



Wednesday, 10 February 2016

LICENSING COMMITTEE

A meeting of **Licensing Committee** will be held on

Thursday, 18 February 2016

commencing at **9.30 am**

The meeting will be held in the Meadfoot Room, Town Hall, Castle Circus,
Torquay, TQ1 3DR

Members of the Committee

Councillor Manning (Chairman)

Councillor Barnby	Councillor Parrott
Councillor Brooks	Councillor Stocks
Councillor Cunningham	Councillor Stubley
Councillor Doggett (Vice-Chair)	Councillor Sykes
Councillor Ellery	Councillor Thomas (D)
Councillor King	Councillor Tolchard
Councillor Lang	Councillor Winfield

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For information relating to this meeting or to request a copy in another format or language please contact:

Lisa Antrobus, Town Hall, Castle Circus, Torquay, TQ1 3DR
01803 207087

Email: governance.support@torbay.gov.uk

www.torbay.gov.uk

LICENSING COMMITTEE AGENDA

1. **Apologies**
To receive any apologies for absence, including notifications of any changes to the membership of the Committee.
2. **Minutes** (Pages 3 - 4)
To confirm as a correct record the Minutes of the meeting of this Committee held on 12 November 2015.
3. **Declarations of interest**
 - (a) To receive declarations of non pecuniary interests in respect of items on this agenda
For reference: Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.
 - (b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda
For reference: Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(**Please Note:** If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)
4. **Urgent items**
To consider any other items that the Chairman decides are urgent
5. **Pavement Cafe Policy 2016-21** (Pages 5 - 37)
This is a a policy to cover the Hlghways function of licensing pavement cafe areas
6. **Hackney Carriage and Private Hire Licensing Policy 2016** (Pages 38 - 104)
To consider a report that sets some small amendments to the current Policy.



Minutes of the Licensing Committee

12 November 2015

-: Present :-

Councillors Brooks, Tolchard, Doggett (Vice-Chair) and Stocks

13. Apologies

Apologies for absence were received from Councillors Cunningham, Ellery, Manning, Parrott and Thomas (D).

Members noted that until the arrival of Councillor Brooks the Committee was not quorate at commencement.

Councillor Doggett Chaired the Committee.

14. Minutes

The Minutes of the meeting of the Licensing Committee held on 30 July 2015 were confirmed as a correct record and signed by the Chairman.

15. Glen Mayhew (Police) Briefing to Committee

At the request of the Licensing Committee held on 30 July 2015 (Minute 12 (i)) Superintendent Glen Mayhew attended the Licensing Committee to give a verbal update as Members had been unanimously concerned over the increase in the recorded 'violence against person' crimes between 2009/2010 and 2013/2014 and wanted to know what action was being taken to reduce this type of crime in the Cumulative Impact Area.

He answered Members questions and explained initiatives that have been undertaken in the town centre and within the Cumulative Impact Area.

16. Delegated decisions under the Licensing Act 2003

The Committee noted the report which set out the details of the decisions taken by the Executive Head, Community Safety in relation to the Licensing Act 2003 applications, using her delegated powers. Members were informed that the Licensing Policy required the decisions made under delegated powers to be reported to the Committee on a regular basis.

Members noted the number of applications dealt with and the number of Hearings that had been held in the period between 1 April 2015 and September 2015.

17. Delegated decisions under the Gambling Act 2005

Members noted the report which set out the decisions taken by the Executive Head, Community Safety in relation to the Gambling Act 2005 applications, using her delegated powers.

18. Verbal Summary of Consultations on Policy Documents - Steve Cox

The Environmental Health Manager (Commercial) provided a verbal update to Members.

1. Consultation for Wheelchair Access in vehicles is due to commence mid-November after being delayed and the results will be brought back to Licensing Committee.
2. Pavement and Cafe Permits will now fall under the remit of the Licensing Team instead of the Highways Department. The existing Policy is being revamped and will go out for consultation. The Policy should be ready to come to Licensing Committee at the end of January 2016 where Members can consider the controversial issue of smoking within outside pavement areas and assess the responses received as a result of the consultation.
3. The Purple Flag Inspectors will be in Torquay from 5pm on 14 November 2015 and will be meeting with Superintendent Mayhew, Inspector Louise Costin, Frances Hughes, Assistance Director Community and Customer Services and Steve Cox, Environmental Health Manager (Commercial).

Torbay currently holds a Purple Flag which recognises standards of excellence in managing the evening and night-time economy.

Chairman



Public Agenda Item: **Yes**

Title: **Pavement Café Policy**

Wards Affected: **All**

To: **Licensing Committee** On: **18 February 2016**

Key Decision: **No**

Change to Budget: **No** Change to Policy Framework: **No**

Contact Officer: **Steve Cox**

☎ Telephone: **01803 208034**

✉ E.mail: **Steve.cox@torbay.gov.uk**

1. What we are trying to achieve

1.1 Members are being asked to agree a new Pavement Café Policy.

2. Recommendation(s) for decision

2.1 That the Pavement Café Policy 2016-21 be approved.

3. Key points and reasons for recommendations

3.1 By the provisions of the Highways Act 1980 as amended by the Local Government (Miscellaneous Provisions) Act 1982, Torbay Council is the Licensing Authority in respect of Pavement Café Licences.

3.2 The Licensing and Highway Teams have been in discussions during 2015-16, and agreed for the transfer of the licensing of Pavement Cafés to the Licensing Team from the 18th February 2016, in line with this new Policy. See Appendix One. This improves efficiencies as the majority of Pavement Café Licensed Premises also have Premises Licences or Club Premises Certificates under the Licensing Act 2003, which are already administered by the Licensing Team. The Highways Team will remain a consultee to this process.

- 3.3 The draft document has undergone a six week consultation with partner agencies, i.e. Highways, The Police, Public Nuisance Officer as well as the current Pavement Café Licence holders.
- 3.4 The new Pavement Café Policy 2016-21 will have limited impact on current Pavement Café Licence holders, except that those with more than 5 tables will need to dedicate 50% or more of those tables as non-smoking, with appropriate signage.
- 3.5 There are new opportunities to have non amplified music, based upon changes to the application process as well as allowing a limited number of amplified events. Both opportunities will incur additional fees to cover the additional Local Authority work.
- 3.6 This is a risk of a challenge to this policy, which would be by way of judicial review. This however is considered unlikely.

For more detailed information on this proposal please refer to the Supporting Information.

**Frances Hughes
Assistant Director Community and Customer Services**

Supporting information to Report

A1. Introduction and history

- A1.1 By the provisions of the Highways Act 1980 as amended by the Local Government (Miscellaneous Provisions) Act 1982, Torbay Council is the Licensing Authority in respect of Pavement Café Licences.
- A1.2 The Licensing and Highway Teams have been in discussions during 2015-16, and agreed for the transfer of the licensing of Pavement Café Licences to the Licensing Team from the 18th February 2016, in line with this new Policy. See Appendix One. This improves efficiencies as the majority of Pavement Café Licensed premises also have Premises Licences or Club Premises Certificates under the Licensing Act 2003, which are already administered by the Licensing Team. The Highways Team will remain a consultee to this process.
- A 1.3 The requirements of the new policy placed on an existing Pavement Café Licence holder remain broadly similar, although there are a number of additional opportunities and changes which are described below.
- A1.4 The times of opening Pavement Café designated areas, will remain the same, being from 1000 to 2300, though these can be extended by the applicant with the agreement of the consultees, notably Highways, the Police and Public Nuisance officer. No Pavement Café Licence will be issued after midnight however.
- A1.5 Currently no music is allowed in the Pavement Café Licensed area, though this is at odds with the guidance issued under Section 182 of the Licensing Act 2003, which covers the same designated area. It is therefore proposed that the applicant can apply for acoustic/non amplified music and song with the payment of a small additional fee, which will cover the additional costs. This forms part of the initial application.
- A1.6 There are occasions where amplified music (live or recorded) will be requested for the designated area, which has the significant potential for noise complaints. This is most likely to be requested by those premises that sell alcohol under a Premises Licences or Club Premises Certificates granted by the Licensing Act 2003. If this is the case they have an exemption under the Licensing Act for Live Music, so no Temporary Event Notice is required. Any control/management of the potential noise nuisance is through restrictions under the Pavement Café Policy. It is therefore proposed, by way of an application, that the Pavement Café Licence holder applies for an 'Amplified Music Permission'. This will initially be restricted to five days per calendar year, as a pilot, to ascertain the likely impact this has on neighbours.
- A1.7 The other significant change is providing tables for non smokers within these designated Pavement Café Licensed areas. Currently there are no restrictions. It is therefore proposed that for premises with more than 5 tables, 50% or more of those tables must be designated smoke free, with appropriate signage.
- A1.8 This is a risk of a challenge to this policy, which would be by way of judicial review. This however is considered unlikely.

A2. Risk assessment of preferred option

A2.1 Outline of significant key risks

The new Pavement Café policy, although identifying new opportunities, does not alter the operation of a Pavement Café Licensed area significantly, with the exception of introducing some non smoking areas. The key risk is a judicial review, though this is not considered likely.

The annual renewal of Pavement Café Licences is about to commence so not agreeing a policy presents a small risk, though renewals could continue, without the current proposed changes, but it would slow down the changes which will bring efficiencies.

A3. Options

A3.1 There are two other options:

- (i) Members alter the policy then agree the amended policy.
- (ii) Members refuse the recommendation.

A4. Summary of resource implications

A4.1 There are some resource implications for the approval of the recommendation, as there will be some costs in delivering the new policy, but in time it is anticipated there will be overall savings to Torbay Council.

A5. What impact will there be on equalities, environmental sustainability and crime and disorder?

A5.1 There are no equality or sustainability issues regarding this report.

A5.2 There are some potential crime and disorder implications, however the Police have been consulted on the draft policy and will remain a consultee.

A6. Consultation and Customer Focus

A6.1 There has been consultation with all current Pavement Café Licence holders and the key partners.

A7. Are there any implications for other Business Units?

A7.1 There are no significant implications for other business units, if the recommendations are supported.

Annexes

Appendix 1 List of consultee responses

Appendix 2 Draft Pavement Café Policy 2016-21

Documents available in members' rooms

None

Background Papers:

The following documents/files were used to compile this report:

None

PAVEMENT CAFÉ LICENSING POLICY 2016-2021: CONSULTATION EXERCISE

Consultation Feedback Summary

	DATE OF RECEIPT	FORM OF REPRESENTATION	RESPONDENT DETAILS	SUMMARY OF REPRESENTATION	OFFICER COMMENTS
1	26 th Nov 15	Email	Mr Tim Northway (on behalf of Highways department, Torbay Council)	<p>Supportive of draft policy but highlights a number of omissions and area of concern:-</p> <ul style="list-style-type: none"> - Existing street furniture should be taken into account when assessing permit size. - Street furniture has been moved in the past at the applicants cost. - Concerns regarding additional fees, does the act allow? - Applications not normally granted for wet sales only, although there are some. - Common reason for refusal not mentioned. - Appeals not necessary as a reasonably application cannot be refused. - Conflict with safety if some premises are open before 10:00, delivery vehicle, street maintenance etc. 	<p>Added</p> <p>Added</p> <p>Reasonable costs, not administration fee, no change. Act states food and beverages, no change</p> <p>Noted, each application decided on its own merits</p> <p>Disagree. Open, fair and transparent process.</p> <p>Amended, case by case decision.</p>

				<ul style="list-style-type: none"> - No provision in the Highways Act to prohibit smoking on public highways. - No provision in the Highways Act to designate areas for entertainment, provision of refreshment only. - Agrees with Barriers, where appropriate. - Welcomes 'noise Officers' as consultees - Highways does not want a duty to inform of repairs/maintenance as maintenance schedules are already in place. - 2/3 of applications are to provide an outside smoking area. 	<p>Disagree, if offering licence. Act allows conditions as Council see fit.</p> <p>As above.</p> <p>Amended</p> <p>Amended (Condition 7.)</p> <p>Noted.</p>
2	18 th Nov 15	Email	Mrs Julie Smart (on behalf of Devon & Cornwall Constabulary)	<p>Agreement that Policy draft has sufficient details but would like to make the following observations:-</p> <ul style="list-style-type: none"> -Whilst the Police support the no-smoking approach they feel it will negatively impact on the highway as this could lead to congestion and conflict with other highway users. -Concerned of increased litter from discarded cigarette butts. -Concerned customers will be tempted to take their drinks with them when they leave the cafe licence area, will this lead to conflict with staff and customers. -Whilst customers are smoking outside of the licensed area it will be difficult for licensees to monitor and manage customer behaviour. 	<p>Noted and amended.</p> <p>Noted and amended.</p> <p>Noted and amended.</p> <p>Noted and amended.</p>

			<p>Argue customers are not committing a criminal offence smoking in the open and would rather they where under the direct supervision of staff.</p> <p>-Suggest areas larger enough could be spilt.</p> <p>-Police agree with barriers to demarcate licensed areas.</p> <p>-Police do not wish for any licensed area beyond midnight in the CIA areas and 11:00pm in all others. How will the Council deal with such applications.</p> <p>-Note policy state licences are for consumption of food and beverages but point out after 9:00 pm most for consumption of Alcohol only.</p> <p>-Police keen for cafe licences not becoming 'street drinking permits'</p> <p>-Note the policy makes no statement regarding the use of glass bottles, despite existing conditions do/conditions of a premises licence. Police do not want to a reversal of this approach.</p> <p>-Ask for Police Officer to be authorised to inspect and require paperwork in relation to cafe areas.</p> <p>-Support change requiring compliance with licensing conditions.</p>	<p>Noted and amended.</p> <p>Noted.</p> <p>Noted.</p> <p>Policy does not need further clarification.</p> <p>Noted, as per Highways observations.</p> <p>Policy clear licences are for consumption of food and beverages. Where no food is served requirements stand for seating/waiter service etc.</p> <p>Amended</p> <p>Amended</p> <p>Noted</p>
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3	1 st Dec 15	Email	Food and Safety Team Torbay Council Town Hall	<ul style="list-style-type: none"> - Concerned a significant number of cafes will not be able operate if 2m gap is required between the cafe pavement area and the edge of the highway. The 2m rule is defined in the Highways Act and remains unchanged. - Agree with the smoke free proposals but are concerned about enforcement. - If smokers are forced to smoke on the open pavement will additional street furniture such as ashtrays be provided? - Will 'vaping' be provided? - Support proposals for allowing entertainment but suggest standardised record sheets could be provided by the Council. - Raise the issues of a business being reimbursed if the street is closed for long durations when they are unable to use the highways e.g. resurfacing works. 	<p>Highways Act stipulates 2 meter gap, this is not a change of policy.</p> <p>Noted</p> <p>This may need to be taken into account during an assessment if applicable.</p> <p>Yes, though not implied or encouraged.</p> <p>Noted</p> <p>No, Fee not rent.</p>
4			Environmental Protection Torbay Council	<p>Commented only on entertainment proposals.</p> <ul style="list-style-type: none"> - Suggest proposals for 'amplified music' would not work as all performances would have some sort of amplification. - Offered any music played should be through a noise limiter and make applicants aware this could be subject to change if problems occur. - Conditions should include the use of limiters, hours of 	<p>Noted, but not amended</p> <p>Noted</p> <p>Noted</p>

				<p>operation.</p> <ul style="list-style-type: none"> - Agrees with proposals for a 'temporary event' application but suggest the policy should give more detail on the noise management plan. - Emphasises swift enforcement if a business is causing a nuisance to neighbours. 	<p>Noted</p> <p>Noted</p>
5	27 th Nov 15	Email	Existing Licence holder	<p>No comments about the policy being sufficient in detail to allow effective decision making.</p> <ul style="list-style-type: none"> - Does not agree with smoke free proposals as some child/family friendly premises may wish to enforced others specifically use the area as an outside smoking area. - Concerns customers will be forced out onto the highways with other highway users and suggests non-smokers have the choice to either eat either outside or in whilst smokers don't. - Proposed splitting areas into smoking and no smoking, - Supports move towards allowing some entertainment. 	<p>Amended</p> <p>Amended</p> <p>Noted</p> <p>Noted</p>
6	17 th Nov 15	Email	Existing Licence holder	<p>Generally supportive of the policy and recognises it seeks to promote good practice.</p> <ul style="list-style-type: none"> - Concerned no performers will sing without an amplification. - Agrees with barriers but states unless the barriers are exceptionally heavy they tend to blow over in the wind. They have found barriers that can with stand high winds 	<p>Noted, but not amended</p> <p>Noted</p>

				<p>are very difficult to pack away at the end of the night to comply with the licence.</p> <ul style="list-style-type: none"> - Does not agree with complete smoke free areas but supports providing a percentage of tables for smoke free which they currently do provide. 	Amended
7	10 th Dec 15	Email	Member of the public	<p>Supports policy except smoke free proposals and makes the following observations:-</p> <ul style="list-style-type: none"> - Believes the proposals are a backdoor way of criminalising smokers whom he views as a minority group and smokers have the right to choose to smoke. Does not believe smoking contributes to litter and there is no proven link between smokers and passive smokers. 	Noted
8	10 th Dec 15	Email	Existing Licence holder	<p>Comments received only about the smoke free proposals.</p> <ul style="list-style-type: none"> - Concerned the smoke free proposal will be detrimental to her business and sees the proposal as one size fits all approach. She only has 4 tables and these are predominately used by smokers. - Also made comments about the amount of advertising boards blocking the public highway, though these comments fall outside of the scope of this consultation. 	Amended Noted

**Torbay Council's
Pavement Café Licensing
Policy
2016- 2021**

1. Introduction

Torbay Council (hereinafter referred to as ‘the Council’) has developed this Policy with a view to promoting the use of Pavement Cafés in our area and to establish a benchmark of good practice.

Torbay is a popular well-established holiday destination situated on the South Devon Coast, on the South West peninsular of England. It has a population of over 130,000 which can increase to over 200,000 in the summer months. The area comprises of the three towns of Torquay, Paignton and Brixham, and is known for its mild climate, picturesque harbours, coves and beaches, and is home to numerous tourist attractions.

The Council is aware that Pavement Cafés are increasingly popular and wishes to regulate their operation so that they can add vitality to, and help maximise the use of our public spaces for people, boost the local economy and add to the complement of facilities available to those living, working and visiting our area.

Application forms, which include contact details for named consultees, are available to view and download from the Council’s website.

If you require this document in another format please call 01803 208 025 or email licensing@torbay.gov.uk.

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4. Guiding Principles

For the purposes of this Policy, Pavement Cafés consist of tables and chairs placed on the public highway where food and/or beverages are served by way of table service to the outside area. Applications for Pavement Café Licences will usually relate to an existing cafe, catering establishment and/or premises regulated under the Licensing Act 2003; however, it is possible for applications to be submitted in respect of premises which are to be built or are in the process of structural conversion. Applications that result in a significant increase in the overall size of the existing premises may require increased facilities. For example: additional parking, a kitchen which is suitably equipped, increased toilet provision. Please note, these examples are not exhaustive and an application will be decided on its own merits.

While wishing to encourage the provision of Pavement Café within Torbay, the Council recognises that public highways exist principally to allow the general public to pass along them without obstruction and therefore, before agreeing to place a Pavement Café on the public highway, the Council will ensure that the public's right to use the highway is not detrimentally affected. Applicants are asked to consider whether the area they wish to licence might impact negatively on the following, and if choosing to pursue an application, such matters must be addressed within the application, where relevant:

- Width restrictions (consideration must be made for customers and pedestrians with impaired vision, mobility difficulties and people pushing prams);
- Emergency vehicle access;
- Emergency exits access;
- Permitting easy and unrestricted access to the highway to Statutory Undertakers maintaining or repairing services (gas, electricity, telephone etc);
- Street cleaning machines access and ease of movement;
- Kerbside parking;
- Unloading areas;
- Bus stops;
- Heavy pedestrian flow; and
- Visual impact.

Please note that the above list is not exhaustive and may be subject to change.

5. Legislative Considerations

Highways Act 1980 - <http://www.legislation.gov.uk/ukpga/1980/66/contents>

The area for which a Pavement Café Licence is sought must be a highway, as defined by s115A of the Highways Act 1980, namely:

- A highway in relation to which a pedestrian planning order is in force;
- A restricted byway;
- A bridleway;
- A footpath (including a walkway as defined in section 35(2) of the Highways Act 1980);
- A footway;
- A subway constructed under section 69 of the Highways Act 1980;
- A footbridge constructed under section 70 of the Highways Act 1980;
- A highway whose use by vehicular traffic is prohibited by a traffic order but whose use by other traffic is not prohibited or restricted or regulated by such an order; and
- To a local Act walkway.

Under Part V11A s115E of the Highways Act 1980, the Council is not permitted to grant a licence unless it first obtains the consent of the frontagers with an interest, the Highway Authority and if appropriate, obtained walkway consent. The Council will therefore publish a Notice and require that it be clearly displayed in a prominent place at or on the premises applying for Pavement Café Licence for a period of not less than 28 consecutive days. The Notice shall summarise the application and provides contact details for relevant persons/bodies who may wish to make a Representation of objection or support.

Planning Permission

Applicants are expected to have obtained the requisite planning permission in advance of making an application for a Pavement Café Licence. If permission is not already in place or where a change of use may be required, Applicants are encouraged to contact the Council's Planning Department before submitting an application.

Permanent structures on the highway associated with a Pavement Café, for example decking, smoking shelters or awnings will not be permitted.

Licensing Act 2003 - <http://www.legislation.gov.uk/ukpga/2003/17/contents>

Applicants wishing to provide alcohol (at any time) or hot food/hot beverages (between the hours of 23:00 – 05:00) to their customers must obtain, if not already in place, a Licence or Certificate under the Licensing Act 2003, unless the premises are exempt under the Licensing Act 2003 (Late Night Refreshment) Regulations 2015. Holders of existing permissions shall refer to their licences/certificates and premises plan to ensure that the cafe's proposed area(s) is in accordance within the scope of that licence/certificate, i.e. it must be included within the Premises Licence or Club Premises Certificate plan, issued under the Licensing Act 2003.

Crime & Disorder Act 1998 - <http://www.legislation.gov.uk/ukpga/1998/37/section/17>

The Council will pay particular regard to any potential risk of crime and disorder arising directly or indirectly from the granting of a Pavement Café Licence and will consult with Devon and Cornwall Constabulary when considering such applications. Applicants are therefore expected to have considered measures that will prevent disorder and minimise the impact and consequences of any disorder.

Environmental Impact

The Council expects Applicants to have taken into consideration their immediate neighbours and more generally the area in which their Pavement Café is located when preparing their application. Where Pavement Cafés are located in residential areas or where there are other noise sensitive premises nearby, Applicants and Licence Holder/s are expected to put in place suitable management controls to ensure the operation of their business does not cause a nuisance. All Applications will be subject to scrutiny by the Council's Public Protection Officers, with particular attention paid to noise, odour and refuse matters.

6. Pavement Café Licences – Application Standards

When compiling an application, Applicants are encouraged to have regard to the list of suggested standards/operating controls set out in this Section. Applicants are expected to demonstrate that their proposals will make a positive contribution to the street scene; only well designed proposals which respond to the site and its surroundings and produce a high quality result will be considered.

The Council requires that Pavement Cafés are located, designed and managed in a way that protects the rights and safety of all users of the highway (particularly pedestrians) and recognises that people with impaired vision, wheelchair users, people relying on mobility aids or people using pushchairs can be particularly affected where businesses do not comply with these standards.

Applicants are advised that before approving a new licence or granting a variation of an existing permission for a Pavement Café Licence, the Council must obtain the consent of frontagers with an interest. The Council recommends that where necessary, Applicants consider discussing their proposed applications with neighbouring businesses in advance of submitting an application in order to try and alleviate/remedy potential objections.

Upon receipt, the Council will submit the Application to the following named consultees for consideration:

- Devon & Cornwall Constabulary;
- Devon & Somerset Fire & Rescue Service;
- Torbay Council's Highways Department;
- Torbay Council's Public Protection Team;
- Torbay Council's Health & Safety Team;
- Torbay Council's Food Safety Team.

Any of those named consultees may make Representation during the 28-day consultation period. Where Applicants consider that their proposal to operate a Pavement Café may prove controversial in terms of its size, location or the activities provided, it is recommended that they contact those relevant consultees, listed above, in advance of making an application to seek their advice and input at this earlier stage to avoid where possible, potential objections.

(i) Design & Layout

While the Council does not intend to prescribe the design and layout of the Pavement Café it licences, Applicants must have regard to the following key considerations that will be taken in account by the Council when assessing applications:

- Pavement Cafés should generally occupy an area directly in front of and be visible from your existing premises and should not extend beyond the width of your frontage. The layout and size of the Pavement Café will depend upon the characteristics of the location of your premises, the available space in which to place furniture and also the nature of your premises.
- The safe and easy passage of pedestrians, particularly those with a disability, along the highway is paramount when considering applications for Pavement Café and therefore, the Council will generally require that a minimum of 2.0m clear highway is left between the edge of the Pavement Café and the edge of any adjacent carriageway or vehicle route. However, given that Pavement Café may be sited in many different locations, each case will be determined on its own merits.
- The location and type of existing street furniture will be taken into account when assessing the size of the Pavement Café licensed areas as this may reduce the available space you may be able to use. However it may be possible to relocate street furniture to accommodate a Pavement Café licensed area. Where this is possible, please note that the cost of doing so shall be met by the Applicant and payable in advance of such movement.

- Sufficient space must be left between tables and chairs to allow unimpeded access and circulation space for all customers within the licensed area, including those with pushchairs, buggies, and members of the public relying on mobility aids, including wheelchairs.
- The positioning of table and chairs should never discourage pedestrians from using the highway outside of your premises or cause pedestrians to walk on to or cross over vehicular carriageways.
- If your Pavement Café accommodates a pedestrian route passing through it, then this route should be obvious to pedestrians, be as straight as possible and be completely free of any obstructions.
- The needs of other users of the highway must be taken into account. Tables and chairs should not be placed so as to:
 - Obstruct highway signs or other official signage; and/or
 - Obstruct sightlines of road users.
- Emergency routes from the Pavement Café and also adjacent buildings must not be obstructed by the operation of the Pavement Café.
- Adequate access for emergency services and statutory undertakers should be available at all times.

(ii) Boundary & Means of Enclosure

- Applicants must as part of their application, clearly define the proposed boundary of their Pavement Café by way of a site or location plan of the proposed cafe area and its relationship to the building.
- Where Pavement Cafés are to be located on a main pedestrian thoroughfare, and where public pedestrian access needs to be maintained, tables and chairs and all other furniture must be enclosed in order to allow for easy, unhampered pedestrian movement and to contain the Pavement Café area.
- The area forming the Pavement Café must be clearly demarcated by way of barriers or other street furniture and/or planters in order to identify the agreed location and size of the Pavement Café area and to help guide persons with visual impairment around its use. Any items used as demarcation of the licensed area must be no less than 800mm in height.
- If planters are being used as delineators, these should either be permanent highway street furniture or removable tub style ones. Non permanent planters

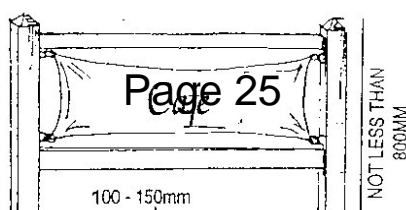
should not be left on the highway outside the permitted hours of the Pavement Café Licence. Planters used as demarcation of the licensed area must be no less than 800mm in height.

- The Council requires that Pavement Cafés in its Cumulative Impact Area, as defined in the Licensing Statement of Principles 2016-21, which consist of four or more tables, must use removable barriers of the design set out below.
- The Council's preference is that these removable barriers are utilised by all Pavement Café Licence Holder/s operating outside of the Cumulative Impact Area, however the use of permanent highway street furniture or removable planters will be permitted to define a licensed area.
- No removable structures should be used or left in the highway that may cause a trip or safety hazard to patrons or users of the highway.

N.B The use of any removable item placed on the highway to show demarcation will be the sole responsibility of the Pavement Café Licence Holder/s and the Council will not accept any liability in the event that injury or damage is caused.

Barriers

- Where barriers are provided, they must be no less than 800mm in height and have a gap of no more than 100mm – 150mm between the base (or tapping rail) and the ground. Barriers must be capable of being temporarily fixed and must be of a style, design and type to be agreed by the Council.
- A variety of means may be used to temporarily fix barriers in place, for example, lockable wheels.
- The Council considers the following to represent an appropriate barrier type:
 - Stable and sturdy – not flimsy or capable of being warped or easily blown over in inclement weather;
 - Light in colour (painted, natural colouring or similar);
 - Close textured, fence-like in appearance, with a tapping rail (i.e. a length of wood positioned at the base of the barrier, designed to assist those with visual impairments) – see sketch below;
 - Lightweight for ease of movement/storage, as barriers will need to be taken down at the end of each day, but sufficiently robust that they don't get easily blown over;
 - Of an appearance which will complement the environment and the setting of the Pavement Café.



- The Council will not usually permit the following barrier types to be used to delineate Pavement Café areas:
 - Post and chain barriers – as are potentially hazardous to pedestrians; and/or
 - Hoop top garden fencing – as is too flimsy and not very tall therefore posing a potential trip hazard.
- The requirement for barrier types and/or other means of delineating Pavement Café areas may differ from one Pavement Café to another and so it is recommended that Applicants contact the Council to discuss their proposals in advance of making an application or purchase.

(iii) Furniture

- The Council encourages the creation and maintenance of high quality Pavement Cafés and whilst choosing not to define a particular style of furniture or colour to be used by Licence Holder/s, it reserves the right to reject an application or suspend/revoke a licence where the operator uses furniture that is inappropriate or not fit for purpose. Applicants are encouraged to consider the following guidelines when deciding which type of furniture to procure for their Pavement Café:

Furniture Standards

- All tables, benches and chairs etc should be constructed from quality materials.
- Furniture colours should ideally be uniform and not be overly reflective where this may pose a risk to road or highway users.
- Parasols should not be made of reflective material and should complement the furniture colour/s chosen and positioned to avoid endangering users of the Pavement Café or passing pedestrians and road users.
- Advertising of the premises is permitted on parasols and on barriers delineating the boundary of the Pavement Café but should be sympathetic to the building and its setting. Applicants are advised to check with the Council's Planning Department before erecting any advertising in case

consent is required. Where consent is required but not granted, advertising shall not be permitted.

- Parasols must be removed at all times when the Pavement Café is not in operation.
- The furniture should enhance the street environment, and Applicants should ensure that various styles of seating and tables are available, depending on the location of the Pavement Café, to complement both a commercial and a more historic conservation area setting.
- Regard must be paid to the surface on which your furniture will stand. An uneven surface, for e.g. cobbles, may require a more sturdy style of furniture than would be necessary on a more even or paved surface.

The positioning of tables and chairs will be dictated by the availability of space outside the premises concerned. Applicants are encouraged to consult the following guidelines, depending on whether furniture will be placed directly in front the premises or at a distance:

Pavement Café Furniture Positioned Directly Fronting the Shop/Restaurant:

- The extent of the area of tables and chairs must be such that a minimum of 2.0m width highway is still available to passing pedestrians (taking into account telephone boxes, litter bins/receptacles, light columns etc).

Pavement Café Furniture Positioned Away From the Shop/Restaurant Front:

- Applicants will need to ensure that they leave no less than 2.0m width of unobstructed highway between the front of the premises in which the Pavement Café is located and the outermost boundary of the Pavement Café (where relevant, this calculation must also factor in tables and chairs immediately fronting the premises).
- All furniture (to include menu boards and outdoor heaters) must be contained within the approved Pavement Café area and all such items must be removed at the terminal hour, if dictated by the Pavement Café Licence and stored securely inside the premises.
- If furniture cannot be stored inside the premises at the terminal hour, it should be stored outside the premises but not within the defined Pavement Café area or on the highway.

(iv) Advertising

- You may wish to incorporate an element of advertising within the area of your Pavement Cafe. For example, in any decoration included in the design of the means of enclosure or on parasols. You are strongly advised to contact the Council's Planning Department to ensure that you obtain the requisite consent, where needed. Failure to obtain consent will result in the use or placing of any advertising object or furniture being prohibited.

(v) Management of Pavement Cafe

- Where there is an existing requirement that the premises must operate a table service inside the premises, it is likely that the transfer of food and beverages to customers seated outside in the defined Pavement Café area must also be made by way of table service.
- Where the premises sells alcohol by way of a Premises Licence granted under the Licensing Act 2003 and that permission requires that waiter/waitress service must be in operation at all times, that this same requirement will be applied to the Pavement Café area.
- Where the premises sells alcohol by way of a Premises Licence granted under the Licensing Act 2003 a premises is prohibited from serving alcoholic and non-alcoholic drinks in glass bottles to persons using the Pavement Café areas at all times. The management must ensure bottled drinks are de-canted into to suitable drinking vessels at point of sale.
- Where the premises sells alcohol by way of a Premises Licence granted under the Licensing Act 2003 and this permission requires alcohol to be served in polycarbonate or shatterproof glasses, or similar, that requirement must be adhered to when serving customers in the Pavement Café Area.
- Where the Pavement Café does not abut the frontage of the Applicants premises, the Applicant must demonstrate in their application the operational controls in place to ensure appropriate management of its customers, staff training and use of equipment – this must be shown by way of a Health & Safety Risk Assessment.
- The Pavement Café must be suitably managed by staff employed at the premises i.e. to control the use of the area, to tidy away trays, crockery and other tableware as well as refuse, and to maintain the area to as high a standard as is required inside the premises.

- Table menus must be made available within the Pavement Café area and may be supplemented by menu boards. Menu boards should be sympathetic in both size and design to the building and its setting.

(vi) Environmental Considerations

- The Council will not generally permit music to be provided over the level of 'background music' within the Pavement Café area. However, the Council will, in certain circumstances, allow for **non-amplified** live music to be played within the Pavement Café area. Applications requesting the use of **non-amplified** live music will attract increased scrutiny and as a direct result of such scrutiny, incur a higher fee (please refer to the Council's Discretionary Fees and Charges). It is also likely that additional, tailored conditions will be applied to licences which permits **non-amplified** live music, including the number of occasions on which **non-amplified** live music is permitted, specify that a noise management plan must be agreed with the Council's Public Protection Team and require that advance notification of the date and time of the planned use of **non-amplified** live music is given to the named consultees.
- Where Applicants/Licence Holder/s wish to provide **amplified** live or recorded music within the Pavement Café area, a separate application for a Temporary Amplified Music Permission is required to cover the period during which **amplified** live or recorded music is intended. This separate and distinct permission will attract a fee (please refer to the Council's Discretionary Fees and Charges). This will require a 10 working day consultation period. In essence, applications of this nature will be managed in a similar way to notifications under the Temporary Event Notice regime (Licensing Act 2003). For the period during which a Temporary Amplified Music Permission is in effect, the condition on your Pavement Café Licence in relation to the matter above is suspended. The Council will limit the number of Temporary Amplified Music Permission granted to any one premises during a 12 month calendar year to five. Where a named consultee objects to the granting of this application, the Council will have careful regard to the reasons of this objection and where it deems it appropriate to do so; will refuse the application without refund of the fee paid.
- Adequate and unobtrusive lighting must be made available in the Pavement Café area.
- There shall be no preparation or storage of food or drink outside the main premises, where there is a risk of contamination and potential difficulties with temperature control. This requirement can only be varied with the written consent of the Council. Applicants are therefore strongly advised to contact the Council's Food & Safety Team for advice in advance of submitting an application.

- Where food is to be served, Applicants should consider providing parasols to protect food from risk of contamination from birds etc.
- Once customers have finished and left the premises, tables should be immediately cleared of uneaten food and waste to minimise attraction from birds, flies etc.
- The Pavement Café area should be kept clean and litter/food waste free, including the floor area and Applicants are advised that they must provide suitable litter/refuse bins at all times during the hours of operation and must also ensure that they maintain suitable staff numbers to meet this requirement. At the end of each trading session, the Pavement Café area must be washed down.

(vii) Smoke free

- Whilst encouraging holders of Pavement Café Licences to offer exclusively smoke free spaces, the Council's minimal acceptable standard is that Licence Holders who have Pavement Café areas with more than 5 tables, must make provision for 50% of those tables to be smoke free during the hours of 10:00 – 21:00. As Pavement Cafés are family-friendly spaces, the Council's principal reasons for adopting this stance are to reduce adult and children's exposure to smoking and to promote healthy behaviours.
- All tables designated as smoke free, must have designated no smoking signs on them.

(viii) Hours of Operation

- Applicants are asked to consider the surrounding environment, neighbouring business and residential properties when setting out their proposed operating times. In order to minimise associated crime and disorder and noise nuisance, the Council requires in general that Pavement Cafés operate on Monday to Sunday within the period of 10:00 to 23:00. Applicants wishing to apply for operating hours outside of these timings are advised to seek guidance from the Council's Public Protection Team and Devon & Cornwall Constabulary before submitting an application, and are please asked to note that an additional fee may be levied in such cases (please refer to the Council's Discretionary Fees and Charges).
- Applications for opening hours beyond midnight will not be considered in any circumstances and will be automatically be rejected.

Businesses are strongly encouraged to contact the Council's Public Protection Team and Police Licensing Officers in advance for guidance in advance of making an application.

7. Grant of a Pavement Café Licence & Licence Conditions

If your application is successful, you will receive a "Pavement Café Licence" which will last for a period of three years, to run from 1st April of the first year to 31st March of the third year, unless you apply instead for a Licence to operate on a seasonal basis only. The Licence may be subject to a number of conditions, with which you **must** fully comply with, at all times.

Where conditions are applied to your Licence, the Council reserves the right to change or add to these and where this is the case, you will be notified in writing in advance of the revised or new conditions having effect. Please see a list of conditions which will be applied under **Appendix 1**

Where an application does not attract a Representation(s), the Council will endeavour to process that application within a week from the end date of the consultation period.

The grant of a Pavement Café Licence does not provide the holder/s of that licence with an exclusive right to use the said area. Access must be provided for those times when cleaning, maintenance and repairs to the public highway, traffic signals, and electric, gas and telephone equipment etc is required, and also where access by emergency services is required. During times when special events are taking place within the Bay, access to and/or use of the cafe area may be also required.

Where Licence Holder/s are requested to move any tables, chairs or other items within their Pavement Café area by Officers of the Council, Emergency Services or Statutory Undertakers, they shall immediately comply with that request. Failure or delay to do so will place the holder/s in breach of that licence.

Applicants and Licence Holder/s are asked to note that the Council will **not** be held liable for any loss of trade and/or income from the Pavement Café area, as a direct result of such activity mentioned in the preceding two paragraphs or refund any of the licence fee paid.

8. Appeals

There is no legal automatic right of appeal against a refusal to grant, vary or renew a Pavement Café Licence, or to appeal against conditions imposed on a Licence under

the Highways Act 1980. Notwithstanding this, the Council does offer an appeal process, where an Applicant or Licence Holder is aggrieved by a decision of an Authorised Officer. This process does attract a fee which is non refundable, (please refer to the Council's Discretionary Fees and Charges) and this must be accompanied with the appeal. All appeals must be made in writing and addressed to the Council's Environmental Health Manager (Commercial). An Applicant or Licence Holder who has been refused a licence, variation or renewal in accordance with the Council's Policy or is unhappy with a condition attached to his/her licence will be expected to demonstrate why there should be an exception to the Council's Policy in his/her particular case.

9. Enforcement

This Council, Police Officers and Police Licensing Officers may carry out periodic inspections of Pavement Café Licences to ensure that all terms and conditions of the permission and various Acts of Parliament (i.e. Highways Act 1980, Environmental Protection Act, Town & Country Planning Act and Licensing Act 2003 etc) are being adhered to.

Where minor breaches are found, the Council and/or the Police will aim to work with the Licence Holder/s to find an agreed solution, where possible. If major or persistent breaches occur, then the matter will be referred to the Licensing Committee for a decision, or where time is limited and it is in the interests of public safety, the matter may be delegated to a Senior Officer of the Council for a decision.

Access to all areas of the Pavement Café area shall be granted to authorised representatives of the Council and for the purpose of inspection. Refusal to grant a reasonable request for access may result in the Pavement Café Licensing being revoked with immediate effect, where the Council deems it appropriate to do so.

Where a Pavement Café Licence is revoked, the Council will not refund any payment of that licence.

10. Contacts

If you would like to discuss your proposal for a Pavement Café with a member of the Licensing Team, please contact us at the address below or by phone.

Address: Torbay Council, Town Hall, Castle Circus, Torquay, TQ1 3DR

Tel: 01803 208025

Appendix 1

Please note that these conditions are not an exhaustive list, and each Application will be considered on its own merits and bespoke conditions may be attached where deemed appropriate.

PAVEMENT CAFÉ LICENCE – SAMPLE CONDITIONS

1. This Pavement Café Licence is granted under Section 115E of the Highways Act 1980 and the Licence Holder/s shall comply with and obtain all other necessary statutory consents and approvals required in connection with the exercise of a refreshment facility on the said highway and comply with the provisions of all such consents and approvals and all statutes and other obligations imposed by law with regards to the provision, maintenance and operation of the refreshment facility.
2. The grant of this Pavement Café Licence shall not be deemed to give any approval or consent which may be needed under any byelaw, enactment or regulation other than cafes under section 115c of Part VIIA of the Highways Act 1980.
3. The Licence Holder/s shall not assign, underlet or part with any interest or possession given by this Licence or any part thereof, but the Licence Holder may surrender it at any time.
4. If the Pavement Café Licence is to be transferred to a new named operator, or there is an alteration to the permitted hours at the Licence Holder/s' request, a new licence will be issued and a fee will be payable.
5. This Pavement Café Licence is granted only for the period shown on the Licence.

Use and Maintenance of the Highway

6. The Licence Holder/s shall not make any excavations or indentations of any descriptions whatsoever in the surface of the highway or place or fix any equipment of any description in the said surface.
7. The Licence Holder/s retains responsibility for carrying out the reinstatement of the highway in the event of any damage to the highway occurring as a result of the Pavement Café activity. The permanent surface reinstatement shall be carried out to the satisfaction of Torbay Council, at the applicant's expense and guaranteed for a minimum period of two years.
8. The Licence Holder/s shall indemnify Torbay Council against all actions, proceedings, claims, demands and liability which may at any time be taken, made or incurred in consequence of the use or presence of the chairs and tables and other objects and for this purpose must take out at the Licence Holder's expense a policy of insurance approved by the Council in the sum of at least £2,000,000 in respect of any one event (£5,000,000 total cover) and must produce to the Council on request the current receipts for the premium payment and confirmation of the renewals of the policy.
9. The Licence Holder/s shall not place on the highway any furniture or equipment or advertisement other than as permitted by Torbay Council and must maintain the same in a clean and tidy condition and not place them so as to obstruct the entrance to or exit from any premises.
10. Notwithstanding the specific requirements in Condition 10 above, the Licence Holder/s shall not do or suffer anything to be done in or on the highway which in the opinion of Torbay Council may be or become a danger, nuisance or annoyance to or cause damage or inconvenience to the said Council or the owners or occupiers of any adjacent or neighbouring premises or to members of the public.
11. The Licence Holder/s shall suspend the operation of the Pavement Café at the request of an

Authorised Officer of the Council to enable any street works to be carried out on or near the permitted location.

12. Where repair or maintenance of the pavement/highway is to be undertaken, Torbay Council will not be liable for any loss of trade and/or income whilst repair/maintenance is carried out. The Licence Holder/s must allow the Council reasonable access for such works.
13. The Licence Holder/s recognise that Torbay Council shall be entitled to suspend the licence on a temporary basis on the occurrence of a special event, as a result of police intelligence to avoid instances of disorder or the potential for disorder, or for any other circumstance which the Council deems necessary. Torbay Council shall not in any circumstances whatsoever be liable for any loss of trade and/or income or refund any fees to the Licence Holder/s in respect of such a suspension.

Delineation of Pavement Cafe Area & Use of Furniture

14. The Licence Holder/s shall, before exercising the privilege granted by this Licence, place removable physical barriers within the perimeter of the area so indicated on the attached plan to the Licence which must be to the satisfaction of Officers of the Licensing & Public Protection Team, and shall ensure that such barriers are removed at the end of each daily period of use and at the expiry, surrender or revocation of this Licence.
15. Tables and chairs shall not be affixed to the highway and should not be stored on the highway when they are not in use, e.g. during inclement weather or before or after the Pavement Café is open.
16. Furniture should be safely stored away from public areas at the end of each daily period of use in such a location where it is safe, secure and unable to be accessed by members of the public.
17. The Licence Holder/s shall ensure that if planters are being used as delineators, these should either be permanent highway street furniture or removable tub style ones. Non permanent planters should not be left on the highway outside of hours.
18. Advertising on barriers and furniture items is not permitted unless consent has been given by Torbay Council's Planning Department.
19. Where gas heaters are used, the connections, including the regulator, hose & clips must be fit for purpose and checked on a regular basis and not be exposed in such a way that they are a trip hazard.

Management of the Pavement Café

20. The Licence Holder/s must comply with the operating hours permitted by the terms of this Licence and as will be detailed on the Pavement Café Licence.
21. The Licence Holder/s shall ensure that customers who purchase food or drink for consumption on the premises shall not consume such items outside of the permitted area (as per the Licence Plan).
22. All customers using the Pavement Café will be required to be seated. Vertical drinking will not be permitted within the licensed area.
23. In premises where alcohol is supplied, Holder/s of this Pavement Café Licence must refer to any relevant permission granted to them under the Licensing Act 2003 regards the serving of this alcohol. Where permissions granted under the Licensing Act 2003 require alcohol to be served in polycarbonate or shatterproof glasses, or similar, that requirement must be adhered to and is not overridden by any condition applicable to the granting of this Pavement Café Licence.
24. The licence holder/(s) shall ensure that all drinking glasses in which drinks are served shall be of strengthened glass and no drink shall be served in a glass bottle from which it is intended or likely that a customer shall drink.

25. The Licence Holder/s shall ensure that adequate supervision by means of a waiter/waitress service is provided over the permitted area during the times of operation.
26. The Licence Holder/s shall ensure that table menus are made available to customers of the Pavement Café.
27. The Licence Holder/s shall ensure that where menu boards are provided that these are sympathetic in both size and design to the building/premises and its setting.
28. The Licence Holder/s shall maintain the area shown on the plan attached to this Licence and the immediately adjacent area in a clean and tidy condition during the permitted hours and shall leave the same area/s in a clean and tidy condition and unobstructed at the end of each daily period of use and on revocation or surrender of this permission.
29. The Licence Holder/s shall provide litter bins or similar receptacles for the deposit of cartons, wrappers, containers and similar discarded items if required by an Authorised Officer of Torbay Council and ensure that bins/other receptacles are emptied daily.
30. The Licence Holder/s shall remove all furniture or equipment, litter bins or other articles placed on the highway in accordance with this Permission at the end of each daily period of use and at the expiry, surrender or revocation of this Permission.
31. The Licence Holder/s shall ensure adequate and unobtrusive lighting is made available in the Pavement Café area.
32. The Licence Holder/s shall not prepare or store food or beverages outside the main business premises (i.e. not in the Pavement Café area). This Condition may be varied only with the written consent of an Authorised Officer of Torbay Council.
33. The Licence Holder/s shall ensure that the 50% or more Designated Non-smoking section of the Pavement Café area is smoke free at all times during the hours of 10:00 – 21:00 and that non-smoking signs are placed upon each table.

Provision of Live and/or Recorded Music (where not granted)

34. Live and recorded music (both amplified and non-amplified) is not authorised in the Pavement Café area.

Provision of Live and/or Recorded Music (where granted)

35. Amplified live and/or recorded music is not permitted at any time in the Pavement Café unless authorised under a Temporary Amplified Music Permission.
36. Unamplified live music is authorised in the Pavement Café (as defined on the premises plan) between the hours of 10:00 – 23:00.
37. Provision of amplified live and/or recorded music must not take place on more than five occasions per calendar year.
38. Unamplified live music is limited to a maximum of two performers.
39. Unamplified live music must not involve the playing of percussion instruments.
40. Where unamplified live music is provided, performers must be sited within an area of the premises plan to be agreed in writing with the Council's Licensing & Public Protection Team.
41. The Licence Holder/s must undertake regular checks whilst musical entertainment is provided to

ensure volume level at the boundary of the Pavement Café area is clearly distinguishable above background noise. Records must be kept of such checks and made available for inspection upon reasonable request by an Authorised Officer of Torbay Council.

Duty to Display & Produce Licence

42. The Licence Holder/s shall ensure that a copy of the Pavement Café Licence and accompanying Conditions is at all times on prominent display within the Pavement Café premises.
43. The Licence Holder/s shall produce this Permission on demand when so required by an Authorised Officer of Torbay Council a Police Officer or a Police Licensing Officer.
44. Where this Licence is revoked, the Licence Holder/s shall return this Licence to Torbay Council Offices within the period of 5 working days on Notice of revocation.

Duty to Notify Council of Changes to Licence or Holder/s Information

45. If the named Licence Holder changes his/her/their personal details (e.g. name or address), the Licence Holder is obliged to notify Torbay Council in writing of the specifics of those changes within 10 working days of that change.
46. The Licence Holder/s must notify Torbay Council's Licensing & Public Protection Team in writing within the period of 10 working days of any changes to any part of the Pavement Cafe operation, including furniture, other items, and area or operating hours. Such changes may necessitate the Licence Holder/s to apply for a new or revised licence.

NON-COMPLIANCE with any Condition of this Licence may render the Licence Holder/s' liable to a written Notice under section 115K of the Highways Act 1980, and failure to comply with such a Notice may cause this Licence to be revoked.

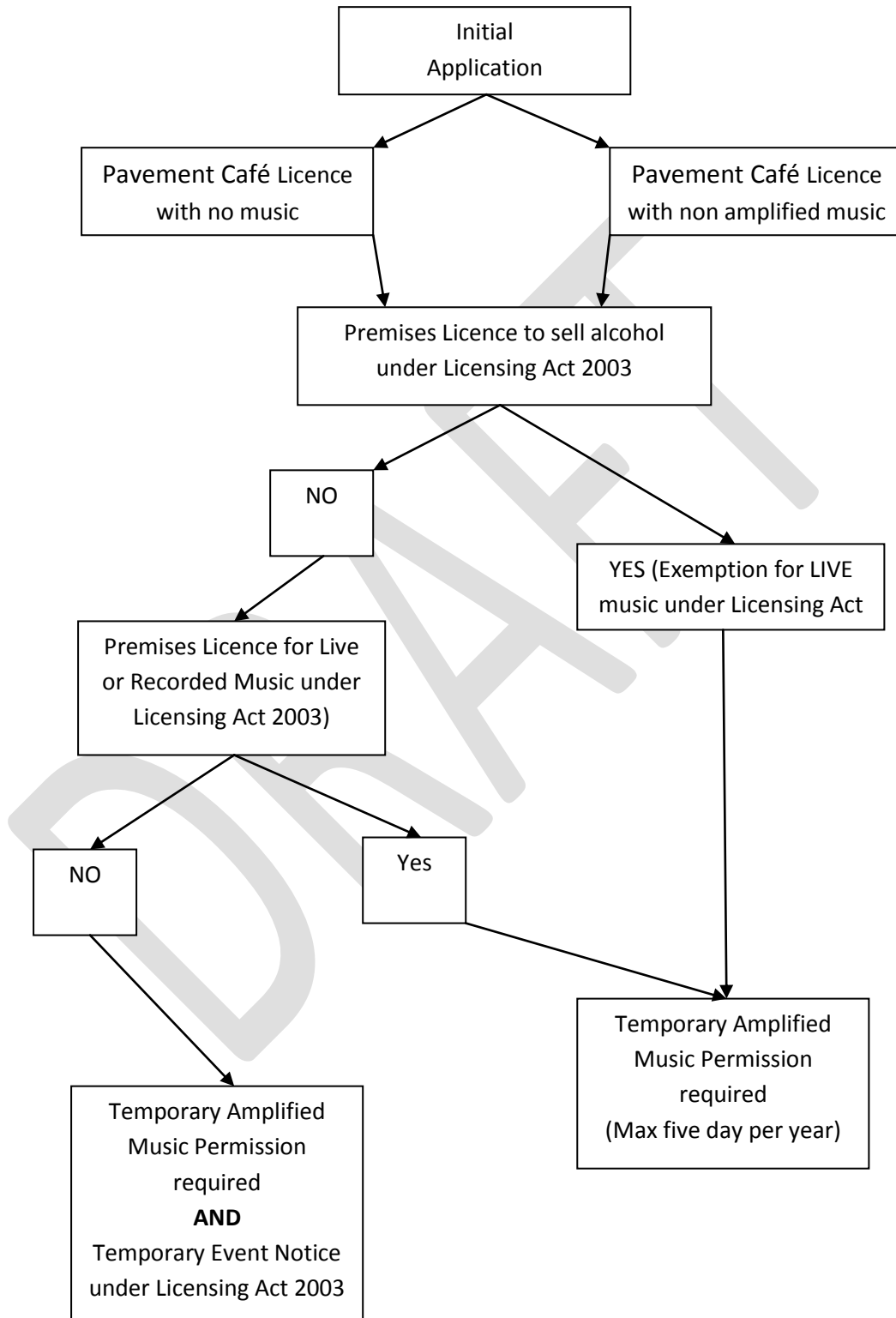
Notes:

Section 115K of the Highways Act, 1980 provides as follows:

- (1) *If it appears to a Council that a person to whom they have granted a Permission under Section 115E of this Act has committed any breach of the terms of that permission, they may serve a notice on him requiring him to take such steps to remedy the breach as are specified in the notice within such time as is so specified.*
- (2) *If a person whom a notice is served under sub-section (1) of this Act fails to comply with the notice, the Council may take the steps themselves.*
- (3) *Where a Council have incurred expenses in the exercise of the power conferred on them by sub-section (2) of this Act, those expenses, together with interest at such reasonable rate as the Council may determine from the date of service of a notice of demand for the expenses, may be recovered by the Council from the person on whom the notice under sub-section 91) of this Act was served.*

Appendix 2

Flow chart for Music in Pavement Café Licensed Area



Agenda Item 6



Public Agenda Item: **Yes**

Title: **Hackney Carriage and Private Hire Licensing Policy 2012**

Wards Affected: **All**

To: **Licensing Committee** On: **18 February 2016**

Key Decision: **No**

Change to Budget: **No** Change to Policy Framework: **No**

Contact Officer: **Steve Cox**

☎ Telephone: **01803 208034**

✉ E.mail: **Steve.cox@torbay.gov.uk**

1. What we are trying to achieve

1.1 This report is concerns amendments to the Hackney Carriage and Private Hire Licensing Policy 2012.

2. Recommendation(s) for decision

2.1 That the changes to the Hackney Carriage and Private Hire Licensing Policy 2012, as highlighted in Appendix One, including the delegation to revoke a licence if the criteria in 5.10 of the Policy, is met, be approved.

3. Key points and reasons for recommendations

3.1 By the provisions of the Local Government (Miscellaneous Provisions) Act 1976, Torbay Council is the Licensing Authority in respect of Hackney Carriages, Private Hire Vehicles and their drivers within Torbay.

3.2 The current Hackney Carriage and Private Hire Licensing Policy 2012 was agreed over three years ago. A number of mostly small amendments have subsequently been identified, which are highlighted in Appendix One.

3.3 As these are Policy changes, any subsequent legal challenge would be by way of a Judicial Review. This is considered unlikely for the nature of the proposed amendments.

For more detailed information on this proposal please refer to the Supporting Information.

Frances Hughes

Assistant Director Community and Customer Services

forward thinking, people orientated, adaptable - always with integrity.

Supporting information to Report

A1. Introduction and history

A1.1 By the provisions of the Local Government (Miscellaneous Provisions) Act 1976, Torbay Council is the Licensing Authority in respect of Hackney Carriages, Private Hire Vehicles and their drivers within Torbay.

A1.2 The current Hackney Carriage and Private Hire Licensing Policy 2012 was agreed over three years ago. A number of mostly small amendments have subsequently been identified, which are highlighted in Appendix One.

A 1.3 The first significant change is due to a long term delay in drivers being able to obtain a Driving Standards Agency (DSA) Practical Driving Test, which they currently need to apply for before being granted a Torbay Council issued Drivers Licence. It is therefore recommended that new Applicants are allowed 6 months to apply for and successfully pass this Driving Test. However, failure to submit confirmation of successfully passing this test within 6 months of the initial grant will result in an automatic revocation of the Licence. The provision of revoking a licence in these circumstances is delegated to Torbay Council's Environmental Health Manager. The new condition shall read as follows.

'Licensed drivers, as a profession, have a responsibility for the safe transportation of fare-paying passengers. Therefore, the Licensing Authority as part of its application procedure requires a Driving Standard Assessment of the drivers' ability and must be obtained by all new applicants, within 6 months of the date of their first granted Licence. A confirmation certificate of this successfully completed assessment must be submitted to Torbay Council's Licensing Department within the said 6 month period. Failure to do so will result in the automatic revocation of the issued Licence. Where this occurs, the Licensing Authority will not refund the fee paid for the said Licence.'

Where an existing licensed driver receives over 6 (six) endorsement/s or penalty points on their licence within each licensing year, the Licensing Authority will require that person to undertake the same assessment. If this is not obtained within 3 months, then the existing licensed drivers badge will be suspended until the necessary driving standards assessment is completed.'

A1.4 The following conditions have been added or changed to extend no smoking in vehicles to E and Vapour Cigarettes. The new condition with read as follows, with italics identifying the added words.

Smoking *is* prohibited in all hackney carriage and private hire vehicles. Smoking signs shall be displayed at all times within the vehicle.

Torbay Council also prohibits the use of E or Vapour Cigarettes by drivers or passengers in licensed vehicles.

A driver found smoking or permitting smoking to take place in a licensed vehicle, will be subject to enforcement action by either the Licensing Authority or the Council.

A1.5 Taxi licensing is now an on line service. This service commenced on the 8th February 2016. There have been a number of necessary Policy amendments to support this change in delivery, which needs to be in place for this years renewal in April 2016.

A1.6 It was anticipated that there would be some additional recommended changes to the Policy regarding Wheelchair Accessible Vehicles. This hasn't been possible to date, as further work and legal advice will be needed before a future report can be brought to the Licensing Committee.

A1.7 As these are Policy changes, legal challenge would be by way of judicial review. This is considered unlikely for the proposed amendments.

A2. Risk assessment of preferred option

A2.1 Outline of significant key risks

There is no significant risk, as there are no significant Policy changes being implemented by this Licensing Committee.

A3. Options

A3.1 There are two other options:

- (i) Members to implement the Policy changes outlined above;
- (ii) Members to implement amended Policy changes;
- (iii) Members refuse the recommendation.

A4. Summary of resource implications

A4.1 There are no resource implications for the approval of the recommendation, as they are generally minor in nature.

A5. What impact will there be on equalities, environmental sustainability and crime and disorder?

A5.1 There are no crime and disorder, equality or sustainability issues regarding this report.

A6. Consultation and Customer Focus

A6.1 There has been limited consultation with users, notably regarding the changes to Driving Standards Agency (DSA) Practical Driving Test.

A7. Are there any implications for other Business Units?

A7.1 There are no significant implications for other business units, if the recommendations are supported.

Annexes

Appendix 1 DRAFT Hackney Carriage and Private Hire Licensing Policy 2016

Documents available in members' rooms

None

Background Papers:

The following documents/files were used to compile this report:

Hackney Carriage and Private Hire Licensing Policy 2012

Agenda Item 6

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Foreword

This section does not form part of the policy and is for information purposes only.

This Policy will guide the Council, as the “Licensing Authority” when considering applications under the Town Police Clauses Act 1847 and Local Government (Miscellaneous Provisions) Act 1976, as amended, which places on Torbay Council the duty to carry out its licensing functions in respect of hackney carriages and private hire vehicles.

We would encourage all those involved in the taxi trade, service users, residents and community groups to take time to read this consultation document and put forward representations whether in support of or against any aspect of this Policy.

Torbay Council Equality

We are committed to acknowledging the full diversity of our community and to promoting equality of opportunity for everyone in Policy making, service delivery, employment practice, regulation and enforcement.

If you have any questions or queries about this document:

Write to us at:

Licensing Section
C/O Town Hall
Castle Circus
Torquay
TQ1 3DR

Or contact us by fax or email or via our website on:

Phone: 01803 208025
Fax: 01803 208854
Email: licensing@torbay.gov.uk
Website: www.torbay.gov.uk

Licensing Authority Area

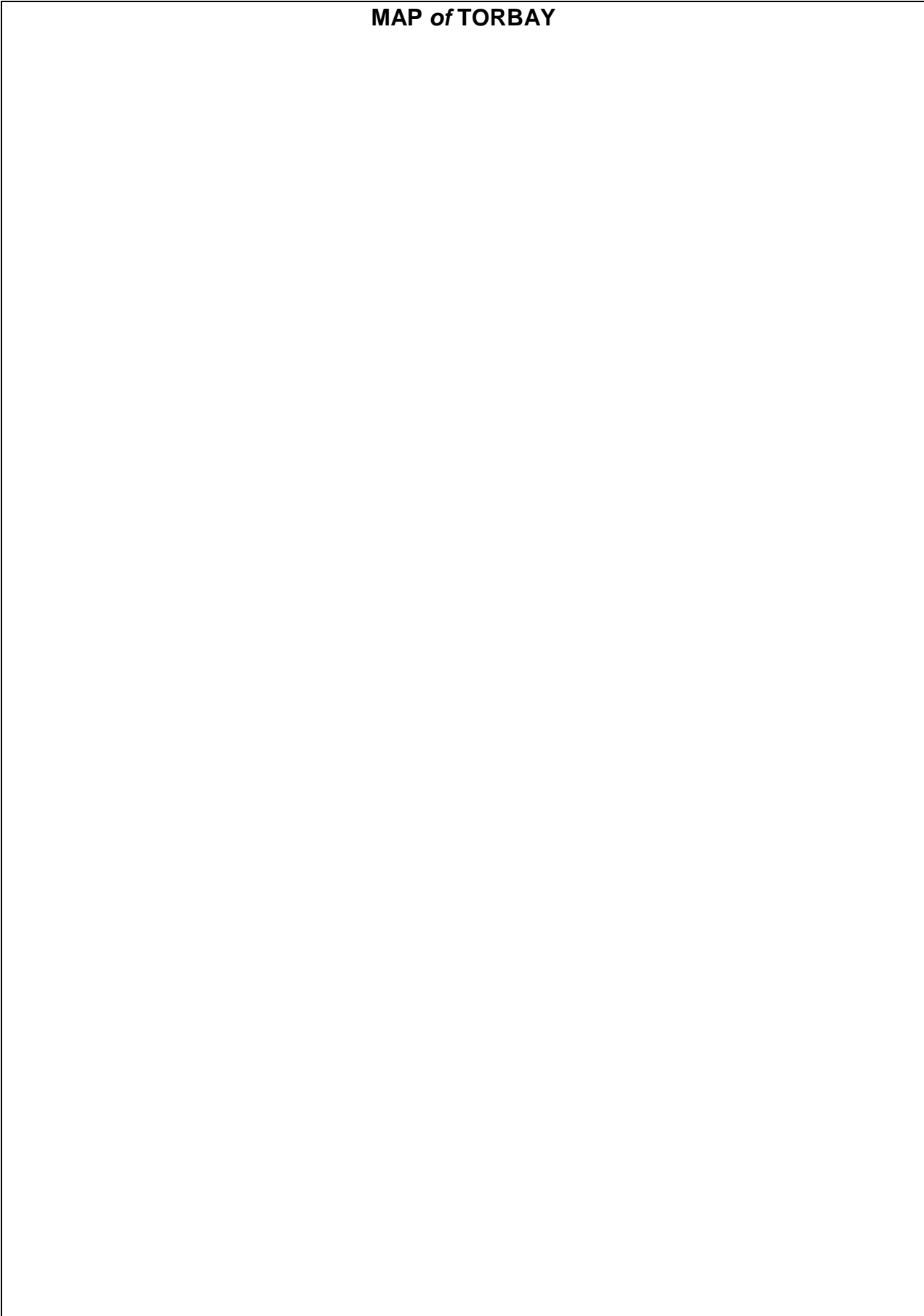
Torbay is situated on the South Devon coast, on the south west peninsular of England and comprises the three towns of Torquay, Paignton and Brixham. Torbay is an outstanding coastal destination, including 22 miles of coastline which has shaped its economic and social development over time. Historically the local economy has focused on tourism, fishing and to a lesser extent manufacturing activities.

The three towns of Torbay and its environs have a combined population of around 134,000, making Torbay the second largest conurbation to the south west of Bristol. Tourism in Torbay today accounts for 1.45 million staying visitors plus 3.8 million day visitors, generating a direct and indirect spend of £442 million per annum. This represents around one third of the area's wealth and also one third of its jobs.

Torbay Council is committed to a broad corporate vision for Torbay and through the Torbay Strategic Partnership the Council has formulated a Community Plan, built around the principles of creating and developing an area that:

- Is prosperous area known to be a great place to live and learn and grow up in.
- Is able to compete on a world stage in our traditional industries of tourism and fishing.
- Communities know and support each other and enjoy some of the best quality of life in England.
- Widens opportunities and provides high quality employment and retains our young people in the Bay.
- Celebrates the differences in the three towns, builds on the strengths of these towns and brings back the feel good factor.

MAP of TORBAY



Introduction

Hackney carriages and private hire vehicles are an important mode of local transport, and as such, have a specific role to play in an integrated transport system. They are able to provide safe, secure and comfortable transport, providing an on-request door-to-door service in various circumstances, including where public transport may not be available (e.g. in very rural areas), or for those with mobility difficulties.

The aim of the Policy is to regulate the provision of a robust taxi and private hire licensing system, which ensures that the public travel safely, receive a good level of service and drivers and operators are not overly burdened by unnecessary conditions.

In setting out its Policy, the Licensing Authority seeks to promote the following objectives:

- The safety and health of drivers and the public;
- Vehicle safety, comfort and access;
- To prevent crime and disorder and to protect the public;
- To encourage environmental sustainability.

Public safety is paramount, and this Licensing Authority seeks to ensure through its licensing regime that all taxi and private hire vehicles are fit for purpose and that their drivers and/or operators are fit and proper persons.

This Policy provides information and guidance to licence applicants, clarity for licensed vehicle owners, drivers and operators and the public as to the way that the Licensing Authority will undertake its licensing functions. In addition, the Policy document seeks to assist the Licensing Authority in reaching a decision on a particular application or as regards a particular enforcement issue, setting out those matters that will normally be taken into account.

This Policy will be kept under review to take into account changes in legislation and best practice. information collated over a period of time, coupled with the outcomes of any updates in legislation or associated government guidance. The policy and supporting appendices to the Policy may be updated from time to time, and therefore, applicants and all other interested persons are advised to contact the Licensing Department for up-to-date information; however information of changes will be given to applicants at annual renewal.

In the preparation and publication of this Policy the Licensing Authority has had regard to the following:

- Guidance issued by the Department for Transport (“Taxi and Private Hire Vehicle Licensing: Best Practice Guidance” – Edition March 2010).
- Relevant legislation.
- Existing Torbay Council Taxi Handbook
- Discussions benchmarking with Partner Agencies and other Local Authorities
- Consultation with Taxi Trade
- Licensing Objectives.

Nothing in this Policy document should be regarded or interpreted as an indication that any requirement of licensing or other law may be overridden.

Hackney Carriage and Private Hire Licensing Policy

1. Introduction

- 1.1 This Policy is written pursuant to the provisions of the Town Police Clauses Act 1847, Local Government (Miscellaneous Provisions) Act 1976, as amended, Transport Act's of 1980 and 1985, which places on Torbay Council the duty to carry out its licensing functions in respect of hackney carriages and private hire vehicles.
- 1.2 It is recognised that other legislation exists which impact on taxi licensing, such as the Equality Act 2010, and therefore aspects of this Policy pay regard to these additional legislative requirements.
- 1.3 The Policy takes effect from 1st May 2013.
- 1.4 The Policy relates to hackney carriage and private hire vehicle licensing and the licensing of drivers and operators.
- 1.5 The purpose of this Policy is to assist the Licensing Authority in reaching a decision on any particular application, and in setting out those matters that are normally taken into account. Additionally, the document seeks to provide clear advice for licence holders in terms of the standards expected, and also to provide general advice to service users and the general public.
- 1.6 The Policy is subject to periodic review every five years. Any major changes to the Policy made between review periods will be preceded by public consultation.
- 1.7 Any changes in legislation will supersede this policy.

2 Licensing Objectives & Related Legislation

- 2.1 The Licensing Authority is committed to ensuring the provision of a professional hackney carriage and private hire service, by continued monitoring and improvement of standards and procedures. The Licensing Authority also seeks to promote the following objectives when considering applications, or when assessing the continuance of an existing licence.
 - **The safety and health of drivers and the public;**
 - **Vehicle safety, comfort and access;**
 - **To prevent crime and disorder and to protect the public;**
 - **To encourage environmental sustainability.**
- 2.2 In promoting these objectives, considerations such as those set out at Para's 2.3, 2.4, 2.5 and 2.6 of the Policy will be taken into account by the Licensing Authority, and applicants and licence holders will be expected to continuously demonstrate that they can meet or exceed specifications set by the Licensing Authority.

2.3 Safety and Health of Driver and the Public:

- Consideration of any convictions and/or cautions;
- Driver training, qualification and performance;
- Health and fitness of applicant for driver licence, or existing licence holder;
- Regular driver health checks;
- Vehicle specifications;
- Knowledge of the geographical area of Torbay.

2.4 Vehicle Safety, Comfort and Access:

- Standards of vehicle appearance and comfort;
- Use and location of ranks;
- Provision of disabled facilities;
- Provision for all age groups;
- Provision of safe and comfortable premises for customers to use, if applicable.

2.5 To Prevent Crime and Disorder and to Protect the Public:

- Vetting, qualification, training and monitoring of licence holders;
- Operating rules and disciplinary processes;
- Measures to prevent noise and light nuisance from taxi activities;
- Commitment to work with Licensing Authority, Police and other statutory authorities.

2.6 To Encourage Environmental Sustainability:

- Investigate alternative fuels and conversion systems;
- Investigate the potential for providing an environmental levy or reducing licence fees for cleaner vehicles;
- Involve Taxi Trade in identifying ways to reduce vehicle emissions;
- Consideration of suitability of vehicles that are unable to comply with Euro Technology (or equivalent standard) requirements.

2.7 The Licensing Authority is aware that applying licensing requirements which are unduly stringent may unreasonably restrict the supply of taxi and private hire services, and can lead to negative safety implications. Therefore, the Licensing Authority has considered each of its licensing requirements in relation to the proportion of risk it aims to address.

2.8 The Licensing Authority recognises that its licensing function is only one means of securing the delivery of the Policy. The Licensing Authority will therefore continue to work in partnership with other stakeholders, such as the Police, Crime & Disorder Partnerships and the Vehicle and Operator Services Agency (VOSA) towards the promotion of the objectives of this Policy.

2.9 In undertaking its licensing function, the Licensing Authority will have regard to the following legislation:

- Town and Police Clauses Act 1847
- Transport Act 1980 & 1985

- Road Traffic Acts
- The Local Government (Miscellaneous Provisions) Act 1976, as amended
- Environmental Protection Act 1990
- Health Act 2006
- The Smoke-free (Premises and Enforcement) Regulations 2006
- The Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007
- The Equality Act 2010
- The European Convention on Human Rights, which is applied by the Human Rights Act 1998
- The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002

2.10 The Licensing Authority will also have regard to any other relevant legislation, strategies, policies and guidance in its decision-making.

3. Consultation

3.1 Before determining this Policy, the Licensing Authority will consult with numerous persons and organisations including the following:

- Taxi Trade within the area of Torbay
- Taxi Trade Representative/s
- Department for Transport (including VOSA)
- Driving Standards Agency
- Chief Officer of Police, Devon & Cornwall Constabulary
- Torbay Council's Environmental Health Department, Highways Transport Services, Development Control Department, Community Safety Team
- Town Councils within the area of Torbay
- Citizens Advice Bureau
- Age UK Torbay
- Living Options Devon
- Torbay Disability Information Service

3.2 Consultees are permitted to make representations in writing or via electronic means e.g. email response. Proper weight will be given to the views of all consulted prior to this Policy taking effect.

4. Departure from Policy

4.1 In exercising its discretion in carrying out its functions, the Licensing Authority will have regard to this Policy and the objectives set out therein.

4.2 Where it is necessary for the Licensing Authority to depart significantly from this Policy, clear and substantive reasons for doing so will be given.

5. Drivers

General Licensing Requirements

- 5.1 It is a legal requirement that drivers of either hackney carriages or private hire vehicles obtain from the Licensing Authority a licence to drive such vehicles.
- 5.2 The Licensing Authority issues Joint Driver Licences, enabling drivers to operate either a hackney carriage or a private hire vehicle, without the need to obtain a separate driver licences.
- 5.3 The Licensing Authority will issue a licence to an applicant provided that the applicant has held an EEA (E.G.) European Union (EU) full driving licence for at least 12 months, and is a “fit and proper” person to hold such a licence.
- 5.4 When determining whether a person is “fit and proper”, the Licensing Authority will consider the applicant’s knowledge of the local area, their driving experience, driving qualifications, medical fitness, criminal record and their previous history as a licensed driver or operator and any other matter considered relevant to ensure the safety of the public and the driver.

Age & Experience

- 5.5 The Licensing Authority will not have regard to the age of an applicant when determining their suitability where it can be shown that:
- The applicant holds a valid full UK driving licence (licence issued in accordance with Part III of the Road Traffic Act 1972 (as amended) and that this licence must have been held for no less than 12 months at the time of application).
 - The applicant has reached the required medical standards entitling them to drive in the United Kingdom.
- 5.6 An applicant who meets the licensing requirements by virtue of an acceptable non-UK driving licence must either:
- Obtain a full UK driving licence within 12 months of the issue of the hackney carriage/private hire driver licence, or
 - Obtain a ‘backing sheet’ e.g. counterpart from the DVLA within 12 months of the issue of the hackney carriage/private hire driver licence which can be attached to the non-UK driving licence and used by the DVLA to monitor endorsements or penalty points obtained whilst driving in the UK.
- 5.7 Where the requirement in Para 5.6 above is not satisfied, the subsequent licensed driver application or renewal application will not be accepted.
- 5.8 Applicants are advised to note that immigration checks may be carried out and may take some time to be finalised and that until such checks are concluded, they are not permitted to work as a licensed driver.

Driver Knowledge and Proficiency

- 5.9 Licensed drivers require a good working knowledge of the geographical area in which they operate in order to meet reasonable customer expectations. The

Licensing Authority, in an effort to determine the fitness of an applicant to hold a driver licence, requires that applicants undertake a computer knowledge test and written test which examines their knowledge of local geography and knowledge of the Highway Code. This test is carried out at a place determined by the Licensing Authority.

- 5.10 Licensed drivers, as a profession, have a responsibility for the safe transportation of fare-paying passengers. Therefore, the Licensing Authority as part of its application procedure requires a Driving Standard Assessment of the drivers' ability and must be obtained by all new applicants, within 6 months of the date of their first granted Licence. A confirmation certificate of this successfully completed assessment must be submitted to Torbay Council's Licensing Department within the said 6 month period. Failure to do so will result in the automatic revocation of the issued Licence. Where this occurs, the Licensing Authority will not refund the fee paid for the said Licence.
- 5.11 Where an existing licensed driver receives over 6 (six) endorsement/s or penalty points on their licence within each licensing year, the Licensing Authority will require that person to undertake the same assessment. If this is not obtained within 3 months, then the existing licensed drivers badge will be suspended until the necessary driving standards assessment is completed.
- 5.12 The driving assessment is achieved by successful completion of the appropriate Driving Standards Agency (DSA) Practical Driving Test. The test is reflective of modern driving practices; the standard is set at a level suitable for the full driving licence holder, which is therefore of a higher level than the learner driver test.
- 5.13 The Licensing Authority has no current plans to make it a mandatory requirement for a driver to obtain a professional qualification – e.g. a BTEC Level 2 Award in Transporting Passengers by Taxi and Private Hire; however, the Licensing Authority would encourage drivers to undertake this qualification as a matter of good practice.
- 5.14 The Licensing Authority aspires that all drivers are trained to BTEC Level 2 Award in Transporting Passengers by Taxi and Private Hire standards or equivalent qualification which includes disability awareness training in both mental and physical issues.
- 5.15 The Licensing Authority at its discretion may require specific training to be undertaken where deemed appropriate. This training may include disability awareness, manual handling and equalities awareness.

Medical Examination and Exemptions

- 5.16 The Licensing Authority requires that all drivers complete a medical examination at the application stage and for existing drivers during the term of the licence, as set out in Para 5.16 below. The medical examination will ensure that the applicant/licensed driver satisfy all the requirements of the DVLA Group II Medical Standards of fitness to drive. The applicant/licensed driver should ensure that the G.P practice at which they are registered undertakes the necessary medical examination.

- 5.17 The requirement for applicants/licensed drivers as regards to medical examination is as follows:
- Upon application
 - Every 5 years between the ages of 45 and 65
 - Every year at renewal where the driver is aged 65 years or over
 - Or anytime as required by the Council or the medical practitioner.
- 5.18 Where there is any doubt as to the medical fitness of the applicant/licence driver, the Licensing Authority may require the applicant/licence driver to undergo a further medical examination by a Doctor appointed by the Licensing Authority at the applicant's/licence driver's own expense.
- 5.19 Where there remains any doubt about the medical fitness of the applicant/licence driver, following the additional assessment described at Para 5.17 above, the Licensing Authority will have regard to the further medical evidence when making a final decision as to the suitability of the applicant/licence driver to drive a hackney carriage or private hire vehicle.
- 5.20 All licence drivers are required to inform the Licensing Authority immediately of any illness, condition or any other matter that affects their ability to drive.
- 5.21 Exemption from carrying guide, hearing and certain other assistance dogs which accompany disabled persons, can only be sought on medical grounds. Therefore, applicants will need to demonstrate the grounds for applying this exemption by providing medical evidence to the Licensing Authority.
- 5.22 An application for the exemption described in Para 5.20 above must be made prior to undertaking a medical examination.
- 5.23 If an application for exemption notice is successful, the Licensing Authority will issue to the driver a Notice of Exemption. This Exemption must be exhibited in the vehicle at all times, by fixing it in a prominent position on the vehicles dashboard.

6. Disclosure & Barring Service Disclosures (DBS) – (Formerly CRB)

- 6.1 The Licensing Authority requires that all applicants and licence drivers complete an enhanced DBS check on application and every three years, as part of the renewal application process. The Licensing Authority shall at their discretion, accept an enhanced DBS check obtained for another employment position. However the enhanced DBS must be no older than 60 days when produced to the Licensing Authority for consideration.
- 6.2 Since March 2002, hackney carriage and private hire drivers have been listed as Regulated Occupations in the Rehabilitation Act 1974 (schedule 1, Part III). The effect of this in relation to hackney carriage and private hire drivers is to render the Rehabilitation of Offenders Act 1974 inapplicable. Therefore any caution and/or conviction, regardless of their age, will be taken into consideration by the Licensing Authority when assessing the suitability of a new or renewal application.

- 6.3 In addition to the 3 year DBS check covered under Para 6.1 above, the Licensing Authority shall require a five year background check for all new applicants. It is a requirement of the DBS that if an applicant has lived abroad for any period of time in the last five years or is from an (EEA) Member State or other country, then a Certificate of Good Conduct (or equivalent) authenticated and translated by the relevant embassy is required. The DBS website (www.homeoffice.gov.uk/dbs) provides information about obtaining these certificates, or similar documents from other countries.
- 6.4 Failure to inform the Licensing Authority immediately, or within 5 working days of any convictions, cautions and fixed penalty notices during the licensing application and/or licensing period (i.e. once the licence is granted) may result in suspension or revocation of the driver licence. Similarly, where convictions, cautions or fixed penalty notices are notified, depending on the nature of the infraction, this may result in suspension or revocation of the driver licence.
- 6.5 The Licensing Authority may, where necessary, require licensed drivers to submit an additional enhanced DBS check at the licensed drivers cost. The Licensing Authority will not require this, unless it has good reason to do so – for example, the reasonable belief that the licensed driver has a criminal conviction not notified to the Licensing Authority. Failure to provide this additional enhanced DBS check may result in the licence being immediately suspended or revoked.
- 6.6 All applicants for the grant/renewal of a licence requiring a enhanced DBS check, or by request during the licence period, as set out in Para 6.5 above, shall be responsible for the costs of obtaining the enhanced DBS check.

7. Relevance of Convictions, Cautions, Fixed Penalties and other relevant information

- 7.1 The Licensing Authority when considering convictions and cautions recorded against an applicant or an existing licensed driver will have regard to the “Convictions & Cautions Policy” set out in **Appendix A**.
- 7.2 In assessing whether an applicant or licensed driver is a “fit and proper” person to hold a licence, the Licensing Authority will consider each case on its own merit.
- 7.3 Upon receipt of the enhanced DBS check, the Licensing Authority will assess whether any or all of the convictions and/or cautions are capable of having real relevance to the issue of whether or not the applicant or licensed driver is a fit and proper person to hold a licence. The Licensing Authority will also take into account any fixed penalty notices and other information, but only insofar as they are relevant to an application for a licence or impact on the continuance of an existing driver licence. In certain cases, the matter may be referred to the Council’s Licensing Committee for determination.
- 7.4 The Licensing Authority will have regard to fixed penalties when considering if an applicant is a fit and proper person. Failure to inform the Licensing Authority of any fixed penalty notices obtained during the application or licence period may result in possible rejection of the application or suspension or revocation of the licence.

- 7.5 In relation to cautions, the Licensing Authority will have regard to the nature of the infraction when considering their relevance to an application or continuance of an existing driver licence.
- 7.6 In relation to previous convictions, the Licensing Authority will have regard to the following:
- The nature of the offence/s;
 - The age of the offence/s;
 - The apparent seriousness, as gauged by the penalty applied.
- 7.7 In general terms, the more recent, serious and relevant the offence is, the less likely that an application will be granted or that an existing licence will be permitted to remain in effect.

8 Change of address

- 8.1 The licensed driver shall immediately notify the Licensing Authority in writing of any change of address **or change of email address**, during the period of licence prior to such change taking place, and in any case within 5 working days of such change.

9 Grant and Renewal of Driver Licences

New Applications

- 9.1 The Licensing Authority issues **one or three yearly** licences or part thereof to new applicants in accordance with Torbay Councils licensing year which currently runs from the 1st May to 30th April.
- 9.2 If any new application cannot be completed in full, within six months, then it will be considered null and void and no refund will be issued. If the applicant wishes to carry on with a new application after this period, they will have to resubmit all the required information again and pay the relevant fee.

Renewal Applications

- 9.3** The Licensing Authority will issue **an annual or three yearly** licence to existing licence drivers, upon receipt of a completed application, which will be issued for the period of 12 or 36 months running from the 1st May. **until the 30th April.**
- 9.4** **All three yearly licences will only be issued when a new Disclosure and Barring Service check has also been undertaken.**
- 9.5 A renewal application made after 30th April will be deemed as a lapse in licence and will result in the application being treated as a new application and not a renewal application. Therefore full application requirements will have to be satisfied.

9.6 If an application is made and the Applicant does not meet the requisite criteria, the Licensing Authority will charge a fee to issue a refund in line with Torbay Councils fees and charges.

~~9.7 If an application is made to renew any licenses which expired on the 30th April and they are not collected or remain unpaid, then those licenses will be cancelled 7 calendar days following. Once cancelled this will be deemed as a lapse in licence and will result in a new application having to be made. Therefore full requirements will have to be satisfied.~~

10. Hackney Carriages and Private Hire Vehicles Byelaws

10.1 The Licensing Authority has adopted a number of Byelaws under Section 68 of the Town Police Clauses Act 1847 and Section 171 of the Public Health Act 1875 which all drivers must comply with depending on the type of licensed vehicle they are driving. Should it become necessary to enforce such a Byelaw, the Licensing Authority shall draw to the driver(s) attention where a specific byelaw is being breached and in an event of continuance of this breach, the Licensing Authority may initiate prosecution proceedings.

11. Driver Appearance

11.1 Whilst working as a licensed driver within Torbay, the Licensing Authority requires a minimum standard of dress code and appearance, this shall apply to both new applicants and existing licensed drivers. The dress code can be found at **Appendix I**.

12. DVLA Licence Checking

12.1 The Licensing Authority will, ~~where considered necessary,~~ check the DVLA database in order to establish a driver's complete driving history.

12.2 Where this course of action is deemed necessary, the Licensing Authority will request that the driver completes a consent form in order that the check can be carried out. The cost of the check is borne by the applicant/licensed driver.

12.3 Should the necessary consent, as required in Para 12.2 above not be given by the applicant/licensed driver, this will result in the application being refused or the existing drivers licence being immediately suspended or revoked.

13 Advice to Drivers

13.1 Within the conditions of the grant of your licence you are responsible for various items, some of which may be checked by various Council Officers on demand. The list of advice to drivers is set out at **Appendix B**.

14 Vehicles

Limitation of Vehicle Numbers

14.1 The Licensing Authority currently imposes a quantity restriction regarding the number of hackney carriages licensed by Torbay Council. This has been the

case for many years and is supported by results from an unmet demand survey. This survey is carried out every 3 years.

Specification and Conditions

- 14.2 The Licensing Authority has a wide discretion over the types of vehicles it licenses as hackney carriages or private hire vehicles. In general, vehicles will be licensed in accordance with the manufacturer's design.
- 14.3 The Licensing Authority has a Policy which sets out the minimum standards of vehicle specification, which apply in respect of all licensed vehicle applications. The vehicle specification and conditions are set out at **Appendix D**.
- 14.4 The Licensing Authority has set an age Policy, with regards to the licensing of vehicles at first application stage. Details are as follows:

Application Type	Maximum Age of Vehicle
Initial (first) Application (all vehicle types)	4 Years AND Less than 60,000 miles
Renewal Application (for vehicles already licensed)	Up to 8 Years* *(Age taken from the date of the first registration in the Vehicle Registration Document)
Wheelchair Accessible Vehicles (WAVs)	Up to 10 Years* *(Age taken from the date of the first registration in the Vehicle Registration Document)

- 14.5 Once licensed, vehicles which are deemed to be in exceptional condition at the end of the maximum age limit can apply to the Licensing Authority for an annual extension. The Licensing Committee will determine whether the vehicle is suitable for an extension, however all applications must be made 6 months prior to the expiration of the annual licence.
- 14.6 The Licensing Authority has adopted a Policy for the licensing of limousines. The Policy is provided at **Appendix E**.
- 14.7 The Licensing Authority would consider applications for 'novelty vehicles', but this would need to be considered separately by Licensing Committee. It should be noted however that Torbay has a restricted policy on numbers of hackney carriages at this time.
- 14.8 The Licensing Authority is empowered to impose such conditions, as it considers reasonably necessary, in relation to the grant of a hackney carriage or private hire vehicle licence by virtue of the Local Government (Miscellaneous Provisions) Act 1976.

Vehicle Damage/Accident

- 14.9 The proprietor of any hackney carriage or private hire vehicle must report to the Licensing Authority, as soon as reasonably practicable, and in any case within

seventy two hours, the occurrence of any accident involving the hackney carriage or private hire vehicle.

- 14.10 The vehicle will be inspected by an Authorised Officer and a decision made as to whether or not the vehicle is in such condition to continue in service.
- 14.11 If any damage to the vehicle is such that the Authorised Officer considers it to be in a safe condition to continue in service, the vehicle shall be permitted to remain in continued service but the identified repairs must be undertaken within a maximum of 28 days of the damage occurring. Failure to do so may result in the vehicle licence being suspended until such time that the permanent repairs have been undertaken.
- 14.12 If any damage is considered by an Authorised Officer to be extensive enough to affect the safety or general appearance of the vehicle it must be immediately withdrawn from service and the plate removed. The vehicle must be repaired before the plate is re-affixed and the vehicle returned to service.
- 14.13 In the case of any dispute in respect of the requirement in Para's 14.9-14.12 above, the Licensing Authority will request that the vehicle be taken to a nominated testing station for examination by a qualified mechanic and the cost of this examination will be borne by the licence holder. The Licensing Authority shall take the findings of the repairs identified by the qualified mechanic, as necessary before the vehicle is permitted to continue in service. The appropriate fee for such examination will be paid by the proprietor. If the proprietor fails to take the vehicle to the nominated testing station, then the vehicle licence will be suspended immediately. This suspension will only be lifted by the Licensing Authority once the nominated testing station carries out an examination of the vehicle and passes it fit to continue in service.

Accessibility

- 14.14 The Licensing Authority is committed to ensuring that a wide variety of opportunities are available to disabled persons, as regards to access to transport and to ensure disabled people are not discriminated against or treated less favourably.
- 14.15 The Licensing Authority is mindful that different accessibility considerations apply in relation to hackney carriages and private hire vehicles. As regards to hackney carriage vehicles, the Licensing Authority considers it important that a disabled person should be able to hire a 'taxi' on the spot with minimum delay or inconvenience - therefore, having accessible vehicles available helps to make this achievable.
- 14.16 The Licensing Authority aspires to achieve 5% wheelchair accessible vehicles by 2018 with regard to both hackney carriage and private hire vehicles.
- 14.17 The Licensing Authority in acknowledging the Equality Act 2010 wishes to make drivers of hackney carriages and private hire vehicles aware that certain duties are due to be placed upon those whom operate wheelchair accessible vehicles. The duties will apply to the driver of any wheelchair accessible vehicle which is on the Authority's list of "Designated Vehicles".

The duties are as follows:

- to carry the passenger whilst in a wheelchair
- not to make any additional charge for doing so
- if the passenger chooses to sit in a passenger seat, to have capacity to carry the wheelchair also
- to take such steps as are necessary to ensure that the passenger is carried in safe and reasonable comfort; and
- to give the passenger such mobility assistance, as is reasonably required.
- the driver must also offer to load the passenger's luggage into and out of the vehicle.

14.18 Before the duties, as set out in Para 14.17 above come into force, drivers who suffer from a disability or a condition which would make it difficult for them to provide physical assistance, can apply to the Licensing Authority for an exemption notice to exempt them from these duties. Applicants/licensed drivers should ensure that the G.P practice where they are registered can undertake a medical assessment and complete an Exemption Application Form. This Form will then need to be produced to the Licensing Authority before a final decision can be determined on whether to issue the driver with an official Notice of Exemption.

14.19 If an application for exemption from duties is successful, the Licensing Authority will issue to the driver a Notice of Exemption. This Notice must be displayed in the vehicle at all times, by fixing it in a prominent position on the dashboard of the vehicle. Failure to display the Notice, as specified in Para 14.18 above, will render the exemption void

Duty to Carry Assistance Dogs

14.20 Licensed drivers are under a duty to carry, free of charge, any guide, hearing and other assistance dogs travelling with a disabled person. Since 31 March 2004, a similar duty has applied to the drivers of licensed private hire vehicles (PHVs). In addition, PHV operators will be under a duty to accept a booking made by, or on behalf of a disabled person and shall not be permitted to make an additional charge for carrying an assistance dog. Any driver (aside from those holding a Notice of Exemption, for the purposes prescribed in Para 14.17 above) who fails to comply with this duty, could be prosecuted and may be liable to a fine not exceeding Level 3.

14.21 If it is brought to the attention of the Licensing Authority, by way of a complaint, that a driver breaches the duty which is outlined in Para 14.20 above, the Licensing Authority may, in addition to any prosecution, seek to suspend or revoke the drivers licence.

Vehicle Testing

14.22 The Licensing Authority may request, at any time when there is doubt as to the suitability or condition of a licensed vehicle, that the vehicle licence holder takes the vehicle to an approved testing station for a vehicle inspection. The inspection will be based on the specification set by the Licensing Authority and costs associated with the inspection, will be met by the applicant/licence holder.

- 14.23 If the vehicle fails to pass the vehicle test, then the vehicle will be immediately suspended until necessary works are completed and the vehicle test is passed.
- 14.24 Failure to provide the vehicle for inspection will result in the vehicle licence being immediately suspended.

Mechanical Breakdown

- 14.25 If any vehicle becomes unfit to complete a hiring during a journey, the driver shall be entitled to demand the fare for the distance already travelled.
- 14.26 The driver shall secure alternative transport without delay to complete the journey if the hirer so wishes. If the original vehicle is repaired and completes the hiring the driver shall be entitled to the full fare with the exception of any time that the hirer waited for the repair to be executed.
- 14.27 Any such incident must be reported to the Licensing Authority immediately or within one working day.

Signage & Advertising

- 14.28 The Licensing Authority recognises that hackney carriage and private hire vehicles must be clearly distinguishable to allow the public to identify them from other vehicles and also from each other. In order to achieve this, the Licensing Authority has adopted conditions setting out the acceptable types of signage for both vehicle types. The conditions are provided at **Appendix F**.
- 14.29 The Licensing Authority shall permit advertising on hackney carriage vehicles. However any such advertisements must be approved by the Licensing Authority in advance of the vehicle undergoing any such modification. Advertising requests must be made in writing to the Licensing Department for approval, enclosing copies of the intended advertisement.
- 14.30 All hackney carriage and private hire vehicles must display within the vehicle, in a prominent position a Notice, to be supplied by the Licensing Authority, advising customers what to do in the event of making a complaint
- 14.31 All exterior and interior signs supplied by the Licensing Authority must be kept in good order and must not be de-faced. Any sign which fails to meet this condition, must be replaced immediately and the cost of replacing these signs shall be borne by the licence holder.

Private Hire Door Signs

- 14.32 If a licensed driver is witnessed by an Officer of the Licensing Authority driving a licensed vehicle without the use of Licensing Authority approved door signs being attached to that vehicle, that driver shall in the first instance receive a verbal warning. If the same driver is then witnessed by an Officer of the Licensing Authority to repeat this conduct within a 6 month period of any verbal warning being given, that driver can expect to receive a formal written warning. Should that driver then be witnessed by an Officer of the Licensing Authority to

repeat this conduct within the following 3 months, then a second formal written warning will be issued and on completion of an investigation, this may result in a report being submitted to Licensing Committee with a recommendation to revoke the said drivers licence.

Tinted Windows

14.33 The Licensing Authority will not issue a licence to a vehicle which has tinted windows that were not in place at the time of manufacture. The manufacture of such windows must be compliant with VOSA regulations.

CCTV

14.34 The hackney carriage and private hire trade provide a valuable service to the public, especially late at night when other forms of public transport may cease to be available. Security for drivers and passengers is of vital importance to the Licensing Authority. CCTV camera recording equipment can be a valuable deterrent as well as protecting the driver from unjustified complaints. It is not proposed that CCTV measures should be required as part of the licensing regime, instead the decision whether to install such equipment is left to the discretion of the vehicle or business owner. Any scheme must comply with the requirements of the Data Protection Act 1984, in so much as images may not be used by persons in any way, except for the purposes of detecting issues of crime and anti-social behaviour inside vehicles or if there is a request for their images by customers. The requirements under the Data Protection Act 1984 only apply to Sole Traders, not Companies. However using images obtained by the CCTV for any other means, may result in persons be guilty of an offence. Request for images obtained via CCTV may be made by the Licensing Authority, the Police or the Trade Suppliers.

14.35 TaxiCam equipment is the only equipment that currently meets the requirements set out in Para 14.34 above for installation in vehicles at this time. The permission to use any other equipment would need to be obtained from a senior officer in the Councils Licensing Authority.

Livery (Colour)

14.36 The Licensing Authority has not implemented a livery (colour) Policy, however this remains under consideration for the future.

14.37 The Licensing Authority will keep the issue under review. If the Licensing Authority believes that it would be of benefit to the public to introduce livery (colour), then a public consultation will be undertaken prior to any change coming into effect.

Seating in Multi-Passenger Vehicles

- 14.38 The Licensing Authority will licence vehicles for seating arrangements of up to eight passengers, where all the Licensing Authority's licensing requirements are satisfied.
- 14.39 All seating arrangements will be considered in relation to safety requirements prior to any licence being issued. It should NOT be assumed that permission will automatically be granted and so applicants are advised to contact the Licensing Authority in advance of making any purchase, prior to making an application.

Smoking

- 14.40 Smoking ~~has been is~~ prohibited in all hackney carriage and private hire vehicles ~~since 1st July 2007~~. No smoking signs shall be displayed at all times within the vehicle.
- 14.41 Torbay Council also prohibits the use of E or vapour cigarettes by drivers or passengers in licensed vehicles.
- 14.14 A driver found smoking, using E/Vapour cigarettes or permitting these to take place in a licensed vehicle, will be subject to enforcement action by either the Licensing Authority or the Council.

Taxi Rank Provision

- 14.15 The ranks currently in operation within Torbay are detailed at **Appendix G**. It should be noted that where written requests for additional rank space is made, the Licensing Authority will consider the existing provision and liaise with the Council's Highways department. The responsibility to instigate formal consultation and rank works lies with the Council's Highways Department.

15. Grant and Renewal of Vehicle Licences

- 15.1 The Licensing Authority will consider all applications for vehicle licences on their own merits.
- 15.2 The Licensing Authority will, providing that all the Licensing Authority's requirements are met; issue a 12-month licence which will run from 1st May to 30th April.
- 15.3 All vehicles presented for licensing for the first time shall be subject to a vehicle inspection.
- 15.4 All vehicles presented for licensing for the first time shall be under 4 years old and have a current mileage of less than 60,000 miles.
- 15.5 Vehicles **aged between 0 and 4 years** will be issued with an annual licence which will run from 1st May to 30th April. An MOT (not more than 90 days old), the registration document and a valid insurance certificate or cover note (faxed copies will not be accepted) must be produced before the grant of the vehicle licence.

- 15.6 Vehicles **aged between 4 and 8 years** will be issued with an annual licence which will run from 1st May to 30th April. An MOT (not more than 90 days old), the registration document and a valid insurance certificate or cover note (faxed copies will not be accepted) must be produced to the Licensing Authority before the Licensing Authority will grant a vehicle licence.
- 15.7 Wheelchair Accessible Vehicles (WAVs) **aged older than 8 years** will be issued with an annual licence which will run from 1st May to 30th April. An MOT (not more than 90 days old), the registration document and a valid insurance certificate or cover note (faxed copies will not be accepted) must be produced to the Licensing Authority before the Licensing Authority will grant a vehicle licence. Additionally a second MOT for the vehicle will be due in October and must be no older than 30 days old. If the second MOT is not submitted by the 31st October then the vehicle licence will be suspended immediately until a valid MOT is submitted to the Licensing Authority.
- 15.8 Applicants should also be aware that if a licence has not been issued at the point when an existing licence expires (due to incomplete paperwork provided to the Licensing Authority), the licence holder must cease using that vehicle until a complete application has been received and determined.
- 15.9 It should be noted that once the date of expiry of an existing licence has passed and a valid application for renewal (i.e. a complete application, including the appropriate fee) has not been received, the licence will automatically expire. Where this occurs, the applicant will be required to submit a new application and the vehicle will be deemed to be a new vehicle. Therefore, the vehicle must meet all the requirements of this type of application. In addition, the expired vehicle licence plate must be returned to the Licensing Authority immediately or within seven days of expiry.
- 15.10 Where the Applicant has made an application for the grant or renewal of a vehicle licence, the Applicant must declare and supply information in relation to the insurance and MOT of that vehicle. If at any point during the term of the licence it is found that insurance and/or the MOT is not in place or lapsed, the Licensing Authority will suspend the vehicle licence immediately until a valid insurance document and/or the MOT is submitted to the Licensing Authority. The Licensing Authority may decide to take the matter further upon investigation, which may include revocation of that licence.
- 15.11 If an application is made and the vehicle does not meet the requisite criteria, the Licensing Authority will charge a fee to issue a refund in line with Torbay Councils fees and charges.

Replacement Vehicles

- 15.12 A vehicle licence is issued to a specific vehicle, therefore, at the point where the licence expires, the licence ceases to exist and any new vehicle would be subject to the requirements of a new vehicle licence application.
- 15.13 To assist vehicle proprietors who wish to be able to change vehicles during the period of an existing licence, the Licensing Authority operates a 'replacement vehicle Policy'. This will enable the existing licence to remain in place; however,

the 'replacement' vehicle will have to meet the Licensing Authority's vehicle specification as set out in **Appendix D**.

16. Private Hire Operators

- 16.1 Any person who makes provisions for the invitation to or acceptance of bookings for a private hire vehicle or a private hire service, must apply to the Licensing Authority for and hold, a valid Private Hire Operator Licence.

Conditions

- 16.2 The Licensing Authority has power to impose conditions on a private hire operators' licence, as it considers reasonably necessary to do so.
- 16.3 The Licensing Authority considers that the conditions set out in **Appendix C** of this Policy meet the necessary criteria when granting a private operator's licence. As such, these conditions will be attached to all private hire operator licences unless at the application stage, evidence is submitted by the applicant which provides sound evidential reasoning for not doing so.

17. Grant and Renewal of Operator Licences

- 17.1 The Licensing Authority will consider all applications for operator licences on its own merits.
- 17.2 The Licensing Authority issues yearly licences for private hire operators which run from the 1st May to the 30th April
- 17.3 If an application is made and the Applicant does not meet the requisite criteria, the Licensing Authority will charge a fee to issue a refund in line with Torbay Councils fees and charges.

The applicant for a private hire operators licence shall be required:-

- 17.4 To show that the premises from which it is intended to conduct business is free from any encumbrances or restrictions for such use, and to provide the name and address of the owner of the premises.
- 17.5 To provide all necessary washing, toilet and rest room facilities for persons conducting business from the premises as required by the Health and Safety at Work legislation.
- 17.6 If waiting facilities are available for intended passengers, to provide sufficient and proper seating for those persons.

18. Disciplinary and Enforcement Measures

- 18.1 The Licensing Authority recognises that well-directed enforcement activity not only benefits the public but also responsible members of the hackney carriage and private hire trades.
- 18.2 The Licensing Authority will follow the principles laid out in the Regulator's **Compliance** Code and any recommendations from the Local Better Regulation

Office. Copies can be found at www.lbro.org.uk/docs/regulators-compliance-code.pdf and www.lbro.org.uk/

- 18.3 The Licensing Authority shall take enforcement action where it considers it necessary and proportionate to do so. In doing so, it will have regard to the licensing objectives stated within this Policy. Enforcement will be risk-based, intelligence-led and targeted and managed in line with the Licensing Authority's Enforcement Policy.
- 18.4 A record of any enforcement and/or disciplinary action taken by the Licensing Authority or Local Authority, whether formal or informal, will be recorded on the licence holder's file. Such evidence of this, may be brought to the attention of the Licensing Committee, Sub-Committee or the Court, if further action is deemed necessary.

19. Fares

- 19.1 On receipt of a request for consideration of an increase in fares from a member of the Torbay Hackney Carriage Association, the Licensing Authority will follow the procedure set out in **Appendix H** of this Policy.
- 19.2 A fares tariff is enforceable as a byelaw and it is an offence for any person to charge more than the metered fare.
- 19.3 The current tariff card must be prominently displayed to customers inside the hackney carriage vehicle, at all times.
- 19.4 The setting of fares for hackney carriages is a function of the Council's Licensing Committee.
- 19.5 The Licensing Authority may not set fares for private hire, as these are set and advertised at the discretion of individual private hire vehicle operator, as in accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1976.

20. Meters

- 20.1 The Licensing Authority requires that meters to calculate fares must be calendar clocked, accurate and displaying the correct time and capable of displaying the various tariffs, as approved by the Licensing Authority. This shall include any extra charges which are payable under the approved Table of Fares.
- 20.2 The meter must be calibrated and set to the Licensing Authority agreed charging distances and tariffs currently in force.
- 20.3 Meters will be checked by the Licensing Authority from time to time, to ensure that they are accurate, to that of a metered mile distance or by waiting time.
- 20.4 Meters must be positioned in order that the fare must be clearly displayed to the passenger throughout the journey.
- 20.5 Meters in operation must not facilitate fraudulent use. Any signs of the tampering included in the breaking of seals will result in immediate action being

taken by the Licensing Authority to suspend the licence pertaining to the vehicle in question. Where a licence is suspended, the vehicle proprietor shall return the licence plate to the Licensing Authority immediately. The Licensing Authority will then consider what further action, if any, to take against the driver or vehicle operator in question. Such action may result in the revocation of either or all the driver, operators or vehicle proprietors licence.

21. RIGHTS OF APPEAL

The following rights of appeal are to be found in Local Government (Miscellaneous Provisions) Act 1976 (LG(MP)A1976):

- 21.1 Appeal against conditions imposed on a hackney carriage proprietor's licence (LG(MP)A 1976, s 47).
- 21.2 Appeal against refusal to grant a private hire vehicle licence, or conditions imposed on such a licence (LG(MP)A 1976, s 48)
- 21.3 Appeal against refusal to grant a private hire driver's licence, or conditions imposed on such a licence (LG(MP)A 1976, s 52)
- 21.4 Appeal against refusal to grant a private hire operator's licence, or conditions imposed on such a licence (LG(MP)A 1976, s 55)
- 21.5 Appeal against refusal to grant a hackney carriage driver's licence (LG(MP)A 1976, s 59)
- 21.6 Appeal against suspension, revocation or refusal to renew a hackney carriage or private hire vehicle licence, or conditions imposed on such a licence (LG(MP)A 1976, s60)
- 21.7 Appeal against suspension, revocation or refusal to renew a hackney carriage or private hire driver's licence (LG(MP)A 1976, s61)
- 21.8 Appeal against suspension, revocation or refusal to renew a private hire operator's licence (LG(MP)A 1976, s62)

Local Government (Miscellaneous Provisions) Act 1976 s 77 states:

'Appeals:

77-(1) sections 300 TO 302 of the Act of 1936, which relates to appeals shall have effect as if this Part of this Act were part of that Act.

(2) If any requirement, refusal or other decision of a district council against which a right of appeal is conferred by this Act-

(a) involves the execution of any work or the taking of any action; or

(b) makes it unlawful for any person to carry on a business which he was lawfully carrying on up until the time for appealing has expired, or, when an appeal is lodged, until the appeal is disposed of or withdrawn or fails for want of prosecution-

- (i) No proceedings shall be taken in respect of any failure to execute the work, or take the action; and
- (ii) That person may carry on that business.

(3) Subsection (2) of this section does not apply in relation to a decision under subsection (1) of section 61 of this Act which has immediate effect in accordance with subsection (2B) of that section'

In general, the effect of LG(MP)A 1976 s 77(2) is to stay any action pending the determination of an appeal. However there is an exception in relation to hackney carriage and private hire driver's licence, when the local authority has decided that the licence should be suspended or revoked with immediate effect in the interest of public safety

The appeal period is 21 days from the date on which 'notice of the local authority's requirement, refusal or other decision was served on the person desiring to appeal

An appeal must be made to:

South and West Devon Magistrates' Court, c/o Torquay & Newton Abbot County Court, Nicolson Road, Torquay. TQ2 7AZ

APPENDIX A

Policy for determining the relevancy of criminal convictions, cautions, reprimands and warnings in relation to Hackney Carriage or Private Hire Driver Licences



Taxi and PHV Licensing Criminal Convictions' Policy

1 General Policy

- 1.1 Each case will be decided on its own merits.
- 1.2 The Licensing Authority has a duty to ensure, so far as possible, that applicants are 'fit and proper' persons to hold licenses and in the absence of a judicially approved definition of "fit and proper", the Licensing Authority use the test of:

Would the Officer charged with the ability to grant a licence allow their son or daughter, spouse or partner, mother or father, grandson or granddaughter, or any other person for whom they care, to get into a licensed vehicle with the applicant alone?

The wording of this test originates from Button, J. T. H. (1999), Taxis – Licensing Law and Practice, Butterworths, London.

- 1.3 The overriding consideration is the safety of the public. The Licensing Authority has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit. An aspect of this is the extent to which previous convictions, including but not limited to convictions of dishonesty, sexual offences, traffic offences, violence and drugs, indicate that a person is not a 'fit and proper' person and would not take advantage of passengers or abuse or assault them.

- 1.4 Simply remaining free from convictions will not generally be regarded as sufficient evidence that a person is a 'fit and proper' person to hold a licence. 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. The following examples afford a general guide on the actions to be taken where convictions are admitted or discovered.

2 Dishonesty

- 2.1 It is essential for the public to have trust in hackney carriage and private hire drivers. The practice of delivering unaccompanied property is indicative of the trust that business people place in licensed drivers and operators. However, there is scope for a dishonest driver to defraud a passenger by demanding more than the legal or agreed fare or by taking a longer route to a destination. Tourists and overseas visitors are particularly at risk from an unscrupulous driver. For this reason, the Licensing Authority will take a serious view of any offences involving dishonesty. The Licensing Authority will not normally consider an application until a period of at least three years free from convictions has elapsed. More than one conviction for this type of offence within the last five years will raise serious doubts about the applicant's fitness to hold a licence. In such cases, the Licensing Authority may reject the application.
- 2.2 In the case of a licensed driver being convicted of an offence involving dishonesty the Licensing Authority may refuse to renew, suspend or revoke the licence. If a licence is revoked, no further application will be considered until a period of at least three years free from the date of conviction of this type has elapsed.
- 2.3 Offences of Dishonesty include:
- Theft
 - Burglary
 - Fraud including benefit fraud
 - Handling or receiving stolen goods
 - Forgery
 - Conspiracy to defraud
 - Obtaining money or property by deception
 - Other deception
 - Any similar offences of dishonesty where the conviction is less than three years prior to the date of application

3 Violence

- 3.1 The Licensing Authority will take a serious view of any applicant convicted of an offence involving violence. A licence will not normally be granted if an applicant has more than one conviction in the last 10 years for an offence of a violent nature.
- 3.2 Unless there are exceptional circumstances a licence will not normally be granted where the applicant has a conviction for an offence such as:
- Murder
 - Manslaughter

- Manslaughter or culpable homicide while driving
- Arson with intent to endanger life
- Terrorism offences
- Or any similar offences (including attempted or conspiracy to commit offences) which replace the above

3.3 In the case of a licensed driver being convicted of any of the above offences, unless there are exceptional circumstances, the Licensing Authority will immediately revoke the licence.

3.4 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s) that replace the offences below and the conviction is less than 10 years old prior to the date of application:

- Arson, with intent to endanger life
- Malicious wounding or grievous bodily harm which is racially aggravated
- Actual bodily harm which is racially aggravated
- Grievous bodily harm with intent
- Robbery
- Possession of firearm
- Riot
- Assault on Police
- Racially aggravated offences
- Violent disorder
- Resisting arrest
- Or any similar offences (including attempted or conspiracy to commit offences), which replace the above

3.5 In the case of a licensed driver being convicted of any of the above offences, the Licensing Authority may suspend or revoke the licence. If a licence is revoked, no further application will be considered until a period of at least 10 years free from the date of conviction has elapsed.

3.6 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s), which replace the offences below and the conviction, is less than 5 years old prior to the date of application:

- Assault occasioning actual bodily harm
- Common assault
- Affray
- Criminal damage
- Harassment
- Or any similar offences (including attempted or conspiracy to commit offences), which replace the above

3.7 In the case of a licensed driver being convicted of any of the above offences, the Licensing Authority may suspend or revoke the licence. If a licence is revoked, no further application will be considered until a period of at least 5 years free from the date of conviction has elapsed.

3.8 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s), which replace the offences below and the conviction, is less than 3 years prior to the date of application:

- S.5 Public Order Act 1986 offence (harassment, alarm or distress)
- S.4 Public Order Act 1986 offence (fear of provocation of violence)
- S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
- Possession of a weapon
- Obstruction
- Minor criminal damage
- Or any similar offences (including attempted or conspiracy to commit offences), which replace the above

3.9 In the case of a licensed driver convicted of any of the above offences, the Licensing Authority may suspend or revoke the licence. If a licence is revoked, no further application will be considered until a period of at least 3 years free from convictions of this type has elapsed.

4 **Drugs**

4.1 The Licensing Authority will take a serious view of convictions for drug related offences. An application will normally be refused when an applicant has a conviction related to the supply of drugs and the conviction is less than five to ten years prior to the date of application. After five years have elapsed, consideration will be given if an applicant can provide evidence that they can be considered a 'fit and proper' person.

4.2 An application will generally be refused where the applicant has more than one conviction relating to the possession of drugs and the conviction is less than five years prior to the date of application.

4.3 An application from an applicant who has an isolated conviction for possession of drugs within the last three to five years will require serious consideration before a decision is made regarding their suitability.

4.4 The Licensing Authority will take a serious view of a licensed driver convicted of a drug related offence. An isolated incident will result in a strict warning about future conduct. More than one conviction for this type of offence in the last five years will raise serious doubts about the person's fitness to hold a licence. In such cases, the Licensing Authority may refuse to renew, suspend or revoke the licence or require a medical examination to be undertaken. If a licence is revoked, no further application will be considered until a period of at least five years free from convictions has elapsed.

5 **Sexual and indecency offences**

5.1 Hackney carriage and private hire drivers frequently carry unaccompanied and/or vulnerable passengers. The Licensing Authority will therefore take a serious view of any convictions for a sexual offence. A licence will not normally be granted if an applicant has more than one conviction for a sexual offence.

5.2 Unless there are exceptional circumstances, an application will normally be refused where the applicant has a conviction for an offence such as:

- Rape

- Assault by penetration
- Offences involving children or vulnerable adults
- Or any similar offences (including attempted or conspiracy to commit offences) which replace the above

5.3 In the case of a licensed driver convicted of any of the above offences, unless there are exceptional circumstances, the Licensing Authority will immediately revoke the licence.

5.4 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s), which replace the offences below and the conviction, is less than 10 years prior to the date of application:

- Sexual assault
- Indecent assault
- Possession of indecent photographs, child pornography etc
- Exploitation of prostitution
- Trafficking for sexual exploitation
- Or any similar offences (including attempted or conspiracy to commit offences), which replace the above

5.5 In the case of a licensed driver convicted of any of the above offences, the Licensing Authority may suspend or revoke the licence. If a licence is revoked, no further application will be considered until a period of at least 10 years free from convictions of this type has elapsed.

5.6 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s), which replace the offences below and the conviction, is less than 5 years prior to the date of application:

- Indecent exposure
- Soliciting (kerb crawling)
- Or any similar offences (including attempted or conspiracy to commit offences) which replace the above

5.7 In the case of a licensed driver convicted of any of the above offences, the Licensing Authority may suspend or revoke the licence. If a licence is revoked, no further application will be considered until a period of at least 5 years free from convictions of this type has elapsed.

5.8 Applications will be refused where the applicant remains on the Sex Offenders Register.

6 **Alcohol Related Offences**

6.1 With motor vehicle:

The Licensing Authority will take a serious view of an applicant convicted for driving or attempting to drive a vehicle with levels of alcohol in blood, breath or urine in excess of the permitted limit. A single conviction for any alcohol-related driving offence will normally preclude an application from being granted for a period of five years from the restoration of the DVLA driving licence.

- 6.2 More than one conviction for any alcohol-related driving offence represents an unacceptable risk to the public and an application will normally be refused.
- 6.3 If there is any suggestion that the applicant suffers clinical alcohol dependence, the Licensing Authority may require a special medical examination to be undertaken. If the applicant is found to be suffering from clinical alcohol dependence, an application will not be considered until a period of at least five years has elapsed after completion of treatment of the condition. The cost of any medical examination must be paid for by the applicant/licensed driver.
- 6.4 The Licensing Authority will take a serious view of a licensed driver convicted of driving or attempting to drive a vehicle with levels of alcohol in excess of the permitted limit as this will raise serious doubts about the person's fitness to hold a licence. In such cases, the Licensing Authority may refuse to renew, suspend or revoke the licence. If a licence is revoked, no further application will be considered until a period of at least five years free from convictions of this type has elapsed.

6.5 Without motor vehicle:

An isolated incident will not necessarily prevent an applicant being granted a licence. However, a number of convictions for alcohol-related offences may indicate a medical problem. In such cases, the Licensing Authority may require a medical examination to be undertaken. The cost of any medical examination must be paid for by the applicant/licensed driver.

7 **Minor traffic offences**

- 7.1 Convictions for minor traffic offences will not prevent a person from being considered for a licence. If a new applicant has six live penalty points on their driving licence for such offences then the application may be granted subject to a strong written warning. If an applicant has more than six penalty points on their licence then the application will normally be refused and no further application will be considered until a period of at least 12 months free from convictions or fixed penalties of this type has elapsed.
- 7.2 In the case of a licensed driver accumulating nine or more penalty points the Licensing Authority may refuse to renew, suspend or revoke the licence. If a licence is revoked, no further application will be considered until a period of at least 12 months free from convictions of this type has elapsed. A list of minor traffic offences can be seen in table 1.

8 **Major traffic offences**

- 8.1 If an applicant has live endorsements or has been disqualified from driving in respect of major traffic offences then the application will normally be refused until at least five years after the most recent such convictions.
- 8.2 In the case of a licensed driver being convicted of a serious road traffic accident, the Licensing Authority may suspend or revoke the licence or an application to renew the licence being refused. If a licence is revoked, no further application will be considered until a period of at least 5 years free from the date of conviction has elapsed.

8.3 A list of major traffic offences can be seen in table 2.

9 Offences by licensed drivers, proprietors or operators

9.1 Any conviction which results from an offence committed by any person whilst carrying out their duties as a hackney carriage or private hire driver, proprietor or operator regarded as extremely serious may, lead to a licence being suspended or revoked or an application to renew the licence being refused.

9.2 More than one conviction, as outlined in Para 9.1 above, will lead to the drivers licence being revoked. This includes any offences against the Town Police Clauses Act 1847, The Local Government (Miscellaneous Provisions) Act 1976 or any breach of the conditions or byelaws made under the relevant legislation.

9.3 Convictions of any description committed by both hackney carriage proprietors, private hire drivers and operators during the duration of their licence must be declared to the Licensing Authority in writing immediately and in any case no later than 7 days.

10 Cautions and Endorsable Fixed Penalties

10.1 For the purpose of these guidelines, endorsable fixed penalties shall be treated as though they were convictions.

10 Pending Investigation

10.1 The Licensing Authority may, at their discretion suspend a drivers licence where is deems it appropriate to do so pending an investigation by either the Local Authority or the Police. This decision will only be taken where it is deemed necessary for the interest of Public Safety.

Table 1: Minor traffic offences

Code	Offence
CU10	Using vehicle with defective brakes
CU20	Causing or likely to cause danger by reason of use or unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition
CU30	Using a vehicle with defective tyres
CU40	Using a vehicle with defective steering
CU50	Causing or likely to cause danger by reason of load or passengers
SP10	Exceeding goods vehicle speed limit
SP20	Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
SP30	Exceeding statutory speed limit on a public road
SP40	Exceeding passenger vehicle speed limit
SP50	Exceeding speed limit on a motorway
SP60	Exceeding speed limit offence
MS10	Leaving a vehicle in a dangerous position
MS20	Unlawful pillion riding
MS30	Play street offences
MS40	Driving with uncorrected defective eyesight or refusing to submit to a test

MS70	Driving with uncorrected defective eyesight
MS80	Refusing to submit to an eyesight test
MS90	Failure to give information as to identity of driver, etc.
MW10	Contravention of special road regulations (excluding speed limit)
PC10	Undefined contravention of pedestrian crossing regulations
PC20	Contravention of pedestrian crossing regulations with moving vehicle
PC30	Contravention of pedestrian crossing regulations with stationary vehicle
TS10	Failing to comply with traffic light signals
TS20	Failing to comply with double white lines
TS30	Failing to comply with a 'stop' sign
TS40	Failing to comply with direction of a constable or traffic warden
TS50	Failing to comply with traffic sign (excluding "stop" sign, traffic lights or double white lines)
TS60	Failing to comply with school crossing patrol sign
TS70	Undefined failure to comply with a traffic direction sign

NOTE: Includes: Aiding, abetting, counselling or procuring any of the offences as coded above. Causing or permitting any of the offences as coded above. Inciting any of the offences as coded above.

Table 2: Major traffic offences

Code	Offence
AC10	Failing to stop after an accident
AC20	Failing to give particulars or to report an accident within 24 hours
AC30	Undefined accident offences
BA10	Driving while disqualified by order of the court
BA30	Attempting to drive while disqualified by order of the court
CD10	Driving without due care and attention
CD20	Driving without reasonable consideration for other road users
CD30	Driving without due care and attention or without reasonable consideration for other road users
CD40	Causing death through careless driving when unfit through drink
CD50	Causing death through careless driving when unfit through drugs
CD60	Causing death through careless driving with alcohol above limit
CD70	Causing death by careless driving then failing to supply a specimen for analysis
CD71	Causing death by careless driving then failing to supply a specimen for drug analysis
DD40	Dangerous driving
DD60	Manslaughter or culpable homicide while driving a vehicle
DD80	Causing death by dangerous driving
DR10	Driving or attempting to drive with alcohol level above limit
DR20	Driving or attempting to drive while unfit through drink
DR30	Driving or attempting to drive then failing to supply a specimen for analysis
DR31	Driving or attempting to drive then failing to supply a specimen for drug analysis
DR40	In charge of a vehicle while alcohol level above limit
DR50	In charge of a vehicle while unfit through drink
DR60	Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive

DR61	Failure to supply drug specimen for analysis in circumstances driving or to drive
DR70	Failing to provide specimen for breath test
DR80	Driving or attempting to drive when unfit through drugs
DR90	In charge of a vehicle when unfit through drugs
IN10	Using a vehicle uninsured against third-party risks
LC20	Driving otherwise than in accordance with a licence
LC30	Driving after making a false declaration about fitness when applying for a licence
LC40	Driving a vehicle having failed to notify a disability
LC50	Driving after a licence has been revoked or refused on medical grounds
MS50	Motor racing on the highway
MS60	Offences not covered by other codes
UT50	Aggravated taking of a vehicle

NOTE: Includes: Aiding, abetting, counselling or procuring any of the offences as coded above. Causing or permitting any of the offences as coded above. Inciting any of the offences as coded above.

APPENDIX B

Advice to Drivers

1. Only a licensed driver may drive a licensed vehicle at any time
2. Driver to ensure that the vehicle is safe and clean prior to commencing work
3. Do not use mobile telephone, radio or data sources while the vehicle is in motion
4. Do not use anyone to tout for you
5. Check operator is licensed
6. Keep vehicle clean inside and out
7. Control language on radio
8. Check road fund licence valid
9. Report any convictions
10. Always check destination
11. Use your radio call sign properly
12. Attend at licensing Office if called
13. Ensure vehicle signs correct
14. Undertake Medical as required
15. Only drive licensed vehicles
16. Do not tout for hire
17. Never Stop for flag down (Private Hire Only)
18. Stay Off of Taxi Ranks (Private Hire Only)
19. Ensure vehicle complies with law
20. Ensure vehicle is insured
21. Check road tax is clearly displayed
22. Report any change of Address
23. Report any found property

24. Assist with any Police link Calls
25. Keep Records of Bookings
26. Keep copy of valid insurance
27. Produce any licence if required
28. Wear I.D. badge at all times in a position where it can be clearly seen
29. Ensure children wear seat belts
30. Comply with Police Access requirements
31. Never exceed number of passengers on Plate regardless of age
32. Check car after every journey for lost property
33. All Private Hire bookings must be pre-booked
34. Report any change of Medical Fitness and attend for a medical if required
35. Give reasonable assistance with luggage
36. Produce any documents required by operator for checking
37. Driver, Vehicle and Operator MUST all be licensed in Torbay
38. Not use private land or Council car parks as a short cut or thoroughfare

Remember Passengers hire the vehicle with the services of the driver and he/she should:-

39. Not use the horn to make passengers aware of his arrival
40. Not cause distress, by loud radio use, to passengers or others

This list is for advice only and is not exhaustive.

APPENDIX C

Private Hire Operator Licence Conditions

The following conditions shall apply to Private Hire Operator Licences issued by Torbay Council by virtue of the Local Government (Miscellaneous Provisions) Act 1976, s55(3).

In these conditions reference to the words “you or your” shall mean the person named in this licence and where that person is a Limited Company, that Company.

1. Standards of Service

- 1.1 At all reasonable times provide a punctual, well-organised and reliable service to members of the public and:
- (a) Ensure that when a private hire vehicle has been hired to be at a place at a pre-arranged time, that the vehicle, unless delayed or prevented by a reasonable cause, attends on time at that place;
 - (b) Ensure that any premises that you provide for accepting bookings when it is open to the public is safe, well maintained, clean, heated, ventilated and well lit, and that any seating that you provide is safe, comfortable and free from defect;
 - (c) Ensure that any telephone facilities and radio equipment provided are maintained in sound condition (e.g. is fit for purpose) and that any defects are repaired promptly; and
 - (d) Ensure that any vehicle provided by you for any booking is safe, clean, well maintained and free from defect.

2. Convictions, Cautions or Fixed Penalty Notices

- 2.1 If you are convicted of any offence (this includes motoring and criminal offences), given a formal caution for any offence or have any fixed penalty notice imposed on you, then you must write to the Licensing Authority giving full details of the offence(s), caution(s) or fixed penalty notice(s) within five working days.

3. Operator Office Location

- 3.1 The office must be located within Torbay to enable any authorised officer access to the premises or any records as required by statutes or conditions.

4. Records

- 4.1 Keep at the operator base specified in this Licence, a bound book, the pages of which are numbered consecutively or a computer record in a form which has been approved by the Licensing Authority in writing; and enter or ensure that there is entered in the book or computer record, details of every booking of a private hire vehicle invited or accepted by you at the time the booking is made. The records shall contain the following details:
- (a) The time and date the booking was made;

- (b) The name and address of the hirer;
- (c) How the booking was made (i.e. by telephone, personal call, etc);
- (d) The time of the pick-up;
- (e) The address of the pick-up;
- (f) The address of the destination;
- (g) The time at which a driver was allocated to the booking;
- (h) The licence number of the vehicle allocated to the booking;
- (i) The name and licence number of the driver allocated to the booking;
- (j) Remarks (including details of any sub-contract); and
- (k) The time and date the entry was made and the name of the person making it.

4.2 Keep the records required under (1) above at the operator base specified in this Licence for a period of not less than 10 working days from the date on which they are made.

4.3 Keep at the operator base specified in this Licence, details of all the private hire vehicles currently operated by you under this Licence. Those records shall contain:

- (a) The licence number of the vehicle;
- (b) The issue and expiry date of the licence;
- (c) The make and registration number of the vehicle;
- (d) The name and address of the proprietor of the vehicle; and
- (e) The call sign allocated to the vehicle.

4.4 Keep or ensure that details of all licences held by private hire vehicle drivers currently employed by you or by the proprietor of any private hire vehicle which obtains bookings from you are kept at the operator base. Those records shall contain:

- (a) The name and address of the driver;
- (b) The issue and expiry date of his/her licence; and
- (c) The driver's licence number.

4.5 Keep for not less than 6 months following the date of the last entry, all records required to be kept by these conditions and produce them when required to do so by an Authorised Officer of the Licensing Authority or a Police Constable as soon as is reasonable practicable and in any case within 3 working days.

5. Computer Records

5.1 Where you use a computer to maintain the records required by these conditions you shall ensure that it is lawful for an Authorised Officer of the Licensing Authority or a Police Constable to have access to those records in accordance with the Data Protection Acts or any subsequent legislation relating to the storage and access to computer records.

5.2 Where any record required under these conditions is made on a computer, the computer program shall be designed to show the time an entry is made and to prevent alterations being made to any data that has been entered and stored on the program.

- 5.3 Where any records are kept on a computer, a facility to print a copy of any record held on any such computer and shall produce them when requested to do so by an Authorised Officer of the Licensing Authority or a Police Constable.

6. Change of Circumstance

- 6.1 If there is any change in any of the circumstances on which the licence was granted, you must provide written details of any changes within 5 working days of the change taking place.

7. Change of Address

- 7.1 If you move your home or business address, you must provide written details to the Licensing Authority within 5 working days of the change taking place.

8. Radio

- 8.1 No device, which can scan radio transmissions, shall be installed, carried or used in or on any premises named within this Licence (this shall not apply to a radio used for the purpose of passing messages to a private hire, which is supplied bookings, by the holder of this licence).

9. Deposit of Driver and Vehicle Licenses

- 9.1 Any operator who employs or permits anyone to drive any licensed vehicle owned by them will ensure that the drivers licence is deposited with him during the period that the driver is employed or permitted to drive, the licence must be returned to the driver at the end of that period. Any vehicle employed or used by an operator must be licensed and the proprietor of the vehicle shall deposit his vehicle licence with the operator during the period that his vehicle is so employed. The operator must return the licence to the vehicle proprietor at the end of the period.

IMPORTANT NOTE:

If you fail without reasonable excuse to comply with these conditions, the Licensing Authority may consider that this amounts to reasonable cause to suspend, revoke or refuse to renew this Licence, subject to each case being considered on its merits.

APPENDIX D

Vehicle Specification Standards and Schedule of Conditions

Specification standards applicable to both vehicle types

Licensed vehicles must be of manufacturers' specification and shall comply in all respects with the Motor Vehicle (Type approval Regulations 1980, Motor Vehicle (Type Approval) Regulations 1984 and the Road Vehicles Construction and Use Regulations 1986. In addition, all vehicles must comply in all respects with the British and European vehicle regulations and be a type to the requirements to the M1 category of European Whole Type Approval 70/156/EEC as amended.

Vehicles converted from vans which have a type approval other than M1 will not be acceptable unless they are presented with approved M1 certification for the resultant vehicle. If the vehicle has been registered with the DVLA and issued with the appropriate registration index number, no change, structural alteration or rearrangement of detail shall be carried out unless the vehicle has received subsequent M1 Whole Type Approval.

If the vehicle has a UK Single Vehicle Approval Certificate, the Licensing Authority will expect that the vehicle will have been modified in accordance with a program approved by the original vehicle manufacturer and have appropriate documentary proof.

There is no policy or requirement on colour differential between Hackney Carriage and Private Hire Vehicles, but no coloured identifying strips, stripes or other markings are permitted to be placed on vehicles beyond those within the maker's specifications or placed on the vehicle at the time of manufacture without the approval of the Licensing Authority. Where vehicles do have identifying strips, stripes or other markings (present at the time of manufacture), applicants are advised to contact the Licensing Authority to discuss the vehicle's suitability prior to making an application to license the vehicle in question.

Stretched limousines and similar vehicles (including applicable speciality vehicles) shall comply with existing conditions of licence applicable to all licensed private hire vehicles in so far as they are not superseded by the additional conditions (as set out in the limousine Policy).

CONDITIONS RELATING TO HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES MADE UNDER LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

Every hackney carriage and private hire vehicle must comply in all respects with these specifications and conditions.

Whilst these specifications may have been complied with, a licence may nevertheless be withheld if the Licensing Authority is of the opinion that any vehicle is unsuitable for public use.

INTERPRETATION

- (a) The “*Licensing Authority*” means Torbay Council.
- (b) The “*Authorised Officer*” means the Licensing Officer of the Council.
- (c) The “*vehicle*” means the vehicle subject of the hackney carriage/private hire vehicle licence to which the conditions are attached.
- (d) The “*proprietor*” means the person for the time being shown on the hackney carriage/private hire vehicle licence as the proprietor of the vehicle.
- (e) The “*driver*” means the driver for the time being of the vehicle.
- (f) Any obligation in these conditions not to do any act or thing shall be deemed to include an obligation not to cause or permit that act or thing to be done.
- (g) Any reference to any statute or subordinate legislation shall be deemed to include a reference to any amendment or re-enactment.

CONDITIONS

Vehicle Body & Colour

- No coloured identifying strips, stripes or other markings are permitted to be placed on the vehicle beyond those within the maker’s specifications or placed on the vehicle at the time of manufacture without the approval of the Licensing Authority.
- The paintwork must be professionally finished and displayed in accordance with the manufacturers’ specifications. Bare metal, primer paint, visible rust and perforations will not be permitted.
- The colour from panel to panel must be of a good match and the finish capable of giving a good sheen.
- All bodywork to be free from dents and damage.

- Panels must be attached and aligned to the chassis/body shell correctly with all joints and welds as per the manufacturer's specifications. The panels must be free from distortion and dents.
- Doors, door locks, boot/tailgate and locks, bonnet, hinges and catches, windows, sun roof and hoods must be operating correctly.
- All trim, mirrors, aerials, bumpers and wheel trims to be complete, correctly aligned and undamaged.
- Windows must be kept free of dirt, grime and marks.

Interior Condition

- The upholstery, carpets, seats, trims and other interior fitments should be free from damage (including stains and burns) and significant wear. Good quality seat covers and carpet mats may be used, providing that each is a matching set, of colour co-ordinating with the vehicle and kept in good condition.
- The floor of the vehicle must be covered with a suitable carpet, mat or other covering which can be readily cleaned.
- All plastic fascia, door linings, roof linings and trim to be kept free from marks, stains and damage.
- All interior lights and fascia illumination to be maintained in good condition.
- All windows to be kept free of dirt, grime and marks.
- All door locks, levers and window winders to be operating efficiently.

Engine Size

- There shall be a minimum engine capacity of 1400 cc, to include vehicles badged by the manufacturers as 1.4 models, for vehicles designed to carry four or more persons.
- The Licensing Authority will consider applications for smaller engine sizes, but only for a reduced number of passengers and it will additionally take into account a proportionate reduction in luggage space, again based upon the number of passengers requested. (private hire vehicles only)
- The minimum engine size in any circumstances will be 1000cc. (private hire vehicles only)

Communication between Driver and Passenger

- Sufficient means must be provided by which any person in the vehicle may communicate with the driver.

Radio Equipment

- Two-way radio equipment provided in the vehicle must be maintained in a sound condition and positioned so as not to obstruct the driver's ability to operate the vehicle's controls.
- Radio equipment must not be fitted in the boot compartment if LPG tanks or equipment is stored therein.

Mobile Telephones

- Use of a mobile telephone must be by way of a hands-free kit or a Bluetooth headset.

Driver's Compartment

- The driver's seat must be designed to accommodate the driver only and provide adequate room to enable easy reach of the operating controls and to enable hand signals to be made on the offside of the vehicle.
- The vehicle must be fitted with at least two mirrors fitted externally to the vehicle, one to the offside and one to the nearside, with another fitted internally. All mirrors are to be fitted and adjusted to afford the driver a clear view to the rear of the vehicle.
- Direction indicators of an approved type must be fitted.
- The vehicle must be fitted with adequate devices for demisting, defrosting and washing the windscreen and with a sun visor capable of being adjusted by the driver.

Steering

- The steering wheel must be on the offside of the vehicle.
- The vehicle must be right-hand drive.
- Wheels should be correctly aligned, joints and bearings free from abnormal wear. All mounting points should be in a sound condition with no undue wear in any associated bushes.

Doors

- Vehicles generally must have at least 4 doors, excluding any tailgate, however consideration will be given to two door vehicles excluding tailgate for applications for vehicles for one or two passengers.
- Passengers' doors must be capable of being readily opened from inside and outside the vehicle by one operation of the latch mechanism, provided that this condition shall not prevent doors being fitted with a child safety lock.

- Windows must be provided at the sides and rear and passenger door windows must be capable of being easily opened and closed by passengers.
- A separate means of ingress and egress for the driver must be provided by means of a door on the offside of the vehicle.

Seating

- Vehicles shall have seating capacities calculated on the basis of a passenger unit seat width of 16" (406mm) measured laterally across any continuous seat.
- Vehicles having split rear seats shall be measured as a continuous seat provided they are as fitted by the manufacturer and have a gap of not more than 1³/₄" maximum.
- All seats (including the driver seat) must be properly cushioned or covered.

Carrying of Animals

- No animals, other than those being carried under s37 of the Disability Discrimination Act 1995), or those owned by bona-fide fare-paying passengers with the agreement of the driver, shall be carried in or on the vehicle whilst the vehicle is so engaged under the terms of the licence.

Heating

- An adequate heating system must be provided and maintained for the driver and passengers and, where the driver's compartment and passenger compartment is separate, provision must be made to enable independent control by driver and passengers.

Luggage

- Luggage space must be a minimum of 0.43 cubic meters (430 litres) without folding down any seat, and be separated from the passenger compartment without obstructing any emergency exits.
- Applications for vehicles with a reduced number of passengers i.e. below 4, consideration will be given for a proportionate reduction in luggage space.
- Luggage carried must be suitably secured in place.
- Luggage carried in estate cars or multi-passenger vehicles must not be stacked above the height of the rear seats unless the vehicle is designed with, or fitted with suitable luggage restraints or covers to prevent luggage from entering the passenger compartment. Alternatively, a guard rail must be fitted.

Tyres

- The depth of tyre tread must not be less than a minimum of 1.66mm.

- All tyres at normal pressure under load must have a suitable minimum circumference for correct operation of the taximeter.
- Tyre fitments should comply, in all respects, with the requirements of any Act or Regulation pertaining to Motor Vehicle Regulations on Tyre Safety in force at the time of licensing and during the currency of the licence.
- Road wheels should be free from any distortion and undue fatigue. All wheel nuts/studs must be of the correct type and correctly tightened.
- All wheel trims must be present and in good condition
- Any spare wheel fitted or otherwise in the vehicle is subject to the tyre specifications set out above.
- The use of a space-saver tyre, run flat tyres (when punctured) or puncture repair kit for all vehicles that are manufactured and delivered with such tyres or kits, shall only be permitted in the case of an emergency.
- In the event of a space-saver tyre, run flat tyres (when punctured) or puncture repair kit being used, it shall only be to complete a fare and must comply precisely with the manufacturers' recommendations. Any such tyre must be replaced in accordance with manufacture requirements before taking another fare, to ensure passenger safety.
- In cases where a wheelchair accessible vehicle conversion or a LPG conversion where the tank occupies the usual site of the spare wheel, the vehicle will be exempt from the requirement to carry a spare wheel matching those fitted to the vehicle. This would be subject to the vehicle meeting the luggage criteria and being approved by the specialist converters. In these instances an alternative space saver tyre or puncture repair kit must be carried on the vehicle for emergencies.
- All other licensed vehicles must carry a spare wheel matching those fitted to the vehicle and an appropriate means of changing the wheel.

Vehicle Suspension

- Suspension components, including shock absorbers, springs and torsional bars and linkages, and their associated mounting points should be in sound condition and operating efficiently so as to ensure there is no excessive roll or pitch. There should be no signs of undue wear/fatigue and they should be reasonably free from rust/corrosion.

Fuel Tank

- The filling point for the fuel tank must be accessible only from the outside if the vehicle and filler caps must be so designed and constructed that they can not be dislodged by accidental operation.

Fittings

- No fittings other than those approved by the Licensing Authority shall be attached to or carried upon the inside or outside of the vehicle.

Fire Extinguisher/First Aid kit/Drivers Handbook

- A fire extinguisher, First Aid Kit and the Drivers Handbook must be carried within the licensed vehicle at all times.
- The fire extinguisher appliance must be either:
 - ABC General Purpose Powder
 - AFFF Foamand conform to BSEN 3, showing the appropriate kite mark.
- First aid kit must be comply with the British Standard for vehicle first aid kits BSI kits must be BS8599-1 standard

Licence Plate

- The authorised licence plate issued by the Licensing Authority must be affixed to the vehicle as follows:
 - The licence plate must be permanently fixed to the rear of the vehicle in a conspicuous upright position.
 - The licence plate must not be fixed to/or displayed in the rear window.
 - The small identification card must be securely fixed to the inside of the vehicle in a conspicuous position.
- No vehicle may be used or permitted to be used with any such licence plate concealed from view or so defaced that any word, letter, figure or material particular is illegible or missing.
- The Licensing Authority must be informed immediately should the licence plate showing the number of the licensed vehicle be broken, lost or defaced. On no account must the licensed vehicle carry any passengers without this licence plate.

Dual Plating

- No vehicle will be granted a licence if it is licensed in another district due to the problems of meeting the variance in conditions applied in different districts and the enforcement of those conditions in cases of non-compliance (i.e. signs, meters, suspensions or revocation).

Roof signs [applicable to Hackney Carriage Vehicles only]

- The vehicle must be fitted with a roof sign of a type approved by the Licensing Authority, with the word "Taxi" predominant on the front of the sign and the word "Taxi" or the proprietors trading name, or telephone number, to the rear. The roof sign shall be properly manufactured and comply with relevant legislation.

- The taxi roof sign must be mounted above the vehicle roof and be adequately secured.
- The roof sign must be capable of being illuminated during the hours of darkness.
- The roof sign must at all times comply with any requirements of vehicle lighting regulations when illuminated.
- Fx4 type vehicles are permitted built-in roof signs only.
- The roof sign may be removed while the vehicle is being used in connection with a funeral or a wedding.

Advertising (door signs etc)

- Please see advertising standards (Appendix F)

Operators Licence [applicable to Private Hire Vehicles only]

- The vehicle used must be covered by an Operator's licence issued by the Licensing Authority.

Alteration of Vehicle

- No material alteration or change in the specification, design, condition or appearance of the vehicle shall be made without the approval of the Licensing Authority at any time while the vehicle licence is in force.
- Equipment must not be removed from the vehicle which is wheelchair accessible which would render the vehicle incapable of carrying wheelchair-bound passengers.

Towing of Trailers

- No licensed vehicle may tow any trailer whilst being used as a licensed vehicle.

Maintenance of Vehicle

- The vehicle, including the engine area, and all fittings and equipment shall at all times when the vehicle is in use or available for hire be kept in an efficient, safe, tidy and clean condition, and all relevant statutory requirements (including, in particular, those contained in the Road Vehicles (Construction and Use) Regulations in force will be complied with.

Inspection

- The vehicle may be called in for inspection at anytime by the Authorised Officer to ensure compliance, failure to attend and show any documentation as requested may lead to suspension or revocation of licence under Section 68 of the Local Government (Miscellaneous Provisions) Act 1976 .

Vehicle Checks

- Any vehicle that is suspected of any infringement of legislation, byelaws or conditions may be stopped by an Authorised Officer at any time to ensure its fitness to be used as a licensed vehicle.

Ranks [applicable to Hackney Carriage Vehicles only]

- The number of Hackney Carriage vehicles stationed at any rank must not exceed the number for which the rank is appointed at any time. If a rank is full at the time of the vehicles' arrival at a rank then the driver must proceed to the next available rank.

Private Hire Ranks

- Any Private Hire vehicle, singularly or with others, which give the appearance that it is available for immediate hiring, commits an offence. No more than two vehicles may congregate in any one location giving the appearance that they are a rank and may be plying for hire. As part of the Operators licence issued for the vehicle, when un-engaged must be parked legally and not within 500 meters from an appointed Hackney Carriage rank.

Complaints

- Any vehicle against which complaint is laid must be presented to the authorised officer within one working day of being so requested for inspection, testing and for the driver to answer such complaint.

Unlicensed Drivers

- Your attention is drawn to section 46 of each of the 1847 and 1976 Acts which require ALL drivers of hackney carriage and private hire vehicles to hold the appropriate drivers licence as issued by the Licensing Authority and it is an offence which affects the insurance to allow any unlicensed person to drive any licensed vehicle.

APPENDIX E

Limousine Licensing Policy

The Licensing Authority accepts that vehicles of this type, where appropriate, have a legitimate role to play in the private hire trade, meeting a public demand.

Any application made will be judged on its own merits. However, stretched limousines which have more than 8 passenger seats will not be licensed as a Private Hire Vehicle as do not fall within the remit of the licensing regime.

Where a vehicle is licensed as a Private Hire Vehicle, the operator and any person who drives the vehicle for hire must also hold the appropriate licence issued by the Licensing Authority.

Vehicles constructed or adapted to seat fewer than nine passengers, including stretched limousines, are exempt from Private Hire Vehicle licensing requirements while being used in connection with a funeral or a wedding, or where used wholly or mainly for the purpose of funerals or weddings.

DEFINITION OF A LIMOUSINE

For the purposes of this policy and licence conditions, a stretch limousine is defined as follows:

A stretch limousine is a motor vehicle that has been lengthened by the insertion of an additional body section and modified by a coachbuilder to contain luxury facilities and fixtures

- that is capable of carrying up to but not exceeding 8 passengers;
- that prior to the introduction of this policy could not currently be licensed by the Council as a Private Hire Vehicle;
- that is not a decommissioned military or emergency service vehicle

	ISSUE	LICENCE CONDITION
1	Left Hand Drive Vehicles	Permit Left Hand Drive limousines to be considered for PHV licensing.
2	Sideways Seating	Permit limousines with sideways facing seating to be considered for PHV licensing.
3	Signage	The signage on limousines will need to meet the Authority's main advertising requirements.
4	Tinted Glass	Permit limousines with heavily tinted glass in the rear offside/nearside windows to be considered for licensing. However, heavily tinted glass in the driver cockpit would remain prohibited in line with legal requirements.
5	Fare Table/ Taximeter	Limousines are not required to display a fare table or contain a taximeter.
6	Roadworthiness	The stretched limousine must hold a valid Single Vehicle Approval (SVA) Certificate.

	ISSUE	LICENCE CONDITION
7	Vehicle Age	Stretched limousines to be licensed in accordance with the Licensing Authority's current PHV standards policy.
8	Insurance	An appropriate insurance policy must be in place which covers use of the vehicle for hire and reward.
9	Tyres	The limousine must be fitted with tyres that meet both the size and weight specification.
10	Maximum Passengers	<p>The limousine's seating capacity must be reduced where necessary to a maximum of 8 passengers.</p> <p>Any seats in the driver's compartment other than the driver's seat shall not be used to carry passengers</p> <p>The vehicle must not carry more than 8 passengers at any time. (A babe in arms is classed as a passenger no matter what their age).</p> <p>In any advertisement publicising their limousine service, the operator must state that the vehicle is only licensed to carry 8 passengers.</p>
11	Seatbelts	Seatbelts must be fitted to all forward and rear facing seats and must be worn at all times by passengers whilst the vehicle is in motion. There is no legal requirement for seatbelts on sideways facing seats.
12	Fire Extinguisher	The vehicle must contain a fully functional portable multi-purpose powder type fire extinguisher which bears a kite mark and a last service sticker. The extinguisher must be securely fitted, accessible and ready for use at all times.
13	Alcohol	<p>Alcoholic drinks provided in the vehicle shall be under the terms of an appropriate licence relating to the sale and supply of alcohol</p> <p>Alcohol shall only be served while the vehicle is stationary and afterwards, the bottle shall be placed in a secure receptacle.</p> <p>If the occupants are below the age of 18, there should be no alcohol in the vehicle for consumption or otherwise.</p> <p>Any glassware in the vehicle must be made of either shatterproof glass or plastic.</p>
14	Entertainment	<p>The driver shall not play or permit the performance of any media that, given its age classification or content, is unsuitable for the age of the passengers in the vehicle.</p> <p>The limousine operator shall ensure that a performing rights licence is held where appropriate.</p> <p>If the limousine parks to provide some form of entertainment to its passengers, an entertainment licence must be in place in accordance with the Licensing Act 2003.</p>
15	Council Notices	The proprietor shall when directed by the Council, display and maintain any notices in a conspicuous position.
16	Advertisements	No other signs, notices or any other markings will be displayed on or in the vehicle without the written permission of the Council.

DRIVER AND OPERATOR LICENSING REQUIREMENTS

- In addition to the limousine being licensed as a private hire vehicle, the limousine operator is required to hold a private hire operators' licence with the Licensing Authority.
- All bookings for a limousine licensed as a private hire vehicle must be booked through the licensed private hire operator.
- Once licensed as a private hire vehicle, the limousine can only be driven by a Torbay Council licensed driver.

VEHICLE TESTING STATIONS

Stretch limousines will normally be required to provide 6 monthly (i.e. 2 per annum) MOT certificates from a VOSA goods vehicle testing station, or alternatively a local authority VOSA approved class 5 testing station, that has appropriate facilities.

If you propose to obtain an MOT from any other vehicle testing station other than those listed above you are advised to contact the licensing section before submitting the vehicle for an MOT, otherwise you may find that the certificate cannot be accepted.

APPENDIX F

Advertising Standards

Permitted Sites for Advertisements

Hackney Carriage Vehicles:

All Hackney Carriage vehicles licensed by Torbay Council must display within the vehicle the current tariff and should not be concealed from passengers at any time.

Advertisements may be permitted on the rear/offside doors of the vehicle so long as they do not have the potential under any circumstances to distract other road users. Advertising signs must be no larger than 24 inches (61cm) long and 12 inches (30.5cm) wide.

An advertisement of one subject matter from one advertiser per vehicle may be permitted on the rear doors.

Vehicles may display the operator's company name, company logo, telephone number and/or web site address on the front doors by way of adhesive stickers or by magnetic signs, if the specific criteria for doing so are met (as per page 54 of this Policy). The size for these types of signs must be no larger than 24 inches (61cm) long and 12 inches (30.5cm) wide.

A company telephone number may also be advertised on the upper nearside of the front windscreen – the size and style to be agreed by the Licensing Authority.

Proprietors are recommended not to order any signs until a formal application has been made to the Licensing Authority and permission in writing has been issued. Such permission will relate only to the vehicle applied for and not any subsequently licensed vehicle.

Private Hire Vehicles:

Advertisements are not permitted on the exterior of the vehicle.

Private Hire vehicles must display two identical signs on the outside of the front doors. So as not to cause confusion with Hackney Carriages, such door signs shall be limited to the words: "Private Hire Vehicle", "Advanced Bookings Only".

These signs can be either adhesive or magnetic signs. The size of these signs must be no larger than 22 inches (55.9cm) long and 9 inches (22.9cm) wide.

The sign must carry the words "Private Hire Vehicle" and "Advanced Bookings Only", it must also carry a landline telephone number where a prospective passenger can make the journey booking.

A company telephone number may also be advertised on the upper nearside of the front windscreen – the size and style to be agreed by the Licensing Authority.

The words “Taxi” or “Cab” must not appear anywhere on the vehicle.

No other word e.g. “Kab” or a variation thereof is to be used to lead or cause the general public to reasonably believe the vehicle is a Hackney Carriage and would be available for hire.

Sites Where Advertisements are not Permitted

Both Hackney Carriage and Private Hire vehicles:

No signage or advertising is permitted on any part of glazing on the vehicle, unless the sign is informing passengers not to smoke, eat or drink or to indicate that credit/debit card payments may be made at a size agreed by the Licensing Authority.

No signage permitted on the glazing must hinder, obscure or restrict the vision of the driver or passenger.

No signage or advertising is permitted internally within the vehicle.

No signage or advertising is permitted on any body part of the vehicle other than those specified above in permitted sites of advertising.

No signage must hinder or obscure or otherwise prevent the vehicle registration number, vehicle lights or Licensing Authority licence plate from being seen.

Other signage:

The Licensing Authority will allow the following types of other signage within the licensed vehicle

- Any sign indicating membership of a national motoring organisation or local taxi association.
- Any sign provided by Torbay Council or Devon County Council to show that the vehicle is used for school contracts shall be displayed in the front windscreen in such a manner so as to not obstruct the drivers vision, and may only be displayed when actually employed in the performance of such contract work with pupils being carried
- Signage to show that Card Payments are taken

Roof Signs

Hackney Carriages – all vehicles must be fitted with a roof sign of a type approved by the Licensing Authority with the word “Taxi” predominant on the front of the sign and the word “Taxi” or the proprietors trading name, or telephone number, to the rear. The roof sign shall be properly manufactured and comply with relevant legislation.

The taxi roof sign must be mounted above the vehicle roof and be adequately secured.

Fx4 type vehicles are permitted built-in roof signs only.

Private Hires – No vehicle is permitted to fit a roof sign

All vehicles must display the universal no-smoking sign in each compartment of the interior. Fixed Penalty Notices may be issued for non-compliance under The Smoke-free (Signs) Regulations 2007.

APPENDIX G

Schedule of Taxi Rank Provision

Taxi Ranks Located Within Torbay Council Area: allocated under Section 63 of the Local Government (Miscellaneous Provisions) Act 1976.

LOCATION	VEHICLE ALLOCATION
Torquay	
Lymington Road (Town Hall Car Park)	Up to 3 vehicles
Lymington Road (Assembly Rooms)	Up to 1 vehicle
Lymington Road (Coach Station)	Up to 6 vehicles
Castle Circus	Up to 3 vehicles
Union Street	Up to 10 vehicles
GPO Roundabout	Up to 3 vehicles
Chestnut Avenue	Up to 3 vehicles
Victoria Parade	Up to 7 vehicles
Victoria Parade (18:00 – 06:00)	Up to 4 vehicles
The Strand	Up to 3 vehicles
The Strand Bus Bays – Seaward Side (00:00 to 06:00)	Up to 10 vehicles
Cary Parade	Up to 8 vehicles
Torbay Road - Princess Theatre (18:00 – 08:00)	Up to 3 vehicles
Torwood Street (18:00 – 08:00)	Up to 4 vehicles

Paignton	
Palace Avenue	Up to 2 vehicles
Torbay Road (18:00 – 08:00)	Up to 3 vehicles

Brixham	
Bank Lane	Up to 7 vehicles

For Horse-Drawn Hackney Carriages

LOCATION	VEHICLE ALLOCATION
Torquay	
Vicarage Hill, Cockington	Up to 2 carriages
Cockington Lane	Up to 4 carriages

APPENDIX H

Fares Increase Procedure

- 1.1 The application will be placed before the next available meeting of the Licensing Committee/Sub-Committee of the Council for their consideration, and
- 1.2 The Committee will refuse, approve or amend any part of the application
- 1.3 No increase in fares can come into operation until the proposals have been advertised as required and objections have been considered
- 1.4 Any fare increase approved must be set into the taximeter within one week of the date on which such increase comes into force
- 1.5 No proprietor may charge any fare increase until the due date and the taximeter has been re-calibrated to the new fares
- 1.6 All taximeters must be checked and sealed by the Licensing Authority's authorised officer prior to being used for hire and reward in any vehicle

APPENDIX I

Dress code of Licensed Drivers

The Licensing Authority is committed to encouraging the professional image of the trade and it considers that drivers should conform to a minimum standard of dress, as set out below, in order to:

- Raise and maintain the profile of the licensed trade
- Promote confidence amongst members of public to ensure passengers feel comfortable when using licensed vehicles
- Promote public safety by ensuring the safe operation of licensed vehicles at all times and that licensing drivers are readily identifiable

Acceptable Standards of Dress:

- The driver shall be clean and tidy in appearance
- Shirts, blouses, T-shirts, or sweat tops should cover the shoulders and be of sufficient length to enable them to be tucked into trousers or shorts
- Shirts or blouses can be worn with a tie or open-necked
- Trousers may be either full length or shorts if tailored
- Smart jeans type trousers are permitted
- Footwear should fit around the heel of feet
- Tailored hats which are used as part of a chauffeur service

Unacceptable standards of dress within this Code:

- Bare chests
- Unsuitable/Unclean or damaged clothing or footwear
- Clothing with offensive words, logos or graphics
- Swimming costumes
- Sleeveless vests or singlets
- Clothing with studs or sharp edges
- Any footwear that may compromise control of a vehicle, e.g. Flip Flops or open toe sandals

- Headwear (e.g. hats, scarves, hoodies, baseball caps) whilst within the vehicle, unless worn as part of a religious belief.
- Hooded garments ('hoodies')

APPENDIX J

Horse Drawn Carriages

The Licensing Authority licences horse drawn hackney carriages and drivers, as in accordance with the Town Police Clauses Act 1847 and Local Government (Miscellaneous Provisions) Act 1976.

The following shall apply to horse drawn hackney carriage licences issued by the Licensing Authority.

1. Drivers

- 1.1 All drivers wishing to operate a horse drawn hackney carriage must obtain a licensed drivers badge from the Licensing Authority before commencing service.
- 1.2 The procedure for obtaining such a licence can be found on page 11 of this Policy. Sections 5 to 13 of the Policy apply to all licensed drivers.
- 1.3 As part of the application process, the applicant will need to obtain a valid certificate of driving competency issued by or on behalf of the British Driving Society.
- 1.4 Drivers wishing to operate a horse drawn hackney carriage only and NOT a motorised hackney carriage vehicle do not have to undertake a local knowledge test as part of the application process. Those drivers wishing to operate both horse drawn and motorised hackney carriage vehicles are required to undertake the local knowledge test as part of the application process. The local knowledge test is, as specified by the Local Authority

2. Carriages

Requirements of carriages

- 2.1 The carriage must be drawn by only one horse
- 2.2 The carriage must have 4 wheels
- 2.3 The carriage must have a separate compartment for the passengers to be carried in
- 2.4 The carriage must be capable of carrying a minimum of 4 passengers and a maximum of 6 passengers
- 2.5 The carriage must have sufficient access steps, designed to ensure safe access of passengers into and from the carriage
- 2.6 The carriage must have an independent, efficient and effective braking system
- 2.7 Any horse which pulls a hackney carriage must be fitted with an effective harnesses and tack to ensure that the driver able to control the horse at all times and steer the carriage as required
- 2.8 The hackney carriage and all its fittings and equipment, will at all times while in use or available for hire, be kept in an efficient, safe, tidy and clean condition.

2.9 An Authorised Officer of the Licensing Authority or Police Officer shall, at all times when the hackney carriage is not hired, be permitted to inspect the carriage, harnesses and fittings so as to ascertain the fitness of the carriage for continued use for hire and reward.

3. **Insurance Requirements**

3.1 The hackney carriage must, at all times whilst licensed, have adequate Public Hire Insurance cover, appropriate to the use of the carriage on the public highway. A certificate and/or policy covering "third party" risks must be produced to the Licensing Authority prior to a vehicle being licensed as a horse drawn hackney carriage.

4. **Grant and Renewal of Carriage Licenses**

4.1 The Licensing Authority will, providing that all the Licensing Authority's requirements are met; issue a 12-month licence which will run from 1st May to 30th April.

5. **Identification plates**

5.1 The Licensing Authority will provide a licence plate, identifying the carriage as a licensed horse drawn hackney carriage. Any such plate will have a licence number on it and must be displayed at the rear of the carriage and must be visible at all times.

6. **Signage & Advertising**

6.1 The Licensing Authority will permit, on the same terms as those currently in force for motorised hackney carriages, advertising on horse drawn hackney carriages. However any such advertisements must be approved by the Licensing Authority in advance of the carriage undergoing any such modification.

6.2 The conditions for advertising are set out in **Appendix F** of this Policy

7. **Welfare of Horses**

7.1 No horse shall be used in connection with a licensed horse drawn carriage, unless a veterinary surgeon has examined the horse within the preceding twelve months and issued a certificate of fitness in respect of that horse.

7.2 The horse must be sound and free from lameness, be at least six years of age and must not be used whilst under any veterinary treatment, unless written permission is expressly given by the surgeon. If any horse proposed for use is not six years of age, then a specific certification must be obtained at the applicants' expense, from the British Driving Society as to that horse's suitability for use.

7.3 The person responsible for providing the hackney carriage for hire shall examine the horse and carriage carefully at the start of each day, to ensure that the health of the animal and a good condition of the carriage and harness are maintained at all times.

7.4 The licensed driver must have due regard to extreme or adverse weather conditions, including hot sunshine, and must at all times consider the horse's welfare.

7.5 The horse must be regularly and competently shod.

7.6 If in the opinion of an Authorised Officer of the Licensing Authority or a Police Officer, the horse appears unfit for work, then the use of that horse shall cease immediately until such time as a veterinary surgeon specialising in large animal practice has certified that the horse is fit. The fees for such an examination are the responsibility of the carriage proprietor.

8. **Fares**

- 8.1 The current tariff in respect of horse drawn hackney carriages must be displayed in a prominent position so that a prospective passenger can see the tariff prior to boarding the carriage.
- 8.2 On receipt of a request for consideration of an increase in fares from a horse drawn carriage operator, the Licensing Authority will follow the procedure set out in **Appendix H** of this Policy.
- 8.3 The setting of horse drawn hackney carriage fares is the function of the Councils Licensing Committee.
- 8.4 A fares tariff is enforceable as a Byelaw and it is an offence for any person to charge more than the set fare.

9. **Change of carriage by an existing proprietor**

- 9.1 An existing proprietor must notify the Licensing Authority of any change of horse or carriage, from those registered with the Licensing Authority, before such change occurs.

10. **Removal of Faeces**

- 10.1 The proprietor shall ensure that the design of the carriage is such that, as far as is practicable, no faeces will be deposited on the highway/road. Any device used, must not cause distress or discomfort to the horse. Any faeces that are deposited on the highway/road are to be removed as soon as is practicable to do so.

11. **Change of Address**

- 11.1 The licensed driver or carriage proprietor shall immediately notify the Licensing Authority of any change of address during the period of licence prior to such change taking place, and in any case within 5 working days of such change.

12. **Convictions**

- 12.1 The proprietor must notify the Licensing Authority, in writing, immediately and within 7 days of receipt of any conviction.

13. **Permitted routes for use**

- 13.1 Torbay Council horse drawn hackney carriages are permitted to operate around Cockington Village, around the area of Cockington Court and to Torquay seafront (not entering the seafront) only. Permission to operate in the grounds of Cockington must be sought from the land owner.