

Agenda

Meeting: **LICENSING COMMITTEE**
Date: **MONDAY 6 MARCH 2017**
Time: **10.00AM**
Venue: **COMMITTEE ROOM**
To: **Councillors C Pearson (Chair), K Ellis (Vice Chair), D Buckle, Mrs J Chilvers, Mrs S Duckett, M Hobson, B Marshall, R Sweeting, J Thurlow and Mrs D White**

1. Apologies for absence

2. Minutes

To confirm as a correct record the minutes of the Licensing Committee held on 9 January 2017 (pages 1 to 4 attached).

3. Disclosures of Interest

A copy of the Register of Interest for each Selby District Councillor is available for inspection at www.selby.gov.uk.

Councillors should declare to the meeting any disclosable pecuniary interest in any item of business on this agenda which is not already entered in their Register of Interests. Councillors should leave the meeting and take no part in the consideration, discussion or vote on any matter in which they have a disclosable pecuniary interest.

Councillors should also declare any other interests. Having made the declaration, provided the other interest is not a disclosable pecuniary interest, the Councillor may stay in the meeting, speak and vote on that item of business.

If in doubt, Councillors are advised to seek advice from the Monitoring Officer.

4. Procedure

To confirm the procedure to be followed at the meeting, including the guidance relating to the relevance of convictions (pages 5 to 8 attached).

5. Chair's Address to the Licensing Committee

6. Gambling Policy Refresh (L/16/20)

To receive the report of the Assistant Policy Officer which asks the committee to consider the draft Gambling Policy for (pages 9 to 44 attached).

7. Changes to the Legislation Affecting Drivers and the Duty to Assist Wheelchair Users (L/16/21)

To receive the report of the Legal Officer which updates the committee on changes to the legislation regarding licensed drivers and wheelchair-accessible vehicles (pages 45 to 62 attached).

8. Private Session

That, in accordance with Section 100(A) (4) of the Local Government Act 1972, in view of the nature of the business to be transacted, the meeting be not open to the Press and public during discussion of the following items as there will be disclosure of exempt information as defined in paragraph 3 of Schedule 12(A) of the Act.

9. Application for a Hackney Carriage Driver's Licence (L/16/22)

To receive the report of the Legal Officer, which asks the Committee to determine an application for a Hackney Carriage Driver's Licence (pages 63 to 69 attached).

**Gillian Marshall
Solicitor to the Council**

Enquiries relating to this agenda, please contact Daniel Maguire on:
Tel: 01757 705101 Email: dmaguire@selby.gov.uk.

Recording at Council Meetings

Recording is allowed at Council, committee and sub-committee meetings which are open to the public, subject to: (i) the recording being conducted with the full knowledge of the Chairman of the meeting; and (ii) compliance with the Council's protocol on audio/visual recording and photography at meetings, a copy of which is available on request. Anyone wishing to record must contact the Democratic Services Manager on the above details prior to the start of the meeting. Any recording must be conducted openly and not in secret.

Minutes

Licensing Committee

Venue:	Committee Room, Civic Centre, Selby.
Date:	Monday 9 January 2017
Time:	10.00am
Present:	Councillors K Ellis (Chair), D Buckle, Mrs J Chilvers, S Duckett, M Hobson, B Marshall, D Peart (Sub for C Pearson), R Sweeting, J Thurlow and Mrs D White.
Apologies:	Councillor C Pearson.
Officers present:	Gillian Marshall, Solicitor to the Council; Rebecca Ware, Legal Officer; and Daniel Maguire, Democratic Services Officer
Public:	0
Press:	0

47. MINUTES

The Committee considered the minutes of the Licensing Committee meeting held on 5 December 2016 and the Extraordinary Licensing Committee meeting held on 19 December 2016. The minutes were approved as a correct record and signed by the Chair.

RESOLVED:

To approve the minutes of the Licensing Committee meeting held on 5 December 2016 and the Extraordinary Licensing Committee meeting held on 19 December 2016.

48. DISCLOSURES OF INTEREST

Councillor D Buckle declared a personal interest in agenda item 9 (minute number 54), as the applicant rented a property from his wife. He advised the Committee that he would leave the meeting during consideration of this item.

49. PROCEDURE

The Committee noted the Licensing Committee procedure.

50. CHAIR'S ADDRESS TO THE LICENSING COMMITTEE

The Chair advised the Committee that a decision made at the meeting held on 19 December 2016 regarding a private hire operator licence was being appealed to the Magistrates Court.

It was noted that the draft Charitable Collections Policy had been considered by the Executive. The Committee was informed that the Executive did not support the amendment proposed by the Licensing Committee to restrict house-to-house collections to between the hours of 8am and 8pm. It was explained that, although sympathetic to the Committee's view, the Executive felt that the ability of charities to apply for national licences without such a condition would undermine any local condition.

51. APPLICATION FOR A DISCREET PRIVATE HIRE VEHICLE LICENCE (REPORT L/16/17)

The Legal Officer presented the report which asked the Committee to consider granting a discreet Private Hire Vehicle Licence to Mr William Anderson.

The Committee was informed that the applicant had established a private hire business which specialised in providing executive transport for businesses such as airport transfers and business meetings. The application was supported by letters from three customers and the applicant was present to answer questions from the Committee.

The applicant and the Legal Officer left the meeting whilst the Committee considered the application.

RESOLVED:

To grant the application for a discreet Private Hire Vehicle Licence to Mr William Anderson.

Reason for decision:

The Committee was required to determine the application in accordance with the Council's Licensing Policy.

52. PRIVATE SESSION

RESOLVED:

That, in accordance with Section 100(A)(4) of the Local Government Act 1972, in view of the nature of the business

to be transacted the meeting be not open to the press and public during discussion of the following items as there will be disclosure of exempt information as described in paragraph 3 of Schedule 12(A) of the Act.

53. RENEWAL OF A PRIVATE HIRE DRIVER'S LICENCE (REPORT L/16/18)

The Legal Officer presented the report which asked the Committee to determine an application to renew a Private Hire Driver's Licence. The application was brought before the Committee due to the applicant declaring a conviction which had not previously been reported to the Council, this being a condition of the licence. The conviction related to the fraudulent claiming of Council Tax benefit.

The applicant was present, and was able to answer questions from the Committee.

The applicant and the Legal Officer left the meeting whilst the Committee considered the application.

The Committee considered that the offence was of a serious nature, and that this could be sufficient grounds to refuse the application. However, the Committee also noted that the applicant had no previous history in respect of his licence, that there was no impact on public or passenger safety and to not grant the application for renewal would result in significant financial hardship.

RESOLVED:

- (i) To grant the application to renew a Private Hire Driver's Licence for a period of 12 months; and**
- (ii) To issue a written warning as to future conduct, which will remain valid for a period of 12 months.**

Reason for decision:

The Committee, having considered the Council's Taxi Licensing Policy and in particular the Relevance of Convictions (appendix C) agreed that there were sufficient reasons to deviate from the Policy and grant the application for renewal but for a shorter period of 12 months.

54. APPLICATION FOR A CERTIFICATE TO EXEMPT A HACKNEY CARRIAGE DRIVER FROM ASSISTING PASSENGERS ON MEDICAL GROUNDS (REPORT L/16/19)

Councillor Buckle left the meeting at this point, in connection with his declaration of a personal interest, and did not return.

The Legal Officer presented the report which asked the Committee to determine an application for an exemption from assisting passengers on medical grounds.

The applicant was present, and was able to answer questions from the Committee. The application was supported by a letter from the applicant's General Practitioner which outlined that the applicant suffered from health problems which prevented him from being able to lift and manually handle large or heavy items such as wheelchairs.

The Committee confirmed that, if it was granted, an exemption would apply to the driver and not the vehicle.

The applicant and the Legal Officer left the meeting whilst the Committee considered the application.

RESOLVED:

To grant the exemption from assisting passengers on medical grounds.

Reasons for decision:

The Committee was required to determine the application in accordance with the Council's Licensing Policy and relevant legislation.

The meeting closed at 11.12am.

LICENSING COMMITTEE

PROCEDURES TO BE FOLLOWED

The Licensing Committee acts in a quasi judicial capacity to give a fair hearing to an applicant where a hearing is required by law or equity. When considering the case the only evidence the Members of the Committee can take into account is evidence previously submitted to form the agenda and any verbal evidence given at the actual meeting by Officers representing the Council and by the applicant or his/her representative, and their witnesses. The following procedures must be followed.

1. Procedures to be followed when submitting an application to the Licensing Committee for consideration;
 - i) The Council's Officers will liaise with the Committee Section to arrange a suitable date for the meeting. The applicant and Members of the Committee will be informed of this date in writing and a copy of the procedure note will be included for the applicant.
 - ii) The applicant and Council's Officers will submit any written evidence to the Committee Section for inclusion in the agenda by a given date. If the evidence is to be verbal, this should be stated.
 - iii) If witnesses are to be called the Committee Section must be notified prior to the hearing.
 - iv) Any application for adjournment because of late submission of papers, will in principle be considered sympathetically by the Committee.
2. The procedure to be followed by the Licensing Committee:
 - i) For each individual case the applicant and any representatives will be shown into the Committee Room at the same time as the appropriate Council's Officers. Witnesses will enter the room at the same time unless there are any objections.
 - ii) The District Solicitor will introduce the applicant, any representatives, witnesses and the Council's Officers to the Members of the Committee.
 - iii) The Chair will introduce Members of the Committee.
 - iv) The Chair will then go through the procedure as follows:

- a) Officers representing the Council will present the case for the Council. They may present such witnesses as they believe are appropriate.
- b) Officers representing the Council, and any witnesses, will then answer questions from the applicant or his/her representative, and from Members of the Committee.
- c) The applicant or his/her representative will then present the applicant's case. They may present such witnesses as they believe are appropriate.
- d) The applicant or his/her representative, and any witnesses, will then answer questions from the Committee and the Council's Officers.
- e) The Council's Officers will then sum up on behalf of the Council.
- f) The applicant or his/her representative will then sum up.
- g) The applicant and his/her representative will then be asked whether they consider they have had an opportunity to say anything that they wish to say and the Committee will take into account any comments, which are then made. The Chair of the Committee will then ask the Council's Officers presenting the case the same question and will again take account of any comments made.
- h) The Council's Officers, the applicant and his/her representative, all witnesses, press and public, will then be asked to withdraw from the meeting whilst the Committee makes their decision on the evidence presented.
- i) The applicant and his/her representative, the Council's Officers, all witnesses, press and public, will be invited back into the meeting to be informed of the Committee's decision.

Following the Committee meeting the Legal Advisor will inform the applicant in writing of the decision of the Licensing Committee and any appeal rights.

Appendix C – Relevance of convictions

The guidance for the relevance of convictions that we use has regard to the joint circular distributed by the Department of Transport and the Home Office (DOT 2/92, HO 13/92).

1. Each case will be decided on its own merits.
2. A person with a current conviction for serious crime need not be permanently barred from obtaining a licence but should be expected to remain free of convictions for 3 to 5 years, according to the circumstances, before an application is entertained. Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. However, the overriding consideration should be the protection of the public.
3. The following examples afford a general guide on the action to be taken where convictions are admitted.

(a) Minor Traffic Offences

Convictions for minor traffic offences, e.g. obstruction, waiting in a restricted street, speeding etc, should not prevent a person from proceeding with an application. If sufficient points have been accrued to require a period of disqualification of the applicant's driving licence then a Hackney Carriage or Private Hire Driver's licence may be granted after its restoration but a warning should be issued as a future conduct.

(b) Major Traffic Offences

An isolated conviction for reckless driving or driving without due care and attention etc. should normally merit a warning as to future conduct and advice on the standard expected of Hackney Carriage and Private Hire Vehicle Drivers. More than one conviction for this type of offence within the last two years should merit refusal and no further application should be considered until a period of 1 to 3 years free from convictions has elapsed.

(c) Drunkenness

(i) With Motor Vehicle

A serious view should be taken of convictions of driving or being in charge of a vehicle while under the influence of drink. An isolated incident should not necessarily debar an applicant but strict warnings should be given as to future behaviour. More than one conviction for these offences should raise grave doubts as to the applicant's fitness to hold a licence. At least 3 years should elapse (after the restoration of the driving licence) before an applicant is considered for a licence. If there is any suggestion that the applicant is an alcoholic, a special medical examination should be arranged before the application is entertained. If the applicant is found to be an alcoholic a period

of 5 years should elapse after treatment is complete before a further licence is considered.

(ii) Not in Motor Vehicle

An isolated conviction for drunkenness need not debar an applicant from gaining a licence. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination (see (i) above). In some cases, a warning may be sufficient.

(d) Drugs

An applicant with a conviction for a drug related offence should be required to show a period of at least 3 years free of convictions before an application is entertained or 5 years after detoxification treatment if he/she was an addict.

(e) Indecency Offences

As Hackney Carriage and Private Hire Vehicle Drivers often carry unaccompanied passengers, applicants with convictions for indecent exposure, indecent assault, importuning, or any of the more serious sexual offences, should be refused until they can show a substantial period (at least 3 to 5 years) free of such offences. More than one conviction of this kind should preclude consideration for at least 5 years. In either case if a licence is granted a strict warning as to future conduct should be issued.

(f) Violence

As Hackney Carriage and Private Hire Vehicle Drivers maintain close contact with the public, a firm line should be taken with applicants who have convictions for grievous bodily harm, wounding or assault. At least 3 years free of such convictions should be shown before an application is entertained and even then a strict warning should be administered.

(g) Dishonesty

Hackney Carriage and Private Hire Vehicle Drivers are expected to be persons of trust. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare etc. Overseas visitors can be confused by the change in currency and become “fair game” for an unscrupulous driver. For these reasons a serious view should be taken of any conviction involving dishonesty.

In general, a period of 3 to 5 years free of conviction should be required before entertaining an application.



Public Session

Report Reference Number: L/16/20

Agenda Item No: 6

To: Licensing Committee
Date: 6 March 2017
Author: Chris Watson, Assistant Policy Officer
Lead Officer: Gillian Marshall, Solicitor to the Council

Title: Gambling Policy Refresh

Summary:

Selby District Council is the Licensing Authority responsible for the licensing of certain gambling premises licences and all types of gaming machine permits in Selby District. As part of this role the Council must have regard to the statutory licensing objectives and issue a statement of licensing principles (the Gambling Policy) which must be reviewed every 3 years. The existing policy has been reviewed which has allowed officers to bring the draft policy in line with the latest regulatory guidance. The draft policy is now out for consultation until 14 March 2017.

Recommendations:

- i. To note the draft Gambling Policy and to provide any comments or recommendations as part of the consultation process.**

Reasons for recommendation

To ensure the Licensing Committee have the opportunity to provide comment(s) on the draft policy as part of the consultation process.

1. Introduction and background

1.1 Selby District Council as a Licensing Authority is given responsibility by the Gambling Act 2005 (the Act) for issuing premises licences for the following in Selby District:

- Casino Premises
- Bingo Premises
- Adult Gaming Premises
- Family Entertainment Centre Premises
- Betting Premises

- 1.2 The Act also passes responsibility to the Council for the granting of all types of gaming machine permits and alters the manner in which certain categories of lotteries are registered and controlled.
- 1.3 In exercising functions under the Act, the Council must have regard to the Licensing Objectives, which are distinct and different from those contained under the Licensing Act 2003. They are:
- Preventing gambling from being a source of crime and disorder, being associated with crime and disorder or being used to support crime;
 - Ensuring that gambling is conducted in a fair and open way; and
 - Protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 1.4 The Council has a duty which it must discharge under s349 of the Act. The Council is required to formulate a Gambling Policy (Statement of Principles) that it proposes to apply in exercising its functions under the Act.
- 1.5 The Gambling Policy (Statement of Principles) must be reviewed at least every three years, and the current policy comes to an end subject to the draft being approved by Full Council in April 2017.

2 The Report

- 2.1 The Gambling Commission (the Commission) is required by s25 of the Act to issue guidance to licensing authorities on the discharge of their functions under the Act. It deals primarily with matters intended to assist in the development of a licensing authority's Gambling Policy and is something the Council must have due regard to. The Commission's guidance was most recently updated in September 2016.
- 2.2 The draft policy (Appendix A) has been written to reflect this latest edition of the Commission's guidance. It also includes the Licence Conditions and Codes of Practice (LCCP). From 6 April 2016 it has been a requirement of the LCCP for licensees to assess the local risks to the licensing objectives posed by the provisions of gambling facilities at each of their premises, and have policies, procedures and control measures to mitigate those risks.
- 2.3 The draft policy also includes the Registration of Small Society Lotteries for the first time (para. 33 of the draft policy). This has been noted as best practice following a benchmarking exercise.
- 2.4 The Executive considered the draft policy on 5 January 2017 and approved it for consultation from 20 January 2017 to 14 March 2017. The consultation will be wide, including: those consultees required by statute (listed at Appendix B of the draft Policy); as well as non-statutory consultees such as the general public, Parish Councils and Selby District Councillors.
- 2.5 Following consultation, a policy amended as necessary is scheduled to be presented to Executive on 6 April 2017 seeking endorsement for Full Council

on 25 April 2017. Subject to approval, the policy will then come into force shortly afterwards.

3 Legal/Financial Controls and other Policy matters

Legal Issues

- 3.1 The review of the Gambling Policy (Statement of Principles) is a legislative requirement. Legislation requires that the final approval for the new Gambling Policy (Statement of Principles) is given by Full Council. Failure to review the policy and follow the correct guidelines will leave decisions on gambling licensing open to challenge.

Financial Issues

- 3.2 This policy proposes no significant changes to the running of the service; therefore, no financial risk is identified.

Impact Assessment

- 3.3 An Equality, Diversity and Community Impact Screening (EDCI) has been completed which shows no significant impact on any of the protected characteristics.

4. Conclusion

- 4.1 The Gambling Policy (Statement of Principles) has received a statutory required review which will ensure the Council is carrying out its role as Licensing Authority in line with the Gambling Act and the most recent Gambling Commission guidance. The draft policy is out for consultation until 14 March and Officers are seeking comment(s) from the Licensing Committee.

5. Background Documents

Existing Gambling Policy

EDCI

Executive Agenda and Minutes 5 January 2017

Contact Officer:

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01757 705101 (x42233)

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Appendices:

Appendix A – draft Gambling Policy (Statement of Principles)



Gambling Policy

Gambling Act 2005

Statement of Principles





Contents

PART A	4
1. Introduction.....	4
2. Profile of Selby District.....	5
3. Declaration	6
4. Responsible Authorities	6
5. Interested parties.....	6
6. Exchange of Information.....	7
7. Enforcement.....	7
8. Licensing Authority functions	8
PART B.....	10
PREMISES LICENCES: CONSIDERATION OF APPLICATIONS.....	10
9. General Principles	10
10. Definition of “ <i>premises</i> ”.....	10
11. Premises “ready for gambling”	12
12. Location:.....	13
13. Duplication with other regulatory regimes:	13
14. Licensing objectives	14
15. Conditions	15
16. Door Supervisors.....	16
17. Adult Gaming Centres	16
18. (Licensed) Family Entertainment Centres	17
19. Casinos	17
20. Bingo premises.....	18
21. Betting premises.....	18
22. Tracks	19
23. Travelling Fairs	20
24. Provisional Statements.....	21

25. Reviews.....	22
PART C.....	24
Permits / Temporary & Occasional Use Notice.....	24
26. Unlicensed Family Entertainment Centre gaming machine permits	24
27. (Alcohol) Licensed premises gaming machine permits	24
28. Prize Gaming Permits.....	25
29. Club Gaming and Club Machines Permits	26
30. Temporary Use Notices	27
31. Occasional Use Notices:.....	27
32. Registration of Small Society Lotteries	28
Appendix A – Responsible Authorities	29
Appendix B – List of Consultees	30
Appendix C - Table of delegation of licensing functions.....	31
Appendix D – Categories of Gaming Machines	33

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PART A

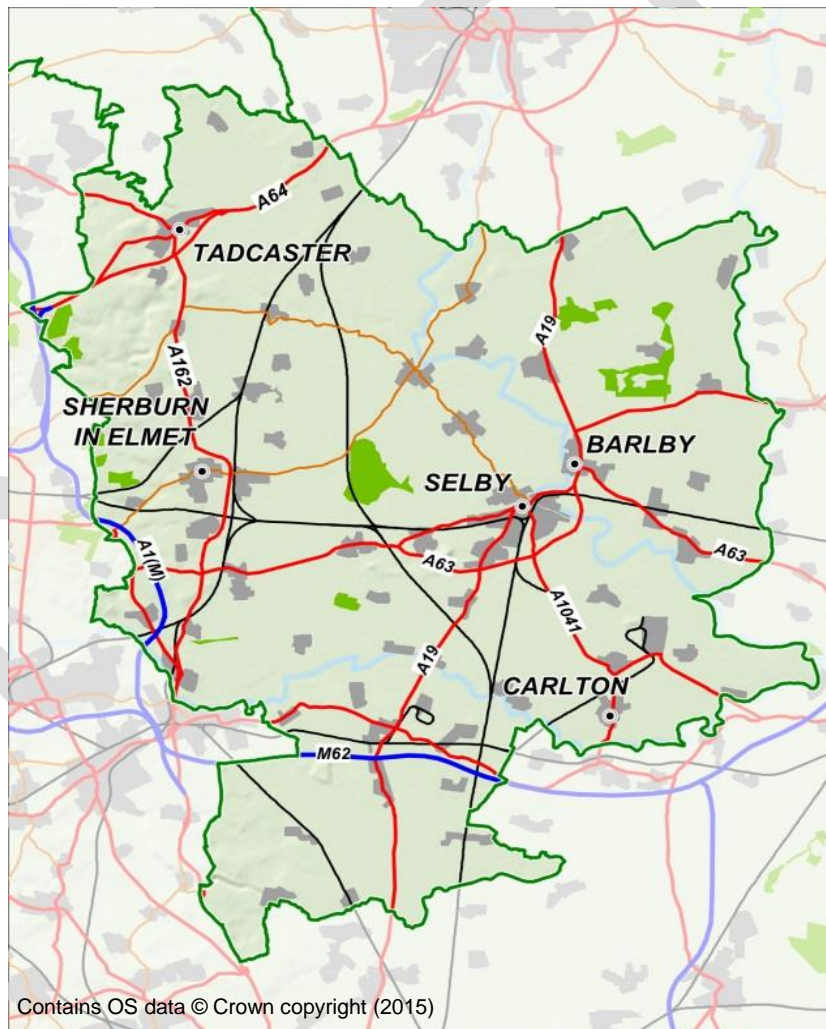
1. Introduction

- 1.1 Section 349 of the Gambling Act 2005 ('the Act') requires us (Selby District Council) as a Licensing Authority in England and Wales to define and publish our Policy Statement on the exercise of our gambling functions at least every three years.
- 1.2 We will review our statement from "time to time" and consult upon any amended parts to the statement. We will then re-publish the amended statement.
- 1.3 In exercising most of our functions under the Act, we must have regard to the licensing objectives as set out in section 1 of the Act. The licensing objectives are:
 - Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
 - Ensuring that gambling is conducted in a fair and open way
 - Protecting children and other vulnerable persons from being harmed or exploited by gambling
- 1.3 We have noted that the Gambling Commission has stated: "The requirement in relation to children is explicitly to protect them from being harmed or exploited by gambling".
- 1.4 We have noted that, as per section 153 of the Act, in making decisions about premises licences and temporary use notices we should aim to permit the use of premises for gambling in so far as we think it is:
 - in accordance with any relevant code of practice issued by the Gambling Commission
 - in accordance with any relevant guidance issued by the Gambling Commission
 - reasonably consistent with the licensing objectives and
 - in accordance with the authority's Statement of Principles
- 1.5 The Act requires that we consult with the following parties:
 - The Chief Officer of Police
 - One or more persons who appear to us to represent the interests of persons carrying on gambling businesses in our area
 - One or more persons who appear to us to represent the interests of persons who are likely to be affected by the exercise of the our functions under the Gambling Act 2005
- 1.6 We have consulted widely on this policy statement from [insert start date] to [insert end date]. A list of persons consulted can be found at Appendix A.
- 1.7 There were [insert number] comments received in response to this consultation.
- 1.8 This statement of Principles was approved at a meeting of the Full Council on [insert date]. This is published on our website (www.selby.gov.uk). In addition, copies are placed in the public libraries of the area as well as being available in our customer contact centre.

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

2. Profile of Selby District

- 2.1 Selby District is situated in the County of North Yorkshire. It covers an area of 602 square kilometres and is situated to the south of the city of York. The district's population is 86,000¹ and the principal settlements are Selby, Tadcaster and Sherburn-in-Elmet. The council area is mainly rural in character and aspect with a dispersed settlement plan. There are 74 Parish Councils as well as various Parish and Community meetings. Selby in particular is of historical importance built as it is around Selby Abbey. As a consequence tourism and leisure are important industries. Detail of the district is shown in the map below.



¹ ONS Mid-Year Estimates 2015

3. Declaration

- 3.1 In producing this Statement of Principles, we have given regard to the licensing objectives of the Act, the guidance issued by the Gambling Commission, and any responses from those consulted on the Statement of Principles.

4. Responsible Authorities

- 4.1 We are required by regulations to state the principles we will apply in exercising its powers under Section 157(h) of the Act to designate, in writing, a body which is competent to advise the authority about the protection of children from harm. The principles are:
- the need for the body to be responsible for an area covering the whole of the licensing authority's area
 - the need for the body to be answerable to democratically elected persons, rather than any particular vested interest group
- 4.2 In accordance with the Gambling Commission's Guidance for local authorities this authority designates Corporate Director of Adult Community Services, North Yorkshire County Council, Room 122 County Hall, Racecourse Lane, Northallerton, North Yorkshire, DL7 8DD for this purpose.
- 4.3 The contact details of the Responsible Authorities under the Act can be found at Appendix A and on our website www.selby.gov.uk:

5. Interested parties

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

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

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

- 5.2 We are required by regulations to state the principles we will apply in exercising our powers under the Act to determine whether a person is an interested party. The principles are:

- Each case will be decided upon its merits. We will not apply a rigid rule to our decision making. We will consider the examples of considerations provided in the Gambling Commission's Guidance for local authorities at 8.12 to 8.17. Note though that decisions on premises and temporary use notices must be “in accordance” with Gambling Commission Guidance (Section 153 of the Act). We will also consider the Gambling Commission's Guidance that "has business interests" should be given the widest possible interpretation and include partnerships, charities, faith groups and medical practices.

- Interested parties can be persons who are democratically elected such as councillors and MP's. No specific evidence of being asked to represent an interested person will be required as long as the councillor/MP represents the ward likely to be affected. Likewise, parish councils likely to be affected will be considered to be interested parties. Other than these, however, we will generally require written evidence that a person/body (e.g. an advocate/relative) 'represents' someone who either lives sufficiently close to the premises to be likely to be affected by the authorised activities and/or has business interests that might be affected by the authorised activities. A letter from one of these persons, requesting the representation is sufficient.
- If individuals wish to approach Councillors to ask them to represent their views then care should be taken that the Councillors are not part of the Licensing Committee dealing with the licence application. If there are any doubts then please contact the licensing team at:

Licensing
 Selby District Council
 Civic Centre
 Doncaster Road
 Selby
 YO8 9FT
licensing@selby.gov.uk
 01757 705101

6. Exchange of Information

- 6.1 We are required to include in our policy statement the principles to be applied by the authority in exercising the functions under sections 29 and 30 of the Act with respect to the exchange of information between us and the Gambling Commission, and the functions under section 350 of the Act with respect to the exchange of information between us and the other persons listed in Schedule 6 to the Act.
- 6.2 The principle that we apply is that we will act in accordance with the provisions of the Act in its exchange of information which includes the provision that the Data Protection Act 1998 will not be contravened. We will also have regard to any Guidance issued by the Gambling Commission on this matter, as well as any relevant regulations issued by the Secretary of State under the powers provided in the Act.
- 6.3 Should any protocols be established as regards information exchange with other bodies then they will be made available.

7. Enforcement

- 7.1 We are required by regulation under the Act to state the principles we will apply to exercising the functions under Part 15 of the Act with respect to the inspection of premises; and the

powers under section 346 of the Act to institute criminal proceedings in respect of the offences specified.

7.2 Our principles are that:

We will be guided by the Gambling Commission's Guidance for local authorities. We will endeavour to be:

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

7.3 As per the Gambling Commission's Guidance for local authorities we will endeavour to avoid duplication with other regulatory regimes so far as possible.

7.4 We have adopted and implemented a risk-based inspection programme, based on:

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

7.5 Our main enforcement and compliance role in terms of the Act will be to ensure compliance with the premises licences and other permissions which we authorise. The Gambling Commission is the enforcement body for the operating and personal licences. It is also worth noting that we will not deal with concerns about manufacture, supply or repair of gaming machines but these concerns will be notified to the Gambling Commission.

7.6 We will also keep ourselves informed of developments regarding the work of the Better Regulation Executive in its consideration of the regulatory functions of local authorities.

7.7 Bearing in mind the principle of transparency, our Corporate Enforcement Policy is available upon request from the licensing team (see details on page 7) or online at: <http://www.selby.gov.uk/enforcement-policy>.

8. Licensing Authority functions

8.1 As the Licensing Authority we are required under the Act to:

- Be responsible for the licensing of premises where gambling activities are to take place by issuing *Premises Licences*
- Issue *Provisional Statements*
- Regulate *members' clubs* and *miners' welfare institutes* who wish to undertake certain gaming activities via issuing Club Gaming Permits and/or Club Machine Permits

- Issue *Club Machine Permits* to *Commercial Clubs*
- Grant permits for the use of certain lower stake gaming machines at *unlicensed Family Entertainment Centres*
- Receive notifications from alcohol licensed premises (under the Licensing Act 2003) of the use of two or fewer gaming machines
- Issue Licensed Premises Gaming Machine Permits for premises licensed to sell/supply alcohol for consumption on the licensed premises, under the Licensing Act 2003, where more than two machines are required
- Register *small society lotteries* below prescribed thresholds
- Issue *Prize Gaming Permits*
- Receive and Endorse *Temporary Use Notices*
- Receive *Occasional Use Notices*
- Provide information to the Gambling Commission regarding details of licences issued (see section above on 'information exchange')
- Maintain registers of the permits and licences that are issued under these functions

8.2 It should be noted that local licensing authorities will not be involved in licensing remote gambling at all. This will fall to the Gambling Commission via Operator Licences.

PART B

PREMISES LICENCES: CONSIDERATION OF APPLICATIONS

9. General Principles

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

Decision-making

- 9.2 We are aware that in making decisions about premises licences we should aim to permit the use of premises for gambling in so far as we think it is:
- in accordance with any relevant code of practice issued by the Gambling Commission;
 - in accordance with any relevant guidance issued by the Gambling Commission;
 - reasonably consistent with the licensing objectives; and
 - in accordance with the authority's statement of licensing policy (which is available to view at the following webpage: <http://www.selby.gov.uk/licensing-policies>)
- 9.3 It is appreciated that as per the Gambling Commission's Guidance for local authorities "moral objections to gambling are not a valid reason to reject applications for premises licences" (except as regards any 'no casino resolution' - see section on Casinos below) and also that unmet demand is not a criterion for us.

10. Definition of “premises”

- 10.1 In the Act “premises” is defined as including “any place”. Section 152 therefore prevents more than one premises licence applying to any place. But a single building could be subject to more than one premises licence, provided they are for different parts of the building and the different parts of the building can be reasonably regarded as being different premises. This approach has been taken to allow large, multiple unit premises such as a pleasure park, pier, track or shopping mall to obtain discrete premises licences, where appropriate safeguards are in place. However, licensing authorities should pay particular attention if there are issues about sub-divisions of a single building or plot and should ensure that mandatory conditions relating to access between premises are observed.
- 10.2 The Gambling Commission states in the fifth edition of its Guidance to Licensing Authorities that: “in most cases the expectation is that a single building/plot will be the subject of an application for a licence, for example, 32 High Street. But, that does not mean 32 High Street cannot be the subject of separate premises licences for the basement and ground floor, if they are configured acceptably. Whether different parts of a building can properly be regarded as being separate premises will depend on the circumstances. The location of the premises will clearly be an important consideration and the suitability of the division is likely to be a matter for discussion between the operator and the licensing officer. However, the Gambling Commission does not consider that areas of a building that are artificially or

temporarily separated, for example by ropes or moveable partitions, can properly be regarded as different premises.

10.3 We take particular note of the Gambling Commission’s Guidance to Local Authorities which states that: Licensing Authorities should take particular care in considering applications for multiple licences for a building and those relating to a discrete part of a building used for other (non-gambling) purposes. In particular they should be aware of the following:

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

10.4 The Guidance also gives a list of factors which we should be aware of when considering if two or more proposed premises are truly separate, which may include:

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

10.5 We will consider these and other relevant factors in making decision, depending on all the circumstances of the case.

10.6 **The Gambling Commission’s relevant access provisions (as defined at 7.23 of the Guidance) for each premises type are reproduced below:**

Type of premises	Access Provisions
Casinos	<ul style="list-style-type: none"> • The principal access entrance to the premises must be from a street • No entrance to a casino must be from premises that are used wholly or mainly by children and/or young persons • No customer must be able to enter a casino directly from any other premises which holds a gambling premises licence
Adult Gaming Centre	<ul style="list-style-type: none"> • No customer must be able to access the premises directly from any other licensed gambling premises
Betting Shops	<ul style="list-style-type: none"> • Access must be from a street or from another premises with a betting premises licence • No direct access from a betting shop to another premises used for the retail sale of merchandise or services. In effect

	there cannot be an entrance to a betting shop from a shop of any kind and you could not have a betting shop at the back of a café – the whole area would have to be licensed.
Tracks	<ul style="list-style-type: none"> • No customer should be able to access the premises directly from: <ul style="list-style-type: none"> - a casino, or - an adult gaming centre
Bingo Premises	<ul style="list-style-type: none"> • No customer must be able to access the premises directly from: <ul style="list-style-type: none"> - a casino - an adult gaming centre, or - a betting premises, other than a track
Family Entertainment Centre	<ul style="list-style-type: none"> • No customer must be able to access the premises directly from: <ul style="list-style-type: none"> - a casino - an adult gaming centre, or - a betting premises, other than a track

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

11. Premises “ready for gambling”

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

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

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

- **Stage 1:** whether the premises ought to be permitted to be used for gambling
- **Stage 2:** whether appropriate conditions can be put in place to cater for the situation that the premises are not yet in the state in which they ought to be before gambling takes place.

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

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

12. Location:

12.1 We are aware that demand issues cannot be considered with regard to the location of premises, but that considerations in terms of the licensing objectives are relevant to our decision-making. As per the Gambling Commission's Guidance to Local Authorities, we will pay particular attention to the protection of children and vulnerable persons from being harmed or exploited by gambling, as well as issues of crime and disorder. Should any specific policy be decided upon as regards areas where gambling premises should not be located, this policy statement will be updated.

12.2 We will need to be satisfied that there is sufficient evidence that the particular location of the premises would be harmful to the licensing objectives before refusing. From 6 April 2016, it has been a requirement of the Gambling Commission's Licence Conditions and Codes of Practice (LCCP), under Section 10, for licensees to assess the local risks to the licensing objectives posed by the provisions of gambling facilities at each of their premises, and have policies, procedures and control measure to mitigate those risks. In undertaking their risk assessments, they must take into account relevant matters identified in this policy statement.

12.3 The LCCP say that licensees must review (and update as necessary) their local risk assessments:

- to take account of significant changes in local circumstances, including those identified in this policy statement;
- when there are significant changes at a licensee's premises that may affect their mitigation of local risks;
- when applying for a variation of a premises licence; and
- in any case, undertake a local risk assessment when applying for a new premises licence.

12.4 We expect the local risk assessment to consider as a minimum:

- the location of services for children such as schools, playgrounds, leisure/community centres and other areas where children will gather;
- the demographics of the area in relation to vulnerable groups;
- whether the premises is in an area subject to high levels of crime and/or disorder.

12.5 Local risk assessments should show how vulnerable people, including people with gambling dependencies are protected.

12.6 It should be noted that any such policy does not preclude any application being made and each application will be decided on its merits, with the onus upon the applicant showing how the concerns can be overcome.

13. Duplication with other regulatory regimes:

13.1 We will seek to avoid any duplication with other statutory / regulatory systems where possible, including planning. We will not consider whether a licence application is likely to

be awarded planning or building approval, in our consideration of it. We will though listen to, and consider carefully, any concerns about conditions which are not able to be met by licensees due to planning restrictions, should such a situation arise.

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

14. Licensing objectives

- 14.1 Premises licences granted must be reasonably consistent with the licensing objectives. With regard to these objectives, we have considered the Gambling Commission's Guidance to Local Authorities:

14.2 **Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime**

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

14.3 **Ensuring that gambling is conducted in a fair and open way**

We note that the Gambling Commission states that it generally does not expect licensing authorities to be concerned with ensuring that gambling is conducted in a fair and open way as this will be addressed via operating and personal licences (but, if such concerns come to our notice we will forward them to the Commission). There is however, more of a role with regard to tracks which is explained in more detail in the 'tracks' section below.

14.4 **Protecting children and other vulnerable persons from being harmed or exploited by gambling**

We have noted the Gambling Commission's Guidance that this objective means preventing children from taking part in gambling (as well as restriction of advertising so that gambling products are not aimed at or are, particularly attractive to children). We will therefore consider, as suggested in the Gambling Commission's Guidance, whether specific measures are required at particular premises, with regard to this licensing objective. Appropriate measures may include supervision of entrances / machines, segregation of areas etc.

14.5 We will also make ourselves aware of the Codes of Practice which the Gambling Commission issues as regards this licensing objective, in relation to specific types of premises.

14.6 As regards the term “vulnerable persons” it is noted that the Gambling Commission does not seek to offer a definition but states that “it will for regulatory purposes assume that this group includes:

- people who gamble more than they want to;
- people gambling beyond their means; and
- people who may not be able to make informed or balanced decisions about gambling due to a mental impairment, alcohol or drugs.”

14.7 We will consider this licensing objective on a case by case basis.

15. Conditions

15.1 Any conditions attached to licences will be proportionate and will be:

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

15.2 Decisions upon individual conditions will be made on a case by case basis, although there will be a number of measures we will consider utilising should there be a perceived need, such as:

- the use of door supervisors;
- supervision of adult gaming machines; and
- appropriate signage for adult only areas etc.

15.3 There are specific comments made in this regard under some of the licence types below. We will also expect the licence applicant to offer his/her own suggestions as to ways in which the licensing objectives can be met effectively.

15.4 We will also consider specific measures which may be required for buildings which are subject to multiple premises licences. Such measures may include the supervision of entrances; segregation of gambling from non-gambling areas frequented by children; and the supervision of gaming machines in non-adult gambling specific premises in order to pursue the licensing objectives. These matters are in accordance with the Gambling Commission's Guidance.

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

- all such machines are located in an area of the premises which is separated from the remainder of the premises by a physical barrier which is effective to prevent access other than through a designated entrance;
- only adults are admitted to the area where these machines are located;
- access to the area where the machines are located is supervised;

- the area where these machines are located is arranged so that it can be observed by the staff or the licence holder; and
- at the entrance to and inside any such areas there are prominently displayed notices indicating that access to the area is prohibited to persons under 18.

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

15.7 It is noted that there are conditions which we cannot attach to premises licences these are:

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

16. Door Supervisors

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

16.2 It is noted that the door supervisors at casinos or bingo premises are not required to be registered by the Security Industry Authority (SIA) under the Private Security Act 2001. Where door supervisors are provided at these premises the operator should ensure that any persons employed in this capacity are fit and proper to carry out such duties. Possible ways to achieve this could be to carry out a Disclosure and Barring Service check on potential staff and for such personnel to have attended industry recognised training. Door supervisors not directly employed by a casino or bingo operator do have to be SIA registered.

17. Adult Gaming Centres

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

17.2 We may consider measures to meet the licensing objectives such as:

- Proof of age schemes
- CCTV
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry
- Notices / signage
- Specific opening hours
- Self-barring schemes

- Provision of information leaflets / helpline numbers for organisations such as GamCare.

This list is not mandatory, nor exhaustive.

18. (Licensed) Family Entertainment Centres

- 18.1 Licensed Family Entertainment Centres (FECs) are those premises which usually provide a range of amusements such as computer games, penny pushers and may have a separate section for adult only 17 gaming machines with higher stakes and prizes. Licensed FECs will be able to make available unlimited category C and D machines where there is a clear segregation in place so children do not access the areas where the category C machines are located.
- 18.2 We will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority, for example, that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machine areas.
- 18.3 We may consider measures to meet the licensing objectives such as:
- CCTV
 - Supervision of entrances / machine areas
 - Physical separation of areas
 - Location of entry
 - Notices / signage
 - Specific opening hours
 - Self-exclusion schemes
 - Provision of information leaflets / helpline numbers for organisations such as GamCare.
 - Measures / training for staff on how to deal with suspected truant school children on the premises

This list is not mandatory, nor exhaustive.

- 18.4 We will, as per the Gambling Commission's guidance, refer to the Commission's website to see any conditions that apply to operating licences covering the way in which the area containing the category C machines should be delineated. We will also make ourselves aware of any mandatory or default conditions on these premises licences.

19. Casinos

- 19.1 *No Casinos resolution* – We have not passed a 'no casino' resolution under Section 166 of the Gambling Act 2005, but we are aware that we have the power to do so. Should we decide in the future to pass such a resolution, we will update this Statement of Principles with details of that resolution. Any such decision will be made by the Full Council.
- 19.2 *Licence considerations / conditions* – We will attach conditions to casino premises licences according to the principles set out in the Gambling Commission's Guidance at paragraph 9, bearing in mind the mandatory conditions listed at paragraph 17 of the Guidance, and the Licence Conditions and Codes of Practice published by the Gambling Commission.

20. Bingo premises

- 20.1 We note that the Gambling Commission's Guidance states:
- 20.2 Licensing authorities will need to satisfy themselves that bingo can be played in any bingo premises for which they issue a premises licence. This will be a relevant consideration where the operator of an existing bingo premises applies to vary their licence to exclude an area of the existing premises from its ambit and then applies for a new premises licence, or multiple licences, for that or those excluded areas.
- 20.3 Children and young people are allowed into bingo premises; however they are not permitted to participate in the bingo and if category B or C machines are made available for use these must be separated from areas where children and young people are allowed.

21. Betting premises

- 21.1 *Betting machines* - Section 181 of the Act contains an express power for licensing authorities to restrict the number of betting machines, their nature and the circumstances in which they are made available by attaching a licence condition to a betting premises licence. When considering whether to impose a condition to restrict the number of betting machines in particular premises, we will, amongst other things, take into account:
- the size of the premises;
 - the number of counter positions available for person-to-person transactions; and
 - the ability of staff to monitor the use of the machines by vulnerable persons
- 21.2 Where an applicant for a betting premises licence intends to offer higher stake category B gaming machines (categories B2-B4) including any Fixed Odds Betting Terminals (FOBTs), then applicants should consider the control measures related to the protection of vulnerable persons.
- 21.3 Where certain measures are not already addressed by the mandatory and default conditions and the Gambling Commission's Codes of Practice or by the applicant we may consider licence conditions to address such issues.

Appropriate licence conditions may be:

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

This list is not mandatory, nor exhaustive.

22. Tracks

- 22.1 Tracks are different from other premises in that there may be more than one premises licence in effect and that the track operator may not be required to hold an operating licence as there may be several premises licence holders at the track which will need to hold their own operating licences.
- 22.2 There may be some specific considerations with regard to the protection of children and vulnerable persons from being harmed or exploited by gambling and this authority would expect the premises licence applicants to demonstrate suitable measures to ensure that children do not have access to adult only gaming facilities. It is noted that children and young persons will be permitted to enter track areas where facilities for betting are provided, although they are still prevented from entering areas where gaming machines (other than category D machines) are provided.

We may consider measures to meet the licensing objectives such as:

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

This list is not mandatory, nor exhaustive.

- 22.3 *Gaming machines* – Where the applicant holds a pool betting operating licence and is going to use the entitlement to four gaming machines, machines (other than category D machines) should be located in areas from which children are excluded.
- 22.4 *Betting machines* – We have a power under the Act, to restrict the number of betting machines, their nature and the circumstances in which they are made available, by attaching a licence condition to a betting premises licence. In relation to betting premises away from tracks, we will take into account the size of the premises and the ability of staff to monitor the use of the machines by vulnerable people when determining the number of machines permitted.
- 22.5 Similar considerations apply in relation to tracks, where the potential space for such machines may be considerable, bringing with it significant problems in relation to the proliferation of such machines, the ability of track staff to supervise them if they are scattered around the track and the ability of the track operator to comply with the law and prevent children betting on the machine. We will consider restricting the number and location of betting machines, in the light of the circumstances of each application for a track betting premises licence.
- 22.6 We take the view that it would be preferable for all self-contained premises operated by off-course betting operators on track to be the subject of separate premises licences. This

would ensure that there was clarity between the respective responsibilities of the track operator and the off-course betting operator running a self-contained unit on the premises.

22.7 Condition on rules being displayed - This authority will consider whether to attach a condition to track premises licences requiring the track operator to ensure that the rules are prominently displayed in or near the betting areas, or that other measures are taken to ensure that they are made available to the public. For example, the rules could be printed in the race-card or made available in leaflet form from the track office.

22.8 Applications and plans – The Gambling Act (s51) requires applicants to submit plans of the premises with their application, in order to ensure that we have the necessary information to make an informed judgement about whether the premises are fit for gambling. The plan will also be used for us to plan future premises inspection activity. (See Guidance to Licensing Authorities, paragraph 20.28).

22.9 Plans for tracks do not need to be in a particular scale, but should be drawn to scale and should be sufficiently detailed to include the information required by regulations (See Guidance to Licensing Authorities 20.29).

22.10 Some tracks may be situated on agricultural land where the perimeter is not defined by virtue of an outer wall or fence, such as point-to-point racetracks. In such instances, where an entry fee is levied, track premises licence holders may erect temporary structures to restrict access to premises (See Guidance to Licensing Authorities 20.31).

22.11 In rare cases where the outer perimeter cannot be defined, it is likely that the track in question will not be specifically designed for the frequent holding of sporting events or races. In such cases betting facilities may be better provided through occasional use notices where the premises boundaries do not need to be defined (See Guidance to Licensing Authorities, paragraphs 20.32).

22.12 We appreciate that it is sometimes difficult to define the precise location of betting areas on tracks. The precise location of where betting facilities are provided is not required to be shown on track plans, both by virtue of the fact that betting is permitted anywhere on the premises and because of the difficulties associated with pinpointing exact locations for some types of track. Applicants should provide sufficient information that this authority can satisfy itself that the plan indicates the main areas where betting might take place. For racecourses in particular, any betting areas subject to the “five times rule” (commonly known as betting rings) must be indicated on the plan. (See Guidance to Licensing Authorities, paragraph 20.33).

23. Travelling Fairs

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

23.2 We will also consider whether the applicant falls within the statutory definition of a travelling fair.

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

24. Provisional Statements

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

24.2 Section 204 of the Gambling Act provides for a person to make an application to the licensing authority for a provisional statement in respect of premises that he or she:

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

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

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

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

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

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

- which could not have been raised by objectors at the provisional statement stage;

- which in the authority's opinion reflect a change in the operator's circumstances; or
- where the premise has not been constructed in accordance with the plan submitted with the application. This must be a substantial change to the plan and we note that it can discuss any concerns it has with the applicant before making a decision.

25. Reviews

- 25.1 Requests for a review of a premises licence can be made by interested parties or responsible authorities; however, it is for us, as the licensing authority to decide whether the review is to be carried-out. This will be on the basis of whether the request for the review is relevant to the matters listed below:
- in accordance with any relevant code of practice issued by the Gambling Commission
 - in accordance with any relevant guidance issued by the Gambling Commission
 - reasonably consistent with the licensing objectives and
 - in accordance with this Gambling Act 2005 - Statement of Principles.
- 25.2 The request for the review will also be subject to our consideration as to whether the request is frivolous, vexatious, or whether it will certainly not cause us to wish to alter/revoke/suspend the licence, or whether it is substantially the same as previous representations or requests for review.
- 25.3 We can also initiate a review of a particular premises licence, or a particular class of premises licence on the basis of any reason which it thinks is appropriate.
- 25.4 Once we have received a valid application for a review, representations can be made by responsible authorities and interested parties during a 28 day period. This period begins 7 days after we receive the application, we will publish notice of the application within 7 days of receipt.
- 25.5 We must carry out the review as soon as possible after the 28 day period for making representations has passed.
- 25.6 The purpose of the review will be to determine whether we should take any action in relation to the licence. If action is justified, the options open to us are to:-
- (a) add, remove or amend a licence condition we impose;
 - (b) exclude a default condition imposed by the Secretary of State (e.g. opening hours) or remove or amend such an exclusion;
 - (c) suspend the premises licence for a period not exceeding three months; and
 - (d) revoke the premises licence
- 25.7 In determining what action, if any, should be taken following a review, we must have regard to the principles set out in section 153 of the Act, as well as any relevant representations.

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

25.9 Once the review has been completed, we must, as soon as possible, notify our decision to:

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

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PART C

Permits / Temporary & Occasional Use Notice

26. Unlicensed Family Entertainment Centre gaming machine permits

- 26.1 Where a premises does not hold a Premises Licence but wishes to provide gaming machines, it may apply to us for this permit. It should be noted that the applicant must show that the premises will be wholly or mainly used for making gaming machines available for use (Section 238 of the Act).
- 26.2 The Act states that a Licensing Authority may prepare a *statement of principles* that they propose to consider in determining the suitability of an applicant for a permit and in preparing this statement, and/or considering applications, it need not (but may) have regard to the licensing objectives and shall have regard to any relevant guidance issued by the Commission under section 25 of the Act.
- 26.3 S24.9 of the Guidance also states: “An application for a permit may be granted only if the licensing authority is satisfied that the premises will be used as an unlicensed FEC, and if the chief officer of police has been consulted on the application” Licensing Authorities might wish to consider asking applications to demonstrate:
- a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed FECs;
 - that the applicant has no relevant convictions (those that are set out in Schedule 7 of the Act); and
 - that staff are trained to have a full understanding of the maximum stakes and prizes.
- 26.4 It should be noted that a Licensing Authority cannot attach conditions to this type of permit.
- 26.5 **Statement of Principles:** We expect applicants to show that there are policies and procedures in place to protect children from harm. Harm in this context is not limited to harm from gambling but includes wider child protection considerations. The efficiency of such policies and procedures will each be considered on their merits. However, they may include appropriate measures / training for staff as regards suspected truant school children on the premises, measures / training covering how staff would deal with unsupervised very young children being on the premises, or children causing perceived problems on / around the premises. We also expect (as per Gambling Commission Guidance), that applicants demonstrate:
- a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed FECs;
 - that the applicant has no relevant convictions (those that are set out in Schedule 7 of the Act); and
 - that staff are trained to have a full understanding of the maximum stakes and prizes.

27. (Alcohol) Licensed premises gaming machine permits

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

premises merely need to notify us, as the licensing authority. We can remove the automatic authorisation in respect of any particular premises if:

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

27.2 **Permit: 3 or more machines-** If a premises wishes to have more than 2 machines, then it needs to apply for a permit and we must consider that application based upon the licensing objectives, any guidance issued by the Gambling Commission issued under Section 25 of the Gambling Act 2005, and “*such matters as [we] think relevant.*”

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

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

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

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

28. Prize Gaming Permits

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

28.2 We have prepared a Statement of Principles which is that the applicant should set out the types of gaming that he or she is intending to offer and that the applicant should be able to demonstrate:

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

- 28.3 In making our decision on an application for this permit we do not need (but may) have regard to the licensing objectives but must have regard to any Gambling Commission guidance.
- 28.4 It should be noted that there are conditions in the Act by which the permit holder must comply, but to which we cannot attach conditions.

The conditions in the Act are:

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

29. Club Gaming and Club Machines Permits

- 29.1 Members Clubs and Miners' welfare institutes may apply for a Club Gaming Permit or a Club Gaming Machines Permit. A Commercial Club may only apply for a Club Machine Permit. The Club Gaming Permit will enable the premises to provide gaming machines (3 machines of categories B3A, B4, C or D), equal chance gaming and games of chance as set out in regulations. A Club Gaming Machine Permit will enable the premises to provide gaming machines (3 machines of categories B3A, B4, C or D). Only one category B3A machine can be sited as part of this entitlement.
- 29.2 Gambling Commission Guidance for licensing authorities states: "Members clubs must have at least 25 members and be established and conducted 'wholly or mainly' for purposes other than gaming, unless the gaming is permitted by separate regulations. The Secretary of State has made regulations and these cover bridge and whist clubs, which replicate the position under the Gaming Act 1968. A members' club must be permanent in nature, not established to make commercial profit, and controlled by its members equally. Examples include; working men's clubs, branches of Royal British Legion and clubs with political affiliations."
- 29.3 Before granting the permit we will need to be satisfied that the premises meet the requirements of a members' club and we may grant the permit only if the majority of members are over 18 years old.
- 29.4 We are aware that we may only refuse an application on the grounds that:
- (a) the applicant does not fulfil the requirements for a members' or commercial club or miners' welfare institute and therefore is not entitled to receive the type of permit for which it has applied;
 - (b) the applicant's premises are used wholly or mainly by children and/or young persons;
 - (c) an offence under the Act or a breach of a permit has been committed by the applicant while providing gaming facilities;
 - (d) a permit held by the applicant has been cancelled in the previous ten years; or
 - (e) an objection has been lodged by the Commission or the police.
- 29.5 There is also a 'fast-track' procedure available under the Act for premises which hold a Club Premises Certificate under the Gambling Act 2005 (Schedule 12 paragraph 10). Under the

fast-track procedure there is no opportunity for objections to be made by the Commission or the police, and the ground upon which an authority can refuse a permit are reduced.

29.6 The grounds on which an application under the process may be refused are that:

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

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

30. Temporary Use Notices

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

30.2 We can only grant a Temporary Use Notice to a person or company holding a relevant operating licence i.e. a non-remote casino operating licence.

30.3 The Secretary of State has the power to determine what form of gambling can be authorised by Temporary Use Notices, and at the time of writing this statement the relevant regulations (The Gambling Act 2005 (Temporary Use Notices) Regulations 2007) state that Temporary Use Notices can only be used to permit the provision of facilities for equal chance gaming, where the gaming is intended to produce a single winner, which in practice means poker tournaments.

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

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

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

31. Occasional Use Notices:

31.1 The Act provides that where there is betting on a track on eight days or fewer in a calendar year, betting may be permitted by an Occasional Use Notice without the need for a full premises licence.

31.2 We have very little discretion as regards these notices aside from ensuring that the statutory limit of 8 days in a calendar year is not exceeded. We will, however, consider the definition of a 'track' and whether the applicant is permitted to benefit him/herself of the notice.

32. Registration of Small Society Lotteries

32.1 We will adopt a risk based approach towards its enforcement responsibilities for small society lotteries. This authority considers that the following list, although not exclusive, could affect the risk status of an operator:

- submission of late returns (returns must be submitted no later than three months after the date on which the lottery draw was held)
- submission of incomplete or incorrect returns
- breaches of the limits for small society lotteries

32.2 Non-commercial gaming is permitted if it takes place at a non-commercial event, either as an incidental or principal activity at the event. Events are non-commercial if no part of the proceeds is for private profit or gain. The proceeds of such events may benefit one or more individuals if the activity is organised:

- by, or on behalf of, a charity or for charitable purposes
- to enable participation in, or support of, sporting athletic or cultural activities.

Appendix A – Responsible Authorities

This list of Responsible Authorities is also available on our website www.selby.gov.uk

North Yorkshire Police

North Yorkshire Police Headquarters
The Licensing Section
Fulford Road
York
YO10 4BY
nylicensing@northyorkshire.pnn.police.uk

North Yorkshire Fire and Rescue Authority

Chief Fire Officer
Fire Brigade Headquarters
Crosby Road
Northallerton
North Yorkshire
DL6 1AB
www.northyorksfire.gov.uk/contact-us

The Gambling Commission

Victoria Square House
Victoria Square
Birmingham
B2 4BP

Tel: 0121 230 6500

Social Services

Strategy & Performance Officer
Children & Young People's Service
Room SB012
County Hall,
Racecourse Lane
Northallerton
DL8 7AE

Lead Officer – Development Control

Selby District Council
Civic Centre
Doncaster Road
Selby
YO8 9FT

H M Revenue & Customs

National Registration Unit (Betting & Gaming)
Portcullis House
21 India Street
Glasgow
G2 4PZ

Tel: 0141 555 3633

The Licensing Officer

Selby Police Station
Portholme Road
Selby
North Yorkshire
YO8 4QQ

Environmental Health

Selby District Council
Civic Centre
Doncaster Road
Selby
YO8 9FT

Solicitor to the Council

Selby District Council
Civic Centre
Doncaster Road
Selby
YO8 9FT

Health & Safety Section

Environmental Health Department
Selby District Council
Civic Centre
Doncaster Road
Selby
YO8 9FT

Appendix B – List of Consultees

Complete list to be provided at full Executive

Indicative list:

Statutory Consultees	Non-Statutory Consultees
Police	All Selby District Councillors
Responsible authorities	All Parish Councils within the District
Interested Parties	Premises Licence Holders
HMRC	Licensing Committee
Fire Authority	Policy Review Committee
Child Protection Services	
Gambling Business Representatives	
People affected by the Act Representatives	

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Appendix C - Table of delegation of licensing functions

Matter to be dealt with	Full Council	Licensing Sub Committee	Officers
Application for premises licences		✓ Where representations have been received and not withdrawn	✓ Where no representations received / representations have been withdrawn
Application for a variation to a licence		✓ Where representations have been received and not withdrawn	✓ Where no representations received / representations have been withdrawn
Application for a transfer of a licence		✓ Where representations have been received from the Commission or responsible authority	✓ Where no representations received from the Commission or responsible authority
Review of a premises licence		✓	
Application for a provisional statement		✓ Where representations have been received and not withdrawn	✓ Where no representations received/representations have been withdrawn
Application for club gaming / club machine permits		✓ Where objections have been made and not withdrawn	Where no objections made/objections have been withdrawn
Cancellation of club gaming / club machine permits		✓	
Applications for other permits		✓ Where the application is for 5 or more machines	✓ (except where there is a possibility of refusal or grant of a reduced number of gaming or betting machines)
Cancellation of licensed premises gaming machine permits			✓
Consideration of temporary use notice			✓
Decision to give a counter notice to a temporary use notice		✓	

Matter to be dealt with	Full Council	Licensing Sub Committee	Officers
Determination as to whether a representation is frivolous, vexatious or repetitive		✓	
Fee Setting – when appropriate		✓	
Three year Gambling Policy	✓		
Policy not to permit casinos	✓		

✓ indicates the lowest level to which decisions can be delegated.

NB. The Council reserves the right to amend this table of delegation

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Appendix D – Categories of Gaming Machines

Section 236 of the Gambling Act 2005 provides for the Secretary of State to make regulations to define four classes of gaming machine: categories A, B, C, and D, with category B further divided into sub-categories. The regulations define the classes according to the maximum amount that can be paid for playing the machine and the maximum prize it can deliver.

The following table shows the different categories of machine and the maximum stakes and prizes that currently apply.

Category of machine	Maximum stake (from Jan 2014)*	Maximum prize (from Jan 2014)*
A	No category A gaming machines are currently permitted	
B1	£5	£10,000*
B2	£100	£500
B3A	£2	£500
B3	£2	£500
B4	£2	£400
C	£1	£100
D – non-money prize (other than a crane grab machine or a coin pusher or penny falls machine)	30p	£8
D – non-money prize (crane grab machine)	£1	£50
D – money prize (other than a coin pusher or penny falls machine)	10p	£5
D – combined money and non-money prize (other than a coin pusher or penny falls machine)	10p	£8 (of which no more than £5 may be prize money)
D – combined money and non-money prize (coin pusher or penny falls machine)	20p	£20 (of which no more than £10 may be prize money)

* with the option of a maximum £20,000 linked progressive jackpot on a premises basis only.

Public Session

Report Reference Number: L/16/21

Agenda Item No: 7

To: Licensing Committee
Date: 6 March 2017
Author: Rebecca Ware, Legal Officer
Lead Officer: Gillian Marshall, Solicitor to the Council

Title: Changes to the Legislation affecting Drivers and the duty to assist wheelchairs users

Summary

The Department of Transport has announced the coming into force of legislation which will make it illegal for taxi drivers of designated wheelchair accessible vehicles to discriminate against wheelchair users unless they are certified as exempt from the requirements to assist and has issued statutory guidance to which a licensing authority should have regard.

The guidance suggested a transitional period in which licensing authorities should review their practices and procedures and work with the trade to ensure that they are aware of their obligations.

Recommendations

That Committee notes the changes in legislation, guidance and proposed transitional arrangements.

1. Introduction and Background

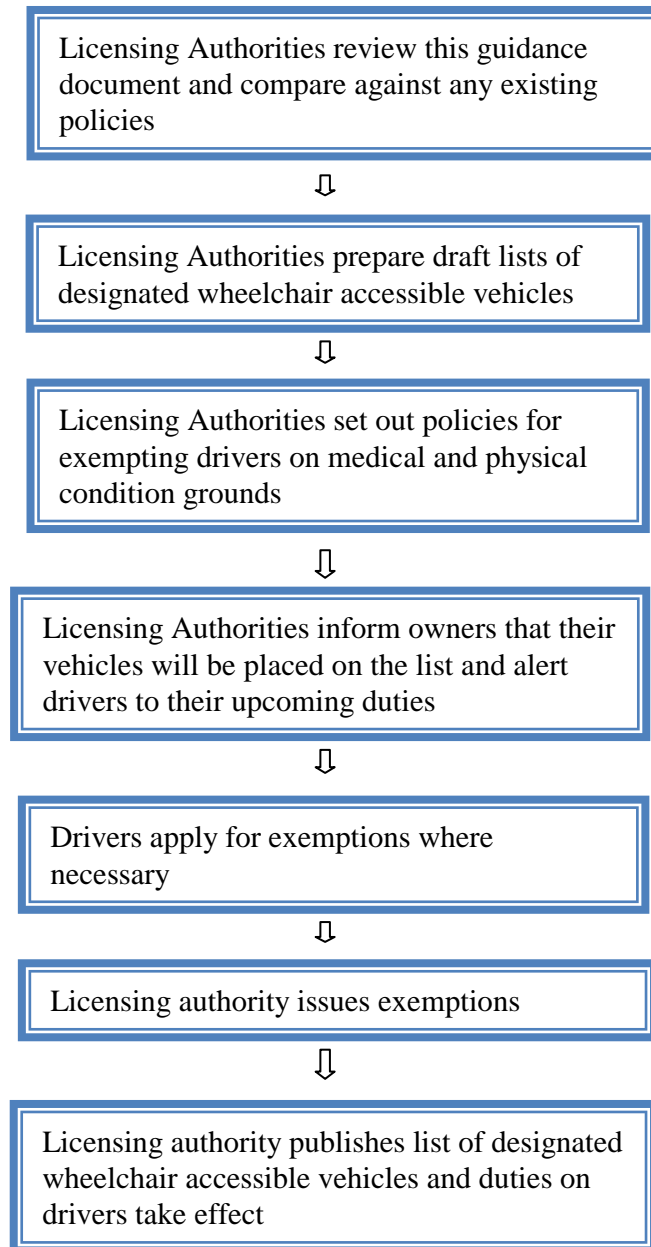
The Department for Transport has now issued an Order to bring into force Section 165 of the Equality Act 2010, which concerns the responsibilities of licensed drivers to ensure wheelchair users have the assistance they need to access taxi and private hire vehicles. Alongside that a statutory guidance document has been issued which constitutes the Secretary of State's formal guidance to licensing authorities in England, Wales and Scotland on the application of sections 165 to 167 of the Equality Act 2010. A copy of the guidance is attached at Appendix A. Authorities must have regard to this guidance document.

2. The Report

2.1 From 6 April 2017, taxi and private hire vehicle drivers of vehicles designated as wheelchair accessible will be obliged to:

- a) Transport wheelchair users in their wheelchair. (If the passenger chooses to sit in a passenger seat, to carry the wheelchair).
 - b) Provide passengers in wheelchairs with appropriate mobility assistance as is reasonable required.
 - c) Charge wheelchair users the same amount as non-wheelchair users.
- 2.2 Mobility assistance is defined as assistance:
- a) to enable the passenger to get into or out of the vehicle;
 - b) if the passenger wishes to remain in the wheelchair, to enable the passenger to get into and out of the vehicle while in the wheelchair;
 - c) to load the passenger's luggage into or out of the vehicle;
 - d) if the passenger does not wish to remain in the wheelchair, to load the wheelchair into or out of the vehicle.
- 2.3 The legislation does not require the driver:
- a) unless the vehicle is of a description prescribed by the Secretary of State, to carry more than one person in a wheelchair, or more than one wheelchair, on any one journey;
 - b) to carry a person in circumstances in which it would otherwise be lawful for the driver to refuse to carry the person
- 2.4 Drivers found not to be complying with the obligations set out at 2.1 above thus discriminating against wheelchair users will be committing a criminal offence and will be liable on a summary prosecution to a fine of up to £1,000. It will be a defence for a driver charged with the offence to show that at the time of the alleged offence—
- a) the vehicle conformed to the accessibility requirements which applied to it, but;
 - b) it would not have been possible for the wheelchair to be carried safely in the vehicle.
- 2.6 The Committee will also be able to consider the suspension or revocation of the driver's licence.
- 2.7 Drivers who for medical reasons are unable to provide assistance to wheelchair users will be able to apply for an exemption certificate from the new requirements.
- 2.8 The guidance document provides advice on maintaining lists of vehicles designated as wheelchair accessible, handling applications from drivers for exemption from the requirements, and on transitioning from existing arrangements to those covered by the Equality Act. Government is also in the process of developing regulations to set out the form of the exemption notices that should be displayed by drivers that have been exempted from the new duties on medical grounds. These are expected to be available in April 2017
- 2.9 The guidance suggests that authorities will need to follow a series of steps to ensure that the new requirements are applied appropriately in their area. In essence, we will need to review our requirements on wheelchair accessible vehicles to ensure that our fleet complies with the required standard, publish a draft list of wheelchair accessible vehicles (WAVs) to which s165-167 applies, inform the trade of which vehicles will appear on the list and therefore which

drivers will be required to comply with the duties, inform drivers of how to apply for exemptions and then deal with such applications. The process is summarised as follows:



2.10 Officers estimate that this process will take 6-9 months to complete and will require amendments to the taxi licensing policy.

3. Legal/Financial Controls and other Policy matters

3.1 Legal Issues

The Equality Act 2010 (Commencement No. 12) Order 2017 brings into force Sections 165 and 167 (in so far as they are not already in force) of the Equality Act 2010.

Section 165 imposes duties on the driver of a designated taxi and the driver of a designated private hire vehicle (“a designated vehicle”), to carry passengers who are either wheelchair users or wheelchair users accompanying passengers, so as to enable wheelchair users to access and exit designated vehicles.

Section 165 also creates a new criminal offence if the driver of a designated vehicle fails to comply with the duties specified in Section 165.

Section 166 provides that the driver of a designated vehicle is exempted from the duties imposed by Section 165 if a licensing authority issues the driver with an exemption certificate which is in force and the prescribed notice of the exemption is exhibited in the designated vehicle in the prescribed manner.

Section 166 also provides that a taxi or private hire vehicle is “designated” if it appears on a list maintained under Section 167.

Section 167 provides that for the purposes of Section 165, a licensing authority may maintain a list of vehicles which are either taxis or private hire vehicles and conform to such accessibility requirements as the licensing authority thinks fit.

3.2 Financial Issues

There are no financial implications.

4. Conclusion

That Committee note the changes in legislation coming into force on 6 April 2017 and the steps required to implement the new arrangements.

5. Background documents

- (i) The Equality Act 2010 (Commencement No. 12) Order 2017.
- (ii) Sections 165-167 Equality Act 2010.

Contact Officer:

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licensingadministration@selby.gov.uk
01757 705101 (x42112)

Appendices:

Appendix A Statutory Guidance



Department
for Transport

Access for wheelchair users to Taxis and Private Hire Vehicles

Statutory Guidance

Moving Britain Ahead

The Department for Transport has actively considered the needs of blind and partially sighted people in accessing this document. The text will be made available in full on the Department's website. The text may be freely downloaded and translated by individuals or organisations for conversion into other accessible formats. If you have other needs in this regard please contact the Department.

Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR
Telephone 0300 330 3000
Website www.gov.uk/dft
General enquiries: <https://forms.dft.gov.uk>



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Contents

Ministerial Foreword	4
1. Introduction	5
Status of guidance	5
2. Putting the law into practice	6
Background	6
Transitory arrangements	6
3. Vehicles	8
Overview	8
Vehicles that can be designated	8
Preparing and publishing lists of designated vehicles	9
Appeals	9
4. Drivers	10
Driver responsibilities	10
Applying for and issuing exemptions	11
Demonstrating exemptions	12
Appeals	12
5. Enforcement	13
Licensing measures and prosecution	13

Ministerial Foreword



This Government is committed to ensuring that transport works for everyone, including disabled people. Since joining the Department for Transport in 2015, and taking on Ministerial responsibility for transport accessibility, I have made it my mission to challenge the status quo and encourage innovative thinking to improve access to transport across the modes.

I know however, that despite the real improvements which have taken place in recent years, some disabled passengers still face discrimination when attempting to travel. I am clear that this is unacceptable.

Owners of assistance dogs are already protected by provisions in the Equality Act 2010 which make it unlawful to refuse or charge them extra. I want similar protections to apply to wheelchair users, which is why I am delighted that we have commenced the remaining parts of sections 165 and 167 of the Equality Act 2010, making it a criminal offence for drivers of designated taxi and private hire vehicles to refuse to carry passengers in wheelchairs, to fail to provide them with appropriate assistance, or to charge them extra. I hope that in so doing we will send a clear signal to the minority of drivers who think it acceptable to discriminate on grounds of disability that such behaviour will not be tolerated – and, more importantly, to enable wheelchair users to travel with confidence.

A handwritten signature in blue ink that reads "Andrew Jones". The signature is written in a cursive, flowing style.

**Andrew Jones MP,
Parliamentary Under Secretary of State, Department for Transport**

1. Introduction

Status of guidance

- 1.1 This guidance document has been issued in order to assist local licensing authorities (LAs) in the implementation of legal provisions intended to assist passengers in wheelchairs in their use of designated taxi and private hire vehicle (PHV) services. It provides advice on designating vehicles as being wheelchair accessible so that the new protections can apply, communicating with drivers regarding their new responsibilities and handling requests from drivers for exemptions from the requirements.
- 1.2 This is a statutory guidance document, issued under section 167(6) of the Equality Act 2010 and constitutes the Secretary of State's formal guidance to LAs in England, Wales and Scotland on the application of sections 165 to 167 of the Equality Act 2010. LAs must have regard to this guidance document.

2. Putting the law into practice

Background

- 2.1 We have commenced sections 165 and 167 of the [Equality Act 2010](#) (“the Act”), in so far as they were not already in force. Section 167 of the Act provides LAs with the powers to make lists of wheelchair accessible vehicles (i.e. “designated vehicles”), and section 165 of the Act then requires the drivers of those vehicles to carry passengers in wheelchairs, provide assistance to those passengers and prohibits them from charging extra.
- 2.2 The requirements of section 165 do not apply to drivers who have a valid exemption certificate and are displaying a valid exemption notice in the prescribed manner. An exemption certificate can be issued under section 166 of the Act, which is already in force. This allows LAs to exempt drivers from the duties under section 165 where it is appropriate to do so, on medical grounds or because the driver’s physical condition makes it impossible or unreasonably difficult for them to comply with those duties.
- 2.3 On 15th September 2010, the Department for Transport issued guidance on the Act which stated, in relation to section 167, *“although the list of designated vehicles will have no actual effect in law until the duties are commenced, we would urge licensing authorities to start maintaining a list as soon as possible for the purpose of liaising with the trade and issuing exemption certificates”*.
- 2.4 We therefore recognise that many LAs have already implemented some of these provisions, including publishing lists of wheelchair accessible vehicles and exempting drivers. Therefore, there are likely to be a range of approaches being used in practice by LAs across England, Wales and Scotland.

Transitional arrangements

- 2.5 We want to ensure that the commencement of sections 165 and 167 of the Act has a positive impact for passengers in wheelchairs, ensures they are better informed about the accessibility of designated taxis and PHVs in their area, and confident of receiving the assistance they need to travel safely.
- 2.6 But we recognise that LAs will need time to put in place the necessary procedures to exempt drivers with certain medical conditions from providing assistance where there is good reason to do so, and to make drivers aware of these new requirements. In addition, LAs will need to ensure that their new procedures comply with this guidance, and that exemption notices are issued in accordance with Government regulations. This will ensure that we get a consistent approach and the best outcomes for passengers in wheelchairs.
- 2.7 As such, we would encourage LAs to put in place sensible and manageable transition procedures to ensure smooth and effective implementation of this new law. LAs should only publish lists of wheelchair accessible vehicles for the purposes of

section 165 of the Act when they are confident that those procedures have been put in place, drivers and owners notified of the new requirements and given time to apply for exemptions where appropriate. We would expect these arrangements to take no more than a maximum of six months to put in place, following the commencement of these provisions, but this will of course be dependent on individual circumstances.

2.8 A flowchart setting out the sorts of processes that a LA could follow is set out below. This is an indicative illustration, and it will be down to each LA to determine the actions they need to take to ensure this new law is implemented effectively in their area.



3. Vehicles

Overview

- 3.1 Section 167 of the Act permits, but does not require, LAs to maintain a designated list of wheelchair accessible taxis and PHVs.
- 3.2 Whilst LAs are under no specific legal obligation to maintain a list under section 167, the Government recommends strongly that they do so. Without such a list the requirements of section 165 of the Act do not apply, and drivers may continue to refuse the carriage of wheelchair users, fail to provide them with assistance, or to charge them extra.

Vehicles that can be designated

- 3.3 We want to ensure that passengers in wheelchairs are better informed about the accessibility of the taxi and PHV fleet in their area, confident of receiving the assistance they need to travel safely, and not charged more than a non-wheelchair user for the same journey.
- 3.4 The Act states that a vehicle can be included on a licensing authority's list of designated vehicles if it conforms to such accessibility requirements as the licensing authority thinks fit. However, it also goes on to explain that vehicles placed on the designated list should be able to carry passengers in their wheelchairs should they prefer.
- 3.5 This means that to be placed on a licensing authority's list a vehicle must be capable of carrying some – but not necessarily all – types of occupied wheelchairs. The Government therefore recommends that a vehicle should only be included in the authority's list if it would be possible for the user of a "reference wheelchair"¹ to enter, leave and travel in the passenger compartment in safety and reasonable comfort whilst seated in their wheelchair.
- 3.6 Taking this approach allows the provisions of section 165 of the Act apply to a wider range of vehicles and more drivers than if LAs only included on the list vehicles capable of taking a larger type of wheelchair.
- 3.7 The Government recognises that this approach will mean that some types of wheelchair, particularly some powered wheelchairs, may be unable to access some of the vehicles included in the LA's list. The Act recognises this possibility, and section 165(9) provides a defence for the driver if it would not have been possible for the wheelchair to be carried safely in the vehicle. Paragraph 3.10 of this guidance below aims to ensure that users of larger wheelchairs have sufficient information about the vehicles that will be available to them to make informed choices about their journeys.

¹ As defined in Schedule 1 of the [Public Service Vehicle Accessibility Regulations 2000](#)

Preparing and publishing lists of designated vehicles

- 3.8 We want to ensure that passengers in wheelchairs have the information they need to make informed travel choices, and also that drivers and vehicle owners are clear about the duties and responsibilities placed on them.
- 3.9 Before drivers can be subject to the duties under section 165 of the Act, the LA must first publish their list of designated vehicles, and clearly mark it as 'designated for the purposes of section 165 of the Act'.
- 3.10 LAs should ensure that their designated lists are made easily available to passengers, and that vehicle owners and drivers are made aware. Lists should set out the details of the make and model of the vehicle, together with specifying whether the vehicle is a taxi or private hire vehicle, and stating the name of operator. Where possible it would also be helpful to include information about the size and weight of wheelchair that can be accommodated, and whether wheelchairs that are larger than a "reference wheelchair" can be accommodated.
- 3.11 However, we recognise that some passengers in wheelchairs may prefer to transfer from their wheelchair into the vehicle and stow their wheelchair in the boot. Although the legal requirement for drivers to provide assistance does not extend to the drivers of vehicles that cannot accommodate a passenger seated in their wheelchair, we want to ensure that these passengers are provided with as much information as possible about the accessibility of the taxi and PHV fleet in their area.
- 3.12 We would therefore recommend that LAs also publish a list of vehicles that are accessible to passengers in wheelchairs who are able to transfer from their wheelchair into a seat within the vehicle. It should be made clear however that this list of vehicles has not been published for the purposes of section 165 of the Act and drivers of those vehicles are therefore not subject to the legal duties to provide assistance. Authorities may however wish to use existing licensing powers to require such drivers to provide assistance, and impose licensing sanctions where this does not occur.

Appeals

- 3.13 Section 172 of the Act enables vehicle owners to appeal against the decision of a LA to include their vehicles on the designated list. That appeal should be made to the Magistrate's Court, or in Scotland the sheriff, and must be made within 28 days of the vehicle in question being included on the LA's published list.

4. Drivers

Driver responsibilities

- 4.1 Section 165 of the Act sets out the duties placed on drivers of designated wheelchair accessible taxis and PHVs.
- 4.2 The duties are:
- to carry the passenger while in the wheelchair;
 - not to make any additional charge for doing so;
 - if the passenger chooses to sit in a passenger seat to carry the wheelchair;
 - to take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort; and
 - to give the passenger such mobility assistance as is reasonably required.
- 4.3 The Act then goes on to define mobility assistance as assistance:
- To enable the passenger to get into or out of the vehicle;
 - If the passenger wishes to remain in the wheelchair, to enable the passenger to get into and out of the vehicle while in the wheelchair;
 - To load the passenger's luggage into or out of the vehicle;
 - If the passenger does not wish to remain in the wheelchair, to load the wheelchair into or out of the vehicle.
- 4.4 Once the duties are commenced, it will be an offence for the driver (unless exempt) of a taxi or PHV which is on the licensing authority's designated list to fail to comply with them. We encourage LAs to provide drivers of taxis and PHVs who are not exempt from the duties with clear guidance on their duties with respect to the carriage of passengers in wheelchairs, either as part of existing driver-facing guidance, or as supplementary communication. The Disabled Persons Transport Advisory Committee's Disability Equality and Awareness Training Framework for Transport Staff² may provide a useful resource.
- 4.5 Although each situation will be different, we take the view that reasonable mobility assistance will be subject to other applicable law, including health and safety legislation. However, we would always expect drivers to provide assistance such as folding manual wheelchairs and placing them in the luggage compartment, installing the boarding ramp, or securing a wheelchair within the passenger compartment.
- 4.6 Depending on the weight of the wheelchair and the capability of the driver, reasonable mobility assistance could also include pushing a manual wheelchair or

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<http://webarchive.nationalarchives.gov.uk/20080804135759/http://www.dptac.gov.uk/education/stafftraining/pdf/trainingframework-nontabular.pdf>

light electric wheelchair up a ramp, or stowing a light electric wheelchair in the luggage compartment.

- 4.7 It is our view that the requirement not to charge a wheelchair user extra means that, in practice, a meter should not be left running whilst the driver performs duties required by the Act, or the passenger enters, leaves or secures their wheelchair within the passenger compartment. We recommend that licensing authority rules for drivers are updated to make clear when a meter can and cannot be left running.

Applying for and issuing exemptions

- 4.8 Some drivers may have a medical condition or a disability or physical condition which makes it impossible or unreasonably difficult for them to provide the sort of physical assistance which these duties require. That is why the Act allows LAs to grant exemptions from the duties to individual drivers. These provisions are contained in section 166, and were commenced on 1st October 2010.
- 4.9 Section 166 allows LAs to exempt drivers from the duties to assist passengers in wheelchairs if they are satisfied that it is appropriate to do so on medical or physical grounds. The exemption can be valid for as short or long a time period as the LA thinks appropriate, bearing in mind the nature of the medical issue. If exempt, the driver will not be required to perform any of the duties. Since October 2010, taxi and PHV drivers who drive wheelchair accessible taxis or PHVs have therefore been able to apply for exemptions. If they do not do so already, LAs should put in place a system for assessing drivers and a system for granting exemption certificates for those drivers who they consider should be exempt.
- 4.10 We suggest that authorities produce application forms which can be submitted by applicants along with evidence supporting their claim. We understand that some licensing authorities have already put in place procedures for accessing and exempting drivers, and as an absolute minimum, we think that the evidence provided should be in the form of a letter or report from a general practitioner.
- 4.11 However, the Government's view is that decisions on exemptions will be fairer and more objective if medical assessments are undertaken by professionals who have been specifically trained and who are independent of the applicant. We would recommend that independent medical assessors are used where a long-term exemption is to be issued, and that LAs use assessors who hold appropriate professional qualifications and who are not open to bias because of a personal or commercial connection to the applicant. LAs may already have arrangements with such assessors, for example in relation to the Blue Badge Scheme.
- 4.12 If the exemption application is successful then the LA should issue an exemption certificate and provide an exemption notice for the driver to display in their vehicle. As section 166 has been in force since 2010, many LAs will already have processes in place for issuing exemption certificates, and as such we do not intend to prescribe the form that those certificates should take. We are however keen to ensure that passengers in wheelchairs are able to clearly discern whether or not a driver has been exempted from the duties to provide assistance, and as such will prescribe the form of and manner of exhibiting a notice of exemption.
- 4.13 If the exemption application is unsuccessful we recommend that the applicant is informed in writing within a reasonable timescale and with a clear explanation of the reasons for the decision.

Demonstrating exemptions

- 4.14 In addition to the exemption certificate, exempt drivers need to be issued with a notice of exemption for display in their vehicle.
- 4.15 The Department will soon make regulations which will prescribe the form of and manner of exhibiting a notice of exemption. Where a driver has been exempted from the duties under section 165 of the Act, they must display an exemption notice in the vehicle they are driving in the form and manner prescribed by the regulations. If the notice is not displayed then the driver could be prosecuted if they do not comply with the duties under section 165 of the Act.
- 4.16 The Department aims to distribute copies of the notice of exemption to LAs, but they are of course free to produce their own in accordance with the regulations.
- 4.17 Only one exemption notice should be displayed in a vehicle at any one time.

Appeals

- 4.18 Section 172 of the Act enables drivers to appeal against the decision of a LA not to issue an exemption certificate. That appeal should be made to the Magistrate's Court, or a sheriff in Scotland, and must be made within 28 days beginning with the date of the refusal.
- 4.19 LAs may choose to establish their own appeal process in addition to the statutory process but this would need to be undertaken rapidly in order to allow any formal appeal to the Magistrate's Court to be made within the 28 day period.

5. Enforcement

Licensing measures and prosecution

- 5.1 It is important to note that a driver will be subject to the duties set out in section 165 of the Equality Act 2010 if the vehicle they are driving appears on the designated list of the LA that licensed them, and the LA has not provided them with an exemption certificate, regardless of where the journey starts or ends.
- 5.2 The Government expects LAs to take tough action where drivers breach their duties under section 165 of the Act.
- 5.3 LAs have wide-ranging powers to determine the rules by which taxis and private hire vehicles within their respective areas may operate. We recommend that they use these powers to ensure that drivers who discriminate against disabled passengers are held accountable.
- 5.4 If a driver receives a conviction for breaching their duties under section 165 of the Act, it would be appropriate for the authority to review whether or not they remained a fit and proper person to hold a taxi or PHV drivers' licence. The Government's presumption is that a driver who wilfully failed to comply with section 165 would be unlikely to remain a "fit and proper person".
- 5.5 Authorities might also apply conditions which enable them to investigate cases of alleged discrimination and take appropriate action, even where prosecution did not proceed.

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