

LICENSING COMMITTEE AGENDA



Tuesday 17 July 2012

at 2.00 pm

in Committee Room B, Civic Centre, Hartlepool

MEMBERS: LICENSING COMMITTEE:

Councillors Ainslie, Brash, Dawkins, Fleet, Gibbon, Griffin, Hall, Jackson, A Lilley, Loynes, Morris, Robinson, Shields, Sirs and Tempest

1. **APOLOGIES FOR ABSENCE**
2. **TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS**
3. **MINUTES**
 - 3.1 To confirm the minutes of the meeting held on 18 January 2012
4. **ITEMS REQUIRING DECISION**
 - 4.1 Licensing Committee Sub Committee Memberships – *Assistant Chief Executive*
 - 4.2 Review of Sub-Committees Hearings for Year 2011/12 – *Assistant Director, Regeneration and Planning*
 - 4.3 Recent and Forthcoming Amendments to the Licensing Act 2003 – *Assistant Director, Regeneration and Planning*
 - 4.4 Criminal Records Bureau Taxi Driver Checks – *Assistant Director, Regeneration and Planning*
 - 4.5 Reforming the Law on Taxi and Private Hire Services – *Assistant Director, Regeneration and Planning*
 - 4.6 Gambling Act Statement of Licensing Principles – *Assistant Director, Regeneration and Planning*
5. **ANY OTHER ITEMS WHICH THE CHAIRMAN CONSIDERS ARE URGENT**

LICENSING COMMITTEE

MINUTES AND DECISION RECORD

18 January 2012

The meeting commenced at 2.00 pm in the Civic Centre, Hartlepool

Present:

Councillor: George Morris (In the Chair)

Councillors: Allan Barclay, Jonathan Brash, Mary Fleet, Sheila Griffin, Gerard Hall, Trisha Lawton, Linda Shields, Lilian Sutheran, Sylvia Tempest and Ray Wells.

Officers: Sylvia Pinkney, Public Protection Manager
Ian Harrison, Principal Trading Standards and Licensing Officer
Tony Macnab, Solicitor
Angela Armstrong, Principal Democratic Services Officer

12. Apologies for Absence

Apologies for absence were received from Councillor Peter Jackson.

13. Declarations of interest by Members

None.

14. Confirmation of the minutes of the meeting held on 12 October 2011

Confirmed.

15. Hackney Carriage and Private Hire Drivers (*Assistant Director, Regeneration and Planning*)

Members were updated on the ongoing impact of the implementation of the requirements for new private hire/hackney carriage drivers to pass the Driving Standards Agency Taxi Test. Members were informed that a consultation exercise had been undertaken with the taxi trade and that 54 responses had been received from 650 drivers, owners and operators that had been contacted. A summary of the responses received was included within the report.

Members unanimously agreed that the safety of the public was their first

priority and that if the test resulted in fewer drivers applying as they did not feel they would reach the standard required, the standard of drivers should increase. Members attention was drawn to the Council's own 'Knowledge Test' and the fact that the pass rate for the locations element of the test was 80% for Hackney Carriage drivers and 65% for Private Hire Drivers. This was due to the fact that Private Hire Drivers have to be booked in advance which therefore provided them with the opportunity to check the location and route of the journey, as opposed to Hackney Carriage Drivers who could be flagged down anywhere to be asked to drive to anywhere and therefore needed a higher knowledge of the area.

A number of representatives from the taxi trade were in attendance at the meeting and the Chair allowed them to address the Committee and answer questions. A representative from the taxi trade commented that it had been known that if an applicant failed the test at the higher level to become a Hackney Carriage driver they then applied to become a Private Hire Driver. This had caused some difficulties in recruiting Hackney Carriage drivers. A representative from the taxi trade suggested that the DSA test should be a requirement upon the first renewal of a licence, enabling the drivers to have some experience of the job before being required to pass the test.

A Member commented that to make the Council's knowledge test fair, both pass rates should be the same and suggested that both pass rates be set at the higher rate of 80%. A representative from the taxi trade commented that increasing the pass rate would make it more difficult and reduce the number of applicants. It was argued that this would question the sustainability of the taxi businesses as new drivers were needed to buy new cars and create additional business. In addition to this, a comment was made that the knowledge test did not test the driver's ability to be a more conscientious driver.

Members were informed that the test was carried out by the Driving Standards Agency at a cost of £79 per test. It was noted that other local authorities had employed local driving instructors to carry out the tests at a lower cost. The Principal Trading Standards and Licensing Officer indicated that he was already working with other Tees Valley authorities with a view to harmonising standards across the Tees Valley area and would report back to a future meeting of the Committee. In addition to this, he indicated that he would speak to the instructors who provide the Driver Improvement Scheme to check if that might be an alternative to the Driving Standards Agency.

Decision

- (i) That the pass rate for the tests undertaken by both Hackney Carriage and Private Hire Drivers be equalised to 80%.
- (ii) That the Principal Trading Standards and Licensing Officer seek the views of other Tees Valley Authorities on how they operate the licensing of Hackney Carriage and Private Hire Drivers with a view to

harmonising standards across the Tees Valley and report back to a future meeting of the Committee.

- (iii) That the Principal Trading Standards and Licensing Officer contact the instructors from the Driver Improvement Scheme to ascertain if it would be possible to operate a similar, but cheaper, alternative to the DSA test.

16. Any Other Items which the Chairman Considers are Urgent – Parking Enforcement in Bus Stops of Hackney Carriage Vehicles adapted for Disabled Passengers

It had been brought to the attention of the Principal Trading Standards and Licensing Officer that Hackney Carriage vehicles with disabled access, which were authorised to stop in bus stops for loading and unloading disabled passengers, had been caught by the Parking Enforcement Camera Car with no disabled passengers whilst parked in a bus stop. Whilst drivers were encouraged to give every possible assistance to passengers, this was a difficult issue to monitor and enforce as the driver could be waiting for a disabled passenger or may have even gone into the premises to assist that passenger.

A number of potential solutions were discussed and whilst Hackney Carriage drivers retained a log of some of their journeys they were not all documented which resulted in proving the reason for parking in bus stops not always possible. However, this was considered an option worth pursuing with taxi operators.

It was suggested that the public and other taxi drivers should be encouraged to report incidents of this nature immediately to the parking enforcement team.

Decision

Members' comments and views were noted.

17. Street Trading *(Assistant Director, Regeneration and Planning)*

Members were updated with potentially significant changes to national legislation that would impact upon the Council's ability to control and licence street trading.

In relation to the licensing of street traders in Hartlepool, it was likely that a number of allowances or requirements currently placed upon applicants or licence holders may be considered in breach of the principles of the Services Directive and would therefore require change. Included within the report were a couple of examples of possible changes to how Hartlepool currently issues licences.

The changes to the legislation would require Local Authorities to amend their licensing processes and as it would become more difficult to refuse licences/consents in future. Members may wish to consider further what the Council's general approach to street trading should be.

During the discussions that followed Members indicated that one option would be to prohibit the licensing of street traders in areas of established shops and businesses and this could be undertaken through the establishing of zoned areas. However, Members were aware of the difficulties faced in view of fair and unfair competition and the issue of anti-competitiveness.

Decision

Members' views and comments were noted.

18. Any Other Items which the Chairman Considers are Urgent – Licensing Act-Sub Committees – Meeting Procedure

The Principal Trading Standards and Licensing Officer referred to the meeting procedure which was used during Licensing Act Sub-Committees. It was highlighted that there may be occasions when officers may be in a position to provide Members with information that they were aware of that was not included within the report that may inform Members' questioning of the applicants and objectors. In view of this, clarification was sought on whether the order of proceedings should be amended to reflect this.

It was noted that included within the current procedure was the option to ensure that all parties had been able to say everything they wished to. It was noted that should any officers have any additional information or clarification they wished Members to be aware of, it could be raised at this point through the Chair of the meeting.

Decision

That should Officers have any points of information or clarification they wished to raise that this should be done through the Chair of the meeting at the point that all parties were asked if they had anything else to add.

The meeting concluded at 3.19 pm

CHAIR

LICENSING COMMITTEE

17 July 2012



Report of: Assistant Chief Executive

Subject: LICENSING COMMITTEE - SUB COMMITTEE
MEMBERSHIPS

1. PURPOSE OF REPORT

- 1.1 To re-appoint and fill vacancies in the Licensing Act Sub Committees and Hackney Carriage and Private Hire Sub Committees.

2. BACKGROUND

- 2.1 Following the recent Annual Council and changes to the membership of the Licensing Committee the memberships of the sub committee need to be reappointed. There are six newly appointed members to the Licensing Committee, Councillors Ainslie, Dawkins, Gibbon, Loynes, Robinson and Sirs.
- 2.2 There are five Licensing Act Sub Committees each consisting of three members and three Hackney Carriage and Private Hire Sub Committees each of five members.
- 2.3 Following a discussion with the Chair, the following proposed sub committee memberships are set out for Members consideration / discussion.

Licensing Act Sub Committees: -

- 1 – Councillors Morris (Ch.), Gibbon and Tempest
- 2 – Councillors Brash (Ch.), Loynes and Robinson
- 3 – Councillors Hall (Ch.), Sirs and Shields
- 4 – Councillors Griffin (Ch.), Dawkins and Jackson
- 5 – Councillors Fleet (Ch.), A Lilley and Ainslie

Hackney Carriage and Private Hire Licensing Sub Committees: -

- 1 – Councillors Morris (Ch.), Gibbon, Tempest, Jackson and Ainslie
- 2 – Councillors Brash (Ch.), A Lilley, Robinson, Loynes and Fleet
- 3 – Councillors Sirs (Ch.), Hall, Shields, Griffin and Dawkins

While it is accepted that political balance is difficult to maintain on sub committees of three, there should at least be two parties represented on

each sub committee. The proposals set out do not strictly meet that requirement.

3. LEGAL CONSIDERATIONS

- 3.1 The Local Government and Housing Act, 1989, requires 'as far as practicable' that a local authority allocates seats on Committees and Sub Committees in the same proportion to reflect the number of Members in each political group to the overall membership of the authority. It is therefore open to the Licensing Committee to agree the composition (in this case) of its Sub Committees which departs from the above principle, where it is appropriate and practicable to do so. This would apply where the nominations received required the various Sub Committees to have a 'disproportionate' number of Members from the same political group, in order to allow its business to be transacted. Further, as new members to the Licensing Committee, Councillors Ainslie, Dawkins, Gibbon, Loynes, Robinson and Sirs are required to undergo appropriate training before they can be involved in the Licensing Act Sub Committees and such training has now taken place.

4. RECOMMENDATION

The Committee is requested to consider the Sub Committee memberships set out above.

5. REASONS FOR RECOMMENDATIONS

Without the vacancies being filled the Licensing Sub Committees cannot operate properly as three members need to be present for a Licensing Act hearing to proceed. The situation is similar for Hackney Carriage Sub Committees where a quorum of three is required.

6. BACKGROUND PAPERS

Licensing Act Committee Minutes 7 January 2005
Licensing Act Committee Minutes 27 July 2005
Licensing Committee Minutes 15 March 2006
Licensing Committee Minutes 2 July 2008
Licensing Committee Minutes 29 July 2009

7. CONTACT OFFICER

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LICENSING COMMITTEE

17th July 2012



Report of: Assistant Director (Regeneration & Planning)

Subject: REVIEW OF SUB-COMMITTEE HEARINGS FOR
YEAR 2011/12

1. PURPOSE OF REPORT

- 1.1 To provide the Licensing Committee with a review of the work undertaken by the Licensing Act and Taxi Sub-Committees for the year 2011/12.

2. BACKGROUND

- 2.1 Licensing Sub-Committee meetings are convened to consider matters relating to individual licences.
- 2.2 During 2011/12 there were 16 Sub-Committee hearings where a total of 28 licences were considered. **Appendices I and II** provide some detail in relation to these hearings.

3. ISSUES

- 3.1 Members will note from the Appendices that in 2011/12 only one Sub-Committee decision was appealed to the Magistrates Court. This related to a decision to suspend a premises licence following an application for review by Cleveland Police.
- 3.2 The Sub-Committee's decision to suspend the licence for 28 days was reduced to 14 days by the Magistrates following a period of negotiation between the licence holder, the Police and the Council solicitor.

4. RECOMMENDATIONS

- 4.1 That Members note the contents of this report.

6. APPENDICES AVAILABLE ON REQUEST, IN THE MEMBERS LIBRARY AND ON-LINE

- 6.1 **Appendix 1** - Licensing Act Sub-Committees
Appendix 2 - Hackney Carriage & Private Hire Sub-Committee

6. BACKGROUND PAPERS

- 6.1 The following background papers were used in the preparation of this report: -

- i. Agenda & Minutes – Licensing Act Sub-Committee 8th April 2011
- ii. Agenda & Minutes – Licensing Act Sub-Committee 18th April 2011
- iii. Agenda & Minutes – Licensing Act Sub-Committee 21st April 2011
- iv. Agenda & Minutes – Licensing Act Sub-Committee 14th September 2011
- v. Agenda & Minutes – Licensing Act Sub-Committee 16th September 2011
- vi. Agenda & Minutes – Licensing Act Sub-Committee 21st October 2011
- vii. Agenda & Minutes – Licensing Act Sub-Committee 7th December 2011
- viii. Agenda & Minutes – Licensing Act Sub-Committee 19th December 2011
- ix. Agenda & Minutes – Licensing Act Sub-Committee 21st December 2011
- x. Agenda & Minutes – Licensing Act Sub-Committee 6th January 2012

7 CONTACT OFFICER

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APPENDIX I

Licensing Act Sub-Committees

Hearings 2011/12

| Date | Premises | Reason | Objector | Decision | Appealed? |
|----------|---------------------------------|-----------------|----------------------------|------------------------------------|------------------------------------|
| 8/4/11 | 234 Owton Manor Lane | New application | Local residents | Granted | No |
| 18/4/11 | Rockies, 75 Church Street | Review | Cleveland Police | No Action Taken* | No |
| 21/4/11 | Yates, Victoria Road | Review | Cleveland Police | No Action Taken* | No |
| 14/9/11 | The Greensides, Stockton Road | Review | Cleveland Police | No Action Taken* | No |
| 16/9/11 | GLE Bar, Church Street | Variation | Cleveland Police | Granted in part | No |
| 21/10/11 | 3 Brus Corner | New application | Local residents & petition | Granted | No |
| 7/12/11 | Kullar News, 122 West View Road | Review | Cleveland Police | 28 Day Suspension | Yes. Suspension reduced to 14 days |
| 19/12/11 | 1-3 Victoria Road | New application | Cleveland Police | Granted | |
| 21/12/11 | Marios, Church Street | Review | Cleveland Police | Hours reduced and conditions added | No |
| 6/1/12 | The Loft | Review | Cleveland Police | Conditions added | No |

* No action was taken by sub-committee as all parties had reached a voluntary agreement

APPENDIX II

Hackney Carriage & Private Hire Sub-Committee

| Date | Reason | Decision | Appealed? |
|----------|---------------------------------------|--|-----------|
| 18/4/11 | Existing Driver – Police Caution | No Action | No |
| 18/4/11 | New Applicant | Refused | No |
| 18/5/11 | New Applicant | Granted | No |
| 18/5/11 | Existing Driver – new driving offence | Referred onto Driver Improvement Scheme | No |
| 18/5/11 | New Applicant | Granted | No |
| 18/5/11 | New Applicant | Granted | No |
| 29/11/11 | Existing – Serious complaint | Revoked | No |
| 15/12/11 | New Applicant | Granted | No |
| 15/12/11 | New Applicant | Granted | No |
| 15/12/11 | New Applicant | Granted | No |
| 15/12/11 | Existing – Police Caution | Warning Issued | No |
| 27/1/12 | Existing – Fixed Penalty Notice | Warning Issued | No |
| 27/1/12 | New Applicant | Granted | No |
| 27/1/12 | Existing – Serious complaint | Suspended | No |
| 29/2/12 | New Applicant | Granted | No |
| 29/2/12 | Existing – 9 penalty points or more | Requirement to pass Driving Standards Agency Taxi Test | No |
| 29/2/12 | Existing – 9 penalty points or more | Requirement to pass Driving Standards Agency Taxi Test | No |
| 29/2/12 | Existing – 9 penalty points or more | No Action | No |

Hearings 2011/12

LICENSING COMMITTEE

17th July 2012



Report of: Assistant Director, Regeneration & Planning

Subject: RECENT & FORTHCOMING AMENDMENTS TO THE
LICENSING ACT 2003

1. PURPOSE OF REPORT

- 1.1 To update Members about recent and forthcoming amendments to the Licensing Act 2003 and other legislation relating to the provision of licensable activities.

2. BACKGROUND

- 2.1 When the Licensing Act was implemented in 2004 its primary purpose was to tackle problems associated with the misuse of alcohol. At that time it was the belief of the Government that late night alcohol related crime and disorder was being caused by the requirement for all licensed premises to close at the same time – producing a surge of drunken people onto the streets – fighting to order pizzas and flag down taxis to get home.
- 2.2 The Licensing Act removed ‘prescribed’ licensing hours and effectively permitted ‘24 hour drinking’ if licensees requested it.
- 2.3 Statutory guidance that accompanied the Act made it very clear that licensing authorities should sign up to the presumption that longer hours would mean less trouble and that there should be an assumption that any licence should be granted unless there were exceptional reasons for it to be refused. Any refusal of a licence application could be appealed to the Magistrates who were also bound to take into consideration the Government’s guidance.
- 2.4 This resulted in there being over 20 licences granted (excluding takeaways) that authorised trading until at least 0400 hours (this has subsequently been reduced to 13 – partly due to proactive action by the Council and the Police and partly due to the current economic climate).
- 2.5 Since the implementation of the Act alcohol related crime and disorder has continued at a significant level and, as such, the previous Government began to soften its stance – recognising through its statutory guidance that longer hours

were not, necessarily, an answer to all problems and allowing licensing authorities more discretion in their approach to the management of licensed premises in their area.

- 2.6 This change in Government guidance was embraced by the Licensing Committee which recommended amendments to the Licensing Policy to full Council in 2011. These were subsequently adopted and the Licensing Policy now states that new licences will not be issued to permit trading after 0200 hours (this does not however affect licences already in existence).
- 2.7 The Government has now taken this further, through the Police Reform and Social Responsibility Act, and a number of significant amendments to the Licensing Act have been introduced, or are planned for the forthcoming year.

3. ISSUES

- 3.1 On 25th April 2012 the following changes were made: -
- 3.2 Persistent Sales of Alcohol to Children - The maximum penalty for the persistent sale of alcohol to children (two sales over a three month period) has been increased from £10,000 to £20,000. Experiences in Hartlepool would suggest these changes are academic as prosecutions for single sales to children have resulted in penalties ranging from conditional discharges to fines of £200-£300.
- 3.3 As an alternative to facing prosecution for such an offence a licence holder may choose to agree to a closure of the licensed premises for up to 14 days (increased from 2 days).
- 3.4 Responsible Authorities - Both licensing authorities and Primary Care Trusts (PCT) were designated as 'Responsible Authorities' and are now able to make representations regarding licence applications.
- 3.5 Public Health is still not a licensing objective and therefore any representations from the PCT must relate to one or more of the current objectives such as prevention of crime and disorder or the protection of children from harm.
- 3.6 The Government has indicated that it will consider, over the next year, whether public health should become a licensing objective. This could have a significant impact as it would allow a PCT to object to licences on the basis that alcohol is detrimental to public health – essentially moving the argument away from the suitability of a licensee and onto the suitability of the products they sell.
- 3.7 As the licensing authority itself has now been designated as a 'Responsible Authority' it is entitled to make representations about a licence application or to apply for an existing licence to be reviewed.
- 3.8 This raises certain procedural questions as the licensing authority, through its Members and officers, would effectively be the complainant, judge and jury.

- 3.9 To comply with Government guidance and ensure that all parties can continue to have confidence in the impartiality of Sub-Committee decisions, procedural and administrative changes will be implemented so that where an officer submits a representation in their capacity as a delegated representative of the licensing authority, the Sub-Committee report would be prepared and presented by another, different, officer on behalf of the Assistant Director, Regeneration & Planning.
- 3.10 This may help to alleviate any allegation or perception of bias in the way that the report had been written and/or presented.
- 3.11 Sub-Committee Decisions - Licensing authority decisions need now only be 'appropriate' rather than 'necessary'. This small change to the language used in the Act is thought to give licensing authorities greater freedom in making their decisions and defending subsequent appeals.
- 3.12 Non Payment of Annual Licence Fees - Licences can now be suspended if the annual fee has not been paid. Previously, any unpaid fee was classed as a civil debt and the licence could continue to be used. At the time of writing this report there is currently around £2000 of unpaid fees still outstanding. Letters have been sent to all relevant licence holders and licences could be suspended as early as June – a further update will be given to Members at the meeting.
- 3.13 Removal of 'Vicinity' Test - Objections to licence applications can now be made by anyone – regardless of where they live or are based. The previous requirement had been that only those who lived, or operated a business, within the 'vicinity' of the licensed premises could make representations.
- 3.14 This may be of interest to Members as representations can now be made by councillors, either as individuals or on behalf of their constituents, in relation to any premises in the town. This could, for example, allow a councillor from the Manor House Ward to submit a representation about an application submitted in respect of premises situated within the Burn Valley Ward.
- 3.15 Temporary Event Notices - The rules relating to occasional events have changed. Event organisers must now inform Environmental Health of their event (previously it was just the Police) and objections can be made relating to any of the licensing objectives (previously crime and disorder only). Organisers can now apply for more events each year and the events can last longer (increasing from a maximum of 4 days to 7 days per event). The general public have no legal right to object to such events.
- 3.16 The Licensing Policy - The frequency for publication of a Licensing Policy Statement by licensing authorities has increased from 3 to 5 years. Hartlepool Borough Council's most recent Licensing Policy was published in January 2011.

3.17 Forthcoming Changes

- 3.18 In addition to the above and as previously discussed by the Licensing Committee, further potentially significant amendments to the Licensing Act are likely to become law in October 2012 or April 2013. These are: -

3.19 Early Morning Restriction Orders (EMRO's)

- 3.20 Once a licence to sell alcohol has been granted it remains in force until it is either surrendered by the licence holder or revoked by the licensing authority. The hours of trade permitted by the licence can only be amended by either a voluntary variation or by order of a licensing sub-committee following a review of the licence.
- 3.21 Hartlepool currently has 13 premises that are licensed to supply alcohol until 4:00 a.m. and, unless there are specific problems associated with a particular premises, the licensing authority has no power to reduce its operating hours. Any attempt to do so by means of a licence review can be appealed to a Magistrates Court.
- 3.22 This essentially means that licensing authorities are limited in their ability to manage their Night Time Economies where problems such as crime and disorder cannot be linked to a specific premises but are more the result of there being a concentration of premises in a problem area.
- 3.23 Once adopted by a licensing authority an EMRO would allow that authority to restrict the sale of alcohol from all premises in a defined area within any time between midnight and 6:00 a.m. This could, for example, allow Hartlepool to prohibit the sale of alcohol between 2:00 a.m. and 6:00 a.m. in the town centre area.
- 3.24 The exact process to be followed for the adoption of an EMRO has not yet been finalised but it is likely that it would require the licensing authority to consult with its residents and businesses and to be able to demonstrate that an EMRO would be 'appropriate' for the promotion of the licensing objectives. If representations are received the Council would be required to hold a hearing and any final decision to adopt an EMRO would require approval by full Council.

3.25 The Late Night Levy

- 3.26 If adopted, the Late Night Levy would allow licensing authorities to raise a contribution from late night opening alcohol retailers towards the policing costs generated by the late night economy. The levy will apply to all premises (on and off-trade) throughout the licensing authority's area, which are authorised to sell or supply alcohol in the time period set by the licensing authority which can be any time between midnight and 6:00 a.m.
- 3.27 The Government has proposed that a maximum of 30% of any Late Night Levy generated would be retained by the local authority (after the deduction of administrative costs) and the remaining 70% would be allocated to the Police.

- 3.28 The exact amount of the levy has not yet been determined but the Government has indicated that it is likely to be between £299 and £1493 per year, based on the rateable value of the premises. Hartlepool currently has approximately 30 premises that operate after midnight but, due to the low rateable value of premises in the town, the average levy per premises would be around £500. This would generate a total annual income of approximately £15000 which would, before the deduction of administrative costs, equate to £4500 for the Council and £10500 for the Police.
- 3.29 However, these figures could be misleading as some retailers who currently trade after midnight may choose to amend their opening hours in order to be excluded from the levy. The Government is also proposing a number of discounts that would reduce the amount of levy payable where the trader was operating a range of best practice initiatives – these discounts could amount to as much as 30% of the initial levy due.
- 3.30 The process for the adoption of a Late Night Levy scheme is similar to that of EMRO's but the Police and Crime Commissioner (PCC) must be specifically included in consultation.
- 3.31 There is no requirement for a licensing authority to adopt either or both of the above measures and, taking into account the current economic climate, it may be inappropriate to consider the immediate adoption of both EMRO's and the Late Night Levy.
- 3.32 Regular discussions with on-licensees would suggest that a move back to a terminal hour of 0200 for all alcohol licensed premises, through the adoption of an EMRO, would be generally welcomed. The introduction of a levy would have serious financial consequences for many businesses, some of which currently operate for only 6-8 hours a week.
- 3.33 Other Changes
- 3.34 Live Music Act 2012 – Introduced initially as a Private Members Bill the Live Music Act will take effect from October 2012 and will allow live music to be played in alcohol licensed premises without the requirement for any form of licence or authorisation. Amplified music is restricted to audiences of 200 but there is no audience limit for unamplified music.
- 3.35 Removal of the requirement for live music to be licensed removes the obligation for licensees to operate within their licence conditions and, as these are often aimed at reducing the potential for noise nuisance, there is a genuine concern that the Live Music Act will lead to a significant increase in noise complaints to Environmental Health officers and the subsequent resource issues that this will create. This will be closely monitored.

4. RECOMMENDATIONS

- 4.1 That Members note the contents of this report.

5. BACKGROUND PAPERS

- 5.1 The following background papers were used in the preparation of this report: -
- i. Agenda & Minutes – Licensing Committee 12th October 2012

6. CONTACT OFFICER

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LICENSING COMMITTEE

17th July 2012



Report of: Assistant Director (Regeneration & Planning)

Subject: CRIMINAL RECORDS BUREAU TAXI DRIVER CHECKS

1. PURPOSE OF REPORT

- 1.1 To update Members on the current legal position concerning Criminal Records Bureau checks for Hackney Carriage and Private Hire drivers.

2. BACKGROUND

- 2.1 At a meeting of this committee on 13th April 2011 Members were advised that the Criminal Records Bureau (CRB) had issued instructions to local authorities indicating that drivers of hackney carriages and private hire vehicles were not eligible for enhanced CRB checks.
- 2.2 This was contrary to the approach taken by almost all licensing authorities in the country which had, until then, requested enhanced CRB checks for drivers as a matter of routine.
- 2.3 The CRB indicated that taxi drivers were only eligible for 'Standard' type disclosures which contain details of convictions, cautions, reprimands and warnings but do not include additional information provided by the Police or reveal whether the applicant is barred from working with children or vulnerable adults.
- 2.4 As the Council's licensing policy at that time stated that taxi licences would only be issued to drivers who had obtained Enhanced CRB disclosures Members reluctantly agreed to amend the policy so as to comply with the new instructions received from the CRB.
- 2.5 Officers were instructed to raise the issue with the Criminal Records Bureau and express the committee's 'outrage' at their decision to deny licensing committee's vital information about those they were being asked to licence.

3. ISSUES

- 3.1 Following representations made by this authority and many others, including trade bodies and child protection agencies, the Government has now implemented legislation allowing licensing authorities to once again require enhanced checks for drivers.
- 3.2 As the revised Licensing Policy was worded in such a way as to require applicants to produce the highest level of CRB legally available, there is no requirement for it to be further amended and enhanced disclosures are, once again, being requested in all cases.
- 3.3 In the period during which Enhanced CRB checks were not permitted, a total of 241 Standard checks were obtained of which 19 related to new drivers.

4. RECOMMENDATIONS

- 4.1 That Members note the contents of this report.

5. BACKGROUND PAPERS

- 5.1 The following background papers were used in the preparation of this report: -
 - i. Agenda & Minutes – Licensing Committee 13th April 2011
 - ii. Agenda & Minutes – Licensing Committee 20th July 2011

6. CONTACT OFFICER

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LICENSING COMMITTEE

17th July 2012



Report of: Assistant Director (Regeneration & Planning)

Subject: REFORMING THE LAW ON TAXI AND PRIVATE HIRE SERVICES

1. PURPOSE OF REPORT

- 1.1 To update Members on a consultation exercise being undertaken by the Law Commission in respect of reforming the law relating to hackney carriage and private hire services.

2. BACKGROUND

- 2.1 Hartlepool Borough Council is the statutory licensing authority for hackney carriage and private hire vehicles, drivers and operators that work within the borough.
- 2.2 The licensing of hackney carriage and private hire services is regulated by legislation that has, in some cases, been in effect for over 160 years. For example, hackney carriages are still regulated by the Town Police Clauses Act 1847.
- 2.3 There are a number of fundamental legal distinctions between hackney carriages and private hire vehicles but, over recent years, these distinctions have been challenged and tested through the Courts.
- 2.4 In addition, changes in technology and an increase in competition and innovation have resulted in the current legal controls being considered 'out of date' and, as such, the Law Commission has been tasked with carrying out a review of the law in this area.
- 2.5 The Commission has now published a consultation document that details its initial views and proposals and a summary of this can be found in **Appendix I**.

3. ISSUES

3.1 The Law Commission is proposing a number of significant changes to the law relating to hackney carriage and private hire services. Some of the proposals will have a direct impact on how Hartlepool Borough Council is able to license its taxi trade and how the trade can operate both within and outside the town.

3.2 The main changes being proposed in the consultation document are as follows:

- (1) National minimum safety standards for both taxis and private hire vehicles.
- (2) Changes to standard-setting: additional local standards, above the national standards, would continue to apply to hackney carriages (for example, topographical knowledge and vehicle requirements). However, for private hire vehicles, only the national standards would apply and there would be no scope for additional local standards.
- (3) Private hire operators would no longer be restricted to accepting or inviting bookings only within a particular locality; nor to only using drivers or vehicles licensed by the same licensing authority.
- (4) Licensing authorities could no longer limit the number of taxi licences.
- (5) More enforcement powers for licensing officers against out-of-borough vehicles and drivers.
- (6) Disability awareness training for drivers.
- (7) Introduction of a statutory definition of “plying for hire” (but without changing it in substance).
- (8) Weddings and funeral cars would no longer be exempted through primary legislation.
- (9) Allowing leisure use of taxis and private hire vehicles.
- (10) Bringing more vehicles within the licensing system (including for example limousines, motorbikes and pedicabs) – but giving the Secretary of State and Welsh Ministers power to make exclusions, and to set separate standards, in respect of different categories of vehicle.
- (11) Clearer exclusions for volunteers and other services where transport is not the main service provided, such as childminders.
- (12) Powers for Government to issue binding statutory guidance to create greater consistency in how taxi and private hire legislation is applied.

3.3 Members may wish to note that the Law Commission is not proposing a removal of the distinction between hackney carriages and private hire vehicles.

- 3.4 The Law Commission will be visiting the North East on 16th July 2012 and an update will be provided to Licensing Committee on 17th July.

4. RECOMMENDATIONS

- 4.1 That Members note the contents of this report.

5. APPENDICES AVAILABLE ON REQUEST, IN THE MEMBERS LIBRARY AND ON-LINE

- 5.1 **Appendix 1** – Law Commission – Reforming the law of Taxi and Private Hire Services Summary

6. BACKGROUND PAPERS

- 6.1 There are no background papers associated with this report.

7. CONTACT OFFICER

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Reforming the law of taxi and private hire services



Law Commission

**REFORMING THE LAW OF TAXI AND
PRIVATE HIRE SERVICES**

Summary

This paper is a summary of the full Consultation Paper, Reforming the Law of Taxi and Private Hire Services, Law Com 203, available at our website at www.lawcom.gov.uk (A-Z of project > Taxi and Private Hire Services).

THE LAW COMMISSION: HOW WE CONSULT

About the Commissions: The Law Commission was set up by section 1 of the Law Commissions Act 1965. The Commission has the purpose of promoting reform of the law.

The Law Commissioners are: The Rt Hon Lord Justice Munby (Chairman), Professor Elizabeth Cooke, Mr David Hertzell, Professor David Ormerod and Frances Patterson QC. The Chief Executive is Elaine Lorimer.

Topic: This consultation covers the reform of the law on taxi and private hire services.

Geographical scope: England and Wales

An impact assessment is available on our website.

Duration of the consultation: 10 May to **10 August 2012**.

How to respond

Send your responses either –

By email to: tph@lawcommission.gsi.gov.uk or

By post to: Public Law Team (Taxi and Private Hire), Law Commission,
Steel House, 11 Tothill Street, London SW1H 9LJ
Tel: 020 3334 0266 / Fax: 020 3334 0201

If you send your comments by post, it would be helpful if, where possible, you also sent them to us electronically (in any commonly used format).

After the consultation: We plan to publish a final report with a draft Bill in November 2013. It will be for Parliament to decide whether to change the law.

Freedom of information: We will treat all responses as public documents. We may attribute comments and publish a list of respondents' names. If you wish to submit a confidential response, it is important to read our Freedom of Information Statement on the next page.

Availability: You can download this consultation paper and the other documents free of charge from our website at:

<http://www.lawcom.gov.uk> (See A–Z of projects > Taxi and Private Hire Services)

SUMMARY

INTRODUCTION

- 1.1 In July 2011, the Law Commission agreed to undertake a law reform project on the law of taxis and private hire vehicles. The project was proposed by the Department for Transport, but when we work on a project, the Law Commission is independent of the Government. This paper summarises our full consultation paper, which is available at <http://www.lawcom.gov.uk> (see A-Z of projects > Taxi and Private Hire Services). It reviews the law, and makes provisional proposals for reform. We now seek your comments and views on our provisional proposals and questions.
- 1.2 This summary is split into three main sections:
 - (1) an introduction and outline of key proposed changes;
 - (2) the case for reform and a brief discussion of the main themes and impact assessment; and
 - (3) a full list of our provisional proposals and questions.

WHAT THIS PROJECT IS ABOUT

- 1.3 In England and Wales, both taxis and private hire vehicles must be licensed. There is a fundamental legal distinction between taxi and private hire services. Taxis, referred to as “hackney carriages” in much of the legislation, can be hailed on the street or work at a rank for immediate hire. Only taxis can do this, which is referred to in law as “plying for hire”. Alternatively, taxis can be booked in advance either directly with the driver or through a third party without the need for an additional licence. By contrast private hire vehicles cannot “ply for hire” and can only be booked in advance. Private hire drivers cannot take bookings directly and can only take passengers that have booked through a licensed operator. A person engaging in any of these activities without the correct licence is committing a criminal offence.

Consultation

- 1.4 It is of primary importance that the views expressed in our consultation documents are only provisional, so that they can form the basis of a discussion on consultation. We are not firmly wedded to any of these proposals. Indeed, experience suggests that our final report is likely to differ substantially from the provisional proposals we now make.
- 1.5 This consultation period will be our main evidence-gathering exercise, and the only opportunity for the public to directly provide their views. After this consultation we will analyse responses and reconsider our proposals. We aim to produce a report with our final proposals and a draft Bill by November 2013.
- 1.6 The opportunity to discuss the issues with interested parties is always most helpful. We would therefore welcome invitations to attend or present at relevant conferences, seminars, workshops or other events during the consultation period.

Our approach

- 1.7 Our terms of reference require us to give due regard to the potential advantages of deregulation. This does not require us to blindly pursue deregulation at all costs. Nor does it mean the removal of all or even most regulation. Rather, it means that we must look at each element of the existing regulatory system to ensure that it does not impose unnecessary costs on the industry, and that it is structured in the right way to accomplish its supposed ends.
- 1.8 We have applied this view of the right regulatory approach in the provisional proposals and questions we ask in this review. The overall effect is of a moderate reform programme, which retains much of the existing structure of regulation, while seeking to improve and simplify it.

OUTLINE OF KEY PROPOSED CHANGES

- 1.9 The main changes that might follow from our provisional proposals include:
 - (1) National minimum safety standards for both taxis and private hire vehicles.
 - (2) Changes to standard-setting: additional local standards, above the national standards, would continue to apply to taxis (for example, topographical knowledge and vehicle requirements). However, for private hire vehicles, only the national standards would apply and there would be no scope for additional local standards. However we ask about possible exceptions where local private hire standards may be retained, for example, in respect of signage.
 - (3) It would be easier for private hire services to operate on a national basis. We suggest private hire operators would no longer be restricted to accepting or inviting bookings only within a particular locality; nor to only using drivers or vehicles licensed by the same licensing authority. Sub-contracting would be allowed, as is already the case in London.
 - (4) London would be regulated under the same flexible framework as the rest of England and Wales.
 - (5) Licensing authorities could no longer limit the number of taxi licences.
 - (6) More enforcement powers for licensing officers against out-of-borough vehicles and drivers.
 - (7) Disability awareness training for drivers.
 - (8) Introduction of a statutory definition of “plying for hire” (but without changing it in substance).
 - (9) Weddings and funeral cars would no longer be exempted through primary legislation.
 - (10) Allowing leisure use of taxis and private hire vehicles.
 - (11) Bringing more vehicles within the licensing system (including for example limousines, motorbikes and pedicabs) – but giving the Secretary of State

and Welsh Ministers power to make exclusions, and to set separate standards, in respect of different categories of vehicle.

- (12) Clearer exclusions for volunteers and other services where transport is not the main service provided, such as childminders.
- (13) Powers for government to issue binding statutory guidance to create greater consistency in how taxi and private hire legislation is applied.

1.10 We also ask questions about the following:

- (1) a new category of wheelchair accessible vehicles;
- (2) extending operator licensing to taxi radio circuits;
- (3) possible use of the term “taxi” in respect of private hire services if used in phrases like “pre-booked taxi only”;
- (4) reintroducing a (revised) contract exemption;
- (5) improving the enforcement powers of licensing officers; and
- (6) a new “peak time” taxi licence that could only be used at particular times of day as decided by the licensing authority.

1.11 This list only provides simplified, headline points and does not include all the changes we propose. Some of the provisional proposals would not give rise to change in London, such as allowing sub-contracting and leisure use of vehicles.

THE NEED FOR REFORM

1.12 The law on taxis and private hire vehicles is fragmented, complex, and out of touch with 21st century life. The oldest taxi legislation that still applies dates from 1831 and the regime has been extended, amended and adapted ever since. Private hire vehicle legislation was not introduced until 1976 (1998 in London), in response to growth in the unlicensed trade, and many regard it as hastily constructed and ill thought out.

1.13 Both taxi and private hire services are highly regulated. The pre-booked market is reasonably competitive. Customers can shop around for the provider they prefer and negotiate on price. A customer who is unhappy with the service given by a company can choose a different firm in the future. They may tell their friends to avoid that firm. The same competitive forces do not apply in respect of taxis. Ranking and hailing are not competitive markets. The customer has little choice but to take the taxi hailed or the first taxi at the rank. This can affect the justification for the level of regulation in each market.

1.14 Safety is a key justification for the licensing system as a whole yet there are no national minimum safety standards for drivers and vehicles. Licensing officers have limited enforcement powers which makes it hard for them to make sure the rules are complied with. Disability groups have highlighted significant problems in ensuring accessibility and the safety of disabled passengers.

1.15 There are aspects of the current system, including quantity restrictions on taxi

licences and restrictions on cross-border activity, which can also hinder effective competition. Not only can this make taxi and private hire services more expensive than they need to be, but it also has a restrictive effect on business. Our proposals are aimed at simplifying and streamlining the legal framework and removing unnecessary and burdensome regulation.

- 1.16 The complexity of the regulatory regime, which is based on numerous pieces of legislation, and the piecemeal way in which it has been put together, have left many key concepts and distinctions unclear and difficult to apply. There are many grey areas about what can count as a taxi (can it cover pedicabs for example?) or a private hire vehicle (do child minders and volunteers need a private hire operator licence where they drive as part of their work?). The rules restricting operators to inviting or accepting bookings only within their licensing area do not fit easily with technological developments such as internet and mobile phone bookings. These apparently basic questions have no clear answer and different approaches are taken in different parts of England and Wales.

THE MAIN THEMES OF REFORM

A new statute for taxi and private hire services

- 1.17 Our aim is to clarify and simplify the existing law on taxis and private hire vehicles and to promote more consistency in bottom-line safety standards across England and Wales, including better provision for disabled passengers. The other key aim of this review is to deregulate aspects not linked to protecting public safety in order to encourage more competitive services. We propose to do so by recommending a new Act of Parliament for taxi and private hire services.
- 1.18 We are not proposing major changes to the way in which licensing is administered and enforced. As now, local authorities would be responsible for issuing licences, and for taking action (with the police) against those who break the law. In respect of taxis, local authorities would continue to have a standard-setting role, over and above the national minimum safety standards. Matters such as topographical knowledge, fares and local requirements (such as the turning circle requirement in London) could continue to apply.

Retaining a two tier system

- 1.19 We think that the legal differences between taxis and private hire vehicles (often known as mini-cabs) are worth keeping. This is sometimes referred to as the two tier system. The alternative, a so-called one tier system, would have a unified category of licensed vehicle doing all (or most) of the same work – pre-booked, hailing and ranking. We accept that the differences between taxis and private hire vehicles are not always well understood by the public, and that this provides an argument for a single tier. But our provisional view is that the distinction between taxis and private hire allows for more targeted regulation. Traditionally taxis can have regulated fares and local requirements like topographical knowledge can be very important. By contrast, private hire services work much more like a free market and recognising the legal distinction means both sides of the trade can work better.

London

- 1.20 There is currently a different legal framework for London. We recognise the

important differences which apply to London but also think that our provisional proposals are sufficiently flexible to allow for these differences given the powers we propose for the Secretary of State and Transport for London (as the relevant licensing authority). We believe this can be done without affecting the distinctive and iconic London black cab.

- 1.21 We propose that our reforms should apply throughout England and Wales including London. We also invite views about how London may be affected differently in respect of all of our provisional proposals and questions.

Welsh devolution

- 1.22 We think the same system should apply in Wales as in England, but, in light of devolution, Welsh Ministers would have the powers that the Secretary of State has in England.

Taxis and the local connection

- 1.23 We provisionally propose only moderate changes to the regulation of taxis apart from removing licensing authorities' ability to limit taxi numbers. We suggest retaining the local link with the setting of taxi conditions and fare regulation, licensing and enforcement. We consider the legal definition of "plying for hire", which covers hailing and ranking, but do not propose radical change.
- 1.24 We do, however, provisionally propose that the Secretary of State and Welsh Ministers should set national *minimum* safety standards. We think all consumers of taxi services should be entitled to the same minimum safety standards, even if local licensing authorities wish to impose higher standards in their area. And establishing national minimum standards, which match the national standards for private hire vehicles (see below), will remove incentives for drivers to try to play the system by being licensed in areas with lower standards. It will also help with the enforcement of conditions across each country.

Taxis and quantity restrictions

- 1.25 We also provisionally propose that the power to limit the number of taxis which can be licensed in a licensing area should be removed. We accept that there are some good arguments for retaining the power (although not on the existing basis of a bureaucratic assessment of unmet demand), but provisionally consider that on balance quantity regulation is not justified. Transport for London does not have the power to limit the number of taxi licences, so our provisional proposal makes no change for the capital.

Private hire and national standards

- 1.26 Our provisional proposals are more far-reaching in respect of private hire licensing. We think that the Secretary of State and Welsh Ministers should set national standards for private hire vehicles, drivers and operators, and that licensing authorities should not have the power to impose higher standards. This reflects our view that the pre-booked market works reasonably well as a competitive market, and so there is no need for rules and regulations to guarantee quality or control fares. We ask if there should be an exception to allow local standard setting about signage. Local licensing authorities would continue to issue licences and to be responsible for enforcement. We also look at whether

operator licensing should be extended to cover, for example, taxi radio circuits.

- 1.27 We propose that the national standards for private hire vehicles should be set at the same level as the minimum standards for taxis. Both in respect of taxis and in respect of private hire vehicles, the power to set standards would allow for different standards to be set for different descriptions of vehicles.

Cross-border

- 1.28 Our provisional proposals aim to clarify the ability of private hire operators to work cross-border. We suggest that operators should no longer have to use drivers and vehicles all licensed with the same authority, enhancing the ability of business to work more efficiently, as well as permitting sub-contracting (adopting the current position in London). The location where a booking is accepted would no longer be critical, which would fit better with technological developments in mobile technology and the internet.
- 1.29 Our provisional proposals in respect of more effective enforcement and common bottom-line safety standards could help reduce incentives for drivers to seek taxi licences in locations far away from where they actually intend to work on a purely pre-booked basis (akin to a private hire vehicle). We do not propose to introduce a return-to-area requirement for vehicles dropping off customers outside their licensing area.

Increased enforcement powers

- 1.30 We make provisional proposals to improve enforcement of conditions. We suggest improving licensing officers' powers; and ask about the effectiveness of tougher sanctions such as impounding vehicles.
- 1.31 The existence of national standards for private hire and minimum standards for taxis should itself make enforcement easier, particularly cross-border enforcement (that is, enforcement by an officer of a licensing authority other than that which licenses the taxi or private hire vehicle).
- 1.32 We also make proposals designed to improve cross-border enforcement, and look at the extent to which enforcement officers' powers could be strengthened.

Equality and accessibility

- 1.33 Taxis and private hire vehicles provide vital transport links for many older or disabled persons as well as people with reduced mobility. Providers of transport services have a legal obligation not to discriminate against disabled people, and local authorities are subject to a duty to promote equality in the exercise of their functions.
- 1.34 We consider how to promote safety for disabled passengers through, perhaps, introducing a separate licence category for wheelchair accessible vehicles and vehicles adapted for other disabilities. We considered the merits of introducing national quotas of accessible taxis but suggest that such a system does not appear workable. Our provisional proposals include compulsory disability discrimination training for taxi and private hire drivers.
- 1.35 This is only an extremely short account of our provisional proposals, which cover

a number of other detailed areas, including hearings and appeals.

IMPACT ASSESSMENT

- 1.36 This consultation also includes an impact assessment and we ask consultees for information about the costs and financial benefits likely to arise from different aspects of the review.
- 1.37 Our expectation is that the review as a whole will be deregulatory, and it will be important to understand the extent of likely savings. Where some new regulatory pressures arise (for example in respect of accessibility or licensing of limousines) it will be equally important to understand how large those new burdens are likely to be. The impact assessment is available at <http://www.lawcom.gov.uk> (see A-Z of projects > Taxi and Private Hire Services).

LIST OF PROVISIONAL PROPOSALS AND QUESTIONS

- 1.38 The list below sets out our provisional views for consultation. They are divided between provisional proposals, where the Law Commission has a preliminary stance and is seeking views on it, and open questions where we are seeking more evidence and have not reached a preliminary position.
- 1.39 It would be helpful if you could give us your views on the provisional proposals and questions we ask, as well as on any other areas you feel are important. The page numbers refer to the full consultation paper which has more detail.

LIST OF PROVISIONAL PROPOSALS AND QUESTIONS

OVERVIEW OF PROVISIONAL REFORM PROPOSALS

Provisional proposal 1

Regulation should continue to distinguish between taxis, which can accept pre-booked fares, be hailed on the street and wait at ranks, and private hire vehicles, which can only accept pre-booked fares. *(Page 160)*

REFORM OF DEFINITIONS AND SCOPE

Provisional proposal 2

London should be included, with appropriate modifications, within the scope of reform. *(Page 162)*

Provisional proposal 3

The regulation of taxi and private hire vehicles should not be restricted to any particular type of vehicle but should rather focus on road transport services provided for hire with the services of a driver. *(Page 164)*

Question 4

Would there be (and if so what) advantages to restricting licensing to motor vehicles that require a driving licence? *(Page 164)*

Provisional proposal 5

Public service vehicles should be expressly excluded from the definition of taxi and private hire vehicles; and taxi and private hire vehicles should only cover vehicles adapted to seat eight or fewer passengers. *(Page 165)*

Provisional proposal 6

References to stage coaches charging separate fares should no-longer feature as an exclusion from the definition of taxis. *(Page 166)*

Provisional proposal 7

The Secretary of State should consider issuing statutory guidance to the Senior Traffic Commissioner about the licensing of limousines and other novelty vehicles to assist consistency. *(Page 167)*

Provisional proposal 8

The concept of “in the course of a business of carrying passengers” should be used to limit the scope of taxi and private hire licensing so as to exclude genuine volunteers as well as activities where transport is ancillary to the overall service. *(Page 168)*

Question 9

How, if at all, should the regulation of taxis and private hire deal with:

- (a) carpooling; and
- (b) members clubs? *(Page 170)*

Provisional proposal 10

The power of the Secretary of State and Welsh Ministers to set national standards should be flexible enough to allow them to make exclusions from the taxi and private hire licensing regimes. *(Page 171)*

Provisional proposal 11

Weddings and funerals should no-longer be expressly excluded from private hire licensing through primary legislation. *(Page 172)*

Question 12

Would there be merits in reintroducing the contract exemption, by means of the Secretary of State and Welsh Ministers' exercise of the power to set national standards? If so, what modifications could be made to help avoid abuse? *(Page 174)*

Provisional proposal 13

Regulation of the ways taxis and private hire vehicles can engage with the public should not be limited to "streets". *(Page 175)*

Question 14

Is there a case for making special provision in respect of taxi and private hire regulation at airports? In particular, where concessionary agreements are in place should airports be obliged to allow a shuttle service for passengers who have pre-booked with other providers, or to the closest taxi rank? *(Page 177)*

Provisional proposal 15

The defining feature of taxis, the concept of "plying for hire", should be placed on a statutory footing and include:

- (a) references to ranking and hailing;
- (b) a non-exhaustive list of factors indicating plying for hire; and
- (c) appropriate accommodation of the legitimate activities of private hire vehicles. *(Page 181)*

Provisional proposal 16

The concepts of hailing and ranking should not cover technological means of engaging taxi services. *(Page 181)*

Question 17

Would there be advantages to adopting the Scottish approach to defining taxis in respect of “arrangements made in a public place” instead of “plying for hire”?
(Page 182)

Provisional proposal 18

The concept of compellability, which applies exclusively to taxis, should be retained. (Page 182)

Provisional proposal 19

Pre-booking would continue to be the only way of engaging a private hire vehicle and cover all technological modes of engaging cars. This is without prejudice to the continued ability of taxis to be pre-booked. (Page 183)

Provisional proposal 20

Leisure and non-professional use of taxis and private hire vehicles should be permitted. There would however be a presumption that the vehicle is being used for professional purposes at any time unless the contrary can be proved.
(Page 184)

Provisional proposal 21

The Secretary of State and Welsh Ministers should have the power to issue statutory guidance in respect of taxi and private hire licensing requirements.
(Page 185)

Provisional proposal 22

Reformed legislation should refer to “taxis” and “private hire vehicles” respectively. References to “hackney carriages” should be abandoned.
(Page 185)

Question 23

Should private hire vehicles be able to use terms such as “taxi” or “cab” in advertising provided they are only used in combination with terms like “pre-booked” and did not otherwise lead to customer confusion? (Page 186)

A REFORMED REGULATORY FRAMEWORK

Provisional proposal 24

Taxi and private hire services should each be subject to national safety requirements. (Page 188)

Provisional proposal 25

National safety standards, as applied to taxi services, should only be minimum standards. (Page 189)

Provisional proposal 26

National safety standards, as applied to private hire services, should be mandatory standards. *(Page 189)*

Provisional proposal 27

Private hire services would not be subject to standards except those related to safety. Requirements such as topographical knowledge would no-longer apply to private hire drivers. *(Page 190)*

Question 28

Should local standard-setting for private hire services be specifically retained in respect of vehicle signage? Are there other areas where local standards for private hire vehicles are valuable? *(Page 190)*

Question 29

What practical obstacles might there be to setting common national safety standards for both taxis and private hire vehicles? *(Page 191)*

Question 30

Should national conditions in respect of driver safety be different for taxi services compared with private hire services? *(Page 192)*

Provisional proposal 31

The powers of the Secretary of State and Welsh Ministers to set standards for taxis and private hire vehicles should *only* cover conditions relating to safety. *(Page 192)*

Provisional proposal 32

The powers of the Secretary of State and Welsh Ministers to set national safety standards should be subject to a statutory consultation requirement. *(Page 193)*

Question 33

What would be the best approach for determining the content of national safety standards? In particular should the statutory requirement to consult refer to a technical advisory panel? *(Page 193)*

Provisional proposal 34

Licensing authorities should retain the power to set standards locally for taxis provided above the minimum national standards. *(Page 193)*

Question 35

Should there be statutory limits to licensing authorities' ability to set local taxi standards? *(Page 194)*

Question 36

Should licensing authorities retain the power to impose individual conditions on taxi and private hire drivers or operators? *(Page 194)*

Question 37

Should the powers and duties of licensing authorities to cooperate be on a statutory footing or is it best left to local arrangements? *(Page 195)*

Provisional proposal 38

Neighbouring licensing authorities should have the option of combining areas for the purposes of taxi standard setting. *(Page 196)*

Provisional proposal 39

Licensing authorities should have the option to create, or remove, taxi zones within their area. *(Page 196)*

Question 40

Would it be useful for licensing authorities to have the power to issue peak time licences which may only be used at certain times of day as prescribed by the licensing authority? *(Page 197)*

Provisional proposal 41

Private hire operators should no longer be restricted to accepting or inviting bookings only within a particular locality; nor to only using drivers or vehicles licensed by a particular licensing authority. *(Page 198)*

Provisional proposal 42

We do not propose to introduce a “return to area” requirement in respect of out-of-area drop offs. *(Page 199)*

Provisional proposal 43

Licensing authorities should retain the ability to regulate maximum taxi fares. Licensing authorities should not have the power to regulate private hire fares. *(Page 200)*

Question 44

Should taxis be allowed to charge a fare that is higher than the metered fare for pre-booked journeys? *(Page 200)*

REFORM OF DRIVER, VEHICLE AND OPERATOR LICENSING**Question 45**

Should national driver safety standards such as the requirement to be a “fit and proper person” be either:

- (a) set out in primary legislation; or
- (b) included within the Secretary of State and Welsh Ministers' general powers to set national safety conditions? *(Page 203)*

Provisional proposal 46

Vehicle owners should not be subject to “fit and proper” tests and the criteria applied would relate solely to the vehicle itself. *(Page 204)*

Question 47

Should national vehicle safety standards be either:

- (a) set out in primary legislation; or
- (b) included within the Secretary of State and Welsh Ministers' general powers to set national safety conditions? *(Page 205)*

Provisional proposal 48

Operator licensing should be retained as mandatory in respect of private hire vehicles. *(Page 206)*

Question 49

Should operator licensing be extended to cover taxi radio circuits and if so on what basis? *(Page 208)*

Provisional proposal 50

The definition of operators should not be extended in order to include intermediaries. *(Page 209)*

Question 51

Should “fit and proper” criteria in respect of operators be retained? *(Page 209)*

Provisional proposal 52

Operators should be expressly permitted to sub-contract services. *(Page 210)*

Question 53

Where a taxi driver takes a pre-booking directly, should record-keeping requirements apply? *(Page 210)*

REFORMING QUANTITY CONTROLS

Provisional proposal 54

Licensing authorities should no longer have the power to restrict taxi numbers. *(Page 213)*

Question 55

What problems (temporary or permanent) might arise if licensing authorities lost the ability to restrict numbers? *(Page 213)*

Question 56

Should transitional measures be put in place, such as staggered entry to the taxi trade over a scheduled period of time, if quantity restrictions are removed? *(Page 215)*

TAXI AND PRIVATE HIRE REFORM AND EQUALITY**Question 57**

Should there be a separate licence category for wheelchair accessible vehicles? This could involve:

- (1) a duty on the licensee to give priority to disabled passengers; and
- (2) a duty on the licensing authority to make adequate provision at ranks for wheelchair accessible vehicles. *(Page 217)*

Question 58

Should licensing authorities offer lower licence fees for vehicles which meet certain accessibility standards? *(Page 217)*

Question 59

Do you have any other suggestions for increasing the availability of accessible vehicles, and catering for the different needs of disabled passengers? *(Page 217)*

Provisional proposal 60

We do not propose to introduce national quotas of wheelchair accessible vehicles. *(Page 218)*

Provisional proposal 61

National standards for drivers of both taxis and private hire vehicles should include recognised disability awareness training. *(Page 219)*

Provisional proposal 62

In order to better address concerns about discrimination, taxis and private hire vehicles should be required to display information about how to complain to the licensing authority. *(Page 219)*

Question 63

What would be the best way of addressing the problem of taxis ignoring disabled passengers seeking to hail them? Could an obligation to stop, if reasonable and safe to do so, in specified circumstances, help? *(Page 220)*

REFORMING ENFORCEMENT

Question 64

Should authorised licensing officers have the power to stop licensed vehicles?
(Page 222)

Question 65

What more could be done to address touting? Touting refers to the offence “in a public place, to solicit persons to hire vehicles to carry them as passengers”.
(Page 223)

Question 66

Would it be desirable and practicable to introduce powers to impound vehicles acting in breach of taxi and private hire licensing rules? (Page 223)

Question 67

Should licensing authorities make greater use of fixed penalty schemes and if so how? (Page 225)

Provisional proposal 68

Enforcement officers should have the powers to enforce against vehicles, drivers and operators licensed in other licensing areas. (Page 225)

Question 69

Should cross-border enforcement powers extend to suspensions and revocation of licences? If so what would be the best way of achieving this? (Page 226)

REFORM OF HEARINGS AND APPEALS

Provisional proposal 70

The right to appeal against decisions to refuse to grant or renew, suspend or revoke a taxi or private hire licence should be limited to the applicant or, as appropriate, holder of the relevant licence. (Page 230)

Provisional proposal 71

The first stage in the appeal process throughout England and Wales, in respect of refusals, suspensions or revocations should be to require the local licensing authority to reconsider its decision. (Page 231)

Provisional proposal 72

Appeals should continue to be heard in the magistrates’ court. (Page 232)

Question 73

Should there be an onward right of appeal to the Crown Court? (Page 233)

CONCLUSION

- 1.41 It is not possible in a summary of this length to introduce all of our provisional proposals. Consultees are therefore encouraged to refer to the full Consultation Paper available on our website. Please send responses by **10 August 2012**.

How to respond

Send your responses either -

By email to: tph@lawcommission.gsi.gov.uk or

By post to: Public Law Team (Taxi and Private Hire), Law Commission, Steel House, 11 Tothill Street, London SW1H 9LJ

Tel: 020 3334 0266 / Fax: 020 3334 0201

If you send your comments by post, it would be helpful if, where possible, you also sent them to us electronically (in any commonly used format).

LICENSING COMMITTEE

17th July 2012



Report of: Assistant Director, Regeneration & Planning

Subject: GAMBLING ACT STATEMENT OF LICENSING PRINCIPLES

1. PURPOSE OF REPORT

- 1.1 To seek approval for the commencement of a consultation exercise relating to a draft statement of licensing principles as required by the Gambling Act 2005.

2. BACKGROUND

- 2.1 The Gambling Act 2005 came into force in 2007 and transferred a range of licensing responsibilities from the Gaming Board and local Magistrates Courts to local authorities and the newly formed Gambling Commission.
- 2.2 Licensable activities that fall within local authority control include bingo halls, betting shops, amusement arcades and casinos.
- 2.3 The Gambling Act 2005 also requires licensing authorities to publish, every three years, a statement of the principles that they propose to apply in exercising their functions under the Act – commonly referred to as a licensing policy.
- 2.4 Hartlepool's current licensing policy was published in January 2010 and, as such, a new policy must be published no later than January 2013.
- 2.5 The current policy (attached as **Appendix 1**) meets the requirements of the Act's statutory guidance and follows closely a best practice licensing policy initially produced by the Local Authority Co-ordinating Body for Regulatory Services (LACORS).
- 2.6 Subject to Committee's agreement it is proposed that the current policy be retained as a basis for consultation and a further report be brought back to Committee in October 2012. A formal recommendation for adoption of the

policy can then be made by the Committee, to full Council, at its meeting in December 2012.

3. ISSUES

- 3.1 There are no substantive changes to the policy that was adopted by full Council in 2010 which means it retains the 'No Casino' resolution whereby the Council states that it will not consider any application for a casino in the borough.
- 3.2 Members may wish to consider whether the retention of this resolution is appropriate.

4. RECOMMENDATIONS

- 4.1 That Members note the contents of this report and approve the commencement of consultation on the draft licensing policy as contained in **Appendix 1.**

6. APPENDICES AVAILABLE ON REQUEST, IN THE MEMBERS LIBRARY AND ON-LINE

- 6.1 **Appendix 1** – 0717 RND Gambling Act Statement of Licensing Principles

5. BACKGROUND PAPERS

- 5.1 There are no background papers associated with this report.

6. CONTACT OFFICER:

Sylvia Pinkney – Public Protection Manager
Regeneration & Neighbourhoods Department
Hartlepool Borough Council
Tel: 01429 523315
Sylvia.pinkney@hartlepool.gov.uk

APPENDIX 1

STATEMENT OF PRINCIPLES
Gambling Act 2005
(To be Published January 2013)



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This Statement of Licensing Principles was approved by Hartlepool Borough Council on XXXXX.

All references to the Guidance refer to the Gambling Commission's Guidance to Licensing Authorities, 3rd Edition, published May 2009.

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PART A

1. The Licensing Objectives

In exercising most of their functions under the Gambling Act 2005, licensing authorities must have regard to the licensing objectives as set out in section 1 of the Act. The licensing objectives are:

- 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

It should be noted that the Gambling Commission has stated: “The requirement in relation to children is explicitly to protect them from being harmed or exploited by gambling”.

This licensing authority is aware that, as per Section 153, in making decisions about premises licences and temporary use notices it should aim to permit the use of premises for gambling in so far as it thinks it:

- in accordance with any relevant code of practice issued by the Gambling Commission
- in accordance with any relevant guidance issued by the Gambling Commission
- Reasonably consistent with the licensing objectives and
- in accordance with the authority’s statement of licensing policy

2. Introduction

Hartlepool is situated on the North East coast of England. The Borough consists of the town of Hartlepool and a number of small outlying villages. The total area of the Borough is 9,390 hectares.

Hartlepool is a unitary authority, providing a full range of services. It adjoins Easington District Council to the north, Sedgefield District Council to the west and Stockton on Tees Borough Council to the south. The residential population is 90,161 of which ethnic minorities comprise 1.2% (2001 census).

Licensing authorities are required by the Gambling Act 2005 to publish a statement of the principles which they propose to apply when exercising their functions. This statement must be published at least every three years. The statement must also be reviewed from “time to time” and any amended parts re-consulted upon. The statement must be then re-published.

Hartlepool Borough Council consulted widely upon this statement before finalising and publishing. A list of those persons consulted is contained in Appendix I.

The Gambling Act requires that the following parties are consulted by licensing authorities:

- The Chief Officer of Police;
- One or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the authority’s area;

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- One or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under the Gambling Act 2005.

Our consultation took place between 19th July and 18th September 2009 and we followed the HM Government Code of Practice on Consultation (published July 2008), which is available at:

<http://www.berr.gov.uk/files/file47158.pdf>

The full list of comments made and the consideration by the Council of those comments is available by request to: Principal Licensing Officer, Hartlepool Borough Council, Civic Centre, Hartlepool, TS24 8AY or via the Council's website at: www.Hartlepool.gov.uk/licensing.

The policy was approved at a meeting of the Full Council on XXXXX date and was published via our website on XXXXX. Copies were placed in the public libraries of the area as well as being available in the Town Hall.

Should you have any comments as regards this policy statement please send them via e-mail or letter to the following contact:

Principal Licensing Officer
Hartlepool Borough Council
Civic Centre
Hartlepool
TS24 8AY

Ian.Harrison@Hartlepool.gov.uk

It should be noted that this statement of licensing principles will not override the right of any person to make an application, make representations about an application, or apply for a review of a licence, as each will be considered on its own merits and according to the statutory requirements of the Gambling Act 2005.

3. Declaration

In producing the final statement, this licensing authority declares that it has had regard to the licensing objectives of the Gambling Act 2005, the Guidance to Licensing Authorities issued by the Gambling Commission, and any responses from those consulted on the statement.

4. Responsible Authorities

The licensing authority is required by regulations to state the principles it will apply in exercising its powers under Section 157(h) of the Act to designate, in writing, a body which is competent to advise the authority about the protection of children from harm. The principles are:

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- the need for the body to be responsible for an area covering the whole of the licensing authority's area; and
- the need for the body to be answerable to democratically elected persons, rather than any particular vested interest group.

In accordance with the suggestion in the Gambling Commission's Guidance to Licensing Authorities, this authority designates the Local Safeguarding Children Board for this purpose.

The contact details of all the Responsible Authorities under the Gambling Act 2005 are available via the Council's website at: www.Hartlepool.gov.uk/licensing

5. Interested parties

Interested parties can make representations about licence applications, or apply for a review of an existing licence. These parties are defined in the Gambling Act 2005 as follows:

"For the purposes of this Part a person is an interested party in relation to an application for or in respect of a premises licence if, in the opinion of the licensing authority which issues the licence or to which the applications is made, the person-

- a) lives sufficiently close to the premises to be likely to be affected by the authorised activities,
- b) has business interests that might be affected by the authorised activities, or
- c) represents persons who satisfy paragraph (a) or (b)"

The licensing authority is required by regulations to state the principles it will apply in exercising its powers under the Gambling Act 2005 to determine whether a person is an interested party. The principles are:

Each case will be decided upon its merits. This authority will not apply a rigid rule to its decision making. It will consider the examples of considerations provided in the Gambling Commission's Guidance to Licensing Authorities at 8.11 to 8.19. It will also consider the Gambling Commission's Guidance that "has business interests" should be given the widest possible interpretation and include partnerships, charities, faith groups and medical practices.

Interested parties can be persons who are democratically elected such as councillors and MP's. No specific evidence of being asked to represent an interested person will be required as long as the councillor / MP represents the ward likely to be affected. Likewise, parish councils likely to be affected will be considered to be interested parties. Other than these however, this authority will generally require written evidence that a person/body (e.g. an advocate / relative) 'represents' someone who either lives sufficiently close to the premises to be likely to be affected by the authorised activities and/or has business interests that might be affected by the authorised activities. A letter from one of these persons, requesting the representation is sufficient.

If individuals wish to approach councillors to ask them to represent their views then care should be taken that the councillors are not part of the Licensing Committee dealing with the licence application. If there are any doubts then please contact the licensing department at the Civic Centre, Hartlepool.

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6. Exchange of Information

Licensing authorities are required to include in their statements the principles to be applied by the authority in exercising the functions under sections 29 and 30 of the Act with respect to the exchange of information between it and the Gambling Commission, and the functions under section 350 of the Act with the respect to the exchange of information between it and the other persons listed in Schedule 6 to the Act.

The principle that this licensing authority applies is that it will act in accordance with the provisions of the Gambling Act 2005 in its exchange of information which includes the provision that the Data Protection Act 1998 will not be contravened. The licensing authority will also have regard to any Guidance issued by the Gambling Commission on this matter, as well as any relevant regulations issued by the Secretary of State under the powers provided in the Gambling Act 2005.

Should any protocols be established as regards information exchange with other bodies then they will be made available.

7. Enforcement

Licensing authorities are required by regulation under the Gambling Act 2005 to state the principles to be applied by the authority in exercising the functions under Part 15 of the Act with respect to the inspection of premises; and the powers under section 346 of the Act to institute criminal proceedings in respect of the offences specified.

This licensing authority's principles are that:

It will be guided by the Gambling Commission's Guidance to Licensing Authorities and will endeavour to be:

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

As per the Gambling Commission's Guidance to Licensing Authorities this licensing authority will endeavour to avoid duplication with other regulatory regimes so far as possible.

This licensing authority has adopted and implemented a risk-based inspection programme, based on;

- The licensing objectives
- Relevant codes of practice
- Guidance issued by the Gambling Commission, in particular at Part 36
- The principles set out in this statement of licensing policy

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The main enforcement and compliance role for this licensing authority in terms of the Gambling Act 2005 is to ensure compliance with the premises licences and other permissions which it authorises. The Gambling Commission is the enforcement body for the operating and personal licences. It is also worth noting that concerns about manufacture, supply or repair of gaming machines are not dealt with by the licensing authority but should be notified to the Gambling Commission.

This licensing authority also keeps itself informed of developments as regards the work of the Better Regulation Executive in its consideration of the regulatory functions of local authorities.

Bearing in mind the principle of transparency, this licensing authority's enforcement/compliance protocols/written agreements are available upon request to the licensing department, Hartlepool Borough Council, Civic Centre, Hartlepool, TS24 8AY. Our risk methodology is also available upon request.

8. Licensing authority functions

Licensing authorities are required under the Act to:

- Be responsible for the licensing of premises where gambling activities are to take place by issuing *Premises Licences*
- Issue *Provisional Statements*
- Regulate *members' clubs* and *miners' welfare institutes* who wish to undertake certain gaming activities via issuing Club Gaming Permits and/or Club Machine Permits
- Issue *Club Machine Permits* to *Commercial Clubs*
- Grant permits for the use of certain lower stake gaming machines at *unlicensed Family Entertainment Centres*
- Receive notifications from alcohol licensed premises (under the Licensing Act 2003) for the use of two or fewer gaming machines
- Issue *Licensed Premises Gaming Machine Permits* for premises licensed to sell/supply alcohol for consumption on the licensed premises, under the Licensing Act 2003, where there are more than two machines
- Register *small society lotteries* below prescribed thresholds
- Issue *Prize Gaming Permits*
- Receive and Endorse *Temporary Use Notices*
- Receive *Occasional Use Notices*
- Provide information to the Gambling Commission regarding details of licences issued (see section above on 'information exchange')
- Maintain registers of the permits and licences that are issued under these functions

It should be noted that licensing authorities are not to be involved in licensing remote gambling at all, which is regulated by the Gambling Commission via operating licences.

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PART B PREMISES LICENCES: CONSIDERATION OF APPLICATIONS

1. General Principles

Premises licences are subject to the requirements set-out in the Gambling Act 2005 and regulations, as well as specific mandatory and default conditions which are detailed in regulations issued by the Secretary of State. Licensing authorities are able to exclude default conditions and also attach others, where it is believed to be appropriate.

(i) Decision-making

This licensing authority is aware that in making decisions about premises licences it should aim to permit the use of premises for gambling in so far as it thinks it:

- in accordance with any relevant code of practice issued by the Gambling Commission;
- in accordance with any relevant guidance issued by the Gambling Commission;
- reasonably consistent with the licensing objectives; and
- in accordance with the authority's statement of licensing policy.

It is appreciated that as per the Gambling Commission's Guidance to Licensing Authorities "moral objections to gambling are not a valid reason to reject applications for premises licences" (except as regards any 'no casino resolution' - see section on Casinos - page 12) and also that unmet demand is not a criterion for a licensing authority.

(ii) Definition of "premises" – In the Act, "premises" is defined as including "any place". Section 152 therefore prevents more than one premises licence applying to any place. But a single building could be subject to more than one premises licence, provided they are for different parts of the building and the different parts of the building can be reasonably regarded as being different premises. This approach has been taken to allow large, multiple unit premises such as a pleasure park, pier, track or shopping mall to obtain discrete premises licences, where appropriate safeguards are in place. However, licensing authorities should pay particular attention if there are issues about sub-divisions of a single building or plot and should ensure that mandatory conditions relating to access between premises are observed.

The Gambling Commission states in the third edition of its Guidance to Licensing Authorities that: "In most cases the expectation is that a single building / plot will be the subject of an application for a licence, for example, 32 High Street. But, that does not mean 32 High Street cannot be the subject of separate premises licences for the basement and ground floor, if they are configured acceptably. Whether different parts of a building can properly be regarded as being separate premises will depend on the circumstances. The location of the premises will clearly be an important consideration and the suitability of the division is likely to be a matter for discussion between the operator and the licensing officer. However, the Commission does not consider that areas of a building that are artificially or temporarily separated, for example by ropes or moveable partitions, can properly be regarded as different premises."

This licensing authority takes particular note of the Gambling Commission's Guidance to Licensing Authorities which states that: licensing authorities should take particular care in

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considering applications for multiple licences for a building and those relating to a discrete part of a building used for other (non-gambling) purposes. In particular they should be aware of the following:

- The third licensing objective seeks to protect children from being harmed by gambling. In practice that means not only preventing them from taking part in gambling, but also preventing them from being in close proximity to gambling. Therefore premises should be configured so that children are not invited to participate in, have accidental access to or closely observe gambling where they are prohibited from participating.
- Entrances to and exits from parts of a building covered by one or more premises licences should be separate and identifiable so that the separation of different premises is not compromised and people do not “drift” into a gambling area. In this context it should normally be possible to access the premises without going through another licensed premises or premises with a permit.
- Customers should be able to participate in the activity names on the premises licence.

The Guidance also gives a list of factors which the licensing authority should be aware of, which may include:

- Do the premises have a separate registration for business rates
- Is the premises’ neighbouring premises owned by the same person or someone else?
- Can each of the premises be accessed from the street or a public passageway?
- Can the premises only be accessed from any other gambling premises?

This authority will consider these and other relevant factors in making its decision, depending on all the circumstances of the case.

The Gambling Commission’s relevant access provisions for each premises type are reproduced below:

7.25:

Casinos

- The principal access entrance to the premises must be from a street (as defined at 7.23 of the Guidance)
- No entrance to a casino must be from premises that are used wholly or mainly by children and/or young persons
- No customer must be able to enter a casino directly from any other premises which holds a gambling premises licence

Adult Gaming Centre

- No customer must be able to access the premises directly from any other licensed gambling premises

Betting Shops

- Access must be from a street (as per para 7.23 Guidance to Licensing Authorities) or from another premises with a betting premises licence
- No direct access from a betting shop to another premises used for the retail sale of merchandise or services. In effect there cannot be an entrance to a betting shop from a

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shop of any kind and you could not have a betting shop at the back of a café – the whole area would have to be licensed.

Tracks

- No customer should be able to access the premises directly from:
 - a casino
 - an adult gaming centre

Bingo Premises

- No customer must be able to access the premise directly from:
 - a casino
 - an adult gaming centre
 - a betting premises, other than a track

Family Entertainment Centre

- No customer must be able to access the premises directly from:
 - a casino
 - an adult gaming centre
 - a betting premises, other than a track

Part 7 of the Gambling Commission's Guidance to Licensing Authorities contains further guidance on this issue, which this authority will also take into account in its decision-making.

(iii) Premises “ready for gambling”

The Guidance states that a licence to use premises for gambling should only be issued in relation to premises that the licensing authority can be satisfied are going to be ready to be used for gambling in the reasonably near future, consistent with the scale of building or alterations required before the premises are brought into use.

If the construction of a premises is not yet complete, or if they need alteration, or if the applicant does not yet have a right to occupy them, then an application for a provisional statement should be made instead.

In deciding whether a premises licence can be granted where there are outstanding construction or alteration works at a premises, this authority will determine applications on their merits, applying a two stage consideration process:-

- First, whether the premises ought to be permitted to be used for gambling
- Second, whether appropriate conditions can be put in place to cater for the situation that the premises are not yet in the state in which they ought to be before gambling takes place.

Applicants should note that this authority is entitled to decide that it is appropriate to grant a licence subject to conditions, but it is not obliged to grant such a licence.

More detailed examples of the circumstances in which such a licence may be granted can be found at paragraphs 7.59-7.66 of the Guidance.

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(iv) Location - This licensing authority is aware that demand issues cannot be considered with regard to the location of premises but that considerations in terms of the licensing objectives are relevant to its decision-making. As per the Gambling Commission's Guidance to Licensing Authorities, this authority will pay particular attention to the protection of children and vulnerable persons from being harmed or exploited by gambling, as well as issues of crime and disorder. Should any specific policy be decided upon as regards areas where gambling premises should not be located, this statement will be updated. It should be noted that any such policy does not preclude any application being made and each application will be decided on its merits, with the onus upon the applicant showing how potential concerns can be overcome.

(v) Planning:

The Gambling Commission Guidance to Licensing Authorities states:

7.59 – In determining applications the licensing authority has a duty to take into consideration all relevant matters and not to take into consideration any irrelevant matters, i.e. those not related to gambling and the licensing objectives. One example of an irrelevant matter would be the likelihood of the applicant obtaining planning permission or building regulations approval for their proposal.

This authority will not take into account irrelevant matters as per the above guidance. In addition this authority notes the following excerpt from the Guidance:

7.66 - When dealing with a premises licence application for finished buildings, the licensing authority should not take into account whether those buildings have or comply with the necessary planning or building consents. Those matters should be dealt with under relevant planning control and building regulation powers, and not form part of the consideration for the premises licence. Section 210 of the 2005 Act prevents licensing authorities taking into account the likelihood of the proposal by the applicant obtaining planning or building consent when considering a premises licence application. Equally the grant of a gambling premises licence does not prejudice or prevent any action that may be appropriate under the law relating to planning or building.

(vi) Duplication with other regulatory regimes - This licensing authority seeks to avoid any duplication with other statutory / regulatory systems where possible, including planning. This authority will not consider whether a licence application is likely to be awarded planning permission or building regulations approval, in its consideration of it. It will though, listen to, and consider carefully, any concerns about conditions which are not able to be met by licensees due to planning restrictions, should such a situation arise.

When dealing with a premises licence application for finished buildings, this authority will not take into account whether those buildings have to comply with the necessary planning or buildings consents. Fire or health and safety risks will not be taken into account, as these matters are dealt with under relevant planning control, buildings and other regulations and must not form part of the consideration for the premises licence.

Licensing objectives - Premises licences granted must be reasonably consistent with the licensing objectives. With regard to these objectives, this licensing authority has considered the Gambling Commission's Guidance to Licensing Authorities and some comments are made below.

Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime - This licensing authority is aware that the Gambling Commission takes a leading role in preventing gambling from being a source

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of crime. The Gambling Commission's Guidance does however envisage that licensing authorities should pay attention to the proposed location of gambling premises in terms of this licensing objective. Thus, where an area has known high levels of organised crime this authority will consider carefully whether gambling premises are suitable to be located there and whether conditions may be suitable such as the provision of door supervisors. This licensing authority is aware of the distinction between disorder and nuisance and will consider factors (for example whether police assistance was required and how threatening the behaviour was to those who could see it) so as to make that distinction.

Ensuring that gambling is conducted in a fair and open way - **This licensing authority has noted that the Gambling Commission states that it generally does not expect licensing authorities to be concerned with ensuring that gambling is conducted in a fair and open way as this will be addressed via operating and personal licences.**

Protecting children and other vulnerable persons from being harmed or exploited by gambling - This licensing authority has noted the Gambling Commission's Guidance that this objective means preventing children from taking part in gambling (as well as restriction of advertising so that gambling products are not aimed at or are, particularly attractive to children). The licensing authority will therefore consider, as suggested in the Gambling Commission's Guidance, whether specific measures are required at particular premises, with regard to this licensing objective. Appropriate measures may include supervision of entrances / machines, segregation of areas etc.

This licensing authority is also aware of the Gambling Commission Codes of Practice as regards this licensing objective, in relation to specific premises.

As regards the term “vulnerable persons” it is noted that the Gambling Commission does not seek to offer a definition but states that “it will for regulatory purposes assume that this group includes people who gamble more than they want to; people who gambling beyond their means; and people who may not be able to make informed or balanced decisions about gambling due to a mental impairment, alcohol or drugs.” This licensing authority will consider this licensing objective on a case by case basis.

Conditions - Any conditions attached to licences will be proportionate and will be:

- relevant to the need to make the proposed building suitable as a gambling facility;
- directly related to the premises and the type of licence applied for;
- fairly and reasonably related to the scale and type of premises; and
- reasonable in all other respects.

Decisions upon individual conditions will be made on a case by case basis, although there will be a number of measures this licensing authority will consider utilising should there be a perceived need, such as the use of supervisors, appropriate signage for adult only areas etc. There are specific comments made in this regard under some of the licence types below. This licensing authority will also expect the licence applicant to offer his/her own suggestions as to way in which the licensing objectives can be met effectively.

This licensing authority will also consider specific measures which may be required for buildings which are subject to multiple premises licences. Such measures may include the supervision of entrances; segregation of gambling from non-gambling areas frequented by

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children; and the supervision of gaming machines in non-adult gambling specific premises in order to pursue the licensing objectives. These matters are in accordance with the Gambling Commission's Guidance.

This authority will also ensure that where category C or above machines are on offer in premises to which children are admitted:

- all such machines are located in an area of the premises which is separated from the remainder of the premises by a physical barrier which is effective to prevent access other than through a designated entrance;
- only adults are admitted to the area where these machines are located;
- access to the area where the machines are located is supervised;
- the area where these machines are located is arranged so that it can be observed by the staff or the licence holder; and
- at the entrance to and inside any such areas there are prominently displayed notices indicating that access to the area is prohibited to persons under 18.

These considerations will apply to premises including buildings where multiple premises licences are applicable.

This licensing authority is aware that tracks may be subject to one or more than one premises licence, provided each licence relates to a specified area of the track. As per the Gambling Commission's Guidance, this licensing authority will consider the impact upon the third licensing objective and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter.

It is noted that there are conditions which the licensing authority cannot attach to premises licences which are:

- any condition on the premises licence which makes it impossible to comply with an operating licence condition;
- conditions relating to gaming machine categories, numbers, or method of operation;
- conditions which provide that membership of a club or body be required (the Gambling Act 2005 specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated; and
- conditions in relation to stakes, fees, winning or prizes.

Door Supervisors - The Gambling Commission advises in its Guidance to Licensing Authorities that if a licensing authority is concerned that a premises may attract disorder or be subject to attempts at unauthorised access (for example by children and young persons) then it may require that the entrances to the premises are controlled by a door supervisor, and is entitled to impose a premises licence to this effect.

Where it is decided that supervision of entrances/machines is appropriate for particular cases, a consideration of whether these need to be SIA licensed or not will be necessary. It will not be automatically assumed that they need to be licensed, as the statutory requirements for different types of premises vary (as per the Guidance, Part 33).

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2. Adult Gaming Centres

This licensing authority will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to, for example, ensure that under 18 year olds do not have access to the premises.

This licensing authority may consider measures to meet the licensing objectives such as:

- Proof of age schemes
- CCTV
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry
- Notices / signage
- Specific opening hours
- Self-exclusion schemes
- Provision of information leaflets / helpline numbers for organisations such as GamCare.

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

3. (Licensed) Family Entertainment Centres:

This licensing authority will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority, for example, that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machine areas.

This licensing authority may consider measures to meet the licensing objectives such as:

- CCTV
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry
- Notices / signage
- Specific opening hours
- Self-exclusion schemes
- Provision of information leaflets / helpline numbers for organisations such as GamCare.
- Measures / training for staff on how to deal with suspected truant school children on the premises

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

This licensing authority will, as per the Gambling Commission's guidance, refer to the Commission's website to see any conditions that apply to operating licences covering the way in which the area containing the category C machines should be delineated. This licensing authority will also make itself aware of any mandatory or default conditions on these premises licences, when they have been published.

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4. Casinos (Hartlepool Council adopted a No Casino Resolution in 2007. Whether the resolution will be retained will be discussed by the Council during and following the conclusion of the consultation process)

This licensing authority has passed a 'no casino' resolution on the basis that whilst it recognises that gambling can be an enjoyable and harmless activity for many, it believes that a casino may provide an environment that may harm vulnerable persons who may gamble beyond their means.

Potential licence applicants should note that as a 'no-casino' resolution has been passed by this authority no applications for casino premises licences will be considered. Any applications received will be returned with a notification that a 'no-casino' resolution is in place.

5. Bingo premises

This licensing authority notes that the Gambling Commission's Guidance states:

18.4 Licensing authorities will need to satisfy themselves that bingo can be played in any bingo premises for which they issue a premises licence. This will be a relevant consideration where the operator of an existing bingo premises applies to vary their licence to exclude an area of the existing premises from its ambit and then applies for a new premises licence, or multiple licences, for that or those excluded areas.

This authority also notes the Guidance at paragraph 18.8 regarding the unusual circumstances in which the splitting of a pre-existing premises into two adjacent premises might be permitted, and in particular that it is not permissible to locate sixteen category B3 gaming machines in one of the resulting premises, as the gaming machine entitlement for that premises would be exceeded.

18.7 Children and young people are allowed into bingo premises; however they are not permitted to participate in the bingo and if category B or C machines are made available for use these must be separated from areas where children and young people are allowed.

6. Betting premises

Betting machines - This licensing authority will, as per the Gambling Commission's Guidance, take into account the size of the premises, the number of counter positions available for person-to-person transactions, and the ability of staff to monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable people, when considering the number/nature/circumstances of betting machines an operator wants to offer.

7. Travelling Fairs

This licensing authority is responsible for deciding whether, where category D machines and / or equal chance prize gaming without a permit is to be made available for use at travelling fairs, the statutory requirement that the facilities for gambling amount to no more than an ancillary amusement at the fair is met.

The licensing authority will also consider whether the applicant falls within the statutory definition of a travelling fair.

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It is noted that the 27-day statutory maximum for the land being used as a fair applies on a per calendar year basis, and that it applies to the piece of land on which the fairs are held, regardless of whether it is the same or different travelling fairs occupying the land. This licensing authority will work with its neighbouring authorities to ensure that land which crosses our boundaries is monitored so that the statutory limits are not exceeded.

8. Provisional Statements

Developers may wish to apply to this authority for provisional statements before entering into a contract to buy or lease property or land to judge whether a development is worth taking forward in light of the need to obtain a premises licence. There is no need for the applicant to hold an operating licence in order to apply for a provisional statement.

S204 of the Gambling Act provides for a person to make an application to the licensing authority for a provisional statement in respect of premises that he or she:

- expects to be constructed;
- expects to be altered; or
- expects to acquire a right to occupy.

The process for considering an application for a provisional statement is the same as that for a premises licence application. The applicant is obliged to give notice of the application in the same way as applying for a premises licence. Responsible authorities and interested parties may make representations and there are rights of appeal.

In contrast to the premises licence application, the applicant does not have to hold or have applied for an operating licence from the Gambling Commission (except in the case of a track) and they do not have to have a right to occupy the premises in respect of which their provisional application is made.

The holder of a provisional statement may then apply for a premises licence once the premises are constructed, altered or acquired. The licensing authority will be constrained in the matters it can consider when determining the premises licence application, and in terms of representations about premises licence applications that follow the grant of a provisional statement, no further representations from relevant authorities or interested parties can be taken into account unless:

- they concern matters which could not have been addressed at the provisional statement stage, or
- they reflect a change in the applicant's circumstances.

In addition, the authority may refuse the premises licence (or grant it on terms different to those attached to the provisional statement) only by reference to matters:

- which could not have been raised by objectors at the provisional statement stage;
- which in the authority's opinion reflect a change in the operator's circumstances; or
- where the premises has not been constructed in accordance with the plan submitted with the application. This must be a substantial change to the plan and this licensing authority notes that it can discuss any concerns it has with the applicant before making a decision.

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9. Reviews:

Requests for a review of a premises licence can be made by interested parties or responsible authorities; however, it is for the licensing authority to decide whether the review is to be carried-out. This will be on the basis of whether the request for the review is relevant to the matters listed below;

- in accordance with any relevant Code of Practice issued by the Gambling Commission;
- in accordance with any relevant guidance issued by the Gambling Commission;
- reasonably consistent with the licensing objectives; and
- in accordance with the authority's statement of principles.

The request for the review will also be subject to the consideration by the authority as to whether the request is frivolous, vexatious, or whether it will certainly not cause this authority to wish to alter/revoke/suspend the licence, or whether it is substantially the same as previous representations or requests for review.

The licensing authority can also initiate a review of a particular premises licence, or a particular class of premises licence on the basis of any reason which it thinks is appropriate.

Once a valid application for a review has been received by the licensing authority, representations can be made by responsible authorities and interested parties during a 28 day period. This period begins 7 days after the application was received by the licensing authority, who will publish notice of the application within 7 days of receipt.

The licensing authority must carry out the review as soon as possible after the 28 day period for making representations has passed.

The purpose of the review will be to determine whether the licensing authority should take any action in relation to the licence. If action is justified, the options open to the licensing authority are:-

- (a) add, remove or amend a licence condition imposed by the licensing authority;
- (b) exclude a default condition imposed by the Secretary of State or Scottish Ministers (e.g. opening hours) or remove or amend such an exclusion;
- (c) suspend the premises licence for a period not exceeding three months; and
- (d) revoke the premises licence.

In determining what action, if any, should be taken following a review, the licensing authority must have regard to the principles set out in section 153 of the Act, as well as any relevant representations.

In particular, the licensing authority may also initiate a review of a premises licence on the grounds that a premises licence holder has not provided facilities for gambling at the premises. This is to prevent people from applying for licences in a speculative manner without intending to use them.

Once the review has been completed, the licensing authority must, as soon as possible, notify its decision to:

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- the licence holder
- the applicant for review (if any)
- the Commission
- any person who made representations
- the chief officer of police or chief constable; and
- Her Majesty's Commissioners for Revenue and Customs

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PART C

Permits / Temporary & Occasional Use Notice

1. Unlicensed Family Entertainment Centre gaming machine permits (Statement of Principles on Permits - Schedule 10 paragraph 7)

Where a premises does not hold a premises licence but wishes to provide gaming machines, it may apply to the licensing authority for this permit. It should be noted that the applicant must show that the premises will be wholly or mainly used for making gaming machines available for use (Section 238).

The Gambling Act 2005 states that a licensing authority may prepare a *statement of principles* that they propose to consider in determining the suitability of an applicant for a permit and in preparing this statement, and/or considering applications, it need not (but may) have regard to the licensing objectives and shall have regard to any relevant guidance issued by the Commission under section 25. The Gambling Commission's Guidance to Licensing Authorities also states: "In their three year licensing policy statement, licensing authorities may include a statement of principles that they propose to apply when exercising their functions in considering applications for permits...., licensing authorities will want to give weight to child protection issues." (24.6)

Guidance also states: "...An application for a permit may be granted only if the licensing authority is satisfied that the premises will be used as an unlicensed FEC, and if the chief officer of police has been consulted on the application....Licensing authorities might wish to consider asking applications to demonstrate:

- a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed FECs;
- that the applicant has no relevant convictions (those that are set out in Schedule 7 of the Act; and
- that staff are trained to have a full understanding of the maximum stakes and prizes. (24.7)

It should be noted that a licensing authority cannot attach conditions to this type of permit.

Statement of Principles This licensing authority will expect the applicant to show that there are policies and procedures in place to protect children from harm. Harm in this context is not limited to harm from gambling but includes wider child protection considerations. The efficiency of such policies and procedures will each be considered on their merits, however, they may include appropriate measures / training for staff as regards suspected truant school children on the premises, measures / training covering how staff would deal with unsupervised very young children being on the premises, or children causing perceived problems on / around the premises. This licensing authority will also expect, as per Gambling Commission Guidance, that applicants demonstrate a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed FECs; that the applicant has no relevant convictions (those that are set out in Schedule 7 of the Act); and that staff are trained to have a full understanding of the maximum stakes and prizes.

2. (Alcohol) Licensed premises gaming machine permits - (Schedule 13 paragraph 4(1))

Automatic entitlement: 2 machines

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There is provision in the Act for premises licensed to sell alcohol for consumption on the premises to automatically have 2 gaming machines, of categories C and/or D. The premises merely need to notify the licensing authority.

The licensing authority can remove the automatic authorisation in respect of any particular premises if:

- provision of the machines is not reasonably consistent with the pursuit of the licensing objectives;
- gaming has taken place on the premises that breaches a condition of section 282 of the Gambling Act (i.e. that written notice has been provided to the licensing authority, that a fee has been provided and that any relevant code of practice issued by the Gambling Commission about the location and operation of the machine has been complied with);
- the premises are mainly used for gaming; or
- an offence under the Gambling Act has been committed on the premises.

Permit: 3 or more machines

If a premises wishes to have more than 2 machines, then it needs to apply for a permit and the licensing authority must consider that application based upon the licensing objectives, any guidance issued by the Gambling Commission issued under Section 25 of the Gambling Act 2005, and “*such matters as they think relevant.*”

This licensing authority considers that “such matters” will be decided on a case by case basis but generally there will be regard to the need to protect children and vulnerable persons from harmed or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machines. Measures which will satisfy the authority that there will be no access may include the adult machines being in sight of the bar, or in the sight of staff who will monitor that the machines are not being used by those under 18. Notices and signage may also be help. As regards the protection of vulnerable persons, applicants may wish to consider the provision of information leaflets / helpline numbers for organisations such as GamCare.

It is recognised that some alcohol licensed premises may apply for a premises licence for their non-alcohol licensed areas. Any such application would most likely need to be applied for, and dealt with as an Adult Gaming Centre premises licence.

It should be noted that the licensing authority can decide to grant the application with a smaller number of machines and/or a different category of machines than that applied for. Conditions (other than these) cannot be attached.

It should also be noted that the holder of a permit must comply with any Code of Practice issued by the Gambling Commission about the location and operation of the machine.

3. Prize Gaming Permits

The Gambling Act 2005 states that a licensing authority may “prepare a statement of principles that they propose to apply in exercising their functions under this Schedule” which “may, in particular, specify matters that the licensing authority proposes to consider in determining the suitability of the applicant for a permit”.

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This licensing authority has prepared a Statement of Principles which is that the applicant should set out the types of gaming that he or she is intending to offer and that the applicant should be able to demonstrate:

- that they understand the limits to stakes and prizes that are set out in Regulations;
- that the gaming offered is within the law
- Clear policies that outline the steps to be taken to protect children from harm.

In making its decision on an application for this permit the licensing authority does not need to (but may) have regard to the licensing objectives but must have regard to any Gambling Commission guidance. (Gambling Act 2005, Schedule 14 paragraph 8(3)).

It should be noted that there are conditions in the Gambling Act 2005 by which the permit holder must comply, but that the licensing authority cannot attach conditions. The conditions in the Act are:

- the limits on participation fees, as set out in regulations, must be complied with;
- all chances to participate in the gaming must be allocated on the premises on which the gaming is taking place and on one day; the game must be played and completed on the day the chances are allocated; and the result of the game must be made public in the premises on the day that it is played;
- the prize for which the game is played must not exceed the amount set out in regulations (if a money prize), or the prescribed value (if non-monetary prize); and
- participation in the gaming must not entitle the player to take part in any other gambling.

4. Club Gaming and Club Machines Permits

Members Clubs and Miners' welfare institutes (but not Commercial Clubs) may apply for a Club Gaming Permit or a Clubs Gaming machines permit. The Club Gaming Permit will enable the premises to provide gaming machines (3 machines of categories B, C or D), equal chance gaming and games of chance as set-out in forthcoming regulations. A Club Gaming machine permit will enable the premises to provide gaming machines (3 machines of categories B, C or D).

Gambling Commission Guidance states: "Members clubs must have at least 25 members and be established and conducted "wholly or mainly" for purposes other than gaming, unless the gaming is permitted by separate regulations. The Secretary of State has made regulation and these cover bridge and whist clubs, which replicates the position under the Gambling Act 1968. A members' club must be permanent in nature, not established to make commercial profit, and controlled by its members equally. Examples include working men's clubs, branches of Royal British Legion and clubs with political affiliations."

The Commission Guidance also notes that "licensing authorities may only refuse an application on the grounds that:

- (a) the applicant does not fulfil the requirements for a members' or commercial club or miners' welfare institute and therefore is not entitled to receive the type of permit for which it has applied;
- (b) the applicant's premises are used wholly or mainly by children and/or young persons;

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- (c) an offence under the Act or a breach of a permit has been committed by the applicant while providing gaming facilities;
- (d) a permit held by the applicant has been cancelled in the previous ten years; or
- (e) an objection has been lodged by the Commission or the police.

There is also a 'fast-track' procedure available under the Act for premises which hold a Club Premises Certificate under the Licensing Act 2003 (Schedule 12 paragraph 10). As the Gambling Commission's Guidance to Licensing Authorities states: "Under the fast-track procedure there is no opportunity for objections to be made by the Commission or the police, and the ground upon which an authority can refuse a permit are reduced." and "The grounds on which an application under the process may be refused are:

- (a) that the club is established primarily for gaming, other than gaming prescribed under schedule 12;
- (b) that in addition to the prescribed gaming, the applicant provides facilities for other gaming; or
- (c) that a club gaming permit or club machine permit issued to the applicant in the last ten years has been cancelled."

There are statutory conditions on club gaming permits that no child uses a category B or C machine on the premises and that the holder complies with any relevant provision of a code of practice about the location and operation of gaming machines.

5. Temporary Use Notices

Temporary Use Notices allow the use of premises for gambling where there is no premises licence but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling. Premises that might be suitable for a Temporary Use Notice, according the Gambling Commission, would include hotels, conference centres and sporting venues.

The licensing authority can only grant a Temporary Use Notice to a person or company holding a relevant operating licence, i.e. a non-remote casino operating licence.

The Secretary of State has the power to determine what form of gambling can be authorised by Temporary Use Notices, and at the time of writing this Statement the relevant regulations (SI no 3157: The Gambling Act 2005 (Temporary Use Notices) Regulations 2007) state that Temporary Use Notices can only be used to permit the provision of facilities or equal chance gaming, where the gaming is intended to produce a single winner, which in practice means poker tournaments.

There are a number of statutory limits as regards Temporary Use Notices. The meaning of "premises" in Part 8 of the Act is discussed in Part 7 of the Gambling Commission Guidance to Licensing Authorities. As with "premises", the definition of "a set of premises" will be a question of fact in the particular circumstances of each notice that is given. In the Act "premises" is defined as including "any place".

In considering whether a place falls within the definition of "a set of premises", the licensing authority needs to look at, amongst other things, the ownership/occupation and control of the premises.

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This licensing authority expects to object to notices where it appears that their effect would be to permit regular gambling in a place that could be described as one set of premises, as recommended in the Gambling Commission's Guidance to Licensing Authorities.

6. Occasional Use Notices:

The licensing authority has very little discretion as regards these notices aside from ensuring that the statutory limit of 8 days in a calendar year is not exceeded. This licensing authority will though consider the definition of a 'track' and whether the applicant is permitted to avail him/herself of the notice.

APPENDIX 1**PART D****SUMMARY OF LICENSING AUTHORITY DELEGATIONS PERMITTED
UNDER THE GAMBLING ACT**

| Matter to be dealt with | Full Council | Sub-Committee of Licensing Committee | Officers |
|--|---------------------|---|--|
| Final approval of three year licensing policy | X | | |
| Policy not to permit casinos | X | | |
| Application for premises licence | | Where representations have been received and not withdrawn | Where no representations received/representati ons have been withdrawn |
| Application for a variation to a licence | | Where representations have been received and not withdrawn | Where no representations received/representati ons have been withdrawn |
| Application for a transfer of a licence | | Where representations have been received from the Commission | Where no representations received from the Commission |
| Application for a provisional statement | | Where representations have been received and not withdrawn | Where no representations received/representati ons have been withdrawn |
| Review of a premises licence | | X | |
| Application for club gaming/club machine permits | | Where objections have been made (and not withdrawn) | Where no objections made/objections have been withdrawn |
| Cancellation of club gaming/club machine permits | | X | |
| Applications for other permits | | | X |
| Cancellation of licensed premises gaming machine permits | | | X |
| Consideration of temporary use notice | | | X |
| Decision to give a counter notice to a temporary use notice | | X | |

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CONTACT DETAILS/ADVICE & GUIDANCE

Further details regarding the licensing application process, including application forms, can be obtained from:

The Licensing Team
Hartlepool Borough Council
Civic Centre
Victoria Road
Hartlepool
TS24 8AY

Tel No: 01429 523354
Fax No: 01429 523308
Email: licensing@hartlepool.gov.uk
Web Site: www.hartlepool.gov.uk/licensing

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CONSULTATION