

To: Members of the Licensing
Committee

Date: 3 March 2016

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Dear Councillor

You are invited to attend a meeting of the **LICENSING COMMITTEE** to be held at **9.30 am** on **WEDNESDAY, 9 MARCH 2016** in the **COUNCIL CHAMBER, RUSSELL HOUSE, RHYL**.

Yours sincerely

G Williams
Head of Legal and Democratic Services

AGENDA

PART 1 - THE PRESS AND PUBLIC ARE INVITED TO ATTEND THIS PART OF THE MEETING

1 APOLOGIES

2 DECLARATION OF INTERESTS (Pages 7 - 8)

Members to declare any personal or prejudicial interests in any business identified to be considered at this meeting.

3 URGENT MATTERS AS AGREED BY THE CHAIR

Notice of items which, in the opinion of the Chair, should be considered at the meeting as a matter of urgency pursuant to Section 100B(4) of the Local Government Act, 1972.

4 MINUTES OF THE LAST MEETING (Pages 9 - 14)

To receive the minutes of the Licensing Committee held on 2 December 2015 (copy enclosed).

5 PROPOSED SCRAP METAL DEALERS POLICY (Pages 15 - 38)

To consider a report by the Head of Planning and Public Protection (copy enclosed) presenting the Scrap Metal Dealers Act 2013 – Statement of Licensing Policy for consideration and approval for consultation.

6 CONSIDERATION OF TRAINING FOR LICENSED DRIVERS (Pages 39 - 40)

To consider a report by the Head of Planning and Public Protection (copy enclosed) regarding the introduction of mandatory safeguarding awareness training for licensed drivers and operators.

7 REVIEW OF CURRENT PENALTY POINTS POLICY AND PROCEDURE (Pages 41 - 50)

To consider a report by the Head of Planning and Public Protection (copy enclosed) presenting an amended Penalty Points Policy and Procedure for approval.

8 LICENSING COMMITTEE FORWARD WORK PROGRAMME (Pages 51 - 52)

To consider a report by the Head of Planning and Public Protection (copy enclosed) presenting the committee's forward work programme for approval.

PART 2 - CONFIDENTIAL ITEMS

It is recommended in accordance with Section 100A(4) of the Local Government Act 1972, that the Press and Public be excluded from the meeting during consideration of the following item(s) of business because it is likely that exempt information as defined in paragraphs 12 and 13 of Part 4 of Schedule 12A of the Act would be disclosed.

9 DISPENSATION FROM REQUIREMENT TO DISPLAY PRIVATE HIRE VEHICLE LICENCE PLATES (Pages 53 - 68)

To consider a confidential report by the Head of Planning and Public Protection (copy enclosed) seeking members' determination of a request for dispensation from the requirement to display licence plates on a private hire vehicle.

10 REVIEW OF A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - DRIVER NO. 15/1123/TXJDR (Pages 69 - 88)

To consider a confidential report by the Head of Planning and Public Protection (copy enclosed) seeking members' review of a licence to drive hackney carriage and private hire vehicles in respect of Driver No. 15/1123/TXJDR.

11 REVIEW OF A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - DRIVER NO. 15/0427/TXJDR (Pages 89 - 122)

To consider a confidential report by the Head of Planning and Public Protection (copy enclosed) seeking members' review of a licence to drive hackney carriage and private hire vehicles in respect of Driver No. 15/0427/TXJDR.

MEMBERSHIP

Councillors

Cefyn Williams (Chair)

Barry Mellor (Vice-Chair)

Joan Butterfield

Win Mullen-James

Bill Cowie

Pete Prendergast

Richard Davies

Arwel Roberts

Stuart Davies

Huw Williams

Hugh Irving

COPIES TO:

All Councillors for information

Press and Libraries

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LICENSING COMMITTEE PROCEDURE FOR THE DETERMINATION OF HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE DRIVER LICENCE APPLICATIONS AND REVIEWS OF EXISTING LICENSED DRIVERS

STEP	DESCRIPTION
1.	The Chair to welcome and introduce the applicant/licence holder to all parties present.
2.	Solicitor to ask the applicant/licence holder to confirm that he/she has received the report and the Committee procedures. If applicant confirms same, move onto step 4.
3.	If it should occur that the applicant/licence holder states that the report has not been received, then such matter will be addressed at this stage. Members may wish to consider adjourning the matter, for a short period, in order for the applicant/licence holder to read the report.
4.	Head of Planning and Public Protection (or representative) briefly introduces the application/review
5.	The applicant/licence holder is requested to present his/her case The applicant/licence holder can call any witnesses he/she chooses in support of the application, for which advance notice should have been given to the Licensing Officers.
6.	Committee Members can question the applicant/licence holder and or his witnesses
7.	Technical officers are invited to present any findings (Licensing/Community Enforcement, First Contact Team (Social Services), School Transport.)
8.	The Committee Members followed by the applicant/licence holder can ask questions of the technical officers
9.	The applicant/licence holder will be invited to make a final statement, if they so wish
10.	The following will be requested to leave the meeting whilst the application/review is discussed by Members – the applicant/licence holder, all third parties, Head of Planning and Public Protection, technical officers NB The only people remaining should be – Committee Members, translator, committee’s legal adviser and the minute taker

11.	The committee members will consider the application/review taking into account the evidence heard
12	Should Committee Members prove it necessary to recommence the asking of questions and recall any party to provide further information or clarification, all persons who have withdrawn from the meeting will be invited to return. After the question(s) have been determined all third parties will be asked to withdraw again for Members to consider all evidence.
13.	When the Members have reached their decision, all parties will be recalled and the applicant/licence holder will be informed of the Members decision by the Chairman.
14.	The Chair will inform the applicant/licence holder of the decision reached. This will include any specific conditions or penalties which may have been imposed. If necessary the Council's Solicitor to provide further clarification of the decision and its implications to the applicant/licence holder.
15.	If the decision is to refuse or there is a decision to suspend or revoke, the Council's Solicitor to inform the applicant/licence holder of the right of appeal to the Magistrates' Court (the decision letter will also include these details).
16.	For an existing licensed driver (issued by Denbighshire), and the decision involves a resolution by the Committee to suspend or revoke the existing licence, Members may do so under either: <ul style="list-style-type: none"> 1. Section 61 (2A) of the Local Government (Miscellaneous Provisions) Act 1976. 2. Section 61 (2B) of the Local Government (Miscellaneous Provisions) Act 1976. This decision will have IMMEDIATE EFFECT and can only be used when the grounds for suspension/revocation are a public safety matter. <p>The Solicitor will explain to the licence holder the implications of the decision.</p>
17.	The applicant/licence holder will be informed of the decision in writing as soon as practicable.
18.	The applicant/licence holder will be invited to discuss any matter they are unsure of with Licensing Officers after the Committee

LOCAL GOVERNMENT ACT 2000

Code of Conduct for Members

DISCLOSURE AND REGISTRATION OF INTERESTS

I, *(name)*

a *member/co-opted member of
*(*please delete as appropriate)*

Denbighshire County Council

CONFIRM that I have declared a ***personal / personal and prejudicial** interest not previously declared in accordance with the provisions of Part III of the Council's Code of Conduct for Members, in respect of the following:-
*(*please delete as appropriate)*

Date of Disclosure:

Committee *(please specify)*:

Agenda Item No.

Subject Matter:

Nature of Interest:

*(See the note below)**

Signed

Date

*Note: Please provide sufficient detail e.g. 'I am the owner of land adjacent to the application for planning permission made by Mr Jones', or 'My husband / wife is an employee of the company which has made an application for financial assistance'.

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LICENSING COMMITTEE

Minutes of a meeting of the Licensing Committee held in the Council Chamber, County Hall, Ruthin on Wednesday, 2 December 2015 at 9.30 am.

PRESENT

Councillors Bill Cowie, Richard Davies, Hugh Irving, Barry Mellor (Vice-Chair), Win Mullen-James, Pete Prendergast, Arwel Roberts, Cefyn Williams (Chair) and Huw Williams

ALSO PRESENT

Head of Planning and Public Protection (GB), Principal Solicitor (AL), Licensing Officers (NJ & JT), Senior Community Safety Enforcement Officer (TWE) and Committee Administrator (KEJ)

POINT OF NOTICE

The Chair agreed to vary the order of the agenda to accommodate individuals attending for particular items.

1 APOLOGIES

Councillors Joan Butterfield and Stuart Davies

2 DECLARATION OF INTERESTS

No declarations of personal or prejudicial interest had been raised.

3 URGENT MATTERS AS AGREED BY THE CHAIR

No urgent matters had been raised.

4 MINUTES OF THE LAST MEETING

The minutes of the Licensing Committee held on 23 September 2015 were submitted.

***RESOLVED** that the minutes of the meeting held on 23 September 2015 be received and confirmed as a correct record.*

EXCLUSION OF PRESS AND PUBLIC

***RESOLVED** that under Section 100A of the Local Government Act 1972, the Press and Public be excluded from the meeting for the following item of business on the grounds that it would involve the likely disclosure of exempt information as defined in Paragraphs 12 and 13 of Part 4 of Schedule 12A of the Act.*

5 APPLICATION FOR A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - APPLICANT NO. 15/1074/TXJDR

A confidential report by the Head of Planning and Public Protection (previously circulated) was submitted upon –

- (i) an application having been received from Applicant No. 15/1074/TXJDR for a licence to drive hackney carriage and private hire vehicles;
- (ii) officers having not been in a position to grant the application in light of the convictions revealed following an enhanced disclosure to the Disclosure and Barring Service (DBS) relating to offences committed between 1998 and 2014 which had not been disclosed by the Applicant;
- (iii) details obtained as a result of a routine check of the Applicant's DVLA licence which had been disclosed by the Applicant;
- (iv) the Council's current policy with regard to the relevance of convictions, and
- (v) the Applicant having been invited to attend the meeting in support of his application and to answer members' questions thereon.

The Applicant confirmed he had received the report and committee procedures. The Licensing Officer (JT) introduced the report and detailed the facts of the case.

The Applicant explained the circumstances surrounding the earlier offences which had been committed in his youth and referred to his changed character and current parental responsibilities. He also explained the circumstances regarding his recent police caution and link to his current occupation. The Applicant submitted various forms of documentation in support of his application, including a letter from North Wales Police which he had produced to demonstrate good character. In response to questions the Applicant advised that because the offences had been committed so long ago he did not think they needed to be disclosed. Officers confirmed that 'taxi driver' was an exempt profession under the Rehabilitation of Offenders Act and therefore applicants were required to disclose spent convictions. In making his final statement the Applicant expressed remorse over his past and gave assurances regarding his current and future conduct.

The committee retired to consider the application but adjourned pending verification of the letter submitted by the Applicant from North Wales Police. Upon resuming the proceedings the committee was advised that the letter was genuine and it was –

RESOLVED that the application for a hackney carriage and private hire vehicle driver's licence from Applicant No. 15/1074/TXJDR be granted.

The reasons for the Licensing Committee's decision were as follows –

Members were satisfied with the explanation provided by the Applicant with regard to his past convictions and considered the additional information presented demonstrated that he was a fit and proper person to hold a licence.

6 REVIEW OF A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - DRIVER NO. 15/1142/TXJDR

A confidential report by the Head of Planning and Public Protection (previously circulated) was submitted upon –

- (i) the suitability of Driver No. 15/1142/TXJDR to hold a licence to drive hackney carriage and private hire vehicles following accrual of 9 penalty points on this DVLA driving licence within a four month period for speeding;
- (ii) the Driver having disclosed 6 of the penalty points upon renewal of his licence but failed to disclose the most recent speeding conviction, and
- (iii) the Driver having been invited to attend the meeting in support of his licence review and to answer members' questions thereon.

The Driver confirmed he had received the report and committee procedures. The Licensing Officer (JT) introduced the report and detailed the facts of the case.

The Driver presented his case and explained the circumstances surrounding each of the three speeding offences and his personal circumstances and living arrangements during that time. In mitigation he advised that his speedometer had been defective and subsequently replaced and whilst he would have disputed one of the speeding offences he had been out of time to appeal. In response to questions regarding his version of events he elaborated further on the circumstances surrounding each offence confirming that he was not carrying fare paying passengers at the time; he had not been offered a speeding course in lieu of penalty points, and had not had the opportunity to disclose the most recent speeding conviction due to personal circumstances. With regard to his speedometer the Driver admitted that he had not thought to provide evidence of the fault before the committee. In making a final statement the Driver referred to his desire to continue to drive licensed vehicles.

The committee adjourned to consider the case and it was –

RESOLVED that the renewal application for a hackney carriage and private hire vehicle driver's licence from Driver No. 15/1142/TXJDR be granted with a formal warning issued as to future conduct.

The reasons for the Licensing Committee decisions were as follows –

Members carefully considered the evidence presented in this case together with the explanation provided by the Driver in mitigation. There were mixed views regarding the credibility of the Driver's version of events but overall it was accepted that no fare paying passengers were being carried at the time of the offences and that the speedometer could have been faulty. Consequently members considered the Driver to be a fit and proper person to hold a licence and felt that a serious warning as to future conduct would be sufficient in this case.

The committee's decision and reasons therefore were conveyed to the Driver.

At this juncture (10.40 a.m.) the meeting adjourned for a refreshment break.

7 REVIEW OF A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - DRIVER NO. 15/0833/TXJDR

A confidential report by the Head of Planning and Public Protection (previously circulated) was submitted upon –

- (i) the suitability of Driver No. 15/0833/TXJDR to hold a licence to drive hackney carriage and private hire vehicles following accrual of 20 penalty points under the Council's penalty point scheme for driving an unlicensed vehicle;
- (ii) details and circumstances relating to the offence having been provided (a summary of facts together with associated witness statements and documentation had been attached to the report), and
- (iii) the Driver having been invited to attend the meeting in support of his licence review and to answer members' questions thereon.

The Driver was in attendance at the meeting together with his representative and confirmed he had received the report and committee procedures. The Senior Community Safety Enforcement Officer (TWE) introduced the report and detailed the facts of the case. In cases where 20 or more penalty points had been accrued in a 24 month period the matter was referred to committee for review.

The Driver's representative explained it was usual practice for a renewal reminder to be sent to licence holders which had not happened in this case. The failure to renew was a genuine oversight on the Driver's part for which he apologised and had since taken steps to ensure the matter would not be repeated by investing in a wall planner to act as an aide-memoire.

Members questioned the Driver on the circumstances of the case and assurances were provided that the vehicle was kept in immaculate condition and regular checks did take place but the expiry date on the licence plate had been overlooked. A letter from the Driver's insurance company (circulated at the meeting) advised that there had been no break in cover and should a claim have arisen during the expiration period it would have been treated on its merits. With regard to the renewal reminders officers confirmed it was customary to send reminders but due to the manual system used at the time no confirmation could be given as to whether a reminder was sent in this case or where it would have been sent to.

In making a final statement the Driver's representative reiterated that the failure to renew the licence had been a genuine oversight and a mechanism was now in place to ensure it would not be repeated. He referred to the Driver's previous good conduct and investment he had made in the vehicle and its ongoing maintenance.

The committee adjourned to consider the case and it was –

RESOLVED that a formal warning be issued to Driver No. 15/0833/TXJDR as to his future conduct.

The reasons for the Licensing Committee's decision were as follows –

Members considered the report and case put forward by the Driver and his response to questions. It was impossible to determine whether or not the Driver had received the renewal reminder due to the process in place at the time and his subsequent change of address. However it was the Driver's responsibility to ensure that he had a valid licence in place at all times. The committee accepted that no deliberate attempt had been made to deceive and noted the steps taken by the Driver to mitigate any lapse in the future. Consequently members considered the Driver to be a fit and proper person to hold a licence and that a stern warning would be appropriate in this case. Further the Driver was reminded to undertake daily checks of his vehicle which would include checking the expiry date of his licence plate. Any further appearance before the committee would be viewed extremely seriously.

OPEN SESSION

Upon completion of the above business the meeting resumed in open session.

8 PROPOSED HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE POLICY

The Licensing Officer (NJ) submitted a report by the Head of Planning and Public Protection (previously circulated) seeking approval of the proposed Hackney Carriage and Private Hire Vehicle Policy for public consultation.

Officers reported upon the review process which included two workshop sessions with the taxi trade, elected members and Fleet Services followed by a presentation at the last Licensing Committee by Fleet Services. The review process had resulted in the draft policy which set out the policies, vehicle specification, conditions and procedures the Council wished to apply in exercising its vehicle licensing function. Members' attention was drawn to the main changes which had been highlighted in a separate appendix for clarity. Following public consultation any relevant representations received would be brought back to the committee.

RESOLVED that –

- (a) *the proposed Hackney Carriage and Private Hire Vehicle Policy as detailed in Appendix 1 to the report be approved for public consultation, and*
- (b) *following consultation a report on the final draft of the Hackney Carriage and Private Hire Vehicle Policy together with any relevant representations received be brought back to the committee for formal approval.*

9 LICENSING COMMITTEE FORWARD WORK PROGRAMME

A report by the Head of Planning and Public Protection was submitted (previously circulated) on the Licensing Committee's future work programme for 2016.

A report back following consultation on the draft Hackney Carriage and Private Hire Vehicle Policy as agreed earlier on the agenda would be included in the work programme for June.

RESOLVED that the Licensing Committee's work programme be approved.

The meeting concluded at 11.40 a.m.

REPORT TO:	Licensing Committee
DATE:	9 th March 2016
LEAD OFFICER:	Head of Planning and Public Protection
CONTACT OFFICER:	Senior Technical Officer (Licensing) licensing@denbighshire.gov.uk 01824 706451
SUBJECT:	Proposed Scrap Metal Dealers Policy

1. PURPOSE OF THE REPORT

- 1.2 To present, to Members the Scrap Metal Dealers Act 2013 – Statement of Licensing Policy for consideration.

2. EXECUTIVE SUMMARY

- 2.1 For Members to consider approving the Scrap Metal Dealers Policy to enable Officers to consult, with relevant parties, prior to presenting at Full Council for adoption.

3. BACKGROUND INFORMATION

- 3.1 The Council have previously approved the application process along with delegation of powers and fees for those requiring a licence under the Scrap Metal Dealers Act 2013.
- 3.2 It is now necessary to have a policy to guide consistent decisions throughout the County and to assist Officers to enforce the provisions of the Scrap Metal Dealers Act 2013.
- 3.3 The policy will also give guidance to new applicants, existing licence holders, and members of the public as to how the Council will administer and enforce the requirements of the Scrap Metal Dealers Act 2013.
- 3.4 The All Wales Licensing Technical Panel have been working on a Policy that can be implemented across Wales, which will provide Licence Holders (who can be licensed by a number of Local Authorities at any one time) with a consistent approach to procedure, compliance and enforcement. A copy of the All Wales Policy can be found at Appendix A.

4. **RECOMMENDATION**

- 4.1 To endorse the Scrap Metal Dealers Act 2013 – Statement of Licensing Policy (attached as Appendix A).
- 4.2 To approve a suitable period of consultation be undertaken to those licensed by Denbighshire under the remit of the Scrap Metal Dealers Act 2013, North Wales Police, British Transport Police, National Resource Wales and Industry Associations.
- 4.3 To authorise Officers that where any relevant responses received as a result of the consultation are considered and where relevant the policy is amended accordingly before presenting to Full Council.

Scrap Metal Dealers
Policy Document

December 2014

1.0 Introduction

- 1.1 The purpose of this policy is to provide guidance on the criteria taken into account by the Council when determining whether or not an applicant or an existing licence holder is suitable to hold a Scrap Metal Dealers Licence.
- 1.2 The aims of the policy are to ensure the following :
- a person licensed as a scrap metal dealer is a fit and proper person
 - the process Denbighshire County Council follow to licence a scrap metal dealer is transparent, fair and proportionate
 - the public including vulnerable persons are safeguarded from dishonest persons
- 1.3 The power of issue, review and enforcement of the licences are vested in Cabinet and duly authorised officers from the Planning and Public Protection Department.
- 1.4 This policy provides guidance to any person with an interest in the business of Scrap Metal Dealers and Motor Salvage Operators, in particular, but not exclusively:
- Applicants for Scrap Metal Dealers Licences
 - Existing licensed Scrap Metal Dealers/Motor Salvage Operators
 - * Licensing Officers
 - * Members of Cabinet (or other relevant decision making body)
 - Magistrates hearing appeals against local authority decisions
- 1.5 Where licensing officers have delegated powers they will utilise these guidelines when making a decision to grant, refuse, revoke or vary a licence. Whilst Officers and the Council's Cabinet will have regard to the guidelines contained in the policy, **each case will be considered on its individual merits and, where the circumstances demand, Cabinet/Officer may depart from the guidelines.**

2.0 Legislation and Policy Guidance

- 2.1 In assessing an application for a Site Licence or a Collector's Licence the Council will have regard to the following legislation and guidance:
- Scrap Metal Dealers Act 2013
 - Scrap Metal Dealers Act 2013 (Commencement and Transitional Provisions) Order 2013

- Scrap Metal Dealers Act (2013) (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013
- The Scrap Metal Dealers Act 2013 Determining suitability to hold a scrap metal dealer's licence –Home Office
- The Scrap Metal Dealers Act 2013 Supplementary Guidance – Home Office
- Local Government Association Guide to the Scrap Metal Dealers Act 2013

2.2 The Scrap Metal Dealers Act 2013 replaces the previous registration system under the Scrap Metal Dealers Act 1964 and the Motor Salvage Operators Regulations 2002 and establishes a new licensing regime. Every scrap metal dealer is required to have a licence and operating without one is a criminal offence. The definition of scrap metal dealers now also incorporates motor salvage operators.

2.3 A scrap metal dealer is defined under the Act as someone whose business consists wholly or partly in buying or selling scrap metal, whether or not the metal is sold in the form in which it was bought; or carries on a business as a motor salvage operator.

2.4 In order for anyone to carry on business as a scrap metal dealer they have to have a licence. Licences last for 3 years. There are two types of licences:

> **Site licence** – all sites where a licensee carries on a business as a scrap metal dealer have to be identified, and a site manager has to be named for each site. The licence allows the licensee to transport scrap metal to and from those sites from any local authority area.

> **Collectors licence** – this allows the licensee to operate as a collector in the area of the issuing licensing authority only. It does not allow the collector to operate in any other local authority, so a separate licence has to be obtained from each council area the collector wishes to operate in. The licence does not authorise the licensee to operate a site; to do so they will need a site licence from the relevant local authority.

2.5 A dealer can only hold one type of licence in any one local authority area. They cannot hold both a site and mobile collectors licence from the same Local Authority. A person may hold more than one licence issued by different Authorities.

3.0 Application Procedure:

3.1 When the Council is considering an application, it will have regard to:

- The Scrap Metal Dealers Act 2013;
- Any supporting regulations

- Guidance issued by the Secretary of State
 - This Statement of Licensing Policy
- 3.2 This does not undermine the rights of any person to apply under the 2013 Act for a licence and have the application considered on its individual merits.
- 3.3 A person carrying on, or proposing to carry on, a business as a scrap metal dealer may apply to the Council to be licensed. The application must be in writing and contain the necessary information.
- 3.4 A local authority may request that an applicant provide such other information, as it considers relevant, for the purpose of considering the suitability of an applicant.
- 3.5 The application must be accompanied by the fee, set by the Council, under guidance from the Secretary of State with the approval of the Treasury.
- 3.6 If the applicant fails to provide the information requested, including the additional supporting documentation, the Council may refuse the application as not valid.
- 3.7 Where the Council is satisfied that an applicant is suitable, it must issue a licence.

4.0 Conditions

- 4.1 The ability to impose conditions is limited, conditions can only be imposed where the applicant or any site manager has been convicted of a relevant offence or where the council is revoking a licence when a condition can be imposed, until the revocation comes into effect. One or both of the following conditions can be imposed, the conditions specify that:
- the dealer can receive scrap metal only between 09:00 and 17:00
 - any scrap metal received has to be kept in the form the dealer received it for a set period of time, which cannot be more than 72 hours.

5.0 Right to make representation

- 5.1 Where it is proposed to refuse an application or vary/revoke a licence, the applicant or licensee will be notified as soon as is reasonably practicable what the council proposes and the reasons for it.
- 5.2 The notice will give the applicant/licensee the opportunity within 14 days to either :
- a) make representations
 - or**
 - b) inform the Authority of their intention to do so

- 5.3 If the applicant/licensee informs the Authority they wish to make representations then they will be permitted a further 14 days to do so. These representations will then be heard in a Licensing Hearing.
- 5.4 If the applicant/licensee informs the Authority they wish to make oral representations then these will be heard at a Licensing Hearing within 21 days.
- 5.5 If at the Hearing the Council refuses the application the applicant will be given a notice of the decision which includes information on the grounds for the decision. The notice will include information about the appeal process.

6. Variation of Licence

6.1 An applicant can, on application, apply to the Council to vary licence by changing it from one type to another. The variation application must be made to reflect changes to:

- Site licence – name of licensee, the sites, site manager
- Collector's licence – name of licensee

The variation can amend the name of the licensee but not transfer the licence to another person.

6.2 Application is to be made to the issuing authority and contain particulars of the changes to be made to the licence.

7. Revocation of Licence

7.1 The authority may revoke a scrap metal licence if it is satisfied that the licensee does not carry on the business of scrap metal dealing at any of the sites identified in the licence.

7.2 The authority may revoke a licence if it is satisfied that a site manager named in the licence does not act as site manager at any of the sites identified in the licence.

7.3 The authority may revoke a licence if it is no longer satisfied that the licensee is a suitable person to carry on a business as a scrap metal dealer.

7.4 A revocation or variation under this section comes into effect when no appeal under section 16.9 is possible in relation to the revocation or variation, or when any such appeal is finally determined or withdrawn.

7.5 If the authority considers that the licence should not continue in force without conditions, it may by notice provide:

a) that, until a revocation under this section comes into effect, the licence is subject to one or both of the conditions set out in section 7.2; or

b) that a variation under this section comes into effect immediately.

8.0 Appeals

8.1 Appeals against a decision taken by the Council to refuse an application or renewal, revoke a licence or condition or vary the licence are to the Magistrates' Court. They must be made within 21 days of the applicant being given notice of the decision.

8.2 On an appeal under this section, the Magistrates' Court may

- a) confirm, vary or reverse the Councils' decision and
- b) give such directions as it considers appropriate having regard to the provisions of the Scrap Metal Dealers Act 2013.

8.6 The Council must comply with any direction given by the Magistrates' Court.

8.7 The Council need not comply with any such directions

- a) until the time for making an application under section 111 of the Magistrates' Court Act 1980 (application by way of case stated) has passed, or
- b) if such an application is made, until the application is finally determined or withdrawn.

9. Register of Licences

9.1 National Resource Wales must maintain a register of scrap metal licences issued by authorities in Wales.

9.2 Each entry must record:

- a) the name of the authority which issued the licence;
- b) the name of the licensee;
- c) any trading name of the licensee;
- d) the address of the site identified in the licence;
- e) the type of licence; and
- f) the date on which the licence is due to expire.

9.3 The registers are to be open for inspection to the public.

10. Notification Requirements

10.1 An applicant for a scrap metal licence, or for the renewal or variation of a licence, must notify the authority to which the application was made of any

changes which materially affect the accuracy of the information which the applicant has provided in connection with the application.

- 10.2 A licensee who is not carrying on business as a scrap metal dealer in the area of the authority which issued the licence must notify the authority within 28 days.
- 10.3 If a licence is issued to a business under a trading name the licensee must notify the authority which issued the licence of any change to that name within 28 days.
- 10.4 An authority must notify the National Resource Wales, of –
- a) any notification given to the authority under section 11.2 or 11.3;
 - b) any variation made by the authority under section 8 (variation of type of licence or matters set out in licence); and
 - c) any revocation of the authority of a licence.
- 10.5 Notification under subsection 11.4 must be given within 28 days of the notification, variation or revocation in question.
- 10.6 Where the authority notifies the National Resource Wales under subsection 11.4, the body must amend the register under section 10 accordingly.

11.7 Display of Licence

- 11.1 Once granted a copy of a site licence must be displayed at each site identified in the licence in a prominent place in an area accessible to the public.
- 11.2 A copy of a collector's licence must be displayed on any vehicle that is being used in the course of the dealer's business. This must be displayed in a manner which enables it to be easily read from outside the vehicle.

12. Verification of Supplier's Identity

- 12.1 Before receiving scrap metal the dealer must verify the person's full name and address, by reference to documents or data from a reliable and independent source.
- 12.2 If suitable verification is not obtained the scrap metal dealer or site manager, or any person who has been delegated responsibility by the dealer or site manager shall be guilty of an offence

13. Payment for Scrap Metal

- 13.1 A scrap metal dealer must only pay for scrap metal by either:
- a) a cheque (which is not transferrable under Section 81A Bills of Exchange Act 1882); or

b) electronic transfer of funds (authorised by a credit, debit card or otherwise).

13.2 Payment includes payment in kind – with goods or services.

14. Records: Receipt of Metal

14.1 If any metal is received in the course of the dealer's business the dealer must record the following information:

- a) description of the metal, including its type (types if mixed), form, condition, weight and any marks identifying previous owners or other distinguishing features;
- b) date and time of receipt;
- c) the registration mark of the vehicle delivered by;
- d) full name and address of person delivering it;
- e) full name of the person making payment on behalf of the dealer.

14.2 The dealer must keep a copy of any documents used to verify the name and address of the person delivering the metal.

14.3 If payment is made via cheque, the dealer must retain a copy of the cheque.

14.4 If payment is made via electronic transfer, the dealer must keep a receipt identifying the transfer, or (if no receipt identifying the transfer) record particulars identifying the transfer.

15. Records: Disposal of Metal

15.1 The Act regards the metal to be disposed of:

- a) whether or not in the same form it was purchased;
- b) whether or not the disposal is to another person;
- c) whether or not the metal is despatched from a site.

15.2 Where the disposal is in the course of business under a site licence, the following must be recorded:

- a) description of the metal, including its type (or types is mixed), form and weight;
- b) date and time of disposal;
- c) if to another person, their full name and address;
- d) if payment is received for the metal (by sale or exchange) the price or other consideration received.

15.3 If disposal is in the course of business under a collector's licence, the dealer must record the following information:

- a) the date and time of the disposal;
- b) if to another person, their full name and address.

16. Records: Supplementary

- 16.1 The information in sections 15 and 16 must be recorded in a manner which allows the information and the scrap metal to which it relates to be readily identified by reference to each other.
- 16.2 The records mentioned in section 15 must be marked so as to identify the scrap metal to which they relate.
- 16.3 Records must be kept for a period of 3 years beginning with the day on which the metal is received or (as may be the case) disposed of
- 16.4 If a scrap metal dealer fails to fulfil a requirement under section 15 and 16 or this section each of the following is guilty of an offence:
- a) the scrap metal dealer;
 - b) if the metal is received at or (as the case may be) despatched from a site, the site manager;
 - c) any person who, under arrangements made by a person within paragraph (a) or
 - d) has responsibility for fulfilling the requirement.
- 16.5 It is a defence for a person within subsection 17.4 (a) or (b) who is charged with an offence under this section to prove that the person
- a) made arrangements to ensure that the requirement was fulfilled, and
 - b) took all reasonable steps to ensure that those arrangements were complied with.

17. Compliance

- 17.1 The Act provides a Police Constable and an Officer from the Council with a right to enter and inspect the premises of licensed and unlicensed scrap metal dealers without notice to the site manager. However the Act does not provide an Officer of the Council with the power to inspect premises of licensed and unlicensed scrap metal dealers outside the area of the authority.
- 17.2 Compliance will be based on the principles that businesses should:
- Receive clear explanations from regulators of what they need to do and by when;
 - Have an opportunity to resolve differences before compliance action is taken, unless immediate action is needed;
 - Receive an explanation of their right of appeal.
- 17.3 The council recognises the interest of both citizens and businesses and will work closely, with partners, to assist licence holders to comply with the law.

However, proportionate but firm action will be taken against those who commit serious offences or consistently break the law.

18. Closure of Unlicensed Sites

18.1 Interpretation:

A person with an interest in a premises is the owner, leaseholder or occupier of the premises. Local authority powers are exercisable only in relation to premises in the authority's area.

18.2 Closure Notice

Not applicable if the premises are residential premises. A constable or the local authority must be satisfied that the premises are being used by a scrap metal dealer in the course of business and that the premises are not a licensed site.

A 'closure notice' may be issued by a constable or local authority which states they are satisfied of the above, the reasons for that, that the constable or local authority may apply to the court for a closure order and specifies the steps which may be taken to ensure that the alleged use of the premises ceases.

The notice must be given to the person who appears to be the site manager of the premises and any person who appears to be a director, manager or other officer of the business in question. The notice may also be given to any person who has an interest in the premises.

The notice must be given to a person who occupies another part of any building or structure of which the premises form part and the constable or local authority believes at the time of giving the notice, that the person's access to that other part would be impeded if a closure order were made in respect of the premises.

18.3 Cancellation of Closure Notice

A constable or an officer of the local authority may cancel a closure notice. This takes effect when it is given to any one of the persons to whom the closure notice was given.

18.4 Application for Closure Order

When a closure notice has been given, a constable or the local authority may make a complaint to the justices of the peace for a closure order. This may not be made less than 7 days after the date on which the closure notice was given or more than 6 months after that date.

A complaint under this paragraph may not be made if the constable or authority is satisfied that the premises are not (or are no longer) being used by a scrap metal dealer in the course of business and there is no reasonable

likelihood that the premises will be so used in the future. The justice may issue a summons to answer to the complaint. This must be directed to anyone whom the closure notice was given and must include the date, time and place at which the complaint will be heard.

18.5 Closure Order

A closure order requires that a premises be closed immediately to the public and remain closed until a constable or the local authority makes a termination of closure order by certificate. The use of the premises by a scrap metal dealer in the course of business be discontinued immediately and that any defendant pay into court such sum as the court determines and that the sum will not be released by the court to that person until the other requirements of the order are met.

The closure order may include a condition relating to the admission of persons into the premises, the access by persons to another part of any building or other structure of which the premises form part.

A closure order may include such provision as the court considers appropriate for dealing with the consequences if the order should cease to have effect. As soon as practicable after the closure order is made, the complainant must fix a copy of it in a conspicuous position on the premises in respect of which it was made.

A sum ordered to be paid into court under a closure order is to be paid to the designated officer for the court.

18.6 Termination of Closure Order by Certificate

Once a closure order has been made and a constable or local authority is satisfied that the need for the order has ceased a certificate may be made. This ceases the closure order and any sum paid into a court is to be released by the court to the defendant.

As soon as is practicable after making a certificate, a constable or local authority must give a copy to any person against whom the closure order was made, give a copy to the designated officer for the court which made the order and fix a copy of it in a conspicuous position on the premises in respect of which the order was made.

A copy of the certificate must be given to any person who requests one.

18.7 Discharge of Closure Order by Court

A closure order may be discharged by complaint to a justice of the peace. This can be done by any person to whom the relevant closure notice was given or any person who has an interest in the premises but to whom the closure notice was given.

The court will make a discharge order if it is satisfied that there is no longer a need for the closure order. The justice may issue a summons directed to a constable as the justice considers appropriate or the local authority, requiring that person appear before the magistrates' court to answer to the complaint.

If a summons is issued, notice of the date, time and place at which the complaint will be heard must be given to all persons to whom the closure notice was given (other than the complainant).

18.8 Appeal

Appeal may be made to the Crown Court against:

- a) a closure order;
- b) a decision not to make a closure order;
- c) a discharge order;
- d) a decision not to make a discharge order.

The appeal must be made before the end of 21 days beginning with the day on which the order or decision in question was made. An appeal under a) or b) may be made by any person to whom the relevant closure notice was given or any person who has an interest in the premises but to whom the closure notice was not given.

An appeal under b) and c) may be made by a constable or the local authority.

18.9 Enforcement of Closure Order

A person is guilty of an offence, without reasonable excuse, if they permit a premises to be open in contravention of a closure order, or fails to comply with, or does an act in contravention of a closure order.

If the closure order has been made, a constable or a person authorised by the local authority may (if necessary using reasonable force) enter the premises at any reasonable time, and having entered the premises, do anything reasonably necessary for the purpose of securing compliance with the order.

If the owner, occupier or other person in charge of the premises requires the officer to produce evidence of identity or evidence of authority to exercise powers, the officer must produce that evidence.

APPENDIX 1 -

3.0 Suitability of Applicant

- 3.1 The Council must determine whether the applicant is a suitable person to carry on a business as a scrap metal dealer; and may not issue a licence unless satisfied the applicant is suitable.
- 3.2 When assessing an application for a Site Licence or for a Collector's Licence the Council will consider the suitability of :
- the individual applicant
 - each partner within a partnership
 - any director(s), secretary(s) or shadow director(s) of a company.
- 3.3 As well as its policy and statutory guidance, the Council, when determining suitability, may have regard to any other information it considers relevant, in particular, but not limited to:
- Scrap Metal Act 2013 – Section 3 (2)
- (a) whether the applicant or site manager has been convicted of any relevant offence; (see Appendix 1)
 - (b) whether the applicant or site manager has been the subject of any relevant enforcement action; (see Appendix 1)
 - (c) any previous refusal of an application for the issue or renewal of a scrap metal licence (and the reasons for the refusal);
 - (d) any previous refusal of an application for a relevant environmental permit or registration (and the reasons for the refusal);
 - (e) any previous revocation of a scrap metal licence (and the reasons for the revocation);
 - (f) whether the applicant has demonstrated that there will be in place adequate procedures to ensure that the provisions of this Act are complied with.
- 3.4 In assessing an applicant/licensee's suitability the Council can also consider any other information it considers relevant, the Council has considered that this will include the following :
- the applicant's behaviour in the operation of their business
 - unspent convictions, cautions on the basic disclosure relating to violence, dishonesty or theft (including non-metal theft)
 - relevant, proportionate information provided by another agency which suggests that an applicant represents a **substantial risk to the public**.

- 3.5 In determining suitability the Council will require the applicant/licensee to produce a Basic Disclosure Certificate. Where the applicant has lived previously outside the United Kingdom the Council will not consider the grant of a licence until a relevant check has been completed with the relevant country or countries and details of such check submitted to the Council.
- 3.6 This Council considers a Basic Disclosure Certificate to be only valid for 3 months prior to the date the application is made.
- 3.7 A single relevant conviction may not automatically result in the Council refusing to grant a licence. The Council will take into account when the offence was committed, the nature of the offence or enforcement action, the gravity of the offence or enforcement action, along with any other relevant information.
- 3.8 The Council may consult other persons regarding the suitability of an applicant/licensee, including, but not limited to:
- (a) any other local authority;
 - (b) departments within Wrexham County Borough Council
 - (b) the Environment Agency;
 - (c) the Natural Resource Body for Wales;
 - (d) the Health and Safety Executive
 - (e) North Wales Police force;
- 3.9 Notwithstanding the existence of this policy, the Council, when determining a person's suitability for the purposes of the Act, will treat each case on its own individual merits

APPENDIX 2

The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013

Made - - - 6th September 2013

Laid before Parliament 10th September 2013

Coming into force - - 1st October 2013

The Secretary of State, in exercise of the powers conferred by sections 3(3)(b) and (c) and 20(4) of

the Scrap Metal Dealers Act 2013(a) makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Scrap Metal Dealers Act 2013

(Prescribed

Relevant Offences and Relevant Enforcement Action) Regulations 2013 and shall come into force

on 1st October 2013.

(2) In these Regulations—

“environment-related offence” means an offence which relates to the transportation, shipment

or transfer of waste, or to the prevention, minimisation or control of pollution of the air, water

or land which may give rise to any harm;

“harm” means:

(i) harm to the health of human beings or other living organisms;

(ii) harm to the quality of the environment;

(iii) offence to the senses of human beings;

(iv) damage to property; or

(v) impairment of, or interference with, amenities or other legitimate uses of the environment.

Relevant offences

2. For the purposes of section 3(3)(b) of the Scrap Metal Dealers Act 2013, “relevant offence”

means any offence specified in the Schedule to these Regulations, and includes an offence of—

(a) attempting or conspiring to commit any offence falling within the Schedule;

(b) inciting or aiding, abetting, counselling or procuring the commission of any offence

falling within the Schedule, and

(c) an offence under Part 2 of the Serious Crime Act 2007(a) (encouraging or assisting

crime) committed in relation to any offence falling within the Schedule.

Relevant enforcement action

3. For the purposes of section 3(3)(c) of the Scrap Metal Dealers Act 2013, a person is the

subject of “relevant enforcement action” if—

(a) the person has been charged with an offence specified in the Schedule to these Regulations, and criminal proceedings in respect of that offence have not yet concluded;

or Page 12 of 13

(b) an environmental permit granted in respect of the person under the Environmental

Permitting (England and Wales) Regulations 2010 (b) has been revoked in whole, or partially revoked, to the extent that the permit no longer authorises the recovery of metal.

Home Office *Damian Green*

6th September 2013 Minister of State

SCHEDULE Regulation 2

PART 1

Primary Legislation

(a) An offence under section 1, 5, or 7 of the Control of Pollution (Amendment) Act 1989(c)

(b) An offence under section 170 or 170B of the Customs and Excise Management Act

1979(d), where the specific offence concerned relates to scrap metal

(c) An offence under section 110 of the Environment Act 1995(e)

(d) An offence under sections 33, 34 or 34B of the Environmental Protection Act 1990(f)

(e) An offence under section 9 of the Food and Environment Protection Act 1985(g)

(f) An offence under section 1 of the Fraud Act 2006(h), where the specific offence concerned relates to scrap metal, or is an environment-related offence

(g) An offence under section 146 of the Legal Aid, Sentencing and Punishment of Offenders

Act 2012(i)

(h) An offence under sections 327, 328 or 330 to 332 of the Proceeds of Crime Act 2002(j)

(i) Any offence under the Scrap Metal Dealers Act 1964(k)

(a) 2007 c.27.

(b) S.I. 2010/675. Environmental permits can be granted under regulation 13, and revoked under regulation 22.

(c) 1989 c.14.

(d) 1979 c.2. Section 170B was inserted by the Finance (No 2) Act 1992 (c.48), section 3, Schedule 2, paragraph 8.

(e) 1995 c.25.

(f) 1990 c.43. Section 34B was inserted, in relation to England and Wales, by the Clean Neighbourhood and Environment Act

2005(c.16), section 46.

(g) 1985 c.48.

(h) 2006 c.35.

(i) 2012 c.10. Section 146 is to be repealed by section 19(1)(f) of the Scrap Metal Dealers Act 2013, which has not yet been commenced.

(j) 2002 c.29.

(k) 1964 c.69. This Act is to be repealed by section 19(1)(a) of the Scrap Metal Dealers Act 2013, which has not yet been commenced.

(j) Any offence under the Scrap Metal Dealers Act 2013

(k) An offence under sections 1, 8,9,10, 11, 17, 18, 22 or 25 of the Theft Act 1968(a), where

the specific offence concerned relates to scrap metal, or is an environment-related offence

(l) Any offence under Part 1 of the Vehicles (Crime) Act 2001**(b)**

(m) An offence under sections 85, 202, or 206 of the Water Resources Act 1991**(c)**.

PART 2

Secondary Legislation

(a) An offence under regulation 38 of the Environmental Permitting (England and Wales)

Regulations 2007**(d)**

(b) An offence under regulation 38 of the Environmental Permitting (England and Wales)

Regulations 2010**(e)**

(c) Any offence under the Hazardous Waste (England and Wales) Regulations 2005**(f)**

(d) Any offence under the Hazardous Waste (Wales) Regulations 2005**(g)**

(e) An offence under regulation 17(1) of the Landfill (England and Wales)

Regulations

2002**(h)**

(f) Any offence under the Pollution Prevention and Control (England and Wales)

Regulations 2000**(i)**

(g) Any offence under the Producer Responsibility (Packaging Waste) Regulations 2007**(j)**

(h) Any offence under the Transfrontier Shipment of Waste Regulations 1994**(k)**

(i) Any offence under the Transfrontier Shipment of Waste Regulations 2007**(l)**

(j) Any offence under the Waste (Electrical and Electronic Equipment) Regulations 2006**(m)** Page 13 of 13

(k) An offence under regulation 42 of the Waste (England and Wales) Regulations 2011**(n)**.

(a) 1968 c.60.

(b) 2001 c.3. Part 1 of this Act is to be repealed by section 19(1)(d)(i) of the Scrap Metal Dealers Act 2013, which has not yet been commenced.

(c) 1991 c.57. Section 85 was repealed by S.I. 2010/675 regulation 107 and Schedule 26, Part 1 paragraph 8(2)(a).

(d) S.I. 2007/3538. Regulation 38 was revoked by S.I. 2010/675, regulation 108(1) and Schedule 27.

(e) S.I. 2010/675.

(f) S.I. 2005/894.

(g) S.I.2005/1806.

(h) S.I.2002/1559. These Regulations were revoked by S.I. 2007/3538, regulation 74(1) and Schedule 22.

(i) S.I. 2000/1973. These Regulations were revoked by S.I. 2007/3538, regulation 74(1) and Schedule 22.

(j) S.I. 2007/871

(k) S.I. 1994/1137. These Regulations were revoked by S.I. 2007/1711, regulation 60(1)(a) and (2).

(l) S.I. 2007/1711.

(m) S.I. 2006/3289.

(n) S.I. 2011/988.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe relevant offences and relevant enforcement action for the purposes of section 3(3)(b) and (c) of the Scrap Metal Dealers Act 2013. Pursuant to section 3(2) of that Act,

where a local authority is processing an application for a scrap metal licence and is evaluating whether the applicant is a suitable person to carry on business as a scrap metal dealer, the local authority may have regard to whether the applicant or any site manager has been convicted of a relevant offence, or has been the subject of any relevant enforcement action.

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DRAFT

COMPLIANCE - RIGHT OF ENTRY

1. A constable or an officer of the Council may enter and inspect a licensed site at any reasonable time on notice to the site manager.

2. A constable or an officer of the Council may enter and inspect a licensed site at any reasonable time, otherwise than on notice to the site manager, if
a) reasonable attempts to give notice have been made and failed,

or

b) entry to the site is reasonably required for the purpose of ascertaining whether the provisions of this Act are being complied with or investigating offences under it and (in either case) the giving of the notice would defeat that purpose.

3. (1) and (2) above do not apply to residential premises.

4. A constable or an officer of the Council is not entitled to use force to enter a premises in the exercise of the powers under sections (1) and (2) above.

5. A justice of the peace may issue a warrant authorising entry to any premises within section 6 below if the justice is satisfied by information on oath that there are reasonable grounds for believing that entry to the premises is reasonably required for the purpose of:

- a) securing compliance with the provisions of the Act, or
- b) ascertaining whether those provisions are being complied with.

6. Premises are within this section if:

- a) the premises are a licensed site, or
- b) the premises are not a licensed site but there are reasonable grounds for believing that the premises are being used by a scrap metal dealer in the course of business

7. The warrant is a warrant signed by the justice which:

- a) specifies the premises concerned, and
- b) authorises a constable or an officer of a local authority to enter and inspect the premises at any time within one month from the date of the warrant.

8. A constable or an officer of the Council may, if necessary, use reasonable force in the exercise of the powers under a warrant under section 5.

9. A constable or an officer of the Council may:

- a) require production of, and inspect, any scrap metal kept at any premises mentioned in section 1 or 2 or in a warrant under section 5;

b) require production of, and inspect, any records kept in accordance with section 15 or 16 and any other records relating to payment for scrap metal;

c) take copies of or extracts from any such records.

10. Section 11 below applies if a constable or an officer of the Council who seeks to exercise powers under this section in relation to any premises.

11. If the owner, occupier or other person in charge of the premises requires the officer to produce:

a) evidence of the officer's identity, or

b) evidence of the officer's authority to exercise those powers the officer must produce that evidence.

12. In the case of an officer of the Council, the powers under this section are exercisable only in relation to premises in the area of the authority.

Delegation of Authority

- 1 Decisions on licensing matters will be taken in accordance with the approved scheme of delegation in Appendix 5 aimed at underlining the principles of timely, efficient and effective decision making.
- 2 This scheme will be subject to amendment from time to time as shown in the Council's Constitution.

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REPORT TO:	Licensing Committee
DATE:	9 th March 2016
LEAD OFFICER:	Head of Planning and Public Protection Services
CONTACT OFFICER:	Public Protection Business Manager licensing@denbighshire.gov.uk 01824 706451
SUBJECT:	Consideration of training for licensed drivers

1. PURPOSE OF THE REPORT

- 1.1 For members to consider instructing officers to draft a proposal for the introduction of mandatory safeguarding awareness training for all Denbighshire licensed hackney carriage, private hire drivers and operators.

2. EXECUTIVE SUMMARY

- 2.1 The primary role of the licensing authority and Committee members is the protection, safety and wellbeing of the public.
- 2.2 A number of recent high profile safeguarding issues around the country have been publicised and in particular relating to child sexual exploitation (CSE) a number of which have had links with local authority licensed vehicles. Introduction of mandatory awareness training supports Denbighshire's commitment to protecting vulnerable people.

3. BACKGROUND INFORMATION

- 3.1 Officers have carefully considered the findings of the inspection report of Rotherham Borough Council submitted to The House of Lords in February 2015 by Louise Casey CB and the independent enquiry into child sexual exploitation in Rotherham 1997-2013 undertaken by Alex Jay OBE, in particular and in the context of licensed vehicles. Members should note that the report by Alex Jay OBE. States: one of the common threads running through child sexual exploitation across England has been the prominent role of taxi drivers in being directly linked to children who were abused.

In September 2015, the Conwy Licensing Committee resolved to

- 3.2 introduce such a mandatory awareness training scheme for all licensed drivers and extended this further to a BTEC Level 2 training. Whilst both Conwy and Denbighshire licensing conditions are separate there is a similarity in most aspects of the industry. Community Safety partners have welcomed this approach in Conwy and have encouraged Denbighshire to implement such a requirement and have included such an action in the Safer Conwy & Denbighshire “Conwy & Denbighshire Community Safety Partnership Action Plan for 2015 / 16”.

- 3.3 At this stage there is no preconception of the scope of the scheme other than it should apply to all drivers. Should Members be minded to instruct officers to consider a scheme they may wish to direct officers to consider particular considerations, such as the action against any driver not trained; the time period to gain training and how long before any refresher training is required and whether this should form part of a wider mandatory training scheme, such as BTEC or NVQ or equivalent.

CONSULTATION

4. None to date although the potential for safeguarding awareness training has been discussed at internal safeguarding meetings including the Corporate Safeguarding Panel who are supportive of the proposal.
- 4.1
- 4.2 It is anticipated that all those who may be affected, such as driver and operators, will be consulted along with partner agencies involved in safeguarding of vulnerable people locally.

RECOMMENDATION

5. That the Committee instruct officers to introduce mandatory safeguarding awareness training for all licensed taxi drivers during 2016.
- 5.1
- 5.2 That the Committee instruct officers to prepare a proposal for formal training for licensed taxi drivers.



REPORT TO:	Licensing Committee
DATE:	9 th March 2016
LEAD OFFICER:	Head of Planning and Public Protection Services
CONTACT OFFICER:	Public Protection Business Manager licensing@denbighshire.gov.uk 01824 706451
SUBJECT:	Review of Current Penalty Points Policy & Procedure

1. PURPOSE OF THE REPORT

- 1.1 To present, to Members, an amended Penalty Point Policy and procedure for their consideration.

2. EXECUTIVE SUMMARY

- 2.1 For Members to consider approving an amended penalty point policy and procedure to secure further improvement in standards for Hackney Carriage Proprietors, Drivers and Vehicles and Private Hire Operators, Drivers and Vehicles.

3. BACKGROUND INFORMATION

- 3.1 Members will be aware that Officers presented a revised Penalty Point Policy and Procedure at the September 2015 Committee (minutes of the meeting can be found within your committee papers). Members agreed the amendments proposed and resolved that officers consult with the licence holders on the amended policy and report back to the Committee.

- 3.2 Following the consultation, the proposed revised Penalty Point Policy and Procedure (along with list of breaches/infringements) can be found at Appendix A. For Members information the main revised policy and procedure has not changed since Officers presented it in September.

4. CONSULTATION

- 4.1 A two week consultation on the revised Penalty Point Policy and Procedure has taken place with all licence holders.

4.2

As a result of this consultation, Officers did not receive any representation.

5.

RECOMMENDATION

5.1

For Members to consider approving the revised Penalty Point Policy and Procedure found at Appendix A, and in doing so agree to replace the existing 2014 Penalty Point Scheme.

5.2

To implement the scheme with immediate effect.

DENBIGHSHIRE COUNTY COUNCIL

PENALTY POINT POLICY AND PROCEDURE

1 INTRODUCTION

- 1.1 This document details the Penalty Point procedure used by the Council to deal with minor breaches or infringements of legislation or unacceptable behaviour committed by those licensed as Drivers and Operators and vehicle proprietors, in much the same way that points can be attached to a DVLA driving licence.

2 POLICY STATEMENT

- 2.1 The aim of this policy is to improve the levels of compliance of licensing regulations and requirements and to help raise standards, safety and the protection of members of the public affected by the actions of licensed drivers and operators and vehicle proprietors.
- 2.2 The Council is committed to ensure that only fit and proper persons become, and remain, as hackney carriage and private hire drivers and Operators and vehicle proprietors.
- 2.3 The procedure also seeks to improve the level of transparency and consistency in which the licensing system is administered and enforced.

3. PURPOSE OF THE PROCEDURE

- 3.1 The penalty point procedure is designed to work in conjunction with other enforcement options, identifying those drivers, operators or vehicle proprietors who repeatedly behave in a manner which, if taken as a whole, indicates that they are not fit and proper persons to hold a licence.
- 3.2 The Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847 (the relevant legislation covering such licences), only allows for the suspension or revocation of a licence, or the prosecution of a licence holder where they commit an offence under the above legislation. Therefore there is no system in place to deal with minor breaches or infringements, which in isolation are not serious enough to warrant the suspension or revocation of a licence.

4. WHO IS COVERED BY THE PROCEDURE

- 4.1 Penalty Points may be awarded against anyone holding a hackney carriage licence; a private hire driver licence; a Private Hire Operator Licence or a Vehicle Proprietor.

5. ISSUING OF PENALTY POINTS

- 5.1** Officers will investigate allegations of offences by licensed operators, drivers or vehicles owners. When considering what action to take the Investigating officer(s) will take into account all available and appropriate evidence, such as eye witness accounts and their reliability, the views of the licence holder who may be affected by the outcome of the investigation, etc.. The outcome of investigations may result in a wide range of potential actions against the driver and /or operator and / or proprietor. This procedure deals with the option of penalty points. For other enforcement action please refer to the relevant procedures.
- 5.2** Once the decision to issue penalty points is made, letters will be sent to all persons/organisations involved in the allegation(s) detailing the findings and decision of the Investigation officer. A record of the decision and any copies of associated documents will be kept on file (usually in secure electronic format) and retained for a period of 6 months following the expiry of the 2 year rolling period referred to at 5.6 below.
- 5.3** The points will be issued by an Officer, or the Committee, to the driver and /or operator and / or proprietor depending on the circumstances, and will be confirmed in writing within 14 days of their issue.
- 5.4** Any penalty points incurred under this procedure are completely separate from any points which may be attached by the Police, through fixed penalty notices, or the Courts, through convictions to DVLA driving licences.
- 5.5** Confirmed infringements or breaches resulting in the award of penalty points will act as an ongoing record of a licensee's behaviour and conduct and may be used in determining whether they are a fit and proper person to hold a licence.
- 5.6** Where a licence holder accumulates 20 or more penalty points, in separate incidents, in a 24 month rolling period (a period of 24 consecutive months determined on a rolling basis with a new 24 month period beginning each day) the matter will be referred to the next available Licensing Committee. The Committee will be required to determine whether the driver or operator is a fit and proper person. The following action can be taken by the Committee:
- i. Take no action
 - ii. Issue a warning
 - iii. Issue additional penalty points
 - iv. Suspend a licence as a punitive sanction
 - v. Suspend a licence to correct a fault, defect, or breach
 - vi. Revoke or refuse to renew a licence
- 5.7** Periods of suspension will be determined by the Licensing Committee and will depend on the nature of the offence, breach, or infringement and the individual's compliance history. A determination will also be made as to whether the suspension or revocation is on the grounds of public safety, thereby having immediate effect.

5.8 Where a driver, proprietor or operator reaches the 20 points and is referred to the Committee it will not preclude all relevant information being disclosed. This will include any other penalty points, complaints, warnings, and suspensions etc. The 20 points will be a referral trigger.

5.9 Where an identified breach results in the issue of a single award of 20 penalty points these matters will be considered as soon as is practicable by the Head of Planning & Public Protection or in his/her absence, the Head of Legal and Democratic Services, in consultation with the Chair of the Licensing Committee, or in his / her absence, the vice Chair, for appropriate action. Any action will be considered alongside the Council's agreed document "Procedure for Suspension / Revocation of a Hackney Carriage and Private Hire Driver Licence".

6. A BREACH OR INFRINGEMENT IS DISCOVERED

6.1 If there is good evidence that there was a breach or inappropriate behaviour and it is considered appropriate to do so, the licence holder will be issued with a penalty point notice.

6.2 The penalty point notice will describe the infringement or breach, date and time it took place, and how many points have been issued to the licence holder.

6.3 The Council reserve the right to not impose penalties points under this scheme where in the opinion of the Officers the allegations are either frivolous, vexatious or repetitious, or made, in the Officers opinion, to further personal grievances or which are not made within a reasonable time period, to be determined by the Council depending on the individual circumstances, of the breach having occurred.

7. HOW TO REPORT AN INFRINGEMENT

7.1 Complaints from members of the public, residents or businesses concerning any breaches of conduct will be subject to investigation by Officers, and only where there is clear, verifiable evidence of an infringement e.g. a photograph of an illegally parked vehicle, will a penalty point notice be issued.

7.2 Infringements can be reported through the Council's website <https://www.denbighshire.gov.uk/en/resident/contact-us/contact-us.aspx>

8. INFRINGEMENTS/BREACHES COVERED BY THE SCHEME

8.1 A full list of infringements and breaches covered by this Scheme can be found at Appendix 1.

9. APPEALS

9.1 If a licensee wishes to appeal against the issue of a "penalty points notice"

he/she must do so in writing, stating the reasons of the appeal, within 10 working days from the date of issue of such a notice, to the Council's Head of Planning and Public Protection or in his/her absence the Public Protection Manager, who, in consultation with the Chairman of the Licensing Committee, will have the discretion to:-

- i. uphold the Council Officer's decision – retain the number points on the “penalty points notice”; or
- ii. cancel the issue of the “penalty points notice” to the licensee.

9.2 The Head of Planning and Public Protection or, as the case may be, the Public Protection Manager will write to the licensee informing them of the outcome within 10 working days of receiving the appeal

9.3 If no appeal is lodged within 10 days from the date of issue of the Notice, then the Council will take the view that the licence holder has accepted the penalty points.

9.4 There is no appeal beyond the decision made by the Head of Public Protection. However, should a licensee be subsequently reported to the Licensing Committee for accumulating 20 penalty points, he/she has the opportunity to raise the validity of the points issued.

10. RE-APPLYING FOR A LICENCE

10.1 If a licence holder has had their licence revoked, they may apply for a new licence, but its Council Policy that such an application under the Penalty Point Scheme will not be entertained until a suitable period from the date of revocation has elapsed, as detailed below:

- i. where the penalty points which resulted in the revocation included any infringements that attracted 10 or more points, then this period will be 24 months
- ii. where none of the infringements individually attracted more than 10 points, then this period is reduced to twelve months

10.2 It should not be assumed that an application for a new licence, following revocation under this Scheme, will automatically be granted. Any application will be subject to the Council's normal application process and consideration of whether the applicant is a fit and proper person to hold a licence.

11. DELEGATION OF FUNCTIONS

11.1 The Head of Planning and Public Protection Public Protection can delegate authority to the Public Protection Manager to issue penalty points in accordance with this policy. The Public Protection Manager can also delegate this function to an authorised Officer of the Council.

12. REVIEW OF THE SCHEME

12.1 This Policy will be reviewed every three years. Notwithstanding this, the

policy will continue to be evaluated and may be updated at any time, subject to the appropriate consultation.

APPENDIX 1 – PENALTY POINT SCHEME

FOR BREACHES OR INFRINGEMENTS BY HACKNEY AND PRIVATE HIRE OPERATORS, DRIVERS AND VEHICLE PROPRIETORS

SCALE OF PENALTY POINTS

REF No	BREACH/OFFENCE OR INFRINGEMENT	PENALTY POINTS
Page 48	Use/Cause/Permit a vehicle to be driven with a defect contrary to Road Vehicle (Construction & Use) Regs 1986 (as amended) (per defect):	
	a) Defective tyres (including spare)	10
	b) Defective brakes	10
	c) Defective seat belts	10
	d) Defective steering	10
	e) Defective suspension	10
	f) Defective doors (closing/ locking mechanism)	6
	g) Defective windscreen - cracked etc. in drivers view	6
	h) Defective bodywork- sharp edges, corrosion likely to cause injury to persons	6
	i) Defective headlamps, brake lights, sidelights	10
	j) Defective windscreen wipers/washers	6
	k) Defective exhaust	3
	l) Defective horn	3
	m) Insecure battery which could be a fire risk.	10
n) Any other relevant defect not referred to above	6	
2	Failing to produce Certificate of Compliance, MOT certificate, driving licence or insurance certificate, which is valid on the day of request, within 7 days of being requested	3
3	Obstructing an authorised officer or Police Officer	10
4	Failure to carry an assistance dog without an exemption notice	3
5	Using or allowing a vehicle to be used subject to a suspension/revocation issued by an Authorised Officer or Police Officer	20
6	Using an unlicensed vehicle or licensed vehicle without Insurance	20

7	Driver using a handheld mobile phone, handheld two way radio, whilst the vehicle is in motion	10
8	Presenting a licensed vehicle for testing in an unsafe or dangerous Condition	20
9	Providing false or misleading information on licence application form / failing to provide relevant information or the relevant fee (including dishonoured cheques)	10
10	Failure to submit a licensed vehicle that is 5 years old, or more for a 6 monthly MoT and provide documented proof to the Council that it has passed such a test. The Council will expect to see documentary evidence that such a test has been carried out within 4 weeks of the due date of the MoT test.	10
11	Operator failing to keep proper records or keep records in accordance with the licence conditions	3
12	Failing to notify the Council of details of road traffic collision within 72 hours	6
13	Failure to behave in a civil and orderly manner (including rude or aggressive behaviour) to a member of the public, licensed driver or Officer of the Council or Police Officer	10
14	Plying for hire by private hire drivers.	10
15	Carrying more passengers than the capacity stated on the vehicle licence.	20
16	Failure to carry an up to date fire extinguisher.	3
17	Failure to wear private hire/hackney carriage driver's badge.	3
18	Refusal to accept hiring without reasonable cause e.g. reasonable cause - when drunk or rude customer	6
19	Failure to observe rank discipline – taxi drivers (e.g. plying for hire outside the markings of one of the County's taxi ranks – parking in front or behind rank).	5
20	Failure to give assistance with loading/unloading luggage to or from any building or place, without reasonable cause e.g. temporary medical condition	3
21	Failure to attend punctually at appointed time and place without sufficient cause:	
	a) During daytime	3
	b) During the hours of darkness	6
22	Leaving a Hackney Carriage unattended whilst on a designated rank, without reasonable cause e.g. quick toilet break	3
23	Failure to comply with the Driver Dress Code	3
24	Failure to comply with the Code of Good Conduct	5
25	Displaying any feature on a private hire vehicle that may suggest that it is a taxi vehicle.	5
26	Failure to carry a legal spare wheel and tools or other method of repair e.g. foam/run flat tyre	3
27	Failure to display the external/internal licence plate or signs as required.	3
28	Displaying unsuitable or inappropriate sited signs or unauthorised advertisements in or on the vehicle.	3
29	Charging hackney carriage passenger more than the metered or agreed fare	6

30	Failure to return a vehicle licence plate within 7 days after request	6
31	Using a non-approved or non-calibrated taximeter	6
32	Unreasonably prolonging a journey or any misconduct regarding the charging of fares	6
33	Failure to notify the Council, in writing, of any conviction, caution, fixed penalty or similar within 7 working days	6
34	Failure to notify the Council, in writing, of a change of address within 7 working days	3
35	Failure to notify, in writing, a change in medical circumstances	6
36	Unsatisfactory condition of a vehicle (interior or exterior):	
	a) Dirty exterior	3
	b) Filthy and stained interior	6
	c) Other non-compliant licensable condition (as required by the "Blue Book")	3
37	Driving or parking in a manner likely to cause inconvenience, distress or danger to members of the public e.g. tailgating/speeding/overtaking/furious driving	10
38	Parking in contravention of public highway parking restrictions including occupying/parking in a loading bay	5
39	Parking/stopping or picking up or dropping off passengers on zigzags of a pedestrian crossing or school entrance	6
40	Failing to display Hackney Carriage fare card in vehicle	3
41	Failure to present vehicle for inspection by an authorised officer at required time/location.	10
42	Private Hire driver charging or attempting to charge more than the fare agreed with the customer by the operator	6
43	Private hire vehicle parking / waiting on a taxi rank	6
44	Smoking in a licensed vehicle, and allowing passengers to smoke in a licensed vehicle	10
45	Failure to display in a licensed vehicle, no smoking signage as prescribed in the Health Act 2006	3

Agenda Item 8

REPORT TO: LICENSING COMMITTEE

DATE: 9th March 2016

REPORT BY: THE HEAD OF PLANNING AND PUBLIC PROTECTION

SUBJECT: LICENSING COMMITTEE WORK PROGRAMME 2015/16

DATE	REPORT	COMMENT
8 th June 2016	Proposed revised Hackney Carriage and Private Hire Driver Policy	Report for Members to consider a revised Policy
	Proposed revised Private Hire Operator Policy	Report for Members to consider a revised Policy
22 nd September 2016	Proposed Street Trading Policy	Report for Members to consider a revised Street Trading Policy
	Forward Work Programme 2016/17	Report for Members to consider approving the FWP for 2016/17
7 th December 2016	Update and Review of Penalty Point Policy and Procedure	Report for Members to consider along with approval of reviewed policy
	Review of Sex Establishment Policy	Report for Members to consider a revised Policy. This item has been moved from the March Committee.

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