

Report of the Chief Executive

CONSULTATION ON STATUTORY GUIDANCE TO LICENSING AUTHORITIES TAXI AND PRIVATE HIRE VEHICLE LICENSING: PROTECTING USERS1. Purpose of report

To advise members of a consultation by the Department for Transport (DfT) seeking views on proposed recommendations contained in draft statutory guidance to taxi and private hire vehicle (PHV) licensing authorities on how their licensing powers can be exercised in order to safeguard children and vulnerable adults and to propose a response from Broxtowe Borough.

2. Background

The Secretary of State may issue guidance to public authorities as to how their licensing functions under taxi and private hire vehicle legislation may be exercised so as to protect children, and vulnerable individuals who are 18 or over, from harm. Section 177 of the Policing and Crime Act 2017 requires the Secretary of State to consult widely on the guidance before publication.

The consultation runs for 10 weeks from 12 February 2019 until 22 April 2019.

3. Detail

The DfT issued Best Practice Guidance (BPG) to assist those licensing authorities in England and Wales that have responsibility for the regulation of the taxi and private hire vehicle (PHV) trades in 2006. The Guidance was previously revised and updated in 2010. The statutory guidance forms a part of the BPG and will replace relevant sections of the 2010 version.

A consultation on revising the BPG will be undertaken once the final statutory guidance has been issued.

A draft response to the consultation is attached in the appendix.

3. Financial implications

There are no current financial implications currently.

Recommendation

The committee is asked to NOTE the consultation and RESOLVE to submit a response.

Background papers

Nil

Taxi and private hire vehicle licensing: protecting users

1. Introduction

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

The easiest way to respond to this consultation is online:

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

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

Confidentiality and data protection

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

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

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

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

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

Find out more about the Department for Transport's data protection and privacy policy.

2. Personal details

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

Your name

Your email

3. About you

2. Are you responding: *

as an individual?

as a taxi driver?

as a PHV driver?

as a taxi intermediary?

as a PHV operator?

a licensing authority

the police

other (specify)?

4. Administration of the licensing framework

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

Yes

No

No opinion

Comment below if you want to explain your answer.

It is vitally important that all those involved in the determination of licensing matters should receive comprehensive training and this should be formally recorded. Members should not participate in such matters unless trained accordingly,

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

Yes

No

No opinion

Comment below if you want to explain your answer.

There must be a Council structure in place to deal with licensing matters. It is recommended that Councils operate with a Committee or Board that is convened at periodic intervals to determine licensing matter. This should be set out in the council's scheme of delegation and be explicit in terms of who deals with which matters, the options and restrictions. All taxi and phv decisions are appealable to the Courts so it is important that the delegation is properly validated and adopted.

It is a matter for the authority to decide if the decision is officer led or committee led but all decisions must be properly reasoned and recorded. Should there be a departure from the Council's policy, this should be referenced and reasons given for such a departure.

5. Implementing changes to the licensing policy and requirements

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

Yes

No

No opinion

Comment below if you want to explain your answer.

A pragmatic and considered approach, as outlined in the guidance, should be taken. Reasonable time should be given to allow compliance to be managed and the changes and timescales should be properly communicated.

6. The Disclosure and Barring Service

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

Yes

No

No opinion

Comment below if you want to explain your answer.

All drivers should be subject to the most rigorous DBS checks available. Drivers will potentially be in contact with vulnerable persons at some stage in their working role. This should be a legislative requirement.

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

Yes

No

No opinion

Comment below if you want to explain your answer.

Subscription to the update service will reduce the administrative burden and mitigate potential delays for applicants and licensing authorities. However it is vitally important that the non-conviction information provided by the police is robustly managed. Police Disclosure Units should ensure that relevant information is provided directly to licensing authorities where a need arises rather than a potential 9 month delay in updates.

Common Law Police Disclosure needs to be properly considered in the light of the Quality Assurance Framework to ensure public safety is not compromised.

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

Yes

No

No opinion

Comment below if you want to explain your answer.

Currently checks are undertaken every 12 months irrespective of the length of the issued licence. (1-3 years). Compulsory subscription to the update service will make a six monthly check less burdensome to licensing authorities and enhance public safety.

7. Licensee self-reporting

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

Yes

No

No opinion

Comment below if you want to explain your answer.

We would agree with this but would suggest that ANY criminal conviction or motoring offence be notified to the authority. There is a wide range of potentially relevant offences not covered by the proposal. As drivers and operators may be loath to notify, clear policies, procedures and penalties should be outlined in policy.

8. Referrals to DBS and the police

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

Yes

No
No opinion

Comment below if you want to explain your answer.

It is entirely appropriate for licensing authorities to make a referral to the DBS. The DBS should then investigate the referral and take the appropriate action. It is important to ensure that the referral process is accessible and uncomplicated to complete. There should be no barrier to enabling licensing authorities in exercising their public protection duties.

9. Overseas convictions

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

Yes
No
No opinion

Comment below if you want to explain your answer.

It is important that licensing authorities have a proper history to base their decisions upon. Regrettably some applicants will not be able to provide such documentation due to their immigration status. The licensing authority will need to determine the application with this in mind.

10. Other information

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

Yes
No
No opinion

Comment below if you want to explain your answer.

It is not unknown for applicants who have been licensed in neighbouring or nearby authorities to make applications prior to any decision made by the current licensing authority. The requirement should include any on-going issues which may result in revocation or suspension. The LGA recommendation that neighbouring authorities should be in communication is a point well made.

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

Yes

No

No opinion

Comment below if you want to explain your answer.

Licensing authorities should use all the tools at their disposal to ensure that the decision making process is as robust as possible.

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

Yes

No

No opinion

Comment below if you want to explain your answer.

All relevant information should be considered as part of the decision making process. Licensing authorities must exercise their public protection duty in as robust a manner as possible.

11. Multi-agency safeguarding hub (MASH)

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

Yes

No

No opinion

Comment below if you want to explain your answer.

MASHs should remain the remit of safeguarding authorities to ensure that all information is properly collated and dealt with. Licensing authorities should actively engage with the MASH to ensure that relevant information is properly shared and utilised.

12. Complaints against drivers and operators

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

Yes

No
No opinion

Comment below if you want to explain your answer.

No comment

13. Safeguarding awareness

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

Yes
No
No opinion

Comment below if you want to explain your answer.

Training should also include disability and equality issues. Refresher training should also be mandated. Every three years would seem appropriate in line with the issue of licenses. The training should also be mandated for operators and those involved in provision of vehicles. i.e. Radio Circuits

14. Language proficiency

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

Yes
No
No opinion

Comment below if you want to explain your answer.

It is important for the passenger to be able to communicate with the driver particularly in case of any emergency.

15. Enforcement

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

Yes
No
No opinion

Comment below if you want to explain your answer.

Such an agreement allows enforcement against out of town vehicles and reduces the opportunities for unregulated or un-roadworthy vehicles to operate thus safeguarding public safety.

16. Criminal record checks for PHV operators

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

Yes

No

No opinion

Comment below if you want to explain your answer.

This is a measure recommended by the Institute of Licensing, National Association of Licensing and Enforcement Officers, Local Government Association guidance.

17. PHV operators - ancillary staff

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

Yes

No

No opinion

Comment below if you want to explain your answer.

As such staff are in possession of personal knowledge and with basic certificates relatively easy to obtain, there is no reason why they should not be subject to a basic disclosure.

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

Yes

No

No opinion

Comment below if you want to explain your answer.

See Q 21

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

Yes

No

No opinion

Comment below if you want to explain your answer.

If PHV operators are employing ex-offenders, they should be able to demonstrate that they have a policy in place to mitigate any potential risks. In particular consideration should be given to any offences disclosed on a basic DBS to ensure that the safety of the public or safeguarding of vulnerable children or adults is not compromised. The policy should clearly outline the steps to be taken.

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

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

Yes

No

No opinion

Comment below if you want to explain your answer.

It is particularly important in respect of schools contracts to ensure that drivers are properly investigated and licensed. The situation described is a loophole in this respect and should be closed.

19. PHV operators – record keeping requirements

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

Yes

No

No opinion

Comment below if you want to explain your answer.

Full details of the booking to include the name of the passenger, the time of the booking, the pick-up point, destination and both driver and vehicle details should be done for all bookings, including for the sake of clarity, those undertaken by hackney carriage vehicles working as PHV's.

It may also be useful to record any fare quoted and agreed.

20. In-vehicle visual and audio recording - CCTV

26. The draft statutory guidance recommends that licensing authorities should carefully consider potential public safety benefits and potential privacy issues when considering

mandating that taxis and PHVs have CCTV installed (paragraphs 2.104 to 2.109). Do you agree with this recommendation?

Yes

No

No opinion

Comment below if you want to explain your answer.

This is a matter for licensing authorities to decide upon following careful consideration and in the light of their own experiences. If adopted, care must be taken to comply with the requirements of the Information Commissioners Office. This will inevitably cause a greater workload for licensing authorities as they will potentially become the data controller if they mandate a blanket policy for adoption of CCTV.

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

Yes

No

No opinion

Comment below if you want to explain your answer.

See 26 above

21. Stretched limousines

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

Yes

No

No opinion

Comment below if you want to explain your answer.

Stretch Limousines must only be licensed if safe and suitable for use with the correct approvals. It may be difficult to enforce seating numbers other than by a condition and each proprietor should be made aware of the serious implications of non-compliance.

22. Previous convictions guidance

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

Yes

No

No opinion

Comment below if you want to explain your answer.

This should echo the content of the recent guidance issued by IoL, NALEO and LGA. A measure of consistency by licensing authorities in consideration of criminal convictions would be a major step forward.

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

Yes

No

No opinion

Comment below if you want to explain your answer.

The list gives enough detail to provide a basis for consideration. It will be for the licensing authority to deal with each case on its own merit and following a properly conducted investigation and hearing, decide accordingly, ensuring that all considerations and reasons are properly recorded as part of the decision making process. It should be made clear that the hearing may or may not be public depending upon the content of the evidence to be heard.

As with the Licensing Act 2003, it may be appropriate to draw up hearing guidelines if there is to be no legislation.

It should also be clear that these apply to operators as well as drivers.

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

Yes

No

No opinion

23. Other offences

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

There are a number of offences which may be committed under taxi and PHV legislation. Timescales should be commensurate with the seriousness and frequency of the offences. These would be as currently contained in the Council's convictions policy as agreed on 13th June 2017

24. Impact assessment

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

No

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

N/A

Ways to respond

Email this completed document to:

SG-Consultation2018@dft.gov.uk

Or post it to:

Department for Transport
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