

**Report of Head of Elections, Licensing and Registration**

**Report to Licensing Committee**

**Date: 5 July 2016**

**Subject: Psychoactive substances Act 2016 – changes to primary legislation and its impact upon Taxi & Private Hire Licensing Policy**

Are specific electoral wards affected? If relevant, name(s) of ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**Summary of main issues**

1. The Psychoactive Substances Act 2016, introduced from 6<sup>th</sup> April 2016, brought changes to primary legislation that impact upon the Council's public safety policy that is expressed in its 'convictions criteria'.
2. Members need to consider the consequences of that Act alongside the adverse effects psychoactive substances may have on communities, health and driving behaviours.
3. The report sets out proposals to align parts of the new legislation within the existing policy that relates to the use of drugs.
4. **Recommendations**
5. Members consider the information and proposals of Officers and recommend them, in principle, for Executive approval and inclusion in the 'convictions criteria' policy.

## **1 Purpose of this report**

- 1.1 This report will identify to Members the relevant legislation and the public safety benefits in having a clear and defensible policy that meets the statutory obligation for protecting the public and which sets out clear public information and a decision making criteria and process for Members, Officers the Courts and the licensed trade to consider.
- 1.2 Decision making needs to be justified and consistent and the existing 'convictions criteria' policy has met both of those requirements having been tested in the Courts on many occasions. Time has however brought changes to the law and also the requirement for local Authorities to be far more alert to criminal trends and public protection. Crime and safety are issues of national and local importance, it remains a primary concern for the people of Leeds and this report reflects on the beneficial safety enhancements to the policy.

## **2 Background information**

- 2.1 Before granting a Private Hire Driver (PHD), Private Hire Operator (PHO), Hackney Carriage Driver (HCD), Hackney Carriage Proprietor (HCP) or Private Hire Proprietors (PHP) licence the Council has a statutory obligation to ensure the applicant is a 'fit and proper' person. That requirement remains with the Council throughout the lifetime of a licence and at the point of renewal.
- 2.2 The Council's existing 'convictions criteria' policy deals with particular aspects of the 'fit and proper' person assessment and which describes and tries to assess the potential risk to the public and the Council by categorising types of convictions.
- 2.3 The 'convictions criteria' is of long standing and the principles of the existing policy have stood the test of time and have been recognised and appreciated in the Magistrates and Crown Courts as good practice and a clear decision making framework. It also enables an audit trail of the decision making process. It is intended to refresh that information and to consider options for dealing with the issues arising with the new Act.
- 2.4 When the Local Government (Miscellaneous Provisions) Act, 1976, was created it did not define drugs as one of the three recognised types of conviction, most probably on the basis that criminal activity of organisations were not on the radar to the extent they are today and the issues around drug misuse were not as prevalent or as relevant to the licensed trades.
- 2.5 Drugs crime is a major feature of organised crime gangs and there is potential where such organised criminal activity exists in areas of West Yorkshire that licensed drivers could become involved in the ferrying of drugs, suppliers and drug users to 'supply points'. The existing 'convictions criteria' recognises the dangers of 'established drugs' within the licensed trade and communities but does not take account of the wide range of psychoactive substances that creates new dangers.

### **3 Main issues**

#### **3.1 Meaning of “psychoactive substance”**

- (1) In this Act “psychoactive substance” means any substance which—
  - (a) is capable of producing a psychoactive effect in a person who consumes it, and
  - (b) is not an exempted substance (see section 3).
- (2) For the purposes of this Act a substance produces a psychoactive effect in a person if, by stimulating or depressing the person’s central nervous system, it affects the person’s mental functioning or emotional state; and references to a substance’s psychoactive effects are to be read accordingly.
- (3) For the purposes of this Act a person consumes a substance if the person causes or allows the substance, or fumes given off by the substance, to enter the person’s body in any way.

#### **3.2 Meaning of “prohibited activity”**

In this Act “prohibited activity” means any of the following activities—

- (a) Producing a psychoactive substance that is likely to be consumed by individuals for its psychoactive effects;
- (b) Supplying such a substance;
- (c) Offering to supply such a substance;
- (d) Importing such a substance;
- (e) Exporting such a substance;
- (f) Assisting or encouraging the carrying on of a prohibited activity listed in any of paragraphs (a) to (e).
- (g) Failure to comply with a Prohibition or Premises notice
- (h) Possession of a psychoactive substance in a custodial institution

3.3 Also known previously as ‘legal highs’ psychoactive substances have presented significant health dangers to the public and it has been very difficult to set regulatory control on quickly moving chemical production which only needs to minutely alter the specification to escape jurisdiction. What is known is that many of these substances create health and behavioural problems and this impacts on licensing policy in a number of ways:-

- The personal use by licensed drivers and the potential impact on road safety.

- The criminality involved in producing, supplying, offering to supply, possessing with intent to supply, possessing on custodial premises, importing or exporting psychoactive substances; that is, any substance intended for human consumption that is capable of producing a psychoactive effect. The maximum sentence will be 7 years' imprisonment

3.4 The consequence of this Act and the effects on communities, health and personal behaviours indicate that psychoactive substances should be aligned with the existing clarification of drugs identified in the current 'convictions criteria'. That part of the convictions criteria is at **Appendix 1** with the proposed changes highlighted in grey.

3.5 If approved the only public document affected by the change would be the 'convictions criteria' itself which would be updated on the Council's web-page and in the information packs presented to applicants or the trade. The Licensing Section has an extensive email database to inform the trade, Private Hire Operators and Taxi Associations of the change to that part of the policy which would be facilitated after final approval.

## **4 Corporate considerations**

### **4.1 Consultation and engagement**

4.1.1 There has been no specific consultation with the trade on this matter which clarifies changes necessary as a result of new legislation. There was however full consultation with the trade and the public on the current 'convictions criteria' before it was introduced in November 2014. At that time, Members considered feedback from the public and the trade in formulating that policy and the principles relating to drugs. The proposals suggested in this report are to clarify how those parts of the convictions criteria applicable to drug convictions also apply to the offences created by the Psychoactive Substances Act 2016.

### **4.2 Equality and diversity / cohesion and integration**

4.2.1 Equality and Cohesion Screening Assessments are carried out on the policies agreed at Licensing Committee in October 2014 which are used to inform decision making. This is available as a Background Document.

### **4.3 Council policies and best council plan**

4.3.1 The Taxi & Private Hire Licensing policies contribute to the following aims:

#### **Best Council Plan 2013 -17**

#### **Towards being an Enterprising Council**

#### **Our Ambition and Approach**

**Our Ambition** is for Leeds to be the best city and Leeds City Council to be the best council in the UK – fair, open and welcoming with an economy that is both prosperous and sustainable so all our communities are successful.

**Our Approach** is to adopt a new leadership style of civic enterprise, where the council becomes more enterprising, business and partners become more civic, and citizens become more actively engaged in the work of the city.

### **Our Best Council Outcomes**

Make it easier for people to do business with us.

### **Our Best Council Objectives**

Promoting sustainable and inclusive economic growth – improving the economic wellbeing of local people and businesses. With a focus on:

- Helping people into jobs,
- Boosting the local economy
- Generating income for the council

Ensuring high quality public services – improving quality, efficiency and involving people in shaping their city. With a focus on;

- Getting services right first time
- Improving customer satisfaction

#### 4.3.2 The Taxi & Private Hire Licensing policies contribute to priorities:

- Reduce crime levels and their impact across Leeds
- Effectively tackle and reduce anti-social behaviour in communities

#### 4.3.3 Safeguarding children and vulnerable adults:

Leeds City Council has both a moral and legal obligation to ensure the duty of care for both children and vulnerable adults across all of its services. This cannot be achieved by any single service or agency. Safeguarding is ultimately the responsibility of all of us and depends on the everyday vigilance of staff who play a part in the lives of children or vulnerable adults.

### **4.4 Resources and value for money**

#### 4.4.1 There are no financial implications to this action for the Council, the licensing section or the trade.

### **4.5 Legal Implications, access to information and call In**

#### 4.5.1 The statutory obligation of the Council is clear and set out at Section 51(1)(a) and (b) of the Local Government (Miscellaneous Provisions) Act 1976

Provided that a district council shall not grant a licence—

unless they are satisfied that the applicant is a fit and proper person to hold a driver's licence; or

to any person who has not for at least twelve months been authorised to drive a motor car, or is not at the date of the application for a driver's licence so authorised

- 4.5.2 The issues of suspension, revocation and refusal to renew follow on from that same requirement.
- 4.5.3 The existing policy has been seen as good practice and repeated in other Licensing areas. It has also stood repeat legal scrutiny in the Courts. The new proposals in this report need to be considered in the light of proportionality. Members might consider that the proposals for change are not a significant departure from the existing policy in so far as the changes are appropriate and necessary for maintaining public safety and not excessive in its overall effects, and reflect changes to legislation.
- 4.5.4 The opportunities for challenge, if challenges are made, are likely to arise on the occasion of individual appeals against decisions made under the policy.

## **4.6 Risk management**

- 4.6.1 It is felt that change proposals do not present significant challenge risk to the Council.

## **5 Conclusions**

- 5.1 Members may feel that the existing 'convictions criteria' has served the Council and the public well and the change proposal is a necessary update which reflect changes in law and safety risks and the change proposal is proportionate.

## **6 Recommendations**

- 6.1 Members consider the information and proposals of Officers and recommend them, in principle, for Executive approval and inclusion in the 'convictions criteria' policy.

## **7 Background documents<sup>1</sup>**

- 7.1 Leeds City Council 'convictions criteria'

Psychoactive Substances Act 2016

Equality and Cohesion Screening Assessment October 2014

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

## Drugs table

	1 year ago	2 years ago	3 years ago	4 years ago	5 years ago	6 years ago	7 years ago	8 years ago	9 years ago
<b>Category 2 offences</b>									
Possessing a Controlled Drug with Intent to Supply	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8
Import Drugs	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8
Producing Controlled Drug	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8
Psychoactive substances Produce, supply offer to supply, import, export, assist or encourage the carrying on of a prohibited activity identified in these prohibited activities	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8
<b>Category 4</b>									
Possessing Controlled Drug	Refused	Refused	Refused	Refused	Refused	8	6	4	2
Psychoactive substances Failure to comply with a Prohibition or Premises notice	Refused	Refused	Refused	Refused	Refused	8	6	4	2
Psychoactive substances Possession of a psychoactive substance in a custodial institution	Refused	Refused	Refused	Refused	Refused	8	6	4	2