

At: Aelodau'r Pwyllgor Trwyddedu

Dyddiad: 7 Mehefin 2018

Rhif Union: 01824 712568

ebost: [democrataidd@sirddinbych.gov.uk](mailto:democrataidd@sirddinbych.gov.uk)

Annwyl Gyngorydd

Fe'ch gwahoddir i fynychu cyfarfod y **PWYLLGOR TRWYDDEDU, DYDD MERCHER, 13 MEHEFIN 2018** am **9.30 am** yn **SIAMBR Y CYNGOR, NEUADD Y SIR, RHUTHUN**.

Yn gywir iawn

G Williams

Pennaeth Gwasanaethau Cyfreithiol a Democrataidd

## **AGENDA**

### **RHAN 1 – GWAHODDIR Y WASG A'R CYHOEDD I FOD YN BRESENNOL AR GYFER Y RHAN HON O'R CYFARFOD**

#### **1 YMDDIHEURIADAU**

#### **2 PENODI CADEIRYDD**

Penodi Cadeirydd y Pwyllgor Trwyddedu ar gyfer y flwyddyn i ddod.

#### **3 PENODI IS-GADEIRYDD**

Penodi Is-Gadeirydd y Pwyllgor Trwyddedu ar gyfer y flwyddyn i ddod.

#### **4 DATGANIADAU O FUDDIANT**

Dylai'r Aelodau ddatgan unrhyw gysylltiad personol neu gysylltiad sy'n rhagfarnu ag unrhyw fater a nodwyd fel un i'w ystyried yn y cyfarfod hwn.

#### **5 MATERION BRYN FEL Y'U CYTUNWYD GAN Y CADEIRYDD**

Rhybudd o eitemau y dylid, ym marn y Cadeirydd, eu hystyried yn y cyfarfod fel materion brys yn unol ag Adran 100B(4) Deddf Llywodraeth Leol, 1972.

**6 COFNODION Y CYFARFOD DIWETHAF** (Tudalennau 9 - 14)

Derbyn cofnodion y Pwyllgor Trwyddedu a gynhaliwyd ar 8 Mawrth 2018 (copi ynghlwm).

**RHAN 2 - MATERION CYFRINACHOL**

Argymhellir, yn unol ag Adran 100A (4) Deddf Llywodraeth Leol 1972, y dylid gwahardd y Wasg a'r Cyhoedd o'r cyfarfod wrth drafod y materion canlynol oherwydd y tebygolrwydd y caiff gwybodaeth eithriedig, fel y diffinnir ym Mharagraffau 12 ac 13 Rhan 4 o Atodlen 12A y Ddeddf, ei datgelu.

**7 ADOLYGIAD O DRWYDDED I YRRU CERBYD HACNI A CHERBYDAU HURIO PREIFAT - GYRRWR RHIF 510126** (Tudalennau 15 - 48)

Ystyried adroddiad cyfrinachol gan y Pennaeth Cynllunio a Diogelu'r Cyhoedd (copi ynghlwm) yn gofyn i aelodau adolygu trwydded i yrru cerbyd hacni a cherbydau hurio preifat o ran Gyrrwr Rhif 510126.

**RHAN 1 – GWAHODDIR Y WASG A'R CYHOEDD I FOD YN BRESENNOL AR GYFER Y RHAN HON O'R CYFARFOD**

**8 CAIS I HYSBYSEBU AR GERBYD HACNI** (Tudalennau 49 - 56)

I ystyried adroddiad gan y Pennaeth Cynllunio a Gwarchod y Cyhoedd (copi ynghlwm) yn ceisio penderfyniad gan yr aelodau ar gais gan Berchennog Cerbydau Hacni am ganiatâd i arddangos arwyddion ar ei gerbydau trwyddedig.

**9 DIWEDDARIAD AR BOLISI EUOGFARNAU CERBYDAU HACNI A HURIO PREIFAT** (Tudalennau 57 - 88)

Ystyried adroddiad gan y Pennaeth Cynllunio a Gwarchod y Cyhoedd (copi ynghlwm) yn rhoi diweddariad i'r aelodau ar bolisi Euogfarnau Gyrwyr Cerbydau Hacni a Hurio Preifat.

**10 RHAGLEN GWAITH I'R DYFODOL Y PWYLLGOR TRWYDDEDU 2018/19** (Tudalennau 89 - 92)

Ystyried adroddiad gan y Pennaeth Cynllunio a Gwarchod y Cyhoedd (copi ynghlwm) yn cyflwyno rhaglen gwaith i'r dyfodol y pwyllgor i'w gymeradwyo.

**AELODAETH**

**Y Cynghorwyr**

Joan Butterfield  
Hugh Irving  
Alan James  
Brian Jones

Melvyn Mile  
Arwel Roberts  
Rhys Thomas  
Tony Thomas

Richard Mainon  
Barry Mellor

Huw Williams

**COPIAU I'R:**

Holl Gynghorwyr er gwybodaeth  
Y Wasg a'r Llyfrgelloedd  
Cynghorau Tref a Chymuned

Mae tudalen hwn yn fwriadol wag

**PWYLLGOR TRWYDDEDU  
GWEITHDREFN ER MWYN PENDERFYNU AR GEISIADAU AM  
DRWYDDEDAU GYRWYR CERBYDAU HACNI A CHERBYDAU HURIO  
PREIFAT AC ADOLYGU GYRWYR TRWYDDEDIG PRESENNOL**

<b>CAM</b>	<b>DISGRIFIAD</b>
1.	Dylai'r Cadeirydd groesawu a chyflwyno'r ymgeisydd/deilydd y drwydded i bawb sy'n bresennol.
2.	Dylai'r Cyfreithiwr ofyn i'r ymgeisydd/deilydd y drwydded i gadarnhau ei fod/bod wedi derbyn yr adroddiad a gweithdrefnau'r Pwyllgor. Os yw'r ymgeisydd yn ateb yn gadarnhaol, dylid symud ymlaen at gam 4.
3.	Pe digwydd i'r ymgeisydd/deilydd y drwydded ddweud nad yw wedi derbyn yr adroddiad, yna dylid cyfarch y mater yn awr. Gallai'r Aelodau fod eisiau ystyried gohirio'r mater, am gyfnod byr, er mwyn i'r ymgeisydd/deilydd y drwydded gael cyfle i ddarllen yr adroddiad.
4.	Dylai Pennaeth Cynllunio a Diogelu'r Cyhoedd (neu gynrychiolydd ar ei ran) gyflwyno'r cais/adolygiad yn fras
5.	Gofynnir i'r ymgeisydd/deilydd y drwydded gyflwyno ei achos/hachos  Gall yr ymgeisydd/deilydd y drwydded alw unrhyw dyst y mae'n eu dewis i gefnogi ei gais/chais, a dylid rhoi rhybudd ymlaen llaw i'r Swyddogion Trwyddedu ynglŷn â hynny.
6.	Gall Aelodau'r Pwyllgor holi'r ymgeisydd/deilydd y drwydded ac /neu ei dystion ei thystion.
7.	Gwahoddir swyddogion technegol i gyflwyno unrhyw ganfyddiadau (Gorfodaeth Trwyddedu/Cymunedol, Tîm Cyswllt Cyntaf (y Gwasanaethau Cymdeithasol), Cludiant Ysgolion.)
8.	Gall Aelodau'r Pwyllgor ac yna'r ymgeisydd/deilydd y drwydded ofyn cwestiynau i'r swyddogion technegol
9.	Gwahoddir yr ymgeisydd/deilydd y drwydded i gyflwyno sylwadau i gloi, os ydynt yn dymuno gwneud hynny.
10.	Gofynnir i'r canlynol adael y cyfarfod tra trafodir y cais/yr adolygiad gan yr Aelodau - yr ymgeisydd/deilydd y drwydded, pob trydydd parti, Pennaeth Cynllunio a Diogelu'r Cyhoedd, swyddogion technegol.  DS yr unig rai a ddylai fod yn weddill yw – Aelodau'r Pwyllgor, cyfieithydd, cynghorydd cyfreithiol y pwyllgor a'r sawl sy'n cymryd y cofnodion.

11.	Dylai aelodau'r pwyllgor roi ystyriaeth i'r cais/adolygiad gan roi cyfrif am y dystiolaeth a glywyd.
12.	Pe bai'n angenrheidiol i Aelodau'r Pwyllgor alw unrhyw barti yn eu holau i'w holi neu i ofyn iddynt ddarparu rhagor o wybodaeth neu egluro rhywbeth, gwahoddir pawb a fydd wedi ymneilltuo o'r cyfarfod yn eu holau. Wedi i'r cwestiwn (cwestiynau) gael eu hateb gofynnir i bob trydydd parti ymneilltuo unwaith eto er mwyn i'r Aelodau gael ystyried y dystiolaeth i gyd.
13.	Pan fo'r Aelodau wedi dod i benderfyniad, gelwir yr holl bartïon yn eu holau a chaiff yr ymgeisydd/deilydd y drwydded wybod beth yw penderfyniad yr Aelodau gan y Cadeirydd.
14.	Bydd y Cadeirydd yn rhoi gwybod i'r ymgeisydd/deilydd y drwydded o'r penderfyniad y daethpwyd iddo. Bydd hyn yn cynnwys unrhyw amodau neu gosbau sydd wedi eu gosod. Os oes angen, dylai Cyfreithiwr y Cyngor gyflwyno eglurhad pellach ynglŷn â'r penderfyniad a'i oblygiadau i'r ymgeisydd/deilydd y drwydded.
15.	Os mai'r penderfyniad yw gwrthod neu os oes penderfyniad i atal neu ddirymu, dylai Cyfreithiwr y Cyngor roi gwybod i'r ymgeisydd/deilydd y drwydded am yr hawl i apelio i Lys Ynadon (bydd y llythyr penderfyniad hefyd yn cynnwys y manylion hyn).
16.	Ar gyfer gyrrwr sydd eisoes wedi ei drwyddedu (a bod y drwydded wedi ei rhoi gan Sir Ddinbych), a bod penderfyniad y Pwyllgor yn ymwneud ag atal neu ddirymu'r drwydded bresennol, gall yr Aelodau wneud hynny naill ai o dan:  1. Adran 61 (2A) Deddf Llywodraeth Leol (Darpariaethau Amrywiol) 1976. 2. Adran 61 (2B) Deddf Llywodraeth Leol (Darpariaethau Amrywiol) 1976. Daw'r penderfyniad hwn i rym YN SYTH ac ni ellir ei ddefnyddio ond pan fo'r sail dros atal/dirymu yn fater sy'n ymwneud â diogelwch y cyhoedd.  Bydd y Cyfreithiwr yn esbonio goblygiadau'r penderfyniad wrth ddeilydd y drwydded.
17.	Caiff yr ymgeisydd/deilydd y drwydded ei hysbysu o'r penderfyniad yn ysgrifenedig cyn gynted ag y bo'r ymarferol bosibl.
18.	Caiff yr ymgeisydd/deilydd y drwydded ei wahodd/gwahodd i drafod unrhyw fater y mae'n ansicr yn ei gilch gyda Swyddogion Trwyddedu yn dilyn y Pwyllgor.

DEDDF LLYWODRAETH LEOL 2000

Cod Ymddygiad Aelodau

## DATGELU A CHOFRESTRU BUDDIANNAU

Rwyf i,  
(enw)

\*Aelod /Aelod cyfetholedig o  
(\*dileuer un)

Cyngor Sir Ddinbych

**YN CADARNHAU** fy mod wedi datgan buddiant **\*personol / personol a sy'n rhagfarnu** nas datgelwyd eisoes yn ôl darpariaeth Rhan III cod ymddygiad y Cyngor Sir i Aelodau am y canlynol:-  
(\*dileuer un)

Dyddiad Datgelu:

Pwyllgor (nodwch):

Agenda eitem

Pwnc:

Natur y Buddiant:

(Gweler y nodyn isod)\*

Llofnod

Dyddiad

Noder: Rhowch ddigon o fanylion os gwelwch yn dda, e.e. 'Fi yw perchennog y tir sy'n gyfagos i'r cais ar gyfer caniatâd cynllunio a wnaed gan Mr Jones', neu 'Mae fy ngŵr / ngwraig yn un o weithwyr y cwmni sydd wedi gwneud cais am gymorth ariannol'.

Mae tudalen hwn yn fwriadol wag



## PWYLLGOR TRWYDDEDU

Cofnodion cyfarfod o'r Pwyllgor Trwyddedu a gynhaliwyd yn Siambr y Cyngor, Neuadd y Sir, Rhuthun, Dydd Iau, 8 Mawrth 2018 am 9.30 am.

## YN BRESENNOL

Cynghorwyr Joan Butterfield, Hugh Irving (Cadeirydd), Alan James (Is-Gadeirydd), Brian Jones, Melvyn Mile, Arwel Roberts, Peter Scott, Rhys Thomas, Tony Thomas a Huw Williams

## HEFYD YN BRESENNOL

Cyfreithiwr (AL), Rheolwr Busnes Gwarchod y Cyhoedd (IM), Swyddog Trwyddedu (NJ) a'r Gweinyddydd Pwyllgor (KEJ)

### 1 YMDDIHEURIADAU

Y Cynghorydd Barry Mellor

### 2 DATGAN CYSYLLTIAD

Ni chafodd unrhyw gysylltiadau eu datgan.

### 3 MATERION BRYD FEL Y'U CYTUNWYD GAN Y CADEIRYDD

Ni chodwyd unrhyw faterion bryd.

### 4 COFNODION Y CYFARFOD DIWETHAF

Cyflwynwyd cofnodion cyfarfod y Pwyllgor Trwyddedu a gynhaliwyd ar 6 Rhagfyr 2017.

***PENDERFYNWYD** derbyn a chadarnhau cofnodion y cyfarfod a gynhaliwyd ar 6 Rhagfyr 2017 fel cofnod cywir.*

### 5 CYFLWYNO RHESTR O GERBYDAU HYGGRCH I GADEIRIAU OLWYN DYNODEDIG

Cyflwynodd y Rheolwr Busnes Gwarchod y Cyhoedd adroddiad (a ddosbarthwyd yn flaenorol) ynglŷn â newidiadau a gyflwynwyd gan Ddeddf Cydraddoldeb 2010 a gofyn am gymeradwyaeth i gyflwyno a chynnal rhestr o gerbydau hygyrch i gadeiriau olwyn.

Roedd Deddf Cydraddoldeb 2010 yn caniatáu i awdurdodau lleol gadw rhestr o gerbydau trwyddedig fel cerbyd hacni neu gerbyd hurio preifat sy'n bodloni gofynion cerbyd hygyrch i gadeiriau olwyn, a phan mae rhestr yn bodoli, mae'r ddeddfwriaeth yn gosod rhwymedigaethau pellach ar yrwyr a/neu berchnogion y cerbydau hynny, gan greu troseddau am doromoadau a gwahaniaethu yn erbyn defnyddwyr

cadeiriau olwyn. Roedd manylion y dyletswyddau i'w rhoi ar yrwyr cerbydau dynodedig o dan y Ddeddf wedi cael eu darparu yn yr adroddiad ynghyd â manylion eithriadau ac amserlen amcanol ar gyfer cyhoeddi'r rhestr. Roedd canllawiau statudol ffurfiol oddi wrth yr Adran Drafnidiaeth wedi cael eu cyhoeddi (ynghlwm fel atodiad i'r adroddiad) yn gofyn i awdurdodau lleol gyflwyno'r rhannau perthnasol o'r Ddeddf Cydraddoldeb er mwyn darparu gwarchodaeth ar gyfer defnyddwyr cadeiriau olwyn.

Ystyriodd yr Aelodau gynnwys yr adroddiad, cyngor o Ddeddf Cydraddoldeb 2010 a chanllaw'r Adran Drafnidiaeth a chroesawyd y darpariaethau newydd er mwyn gwarchod hawliau defnyddwyr cadeiriau olwyn yn well a chreu gwelliannau a rhagofalon yn erbyn gwahaniaethu wrth ddefnyddio cerbydau trwyddedig. Nodwyd bod cwynion blaenorol wedi cael eu dwyn gerbron y pwyllgor mewn perthynas â gwasanaethau a ddarparwyd gan gerbydau trwyddedig sy'n hygyrch i gadeiriau olwyn a fyddai'n cael eu trin o dan y darpariaethau newydd gyda chosbau'n cael eu rhoi am fynd yn groes i'r cyfrifoldebau a roddwyd ar yrwyr a pherchnogion mewn perthynas â hynny.

**PENDERFYNWYD** bod yr Aelodau yn –

- (a) *cymeradwyo cyflwyno rhestr gyhoeddedig o gerbydau hygyrch i gadeiriau olwyn;*
- (b) *dirprwyo gosod y dyddiad gweithredu i'r Rheolwr Busnes Gwarchod y Cyhoedd mewn ymgynghoriad gyda'r Rheolwr Gwarchod y Cyhoedd a Chadeirydd y Pwyllgor Trwyddedu, a*
- (c) *cyfarwyddo swyddogion i adrodd yn ôl i'r Pwyllgor Trwyddedu yn ystod 2018 gyda gwybodaeth ar y rhestr a baratowyd.*

## **6 DIWYGIADAU ARFAETHEDIG I FANYLION CERBYD HACNI A CHERBYDAU HURIO PREIFAT PRESENNOL**

Cyflwynodd y Swyddog Trwyddedu adroddiad (a ddosbarthwyd yn flaenorol) yn manylu ar y diwygiadau arfaethedig i'r manylebau cerbyd hacni a cherbydau hurio preifat presennol er mwyn i'r aelodau eu hystyried.

Ers gweithredu polisi cerbydau hacni a hurio preifat newydd ym mis Gorffennaf 2017, amlygodd adborth o'r diwydiant trwyddedu yr angen am fwy o fanylder mewn perthynas â manylebau cerbydau o ran drysau ac roedd yr adran sy'n ymwneud â hygyrchedd cadeiriau olwyn yn cael ei ystyried yn rhy gyfyngol ac efallai y gallai fod â chanlyniadau anfwriadol ar y diwydiant tacsis. O ganlyniad, roedd swyddogion wedi cynnig gwelliant i'r paragraffau perthnasol yn y manylebau cerbydau (fel y manylwyd yn yr adroddiad) a fyddai'n adlewyrchu'n well ofynion yr awdurdod ar gyfer cerbydau trwyddedig mewn perthynas â drysau ac yn caniatáu gwell hyblygrwydd o ran argaeledd mynediad i gadeiriau olwyn er budd y diwydiant trwyddedig a'r cyhoedd sy'n teithio.

Ystyriodd yr aelodau'r diwygiadau arfaethedig a gofynnwyd am sicrwydd na fyddai'r newidiadau arfaethedig yn gadael yr awdurdod yn agored i'w herio ymhellach.

Eglurodd y swyddogion bod y diwygiadau'n darparu mwy o eglurder; yn cynyddu'r ystod a'r nifer o gerbydau sy'n addas ar gyfer dibenion trwyddedu, ac yn darparu gwell hyblygrwydd o ran y cyfarpar sydd ar gael ar gyfer hwyluso mynediad i gadeiriau olwyn. O ganlyniad, roedd y swyddogion yn fodlon gyda'r addasiadau arfaethedig a -

**PHENDERFYNWYD** bod y diwygiadau i'r manylebau cerbydau hacni a cherbydau hurio preifat fel y manylwyd ym mharagraffau 4.7 a 4.9 yr adroddiad, fel yr ailadroddwyd isod, yn cael eu cymeradwyo ar unwaith –

- Adrannau 3.11.1 & 6.5.1 – “Bydd gan salwnau, ystadau neu dacsis wedi'u haddasu'n arbennig fod â drysau'n agor ar y pedwar ochr, sy'n gallu cael eu hagor o'r tu mewn a'r tu allan. Bydd gan fysiau mini, faniau a cherbydau cludo criw gael tri drws o leiaf, nad ydynt yn cynnwys unrhyw ddrysau cefn na thinbren.”
- Adrannau 3.14.1 & 6.8.1 – “Bydd ramp neu rampiau neu offer codi priodol ar gael bob amser i lwytho cadair olwyn a'r teithiwr i'w defnyddio trwy ddrws cefn yr ochr agosaf.”

## 7 DEDDF GAMBLO 2005 – ADOLYGU DATGANIAD O EGWYDDORION

Cyflwynodd y Swyddog Trwyddedu adroddiad (a ddosbarthwyd yn flaenorol) yn cyflwyno drafft terfynol Datganiad Egwyddorion y Cyngor ar gyfer y Ddeddf Gamblo 2005 i'w mabwysiadu a'i gweithredu o 1 Ebrill 2018.

Roedd gofyniad statudol i adolygu'r Datganiad Egwyddorion bob tair blynedd ac roedd y ddogfen ddrafft wedi cael ei datblygu gan y chwe awdurdod trwyddedu yng Ngogledd Cymru er mwyn sicrhau cysondeb mewn materion yn ymwneud â swyddogaethau a phroblemau gamblo. Roedd y ddogfen ddrafft wedi cael ei chymeradwyo ar gyfer ymgynghoriad cyhoeddus gan y Pwyllgor Trwyddedu ym mis Medi 2017 ac nid oedd unrhyw sylwadau wedi dod i law.

Ymatebodd y Swyddogion i gwestiynau'r aelodau ynghylch gweinyddiaeth a gorfodaeth o ran gweithgareddau gamblo ac eglurwyd rôl yr awdurdod trwyddedu a'r Comisiwn Gambo i'r perwyl hwnnw. Nid oedd unrhyw feysydd penodol o bryder o ran rheoleiddio gamblo yn y sir ac ar y cyfan cymerwyd camau mewn ymateb i dderbyn cudd-wybodaeth heb ddim trefn archwilio safonol ar gyfer gweithgareddau gamblo, ac roedd gweithredwyr ar y cyfan yn cydymffurfio â gofynion deddfwriaethol. Mewn ymateb i gwestiynau pellach, cadarnhaodd y swyddogion hefyd y gofynion trwyddedu o ran peiriannau gemau gyda gwobrau mawr a loteriau a rafflau cymdeithasu bach. Nodwyd nad oedd casino yn y sir a bod y cyngor wedi penderfynu yn y gorffennol i beidio â chaniatáu ceisiadau am gasinos. Nododd yr aelodau na chafwyd unrhyw sylwadau yn dilyn y broses ymgynghori ac nad oedd cynnwys y ddogfen ddrafft wedi newid. O ganlyniad -

**PENDERFYNWYD** bod y Datganiad Egwyddorion fel y cyflwynwyd a'i atodwyd i'r adroddiad gael ei fabwysiadu a'i weithredu o 1 Ebrill 2018.

## 8 **DIWEDDARIAD AR BOLISI EUOGFARNAU AC AMODAU GYRWYR A GWEITHREDWYR CERBYDAU HACNI A HURIO PREIFAT**

Cyflwynodd y Rheolwr Busnes Gwarchod y Cyhoedd adroddiad (a ddsbarthwyd yn flaenorol) yn rhoi diweddariad i'r aelodau ar gynnydd adolygu polisïau sy'n gysylltiedig â Pholisi Euogfarnau Gyrwyr Cerbydau Hacni a Hurio Preifat a Gweithredwyr Hurio Preifat.

Cafodd yr aelodau eu hatgoffa am y gwaith a wnaed gan gweithgor cenedlaethol i ddatblygu model cenedlaethol ar addasrwydd ymgeiswyr a thrwyddedai mewn perthynas â thrwyddedu cerbydau hacni a cherbydau hurio preifat a fu'n destun ymgynghoriad cenedlaethol yn ddiweddar a ddaeth i ben ar 10 Mawrth 2018. Y disgwyl oedd y byddai'r drafft yn cael ei ddatblygu ymhellach a'i ryddhau yn ddiweddarach yn y flwyddyn. Yn ogystal, roedd Llywodraeth Cymru wedi cwblhau ymgynghoriad ar drwyddedu tacsis a cherbydau hurio preifat yng Nghymru yn ddiweddar a byddai gwaith pellach yn dilyn o'r broses honno. Byddai'r ddwy ffrwd waith yn cael effaith ar y broses drwyddedu yn genedlaethol ac yn lleol a chyfeiriwyd am ymgysylltiad y cyngor yn y broses honno.

Cytunodd y Pwyllgor y byddai'n well ymgysylltu yn yr ymgynghoriadau gyda'r bwriad o ddatblygu modelau cenedlaethol cyn ystyried y perthnasedd i bolisi trwyddedu tacsis y Cyngor. Fodd bynnag, gofynnwyd cwestiynau ynghylch y potensial ar gyfer canlyniadau cyferbyniol o'r ddwy ffrwd waith o gofio fod un yn cael ei gwneud gan Lywodraeth y DU a'r llall gan Lywodraeth Cymru. Er bod potensial ar gyfer gwahaniaethau cyffredinol rhwng y ddwy weinyddiaeth, rhoddodd y swyddogion sicrwydd bod y ffrydiau gwaith yn yr achos penodol hwn yn canolbwyntio ar wahanol rannau o'r ddeddfwriaeth drwyddedu, gyda'r gweithgor cenedlaethol yn canolbwyntio ar bolisi euogfarnau cyffredinol a Llywodraeth Cymru yn canolbwyntio ar y diwydiant tacsis a cherbydau hurio preifat yng Nghymru.

Amlygodd y Cadeirydd yr angen am gronfa ddata dirymiadau cenedlaethol i atal gyrwyr rhag cael trwydded yn rhywle arall os oeddent wedi cael eu gwahardd neu eu gwrthod mewn ardal benodol. Soniodd y swyddogion am drefniadau anffurfiol gydag awdurdodau cyfagos i rannu gwybodaeth mewn perthynas â hynny, ond cadarnhaodd fod gwaith ar y gweill i gyflwyno cofrestr genedlaethol o drwyddedau sydd wedi eu gwrthod neu ddirymu, y gallai awdurdodau lleol ei defnyddio fel rhan o'r broses ymgeisio wrth asesu addasrwydd gyrwyr. Roedd yr aelodau'n falch o nodi byddai cronfa ddata dirymiadau cenedlaethol yn cael ei chyflwyno yn fuan, a gofynnwyd am gael gwybod y diweddaraaf o ran cynnydd.

**PENDERFYNWYD** bod yr aelodau yn –

- (a) *cydnabod cynnwys yr adroddiad, a*
- (b) *cyfarwyddo swyddogion i adrodd yn ôl i'r Pwyllgor Trwyddedu ar waith y gweithgor cenedlaethol a Llywodraeth Cymru wrth i gynnydd pellach gael ei wneud i ganiatáu i aelodau ystyried perthnasedd i bolisïau trwyddedu tacsis y cyngor.*

## 9 ADOLYGU'R POLISI MASNACHU AR Y STRYD

Cyflwynodd y Swyddog Trwyddedu adroddiad (a ddisbarthwyd yn flaenorol) yn hysbysu'r aelodau ar gynnydd adolygiad o'r polisi masnachu ar y stryd cyfredol yn Sir Ddinbych.

Yn 2015, rhoddodd y Pwyllgor Trwyddedu awdurdod i swyddogion adolygu'r gyfundrefn masnachu ar y stryd bresennol er mwyn mynd i'r afael ag anawsterau gyda'r rheoliadau presennol ac awgrymu gwelliannau i reoleiddio a chefnogi masnachu ar strydoedd y Sir yn well. Cafodd polisi drafft ei ystyried gan y Pwyllgor Trwyddedu yn Rhagfyr 2016, yn dilyn hynny cynhaliwyd ymgynghoriad cychwynnol gyda Chynghorau Dinas, Tref a Chymuned ynghyd ag adrannau mewnol y Cyngor. Cafodd sylwadau o'r ymgynghoriad cychwynnol eu cynnwys mewn Polisi Masnachu ar y Stryd drafft a gyflwynwyd ar gyfer ymgynghoriad cyhoeddus. Ni dderbyniwyd unrhyw sylwadau o ganlyniad l'r ymarfer ymgynghoriad cyhoeddus hwnnw. Fodd bynnag, roedd adborth oddi wrth unigolion a thimau o fewn y cyngor wedi codi materion pellach l'w hystyried ac ym mis Medi 2017 gofynnodd y Pwyllgor Trwyddedu am gynnal trafodaethau pellach gyda masnachwyr "sefydlog", masnachwyr ar y stryd, cymunedau a thimau'r Cyngor ehangach cyn cytuno ar bolisi terfynol l'w ystyried. Roedd gwaith yn mynd rhagddo ar hyn o bryd i lunio strategaeth gychwynnol gan ddefnyddio holiaduron wyneb yn wyneb a chyfryngau cymdeithasol, ynghyd â gwefan y Cyngor i gysylltu a gwahodd adborth gan aelodau allweddol o'r gymuned er mwyn gallu paratoi polisi sydd wedi bod yn destun proses ymgysylltu ac ymgynghori trylwyr.

Nododd yr Aelodau'r cynnydd gydag adolygu'r Polisi Masnachu ar y Stryd a'r ymdrechion a wnaed i ymgysylltu ag unigolion a grwpiau penodol a allai gael eu heffeithio'n uniongyrchol gan y polisi. Amlygwyd y pwysigrwydd o ddatblygu polisi cadarn, addas i'r diben ar gyfer trefi a chymunedau yn y sir, ac ar gyfer tryloywder. Cytunodd y swyddogion adrodd yn ôl ar y rhestr o ymgynghoreion a'u cyfraniadau o ran ffurfio'r ddogfen bolisi derfynol i'r aelodau ei hystyried.

***PENDERFYNWYD*** bod Aelodau'n rhoi awdurdod i swyddogion barhau i weithio gyda grwpiau ac unigolion perthnasol a chyflwyno polisi drafft ar gyfer cyflwyniad mewn Pwyllgor Trwyddedu yn y dyfodol.

## 10 RHAGLEN GWAITH I'R DYFODOL Y PWYLLGOR TRWYDDEDU 2018

Cyflwynwyd adroddiad gan y Pennaeth Cynllunio a Gwarchod y Cyhoedd (a ddisbarthwyd yn flaenorol) ar raglen gwaith i'r dyfodol y Pwyllgor Cynllunio ar gyfer 2018.

Codwyd y materion canlynol –

- Roedd y Cadeirydd a'r Cynghorydd Tony Thomas (Aelod Arweiniol dros Drwyddedu) wedi bod yng nghwmni'r Swyddogion Trwyddedu a Heddlu Gogledd Cymru ar ymgyrch reoleiddio ar y cyd yng ngogledd y sir, a oedd wedi cynnwys ymweliadau â nifer o eiddo trwyddedig yn oriau mân y bore. Bu'r ymgyrch yn un gwerth ei gwneud gyda pherthynas dda rhwng y trwyddedigion a'r swyddogion a chymorth a chydweithrediad ymysg pawb. Mynegwyd peth

pryder ynghylch tystiolaeth o ddefnyddio cyffuriau mewn eiddo trwyddedig ac o fewn y gymuned ehangach, a soniodd y swyddogion am y mesurau sy'n cael eu cymryd trwy ymagweddau amlasiantaeth i fynd i'r afael â'r mater hwnnw. Cyfeiriwyd at gylch gorchwyl y Pwyllgor Trwyddedu l'r perwyl hwn a'u cyfrifoldebau o dan y Ddeddf Drwyddedu. Er mai mater i'r heddlu yn bennaf oedd cyffuriau, gofynnodd yr aelodau am gael gwybod am unrhyw ddatblygiadau yr oedd swyddogion yn dod yn ymwybodol ohonynt wrth fynd i'r afael â'r mater hwnnw.

- Roedd y Cadeirydd a'r Cynghorydd Alan James (is-gadeirydd) wedi cyfarfod gyda swyddogion i ymgymryd â'r adolygiad o'r ffurflenni cais, fel y gofynnodd y pwyllgor, ac roedd y cyfeiriad at ddatgelu euogfarnau bellach wedi cael ei wneud yn fwy eglur ar gyfer ymgeiswyr - byddai'r ffurflenni newydd yn cael eu cyflwyno maes o law
- Cyfeiriwyd at y sesiwn hyfforddiant hanner diwrnod ar drwyddedu tacsis a drefnwyd ar gyfer 9.00 a.m. ar 19 Ebrill 2018 yn Neuadd y Sir, Rhuthun, ac anogwyd yr aelodau i hysbysu'r swyddogion os oedd ganddynt unrhyw anghenion hyfforddiant ychwanegol penodol.

Roedd yr Aelodau yn fodlon gyda chynnwys y rhaglen waith ac felly –

***PENDERFYNWYD*** y dylid cymeradwyo rhaglen gwaith i'r dyfodol y Pwyllgor Trwyddedu fel y manylwyd yn yr Atodiad 1 yr adroddiad.

Daeth y cyfarfod i ben am 10.30 a.m.

Yn rhinwedd Paragraff(au) 12, 13 Rhan 4, Atodlen 12A  
Deddf Llywodraeth Leol 1972.

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Mae tudalen hwn yn fwriadol wag



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Deddf Llywodraeth Leol 1972.

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Deddf Llywodraeth Leol 1972.

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<b>ADRODDIAD I'R:</b>	Pwyllgor Trwyddedu
<b>DYDDIAD:</b>	13 Mehefin 2018
<b>SWYDDOG ARWEINIOL:</b>	Pennaeth Cynllunio a Gwasanaethau Gwarchod y Cyhoedd
<b>SWYDDOG CYSWLLT:</b>	Howard Birnie <a href="mailto:trwyddedu@sirddinbych.gov.uk">trwyddedu@sirddinbych.gov.uk</a> 01824 706431
<b>PWNC:</b>	Cais i Hysbysebu ar Gerbydau Hacni

## **1.0 PWRPAS YR ADRODDIAD**

- 1.1 Ystyried cais gan Mr William Curry, sydd yn Berchennog Cerbydau Hacni sefydledig, am gymeradwyaeth i arddangos arwyddluniau ar ei gerbydau trwyddedig.
- 1.2 Egluro gofynion y polisi o ran y gorffeniad paent ar gyfer cerbydau hacni.

## **2.0 CRYNODEB GWEITHREDOL**

- 2.1 Yn unol â'r awdurdod dirprwyedig, gall Swyddogion gymeradwyo ceisiadau o'r fath yn unol â'r polisi cyfredol.
- 2.2 Er bod gan Swyddogion awdurdod dirprwyedig i gymeradwyo ceisiadau fel y disgrifiwyd ym mhwynt 2.1 uchod, mae'r cais penodol hwn wedi peri pryder i swyddogion felly nid yw wedi'i gymeradwyo ar lefel swyddog.
- 2.3 Ar ôl derbyn cais o'r fath, gofynnir i'r Aelodau ystyried y manylion o fewn yr adroddiad hwn i'w cynorthwyo wrth benderfynu a ddylid cymeradwyo'r cais hwn.

## **3.0 PŴER I WNEUD Y PENDERFYNIAD**

- 3.1 Deddf Cyfrifoldebau Heddluoedd Trefol 1847.

#### 4.0 GWYBODAETH GEFNDIR

- 4.1 Mae Mr Curry wedi cysylltu â'r Cyngor gyda'r bwriad o wneud cais am ganiatâd i arddangos arwyddlun mawr o Fflag Cymru ar fonedi ei gerbydau trwyddedig, gweler Atodiad A. Sylwch mai lluniau wedi'u creu gan gyfrifiadur yw'r rhain ac nid ffotograffau o'r cerbydau fel ag y maent ar hyn o bryd.
- 4.2 Mae manyleb cerbyd a pholisi cyfredol y Cyngor (5.6, 6.2 a 7.6) yn nodi'r gofynion derbynol o ran paent, arwyddion, hysbysebu a chynllun lliwiau Cerbydau Hacni. Gweler detholiadau perthnasol o'r adrannau hyn yn Atodiad B i'r adroddiad hwn.

#### 5.0 YSTYRIAETH

- 5.1 Yn gyntaf oll, dylai'r Aelodau nodi fod adran 6.2.2 yn ymddangos yn anghyflawn wrth ei chymharu ochr yn ochr â gofynion polisi tebyg ar gyfer cerbydau hurio preifat. Yn benodol, y gofyniad ar gyfer cerbyd hurio preifat yw, yn 3.8.2, "Bydd gan y paent orffeniad proffesiynol ac yn un lliw cyson ar draws corff cyfan y cerbyd." Efallai y dylai Aelodau ystyried a oedd bwriad i'r gofyniad hwn gael ei ailadrodd yn y manyleb cerbyd hacni.
- 5.2 Mae Swyddogion yn dymuno tynnu sylw'r Aelodau at y gofynion yn ymwneud ag Arwyddion a Hysbysiadau. Er y gellir arddangos enw'r cwmni/ rhif ffôn ar ochr neu gefn cerbyd, ni chaniateir unrhyw arwyddion, arwyddlun neu hysbysiadau eraill y tu mewn na thu allan i'r cerbyd heb ganiatâd ysgrifenedig penodol gan y Cyngor.
- 5.3 Bydd Aelodau'n dymuno ystyried a yw pob math o arwyddluniau chwaraeon ac arwyddion gwladgarol yn dderbynol i'w harddangos ar gerbydau trwyddedig yn gyffredinol. Er enghraifft, efallai y ceir cais i arddangos teyrngarwch i dîm chwaraeon neu wlad, ac y byddai hynny wedyn yn denu sylw dieisiau, neu'n cynyddu'r risg o ymddygiad troseddol.
- 5.4 Er nad yw cais Mr Curry y tu allan i'r gofynion y manylwyd arnynt uchod yn awtomatig, mae Swyddogion o'r farn y dylid rhoi cyfle i'r Aelodau ystyried y mater yn yr achos hwn.
- 5.5 Pan ystyriodd yr Aelodau gais i arddangos arwyddluniau llai yn ystod eu Cyfarfod ym mis Medi 2017, **PENDERFYNWYD -**

*(a) cymeradwyo'r cais i arddangos arwyddlun fel y gwnaed cais amdano, ac*

*(b) ystyried ceisiadau i arddangos arwyddluniau yn y dyfodol yn unigol yn ôl eu rhinweddau eu hunain.*

Dyma oedd y rhesymau dros benderfyniad y Pwyllgor Trwyddedu –  
*“Ar ôl ystyried yr adroddiad a chyflwyniad yr Ymgeisydd, roedd yr Aelodau’n fodlon ei bod hi’n briodol i’r arwyddluniau gael eu harddangos ar y cerbyd fel y ceisiwyd. Cydnabuwyd y gallai rhai arwyddluniau o’r math hyn ddenu sylw dieisiau ond, yn ôl yr Aelodau, nid oedd newid i’r polisi’n angenrheidiol ac y dylai pob cais gael ei benderfynu ar ei rinwedd ei hun.”*

## 6.0

### **ARGYMHELLION**

## 6.1

Bod yr Aelodau’n ystyried y cais i arddangos arwyddluniau ac yn dewis un o’r opsiynau canlynol:

- cymeradwyo’r cais fel y gwnaed cais amdano, neu
- gwrthod y cais.

## 6.2

Bod yr Aelodau’n ystyried sylwadau’r gofyniad polisi ym mhwynt 5.1 uchod a chadarnhau’r hyn a fwriedir:

- Bydd gan y paent orffeniad proffesiynol; neu
- Bydd gan y paent orffeniad proffesiynol ac yn un lliw cyson ar draws corff cyfan y cerbyd.

Mae tudalen hwn yn fwriadol wag

**Cais i Hysbysebu ar Gerbydau Hacni – Atodiad A**  
**Pwyllgor Trwyddedu – 13 Mehefin 2018**





## 5.6 ARWYDDION/HYSBYSEBION/LIFRAI

- 5.6.1 Mae'n bwysig fod y cyhoedd yn gallu adnabod a deall y gwahaniaeth rhwng Cerbyd Hacni a Cherbyd Hurio Preifat.
- 5.6.2 Mae platiau adnabod cerbydau yn hollbwysig o ran helpu pobl i adnabod cerbydau sydd wedi'u trwyddedu'n gywir. Ar bob cerbyd trwyddedig bydd plât wedi'i arddangos ar y tu blaen ac un ar y tu ôl.
- 5.6.3 Mae'n rhaid i Gerbyd Hacni sydd wedi'i drwyddedu gan y Cyngor fod ag arwydd wedi'i oleuo ar y to. Mae'r rhaid i'r arwydd fod â'r geiriau "Tacsi/Taci" arno a dylai fod wedi'i oleuo pan fydd ar gael i'w hurio.
- 5.6.4 Rhaid cyflwyno manylion unrhyw hysbyseb y dymunir ei osod ar Gerbyd Hacni i'r Adran Drwyddedu er mwyn i gynnwys yr hysbyseb gael ei ystyried. Os nad yw'r swyddog yn cymeradwyo'r hysbyseb/hysbysebion yna bydd y cais yn cael ei gyfeirio at y Pwyllgor Trwyddedu er ystyriaeth.

## 6.2 CORFF

- 6.2.1 Ni fydd arwyddion allanol gweladwy o unrhyw ddifrod arwyddocaol blaenorol i'r cerbyd e.e. crafiadau dwfn
- 6.2.2 Bydd gorffeniad proffesiynol i baent y cerbyd.
- 6.2.3 Ni fydd arwyddion crydiad arwyddocaol ar y cerbyd. Mae crydiad yn cynnwys rhwd amlwg ac arwyddion o rwd – h.y. swigod ar y paent.

## 7.6 ARWYDDION A HYSBYSIADAU

- 7.6.1 Gall perchennog arddangos enw'r cwmni y mae'r cerbyd yn gweithio iddo a/neu ei rif ffôn ar ochr a/neu du ôl y cerbyd, ond ni fydd

unrhyw arwyddion, arwyddluniau a hysbysiadau yn cael eu harddangos y tu allan na'r tu mewn i'r cerbyd heb ganiatâd ysgrifenedig penodol y Cyngor.

7.6.2 Mae'n rhaid i unrhyw berchennog sy'n dymuno defnyddio neu werthu lle ar y cerbyd i hysbysebu cwmni/busnes arall wneud cais i'r Cyngor yn gyntaf gan gynnwys hysbyseb drafft i'w ystyried. Dim ond un hysbyseb awdurdodedig a ganiateir.

7.6.3 Ni ddylai'r fath hysbysebion:

- i) gynnwys unrhyw beth crefyddol neu wleidyddol
- ii) hysbysebu alcohol neu dybaco
- iii) fod yn bornograffig neu'n dramgwyddus
- iv) hyrwyddo prisiau disgownt
- v) hysbysebu ffioedd



<b>ADRODDIAD I'R:</b>	Pwyllgor Trwyddedu
<b>DYDDIAD:</b>	13 Mehefin 2018
<b>SWYDDOG ARWEINIOL:</b>	Pennaeth Cynllunio a Gwarchod y Cyhoedd
<b>SWYDDOG CYSWLLT:</b>	Uwch Swyddog Technegol (Trwyddedu) 01824 706433
<b>TESTUN:</b>	Diweddariad ar Bolisi Euogfarnau Cerbydau Hacni a Hurio Preifat

## 1. PWRPAS YR ADRODDIAD

- 1.1 Diweddariad i Aelodau ar y Polisi Euogfarnau Gyrwyr Cerbydau Hacni a Hurio Preifat.

## 2. CRYNODEB GWEITHREDOL

- 2.1 Mae Aelodau wedi trefnu diweddariad i nodi'r cynnydd ar y polisi sy'n gysylltiedig â'r Polisi Euogfarnau Gyrwyr Cerbydau Hacni a Hurio Preifat.

## 3. PŴER I WNEUD Y PENDERFYNIAD

- 3.1 Does dim angen penderfyniad.

## 4. GWYBODAETH GEFNDIR

- 4.1 Mae'r cyngor, fel rhan o'i swyddogaeth trwyddedu gyrwyr cerbydau hacni a hurio preifat wedi sefydlu Polisi Euogfarnau i arwain ymgeiswyr a swyddogion ar y disgwyliadau mewn perthynas â pherthnasedd euogfarnau ac ati.
- 4.2 Adolygwyd y polisi Euogfarnau cyfredol ddiwethaf yn 2014.
- 4.3 Bydd yr Aelodau'n cofio iddynt gytuno y dylai'r polisi presennol gael ei adolygu fel rhan o'u rhaglen gwaith i'r dyfodol.
- 4.4 Ers i hwn gael ei ychwanegu at y rhaglen gwaith i'r dyfodol, mae gwaith sylweddol wedi cael ei wneud gan weithgor cenedlaethol, o'r enw'r Sefydliad Trwyddedu (IOL), sy'n cynnwys sbectrwm eang o fudd-ddeiliaid â diddordeb mewn trwyddedu tacsis, i ddatblygu model cenedlaethol ar

addasrwydd ymgeiswyr a deiliaid trwyddedau ar gyfer cerbydau hacni a cherbydau hurio preifat.

- 4.5 Cyhoeddwyd fersiwn terfynol Polisi'r IOL ym mis Ebrill eleni, a bydd Aelodau'n cofio fod polisi'r IOL wedi ei drafod yn ystod eu hyfforddiant diweddar i Aelodau a hwyluswyd gan James Button, ac roedd Aelodau yn awyddus i gael diweddariad ar y polisi yn y cyfarfod nesaf a drefnwyd. Er gwybodaeth i Aelodau, mae copi o bolisi'r IOL ynghlwm yn Atodiad A.
- 4.6 Bwriad y polisi cenedlaethol oedd i gymaint o awdurdodau lleol a bo modd fabwysiadu'r ddogfen i safoni'r gofynion isafswm ar gyfer pennu a oedd ymgeiswyr yn addas i fod yn yrwyr tacsis trwyddedig.
- 4.7 Mae Swyddogion wedi gwneud ymholiadau gydag awdurdodau cyfagos i benderfynu a oedd bwriad i fabwysiadu'r polisi "IOL" Cenedlaethol ledled Gogledd Cymru. Yn dilyn ymholiadau cychwynnol, dim ond Ynys Môn sydd wedi mynegi diddordeb mewn mabwysiadu polisi'r IOL.
- 4.8 Gan nad yw'n ymddangos y bydd yn cael ei fabwysiadu'n eang ar draws Gogledd Cymru, dylai Aelodau fod yn ymwybodol fod risg pe bai Sir Ddinbych yr unig Awdurdod Lleol yng Ngogledd Cymru i fabwysiadu polisi'r IOL gan fod posibilrwydd i ymgeiswyr na fyddent wedi cyflawni gofynion y polisi hwn ymgeisio i unrhyw awdurdod cyfagos nad yw wedi mabwysiadu'r polisi cenedlaethol a, phe bai'n cael ei gymeradwyo, byddai'n dal yn bosibl iddynt weithredu yn Sir Ddinbych dan rai amgylchiadau.
- 4.9 Dylai Aelodau fod yn ymwybodol fod Panel Technegol Trwyddedu (Cymru), fforwm o Swyddogion Trwyddedu awdurdodau lleol, hefyd wedi cael trafodaeth ynghylch Polisi Perthnasedd Euogfarnau Cenedlaethol yr IOL, derbyniwyd sylwadau cadarnhaol a negyddol, serch hynny roedd pawb yn credu fod angen craffu ymhellach ar y polisi hwn er mwyn canfod unrhyw amrywiad a'i effaith bosibl cyn y gallai'r Panel gefnogi ei fabwysladau drwy Gymru.
- 4.10 Yn ychwanegol i waith helaeth yr IOL i ddatblygu polisi euogfarnau cadarn, bydd Llywodraeth Cymru, dros yr ychydig fisoedd nesaf, yn cyflwyno papur gwyn a fydd yn amlinellu cynigion o ran y ffordd y maent yn credu y dylai trwyddedu weithio yng Nghymru. Mae Llywodraeth Cymru yn parhau i fod yn obeithiol y byddant mewn sefyllfa i gyflwyno deddfwriaeth i Gynulliad Cenedlaethol Cymru cyn diwedd tymor presennol y Cynulliad.
- 4.12 Mae Llywodraeth Cymru wedi awgrymu y byddai polisi'r IOL neu rhywbeth tebyg mwy na thebyg yn cael ei gynnwys yn y ddeddfwriaeth

newydd ar gyfer Cymru.

- 4.13 Yn y cyfamser, os bydd Aelodau'n penderfynu aros am ganlyniad Papur Gwyn Llywodraeth Cymru, byddai modd adolygu Polisi Euogfarnau presennol y Cyngor i sicrhau fod unrhyw feysydd amwys yn cael eu dileu neu eu hegluro.

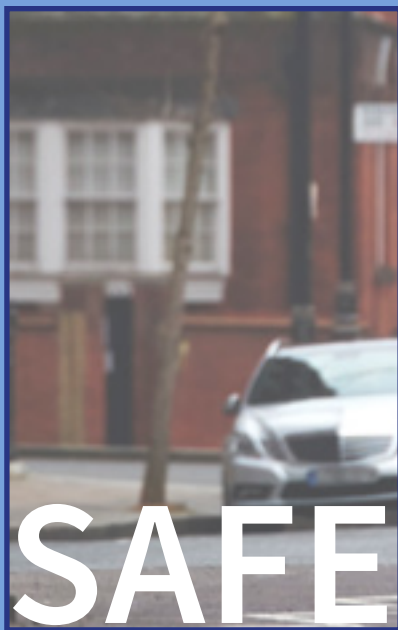
## **5.0 ARGYMHELLION**

- 5.1 Dylai Aelodau awdurdodi swyddogion i barhau i asesu'r effaith ar fabwysïadau Polisi Perthnasedd Euogfarnau Trwyddedu ar y cyd ag adolygiad Llywodraeth Cymru ac adrodd yn ôl i gyfarfod y pwyllgor yn y dyfodol.

- 5.2 Mae Aelodau yn cyfarwyddo swyddogion i adolygu'r Polisi Euogfarnau presennol ac adrodd yn ôl i gyfarfod nesaf y Pwyllgor.

Mae tudalen hwn yn fwriadol wag

# Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades



April 2018

 Institute of Licensing

Produced by the Institute of Licensing in partnership with:



## Contents

Foreword .....	2
Chapter 1: Introduction .....	3
Chapter 2: Offenders and Offending - An Overview .....	5
Risk of re-offending: .....	7
Chapter 3: 'Taxi' Licensing Overview .....	9
Taxi Drivers .....	9
Private Hire Operators .....	13
Vehicle Proprietors .....	15
Chapter 4: Guidance on Determination .....	17
Pre-application requirements .....	17
Vehicles: .....	17
Drivers: .....	18
Operators: .....	18
Drivers .....	20
Crimes resulting in death .....	21
Exploitation .....	21
Offences involving violence .....	21
Possession of a weapon .....	21
Sex and indecency offences .....	21
Dishonesty .....	22
Drugs .....	22
Discrimination .....	22
Motoring convictions .....	22
Drink driving/driving under the influence of drugs/using a hand-held telephone or hand held device whilst driving .....	22
Other motoring offences .....	23
Hackney carriage and private hire offences .....	23
Vehicle use offences .....	23
Private Hire Operators .....	23
Vehicle proprietors .....	24
Acknowledgements .....	25

## Foreword

The function of licensing is the protection of the public. A member of the public stepping into a motor vehicle driven by a stranger must be able to trust the driver. Are they honest? Are they competent? Are they safe? Are they trustworthy? When we transact with others, we usually have time and opportunity to make such assessments. When we transact with taxi drivers, we don't. Therefore, we must, and do, rely on the licence as the warranty of the driver's safety and suitability for the task at hand.

It follows that a licensing authority has an onerous responsibility. In making decisions regarding grant and renewal of licences it is, in effect, holding out the licensee as someone who can be trusted to convey the passenger from A to B in safety. That passenger may be you, or your elderly mother, or your teenage daughter, or a person who has had too much to drink, or who is vulnerable for a whole host of other reasons.

Everybody working in this field should acquaint themselves with the facts of the Rotherham case, which stands as a stark testament to what can happen when licensing performs its safeguarding role inadequately. But the extremity of that appalling story should not distract us from the job of protecting the public from more mundane incompetence, carelessness or dishonesty. The standards of safety and suitability do not have to be set as a base minimum. To the contrary, they may be set high, to give the public the assurance it requires when using a taxi service. It is good to know that one's driver is not a felon. It is better to know that he or she is a dedicated professional.

Crucially, this is not a field in which the licensing authority has to strike a fair balance between the driver's right to work and the public's right to protection. The public are entitled to be protected, full stop. That means that the licensing authority is entitled and bound to treat the safety of the public as the paramount consideration. It is, after all, the point of the exercise.

Therefore, this guidance is to be welcomed. It rightly emphasises that any circumstance relating to the licensee is potentially relevant, provided of course that it is relevant to their safety and suitability to hold a licence. It provides useful and authoritative guidelines to licensing authorities as to how they ought to approach their important task of making determinations about the safety and suitability of drivers and operators.

While, of course, licensing is a local function, it seems absurd that precisely the same conduct might result in a short period without a licence in one district, and a much longer period in a neighbouring district. If a driver is suitable in district A, they are surely suitable in district B, and vice versa. If, as is hoped, this guidance becomes widely adopted, this will result in a degree of national uniformity, which serves the public interest in consistency, certainty and confidence in the system of licensing. Adherence to the guidance may also provide protection to licensing authorities on appeal.

The guidance is therefore commended to licensing authorities. It is hoped that, in due course, it will sit at the elbow of every councillor and officer working in taxi licensing.

Philip Kolvin QC  
Cornerstone Barristers

April 2018

## Chapter 1: Introduction

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- 1.1 This guidance has been produced by the Institute of Licensing working in partnership with the Local Government Association (LGA), Lawyers in Local Government (LLG) and the National Association of Licensing and Enforcement Officers (NALEO), following widespread consultation. We are grateful to all three organisations for their contributions. This guidance is formally endorsed by all of those organisations.
- 1.2 The overriding aim of any Licensing Authority when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators, must be the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services.
- 1.3 The relevant legislation provides that any person must satisfy the authority that they are a fit and proper person to hold a licence and that is a test to be applied after any applicant has gained any reasonably required qualifications<sup>1</sup>. It is the final part of the process of an application when the decision is made, whether by a committee, sub-committee or an officer under a Scheme of Delegation. It involves a detailed examination of their entire character in order to make a judgment as to their fitness and propriety.
- 1.4 If a licence holder falls short of the fit and proper standard at any time, the licence should be revoked or not renewed on application to do so.
- 1.5 There is no recent Statutory or Ministerial guidance as to how such decisions should be approached or what matters are relevant or material to a decision. This guidance complements the LGA's Taxi and Private Hire Licensing Councillor's Handbook and any forthcoming Government guidance. Local authorities should also be aware of the forthcoming National Anti Fraud Network database on refusals and revocations of hackney carriage and private hire licences.
- 1.6 This document is intended to provide guidance on determining suitability, taking into account the character of the applicant or licensee. It can then be used by local authorities as a basis for their own policies: in particular it considers how regard should be had to the antecedent history of the applicant or licence holder and its relevance to their 'fitness and propriety' or 'character'. As with any guidance it need not be slavishly followed but it provides a starting or reference point from which decisions can be made taking into account the particular merits of each case.
- 1.7 A licensing authority policy can take a 'bright line approach' and say "never" in a policy, but it remains a policy, and as such does not amount to any fetter on the discretion of the

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<sup>1</sup> Except vehicle proprietors. In those cases there is no "fit and proper" requirement, but the authority has an absolute discretion over granting a licence.



authority. Each case will always be considered on its merits having regard to the policy, and the licensing authority can depart from the policy where it considers it appropriate to do so. This will normally happen where the licensing authority considers that there are exceptional circumstances which warrant a different decision. This approach was endorsed by the High Court in *R (on the application of Nicholds) v Security Industry Authority*<sup>2</sup>.

- 1.8 In Chapter 2 this Guidance explores the current thinking behind an individual's tendencies to reoffend. It is clear that this is not an exact science and that there is no meaningful and precise statistical evidence that can assist in the setting of policy. Given the important function of licensing to protect the public, any bar should be set at the highest level which is reasonable, albeit subject to the exercise of discretion as is set out in paragraph 1.7 and Chapters 3 and 4.
- 1.9 This Guidance contains no detailed list of offences. All offences are allocated to a general category such as 'dishonesty' or 'drugs'. This prevents it being argued that a specific offence is not covered by the Policy as it 'is not on the list' and also prevents arguments that a firearm is more serious than a knife and should lead to differentiation. In each case, appropriate weight should be given to the evidence provided.
- 1.10 This Guidance cannot have the force of legislation, new or amended; the need for which is both abundantly clear to, and fully supported by the Institute and the other organisations working with it. It is intended to help local authorities achieve greater consistency so that applicants are less able to shop between authorities. It is acknowledged that this cannot be fully achieved without the imposition of national minimum standards.
- 1.11 In preparing this document the Institute's Working Party has consulted with and considered the issues from all perspectives including, Councillors, Licensing Officers, Lawyers, the Hackney Carriage and Private Hire Trades, Academics, the Probation Service and the Police.

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<sup>2</sup> [2007] 1 WLR 2067

## Chapter 2: Offenders and Offending - An Overview

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- 2.1 The aim of local authority licensing of the taxi and PHV trades is to protect the public'.<sup>3</sup> With this in mind, Public Protection must be at the forefront of the decision maker's mind when determining whether an individual is considered a "fit and proper person" to hold a licence.
- 2.2 This section aims to provide a brief overview of public protection, how to determine risk and factors to be considered when an applicant seeks to demonstrate a change in their offending behaviour.
- 2.3 The licensing process places a duty on the local authority to protect the public. Given the nature of the role, it is paramount that those seeking a living in the trades meet the required standards. As the previous offending behaviour can be considered as a predictor in determining future behaviour as well as culpability, it is essential that the decision maker considers all relevant factors including previous convictions, cautions and complaints and the time elapsed since these were committed.
- 2.4 There has been extensive research into the reasons behind why some individuals commit crimes, why some learn from their mistakes and stop offending whilst others find themselves in a cycle of repeat offending. Several theories have evolved over many years offering insight into the reasons behind offending behaviour. One common theme is that no two crimes are the same and that risk cannot be eliminated, or the future predicted. What can be done, is to examine each case on its individual merits, look at the risks involved along with any change in circumstances since any offences were committed to assist in making the decision.
- 2.5 A key factor when considering an application from an individual with any convictions, cautions or complaints recorded is Public Protection. This includes assessing the risk of re-offending and harm<sup>4</sup>. Risk assessment tools are regularly employed by those who are responsible for managing individuals who have committed offences. Local Authorities are not always privy to this information so it is important when they are making decisions around suitability that they have an understanding of offending behaviour and risk of re-offending in generic terms.

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<sup>3</sup> DfT "Taxi and Private Hire Licensing – Best Practice Guide" para 8

<sup>4</sup> Kemshall, H. (2008). Understanding the Management of High Risk Offenders (Crime and Justice). Open University Press

- 2.6 Flaud<sup>5</sup> noted that risk is in principle, a matter of fact, but danger is a matter of judgment and opinion. He goes on to note that risk may be said to be the likelihood of an event occurring; danger may be the degree of damage (harm) caused should that event take place<sup>6</sup>.
- 2.7 The National Offender Management Service refers to risk in two dimensions. That being the likelihood that an offence will occur, and the impact / harm of the offence should it happen. Generally, when making a decision around probability and likelihood of re-offending, consideration is needed towards static and dynamic factors.
- 2.8 Static factors are historical and do not change such as age, previous convictions and gender. They can be used as a basis for actuarial assessments and are fundamental in considering an individual's potential to reoffend in future<sup>7</sup>. For example, recent published statistics revealed that 44% of adults are reconvicted within one year of release. For those serving sentences of less than twelve months this increased to 59%<sup>8</sup>. It is also widely accepted that generally persons with a large number of previous offences have a higher rate of proven reoffending than those with fewer previous offences<sup>9</sup>.
- 2.9 Dynamic factors are considered changeable and can vary over time. They include attitudes, cognitions and impulsivity<sup>10</sup>. It is documented that the greater their unmet need, the more likely an individual is to re-offend. When considering whether an individual has been rehabilitated, it is important to have regard towards the motivation behind their offending and dynamic risk factors present at the time, against the steps taken to address such factors thus reducing the risk of re-offending.
- 2.10 It is of note that problems and/or needs are more frequently observed in offender populations than in the general population<sup>11</sup>. Many of these factors are interlinked and embedded in an individual's past experiences. This can impact upon that person's ability to change their behaviour, particularly if the areas identified have not been addressed or support has not been sought. Needs will vary from individual to individual and will rely upon their level of motivation and the nature of the offence committed.

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<sup>5</sup> Flaud, R. (1982). Cited in, Gendreau, P., Little, T. and Goggin, C. (1996). A meta-analysis of the predictors of adult offender recidivism: what works! *Criminology*, 34, 557-607.

<sup>6</sup> Gendreau, P., Little, T. and Goggin, C. (1996). A meta-analysis of the predictors of adult offender recidivism: what works! *Criminology*, 34, 557-607.

<sup>7</sup> Craig, L. A. and Browne, K. B (2008). *Assessing Risk in Sex Offenders: A Practitioner's Guide* Paperback.

<sup>8</sup> Ministry of Justice (2017) *Proven reoffending statistics: July 2014 to June 2015*, London: Ministry of Justice.

<sup>9</sup> Ministry of Justice (2015): *Transforming Rehabilitation: a summary of evidence on reducing reoffending*. London: Ministry of Justice.

<sup>10</sup> McGuire, J. (2008). A review of effective interventions for reducing aggression and violence. *Philosophical Transactions of the Royal Society B: Biological Sciences*, 363(1503), 2577-2597

<sup>11</sup> Nash, M. (1999) *Police, Probation and Protecting the Public*. London: Blackwell Press.

### Risk of re-offending:

- 2.11 The issue of recidivism and increase in serious crime rates has given rise to extensive publications, theories and changes in legislation with many focusing upon the need for more rehabilitation projects as a means of reducing re-offending rates. Central to the rehabilitation of offenders is the concept of criminogenic needs. This has been described by the National Offender Management Service as “any area where the offender has needs or deficits, in which a reduction in the need or deficit would lead to a reduction in the risk of re-conviction. An individual’s ability to address and reduce such needs relies heavily upon their motivation to change and desist and often takes place over a period of time”<sup>12</sup>.
- 2.12 Kurlychek, 2007 in her study noted that “a person who has offended in the past has been found to have a high probability of future offending, but this risk of recidivism is highest in the time period immediately after arrest or release from custody and, thereafter, decreases rapidly and dramatically with age”<sup>13</sup>.
- 2.13 A consistent finding throughout criminological literature is that male offenders tend to desist from crime aged 30 years and over<sup>14</sup>. It is well documented that the change occurs for various reasons; for example, as a result of successful treatment, natural maturation or the development of positive social relationships<sup>15</sup>. Female offenders are also considered more likely to desist from offending as they mature. The peak age of reported offending for females was 14 compared to 19 for males<sup>16</sup>.
- 2.14 Desisting from crime for people who have been involved in persistent offending is a difficult and complex process, likely to involve lapses and relapses. Some individuals may never desist<sup>17</sup>. As a result, it is important for individuals to evidence change in their behaviour before they can be considered to present a low or nil risk of re-offending. Often the only way of achieving this is through lapse of time.
- 2.15 The longer the time elapsed since an offence has been committed, the more likely the individual will desist from crime. It is noted that the more a life is lived crime-free, the more one comes to see the benefits of desistance<sup>18</sup>. Demonstrating a change in offending behaviour and an ability to make effective choices takes time and comes with some

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<sup>12</sup> National Offender Management Service (2016). Public Protection Manual Edition. Proven Reoffending Statistics Quarterly Bulletin, October 2015 to December 2015

<sup>13</sup> Kurlychek, M C, Brame, R (2007). Scarlet letters and recidivism: Does an old criminal record predict future offending? University of South Carolina.

<sup>14</sup> Serin, R, C. and Lloyd, C.D (2008). Examining the process of offender change: the transitions to crime desistance. 347-364.

<sup>15</sup> Nash, M. (1999) Police, Probation and Protecting the Public. London: Blackwell Press.

<sup>16</sup> Trueman, C.N. (2015). Women and Crime. The History Learning Site. Ingatestone: Essex.

<sup>17</sup> Farrell, S (2005). Understanding Desistance from Crime: Emerging Theoretical Directions in Resettlement and Rehabilitation (Crime and Justice) Paperback.

<sup>18</sup> Maguire, M., Morgan, R. and Reiner, R. (2002). The Oxford Handbook of Criminology. 3<sup>rd</sup> Edition. Oxford: Oxford University Press.

ambiguity for those who have committed offences. A study in 2007 looking into previous convictions and the links to re-offending concluded that “individuals who have offended in the distant past seem less likely to recidivate than individuals who have offended in the recent past”<sup>19</sup>.

- 2.16 Although it is not possible to determine the future behaviour of an individual, taking steps to reduce risk and protect the public can be achieved by following correct processes and guidance. Having regard to an individual’s previous behaviour and their potential to cause harm as a result of the choices they have made plays a significant part when making a decision as to whether to grant a licence. Being able to evidence change in behaviour will involve consideration of the circumstances at the time of the offence, steps taken to address any issues identified and that person’s ability to sustain such change. This can be a long process that can only be achieved over time.

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<sup>19</sup> Kurlychek, M C, Brame, R (2007). Scarlet letters and recidivism: Does an old criminal record predict future offending? University of South Carolina.

## Chapter 3: 'Taxi' Licensing Overview

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- 3.1 Taxis are used by almost everyone in our society occasionally, but they are used regularly by particularly vulnerable groups: children; the elderly; disabled people; and the intoxicated, and a taxi driver has significant power over a passenger who places themselves, and their personal safety, completely in the driver's hands.
- 3.2 Local authorities (districts, unitaries and Welsh Councils) and TfL are responsible for hackney carriage and private hire licensing.
- 3.3 The principal legislation is the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976. The purpose of taxi licensing is detailed in the DfT *"Taxi and Private Hire Licensing – Best Practice Guide"* para 8 which states:
- "The aim of local authority licensing of the taxi and PHV trades is to protect the public."
- 3.4 Within the two licensing regimes, there are 5 types of licence: hackney carriage vehicle; private hire vehicle; hackney carriage driver; private hire driver and private hire operator.
- 3.5 In relation to all these licences, the authority has a discretion over whether to grant. Whilst there is some guidance issued by the DfT, there are no national standards.
- 3.6 Drivers and operators cannot be granted a licence unless the authority is satisfied that they are a "fit and proper person" to hold that licence (see Local Government (Miscellaneous Provisions) Act 1976 ss 51 and 59 in respect of drivers; s55 in respect of operators).
- 3.7 There are no statutory criteria for vehicle licences; therefore, the authority has an absolute discretion.
- 3.8 In each case, the authority has powers to grant a licence, renew it on application and, during the currency of the licence, suspend or revoke it.
- 3.9 What is the role of each of these, and how do authorities determine an application, or take action against a licence?

### Taxi Drivers

- 3.10 The term "taxi driver" encompasses two different occupations: hackney carriage drivers and private hire drivers. "Taxi driver" is therefore used as a broad, overarching term to cover both hackney carriage and private hire drivers. In each case there are identical statutory

criteria to be met before a licence can be granted and many authorities grant “dual” or “combined” licences to cover driving both types of vehicle.

- 3.11 An applicant must hold a full DVLA or equivalent driver’s licence, have the right to work in the UK, and be a “fit and proper” person<sup>20</sup>.
- 3.12 The driving licence element is a question of fact. Although there are some issues with foreign driving licences, ultimately a person either has, or does not have a driving licence.
- 3.13 An applicant must also have the right to remain, and work in the UK<sup>21</sup>.
- 3.14 Again, this is ultimately a question of fact and the local authority should follow the guidance issued by the Home Office.<sup>22</sup>
- 3.15 It is the whole issue of “fit and proper” that causes local authorities the most difficulties. It has never been specifically judicially defined but it was mentioned in *Leeds City Council v Hussain*<sup>23</sup>. Silber J said:
- “... the purpose of the power of suspension is to protect users of licensed vehicles and those who are driven by them and members of the public. Its purpose [and], therefore [the test of fitness and propriety], is to prevent licences being given to or used by those who are not suitable people taking into account their driving record, their driving experience, their sobriety, mental and physical fitness, honesty, and that they are people who would not take advantage of their employment to abuse or assault passengers.”
- 3.16 This is reflected in a test widely used by local authorities:
- ‘Would you (as a member of the licensing committee or other person charged with the ability to grant a hackney carriage driver’s licence) allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person for whom you care, to get into a vehicle with this person alone?’<sup>24</sup>
- 3.17 It is suggested that the expression “safe and suitable” person to hold a driver’s licence is a good interpretation which neither adds nor removes anything from the original term of “fit and proper” but brings the concept up to date.

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<sup>20</sup> Local Government (Miscellaneous Provisions) Act 1976. Section 51(1) covers private hire drivers, and section 59(1) covers hackney carriage drivers.

<sup>21</sup> Local Government (Miscellaneous Provisions) Act 1976 S51(1)(a)(ii) in respect of private hire drivers and S59(1)(a)(ii) in respect of hackney carriage drivers.

<sup>22</sup> “Guidance for Licensing Authorities to Prevent Illegal Working in the Taxi and Private Hire Sector in England and Wales” - Home Office, 1<sup>st</sup> December 2016 available at <https://www.gov.uk/government/publications/licensing-authority-guide-to-right-to-work-checks>

<sup>23</sup> [2002] EWHC 1145 (Admin), [2003] RTR 199

<sup>24</sup> Button on Taxis – Licensing Law and Practice 4<sup>th</sup> Ed Bloomsbury Professional at para 10.21

3.18 How can a local authority assess and then judge whether or not someone is safe and suitable to hold a drivers' licence?

3.19 The local authority has the power to require an applicant to provide:

“such information as they may reasonably consider necessary to enable them to determine whether the licence should be granted and whether conditions should be attached to any such licence.”<sup>25</sup>

This “information” can include any pre-conditions or tests that they consider necessary

3.20 Some of these are universal, such as medical assessments<sup>26</sup>. Others are required by some authorities, but not others. These include:

- Enhanced DBS certificates and sign-up to the update service;
- Knowledge tests;
- Driving tests;
- Disability Awareness;
- Signed Declarations;
- Spoken English tests.

3.21 The provision of information in these terms can satisfy the local authority that a person has the skills and competencies to be a professional driver to hold a licence. However, the concepts of safety and suitability go beyond this. There is the character of the person to be considered as well.

3.22 Both hackney carriage and private hire drivers are exempt from the provisions of the Rehabilitation of Offenders Act 1974. This means that there are no “spent” convictions and that any and all criminal convictions (apart from “protected convictions” and “protected cautions” where they have been declared<sup>27</sup>) can be taken into account by the local authority in assessing safety and suitability, but only relevant spent convictions should be considered by the decision maker<sup>28</sup>.

3.23 All Applicants/Licensees should be required to obtain an Enhanced DBS Certificate with Barred Lists checks<sup>29</sup> and to provide this to the Licensing Authority. All Licensees should also be required to maintain their Certificates through the DBS Update Service throughout the currency of their licence.

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<sup>25</sup> Local Government (Miscellaneous Provisions) Act 1976 s57(1)

<sup>26</sup> See Local Government (Miscellaneous Provisions) Act 1976 s57(2)

<sup>27</sup> “Protected convictions” and “protected cautions” are single, minor and elderly matters that do not appear on any DBS Certificates.

<sup>28</sup> See *Adamson v Waveney District Council* [1997] 2 All ER 898

<sup>29</sup> “For Taxi [driver] Licensing purposes the correct level of check is always the Enhanced level check, with the Adults and Children’s Barred list check. Other Workforce should always be entered at X61 line 1 and Taxi Licensing should be entered at X61 line 2” DBS email 31st August 2017.



- 3.24 If any applicant has, from the age of 10 years, spent six continuous months or more living outside the United Kingdom, evidence of a criminal record check from the country/countries covering the relevant period should be required.
- 3.25 Local authorities should have a policy to provide a baseline for the impact of any convictions, cautions or other matters of conduct which concern a person's safety and suitability<sup>30</sup>.
- 3.26 The character of the driver in its entirety must be the paramount consideration when considering whether they should be licensed. It is important to recognise that local authorities are not imposing any additional punishment in relation to previous convictions or behaviour. They are using all the information that is available to them to make an informed decision as to whether or not the applicant or licensee is or remains a safe and suitable person.
- 3.27 There are occasions where unsuitable people have been given licences by local authorities, or if refused by the authority, have had it granted by a court on appeal.
- 3.28 Often this is because of some perceived hardship. Case law makes it clear that the impact of losing (or not being granted) a driver's licence on the applicant and his family is not a consideration to be taken into account<sup>31</sup>. This then leads to the question of whether the stance taken by local authorities is robust enough to achieve that overriding aim of public protection.
- 3.29 However, all too often local authorities depart from their policies and grant licences (or do not take action against licensees) without clear and compelling reasons. It is vital that Councillors recognise that the policy, whilst remaining a policy and therefore the Authority's own guidelines on the matter, is the baseline for acceptability. It should only be departed from in exceptional circumstances and for justifiable reasons which should be recorded.
- 3.30 One common misunderstanding is that if the offence was not committed when the driver was driving a taxi, it is much less serious, or even if it was in a taxi but not when passengers were aboard. This is not relevant: speeding is dangerous, irrespective of the situation; drink driving is dangerous, irrespective of the situation; bald tyres are dangerous, irrespective of the situation. All these behaviours put the general public at risk. Violence is always serious. The argument that it was a domestic dispute, or away from the taxi, is irrelevant. A person who has a propensity to violence has that potential in every situation. Sexual offences are always serious. A person who has in the past abused their position (whatever that may have been)

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<sup>30</sup> As recommended by the DfT "Taxi and Private Hire Licensing – Best Practice Guide" para 59

<sup>31</sup> *Leeds City Council v Hussain* [2002] EWHC 1145 (Admin), [2003] RTR 199 and *Cherwell District Council v Anwar* [2011] EWHC 2943 (Admin)

to assault another sexually has demonstrated completely unacceptable standards of behaviour.

- 3.31 Applicants may claim that they have sought employment in other fields and been precluded as a result of their antecedent history particularly if that contains convictions. They therefore seek to become a licensed driver as an occupation of last resort. This is unacceptable as the granting of a licence would place such a person in a unique position of trust. The paramount responsibility of a licensing authority is to protect the public, not provide employment opportunities.
- 3.32 Licensees are expected to demonstrate appropriate professional conduct at all time, whether in the context of their work or otherwise. Licensees should be courteous, avoid confrontation, not be abusive or exhibit prejudice in any way. In no circumstances should Licensees take the law into their own hands. Licensees are expected to act with integrity and demonstrate conduct befitting the trust that is placed in them.
- 3.33 There are those who seek to take advantage of vulnerable people by providing services that they are not entitled to provide; for example, by plying for hire in an area where they are not entitled to do so. Licensees are expected to be vigilant of such behaviour and to report any concerns to the Police and the relevant licensing authority. Passengers should feel confident to check that the person offering a service is entitled to do so. Licensees should willingly demonstrate that they are entitled to provide the offered service by, for example, showing their badge.
- 3.34 As a society, we need to ask the question “who is driving my taxi?” and be secure in the knowledge that the answer is “a safe and suitable person”. The vast majority of drivers are decent, law abiding people who work very hard to provide a good service to their customers and the community at large. However poor decisions by local authorities and courts serve to undermine the travelling public’s confidence in the trade as a whole. Unless local authorities and the courts are prepared to take robust (and difficult) decisions to maintain the standards the local authority lays down, and in some cases tighten up their own policies, the public cannot have complete confidence in taxi drivers. This is detrimental to all involved.

## Private Hire Operators

- 3.35 A private hire operator (“PHO”) is the person who takes a booking for a private hire vehicle (“PHV”), and then dispatches a PHV driven by a licensed private hire driver (“PHD”) to fulfil that booking. All three licences (PHO, PHV and PHD) must have been granted by the same

authority<sup>32</sup>. A local authority cannot grant a PHO licence unless the applicant has the right to work in the UK and is a fit and proper person<sup>33</sup>.

- 3.36 As with taxi drivers the role of the PHO goes far beyond simply taking bookings and dispatching vehicles. In the course of making the booking and dispatching the vehicle and driver, the PHO will obtain significant amounts of personal information. It is therefore vital that a PHO is as trustworthy and reliable as a driver, notwithstanding their slightly remote role. Hackney carriages can also be pre-booked, but local authorities should be mindful that where that booking is made by anybody other than a hackney carriage driver, there are no controls or vetting procedures in place in relation to the person who takes that booking and holds that personal information.
- 3.37 How then does a local authority satisfy itself as to the “fitness and propriety” or “safety and suitability” of the applicant or licensee?
- 3.38 Spent convictions can be taken into account when determining suitability for a licence, but the applicant (or licensee on renewal) can only be asked to obtain a Basic Disclosure from the Disclosure and Barring Service.
- 3.39 Although this is by no means a perfect system, it does give local authorities a reasonable basis for making an informed decision as to fitness and propriety of an applicant or existing licensee.
- 3.40 To enable consistent and informed decisions to be made, it is important to have a working test of fitness and propriety for PHOs and a suitable variation on the test for drivers can be used:
- “Would I be comfortable providing sensitive information such as holiday plans, movements of my family or other information to this person, and feel safe in the knowledge that such information will not be used or passed on for criminal or unacceptable purposes?”<sup>34</sup>
- 3.41 There is a further point to consider in relation to PHOs and that concerns the staff used on the telephones and radios. There is no reason why a condition cannot be imposed on a PHO licence requiring them to undertake checks on those they employ/use within their company to satisfy themselves that they are fit and proper people to undertake that task and retain that information to demonstrate that compliance to the local authority. Any failure on the part of the PHO to either comply with this requirement, or act upon information that they

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<sup>32</sup> See *Dittah v Birmingham City Council*, *Choudhry v Birmingham City Council* [1993] RTR 356 QBD

<sup>33</sup> Section 55(1) Local Government (Miscellaneous Provisions) Act 1976

<sup>34</sup> Button on Taxis – Licensing Law and Practice 4<sup>th</sup> Ed Bloomsbury Professional at para 12.35

obtain (thereby allowing unsuitable staff to work in positions of trust), would then have serious implications on the continuing fitness and propriety of the PHO.

- 3.42 Care should be taken in circumstances where a PHO Licence is sought in the name of a limited company, partnership or other business structure that all the requirements applicable to an individual applicant are made of each director or partner of the applicant organisation<sup>35</sup>. Only by so doing can a decision be made as to the fitness and propriety of the operating entity.

## Vehicle Proprietors

- 3.43 Similar considerations apply to the vehicle proprietors, both hackney carriage and private hire (referred to here generically as “taxis”). Although the vehicle proprietor may not be driving a vehicle (and if they are they will be subject to their own fitness and propriety test to obtain a driver’s licence), they clearly have an interest in the use of the vehicle. They will also be responsible for the maintenance of the vehicle, and vehicles that are not properly maintained have a clear impact on public safety.
- 3.44 Taxis are used to transport people in many circumstances, and are seen everywhere across the United Kingdom, at all times of the day and night, in any location. Therefore, taxis could provide a transportation system for illegal activities or any form of contraband, whether that is drugs, guns, illicit alcohol or tobacco, or people who are involved in or are the victims of illegal activity, or children who may be at risk of being, or are being, abused or exploited.
- 3.45 In relation to both hackney carriages and private hire vehicles, the local authority has an absolute discretion over granting the licence<sup>36</sup> and should therefore ensure that both their enquiries and considerations are robust. It is much more involved than simply looking at the vehicle itself and it is equally applicable on applications to transfer a vehicle as on grant applications.
- 3.46 Again, this is not an exempt occupation for the purposes of the 1974 Act, but exactly the same process can be applied as for private hire operators – Basic DBS, statutory declaration and consideration of spent convictions. This can then be used in the light of a similar policy in relation to suitability as the authority will already have for drivers and PHOs.
- 3.47 A suitable test would be:

“Would I be comfortable allowing this person to have control of a licensed vehicle that can travel anywhere, at any time of the day or night without arousing suspicion, and be

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<sup>35</sup> See s57(1)(c) of the 1976 Act.

<sup>36</sup> S37 of the 1847 Act in relation to hackney carriages; section 48 of the 1976 Act to private hire vehicles.

satisfied that he/she would not allow it to be used for criminal or other unacceptable purposes, and be confident that he/she would maintain it to an acceptable standard throughout the period of the licence?”<sup>37</sup>

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<sup>37</sup> Button on Taxis – Licensing Law and Practice 4<sup>th</sup> Ed Bloomsbury Professional at para 8.98

## Chapter 4: Guidance on Determination

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- 4.1 As is clear from the overview of Offenders and Offending above, there is no evidence which can provide precise periods of time which must elapse after a crime before a person can no longer be considered to be at risk of reoffending, but the risk reduces over time. In light of that, the suggested timescales below are intended to reduce the risk to the public to an acceptable level.
- 4.2 Many members of our society use, and even rely on, hackney carriages and private hire vehicles to provide transportation services. This can be on a regular basis, or only occasionally, but in all cases passengers, other road users and society as a whole must have confidence in the safety and suitability of the driver, the vehicle itself and anyone involved with the booking process.
- 4.3 Ideally, all those involved in the hackney carriage and private hire trades (hackney carriage and private hire drivers, hackney carriage and private hire vehicle owners and private hire operators) would be persons of the highest integrity. In many cases that is true, and the vast majority of those involved in these trades are decent, upstanding, honest and hard-working individuals. Unfortunately, as in any occupation or trade, there are those who fail to conform to those standards.
- 4.4 The purpose of this document is to offer guidance on how licensing authorities can determine whether a particular person is safe and suitable either to be granted a licence in the first place or to retain such a licence. As outlined above, a policy can be robust, and if necessary, say never, and each case is then considered on its own merits in the light of that policy.

### Pre-application requirements

- 4.5 Licensing authorities are entitled to set their own pre-application requirements. These will vary depending upon the type of licence in question but can include some or all of the following (these are not exhaustive lists):

#### Vehicles:

- Basic DBS checks;
- Specifications e.g. minimum number of doors, minimum seat size, headroom, boot space etc;
- Mechanical tests and tests of the maintenance of the vehicle e.g. ripped seats etc;
- Emission limits/vehicle age limits;
- Wheelchair accessibility requirements.

#### Drivers:

- Enhanced DBS checks with update service;
- Checks made to the National Anti Fraud Network database on refusals and revocations of hackney carriage and private hire licences (when available);
- Medical checks;
- Knowledge of the geographic area;
- Spoken and written English tests;
- Disability awareness training;
- Child sexual exploitation and safeguarding training.

#### Operators:

- Basic DBS checks;
- Details of their vetting procedures for their staff;
- Knowledge of the licensing area.

- 4.6 In relation to each of these licences, the licensing authority has discretion as to whether or not to grant the licence.
- 4.7 Drivers and operators cannot be granted a licence unless the authority is satisfied that they are a “fit and proper person” to hold that licence (see Local Government (Miscellaneous Provisions) Act 1976 ss 51 and 59 in respect of drivers; s55 in respect of operators).
- 4.8 There are no statutory criteria for vehicle licences, therefore the authority has an absolute discretion over whether to grant either a hackney carriage or private hire proprietor’s licence.
- 4.9 “Fit and proper” means that the individual (or in the case of a private hire operator’s licence, the limited company together with its directors and secretary, or all members of a partnership<sup>38</sup>) is “safe and suitable” to hold the licence.
- 4.10 In determining safety and suitability the licensing authority is entitled to take into account all matters concerning that applicant or licensee. They are not simply concerned with that person’s behaviour whilst working in the hackney carriage or private hire trade. This consideration is far wider than simply criminal convictions or other evidence of unacceptable behaviour, and the entire character of the individual will be considered. This can include, but is not limited to, the individual’s attitude and temperament.

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<sup>38</sup> Section 57(2)(c) of the Local Government (Miscellaneous Provisions) Act 1976 allows a local authority to consider the character of a company director or secretary, or any partner.

- 4.11 Convictions for attempt or conspiracy will be regarded as convictions for the substantive crime. A caution is regarded in exactly the same way as a conviction<sup>39</sup>. Fixed penalties and community resolutions will also be considered in the same way as a conviction<sup>40</sup>.
- 4.12 It is important to recognise that matters which have not resulted in a criminal conviction (whether that is the result of an acquittal, a conviction being quashed, decision not to prosecute or an investigation which is continuing where the individual has been bailed) can and will be taken into account by the licensing authority. In addition, complaints where there was no police involvement will also be considered. Within this document, any reference to "conviction" will also include matters that amount to criminal behaviour, but which have not resulted in a conviction.
- 4.13 In the case of any new applicant who has been charged with any offence and is awaiting trial, the determination will be deferred until the trial has been completed or the charges withdrawn. Where an existing licensee is charged, it will be for the licensing authority to decide what action to take in the light of these guidelines.
- 4.14 In all cases, the licensing authority will consider the conviction or behaviour in question and what weight should be attached to it, and each and every case will be determined on its own merits, and in the light of these guidelines.
- 4.15 Any offences committed, or unacceptable behaviour reported whilst driving a hackney carriage or private hire vehicle, concerning the use of a hackney carriage or private hire vehicle, or in connection with an operator of a private hire vehicle will be viewed as aggravating features, and the fact that any other offences were not connected with the hackney carriage and private hire trades will not be seen as mitigating factors.
- 4.16 As the licensing authority will be looking at the entirety of the individual, in many cases safety and suitability will not be determined by a specified period of time having elapsed following a conviction or the completion of a sentence. Time periods are relevant and weighty considerations, but they are not the only determining factor.
- 4.17 In addition to the nature of the offence or other behaviour, the quantity of matters and the period over which they were committed will also be considered. Patterns of repeated unacceptable or criminal behaviour are likely to cause greater concern than isolated occurrences as such patterns can demonstrate a propensity for such behaviour or offending.
- 4.18 Most applicants or licensees will have no convictions and that is clearly the ideal situation. In relation to other people, it is accepted that human beings do make mistakes and lapse in their conduct for a variety of reasons, and it is further accepted that many learn from experience and do not go on to commit further offences. Accordingly, in many cases an isolated

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<sup>39</sup> This is because a caution can only be imposed following an admission of guilt, which is equivalent to a guilty plea on prosecution.

<sup>40</sup> This is because payment of a fixed penalty indicates acceptance of guilt, and a community resolution can only be imposed following an admission of guilt.



conviction, especially if committed some time ago, may not prevent the grant or renewal of a licence.

- 4.19 It is also important to recognise that once a licence has been granted, there is a continuing requirement on the part of the licensee to maintain their safety and suitability. The licensing authority has powers to take action against the holder of all types of licence (driver's, vehicle and operator's) and it must be understood that any convictions or other actions on the part of the licensee which would have prevented them being granted a licence on initial application will lead to that licence being revoked.
- 4.20 Any dishonesty by any applicant or other person on the applicant's behalf which is discovered to have occurred in any part of any application process (e.g. failure to declare convictions, false names or addresses, falsified references) will result in a licence being refused, or if already granted, revoked and may result in prosecution.
- 4.21 As the direct impact on the public varies depending upon the type of licence applied for or held, it is necessary to consider the impact of particular offences on those licences separately. However, there are some overriding considerations which will apply in all circumstances.
- 4.22 Generally, where a person has more than one conviction, this will raise serious questions about their safety and suitability. The licensing authority is looking for safe and suitable individuals, and once a pattern or trend of repeated offending is apparent, a licence will not be granted or renewed.
- 4.23 Where an applicant/licensee is convicted of an offence which is not detailed in this guidance, the licensing authority will take that conviction into account and use these guidelines as an indication of the approach that should be taken.
- 4.24 These guidelines do not replace the duty of the licensing authority to refuse to grant a licence where they are not satisfied that the applicant or licensee is a fit and proper person. Where a situation is not covered by these guidelines, the authority must consider the matter from first principles and determine the fitness and propriety of the individual.

## Drivers

- 4.25 As the criteria for determining whether an individual should be granted or retain a hackney carriage driver's licence are identical to the criteria for a private hire driver's licence, the two are considered together.
- 4.26 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.

- 4.27 As stated above, where an applicant has more than one conviction showing a pattern or tendency irrespective of time since the convictions, serious consideration will need to be given as to whether they are a safe and suitable person.
- 4.28 In relation to single convictions, the following time periods should elapse following completion of the sentence (or the date of conviction if a fine was imposed) before a licence will be granted.

#### Crimes resulting in death

- 4.29 Where an applicant or licensee has been convicted of a crime which resulted in the death of another person or was intended to cause the death or serious injury of another person they will not be licensed.

#### Exploitation

- 4.30 Where an applicant or licensee has been convicted of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of whether the victim or victims were adults or children, they will not be licensed. This includes slavery, child sexual exploitation, grooming, psychological, emotional or financial abuse, but this is not an exhaustive list.

#### Offences involving violence

- 4.31 Where an applicant has a conviction for an offence of violence, or connected with any offence of violence, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

#### Possession of a weapon

- 4.32 Where an applicant has a conviction for possession of a weapon or any other weapon related offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

#### Sex and indecency offences

- 4.33 Where an applicant has a conviction for any offence involving or connected with illegal sexual activity or any form of indecency, a licence will not be granted.
- 4.34 In addition to the above, the licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any 'barred' list.

### Dishonesty

- 4.35 Where an applicant has a conviction for any offence of dishonesty, or any offence where dishonesty is an element of the offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

### Drugs

- 4.36 Where an applicant has any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.
- 4.37 Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

### Discrimination

- 4.38 Where an applicant has a conviction involving or connected with discrimination in any form, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

### Motoring convictions

- 4.39 Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. Any motoring conviction demonstrates a lack of professionalism and will be considered seriously. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the grant of a licence or may not result in action against an existing licence. Subsequent convictions reinforce the fact that the licensee does not take their professional responsibilities seriously and is therefore not a safe and suitable person to be granted or retain a licence.

### Drink driving/driving under the influence of drugs/using a hand-held telephone or hand held device whilst driving

- 4.40 Where an applicant has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence or driving ban imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.
- 4.41 Where an applicant has a conviction for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least 5 years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

### Other motoring offences

- 4.42 A minor traffic or vehicle related offence is one which does not involve loss of life, driving under the influence of drink or drugs, driving whilst using a mobile phone, and has not resulted in injury to any person or damage to any property (including vehicles). Where an applicant has 7 or more points on their DVLA licence for minor traffic or similar offences, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed.
- 4.43 A major traffic or vehicle related offence is one which is not covered above and also any offence which resulted in injury to any person or damage to any property (including vehicles). It also includes driving without insurance or any offence connected with motor insurance. Where an applicant has a conviction for a major traffic offence or similar offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

### Hackney carriage and private hire offences

- 4.44 Where an applicant has a conviction for an offence concerned with or connected to hackney carriage or private hire activity (excluding vehicle use), a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

### Vehicle use offences

- 4.45 Where an applicant has a conviction for any offence which involved the use of a vehicle (including hackney carriages and private hire vehicles), a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

## Private Hire Operators

- 4.46 A private hire operator (“an operator”) does not have direct responsibility for the safety of passengers, other road users or direct contact with passengers who are in the private hire vehicle (except where they are also licensed as a private hire driver). However, in performing their duties they obtain and hold considerable amounts of personal and private information about their passengers which must be treated in confidence and not revealed to others, or used by the operator or their staff for criminal or other unacceptable purposes.
- 4.47 As stated above, where an applicant has more than one conviction, serious consideration will need to be given as to whether they are a safe and suitable person.
- 4.48 Operators must ensure that any staff that are used within the business (whether employees or independent contractors) and are able to access any information as described above are subject to the same standards as the operator themselves. This can be effected by means of the individual staff member being required by the operator to obtain a basic DBS certificate. If an operator is found not to be applying the required standards and using staff that do not meet the licensing authority’s overall criteria, that will lead to the operator’s licence being revoked.

- 4.49 As public trust and confidence in the overall safety and integrity of the private hire system is vital, the same standards will be applied to operators as those applied to drivers, which are outlined above.

## Vehicle proprietors

- 4.50 Vehicle proprietors (both hackney carriage and private hire) have two principal responsibilities.
- 4.51 Firstly, they must ensure that the vehicle is maintained to an acceptable standard at all times.
- 4.52 Secondly, they must ensure that the vehicle is not used for illegal or illicit purposes.
- 4.53 As stated above, where an applicant has more than one conviction, serious consideration will need to be given as to whether they are a safe and suitable person to be granted or retain a vehicle licence.
- 4.54 As public trust and confidence in the overall safety and integrity of the private hire system is vital, the same standards will be applied to proprietors as those applied to drivers, which are outlined above.

## Acknowledgements

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In December 2015, the Institute of Licensing established a working party to look at the creation of a model or standard set of guidelines in relation to assessing the suitability of applicants and licence holders in relation to taxi drivers, operators and vehicle proprietors, taking into account the character of the applicant or licensee.

The core project group comprised:

- Stephen Turner, Solicitor at Hull City Council, Licensing Lead for Lawyers in Local Government and Vice Chair of the North East Region IoL (Project Group Chair)
- Jim Button, Solicitor at James Button & Co and President of IoL
- Philip Kolvin QC, Cornerstone Barristers and Patron of IoL
- John Miley, Licensing Manager for Broxtowe Borough Council, National Chair for NALEO and Vice Chair of the East Midlands Region IoL
- Linda Cannon, previously Licensing Manager for Basingstoke & Dean and Hart Councils, and now private licensing consultant and Chair of the South East Region IoL
- Phil Bates, Licensing Manager for Southampton City Council
- Sue Nelson, Executive Officer of IoL

This Guidance is the result of the work of the project team and includes consideration of antecedent history of the applicant or licence holder and its relevance to their 'character' as well as consideration of convictions, cautions and non-conviction information.

The Institute is delighted to have the Local Government Association, the National Association of Licensing and Enforcement Officers and Lawyers in Local Government contributing to and supporting this project with IoL.

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- Louise Scott Garner
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Lawyers in Local Government (LLG). [www.lawyersinlocalgovernment.org](http://www.lawyersinlocalgovernment.org)

National Association of Licensing and Enforcement Officers (NALEO). [www.naleo.org.uk](http://www.naleo.org.uk)



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## **1.0 PWRPAS YR ADRODDIAD**

1.2 Rhoi diweddariad i'r Aelodau ar y Rhaglen Gwaith i'r Dyfodol.

## **2.0 CRYNODEB GWEITHREDOL**

2.1 Mae Rhaglen Gwaith i'r Dyfodol arfaethedig ynghlwm yn Atodiad A, er ystyriaeth a chymeradwyaeth yr Aelodau.

## **3.0 GWYBODAETH GEFNDIR**

3.1 Bydd yr aelodau yn gwybod y cymeradwywyd proses 12 mis dreigl ar gyfer eu Rhaglen Gwaith i'r Dyfodol mewn cyfarfod blaenorol o'r Pwyllgor Trwyddedu.

3.2 Bydd yr aelodau yn nodi nad yw'r rhaglen ar gyfer y cyfarfod heddiw yn cynnwys unrhyw adroddiadau yn unol â'r Rhaglen Gwaith i'r Dyfodol a gynigiwyd yn flaenorol, a hynny oherwydd bod swyddogion wedi bod yn canolbwyntio ar ddiweddarau ffeiliau data yn dilyn symud o un gronfa ddata i un arall.

3.3 Gan fod hyn yn rhan allweddol o fusnes y Cyngor, mae'r swyddogion yn cynnig y dylent barhau â'r diweddariad data hwn dros fisoedd yr haf a'r hydref er mwyn gallu bod yn sicr y gellir monitro'r gwaith craidd yn ddigonol a hefyd er mwyn caniatáu hysbysiadau adnewyddu effeithiol ac ymatebion effeithlon i geisiadau Rhyddid Gwybodaeth ac ymholiadau cysylltiedig â'r gofrestr gyhoeddus.

3.4 Hoffai'r swyddogion gadarnhau y bydd unrhyw fusnes heb ei gynllunio h.y. gwrandawiadau gyrwyr, yn parhau yn ôl yr angen.

#### **4.0 ARGYMHELLIAD**

- 4.1 Bod yr Aelodau yn cymeradwyo'r Rhaglen Gwaith i'r Dyfodol arfaethedig fel y manylir yn yr Atodiad.

**Pwyllgor Trwyddedu**

**Rhaglen Waith**

<b>Dyddiad y Pwyllgor</b>	<b>Adroddiad</b>	<b>Sylwadau</b>
<b>Rhagfyr 2018</b>	Gweithdrefn Pwyntiau Cosb	Diweddarau
	Polisi euogfarnu Gyrwyr Cerbydau Hacni a Hurio Preifat	Diweddarau
<b>Mawrth 2019</b>	Polisi Defnydd a Fwriadwyd	Adolygu
	Polisi Eithrio Hurio Preifat	Adolygu
<b>Mehfin 2019</b>	Polisi/Amodau Gyrrwr/ Gweithredwr Cerbyd Hacni a Hurio Preifat	Diweddarau
<b>Medi 2019</b>	Polisi Masnachu ar y Stryd	Diweddarau
	Polisi Codi ar y Stryd	Adolygu
	Polisi Codi o Dŷ i Dŷ	Adolygu

Mae tudalen hwn yn fwriadol wag