any, action in terms of the licence should be taken based on the balance of probabilities.</p> <p><b>3.7.8</b> A failure by a licence holder to disclose a matter referred to in 3.7.7 that the council is subsequently advised of may be seen as behaviour that questions honesty and therefore the suitability of the licence holder regardless of the outcome of the initial allegation.</p>
<p><b>4.1 Private Hire Operators</b></p>	<p><b>4.1.8</b> Applications will only be acceptable if they include the following:</p> <ul style="list-style-type: none"> <li>• Application form completed in its entirety and signed by the applicant along with all the information prescribed.</li> </ul>	<p><b>Insertions and numbers within this section to be amended as necessary</b></p> <p><b>4.1.8</b> Applications will only be acceptable if they include an application form completed in its entirety and signed by the applicant along with all the information prescribed.</p>

	<ul style="list-style-type: none"> <li>Application for a Disclosure and Barring Service Basic Check, which can be obtained from DBS or Disclosure Scotland, completed by the applicant with accompanying identification or a current valid disclosure certificate completed within 1 month and obtained via an approved body which will allow an update service check to be performed. Applicants that hold a current Drivers Licence with the Council will be exempt from this requirement.</li> </ul>	<p><b>4.1.9</b> Where an operator is not a Swale licensed driver, who is subject to the associated enhanced disclosure check requirements, the following provisions shall apply.</p> <p><b>4.1.10</b> Private hire operators, that re not licensed drivers, cannot be required to produce an enhanced DBS disclosure. The national standards recommend however that licensing authorities should request a basic disclosure from the DBS and that subsequent checks are undertaken annually. Consequently, the following requirements apply:</p> <p><b>4.1.11</b> All new applicants must provide a completed Basic DBS Check Certificate at the point of their initial application, register with the DBS Update Service upon receipt of their certificate, which will be sent to them by the DBS, and give the Council ongoing permission and the information required to check the status of their certificate every year or otherwise as considered appropriate.</p> <p><b>4.1.12</b> All existing operators who have not already registered with the DBS Update Service must provide a current (less than 3 months old at the date of application) Basic DBS Check certificate, register for the DBS Update Service and give the Council ongoing permission and the information required to check the status of</p>
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		<p>their certificate every year or otherwise as considered necessary, by no later than 1 July 2021. Any operator who fails to do so will be subject to suspension or other enforcement intervention as appropriate.</p> <p><b>4.1.13</b> Where an applicant or licence holder has spent an extended period (three or more continuous months) outside the UK, A Certificate of Good Conduct will also be required from the relevant embassy.</p> <p><b>4.1.14</b> Where the applicant is a company or partnership, these requirements shall apply to all directors, partners, and secretaries.</p> <p><b>4.1.15</b> Once an operator has registered for the Update Service they must remain registered, and give the Council permission to check the status of their certificate as considered necessary, for the duration of their time as a licensed Operator with the Council.</p> <p><b>4.1.16</b> The council may, at any point throughout the duration of this Policy, specify (by way of updating the relevant sections on its website) the way in which applicants can/must apply for their DBS certificates (e.g. via a 3<sup>rd</sup> party). Applicants will continue to be responsible for all costs associated with this.</p>
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<p><b>Private Hire Operators Despatch Staff</b></p>	<p>To be included in Appendix K Private Hire Operators Conditions</p>	<p><b>Insertion</b></p> <p><b>10.1</b> The licence holder(s) must keep an up to date record of all members of staff included in taking bookings and dispatching vehicles.</p> <p><b>10.2</b> All staff listed on the register referred to in 10.1 must provide the licence holder(s) with a Basic DBS check certificate that is less than 3 months old prior to taking bookings and dispatching vehicles.</p> <p><b>10.3</b> The licence holder(s) must be able to provide evidence to the satisfaction of the council, upon request, that they have had sight of the Basic DBS check certificates referred to in 10.2 (although DBS certificates must not be retained) and record this, along with the date seen, in the register referred to in 10.1.</p> <p><b>10.4</b> Should an employee cease to be on the register and later re-entered, a new basic DBS certificate should be requested</p> <p><b>10.5</b> The licence holder(s) must have and apply a policy on employing ex-offenders in roles that would be on the register above. As with the threshold to obtaining a private hire vehicle operator's licence, those with a conviction for offences provided in Appendix E of this Policy, other than those relating to driving, may not be suitable to decide who is sent to</p>
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		carry a child or vulnerable adult unaccompanied in a car. The policy on employing ex-offenders should reflect this and be properly applied by the licence holder (s)
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<b>General Licensing Committee Meeting</b>	
<b>Meeting Date</b>	21 <sup>st</sup> January 2021
<b>Report Title</b>	Draft Street Trading Policy
<b>Cabinet Member</b>	Councillor Richard Palmer, Cabinet Member for Community
<b>SMT Lead</b>	Nick Vickers, Chief Financial Officer
<b>Head of Service</b>	Della Fackrell, Resilience & Licensing Manager
<b>Lead Officer</b>	Christina Hills, Licensing Officer
<b>Key Decision</b>	No
<b>Classification</b>	<b>Open</b>
<b>Recommendations</b>	<ol style="list-style-type: none"> <li>1. To approve the draft Street Trading Policy following a 14 week consultation</li> <li>2. Members to determine the level of fees to be set for Street Trading Consents</li> <li>3. To recommend to Full Council that the policy be approved and published</li> </ol>

## **1 Purpose of Report and Executive Summary**

- 1.1 At the General Licensing Committee of 2<sup>nd</sup> February 2020 a draft Street Trading Policy under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 was approved for public consultation. This report seeks approval from Members to endorse the draft Street Trading Policy following a 14 week consultation so that it can be presented to full Council for formal adoption.
- 1.2 Members are also asked to determine the level of fees that should be set for Street Trading Consents

## **2 Background**

- 2.1 Under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, a local authority may regulate street trading in their area. Swale BC has adopted these provisions for the whole of its area and on 23<sup>rd</sup> July 2010 designated all streets in the area as 'consent streets'
- 2.2 The effect of this designation is that any street trading in any street is prohibited, subject to legal exemptions, without first obtaining a street trading consent from the Council.

- 2.3 On 1<sup>st</sup> December 2010 to ensure compliance under the European Service Directive, the Council approved a Street Trading Local Policy and Guidance Document.
- 2.4 A revised Street Trading Policy was approved by the Council on 24<sup>th</sup> July 2013 and which, although set to be reviewed in 2016, is still in existence to date. This is shown as **Appendix I**.
- 2.5 The Street Trading Policy outlines how the Council will execute its decision making functions when dealing with applications for Street Trading Consents.
- 2.6 There is no statutory requirement for a local authority to have a formal Street Trading policy; however, a Council can choose to adopt such a policy.
- 2.7 The adoption of a Policy benefits customers as well as reassuring the general public and other public bodies. It also reinforces effective practices and ensures proportionate, consistent and targeted regulator activity, whilst also developing a transparent and effective dialogue and understanding between regulators and those we regulate.

### **3 Proposals**

- 3.1 The existing policy was reviewed by officers. There have been no changes to legislation to take into account. The current policy has been expanded in some areas to provide clarification as to what is defined within the Local Government (Miscellaneous Provisions) Act 1982 and, where appropriate, exemptions contained within the existing policy have been deleted.
- 3.2 The draft Street Trading Policy is attached as **Appendix II**
- 3.3 The existing policy has been amended as shown below:
- Street Trading at Fetes and Carnivals – outdoor events staged mainly for public entertainment and benefiting charitable concerns. It is for Members to determine what percentage of monies raised will be contributed to the beneficiary individual, organisation or charity. This is shown at point 3.6.1 within the draft policy.
  - Removal of ‘7 metre rule’ within the existing policy whereby anyone trading more than 7 metres from the highway was exempted from the requirement of obtaining a Street Trading Consent. This exemption was taken from the London Local Authorities Act 1990 rather than the Local Government (Miscellaneous Provisions) Act 1982 and is not a legal exemption.
  - Removal of the requirement for ice-cream vendors to register and use a specific chime. This was originally imposed to assist with enforcement.

However, it leads to complaints from ice-cream vendors that another vendor is using their chime and is difficult to enforce.

- Ice Cream Vans and Mobile Food Vans will be required to supply details of their proposed routes, streets and stopping places (which may vary from day to day) again to decrease complaints from other traders.
- Removal of the 'Trial Period' which permits individuals, under the control of an existing consent holder, to try their hand at street trading for a limited period of three weeks.
- The surrender and revocation of a Street Trading Consent is now included in the Policy.
- Amendments to the application procedure to make it more comprehensive. This includes the requirement for applicants to obtain a standard Disclosure and Barring Service criminal records check for new and renewal applications and for one-off consents where considered necessary in order to check the suitability of the applicant.
- Event organisers will no longer apply on behalf of all stall holders, instead each individual stall holder will require a separate Street Trading Consent. The reason for this change is because currently the event organiser is the only person who would be legally accountable and the only person that the Council could take enforcement action against, should there be any problem (for example trading in counterfeit goods).
- Enforcement – this section has been expanded.
- Data Retention – this section has been expanded.

## **4 Fees**

- 4.1 The licensing fees have been reviewed taking into account that they will need to reflect the increased administrative burden that will fall to the licensing team with this enhanced policy whilst at the same time ensuring they are not set at a rate that would be prohibitive to applicants for Street Trading Consents
- 4.2 Currently, fees are charged to event organisers based on the number of stalls at an event, whereas if the proposal to require individual stall holders to apply for their own consents is approved this will lead to a relatively substantial increase in income.
- 4.3 A benchmarking exercise was conducted comparing fees currently charge by Swale and authorities within our CIPFA group which is attached as **Appendix III**.

Members will note that fees tend to vary widely between authorities but that Swale is on the lower end of the spectrum.

- 4.4 Taking into account the above factors, fees have been worked up as shown as **Appendix IV**.

## **5 Alternative options**

- 5.1 The Council could choose not to introduce an updated policy on Street Trading, however, to do so would be contrary to best practice and may lead to a lack of clarity on the application of legislation.

## **6 Consultation Undertaken**

- 6.1 A consultation ran between 30<sup>th</sup> March 2020 until 19<sup>th</sup> June 2020 which was then extended until 30<sup>th</sup> June 2020. Methods of consultation were by the advertising on the Council's website, in local newspapers and where appropriate by email and post.

- 6.2 The consultees were:

- All Swale Councillors
- All Town and Parish Councils
- Town Markets/Co-Operatives
- Kent Police
- Kent Fire and Rescue
- Kent County Council Highways Department
- Kent County Council Trading Standards
- Kent County Council Safeguarding Unit
- Swale BC Environmental Services (Commercial and Environmental Response teams)
- Swale BC Planning
- Swale BC Economy and Community Services team
- Swale BC Green Spaces team
- Any relevant trade associations
- All existing Consent holders

- 6.3 All responses have been entered onto a grid for consideration.

- 6.4 Licensing officers, in consultation with the Resilience and Licensing Manager have conducted an evaluation of each response and have given

recommendations as to whether or not to amend the policy statement, and if so, in what way and to what extent.

6.5 The grid and recommendations are attached as **Appendix V**.

## 7 Implications

Issue	Implications
Corporate Plan	Having an adopted Street Trading Policy satisfies the corporate objective of: A Council to be proud of
Financial, Resource and Property	<p>There are no direct financial implications for Swale Borough Council concerning this draft Policy as the consultation is being carried out by officers. However, if at any time in the future the policy was subject to legal challenge, there could be costs associated with this process.</p> <p>There could be traders who previously were informed that they required no street trading consent because they were trading more than 7 metres from the highway. As this was an illegal exemption these traders will now require a street trading consent and to pay the requisite fee.</p>
Legal and Statutory	The relevant legislation in relation to street trading is contained within Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).
Crime and Disorder	It is a criminal offence to trade in the street without an appropriate consent. The policy provides a framework for consistent decision-making
Environmental Sustainability	No implications
Health and Wellbeing	No implications
Risk Management and Health and Safety	It is important that Swale BC has a robust and accountable regulatory regime in relation to street trading in order to ensure fair trading, prevent crime and to protect consumers
Equality and Diversity	<p>The Council has a legal obligation under section 149 of the Equality Act 2010 to have due regard to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups.</p> <p>When considering street trading consent applications, only issues provided for in Schedule 4 of the Local Government (Miscellaneous</p>

	Provisions) Act 1982 and provided for in the Street Trading policy for Swale BC will be taken into account. This will ensure a consistent approach is adopted. Under the terms of the policy, every application will be considered on its own merits.
Privacy and Data Protection	Normal data protection and privacy rules will apply. Under the 2013 Act the Council is obliged to provide certain information to the Environment Agency who compile and keep a public register.

## 7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Existing Street Trading Policy 2013 - 2016
- Appendix II: Draft Street Trading Policy 2021 – 2024
- Appendix III: Benchmarking of Fees
- Appendix IV: Proposed Fees
- Appendix V: Consultation Evaluation Grid

## 8 Background Papers

Local Government (Miscellaneous Provisions) Act 1982

**Local Government  
(Miscellaneous Provisions) Act  
1982**

**Street Trading Local Policy and  
Guidance Document  
(2013-2016)**



## WELCOME TO SWALE

Swale has a prime location within 40 miles of the Channel Ports and London but set within the Kentish countryside. The borough has three distinct areas including Faversham, Sittingbourne and the Isle of Sheppey as well as extensive rural surroundings.

Set within the 'Garden of England', Swale provides historic towns, seaside resorts and beautiful villages combined with exceptional landscapes, wildlife and maritime and aviation history.

Swale is more deprived than the national and Kent average but with a higher percentage of diversity with a growing population of 133,400.

There is an increasing demand for new jobs and street trading provides an opportunity for employment and economic growth which will contribute towards the regeneration of Swale.

The Council aim to regulate street trading in a way that enhances the character of the borough, for the benefit of the whole community and those visiting.

### LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

## STREET TRADING LOCAL POLICY and GUIDANCE DOCUMENT

### Introduction and Scope

Local Authorities have a legal discretion to regulate street trading in their area. Street trading is covered by the Local Government (Miscellaneous Provisions) Act 1982 Schedule 4 – Street Trading, which Swale Borough Council adopted in 1993 and resolved to control within its boundaries. Any licence/ consent or permits issued prior to February 2010 are now obsolete. In Swale, streets are designated as 'consent' streets for the purposes of street trading.

The Council has designated **all** streets within its boundaries as "Consent Streets". The effect of this designation is that if you want to sell goods on the street, you are classed as a street trader and, subject to legal exemptions, will need to have the appropriate consent. Conditions can be attached to the consent as is considered 'reasonably necessary'. Trading without the required consent is a criminal offence.

### What is Street Trading?

Street trading is defined as '*selling, exposing or offering for sale any article (including a living thing) in a street*'. This includes food and beverages or other services and activities such as arts and crafts, face painting, hair braiding etc.

## **Purpose**

The purpose of this Street Trading Policy is to provide a framework for consistent decision-making. The Council wishes to create a vibrant street scene which complements retail activity, events and activities. Street trading is therefore seen by the Council as a regeneration tool.

## **Objectives of the policy**

Central to the Council's policy are a number of key objectives which are:

- To protect public health through the control of street trading within Swale by improving standards of food safety, health and safety and environmental management and enhance the image of the area.
- To address commercial need by ensuring that permitted street trading is properly regulated as to where, when and how it takes place.
- To prevent public nuisance by taking measures to reduce the risk of nuisance from noise, refuse, vermin, fumes and smells.
- To ensure that traders operate within the law and act fairly in their dealings with the public so as not to present a risk to public order.
- To ensure the suitability of the structures used for the sale of goods.
- To ensure that traders and the people that they employ are "fit and proper" in accordance with the Act and that may include a requirement for basic criminal record checks.
- To permit temporary or occasional street trading, where appropriate.

## **Can I apply?**

Any persons aged seventeen years or over may apply for a consent. The consent to trade will be allocated at the sole discretion of the Council. The allocation of a consent(s) will be directed at obtaining a wide range of trades and a high quality style of trading. Applicants are required to provide full details including where possible photographs, of their trading style.

Applicants must ensure that their proposed trade is compatible with the locations being applied for as the Council will have regard to the interests of nearby permanent traders. Permanent traders is defined as other local shops and market traders. The aim is not to discourage competition, rather to ensure an adequate mix of trades so as to avoid over saturation of any given area. Similar trades are unlikely to be allocated to different permanent consent sites in the same street unless reasonable justification is given.

## Where can I trade?

Street Trading consents from fixed locations will **not** normally be granted where:

- Road safety would be compromised either from the citing 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 will be sited.
- There would be a significant loss of amenity caused by additional traffic, or disturbance (e.g. noise, odour or fumes, etc.).
- **There is already adequate provision of similar goods in the immediate vicinity of the site to be used for street trading purposes.**
- There is a conflict with Traffic Management Orders such as waiting restrictions.
- The site or pitch obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use for street trading purposes.
- The trading unit obstructs the safe passage of users of the footway or carriageway.
- The pitch interferes with sight lines for any road users such as at road junctions, or pedestrian crossing facilities.
- The site does not allow the Consent Holder, staff and customers to park in a safe manner.
- Any new pitch would be in competition with an existing business premise within the immediate locality selling identical items.
- Any new pitch would detract from the aesthetics of the local area.
- The pitch would be sited on the A249 or M2 as these locations are prohibited by the Highways Agency. Lay'bys on any other roads will be considered on a case by case basis.
- The pitch would be in conjunction with one of the permanent Town Markets. Applications to trade within the market footprint on market days will not be considered (for information on market footprints please contact the Licensing department).
- The pitch would be on a Council owned carpark.

## Exemptions

The following are considered exempt from the need to obtain a Street Trading Consent:

- Fetes and Carnivals – outdoor events staged for public entertainment and benefiting charitable concerns
- Non-commercial or charitable events organised by not-for-profit organisations, charitable trusts
- Farmers' Markets (producer managed marketplace for local producers to sell their own produce direct to local people, separate to a Town Market)
- Sale of articles by householders on land contiguous with their homes
- Trading on private land, more than 7 metres away from the Highway, the Highway is defined as any road and pavement or any land where the public

have access without payment. In this instance the trader would only require the consent of the landowner

- Door to door sales, these are not considered Street Trading as they are dealt with by way of a Peddlars Licence. The Police issue and regulate Peddlars. Peddlars licences are also issued for traders that move and only stop temporarily to complete a sale.
- A Trader operating as part of a licensed market area (e.g. Rose Street Car Park, Sheerness, Forum Car Park, Sittingbourne and The Market Place, Faversham) or fair (e.g. Faversham Recreation Ground, Milton Recreation Ground)
- Trading in a trunk road picnic area as defined in Section 112 of the Highways Act 1980
- Trading carried out by 'rounds men' e.g. milk deliveries, window cleaning
- Trading carried on at a petrol station
- Trading carried out as a news vendor only selling newspapers or periodicals (this is subject to conditions about the size and position of the stand)
- Shops utilising the pavement outside their premises, offering and/ or selling goods which are part of the business of the shop; subject to Highways and Health and Safety legislation.

### **Street Trading consents for which fees are payable**

Swale Borough Council will require payment of fees for the following street trading activities:

- One-off application (Temporary Consent, up to 96 hours/4days)
- An annual application for a fixed location
- An annual application for a non fixed location (such as Ice Cream Vans)
- A six month\* application for either a fixed or non fixed location.
- Annual renewal of a fixed location consent
- Variation of a consent (all types)
- An application a Event Organisers Consent (Multiple Stalls)

\*If applying for a 6 month consent the months must run concurrently.

### **Application procedure for a one off consent that is not part of an Event**

An individual can make an application for a one off consent in the prescribed format to the Licensing Department, one off consents are designed for events and festivals and can last for a maximum of 96 hours/4 days. The following documentation must accompany the application:

- A passport sized photograph (for the ID card)
- The fee of £30.00

The application will be assessed by the Licensing Officer, provided all of the relevant information has been submitted, the consent will be granted and issued.

The Licensing Officer will pass details of the stall holder to the Environmental Health Department and any relevant Enforcement Officer for information, no further consultation takes place.

### **Application procedure for annual or 6 month consents (not Events)**

It is essential that you contact the Planning Department prior to making an application, to check if there will be a need for you to obtain Planning Consent. It is generally the case that if you will be in situ for more than 28 days per calendar year, planning consent WILL be required.

An individual can make an application for an annual consent (fixed site) to the Licensing Department, the following documentation must accompany the application:

- An outline of desired trading area(s) (several can be proposed but only one will be granted) The proposed area will be reserved until the application has been considered
- Consent of the owner if the proposed trading area is private and you will be within 7 metres of the Highway.
- A passport sized photograph (for the ID card)
- The fee of £100.00 or £50.00 for 6 months

Your business will need to be registered with Environmental Health if you wish to sell food.

KCC Highways does not condone the use of the public highway for commercial purposes. KCC Highways will not give approval for mobile vending units but will, as part of the consultation process, provide advise on the safety aspects of a proposed location. KCC Highways **may** offer pre-application advice and applicants are advised to e-mail [roadworkseast@kent.gov.uk](mailto:roadworkseast@kent.gov.uk) stating the proposed location together with a small plan or map of the proposed site; in these circumstances advise does **not** constitute a consent.

The application will be assessed by the Licensing Officer, provided that all of the relevant information has been submitted and the application will be processed and a letter of acknowledgement will be sent to the applicant.

The Licensing Officer will then consult with the following:

Kent Police  
Kent Fire and Rescue Service  
KCC Highways  
Environmental Protection Team  
Environmental Response Team  
Environmental Commercial Team  
Ward Councillors.  
Parish and Town Councils\*

\* Parish and Town Councils would not normally be consulted in the case of mobile Ice Cream Sellers requesting a 'Whole Borough' consent.

The Promenade in Leysdown on the Isle of Sheppey has been highlighted as historically suffering from seasonal illegal traders, for this reason no temporary consents will be accepted for this area.

Each Consultee (as listed above) has 28 days from the date that they receive the application notification in which to respond (in writing) to the Licensing Department. Consultees are notified of applications by either e-mail or post.

At the end of the consultation period, if no representations have been made the Licensing Officer **may** grant the consent. If representations have been made **and no agreement between parties can be reached** the application will be referred to the Licensing Sub Committee for a decision.

### **Application procedure to renew an Annual Consent (not Events)**

Once granted an annual consent must be renewed each year. Approximately 6 weeks prior to its expiry the Licensing Officer will send a renewal reminder. Although no consultation takes place on annual renewals you should allow 28 days for the application to be processed.

You will need to submit the completed application and fee. You will not need to submit plans and photographs as these will already be held by the Council.

In some instances the Licensing Officer may deem it inappropriate to automatically renew the licence and the application would then undergo consultation with the relevant Authorities. This would be the case if complaints had been received and/or any offences had been committed since the licence was issued.

### **Application for an Annual Consent, non fixed location (Ice Cream Sellers only)**

Ice Cream vans, by the nature of their business move from location to location but still fall under this legislation. They are not classed as 'Fixed Site' traders but must obtain consent from the Local Authority to carry out trade on the Highway.

The application and consultation procedure is the same as that for a 'Fixed Site' pitch with the exception of nominating a single street, instead applicants are required to nominate an area.

The consent is granted to the individual making the 'sale' and not the overall business.

Each individual/ business operating ice-cream vans will need to nominate a unique chime at the application stage and **where possible** no traders will have the same chime. Should an individual/ business be found copying another chime

or purposely changing their chime to evade enforcement action, their consent may be revoked or any renewal application rejected.

'Fixed Site' Ice Cream Sellers should follow the same application procedure as anyone applying for a 'normal' annual or 6 month consent.

### **Trial period**

Companies who employ multiple drivers must ensure each driver is individually licensed. To allow time for a company to evaluate the suitability of a driver this authority has implemented a three week 'trial' period. Companies wishing to use this facility should contact the Licensing Department prior to the individual trading. After the trial period expires the company must make an application to authorise the driver otherwise any further trading would be considered illegal.

### **Application procedure for Event Organisers Consents**

Unique to Swale Borough Council this allows an Event Organiser (on behalf of all the street traders) to make an application to the Licensing Department, stating how many trade stands they wish to have consent for. Event organiser(s) should consider any existing shops within the boundary of their event and establish whether they intend to trade on the street scene; if not, with their agreement the 'pitch' can be offered to another trader.

For Health and Safety purposes a list of stallholders and their intended locations should accompany the application.

The fee must accompany the application and be based on the number of stalls requested as follows:

- 1 – 19 = £65.00
- 20 – 49 = £130.00
- 50+ = £200.00

The application will be assessed by the Licensing Officer, provided all of the relevant information has been submitted and the consent will be granted and issued. No consultation takes place on Organiser Permits as in most cases details of the event have already been given to the Licensing Officer for consideration under different legislation.

No enforcement is carried out by the Council on Festival Organiser Consents, it is the responsibility of the consent holder to ensure the suitability, position and legality of each stall at their event.

The Licensing Officer will copy the list of stall holders to the Police and Fire Safety Officer for information, no further consultation takes place.

## **Revocation of a Trading Consent**

The Council can revoke a Street Trading consent after it has been granted. This could be for a variety of reasons such as:

- Trading outside permitted hours
- Non compliance with conditions
- Non use of site for three months
- Other Statutory Notices served on a specific trader

Notice will be given of the intent to revoke a licence and the matter would be put before the General Licensing Committee for consideration. There is no automatic right of appeal against revocation of a licence and no refund of the consent fee paid.

## **Conditions**

Standard conditions based on this policy document will be attached to every consent detailing the holder's responsibilities. Additional conditions may also be attached limiting the days and the hours when street trading is permitted, the goods which may be sold, the size of the trading pitch or any other relevant detail. Failure to comply with conditions may lead to revocation or non-renewal of a consent. Any contraventions will be considered prior to any further consent being issued. If a person is convicted of an offence then further consents may not be issued.

## **Enforcement**

Persons engaging in street trading (as defined in the Act) without a consent or who fail to comply with the conditions will be liable to prosecution under paragraph 10 of Schedule 4 of the Act. Decisions regarding enforcement action will be made in accordance with this policy and the Council's Enforcement Policy (available on our website [www.swale.gov.uk](http://www.swale.gov.uk)).

In regards to mobile traders, a 'Code of Conduct', issued by the Department of the Environment (London) provides guidance to traders and Local Authorities on aspects of the ice-cream trade such as the sounding of chimes. The Local Authority's Environmental Department may refer to this guidance when investigating allegations of noise nuisance.

The Borough Council will only carry out enforcement on Ice Cream Sellers in the following circumstances:

- Trading in an area not defined on the Street Trading Consent
- Trading outside of the permitted hours
- Incorrect disposal of waste
- Health and Safety/ Food Hygiene and Environmental Issues

Any Statutory Notice served on a consent holder (in respects to nuisance) may result in a consent being revoked.

The enforcement function for any breaches in relation to street trading is currently delegated to the Head of Service Delivery, supported by the Licensing Enforcement Officer.

### **Waste/ Refuse**

At the end of each day trading, the consent holder will clear the area around their permitted site and shall under no circumstances, deposit litter, rubbish or refuse in the street, suitable containers should be provided for the disposal of waste.

No waste liquids shall be disposed of into any highway channel, gully or manhole or in any other manner likely to cause pollution of any surface water channel.

All refuse generated by the business must be taken to a licensed waste disposal site. Consent holders must identify their method of waste disposal at the time of application and keep records of their waste management, which must be available on request by the Borough Council or the Environment Agency.

### **How The Council Makes Its Decision**

The Council is bound to act reasonably and consistent with its general obligations (e.g. those under the Human Rights Act) but has a wide discretion with regard to the granting or refusal of Street Trading consents and does not have to rely upon specific statutory grounds in order to refuse an application for grant or renewal of a consent. There is no statutory right of appeal against the Council's decision. However, if your application is refused or revoked, you can discuss the matter with the Licensing Officer/Head of Service in the first instance, who will consider any objections you put forward.

Where adverse representations are received and remain unresolved the application will usually be considered by the Licensing Sub-Committee. At this point the applicant, will be expected to attend and will be advised in writing of the date, time and place when the application will be heard. The applicant can be represented by a solicitor, or supported by a colleague and translation provision will be provided if requested. The Licensing Officer will be responsible for preparing a report for the Licensing Sub-Committee regarding the application. The report will be made available to the applicant at least five working days before the date of the meeting.

You can also ask for a Judicial Review, which is a decision made by a High Court Judge who will look at all aspects on the application and then give a judgement on the facts.

### **General**

The Council can charge such fees as it considers reasonable but should cover the cost of administration, monitoring and enforcement. The Head of Service in consultation with the relevant Cabinet Member has delegated authority to set and review the fee structure in determining service pressures, if necessary at half year review but at least once a year.

Consents are issued to the individual and not the business, the named individual should be present throughout trading hours. The names of any assistants should be included in the initial application. If the named holder of the consent will not always be present, additional consents for the assistants may be required, Should the consent holder wish to vary the consent at any time, an administration fee will be charged and the variation will undergo a consultation process.

A street trading consent can not be transferred or sold to another person except that the consent may, with agreement from the Licensing Officer, be transferred to a member of the Consent Holder's immediate family in the event of the Consent Holder's death or incapacity. In these cases no fee will be charged.

This policy will be subject to a basic annual review and monitoring is undertaken by the Licensing Officer/Head of Service in conjunction with the appropriate Cabinet Member. Every three years the Policy will undergo a full review and widespread consultation in line with Government guidelines.

This policy will form the basis of the detailed conditions attached to every street trading consent. This policy will be applied in a manner which is consistent with our equality duties.

### **Trading conditions/ locations where different rules apply**

Parks and publicly owned open spaces in Swale are not considered part of the policy relating to "Consent Streets". Enquiries relating to trading in parks and publicly owned open spaces must be directed to Swale Borough Council's Greenspaces Manager on 01795 417127.

Any food traders in these circumstances would need to be compliant with food hygiene regulations.

Exposing vehicles for sale on a road does not form part of the street trading legislation and instead is regulated under Section 3 of the Clean Neighbourhoods and Environment Act 2005. Complaints relating to commercial sales, of two or more vehicles within 500 metres should be reported to Swale Borough Council on 01795 417850.

Promotional Standards are not covered under this legislation as no 'sale' takes place. In most cases the main aim of such stands is to raise awareness of a business or charity. Anyone wishing to erect such a stand should, in the first instance contact the Licensing Department to check suitable locations and then KCC Highways as a Temporary Structure Permit may be required. This Council will only allow one promotional stand in any one area on any one day.

Street Trading and the Licensing Act 2003: These pieces of legislation come together when the holder of the Street Trading consent wishes to sell alcohol, this would normally only be the case with one off consents issued for events and festivals. In these circumstances the consent holder would also be required to

apply for a Temporary Event Notice (TEN) from the Licensing Department, The Street Trading consent alone does not authorise the sale of alcohol.

In respect of a consent issued to a Festival Organiser, it is the responsibility of the organiser to ensure that any stalls wishing to sell alcohol are aware of the requirement to apply for a TEN at least **5 working days** prior to the event. It should be noted that the day the paperwork is served and the day of the event are **not** included in the 5 days, therefore it is recommended that you allow at least 7 working days.

Trading in conjunction with any of the Town Markets is not covered by this legislation, for help and advice in obtaining a Market Pitch please contact Swale Borough Councils Economy and Community Services Manager on 01795 417420. .

### **Further Information**

For further information in relation to street trading please contact: The Licensing Department, Swale Borough Council, Swale House, East Street, Sittingbourne, Kent ME10 3HT

Tel: 01795 417364

Email: [licensing@swale.gov.uk](mailto:licensing@swale.gov.uk)

## **Appendix I: General Consent Conditions**

1. When consent is granted the Consent Holder and any assistants will be issued with a badge, which must be worn at all times while street trading;
2. The consent holder will ensure that his/her street trading activities do not create any obstruction to the flow of pedestrians or other traffic using the street or part of the street to which his/her consent relates, or create any danger to persons using it;
3. The consent holder will ensure that his/her street trading activities do not cause nuisance or annoyance, whether to persons using the street or part of the street which his/her consent relates or otherwise;
4. No signs advertising the trade are placed on the highway (or abutting the highway);
5. The consent must be available for inspection at all times during the hours of trading at the place of trading;
6. A consent number is displayed in an appropriate place;
7. If assistants are employed, they each have a copy of the consent within their possession at all times of trading. (***Assistants must be accompanied and supervised by the consent holder at all times. Where this is not the case, assistants must apply separately for a consent in their own name submitting the appropriate fee***);
8. The consent holder will not deposit trade refuse or litter of any kind on the street or part of the street to which his/her consent relates;  
(***Note under the Environmental Protection Act 1990 you are under a duty of care to dispose of any refuse in a correct manner.***)
9. The consent excludes trading in conjunction with the Town markets.
10. The consent does not automatically entitle the holder to trade at any festival or event, irrespective of whether you ordinarily trade in that location, permission must be sought by the event organiser(s).
11. That the consent holder has been granted permission for the use of land adjacent to the highway from the landowner and adjoining landowners when appropriate. The granting of a consent does not imply that landowners permission has been granted;
12. Consent to trade in a certain location does not imply the grant of planning permission and applicants are strongly recommended to consult the Planning Officer prior to commencement of trading;
13. Where food is sold the consent holder must comply at all times with ALL current hygiene legislation including EU hygiene regulations and Food Hygiene (England) Regulations 2006, as applicable.

**Note: The Council may at any time vary conditions of a Street Trading Consent.**

## **Appendix II: Organisers Consent Conditions**

- 1 When consent is granted the consent holder will be issued with a paper licence which should be available for inspection.
- 2 The consent holder will ensure that the street trading activities do not create any obstruction to the flow of pedestrians or other traffic using the street or part of the street to which his/her consent relates, or create any danger to persons using it;
- 3 The consent holder will ensure that the street trading activities do not cause nuisance or annoyance, whether to persons using the street or part of the street which his/her consent relates or otherwise;
- 4 No signs advertising the trade are placed on the highway (or abutting the highway);
- 5 The consent holder will not deposit trade refuse or litter of any kind on the street or part of the street to which his/her consent relates;  
***(Note under the Environmental Protection Act 1990 you are under a duty of care to dispose of any refuse in a correct manner.)***
- 6 The consent excludes trading in conjunction with the Town markets as these are covered under separate legislation.

**Notes: The Council may at any time vary conditions of a Street Trading Consent.**

**The Council carries out no Enforcement over stalls covered by an Organisers Consent, other than those selling alcohol.**

**The Council has no power to move on any person in possession of a Peddlars Licence issued by Kent Police.**

# Swale Borough Council



## Street Trading Policy

Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982

### Version

2021

Next Scheduled Review: 2024

All enquiries relating to this document should be sent to:

Licensing  
Swale Borough Council  
Swale House  
East Street  
Sittingbourne  
Kent  
ME10 3HT

[licensing@swale.gov.uk](mailto:licensing@swale.gov.uk)

## Issue & Review Register

Summary of Changes	Issue Number & Date	Approved by

All changes to this document are tracked using a different colour and/or marked with a vertical line at the side of the page.

If amendments have been made, this will be redistributed to all named on the distribution list.

Compiled by:

Date:

Approved by:

Date:

### **Changes and Corrections**

Any changes or corrections required should be notified in writing to:

Licensing  
Swale Borough Council  
Swale House  
East Street  
Sittingbourne  
Kent  
ME10 3HT

Or

[licensing@swale.gov.uk](mailto:licensing@swale.gov.uk)

## Street Trading Policy 2021-2024

### Local Government (Miscellaneous Provisions) Act 1982 Street Trading Local Policy Document

#### 1. Legislation & Policy

- 1.1 Local Authorities have a legal discretion to regulate street trading in their area. Street trading is covered by the Local Government (Miscellaneous Provisions) Act 1982 Schedule 4 – Street Trading, which Swale Borough Council adopted in 1993 and resolved to control within its boundaries.

On 23<sup>rd</sup> July 2010 the Council formally designated all streets within its boundaries as ‘Consent Streets’.

The effect of this designation is that if you want to sell goods on the street (see para 3.2. for definition), you are street trading (see para 3.1 for definition) and you will need to have the appropriate consent from the Council unless you are legally exempt (see para 3.5).

Trading without the required consent is a criminal offence.

- 1.2 Swale Borough Council adopted this policy on DD/MM/YYYY

Every three years the Policy will undergo a full review involving widespread consultation with the existing traders, relevant authorities and the general public, any consultation will be in line with Government guidelines.

#### 2. Purpose & Objectives

- 2.1 Street trading can add variety and vibrancy to the character of this Borough as well as diversity of shopping opportunities. The aim of the Council is to give consent to traders who will help to create a vibrant street scene which complements retail activity, community events and activities.
- 2.2 The purpose of this policy is to provide a framework setting out the Council’s procedures which will be used to inform the various decision making processes to ensure a consistent approach and expectations of those engaged in street trading either from an individual pitch as a mobile trader or as part of a large scale event/festival
- 2.3. This policy aims to give clarity and transparency to potential and existing traders, explaining how the Council will promote its objectives and deliver compliance with imposed conditions.

The Council's key objectives are:

- 2.3.1 To protect the public through the control of street trading within Swale by improving standards of food safety, health and safety and environmental management to enhance the image of the area
- 2.3.2 To ensure that permitted street trading is properly regulated as to where, when and how it takes place.
- 2.3.3 To prevent public nuisance by the use of conditions designed to reduce the risk of nuisance from obstruction, noise, refuse, vermin, fumes and smells.
- 2.3.4 To ensure the suitability of the structures used for the sale of goods.
- 2.3.5 To ensure that traders and the people that they employ are 'fit and proper' in accordance with the Act. This will include a requirement for a basic Disclosure and Barring Service Criminal Records check.

### **3. Street Trading Definition and Exemptions**

- 3.1 Street Trading is defined under the Act as 'selling, exposing or offering for sale any article (including a living thing) in a street'.
- 3.2 A 'street' is broadly defined to include any road, footway, beach or other area to which the public have access without payment and a service area as defined in s.329 of the Highways Act 1980.
- 3.3. This can include areas adjacent to a street, car parks and privately owned land where the public have access, without payment, as a matter of fact.
- 3.4 Street trading includes the sale of food and beverages. It does not include the provision of services (such as face painting or hair braiding) even if payment is made.
- 3.5 The following activities are **exempt** from the need to obtain a street trading consent under the Act:
  - 3.5.1 Trading by a person acting as a pedlar under the grant of a Pedlar's Certificate granted under the Pedlars Act 1871 and issued by the police – see 3.7 below
  - 3.5.2 Anything done in a market or fair, the right to hold which was acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of an enactment or order. This means markets that have a 'charter' or are permitted by other legislation e.g. The Food Act 1984. All other so called 'markets' will require a Street Trading Consent and for the purposes of this policy will be referred to as 'events' to avoid confusion.

- 3.5.3 Trading in a trunk road picnic area as defined in Section 112 of the Highways Act 1980.
- 3.5.4 Trading carried out as a news vendor selling newspapers or periodicals (only without a stall/receptacle) or one which is not over 1m long or wide or over 2m high.
- 3.5.5 Trading carried out at a petrol filling station.
- 3.5.6 Trading which is carried out at a premises used as a shop or in a street adjoining premises so used and as part of the business of the shop
- 3.5.7 Trading carried out by a 'roundsman' e.g. milk deliveries. However, this does not include ice cream sellers and mobile catering vehicles
- 3.5.8 Use for trading from an object or structure placed on, in or over the highway under Part VIIA of the Highways Act 1980
- 3.5.9 The operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980.
- 3.5.10 Doing anything authorised as a public charitable collection made under section 5 of the Police, Factories, etc (Miscellaneous Provisions) Act 1916 – see 11.4 below
- 3.6 Trading at the following events requires a Street Trading Consent but no fee will be charged:
- 3.6.1 Street Trading at Fetes and Carnivals – outdoor events for which no entry fee is charged staged mainly for public entertainment and benefiting charitable concerns. It is expected that at least **???**% of monies raised will be contributed to the beneficiary individual, organisation or charity.
- 3.6.2 Street Trading at non-commercial or charitable events for which no entry fee is charged organised by not-for-profit organisations and charitable trusts.
- 3.7 As detailed in 3.5 above pedlars acting under a certificate are exempt. However, a pedlars' certificate is not required to sell food, and such sales are not exempt, although some traders do have certificates. If the sale is in a street, then it will be street trading and require the appropriate consent.
- 4. Consideration of an application for a Street Trading Consent - location**
- 4.1 The Council does not designate pitches and applicants must therefore propose trading which is compatible with the location being applied for. When considering the proposal, the Council will have regard to other trading taking place in the immediate vicinity.

The aim of this policy is not to discourage competition, rather to ensure an appropriate mix of trading so as to avoid over saturation of any given area. Every application will be considered on its own merits.

Consent will not usually be given for any fixed locations where:

- 4.1.1. Road safety would be compromised either from the siting of the trading activity itself, or from customers visiting or leaving the site.
- 4.1.2. There would be a significant loss of amenity to those in the area caused by additional traffic, or disturbance (e.g. noise, odour or fumes, etc.)
- 4.1.3. There is already significant provision of similar goods in the immediate vicinity of the site to be used for street trading purposes.
- 4.1.4. There is a conflict with Traffic Management Orders such as waiting restrictions.
- 4.1.5. The trading obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger.
- 4.1.6. The Consent Holder, staff and customers have no appropriate place to park in a safe manner, if required
- 4.1.7. The pitch would be sited on the A249 or M2 as these locations are prohibited by Highways England. Layby's on any other road will be considered on a case by case basis.
- 4.1.8. The pitch would be on a council owned carpark
- 4.2 The consent holder must be granted permission for the use of any land adjacent to the highway from the landowner and adjoining landowners where appropriate. The granting of a consent does not imply that landowners permission has been granted;

Consent to trade does not imply the grant of planning permission and applicants are strongly recommended to consult the Planning Department to check if permission is required prior to commencement of trading

## **5. Application Procedure**

- 5.1 Only persons aged seventeen or over may apply for consent. However, a person under seventeen may be employed as an assistant.
- 5.2 New applications for sole traders and multiple trader event organisers will be determined following a 28 consecutive day consultation period.
- 5.3 One - Off Consents. The Council will grant one-off consents up to a maximum of 12 times per calendar year. These types of consents include events that are not exempt from street trading requirements under separate legislation.

- 5.3.1 One-off consents can last for up to 4 days
- 5.3.2 Each individual trader at an event must obtain their own consent. However, event organisers can co-ordinate the applications.
- 5.3.3 An application for a one-off consent must be submitted at least 8 weeks before the intended trading and will be determined following a 28 consecutive day consultation period
- 5.4 All applicants for the consents above will be required to provide documents as shown at Appendix I.
- 5.5 Renewal applications - For sole traders and event organisers
- 5.4.1 Applicants should submit their renewal application at least 8 weeks prior to the expiry of their consent if they wish to continue to trade. The Council will normally send reminders of the expiry of consents three months before expiry. It does however, remain the responsibility of the trader to ensure that an application is submitted in time for the consent to be renewed.
- 5.4.2 A renewal application will be determined following a 28 consecutive day consultation period
- 5.4.3 At renewal, the Council will consult to determine if there are any concerns regarding the street trader or if there have been any complaints.
- 5.4.4 Where a renewal application has been made and there have been no justifiable complaints, no enforcement issues and all fees have been paid on time, the consent will normally be renewed.
- 5.4.5 Where a renewal application has been made and there have been complaints or enforcement issues which did not result in revocation then the application may be rejected. The council may choose to consult with such agencies and interested parties it considers relevant in this regard before making a decision.
- 5.4.6 Applicants will need to submit documents as shown in Appendix I.

## **6. Consent Fees**

- 6.1 The Council can charge such fees as it considers reasonable and will recover the cost of administration and compliance.

Payment will be required for the following street trading applications:

- a) An annual consent for a fixed location.

- b) An annual consent for a non-fixed location (mobile traders).
- c) A six month consent for a fixed location
- d) A six month consent for a non-fixed location (mobile traders)
- e) A One-off consent
- f) A One-off consent involving multiple traders where there is no exemption applicable (an event)

The Council's adopted fees, for the above-mentioned applications, are shown in Appendix III of this Policy.

## **7. How the Council makes its decisions**

- 7.1. The Council is bound to act reasonably and consistently with its general obligations (e.g. those under the Human Rights Act and Equalities Act) but has a wide discretion when making a decision to give consent for Street Trading. The Council does not have to rely upon specific statutory grounds in order to refuse an application for Street Trading consent or whether or not to renew that consent.
- 7.2 The Licensing section will assess the proposed location, taking into consideration the concerns raised in Section 4 of this policy. The application will then be consulted with various public serving authorities and Council services. The consultees who will be consulted on all applications are:
- a) Kent Police
  - b) Kent Fire and Rescue Service
  - c) KCC Highways
  - d) Swale BC Environmental Health
  - e) Swale BC Environmental Response Team
  - f) Swale BC Planning
  - g) Swale BC Property Services
  - h) Swale BC Economy and Community Services
  - i) Swale BC Green Spaces team
  - j) Ward Councillors
  - k) Parish and Town Councils
  - l) KCC Safeguarding Unit

And in some cases:

- m) Other businesses/organisations if it is considered that they are likely to be affected by a successful application

The consultation will run for 28 consecutive days.

- 7.3. A representation will be considered to be relevant if it is made by a person, business or body that is likely to be directly affected by a successful application.

- 7.4 If the Licensing section receives a representation then it will be forwarded to the applicant for their comment. The name and address of the objector will be published unless the Council receive a request for this not to be done for a good reason. The Council will not accept anonymous representations.
- 7.5 Any comments that the applicant may wish to make should be received by the Licensing section within 10 working days of the applicant being notified of the representation.
- 7.6 If the representations cannot be mediated and remain unresolved the application will be referred to the General Licensing Sub-Committee. The hearing will normally take place within 20 days from the end of the consultation period.
- 7.7 A Licensing Officer will be responsible for preparing a report for the General Licensing Committee (who can then delegate this to a Sub-Committee) , which will be made available to the applicant at least five working days before the date of the meeting. The applicant and the persons making representations will be invited to attend and will be advised in writing of the date, time and place when the application will be heard. Any party can be represented by a lawyer or supported by a representative of their choice.
- 7.8 The Committee may grant the consent as applied for or impose additional restrictions limiting the days and/or times when street trading is permitted. In some circumstances the Committee may restrict the goods which may be sold, the size of the trading pitch or any other relevant detail, depending on the specifics of the application. The Committee could also refuse the application.
- 7.9 If an application for consent is refused following a decision by a Licensing Officer, an applicant can make a written appeal to the Resilience and Licensing Manager, who will reconsider the case based on any new evidence given.
- 7.10 If an applicant's appeal is rejected, they will be made aware of the reasons for refusal and advised the only right of appeal against the Council's decision is by way of Judicial Review.
- 7.11 A Judicial Review is where a decision is made by a High Court Judge who will look at all aspects of the application and decide whether or not the Council has acted lawfully
- 7.12 The Council can revoke any street trading consent after it has been given.
- 7.13 In these circumstances, the Council will give notice of any intent to revoke a street trading consent, which will provide a detailed explanation as to why the

consent has been revoked. The Council reserves the right to put any contentious matters before the General Licensing Sub-Committee.

- 7.14 If an application is refused or renewal is refused or consent is revoked, following a decision made by the General Licensing Sub-Committee applicants will be advised the only right of appeal against the Council's decision is by way of Judicial Review..
- 7.15 Applicants can also make a formal complaint to the Council at [www.swale.gov.uk/compliments-and-complaints](http://www.swale.gov.uk/compliments-and-complaints)
- 7.16 Where a consent is refused the Council may refund the fee, or a part of it as it considers appropriate. Refunds will be considered on a case by case basis.

## **8. Surrendering a Street Trading Consent**

The consent holder may at any time surrender in writing the consent issued to them. Where a consent is surrendered, the Council is under a duty to remit or refund the whole or part of the fee paid for the Consent as they consider appropriate as shown at para 9(5) of the Local Government (Miscellaneous Provisions) Act 1982.

## **9. Conditions**

- 9.1 The Council has adopted standard conditions, as shown in Appendix II, based on the objectives and expectations set out in this policy document as well as the responsibilities of each trader, which will be attached to each Street Trading Consent. Additional conditions may be imposed, or amendments made to the standard conditions, should specific circumstances make this reasonably necessary. Breach of conditions could ultimately lead to enforcement action, which may include, but is not limited to the revocation of a Consent.
- 9.2 The Council may amend the consent conditions at any time. Any substantial amendment to the standard conditions would involve consultation with all affected parties and the responses being presented before the General Licensing Committee for formal adoption. Once adopted the amended conditions will be imposed on all existing consent holders immediately thereafter or as decided by Committee.
- 9.3 Failure to comply with our standard conditions may lead to enforcement action, which may include, but is not limited to consent being revoked by the Council. This may affect any future applications.

## **10. Enforcement**

- 10.1 A person engaging in street trading without consent, trading from a stationary van, barrow, other vehicle or portable stall without specific permission for that

trading or who fails to comply with conditions at time of trading or location, will be guilty of an offence and may be liable to prosecution under paragraph 10 of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.

It is also an offence to make a false statement which you know to be false in any material respect or which you do not believe to be true in connection with an application for consent.

These offences are punishable on conviction with a fine up to £1,000.

- 10.2 The aim of enforcement within the borough of Swale, is to protect the health and safety and welfare of the public who may be exposed to risks from unauthorised or poorly run street trading. We aim to:
- a) Ensure that all street traders are fit and proper to trade
  - b) Promote compliance with the law
  - c) Ensure those who fail to abide by the Standard Conditions or relevant legislation (depending on the nature of the business) are held accountable, which may result in prosecution or revocation of their consent
  - d) Be proportionate and consistent in our dealings with applicants and consent holders
  - e) Be transparent, open and honest
- 10.3 Decisions regarding enforcement action will be made in accordance with this policy, the Swale BC Enforcement Policy, Licensing Enforcement Policy and on a case-by-case basis. The enforcement function for any breaches in legislation is currently delegated to the Resilience and Licensing Manager, supported by Licensing Officers.
- 10.4 In regard to ice cream traders, a 'Code of Conduct', issued by the Department for Environment Food and Rural Affairs ([www.defra.gov.uk](http://www.defra.gov.uk)) provides guidance to traders and Local Authorities on aspects of the trade such as the sounding of chimes. The Local Authority's Environmental Department may refer to this guidance when investigating allegations of noise nuisance.
- 10.5 The licensing team will only carry out enforcement on Ice Cream Sellers in the following circumstances:
- a) Trading without a consent
  - b) Trading in an area not specified on the Street Trading Consent
  - c) Trading outside of the permitted hours
- 10.6 Enforcement of the following will be carried out by other departments of the Council:
- a) Incorrect disposal of waste
  - b) Health and Safety/ Food Hygiene and Environmental Issues

- 11. Other Legislative Requirements – This is not intended as an exhaustive list**
- 11.1 Any food traders would need to be compliant with food hygiene regulations. All food businesses that prepare, sell, store or cook foods and drinks need to register as a food business with Environmental Health.
- 11.2 Where food is sold the consent holder must comply at all times with ALL current hygiene legislation.
- 11.3 Exposing vehicles for sale on a road is regulated under Section 3 of the Clean Neighbourhoods and Environment Act 2005. Complaints relating to commercial sales, of two or more vehicles within 500 metres of each other should be reported to Swale BC Environmental Response Team.
- 11.4 Persons collecting money under section 5 of the Police, Factories, etc (Miscellaneous Provisions) Act 1916 require a Street Collection Permit from the Council but not a Street Trading Consent.
- 11.5 Some charities employ collectors who canvass the public in order to obtain a direct debit mandate to contribute to the charity (these collectors are sometimes known as ‘chuggers’). This type of collection requires neither a Street Collection Permit nor a Street Trading Consent. However Swale Borough Council does have an expectation that all proposed collectors of this type will contact the Regeneration Officer (Town Centres) to liaise over the location, days and times that this type of activity will take place, especially to ensure that they do not interfere with any markets or events taking place. It is expected that there will be no tables or structures such as gazebos erected by the collectors. Most important is the expectation that direct debit collectors will behave in a respectful and courteous manner toward members of the public and not harass them in any way.
- 11.6 Promotional stands are not covered under this legislation as no sale takes place. However, there is an expectation that anyone wishing to erect such a stand should, in the first instance contact the Regeneration Officer (Town Centre) to check suitable locations so as not to interfere with any events or markets that may be taking place.
- 11.7 Any sale of alcohol will also require a Temporary Events Notice (TEN) under the Licensing Act 2003. The notice period for giving a standard TEN is statutory and is 10 clear working days between and not including serving the notice and the date of the event. A late TEN requires at least 5 clear working days’ notice between and not including serving the notice and the date of the event.
- 11.8 There are limits on the number of standard TEN’s and late TEN’s that can be applied for within a year.

11.9 In respect of a consent issued to an Event Organiser, it is the responsibility of the organiser to ensure that any stall wishing to sell alcohol is aware of the requirement for a TEN.

## **12. Data Retention**

12.1 Under the General Data Protection Regulations the Council has set out the period of time that personal information shall be retained.

12.2 All personal information provided on an unsuccessful application, will be retained for a period of six months before being destroyed.

12.3 All personal information relating to the consent holder, irrespective of its level of sensitivity, will be retained for the period of consent; once the consent has expired or been revoked or the trader notifies the Council they no longer wish to have consent; the information shall be retained for a period of 24 months before being destroyed. DBS checks will not be retained by the Council

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## Appendix 1 – Documents to provide on application

New Applications and Renewal Applications	One off consents
<p>A completed and signed street trading consent application form. Applications forms are available online at <a href="https://www.swale.gov.uk/street-trading-consent">https://www.swale.gov.uk/street-trading-consent</a> by email at <a href="mailto:licensing@swale.gov.uk">licensing@swale.gov.uk</a> or they can be sent by post on request from the licensing team</p>	<p>A completed and signed street trading consent application form. Applications forms are available online at <a href="https://www.swale.gov.uk/street-trading-consent">https://www.swale.gov.uk/street-trading-consent</a> by email at <a href="mailto:licensing@swale.gov.uk">licensing@swale.gov.uk</a> or they can be sent by post on request from the licensing team</p>
<p>The application form must be accompanied by the full fee (unless para 3.6 applies and no fee is due). Details of fees are shown at Appendix III</p>	<p>The application form must be accompanied by the full fee (unless para 3.6 applies and no fee is due). Details of fees are shown at Appendix III</p>
<p>Where the proposed street trading activity is from a fixed position, a plan showing the precise trading position and its proximity to other similar retail outlets within a 100 metre radius. The proposed position and orientation of the stall, van, barrow, cart etc. is to be shown on the plan. The plan shall also include any additional vehicles that will be parked on the site</p>	<p>A location plan showing the exact position of any cart, van, barrow etc</p>
<p>Ice Cream Vans and Mobile Food Vans are exempt from providing location plans unless the van is stationary. However, details should be given of the proposed route/streets/stopping places where it is intended street trading will take place as well as the proposed trading hours. This may vary from day to day.</p>	
<p>One colour photograph of the stall, van, barrow, cart that will be used for street trading activity. The photograph shall show any proposed awnings fully extended, whether integral or not.</p>	<p>One colour photograph of the stall, van, barrow, cart that will be used for street trading activity. The photograph shall show any proposed awnings fully extended, whether integral or not.</p>
<p>Multiple traders and event organisers do not need to provide photographs of the individual pitches but must provide a numbered site plan of pitches together with a list giving the name of each individual trader and the nature of their business that from time to time trade from those pitches. This list should be kept updated and amendments submitted to the licensing team throughout the lifetime of the consent</p>	<p>Event organisers do not need to provide photographs of the individual pitches but must provide a numbered site plan of pitches together with a list giving the name of each individual trader</p>

One passport size colour photograph of the applicant. If there are assistants, then they too must supply a photograph of themselves	One passport size colour photograph of the applicant. If there are assistants, then they too must supply a photograph of themselves
If the land is privately owned, written permission from the land owner, this includes Kent County Council Highways.	If the land is privately owned, written permission from the land owner this includes Kent County Council Highways.
Applicants and where applicable their assistants, must submit a Standard Disclosure and Barring Service criminal records check. This can be obtained as shown below: Email: <a href="mailto:customerservices@dbs.gsi.gov.uk">customerservices@dbs.gsi.gov.uk</a> Phone: 03000 200 190 Address: PO Box 165. Liverpool L69 3JD  The original certificate must accompany the application form and must be submitted within one month of issue. The requirement for a DBS does not apply to event organisers.	Where considered necessary, applicants must submit a Standard Disclosure and Barring Service criminal records check. This can be obtained as shown below:  Email: <a href="mailto:customerservices@dbs.gsi.gov.uk">customerservices@dbs.gsi.gov.uk</a> Phone: 03000 200 190 Address: PO Box 165. Liverpool L69 3JD  The original certificate must accompany the application form and must be submitted within one month of issue. The requirement for a DBS does not apply or event organisers.
Evidence of the right to work in the UK. Documents that demonstrate this are attached as Appendix IV.	Evidence of the right to work in the UK. Documents that demonstrate this are attached as Appendix IV.

## Appendix II: General Consent Conditions

1. When consent is granted the consent holder will be issued with formal written consent which shall be available for inspection by authorised officers of the Council or the Police at any time that trading is taking place.
2. When consent is granted the Consent Holder and any assistants will be issued with a badge, which must be worn at all times while street trading.
3. The consent holder shall ensure their street trading activities subject to consent do not create any obstruction to the flow of pedestrians or other traffic using the street or part of the street to which their consent relates or create any danger to persons using it.
4. The consent holder shall ensure that their street trading activities subject to consent do not cause a nuisance or annoyance, to person(s) or residents using the street or part of the street or running a business within the vicinity of where their consent applies.
5. No signs advertising the trading shall be placed where it can cause an obstruction to vehicles or pedestrians using the street.
6. Where food is sold the consent holder must comply at all times with ALL current hygiene legislation.
7. Consent holders must identify their preferred method of waste disposal at the time of making their application, and keep records of their waste management, which must be available, upon request by Swale Borough Council's Licensing or Environmental Department or from the Environment Agency.
8. The consent holder shall not deposit trade refuse or litter of any kind on the street or part of the street to which their consent relates; (Note under the Environmental Protection Act 1990 everyone has a duty of care to dispose of any refuse in a correct manner.)
9. The consent holder shall at the end of each trading day or session, whichever is the shortest, clear around their permitted site.
10. It is recommended that a licence holder has a waste management plan in place, to ensure that:
  - a) Suitable waste containers will be made available to customers, where it is appropriate, for any potential waste products generated by the sale of goods.

- b) No waste liquids shall be disposed of into any highway channel, gully or manhole or in any other manner which is likely to cause pollution of any surface water channel.
- c) All refuse generated by the business must be taken to a licensed waste disposal site.

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**Appendix III: Current Fees and Charges**

Annual Consent	£110.00
6 Month Consent	£55.00
One-Off Consent	£35.00
Event Consent	£75.00 (1-19 stalls) £145.00 (20-49 stalls) £220.00 (50+ stalls)
Fee exemptions:	

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**Appendix IV:****Documents which demonstrate entitlement to work in the UK**

1. A passport showing the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK.
2. A passport or national identity card showing the holder, or a person named in the passport as the child of the holder, is a national of a European Economic Area country or Switzerland.
3. A Registration Certificate or Document Certifying Permanent Residence issued by the UKVI to a national of a European Economic Area country or Switzerland.
4. A Permanent Residence Card issued by the UKVI to the family member of a national of a European Economic Area country or Switzerland
5. A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the UKVI to the holder indicating that the person named is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.
6. A **current** Immigration Status Document issued by the UKVI to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or previous employer.
7. A birth (short or long) or adoption certificate issued by the UK which includes the name(s) of at least one of the holder's parents or adoptive parents, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
8. A birth (short or long) or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, **together with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.
9. A certificate of registration or naturalisation as a British citizen, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.

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STREET TRADING FEES BENCHMARKING		
<b>KENT AUTHORITIES</b>		
<b>SWALE</b>	For 12 months – new and renewal	£110
	For 6 months – new and renewal	£55
	One off consent	£35
	Events	£75
	1-19 stalls	£145
	20-49 stalls	£220
	Over 50 stalls	
<b>ASHFORD</b>	Market pitch	£79
	Food mobiles – static/short term static	
	New without planning permission	£218
	New with planning permission	£110
	Renewals	£79
<b>CANTERBURY</b>	Permanent pitch for one year - Application plus Pitch fee	£100 Between £15 and £105 per day based on location
	Temporary pitch up to 7 days – Application plus pitch fee	£10 Between £15 and £25 per day based on location
<b>DARTFORD</b>	No Consents issued	
<b>DOVER</b>	For 12 months – new	£494 which is: £302 on application (non-refundable) £192 when application is approved
	For 12 months – renewal	£229
	Occasional	£130

	Occasional Street Market Up to 25 stalls Per stall thereafter	£200 £10
<b>FOLKESTONE &amp; HYTHE</b>	New and Renewal	£295
<b>GRAVESHAM</b>	No Consents issued	
<b>MAIDSTONE</b>	Up to 12 trading days Up to 30 trading days Up to 90 trading days 12 months	£32 £69 £189 £405
<b>MEDWAY</b>	New and renewal Daily consent (For festivals)	£280 £65
<b>SEVENOAKS</b>	No Consents issued	
<b>THANET</b>	No Consents issued. There are Prohibited Streets	
<b>TONBRIDGE &amp; MALLING</b>	Fixed pitch 12 months Fixed pitch occasional Non-fixed pitch 12 months Non-fixed pitch occasional	£1225 £325 £1150 £60
<b>TUNBRIDGE WELLS</b>	Application fee – per stall/pitch Calverley Precinct – per stall/pitch All other Consent streets – per stall/pitch Street market/event fees – per stall/pitch	£65 £26 £26 £26

<b>CIPFA 'FAMILY GROUP' AUTHORITIES</b>		
<b>BRAINTREE</b>	1 day's trading per week per annum	£111
	2 day's trading per week per annum	£194
	3 day's trading per week per annum	£265
	4 day's trading per week per annum	£332
	5 day's trading per week per annum	£441
	6 day's trading per week per annum	£498
	7 day's trading per week per annum	£553
	Special Events Up to 10 traders	£44
Between 11 and 19 traders	£60	
Over 20 traders	£77	
<b>EAST STAFFORDSHIRE</b>	New and renewal per annum	£2980
<b>EASTLEIGH</b>	No Consents issued	
<b>EREWASH</b>	Daily	£15
	Quarterly	£250
<b>GLOUCESTER</b>	City Centre Catering annual fee (Every day)	£8000
	City Centre Catering annual fee (Up to 5 days)	£6400
	City Centre Catering seasonal daily rate (January - October)	£25
	City Centre Catering seasonal daily rate (November– December)	£30
	Catering outside City Centre annual fee (4 or more days)	£4000
	Catering outside City Centre daily rate	£15
	Retailers City Centre annual fee (4 or more days)	£4000
	Retailers City Centre seasonal daily rate (January – October)	£20
	Retailers City Centre seasonal daily rate (November-December)	£25
	Retailers outside City Centre annual fee (4 or more days)	£2080
	Retailers outside City Centre daily rate	£10
	New application additional fee	£115

<b>GOSPORT</b>	Food stalls/vehicle/trailer annual consent 7 days a week	£1210
	Non-food stalls/vehicle/trailer annual consent 7 days a week	£860
	Food stalls/vehicle/trailer annual consent up to 3 days a week	£615
	Non-food stalls/vehicle/trailer annual consent up to 3 days a week	£450
	Food stalls/vehicle/trailer annual consent 1 day a week	£345
	Non-food stalls/vehicle/trailer annual consent 1 day a week	£305
	Food stalls/vehicle/trailer six month consent 7 days a week	£630
	Non-food stalls/vehicle/trailer six month consent 7 days a week	£445
	Daily consent per 30cm(1ft) Minimum 4.6m (15ft)	£2.65
<b>HAVANT</b>	No Consents issued	
<b>KETTERING</b>	Per month	£375
	Per 3 months	£1125
	Per Annum	£4500
<b>NUNEATON &amp; BEDWORTH</b>	Monday to Friday	£40.40
	Saturday	£43
	Saturday only	£55.70

**APPENDIX IV**

<b>2018</b>	<b>Cost per consent £</b>	<b>Total</b>	<b>Income £</b>
One year consents	100	15	1,500
6 Months consents	50	3	150
1-19 stalls	65	8	520
20-49 stalls	130	6	780
50 plus stalls	200	4	800
One off consents	30	1	30
		<b>TOTAL</b>	<b>3,780</b>

**PROPOSED FEES FOR 2021****Option A**

One year consents		130 approx 20	2,600
6 months consents		65 approx 3	195
One off consents	If we charged £15	approx 600	9,000
		<b>TOTAL</b>	<b>11,795</b>

<b>2019</b>	<b>Cost per consent £</b>	<b>Total</b>	<b>Income £</b>
One year consents	100	23	2,300
6 Months consents	50	3	150
1-19 stalls	65	7	455
20-49 stalls	130	0	0
50 plus stalls	200	2	40
One off consents	30	3	90
		<b>TOTAL</b>	<b>3,035</b>

<b>2020</b>	<b>Cost per consent £</b>
One year consents	100
	110
6 months consents	55
1-19 stalls	75
20-49 stalls	145
50 plus stalls	220
One off consents	35

<b>Option B</b>			
One year consents	130	approx 20	2,600
6 months consents	65	approx 3	195
	If we charged		
One off consents	£10	approx 600	6,000
		<b>TOTAL</b>	<b>8,795</b>

Assistants Badge                      15 unknown    unknown

<b>Total</b>	<b>Income £</b>
8	800
10	1,100
3	165
0	0
0	0
0	0
5	175
<b>TOTAL</b>	<b>2240</b>

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Respondent	Paragraph	Interest	Comments made	Response from Council
Respondent 1	Whole Policy	Council Department	Having reviewed the draft policy, I can confirm that there are no objections or comments	Noted
Respondent 2	3.6.1 - Street Trading at Fetes and Carnivals - outdoor events staged mainly for public entertainment and benefiting charitable concerns. It is expected that at least ???% of monies raised will be contributed to the beneficiary individual, organisation or charity	Community Safety Officer	I think this could cause problems. As a member of a team helping to organise an event myself, I know how difficult it can be to get additional vendors to attend if their percentage donation fee is too high. There are also issues of being able to measure takings	It will be for Members to determine what percentage of monies raised, if any, should be given to the cause for which the event was staged
Respondent 3	11.5 and 11.6	Council Officer	Nothing of any substance from me apart from the references to Regeneration Officer (Town Centre) who no longer works for the Council	Policy to be amended to reflect this
Respondent 4	Whole Policy	Members of public	My wife and I are the proprietors of The Sweet Hut, The Leas, Minster. The review of this policy is of particular interest to us, in regards to Ice cream van trading. Since opening The Sweet Hut, we have invested heavily in machinery to provide whippy ice creams, as well as other ice creams and ice lollies to the public, from our premises on	The issue of ice cream traders at The Leas, Minster garners a lot of complaints to the licensing team. Firstly from the traders themselves who each feel that they

			<p>The Leas (The Sweet Hut). It is therefore hugely frustrating when an ice cream van parks on the road, directly above us, effectively reducing our trade, and adding an unfair competition (when they have less overheads and can therefore sell ice cream at a cheaper cost to the public). We welcome healthy competition and have a good relationship with The Oyster Café, at the other end of The Leas. With two fixed businesses along a relatively small sea front, the general public are provided with choice and the demand is appropriately met. Having a premises, means we have one location to trade from, whereas, mobile ice cream vans can trade anywhere.</p> <p>Having read the new Street Trading Policy, we welcome the proposed changes that require ice cream vendors to specify the areas they would trade in. It is also pleasing to read that businesses may be consulted during the decision making process. Our question is, what is the criteria that determines whether we are consulted or not, when a licence is applied for? Due to our unique location (right on the sea front), we would hate to miss out on being consulted, due to a technicality e.g. that the trader would not be right outside our premises.</p> <p>Our other query was regarding the following statement:</p> <p>4.1.3 There is already significant provision of similar goods in the immediate vicinity of the site to be used for street trading purposes.</p> <p>As mentioned above, we welcome healthy and fair competition and have good relations with our neighbouring businesses, both of which sell goods, we sell, e.g. ice creams, and hot and cold drinks. The word 'significant' seems a little open to interpretation. We wondered</p>	<p>should be the only one allowed to trade at this location as historically there have been 'gentleman's agreements' that they would not trade next to another ice cream trader and secondly from residents in the area who complain about the noise and smell from the engines of the ice cream traders who park for hours on end.</p> <p>The proposed Street Trading Policy will require all ice cream traders to specify locations, dates and times that they intend to trade and this will in part allow the licensing team to ensure that there is no 'overlap' between traders.</p> <p>It is proposed that a condition of licensing will be that there will never be more than 2 ice cream traders at The Leas, Minster and that these vans shall be at least 100 metres from each other. The exact location, times of trading to</p>
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			<p>whether 'adequate' would be more fitting, and enable to council to review each area on individual circumstances e.g. size of area, public footfall etc.</p> <p>In summary, we support the changes and further protection this policy may give existing/fixed businesses. We very much hope that it will enable all traders, whether they be mobile or not, a fair chance at earning a living.</p>	<p>be decided by the licensing team.</p> <p>We will always consult with nearby businesses that could be affected by the proposed street trading. Whether the terminology used is 'significant' or 'adequate' it will always be open to interpretation. We agree that the criteria used to determine an individual street trading consent application should be on a case by case basis taking into account individual circumstances</p>
	4.1 and whole policy	Ward Councillor	<p>I feel that we should include no trading near to schools (area to be defined). Whilst this section refers to fixed locations it should also be applicable to mobile units. The reason for this is health concerns and we should do more as a council to do what we can promote healthy lifestyles. And ice cream van or other food stall outside of a school each day doesn't do anything to promote healthy lifestyles. As well as this the queues outside of schools cause safety issues when there is no room on the footpath.</p> <p>General comment - We should be doing more to ensure that traders assist with the council's Climate and Ecological Emergency. We need to have better standards in terms of vehicles which are being used on our roads. Some ice cream vans are very old and are some of the most polluting</p>	<p>Agreed. Policy to be changed to state that no trading shall take place within 400 Metres of a school</p> <p>Comment noted. An age limit could be imposed regarding vehicles used for Street Trading. This would have to have a 'lead in' time</p>

			<p>vehicles on our road. There must be more we can do to raise the standards we have.</p>	<p>to allow traders to prepare to change to more environmentally friendly vehicles. Members could decide what would be an appropriate timescale taking into consideration the current economic climate as a result of the Coronavirus pandemic</p>
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