

Committee: LICENSING TASK GROUP

Agenda Item

Date: 3 December 2012

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**Title: REVIEW OF PRACTICES AND
PROCEDURES FOR THE HACKNEY
CARRIAGE AND PRIVATE HIRE TRADES**

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Legal**

Item for decision

Summary

1. On 24 October 2012 the Licensing and Environmental Health Committee resolved to appoint this Task Group for the purpose of examining policies and procedures in relation to hackney carriages, private hire drivers and operators, reviewing enforcement, conditions of licence, licensing standards and the protocol on suspension and revocation of licence and advising on whether there should be a statement of licensing policy

Recommendations

Members consider

2. Whether the licensing standards need review and if so what revisions are necessary
3. Whether the conditions of licence need review and if so what revisions are necessary
4. Whether the protocol for the suspension and revocation of licences needs review and if so what revisions are necessary
5. What approach the council should adopt with regard to enforcement of the legislation
6. What approach the council should adopt with regard to the enforcement of conditions
7. Whether it is desirable for the council to have a formal licensing policy and if so what form that policy should take
8. What involvement should representatives of the trade have in determining the policies and procedures of the council

Financial Implications

9. None arising from this report

Background Papers

10. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

None

Accompanying papers

11. The following papers are not background papers within the statutory definition but are attached to assist members consider this report

- a. Council’s licensing standards for drivers
- b. Council’s licensing standards for proprietors and operators
- c. Conditions relating to a driver’s licence
- d. Hackney carriage vehicle conditions
- e. Private hire vehicle conditions
- f. Private hire operator conditions
- g. Protocol for the suspension or revocation of licenses
- h. Regulators Compliance Code 17 December 2007

Impact

12.

Communication/Consultation	Members will need to determine what consultation is necessary before members make any recommendations to the Licensing and Environmental Health Committee
Community Safety	The safety of the community is one of the main aims of the legislation
Equalities	There are no equality issues arising from this report
Health and Safety	None
Human Rights/Legal Implications	Local authorities are entitled to have policies regarding licensing issues but must be prepared to depart from those policies in appropriate cases. Any policies should make this clear. In the event of an appeal against a decision of the authority the court must apply the council’s policies and can only depart from them if it considers that there are reasons to make an exception, not because the court considers the policy to be unsound. The only way to challenge a policy itself is by way of judicial review.
Sustainability	None

Ward-specific impacts	None
Workforce/Workplace	None

Situation

Background

13. The power to licence vehicles, drivers and operators is adoptive. This council resolved to adopt those powers in 1992. Shortly after adopting the legislation the council adopted pre-licensing standards which set out circumstances under which a driver may not be considered to be a fit and proper person and therefore likely to have a licence refused. These were replaced by licensing standards in 2003 but have not been subject to revision since.
14. In September 2004 the committee adopted licensing standards for operators of private hire vehicles and proprietors of hackney carriages. These again have not been revised since. However following the decision of the high court in R. (Newcastle City Council) –v- Berwick upon Tweed Borough Council it was decided that the council would not licence vehicles which would be used predominantly outside the district.
15. With regard to drivers, operators and vehicles there are conditions of licence which apply. These were drawn up in 1992 and whilst there have been some minor amendments they have not been comprehensively reviewed since.
16. In September 2010 members adopted a protocol for the suspension or revocation of licences. This documented the practice which had been applied in dealing with such matters.
17. In addition to these published documents I have reported on the exercise of my delegated powers to the Licensing and Environmental Health Committee at each committee meeting since delegated powers were granted to me in 2004, initially verbally but since 2010 (due to an increase in the number of cases in which delegated powers were exercised) in writing. The minutes of such reports are in the public domain and the stance of the Licensing and Environmental Health Committee towards enforcement matters is therefore well documented. However the council does not have a formal policy document regarding its approach to licensing relating to the hackney carriage and private hire trades.
18. At a recent appeal against a decision I took under delegated powers to suspend the licence of a driver who was not wearing his badge the solicitor for the driver criticised the council for not having a licensing policy. The council lost the appeal although analysis of the magistrates' reasons does not indicate that the absence of a policy was material to their decision.
19. At the meeting of the Licensing and Environmental Health Committee on 24 October 2012 the representative of ULODA called for a licensing policy stating

that the council has a policy under the Licensing Act 2003 and that it was best practice to have such a policy.

20. The analogy with the Licensing Act 2003 (and for that matter the Gambling Act 2005) is not appropriate as under those items of legislation licensing authorities are obliged to have policies to indicate how they will meet the licensing objectives. There is no such requirement under the legislation relating to hackney carriage and private hire matters.
21. The Department of Transport Best Practice Guidance for taxi and private hire vehicles does not recommend that councils should adopt a formal licensing policy. I am not aware of any licensing authorities which have done so. I am not sure therefore of the basis upon which it is suggested that it is best practice to have a policy. However against that a policy would be of possible assistance to the trade in understanding the approach being taken by the council. The existence of a policy would also be of assistance in defending appeals and other decisions (e.g. whether to prosecute) as when a council has a policy the courts must apply the policy as if it were standing in the shoes of the local authority.

Licensing Standards - Drivers

22. At present there are 2 documents entitled "Licensing Standards", one relating to drivers, the other relating to operators and proprietors. I would suggest that the titles be amended to make it clear that they cover separate areas.
23. Drivers are usually subjected to an enhanced CRB check and medical on first application and thereafter at 3 year intervals.
24. The policy with regard to convictions is dealt with by the Licensing Standards. However members are asked to consider whether the Licensing Standards should be amended to refer to formal cautions. A caution may be administered as an alternative to a prosecution where the police consider it appropriate to do so and when the offender has admitted guilt. Thus a caution is evidence of the commission of a criminal offence but is not a conviction. Cautions are deemed spent at the time they are administered or (in the case of a conditional caution) when any conditions have been satisfied.

Question – should the Committee adopt an approach to cautions and if so should that be reflected in the Licensing Standards?

25. Drivers are expected to meet group 2 medical standards. Although this approach has been adopted by the Committee it is not reflected in the Licensing Standards.

Question – should the Licensing Standards state what level of fitness is required by drivers?

26. The Licensing Standards set out the number of motoring offences drivers may have before they may be considered not to be "fit and proper persons". It divides offences into 2 types, "minor" and "serious". A minor offence is defined as one where 5 points or less are endorsed on the licence for the offence. A serious

offence is where 6 points or more are endorsed for a single offence. This classification can be misleading. For example, excess speed carries points between 3 – 6 (3 being the appropriate number for a fixed penalty notice). 5 points is outside the definition of a serious offence but would nevertheless be likely to indicate a speed significantly higher than the limit.

Questions –

- (a) Should the word “minor” be removed as being misleading?**
- (b) Should the policy as to who is a fit and proper person be based upon the number of convictions as at present or upon the number of points on the licence?**
- (c) If members favour moving from the number of convictions to the number of points what is the appropriate limit?**
- (d) Should the standards make exceptions for offences which do not relate to the driving ability of drivers (e.g. no insurance)?**

27. The Licensing Standards deal with disqualifications from driving in a general sense. Members will be aware of the “totting up” provisions of the Road Traffic Act which provide for an automatic disqualification for a driver who accumulates 12 points or more in a 3 year period. However the courts do have a limited discretion not to disqualify if to impose a disqualification would cause the offender great hardship. It is comparatively easy for someone who will lose their livelihood if they lose their licence to persuade magistrates not to impose a disqualification. This can lead to unequal treatment of some drivers. A driver who has been disqualified under the totting up provisions would not meet Licensing Standards until 3 years 6 months from the date of disqualification. A driver who has persuaded magistrates not to disqualify however would meet Licensing Standards as soon as the first endorsement is more than 3 years old which could be a matter of a few days after the 4th offence. On 2 occasions Members have not been satisfied that a driver who meets Licensing Standards merely because magistrates exercised their discretion not to disqualify was a fit and proper person and refused applications for licenses.

Question – should the Licensing Standards be amended to indicate that a driver who has accumulated 12 points in a 3 year period would not normally be considered to be a fit and proper person for 3 years 6 months after the date of the last conviction even if he is not disqualified for that offence?

Licensing Standards – Operators/Proprietors

28. The standards required of operators/proprietors are not quite as stringent as those relating to drivers. In particular with the exception of the offence of no insurance the driving record of the operator/proprietor is irrelevant. This is logical as operators and proprietors need not drive licensed vehicles. Should they wish to do so then they would need to hold a driver’s licence and would need to satisfy the standards for such a licence (or that there are grounds to depart from those standards) before such a licence would be granted. The offence of no insurance

is relevant to operators/proprietors however as they are primarily responsible for ensuring that their vehicles are insured and a track record of failing to do this may indicate that they are not fit and proper persons to hold an operator's licence or hackney carriage vehicle licence.

29. Because operators/proprietors are not exempt occupations under the Rehabilitation of Offenders Act the Council is not entitled to request an enhanced or even a standard CRB check. Only a basic check can be requested which will only show unspent convictions. The current standards refer to unspent convictions and conditional discharges within the last 5 years. A conditional discharge is deemed spent at the end of the discharge period or after 12 months (whichever is the longer). As such it will not be revealed by a basic CRB check. Cautions will not be revealed by a basic CRB check as they are deemed spent once administered.

Questions –

- (a) Do members agree with the approach to the driving record of operators/proprietors?**
- (b) Should the reference to conditional discharges be omitted from the standards**
- (c) Should the standards make reference to cautions?**

Drivers Conditions

30. These are now very dated and in my view need rewriting in full. Before that exercise is undertaken however it would be helpful to know whether Members consider the content of the conditions covers everything Members would wish to be dealt with and whether there are any matters which ought to be omitted. In particular the conditions contain some matters which repeat the law which members may consider unnecessary. Where the law requires a driver (or vehicle operator or proprietor) to do or not to do something Members may feel that the better approach is not to repeat this in the conditions of licence but to spell out the Council's approach to breaches of the relevant items of legislation in the Licensing Policy should Members decide to adopt one.

Questions –

- (a) Are there any matters which Members feel should be covered by conditions on the driver's licence which are currently not dealt with?**
- (b) Are there any matters in the conditions which Members consider inappropriate?**
- (c) In particular would Members be in favour of omitting conditions where the conditions replicate legislation (e.g. it is an offence not to wear a driver's badge or to fail to return a badge upon request if a licence is suspended or revoked)?**

Vehicle Licenses

31. Again these are somewhat antiquated and need review. It is probably sensible to retain separate conditions for hackney carriages and private hire vehicles as while there are many similarities there are also fundamental differences regarding e.g. signage and meters.

Questions –

- (a) Are there any matters which Members feel should be covered by conditions on the vehicle licences which are currently not dealt with?***
- (b) Are there any matters in the conditions which Members consider inappropriate?***
- (c) In particular would Members be in favour of omitting conditions where the conditions replicate legislation?***
- (d) With regard to hackney carriages whether Members would be content for the requirement for meters to be checked by the Council to be replaced with a requirement for meters to be calibrated by an approved company?***

Operators Conditions

32. Apart from updating these contain a number of references which duplicate legislation.

Questions –

- (a) Are there any matters which Members feel should be covered by conditions on the operator's licence which are currently not dealt with?***
- (b) Are there any matters in the conditions which Members consider inappropriate?***
- (c) In particular would Members be in favour of omitting conditions where the conditions replicate legislation?***

Protocol for the suspension, revocation or non-renewal of driver's licenses

33. This is the most recent of the suite of documents to be considered by the Task Group having been adopted in September 2010. It covers decisions by the Licensing and Environmental Health Committee and any decisions taken by me under delegated powers.

34. The protocol seems to have worked well in practice although I consider it would be appropriate to make specific reference to it in reports to the Committee when considering revocation, suspension or non-renewal in future.

35. I do not consider it necessary or desirable to extend the protocol to cover operators or vehicles. In respect of these licenses I do not have delegated authority to take any action save for where a vehicle is unfit. Any decisions regarding operators and vehicles therefore have to be taken by the Committee.

36. With regard to operators suspension of a licence is rarely a proportionate option. The suspension of an operator's licence affects not only the operator but also those drivers who drive for him. Unless they were able to find another operator prepared to give them work at short notice it deprives the drivers who may well be innocent of any wrong-doing of a livelihood for the period of a suspension. Where there is an offence the only practical sanction is a prosecution. This is a matter best dealt with as a matter of licensing policy rather than in a protocol.

37. So far as vehicle licences are concerned these can be suspended, revoked or not renewed on grounds that the vehicle is unfit for use as a hackney carriage/private hire vehicle or that the operator or proprietor has committed an offence under the relevant legislation or for any other reasonable cause.

38. Fitness for use is an issue determined by vehicle inspection by one of the Council's approved garages. I struggle with the concept that it is appropriate to suspend, revoke or not renew a vehicle licence on the basis that the operator of a private hire vehicle has committed a relevant offence. If the operator is deemed fit to retain his licence I do not see how it can be reasonable to suspend etc the vehicle licence. The suspension of a vehicle licence in these circumstances would have the same effect on the driver allocated that vehicle as suspending the operator. The only circumstance in which I consider it would be reasonable to take action with regard to a vehicle licence is when there is no operator licensed to operate that vehicle. The Committee has in the recent past refused to renew a vehicle licence for any other reasonable cause in such circumstances.

39. Similar considerations apply to the proprietors of hackney carriages. If the proprietor is a licensed driver any wrong doing on his part can be dealt with by a suspension etc. of the driver's licence. If he is not then suspension of the vehicle licence impacts upon the person employed to drive it.

Questions –

(a) Are Members satisfied with the Protocol as drawn?

(b) Do Members agree that the protocol should not be extended to cover operators/proprietors and vehicles?

Approach to the enforcement of the legislation

40. There are at least 34 potential offences under various items of legislation which relate to hackney carriages or private hire vehicles. The approach taken to date has been that where in my opinion there is evidence that an offence has been committed but that a prosecution would be disproportionate I would deal with the matter by way of a short suspension. If I considered that my power of suspension was insufficient then that would suggest that a prosecution is called

for rather than a reference to the Committee. If as a driver, proprietor or operator is convicted of an offence then that would trigger a reference to the Committee to determine whether in the light of the conviction the individual remained a fit and proper person.

41. As Members will be aware the Council recently lost an appeal against a decision suspending a driver for failure to wear his badge. The court also ordered the Council to pay the driver's costs.

42. Subject to compliance with the Code for Prosecutors it would appear that for the Council the safest way forward is to prosecute for offences rather than to suspend. The Code for Prosecutors requires the prosecutor to be satisfied that a prosecution would be in the public interest. In determining the public interest regard may be had to any policy the Council may have with regard to enforcement.

Question – do Members agree that where a driver has committed an offence, subject to any policy adopted with regard to enforcement, a prosecution is to be preferred to a suspension?

Approach to the enforcement of conditions

43. Members have expressed concern at the apparent disregard by members of the hackney carriage and private hire trades to the conditions attached to the licenses. The most common breach of condition is failure to notify the Council of a conviction or fixed penalty notice within 7 days. Following this is failure to wear a driver's badge (also an offence as to which see above); failure to notify the Council of accidents and failure to notify a change of address.

44. These breaches of condition have been dealt with by me under delegated powers generally by way of suspension. The suspensions have ranged from 1 to 14 days depending upon the circumstances of the breach and of the driver. Initially when I began using these powers the starting point for a suspension was 2 days. Members began expressing their concern that this was not proving sufficient deterrent and therefore in April 2012 the starting point for a suspension was increased to 3 days. The trade were notified of this through the liaison meetings and taxi chat and I presume Mr Drinkwater circulated his members at least as he was present when the decision to increase the starting point was reported to the Committee.

45. Notwithstanding this the number of drivers breaching conditions seems to be increasing. The report on the exercise of delegated powers to the Committee on 24 October 2012 referred to 15 cases, 3 times as many as for the corresponding period in 2011. Whilst against the total number of drivers licensed by the Council this may not seem a high number the duty to notify the Council of a fixed penalty notice only arises if such a notice is issued. I have recently asked the licensing team to keep a record of the number of drivers who do notify the Council of FPNs. The time that has elapsed since I made that request is too short to enable any clear conclusions to be drawn but the inference from the short period records have been kept is that over half the drivers who receive FPNs fail to tell us within 7 days and of these the vast majority do not do so until renewal.

46. Any sanction which is imposed needs to be proportionate and I am concerned that 3 days loss of income is approaching the limits of proportionality. If Members consider other action necessary then this would need to be addressed either in any licensing policy which may be adopted or at the least by a decision of the Committee.

47. If Members are considering suggesting a higher starting point for suspensions it may be appropriate to consider an amnesty accompanied by a notice to all drivers informing them of the change of approach

Question – what approach do Members consider should be taken in dealing with drivers who breach conditions attached to their licence?

Licensing Policy

48. As stated there is no legal or best practice requirements to have a licensing policy in relation to the hackney carriage and private hire trades. However s.21 Legislative and Regulatory Reform Act 2006 provides that in exercising regulatory functions to which the section applies authorities must have regard to the principles that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent and that regulatory activities should be targeted only at cases in which action is needed. The section applies to regulatory functions under the LG(MP)A 1976. Although I consider that the Council can demonstrate compliance with these principles a documented policy would reinforce the Council's approach.

49. If Members decide to recommend to the Committee that a policy should be adopted s.22 of the 2006 Act requires that regard should be had to any Code of Practice issued under that Act. The current Code of Practice is the Regulators Compliance Code issued on 17 December 2007 ("the Code").

50. Although Members are required to have regard to the Code in determining the Council's policies the provisions of the Code are not binding. Members are free to depart from the Code if they think fit but any departure from the Code should be properly reasoned and based upon evidence.

51. The Code is based upon the Hamilton Principles which are set out in the body of the Code. The main points may be summarised as follows:-

- There should only be intervention where there is a clear case for protection
- Risk assessments should be employed to concentrate resources in areas that need them most
- Regulators should provide authoritative, accessible advice easily and cheaply

- Inspections should not take place without a reason
- Businesses should not have to give information which is unnecessary or to give information more than once
- Businesses which persistently break regulations should be identified and face proportionate and meaningful sanctions
- Regulators should be accountable for the efficiency and effectiveness of their activities

52. Having regard to these principles I would suggest that Members consider the following when determining what provisions should be contained in any policy document:-

- Is there a clear case for protection in the application and enforcement of the licensing of drivers, operators and vehicles under the TPCA and LG(MP)A?
- What risk assessments (if any) need to be carried out?
- At present advice is given proactively in the form of statements made at the liaison meetings with the trade, in taxi chat and in circulars to operators. Reactive advice is given with regard to individual questions raised by trade representatives, operators or drivers by the licensing or legal services teams (depending on the nature of the enquiry).
- Inspections of vehicles take place annually for vehicles up to 5 years old and 6 monthly for vehicles over 6 months old. The enforcement team carry out random spot checks with the police and other agencies when vehicles are inspected. These occur approximately 4 times a year and generally detect cases of breaches of the legislation or licensing conditions in respect of some drivers/operators/vehicles as well as identifying some cases of unlicensed drivers and vehicles. As such these checks would appear to be a justifiable use of resources. The Code provides that "Regulators should use only a small element of random inspection in their programme to test their risk methodologies or the effectiveness of their interventions". It should be borne in mind that the Code covers a vast range of regulatory activities. My view is that the context of this part of the Code in relation to inspection of business premises and that the regime adopted by the Council for vehicle inspection/spot checks is amply justified.
- The requirement for businesses to not have to give unnecessary information is in my view met. The Council only requires information on the application forms for licenses unless such information or other intelligence suggests that further enquiries are necessary. The provision for businesses not to be required to give the same information more than once is in the context of there being more than

1 regulator concerned with the business which does not apply to the hackney carriage/private hire trades.

- In terms of enforcement action the Code states that regulators should ensure that their sanctions and penalties policy should be consistent with the principles set out in the Macrory Review which are:-
 - Aim to change the behaviour of the offender
 - Aim to eliminate any financial gain or benefit from non-compliance
 - Be responsive and consider what is appropriate for the particular offender and regulatory issue which can include punishment and the public stigma that would be associated with a criminal conviction
 - Be proportionate to the nature of the offence and the harm caused
 - Aim to restore the harm caused by regulatory non-compliance
 - Aim to deter future non-compliance

The Code also suggests that regulators should:-

- Publish an enforcement policy
 - Measure outcomes not just outputs
 - Justify their choice of enforcement year on year
 - Follow up on enforcement actions
 - Enforce in a transparent manner
 - Be transparent in the way in which they apply and determine penalties and
 - Avoid perverse incentives which may influence the choice of sanction
- Whilst acknowledging the desirability of accountability all enforcement action is reported to the Committee and the minutes and reports are therefore in the public domain. I query therefore whether further steps would be necessary or proportionate.

Questions –

- (a) Do Members consider it desirable for the Council to have a policy regarding licensing issues in relation to the hackney carriage/private hire trades?**

(b) Which areas should such a policy cover:-

- a. Licensing standards**
- b. Licensing conditions**
- c. Enforcement (including sanctions)**
- d. Protocol for suspension/revocation/non-renewal**
- e. Risk assessments**
- f. Advice to the trade**
- g. Inspections**
- h. Accountability**
- i. Any other matters?**

Engagement with the trade

53. Clearly it would be necessary to consult with the trade on any proposed amendments to the existing documentation and with regard to any proposed policy that Members may wish to recommend.

54. There is only one representative organisation active in the district at the present time, which is ULODA. However it is not representative of the whole trade. Currently the Council licenses over 1000 drivers and 110 operators or hackney carriage proprietors (the number of vehicle licenses is not relevant for this purpose as all vehicle licenses are held by drivers, operators or proprietors). Enquiries of the Chairman of ULODA have failed to ascertain how many members the organisation has. With regard to hackney carriages Members will be aware that the Council publishes a table of fares which sets the maximum fare which can be charged. Historically applications for increases in the table have always been submitted by ULODA. However it appears that only 15 out of 50 hackney carriages licensed by the Council have had their meters recalibrated. This demonstrates that the majority of the hackney carriage trade has not adopted the increase applied for by ULODA. I have no knowledge of how many operators and drivers belong to ULODA.

55. Consideration has to be given as to how to consult as any amendments to existing documents or any proposed policy will affect the trade as a whole, not merely members of ULODA. It is also necessary to consider when to consult. Whilst Members should have regard to the views of those consulted Members should bear in mind that the documents/policy is that of the Council and not the trade. Where Members have different views to those expressed in response to the consultation exercise and are not persuaded by those other views the opinion of Members should prevail.

Questions –

- (a) Who should be consulted with regard to any proposed changes to the documentation/proposed policy?**
- (b) How should consultation take place?**
- (c) At what stage should consultation take place**
 - a. Now?**
 - b. When the draft documents have been prepared?**
 - c. Both now with regard to general comments and again when draft documents have been prepared?**

Risk Analysis

56.

Risk	Likelihood	Impact	Mitigating actions
The Council does not have a licensing policy	4 – there is no such policy in place at present	2 – the Council's approach to enforcement is well documented and known throughout the trade and the absence of a policy was not material in the decision on a recent appeal case	Adopting a policy would strengthen the Council's position and reduce the risk of appeals and challenges to decisions
Any policy adopted is subject to legal challenge	2 – providing the policy is justifiable it is unlikely that an aggrieved party would risk judicial review proceedings	3 – significant time and expense would be incurred in defending a challenge and in the event that a challenge were to be	If Members recommend a policy they have full regard to the Code and give clear reasons for any departure therefrom. Members also pay close regard to the responses received during the consultation exercise

		successful the Council would have to start this process again	and give clear reasons in the event that decisions taken by Members are not in accordance with such responses
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- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.

ACCOMPANYING PAPERS

Licensing standards [Drivers]

Uttlesford District Council are responsible for ensuring the safety and wellbeing of the fare paying public and others by administering control of hackney carriages and private hire vehicle drivers pursuant to the provisions of the Local Government (Miscellaneous Provisions) Act 1976. To achieve this objective the Council has adopted standards which it expects drivers licenced by the Council to meet, both on an application for a new licence and during the period a licence is held. Whilst each case will be dealt with on its individual merits applications for a new licence from persons who fail to meet these standards will normally be refused and existing licence holders who cease to meet these standards are likely to have their licence suspended or revoked or not renewed on application. The licensing standards are:-

1. No more than 3 minor motoring offences during the last three years. For this purpose a minor motoring offence is defined as one where 5 or less penalty points have been endorsed on the drivers licence.
2. No serious motoring offences in the last 3 years. For this purpose a serious motoring offence is defined as one where 6 or more points have been endorsed on the drivers licence.
3. Where a driver has been disqualified from driving for any reason an application for a licence will not normally be considered for three years from the date that the disqualification expires or twelve months from the date that the driving licence is re-issued whichever is the later.
4. No criminal convictions which are not deemed to be spent within the meaning of the Rehabilitation of Offenders Act 1974 nor any conditional discharges for any offence within the last 5 years.
5. No pending prosecutions for any criminal or motoring offence.
6. Not to have had a hackney carriage or private hire vehicle drivers licence revoked by another licensing authority in the last 3 years.

Licensing Standards [Operators/Proprietors]

Uttlesford District Council is responsible for ensuring the safety and wellbeing of the fare paying public and others by administering control of hackney carriages and private hire vehicles pursuant to the provisions of the Local Government (Miscellaneous Provisions) Act 1976. To achieve this objective the Council has adopted standards which it expects operators and proprietors to meet both on an application for a new licence and during the period a licence is held. Whilst each case will be determined on its individual merits applications for a new operators or proprietors licence from persons who fail to meet these standards will normally be refused and existing licence holders who cease to meet these standards are likely to have their licenses suspended or revoked or not renewed upon application. The licensing standards are:-

- 1 No criminal convictions (other than motoring offences not referred to in paragraph 3 below) which are not deemed to be spent within the meaning of the Rehabilitation of Offenders Act 1974 and not to have been conditionally charged for any offence within the last 5 years
- 2 No pending prosecution for any criminal offence (other than motoring offences not referred to in paragraph 3 below)
- 3 Not to have been convicted for using a motor vehicle without insurance in the last 3 years
- 4 Not to have had a hackney carriage proprietors or private hire operator's licence suspended or revoked by another licensing authority within the last 3 years

The Executive Manager Corporate Governance has been given delegated authority to refuse applications for proprietors or operators licenses which do not meet licensing standards with power in his discretion to refer appropriate cases to the Committee.



CONDITIONS RELATING TO JOINT PRIVATE HIRE/ HACKNEY

CARRIAGE DRIVER'S LICENCE

Introduction

In order that a reliable Private Hire service of an acceptable standard is provided within the jurisdiction of Uttlesford District Council, then the following conditions will apply. These conditions may be amended or varied by the Council at any time.

1 Conduct of Driver

The driver will:-

- (a) at all times behave in a polite and orderly manner;
- (b) at all times be clean and respectable regarding his/her manner of dress. The wearing of shorts and vests will not normally be permitted;
- (c) afford all reasonable assistance with a passengers luggage especially in the loading and unloading of such luggage into and from the vehicle;
- (d) not without the express consent of the hirer, drink, or eat in the vehicle during the course of the hiring;
- (e) not without the express consent of the hirer play any radio or sound reproducing instruments or equipment in the vehicle other than for the purpose of sending or receiving messages in connection with the operation of the vehicle;
- (f) at no time cause or permit the noise emitted by any radio or other previously mentioned equipment in the vehicle which he/she is driving to be a source of nuisance or annoyance to any person, whether inside or outside the vehicle;
- (g) take all reasonable steps to ensure the safety of passengers conveyed in, entering or alighting from the vehicle driven by him/her.

2 Passengers

- (a) The driver shall not convey or permit to be conveyed in a private hire vehicle or hackney carriage vehicle a greater number of persons than that prescribed in the licence for the vehicle.
- (b) The driver must take all reasonable steps to ensure the safety of all passengers whilst in the vehicle and that the relevant legislation regarding seat belts and child restraints are complied with.
- (c) The driver shall not without the consent of the hirer of a vehicle convey or permit to be conveyed any other person in that vehicle.

3 Lost Property

- (a) The driver shall immediately after the end of every hiring or as soon as practicable thereafter carefully search the vehicle for any property which may have been accidentally left there.
- (b) If any property accidentally left in a private hire vehicle is found by the driver or handed to the driver then he/she shall make every endeavour to return the property to its rightful owner. If the property cannot be returned to the owner then the matter should be reported to the nearest police station as soon as practicable and in any case within 24 hours of the finding. Details of where the property can be reclaimed should also be given to the police in the event of the owner being traced.

4 Written Receipts

The driver shall if requested by the hirer of a private hire vehicle or hackney carriage vehicle, provide him/her with a written receipt for the fare paid.

5 Animals

The driver shall not convey in a private hire vehicle any animal belonging to or in the custody of himself or the Proprietor of the vehicle and he/she shall ensure that any animal belonging to or in the custody of any passenger is adequately restrained and kept in such a position so as not to distract the driver or otherwise to be a cause of danger or nuisance.

6 Assistance Dogs

The driver shall not refuse to convey in a Private Hire Vehicle/Hackney Carriage Vehicle a guide, hearing or other "Assistance Dog" when accompanying a disabled person. The driver must not make any charge for the conveyance of an "Assistance Dog".

The driver can refuse to carry an "Assistance Dog" if he/she is in possession of a medical certificate which exempts him/her on medical grounds. The notice of exemption if granted by this Council must be displayed in the Private Hire Vehicle or Hackney Carriage Vehicle.

7 Prompt Attendance

The driver of a private hire vehicle or hackney carriage vehicle shall, if he/she is aware that the vehicle has been hired to be in attendance at an appointed time and place or he/she has otherwise been instructed by the proprietor of the vehicle to be in attendance at an appointed time and place, punctually attend at that appointed time and place unless unavoidably delayed or prevented.

8 Copy of Conditions

The driver shall at all times when driving a private hire or hackney carriage vehicle, carry with him/her a copy of these conditions and make them available for inspection by the hirer or any other passenger on request.

9 Use of Unlicensed Drivers

The use of a unlicensed driver is strictly forbidden. If a driver wishes to be employed in such a capacity, then he/she must deposit with the operator a copy of his/her licence which authorises him/her to drive as well as a Private Hire/Hackney Carriage driving licence issued by Uttlesford district Council. The operator or proprietor will retain that copy until such time as the driver ceases to be permitted or employed to drive a private hire vehicle.

10 Change of Address

The driver shall notify the Assistant Chief Executive in writing of any change of his/her address during the period of the licence. This notification must be received within 7 days of such a change taking place.

11 Convictions

The driver shall notify the Assistant Chief Executive in writing of any offence (including motoring and criminal offences), formal caution for any offence or any fixed penalty notice imposed on them, within 7 days of such a conviction.

12 Accidents

The driver shall notify the Assistant Chief Executive in writing of any vehicle accident in which the driver is involved whilst driving a private hire/hackney carriage vehicle. The notification must be received within 72 hours of such an accident.

13 Wearing of Badge

The driver shall at all times when acting in accordance with his/her licence wear the badge issued by Uttlesford District Council in a conspicuous position. The badge will contain a photograph of the licence holder. Any change of appearance of the licence holder must be notified to Uttlesford District Council in order that a new badge can be issued. No fee will be charged in these type of cases.

14 Return of Badge

The driver shall upon the expiry (without immediate renewal), revocation or suspension of his/her licence forthwith return to the Assistant Chief Executive the drivers badge issued to him/her by Uttlesford District Council when granting the licence.

15 Display of Plate

The driver shall ensure that the private hire licence plate or hackney carriage licence plate, is displayed in the correct position and is clear and legible at all times.

16 Fare to be Demanded

The driver shall not demand from the hirer of a hackney carriage vehicle/ private hire vehicle a fare in excess of that indicated on the taximeter or previously agreed respectively.

17 Physical and Mental Fitness

The driver shall during the period of the licence report to the Council as soon as practicable any disability, physical or mental medical condition which develops or worsens which effect his/her ability to drive safely. Examples of such conditions could include the following:-

- (a) giddiness
- (b) fainting
- (c) epilepsy
- (d) strokes
- (e) Parkinsons disease

This list is not exhaustive, however drivers are also reminded that they are legally required to inform the DVLA at Swansea of any developing conditions which may effect their ability to drive.

18 Medical Evidence

A driver upon application for a licence shall provide to Uttlesford District Council, a medical certificate duly certified by a registered medical practitioner as to his/her ability and suitability to continue to drive as a private hire driver. Such a certificate will be valid for a period of 3 years and will need to be renewed on a 3 year basis.

19 Age of Driver

A person must have held a full driving licence for at least 12 months before the District Council will issue a private hire or hackney carriage drivers licence.

20 Certificate of Insurance

The driver will be responsible for ensuring that any vehicle in his charge is insured for use as a private hire vehicle. The conditions relating to insurance of motor vehicles are contained in part 6 of the Road Traffic Act 1988.

21 Penalties

The District Council may suspend or revoke the licence granted if any of the above conditions are not complied with.



HACKNEY CARRIAGE VEHICLE LICENCE

CONDITIONS OF LICENCE

INTRODUCTION

In order that a reliable Hackney Carriage service of an acceptable standard is provided within the jurisdiction of Uttlesford District Council, the following conditions will apply. These conditions may be amended or varied by the Council at any time.

The proprietor of the vehicle must ensure that the vehicle complies with the following conditions at all times.

1 TYPE OF VEHICLE

The vehicle must be safe, comfortable and suitable in type, size and design for use as a hackney carriage and must be:

- (a) a standard right hand drive saloon type or estate/hatchback type car finished in the manufacturer's standard colour with a minimum of four doors;
- (b) a mini-bus type of vehicle finished in the manufactures standard colour with a minimum of four doors.
- (c) have an engine and normal cubic capacity of which is not less than 1300ccs;
- (d) In a well maintained condition as judged by the Council's inspecting officer;
- (e) in a condition so as to comply at all times with all relevant statutory requirements.
- (f) the vehicle shall be made available for inspection by the appropriate officers of the Council as required.

2 COACHWORK

Vehicles much comply with the following:

- (a) the width of the rear part of the body, measured 6in below the top and 6in in front of the rear back rest, shall not be less that 4ft 3in, this measurement to be made with both rear doors closed;

- (b) the minimum leg room for passengers using the rear seats shall be 8 1/2in. The measurements to be taken from the rear door pillar to the nearest point of the rear seat squab.
- (c) All doors shall be capable of being opened from both the inside and the outside and to an angle of at least 60 degrees and any sliding door in a vehicle with three doors or less shall be capable of providing an open unrestricted minimum width of 2' 10".
- (d) Two windows on opposite sides of the vehicle shall be fitted and shall be capable of being adjusted and secured in an open or partly open position;
- (e) All glass fitted shall be safety glass, i.e. glass that if fractured does not fly into fragments capable of causing severe cuts;
- (f) Broken, discoloured or cracked glass, either in a window, windscreen or any part of the vehicle shall be replaced at once;
- (g) Every vehicle shall be refurbished as often as necessary and all coachwork shall be maintained in a clean condition and in proper state of repair; and
- (h) If the vehicle is an estate or hatchback type car it must be fitted with a guard rail or other device of a type approved by the Council to separate the rear loading area from the passengers.

3 GENERAL

- (a) The vehicle must be fitted with suitable tyres of the same type and size and include the carriage of a spare wheel. Where a vehicle is manufactured not to carry a spare wheel then subject to the vehicle being fitted with suitable run flat tyres or it carries a manufactures approved temporary repair kit then the requirement for a spare wheel to be carried would not apply.
- (b) The vehicle must be fitted on both sides with external rear view mirrors;
- (c) Two way radio equipment may not be installed without the prior approval of the Council's inspecting officer who may specify the position of the equipment to ensure safe operation;
- (d) CB Radios may not be the sole means of communications for the purpose of this licence;
- (e) All parts of the vehicle, its fittings and equipment both internal and external must be kept in an efficient, safe and clean condition to the satisfaction of the Council's inspecting officer and comply at all times with all relevant statutory requirements;
- (f) The vehicle must be at all times be insured to the satisfaction of the Council for fare paying passengers.

4 SAFETY EQUIPMENT

The Proprietor shall provide and maintain in good order in the vehicle:

- (a) a 1kilogram fire extinguisher fitted with a gauge shall be fitted and carried in the vehicle at all times. It must be readily available for use in case of emergency and meet British standards EN3.
- (b) a suitable first aid kit containing appropriate first aid dressings and appliances.

5 INTERIOR MARKINGS

The Proprietor shall cause to be clearly marked and maintained inside the vehicle in such a position as to be clearly visible to persons conveyed therein;

- (a) the number of the licence
- (b) the number of passengers prescribed in the licence;
- (c) the table of fares currently in operation;
- (d) the statement in legible letters at least 1cm high "Complaints should be referred to the Proprietor in the first instance, and if necessary, then the Assistant Chief Executive, Uttlesford District Council, Council Offices, London Road Saffron Walden quoting all the facts including the number of the hackney carriage licence" and
- (e) the name of the proprietor.

6 EXTERIOR SIGNS

The Proprietor shall ensure that:

- (a) at all times the vehicle licence plate provided by the Council is displayed in a prominent position at the rear and on the exterior of the vehicle;
- (b) the vehicle is fitted with a roof sign bearing the word "TAXI". Prior approval of the Council must be sought before the fitting of this sign.
- (c) the roof sign is maintained in good order and displayed at all times on the roof the vehicle except:
 - (ii) when the vehicle is on hire for a wedding;
 - (iii) when it is necessary to accommodate passengers luggage by the use of a roof rack;
 - (iv) when the vehicle is being used for the Proprietor (it is an offence for someone not licensed as a Hackney Carriage Driver to drive a Hackney Carriage, except for the purpose of testing the vehicle) for social, domestic or pleasure purposes; and
 - (v) otherwise with the prior approval in writing of the Assistant Chief Executive and;
- (d) the roof sign is illuminated during the hours of darkness except when the vehicle is under hire
- (e) reasonable company logo and or telephone details may be displayed on the side of the vehicle.

7 ADVERTISEMENTS

Third party advertising is permitted externally on a vehicle and internally on the back of seat head rests. The Assistant Chief Executive has delegated powers to require operators to remove any advertisement which is considered offensive, harmful to health or considered unsuitable.

8 INSPECTION

The Proprietor shall submit the vehicle to the Council for inspection:

- (a) on first application for a licence.
- (b) annually when the licence is due for renewal.
- (c) at six monthly intervals if the vehicle is over 5 years old.
- (d) after any repair made necessary by an accident affecting the safety, performance or appearance of the vehicle or the comfort or convenience of passengers and the Proprietor shall notify the Assistant Chief Executive in writing of any such accident within 72 hours of such accident occurring;
- (e) at any time if so requested by the Council's inspecting officer.

9 TAXIMETER

- (a) The vehicle shall be fitted with a taximeter visibly recording the passenger fare payable in conformity with such table of fares as may from time to time be approved by the Council or (where lower) the table of fares charged by the driver.
- (b) The position of the taximeter shall be agreed by the Council's inspecting officer and shall be maintained at all times so that the fare displayed can readily be seen by the passenger.
- (c) The operation of the taximeter shall accord with any byelaws made by the Council.
- (d) The taximeter shall be tested for accuracy on initial application and following any changes to the table of fares or as required.

10 CONVICTIONS

The Proprietor shall notify the Assistant Chief Executive in writing of any conviction or police caution recorded against him or if the Proprietor is a company against any of its directors during the period of the licence within seven day of such conviction or caution.

11 BYELAWS

The vehicle must comply with the relevant provisions of the hackney carriage byelaws or be taken out of service as a hackney carriage until such a time as the vehicle complies with the byelaws.

12 CHANGE OF ADDRESS

The Proprietor shall notify the Assistant Chief Executive in writing of any change of address during the period of licence within seven days of such change, taking place.

13 SURRENDER OF LICENCE

Expect in situations which Section 49 of the Local Government (Miscellaneous Provisions) Act 1976 applies (transfer of vehicles with licence), if the Proprietor ceases to use the vehicle for the purpose for which it is licensed he shall surrender the licence and return the plate which remains the property of Uttlesford District Council to the Assistant Chief Executive.

14 DEPOSIT OF DRIVER'S LICENCE

If the Proprietor permits or employs any other person to drive the vehicle as a hackney carriage he shall, before that person commences to drive the vehicle, cause that person to deliver to him a copy of his hackney carriage driver's licence for retention until such time as the drive ceases to be permitted or employed to drive the vehicle any other vehicle of his and shall record details of the licence in a register he shall keep for this purpose.

13 ROAD ACCIDENTS

The Proprietor must notify the Council of any road accident in which a vehicle of his/hers has been involved. Notification must be made within three days of any such occurrence.

14 USAGE

Whilst a vehicle is being used as a Hackney Carriage it shall not be driven by any person other than a driver properly licensed by Uttlesford District Council who will display his/her official identity badge in a conspicuous place on his/her person.

15 SPECIAL OCCASION VEHICLES

- (i) Vehicles will have an extended wheelbase with modifications carried out by the manufacturer or a specialist converter approved by the manufacturer.
- (ii) Vehicles will normally be right hand drive models unless these are not produced by the particular manufacturer, in which case a left hand drive vehicle would be allowed.
- (iii) The vehicle must seat a minimum of six passengers and a maximum of eight passengers. However in the case of a left hand drive model any seat(s) alongside the driver's position may not be used for passengers nor count as such.

- (iv) All passengers must be able to enter or exit the vehicle via the passenger doors available on each side of the vehicle and without the need to step over or across any passenger seating or obstruction.
- (v) Seat belts must be provided for each passenger seat which should be at least 18" in width across both the seat cushion and back rest.
- (vi) The licensed vehicle shall only be used for transporting passengers engaged in a private party or on corporate entertainment or other corporate business.
- (vii) All other appropriate standard conditions shall apply.

17 AGE LIMITS ON VEHICLES

On 9th January 2008 the Licensing Committee resolved to adopt new procedures regarding the Licensing of Hackney Carriage Vehicles. From this date a 12 year policy is now introduced as an upper age limit beyond which vehicles will not be licensed. In addition a 20 year policy is introduced beyond which wheelchair accessible vehicles and those used solely in connection with school contracts will not be licensed. The new policy will not apply to classic vehicles.

The current 10 year ruling from date of manufacture is hereby abolished.

After 1 year in addition to producing an insurance document/details a valid MOT certificate is also required.



PRIVATE HIRE VEHICLE LICENCE CONDITIONS OF LICENCE

INTRODUCTION

In order that a reliable Private Hire service of an acceptable standard is provided within the jurisdiction of Uttlesford District Council, the following conditions will apply. These conditions may be amended or varied by the Council at any time.

The Proprietor of the vehicle must ensure that the vehicle complies with the following conditions at all times.

1 TYPE OF VEHICLE

The vehicle must be safe, comfortable and suitable in type, size and design for use as a Private Hire and must be:

- (a) not of such a design and appearance as to lead any person to believe that the vehicle is a Hackney Carriage;
- (b) a standard right hand drive saloon type or estate/hatchback type car finished in the manufacturer's standard colour with a minimum of four doors;
- (c) a mini-bus type of vehicle finished in the manufacturer's standard colour with a minimum of three doors;
- (d) have an engine the normal cubic capacity of which is not less than 1300 ccs;
- (e) in a well maintained condition as judged by the Council's approved inspecting officer;
- (f) in a condition so as to comply at all times with all relevant statutory requirements.
- (g) the vehicle shall be made available for inspection by the appropriate officers of the Council as required.

2 COACHWORK

Vehicles must comply with the following:-

- (a) the width of the rear part of the body, measured 6in below the top and 6in in front of the rear back-rest, shall not be less than 4ft 3in, this measurement to be made with both rear doors closed;
 - (b) the minimum leg room for passengers using the rear seats shall be 8½in., the measurement to be taken from the rear door pillar to the nearest point of the rear seat squab;
 - (c) all doors shall be capable of being opened from both the inside and the outside and to an angle of at least 60 degrees and any sliding door in a vehicle with three doors or less shall be capable of providing an open unrestricted minimum width of 2' 10";
 - (d) two windows on opposite sides of the vehicle shall be fitted and shall be capable of being adjusted and secured in an open or partly open position;
 - (e) all glass fitted shall be safety glass, ie glass that if fractured does not fly into fragments capable of causing severe cuts;
 - (f) broken, discoloured or cracked glass, either in a window, windscreen or any other part of the vehicle shall be replaced at once;
-
- (g) every vehicle shall be refurbished as often as necessary and all coachwork shall be maintained in a clean condition and in a proper state of repair; and
 - (h) if the vehicle is an estate or hatchback type car it must be fitted with a guard rail or other device of a type approved by the Council to separate the rear loading area from the passengers.

3 GENERAL

- (a) The vehicle must be fitted with suitable tyres of the same type and size and include the carriage of a spare wheel. Where a vehicle is manufactured not to carry a spare wheel then subject to the vehicle being fitted with suitable run flat tyres or it carries a manufactures approved temporary repair kit then the requirement for a spare wheel to be carried would not apply.
- (b) The vehicle must be fitted on both sides with external rear view mirrors;
- (c) Two way radio equipment may not be installed without the prior approval of the Council's inspecting officer who may specify the position of the equipment to ensure safe operation;
- (d) CB Radios may not be the sole means of communication for the purpose of this licence;
- (e) All parts of the vehicle, its fittings and equipment both internal and external must be kept in an efficient, safe and clean condition to the satisfaction of the Council's inspecting officer and comply at all times with all relevant statutory requirements;

- (f) The vehicle must at all times be insured to the satisfaction of the Council for fare paying passengers.

4 SAFETY EQUIPMENT

The Proprietor shall provide and maintain in good order in the vehicle:

- (a) a 1 kilogramme fire extinguisher fitted with a gauge will be carried in the vehicle at all times. It must be readily available for use in case of emergency and meet British Standards EN3.
- (b) a suitable first aid kit containing appropriate first aid dressings and appliances.

5 INTERIOR MARKINGS

The Proprietor shall cause to be clearly marked and maintained inside the vehicle in such a position as to be clearly visible to persons conveyed therein:

- (a) the number of the licence;
- (b) the maximum number of passengers prescribed in the licence;
- (c) the statement in legible letters at least 1cm high
"Complaints should be referred to the Proprietor in the first instance, and if necessary, then to the Assistant Chief Executive, Uttlesford District Council, Council Offices, London Road, Saffron Walden quoting all the facts including the number of the Private Hire vehicle licence" and;
- (d) the name of the Proprietor.

6 EXTERIOR SIGNS

The Proprietor shall ensure that:

- (a) at all times the vehicle licence plate provided by the Council is displayed in a prominent position at the rear and on the exterior of the vehicle;
- (b) a reasonable company logo and or telephone details may be displayed on the side of the vehicle.

7 ADVERTISEMENTS

Third party advertising is permitted externally on a vehicle and internally on the back of seat head rests. The Assistant Chief Executive has delegated powers to require operators to remove any advertisement which is considered offensive, harmful to health or considered unsuitable.

8 INSPECTION

The Proprietor shall submit the vehicle to the Council for inspection:

- (a) on first application for a Licence;
- (b) annually when the licence is due for renewal;
- (c) at six monthly intervals if the vehicle is over 5 years old;
- (d) after any repair made necessary by an accident affecting the safety, performance or appearance of the vehicle or the comfort or convenience of passengers and the Proprietor shall notify the Assistant Chief Executive in writing of any such accident within 72 hours of such accident occurring;
- (e) at any other time if so requested by the Council's inspecting officer.

9 CONVICTIONS

The Proprietor shall notify the Assistant Chief Executive in writing of any conviction or police caution recorded against him, or if the Proprietor is a Company against any of its Directors during the period of the licence within seven days of such a conviction or caution.

10 CHANGE OF ADDRESS

The Proprietor shall notify the Assistant Chief Executive in writing of any change of address during the period of licence within seven days of such change taking place.

11 SURRENDER OF LICENCE

Except in situations to which Section 49 of the Local Government (Miscellaneous Provisions) Act 1976 applies (transfer of vehicles with licence), if the Proprietor ceases to use the vehicle for the purpose for which it is licensed he shall surrender the licence and return the plate which remains the property of Uttlesford District Council to the Assistant Chief Executive.

12 DEPOSIT OF DRIVER'S LICENCE

If the Proprietor permits or employs any other person to drive the vehicle as a Private Hire he shall, before that person commences to drive the vehicle, cause that person to deliver to him a copy of his Private Hire driver's licence for retention until such time as the driver ceases to be permitted or employed to drive the vehicle or any other vehicle of his and shall record details of the licence in a register he shall keep for this purpose.

13 ROAD ACCIDENTS

The Proprietor must notify the Council of any road accident in which a vehicle of his/hers has been involved. Notification must be made within three days of any such occurrence.

14 USAGE

Whilst a vehicle remains licensed as a private hire vehicle it shall not be driven by any other person except one duly licensed by this Council. The driver will wear his/her identity badge in a conspicuous place on his/her person.

15 SPECIAL OCCASION VEHICLES

- (viii) Vehicles will have an extended wheelbase with modifications carried out by the manufacturer or a specialist converter approved by the manufacturer.
- (ix) Vehicles will normally be right hand drive models unless these are not produced by the particular manufacturer, in which case a left hand drive vehicle would be allowed.
- (x) The vehicle must seat a minimum of six passengers and a maximum of eight passengers. However in the case of a left hand drive model any seat(s) alongside the driver's position may not be used for passengers nor count as such.
- (xi) All passengers must be able to enter or exit the vehicle via the passenger doors available on each side of the vehicle and without the need to step over or across any passenger seating or obstruction.
- (xii) Seat belts must be provided for each passenger seat which should be at least 18" in width across both the seat cushion and back rest.
- (xiii) The licensed vehicle shall only be used for transporting passengers engaged in a private party or on corporate entertainment or other corporate business.
- (xiv) All other appropriate standard conditions shall apply.

16 SCHOOL CONTRACTS

- a. Vehicles with an engine capacity of not less than 1200cc may be licensed as a private hire vehicle provided it is used safely on education contracts.
- b. Vehicles of this nature must have a minimum of four doors.
- c. These type of vehicles will be inspected either six monthly or annually depending upon the age of the vehicle.
- d. Carrying capacity will be determined by the number of seats however where entry width to the vehicle is less than 2ft 10inches then the carrying capacity will be determined by the vehicle examiner.

17 AGE LIMITS ON VEHICLES

On 9th January 2008 the Licensing Committee resolved to adopt new procedures regarding the Licensing of Private Hire Vehicles. From this date a 12 year policy is now introduced as an upper age limit beyond which vehicles will not be licensed. In addition a 20 year policy is introduced beyond which wheelchair accessible vehicles and those used solely in connection with school contracts will not be licensed. The new policy will not apply to classic vehicles.

The current 10 year ruling from date of manufacture is hereby abolished.

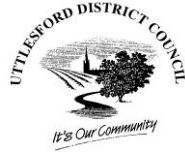
18 VINTAGE CARS

On 9th June 2004 the Licensing Committee resolved to adopt new procedures regarding the licensing of private hire vehicles. From this date the policy in respect of licensing these type of vehicles is as follows.

- Vehicles only to be used between 1st April and 21st October in any one year.
- Use limited to daylight hours only.
- To be used within a radius of 25 miles from the operating base.
- Licensed to carry a maximum of 3 passengers.
- Maximum speed of 50mph.
- Not to be used on a motorway.
- The policy applies only to those vehicles manufactured before 1945.

19 SMART CARS

On 10th March 2010 the Licensing Committee resolved to adopt new procedures regarding the licensing of smart cars which will be permitted to carry a maximum of one passenger. This policy will be reviewed in September 2010 and again in March 2011. The normal rules regarding inspections and age limits will remain unaltered for this type of vehicle.



CONDITIONS RELATING TO PRIVATE HIRE OPERATORS LICENCE

Introduction

In order that a reliable private hire service of an acceptable standard is provided within the jurisdiction of Uttlesford District Council, the following conditions will apply. These conditions may be amended or varied by the Council at any time.

The operator of the private hire vehicle must ensure that he or she complies with these conditions at all times.

- 1 A private hire operator shall keep records of all private hire vehicles operating under this licence.
- 2 The records will be kept in a register and contain the following information:-
 - (a) make and type of vehicle,
 - (b) vehicle registration number,
 - (c) owners name and address,
 - (d) private hire vehicle number,
 - (e) name and address of all private hire drivers employed by him (if applicable).
- 3 An operator shall keep a record of every booking of a private hire vehicle invited or accepted on his behalf. Details will be recorded in a register which will contain the following information:-
 - (a) time and date of hiring,
 - (b) name of hirer,

- (c) name of driver,
 - (d) details of journey, eg from and to,
 - (e) fare paid,
 - (f) private hire vehicle number.
- 4 The operator shall produce all or any of the records specified in the above conditions on request to any authorised officer of Uttlesford District Council or to any police constable for inspection. These records must be retained for a minimum period of one year.
- 5 A private hire vehicle operator must notify the District Council within seven days of any change of his or her address during the period of the licence.
- 6 The operator shall within seven days disclose to the district council in writing, details of any conviction/fixed penalty or police caution whether for a driving offence or otherwise imposed on him/her during the period of the licence.
- 7 The operator shall not invite to accept bookings for private hire work for any vehicle which has not been licensed by the district council for such work.
- 8 The operator shall not employ or otherwise engage whether directly or indirectly any driver to drive any private hire vehicle for which the operator invites or accepts bookings unless the driver has been granted the appropriate licence by the District Council.
- 9 The operator shall provide a prompt and efficient service to all members of the public at all reasonable times and for this purpose shall, in particular:-
- (a) ensure that when a private hire vehicle has been hired to pick up at an appointed time and place, the vehicle shall, unless delayed or prevented by sufficient cause, punctually attend at the appointed time and place,
 - (b) keep clean, adequately heated, ventilated and lit any premises provided and to which the public have access whether for the purpose of booking or waiting,
 - (c) ensure that any waiting area provided has adequate seating facilities,
 - (d) ensure that any telephone facilities and radio equipment provided are maintained in a sound condition and that any defects are repaired promptly.

- 10 The operator shall immediately upon receipt of a complaint made against him or one of his operatives notify the Assistant Chief Executive at the District Council.

PROTOCOL FOR DEALING WITH THE SUSPENSION, REVOCATION AND NON-RENEWAL OF DRIVERS' LICENCES

Introduction

Uttlesford District Council licenses drivers of hackney carriages under Section 46 Town or Police Clauses Act 1847 and also licenses private hire vehicle drivers under Section 51 of the Local Government (Miscellaneous Provisions) Act 1976. Under Section 61 of the 1976 Act both hackney carriage and private hire vehicle driver's licences may be suspended or revoked or the local authority may refuse to renew the same on the grounds that since the grant of the licence the driver has been convicted of an offence involving dishonesty, indecency or violence or has been convicted of an offence under or has failed to comply with the provisions of either the 1847 Act or the 1976 Act. A licence may also be revoked or suspended or may not be renewed for any other reasonable cause.

Any other reasonable cause

This expression is not defined in the legislation. However, it is not limited to matters which arose after the grant of the licence. Examples of what may be considered 'any other reasonable cause' would include (but is not limited to):

- Cases where information comes to light which suggests that had the information been known at the time of application, a licence would not have been granted or renewed.
- Where a driver ceases to meet the council's licensing standards.
- Where the driver has breached a condition of his or her driver's or vehicle licence.
- Where the driver has committed a minor offence for which he or she is not prosecuted.
- Where information comes to light which suggests that the driver may no longer be a fit and proper person to hold a licence.

Appeals

Whenever a decision is taken to suspend, revoke or not to renew a licence or where conditions are imposed upon a private hire vehicle driver's licence that the driver is not satisfied with there is a right of appeal to the magistrates' court. Normally a decision to suspend, revoke or not to renew a licence takes effect 21 days after the driver has been given notice of the decision. The driver may continue to drive during that period and if he or she lodges an appeal within that time may continue to drive until such time as the appeal has been disposed of or has been abandoned. However, this does not apply in two cases. Where a licence is suspended or revoked and it appears to the council that the interests of public safety require the suspension or revocation to have immediate effect and notifies

the driver accordingly, then whilst the driver may still appeal, he or she may not drive immediately he or she has been notified of the decision.

Delegated Powers

The Assistant Chief Executive and those authorised by him have delegated powers to deal with certain types of case. These are as follows:

1. When the Assistant Chief Executive believes that a licence should be suspended with immediate effect on grounds of public safety he may do so. The Assistant Chief Executive will arrange for a special meeting of the Licensing Committee to be convened as soon as is reasonably practicable for the purpose of determining whether the suspension should be confirmed or the licence revoked.
2. The council has a policy of granting or renewing licences in some circumstances where the driver provides a statutory declaration as to his or her character pending receipt of a clear Criminal Records Bureau check. If upon receipt of the CRB check it transpires that the applicant has made a false declaration the Assistant Chief Executive has power to revoke the licence.
3. The Assistant Chief Executive also has power to suspend licences where there has been a breach of condition or where in the Assistant Chief Executive's view a prosecution would be disproportionate.

Any other decisions concerning the revocation, suspension or non-renewal of a driver's licence must be referred to the Licensing Committee. In addition, the Assistant Chief Executive may refer cases at his discretion to the Committee instead of dealing with them under his delegated powers.

Procedure – Decisions under delegated powers

Where the Assistant Chief Executive is considering exercising his delegated powers the following procedure will apply:

1. The Assistant Chief Executive or those authorised by him will write to the driver requesting that he or she make an appointment to meet with the Assistant Chief Executive. The letter will contain the following:
 - a. Details of the allegations which have been made against the driver or other matters which may lead to the suspension of his licence.

- b. A statement that the Assistant Chief Executive may consider suspending the driver's licence for up to 14 days.
 - c. A statement that the driver may be accompanied by his or her operator, a trade union representative or a friend.
 - d. A statement that in the event that the Assistant Chief Executive decides to suspend the licence that there is a right of appeal.
2. The meeting between the Assistant Chief Executive and the driver and his or her representative (if present) shall take the form of a discussion within which the Assistant Chief Executive will seek the driver's comments upon the allegations made against him or her. If the Assistant Chief Executive considers it necessary to make further enquiries he will explain this to the driver and adjourn the meeting to enable such enquiries to be made. In the event that following such enquiries the Assistant Chief Executive decides that no further action is required (or that the only action which may be required is that which has been discussed with the driver at the meeting) then the Assistant Chief Executive will write to the driver accordingly. In any other case the Assistant Chief Executive will reconvene the meeting.
3. At the conclusion of the meeting or any adjournment thereof, the Assistant Chief Executive will inform the driver whether or not he considers the allegations have been made out and in the latter event what sanction (being a suspension of not more than 14 days) the Assistant Chief Executive intends to impose.
4. In the event the Assistant Chief Executive decides that the licence should be suspended the Assistant Chief Executive will inform the driver of his or her right of appeal to a magistrates court and (save for in cases where an immediate suspension is required in the interest of public safety) shall inform the driver of his or her right to continue to drive until the time for lodging an appeal has lapsed or (if an appeal is lodged within that period) until such time as the appeal has been determined or abandoned.
5. As soon as is reasonably practicable after the meeting the Assistant Chief Executive will notify members of the licensing committee of the suspension by e-mail and write to the driver
 - a. Confirming the decision
 - b. Confirming the sanction.
 - c. Giving reasons for a. and b. above.
 - d. Giving details of the appeal procedure and the fee payable to the court on appeal.

- e. Unless the suspension is taking immediate effect on the grounds of public safety, informing the driver of his or her right to drive during the period within which an appeal may be lodged, if an appeal is lodged within that period to drive until such time as the appeal has been disposed of or abandoned and informing the driver of the dates the suspension will be effective in the event that an appeal is not lodged.

Procedure - Decisions by the Licensing Committee

Where a decision would fall outside of the delegated powers of the Assistant Chief Executive or where the Assistant Chief Executive considers that his delegated powers would not be sufficient to deal with an allegation, then the matter will be determined by the Licensing Committee and the following procedures will apply:

1. At least 4 members of the Licensing Committee will be requested to attend a meeting of the Committee for the purpose of considering the allegations.
2. Usually, the committee meetings will be held in public although consideration of matters which would not otherwise be in the public domain (e.g. consideration of a driver's medical condition, details of spent convictions etc) would require the committee meeting to be held in private.
3. The driver will be given written notice of the time and date of the committee meeting at least 10 working days prior to the meeting taking place and at the same time will be provided with a copy of the officer's report which will be presented to the committee along with any supporting documents.
4. The letter notifying the driver of the time and date of the meeting shall also inform him or her of his or her right to be represented at the meeting by his or her operator, a trade union representative or a friend.
5. Having considered the officer's report, any evidence which the officer wishes to tender in support of his report (which shall have been disclosed in advance to the driver), any evidence from the driver, any evidence from witnesses called by or on behalf of the driver and any submissions made by the driver and/or his or her representative, the committee will retire to consider its decision and will upon returning announce its decision to the driver.
6. The committee shall give verbal reasons for its decision and in the event that the committee decide to suspend, revoke or not to renew a licence the lead officer of the committee shall explain to the driver his or her right to appeal to a magistrates court and (save for in cases where an immediate suspension is required in the interest of public safety) shall inform the driver of his or her right to continue to drive until the time for lodging an appeal has lapsed or (if an appeal is lodged within that period) until such time as the appeal has been determined or abandoned.
7. As soon as is reasonably practicable after the committee meeting, the lead officer to the committee shall write to the driver confirming

- a. the committee's decision
- b. any sanction imposed.
- c. the committee's reasons for a. and b. above.
- d. Giving details of the appeal procedure and the fee payable to the court on appeal.
- e. Unless the suspension is taking immediate effect on the grounds of public safety, informing the driver of his or her right to drive during the period within which an appeal may be lodged, if an appeal is lodged within that period to drive until such time as the appeal has been disposed of or abandoned and informing the driver of the dates the suspension will be effective in the event that an appeal is not lodged.

Principles to be applied in decision making

The express aims of the licensing regime are the safety and comfort of the public. Safety extends not only to fare paying passengers but also to other road users and pedestrians. When considering the grant of a licence a local authority may not grant a licence to anyone unless they are satisfied that the applicant is a fit and proper person to hold a licence. Where the committee cease to be satisfied for any reason that a driver is a fit and proper person it follows that he or she should not be in possession of a licence and in those circumstances the licence will either be revoked or not renewed on application. There will however be other circumstances where there has been some action or inaction on the part of a driver which has not rendered the driver an unfit person but nevertheless warrants a sanction both as a mark of disapproval of the driver's conduct and as a deterrent to others. In such circumstances, a suspension of the licence would be appropriate. In determining whether to suspend a licence and if so in determining the length of suspension, regard will be had by the Licensing Committee or by the Assistant Chief Executive in the exercise of delegated powers to the following factors:

1. Whether the driver fully admitted the matter alleged or whether he or she put forward explanations which were wholly unsustainable.
2. The seriousness of the matter complained of.
3. The driver's past history.
4. Whether the driver has suffered any other penalty in respect of the matters complained of.
5. Any aggravating factors

6. Any mitigation put forward by the driver or his or her representative.
7. The financial effect of any suspension upon the driver acknowledging that he or she will not be able to earn an income from driving during the period of any suspension.

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Foreword

The Regulators' Compliance Code is a central part of the Government's better regulation agenda. Its aim is to embed a riskbased, proportionate and targeted approach to regulatory inspection and enforcement among the regulators it applies to.

Our expectation is that as regulators integrate the Code's standards into their regulatory culture and processes, they will become more efficient and effective in their work. They will be able to use their resources in a way that gets the most value out of the effort that they make, whilst delivering significant benefits to low risk and compliant businesses through betterfocused inspection activity, increased use of advice for businesses, and lower compliance costs.

The Compliance Code has been issued with parliamentary approval, following a wide and lengthy consultation process, and comes into force on 6 April 2008 by virtue of the Legislative and Regulatory Reform Code of Practice (Appointed Day) Order 2007.

I believe that the application of the Code can make a difference on the ground to the regulators,

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Policy Review
Licensing Task Group, 3 December 2012 Item 3
those they regulate, and society in general.

Pat McFadden MP

Minister of State Department for Business, Enterprise and Regulatory Reform (BERR)

Part 1

General introduction

Author:
Version date:

1. Purpose of the Code

- 1.1 Effective and welltargeted regulation is essential in promoting fairness and protection from harm. However, the Government believes that, in achieving these and other legitimate objectives, regulation and its enforcement should be proportionate and flexible enough to allow or even encourage economic progress.
- 1.2 This Code supports the Government's better regulation agenda and is based on the recommendations in the Hampton Report¹. Its purpose is to promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes² without imposing unnecessary burdens on business, the Third Sector³ and other regulated entities⁴.
- 1.3 The Code stresses the need for regulators⁵ to adopt a positive and proactive approach towards ensuring compliance by:
- helping and encouraging regulated entities to understand and meet regulatory requirements more easily; and
responding proportionately to regulatory breaches.
- 1.4 The Code supports regulators' responsibility to deliver desirable regulatory outcomes. This includes having effective policies to deal proportionately with criminal behaviour which would have a damaging effect on legitimate businesses and desirable regulatory outcomes. The Code does not relieve regulated entities of their responsibility to comply with their obligations under the law.

¹ *Reducing Administrative Burdens: Effective Inspection and Enforcement*, Philip Hampton, March 2005.

² Throughout this Code, the term 'regulatory outcomes' means the 'end purpose' of regulatory activity (for example, reduction in accidents/disease, less pollution).³ This is defined as nongovernmental organisations that include voluntary and community organisations, charities, social enterprises, cooperatives and mutuals.

⁴ Throughout this Code, the term 'regulated entities' includes businesses, public sector bodies, charities and voluntary sector organisations that are subject to regulation.

⁵ The term 'regulator' is used in this code to refer to any organisation that exercises a regulatory function.

2. Background and scope

- 2.1 This Code has been laid before Parliament by the Minister for the Cabinet Office and has been approved by both Houses of Parliament in accordance with section 23 of the Legislative and Regulatory Reform Act 2006 ("the Act"), after having consulted persons appearing to him to be representative of persons exercising regulatory functions and such other persons as he considered appropriate. In preparing the draft, the Minister has sought to secure that the Code is consistent with the Principles of Good Regulation specified in section 21(2) of the Act.⁶
- 2.2 The Minister issues the Code under section 22(1) of the Act on 17 December 2007.
- 2.3 The Code only applies to those regulatory functions specified by order made under section 24(2)

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of the Act. Any regulator whose functions are so specified **must have regard** to this Code:

(a) when determining any general policy or principles about the exercise of those specified functions (section 22(2)); or

(b) when exercising a specified regulatory function which is itself a function of setting standards or giving general guidance about other regulatory functions (whether their own functions or someone else's functions) (section 22(3)).

- 2.4** The duties to have regard to the Code under section 22(2) and (3) of the Act **do not** apply to the exercise by a regulator or its staff of any specified regulatory function in individual cases. This means, for example, that while an inspector or investigator should operate in accordance with a regulator's general policy or guidance on inspections, investigations and enforcement activities, the Code does not apply directly to the work of that inspector or investigator in carrying out any of these activities in individual cases.
- 2.5** The duty on a regulator to "have regard to" the Code means that the regulator **must** take into account the Code's provisions and give them due weight in developing their policies or principles or in setting standards or giving guidance.
- 2.6** The regulator is not bound to follow a provision of the Code if they *properly* conclude that the provision is either not relevant or is outweighed by another relevant consideration. They should ensure that any decision to depart from any provision of the Code is properly reasoned and based on material evidence. Where there are no such relevant considerations, regulators should follow the Code.
- 2.7** Section 22(4) of the Act provides that the duty to have regard to the Code is subject to any other legal requirement affecting the exercise of the regulatory function, including EC law obligations.

⁶

These principles are that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent; and that regulatory activities should be targeted only at cases in which action is needed.

2.8 In accordance with section 24(3) of the Act, this Code does not apply to:

- regulatory functions so far as exercisable in Scotland to the extent that the functions relate to matters which are not reserved matters;
- regulatory functions so far as exercisable in Northern Ireland to the extent that the functions relate to transferred matters; or
- regulatory functions exercisable only in or as regards Wales.

Part 2

Specific obligations of the Code

This part outlines the Hampton Principles on which this Code is based, and sets out the specific provisions that elaborate these principles. The Hampton Principles and the italicised statement at the start of each numbered section do not form part of the Code's requirements, but set the context in which the specific obligations set out in the numbered paragraphs should be interpreted.

3. Economic progress

Hampton Principle: *Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.*

Good regulation and its enforcement act as an enabler to economic activity. However, regulation that imposes unnecessary burdens can stifle enterprise and undermine economic progress. To allow or encourage economic progress, regulators must have regard to the following provisions when determining general policies or principles or when setting standards or giving general guidance about the exercise of regulatory functions.

- 3.1 Regulators should consider the impact that their regulatory interventions may have on economic progress, including through consideration of the costs, effectiveness and perceptions of fairness of regulation. They should only adopt a particular approach if the benefits justify the costs⁷ and it entails the minimum burden compatible with achieving their objectives.
- 3.2 Regulators should keep under review their regulatory activities and interventions with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose.

⁷

Costs and benefits include economic, social and environmental costs and benefits.

- 3.3 Regulators should consider the impact that their regulatory interventions may have on small regulated entities, using reasonable endeavours to ensure that the burdens of their interventions fall fairly and proportionately on such entities, by giving consideration to the size of the regulated entities and the nature of their activities.
- 3.4 When regulators set standards or give guidance in relation to the exercise of their own or other regulatory functions (including the functions of local authorities), they should allow for reasonable variations to meet local government priorities, as well as those of the devolved administrations.

4. Risk Assessment

Hampton Principle: *Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them*

Risk assessment involves the identification and measurement of capacity to harm and, if such capacity exists, an evaluation of the likelihood of the occurrence of the harm. By basing their regulatory work on an assessment of the risks to regulatory outcomes, regulators are able to target their resources where they will be most effective and where risk is highest. As such, in order to carry out comprehensive and effective risk assessment, regulators must have regard to the following provisions when determining general policies or principles or when setting standards or giving general guidance about the exercise of regulatory functions.

- 4.1 Regulators should ensure that the allocation of their regulatory efforts and resources is targeted where they would be most effective by assessing the risks to their regulatory outcomes. They should also ensure that risk assessment precedes and informs all aspects of their approaches to regulatory activity, including:
- data collection and other information requirements;
 - inspection programmes;
 - advice and support programmes; and
 - enforcement and sanctions.
- 4.2 Risk assessment should be based on all available relevant and good quality data⁸. It should include explicit consideration of the combined effect of:
- the potential impact of noncompliance on regulatory outcomes; and
 - the likelihood of noncompliance.

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An example of risk methodology, which the Hampton Review recognised as “best practice” (see *Hampton Report*, at page 32) is the Environmental Protection – Operator & Pollution Risk Appraisal scheme (EP OPRA).

- 4.3** In evaluating the likelihood of noncompliance, regulators should give consideration to all relevant factors, including:

past compliance records and potential future risks;
the existence of good systems for managing risks, in particular within regulated entities or sites
evidence of recognised external accreditation; and
management competence and willingness to comply.

- 4.4** Regulators should consult and involve regulated entities and other interested parties in designing their risk methodologies, and publish details of the methodologies.

- 4.5** Regulators should regularly review and, where appropriate, improve their risk methodologies. In doing so, they should take into account feedback and other information from regulated entities and other interested parties.

5. Advice and Guidance

Without knowing or understanding relevant legal requirements, regulated entities will find it difficult to comply. Regulators can, however, improve compliance through greater focus on support and advice. Regulators must, therefore, have regard to the following requirements when determining general policies or principles or when setting standards or giving general guidance on advice and information services.

- 5.1** Regulators should ensure that all legal requirements relating to their regulatory activities, as well as changes to those legal requirements⁹, are promptly communicated or otherwise made available to relevant regulated entities.

- 5.2** Regulators should provide general information, advice and guidance to make it easier for regulated entities to understand and meet their regulatory obligations. Such information, advice and guidance should be provided¹⁰ in clear, concise and accessible language, using a range of appropriate formats and media .

- 5.3** Regulators should involve regulated entities in developing both the content and style of regulatory guidance. They should assess the effectiveness of their information and support services by monitoring regulated entities’ awareness and understanding of legal requirements, including the extent to which those entities incur additional costs obtaining

external advice in order to understand and comply with legal requirements.

⁹ This includes when a regulatory requirement has been removed and considered no longer relevant or applicable. ¹⁰ A good example of online advice is the Environment Agency's NetRegs (www.netregs.gov.uk) an internet based plain language guidance system for business.

- 5.4** Regulators should provide targeted and practical advice that meets the needs of regulated entities. Such advice may be provided in a range of formats, such as through face-to-face interactions, telephone helpline and online guidance. In determining the appropriate formats, regulators should seek to maximise the reach, accessibility and effectiveness of advice while ensuring efficient use of resources. There may remain a need for regulated entities with particularly complex practices to use specialist or professional advisors as appropriate.
- 5.5** When offering compliance advice, regulators should distinguish between statutory requirements and advice or guidance aimed at improvements above minimum standards. Advice should be confirmed in writing, if requested.
- 5.6** Regulators should provide appropriate means to ensure that regulated entities can reasonably seek and access advice from the regulator without directly triggering an enforcement action. In responding to such an approach, the regulator should seek primarily to provide the advice and guidance necessary to help ensure compliance.
- 5.7** Advice services should generally be provided free of charge, but it may be appropriate for regulators to charge a reasonable fee for services beyond basic advice and guidance necessary to help ensure compliance. Regulators should, however, take account of the needs and circumstances of smaller regulated entities and others in need of help and support.

6. Inspections and other visits

*Inspections can be an effective approach to achieving compliance, but are likely to be most effective when they are justified and targeted on the basis of an assessment of risk. In order to ensure the effectiveness of their inspection programmes, regulators must have regard to the following provisions **when determining general policies or principles or when setting standards or giving general guidance on inspections.***

- 6.1** Regulators should ensure that inspections and other visits, such as compliance or advice visits, to regulated entities only occur in accordance with a risk assessment methodology (see paragraphs 4.2. and 4.3), except where visits are requested by regulated entities, or where a regulator acts on relevant intelligence.
- 6.2** Regulators should use only a small element of random inspection in their programme to test their risk methodologies or the effectiveness of their interventions.
- 6.3** Regulators should focus their **greatest** inspection effort on regulated entities where risk assessment shows that both:
- a compliance breach or breaches would pose a serious risk to a regulatory outcome; and
 - there is high likelihood of noncompliance by regulated entities.
- 6.4** Where regulators visit or carry out inspections of regulated entities, they should give positive feedback to the regulated entities to encourage and reinforce good practices. Regulators should also share amongst regulated entities, and with other regulators, information about good practice.
- 6.5** Where two or more inspectors, whether from the same or different regulators, undertake planned inspections of the same regulated entity, regulators should have arrangements for collaboration to minimise burdens on the regulated entity, for example, through joint or coordinated inspections and data sharing.

7. Information requirements

*Effective regulatory work, including risk assessment, requires accurate information. However, there are costs to its collection both to the regulator and to regulated entities. It is important to balance the need for information with the burdens that entails for regulated entities. As such, regulators must have regard to the following provisions **when determining general policies or principles or when setting standards or giving general guidance on data requirements.***

- 7.1** When determining which data they may require, regulators should undertake an analysis of the costs and benefits of data requests to regulated entities. Regulators should give explicit consideration to reducing costs to regulated entities through:
- varying data requests according to risk, as set out in paragraph 4.3;
 - limiting collection to specific regulated entities sectors/subsectors;
 - reducing the frequency of data collection;
 - obtaining data from other sources;
 - allowing electronic submission; and
 - requesting only data which is justified by risk assessment.
- 7.2** If two or more regulators require the same information from the same regulated entities, they should share data to avoid duplication of collection where this is practicable, beneficial and cost effective. Regulators should note the content of the Information Commissioner's letter¹¹ when applying the Data Protection Act 1998¹² in order to avoid unnecessarily restricting the sharing of data.
- 7.3** Regulators should involve regulated entities in vetting data requirements and form design for clarity and simplification. They should seek to collect data in a way that is compatible with the processes of regulated entities and those of other regulators who collect similar data.

¹¹ A letter from the Information Commissioner (22/01/07) giving advice on "data protection and the sharing of regulatory data on businesses" is available at: <http://bre.berr.gov.uk/regulation/documents/data/pdf/letter.pdf>

¹² 1998 c 29.

8. Compliance and enforcement actions

Hampton Principle: *The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.*

By facilitating compliance through a positive and proactive approach, regulators can achieve higher compliance rates and reduce the need for reactive enforcement actions. However, regulators should be able to target those who deliberately or persistently breach the law. To ensure that they respond proportionately to regulatory breaches, regulators must have regard to the following provisions when determining general policies or principles or when setting standards or giving general guidance on the exercise of compliance and enforcement functions.

- 8.1** Regulators should seek to reward those regulated entities that have consistently achieved good levels of compliance through positive incentives, such as lighter inspections and

reporting requirements where risk assessment justifies this. Regulators should also take account of the circumstances of small regulated entities, including any difficulties they may have in achieving compliance.

8.2 When considering formal enforcement action, regulators should, where appropriate, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach. This paragraph does not apply where immediate action is required to prevent or respond to a serious breach or where to do so is likely to defeat the purpose of the proposed enforcement action.

8.3 Regulators should ensure that their sanctions and penalties policies are consistent with the principles set out in the Macrory Review¹³. This means that their sanctions and penalties policies should:

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from noncompliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by regulatory noncompliance, where appropriate; and
- aim to deter future noncompliance.

¹³ The report of the Macrory Review, which the Government has accepted, is available at: http://bre.berr.gov.uk/REGULATION/reviewing_regulation/penalties/index.asp.

8.4 In accordance with the Macrory characteristics, regulators should also:

- publish an enforcement policy;
- measure outcomes not just outputs;
- justify their choice of enforcement actions year on year to interested parties;
- followup enforcement actions where appropriate;
- enforce in a transparent manner;
- be transparent in the way in which they apply and determine penalties; and
- avoid perverse incentives that might influence the choice of sanctioning response.

8.5 Regulators should ensure that clear reasons for any formal enforcement action are given to the person or entity against whom any enforcement action is being taken at the time the action is taken. These reasons should be confirmed in writing at the earliest opportunity. Complaints and relevant appeals procedures for redress should also be explained at the

same time.

- 8.6** Regulators should enable inspectors and enforcement officers to interpret and apply relevant legal requirements and enforcement policies fairly and consistently between like-regulated entities in similar situations. Regulators should also ensure that their own inspectors and enforcement staff interpret and apply their legal requirements and enforcement policies consistently and fairly.

9. Accountability

Hampton Principle: Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.

By establishing effective accountability and transparency structures regulators will make their activities accessible and open to scrutiny. This should increase the legitimacy of regulatory activities and enable regulators and regulated entities to work together to achieve regulatory compliance. Regulators must have regard to the following provisions when determining general policies or principles or when setting standards or giving general guidance on the exercise of regulatory functions.

- 9.1** Regulators should create effective consultation and feedback opportunities to enable continuing cooperative relationships with regulated entities and other interested parties.

- 9.2** Regulators should identify and explain the principal risks against which they are acting. They should, in consultation with regulated entities and other interested parties, set and publish clear standards and targets for their service and performance. These standards should include:

- regulatory outcomes¹⁴ (capturing the principal risks);
 - costs to regulated entities of regulatory interventions; and
 - perceptions of regulated entities and other interested parties about the proportionality and effectiveness of regulatory approach and costs.
- 9.3** Regulators should measure their performance against the standards in paragraph 9.2 and regularly publish the results. To aid understanding, regulators should also explain how they measure their performance.
- 9.4** Local authorities and fire and rescue authorities are exempt from the requirements of paragraphs 9.2 and 9.3.
- 9.5** Regulators should ensure that their employees provide courteous and efficient services to regulated entities and others. They should take account of comments from regulated entities and other interested parties regarding the behaviour and activity of inspectors and other enforcement staff.
- 9.6** Regulators should provide effective and timely complaints procedures (including for matters in this Code) that are easily accessible to regulated entities and other interested parties. They should publicise their complaints procedures, with details of the process and likely timescale for resolution.
- 9.7** Complaints procedures should include a final stage to an independent, external, person. Where there is a relevant Ombudsman or Tribunal with powers to decide on matters in this Code, the final stage should allow referral to that body. However, where no such person exists, a regulator should, in consultation with interested parties, provide for further complaint or appeal to another independent person, for example, an independent professional body.

¹⁴ As defined in footnote 2 above.

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