

BIRMINGHAM CITY COUNCIL

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

15 JULY 2015
ALL WARDS

LICENSING AUTHORITY POLICIES, PROCEDURES AND DELEGATIONS

1. Summary

- 1.1 This report outlines the policies, procedures and delegations, which have been built up over a number of years in relation to licensing and registration issues, allowing the Licensing Authority to delegate the bulk of the administration associated with the licensing regime to be carried out by Officers.
- 1.2 It also ensures that the Committee itself acts in a manner which is as open and consistent as circumstances allow.
- 1.3 The report consolidates existing policy, procedures and delegations and updates those policies in line with current working practices.

2. Recommendation

- 2.1 That the Committee notes the policies approved by City Council:
 - relating to the Gambling Act 2005 and approved in 2013;
 - regarding Sexual Entertainment Venues and approved in 2014;
 - relating to the Licensing Act 2003 and approved in 2015;
- 2.2 That the Committee note the changes to the Poisons Act as detailed in paragraph 17 of Appendix 1 to this report.
- 2.3 That the amendment to Paragraph 3.16.1 of Appendix 1, as detailed in Paragraph 4.7 be agreed.
- 2.4 That the Committee approves the policies and procedures contained in Appendix 1 related to all other matters.

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3. Background

- 3.1 The City Council has a number of licensing, regulatory and registration powers and duties and the exercise of these powers and duties are delegated to the Licensing and Public Protection Committee. The granting and issuing of specific licences, permits and registrations is delegated to the Director of Regulation and Enforcement on the understanding that any applications giving rise to concern or difficulty may be referred to the Licensing and Public Protection Committee or its sub-committees for determination where appropriate.
- 3.2 The Licensing Service is responsible for the administration of grants, renewals and transfers as appropriate of hackney carriage and private hire vehicles, drivers and operators licences and for issuing licences under the Licensing Act 2003 and Gambling Act 2005, sex establishment and animal welfare legislation, and issuing permits for charitable collections and massage and special treatments etc. as well as the associated variations, amendments and transfers, which are carried out under policies delegated by your Committee.
- 3.3 The public office of the Licensing Service is situated at Crystal Court, Aston Cross Business Village, Rocky Lane, Birmingham, B6 5RQ.

4. Licensing and Public Protection Committee

- 4.1 The licensing function of the City Council is disposed of through the processes and procedures of the Licensing and Public Protection Committee, sub-committees and officers by virtue of the Local Government Acts and other relevant statutory provisions.
- 4.2 The Court of Appeal stated in the “Hope and Glory” case (2011) that the licensing function of the licensing authority is an administrative function, by contrast with the function of the magistrates, which is a judicial function. The Court of Appeal said this:

“The licensing authority has a duty, in accordance with the rule of law, to behave fairly in the decision-making procedure, but the decision itself is not a judicial or quasi-judicial act. It is the exercise of power delegated by the people as a whole to decide what the public interest requires.”

This means that it must act in accordance with the two rules of natural justice. These are firstly that everyone has a right to be heard and secondly the rule against bias.

- 4.3 The right to be heard requires that a person directly affected by the matter under consideration must be given a fair opportunity both to state his/her case and to know of and to respond to any objections.

- 4.4 The rule against bias prohibits members participating in any decision if they have a financial or other interest in the outcome. Members will be familiar with this requirement from their general duties as Councillors.
- 4.5 Further guidance on the determination of matters concerning licensing appears at Annexe 1.
- 4.6 The provisions as set out in the appendix to this report summarise your Committee's policies in respect of the activities it licences.
- 4.7 Paragraph 3.16.1 of the Appendix has been amended to reinstate a sentence which had been erroneously omitted from the previous version of the report. The requirement to present an MOT certificate dated no less than 10 weeks prior to the licensing or relicensing of a vehicle is a long established one. It is clearly detailed within the application form and doesn't represent any change of policy. The amendment is purely to correct an omission.

5. Consultation

- 5.1 This report seeks to reproduce in one document a number of policies which have been implemented over a number of years.

6. Implications for Resources

- 6.1 It is the responsibility of the Committee Chairman and the Director of Regulation and Enforcement to ensure the services provided by the Committee are contained within the approved budget.
- 6.2 In relation to Village Greens there is an annual budget allocation of £50,000 associated with this function.
- 6.3 In relation to the Poisons Act 1972, the legislative changes will have a detrimental impact on the budget of approximately £650 per annum.

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.

8. Implications for Equality and Diversity

- 8.1 The matters identified in this report are in accordance with Regulation and Enforcement's enforcement policies which ensure that equality issues have been addressed.

DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: nil

1. **Hackney Carriage and Private Hire Licensing**

- 1.1 Although both hackney carriages and private hire vehicles are licensed to carry passengers, there is a distinct difference in the way vehicles can be made available for hire.
- 1.2 Hackney carriages (“black cabs”) are the only vehicles licensed to ply for hire, which means that they may stand on taxi ranks, respond to a flag down in the street, and are generally available for immediate hiring.
- 1.3 Private hire vehicles must be pre-booked in advance, through a licensed private hire operator and may not use taxi ranks, respond to a flag down in the street, or be offered for immediate hiring.
- 1.4 Hackney carriage vehicles must be fitted with a taximeter which calculates the fare according to time and distance travelled. The meter is tested and sealed to ensure accuracy and compliance with the fare structure agreed by the Licensing and Public Protection Committee. The current table of fares must be displayed in the vehicle.
- 1.5 There is no power for the licensing authority to control the fares charged for private hire journeys, the fare structure for each company being set by the licensed operator. However, conditions of licence require the operator’s table of fares to be displayed inside each private hire vehicle.
- 1.6 Although both hackney carriages and private hire vehicles are commonly referred to as taxis, the word “taxi” has a statutory definition, by virtue of the Transport Act 1985, and may only be applied to a licensed hackney carriage.
- 1.7 For this reason Birmingham’s licensing conditions prevent private hire operators, vehicles or drivers from using the words “taxi” or “cab” in relation to their business.
- 1.8 The hackney carriage fleet is made up exclusively of purpose-built cabs, all of which are equipped for wheelchair accessibility.
- 1.9 At present there is a moratorium on the issue of new hackney carriage vehicle licences which was agreed by the former Licensing Committee in September 2008. This moratorium was reviewed in September 2010 and again in September 2014 whereupon it was extended for a further three years. The Committee has the authority to revert to the previous arrangements, whereby no limits were imposed, if that is considered appropriate.
- 1.10 In addition to the requirements for an annual vehicle inspection and meter test, vehicle owners must also produce insurance for the vehicle, covering its use for public or private hire as appropriate before a licence can be issued.

Further, the insurance for licensed vehicles must be maintained continuously throughout the duration of the licence.

- 1.11 The legislation impacting on hackney carriage and private hire vehicles is the Town Police Clauses Act 1847, Birmingham City Council Hackney Carriage Byelaws 2008, the Local Government (Miscellaneous Provisions) Act 1976, Transport Act 1985, and the Equalities Act 2010.

2. **Licensing Hackney Carriage and Private Hire Drivers**

Individuals must satisfy the authority that they are fit and proper to be licensed drivers. The following application process is designed to ensure services delivered within the City are of a good standard and is subject to the appropriate fees being paid:

1. application received
2. entitlement to drive in the UK checked
3. entitlement to work in the UK checked
4. knowledge test
5. criminal record check
6. medical
7. driving test
8. disability awareness course
9. licence fee
10. licence issued

(It may be necessary for an application to be referred to Committee at any stage of this process.)

2.1 **Application Received:**

The application form will be checked and details entered onto the Licensing Service computer system.

2.2 **Entitlement to drive in the UK Checked:**

An EU or EEA licence is acceptable as long as the counterpart licence issued by DVLA (for EU and EEA drivers) accompanies it. However, vocational drivers may not drive indefinitely on an EU or EEA licence and must produce a United Kingdom DVLA driving licence if they have been resident in the UK for five years or more. An applicant for a hackney carriage or private hire driver's licence must have held a full DVLA driver's licence for at least two years.

2.3 **Entitlement to work in the UK checked**

The Asylum and Immigration Act 1996 places an obligation on employers to check the status of job applicants in order to establish a legal right to work. Employing a person who does not have the right to work in the United Kingdom is a criminal offence under Section 8 of The Asylum and Immigration Act 1996 and employers can and do face prosecution for breaches of the Act. As a Licensing Authority, Birmingham City Council does not employ the

drivers who are the recipients of hackney carriage and private hire licences although licensing authorities are recommended in the Department for Transport Best Practice Guidance (March 2010) to establish the right to work, as part of the process of determining whether an applicant is a 'fit and proper person'. Members of the hackney carriage and private hire trade are almost exclusively self-employed, so if a Licensing Authority does not check on an applicant's right to work, it is unlikely that anybody else will. Officers carry out the checks in accordance with the established procedure used by Birmingham City Council when recruiting employees.

2.4 Knowledge Tests

2.4.1 Knowledge folders are prepared annually for hackney carriage, private hire and for a 12 month trial period starting 1 April 2013, restricted private hire licences and should remain current for two years (in exceptional circumstances it may become necessary to amend this duration). An applicant may take the test associated with a knowledge folder at any time after issue, up to and including the expiry date subject to test appointment availability.

2.4.2 Candidates making a third test cancellation without an adequate and evidenced reason should be required to wait twelve months before being allowed to take the test.

2.4.3 Candidates absent or cancelling, within five clear working days, without an adequate and evidenced reason will forfeit their test fees.

2.4.4 Knowledge folders contain a combination of legal, licence condition, route and two point location questions applicable to the licence type. Candidates must identify and memorise the answers to those questions and answer a selection of questions as detailed below.

2.4.5 Hackney Carriage

- The hackney carriage knowledge test is conducted in-house and under normal test conditions (no communication with another person except the examiner, no reference to any material during the test except the test paper).
- The test must be completed within two hours if conducted verbally, and three hours if written. (If a candidate wishes to take a written knowledge test, they must also complete the verbal communications test (VCT).)
- The test consists of 106 questions (6 legal, 80 two-point locations and 20 routes) selected at random from the relevant knowledge folder.
- All six legal questions must be answered fully and correctly.
- The applicant must answer **90%** of the remaining routes and two point location questions correctly in order to pass the test.
- The applicant must pass this test to progress their application and is allowed three attempts.
- The application process is terminated if the applicant fails the third test. The applicant can re-apply after a period of twelve months from the date of the last failed knowledge test.

2.4.6 Private Hire

- The private hire knowledge test is conducted in-house and under normal test conditions (no communication with another person except the examiner, no reference to any material during the test except the test paper).
- The test is designed to mirror the hackney carriage test in style and presentation, but is based on well-known cross city routes and familiar locations and the bank of questions in the private hire knowledge folder is considerably smaller than that found in the corresponding hackney carriage folder.
- The test must be completed within one hour and must be taken verbally.
- The test consists of 90 questions (7 legal and 7 conditions based multiple choice questions, 6 A to Z based tasks, 50 two-point locations and 20 routes) selected at random from the relevant knowledge folder.
- The legal, conditions and A to Z based questions must all be answered correctly.
- An applicant must answer **80%** of the remaining routes and two point location questions correctly in order to pass the test.
- An applicant is allowed three attempts at a test.
- The application process is terminated if the applicant fails the third test. The applicant can re-apply after a period of twelve months from the date of the last failed knowledge test.

2.4.7 Restricted Private Hire

In April 2013 a Restricted Private Hire badge was introduced on a trial basis. This facility is subject to an annual review, and could be withdrawn thereafter. An applicant wishing to work as a chauffeur/executive driver may be eligible to apply for a one year restricted private hire licence. Applicants wishing to obtain a restricted private hire licence must be sponsored by a Birmingham based licensed operator running a recognised executive, or limousine hire business which does not undertake any regular private hire work. A candidate for a restricted private hire driver's licence is required to provide a letter of introduction from the licensed operator indicating their intention to employ the applicant as a chauffeur, confirming the type of work to be undertaken and stating explicitly no cash work will be undertaken.

- The knowledge test for restricted private hire drivers is based on the standard private hire knowledge test and consists of 20 questions (7 legal and 7 conditions based multiple choice questions and 6 A to Z based tasks) selected at random from the relevant knowledge folder.
- The legal, conditions and A to Z based questions must all be answered correctly.
- There are no two-point locations, or routes.
- An applicant is allowed three attempts at a test.
- The application process is terminated if the applicant fails the third test.
- The applicant can re-apply after a period of twelve months from the date of the last failed knowledge test.

2.5 Criminal Record Check

2.5.1 All applicants and drivers are required to undertake an enhanced Disclosure and Barring Service (DBS) check. Hackney carriage and private hire drivers are exempt from the provisions of the Rehabilitation of Offenders Act 1974 by virtue of the Rehabilitation of Offenders Act 1974 (Exemptions) (Amendment) Order 2002 and convictions are, therefore, never spent. On initial application, and every three years thereafter, where a licence is granted a driver will be subject to a criminal record check facilitated by the DBS. Where the DBS check reveals cautions or convictions relating to drugs, dishonesty, violence, or offences of a sexual nature, or reveals any information giving cause for concern, the applicant, or licensed driver will be referred to the Licensing Sub-Committee where the individual's fitness to hold a licence will be considered, unless those matters have already been taken into consideration and passed by Committee.

2.5.2 All new applicants who have been resident abroad as adults must produce evidence of good conduct in that country or the equivalent of a DBS disclosure before their application can be considered. Any matters revealed will be dealt with in the same way as any revealed by the DBS check.

2.5.3 An applicant who has fled an oppressive regime or has other reasonable grounds to believe that obtaining such documentation would be impossible or dangerous may apply to the Licensing Sub-Committee for an exemption and should support that application with a Statutory Declaration and a verifiable character reference from an individual employed in a Prominent 'Regulated Occupation'. Further details in this respect are available on request.

2.5.4 Drivers' licences are currently renewed at the choice of the licensee for one, two or three years, to coincide with the DBS check. Restricted private hire licences will only be granted, or renewed on a one year basis. On renewal, applicants are required to show their current DVLA driving licence for any possible endorsements. The licence must be in good condition, easily read, and relate to the particulars of the applicant. Where a DVLA driving licence reveals matters or information that gives cause for concern the application can be referred to the Licensing Sub Committee for determination (unless previously considered and passed by Committee).

2.6 Medical

All applicants for the grant of a driver's licence are required to undertake and pass a Group II medical examination for vocational drivers before a licence can be issued. The medical is conducted at Birmingham City Council's Occupational Health Service. Once licensed, drivers remain subject to further medical checks as follows:

- Drivers aged 45 and under - every 5 years
- Drivers between 45 and 60 - every 3 years
- Drivers over 60 - every year.

2.7 Driving Test

Qualified examiners based within the City Council's Driver Training Service conduct the driving test.

- The applicant must pass the test in order to progress their application and is allowed **three** attempts.
- The application process is terminated if the applicant fails the third test.
- The applicant is eligible to re-apply after a period of twelve months from the date of the last driving test.

2.8 **Disability Awareness Training**

All new applicants for the grant of a driver's licence must undergo the Birmingham City Council approved disability awareness training. The course is mandatory and subject to a fee, payable by the applicant.

2.9 **Fee Paid and Licence Issued**

An application will not be considered complete until such time as all fees have been paid and a licence issued. A licence is issued with attached conditions and the licensee is considered to have accepted those conditions unless appealed to Magistrate's Court within 21 days of issue, or granted exemption by Licensing Sub-Committee.

2.10 Whilst an application for the grant of a licence is pending the applicant will undertake such tests and checks as the Licensing and Public Protection Committee deem appropriate and this may include new tests introduced whilst the application is in progress.

2.11 An incomplete application on which there has been no activity for a period of twelve months or more, will be deemed abandoned and treated as withdrawn. Where an applicant returns to the Licensing Service to pursue an application deemed abandoned they will be required to submit new forms and undertake all tests with the exception of the disability awareness course if already taken.

2.12 **Driver Licence- Renewal**

A driver's licence is eligible for renewal from a date ten weeks prior to the expiry of the licence. The renewal of a licence will be subject to the policies relating to medicals, DBS checks, outstanding enforcement issues, and DVLA licence checks. An expired driver's licence may be renewed up to one calendar month after the expiry date.

2.13 **Late renewal**

The period of one month after the licence has expired is referred to as a "late renewal period" and will be subject to a higher fee, namely the fee associated with a grant of a licence. Any application made more than a month after expiry will be considered a new application, subject to all the requirements for the grant of a licence and the applicant will be required to undertake all applicable tests and checks. Where there are exceptional circumstances which may warrant an exemption from that requirement, Officers may refer the matter to the Licensing Sub Committee for determination to agree a later renewal.

Whilst an application for the grant of a licence is pending the applicant will undertake such tests and checks as the Licensing and Public Protection

Committee deem appropriate and this may include new tests introduced whilst the application is in progress.

2.14 Multiple Driver Licence Types

If a driver already holds one type of licence and applies for another type of licence they must undergo all the relevant tests that were either not applicable or not in force at the time the first licence was granted. In any case where a medical or DBS check on the original licence is more than 12 months old, an applicant will be required to undertake another, the new check becoming current for both licences. Driving test and Disability Awareness course passes can be carried over to the new application. Knowledge test passes will not be carried over or exempted except where agreed by Committee.

- 2.15 Any person may request their application be referred to the Licensing Sub Committee for determination, however, the Head of Licensing or his nominated deputies, in consultation with the Chair of the Licensing and Public Protection Committee, may refuse such a request where the request is considered to be frivolous, vexatious or repetitious.

2.16 Lost or Stolen Driver Licence (Badge)

In the event a badge is lost or stolen this information must be reported to the Licensing office within three working days (not including Saturday and Sunday). If the badge has been stolen the Police must be informed and a Police report number obtained. If the badge has been lost a declaration to this effect must be made to the Licensing Offices. A replacement badge will be issued on payment of a fee and production of a current DVLA driving licence. A person may not legally work as a hackney carriage or private hire driver without being in possession of a current badge.

3. Licensing Hackney Carriage and Private Hire Vehicles

- 3.1 The Law states no-one can drive a hackney carriage or private hire vehicle licensed by Birmingham City Council unless they are licensed to do so i.e. they hold a current valid hackney carriage or private hire driver's licence, as appropriate, issued by Birmingham City Council.

3.2 Insurance

Vehicle proprietors must produce current, valid, insurance covering the use of the vehicle for public or private hire as applicable, before a licence can be issued.

3.3 Transfer of vehicle licence

- 3.3.1 Transfer of interest in a licence shall be completed only when the old identity plate(s) and licence are returned to the Licensing Office.
- 3.3.2 If this cannot be done, the previous owner must sign a declaration informing the Licensing Office of the whereabouts of the vehicle identity plates or the reason the identity plates cannot be produced. This declaration will be used to assist in progressing with the transfer application.

3.3.3 The transfer fee will be charged where interest in a vehicle licence is transferred to another proprietor. Where a renewal or replacement is conducted simultaneously both fees will be due.

3.4 **Vehicle Replacement**

The replacement fee will be charged when a vehicle is replaced during the life of a licence. Where a renewal or transfer is conducted simultaneously both fees will be due. If transfer, replacement and renewal transactions are conducted simultaneously the replacement fee will be waived.

3.5 **Lost or Stolen Vehicle Licence (Plate)**

In the event a vehicle identity plate is stolen the Police must be informed and a Police report number obtained. If the identity plate is lost a signed declaration must be made to this effect. This information must be reported to the Licensing Office within three working days. A replacement plate will be issued on payment of a fee and production of a valid insurance document and DVLA driving licence.

3.6 **Licensing a vehicle registered to another keeper:**

3.6.1 Where an applicant for a vehicle licence provides a registration document indicating that the registered keeper is another individual, or legal entity, the applicant will be required to provide a letter from the registered keeper indicating that use of the vehicle as a hackney carriage or private hire vehicle by the applicant, is done with their full knowledge and consent.

3.6.2 Where an applicant for a vehicle licence provides a registration document indicating that the registered keeper is another individual, or legal entity, the applicant will be required to provide a letter from the insurers indicating that they are aware of the arrangement and content to provide appropriate insurance cover in those circumstances.

3.7 **Expired Hackney Carriage Vehicle Licence**

When a hackney carriage vehicle licence has expired and more than one calendar month has elapsed any attempt to re-licence the vehicle must be referred to the Licensing Sub Committee for determination.

3.8 **Approved Vehicle Types – Hackney Carriage**

The Licensing Authority has set down a series of specifications that a vehicle will need to comply with prior to it being accepted as a licensed vehicle:

- Vehicles specifically adapted for wheelchair carriage which meet the M1 European standard.
- Any M1 vehicle adapted to be a hackney carriage where the adaptations are approved by the Vehicle Certification Agency (VCA) and the adaptations have VCA certification to European Whole Vehicle Type Approval (EWVTA) or G/B/ Low Volume (Small Series) Type Approval.

The front seat of a hackney carriage vehicle will not be included in the seating capacity indicated on the vehicle licence.

Any MPV or van derived M1 class vehicle to be licensed as a hackney carriage must be black in colour and must not be fitted with full-body advertising livery.

Purpose built Hackney Carriage vehicles cannot be licensed for the purposes of private hire.

3.9 Approved Vehicle Types – Private Hire

3.9.1 The private hire licensing provisions apply to a variety of vehicles ranging from four-door saloon vehicles to people carriers, however, those vehicles should be:

- built to M1 specification.
- have a minimum engine size of 1600cc (1500cc for second-generation Toyota Prius.)
- be capable of carrying a minimum of four average sized adults in comfort.
- All vehicles must be right hand drive and must not have fewer than four road wheels.
- Cars must have a minimum of four doors giving adequate access to and egress from the vehicle. The design of the car can be saloon, hatchback or estate.
- Larger vehicles (MPV, minibus, or people mover types) must have sufficient doors of sufficient size to allow passengers to get in and out quickly and safely.
- Where exit from the rear seats in vehicles equipped with three rows of seats requires operation of a tip seat mechanism, passengers must be able to exit from either side of the vehicle and the tip seats at either end of the middle row must be capable of independent operation.
- Where a vehicle is equipped with pop-up, or auxiliary seats intended for occasional use only, those seats must not be included in the licensed capacity of the vehicle.
- Where the vehicle configuration requires a whole bench seat to slide and/or tip for access/egress to the rear seats, the rear seats should not be included in the seating capacity and should be removed to avoid pressure from passengers to carry numbers in excess of the licensed capacity.
- All vehicles must have a wheelbase (when measured from the centre of the front wheel to the centre of the rear wheel) of at least 2540mm (100 inches).
- Cars must have a back seat width (when measured in a continuous line from edge to edge) of at least 1220mm (48 inches).
- Larger capacity vehicles (MPV, minibus, or people mover types) which are fitted with individual seats, or which do not have full width bench seats, must have a minimum 407mm (16 inches) of seat space per passenger across the width of the seat.
- Seat belts must be provided for all passengers according to the licensed capacity of the vehicle.
- Vehicles equipped with soft tops, removable hard tops and people carriers (MPV types) described as black on the log book, will not be licensed for the purpose of private hire.

- Vehicles fitted with darker tints and privacy glass can be licensed where the glass is to factory standard and vehicles are presented to licensing in an unmodified state, vehicles fitted with films, foils, or any other aftermarket tinting will be refused a licence, unless the tinting is removed and the vehicle returned to the manufacturer's standard specification.
- 3.9.2 Vehicles identified as stretched limousines, or novelty vehicles will be considered outside the scope of this definition, in line with current practice.
- 3.10 Transfer of Hackney Carriage Vehicle Licence**
A proprietor of a hackney carriage vehicle may replace, swap or change their vehicle with another licensed hackney carriage vehicle of any age. In this policy it is understood that the licence and its related vehicle will remain together and not be separated.
- 3.11 Transfer of Private Hire Vehicle Licence**
- 3.11.1 Private hire vehicle licences may only be transferred to a vehicle that is less than 8 years old.
- 3.11.2 The licence to be transferred into the proprietor's name must relate to a vehicle, that is less than 8 years old. Failure to comply with this policy will result in the private hire vehicle licence being transferred for the duration of the life of the licence; however, the Council will refuse to renew that licence when it expires.
- 3.12 Replacement of Hackney Carriage Vehicle Licence**
A hackney carriage vehicle licence may only be transferred to another vehicle (that is to say separated from its related vehicle and moved to another vehicle) that is younger/newer than the age of the vehicle currently licensed.
- 3.13 Replacement of Private Hire Vehicle Licence**
- 3.13.1 A licensed private hire vehicle can only be replaced, swapped or changed with a vehicle that is less than 8 years old.
- 3.13.2 Failure to comply with this policy will result in the vehicle or the private hire vehicle licence being transferred for the duration of the life of the licence, however, the Licensing Service will then refuse to renew this.
- 3.14 Age Limit – Hackney Carriage Vehicles**
No vehicle over the age of 14 years will have its licence renewed unless the vehicle is able to pass the Supplementary Test Plus, in which case the vehicle licence may be renewed on a year by year basis, subject to passing the Supplementary Test Plus on each occasion.
- 3.15 Age Limit - Private Hire Vehicles**
No vehicle over the age of 8 years will have its licence renewed unless the vehicle is able to pass the Supplementary Test Plus, in which case the vehicle licence may be renewed on a year by year basis, subject to passing the Supplementary Test Plus on each occasion.

3.16 **Vehicle Testing – ALL Vehicles**

- 3.16.1 All vehicles are subject to a standard MOT test to determine its mechanical fitness and a more stringent supplementary test dealing with the vehicle's condition, appearance and suitability prior to licensing. An MOT certificate presented for the purpose of replacement of a vehicle or the renewal or granting of a licence must be less than ten weeks old at the time of the transaction, that time period to be calculated from the date of inspection.
- 3.16.2 The law provides that a private hire vehicle cannot, in its type, design or identification, lead anyone to believe that it is a hackney carriage.

4. **Private Hire Operators**

- 4.1 All Birmingham licensed operators **must** operate from premises within the City boundaries. Operators' fares are not regulated but each operator is required to ensure that their particular charges are displayed or available on request to each person travelling in a private hire vehicle.
- 4.2 Drivers pay a weekly rental to a licensed operator for the hire of a radio, or data communication unit. The operator then passes the details of bookings assigned to each driver by voice over a radio network or as text delivered via an electronic data link.
- 4.3 An applicant for the grant of or renewal of an operator's licence will be asked to disclose details of any previous convictions and also an applicant for the grant of an operator's licence will be asked for details of any previous experience of working within the private hire industry.
- 4.4 Planning permission must be obtained for the premises where the operation is to be based, unless the applicant can provide confirmation from the Planning Department that such permission is not required.
- 4.5 The conditions of licence imposed on operators are strictly enforced, particularly those relating to the keeping of records. Failure by a licensed operator to comply with their conditions is a criminal offence under the Local Government (Miscellaneous Provisions) Act 1976. The records to be maintained include records of all journeys undertaken, and information and documentation relating to the vehicles and drivers operated, together with their "call signs".
- 4.6 The fee payable for an operator's licence is based on the structure of the operation and the number of drivers and vehicles managed. This fee is payable at the time the application is submitted.
- 4.7 Renewal applications for operator licences must be submitted to the Licensing Office at least 14 days before expiry, fully completed and with all necessary accompanying paperwork. Failure to comply with this requirement may prevent a new licence from being issued on or before the expiry of the old licence.

5. **Committee Policies Relating to Hackney Carriage and Private Hire Drivers**

5.1 An applicant for a hackney carriage or private hire driver's licence must have held a full DVLA driver's licence for at least two years.

5.2 **Disqualification from Driving**

The Licensing Sub Committee will not be disposed to grant new applications or applications for renewal of hackney carriage or private hire driver's licences from persons who have been disqualified from driving until such time that such applicants have gained sufficient recent driving experience and become re-acquainted with driving conditions following reinstatement of DVLA licences; further that the period of further driving experience should be at least equivalent to the period of disqualification. For example, a driving disqualification of six months will mean a rehabilitation period of six months from the date the DVLA licence is reinstated. However, a rehabilitation period may be reduced at the discretion of the Committee where an applicant has successfully completed an approved driving course as part of the sentence.

5.3 **Driving Offences Associated with Drink or Drugs**

The Licensing Sub Committee will not be disposed to grant or renew applications for licences to drive hackney carriage or private hire vehicles where the applicant has been convicted of a driving offence associated with drink or drugs under the Road Traffic Acts for the following periods, following reinstatement of the DVLA driving licence:

- In the case of disqualification a minimum of two years or refer to paragraph 5.2 if the period of disqualification is longer.
- two years where there is no disqualification.

5.4 **Plying For Hire: First and Any Subsequent Offences**

Drivers convicted of a first offence of plying for hire, and driving with no insurance should be revoked. Drivers convicted only of plying for hire should be subject to suspension for a minimum period of six months for the first offence. For any subsequent offence, consideration should be given to the ultimate penalty of revocation of a drivers licence. Each individual case should be considered on its own merits.

5.5 **Refusal of Applicants with a Conviction for any Sexual Offence**

An applicant with a conviction for any sexual offence should normally be refused.

5.6 **An Applicant Refused or Revoked by another Authority**

Where an applicant has had a licence refused or revoked by another local authority, that application shall be referred to and determined by the Licensing Sub-Committee.

5.7 Further Applications from Applicants or Drivers Refused or Revoked

5.7.1 An application for the grant of a hackney carriage or private hire driver's licence must be referred to the Licensing Sub-Committee for determination under any of the following circumstances:

- application previously refused;
- licence previously revoked or refused upon renewal;

5.7.2 Further, an application will not be considered within 12 months of the date of refusal, revocation or unsuccessful appeal, whichever is the later.

5.8 Refusal of Applicants with a Conviction for a Drugs Related Offence

An applicant with a conviction for a drug-related offence should normally be refused.

5.9 Failure of Three or More Knowledge Tests per Application

5.9.1 Where an applicant has failed three knowledge of the city tests in connection with an application for a hackney carriage or private hire driver's licence, that application will be refused on the grounds that the person is not considered to be a fit and proper person to hold such a licence.

5.9.2 An applicant may re-submit an application for the grant of a driver's licence one year after the date of the third knowledge test. This application will be treated as a new application and the applicant must undertake and pass the appropriate tests.

5.10 Failure of Three Driving Tests per Application

5.10.1 Where an applicant has failed three driving tests in connection with an application for a driver's licence that application will be refused on the grounds that the applicant is not considered to be a fit and proper person to hold such a licence.

5.10.2 An applicant may re-submit an application for the grant of a driver's licence one year after the date of the third driving test, however, should a further failure occur this application will be presented to the Licensing Sub Committee for determination.

5.11 Working Dogs

Since March 2001 licensed hackney carriage and private hire drivers in England are under a duty to carry guide, hearing and other prescribed assistance dogs in their vehicles without additional charge. Drivers can apply for an exemption from the duty on medical grounds if they have a condition that is aggravated by contact with dogs to allow them to continue in the trade. Drivers must comply with the requirements of the exemption.

6. **Suspension, Revocation and Refusal to Renew Licences**

6.1 A hackney carriage or private hire vehicle licence may be subject to suspension, revocation or refusal, or renewal, by the Licensing Sub-Committee, on the following grounds:

- The vehicle is unfit for use as a hackney carriage or private hire vehicle.
- Any offence or non-conformity with the legislative provisions by either the operator or the driver.
- Any other reasonable cause.

6.2 A hackney carriage or private hire driver's licence may be suspended, revoked or refused on renewal by the Committee on the following grounds:

- Since the grant of the licence the driver has been cautioned or convicted of an offence involving drugs, dishonesty, indecency or violence.
- Any offence or non-compliance with the legislative provisions by the driver.
- Any other reasonable cause.

6.3 A private hire operator's licence may be subject to suspension, revocation or refusal on renewal by the Committee on the following grounds:

- Any offence or non-compliance with the legislative provisions by the operator.
- Any conduct on the part of the operator which renders him unfit to hold a licence.
- Any material change in any of the circumstances of the operator, based on which the licence was granted.
- Any other reasonable cause.

6.4 In all the above cases, and where applicants for the grant of a licence have been refused, there is a right of appeal against the Committee's decision to the Magistrates' Court. The outcome of all appeals is reported to the Licensing and Public Protection Committee on a regular basis.

7. **Enforcement**

7.1 Licensing Enforcement Officers and Licensing Compliance Officers are issued with an identity card and authorisation. They enforce the provisions of the legislation for which they are authorised. This includes but is not limited to:

Birmingham City Council Act 1990
Equalities Act 2010
Gambling Act 2005
House to House Collections Act 1939
Licensing Act 2003
Local Government Act 1972 (Section 222)
Local Government Act 2003

Local Government (Miscellaneous Provisions) Act 1976 Part II
Local Government (Miscellaneous Provisions) Act 1982 Part I, II, VII
Police Factories, etc. (Miscellaneous Provisions) Act 1916 (Street Collections)
Private Hire Vehicles (Carriage of Guide Dogs etc.) Act 2002
Private Security Industry Act 2001
Town Police Clauses Act 1847 and 1889
Hackney Carriage Byelaw, 26 June 2008

- 7.2 Officers undertake inspections, offer advice, deal with requests for assistance, investigate complaints and take part in planned exercises including operations with other enforcement agencies.
- 7.3 The premises and individuals licensed under the above Acts will be risk rated and inspected as and when appropriate in line with that rating, to ensure compliance with the legislation and any conditions attached to their licences. Inspections may also take place upon the grant, renewal or transfer of a licence or upon the receipt of a complaint.
- 7.4 Private hire operators will be risk rated and inspected an appropriate number of times during the year. Officers will check that the documents and records relating to drivers, vehicles and bookings are as prescribed by their conditions of licence. All operators will receive at least one inspection during the course of the operational year.
- 7.5 Stop check exercises are regularly undertaken with the assistance of the Police. Licensed vehicles are stopped and inspected to ensure that they and their drivers are complying with conditions of licence and are safe to carry members of the public. If defects on the vehicle are noted such as loose radios, bald tyres or defective lights, the plate licence may be suspended until the issues are rectified.
- 7.6 As well as routine inspections and high visibility exercises, Officers undertake exercises, where they pose as members of the public and make test purchases. Again this is to check licensees are complying with the legislation and their conditions of licence.
- 7.7 Officers also work jointly with agencies such as the Police and DVSA (formerly VOSA).

8. **General Licensing**

- 8.1 The General Licensing Team at Crystal Court is responsible for a wide range of licensing functions, which include sales of alcohol, late night refreshment, regulated entertainment, sex establishments, charitable collections, scrap metal and gambling premises.
- 8.2 Administration of the Animal Welfare licensing function as detailed in paragraph 9 below, was transferred from the General Licensing Team to the Environmental Health Section on 1st September 2008. The Senior Animal

Welfare Officer and the administration team are located at 581 Tyburn Road, Erdington, Birmingham B24 9RF. Inspection and enforcement is carried out by the Senior Animal Welfare Officer.

9. Animal Welfare Licences

9.1 Animal Boarding

9.1.1 The relevant legislation is the Animal Boarding Establishments Act 1963. It requires anyone involved in the business of providing accommodation for other people's animals (being cats or dogs), to obtain a licence from the local authority.

9.1.2 Inspections are undertaken by the Senior Animal Welfare Officer, prior to licence approval.

9.1.3 Licensed premises now include home dog boarders, where individuals board dogs in their own home and also dog day care centres.

9.2 Dog Breeding

9.2.1 The relevant legislation is the Breeding of Dogs Acts 1973 and 1991 which prescribe standards of management and accommodation in relation to the business of breeding dogs.

9.2.2 In addition to the inspection by the Senior Animal Welfare Officer the Act requires that the services of an independent veterinary surgeon or practitioner is used for inspecting prospective establishments in respect of applications for the grant of a new licence

9.3 Pet Shops

9.3.1 The relevant legislation is the Pet Animals Act 1951.

9.3.2 The Act regulates the sale of pet animals which includes a provision that a pet animal cannot be sold to a person under the age of 16. Conditions which are applied to premises promote animal health and welfare.

9.4 Performing Animals

The Performing Animals (Regulations) Act 1925 covers the use of animals in film and stage performances, at circuses, and as part of exhibitions etc. More recently these provisions are applied to persons who use animals during educational talks and demonstrations at children's parties. It is an offence for anyone to train or exhibit a performing animal unless they are registered.

9.5 Dangerous Wild Animals

9.5.1 The Dangerous Wild Animals Act 1976 (as amended) contains a schedule detailing a variety of animals for the purposes of the Act e.g. venomous snakes and certain monkeys etc.

9.5.2 Zoos, pet shops and circuses are exempt from the provisions of the Act. There are no current licences, however, the Act provides powers to the Council to seize any animal being kept on premises which are unlicensed.

9.5.3 There is a requirement for an independent report to be obtained from a veterinary surgeon or practitioner before a licence can be granted.

9.6 Riding Establishments

9.6.1 Stables which hire out horses or ponies for riding or instruction must be licensed under the provisions of the Riding Establishments Act 1964 and 1970. When considering applications there is a requirement for an independent report to be obtained from a veterinary surgeon or practitioner.

9.6.2 An applicant for the grant or renewal of a licence must undergo or present an enhanced criminal record check (not more than 3 months old) with the submission of an application form.

9.6.3 Once licensed, a licence holder must ensure that an enhanced criminal record check is conducted for any person in their employ that may come into contact with any persons under the age of 17 years that will be using the services of the riding establishment.

9.7 Zoos

9.7.1 Under the provisions of the Zoo Licensing Act 1981 a zoo is classed as any establishment, other than a circus or pet shop, where animals are kept for public exhibition.

9.7.2 Licences are initially granted for four years and then renewable every six years. Zoos must observe standards of modern zoo practice which have been specified by the Secretary of State.

9.7.3 Inspections are carried out annually by the Senior Animal Welfare Officer, however, at least twice during the term of the licence; a formal inspection must be carried out by a veterinary surgeon or practitioner in addition to an inspector appointed by the Secretary of State.

10. Licensing Act 2003

10.1 Premises providing alcohol, regulated entertainment or the provision of late night refreshment (after 11pm) require a “premises licence” which is of an unlimited duration, and will only cease to have effect if it is surrendered by the holder of the licence, revoked by the Licensing Authority, or lapses due to the death, incapacity or insolvency of the licence-holder.

10.2 In some cases where the licence lapses there is a mechanism to restore the licence as an interim measure while arrangements are made with regards the longer-term operation of the premises.

10.3 A “club premises certificate” is required for private members clubs.

- 10.4 Alcohol may only be provided at licensed premises if it is under the supervision of a personal licence holder who is declared as the Designated Premises Supervisor (DPS). A personal licence remains in force for ten years. This requirement does not apply to a “club premises certificate” as a personal licence holder is not required for the supply of alcohol at a club premises nor where a board or management committee of a community premises has applied to remove the mandatory condition requiring a DPS to be declared.
- 10.5 Local authorities are required to produce a “statement of licensing policy” which underpins how they will administer and consider applications under the Licensing Act 2003. Birmingham’s statement of licensing policy including the scheme of delegations underwent the statutory review during 2014. The revised policy was approved by the City Council and comes into effect in 2015. Within the policy there are special policies for three areas of the City based on the cumulative impact of a concentration of licensed premises. The three areas are Broad Street, Hurst Street/Arcadian and Central Moseley.
- 10.6 The functions of the Licensing Authority must be carried out with regard to the four licensing objectives stipulated in the Act:
- the prevention of crime and disorder;
 - public safety;
 - the prevention of public nuisance;
 - the protection of children from harm.
- 10.7 Premises licences and club certificates remain in force indefinitely subject to conditions unless they are revoked or lapse. During the term of those licences the Licensing Service deals with amendments, transfers, variations. In addition, on the anniversary of the grant of those licences/certificates an annual fee has to be collected. Officers also process applications for personal licences and administer Temporary Event Notices.
- 10.8 Hearings must be held whenever relevant representations are received or whenever there is an application for the review of Premises Licences / Club Premises Certificates.

11. **Gambling Act 2005**

- 11.1 The Gambling Act 2005 provides for the regulation, by Local Authorities, of different classes of gambling premises (e.g. casinos, bingo halls, betting shops, tracks and amusement centres).
- 11.2 In addition the Act provides for the registration of small society lotteries, also the granting of permits for machines in alcohol licensed premises, clubs and unlicensed family entertainment centres.

- 11.3 Officers have delegated authority to grant and renew permits for up to four machines in alcohol licensed premises; applications for the grant of more than four machines are referred to Licensing Sub-Committee for consideration. A full scheme of delegations is included within the current Gambling Act Statement of Principles.
- 11.4 The legislation requires Local Authorities to produce a “statement of licensing principles” which underpins how they will administer and consider applications under the Gambling Act 2005. There is a statutory requirement to review the policy every three years. Birmingham’s current statement of licensing principles was approved by the City Council on 4th December 2012 and came into effect on 31st January 2013. The review is due to be completed in 2015.
- 11.5 The functions of the Licensing Authority must be carried out with regard to the three licensing objectives stipulated in the Act:
- preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
 - ensuring that gambling is conducted in a fair and open way;
 - protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 11.6 Premises licences are of unlimited duration and during the term of those licences the Licensing Service deals with amendments, transfers, variations. In addition, on the anniversary of the grant of those licences an annual fee has to be collected. There is also the requirement to administer Temporary Use Notices and Occasional Use Notices.
- 11.7 Hearings are held whenever relevant representations are received or whenever there is an application for the review of premises licences.

12. **Massage and Special Treatment Establishments**

- 12.1 The relevant legislation in this area is the Birmingham City Council Act 1990.
- 12.2 Only a very small number of local authorities in the country have similar powers. The legislation was originally aimed at controlling massage and various treatments which could carry a health and safety risk to the public, e.g. water borne disease and exposure to UV rays. The Act has led to a whole range of premises being included, from health and fitness centres to hairdressing salons.
- 12.3 Anyone conducting an establishment for treatment by way of massage is required to be licensed; other forms of treatment also include Solaria, Therapeutic Spa Baths, Sauna, Turkish Baths, Aromatherapy massage and Herbal Baths.
- 12.4 Each licensed premises is subject to an annual visit by a Licensing Enforcement Officer.

12.5 When considering applications for licences consultation is carried out with West Midlands Police. There are also statutory requirements placed on applicants to post notices on the premises giving passers-by opportunity to comment or object.

12.6 All licences are subject to a set of conditions which regulate the manner in which the premises must be operated.

13. **Sex Establishments**

13.1 The primary legislation is Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (the “Act”).

13.2 The Act gives local authorities the adoptive powers to control sex establishments which are defined as a sex shop, a sex cinema or a sexual entertainment venue (SEV). This last category was introduced following an amendment by the Policing and Crime Act 2009 (see paragraph 13.9 below).

13.3 A sex shop is a premises used for a business, which consists, to a significant degree, of selling what are termed sex articles. These commonly include magazines, DVDs and different forms of sex aids.

13.4 A sex cinema is any premises used to a significant degree for showing of films, which are concerned primarily with, or relate to, or are intended to stimulate or encourage sexual activity.

13.5 The key words in the statutory definition are the words “to a significant degree”. This is not defined by the Act but case law suggests ‘significant’ implies a higher standard than ‘more than trifling’. In almost all cases the ratio between the sexual and other aspects of the business would be material: the absolute quantity of sales, the character of the remainder of the business, the nature of the display and the nature of the articles themselves are all considerations. No single factor is decisive and the Committee must decide which considerations are material and what weight to attach to them.

13.6 When considering applications for licences consultation is carried out with West Midlands Police, Ward Councillors and the Licensing Enforcement Team. There are also statutory requirements placed on applicants to advertise in the local press and post notices on the premises giving passers-by opportunity to comment or object.

13.7 The criteria for consideration are:

- the suitability of the applicant;
 - whether the person applying will actually be responsible for operating the business
 - the location and suitability of the premises;
- and

- whether the number of sex establishments within that locality is equal to or exceeds the number which the Council considers appropriate for the area.

13.8 Other than where the suitability of the applicant is concerned, there is no automatic right of appeal against a decision to refuse a licence and, therefore, an applicant's only remedy would normally be by way of judicial review.

13.9 Sexual Entertainment Venues

13.9.1 A Sexual Entertainment Venue (SEV) is defined as "any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer".

13.9.2 The meaning of 'relevant entertainment' is "any live performance or live display of nudity which is of such nature that it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means)".

13.9.3 These definitions would apply to the following forms of entertainment as they are commonly known: lap dancing; pole dancing; strip shows; peep shows; and live sex shows.

13.9.4 The legislation provides exemptions from the definitions of SEVs as follows:

- Sex shops and sex cinemas (these are separately defined in Schedule 3 to the 1982 Act).
- Premises which provide relevant entertainment on an infrequent basis.

These are detailed as premises where:

- (a) no relevant entertainment has been provided on more than 11 occasions within a 12 month period
- (b) no such occasion has begun within a period of one month beginning with the end of the previous occasion; and
- (c) no such occasion has lasted longer than 24 hours.

13.9.5 On 12th October 2010, Birmingham City Council resolved to adopt the provisions to control SEVs. A separate Sexual Entertainment Venue Policy, to apply to the whole of Birmingham, was published and became effective from 3 January 2011. This Policy was revised in October 2014 and was effective since 1 November 2014. .

13.9.6 The Sexual Entertainment Venue Policy document contains full details of the licensing regime applicable to Birmingham including application procedures, standard conditions and delegations. The Standard conditions were revised with effect from 1st November 2014 (on all licences granted or renewed after that date).

14. **Charitable Street Collections**

- 14.1 The relevant legislation is the Police, Factories etc., (Miscellaneous Provisions) Act 1916.
- 14.2 The Act prescribes Regulations, which govern the conduct of collections being made for charitable or other purposes in any street or public place.
- 14.3 This could include a collecting box or tin, or even the sale of any articles or magazines where there is a representation at the point of sale that part of the proceeds are being applied to charitable or other purposes.
- 14.4 Organisations do not have to be a registered charity but checks are made to ascertain that the organisation is genuine, and for new organisations or charities, copies of the latest accounts may be requested. Details of the promoter are forwarded to the West Midlands Police to afford them the opportunity to comment on the suitability of the applicant. The promoter of the collection or permit holder is also required to submit a return within one month of the collection taking place to show the amount collected and details of how the proceeds have been applied particularly on expenses.
- 14.5 In September each year, an advertisement is placed on the Birmingham City Council website inviting applications to be lodged by 1 November for the following year. In order to allow for a fair opportunity of collection dates for all prospective charitable organisations, applications are restricted to either one collection that covers the “whole city” or two separate dates for a selection of districts.
- 14.6 All applications received by 1 November each year are given priority for dates and areas and efforts are made to allocate preferred dates to each of the individual organisations. To avoid any clash of interest permits are not granted to two separate organisations to collect in the same place on the same day. For those organisations applying later than 1 November, applications are allocated on a first come first served basis provided that the requested date and area is still available.
- 14.7 “Face to face” fundraising usually relates to the collection of direct debits / standing orders from shoppers/pedestrians. Such appeals are normally conducted by professional fundraising companies that are remunerated by charities. Where a professional fundraiser is involved in a charitable street collection on behalf of a charity, our procedures require that a copy of the statutory fundraising agreement is submitted with the application as this gives details of the costs of the fundraising.
- 14.8 Under the Model Street Collection Regulations, “no payment shall be made out of the proceeds of a collection, directly or indirectly, to any other person connected with the promotion or conduct of the collection other than payments which have been specifically approved by the Council.”

- 14.9 All such face-to-face street collection applications are, therefore, referred to Committee for consideration with the expectation that an applicant demonstrates how any potential donors are made fully aware of the remuneration costs involved and the relationship between the company and the charity.
- 14.10 There is no right of appeal against the refusal to grant a street collection permit.
- 14.11 The Charities Act 2006 was introduced to change the way in which charitable collections were regulated, however, the Act was implemented in phases and to date the provisions relating to public charitable collections have still not been introduced.
- 14.12 It should be noted that a part of the Charities Act 2006 that was introduced, amended the Charities Act 1992 in relation to the statement required to be made by professional fundraisers when raising money for particular charitable institutions. The statement must give the method by which the fundraiser's remuneration in connection of the appeal is determined and the notifiable amount of that remuneration.

15. **House to House Collections**

- 15.1 The relevant legislation is the House to House Collections Act 1939.
- 15.2 Whereas street collection permits are normally issued to cover a period of one or two days, a house to house collection licence can be granted for any period up to one year. With regard to vetting and checking to ascertain whether the organisation applying is genuine or not, the same procedures apply as for street collections. (see 14.4)
- 15.3 There is a requirement for the promoter of the collection to make a return following the collection.
- 15.4 Collections generally take place from door to door or from one public house to another.
- 15.5 Some of the larger well-known charities such as British Red Cross, Christian Aid, Shelter, RNLI etc., have a Government exemption from having to apply for a licence, but most of the smaller, and particularly local groups and organisations need a licence before they can collect money (or articles which they intend to give away or sell later), from door to door.
- 15.6 As with the procedure for street collections, where a charitable organisation is utilising the services of a professional fundraising company, our procedures require that a copy of the statutory fundraising agreement is submitted with the application.

- 15.7 Unlike street collections, there is a statutory right of appeal against the refusal to grant a house to house collection licence. In this case, the right of appeal is to the Secretary of State, and the grounds for refusal are set out in the Act.

16. **Skin Piercers**

- 16.1 The relevant legislation is the Local Government (Miscellaneous Provisions) Act 1982 Part VIII which applies to the registration of persons operating at premises to provide the following types of skin piercing: Acupuncture, Tattooing and Electrolysis. In Birmingham, byelaws were introduced in 1985 to regulate these activities.
- 16.2 The Local Government Act 2003 came into effect on 1 April 2004 and introduced the registration and inspection of all businesses which carry out cosmetic skin piercing and semi-permanent skin colouring. Byelaws were introduced in 2006 to regulate these activities.
- 16.3 Inspection and enforcement is carried out by officers of Birmingham's Environmental Health Service.
- 16.4 This is purely a registration function, with no provision for objection or refusal. Registration Certificates are issued by Senior Licensing Officers or above.

17. **Poisons Act 1972**

- 17.1 On 26th May the Deregulation Act 2015 (Poisons and Explosives Precursors) (Consequential Amendments, Revocations and Transitional Provisions) Order 2015 comes into effect. This Order removed the requirement for the Local Authority to keep a list of persons selling non-medicinal poisons.
- 17.2 Previously, the list was maintained by the Licensing Service.
- 17.3 In 2014-15 your officers dealt with 20 renewal and 9 new applications, at a cost of £20 and £35 respectively.

18. **Alcohol Restricted Areas (Designated Public Place Orders (DPPO))**

- 18.1 The legislation which effected Alcohol Restricted Areas was the Criminal Justice and Police Act 2001 (as amended). This included a number of powers to combat crime and disorder, including measures to deal with alcohol related problems. The Act gives local authorities the power to designate areas 'Alcohol Restricted Areas' where it will become an offence for any person to drink alcohol after being requested not to do so by a Police Officer.
- 18.2 In October 2014 this legislation was revoked, meaning extant DPPOs would remain in effect for three years from that date, but no further DPPOs can be granted.

- 18.3 The provisions have been replaced by Public Space Protection Orders which are not within the scope of the Licensing Service.

19 **Village Greens**

- 19.1 The relevant legislation is the Commons Act 2006 and the Local Authority is the 'Registration Authority' for the purposes of the legislation.
- 19.2 Applications can seek the inclusion in the register of town and village greens of land which is claimed to have qualified for registration by virtue of continuous usage by inhabitants of the locality for lawful sports and pastimes as of right over a period of 20 years. In order for an application to succeed it must satisfy all parts of the statutory test.
- 19.3 Applications are reported to the Licensing and Public Protection Committee. In cases where objections give rise to a serious dispute of fact between the applicant and the objectors, a public inquiry may be held before an independent inspector, who will then put forward a recommendation to the Registration Authority. The final decision will be taken by the Licensing and Public Protection Committee, or a Licensing Sub-committee if so delegated.

20. **Scrap Metal Licences**

- 20.1 The General Licensing Team administers applications made for Scrap Metal Dealers and Collectors under the Scrap Metal Dealers Act 2014. This is an executive function of the City Council, and as such is delegated to officers from the Executive, rather than by the Licensing and Public Protection Committee

21. **Notices**

- 21.1 Where applications carry a requirement to advertise in the local press, it is recommended advertisements are placed in The Birmingham Mail, The Birmingham Post, or, for applications relating to premises in Sutton Coldfield, the Sutton Observer.
- 21.2 Should applicants wish to use an alternative publication they are advised to consult with officers at the Licensing Service.
- 21.3 In circumstances where Birmingham City Council Licensing Service is required to publish notices in the local press such notices will be placed in the Birmingham Mail or the Birmingham Post.

GOOD PRACTICE AND PROCEDURE

The following are points that your Committee should bear in mind when making decisions concerning individual licences and should be read in conjunction with the Members' Code of Conduct and the Member/Officer Protocol. They are based on the large number of legal cases in which the courts, including the European Courts, have considered different aspects of a local authority's licensing functions. However, your Committee should be aware that in certain cases there are additional requirements resulting from specific legislation.

1. Political/Party Group Meetings

Group meetings should be concerned with policy reports, not the discussion of individual licence applications etc. The use of a party political whip is inconsistent with the rules of natural justice and should be avoided by Councillors sitting on the Licensing Committee.

2. Members

Members should be mindful of the requirements concerning the disclosure of interests and when it is necessary for a member to vacate a meeting. In cases of doubt the Director of Legal Services, or his representative, should be consulted. Details are set out in the Council Constitution.

3. Social Media**What are social media?**

Social media is the term to describe websites and online tools which allow people to interact with each other by creating their own content. The content could, for example, be blogs, videos or short messages, known as tweets, via twitter.

On social media sites users share information, discuss opinions and may create interest groups or pages. Ultimately people use these sites and tools to build online communities and networks which encourage participation and engagement.

Types of Social Media:

- Blogging and microblogging – online journals – Twitter is an example of microblogging, where entries are limited to 140 characters

- Online Forums – people with similar interests sharing information and opinions – AccyWeb is an example
- Social networking sites – these facilitate connections between people who already know each other, often in a social context, but are increasingly used by businesses to promote their products or services- Facebook is an example
- Video and photo publishing – sharing videos and photographs worldwide – Flickr is an example

Some general legal issues:

- **Libel** – If you publish an untrue statement about a person which is damaging to their reputation, they may take a libel action against you. The same thing may happen if, for example, someone else publishes something libellous on your website, you know about it and don't take swift action to remove it. A successful libel claim could result in the award of damages against you,
- **Copyright** – Placing images or text on your site from a copyrighted source (for example extracts from publications or photos), without obtaining permission, is likely to breach copyright laws. Therefore don't publish anything you are unsure about, or obtain prior permission. A successful claim for breach of copyright would be likely to lead to an award of damages against you.
- **Data Protection** – Do not publish the personal data of individuals unless you have their express permission.
- **Bias and Predetermination** – if you are involved in making licensing decisions, do not say anything through social media (or indeed anywhere) that suggests you have completely and irrevocably made your mind up on an issue that is due to be formally decided upon. While your likely view on a particular application may be well known, you need to be able to show that you attended the committee or hearing prepared to take on board and weigh all the evidence and arguments, and were genuinely persuadable to a different view. If you weren't, the decision may be later challenged as invalid. If a person has suffered some sort of detriment as a result of such an invalid decision, they may have a claim against the council for damages.
- **Wednesbury Unreasonableness** – members must also always be seen to acting reasonably in relation to the Committee process and consideration of all applications; if detriment arises a Third Party may commence Judicial Review proceedings.

Use of Social Media by Members of Committee

- Although the use of Social Media can be an invaluable tool for a Member of the Council/Committee Member it is important that such usage is properly managed at all times and that particularly a clear distinction is maintained between Private usage and Member usage. It is important that Social Media is not perceived by any Third Party to interfere with the proper decision making process. Members are advised to exercise extreme caution before commenting on social media, or in the conventional press, on any licensing decisions which they are, or are likely to be involved in making. This is to ensure that their comments may not be interpreted to mean that members have already determined a licence application, which could be used against the local authority.
- The same applies to Council Members who are not members of the Licensing & Public Protection Committee, but whose comments or actions on social media could be misinterpreted. If elected Members make any comments when representing residents who are objecting to licence applications they must not link their comments in any way to members of the Committee.
- During Committee hearings it is particularly important that mobile communication devices, including telephones and tablet computers or Social Media are not used, whether for research or communication purposes. The use of any form of Social Media or mobile telephones at Committee may lead to an inference of bias, pre-determination or Wednesbury Unreasonableness.

4. The Applicant

Ordinarily the applicant should be given the opportunity of being heard by your Committee before the application is determined, even if this is not an express requirement of the relevant statute. The applicant should also be allowed to be accompanied by a legal or other representative if they so desire.

5. Third Parties to a Hearing

Any person or body wishing to make representations or objections in respect of an application or notice should be given the opportunity to do so. Subject to any statutory restriction the nature of the representations or objections should be disclosed to the applicant in advance of the meeting so that they may consider their response. The identity of an objector should not be disclosed to the applicant without their consent, unless any statutory provision state otherwise.

6. Disclosure of Information

The applicant should be given prior knowledge of the nature of the Council's concerns, and of those of any objectors.

The extent of the disclosure should also be sufficient to avoid the applicant having to request an adjournment to allow time for proper consideration of the matters they are obliged to address.

7. Evidence

Each member of your Committee should be supplied with copies of every document that has been supplied both by and to the applicant and any third parties to the hearing. If any new documents are produced at the meeting, each party should have the opportunity to inspect them. In certain cases there may be statutory provisions which require another party's consent, if applicable, to new documentation being introduced at the meeting.

8. Adjournments

Any request for an adjournment should not be refused if to do so would effectively deny the applicant a fair hearing.

9. The Hearing

The procedure is intended as a general framework to ensure the rules of natural justice apply and that a fair hearing is presided over by an "independent and impartial tribunal". The conduct of individual hearings may vary slightly according to circumstances and the discretion of the Chairman. In all cases, however, this general framework will be followed:

- a. Members present should identify themselves so that the applicant may be satisfied that there has been no breach of the rule against bias.
- b. A licensing officer will outline the relevant details of the application or matter under consideration.
- c. Usually the applicant will present his or her case first, at the conclusion of which members may ask questions. A similar opportunity will then be afforded to any third party to a hearing making representations or objections to the application.
- d. The applicant should be given the opportunity to ask questions of those third parties.

- e. Once the licensing officer, the applicant and any third party to the hearing have given evidence and answered any questions, the third party shall first be given an opportunity to make brief closing remarks, and then the applicant to make their final closing remarks on the application under question. All parties should leave the room, so that only the Committee, the Committee Manager and the Director of Legal Services' representative remain.

During the hearing members must not discuss the merits of the case. This should be left until the applicant, any objectors and officers involved in the case have left the room.

The only members who may participate in the decision making are those who have seen and heard all the evidence and have been present for the subsequent discussion.

Once the applicant, any third party and officers have left the meeting they may be recalled to provide further information or clarification but all of them must return, not just the person from whom further information is required.

10. The Decision

Once the Committee has reached its decision the parties must be recalled and informed verbally of the decision with the exception of applicants and drivers for a hackney carriage or private hire licence or personal licence who only receive the decision later in writing. If reasons for the decision are to be given, which will usually be the case, this will be done in writing at a later date. Notice of any right of appeal should also be given to the parties.

DELEGATION OF AUTHORITY**Table 1**

Hackney Carriage / Private Hire	Decision to be made by:		
Matter to be dealt with:	Full Committee	Sub-Committee	Officers (Senior Licensing Officer or above)
Setting of Fees and charges	All Cases		
Approval of Hackney Carriage Fares	All Cases		
Agree standard conditions i.e. vehicle / driver/operator etc.	All Cases	Requests for exemption may be considered by sub committee	
When a hackney carriage vehicle licence has expired and more than one calendar month has elapsed		any attempt to re-license the vehicle	
AUTHORITY TO SUSPEND, REVOKE OR REFUSE TO RENEW OR REFUSE TO GRANT ANY LICENCE OR APPLICATION:			
in the case of a licensed vehicle being found to be in contravention of legislation,			Officers delegated this authority are those authorised for the purpose of the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847
if the officer is not satisfied as to the fitness of the vehicle, or			Officers delegated this authority are those authorised for the purpose of the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847
if the officer is not satisfied as to the accuracy of the taximeter, or			Officers delegated this authority are those authorised for the purpose of the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847
if the vehicle does not have adequate insurance cover, or			Officers delegated this authority are those authorised for the purpose of the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847
if the vehicle is unroadworthy or in a dangerous condition.			Officers delegated this authority are those authorised for the purpose of the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847
if an officer is not satisfied as to the fitness of a driver following a medical report from the Occupational Health Service.			Officers delegated this authority are those authorised for the purpose of the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847
Where the applicant has 11 points on their DVLA licence or a conviction or caution for an offence that does not fall within the category of drugs, violence, dishonesty or of a sexual nature.			All Cases
Where an applicant has cautions over two years old, such application will be granted.			All Cases
Where an applicant has a conviction(s) for dishonesty, whatever the sentence, including a prison sentence, then such application will be granted provided at least ten years has lapsed since the last conviction for dishonesty.			All Cases
Where an applicant has an absolute discharge for any offence, with no other offences, such application will be granted.			All Cases
Where an applicant has failed 3 verbal communication tests, or 3 Knowledge tests, or 3 driving tests, then such application will be refused.			All Cases

Table 1 continued

Hackney Carriage / Private Hire	Decision to be made by:		
	Full Committee	Sub-Committee	Officers (Senior Licensing Officer or above)
Where an applicant has previously been refused or his/her licence revoked, whether by Birmingham City Council or another Local Authority, any further application will be refused within a 12 month period starting from the date of the refusal/revocation of the previous licence.		All Cases	
Where a private hire driver is convicted for plying for hire (first offence), then their private hire driver's licence will normally be suspended for a minimum period of 6 months.		All Cases	
Where a private hire driver is convicted for plying for hire and no insurance, then their private hire driver's licence will normally be revoked.		All Cases	
Grant/renewal of a licence where a driver is convicted of a drink/drug related driving offence or has been subject to a driving ban		All Cases	
Renewal of a drivers licence after the late renewal period where the circumstances for the lateness are on medical grounds only. (late renewal fee applies)		Over 12 months	Discretionary up to 12 months from expiry of licence
Where a driver pays any fee by cheque and that cheque is not honoured and following chasing letters to be sent to the driver at his/her last known address, the drivers licence or vehicle licence will be suspended until such time as the requisite fee is received.			All Cases
When confirmation is received to the effect that the holder of the licence has been banned from driving by a Court of Law and is no longer in possession of a valid DVLA driving licence.			All Cases
Approval of the installation of safety screens in private hire vehicles, where MIRA testing and approval, or an equivalent European test certificate can be produced for the proposed screen			All Cases
Approval of certain standard exemptions to the current licence conditions for private hire operators and vehicles, where the applicant can demonstrate that the exemption is justified (limousines, stretched and special event vehicles carrying out private hire work within the city)			All Cases
Grant of licence where the applicant has 6 points on their DVLA licence or a conviction or caution for an offence that does not fall within the category of drugs, violence, dishonesty or of a sexual nature.			Licensing officer and above
Consideration of suitability of evidence as to good character where applicant is from a failed state and cannot comply with requirement to provide a DBS.		All cases	

Table 2

Table reproduced from Statement of Gambling Principles 2013			
Gambling Act 2005	Decision to be made by:		
Matter to be dealt with:	Full Committee	Sub-Committee	Officers (Senior Licensing Officer or above)
Three year licensing policy	FULL COUNCIL		
Policy to permit casino	FULL COUNCIL		
Fee setting (when appropriate)	All Cases		
Application for premises licences		Where representations have been received and not withdrawn	Where no representations received or representations have been withdrawn
Applications for a variation to a licence		Where representations have been received and not withdrawn	Where no representations received or representations have been withdrawn
Application for a transfer of a licence		Where representations have been received from the Gambling Commission	Where no representations received or representations have been withdrawn
Application for a provisional statement		Where representations have been received and not withdrawn	Where no representations received or representations have been withdrawn
Review of a premises licence		All cases	
Application for club gaming/ club machine permits		Where representations have been received and not withdrawn	Where no objections made or objections have been withdrawn
Cancellation of club gaming/ club machine permits		All cases	
Application for other permits		Where an application is received to operate more than 4 gaming machines on an alcohol licensed premises	All other cases
Cancellation of licensed premises gaming machine permits			All cases
Consideration of temporary use notice			All cases
Decision to give a counter notice to a temporary use notice		All cases	
Decision to attach / exclude a premises licence condition		Where any of the relevant parties withhold their agreement to the proposed attachment / exclusion	Where all the relevant parties agree.

Table 3

Table reproduced from Statement of Licensing Policy 2015			
Matter to be dealt with:	Full Committee	Sub-Committee	Officers (Senior Licensing Officer or above)
Statement of Licensing Policy	FULL COUNCIL		
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.	

Table 3 Continued

Table reproduced from Statement of Licensing Policy 2015 - continued			
Matter to be dealt with:	Full Committee	Sub-Committee	Officers (Senior Licensing Officer or above)
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	All cases		
Request for imposition of Late Night Levy	FULL COUNCIL		

Table 4

Table reproduced from Sexual Entertainment Venue Policy 2014			
Matter to be dealt with:	Decision to be made by:		
	Full Committee	Sub-Committee	Officers (Senior Licensing Officer or above)
Application for grant or transfer	All cases		
Application for renewal or variation	If relevant objection made		If no relevant objection made
Minor variation application	If relevant objection made		If no relevant objection made
Revocation of Licence	All cases		
Cancellation of Licence			All cases
Make/amend regulations prescribing standard conditions, terms and restrictions	All cases		
Setting of fees	All cases		
Waiver	All cases		
To make and amend policy relating to the licensing of sex establishments	All cases		
To enforce the provisions of Part II and Schedule 3 of the Local Government Miscellaneous Provisions Ac 1982			All cases

Table 5

Sex Shop/Sex Cinemas			
Matter to be dealt with:	Decision to be made by:		
	Full Committee	Sub-Committee	Officers (Senior Licensing Officer or above)
Application for grant / transfer / variation	All cases		
Renewal	If objections received		If no objections received

Table 6

Miscellaneous			
Matter to be dealt with:	Decision to be made by:		
	Full Committee	Sub-Committee	Officers (Senior Licensing Officer or above)
Massage & Special Treatment Licence	If objection received		If no objection received
Skin piercing Registration			All Cases
face-to-face street collection applications	All cases where collectors are paid, or where fundraisers are paid directly or indirectly from proceeds of collection		All other cases
House to House collections applications	Cases referred by Licensing Officers for determination		All cases (unless application raises concerns i.e. allocation of proceeds)
Village Green Consideration of application	All cases		
Village Green – instruction of independent inspector	All cases		
Village Green – determination of application	All Cases		