

BIRMINGHAM CITY COUNCIL

LICENSING AND PUBLIC PROTECTION COMMITTEE

WEDNESDAY, 18 NOVEMBER 2020 AT 10:30 HOURS
IN ON-LINE MEETING, MICROSOFT TEAMS

Please note a short break will be taken approximately 90 minutes from the start of the meeting and a 30 minute break will be taken at 1300 hours.

A G E N D A

1 NOTICE OF RECORDING/WEBCAST

The Chairman to advise/meeting to note that this meeting will be webcast for live or subsequent broadcast via the Council's Internet site (www.civico.net/birmingham) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2 DECLARATIONS OF INTERESTS

Members are reminded that they must declare all relevant pecuniary and non pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations will be recorded in the minutes of the meeting.

3 APOLOGIES

To receive any apologies.

5 - 14

4 MINUTES

To note the public section of the Minutes of the meeting held on 30 September, 2020.

15 - 26

5 LPPC 2019-20 OUTTURN REPORT

The report of Interim Assistant Director of Regulation & Enforcement

27 - 38

6 LPPC 2020-21 BUDGET REPORT

The report of Interim Assistant Director of Regulation & Enforcement

<u>39 - 88</u>	7	<u>STATEMENT OF LICENSING POLICY CONSULTATION REPORT 2020</u>	The report of Interim Assistant Director of Regulation & Enforcement
<u>89 - 154</u>	8	<u>DFT: STATUTORY GUIDANCE REPORT</u>	The report of Interim Assistant Director of Regulation & Enforcement
<u>155 - 176</u>	9	<u>ENFORCEMENT POLICY REVIEW UPDATE REPORT</u>	The report of Interim Assistant Director of Regulation & Enforcement
<u>177 - 186</u>	10	<u>R&E ENFORCEMENT REPORT – SEPTEMBER 2020</u>	The report of Interim Assistant Director of Regulation & Enforcement
<u>187 - 196</u>	11	<u>FOOD ENFORCEMENT DURING COVID</u>	The report of Interim Assistant Director of Regulation & Enforcement
<u>197 - 230</u>	12	<u>PROSECUTIONS & CAUTIONS (APRIL-AUGUST 2020)</u>	The report of Interim Assistant Director of Regulation & Enforcement
<u>231 - 234</u>	13	<u>CHAIRS AUTHORITY REPORT</u>	The report of Interim Assistant Director of Regulation & Enforcement
<u>235 - 242</u>	14	<u>ENFORCEMENT POWERS PRESENTATION – NOVEMBER 2020</u>	Item Description
	15	<u>DATE AND TIME OF NEXT MEETING</u>	To note the date and time of the next meeting on Wednesday, 13 January, 2020 at 1030 hours.
	16	<u>OTHER URGENT BUSINESS</u>	To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chairman are matters of urgency.
	17	<u>AUTHORITY TO CHAIRMAN AND OFFICERS</u>	Chairman to move:- 'In an urgent situation between meetings, the Chairman jointly with the relevant Chief Officer has authority to act on behalf of the Committee'.
	18	<u>EXCLUSION OF THE PUBLIC</u>	That in view of the nature of the business to be transacted which includes exempt information of the category indicated the public be now excluded

from the meeting:-

Exempt Paragraph 6

PRIVATE AGENDA

19 **PUBLIC HEALTH UPDATE**

Item Description

20 **OTHER URGENT BUSINESS (EXEMPT INFORMATION)**

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chairman are matters of urgency.

BIRMINGHAM CITY COUNCIL

**LICENSING AND
PUBLIC PROTECTION
COMMITTEE
30 SEPTEMBER, 2020**

**MINUTES OF A MEETING OF THE LICENSING
AND PUBLIC PROTECTION COMMITTEE HELD
ON WEDNESDAY, 30 SEPTEMBER, 2020 AT
1030 HOURS AS AN ONLINE MICROSOFT
TEAMS MEETING**

PRESENT: - Councillor Phil Davis in the Chair;

Councillors Bob Beauchamp, Nicky Brennan, Neil Eustace,
Adam Higgs, Mike Leddy, Mary Locke, Majid Mahmood, Simon
Morrall, Chauhdry Rashid, Mike Sharpe and Martin Straker
Welds.

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NOTICE OF RECORDING/WEBCAST

1288 The Chair advised that the meeting would be webcast for live and subsequent broadcast via the Council's internet site (www.civico.net/birmingham) and that members' of the press/public may record and take photographs except where there were confidential or exempt items.

DECLARATIONS OF INTEREST

1289 Members were reminded that they must declare all relevant pecuniary and non pecuniary interests relating to any items of business to be discussed at the meeting. If a pecuniary interest was declared a Member must not speak or take part in that agenda item. Any declarations would be recorded in the minutes of the meeting.

APOLOGIES

1290 An apology was received from Councillors Olly Armstrong and Bruce Lines for non-attendance.

MINUTES

1291 The Minutes of the meeting held on 12 February, 2020, having been previously circulated were confirmed and signed by the Chair.

The business of the meeting and all discussions in relation to individual reports are available for public inspection via the web-stream.

**THE ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014:
PROPOSALS TO EXTEND AND VARY THE DOG RELATED PUBLIC
SPACE PROTECTION ORDERS**

The following Report of the Interim Assistant Director for Regulation and Enforcement was submitted:-

(See document no. 1)

Mark Croxford, Head of Environmental Health, made introductory comments relating to the report during which he indicated that there was a slight modification to the Public Space Protection Orders related to dogs on leads on footpaths.

In response to Councillor Brennan, Marc Croxford confirmed that areas included children's play areas. In reply to comments from Councillor Majid Mahmood that the vast majority of dog owners were responsible owners and his disappointment at the low numbers of feedback and participation levels to which Councillor Mary Locke added that there were different ways of carry out consultation, Marc Croxford explained that a lot of people were reluctant to respond to consultations. The RSPCA had been one of the stakeholders involved. In reply to Councillor Adam Higgs' comment about dog fouling he added that some people felt there were areas that were natural for dog fouling as it would break down. There was a minority of irresponsible dog owners therefore there was a need for the powers.

1292

RESOLVED:-

- i) That the Committee considers there is a necessity for the following proposed Public Space Protection Orders to be extended by the Cabinet Member - Social Inclusion, Community Safety & Equalities having had regard to the outcome of the consultation.
 - a) Fouling of Land by Dogs
 - b) Dogs on Leads to be varied to exclude designated park land
 - c) Dogs on Lead by Direction
 - d) Dogs Exclusion
 - e) The Dogs (Specified Maximum)
- ii) that the Cabinet Member - Social Inclusion, Community Safety & Equalities be requested to extend, for a period of 3 years, the PSPOs listed in a), c), d) and e) and the PSPO in b) amended as described,

IMPACT OF CAZ

The following report of Interim Assistant Director of Regulation and Enforcement was submitted:-

(See document no. 2)

Sajeela Nasser, Head of Licensing, Markets and Street Trade gave a summary of the report explaining the three potential options for the Committee to consider which were explained in detail at paragraph 6.1 of the report. Sajeela Nasser indicated that the Cabinet Member was supportive of Option 3 and would continue to protect jobs in the City and support taxi drivers. The Committee's views were requested on the 3 options.

Councillor Leddy queried how this compared with the resolutions passed at City Council in September with regard to carbon emissions. Members expressed their views on the 3 options and agreed there was a need for the infrastructure to be available in the City. Councillor Majid Mahmood felt it would be helpful to have details of the charging points installed on a regular basis and queried the numbers of hybrid vehicles.

Sajeela Nasser responded that the long term aim would have positive effects on the City. Owing to the impact of Covid 19 there had been some reassessment of proposals. A balance needed to be made to try to improve the air quality. Officers could look at other options if Members so wished. Sajeela Nasser undertook to arrange for a presentation to the Committee on the infrastructure in the City. It was suggested that option 3 should be subject to the decision of the City Council in September 2020.

Option 2 was put to the vote and lost.

Option 3 as amended, subject to the decision of the City Council in September 2020, was put the vote and approved.

1293

RESOLVED:-

- i) That the Committee adopts Option 3 – Amend the requirement to require newly licensed vehicles be required to be ULEV from 1 January 2026 subject to the decision of the City Council in September 2020 with regard to carbon emissions.
 - ii) That minute 1153 point 2.3 be discharged; and
 - iii) That a further review the availability of ULEV's in the summer of 2024 to ensure that option 3 is a viable option for the trade and to consider the availability of suitable vehicles and charging infrastructure.
-

POSTPONING THE 2020 HACKNEY CARRIAGE UNMET DEMAND SURVEY

The following report of the Interim Assistant Director for Regulation and Enforcement was submitted:-

(See document no. 3)

Emma Rohoman, Licensing Operations Manager made introductory comments relating to the report and indicated that a new survey would normally be required during 2020 however owing to the impact of Covid 19 the results would not be a true reflection of the trade in Birmingham or the levels of demand for hackney carriage vehicles. It was suggested that the survey be deferred to the following year until traffic levels returned and a meaningful survey could be carried out. In reply to comments from Councillor Majid Mahmood, Emma Rohoman informed that the current guidance was that the survey should be carried out every 3 years.

1294

RESOLVED:-

- i) That Members agree that the unmet demand survey is postponed until such a time as traffic levels return to normal levels; and
- ii) that the moratorium on new hackney carriage vehicle licences continues until a review can be conducted that includes data from the unmet demand survey.

CORONAVIRUS AND ENFORCEMENT

The following report of the Interim Assistant Director of Regulation and Enforcement was submitted:-

(See document no. 4)

Paul Lankester, Interim Assistant Director, Regulation and made introductory comments relating to the report and suggested that the Committee may want a representative from West Midlands Police to attend a future meeting. Paul Lankester thanked officers working on enforcement who were going an extra mile in carrying out their duties. Mark Croxford gave an update on the work of the Environmental Health Team in tackling Coronavirus in Birmingham giving a summary of the report.

The Chair on behalf of the Licensing and Public Protection Committee thanked officers from Environmental Health and Licensing for their response to recent events and into uncharted territory and asked that the Committee record its thanks to all staff at all levels.

Members spoke about keeping citizens safe and the rising number of deaths in the UK. The Committee was informed that a number of events had continued to be held in the City in breach of Government guidelines and some examples were given. With regard to demonstrations a risk assessment was always

required by the City Centre Manager who was in contact with the police and organisers who generally complied with the requirement. As a result some demonstrations had not taken place in order to keep people safe.

In reply to Councillor Majid Mahmood Marc Croxford said that he could not comment about the event mentioned as it was in Solihull and not Birmingham. West Midlands Police have attended some events or gatherings following receiving a complaint. They were then required to provide evidence.

1295

RESOLVED:-

That the report be noted.

REGULATION AND ENFORCEMENT REPORT TO END AUGUST 2020

The following report of the Interim Assistant Director for Regulation and Enforcement was submitted:-

(See document no. 5)

Paul Lankester, Interim Assistant Director, Regulation and Enforcement made introductory comments relating to the report and informed the Committee that a report regarding Covid 19 will be incorporated in the future.

In reply to comments from Members, Paul Lankester advised that a risk assessment had been carried out to establish the situation with regard to temporary pavement licences.

With regard to placarding Tony Quigley, Trading Standards informed that the majority of the companies contacted had ceased placarding however there were now some new companies who had been asked to take their placarding down. An enforcement notice was served on the second occasion. Officers had done some publicity to deter businesses from placarding.

In relation to the business grants, Tony Quigley, Trading Standards said that Birmingham Audit were cross referencing applications and had highlighted a number of businesses were not eligible. Going forward they would support any investigation by Birmingham Audit in the early stages.

In reply to questions different ways of working had been introduced for the Registration Service and was being monitored. It would take the rest of the financial year to clear the backlog of births registered and additional working hours had been undertaken to deal with it. Births were required to be registered face to face and was restricted by the number of people allowed in the registry office per day.

Pavement licences were temporary until September 2021. Paul Lankester undertook to liaise with colleagues regarding a joint report by Ward. Stratford Road in particular was mentioned. The issue had been looked at through an Enforcement sub-group and there was a priority street list for officers to visit to speak to traders. Enforcement action could be taken by officers. Sajeela

Licensing and Public Protection Committee – 30 September, 2020

Nasser undertook to feedback Member's concerns and query the strategies for dealing with the issue of encroachment onto the pavement.

1296 **RESOLVED:-**

That the report be noted.

NATIONAL TRADING STANDARDS REGIONAL INVESTIGATIONS TEAM (CENTRAL ENGLAND)

The following report of the Interim Assistant Director for Regulation and Enforcement was submitted:-

(See document no. 6)

Tony Quigley, Trading Standards briefly introduced the report providing an update on the work carried out and showing some examples recent cases. Members acknowledged the good work carried out by the team

1297 **RESOLVED:-**

That the report be noted.

PROSECUTIONS AND CAUTIONS - FEBRUARY 2020

The following report of the Interim Assistant Director for Regulation and Enforcement was submitted:-

(See document no. 7)

It was agreed that the 2 reports should be taken together. Paul Lankester, Interim Assistant Director, Regulation and Enforcement made introductory comments relating to the report. Following some comments by Councillor Majid Mahmood it agreed by the Chair that it would be useful to have information on how work was prioritised Paul Lankester informed that they had explored the situation with litter enforcement. Officers had been threatened and given false names. Work on signage at gateways to the City for displaying information was being monitored and a report will be brought to the Committee in the future.

1298 **RESOLVED:-**

That the report be noted.

PROSECUTIONS AND CAUTIONS – MARCH 2020

The following report of the Interim Assistant Director for Regulation and Enforcement was submitted:-

(See document no. 8)

1299

RESOLVED:-

That the report be noted.

ACTION TAKEN BY THE CHAIR OF THE LICENSING AND PUBLIC PROTECTION COMMITTEE: JANUARY TO AUGUST 2020

The following report of the Interim Assistant Director for Regulation and Enforcement.

(See document no. 9)

Emma Rohomon, Licensing Operations made introductory comments relating to the report. In response to Councillor Majid Mahmood she informed that the source of information was from West Midlands Police or other persons. Information from WMP was reported to the Chair. They always sought to clarify information with WMP. The Licensing Committee had the right to suspend or revoke a licence if they believed a person was not a fit and proper person. If the person was exonerated or it proved to be a mistake they could fast track an application to put the person in the position they was in.

There had been one further suspension since the report and it will be included in the following report. In reply to Councillor Majid Mahmood Emma Rohomon reported the following -

You must notify the Licensing Office, in writing, within 7 days if you,

- a) are convicted of any criminal or motoring offence
- b) are cautioned for any criminal or motoring offence (by the Police or any other agency)
- c) receive a Magistrates' Court summons
- d) receive a fixed penalty notice for any criminal or motoring offence
- e) receive a police warning or court order in relation to harassment or any other form of anti-social behaviour
- f) receive a civil or family law injunction
- g) are arrested for any offence (whether or not charged)
- h) are charged with any criminal offence.
- i) are refused any type of licence by any other regulatory authority or any such licence is suspended, revoked or not renewed and provide the following information:
 - a. The name of the council.
 - b. The licence number(s) of the licence(s) suspended or revoked.
 - c. The date of the decision.
 - d. A copy of the decision notice issued by the other council giving the grounds for the action taken.
- j) change your home address
- k) keep the vehicle when it is not in use at an address that is not specified on your licence

1300 **RESOLVED:-**

That the report be noted.

SCHEDULE OF OUTSTANDING MINUTES

The following schedule of outstanding minutes was submitted:-

(See Document No. 10)

A report had been submitted to the Committee in February.

1301 **RESOLVED:-**

That Outstanding minute No.1231 be discharged.

DATE OF NEXT MEETING

1302 The date of the next meeting to be held on 18 November, 2020 at 1030 hours was noted.

OTHER URGENT BUSINESS

1303 There was no other urgent business.

AUTHORITY TO CHAIR AND OFFICERS

1304 **RESOLVED:-**

In an urgent situation between meetings, the Chair jointly with the relevant Chief Officer has authority to act on behalf of the Committee.

EXCLUSION OF THE PUBLIC

1305 **RESOLVED:-**

That, in view of the nature of the business to be transacted, which includes exempt information of the category indicated, the public be now excluded from the meeting:-

Agenda Item etc.

Relevant Paragraph of Exempt
Information Under Revised
Schedule 12A of the Local
Government Act 1972

Private section of the Minutes of the
meeting 12 February, 2020

2 and 6

PRIVATE MINUTES

1307 The private section of the Minutes of the meeting held on 12 February, 2020 were noted and the minutes as a whole, having previously been circulated, were confirmed as a correct record and signed by the Chair.

The meeting ended at 1242 hours.

Report to:	LICENSING AND PUBLIC PROTECTION COMMITTEE	
Report of:	INTERIM ASSISTANT DIRECTOR REGULATION AND ENFORCEMENT AND CHIEF FINANCIAL OFFICER	
Date of Decision:	18 NOVEMBER 2020	
SUBJECT:	LICENSING AND PUBLIC PROTECTION – OUTTURN 2019/20	

1. Purpose of Report:
<p>1.1 This report sets out the outturn income and expenditure for 2019/20 incurred on services that are the responsibility of the Licensing and Public Protection Committee.</p> <p>1.2 The Cabinet approved the City Council's Outturn Report for 2019/20 on 23 June 2020 although the figures are still subject to audit by the City Council's approved external auditors.</p>

2. Decision(s) Recommended:
<p>The Licensing and Public Protection Committee is requested to:</p> <p>2.1 Note the revenue outturn overspend of £0.272m as detailed in Appendix 1.</p> <p>2.2 Note the expenditure on grant funded programmes in Appendix 2.</p> <p>2.3 Note the position on Capital projects, as detailed in Appendix 3.</p> <p>2.4 Note the position on reserves, as detailed in Appendix 4.</p>

Lead Contact Officer(s):	David Jones, Finance Manager – Services Finance
Telephone No:	0121 675 0580
E-mail address:	david.jones@birmingham.gov.uk

3. Consultation
<p>3.1 <u>Internal</u></p> <p>The Revenue and Capital Outturn position for the City Council as a whole was considered by Cabinet on 23 June 2020. The Chair of Licensing and Public Protection Committee, the Service Director of Regulation and Enforcement and the Chief Financial Officer have been consulted in the preparation of this report.</p> <p>3.2 <u>External</u></p> <p>Not applicable.</p>

4. Compliance Issues:
<p>4.1 <u>Are the recommended decisions consistent with the Council's policies, plans and strategies?</u></p> <p>The budget is integrated with the Council Business Plan, and resource allocation is directed towards policy priorities.</p> <p>4.2 <u>Financial Implications (Will decisions be carried out within existing finances and Resources?)</u></p> <p>This Licensing and Public Protection Financial Outturn report gives details of monitoring of service delivery within available resources of the Place Directorate.</p> <p>4.3 <u>Legal Implications</u></p> <p>Section 151 of the Local Government Act requires the Chief Financial Officer (as the responsible officer) to ensure proper administration of the City Council's financial affairs. This report forms the concluding part of the Council's budgetary control cycle for 2019/20. Budgetary control, which includes the regular monitoring of and reporting on budgets, is an essential requirement placed on Cabinet Members, Committees, and Members of Executive Team by the City Council in discharging this statutory responsibility. There are no specific implications in relation to other policies.</p> <p>4.4 <u>Public Sector Equality Duty</u></p> <p>There are no additional specific Equality Duty or Equality Analysis issues beyond any already assessed and detailed in the budget setting process and monitoring issues that have arisen in the year to date. Any specific assessments will be made by the Directorates in the management of their services.</p>

5. Relevant Background/Chronology of Key Events:

Revenue Budget 2019/20

- 5.1 The City Council approved the overall budget on 26 February 2019. The Licensing and Public Protection Committee noted the original net revenue budget allocation of £6.986m (as detailed in Appendix 1) on 13 March 2019.
- 5.2 Adjustment in quarter 2 and quarter 3 had net reduction of £0.569m
- 5.3 For the final quarter – additional budget resources were allocated to each service area to provide funding for the Apprenticeship levy. This charge is made in direct proportion to the employee costs for each service.

	£'m
Original Budget 2019/20 Reported to LPPC 13 March 2019	6.986
Quarter 1 – <i>no changes</i>	0.000
<u>Quarter 2</u>	
Transfer of Environmental Waste Enforcement Budget to Street Scene	(0.472)
PL126 Management Restructure (phase 1 in 2019/20)	(0.124)
Additional Budget for Environmental Planning Officers (part year)	0.027
<u>Quarter 3</u>	
Net Neutral adjustment between Supplies and Income for Highways Licensing (£0.060m)	(0.000)
<u>Quarter 4</u>	
Additional allocation across all services to fund Apprenticeship levy	0.046
Additional allocation to fund Oxhill Road Emergency response (EnvH)	0.365
Approved Net Revenue Budget at 31 March 2020	6.828

- 5.4 The approved budget for this Committee at the end of the financial year was therefore £6.828m.

Revenue Outturn

- 5.5 The provisional revenue outturn expenditure for the Licensing and Public Protection Committee is £7.031m, which represents an overspend of £0.272m against the annual net budget of £6.828m. This has been incorporated into the overall Neighbourhoods Directorate year end position.

5.6 The table below sets out a high-level summary of the year end overspend by service (full details in Appendix 1) and how this is comprised of over the savings programme and base budget pressures.

Outturn Year End Variations			
Budget Head	Savings Programme	Base Budget (underspend) / Pressures	Total (underspend) / Pressures
	£'m	£'m	£'m
Environmental Health	-	(0.267)	(0.267)
Pest Control	-	0.009	0.009
Register Office	-	(0.331)	(0.331)
Mortuary and Coroners	-	0.678	0.678
Trading Standards	-	(0.038)	(0.038)
Licensing	-	0.118	0.118
Highways	-	0.103	0.103
TOTAL	-	0.272	0.272

5.7 The key components include:

- **Environmental Health (£0.267m underspend) - and Pest Control (£0.009m overspend)**

Environmental Health had been holding vacancies as a short term measure to meet budget pressures forecast across the Division for much of 2019/20.

Pressure caused by the emergency response required at Oxhill Road have now been funded with additional budget resources of £0.365m.

The Pest Control Service had been expected to overachieve its 2019/20 income target through additional short-term contract work.

However, income derived from cleaning and remediation works at unauthorised encampment sites was no longer being generated due to the opening of the Proctor Street Travellers Transit site, as reported at Licensing and Public Protection committee in the latter part of the financial year.

- **Mortuary and Coroners (£0.678m pressure)**

The Coroners service has a number of pressures this year, which is mainly the cost of additional coronial staff (£0.216m), a reduction of £0.084m in the funding from West Midlands Police for Coroner Investigators.

The remaining £0.052m pressure is a combination of unplanned property repairs needed to the Mortuary and to the main building such as roof repairs, significant repairs to the floor of the main room used for filing purposes and repairs to rectify general wear and tear on the whole building.

The cost from the need for additional courtrooms had been mitigated during the year through the use of Council premises at Margaret Street.

Larger building accommodation for the service has been pursued in 2020/21.

- **Trading Standards (£0.038m saving)**

Trading Standards continued to utilise additional income sharing costs of officers assigned to projects and secured external funding for anti-counterfeiting operations.

- **COVID-19 Response Costs**

Services linked to this committee have been significantly involved in the Council's response to the pandemic. However, this will financially impact in 2020/21. Set up costs for the Regional Mortuary (in March 2020) were initially met at a Corporate level and are not included in the figures in this report.

Capital

5.8 The Capital programme for security and essential health and safety works in the mortuary including ventilation solutions will continue to be reviewed and updated.

5.9 A short term solution for 2019/20 involving the extension of temporary air conditioning was in place at the year end.

5.10 Additional allocation was made to fund a new vehicle fore Animal Welfare.

6. Grant Funded Programmes

6.1 There are two grant funded programmes: Illegal Money Lending and Scambusters.

6.2 The expenditure and income for each is shown in Appendix 2

Illegal Money Lending

- 6.3 The Illegal Money Lending Team (IMLT) England investigates and takes action against Illegal Money Lending or “Loan Shark” perpetrators across the whole of England.
- 6.4 The project is funded through specific grant from HM Treasury, with resources of up to £3.961m in 2019/20.
- 6.5 The revenue outturn for 2019/20 was £3.972m with the additional £0.011m funded from reserves ring fenced for this purpose.

Regional Intelligence Team

- 6.6 The Regional Intelligence Team (Scambusters) investigates and takes action against fraudsters operating across council boundaries in the central region.
- 6.7 Funding was initially confirmed at £0.320m (the same level as in 2018/19). However additional funding was also approved up to a maximum of £0.098m (total potential £0.418m).
- 6.8 The expenditure at the end of 2019/20 was £0.403m

7. Balances and Reserves:

- 7.1 The balances and reserves at the end of the financial year are shown in Appendix 4.
- 7.2 The balances at the start of the year (1 April 2019) totalled £1.614m and these are all specific ring-fenced resources.
- 7.3 Proceeds of Crime Act (PoCA) reserves have been utilised for both Trading Standards and for Illegal Money Lending. For 2019/20 an additional reserve has been set up for PoCA awarded to the Regional Intelligence Team. All three service areas have continued to receive awarded income and have delivered spend above that level. There is a **net** increase in these three accounts of £0.219m.

This is a reflection of the completed successful prosecutions that these services have been involved in.

Reserves have reduced during the year by a **net** £0.324m resulting in a closing balance of £1.290m.

8. Evaluation of Alternative Option(s):

8.1 This report sets out the Outturn position for 2019/20 and all the issues, financial risks and options were reported during the financial year to the Licensing and Public Protection Committee.

9. Reasons for Decision(s):

9.1 The Report informs the Licensing and Public Protection Committee of the Revenue Budget for 2019/20 and the outturn position at the year end.

9.2 The position in respect of the Licensing and Public Protection Committee’s use of reserves, the Savings Programme and the risks are also identified.

Signatures

Paul Lankester
Interim Assistant Director Regulation and Enforcement

Rebecca Hellard
Chief Financial Officer

Date

List of Background Documents used to Compile this Report:

Licensing & Public Protection - Revenue and Capital Budget 2019/20 – 13 March 2019
Licensing & Public Protection – Budget Monitoring 2019/20 – Quarter 1 – 13 September 2019
Licensing & Public Protection – Budget Monitoring 2019/20 – Quarter 2 – 18 December 2019
Licensing & Public Protection – Budget Monitoring 2019/20 – Quarter 3 – 12 February 2020

List of Appendices accompanying this Report (if any):

1. Appendix 1 - Financial Performance Statement at Outturn
2. Appendix 2 - Summary of Illegal Money Lending and Regional Intelligence Team.
3. Appendix 3 - Capital Programme
4. Appendix 4 - Balances and Reserves

Report Version	3.0	Dated	05 Nov 2020
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Licensing and Public Protection Committee - Outturn 2019/20

Analysis A - Total per Service Area

CBP620 - Corporate Monitoring Report - Revenue	Year End			
	Budget at Quarter 3	Budget at Outturn	Actual Outturn	Variance
	£'000	£'000	£'000	£'000
Neighbourhoods Directorate				
Environmental Health	2,752	3,127	2,860	(267)
Pest Control	276	279	288	9
Registration Service	731	739	408	(331)
Mortuary & Coroners *	1,594	1,600	2,278	678
Trading Standards	1,171	1,175	1,137	(38)
<u>Licensing:</u>				
Hackney Carriage / Private Hire	(16)	(13)	0	13
Entertainment and General	(73)	(71)	34	105
Illegal Money Lending	0	10	10	0
Regional Intelligence	0	0	0	0
Proceeds of Crime Act	0	0	0	0
Inclusive Growth Directorate				
Public Rights Of Way	75	75	99	24
Highway Licences	(49)	(49)	52	101
NRSWA Licences	(44)	(44)	(66)	(22)
Net Expenditure	6,417	6,828	7,100	272

* excludes 1974 Inquest

Analysis B - Total per Type of Expenditure/Income

CBP620 - Corporate Monitoring Report - Revenue	Year End			
	Budget at Quarter 3	Budget at Outturn	Actual Outturn	Variance
	£'000		£'000	£'000
Employees	13,678	13,495	13,999	504
Premises	903	903	1,250	347
Transport and moveab	298	237	384	147
Supplies and Service *	2,794	3,390	5,733	2,343
Capital Financing	249	263	263	0
Recharge Expenditure	759	698	836	138
Total Expenditure	18,681	18,986	22,465	3,479
Rev Income *	(11,966)	(12,057)	(14,866)	(2,809)
Capital Funding, levies, interest	(249)	(217)	(175)	42
Appropriations to/from Reserves	0	116	(324)	(440)
Net Expenditure	6,466	6,828	7,100	272

* excludes 1974 Inquest - Supplies/Servs

* excludes 1974 Inquest - Rev Income

Licensing and Public Protection - Savings (Consultation November 2018)

Outturn

Reference	Division	Description	Type	2018/19 Net Spend £'000	2019/20 Savings £'000	2020/21 Savings £'000	2021/22 Savings £'000	2022/23 Savings £'000
PL101 19+	Regulation & Enforcement	The changes consist of the introduction of the following new optional income generating services: * a range of wedding photography packages * a range of wedding floral packages * a change of name service * room hire * additional wedding extras to facilitate bespoke ceremonies * Sale of increased range of keepsakes and range of additional products for ceremonies * A review of non-statutory fees and charges	Base	860	(40)	(40)	(40)	(40)
PL111 19+	Regulation & Enforcement	Trading Standards will utilise the proceeds of crime money (POCA) it has successfully secured from its criminal proceedings to contribute to funding 2 members of staff whose roles include the oversight and authorisation of criminal investigations into acquisitive crime such as fraud, rogue trading organised crime.	Base	1,261	(70)	(70)	(70)	(70)
PL115 19+	Regulation & Enforcement	The removal of flytipping will continue as at present with no diminution of service. This proposal relates to the a re-prioritisation of the work of the waste enforcement unit to focus of cases where the likelihood of prosecution is high. Duty of care inspections (prevention) will continue but delivered by a wider range of staff that are able to carry out these duties. Training will be provided to relevant employees to support the work of the team which will include some staff having the authority to issues fixed penalty notices.	Base	923	(300)	(300)	(300)	(300)
PL121 19+	Regulation & Enforcement	The IMLT and RIT teams are both hosted by Birmingham City Council and paid for by grants from Treasury and National Trading Standards for the benefit of people living in England in respect of IMLT and for people living in the wider West Midlands in respect of RIT. By hosting the teams Birmingham City Council incurs costs associated to employing the officers. Apart from salaries, which are fully recovered, these include things like accommodation, heating, lighting, management responsibility and the provision of professional services such as legal, accountancy and HR. The council applies a recharge to recover these costs from the respective grants to ensure that the council is not subsidising these teams. We have reviewed the way that we calculate these recharges and propose to increase them to accurately reflect the true costs incurred by the council in hosting the IMLT and RIT teams in the future.	Base		(50)	(50)	(50)	(50)
Total Savings				3,044	(460)	(460)	(460)	(460)

Licensing and Public Protection Committee - Outturn 2019/20

Capital Programme

	Year End			
	Budget at Quarter 3	Budget at Outturn	Actual Outturn	Variance
	£'000	£'000	£'000	£'000
Mortuary/Coroners	271	278	45	(233)
Animal Welfare Vehicle	0	9	0	(9)
Net Expenditure	271	287	45	(242)

Licensing and Public Protection - Reserves at Outturn 2019/20

	Balance @ 31/03/19	Base (use) / contribution	Changes during year	Forecast Balance @ 31/03/20
	£'000	£'000	£'000	£'000
Ring-Fenced Licensing Reserves				
Hackney Carriage and Private Hire *	(237)	0	554	317
Entertainment and General	0	(116)	116	0
Ring-Fenced Grant Reserves				
England Illegal Money Lending Team	(295)	0	11	(284)
Regional Intelligence Team	0	0	(22)	(22)
Ring-Fenced Proceeds of Crime Act				
Trading Standards (Birmingham)	(374)	0	(96)	(470)
Illegal Money Lending (England)	(708)	0	(122)	(830)
Regional Intelligence Team (Midlands)	0	0	(1)	(1)
Total	(1,614)	(116)	440	(1,290)
			Total Appropriation Transactions In Year	324

* Hackney Carriage / Private Hire - 1/3 debit balance to be included in the licence fee calculations

Report to:	LICENSING AND PUBLIC PROTECTION COMMITTEE	
Report of:	INTERIM ASSISTANT DIRECTOR REGULATION AND ENFORCEMENT AND CHIEF FINANCIAL OFFICER	
Date of Decision:	18 NOVEMBER 2020	
SUBJECT:	LICENSING AND PUBLIC PROTECTION – REVENUE BUDGET 2020/21	

1. Purpose of Report:
<p>1.1 This report sets out the Licensing and Public Protection Committee’s Revenue Budget for the 2020/21 financial year.</p> <p>1.2 The report also details the approved savings programme for 2020/21.</p> <p>1.3 The report is in line with the current City Council established financial budgetary framework.</p>

2. Decision(s) Recommended:
<p>The Licensing and Public Protection Committee is requested to :</p> <p>2.1 Note the 2020/21 Revenue Budget Changes as detailed in Appendix 1.</p> <p>2.2 Note the 2020/21 Service and Subjective Budget in Appendix 2.</p> <p>2.3 Note the Budget 2020/21 to 2023/24 in Appendix 3.</p> <p>2.4 Note the 2020/21 budgeted employee establishment as detailed in Appendix 4.</p> <p>2.5 Note the latest 2020/21 Reserves position as detailed in Appendix 5.</p>

Lead Contact Officer(s):	David Jones, Finance Manager – Services Finance
Telephone No:	0121 675 0580
E-mail address:	david.jones@birmingham.gov.uk

3. Consultation

3.1 Internal

The 2020/21 Revenue Budget has been reported to the Place Senior Management Team and the Interim Assistant Director of Regulation and Enforcement. Legal and Finance have also been consulted as required in line with the Council's framework.

3.2 External

There are no additional issues beyond consultations carried out as part of the Public Budget Consultation that was completed for 2020/21.

4. Compliance Issues:

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

The budget is integrated with the Council Plan and Budget 2020+ and resource allocation is directed towards policy priorities.

4.2 Financial Implications (Will decisions be carried out within existing finances and Resources?)

This reports sets out the revenue and capital budget available, to deliver services which are the responsibility of Licensing and Public Protection Committee, during the 2020/21 financial year.

Budget monitoring reports, detailing financial performance against cash limits and any required actions, will be brought to Licensing and Public Protection Committee at regular intervals in 2020/21.

4.3 Legal Implications

Section 151 of the 1972 Local Government Act requires the Corporate Director Finance and Governance (as the responsible officer) to ensure proper administration of the City Council's financial affairs. Budgetary control, which includes the regular monitoring of and reporting on budgets, is an essential requirement placed on directorates and members of Corporate Leadership Team by the City Council in discharging the statutory responsibility. This report meets the City Council's requirements on budgetary control for the specified area of the City Council's Directorate activities.

4.4 Public Sector Equality Duty

There are no additional specific Equality Duty or Equality Analysis issues beyond any already assessed and detailed in the budget setting process and monitoring issues that have arisen in the year to date. Any specific assessments will be made by the Directorates in the management of their services.

5. Relevant Background/Chronology of Key Events:

Revenue Budget 2020/21

- 5.1 The City Council approved the overall budget on 25th February 2020. The Licensing and Public Protection Committee should note the original net revenue budget allocation of **£6.471m** (as detailed in Appendices 1, 2 and 3) and summarised below.
- 5.2 The City Council's Budget Strategy for 2020/21 is based on the following principles:
- There is 2.5% provision for pay award from April 2020.
 - General price inflation is 2% from April 2020.
 - The revenue and financial implications from capital expenditure programmes and equal pay are reflected in the long term budget.
- 5.3 Changes from 2019/20 Quarter 3 (reported to Committee 12 February 2020) to Original 2020/21 are summarised in the table below:

	£'m
Revenue Budget 2019/20 (as at Quarter 3)	6.417
<u>Changes to Existing Savings, Pressures and Use of Resources</u>	
<u>Full-year effect of previous year Savings and New Pressures</u>	
PL126 Management Restructure (full year effect)	(0.202)
Environmental Health Food Programme	0.300
Coroners and Mortuary establishment and volume pressures	0.400
<u>Budget Plan 2019+</u>	
Pay award and Price Inflation	0.182
<u>Technical Adjustments</u>	
Environmental Planning Officers (full year effect)	0.084
Assistant Director and Divisional Management	(0.046)
Mortuary Service	(0.490)
Street Trading Consent Service to Licensing *	(0.148)
Internal Restructure in Highways	(0.026)
* Some additional expenditure budget still to be transferred for Street Trading	
Approved Budget 2020/21	6.471

- 5.4 Service implications and subjective budget details are analysed in Appendices 1 and 2.
- 5.5 The budget from 2020/21 to 2022/23 is analysed in Appendix 3.

Employee Budget 2020/21

- 5.6 The employee numbers for Licensing and Public Protection Committee are shown in the table below and detailed by service in Appendix 4

	Employee FTEs 2019/20	Env Planning Officers	New Pressures	Restructures	Employee FTEs 2019/20
LPPC	301.6	2.0	5.0	(4.0)	304.6

5.7 The WOC1 savings are part of the four-year savings programme approved for 2018/19 onwards. The final phase within the services that report to this committee will be met from non-employee budgets.

5.8 The new pressures awarded £0.300m (of which £0.275m covers staff) was awarded to increase the capacity in Environmental Health to meet the statutory food hygiene inspection programme in full, as required by the Food Standards Agency (and it acknowledges the increased workload that the legislation to control allergens in food has placed upon the council.

5.9 “PL126” is the management restructure, Phase 1 was implemented in 2019/20 with the final Phase 2 full year effect in 2020/21.

5.10 The Mortuary service has been restructured to be separate from the Coroners service and no longer part of the LPPC portfolio, reducing the establishment by 5.0 FTE

5.11 Street Trading Consent now forms part of the Licensing service (formally within the retail Markets) the 2.0 FTE is added to the LPPC establishment.

5.12 This leaves the employee establishment for 2020/21 at 304.6 FTEs.

Savings Programme 2020/21 Onwards

5.13 The City Council has approved a Savings Programme from 2020/21 to 2023/24, based on the following principles:

- All planned step-up savings set out in the Financial Plan 2019+ have been reviewed and amended where necessary.
- Services have implemented further savings where necessary to compensate for local business issues.
- The impact of grant reductions or fall-out is borne by the services concerned, either through a reduction in the expenditure previously funded through grant or by compensatory savings.

5.14 The cumulative implications for the Committee are set out in the table below.

Service Area	2020/21	2021/22	2022/23	2023/24
	£m	£m	£m	£m
Pest Control	(0.008)	(0.008)	(0.008)	(0.008)
Register Office	(0.024)	(0.024)	(0.024)	(0.024)
Coroners Service	(0.013)	(0.013)	(0.013)	(0.013)
Trading Standards	(0.157)	(0.157)	(0.157)	(0.157)
TOTAL	(0.202)	(0.202)	(0.202)	(0.202)

- 5.15 All these savings relate to step ups from 2019/20 and only affect 2020/21 with no further step-ups planned.
- 5.16 The total savings are therefore £0.202m as also shown in Appendix 1 and Appendix 3
- 5.17 Licensing and Public Protection Committee savings for 2020/21 includes a wide range of components and will include the following actions to successfully deliver these savings:
- Delivering efficiencies on non-employee expenditure
 - Maximising the opportunities to generate additional income from services (including provision to other Local Authorities).

Grants

- 5.18 Within Regulatory Services, there are two grant funded programmes: Illegal Money Lending and Regional Intelligence Team (RIT) (Scambusters).
- 5.19 The funding for Illegal Money Lending Team is £4.150m in 2020/21 and for RIT it is £0.320m.

Reserves

- 5.20 The reserves are all ring-fenced and commence the year with a total £1.290m, as summarised in Appendix 5.
- 5.21 This is currently estimated for a net total of £0.352m of this balance to be utilised in 2020/21.

6. Evaluation of Alternative Option(s):

- 6.1 During the course of 2020/21 the financial position will be closely monitored and reported, options identified to resolve budgetary pressures as necessary, and alternative savings proposals developed to meet new and emerging pressures.

7. Reasons for Decision(s):

- 7.1 This report informs the Licensing and Public Protection Committee of the Revenue and Capital Budget for 2020/21.
- 7.2 The position in respect of the Licensing and Public Protection Committee's Savings Programme and the present risks identified in its delivery.

Signatures

Paul Lankester
 Interim Assistant Director Regulation and Enforcement

Rebecca Hellard
 Interim Director of Finance

Date

List of Background Documents used to Compile this Report:

- Licensing & Public Protection - Revenue and Capital Budget 2019/20 – 13 March 2019
- Licensing & Public Protection – Budget Monitoring 2019/20 – Quarter 1 – 13 September 2019
- Licensing & Public Protection – Budget Monitoring 2019/20 – Quarter 2 – 18 December 2019
- Licensing & Public Protection – Budget Monitoring 2019/20 – Quarter 3 – 12 February 2020
- Licensing & Public Protection – Outturn 2019/20 – 18 November 2020

List of Appendices accompanying this Report (if any):

- Appendix 1 – Analysis Revenue Budget Changes 2019/20 (Quarter 3) to 2020/21
- Appendix 2 – Service and Subjective Analysis of 2020/21 Budgets
- Appendix 3 – Budget 2020/21 to 2022/23
- Appendix 4 – Indicative Workforce Plan
- Appendix 5 – Reserves

Report Version	5.0	Dated	06 November 2020
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Licensing and Public Protection Committee

Revenue Budget 2020/21

Analysis of Budget Changes 2019/20 to 2020/21

Service	Current Budget 2019/20 Quarter 3	Existing (Step Up) Savings (WOC1 and PL126)	New Pressures	AD Budget Environmental Planning Mortuary Street Trading	Pay and Price Inflation	Original Budget 2020/21
	£'000s	£'000s	£'000s	£'000s	£'000s	£'000s
Environmental Health	2,752	0	300	38	79	3,169
Pest Control	276	(8)			12	280
Register Office	731	(24)			26	733
Coroners (excluding Mortuary)	1,594	(13)	400	(490)	46	1,537
Trading Standards	1,171	(157)			26	1,040
Illegal Money Lending	0				2	2
Scambusters	0					0
Licensing and Enforcement (including Street Trading)	(89)			(148)	(4)	(241)
Total Regulatory Services	6,435	(202)	700	(600)	187	6,520
Public Rights of Way	75			(26)	0	49
Highway Licences	(49)			10	(3)	(42)
NRSWA Licences (Highways)	(44)			(10)	(2)	(56)
Total Highways	(18)	0	0	(26)	(5)	(49)
TOTAL LPPC 2020/21 Structure	6,417	(202)	700	(626)	182	6,471

Mortuary service separate to Coroners Service from April 2020. No longer part of LPPC portfolio
Street Trading transferred to Licensing Service for 2020/21

APPENDIX 1

Licensing and Public Protection Committee Revenue Budget 2020/21

Service and Subjective Analysis of 2020/21 Budget

Commitment Item	Environmental Health	Pest Control	Register Office	Coroners	Trading Standards	Illegal Money Lending	Scambusters	Licensing	Regulatory Budget	Highways Regs	NRSWA	Public Rights of Way	Total LPPC Budget
	£'000s	£'000s	£'000s	£'000s	£'000s	£'000s	£'000s	£'000s	£'000s	£'000s	£'000s	£'000s	£'000s
Employees Direct	3,475	845	2,617	1,257	861	3,437	230	1,918	14,640	0	0	0	14,640
Premises	95	0	288	87	164	74	2	201	911	2	0	0	913
Transport	10	113	1	5	14	77	2	21	243	0	0	0	243
Supplies and Services	451	87	111	791	265	474	73	547	2,799	190	22	49	3,060
Capital Financing	19	0	104	0	30	50	0	0	203	0	0	0	203
Recharge Expenditure	0	0	0	0	0	90	21	587	698	0	0	0	698
Total Expenditure	4,050	1,045	3,121	2,140	1,334	4,202	328	3,274	19,494	192	22	49	19,757
Grants	0	0	0	0	0	(4,150)	(320)	0	(4,470)	0	0	0	(4,470)
Fees and Charges	(697)	(681)	(2,266)	0	(18)	0	0	(118)	(3,780)	(174)	(4)	0	(3,958)
Rents	0	0	(18)	0	0	0	0	0	(18)	0	0	0	(18)
Miscellaneous Income	(8)	(84)	0	(604)	(224)	0	(8)	(3,397)	(4,325)	(60)	(74)	0	(4,459)
Recharge Income	(156)	0	0	0	(22)	0	0	0	(178)	0	0	0	(178)
Total Budgeted Income	(861)	(765)	(2,284)	(604)	(264)	(4,150)	(328)	(3,515)	(12,771)	(234)	(78)	0	(13,083)
Asset Revenue Manager	(19)	0	(104)	0	(30)	(50)	0	0	(203)	0	0	0	(203)
Planned Use of Reserves					0			0	0	0	0	0	0
Net Provisional Budget	3,170	280	733	1,536	1,040	2	0	(241)	6,520	(42)	(56)	49	6,471

Mortuary service separate to Coroners Service from April 2020. No longer part of LPPC portfolio
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Licensing and Public Protection Committee
Revenue Budget 2020/21

Budget 2020/21 to 2023/24

Ref		2020/21 £'000s	2021/22 £'000s	2022/23 £'000s	2023/24 £'000s
	LPPC Current Budget 2019/20 Quarter 3	6,417	6,417	6,417	6,417
	Pressures				
NEP003	Insufficient funds to meet the statutory Inspection programme as required by the Food Law Code of Practice (England)	300	275	275	275
NEP028	Mortuary and Coroners Service	400	480	480	570
	Sub-Total Pressures	700	755	755	845
	Existing Savings (full year effect of savings agreed in previous years)				
WOC1	Allocation of workforce savings	(100)	(99)	(99)	(99)
PL126	Review of Managerial Arrangements Across the Directorate	(102)	(102)	(102)	(102)
	Sub total Savings	(202)	(201)	(201)	(201)
	Pay Award and Price Inflation	182	182	182	182
	Planning Resources to fund Environmental Planning Officers (full year effects)	84	56	0	0
	Restructure of Assistant Director and Divisional Management	(46)	(46)	(46)	(46)
	Mortuary Service no longer within LPPC Portfolio	(490)	(490)	(490)	(490)
	Street Trading Service transferred to Licensing	(148)	(148)	(148)	(148)
	Internal Realignment within Highways	(26)	(26)	(26)	(26)
	Total	(444)	(472)	(528)	(528)
	LPPC Budget 2018/19 +	6,471	6,499	6,443	6,533

Current Budgeted FTEs	301.6	301.6	301.6	301.6
Environmental Food Hygiene Inspections	5.0	5.0	5.0	5.0
Environmental Planning Officers	2.0	2.0	0.0	0.0
Assistant Director	(1.0)	(1.0)	(1.0)	(1.0)
Mortuary Establishment	(5.0)	(5.0)	(5.0)	(5.0)
Street Trading Service	2.0	2.0	2.0	2.0
LPPC Budgeted FTE's	304.6	304.6	302.6	302.6

**Licensing and Public Protection Committee
Revenue Budget 2020/21**

Indicative Workforce Plan 2019/20 to 2020/21

	Environmental Health	Pest Control	Register Office	Coroners Service **	Trading Standards	Illegal Money Lending	Scam - busters	Licensing	TOTAL
	FTE	FTE	FTE	FTE	FTE	FTE	FTE	FTE	FTE
Actual Fte's 2019/20 Qtr3	52.8	22.7	59.8	19.8	16.6	52.7	2.0	36.8	263.3
Current Budgeted FTE's 2019/20	64.3	25.0	66.1	25.3	21.3	55.0	2.2	42.4	301.6
Environmental Food Hygiene Inspections	5.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	5.0
Environmental Planning Officers	2.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	2.0
Assistant Director	(0.4)	0.0	0.0	0.0	(0.3)	0.0	0.0	(0.3)	(1.0)
Mortuary Establishment **	0.0	0.0	0.0	(5.0)	0.0	0.0	0.0	0.0	(5.0)
Street Trading Service	0.0	0.0	0.0	0.0	0.0	0.0	0.0	2.0	2.0
FTE's 2020/21	70.9	25.0	66.1	20.3	21.0	55.0	2.2	44.1	304.6

** Mortuary service excluded as no longer part of LPPC portfolio

Licensing and Public Protection Committee Revenue Budget 2020/21

Estimated Reserves 2020/21

Balances & Reserves	Licensing		External Grant Funded Services		Proceeds of Crime Act 2002			Total Ringfenced Reserves
	Entertain - ment & General	Hackney Carriage & Private Hire	Illegal Money Lending	RIT Scambusters	Trading Standards	RIT Scambusters	Illegal Money Lending	
	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000
Reserves and Balances Brought Forward at 01 April 2019	-	(237)	(295)	-	(374)	-	(708)	(1,614)
Use of Reserves reported at Quarter 3 2019/20	(116)	-	-	-	-	-	-	(116)
Additional Contributions to or from Reserves by 31 March 2020	116	554	11	(22)	(96)	(1)	(122)	440
Reserves at 01 April 2020	-	317	(284)	(22)	(470)	(1)	(830)	(1,290)
Estimated Use of Reserves during 2020/21	-	(110)	-	22	160	-	280	352
Estimated Reserves at 31 March 2021	-	207	(284)	-	(310)	(1)	(550)	(938)

Notes

Reserves are strictly ringfenced to the service areas to which they relate.

BIRMINGHAM CITY COUNCIL

**REPORT OF THE INTERIM ASSISTANT DIRECTOR OF
REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

**NOVEMBER 2020
ALL WARDS**

**INTERIM STATEMENT OF LICENSING POLICY 2020
CONSULTATION REPORT**

1. Summary

- 1.1 The City Council as the Licensing Authority is required to determine and publish its Statement of Licensing Policy at least every five years, and keep it under review and make such revisions to it at such times, as it considers appropriate.
- 1.2 This is a requirement of the Licensing Act 2003 ('The Act').
- 1.3 The purpose of this report is to introduce the review process and inform the Licensing and Public Protection Committee of the current situation. A verbal update will be provided with any significant comments received as part of the consultation.
- 1.4 In order to take effect, the policy and scheme of delegation must be approved by City Council. The deadline for reports to City Council is 19th November 2020.

2. Recommendation

- 2.1 That having undertaken a statutory consultation on the City Council's Statement of Licensing Policy for a 4 week period commencing on Friday 16th October 2020 and having regard to the responses received, that Committee consider the draft Policy attached at Appendix 1 to this report and, subject to the matters detailed within the report commends the draft Interim Policy to City Council for approval in December 2020.

Contact Officer: Emma Rohomon Licensing Manager
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3. Background

- 3.1 The current Statement of Licensing Policy has been in effect since 2015. The next full review being due in 2020.
- 3.2 The full review, including Cumulative Impact Assessment was due to be commenced in the spring of 2020. Unfortunately, owing to the pressing need to respond to urgent operational matters resulting from the Coronavirus Pandemic, the work was not able to be started as planned.
- 3.3 In April 2020 the Local Government Association published a document entitled: *Approaches to managing licensing and related issues during the COVID-19 pandemic Advice for licensing authorities.*
<https://www.local.gov.uk/approaches-managing-licensing-and-related-issues-during-covid-19-pandemic>
In which they stated:
Councils may want to consider with members whether it would be pragmatic to delay their consultations given the current challenges in effectively engaging with the local trade and residents. The LGA has flagged to the Home Office that this should be acceptable, assuming work is progressed once some level of normality has returned.
- 3.4 In August 2020, the Leader of Birmingham City Council, in company with the leaders of Leeds, Manchester and Westminster wrote to the Home Office Minister requesting confirmation of such a delay. A Copy of this letter is attached at Appendix 2. No official response has been forthcoming, but officers have been advised informally that this will not be permitted.
- 3.5 It is proposed to introduce an interim policy in order to secure legal compliance to allow sufficient time for the more in-depth work to be carried out.

4. Cumulative Impact

- 4.1 Prior to the amendments made by the Policing and Crime Act 2017, the Licensing Act 2003 did not contain any reference to 'Cumulative Impact Policies'. The only reference was included in the s182 Statutory Guidance published by the Home Office. The guidance defines Cumulative Impact as:
"the potential impact on the promotion of the licensing objectives of a number of licensed premises concentrated in one area" (para 14.20)
- 4.2 The revised s182 Guidance states:
"A cumulative impact assessment (CIA) may be published by a licensing authority to help it to limit the number or types of licence applications granted in areas where there is evidence to show that the number or density of licensed premises in the area is having a cumulative impact and leading to problems which are undermining the licensing objectives. CIAs relate to applications for new premises licences and club premises certificates and applications to vary existing

premises licences and club premises certificates in a specified area.”
(para 14.24)

- 4.3 The effect of a cumulative impact policy is to reverse the ‘presumption to grant’. In ordinary circumstances, the Licensing Act operates on a presumption that a licence will be granted unless it can be demonstrated that it should not be i.e. through objections etc. Cumulative Impact policies reverse the presumption to make it so the licence application (subject to receipt of relevant objection) would be refused, unless it can be demonstrated (by the applicant) that they will not add to the impact on the licensing objectives.
- 4.3 Such policies are only relevant in cases of new applications or variations to licences. They DO NOT affect existing licences.
- 4.4 The codification of cumulative impact in 2017 brought in evidential requirements which must be proven before such a policy can be adopted. It introduced the Cumulative Impact Assessment. This is an assessment separate to the Statement of Licensing Policy which must be revised every three years, as opposed to the five year requirement for the Statement.
- 4.5 The 2015 Statement of Licensing Policy (as amended) included a number of Cumulative Impact Policy areas. For the reasons given above, these policy areas cannot continue into the Interim Policy. Any suggestion to maintain the Cumulative Impact Policies in the 2015 policy document would present a risk of judicial review.
- 4.6 However, as is clearly stated in the s182 Guidance: *“The absence of a CIA does not prevent any responsible authority or other person making representations on an application for the grant or variation of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives, However, in each case it would be incumbent on the person making the representation to provide relevant evidence of cumulative impact”*.

5. Consultation

- 5.1 The original Policy was subject to consultation with stakeholders before being implemented in 2005. The latest revised version was approved with effect from 2015.
- 5.2 As this proposed policy does not differ from the previous policy, a brief consultation was carried out, with a view to a much more comprehensive consultation package as part of the subsequent review. This subsequent review to be carried out in 2021.
- 5.3 Consultation commenced with stakeholders, including (but not limited to) the list of statutory Consultees, being:

- The chief officer of police for the licensing authority's area,
- The fire and rescue authority for that area,
- Such persons as the licensing authority considers to be representative of holders of premises licences issued by that authority,
- Such persons as the licensing authority considers to be representative of holders of club premises certificates issued by that authority,
- Such persons as the licensing authority considers to be representative of holders of personal licences issued by that authority, and
- Such other persons as the licensing authority considers to be representative of businesses and residents in its area.

3.7 The public consultation was for four weeks, from 16th October to 13th November. Should there be any relevant consultation responses which would require revision to the document, these will need to be considered. In the absence of any material issues being raised, the draft document will be presented to City Council on 1st December for approval.

6. Implications for Resources

6.1 The cost of devising and maintaining a Statement of Licensing Policy is included within the existing Licence fee structure. Carrying out a full review will be labour intensive in terms of officer hours and may require external expert support.

6.2 Any proposal to maintain the Cumulative Impact Policies in the 2015 policy document would present a risk of judicial review. Any decisions made by the sub-committee citing the CIP would also be susceptible to a judicial review.

7. Implications for Policy Priorities

7.1 The issues addressed in this report relate to the City Council priorities associated with creating a cleaner, greener and safer city and providing excellent services, as well as laying the foundations for a prosperous city, built on an inclusive economy; Involving local people and communities in the future of their local area and their public services – a city with local services for local people.

9. Public Sector Equality Duty

9.1 The benefit of an agreed Policy is to ensure a consistent approach.

9.2 The Government carried out an equality impact assessment of the legislation which found that no unintended or disproportionate impact is likely. It is not

anticipated any amendments to be made as a result of this review would require an Equality Impact Assessment.

- 9.3 Section 5 of the Licensing Act 2003 requires the Licensing Authority to publish a Statement of Licensing Policy. Section 5(3) of the Act specifies those who must be consulted on the Policy and subsequent Policy reviews.
- 9.4 Under the Duty we must have regard to the need to:
- Eliminate unlawful discrimination, harassment, and victimisation and other conduct prohibited by the Act.
 - Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - Foster good relations between people who share a protected characteristic and those who do not.
- 9.5 The recommendations contained in this report will not have any effect on any of our duties under the Equality Act 2010. Any future changes to policy will be subject to separate consideration of this duty.
- 9.6 For the reasons set out above it is considered an initial Equality Analysis is not deemed appropriate or necessary.

INTERIM ASSISTANT DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: Nil



Kit Malthouse MP
Minister of State (Minister for Crime and
Policing)

19th August 2020

Via e-mail

Dear Minister,

Request for the extension of the 5-year statutory requirement for Licensing Authorities to revise their Statements of Licensing Policy under the Licensing Act 2003.

As you understand, the Covid-19 pandemic has put immense pressure and challenges on Local Government to deal with not only the public health emergency but also to support businesses in the recovery. The Hospitality Sector has been particularly hit by the pandemic with businesses struggling to operate under the current social distancing restrictions and a drop of more than 60% in footfall compared to the same period last year. These are unprecedented times and we are pleased that the Government has committed to support the Hospitality Sector amongst other struggling sectors.

Our Authorities have over 12,000 licensed businesses under the Licensing Act 2003 (the 2003 Act). We have done a huge amount to support our local hospitality sectors to reopen. As well as providing additional outside seating, we are encouraging residents and workers to make use of the diverse hospitality offer.

Like most Local Authorities across the Country we are required to revise and publish our Statement of Licensing Policy (Policy) under section 5 of the 2003 Act before the end of this year. In revising our Policy, we must have regard to any cumulative impact assessment that the Council has published. The problem that our authorities now face is that our night-time economy statistical data, which we would have relied upon for this process prior to March 2020, does not represent the reality which we are now in. As businesses have been forced to close, residents have remained at home and the emergency services have worked hard to deal with the pandemic it has been difficult to consult with key stakeholders on policy revision.

We find ourselves in an extremely difficult position where we are required by law to produce a revised policy on how we are to administer the Licensing regime and promote the Licensing Objectives without the ability to fully understand what the future looks like.

In Westminster's case they have undertaken research on the cumulative impact within the West End prior to the lock down. However, that research was based on the operation of the Hospitality Sector and the local impact prior to the pandemic. If Westminster were to progress with the production of a

Continued...]

Cumulative Impact Assessment, it would be required under the 2003 Act to consult on implementing a more restrictive licensing policy which would be totally counterproductive to the aims to support business to recover. Manchester and Birmingham City Councils are also in a similar position.

We would, therefore, request that you consider using your powers under section 5(7) of the 2003 Act to provide a temporary extension to the current 5-year policy deadline for a period of 2 years. This would enable Local Authorities to liaise with key stakeholders to develop a policy approach to support the recovery of businesses in the post Covid-19 economy. This change will not adversely affect local authorities, businesses or residents. The government has already taken similar steps to amend legislation to provide relaxations of regulatory deadlines and control to support businesses in the recovery. If you were to agree to use your powers under the 2003 Act to implement this proposal, we would be able to continue with our current Licensing Policies whilst we work with key partners and businesses to understand what the new normal is. These are truly unique circumstances and our proposal would support the wider aims of the government to assist businesses, and particularly the Hospitality Sector to recover.

In addition to Birmingham, Leeds, Manchester and Westminster, who are requesting this amendment to the 2003 Act, this proposal is also supported by the LGA's Safer and Stronger Communities Board, Basingstoke and Deane Borough Council & Hart District Council, Fareham Borough Council, Gosport Borough Council, London Borough of Bromley, London Borough of Haringey, London Borough of Tower Hamlets, Maidstone Borough Council, New Forest District Council, Royal Borough of Windsor & Maidenhead, Runnymede Borough Council, Slough Borough Council, Spelthorne Borough Council and York City Council.

We would be happy to brief you with more detail if this would help you to understand the issues and why we feel strongly that this change in law would be beneficial for business and local authorities.

Councillor Rachael Robathan
Leader of the Council
Westminster City Council

Councillor Ian Ward
Leader of the Council
Birmingham City Council

Councillor Judith Blake
Leader of the Council
Leeds City Council

Sir Richard Leese
Leader of the Council
Manchester City Council

- c.c. - *Rt Hon Robert Jenrick MP, Secretary of State for Housing, Communities and Local Government*
- *Nickie Aiken MP, Cities of London and Westminster*
 - *Karen Buck MP, Westminster North*
 - *Mike Kane MP, Wythenshawe and Sale East, Manchester*
 - *Afzal Khan MP, Gorton, Manchester*
 - *Lucy Powell MP, Manchester Central*
 - *Jeff Smith MP, Withington, Manchester*
 - *Graham Stringer MP, Blackley and Broughton, Manchester*
 - *Shabana Mahmood MP, Ladywood, Birmingham*
 - *Gary Sambrook MP, Northfield, Birmingham*
 - *Khalid Mahmood MP, Perry Barr, Birmingham*
 - *Steve McCabe, Selly Oak, Birmingham*
 - *Andrew Mitchell MP, Sutton Coldfield, Birmingham*
 - *Jess Phillips MP, Yardley, Birmingham*
 - *Stuart Andrew MP, Pudsey, Leeds*
 - *Hilary Benn MP, Leeds Central*
 - *Richard Burgon MP, Leeds East*
 - *Fabian Hamilton MP, Leeds North East*

- *Preet Gill MP, Edgbaston, Birmingham*
- *Jack Dromey MP, Erdington, Birmingham*
- *Tahir Ali MP, Hall Green, Birmingham*
- *Liam Byrne MP, Lodge Hill, Birmingham*
- *Andrea Jenkyns MP, Morley and Outwood, Leeds*
- *Rachel Reeves MP, Leeds West*
- *Alec Shelbrooke MP, Elmet and Rothwell, Leeds*
- *Alex Sobel MP, Leeds North West*

BIRMINGHAM CITY COUNCIL

STATEMENT OF LICENSING POLICY 2020

Birmingham City Council ("the Council") is required to publish this Statement of Licensing Policy ("Policy") under the Licensing Act 2003 ("the Act").

Legal Background

Section 5 of the Act requires each Licensing Authority to publish, every five years, a Statement of its Licensing Policy.

This Policy is the Council's Statement of Licensing Policy which will come into force on 2nd December and will be reviewed, updated and modified as and when the Council considers appropriate.

Technical amendments to correct errors brought about by legislative or other administrative change (such as change of address details or references to Guidance) will be effected by officers of the Licensing and Public Protection Committee and tracked by way of version control.

Amendments or reviews of the Policy itself must be approved by City Council.

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1. **Licensing Act 2003 Guidance**

- 1.1. In accordance with Section 182 of the Act the Secretary of State has produced Amended Guidance for Licensing Authorities (the Council) regarding the discharge of their functions. This guidance is regularly reviewed and updated. For the most recent version, go to www.gov.uk.
- 1.2. No part of the Act compels the Licensing Authority to follow the guidance explicitly. The Council may and will depart from the Guidance and this policy where it is deemed appropriate to promote one or all of the licensing objectives.

2. **Scope**

2.1 This Policy relates to those licensable activities identified by the Act, which are:

- The sale of alcohol by retail.
- The supply of alcohol to club members and their guests.
- The provision of regulated entertainment. "Regulated entertainment" is defined as any of the following which take place in the presence of an audience for the entertainment of that audience and are provided for members of the public or a section of the public or exclusively for the members of a qualifying club and/or their guests or for consideration and with a view to profit:
 - A performance of a play.
 - An exhibition of a film.
 - An indoor sporting event.
 - A Boxing or wrestling entertainment.
 - A contest, exhibition or display which combines boxing or wrestling with one or more martial arts ("combined fighting sports")
 - A performance of dance.
 - A performance of live music.
 - Any playing of recorded music.
 - The provision of late night refreshment. (Late night refreshment is defined under the Act as the supply of hot food or drink to the public or a section of the public on or from any premises whether for consumption on or off the premises (mobile units included) between 11pm and 5am.)

2.2 There are certain exemptions from this definition which are set out in the Act, particularly in relation to plays, indoor sporting events and performances of dance. These exemptions are detailed within APPENDIX 1 to the Policy.

3. Background

- 3.1 The Council has responsibility for granting licences for the sale by retail of alcohol, the supply of alcohol by or on behalf of a club or to the order of a member of the club, the provision of regulated entertainment and the provision of late night refreshment establishments (including late night takeaways) throughout its area.
- 3.2 Birmingham is the second city of the United Kingdom and this is reflected in the fact that the city has a thriving night time economy. The city has a multicultural population of 1,141,400 people live in Birmingham (according to the 2018 mid-year population estimates).and is part of the West Midlands Conurbation which, is the largest conurbation in the United Kingdom after Greater London. Birmingham is a prominent entertainment destination for people living in the conurbation and many areas beyond.

4. Development Process

- 4.1 The content of this document was developed by the Council in consultation with representatives of the following key stakeholder groups and organisations:
- West Midlands Police.
 - West Midlands Fire Service.
 - Bodies representing holders of premises licences, club premises licences and personal licences in the Council's area.
 - The Birmingham Magistrates Court Service.
 - Bodies representing local businesses.
 - Representatives of the Council's Planning, Environmental Health, and Trading Standards Services.
 - Trade Associations.
 - Independent licence holders.
 - Local residents.
 - Birmingham Safeguarding Children Board.
 - Members of the Council's Licensing and Gambling Forum.
 - Public Health
- 4.2 The views of the parties consulted have been given proper weighting.

5. Licensing Objectives

5.1 This Policy has been developed with the licensing objectives, as stated in the Act, at its core, namely:

- **The prevention of crime and disorder.**
- **Public safety.**
- **The prevention of public nuisance.**
- **The protection of children from harm.**

5.2 Each of the licensing objectives is considered to be of equal importance for the purposes of this Policy.

5.3 Each application for the grant, variation or review of a licence will be considered and determined on its individual merits.

5.4 This Policy concerns the regulation of licensable activities on licensed premises, by qualifying clubs and at temporary events within the terms of the Act. The conditions attached to the licence or other authorisation issued under the Act will be focused on matters within the control of the licensee or other person who is granted the licence or authorisation and will be centred on and around the premises or place(s) being used for licensable activities and the vicinity of those premises and places.

6. Relationship with other Legislation

6.1 The Council will avoid in so far as is possible duplication with other regulatory regimes and legislation. It will, in appropriate circumstances, attach conditions to premises licences and club premises certificates to the extent that they are appropriate for the promotion of the four licensing objectives but will not attach conditions where provision exists in other legislation, e.g. planning or health and safety legislation. However, it may be appropriate to attach specific conditions where legislation does not cover the unique circumstances that arise in connection with entertainment at specific premises.

6.2 This Policy takes into consideration the crime and disorder initiatives being implemented by the Council in partnership with other enforcement or regulatory agencies. The Council will strive to support these initiatives by implementing this Policy, which promotes and encourages a responsible approach to the sale of alcohol, late night refreshment and the provision of entertainment.

6.3 The Council maintains that its function as the Licensing Authority concerns the control of licensable activities, licensed premises and licence holders. The Council will attach such conditions to licences as are appropriate to promote the licensing objectives.

6.4 This Policy is concerned with individuals and behaviour on or in the vicinity of licensed premises and, therefore, within the control of the individual holding the relevant licence or authorisation. It is not a mechanism for the general control of anti-social behaviour by individuals.

6.5 In implementing this Policy the Council will have regard to the provisions of the Human Rights Act 1998.

6.6 **Equality and Race Relations**

The Council recognises the right to freedom of speech and would not intervene in this matter, when discharging its licensing functions, unless to do so would be appropriate to promote one or all of the licensing objectives. Holders of premises, club or personal licences / certificates should be aware of the potential for some organisations to have an influence on or advocate illegal activity that would be in direct contradiction of the spirit of the licensing objectives.

6.7 The Council may, following representations from responsible authorities or other persons and based on evidence, seek to prohibit certain types of meetings or gatherings at licensed premises or clubs by attaching conditions in order to promote the licensing objectives, in particular the prevention of crime and disorder and the promotion of public safety.

6.8 **Licensing Hours**

The Council's view, having considered the Act and having had regard to the Guidance under section 182, is that that the Act neither promotes nor discourages extended licensing hours. For that reason the Council will approach each application on its own individual merits having regard to the representations received, the Guidance and this policy, and with the aim of properly promoting the licensing objectives, which it recognises are paramount considerations. The Council will not apply core hours to any area of the city.

6.9 Shops and supermarkets will normally be free to provide sales of alcohol for consumption off the premises at any times when they are open for shopping unless the Council has good reasons for restricting those hours such as where there have been Police representations in the case of shops known to be a focus of crime, disorder and/or disturbance. The Council may consider any other matter that it considers relevant to the promotion of the licensing objectives.

6.10 **Licensing and Planning**

The Council is of the view that the Licensing Authority is not bound by decisions made by the Planning Authority and vice versa. While the two authorities consider different (albeit related) matters, the Licensing Authority must ensure it addresses only the licensing objectives to ensure that any hearing does not in effect become a re-run of any planning hearing.

6.11 There may be occasions when licensing hours are different from hours granted by the Planning Authority, or vice versa. In such situations the licence holder must observe the earlier closing time. The responsibility for enforcement will rest with whichever body within the Council granted the earlier terminal hour.

6.12 The Licensing Authority of the Council will ensure that there is proper integration with the Planning Authority by providing it with regular reports on the situation regarding licensed premises in the area. This will include the general impact of alcohol related crime and disorder and the impact of public nuisance

caused by licensed premises.

6.13 Paragraph 9.44 of the Amended Guidance states:

“Where businesses have indicated, when applying for a licence under the 2003 Act, that they have also applied for planning permission or that they intend to do so, licensing committees and officers should consider discussion with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs. “

6.14 **Integrating Strategies**

The Council recognises that a minority of consumers will behave badly and unlawfully once away from licensed premises. The Council cannot as part of its licensing function address issues relating to the behaviour of individuals or groups once they are away from licensed premises, although it can address issues within the direct control of the individual, club or business holding the licence, certificate or authorisation concerned. The Council also recognises that initiatives are available that assist with calming or reducing the incidence of disorder and would expect these to be addressed in the operating schedule. Measures outside of the Council's licensing functions available for addressing behavioural issues include:

- Planning controls.
- Positive measures to create a safe and clean city centre environment in partnership with local businesses, transport operators and other services provided by the Local Authority.
- Police enforcement of the law concerning disorder and anti-social behaviour, including the issuing of fixed penalty notices.
- The confiscation of alcohol from adults and children in designated areas.
- Police powers to close down instantly, for up to 24 hours, any licensed premises or temporary events on the grounds of disorder, the likelihood of disorder or excessive noise emanating from the premises.
- The power of the Police, other responsible authority or a local resident or business to seek a review of the licence or certificate in question.

6.15 The Council will secure the integration of its licensing function with other local strategies by supporting partnership working with other agencies and Council services and by establishing best working practice utilising some of the initiatives available to the Licensing Service and Licensing and Public Protection Committee such as.

- The continued use of Public Space Protection Orders
- Sharing information.
- Targeting premises in areas where nuisance, breaches of conditions and contraventions of legislation occur.
- Promoting the Challenge 25 proof of age scheme or recognised equivalent.
- Restricting hours of operation of licences, where appropriate, in areas where alcohol fuelled disorder or nuisance is prevalent (EMRO).
- Assisting in the establishment of an information monitoring system, with the Police, in order to identify premises that are disregarding their

responsibilities. This will assist in collating information in order to identify premises where arrested or detained persons last purchased alcohol or the premises they were allowed to purchase alcohol to a state of inebriation.

- Adopting a multi-agency approach to announced and unannounced inspections and visits to those premises defined as being high risk or through intelligence led action.
- Continuing to promote the setting up and use of safe places for transport. Liaison with transport agencies to improve signage, lighting and awareness of availability.

6.16 Public Health

6.16.1 The Council recognises the impact of alcohol misuse in Birmingham. It is hoped that through the implementation of this Licensing Policy the promotion of the four Licensing Objectives will in turn have a positive effect on preventing alcohol misuse in the city and reducing harmful and hazardous drinking, and will be a vehicle for addressing the wider and social determinants of health especially children's safeguarding . It will also have a positive effect on pricing, the promotion of treatment services; including screening and advice, marketing controls, availability controls, legal drinking age enforcement, reinforcing drink driving laws and server liability. For example, by ensuring licensed premises refuse sales of alcohol to children, or those attempting to purchase it on behalf of children, this will impact positively on a reduction in child alcohol-related health problems.

6.16.2 The inclusion of off-licence premises when considering cumulative impact zones will reduce the opportunity for pre-loading, access to cheap alcohol and super strength, on-street drinking, especially in underage and vulnerable groups. Additionally, by preventing the use of illegal drugs on licensed premises, it is hoped this might reduce combined alcohol and drug misuse, which is an issue for any city.

6.16.3 Through ensuring the responsible selling of alcohol, this may impact on reducing a person's drinking at harmful or hazardous levels, especially the enforcement of no sales to the intoxicated. However, it is recognised that any such positive impact will be as a coincidence of the licensing authority conducting its licensing function under the Act to promote the Licensing Objectives.

7. Enforcement Protocol

7.1 The City Council has developed a protocol for enforcement and will continue partnership working with other enforcement agencies to promote a consistent approach between them. The protocol will encompass a strategy of targeting high-risk premises and will ensure intelligence led policing and regulation. The protocol will actively promote inspections of licensed premises which have been found, following risk assessment, to be problematic or high risk.

7.2 The Council will actively seek to advise the licensees or managers of those premises who wish to comply with legislation and conditions; however, the Council will take a firm stand against irresponsible licensees who do not comply.

- 7.3 The Council, the Police and other responsible bodies will share information about licensees, licensed premises and activities associated with them. Such information sharing is permitted under Section 185 of the Act. Further open access to data will be given to those Police Officers and Licensing Authority Officers discharging their functions under this Act.
- 7.4 The Council and the Police will work closely in order to ensure consistency, transparency and proportionality in their enforcement activities. The Council will continue to investigate complaints and conduct proactive enforcement exercises to ensure that licences and the conditions attached to them are complied with and that unlicensed activity is dealt with as appropriate to ensure the highest standards of licensees and premises in the City of Birmingham.
- 7.5 Closure notices can be issued by a Police officer of the rank of Inspector or above in relation to crime and disorder.
- 7.6 The Council's Licensing Enforcement team is authorised to act as the Responsible Authority on behalf of the Licensing Authority which includes responsibility for considering applications for new /varied authorisations or for licence reviews.

8. **The Licence Process**

- 8.1 Further guidance for applicants for a licence or other authorisation under the Act and details about the application and licensing process can be obtained from; the Licensing Service website at www.birmingham.gov.uk/licensing or via licensing@birmingham.gov.uk
- 8.2 The Policy of the Council will be to:
- promote the four licensing objectives;
 - ensure that the premises are appropriate for their proposed use;
 - ensure the premises layout and condition is acceptable for the proposed use; and
 - ensure that the premises are being managed responsibly.

8.3 **Operating Schedule**

All applicants for the grant or variation of a **premises licence or club premises certificate** are required to provide an operating schedule as part of their application. The operating schedule will be in a prescribed form and must include a statement of the following:

- Full details of the licensable activities to be carried on at and the intended use of the premises.
- The times during which the licensable activities will take place.
- Any other times when the premises are to be open to the public.
- Where the licence is only required for a limited period, that period.
- Where the licensable activities include the supply of alcohol, the name and address of the individual to be specified as the designated premises

- supervisor.
 - Whether alcohol will be supplied for consumption on or off the premises or both.
 - The steps which the applicant proposes to promote the licensing objectives. (examples of which can be found within paragraphs 18 to 21 of this Policy)
- 8.4 Any steps proposed by an applicant, and the extent to which they apply will depend on the individual premises, the proposed events /activities and the characteristics of the premises, the surrounding area, and to an extent, the history of the premises or applicant.
- 8.5 The Council's powers and duties as Licensing Authority are delegated by the Council to its Licensing and Public Protection Committee, Licensing Sub-Committees and officers. The Council approaches these delegations in accordance with APPENDIX 2 to this Policy.
- 8.6 Every application received whether for the issue of a personal or premises licence will be treated fairly and will be considered on its own merits. If no relevant representations are received then the licence will be issued automatically with, in the case of a premises licence or club premises certificate, such conditions attached as are mandatory under the Act or are consistent with the operating schedule accompanying the application.
- 8.7 **Representations**
Where relevant representations are made regarding a particular application for the grant, variation or review of a premises licence the Council will consider the likely impact that the proposed use of the premises will have on promotion of the licensing objectives.
- 8.8 Representations which are made outside of the period prescribed by the Secretary of State or are, in the Council's opinion, frivolous or vexatious will not be considered by the Council as relevant representations.
- 8.9 Where relevant representations are made, a hearing will be held before the Council's Licensing and Public Protection Committee or Sub-Committee (as appropriate) and the application will be determined once the application and representations have been considered.
- 8.10 The Council will determine the application using and considering supporting evidence from the applicant and any parties who have made representations.
- 8.11 Any decision of the Council will be relayed to the applicant as soon as is practicable and in writing.
- 8.12 **People or organisations that can make representations**
Any responsible authority and/or other person is entitled to make representations to licensing authorities in relation to applications for the grant, variation, minor variation or review of premises licences and club premises certificates or the grant of a provisional statement, regardless of their

geographic proximity to the premises, and to make applications for the review of such authorisations.

“Other person” is defined as any individual, body or business including a member of the relevant licensing authority

"Responsible authority" is defined as:

- a) The Chief Officer of Police within which the premises are situated;
- b) the Fire Authority within which the premises are situated;
- c) the enforcing authority within the meaning given by Section 18 of the Health and Safety at Work etc. Act 1974 in which the premises are situated;
- d) the local Planning Authority within which the premises are situated;
- e) the Local Authority for which statutory functions are exercisable in relation to minimising or reducing the risk of pollution to the environment or harm to human health in which the premises are situated;
- f) a body which:
 - (i) represents those who, in relation to any such area, are responsible for, or interested in, the protection of children from harm and
 - (ii) is recognised by the Licensing Authority for that area for the purposes of this section as being competent to advise it on such matters;
- g) any Licensing Authority (other than the Council) in whose area part of the premises is situated;
- h) in relation to a vessel:
 - (i) a navigation authority having functions in relation to the waters where the vessel is usually moored or berthed or any waters where it is or is proposed to be navigated at a time when it is used for licensable activities;
 - (ii) the Environment Agency;
 - (iii) the British Waterways Board;
 - (iv) the Secretary of State; or
 - (v) a person prescribed for the purposes of this subsection.
- i) the local authority in England whose public health functions within the meaning of the National Health Service Act 2006 are exercisable in respect of any area in which the premises are situated,
- j) the relevant licensing authority and other licensing authority in whose area part of the premises is situated

[LA2003 13(4) (as amended)]

8.13 **Making Representations:**

Representations may be made in relation to the following applications:

- Grant of Premises Licence
- Grant of Club Premises Certificate
- Variation of Premises Licence
- Variation of Club Premises Certificate
- Minor Variation of Premises Licence

- Minor Variation of Club Premises Certificate
- 8.14 Representations are not limited to objections to licence applications but may also be made in support of applications. They will still be governed by the same rules as for objections.
- 8.15 Representations will not be accepted if they are deemed by officers to be frivolous or vexatious.
- 8.16 Representations may not be made anonymously. If a person believes there are exceptional circumstances relating to the disclosure of their identity, they are advised to contact the Licensing Service for advice.

8.17 **Petitions**

The petition must meet the following minimum requirements:

- It must be clear to which premises/application the petition relates.
 - The petition must relate to one or more of the licensing objectives.
 - Each page must include information as to the purpose of the petition (so it is clear signatories were aware what they were signing.)
 - Full Names and addresses must be supplied, in a legible manner.
 - It should be made clear to all signatories that a copy of the petition, containing their details will be passed to the applicant and contained within the Committee papers, which, in the event of a hearing become public documents.
 - The first named respondent is taken to be the instigator of the petition, and will be used as the point of contact in terms of any queries about the petition.
 - The first named respondent will be expected to represent the signatories at a hearing and to communicate any information to other signatories as appropriate – the Council will NOT contact each signatory as if they were making individual representations.
 - The Council reserves the right to make such checks as to the validity of the petition signatories as it feels appropriate.
 - Petitions regarding Licensing Act 2003 applications MUST be submitted in accordance with the existing rules for licence representations, to the offices of the Licensing Service in Aston, (contrary to the City Council's guidance relating to petitions of any other kind). They should NOT be sent to individual officers.
 - Petitions submitted to an Elected Member or via City Council Meeting are conferred no advantage, and risk unnecessary delay of submission.
- 8.18 A petition must be submitted in good faith. **You must not include:**
- potentially libellous, false or defamatory statements
 - matters which are subject to prescribed statutory requirements
 - information protected by a court order (e.g. the identities of children in custody disputes); or in accordance with any other enactment

- matters which are subject to appeal processes or legal actions (e.g. planning appeals, enforcement action or other legal actions in court etc)
- material which is commercially sensitive, confidential or which may cause personal distress or loss
- the names of individual officials of public bodies
- the names of individuals, or information where they may be easily identified, in relation to criminal accusations
- anything which would incite racial hatred or violence

8.19 Where it is reasonably anticipated that the expression of such beliefs, views, policies or objectives might be unlawful, the Council reserves the right to prevent by any means those views/beliefs from being expressed either on its premises or by using Council resources.

8.20 Anyone contemplating drawing up a petition either in support of or objection to a licence application is strongly advised to contact the Licensing Service for advice on the format before obtaining signatures.

8.21 Provisional Statements.

An application for a **provisional statement** shall be considered, subject to the provisions of the Act.

9. Licence Reviews

9.1 The Council may review a licence on the application of any responsible authority or other person.

9.2 The Licensing Authority can refuse to review licences if it considers that the representations are not relevant to any of the licensing objectives or, in the case of a representation made by an other person, that the representation is frivolous, vexatious or a repetition of a representation already made at the time of the licence application or previous application for review.

9.3 The outcome of a review may be no action, warnings regarding future conduct, additional conditions or the modification, suspension for a period not exceeding 3 months or revocation of the licence, the exclusion of a licensable activity from the scope of the licence, the removal of the designated premises supervisor.

9.4 Summary (Expedited) Licence Reviews.

The Summary Review procedure was effected by Section 53A-C of the Licensing Act 2003 inserted by section 21 of the Violent Crime Reduction Act 2006, which allows a quick process for attaching interim conditions to a licence and a fast track licence review when the police consider that the premises concerned is associated with serious crime or serious disorder (or both).

9.5 Interim Steps:

The Licensing Sub Committee shall determine, by email, telephone (or in such other manner as may be deemed appropriate by the Committee Services Manager or by the Solicitor to the Council), whether it is necessary to take interim steps pending determination of the premises licence the subject of an application and a certificate issued by a Senior Police Officer stating that in

his/her opinion named premises are associated with serious crime or serious disorder (or both) (the requirements of the Local Government Act 1972 concerning the giving of notice of meetings will not apply).

- 9.6 Following a determination of interim steps, the licence will be subject to review, which will be heard in the usual manner.

10. **Open Space Premises Licences**

The Council has applied for and been granted a number of premises licences for public spaces, such as parks and other municipal areas, within the city. Performers and entertainers who wish to give performances in such places may seek the permission of the Council, as licence holder, to do so. Such permission should be sought at least 3 months in advance of the event as the applicant will in most cases be required to participate in a Safety Advisory Group (SAG) before the Council approves the event.

11. **Vicinity**

The Council has chosen not to define vicinity as a fixed distance in relation to any premises. Instead its approach will be to consider each matter individually, taking into account whether any individual's residence or business is likely to be directly affected by activities which occur on the premises or immediately outside it. The key consideration is the impact of issues on the licensing objectives.

12. **Temporary Event Notices**

12.1 **Standard TENS**

It is recommended that an applicant for a temporary event notice should give at least 28 days prior notice of their intended event and that at the same time of submitting their application to the Council they serve notice to the Police and Environmental Health. Section 100 of the Act stipulates a period of at least 10 working days, prior to the event for an application to be submitted. The Council agrees with the Guidance that 10 working days notice means 10 working days exclusive of the day on which the event is to start and exclusive of the day on which the notice is given.

- 12.2 There are strict limits on the number of TENS which can be submitted. Once these limits have been reached, the Council will issue a counter notice (permitted limits) if any more are given.

- 12.3 In the event of a valid objection to a Standard TEN, a sub-committee hearing will be held to determine the notice. Further guidance is available online.

12.4 **Late TENS**

Late TENS can be given up to five working days but no earlier than nine working days before the event is scheduled and, unless given electronically to the Council, must also be sent by the premises user to the police and environmental health. A late TEN given less than five days before the event to which it relates will be returned as void and the activities to which it relates will not be authorised. There are strict limits on the number of Late TENS which can be submitted. Once these limits have been reached, the Council will issue

a counter notice (permitted limits) if any more are given.

12.5 In the event of a valid objection to a Late TEN, there will be no hearing. A counter notice will be issued. This is in accordance with the legislative requirements. Further guidance is available online

12.6 Notwithstanding the mandatory notifications already included within the legislation, the Council highly recommend that anyone contemplating putting on an event should contact West Midlands Fire and Rescue Service for advice relating to matters concerning fire safety.

13. Personal Licences

13.1 All applicants for the grant of a **personal licence** will be required to undertake a criminal record check. Where a criminal record check discloses an unspent relevant conviction (see schedule 4 of the Licensing Act 2003) and the Police object to the application on crime prevention grounds the Licensing and Public Protection Committee or Sub-Committee shall normally refuse such an application unless there are exceptional and compelling circumstances to justify the granting of a licence.

13.2 If there have been Police representations in relation to the individual specified in the application for a premises licence, club premises certificate or authorisation as the designated premises supervisor then the Council may consider any factors relating to that individual which would undermine the licensing objective relating to the prevention of crime and disorder. This could include the previous character of the individual, the individual's experience and training and their ability to monitor the premises at all times when they are open.

14. Cumulative Impact

14.1 The cumulative impact of licences in a particular area may lead to the area becoming saturated with premises of a certain type, making it a focal point for large groups of people, and thereby creating exceptional problems of crime, disorder and nuisance over and above the impact from the individual premises themselves.

14.2 A Cumulative Impact Policy requires a Cumulative Impact Assessment (CIA) to be carried out. A cumulative impact assessment helps to inform the statement of licensing policy with the aim of limiting the number of licence applications granted where there is evidence to show that the number of licensed premises in a particular area is having a cumulative impact and leading to problems which are undermining the licensing objectives.

14.3 There is no current cumulative impact assessment in effect. When carrying out such an assessment reference shall be made to the steps outlined in the s182 Guidance.

14.3 The effect of a cumulative impact or 'special' policy is to create a rebuttable presumption that applications for new licences/certificates or material variations to existing licences will normally be refused unless it can be shown that the

premises concerned will not add to the cumulative impact on the licensing objectives being experienced.

- 14.4 As is clearly stated in the s182 Guidance: *“The absence of a CIA does not prevent any responsible authority or other person making representations on an application for the grant or variation of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives, However, in each case it would be incumbent on the person making the representation to provide relevant evidence of cumulative impact”*.

15. Early Morning Restriction Orders

- 15.1 The ability to implement an Early Morning Restriction Order or ‘EMRO’ is a power conferred on licensing authorities by the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”), which enables licensing authorities to restrict the sale of alcohol in the whole or a part of their areas between midnight and 6am on all or some days. Licensing authorities are able to make an EMRO in relation to problem areas if they have evidence that the order is appropriate for the promotion of the licensing objectives. It should be noted that the restriction would only relate to alcohol and will have no effect on regulated entertainment.
- 15.2 The Council has no plan to implement any EMROs at the time of writing this policy.
- 15.3 Any decision to implement an EMRO would be made by the Licensing and Public Protection Committee.

16. Late night levy

- 16.1 The power to implement a late night levy is also within the 2011 Act. This enables licensing authorities to charge a levy to persons who are licensed to sell alcohol late at night in the authority's area, as a means of raising a contribution towards the costs of policing the late-night economy.
- 16.2 Any levy would have to apply to the entire Local Authority area.
- 16.3 The Council has no plan to implement a Late Night Levy at the time of writing this policy.
- 16.4 Any decision to implement a late night levy would require consultation with the Police and Crime Commissioner and Chief Officer of Police, as well as much broader consultation. Such a decision would be made by the Full Council.

17. Conditions of Licence

- 17.1 The Council will endeavour to tailor conditions to the premises concerned and there is also a pool of model licensing conditions that may, in appropriate circumstances, be attached to a licence or certificate depending upon the individual styles and characteristics of the premises and events concerned. This pool of conditions will be utilised to apply appropriate and proportionate conditions in particular circumstances. The pool of conditions is not an exhaustive list and the Council may attach any conditions that are appropriate for the promotion of the licensing objectives.
- 17.2 The Council cannot not impose standardised conditions on any licence or certificate other than those prescribed by law (Mandatory Conditions).

18. The Prevention of Crime and Disorder

- 18.1 It should be noted in particular that it is unlawful under the 2003 Act:
- to sell or supply alcohol to a person who is drunk;
 - to knowingly allow disorderly conduct on licensed premises;
 - for the holder of a premises licence or a designated premises supervisor to knowingly keep or to allow to be kept on licensed premises any goods that have been imported without payment of duty or which have otherwise been unlawfully imported;
 - to allow the presence of children under 16 who are not accompanied by an adult between midnight and 5am at any premises licensed for the sale of alcohol for consumption on the premises, and at any time in premises used exclusively or primarily for the sale and consumption of alcohol.

Conditions enforcing these arrangements are, therefore, unnecessary.

18.2 **General**

When applicants for premises licences or club premises certificates are preparing their operating schedules or club operating schedules, when responsible authorities are considering such applications and when the Licensing Authority are considering applications following the receipt of any relevant representations from a responsible authority or interested party, the following options should be considered as measures which, if appropriate, would promote the prevention of crime and disorder.

- 18.3 Whether or not any risk assessment shows them to be necessary in the individual circumstances of any premises will depend on a range of factors including the nature and style of the venue, the activities being conducted there, the location of the premises and the anticipated clientele of the business involved. It should also be borne in mind that club premises operate under codes of discipline to ensure the good order and behaviour of members.
- 18.4 Necessary conditions for the licence or certificate will also depend on local knowledge of the premises.
- 18.5 Under no circumstances should the following measures be regarded as standard conditions to be automatically imposed in all cases. They are designed to provide a range of conditions drawn from experience relating to differing situations and to offer guidance.
- 18.6 Any individual preparing an operating schedule is at liberty to volunteer any measure, such as those described below, as a step they intend to take to promote the licensing objectives. When incorporated into the licence or certificate as a condition they become enforceable under the law and a breach of such a condition could give rise to prosecution.

18.7 Drinks and Irresponsible promotions

18.7.1 Standardised conditions should not be attached to premises licences or club premises certificates which promote fixed prices for alcoholic drinks.

18.7.2 Licence holders should undertake all reasonable steps to ensure staff do not engage in, arrange or participate in irresponsible drinks promotions.

18.7.3 Mandatory conditions now apply to irresponsible promotions that includes: drinking games, large quantities of alcohol for a fixed price, posters and flyers that encourage anti-social behaviour or glamorise this sort of activity and if there is a significant risk that these do not promote the licensing objectives.

18.8 Text pagers

18.8.1 Text and radio pagers connecting premises licence holders, designated premises supervisors managers of premises clubs to the local Police can provide for rapid response by the Police to situations of disorder which may be endangering the customers and staff on the premises.

18.8.2 Such pagers provide two-way communication both enabling licence holders, managers, designated premises supervisors and clubs to report incidents to the Police and enabling the Police to warn those operating a large number of other premises of potential troublemakers or individuals suspected of criminal behaviour that are about in a particular area. Pager systems can also be used by licence holders, door supervisors, managers, designated premises supervisors and club employees to warn each other of the presence of such people in an area.

18.9 Door supervisors

18.9.1 Conditions relating to the provision of door supervisors and security teams may be valuable in:

- preventing the admission and ensuring the departure from the premises of the drunk and disorderly, without causing further disorder;
- keeping out excluded individuals (subject to court bans or imposed by the licence holder);
- searching and excluding those suspected of carrying illegal drugs, or carrying offensive weapons; and
- maintaining orderly queuing outside of venues prone to such queuing.

18.9.2 Where door supervisors are conducting security activities there will be a condition attached which means that they would have to be registered with the Security Industry Authority.

18.9.3 Conditions may also be needed to deal with the number of door supervisors, the displaying of name badges, the carrying of proof of registration, where and at what times they should be stationed on the premises, and whether at least one female supervisor should be available (for example, if female customers are to be the subject of body searches).

18.9.4 Door supervisors also have a role to play in ensuring public safety.

18.10 **Bottle bans**

Bottles may be used as weapons inflicting more serious harm during incidents of disorder. A condition can prevent sales of drinks in their bottles for consumption on the premises. However, responsible authorities and licensing authorities should note that many women consider drinking from bottles to be safer as it is easier for them to prevent the spiking of bottled drinks with drugs because the opening to a bottle can be more readily covered. These issues, therefore, need to be carefully balanced.

18.11 **Plastic containers and toughened glass**

18.11.1 Glasses containing drinks may be used as weapons during incidents of disorder and can cause very serious injuries. Consideration should therefore be given to conditions requiring the use of safer alternatives which inflict less severe injuries. Location and style of the venue and the activities carried on there would be particularly important in assessing whether a condition is necessary. For example, the use of glass containers on the terraces of outdoor sports grounds may obviously be of concern, but similar concerns may also apply to indoor sports events such as boxing matches. Similarly, the use of plastic containers or toughened glass during the televising of live sporting events such as international football matches, when high states of excitement and emotion fuelled by alcohol might arise, may be a necessary condition.

18.11.2 It should be noted that the use of plastic or paper drinks containers and toughened glass may also be relevant as measures to promote public safety.

18.12 **CCTV**

18.12.1 The presence of CCTV cameras can be an important means of deterring and detecting crime at, and immediately outside, licensed premises. Conditions should not just consider a requirement to have CCTV on the premises but also the precise siting of each camera, the requirement to maintain cameras in working order, and to retain recordings for an appropriate period of time.

18.12.2 The Police may provide advice on the use of CCTV to prevent crime to those individuals conducting risk assessments when preparing operating schedules.

18.13 **Open containers not to be taken from the premises**

Drinks purchased in licensed premises or clubs may be taken from those premises for consumption elsewhere. Where premises are licensed for the sale of alcohol for consumption off the premises that would be entirely lawful. However, consideration should be given to a condition preventing the taking of alcoholic and other drinks from the premises in open containers (e.g. glasses and opened bottles). This may again be necessary to prevent the use of these containers as offensive weapons in surrounding streets after individuals have left the premises.

18.14 **Restrictions on Drinking Areas**

It may be necessary to restrict the areas where alcoholic drinks may be consumed in premises after they have been purchased from the bar. An example would be at a sports ground where the Police consider it necessary to prevent the consumption of alcohol on the terracing of sports grounds during particular sports events. Such conditions should not only specify these areas

but indicate the circumstances in which the ban would apply and times at which it should be enforced.

18.15 Capacity limits

Although most commonly made a condition of a licence on public safety grounds, consideration should also be given to conditions which set capacity limits for licensed premises or clubs where it may be necessary to prevent overcrowding which can lead to disorder and violence. Where such a condition is considered necessary consideration should also be given to whether door supervisors would be needed to ensure that the numbers are appropriately controlled.

18.16 Wind-Down Policies

Consideration of implementing a period of lower volume, lower tempo music before closing to facilitate customers leaving in a calmer, quieter manner.

18.17 Large Capacity Venues for “Vertical” consumption of alcohol HVVDs

18.17.1 Large capacity “vertical drinking” premises, sometimes called High Volume Vertical Drinking establishments (HVVDs) are premises which have exceptionally high capacities, used primarily or exclusively for the sale and consumption of alcohol, and little or no seating for patrons.

18.17.2 It may be necessary to attach conditions to licences for these premises which require adherence to a prescribed capacity, an appropriate ratio of tables and chairs to customers based on capacity and the presence of security staff to control entry for the purposes of compliance with the capacity limit.

18.18 Crime prevention notices

It may be necessary at some premises for notices to be displayed which warn customers of the prevalence of crime which may target them. Some premises may be reluctant to volunteer the display of such notices for commercial reasons. For example, in certain areas, a condition attached to a premises licence or club premises certificate might require the displaying of notices at the premises which warn customers about the need to be aware of pickpockets or bag snatchers, and to guard their property. Similarly, it may be necessary for notices to be displayed which advise customers not to leave bags unattended because of concerns about terrorism. Consideration could be given to a condition requiring a notice to display the name of a contact for customers if they wish to report concerns.

18.19 Signage

18.19.1 It may be necessary for the normal hours under the terms of the premises licence or club premises certificate at which licensable activities are permitted to take place to be displayed on or immediately outside the premises so that it is clear if breaches of the terms of the licence or certificate are taking place.

18.19.2 Similarly, it may be necessary for any restrictions on the admission of children to be displayed on or immediately outside the premises so that the consequences of breaches of these conditions would also be clear and to deter those who might seek admission in breach of those conditions.

19. PUBLIC SAFETY

19.1 The attachment of conditions to a premises licence or club premises certificate will not in any way relieve employers of the statutory duty to comply with the requirements of other legislation including the Health and Safety at Work etc Act 1974, especially the requirements under the Management of Health and Safety at Work Regulations 1999, and the Regulatory Reform (Fire Safety) Order 2005 to undertake risk assessments. Employers should assess the risks from fire, and take measures necessary to avoid and control them.

19.2 Conditions enforcing these requirements are, therefore, unnecessary.

19.3 From 1 October 2006, the Regulatory Reform (Fire Safety) Order 2005 replaced previous fire safety legislation. Under Article 43 of the Order, any conditions imposed by the Licensing Authority that relate to any of the requirements or prohibitions that are, or could be, imposed by the Order have no effect.

19.4 General

19.4.1 In addition, to considering the points made in this section, those preparing operating schedules or club operating schedules, licensing authorities and responsible authorities should consider:

- Model National and Standard Conditions for Places of Public Entertainment and Associated Guidance (Entertainment Technology Press – ABTT Publications) ISBN 1 904031 11 0.
- The Event Safety Guide – A guide to health, safety and welfare at music and similar events (HSE 1999) (“The Purple Book”) ISBN 0 7176 2453 6.
- Managing Crowds Safely (HSE 2000) ISBN 0 7176 1834 X.
- 5 Steps to Risk Assessment: Case Studies (HSE 1998) ISBN 07176 15804.
- The Guide to Safety at Sports Grounds (The Stationery Office, 1997) (“The Green Guide”) ISBN 0 11 300095 2.
- Safety Guidance for Street Arts, Carnival, Processions and Large Scale Performances published by the Independent Street Arts Network.

19.4.2 Any individual preparing an operating schedule or club operating schedule is at liberty to volunteer any measure, such as those described below, as a step he or she intends to take to promote the licensing objectives. When incorporated into the licence or certificate as a condition, they become enforceable under the law and a breach of such a condition could give rise to prosecution.

19.5 Disabled people

In certain premises where existing legislation does not provide adequately for the safety of the public, consideration might also be given to conditions that ensure that:

- when disabled people are present adequate arrangements exist to enable their safe evacuation in the event of an emergency; and
- disabled people on the premises are made aware of those

arrangements.

19.6 **Escape routes**

19.6.1 It may be necessary to include conditions relating to the maintenance of all escape routes and exits including external exits. These might be expressed in terms of the need to ensure that such exits are kept unobstructed, in good order with non-slippery and even surfaces, free of trip hazards and clearly identified. In restaurants and other premises where chairs and tables are provided this might also include ensuring that internal gangways are kept unobstructed.

19.6.2 In certain premises where existing legislation does not provide adequately for the safety of the public consideration might also be given to conditions that ensure that:

- All exits doors are easily openable without the use of a key, card, code or similar means.
- Doors at such exits are regularly checked to ensure that they function satisfactorily and a record of the check kept.
- Any security fastenings are removed prior to the premises being open to the public; and
- the edges of the treads of steps and stairways are maintained so as to be conspicuous.

19.7 **Safety checks**

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests consideration might also be given to conditions that ensure that:

- Safety checks are carried out before the admission of the public; and
- details of such checks are kept in a Log-book.

19.8 **Curtains, hangings, decorations and upholstery**

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests consideration might also be given to conditions that ensure that:

- Curtains, hangings and temporary decorations are arranged so as not to obstruct exits; and
- Temporary decorations are not used without the consent of the Licensing Authority.

19.9 **Accommodation limits**

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests consideration might also be given to conditions that ensure that:

- Arrangements are made to ensure that any capacity limit imposed under the premises licence or club premises certificate is not exceeded; and
- The licence holder, a club official, manager or designated premises supervisor should be aware of the number of people on the premises and required to inform any authorised person on request.

19.10 **Access for emergency vehicles**

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests consideration might also be given to conditions that ensure that:

- Access for emergency vehicles is kept clear and free from obstruction.

19.11 **First aid**

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests consideration might also be given to conditions that ensure that:

- Adequate and appropriate supply of first aid equipment and materials is available on the premises.
- If necessary, at least one suitably trained first-aider shall be on duty when the public are present; and if more than one suitably trained first-aider that their respective duties are clearly defined.

19.12 **Lighting**

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests consideration might also be given to conditions that ensure that:

- In the absence of adequate daylight the lighting in any area accessible to the public, members or guests shall be fully in operation when they are present.
- Emergency lighting is not altered.
- Emergency lighting batteries are fully charged before the admission of the public, members or guests.
- In the event of the failure of normal lighting, where the emergency lighting battery has a capacity of one hour, arrangements are in place to ensure that the public, members or guests leave the premises within 20 minutes unless within that time normal lighting has been restored and the battery is being re-charged;
- and, if the emergency lighting battery has a capacity of three hours the appropriate period by the end of which the public should have left the premises is one hour.

19.13 **Temporary electrical installations**

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests consideration might also be given to conditions that ensure that:

- Temporary electrical wiring and distribution systems are not provided without notification to the Licensing Authority at least ten days before commencement of the work and/or prior to inspection by a suitably qualified electrician.
- Temporary electrical wiring and distribution systems shall comply with the recommendations of BS 7671 or, where applicable, BS 7909.
- Temporary electrical wiring and distribution systems are inspected and certified by a competent qualified person before they are put to use.

19.14 **Indoor Sports Entertainments**

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests consideration might also be given to conditions that ensure that:

- If necessary, an appropriately qualified medical practitioner is present throughout a sports entertainment involving boxing, wrestling, judo, karate or other sports entertainment of a similar nature.
- Where a ring is involved it is constructed and supported by a competent authority.
- At any wrestling or other entertainments of a similar nature members of the public do not occupy any seat within 2.5 metres of the ring.
- At water sports entertainments staff adequately trained in rescue and life safety procedures are stationed and remain within the vicinity of the water at all material times (see also Managing Health and Safety in Swimming Pools issued jointly by the Health and Safety Commission and Sport England).

19.15 **Special Effects**

The use of special effects in venues of all kinds being used for regulated entertainment is increasingly common and can present significant risks. Any special effects or mechanical installation should be arranged and stored so as to minimise any risk to the safety of the audience, the performers and staff.

19.16 **Alterations to the Premises**

Premises should not be altered in such a way as to make it impossible to comply with an existing licence condition without first seeking a variation of the premises licence to delete the relevant public safety condition. The applicant will need to propose how they intend to take alternative steps to promote the public safety objective in a new operating schedule reflecting the proposed alteration to the premises.

19.17 **Theatres and Cinemas (Promotion of Public Safety)**

In addition to the points made in the above there are particular matters in the context of public safety which should be considered in connection with theatres and cinemas.

19.17.1 Premises used for Closely Seated Audiences

19.17.2 Attendants

- (a) The number of attendants on each floor in a closely seated auditorium should be as set out on the table below:

Number of members in the audience present on a floor	Minimum No. of attendants required to be present on a floor
1 to 100	1
101 to 250	2
251 to 500	3
501 to 750	4
751 to 1000	5

And one additional attendant for each additional 250 persons (or part thereof).

- (b) Attendants shall not be engaged in any duties that would prevent them from promptly discharging their duties in the event of an emergency or entail their absence from that floor or auditorium where they are on duty.
- (c) Any attendant shall be readily identifiable to the audience (but this need not entail the wearing of a uniform).
- (d) The premises shall not be used for a closely seated audience except in accordance with seating plan(s), a copy of which is available at the premises and shall be shown to any authorised person on request.
- (e) No article shall be attached to the back of any seat which would reduce the clear width of seatways or cause a tripping hazard or obstruction.
- (f) A copy of any certificate relating to the design, construction and loading of any temporary seating shall be kept available at the premises and shall be shown to any authorised person on request.

19.17.3 Standing and Sitting in Gangways etc

19.17.4 Sitting on floors shall not be permitted except where authorised in the premises licence or club premises certificate.

19.17.5 Waiting or standing shall not be permitted except in areas designated in the premises licence or club premises certificate.

19.17.6 In no circumstances shall anyone be permitted to:

- (i) sit in any gangway;
- (ii) stand or sit in front of any exit; or
- (iii) stand or sit on any staircase including any landings.

19.17.7 Drinks

Except as authorised, by the premises licence or club premises certificate, no drinks shall be sold to or be consumed by a closely seated audience except in

plastic and paper containers.

19.17.8 **Balcony Fronts**

Clothing or other objects shall not be placed over balcony rails or upon balcony fronts.

19.17.9 **Special effects**

19.17.10 Any special effects or mechanical installation should be arranged and stored so as to minimise any risk to the safety of the audience, the performers and staff.

19.17.11 Specials effects include:

- Dry ice machines and cryogenic fog.
- Smoke machines and fog generators.
- Pyrotechnics, including fireworks.
- Real flame.
- Firearms.
- Motor vehicles.
- Strobe lighting.
- Lasers (see HSE Guide The Radiation Safety of lasers used for display purposes [HS(G)95] and BS EN 60825: Safety of laser products).
- Explosives and highly flammable substances.

19.17.12 In certain circumstances it may be necessary to require that certain special effects are only used with the prior consent of the Licensing Authority. In these cases the Licensing Authority should notify the Fire and Rescue Authority who will exercise their powers under the Regulatory Reform (Fire Safety) Order 2005.

19.17.13 **Ceilings**

All ceilings in those parts of the premises to which the audience are admitted should be inspected by a suitably qualified person who will decide when a further inspection is necessary and a certificate concerning the condition of the ceilings forwarded to the Licensing Authority.

19.17.14 **Seating**

Where the potential audience exceeds 250 all seats in the auditorium should, except in boxes accommodating not more than 8 persons, be either securely fixed to the floor or battened together in lengths of not fewer than 4 or more than 12.

19.18 **Premises used for Film Exhibitions**

19.18.1 **Attendants - premises without a staff alerting system**

Where the premises are not equipped with a staff alerting system the number of attendants present should be as follows:

- Number of members of the audience present on the premises 1 to 250, minimum number of attendants required to be on duty 2.
- And one additional attendant for each additional 250 members of the audience present (or part thereof).

- Where there are more than 150 members of an audience in any auditorium or on any floor at least one attendant shall be present in any auditorium or on any floor

19.18.2 Attendants – with a staff alerting system

(a) Where premises are equipped with a staff alerting system the number of attendants present should be as set out in the table below:

Number of members in the audience present on the premises	Minimum number of attendants required to be on duty	Minimum number of staff on the premises who are available to assist in the event of an emergency
1 to 500	2	1
501 to 1000	3	2
1001 to 1500	4	4
1501 or more	5 (plus 1 per additional 500 [or part thereof] persons over 2000 on the premises)	5 (plus 1 per additional 500 [or part thereof] persons over 2000 on the premises)

(b) Staff shall not be considered as being available to assist in the event of an emergency if they are:

- (i) the holder of the premises licence or the manager on duty at the premises; or
- (ii) a member of staff whose normal duties or responsibilities are likely to significantly affect or delay his response in an emergency situation; or
- (iii) a member of staff whose usual location when on duty is more than 60 metres from the location to which he/she is required to go on being alerted to an emergency situation.

(c) Attendants shall as far as reasonably practicable be evenly distributed throughout all parts of the premises to which the public have access and keep under observation all parts of the premises to which the audience have access.

(d) The staff alerting system shall be maintained in working order.

19.18.3 Minimum Lighting

The level of lighting in the auditorium should be as great as possible consistent with the effective presentation of the film and the level of illumination maintained in the auditorium during the showing of films would normally be regarded as satisfactory if it complies with the standards specified in BS CP 1007 (Maintained Lighting for Cinemas).

20. The Prevention of Public Nuisance

20.1 It should be noted that provisions of the Environmental Protection Act 1990, the Noise Act 1996 and the Clean Neighbourhoods and Environment Act 2005 provide some protection to the general public from the effects of noise nuisance. In addition, the provisions in Part 8 of the Licensing Act 2003 enable a senior Police officer to close down instantly for up to 24 hours licensed premises and premises carrying on temporary permitted activities that are causing nuisance resulting from noise emanating from the premises. These matters should be considered before deciding whether or not conditions are necessary for the prevention of public nuisance.

20.2 General

20.2.1 When applicants for premises licences or club premises certificates are preparing their operating schedules or club operating schedules, responsible authorities are considering such applications and licensing authorities are considering applications following the receipt of relevant representations from a Responsible Authority or interested party, the following options should be considered as measures that, if necessary, would promote the prevention of public nuisance.

20.2.2 Whether or not any risk assessment shows them to be necessary in the individual circumstances of any premises will depend on a range of factors including the nature and style of the venue, the activities being conducted there, the location of the premises and the anticipated clientele of the business involved.

20.2.3 Appropriate conditions for licences and certificates will also depend on local knowledge of the premises.

20.3 Noise

20.3.1 Where relevant representations are received the Council may have regard to nuisance caused by noise from licensed premises or noise attributable to it and may require prevention measures to be implemented by licence and certificate holders. Details of these measures must be highlighted as part of the operating schedule accompanying the application. The Council may consider the direct impact of a premises licence or club premises certificate on those persons living or working in the area concerned. The Council may require stricter conditions in areas which are primarily of a residential nature.

20.3.2 The Council also recognises that Birmingham is a diverse city containing many areas of mixed use where residents live alongside commercial and entertainment developments. The Council expects applications in such areas to properly address noise control and may impose stricter conditions where there is a dense residential population in close proximity to the premises.

20.3.3 The Council may limit opening hours or restrict licensable activities if appropriate in relation to noise nuisance, but will not do so without regard to the individual merits of any application.

20.3.4 Applicants are expected to consider measures which could be implemented in

order to mitigate or remove any potential nuisance from their premises. Examples include:

- ensuring noise or vibration does not emanate from the premises so as to cause a nuisance to nearby properties. This might be achieved by a simple requirement to keep doors and windows at the premises closed;
- limiting live music to a particular area of the building;
- moving the location and direction of speakers away from external walls or walls that abut private premises;
- installation of acoustic curtains;
- fitting of rubber seals to doorways;
- installation of rubber speaker mounts;
- measures to ensure that music will not be audible above background level at the nearest noise sensitive location;
- undertaking routine monitoring to ensure external levels of music are not excessive and take appropriate action where necessary;
- noise limiters on amplification equipment used at the premises (if appropriate);
- Prominent, clear and legible notices displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly.
- Restrictions on the use of explosives, pyrotechnics and fireworks of a similar nature which could cause disturbance in surrounding areas.
- The placing of refuse – such as bottles - into receptacles outside the premises takes place at times that will minimise the disturbance to nearby properties.

20.4 **Noxious smells**

In certain premises where existing legislation does not provide adequately for the prevention of public nuisance consideration might be given to conditions that ensure that:

- Noxious smells from licensed premises are not permitted so as to cause a nuisance to nearby properties and the premises are properly vented.

20.5 **Light pollution**

In certain premises where existing legislation does not provide adequately for the prevention of public nuisance consideration might be given to conditions that ensure that:

- Flashing or particularly bright lights on or outside licensed premises do not cause a nuisance to nearby properties. Any such condition needs to be balanced against the benefits to the prevention of crime and disorder of bright lighting in certain places

20.6 **Hours**

20.6.1 The hours during which the premises are permitted to be open to the public or to members and their guests can be restricted by the conditions of a premises licence or a club premises certificate for the prevention of public nuisance. But this must be balanced by the potential impact on disorder which results from arbitrarily fixed closing times. However, there is no general presumption in favour of lengthening licensing hours and the four licensing objectives should be paramount considerations at all times.

20.6.2 Restrictions could be necessary on the times when certain licensable activities take place even though the premises may be open to the public at such times. For example the playing of recorded music after a certain time might be prohibited even though other licensable activities are permitted to continue.

20.6.3 Restrictions might be necessary on the parts of premises that might be used for certain licensable activities at certain times. For example while the provision of regulated entertainment might be permitted while the premises is open to the public, or members and their guests, regulated entertainment might not be permitted in garden areas of the premises after a certain time.

20.7 **Fly posting and Promotional Material**

20.7.1 As a leading entertainment centre Birmingham often faces the widespread problem of illegal or nuisance fly posting, and littering from promotional material. This can have an impact on the prevention of public nuisance objective and the prevention of crime and disorder objective within the Licensing Act 2003.

20.7.2 Existing legislation seeks to address this problem, however, it often proves ineffective in preventing this type of nuisance advertising. The Council is also concerned that some licence holders leave the advertising of regulated entertainment to events promoters and then use this to argue that they are not responsible for any illegal fly posting which occurs.

20.7.3 The Council expects responsible licence holders to ensure the licensing objectives are properly promoted when advertising regulated entertainment at their premises. For this reason it considers licence holders should outline in their operating schedules the steps to be taken to make sure that advertising of licensable activities does not cause nuisance or ~~result in criminal offences~~ give rise to crime and disorder.

20.7.4 Where they are engaged, Premises Licence Holders are encouraged to have explicit agreements or contracts with named individuals or companies used to promote events to address the issue of fly posting and littering from promotional material: and to maintain a register of individuals and companies contracted with, for inspection by any Responsible Authority or Authorised Officer on request. Where appropriate and where consistent with the applicant's operating schedule the Council will impose conditions to this effect when its discretion to do so has been engaged.

20.8 **Live Music, Dancing and Theatre**

The Council recognises that proper account must be taken of the need to encourage and promote live music, dancing and theatre for the wider cultural benefit of communities generally. The potential for limited disturbance in neighbourhoods must be carefully balanced with these wider benefits.

21. The Protection of Children From Harm

- 21.1 It should be noted that it is unlawful under the 2003 Act to permit unaccompanied children under the age of 16 to be present on premises exclusively or primarily used for supply of alcohol for consumption on those premises under the authorisation of a premises licences, club premises certificates or a temporary event notice when open for the purposes of being used for the supply of alcohol for consumption there.
- 21.2 In addition, it is an offence to permit the presence of children under 16 who are not accompanied by an adult between midnight and 5am at all premises supplying alcohol for consumption on those premises under the authorisation of any premises licence, club premises certificate or temporary event notice.
- 21.3 Conditions duplicating these provisions are, therefore, unnecessary.
- 21.4 Applicants for a premises licence will be expected to set out in the operating schedule accompanying their application a statement of the measures that they will take to protect children from harm.

These measures should include:

- Arrangements to prevent children from acquiring or consuming alcohol;
- Arrangements for the appropriate instruction, training and supervision of staff to prevent children from acquiring or consuming alcohol;
- Steps to prevent children from being exposed to drugs, drug taking or drug dealing; Arrangements to prevent children from being exposed to gambling;
- Steps to prevent children from being exposed to entertainment of an adult or sexual nature; Steps to prevent children from being exposed to incidents of violence or disorder;
- Measures to prevent children from being exposed to environmental pollution such as excessive noise;
- Measures to prevent children from being exposed to special hazards such as falls from height; Arrangements for appropriate instruction, training and supervision of those employed or engaged to secure the protection of children from harm;
- Restrictions on the access by children to the whole or any part of the premises, including times when children may not be present;
- Means for ensuring that nominated persons supervising children are suitable. To include training in supervising adults in safeguarding principles and where necessary disclosure from the Disclosure and Barring Service.

- 21.5 The Council will not impose any condition which requires licensed premises to allow access by children.
- 21.6 The Council will not limit or exclude access of children to any premises unless it considers it necessary to do so for the prevention of harm to them. Where the Council determines that there is a risk of harm to children in relation to particular premises it may exclude or limit the access of children to the premises at specific times, or when certain activities are taking place, or may attach to the licence a condition that children/young persons must be accompanied by an adult.
- 21.7 Issues of concern may include:
- where the entertainment or services provided on the premises are commonly of an adult or sexual nature;
 - where any member of the current staff at the premises has been convicted for serving alcohol to a minor or where there is a reputation for selling alcohol to underage drinkers; or
 - where there is a strong element of gambling on the premises or the premises has a known association or involvement with taking or dealing drugs.
 - For any premises with known associations (having been presented with evidence at a hearing) with heavy or binge or underage drinking, drugs, significant gambling, or any activity or entertainment (whether regulated entertainment or not) of a clearly adult or sexual nature, there should be a strong presumption against permitting any access at all for children under 18 years.
 - Applicants wishing to allow access for children to premises where these associations may be relevant, when preparing operating schedules or club operating schedules or variations of those schedules for the purposes of obtaining or varying a premises licence or club premises certificate should:
 - explain their reasons; and
 - outline in detail the steps that they intend to take to protect children from harm on such premises.
 - for any premises not serving alcohol for consumption on the premises, but where the public are allowed on the premises after 11.00pm in the evening, there should be a presumption against the presence of children under the age of 12 unaccompanied by adults after that time. Applicants wishing to allow access when preparing operating schedules or variations of those schedules or club operating schedules for the purposes of obtaining or varying a premises licence or club premises certificate should:
 - explain their reasons; and outline in detail the steps that they intend to take to protect children from harm on such premises.
- 21.8 In any other case, subject to the premises licence holder's or club's discretion, the expectation would be for unrestricted access for children of any age to premises.

21.9 An operating schedule or club operating schedule should indicate any decision for the premises to exclude children completely, which would mean there was no need to include in the schedule steps the applicant proposes to take to promote the protection of children from harm

21.10 The Council may, in appropriate circumstances, attach conditions to a licence in order to control entertainment specifically aimed at children or otherwise to ensure adequate supervision by adult staff. It may also set requirements regarding the appropriate number of adult staff to be present at the premises based on the number of children present.

21.11 The Council encourages licence holders and operators of licensed premises:

- (1) To ensure that they are fully aware of the signs of child sexual exploitation and to understand that the sexual exploitation of a child is sexual abuse and a crime and
- (2) To raise the awareness of their staff about child sexual exploitation and provide intelligence to the appropriate authorities about concerns and about perpetrators who may be operating in their areas.

21.12 **Children in performances**

21.12.1 There are many productions each year that are one-off shows where the cast is made up almost entirely of children. They may be taking part as individuals or as part of a drama club, stage school or school group. The age of those involved may range from 5 to 18. The Children (Performances) Regulations 1968, as amended, set out requirements for children performing in a show.

21.12.2 However, if it is necessary to consider imposing conditions in addition to these requirements for the promotion of the protection of children from harm then the matters outlined below should be considered:

- **Venue** – the backstage facilities should be large enough to accommodate safely the number of children taking part in any performance.
- **Special effects** – it may be inappropriate to use certain special effects including smoke, dry ice, rapid pulsating or flashing lights, which may trigger adverse reactions especially with regard to children.
- **Care of children** – theatres, concert halls and similar places are places of work and may contain potentially dangerous equipment. It is therefore important that children performing at such premises are kept under adult supervision at all times including transfer from stage to dressing room and anywhere else on the premises. It is also important that the children can be accounted for at all times in case of an evacuation or emergency.

21.13 **Films**

The Council will expect those premises exhibiting films to include in the operating schedule accompanying their application for a licence, details of the measures they propose to stop children who are under age from viewing age-restricted films which are classified by the British Board of Film Classification or by the Council itself.

21.14 Adult Entertainment

21.14.1 Where regulated entertainment provided on premises is commonly of an adult or sexual nature the Council may, where relevant representations are received, give appropriate consideration to whether to grant a premises licence when the premises are in the vicinity of:

- Residential Housing.
- Schools.
- Play Areas.
- Children's Nurseries or preschool facilities.
- Places of Religious Worship or Education.
- Historic Buildings.
- Tourist Attractions.
- Predominantly Family Shopping Areas.
- Community Facilities or Public Buildings e.g. youth clubs, libraries & sports centres.

21.14.2 In so far as it relates to the licensing objectives, and taking into account location, the Council may determine the nature of any external signage for premises providing adult entertainment. The Council will also expect that the entertainment occurring on the premises should only be visible to those who have chosen to go inside, regardless of the location.

21.14.3 The Council is especially concerned that premises providing adult entertainment promote the protection of children from harm objective and will expect operating schedules to address this by adopting strict entrance policies, security measures and staff training and management policies to ensure that this and the other licensing objectives are promoted.

21.14.4 The Council has resolved to adopt schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Policing and Crime Act 2009, in relation to lap dancing and other sexual entertainment venues and the Licensing and Public Protection Committee will have regard to its own Sexual Entertainment Venue Policy, as and when an application is made to operate a venue of this kind.

21.15 Sale of Alcohol to Children

21.15.1 The Council considers that the sale of alcohol to children, or supply of alcohol in the case of a club, is a particularly serious offence.

21.15.2 There has been considerable research on the detrimental impact in areas where alcohol is accessed by children, in particular with regard to health, crime and disorder and anti-social behaviour. The Council, therefore, expects all licence holders to set out in their operating schedules the measures and management controls in place to prevent alcohol being sold or served to children (other than in the limited circumstances permitted under the Act) and to demonstrate all reasonable precautions and due diligence to prevent sales to under age persons whilst trading.

21.15.3 The Council considers that 'Challenge 25' policies, where the individual attempting to purchase alcohol must prove he/she is 18 or over if he/she appears to be under 25, are in many circumstances an effective way of preventing the sale of alcohol to children.

21.15.4 The Council expects licensed premises to embrace this initiative and premises licensed for the sale or supply of alcohol, particularly off-sales, to display prominent signage informing customers that it is an offence to sell or allow the sale of alcohol to children, to buy or attempt to buy it on a child's behalf, and for children to buy or attempt to buy it themselves.

21.15.5 Where the Council is required to review a licence due to the sale of alcohol to children the presumption will be for the licensee to demonstrate what systems were in place to try and prevent the situation arising.

21.15.6 If the Licensing Sub-Committee are not persuaded that appropriate, reasonable steps were taken by the licensee then the committee will take action to ensure the licensing objectives are promoted and may suspend or even revoke the licence of the premises licence holder or remove the designated premises supervisor.

22. List of Responsible Authorities:

Applicants are required under the Act to send copies of their application to the following responsible authorities in the Birmingham area:

A Copy must be sent to each Authority listed – even where they share the same address.

Licensing Authority	Birmingham City Council General Licensing Regulation & Enforcement P.O. Box 17831 Birmingham B2 2HJ licensing@birmingham.gov.uk
Operations Manager Licensing Enforcement	Birmingham City Council General Licensing Regulation & Enforcement P.O. Box 17831 Birmingham B2 2HJ licensing@birmingham.gov.uk
Chief Inspector of Weights and Measures	Trading Standards PO Box 16977, Birmingham B2 2AE tradingstandards@birmingham.gov.uk
Environmental Health	Environmental Health Pollution Team PO Box 16977, Birmingham B2 2AE pollution.team@birmingham.gov.uk
West Midlands Police	Birmingham Licensing Department West Midlands Police Lloyd House Colmore Circus Queensway Birmingham B4 6NQ bw_licensing@west-midlands.pnn.police.uk
West Midlands Fire Service	West Midlands Fire Service HQ 99 Vauxhall Road Nechells Birmingham B7 4HW firesafety.admin@wmfs.net
Planning Services	Planning & Development PO Box 28 1 Lancaster Circus Birmingham B1 1TU PlanningandRegenerationEnquiries@birmingham.gov.uk

Birmingham Children's Trust Protection of Children From Harm	Safeguarding Children & Licensing Birmingham Children's Trust 1 Lancaster Circus Ground Floor, Zone 02 PO Box 16895 Birmingham B2 2LD licensing@birminghamchildrenstrust.co.uk
Director of Public Health	Public Health Birmingham City Council 10 Woodcock Street Birmingham B7 4BH publichealth@birmingham.gov.uk
Home Office (Immigration Enforcement)	Alcohol Licensing Team Lunar House 40 Wellesley Road Croydon CR9 2BY Alcohol@homeoffice.gsi.gov.uk

Applicants seeking to licence a vessel are also required under the Act to send copies of their application to the following responsible authorities, in addition to those listed above:

Environment Agency	Environment Agency Midlands Regional Office 550 Streetsbrook Road Solihull B91 1QU
Canal & River Trust	Canal & River Trust Peel's Wharf Lichfield Street Fazeley Tamworth B78 3QZ

Deregulation of Schedule 1 Entertainment

Schedule 1 Category	Position
Plays	Deregulated between 0800-2300 for audiences up to 500
Dance	Deregulated between 0800-2300 for audiences up to 500 (Except certain performance of an adult nature)
Indoor Sport	Deregulated between 0800-2300 for audiences up to 1000
Live Music	Licensing suspended for amplified live music between 0800-2300 in on-licensed premises and deregulated in workplaces for audiences up to 500 (raised from 200 in Live Music Act 2012) (the Live Music Act 2012 already deregulated unamplified live music between 0800-2300 with no audience limitations)

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e of the Licensing Act 2003 (Descriptions of Entertainment)(Amendment) Order 2013 further to those already implemented by the Live Music Act 2012.

Guidance on both enactments has been produced by the Department for Culture Media and Sport.

DELEGATION OF FUNCTIONS REGARDING THE LICENSING ACT 2003

Subject	Sub Committee	Officers
Application for personal licence.	If a Police objection is made.	If no objection made.
Application for personal licence with relevant unspent convictions.	If a Police objection is made.	
Application for premises licence/ club premises certificate.	If a relevant representation is made.	If no relevant representations made.
Application for provisional statement.	If a relevant representation is made.	If no relevant representations made.
Application to vary premises licence/club premises certificate.	If a relevant representation is made.	If no relevant representations made.
Request to vary designated premises supervisor.	If a Police objection is made.	All other cases.
Request to be removed as designated premises supervisor.		All cases.
Application for transfer of premises licence.	If a Police objection is made.	All other cases.
Application for interim authorities.	If a Police objection is made.	All other cases.
Application to review premises licence/club premises certificate.	All cases.	
Decision on whether a complaint is irrelevant, frivolous, vexatious, etc.		All cases.
Decision to object when Local Authority is a consultee and not the relevant authority considering the application.		All cases.
Determination of application to vary premises licence at community premises to include and alternative licence condition	If a Police objection is made.	All other cases.
Determination of a Police objection to a STANDARD temporary event notice.	All cases.	
Application for minor variation of premises licence/club premises certificate		All cases (for decision whether to consult other Responsible

		authorities and for Determination)
Determination of a Police / EH objection to a temporary event notice.	All cases except where objection requires inclusion of conditions from existing premises licence and applicant is in agreement	Where objection requires inclusion of conditions from existing premises licence and applicant is in agreement
Attachment of Conditions from existing premises licence to TEN	Where applicant objects to conditions	If applicant is in agreement
Issuing of Counter notice for STANDARD TEN	Following determination hearing	Where limits are exceeded
Issuing of counter notice for Late TEN		All cases
Suspension of licence for non payment of fees		All cases
Requests for a change to the film classification awarded by the BBFC	All cases	
Requests for classification of films where there is no BBFC classification	Where there is concern about the content of any film submitted or the proposed exhibition of the film	Where appropriate procedure is followed and no concerns as to content
Request for implementation of Early Morning Restriction Order	FULL Committee	
Request for imposition of Late Night Levy	Full City Council	
Statement of Licensing Policy	Full City Council	
Cumulative Impact Assessment	Full City Council	

BIRMINGHAM CITY COUNCIL

**REPORT OF THE INTERIM ASSISTANT DIRECTOR
OF REGULATION AND ENFORCEMENT TO
THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

NOVEMBER 2020
ALL WARDS

**DEPARTMENT FOR TRANSPORT:
STATUTORY TAXI AND PRIVATE HIRE VEHICLE STANDARDS
ACHIEVING COMPLIANCE**

1 Summary

- 1.1 In July 2020 the Department for Transport published their long awaited Statutory Taxi and Private Hire Vehicle Standards document.
- 1.2 The statutory guidance was issued by the Secretary of State for Transport under powers conferred by the Policing and Crime Act 2017..
- 1.3 The guidance seeks to provide common core minimum standards to better regulate the taxi and private hire sector.
- 1.4 This report provides a comparison between the statutory guidance and the current position in Birmingham City Council, as well as proposed actions in order to bring us into alignment with the statutory guidance.

2. Recommendations

- 2.1 The report be noted.
- 2.2 The actions identified within Appendix 2 be agreed.
- 2.3 The action plan for compliance (Paragraph 8) be agreed.
- 2.4 Officers to provide progress updates to the Licensing and Public Protection Committee as appropriate.

Contact Officer: Emma Rohomon, Licensing Operations Manager
Telephone: 0121 303 9780
E-mail: emma.rohomon@birmingham.gov.uk

3. Background

- 3.1 The legislation providing for the licensing of the hackney carriage and private hire trade is very old. Town Police Clauses Act 1874 and Local Government (Miscellaneous Provisions) Act 1976.
- 3.2 At the time the legislation was drafted, things were very different, not just in the world of passenger transport. One Act was passed before the popular introduction of the internet, and one before the introduction of mains electricity or the motor car.
- 3.3 The antiquated legislation, coupled with the variety of local policies and conditions introduced across the country has led to inconsistency of approach which, in turn, has led to an exploitation of loopholes or weaknesses in the system. It is this inconsistency the Department for Transport seeks to address in their guidance.
- 3.4 There have been many calls for root and branch review of the legislation, the most recent of which resulted in a commitment from Government to produce this guidance document. Save for the Deregulation Act 2015 which legalised the practice of 'cross border' hire, the legislation itself remains essentially unchanged since its enactment,

4. The Guidance

- 4.1 The Guidance sets out certain standards which Licensing Authorities are expected to comply with. : These standards have been drawn up as a result of discussions with the trade, regulators and safety campaign groups. They focus on protecting children and vulnerable adults.
- 4.2 Paragraph 1.3 of the document clearly states: **“The Department...expects these recommendations to be implemented unless there is a compelling reason not to do so.”** (emphasis added)
- 4.3 Compelling Reason?
An example of a compelling reason not to comply with the recommendations would be,if our existing requirements are more stringent than those in the guidance. We would not be expected to lower our standards to achieve compliance.

5. The Road to Compliance

- 5.1 Appendix 1 is an annotated copy of the Statutory Guidance. For completeness, the entire document is included, but with the addition of a column to identify where there is a divergence between the guidance and the current position in Birmingham. A further column then indicates a proposal to remedy the situation
- 5.2 Some proposals will require a change in policy, indeed one of the main recommendations is the implementation of a standalone policy document which can be subject to regular review. Some require a change in internal processes within the licensing service and others will require an amendment to licence conditions.
- 5.3 Appendix 2 expands upon the information in Appendix 1 by indicating how the changes could be brought about.

6. The Changes

6.1 Policy:

As previously mentioned, one of the first proposals is to introduce a licensing policy document akin to those relating to other licensing areas such as alcohol and gambling. The Policies Procedures and Delegations Report is currently presented annually to the Licensing and Public Protection Committee which includes all of the hackney carriage and private hire policies. A standalone policy document would allow for a narrative introduction of the policy and would facilitate better communication of the policies and requirements.

6.2 Appropriate consultation is also included within the guidance. This includes a much broader church than just the licence holders themselves.

6.2 Criminal Record Checks

The Guidance requires all drivers to subscribe to the DBS (Disclosure and Barring Service) update service. This is a much easier system to comply with than the current requirements and will afford a greater reassurance as randomised checks can be carried out as well as the regular checks required.

6.3 The Guidance introduces the need for vehicle proprietors and operators to provide basic criminal records disclosures regularly (unless they are also licensed drivers, in which case the enhanced check will suffice).

6.4 Communication and Cooperation

There is much emphasis placed on the importance of clear advice and good communication between the licensing authority and the licence holders, and also the passengers.

6.5 The guidance stresses the importance of good communication between neighbouring authorities and other regulatory bodies such as the police. It also recommends the co-authorisation of officers from other authorities to enable enforcement action to take place effectively 'without borders.' This is something which has been considered before and can certainly be revisited.

6.6 The Guidance includes within its annexe, a list of proposals for determination of previous convictions. These replicate, to an extent those included within the document produced by the Institute of Licensing, which were accepted as best practice guidance by your Committee in June 2018

6.7 CCTV

The guidance recognises the need for local considerations to be made with regard to CCTV requirements, and rather than mandating CCTV be installed in all vehicles, instead requires a comprehensive consultation be carried out.

7 Remaining concerns

7.1 Whilst the document does contain some welcome clarity on dealing with licence applications for drivers, vehicle proprietors and operators, there are still some disappointing omissions in the document.

7.2 Vehicle standards

Contrary to what the title would suggest, there are no standards within the guidance which relate to the actual vehicles. No mention of emissions standards, age policies or signage.

7.3 These issues are amongst the most contentious of all in terms of local variances in standards.

7.4 Vehicle Standards are to be addressed in the revised DfT Best Practice Guidance.

8. Action Plan for Compliance

8.1 Many of the actions listed in Appendix 2 will require further work on the part of officers. Many will require consultation and further reports to be brought before the Committee, Cabinet Member or to City Council.

8.2 Officers will formulate the proposals into a single draft policy document. This will then go out to consultation and the results reported back to your Committee.

8.3 Internal processes identified will be commenced as soon as possible.

8.4 The information document for applicants and licence holders will be produced after the agreement of the draft policy. The information for passengers can be produced without delay.

9. Consultation

9.1 This report is essentially a position statement comparing the current policies and processes against the requirements of the statutory guidance.

9.2 There are certain proposals within the document which will require further work to be carried out and further reports to be brought before the Committee, Cabinet Member or to City Council.

10. Implications for Resources

10.1 The cost of administering the licensing service is recovered in full, from licence fees. A number of these proposals will lead to additional resource requirements, such as officer time, or the cost of external training providers, others will incur no additional resource requirement. Many will simply require a different way of working.

10.2 It is not therefore expected to have any significant effect on income or expenditure.

10.3 Mandatory subscription to the DBS update scheme will impact on the Occupational Health service who currently administer the DBS checks.

11. Implications for Policy Priorities

11.1 The Council's Vision and Priorities 2017-2020 document identifies four priorities for Birmingham namely: Children, Housing, Jobs and Skills, and Health. The recommendations in this report support the Council's main priorities at the highest level, in particular those for Health, Children, and Jobs and Skills.

12. Public Sector Equality Duty

12.1 Under the Duty we must have regard to the need to:

- Eliminate unlawful discrimination, harassment, and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

12.2 The recommendations contained in this report will not have any effect on any of our duties under the Equality Act 2010. Any future changes to policy as a result of this report will be subject to separate consideration of this duty.

12.3 For the reasons set out in paragraph 12.2, it is considered an initial Equality Analysis is not deemed appropriate or necessary.

INTERIM ASSISTANT DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers:



Department
for Transport

APPENDIX 1

Statutory Taxi & Private Hire Vehicle Standards

July 2020

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.

<h3>3.Administering the Licensing Regime</h3>		
<p>3.1 Licensing Policies:</p> <p>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.</p>	<p>Our Policies are available online but the communication of them could be improved.</p>	<p>A Single Cohesive Policy to be produced, containing all relevant information. Readily accessible online.</p>
<p>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.</p>		
<p><i>“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.”</i></p>		
<p>3.3 The long-term devastation caused by CSAE was summarised in the same report:</p>		
<p><i>“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</i></p>		

<p><i>appropriately. The abuse and violence continues to affect victims into adulthood. Many enter violent and abusive relationships. Many suffer poor mental health and addiction.”</i></p>		
<p>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.</p>		
<p>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.</p>	<p>Our current policies are regularly updates to reflect changes.</p>	<p>With the introduction of a standalone policy document, this could include a review period as suggested.</p>

Duration of licences		
<p>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.</p>		
<p>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.</p>	<p>Currently applicants have an option to choose one two or three year licences.</p>	<p>Move to a 'standard' 3 year driver licence. Shorter duration by exception/ request</p>

Whistleblowing		
<p>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.</p>	<p>BCC HR procedures are in effect. No separate licensing process is in place.</p>	<p>Communicate existing procedures to all staff. Consider if further process is necessary</p>
<p>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.</p>		
<p>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.”</p>		
<p>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.</p>		<p>See 3.8</p>

<p>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.</p>		
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Consultation at the local level		
<p>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.</p>	<p>Depending upon the subject, consultation tends to be with trade representatives and through BeHeard.although we do try to contact particular groups who may be affected.</p>	<p>Devise a suitable clear consultation process for all matters according to the impact of the proposals.</p>
<p>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.</p>	<p>We currently have good links with both the Regional Taxi Licenising Forum and also the Neighbouring Authorities Working Group, although we do not specifically consult with them on matters.</p>	<p>neighbouring authorities will be included in the consultation process per 3.12 above.</p>

Changing licensing policy and requirements		
<p>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.</p>	<p>Previous legal advice has been that we cannot retrospectively apply conditions to licences already granted.</p> <p>This is still technically the case, but in certain compelling circumstances it may still be possible.</p>	<p>This will be considered and included as part of any policy proposal going forward.</p>
<p>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.</p>		

<h2>4 Gathering and Sharing Information</h2>		
<p>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.</p>		
<h3>The Disclosure and Barring Service</h3>		
<p>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.</p>		
<p>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</p>		

<p>provided at each level of DBS checks is annexed to this document (Annex – Disclosure and Barring Service information).</p>		
<p>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.</p>		
<p>The Disclosure and Barring Service Update Service</p>		
<p>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.</p>	<p>We currently require a DBS every 3 years. We do not REQUIRE licence holders to subscribe to the Update Service.</p>	<p>Require compulsory subscription to the update service.</p>
<p>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.</p>		
<p>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</p>		

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.	We already have good links with the Disclosure Team withing West Midlands Police.	Review the Information Sharing Protocols for appropriateness.

Licensee self-reporting		
<p>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.</p>	<p>Currently licence holders are required to disclose matters within 7 days</p>	<p>Reduce this to 48 hours.</p>
<p>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.</p>		

Referrals to the Disclosure and Barring Service and the Police		
<p>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.</p>	<p>This is not routinely done at the moment</p>	<p>To be included in reports for matters to be determined.</p> <p>i.e. Is a referral to DBS appropriate in these circumstances. Yes/no etc</p>
<p>4.15 The Department recommends that licensing authorities should make a referral to the DBS when it is thought that:</p>		
<p>an individual has harmed or <u>poses a risk</u> of harm to a child or vulnerable adult;</p> <ul style="list-style-type: none"> • 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. 		
<p>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.</p>		

Working with the Police		
<p>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 nonconviction intelligence, will assist furthering these relationships and reinforce the benefits of greater sharing of information.</p>	<p>This does not happen as a matter of course.</p>	<p>Actions taken as a result of information disclosed will be reported back to the police.</p>
<p>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.</p>		
<p>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.</p>		

Sharing licensing information with other licensing authorities		
<p>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.</p>	This is already a requirement	No action required
<p>4.21 The LGA’s Councillors’ Handbook on taxi and private hire vehicle licensing advises that those responsible for licensing should “<i>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 decisionmaking. By working together, local government can make sure that this vital service is safe, respected, and delivering for local communities.</i>”. 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 nondisclosure of relevant information by applicants.</p>	We do not currently subscribe to NR3	We will commence the processes required for subscribing to NR3 and include the checking of NR3 in the licence process.
<p>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.</p>		

<p>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.</p>		
<p>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.</p>		
<p>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’.</p>		

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.	We currently have good links with the MASH, as well as with the LADO team. We have provided training for them on what we do and what / how to report to us. Meetings have ceased due to Covid.	Make contact / Refresh the training as necessary.

Complaints against licensees		
<p>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.</p>	<p>Currently the complaints management database is separate to the licensing system. We have recently successfully procured a single service solution which will be implemented in the coming months.</p>	<p>None required. (Continue with move to new system)</p>
<p>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.</p>	<p>The current system allows for officers to see the licence history to follow up as appropriate. The new system will also have this functionality.</p>	<p>None required. (Continue with move to new system)</p>
<p>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.</p>	<p>Currently the licenising service contact details are on the reart of the internal licence plate, and on the exterior plate. Operator conditions set minimum standards for their complaints management systems and requires certain complaints to be disclosed to the Licensing Service.</p>	<p>Consider alternative methods of displaying contact details in the vehicles in a meaningful/useful manner. Inreroduce guidance for passengers.</p>

<p>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.</p>		
<p>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.</p>		

Overseas convictions		
<p>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</p>		
<p>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.</p>	<p>We already require a Certificate of Good Conduct, or, where this not possible, a Statutory Declaration may be accepted.</p>	<p>None</p>
<p>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.</p>		

5. Decision Making		
Administration of the licensing framework		
<p>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.</p>		
<p>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.</p>		

Training decision makers		
<p>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.</p>	<p>We have recently strengthened the training requirements for Committee Members to ensure the broad spectrum of matters is covered.</p>	<p>Continue with the training programme, ensuring the relevant matters are addressed and training is up to date and appropriate</p>
<p>5.4 Public safety is the paramount consideration but the discharge of licensing functions must be undertaken in accordance with the following general principles:</p> <ul style="list-style-type: none"> • 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. 		
<p>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</p>		

<p>or votes and, once declared, they must leave the room for the duration of the discussion or vote.</p>		
<p>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.</p>	<p>This is constitutionally different to the Committee set up to dispose of LA2003/GA2005 matters, but utilises the same members.</p> <p>Currently, owing to the COVID-19 pandemic response, the majority of HCPH matters are delegated to a senior officer. This is reflected in the scheme of delegations.</p>	<p>Constitution is being amended to reflect the difference in the 2 types of Committee.</p>

<p>The Regulatory Structure</p>		
<p>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:</p> <ul style="list-style-type: none"> • 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. 		
<p>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.</p>		
<p>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.</p>		

<p>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.</p>	<p>The officer this responsibility is currently delegated to does not deal with the enforcement/compliance team Nor do they deal directly with the licensees in normal circumstances.</p>	<p>The delegations are due to be reviewed at a later date.</p>
<p>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.</p>	<p>Currently immediate suspension or revocation matters are determined in consultation with the Chair Of Licensing and Public Protection.</p>	<p>Consider whether the immediate sus/rev can be delegated to a senior officer as per the recommendations.</p>

<p>Fit and proper test</p>		
<p>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:</p> <p>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?</p>	<p>This is already the test applied.</p>	
<p>5.13 If, on the balance of probabilities, the answer to the question is 'no', the individual should not hold a licence.</p>		
<p>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.</p>		<p>This will be reiterated in the content of reports.</p>

Criminal convictions and rehabilitation		
<p>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.</p>	<p>Previously the IoL Guidance had been accepted as good practice.</p>	<p>The limits proposed in the Annex are to be incorporated into the Licensing Policy</p>
<p>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.</p>		
<p>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.</p>		

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.	See above re: DBS update	
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.		To be made explicit in the policy document
6.4 Drivers working under an arrangement to transport children may be working in 'regulated activity' as defined by the Safeguarding Vulnerable Groups Act	Education transport / Home to school transport does not fall	

<p>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.</p>	<p>within the remit of the Licensing Service</p>	
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<p>Safeguarding awareness</p>		
<p>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.</p>		
<p>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:</p> <ul style="list-style-type: none"> • 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. 	<p>We do have a safeguarding training package</p>	<p>Review the training and ensure it remains appropriate</p>

<p>6.7 Since 2015, the Department for Education (DfE) has run a nationwide campaign – ‘<i>Together, we can tackle child abuse</i>’ 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.</p>		
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<p>‘County lines’ exploitation</p>		
<p>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”.</p>		
<p>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.</p>		
<p>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.</p>		

<p>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:</p> <p>Children and young people travelling in taxis or private hire vehicles alone;</p> <ul style="list-style-type: none"> • travelling at unusual hours (during school time, early in the morning or late at night); • travelling long distances; 	<p>We do have a safeguarding training package</p>	<p>Review the training and ensure it remains appropriate</p>
<ul style="list-style-type: none"> • unfamiliar with the local area or do not have a local accent; • paying for journeys in cash or prepaid. 		
<p>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.</p>		
<p>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:</p> <ul style="list-style-type: none"> • 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 	<p>We do have a safeguarding training package</p>	<p>Review the training and ensure it remains appropriate</p>

<p>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.</p>	<p>The Knowledge Test (both HC and PH) include an element of communication in English. Candidates who are not proficient in English will not pass the test.</p>	
<p>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.</p>	<p>See above</p>	

<h2>7. Vehicle Licensing</h2>		
<p>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.</p>		
<h3>Criminality checks for vehicle proprietors</h3>		
<p>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.</p>	<p>We do not currently require a basic disclosure</p>	<p>Introduce this requirement, subject to the following paragraphs (re: companies etc)</p>
<p>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</p>		

<p>individual cease to hold a driver licence a basic certificate should be required immediately.</p>		
<p>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.</p>		
<p>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.</p>		
<p>7.6 As explained earlier in the context of driver licensing, the DBS cannot access criminal records held overseas so other checks must be consider where and applicant has lived or worked overseas (see paragraph 4.34 - 4.36).</p>		

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: <ul style="list-style-type: none"> • deterring and preventing the occurrence of crime; 		
<ul style="list-style-type: none"> • 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.	We do not currently mandate CCTV in all vehicles, although it is permitted to be installed.	Carry out consultation as described
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		

<p>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.</p>		
<p>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.</p>		
<p>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.</p>		
<p>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).</p>		<p>If implemented, any condition must be kept under regular review.</p>

Stretched Limousines		
<p>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.</p>	<p>We do currently licence stretched limousines</p>	
<p>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.</p>		

<h2>8. Private Hire Vehicle Operator Licensing</h2>		
<p>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.</p>		
<h3>Criminality checks for private hire vehicle operators</h3>		
<p>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.</p>	<p>We do not currently require a basic disclosure</p>	<p>Introduce this requirement, subject to the following paragraphs (re: companies etc)</p>
<p>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</p>		

<p>considering their suitability to hold a vehicle licence. Should the individual cease to hold a driver licence a basic certificate should be required immediately</p>		
<p>8.4 Refusal to license in 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.</p>		
<p>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.</p>		
<p>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.</p>		

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.	This is a requirement of the Operator Conditions already	
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.	This is not currently a requirement	This will require an amendment to the licence conditions.
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		

<p>later re-entered, a new basic DBS certificate should be requested and sight of this recorded.</p>		
<p>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.</p>		
<p>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.</p>	<p>This is not currently a requirement</p>	<p>This will require an amendment to the licence conditions.</p>

Record keeping		
<p>8.13 Section 56 of the <u>Local Government (Miscellaneous Provisions) Act 1976</u> 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:</p>		
<p>the name of the passenger;</p> <ul style="list-style-type: none"> • 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. 	<p>This information is already required by our conditions</p>	
<p>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.</p>	<p>We require this information be retained for 12 months</p>	

<p>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.</p>		
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<p>Use of passenger carrying vehicles (PCV) licensed drivers</p>		
<p>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.</p>	<p>This is already part of our operator conditions</p>	
<p>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.</p>	<p>This is already part of our operator conditions</p>	

<h2>9. Enforcing the Licensing Regime</h2>		
<p>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.</p>		
<p>Joint authorisation of enforcement officers</p>		
<p>9.2 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. 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.</p>	<p>We have explored this before. There are issues concerning the financing of such arrangements</p>	<p>Revisit the proposal with colleagues from neighbouring authorities.</p>

<p>Setting expectations and monitoring</p>		
<p>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.</p>	<p>We currently include all relevant information on the website but it could and should be more easily accessible.</p>	<p>Produce a clear package of information for all licence holders and applicants.</p>
<p>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.</p>	<p>See 9.3</p>	<p>See 9.3</p>

<p>Suspension and revocation of driver licences</p>		
<p>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: -</p> <p>that he has since the grant of the licence—</p> <p>been convicted of an offence involving dishonesty, indecency or violence; or</p> <p>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;</p> <p>(aa) that he has since the grant of the licence been convicted of an immigration offence or required to pay an immigration penalty; or</p> <p>(b) any other reasonable cause</p>		
<p>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.</p>		
<p>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.</p>	<p>This is already the process. Although matters may be heard in absence in the event of no response/non attendance</p>	

<p>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.</p>		
<p>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.</p>		
<p>9.10 A suspension may still be appropriate if it is believed that a minor issue can be addressed though 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.</p>		

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 ¹	Yes	Yes	Yes	Yes
Spent convictions ²	No	Yes	Yes	Yes
Spent cautions ^{1 & 2}	No	Yes	Yes	Yes
Additional police Information ³	No	No	Yes	Yes
Barred list(s) Information ⁴	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.

Actions Summary

APPENDIX 2

Paragraph	Actions/ Proposals	Comment
3.1 (3.5)	A Single Cohesive Policy to be produced, containing all relevant information. Readily accessible online. Regularly reviewed (3.5)	Policy
3.7	Move to a 'standard' 3 year driver licence. Shorter duration by exception/ request	Policy
3.8	Whistleblowing - Communicate existing procedures to all staff. Consider if further process is necessary	Internal process
3.12 (3.13)	Consultation: Devise a suitable clear consultation process for all matters according to the impact of the proposals. Including neighbouring Authorities (3.13)	Policy
3.14	Consider appropriateness of retrospective application of new policies.	Policy.
4.5 (6.2)	Require compulsory subscription to the DBS update service.	Policy. This will be a much more efficient and reliable process. There will be an impact on the Occupational Health Service who currently deliver this function.
4.11	Review the Information Sharing Protocols with the Police for appropriateness	Internal – officers.
4.12	Reduce deadline for reporting incidents/issues to 48 hours from 7 days	Conditions.
4.14	Ensure matters of concern are reported to DBS	Internal process to be introduced.
4.17	Actions taken as a result of information disclosed by the police will be reported back to the police.	Internal process to be introduced
4.21	We will commence the processes required for subscribing to NR3 and include the checking of NR3 in the licence process.	Internal processes, including contacting affected individuals.
4.28	Maintain good links with MASH teams	Internal process. Make contact again, refresh training where appropriate
4.29	Robust system for recording complaints	Continue with replacement of licensing systems to a single solution.
4.31 (9.4)	ensure that passengers know who to complain to, licensing authorities should produce guidance for	Internal – Produce Guidance/information for passengers on the safe use of licensed vehicles

	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	Conditions – Review the appropriateness of current requirement concerning signage within the vehicles in the event of a complaint.
5.3	Comprehensive training for decision makers	Internal process - Continue with the training programme, ensuring the relevant matters are addressed and training is up to date and appropriate
5.6 (5.10)	Discharge of HCPH Licensing functions. This is constitutionally different to the Committee set up to dispose of LA2003/GA2005 matters, but utilises the same members. Currently, owing to the COVID-19 pandemic response, the majority of HCPH matters are delegated to a senior officer. This is reflected in the scheme of delegations.	Internal- Constitution is being updated to ensure the differences are appropriately referenced. Current delegated arrangements to be reviewed in accordance with the Committee decision in May 2020.
5.11	Consider whether the immediate suspension or revocation (in the interests of public safety) can be delegated to a senior officer as per the recommendations.	Licensing & Public Protection Committee Delegations matter.
5.14	Ensure <u>an applicant or licensee should not be 'given the benefit of doubt'</u> . 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.	Internal Process – to be included in the content of reports for decision.
5.15	Adopt the Department for Transport recommendations on the assessment of previous convictions.	Policy.
6.6 6.11 6.13	Review the current safeguarding training to ensure it remains fit for purpose	Internal process.
7.2, 8.2	Require a basic disclosure from the DBS and that a check is undertaken annually for vehicle proprietors (7.2)and PH Operators (8.2)	Policy
7.9	CCTV All licensing authorities should consult to identify if there are local circumstances which indicate	Officers to carry out the consultation and report back to Licensing and Public Protection Committee. (Potentially Policy)

	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	
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.	Conditions
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	Conditions
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	Internal Process – officers to progress with neighbouring authorities where appropriate.
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	Internal process - Produce a clear package of information for all licence holders and applicants. Links to (3.1)(4.31)(9.4)

BIRMINGHAM CITY COUNCIL

**REPORT OF THE INTERIM ASSISTANT DIRECTOR
REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

18 NOVEMBER 2020
ALL WARDS

**ENFORCEMENT POLICY REVIEW
REGULATION AND ENFORCEMENT**

1. Summary

- 1.1 On 6 April 2014 the Regulators Code came into force which had implications for all Local Authority Enforcement Policies. On 17 June 2015 and 1^h November 2017 the Division's enforcement policy was reviewed and agreed by this Committee following consultation and an equality impact assessment.
- 1.2 The Council is required to keep the Enforcement Policy under regular review. The Policy was updated and revised to include the new names of relevant government departments responsible for policy and to identify when it is likely that enforcement action will be initiated by the Council.
- 1.3 On 15 June 2020 the revised Enforcement policy was reviewed by the Leader and Chief officer and the policy agreed with a call-in deadline of 4.00pm on 18 June 2020
- 1.4 This report provides the committee with the revised policy, subject to a minor change, the policy requires no further changes and the Committee is invited to endorse it.

2. Recommendation

- 2.1 That Committee approve the Enforcement Policy which is attached at Appendix 1.

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3. Background

- 3.1 The Regulation and Enforcement Division's Enforcement Policy is a document that provides officers with guidance in the application of enforcement decisions. It is as important for officers as it is for those against whom enforcement action might be taken as it helps to provide clarity and encourages consistency in the decision making process. As a Local Authority regulator, we are obligated to publish a policy by the Regulator's Compliance Code of 2014. It requires us to have regard to certain principles when constructing our own policy, which are repeated for convenience below.
- 3.2 The Regulators' Code attempts to improve the way regulation is delivered at the front line. It sets out a clear framework for transparent and accountable regulatory delivery and establishes clear principles for how local authorities should interact with those they are regulating. The Code is underpinned by the statutory principles of good regulation, which provide that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent and should be targeted only at cases in which action is needed.
- 3.3 At the meeting of the Licensing and Public Protection Committee on 15 November 2017 the Regulation and Enforcement Division's Enforcement Policy was presented having been reviewed and updated under the duty on the Local Authority to have regard to the Regulator's Code in developing the principles and policies which guide their regulatory activities as well as the views of the members of the Licensing and Public Protection Committee. This is a review of that policy to ensure the information remains up to date with the code.

4. Regulators' Code

- 4.1 The Code places certain specific obligations upon regulators. Those obligations are set out below.
- 4.2 **Regulators should carry out their activities in a way that supports those they regulate to comply and grow.** Regulators should avoid imposing unnecessary regulatory burdens through their regulatory activities and should assess whether similar social, environmental and economic outcomes could be achieved by less burdensome means. Regulators should choose proportionate approaches to those they regulate, based on relevant factors including, for example, business size and capacity.
- 4.3 **Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.** Regulators should have mechanisms in place to engage those they regulate, citizens and others to offer views and contribute to the development of their policies and service standards. Before changing policies, practices or service standards, regulators should consider the impact on business and engage with business representatives.

- 4.4 **Regulators should base their regulatory activities on risk.** Regulators should take an evidence based approach to determining the priority risks in their area of responsibility, and should allocate resources where they would be most effective in addressing those priority risks.
- 4.5 **Regulators should share information about compliance and risk.** Regulators should collectively follow the principle of “collect once, use many times” when requesting information from those they regulate. When the law allows, regulators should agree secure mechanisms to share information with each other about businesses and other bodies they regulate, to help target resources and activities and minimise duplication.
- 4.6 **Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.** Regulators should provide advice and guidance that is focused on assisting those they regulate to understand and meet their responsibilities. When providing advice and guidance, legal requirements should be distinguished from suggested good practice and the impact of the advice or guidance should be considered so that it does not impose unnecessary burdens in itself.
- 4.7 **Regulators should ensure that their approach to their regulatory activities is transparent.** Regulators should publish a set of clear service standards, setting out what those they regulate should expect from them.

5. Changes to the Policy

- 5.1 The Policy is reviewed regularly. The vast majority of updates relate to government and policy department name changes. However, the policy also takes in to account the priorities of the council and seeks to include some of these priorities in the enforcement decision making process. The changes appear at paragraphs 7.2.4 and provides some examples where an investigation would lead to the institution of legal proceedings, officers will still have regard to applying the other tests applicable to prosecution and will consider each case on its own merits.

6. Consultation

- 6.1 In view of the minor changes that are proposed to the policy, and the fact that since its adoption no formal complaints or concerns about the interpretation or application of the policy have been received, no external consultation has taken place on this review.

7. Implications for Resources

- 7.1 No specific implications have been identified. The Policy guides the decision making process and there are no additional associated costs linked to it.

8. Implications for Policy Priorities

- 8.1 The issues addressed in this report underpin the City Council Vision, Birmingham is an entrepreneurial city to learn, work and invest in, Birmingham is an aspirational city to grow up in, Birmingham is a great city to live, Birmingham is a fulfilling city to age well in.
- 8.2 Further Regulation and Enforcement will be a key service in ensuring Birmingham residents gain the maximum benefit from hosting the Commonwealth Games by supporting legitimate business and tackling rogue traders looking to take advantage of opportunities that arise within the ghost market.
- 8.3 They also support the Regulation and Enforcement Mission Statement: Locally accountable and responsive fair regulation for all – achieving a safe, clean, green and fair trading city for residents, business and visitors.

9. Public Sector Equality Duty

- 9.1 An initial equality analysis was completed in 2014 when the Policy was first drafted. A further equality analysis was created on 3 March 2020 prior to the leader and chief Officer agreement.
- 9.2 One of the benefits of an enforcement policy is to ensure consistency and fairness of enforcement throughout all communities and the commercial sector in Birmingham. The purpose of this Policy is to ensure that decisions are made transparently and to eliminate unfair or inequitable decisions. By its nature it should not have an adverse impact on anyone with protected characteristics.

INTERIM ASSISTANT DIRECTOR REGULATION AND ENFORCEMENT

Appendix 1: Regulation and Enforcements - Enforcement Policy

BIRMINGHAM CITY COUNCIL
REGULATION AND ENFORCEMENT
ENFORCEMENT POLICY

1. INTRODUCTION

- 1.1 The Regulatory Enforcement and Sanctions Act 2008 established The Local Better Regulation Office (LBRO). Over time this evolved into the Better Regulation Delivery Office (BRDO) which then became Regulatory Delivery (RD). The Office for Product Safety and Standards (OPS&S) succeeds the former Regulatory Delivery and works with local authorities and others to take forward its responsibilities, including Primary Authority and Better Business for All. It is part of the Department for Business, Energy and Industrial Strategy (BEIS). The Act also imposed upon Regulation and Enforcement a duty to:
- (a) have regard to any guidance given to a Local Authority by OPS&S,
 - (b) a duty to comply with guidance where we are directed to do so by OPS&S, and
 - (c) a duty to have regard to any list of enforcement priorities published by OPS&S. We are committed to doing so.
- 1.2 The Regulators Code (RC) provides a set of principles for Regulators to consider.
- (a) Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
 - (b) Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.
 - (c) Regulators should base their regulatory activities on risk.
 - (d) Regulators should share information about compliance and risk.
 - (e) Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.
 - (f) Regulators should ensure that their approach to their regulatory activities is transparent.
- 1.3 Section 6 of the Regulators' Code sets out an expectation that local authorities will ensure that their approach to their regulatory activities is transparent. This means we will publish our policy on how we intend to deliver regulation and what those affected can expect. We believe that our enforcement policy is clear, concise, transparent and fit for purpose. Included in our enforcement policy is the way we will deal with issues and what those regulated can expect.
- 1.4 The RC indicates that it is for each local authority to determine an approach to service standards that will work best for those it regulates and itself.

- 1.5 This policy commits Birmingham City Council's Regulation and Enforcement Division to good enforcement practice with effective procedures and clear policies. Regulation and Enforcement Division includes the Licensing Service, Environmental Health, Trading Standards, the hosted England Illegal Money Lending Team, the Regional Investigation Team and incorporates the enforcement actions of the Waste Enforcement Unit.
- 1.6 This document has been prepared with regard to the current principal legislation and statutory guidance including:
- The Regulatory Enforcement and Sanctions Act 2008 (The RES Act).
 - Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 SI665/2009 (The CRE Enforcement Order).
 - Co-ordination of Regulatory Enforcement (Procedure for References to RD) Order 2009 SI670/2009 (The CRE BRDO Order).
 - Legislative and Regulatory Reform Act 2006 (LRRRA).
 - Legislative and Regulatory Reform (Regulatory Functions) Order 2007 Regulators' Code (RC).
- 1.7 This Policy has also been prepared having regard to:
- The Enforcement Concordat: Good Practice Guide for England and Wales and the Principles of Good Enforcement: Standards; Openness; Helpfulness; Complaints; Proportionality and Consistency; the Human Rights Act 1988 and the Code for Crown Prosecutors.
 - The LRRRA Part 2 requires us also to have regard to the Principles of Good Regulation. We recognise that our regulatory activities should be carried out in a way which is:
 - (a) proportionate;
 - (b) accountable;
 - (c) consistent;
 - (d) transparent; and
 - (e) targeted (to situations which need action) when we exercise a regulatory function which for local authorities includes: environmental health, trading standards and licensing. We have had regard to the RC in the preparation of this policy.

2. WHAT THIS POLICY IS FOR

- 2.1 Regulation and Enforcement's primary function is to achieve regulatory compliance in order to protect the public, legitimate business, the environment and groups such as consumers and workers. However, we reserve the right

to take enforcement action in some cases after compliance has been achieved if it is in the public interest to do so.

2.2 We recognise that prevention is better than cure, but where it becomes necessary to take formal enforcement action against a business, or member of the public, we will do so. There are a wide range of tools available to us as an enforcement agency. The actions we may take include:

- (a) No action.
- (b) Informal Action and Advice.
- (c) Fixed Penalty Notices.
- (d) Penalty Charge Notices.
- (e) Formal Notice.
- (f) Forfeiture Proceedings.
- (g) Seizure of goods/equipment.
- (h) Injunctive Actions and other Civil Sanctions.
- (i) Refusal/Suspension/Revocation of a licence.
- (j) Simple Caution.
- (k) Prosecution.
- (l) Proceeds of Crime Applications.

2.3 When considering enforcement action, Regulation and Enforcement will, where appropriate and where reasonably practicable, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach. However, it must also be noted that legal processes dictated by statute will be applied in many instances where contraventions of legislation have been detected. Further this paragraph does not apply where immediate action is required to prevent or respond to a potential breach/contravention or where to do so is likely to defeat the purpose of the proposed enforcement action.

2.4 If you are a business operating in more than one Local Authority and you have chosen to have a registered Primary Authority Partnership under the RES Act we will, where required, comply with the agreement provisions for enforcement and notify your Primary Authority of the enforcement action we propose to take. We may under that Act also refer the matter to RD if appropriate.

2.5 This policy is intended to provide guidance for enforcement officers, businesses, consumers and the public.

3. SCOPE OF THE POLICY

3.1 This Policy, where appropriate, applies to the legislation delegated to Regulation and Enforcement and enforced by authorised officers with delegated enforcement powers. These delegated powers are listed and reproduced within the Council's constitution. These can be found at: https://www.birmingham.gov.uk/info/50068/how_the_council_works/283/the_councils_constitution

- 3.2 'Enforcement' includes any criminal or civil action taken by enforcement officers aimed at ensuring that individuals or businesses comply with the law.
- 3.3 For the purposes of the RES Act the term 'enforcement action' has been given a general statutory definition, which is:
- (a) Action to source compliance with a restriction, requirement or condition in relation to a breach or supposed breach
 - (b) Action taken in connection with imposing a sanction for an act or omission; and
 - (c) Action taken in connection with a statutory remedy for an act or omission.
- 3.4 A list of specific 'enforcement actions' is provided in Section 2 of this Policy. This means that if you are a business or organisation registered with a Primary Authority and we are proposing to take action against you and that action is one of those listed then, unless one of the permitted exceptions applies, we will be required to contact your Primary Authority and give notice of the enforcement action we propose to take against you.
- 3.5 By this document Regulation and Enforcement intends to enable enforcement officers to interpret and apply relevant legal requirements and enforcement policies fairly and consistently between like-regulated entities in similar situations. Regulation and enforcement also aims to ensure that its own enforcement officers interpret and apply their legal requirements and enforcement policies consistently and fairly.
- 3.6 In certain circumstances we will seek to raise awareness and increase compliance levels by publicising unlawful trade practices or criminal activity. Where appropriate the results of specific court cases may also be published. Court results are placed on our website on the Traders Prosecuted page, which can be found at: <https://www.birmingham.gov.uk/traders>

4. HOW TO OBTAIN A COPY OF THE POLICY OR MAKE COMMENTS

- 4.1 This Policy is available on the Birmingham City Council website at:
<http://www.birmingham.gov.uk/regulatoryenforcementpolicy>
If you would like a paper copy of the Policy and/or you would like to comment on the Policy, please contact us through one of the following means :
- (a) E-mailing EH@birmingham.gov.uk
 - (b) Emailing tradingstandards@birmingham.gov.uk
 - (c) Emailing licensing@birmingham.gov.uk
 - (d) Writing to the Assistant Director Regulation and Enforcement, Ashted Lock, Units 1-3, Ashted lock Way, Birmingham, B7 4AZ
 - (e) Telephoning 0121 303 6121.
- 4.2 On request, this Policy will be made available on tape, in Braille or large type.

5. OUR APPROACH

- 5.1 Our principles are informed by a number of codes of practice and statute as well as the Regulators' Code (the Code), Enforcement Concordat and the Guidance of OPS&S as to how to apply these documents.
- 5.2 We recognise that prevention is better than cure and our role, therefore, involves actively working with businesses to advise on and assist with compliance. However, where it becomes necessary to take formal enforcement action against a business, or member of the public, we will do so.
- 5.3 Where we consider that formal enforcement action is necessary, each case will be considered on its own merits.
- 5.4 However, there are general principles that apply to the way each case must be approached. These are set out in this Policy.
- 5.5 The approach of Regulation and Enforcement to the sanctions and penalties available to it will aim to:
- (a) Change the behaviour of the offender;
 - (b) Change attitudes in society to offences which may not be serious in themselves, but which are widespread;
 - (c) Eliminate any financial gain or benefit from non-compliance;
 - (d) Be responsive and consider what is appropriate for the offender and regulatory issue which can include punishment and the public stigma that should be associated with a criminal conviction;
 - (e) Be proportionate to the nature of the offence and the harm caused;
 - (f) Restore the harm caused by regulatory non-compliance, where appropriate; and
 - (g) Deter future non-compliance;
 - (h) Comply with Statutory requirements.
- 5.6 All enforcement decisions will be fair, independent and objective. They will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.

- 5.7 Where possible, we will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss and its significance in making the decision to take formal action. This may include actual or potential harm or loss or the impact on the well-being of individuals or potential or actual harm to communities or the environment.
- 5.8 Where possible, we will endeavour to ensure that those regulated can seek advice from the service about potential non-compliance without automatically triggering enforcement action. Each matter will be considered on its own merits and will determine the action by the service.
- 5.9 Birmingham City Council is a public authority for the purposes of the Human Rights Act 1998. We will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- 5.10 All enforcement activities, including investigations and formal actions, will always be conducted in compliance with the statutory powers of the officer and all other relevant legislation, including but not limited to the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000 and the Criminal Justice and Police Act 2001, and in accordance with any formal procedures and codes of practice made under this legislation in so far as they relate to enforcement powers and responsibilities.
- 5.11 This Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Code. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

6. NOTIFYING ALLEGED OFFENDERS

- 6.1 If we receive information (for example from a complainant) that may lead to formal enforcement action against a business or individual we will notify that business or individual as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public.
- 6.2 During the progression of enforcement investigations/actions, business proprietors or individuals and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and/or in accordance with the Data Protection Act 2018.

7. ENFORCEMENT ACTION

7.1 An Overview of the enforcement actions available

7.1.1 There are a large number of potential enforcement options. The level of the action taken varies from no action through to proceedings in Court. Examples of the main types of action that may be considered are shown below:

- (a) No action.
- (b) Informal Action and Advice.
- (c) Fixed Penalty Notices.
- (d) Penalty Charge Notices.
- (e) Formal Notice.
- (f) Forfeiture Proceedings.
- (g) Seizure of goods/equipment.
- (h) Injunctive Actions and other Civil Sanctions.
- (i) Refusal/Suspension/Revocation of a licence (including with immediate effect).
- (j) Simple Caution.
- (k) Prosecution.
- (l) Proceeds of Crime Applications.

7.1.2 The order in which the enforcement actions are listed above is not necessarily in absolute order of escalating seriousness relative to each other. Regulation and Enforcement reserves the right to escalate its level of enforcement action, having regard to the criteria in paragraph 7.2 of this policy.

7.2 Deciding what level of action is appropriate

7.2.1 In assessing what enforcement action is necessary and proportionate, consideration will be given to, amongst other things:

- (a) The seriousness of the compliance failure.
- (b) The past and current performance of any business and/or individual concerned.
- (c) Any obstruction on the part of the offender.
- (d) The risks being controlled.
- (e) Statutory guidance.
- (f) Codes of Practice.
- (g) Any legal advice.
- (h) Policies and priorities of Government, Birmingham City Council and Birmingham City Council's Licensing and Public Protection Committee.
- (i) A person's age in relation to young people (termed 'juveniles') aged under 18.
- (j) The existence of a Primary Authority agreement.
- (k) Any duty of a local authority or Statutory provisions

7.2.2 Certain enforcement action, such as the decision to Caution and/or the decision to prosecute, is further and specifically informed by those matters set out below at paragraphs 7.13 and 7.14.

7.2.3 The Risk Matrix in Appendix 1 to this policy will be used as a framework to support transparency and consistency of approach and decision making. For workplace health and safety the Enforcement Management Model (EMM) is used to ensure that enforcement decisions are consistent.

7.2.4 Action is more likely to be taken if the following are of relevance

- a. Situations where it is evident that a vulnerable individual or vulnerable group has been exploited
- b. Obstruction of authorised officers of the service in the lawful execution of their duties.
- c. Offences involving deceptions, fraud or negligence.
- d. Wilful disregard for the law.
- e. Risk to public health /safety
- f. Public nuisance
- g. Categories of offences which create significant financial burden to the taxpayer or impact at a community-wide level or that undermine public/business confidence in the City.

7.3 An explanation of the enforcement action options

7.3.1 No Action

7.3.2 In certain circumstances, we may consider that no action is appropriate in the circumstances, such as where the offender is elderly and frail or is suffering from mental health issues or serious ill health, and formal action would seriously damage their wellbeing. In such cases we will advise the offender of the reasons for taking no action.

7.4 Informal Action and Advice

7.4.1 For minor breaches of the law we may give verbal or written advice. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable and take into account the seriousness of the contravention and the implications of the non-compliance.

7.4.2 Sometimes we will advise offenders about 'good practice' but we will clearly distinguish between what they must do to comply with the law and what is advice only.

7.4.3 Failure to comply could result in an escalation of enforcement action.

7.5 Fixed Penalty Notices

7.5.1 Certain offences are subject to fixed penalty notices where prescribed by legislation. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), we may choose to administer a FPN on a first occasion, without issuing a warning. Failure to pay the FPN may lead to a prosecution.

7.6 **Penalty Charge Notices**

7.6.1 Penalty Charge Notices (PCN) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.

7.7 **Failure to discharge a FPN and/ or a PCN**

7.7.1 A failure to pay a FPN or PCN is a material consideration for the purposes of deciding whether a prosecution will be taken or civil debt recovery commenced.

7.7.2 In order to maintain the integrity of this legislative regime and adherence to relevant statutory Codes of Practice, Regulation and Enforcement will consider an escalation of enforcement action. This will include consideration of a prosecution for the original offence under the primary legislation or consideration of civil action to recover the debt.

7.8 **Formal Notice**

7.8.1 Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. Notices may require activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed will be reasonable, take into account the seriousness of the contravention, the implications of the non-compliance and the appeal period for that notice.

7.8.2 All notices issued will include details of any applicable appeals procedures.

7.8.3 Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with [a breach of the notice] we may carry out any necessary works to satisfy the requirements of the notice ourselves. Where the law allows, we may then commence recovery action, through the courts, if necessary, against the person/business served with the notice, for any costs we incur in carrying out the work. Notwithstanding the default power, non-compliance with notices may lead to a prosecution.

7.9 **Forfeiture Proceedings**

7.9.1 This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem. In appropriate circumstances, we will make an application for forfeiture to the Magistrates Courts.

7.10 Seizure

7.10.1 Certain legislation enables authorised enforcement officers to seize goods, equipment or documents, for example, unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for possible future court proceedings. When we seize goods we will give the person from whom the goods are taken an appropriate receipt and details of any applicable appeals and/or property return procedures.

7.11 Injunctive Actions and Other Civil Sanctions

7.11.1 In certain circumstances, for example, where offenders are repeatedly found guilty of similar offences or where it is considered that injunctive action is the most appropriate course of enforcement, then such actions may be used to deal with repeat offenders, dangerous circumstances, or consumer/environmental/public health detriment.

7.11.2 Action under the Enterprise Act 2002- proceedings may be brought where an individual or organisation has acted in breach of community or domestic legislation with the effect of harming the collective interests of consumers. In most circumstances action will be considered where there have been persistent breaches or where there is significant consumer detriment. Action can range from:

- (a) Informal undertakings.
- (b) Formal undertakings.
- (c) Interim Orders.
- (d) Court Orders.
- (e) Contempt Proceedings.

7.11.3 In certain circumstances Community Protection Notices (CPN's) or Criminal Behaviour Orders (CBO's) can be issued and obtained in respect of anti-social behaviour.

Where the non-compliance under investigation amounts to anti-social behaviour such as persistent targeting of an individual or a group of individuals in a particular area, or activity that is deemed detrimental to quality of life, a CPN or CBO may be sought or issued to stop the activity.

7.12 Suspension and Revocation of a Licence

7.12.1 Hackney Carriage and Private Hire Drivers – the grounds for refusing to renew a licence, or for suspending or revoking a licence, are based on whether the driver has:

- (i) Been convicted of an offence involving dishonesty, indecency, drugs or violence;
- (ii) Been convicted of an offence under the Local Government (Miscellaneous Provisions) Act 1976;
- (iii) Failed to comply with a requirement of the Local Government (Miscellaneous Provisions) Act 1976; or
- (iv) Any other reasonable cause.

7.12.2A Hackney Carriage or Private Hire Drivers' licence may also be suspended or revoked with immediate effect if such a decision is deemed necessary in the interests of public Safety. No conviction is required for this action to be taken. Matters will be considered on the Civil Standard of proof – on the balance of probability.

7.12.3 Premises Licences (Licensing Act 2003) – where a review of a Premises Licence is sought under Section 51 of the Act the options available to the Licensing and Public Protection Committee are:

- (i) Modification of the conditions of the Licence.
- (ii) Exclusion of licensable activity from the scope of the Licence.
- (iii) Removal of the Designated Premises Supervisor.
- (iv) Suspension of the Licence for a period not exceeding three months.
- (v) Revocation of the Licence.
- (vi) Issue of a Warning Letter.
- (vii) No action.

7.12.4 Premises Licences (Gambling Act 2005) – where a review of a Premises Licence is sought under Section 202 of the Act, the options available to the Licensing and Public Protection Committee are:

- (i) Revocation of the Licence.
- (ii) Suspension of the Licence for a specified period not exceeding three months.
- (iii) Exclusion of a condition attached to the Licence, under Section 168, or removal or amendment of an exclusion.
- (iv) Additions, removal or amendment of a condition under Section 169.

7.12.5 **General Licensing** – where there is a breach of condition of Licence or Permit, upon hearing evidence, the Licensing Committee has the power to suspend, revoke or refuse to renew the Licence/Permit subject to the provisions of the legislation.

7.12.6 **Correctional Training Courses** – where a driver of a hackney carriage or a private hire vehicle has committed an offence that would be considered suitable for disposal by way of administering a Simple Caution or a FPN, we may in appropriate circumstances offer the driver the opportunity of attending a correctional training course at the driver's expense as an alternative to receiving the Simple Caution or FPN . The acceptance of a training course will not be cited as a formal sanction by the Council in the event of future legal proceedings against the individual, but the circumstances of the offence would remain relevant in terms of the individual's fitness to hold a licence.

7.13 **Simple Caution**

7.13.1 In appropriate circumstances, where a prosecution would otherwise be justified, a Simple Caution may be administered. Simple Cautions will be used in accordance with current Guidelines, including the Director's Guidance on Charging issued by the Director of Public Prosecutions under section 37A of the Police and Criminal Evidence Act 1984.

7.13.2 A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

7.13.3 For a Simple Caution to be issued a number of criteria must be satisfied:

- (a) Sufficient evidence must be available to prove the case.
- (b) The offender must admit the offence.
- (c) It must be in the public interest to use a Simple Caution.
- (d) The offender must be 18 years or over.

7.13.4 We will also take into account whether the offender has received a simple caution within the last 2 years when determining whether a simple caution is appropriate for any subsequent offending.

7.13.5 If during the time the Simple Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the Caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

7.13.6 The refusal of an offender to be cautioned does not preclude the matter being passed for prosecution. In fact, any such failure will be a material consideration when deciding whether the offender should then be prosecuted for that offence.

7.13.7 We take the view that offences of selling age restricted products to minors and other vulnerable persons have such a serious and adverse impact on the safety and wellbeing of the community that our presumption will always be to deal with them by way of formal action, meaning simple caution or prosecution

and/or licence reviews. Where a sale of alcohol is made by someone who is not a personal licence holder, consideration will be given to administering a simple caution for a first offence.

Where a sale of alcohol is made by someone who is a personal licence holder, consideration will be given to dealing with the case by way of prosecution for a first offence. In every case we will consider the individual circumstances before making our decision.

7.14 Prosecution

7.14.1 In circumstances where none of the other forms of enforcement action are considered appropriate or a defendant failed to comply with a notice issued or failed to pay a fixed penalty notice issued to them, a prosecution will be considered and may ensue.

7.14.2 When deciding whether to prosecute, Regulation and Enforcement applies the Code for Crown Prosecutors as issued by the Crown Prosecution Service and Director of Public Prosecutions.

7.14.3 The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. For a copy of the Code for Crown Prosecutors visit:
http://www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html

7.14.4 The Code for Crown Prosecutors has two stages: (i) the evidential stage; followed by (ii) the public interest stage. Regulation and Enforcement will only consider whether a prosecution is in the public interest after considering whether there is sufficient evidence to prosecute and being satisfied that there is a realistic prospect of conviction. However, there will be cases where it is clear, prior to reviewing all the evidence, that the public interest does not require a prosecution. In these instances, we may decide that the case should not proceed further.

7.14.5 The results of prosecution cases are a matter of public court record. Summaries of court case outcomes will be published on our website for a limited period of time. (visit <http://www.birmingham.gov.uk/traders-prosecuted>)

7.15 Proceeds of Crime Act Applications

7.15.1 Regulation and Enforcement either through its own Officers or in co-operation with the Police may make application under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of an offender. The purpose of any such proceedings is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof.

8. DECISIONS ON ENFORCEMENT ACTION

- 8.1 Decisions about the most appropriate enforcement action to be taken are based upon those matters set out in Section 7 above.
- 8.2 Where appropriate, decisions about what enforcement action to take may involve consultation between:
- (a) Investigating Officer(s).
 - (b) Senior managers from Regulation and Enforcement.
 - (c) Birmingham City Council Solicitors.
- 8.3 The decision to prosecute a case will be taken by those with authority to do so in accordance with the Birmingham City Council Scheme of Delegations.

8.4 **Enforcement Policy – Appeals and Complaints**

- 8.4.1 **Appeals through the Council’s Corporate Complaints Procedure.** The Council has a Corporate comments, compliments and complaints Procedure. (https://www.birmingham.gov.uk/info/50172/comments_compliments_and_complaints).

The Council encourages any person who has a problem with a service they receive, due to a failure in the service, to report it. However, where a report is received from a person who is the subject of a law enforcement investigation or current/pending statutory action then the Corporate Policy will not normally be used. The reasons for this and examples of relevant circumstances include:

- Ongoing law enforcement investigation or legal process has commenced. In most situations law enforcement investigations fall under the requirements of the Police and Criminal Evidence Act 1984 (PACE). This imposes requirements on the circumstances in which the council can engage with a person who is suspected of committing an offence or who is the subject of current/pending law enforcement action. The Corporate Procedure cannot be used to attempt to override or circumvent PACE, for example to challenge elements of an investigation; the necessity for enforcement action; or an enforcement decision. If this is attempted, then the council’s Corporate Procedure will normally be staid. The suspension would apply until law enforcement / legal proceedings stages are completed. The outcome of an investigation, including legal proceedings may render the basis of a complaint/report nullified, but a person’s rights are not affected as the criminal justice system has processes to ensure fairness and equity, including appeals procedures. [The Council cannot provide advice on these and the aggrieved person would be required to explore these independently].
- A complaint that has already been settled in another way. This includes a determination by a Court or Tribunal service or other statutory regulator/arbitration/ombudsman service.

8.4.2 **Who will investigate if a complaint or challenge is made?**

- If a complaint is made through a criminal justice system route, such as an appeal or contested trial this will be dealt with by the relevant statutory process at court.
- If a complaint is attempted through the Council's Corporate Procedure, in the first instance the relevant Investigating Officer from Regulation and Enforcement, potentially with their line manager will consider and make a determination. (The exception to this is where a complaint is made about a specific Investigating Officer. If this applies the Investigating Officers line manager or other manager within Regulation and Enforcement will make a determination. (This process will be applied for complaints about alleged officer misconduct or where a request is made for an officer to be removed from an investigation). Following investigation the complainant/requestor will be advised on any proposed course of action. Complaints/challenges will not ordinarily lead to cessation of a criminal investigation or legal proceedings. If a complaint is made about the manager who is overseeing an investigation this will be considered by a manager within Regulation and Enforcement of equivalent or more senior grade who has not had direct involvement in the relevant investigation or enforcement decision.

8.5 Enforcement of Waste Crime

- 8.5.1 The mission statement for Regulation and Enforcement Services is "Fair Regulation for All – achieving a safe, healthy, clean, green and fair trading city for residents, businesses and visitors". This reflects the Council's priority of "Birmingham is a great city to live in".
- 8.5.2 Amongst many steps to achieve a cleaner city a task force specifically set up to tackle aspects of waste crime was established. In order for the task force to be as effective as possible, the legislation around illegally dumped waste must be strictly enforced. Not all waste crime offending will directly trigger the usual threshold guide for legal proceedings to be commenced, as set out in the Matrix (Appendix 1). However, given the community-wide impact of the problem (outlined at Paragraph 7.2.4) waste offences may be prosecuted, in appropriate circumstances where the threshold is not met, in order to secure deterrent or punitive action which is, considered to be, in the public interest. Any matters which are dealt with in this manner will still have the usual legal protections afforded and will still be subject to the code for crown prosecutors.

9. PRIMARY AUTHORITY PARTNERSHIP SCHEME AND ITS ENFORCEMENT PROVISIONS

- 9.1 When we have come to the decision to take enforcement action against you and:

1. You are a business operating in more than one Local Authority and you have chosen to have a registered Primary Authority Partnership under the RES Act; and
2. The enforcement action we propose to take is covered by the definition of enforcement action for the purposes of Part 2 of the RES Act.

We will, where required to do so by that Act, comply with the agreement provisions for enforcement and notify your Primary Authority of the action we propose to take.

- 9.2 Your Primary Authority has the right to object to our proposed action in which circumstances either they or we may refer the matter to BRDO.

10. LIAISON WITH OTHER REGULATORY BODIES AND ENFORCEMENT AGENCIES

- 10.1 In addition to the duties imposed upon us by the RES Act in respect of co-operating and working with Primary Authorities and RD, we will, where appropriate, co-operate and co-ordinate with any relevant regulatory body and/or enforcement agency to maximise the effectiveness of any enforcement.

- 10.2 Where an enforcement matter affects a wide geographical area beyond the City boundaries or involves enforcement by one or more other local authorities or organisations, where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity co-ordinated with them.

- 10.3 Regulation and enforcement will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including:

- (a) Government Agencies.
- (b) Police Forces.
- (c) Fire Authorities.
- (d) Statutory Undertakers.
- (e) Other Local Authorities.
- (f) Other internal Council Departments

11. CONSIDERING THE VIEWS OF THOSE AFFECTED BY OFFENCES

- 11.1 Regulation and Enforcement undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when making enforcement decisions.

12. PROTECTION OF HUMAN RIGHTS

- 12.1 This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

13. REVIEW OF THE ENFORCEMENT POLICY

- 13.1 This Policy will be reviewed annually. A copy of this Policy is available at: <http://birmingham.gov.uk/regulatoryenforcementpolicy>

END OF DOCUMENT

BIRMINGHAM CITY COUNCIL

**REPORT OF THE INTERIM ASSISTANT DIRECTOR OF REGULATION AND
ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

NOVEMBER 2020
ALL WARDS

Regulation and Enforcement Report - September 2020

1. Summary
 - 1.1 Birmingham City Council's Regulation and Enforcement Division covers range of statutory functions including enforcement activities.
 - 1.2 The purpose of this report is to provide the Committee with information as to the scale and type of activities that have been ongoing in the current financial year. This period covers the month of September 2020.
2. Recommendation
 - 2.1 That the content of the report be noted.

Contact Officer: Paul Lankester, Interim Assistant Director Regulation & Enforcement
Telephone: 0121 675 2495
E-mail: paul.lankester@birmingham.gov.uk

3.0 Background

3.1 The range of functions exercised by officers on behalf of the City Council are varied and occur across all parts of the city. The overview of activities in September 2020 is set out in the Appendix to this report.

4. Consultation

4.1 No public consultation has taken place, as this is an information report.

5. Implications for Resources

5.1 None

6. Implications for Policy Priorities

6.1 None

7. Public Sector Equality Duty

7.1 No further equality issues have been identified, as all enforcement activities are carried in accordance with the adopted enforcement policy, which was the subject of a equalities impact assessment.

INTERIM ASSISTANT DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: Nil

REGULATION & ENFORCEMENT REPORT – SEPTEMBER 2020**Introduction**

The way the Council enforces its regulatory activities under the terms of the relevant legislation has altered significantly since the outbreak of Covid 19. Changes have been made to comply with national guidance and the introduction of new legislation. This report provides a snapshot of enforcement activity for the services in Regulation and Enforcement since lockdown. While services are seeking to enter the recovery phase, many services are reliant on changes to Government legislation and guidance.

As more data becomes available this report will be updated in future months- feedback is welcomed.

Detailed Action

The table below sets out the activities undertaken in Q1 (April, May, June accumulative); July/August 2020 and September 2020

Environmental Health, Licensing and Trading Standards

Activity	Env. Health			Licensing						Trading Standards		
	Q1	July/ Aug	Sept	HCPH*			General			Q1	July/ Aug	Sep
				Q1	Jul/ Aug	Sep	Q1	Jul/ Aug	Sep			
Prosecution agreed	57	76		8						7	7	
Simple Cautions	4	4		16								
Statutory Notices served	26	34	24									
Coronavirus Enforcement	254	632	1,077	33								
Licence applications				195	331	181	196	264	133	126		
Licence sub-committees							14	20	11	17		
Of which were reviews: Interim steps							1	1	0			
Expedited							2	0	1			
Standard							3	0	0			
Licence renewals				343	890	648	9	15	11			
Requests for Actions Received	10,809	9,159	4,514	166	199	116				1,114		

Requests for Actions closed	8,446	5,775	2,496	287	163	105				1,251		
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Environmental Health

Analysis of Requests for Assistance (RFA)

The analysis of the types of activity in Environmental Health is shown below.

	Q1	July /August		September		Q2
Work type	RFA Total	Total	PI Target met	Total	PI Target met	RFA Total
Accidents	92	64	64	20	20	84
Dogs	415	372	366	79	79	445
Infectious Disease	122	110	98	26	25	136
Pest Control	4,022	3,612	3,173	730	707	4,342
Request for Assistance	6,158	5,001	3,718	1467	915	6,468
Total	10,809	9,159	7,419	2,322	1,746	11,481

Currently it is predicted that the complaint rate will be 30% higher for the second quarter than the first.

The Service continues to undertake inspections and provide advice on Covid compliance. Through monies provided by the Director of Public Health we are recruiting 8 extra officers solely focused on Covid compliance checks.

In addition, the Government has announced nationally the investment of £30m for increased Enforcement and Compliance checks. Birmingham's share of this is £889k to be spent in the next 4 months. At present we are drafting a plan for this money which is a mix of enforcement activity and education. We are looking to recruit a further 15 enforcement officers to undertake inspections, advise on risk assessments and respond to complaints. The educational side will support the deployment Covid Marshalls across the city as well as increased presence on advertising and social media campaigns to explain the restrictions under the current Covid Tier and to promote disease control steps.

The courts are now sitting, and hearing submitted prosecution cases and we are again looking to submit cases rather than deal with matters via simple cautions in-line with our enforcement policy. We are undertaking limited inspections of high risk food

premises and food complaints on a risk assessment basis as required by the Food Safety Agency.

Licensing

Activity in the Licensing Service has increased of late and the service is close to returning to 'business as usual', though lockdown restrictions do impact on this extensively. Activity in Licensing Sub Committees has markedly increased following the opening of the hospitality sector. This is expected to continue for the remainder of the year.

40 matters have been finalised through the delegated process, which would have ordinarily come before the sub-committee.

Outcome of Licensing Act 2003 Reviews (Q2: July – September)

PB's, 54 – 57 Key Hill, Hockley, Birmingham, B18 5NX

On 18th August 2020, Superintendent Morris, of West Midlands Police, applied for a review, under Section 53A of the Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006), of the Premises Licence granted to Nickeshia Reid-Davidson in respect of the above premises as a result of the premises being found not to be operating in a Covid safe manner at approx. 1.30am on Saturday 15th August 2020 despite previous engagement with the licensee on at least 7 occasions.

A Licensing Sub Committee was required to convene within 48 hours of receipt of the application to determine whether to take any interim steps.

On 19th August 2020 Licensing Sub-Committee B met and having heard from both the licensee and representatives of WMP resolved that the Designated Premises Supervisor (DPS) be removed and that the Premises Licence be suspended pending the full review hearing.

The review application was advertised, by the Licensing Authority in accordance with the regulations; representations were received from Public Health and Environmental Health as responsible authorities under the Licensing Act 2003.

On the 14th September 2020 Licensing Sub Committee A, met to consider the full review and having heard evidence from the licence holder, West Midlands Police, Public Health and Environmental Health resolved to revoke the premises licence, remove the DPS and to maintain the interim step of suspension pending the outcome of any appeal to the Magistrates Court.

Analysis of RFAs

The breakdown of types of RFAs in Licensing is shown below.

	July/August		September	
	Received	Closed	Received	Closed
Total	199	163	116	105
Hackney Carriage	15	9	9	10
Private Hire	130	116	76	59
Licensing Act 2003	50	30	26	33
Gambling Act 2005	0	0	0	0
Scrap Metal Dealers	3	6	4	3
Sexual Entertainment Venues	0	0	0	0
Massage & Special Treatments	1	2	1	0

Trading Standards – September 2020

September 2020 RFAs

Trading Standards received 427 Requests for Assistance in September, an 11% increase on the previous month.

Coronavirus Related RFAs

Reports of businesses breaching the coronavirus restrictions continue to reduce, with five RFAs received in September – 50% fewer than the previous month. All five related to social distancing and the appropriate use of PPE.

Trading Standards continue to receive enquiries about alleged non compliant face masks. Officers follow these up by contacting the suppliers including importers and requesting documentation to check their safety certification and import documentation.

Core TS Activities

The core Trading Standards activities – product safety, underage sales, rogue traders and car sales all remain largely consistent. However, complaints about consumer fraud have increased this month. Of these, the highest sub-categories are scam websites and telephone calls / text messages and doorstep selling. There appears to be an increase in tradespeople going door-to-door offering their goods and services.

Second-hand car cases continue to be a source of complaints, in a couple of cases where the vehicle was alleged to be dangerous and unroadworthy, the vehicle has been examined by an independent expert and investigations are proceeding.

Financial Investigation

In terms of COVID-19 related work, the two Financial Investigators (FIs) remain focused on fraudulent Coronavirus Business Grant applications. Interviews with suspects in these cases are set to commence in joint investigations with Birmingham

Audit. Both FIs are conducting work on behalf of Sandwell MBC and Wolverhampton CC, in a shared approach to undertaking financial investigation. In terms of Sandwell, this also relates to suspected fraudulent claims for Coronavirus Business Grants, along with a large-scale car cloning scam and tracing and recovering funds stolen from a school by a rogue business manager.

Outstanding Proceeds of Crime hearings continue to be adjourned at the Crown Courts, with administrative hearings held via video link wherever possible.

Regional Investigation Team (RIT)

Officers from the RIT assisted other law enforcement bodies with an exercise at an outdoor market known for selling counterfeit products. Summonses were issued to a Birmingham based clothing manufacturer for his part in the counterfeit clothing manufacturing chain. He is next due to appear at Birmingham Magistrates Court on 30 November.

In the last update, reference was made to the sentencing of three individuals for their part in a home improvement scam. A fourth person involved in this case and who had failed to attend court, has been arrested and is now in the court system.

Several other investigations are currently being conducted. All of the investigations involve a significant number of alleged victims, with those victims being spread across the central region and beyond.

England Illegal Money Lending Team (IMLT)

During September, the IMLT received 49 reports of illegal money lending (IML), an increase of 31 reports to the previous month, and an increase of 12 reports from last year. 18 new illegal lenders were identified.

Enforcement activity during September saw the IMLT execute five warrants in four Operations. These were at addresses located in Kent, the Wirral, Milton Keynes and Oldham. This saw six individuals arrested, all of whom have been released under investigation to allow for further enquiries.

There has been one hearing during this time where a male was convicted of two offences for IML in St Albans as part of the IMLT operation Three Rivers. Mr Solimar Barrera was sentenced to 12 months imprisonment on each offence to be served concurrently. In respect of a Proceeds of Crime Act offence, Mr Barrera was sentenced to 2 months custody to be served consecutively, i.e. a total of 14 months, but suspended for 18 months. A contribution to costs of £400 was ordered.

LIAISE work has continued through September with online virtual training being made available for partner agencies, with 913 staff receiving training. Bespoke one to one LIAISE support has been provided to 42 victims of loan sharks and the team have generated 15 pieces of IML intelligence.

The applications for the annual LIAISE POCA funding have been finalised with £200,000 being granted for community grassroot projects to promote the IMLT message across the UK.

The IMLT have launched a new smartphone app for victims and partner agencies to report loan sharks. Users can also access information and advice about Stop Loan

Sharks and other support services. The team are using geofencing to send push notifications about recent arrests and court cases to app users in a specific area or location. The app featured in Martin Lewis' Money Tips weekly email which was sent to 12 million people. One social media user tweeted about the app and shared links with his 15.6K followers. The app has over 300 active users and is free to download on both iOS and Android.

Registration Service

Births

The Government reintroduced the registration of births, with a revised process. The procedure still requires face to face meetings, the service was fully operational from mid-June. As at 28 September there was a backlog of birth registrations of 4613, of which 2311 were over 42 days. The table below shows the level of birth registrations for June through to September compared to 2019, when the service recommenced.

Birth Registrations	2019	2020	% change
June	1,819	543	-70.15
July	1,880	2,820	+50.9
August	1,647	2,045	+24.2
September	1956	2376	+21.5
Running Total	7302	7784	+6.6%

Deaths

The service is processing death registrations in line with the Coronavirus Act and the direction of the General Register Office, GRO. In late March 2020 a new process for registering was enacted and the service implemented this and honed the processes to improve performance. The table below shows the level of death registration compared to 2019.

Deaths	2019	2020	% change
April	819	2260	+176
May	863	983	+13.9
June	762	767	+0.65
July	802	800	-0.25
August	793	714	-9.95
September	802	804	0.25
Running Total	4,841	6,226	+28.6%

Ceremonies

The Government announced that marriage and civil partnership notices of marriage and civil partnerships and ceremonies could recommence from July, provided the venue is COVID 19 secure. Following this announcement and in line with the guidance issued in late June by the GRO, Birmingham Register Office implemented measures to enable ceremonies to take place from 4 July. The tables below show the level of ceremonies and notices from July to September compared to 2019.

Ceremonies	2019	2020	% change
July	188	45	-76.1%
August	224	63	-72.75%
September	150	121	-19.35%
Running Total	562	229	-59.25%

Notice of Marriage and Civil Partnership	2019	2020	% change
July	610	430	-29.95
August	522	365	-30.1
September	621	373	-39.95
Running Total	1753	1168	-33.35%

Citizenship Ceremonies	2019	2020	% change
July	268	156	-41.75
August	199	246	+33.2
September	281	170	-39.45
Running Total	748	572	23.55.%

City Centre Operations - Temporary Pavement Licences

The City Centre Team process pavement licences in the city centre only, with new legal provisions enacted in July 2020. An on-line application process was launched on 30 July 2020. The table below shows the activity that has taken place to the end of September 2020.

2020/21	Jul	Aug	Sep
Received	3	34	8
Approved	2	29	7
Refused/Returned/Withdrawn	1	5	1

Paul Lankester
Interim Assistant Director Regulation and Enforcement

18 November 2020

BIRMINGHAM CITY COUNCIL

**REPORT OF THE INTERIM ASSISTANT DIRECTOR OF REGULATION AND
ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

NOVEMBER 2020
ALL WARDS

FOOD ENFORCEMENT DURING COVID 19

1. Summary

- 1.1 The Food Standards Agency (FSA) recognise the challenging circumstances that COVID-19 has created and the critical role that local authorities are playing in the wider public health response required to control the pandemic.
- 1.2 Further the FSA is also conscious of the statutory responsibilities that both they and local authorities have to protect public health through delivery of official food controls.
- 1.3 This report details the expectations on food authorities during the current pandemic, with defined priorities in place until January 2021. The report also provides information on how this authority is meeting those priorities.

2. Recommendation

- 2.1 That the report be noted.

Contact Officer: Nick Lowe, Operations Manager Food
Telephone: 0121 303 2491
Email: nick.lowe@birmingham.gov.uk

3. Background

- 3.1 Following the commencement of the Covid 19 lockdown in March 2020, much of the planned food enforcement work was suspended. This was in part due to the large number of food premises being closed, to implement safety protocols for our officers, and to facilitate the redeployment of officers to other more pressing duties.
- 3.2 Once businesses started to reopen, the emphasis was placed on undertaking assessments remotely where possible. Further instructions have subsequently been released encouraging the recommencement of food enforcement activities where resources and local restrictions permit.

4 General FSA Instruction

4.1 Food Authorities (FAs) are instructed to take the following actions:

1. Where resources are being redeployed to support contact tracing and other COVID-19 activities, the FSA expect Food Authorities to risk-assess their approach in order to follow FSA guidance and advice. Failing to do so could be detrimental to public health, place additional pressure on the NHS and would also put the Food Authority at risk. Heads of Service within each Food Authority should raise this at Chief Executive level to highlight the need to protect resources within food safety teams.
2. Where Food Authorities are unable to deliver the sector specific controls laid down in legislation or follow our advice in respect of the other high priority controls and activities, they must alert the FSA as a matter of urgency.
3. The FSA will be undertaking an assessment of Food Authority performance for 2020/21 and reporting this to the FSA Board as normal. The focus will be on assessing performance against the advice that the FSA have issued during this period and following up with Food Authorities as appropriate.

4.2 As a result of the above this authority has set up a Food Restart Project Team using available resources, this team is undertaking food activities in accordance with FSA priorities. In particular, emphasis is being placed on sector specific controls (products of animal origin), and enforcement relating to high risk issues including allergens.

5. Specific Priorities for action

- 5.1 For programmed inspections the period for temporary deviation from the prescribed intervention frequencies set out in the Food Law Code of Practice is extended until 31 January 2021 and will be kept under review. This extends to registered and approved establishments where the frequency of inspection and other onsite interventions are determined using the Food Establishment Intervention Rating Schemes set out in the Food Law Code of Practice. It includes food establishments that have already been risk rated, those that are registered and awaiting the initial inspection/intervention, and any 'new' businesses registering with the local authority.
- 5.2 Food Authorities are expected to prioritise their activities as set out at in the attached table. The focus should remain on physical onsite interventions for high risk and noncompliant establishments. These should be preceded by remote assessment where appropriate to help target what to consider onsite.

- 5.3 The highest priority should continue to be given to:
- ongoing proactive surveillance to obtain an accurate picture of the local business landscape and, where new and emerging risks are identified, undertaking appropriate interventions where there are concerns around public health/consumer protection – this includes at new businesses, those opening after prolonged closure and those changing the nature of their operations
 - urgent reactive work including following up on food incidents and investigating foodborne disease outbreaks or complaints
 - follow up with establishments subject to ongoing formal enforcement action and those overdue/due an enforcement revisit Where local authorities are unable to deliver these high priority controls and activities, they must alert the FSA as a matter of urgency.
- 5.4 Medium priority should be given to undertaking planned due/overdue interventions of high risk and poorly compliant establishments that do not fall into the high priority category above.
- 5.5 For the lowest risk establishments, due interventions can be deferred unless remote assessment suggests that there are serious public health issues that need to be assessed and addressed in which case onsite interventions should be undertaken.
- 5.6 This authority is utilising resources on the highest priority matters, but in addition carrying out medium priority functions when possible. This means that a proportion of programmed inspections are continuing to be undertaken as appropriate in risk and date order.

6. Consultation

- 6.1 The priorities and actions outlined in this report involved consultation between the Food Standards Agency and food authorities across England.

7. Implications for Resources

- 7.1 The resources to undertake food enforcement are reduced due to the redeployment of officers dealing with Covid 19 related actions. The remaining resources are therefore targeted in accordance with the priorities identified by the FSA.

8. Implications for Policy Priorities

- 8.1 Safe food is crucial to the health and safety of citizens and visitors to the City. The reduction in food enforcement activity will have a direct impact on these priorities, nevertheless as indicated resources are being targeted at the highest priority matters. This includes serious safety issues, allergens, incidents and outbreaks.

9. Public Sector Equality Duty

9.1 Equality issues are accounted for during food safety activities carried out by officers.

INTERIM ASSISTANT DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers:

Local Authority Framework Agreement - Food Standards Agency 2001

Table 2: Prioritisation of other official control activities in registered and approved establishments

Activity	Remote	Physical
High priority		
<p>Ongoing proactive surveillance to obtain an accurate picture of the local business landscape:</p> <ul style="list-style-type: none"> • open/closed/recently re-opened/new businesses • change of operation, activities or FBO 	<p>Internet searches, phone calls, information from businesses, complaints, drive-round etc. and other local sources of intelligence</p>	<p>See entry below</p>
<p>Appropriate interventions for establishments where the local authority has concerns around public health/consumer protection as a result of the ongoing proactive surveillance</p>	<p>Actions to facilitate the targeting of what to focus attention on at a subsequent onsite visit:</p> <ul style="list-style-type: none"> • Phone conversation with FBO/staff • Review of documentation - Food Safety Management System, records, invoices etc. • Use of video/photographic evidence where appropriate to do so 	<ul style="list-style-type: none"> • Onsite inspection, targeted (partial) inspection, audit • Giving/updating food hygiene ratings where appropriate to reflect findings • Sampling
<p>Urgent reactive work including following up on food incidents and investigating foodborne disease outbreaks or complaints</p>	<p>Actions to inform the need for an onsite visit:</p> <ul style="list-style-type: none"> • Phone conversation with FBO/staff • Review of documentation - Food Safety Management System, records, invoices etc. • Use of video/photographic evidence where appropriate to do so • Sampling results 	<ul style="list-style-type: none"> • Onsite inspection, targeted (partial) inspection, audit • Giving/updating food hygiene ratings where appropriate to reflect findings • Sampling

Activity	Remote	Physical
Establishments subject to ongoing formal enforcement action	<p>Actions to facilitate the targeting of what to focus attention on at a subsequent onsite visit:</p> <ul style="list-style-type: none"> • Phone conversation with FBO/staff • Review of documentation - Food Safety Management System, records, invoices etc. • Use of video/photographic evidence where appropriate to do so 	<ul style="list-style-type: none"> • Follow-up visit • Sampling
Establishments overdue/due an enforcement revisit	<p>Actions to facilitate the targeting of what to focus attention on at a subsequent onsite visit:</p> <ul style="list-style-type: none"> • Phone conversation with FBO/staff • Review of documentation - Food Safety Management System, records, invoices etc. • Use of video/photographic evidence where appropriate to do so 	<ul style="list-style-type: none"> • Follow-up visit • Sampling

Activity	Remote	Physical
Medium priority		
<p>Establishments rated:</p> <ul style="list-style-type: none"> • all A, all B - all and non-compliant C for hygiene • A / high risk for standards overdue/due an intervention not already captured above 	<p>Actions to facilitate the targeting of what to focus attention on at a subsequent onsite visit:</p> <ul style="list-style-type: none"> • Phone conversation with FBO/staff • Review of documentation - Food Safety Management system, records, invoices etc. • Use of video/photographic evidence where appropriate to do so <p>Note</p> <p>Where establishments have the additional score of 22 for consumers at risk for food hygiene but have good levels of compliance (0 or 5 for hygiene, structure and confidence in management), remote intervention may be used to inform the need for an onsite visit rather than to facilitate the targeting of one.</p>	<ul style="list-style-type: none"> • Onsite inspection, targeted (partial) inspection, audit • Giving/updating food hygiene ratings where appropriate to reflect findings • Sampling
<p>Establishments given an 'awaiting inspection' FHRS status including new businesses</p>	<p>Actions to facilitate the targeting of what to focus attention on at a subsequent onsite visit:</p> <ul style="list-style-type: none"> • Phone conversation with FBO/staff • Review of documentation - Food Safety Management system, records, invoices etc. • Use of video/photographic evidence where appropriate to do so 	<ul style="list-style-type: none"> • Onsite inspection, targeted (partial) inspection, audit • Giving/updating food hygiene ratings

Activity	Remote	Physical
Establishments where applying COVID-19 requirements - e.g. social distancing - might impact on food safety or the ability of the local authority to conduct a physical inspection	<p>Actions to facilitate the targeting of what to focus attention on at a subsequent onsite visit:</p> <ul style="list-style-type: none"> • Phone conversation with FBO/staff • Review of documentation - Food Safety Management system, records, invoices etc. • Use of video/photographic evidence where appropriate to do so 	<ul style="list-style-type: none"> • Onsite inspection, targeted (partial) inspection, audit • Possible use of remote assessment when at the establishment where that might help • Giving/updating food hygiene ratings where appropriate • Sampling
Low priority		
<p>Establishments rated:</p> <ul style="list-style-type: none"> • compliant C, all D, all E for hygiene; or • B or C / medium or low risk for standards overdue/due an intervention not already captured above 	<p>Actions to inform the need for an onsite visit:</p> <ul style="list-style-type: none"> • Phone conversation with FBO/staff. • Review of documentation - Food Safety Management system, records, invoices etc.) • Use of video/photographic evidence where appropriate to do so <p>Note</p> <p>In cases where resources permit and it is practical and feasible to do so, actions to facilitate the targeting of what to focus attention on at a subsequent onsite visit:</p> <ul style="list-style-type: none"> • Phone conversation with FBO/staff. • Review of documentation - Food Safety Management system, records, invoices etc.) • Use of video/photographic evidence where appropriate to do so 	<ul style="list-style-type: none"> • Onsite inspection, targeted (partial) inspection, audit • Giving/updating food hygiene ratings where appropriate • Sampling
Alternative enforcement strategies	Issue and review of AES	Possible follow-up to AES response

BIRMINGHAM CITY COUNCIL

REPORT OF THE INTERIM ASSISTANT DIRECTOR OF REGULATION AND ENFORCEMENT TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE

NOVEMBER 2020
ALL WARDS

PROSECUTIONS AND CAUTIONS: APRIL 2020 - AUGUST 2020

1. Summary
 - 1.1 This report summarises the outcome of legal proceedings taken by Regulation and Enforcement during the months of April to August 2020.
2. Recommendation
 - 2.1 That the report be noted.

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3. Results

3.1 During the months of April to August 2020, the following cases were heard at Birmingham Magistrates Court, unless otherwise stated:

- 162 Environmental Health cases were finalised resulting in fines of £50,360. Prosecution costs of £28,080 were awarded. Eight simple cautions were administered as set out in Appendix 1.
- No Licensing cases were finalised. Eight simple cautions were administered as set out in Appendix 2.
- One Trading Standards case was finalised resulting in a four month suspended sentence and a Rehabilitation Activity Requirement + 150 hours unpaid work. No simple cautions were administered as set out in Appendix 3.
- One Waste Enforcement case was finalised resulting in a fine of £250 and prosecution costs in the sum of £800. No simple cautions were administered as set out in Appendix 4.
- Appendix 5 lists cases finalised by district April 2019 – August 2020.
- Appendix 6 lists the enforcement activity undertaken by the Waste Enforcement Team from April to August 2020.
- Appendix 7 lists Penalty Charge Notices issued by Parking Enforcement specifically for individuals parking on Taxi Ranks across the City April to August 2020. Please note this does not include other parking tickets issued anywhere else in the City.

4. Consultation

4.1 The Enforcement Policy that underpins the work identified in this report is approved by your Committee. The policy reflects the views of the public and business in terms of the regulation duties of the Council. Any enforcement action[s] taken as a result of the contents of this report are subject to that Enforcement Policy.

5. Implications for Resources

5.1 Costs incurred in investigating and preparing prosecutions, including officers' time, the professional fees of expert witnesses etc. are recorded as prosecution costs. Arrangements have been made with the Magistrates Court for any costs awarded to be reimbursed to the City Council. Monies paid in respect of fines are paid to the Treasury.

- 5.2 For the year April 2020 to August 2020 the following costs have been requested and awarded:

Environmental Health (including Waste Enforcement cases)

£29,520 has been requested with £28,880 being awarded (98%).

Licensing

No costs have been requested or awarded.

Trading Standards

No costs have been requested or awarded.

- 5.3 This will not directly correlate to the values awarded in the same time period as individual cases are often cleared in instalments with the associated fines and court costs taking precedence over the settling of BCC legal costs. Therefore, income received may relate to cases from the previous financial year or earlier.

6. Implications for Policy Priorities

- 6.1 The contents of this report contribute to the priority action of ensuring business compliance with legislation to protect the economic interests of consumers and businesses as contained in the Council Business Plan 2015+.

7. Public Sector Equality Duty

- 7.1 The actions identified in this report were taken in accordance with the Enforcement Policy of the Licensing and Public Protection Committee which ensures that equality issues have been addressed.

INTERIM ASSISTANT DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: Nil

ENVIRONMENTAL HEALTH CASES

LITTERING OFFENCES – SINGLE JUSTICE PROCEDURE

Date Cases Heard	Total Number of Cases	Total Fines imposed	Total Costs awarded	Total Costs requested
26/5/20	82	£33,352	£14,170	£14,350
23/6/20	32	£7,002	£5,600	£5,600
14/7/20	6	£1,200	£960	£960
25/8/20	42	£8,806	£7,350	£7,350

	Date Case Heard	Name	Fine/Penalty & Costs	Ward of defendant
1	26/5/20	Azad Abbas Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Glebe Farm & Tile Cross
2	26/5/20	Abdul Ahad Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Perry Barr
3	26/5/20	Adeel Ahmed Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Aston
4	26/5/20	Amanda Bannister Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Castle Vale

5	26/5/20	Alisha Begum Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Out of area
6	26/5/20	Henna Begum Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Ladywood
7	26/5/20	Shute Harris Benjamin Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Nechells
8	26/5/20	Asia Bibi Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Ladywood
9	26/5/20	David Alexander Bleakley Walsall Proved in Absence	£440 £175 costs (£175 requested)	Out of area
10	26/5/20	James Booth Aston-under-Lyne Proved in Absence	£440 £175 costs (£175 requested)	Out of area
11	26/5/20	Michelle Bowater Kettering Proved in Absence	£440 £175 costs (£175 requested)	Out of area
12	26/5/20	Sicu Radulesca Bratianu Stourbridge Proved in Absence	£440 £175 costs (£175 requested)	Out of area

13	26/5/20	Charles Brazil Gloucester Proved in Absence	£440 £175 costs (£175 requested)	Out of area
14	26/5/20	Christina Burst London Proved in Absence	£440 £175 costs (£175 requested)	Out of area
15	26/5/20	Aidan Butler Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Harborne
16	26/5/20	Alexandra Callinan Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Weoley & Selly Oak
17	26/5/20	Hayley Chamberlain Leicester Guilty plea	£107 £175 costs (£175 requested)	Out of area
18	26/5/20	Haoji Chen Coventry Proved in Absence	£440 £175 costs (£175 requested)	Out of area
19	26/5/20	Natalie Clarke Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Perry Barr

20	26/5/20	Clare Corbett London Proved in Absence	£440 £175 costs (£175 requested)	Out of area
21	26/5/20	George Robert Cox Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Acocks Green
22	26/5/20	Jordan Crawford Birmingham Guilty plea	£323 £85 costs (£175 requested)	Sparkhill
23	26/5/20	Holly Curmi Stoke-on-Trent Proved in Absence	£440 £175 costs (£175 requested)	Out of area
24	26/5/20	Zackia Daniels Bolton Proved in Absence	£440 £175 costs (£175 requested)	Out of area
25	26/5/20	Aasim Din Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Bournville & Cotteridge
26	26/5/20	Florin Drenea Coventry Proved in Absence	£440 £175 costs (£175 requested)	Out of area
27	26/5/20	Andrew Elmer London Proved in Absence	£440 £175 costs (£175 requested)	Out of area

28	26/5/20	Kevin Ingor Flach Sutton Coldfield Proved in Absence	£440 £175 costs (£175 requested)	Sutton Mere Green
29	26/5/20	Edward Florin Smethwick Proved in Absence	£440 £175 costs (£175 requested)	Out of area
30	26/5/20	Anthony Fox Leamington Spa Proved in Absence	£440 £175 costs (£175 requested)	Out of area
31	26/5/20	Mirel Daniel Fratita Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Soho & Jewellery Quarter
32	26/5/20	Cristion George Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Bordesley Green
33	26/5/20	Viorel Gheorghe Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Alum Rock
34	26/5/20	Kirsty Green Henley-in-Arden Proved in Absence	£440 £175 costs (£175 requested)	Out of area
35	26/5/20	Pipa Gulliford Bridgend, Wales Proved in Absence	£440 £175 costs (£175 requested)	Out of area

36	26/5/20	Michael Hadley Birmingham Proved in Absence	£440 £175 costs (£175 requested)	North Edgbaston
37	26/5/20	Paul Hardwicke Preston Proved in Absence	£440 £175 costs (£175 requested)	Out of area
38	26/5/20	Catherine Harty Dudley Proved in Absence	£440 £175 costs (£175 requested)	Out of area
39	26/5/20	Alisha Hussain Birmingham Guilty plea	£80 £130 costs (£175 requested)	Sparkbrook & Balsall Heath East
40	26/5/20	Shazad Hussain Birmingham Guilty plea	£360 £175 costs (£175 requested)	Hall Green North
41	26/5/20	Abdulah Idris Coventry Proved in Absence	£440 £175 costs (£175 requested)	Out of area
42	26/5/20	Georgreta Ilie Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Holyhead
43	26/5/20	Matei Ionut Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Nechells

44	26/5/20	Rowan Irving Marlborough Proved in Absence	£440 £175 costs (£175 requested)	Out of area
45	26/5/20	Mohammed Islam Smethwick Proved in Absence	£440 £175 costs (£175 requested)	Out of area
46	26/5/20	Walid Issa Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Alum Rock
47	26/5/20	John Anthony Jackson Solihull Guilty plea	£307 £175 costs (£175 requested)	Out of area
48	26/5/20	Matthew Jansen Oldbury Proved in Absence	£440 £175 costs (£175 requested)	Out of area
49	26/5/20	Russell Jones Birmingham Proved in Absence	£440 £175 costs (£175 requested)	South Yardley
50	26/5/20	Ylli Kadrija Watford Proved in Absence	£440 £175 costs (£175 requested)	Out of area
51	26/5/20	Maham Khan Nottingham Proved in Absence	£440 £175 costs (£175 requested)	Out of area

52	26/5/20	Alicia Killeen Burntwood Proved in Absence	£440 £175 costs (£175 requested)	Out of area
53	26/5/20	Nuh Kizil Croydon Proved in Absence	£440 £175 costs (£175 requested)	Out of area
54	26/5/20	Maciej Kowalski Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Hall Green North
55	26/5/20	Matthew Kronig Gloucester Proved in Absence	£440 £175 costs (£175 requested)	Out of area
56	26/5/20	Ashok Kumar Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Soho & Jewellery Quarter
57	26/5/20	Paul Ladlow Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Newtown
58	26/5/20	Jamie Dean Lawrence Birmingham Proved in Absence	£440 £175 costs (£175 requested)	North Edgbaston
59	26/5/20	Leo Ching Leung Solihull Guilty plea	£80 £130 costs (£175 requested)	Out of area

60	26/5/20	Zeata Beata Lewandowska Smethwick Proved in Absence	£440 £175 costs (£175 requested)	Out of area
61	26/5/20	Qiwon Lin Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Newtown
62	26/5/20	Natasha Louise Lock Lincoln Guilty plea	£250 £175 costs (£175 requested)	Out of area
63	26/5/20	Elliot Lolley Tamworth Proved in Absence	£440 £175 costs (£175 requested)	Out of area
64	26/5/20	Vasile Marcel Lunca Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Holyhead
65	26/5/20	Chawder Mahmood Smethwick Proved in Absence	£440 £175 costs (£175 requested)	Out of area
66	26/5/20	Milam Manina Bromsgrove Guilty plea	£293 £175 costs (£175 requested)	Out of area
67	26/5/20	Eslam Mansi Birmingham Guilty plea	£192 £175 costs (£175 requested)	Sohol & Jewellery Quarter

68	26/5/20	Florin Markocsan Wolverhampton Proved in Absence	£440 £175 costs (£175 requested)	Out of area
69	26/5/20	May Matania Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Gravelly Hill
70	26/5/20	Keith McFadden London Proved in Absence	£440 £175 costs (£175 requested)	Out of area
71	26/5/20	Gabriel Micli Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Soho & Jewellery Quarter
72	26/5/20	Abdul Mokith Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Aston
73	26/5/20	Liam Mole Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Ladywood
74	26/5/20	Nicholas Moran Birmingham Proved in Absence	£440 £175 costs (£175 requested)	South Yardley
75	26/5/20	Vincent Martin Moss Nuneaton Guilty plea	£40 £175 costs (£175 requested)	Out of area

76	26/5/20	Andrew Moyse Redditch Proved in Absence	£440 £175 costs (£175 requested)	Out of area
77	26/5/20	Samantha Mulcare Birmingham Guilty plea	£80 £175 costs (£175 requested)	Gravelly Hill
78	26/5/20	Lincoln Murphy Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Sparkbrook & Balsall Heath East
79	26/5/20	Reece Walker Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Bartley Green
80	26/5/20	Ziyan Wang Guildford Proved in absence	£440 £175 costs (£175 requested)	Out of area
81	26/5/20	Jemma Marie Whelan Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Ward End
82	26/5/20	Ryan Willeh Birmingham Proved in Absence	£440 £175 costs (£175 requested)	Sheldon

83	23/6/20	Nick Aldridge Louth Proved in Absence	£220 £175 costs (£175 requested)	Out of area
84	23/6/20	Yasmeena Ali Wokingham Proved in Absence	£220 £175 costs (£175 requested)	Out of area
85	23/6/20	Adam Bailey Coventry Proved in Absence	£220 £175 costs (£175 requested)	Out of area
86	23/6/20	Kyle Burley Chelmsley Wood Proved in Absence	£220 £175 costs (£175 requested)	Out of area
87	23/6/20	Michelle Capewell Stoke-on-Trent Proved in Absence	£220 £175 costs (£175 requested)	Out of area
88	23/6/20	Michelle Frances Downes Studley Guilty plea	£256 £175 costs (£175 requested)	Out of area
89	23/6/20	Gurpreet Dulay Leamington Spa Proved in Absence	£220 £175 costs (£175 requested)	Out of area
90	23/6/20	Mari Egorov Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Balsall Heath West

91	23/6/20	Georgia Fodor Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Edgbaston
92	23/6/20	James Brian Gwynne Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Newtown
93	23/6/20	Adam Hammad Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Bournbrook & Selly Park
94	23/6/20	Hajri Hoda Sutton Proved in Absence	£220 £175 costs (£175 requested)	Out of area
95	23/6/20	Wakahs Hussain Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Small Heath
96	23/6/20	Viorel Ionita Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Sparkhill
97	23/6/20	Eamonn Lutwyche Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Kingstanding
98	23/6/20	Anca Maria Magureanu Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Ladywood

99	23/6/20	Tariq Mahmood Birmingham Guilty plea	£220 £175 costs (£175 requested)	Sparkbrook & Balsall Heath East
100	23/6/20	Sultan Malik West Bromwich Proved in Absence	£220 £175 costs (£175 requested)	Out of area
101	23/6/20	Connor Middleton Birmingham Proved in Absence	£220 £175 costs (£175 requested)	North Edgbaston
102	23/6/20	Ahmed Mogri Wolverhampton Proved in Absence	£220 £175 costs (£175 requested)	Out of area
103	23/6/20	Gheorghe Raduca Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Heartlands
104	23/6/20	Charlotte Randle Tamworth Proved in absence	£220 £175 costs (£175 requested)	Out of area
105	23/6/20	Daniel Richardson Shildon Proved in Absence	£220 £175 costs (£175 requested)	Out of area
106	23/6/20	Vandana Rostas Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Glebe Farm & Tile Cross

107	23/6/20	Paul Silvers Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Billesley
108	23/6/20	Katie Spencer Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Harborne
109	23/6/20	Beatrice Spirache Ilford Proved in Absence	£220 £175 costs (£175 requested)	Out of area
110	23/6/20	Jacqueline Tate Birmingham Guilty plea	£146 £175 costs (£175 requested)	Sheldon
111	23/6/20	Adam Whetstone Coventry Proved in Absence	£220 £175 costs (£175 requested)	Out of area
112	23/6/20	Di Wu Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Ladywood
113	23/6/20	Olga Zachor Wolverhampton Proved in Absence	£220 £175 costs (£175 requested)	Out of area
114	23/6/20	Haojia Zhang Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Edgbaston

115	14/7/20	Alina Baban Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Sparkhill
116	14/7/20	Ashley Andre Brown Wilmslow Guilty plea	£100 £85 costs (£175 requested)	Out of area
117	14/7/20	Edith Lakotas Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Ward End
118	14/7/20	Sharon Marsh Telford Proved in Absence	£220 £175 costs (£175 requested)	Out of area
119	14/7/20	Mohammed Miah London Proved in Absence	£220 £175 costs (£175 requested)	Out of area
120	14/7/20	Paul Colin Weall Middlesborough Proved in Absence	£220 £175 costs (£175 requested)	Out of area
121	25/8/20	Steven Baillie Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Stirchley
122	25/8/20	Imran Bashir Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Gravelly Hill
123	25/8/20	Antonia Batur Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Ladywood

124	25/8/20	Kristaq Blido Wolverhampton Guilty plea	£146 £175 costs (£175 requested)	Out of area
125	25/8/20	Katelyn Chantier Coventry Proved in Absence	£220 £175 costs (£175 requested)	Out of area
126	25/8/20	Akram Cherhabil Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Bordesley Green
127	25/8/20	Florin Cosma Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Alum Rock
128	25/8/20	Dennis Cummings Tipton Proved in Absence	£220 £175 costs (£175 requested)	Out of area
129	25/8/20	Claire Edminston Alexandria Scotland Proved in Absence	£220 £175 costs (£175 requested)	Out of area
130	25/8/20	Gareth Evans Bilston Proved in Absence	£220 £175 costs (£175 requested)	Out of area
131	25/8/20	Gordon Ivan Fields Midhurst Guilty plea	£40 £175 costs (£175 requested)	Out of area

132	25/8/20	Rebecca Hill Tipton Guilty plea	£40 £175 costs (£175 requested)	Out of area
133	25/8/20	Nguyen Hoang London Proved in Absence	£220 £175 costs (£175 requested)	Out of area
134	25/8/20	Darren Hockett Gloucester Proved in Absence	£220 £175 costs (£175 requested)	Out of area
135	25/8/20	Mary Hughes Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Ladywood
136	25/8/20	Sian Hughes Stoke-on-Trent Proved in Absence	£220 £175 costs (£175 requested)	Out of area
137	25/8/20	Ali Hussein Tipton Proved in Absence	£220 £175 costs (£175 requested)	Out of area
138	25/8/20	Xing Jiang Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Bodesley & Highgate
139	25/8/20	Leonard Jones Malvern Proved in Absence	£220 £175 costs (£175 requested)	Out of area

140	25/8/20	Scott Lacey Birkenhead Proved in Absence	£220 £175 costs (£175 requested)	Out of area
141	25/8/20	Stephen Law Sheerness Proved in Absence	£220 £175 costs (£175 requested)	Out of area
142	25/8/20	Radoslaw Lonika Smethwick Proved in Absence	£220 £175 costs (£175 requested)	Out of area
143	25/8/20	Paul Lyons Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Shard End
144	25/8/20	Igor Marenjak Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Ladywood
145	25/8/20	Sarah McInally Liverpool Proved in Absence	£220 £175 costs (£175 requested)	Out of area
146	25/8/20	Seyed Moezeddin Mohammadi Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Kings Norton South
147	25/8/20	Syed Mohsin Leicester Proved in Absence	£220 £175 costs (£175 requested)	Out of area

148	25/8/20	Thomas Newbold Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Kings Norton North
149	25/8/20	Sophie Phillips Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Stockland Green
150	25/8/20	Gheorghe Popescu Worcester Proved in Absence	£220 £175 costs (£175 requested)	Out of area
151	25/8/20	Paul Rackham Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Alum Rock
152	25/8/20	Bethan Roberts Plymouth Proved in Absence	£220 £175 costs (£175 requested)	Out of area
153	25/8/20	Mo Stewart Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Aston
154	25/8/20	Ross Stewart Rickmansworth Proved in Absence	£220 £175 costs (£175 requested)	Out of area
155	25/8/20	Tracy Stone Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Shard End

156	25/8/20	Mohammed Tariq Bedford Proved in Absence	£220 £175 costs (£175 requested)	Out of area
157	25/8/20	Suzanne Terrasse Tunbridge Wells Proved in Absence	£220 £175 costs (£175 requested)	Out of area
158	25/8/20	Jon White Bromsgrove Proved in Absence	£220 £175 costs (£175 requested)	Out of area
159	25/8/20	Eren Frank Wirizlay Telford Proved in Absence	£220 £175 costs (£175 requested)	Out of area
160	25/8/20	Anna Wright Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Stockland Green
161	25/8/20	Ngu Yen Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Birchfield
162	25/8/20	Ally Young Birmingham Proved in Absence	£220 £175 costs (£175 requested)	Ladywood

ENVIRONMENTAL HEALTH SIMPLE CAUTIONS

During the period April to August 2020 eight simple cautions were administered:-

Food Safety and Hygiene (England) Regulations 2013

Eight cautions were issued for failing to comply with Food Hygiene Regulations

LICENSING CASES

There were no finalized Licensing cases during April to August 2020.

LICENSING SIMPLE CAUTIONS

During April to August 2020 eight simple cautions were administered: -

The Criminal Justice and Public Order Act 1994

Section 167(1) One caution was issued for soliciting persons to hire a vehicle to carry them as passengers

Local Government (Miscellaneous Provisions) Act 1976

Section 48(6) Two cautions were issued for failing to display a private hire vehicle licence plate

Section 64(3) Five cautions were issued for waiting on a Hackney Carriage stand without being licensed as Hackney Carriage

TRADING STANDARDS CASES

	Date Case Heard	Name & Address	Offence details (including Legislation)	Fine/Penalty & Costs	Ward of defendant	Ward - Offence committed
163	1/5/20 Birmingham Crown Court	Dana Mahmad Arif Birmingham	Tobacco and Related Products Regs 2016 Standardised Packaging of Tobacco Products Regs 2015 Trade Marks Act 1994 Pleaded guilty to five offences: two of having 1246 packs of cigarettes of various brands in possession for supply in a van parked behind Kani Mini Market, 27-29 Grove Lane, Handsworth, Birmingham which did not comply with requirements in that the health warnings were not labelled in English and the packaging was not of the colour and form as prescribed and 3 offences of having 338 packets of 'Mayfair' cigarettes, 103 pouches of 'Amber Leaf' tobacco and 42 packets of 'Richmond' cigarettes in possession for sale which bore registered trademarks without the consent of the trade mark holders	4 months custody suspended for 2 years 15 days RAR (Rehabilitation Activity Requirement) + 150 hours unpaid work POCA timetable set	Shard End	Handsworth

TRADING STANDARDS SIMPLE CAUTIONS

No simple cautions were administered during April to August 2020.

WASTE ENFORCEMENT CASES

	Date Case Heard	Name & Address	Offence details (including Legislation)	Fine/Penalty & Costs	Ward of defendant	Ward - Offence committed
164	28/8/20	Peter Hake Solihull	Environmental Protection Act 1990 Pleaded guilty to two offences: one of being a producer of controlled waste and failing to prevent a contravention under Section 33 of the Act in that there was a policy to store commercial waste in the rear garden without proper and secure storage facilities and waste from the business was found dumped on the pavement outside 1573 Stratford Road, Hall Green, Birmingham and one offence of failing to provide written information as to how the business at Merluza Hair & Beauty Spa, 1571 Stratford Road disposes of its waste.	£250 x 1 st offence No separate penalty x 2 nd offence Costs £800 (£1,260 requested)	Out of area	Hall Green South

WASTE ENFORCEMENT SIMPLE CAUTIONS

No simple cautions were administered during April to August 2020.

CASES FINALISED BY DISTRICT (PLACE OF OFFENCE) – APRIL- AUGUST 2020

	Edgbaston	Erdington	Hall Green	Hodge Hill	Ladywood	Northfield	Perry Barr	Selly Oak	Sutton Coldfield	Yardley	Out of Area	Total
Licensing	0	0	0	0	0	0	0	0	0	0	0	0
Environmental Health (FPNs) Not paid and prosecuted	0	1	0	1	160	0	0	0	0	0	0	162
Environmental Health (including WEU)	0	0	1	0	0	0	0	0	0	0	0	1
Trading Standards	0	0	0	0	0	0	1	0	0	0	0	1

CASES FINALISED BY DISTRICT (DEFENDANT'S HOME ADDRESS/REGISTERED OFFICE) APRIL- AUGUST 2020

	Edgbaston	Erdington	Hall Green	Hodge Hill	Ladywood	Northfield	Perry Barr	Selly Oak	Sutton Coldfield	Yardley	Out of Area	Total
Licensing	0	0	0	0	0	0	0	0	0	0	0	0
Environmental Health (FPNs) Not paid and prosecuted	7	7	9	13	25	3	4	4	1	5	84	162
Environmental Health (including WEU)	0	0	0	0	0	0	0	0	0	0	1	1
Trading Standards	0	0	0	1	0	0	0	0	0	0	0	1

WASTE ENFORCEMENT UNIT – ENFORCEMENT ACTIVITY
APRIL 2020 – MARCH 2021

	Waste Investigation Outcomes													
	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Total	
Duty of care inspections into the waste disposal arrangements of commercial premises	1	6	4	58	7								76	
Section 34 Environmental Protection Act demand notices issued:(trade waste statutory information demands)	1	4	2	52	5								64	
Section 34 Environmental Protection Act Fixed Penalty Notices issued to businesses (£300)	32	2	2	2	1								39	
Section 87 Environmental Protection Act Fixed Penalty notices issued for commercial and residential litter offences(£80)	1	0	0	1	1								3	
Section 33 Environmental Protection Act Fixed penalty notices issued for fly tipping (£400)	1	7	2	11	8								29	
Prosecutions														
Number of prosecution files submitted to legal services, (number produced quarterly.	4	1	11	10	4								30	

PENALTY CHARGE NOTICES ISSUED FOR PARKING ON TAXI RANKS
APRIL 2020 – MARCH 2021

Monthly Parking Pcn's Issue for Current Financial Year (excludes voids)	Processing
April 2020	42
Aberdeen Street Winson Green	2
Bennetts Hill City Centre	1
Bishopsgate Street City Centre	2
Colmore Row City Centre	2
Corporation Street City Centre	2
Dale End City Centre	6
Edmund Street City Centre	1
Hurst Street City Centre	1
Institute Road Kings Heath	7
Institute Road Moseley	3
Rochester Road	2
Smallbrook Queensway	1
Station Street City Centre	1
Steelhouse Lane City Centre	3
Temple Row City Centre	4
Theatre Approach City Centre	3
Waterloo Street City Centre	1
May 2020	62
Aberdeen Street Winson Green	3
Bennetts Hill City Centre	1
Bishopsgate Street City Centre	4
Bridge Street City Centre	3
Colmore Row City Centre	1
Corporation Street City Centre	2
Dale End City Centre	3
Edgbaston Street City Centre	1
High Street City Centre	1
High Street Erdington	1
Institute Road Kings Heath	2
Navigation Street City Centre	3
Rochester Road	3
Smallbrook Queensway	2

Steelhouse Lane City Centre	12
Temple Row City Centre	14
Theatre Approach City Centre	2
Waterloo Street City Centre	1
Woodcock Street City Centre	3
June 2020	111
Aberdeen Street Winson Green	3
Aston Street	1
Bennetts Hill City Centre	2
Bishopsgate Street City Centre	6
Bridge Street City Centre	4
Cambridge Street City Centre	4
Colmore Row City Centre	3
Corporation Street City Centre	3
Dale End City Centre	8
Digbeth Digbeth	2
Edgbaston Street City Centre	6
Edmund Street City Centre	4
Granville Street City Centre	1
High Street City Centre	2
Hurst Street City Centre	2
Institute Road Kings Heath	9
Rochester Road	4
Smallbrook Queensway	6
Station Street City Centre	1
Steelhouse Lane City Centre	4
Summer Row City Centre	1
Temple Row City Centre	22
Temple Street City Centre	1
Theatre Approach City Centre	10
Thorp Street City Centre	1
Warstone Lane	1
July 2020	185
Aberdeen Street Winson Green	4
Aston Street	2
Bennetts Hill City Centre	24
Berkley Street City Centre	1
Bishopsgate Street City Centre	10
Bridge Street City Centre	1
Cambridge Street City Centre	3
Colmore Row City Centre	1

Corporation Street City Centre	9
Dale End City Centre	13
Dalton Street	1
Digbeth Digbeth	3
Edgbaston Street City Centre	4
Edmund Street City Centre	1
Hill St City Centre	2
Hinckley Street City Centre	1
Hurst Street City Centre	6
Institute Road Kings Heath	9
Lower Essex Street City Centre	1
Pebble Mill Road Edgbaston	1
Rochester Road	5
Sheepcote Street City Centre	1
Smallbrook Queensway	16
St Marys Row Moseley	2
Station Street City Centre	15
Steelhouse Lane City Centre	11
Suffolk Street Queensway Ladywood	2
Summer Row City Centre	4
Temple Row City Centre	10
Theatre Approach City Centre	14
Thorp Street City Centre	6
Warstone Lane	1
Waterloo Street City Centre	1
August 2020	253
Aberdeen Street Winson Green	13
Aston Street	2
Bennetts Hill City Centre	53
Berkley Street City Centre	3
Bishopsgate Street City Centre	26
Brassington Avenue Sutton Coldfield	1
Bridge Street City Centre	11
Cambridge Street City Centre	3
Colmore Row City Centre	7
Corporation Street City Centre	9
Dale End City Centre	7
Dalton Street	1
Digbeth Digbeth	2
Dudley Street City Centre	1
Edgbaston Street City Centre	4

Edmund Street City Centre	1
Great Colmore Street City Centre	3
High Street City Centre	1
Hill St City Centre	1
Hinckley Street City Centre	1
Hurst Street City Centre	3
Institute Road Kings Heath	15
Lower Essex Street City Centre	1
Moor Street Queensway	1
Rochester Road	5
Smallbrook Queensway	15
St Pauls Square City Centre	4
Station Street City Centre	5
Steelhouse Lane City Centre	6
Suffolk Street Queensway Ladywood	1
Summer Row City Centre	15
Temple Row City Centre	8
Temple Row West City Centre	1
Theatre Approach City Centre	10
Thorp Street City Centre	11
Waterloo Street City Centre	2
September 2020	22
Aberdeen Street Winson Green	1
Bennetts Hill City Centre	1
Bishopsgate Street City Centre	4
Cambridge Street City Centre	1
Colmore Row City Centre	1
Rochester Road	2
Steelhouse Lane City Centre	2
Summer Row City Centre	2
Temple Row City Centre	3
Theatre Approach City Centre	2
Thorp Street City Centre	3
TOTAL	675

BIRMINGHAM CITY COUNCIL

**REPORT OF THE INTERIM ASSISTANT DIRECTOR OF REGULATION AND
ENFORCEMENT
TO THE LICENSING & PUBLIC PROTECTION COMMITTEE**

18 NOVEMBER 2020
ALL WARDS

**ACTION TAKEN BY THE CHAIR OF THE LICENSING &
PUBLIC PROTECTION COMMITTEE:
SEPTEMBER 2020**

1. Summary

- 1.1 This report advises the Committee of action taken by the Chair under authority from the Licensing & Public Protection Committee, together with an explanation as to why this authority was used.

2. Recommendation

- 2.1 That the report be noted.

Contact Officer: Sajeela Naseer, Head of Licensing, Markets and Street Trading
Telephone: 0121 303 6112
E-mail: sajeela.naseer@birmingham.gov.uk

3. Background Information

- 3.1 On 16 March 2007 Section 52 of the Road Safety Act 2006 came into force. This has had the effect of enabling a licensing authority to suspend or revoke a hackney carriage or private hire driver's licence with immediate effect – meaning that the suspension or revocation takes effect immediately once notice of the authority's decision has been given to the driver – where this decision is considered necessary in the interests of public safety.

4. Summary of Action Taken for September 2020 – Immediate Suspension/Revocations

- 4.1 On 29 September 2020 authority was sought to suspend with immediate effect the hackney carriage driver's licence held by driver reference 006512. The Licensing Service received information on 29 September 2020 from West Midlands Police indicating the driver was under investigation for an offence of rape in a domestic setting. The matter was not immediately reported to the Licensing Service as the individual had given his employment as "self-employed" and his status as a licensed driver had not been identified at the time.
- 4.2 The interests of public safety being considered paramount, an authorisation of the Director of Regulation and Enforcement, acting in consultation with the Chair, was obtained and on 30 September 2020 written notices were sent to the driver at two addresses, being the last known address held on the Licensing Service database and a second address provided by West Midlands Police as the address at which they believed the driver was residing, advising that his private hire driver licence was suspended with immediate effect, in accordance with Sections 61(1)(b) and 61(2B) of the Local Government (Miscellaneous Provisions) Act 1976.

5. Implications for Resources

- 5.1 No specific implications have been identified; however, drivers retain the right to appeal through a Magistrates' Court, which may result in the imposition of costs either for or against the City Council.

6. Implications for Policy Priorities

- 6.1 The contents of the report contribute to the City Council's Licensing Policy priority of improving the standards of licensed vehicles, people and premises in the City.

6.2 The issues addressed in this report relate to the City Council priorities of: Birmingham is an entrepreneurial city to learn, work and invest in, and Birmingham is a great city to live in.

7. Public Sector Equality Duty

7.1 The actions identified in this report were taken in accordance with the Regulatory and Enforcement's enforcement policy, which ensures that equality issues have been addressed.

INTERIM ASSISTANT DIRECTOR OF REGULATION AND ENFORCEMENT

Amendments in response to COVID-19.

A. Agreed Amendments

Service Area	Amendment	Status
HCPH	Where a driver or vehicle licence due for renewal during this period of imposed restrictions ('lockdown') expires, the licence holder will, once the lockdown has ended, be permitted to apply for a 'late renewal'. Once the lockdown is over, and trade begins to recover, licence holders will then be able to submit an application to, to all intents and purposes, resurrect their previous licence without undertaking additional tests. They WILL still be required to fulfil any suitability requirements as to MOT's, medicals and DBS checks where appropriate.	Agreed April 2020 Temporary
	<i>For clarification, this should have also stated that such a transaction would be carried out at the standard renewal fee and will not be required to be put before a committee for determination.</i>	For decision Temporary
	Where a hackney carriage vehicle licence expires as a result of the circumstances detailed above, the licence holder will be permitted to 'renew' the licence unimpeded by the moratorium. There will be no effective increase in the number of vehicles in operation, and so the moratorium should not be applied in these circumstances.	Agreed April 2020 Temporary
<p>See also existing policies MitEx1-7:</p> <p>A limited exemption from the moratorium on the issue of new hackney carriage vehicle licences can be allowed for proprietors of hackney carriage vehicles who surrender or allow their vehicle licence to expire between 1 January 2019 and 1 January 2021, to the effect they may apply for the grant of a new hackney carriage vehicle licence irrespective of any moratorium requirement, so long as the applicant meets all of the qualifying criteria. The vehicle must be of a suitable type and all licensing prerequisites applicable at the time of licensing must be complied with.</p>		
General Licensing (all)	Applications for licences administered by the General Licensing team are to be submitted electronically, either using the EGov platform, or by email.	Agreed April 2020
General Licensing (LA2003)	Details of new Licence Applications (LA2003) are to be circulated to elected members and posted onto the website in acknowledgement of the potential impact of lockdown arrangements on the efficacy of the 'blue notice' process.	Agreed April 2020 Temporary

The Health Protection (Coronavirus Restrictions) (England) (No. 4) Regulations 2020

Mark Croxford
Head of Environmental Health
Regulation & Enforcement Division
Birmingham City Council

No. 4 Regulations

- Made in 6 parts
 - Part 1 Introductory
 - Part 2 Restrictions on movement
 - Part 3 Restrictions on gatherings
 - Part 4 Closure of, and restrictions on, businesses
 - Part 5 Enforcement
 - Part 6 Final provisions

No. 4 Regulations

- **Part 1 Introductory**

- Definitions inc' Elite Sports person, gatherings & vulnerable person

- **Part 2 Restriction on Movement**

- No person may leave or be outside of the place where they are living without reasonable excuse.

No. 4 Regulations

- **Part 3 Restrictions on gatherings**
 - A gathering takes place when two or more persons are present together in the same place
 - two or more people indoors
 - in a public outdoor place and consists of more than two people
- **Part 2 and 3 can only be enforced by Police**

No. 4 Regulations

- **PART 4 Closure of, and restrictions on businesses**
 - Restrictions on service of food and drink for consumption on the premises
 - person responsible for carrying on a restricted business, or providing a restricted service, must cease to carry on that business or provide that service.
 - Exemptions

No. 4 Regulations

- Part 4 offences can be enforced by both Police & Local Authority Officers.
- **PART 5 Enforcement**
- Individual
 - FPN £200 and £100 if paid in 14 days
 - 2nd offence is £400
 - Doubles for each subsequent offence until 6th offence set at £6,400.

No. 4 Regulations

- Business
 - FPNs for businesses start at £1,000 and then escalate to £2k; £4k & £10k
- **Part 6 Final Provisions**
 - Expires 28 days after declaration (5/11/20)
 - Revocation of Tier 1,2 and 3

