



Committee: LICENSING COMMITTEE
Date: THURSDAY, 9 JANUARY 2020
Venue: LANCASTER TOWN HALL
Time: 1.00 P.M.

A G E N D A

1. **Apologies for Absence**

2. **Minutes**

Minutes of meeting held on 28 November 2019 (previously circulated).

3. **Items of Urgent Business authorised by the Chair**

4. **Declarations of Interest**

To receive declarations by Councillors of interests in respect of items on this Agenda.

Councillors are reminded that, in accordance with the Localism Act 2011, they are required to declare any disclosable pecuniary interests, which have not already been declared in the Council's Register of Interests. (It is a criminal offence not to declare a disclosable pecuniary interest either in the Register or at the meeting.)

Whilst not a legal requirement, in accordance with Council Procedure Rule 9, and in the interests of clarity and transparency, Councillors should declare any disclosable pecuniary interests, which they have already declared in the Register, at this point in the meeting.

In accordance with Part B, Section 2 of the Code of Conduct, Councillors are required to declare the existence and nature of any other interests as defined in paragraphs 8(1) or 9(2) of the Code of Conduct.

Matters for Decision

Exclusion of the Press and Public

5. **Exempt Item**

The Committee is recommended to pass the following recommendation in relation to the following item:

"That, in accordance with Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following item of business, on the ground that it could involve the possible disclosure of exempt information, as defined in paragraph 1 of Schedule 12A of that Act."

Councillors are reminded that, whilst the following item has been marked as exempt, it is for the Committee to decide whether or not to consider it in private or in public. In making the decision, Councillors should consider the relevant paragraph of Schedule 12A of the Local Government Act 1972, and also whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. In considering their discretion, Councillors should also be mindful of the advice of Council officers.

6. **Application for Renewal of a Scrap Metal Dealer's Licence - Mr. James Carr** (Pages 3 - 38)

Report of the Commercial Protection Manager

The press and public will be readmitted to the meeting at this point.

7. **National Register of Taxi Licence Revocations and Refusals** (Pages 39 - 71)

Report of the Commercial Protection Manager

ADMINISTRATIVE ARRANGEMENTS

(i) Membership

Councillors Colin Hartley (Chair), Mel Guilding (Vice-Chair), Richard Austen-Baker, Merv Evans, Kevin Frea, Mike Greenall, Joan Jackson, Abi Mills, Jean Parr and Joyce Pritchard

(ii) Queries regarding this Agenda

Please contact Jane Glenton, Democratic Services - telephone (01524) 582068 or email jglenton@lancaster.gov.uk.

(iii) Changes to Membership, or apologies

Please contact Democratic Support, telephone (01524) 582170 or email democraticsupport@lancaster.gov.uk.

KIERAN KEANE,
CHIEF EXECUTIVE,
TOWN HALL,
DALTON SQUARE,
LANCASTER, LA1 1PJ

Published on Tuesday, 31 December 2019.

By virtue of paragraph(s) 1 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

By virtue of paragraph(s) 1 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted



Home Office

Scrap Metal Dealers Act 2013

Determining suitability to hold a scrap metal dealer's licence

Statutory guidance for local authorities in England and Wales
First publication: issued 1 October 2013
Revised: May 2014

Introduction

The Scrap Metal Dealers Act 2013 received Royal Assent on 28 February 2013. The majority of the provisions within the Act commence on 1 October 2013 including the requirement in section 1(1) to be authorised by a licence in order to carry on business as a scrap metal dealer. Section 3(1) of the Act states that a local authority must not issue or renew a scrap metal dealer's licence unless it is satisfied that the applicant is a suitable person to carry on business as a scrap metal dealer. Section 3(6) states that a local authority must have regard to any guidance on determining suitability issued by the Secretary of State.

Status of the guidance

This is statutory guidance and local authorities are under a duty to have regard to it.

Whose suitability should be assessed?

When assessing an application for a scrap metal dealer's licence, you should consider the suitability of:

- the individual applicant;
- each partner within a partnership;
- any director(s), secretary(s) or shadow director(s) of a company.

You should consider whether a site manager (if an application for a site licence is submitted) has been convicted of a relevant offence or relevant enforcement action and whether this impacts on the applicant's suitability to hold a scrap metal dealer's licence.

What information may you have regard to?

Under section 3(2) of the Scrap Metal Dealers Act 2013, you may have regard to any information which you consider to be relevant when determining the suitability of a person to hold a scrap metal dealer's licence, including:

1. whether the applicant or any site manager has been convicted of any relevant offence

Under Schedule 1, Para 2 (1) (j), of the Act, a person applying for a scrap metal dealer's licence must provide details of any conviction for a relevant offence. The relevant offences, prescribed by the Secretary of State, can be found in Part 1 and 2 of the Schedule of The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013 using the following link:

<http://www.legislation.gov.uk/id/uksi/2013/2258>. Under Regulation 2, a relevant offence is also "attempting or conspiring to commit any offence falling within the Schedule; inciting or aiding, abetting, counselling or procuring the commission of any offence falling within the Schedule, and an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) committed in relation to any offence falling within the Schedule". These offences should also be considered when determining suitability.

- A conviction for a relevant offence should not automatically lead to the refusal of a scrap metal dealer's licence. You may consult your local police force (section 3 (7)) for further details about the offence including both the seriousness of the offence and the date of when it was committed. Once you have this, you should consider it alongside any other information you may have regard to when determining suitability. If a site manager has been convicted of a relevant offence, the same process applies.

- Under section 4 (5) of the Act, if a person has been convicted of a relevant offence or is convicted of a relevant offence once a licence has been issued, you may wish to consider, imposing one or both of the following conditions on the licence if you think this is necessary:
 - that the dealer must not receive scrap metal except between 9am and 5pm on any day;
 - that all scrap metal received must be kept in the form in which it is received for a specified period, not exceeding 72 hours, beginning with the time when it is received.
 - These conditions are set out at section 3 (8) of the Act and could be applied until you are satisfied that the inclusion of such a condition in the licence is no longer necessary under all the circumstances.
 - If, during your checks, you discover that the applicant has a relevant conviction which was not detailed in a person's application you should request further information from the applicant (Schedule 1, Para 4). You should also consider whether this is a deliberate omission and therefore impacts on suitability. Making a false statement in an application is a criminal offence (Schedule 1, Para 5) and, where this has happened, it will be at your discretion as to whether you refer this to the police.
 - Generally, local authorities should not consider spent convictions when making a decision on suitability and should disregard any spent convictions on the part of the applicant. Only if the local authority is satisfied that justice cannot be done except by admitting or requiring evidence relating to a person's spent convictions may the authority require the evidence and take it into account. In doing so, the local authority must have regard to the age, circumstances, relevance and seriousness of the spent convictions¹.
2. whether the applicant or any site manager has been the subject of any relevant enforcement action
- The relevant enforcement action you may have regard to when considering suitability to hold a scrap metal licence has been prescribed in Regulation 3 of The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013 by the Secretary of State which can be found at: <http://www.legislation.gov.uk/id/ukSI/2013/2258>.
 - Under Regulation 3(a), a person is the subject of relevant enforcement if *'the person has been charged with an offence specified in the Schedule to these Regulations, and criminal proceedings in respect of that offence have not yet concluded'*. However, you should **not** refuse a licence on this point alone as the action (pending prosecution) is ongoing. If an applicant details a pending prosecution in their application form, you should note this and monitor the outcome. Only once the action is completed should you consider whether the outcome, if a conviction, impacts on a person's suitability to hold a scrap metal dealer's licence and take any necessary action for instance to impose conditions or, ultimately, to revoke.
 - Under Regulation 3 (b), a person is the subject of relevant enforcement action if *"If an environmental permit granted in respect of the person under the Environmental Permitting (England and Wales) Regulations 2010 has been revoked in whole, or partially revoked, to the extent that the permit no longer authorises the recovery of metal"*. You should consult the Environment Agency (in England) or Natural Resources Wales (section 3 (7)) to find out

¹ Section 7 (3) Rehabilitation of Offenders Act 1974. We are amending the statutory guidance to ensure that the guidance properly reflects this Act and is in line with the existing legal framework.

the reasons for the whole or partial revocation and consider if the reasons impact on their suitability.

3. any previous refusal of an application for the issue or renewal of a scrap metal licence (and the reasons for the refusal)
 - You should check your local authority area's records to find out whether a scrap metal dealer has previously been refused a scrap metal dealer's licence, taking into consideration the reasons for the refusal. Section 3 (7) of the Act states that you may consult other persons regarding the suitability of an applicant, including in particular, any other local authority or officer of a police force. It will be undesirable for a person who has been refused a licence by one local authority area to be issued a licence by another, therefore if a person has been refused a licence in a different local authority area, it will be important to scrutinise the reasons for the refusal. For example, the refusal may have been given because the applicant has not demonstrated that there will be adequate procedures in place to comply with the Act (section 3 (2) (f)) but the applicant has now implemented sufficient changes and the reason no longer applies.
4. any previous refusal of an application for a relevant environmental permit or registration (and the reasons for the refusal)
 - You should routinely check whether an applicant is on the Environment Agency's register of permits and registrations. If you have any concerns or would like to find out further information you should contact the Environment Agency (in England) or Natural Resources Wales. Additionally, if the applicant does not appear on the register and, therefore, does not hold a relevant environmental permit, exemption, or registration, then you may also wish to consult the Environment Agency or Natural Resources Wales as the applicant should not be operating as a scrap metal dealer without one or other of these.
5. any previous revocation of a scrap metal licence (and the reasons for the revocation)
 - You should routinely check the register of scrap metal licences, hosted by the Environment Agency/Natural Resources Wales, to find out if a scrap metal dealer has had a licence revoked in another local authority area. If a person has had a licence revoked, you should contact that local authority to understand the reasons why the licence was revoked (section 3 (7)). It will be important for you to scrutinise the reasons for refusal and consider whether these still apply. The reasons for revoking a licence may not always impact on suitability (section 4 (1) (2)).
6. whether the applicant has demonstrated that there will be in place adequate procedures to ensure that the provisions of this Act are complied with
 - Where you have information that raises concerns about the adequacy of procedures that the applicant or site manager has in place to comply with section 11 (verifying the supplier's identity), section 12 (offence of buying scrap metal for cash) or section 15 (records: supplementary), you may wish to obtain further information about how the applicant will ensure compliance with the requirements of the Act. For example, where you have concerns about the procedures around the offence of buying scrap metal for cash, you may wish to check the details of the back account which the applicant proposes to use. This information should be included in the application form (Schedule 1, Para 2 (1) (i)).

Further information

Although section 3 (2) sets out some information you may have regard to, you may request any relevant information from the applicant (either when the application is made or later) to help you consider the application (Schedule 1, Para 4 (1)), this will include determining suitability.

Reasons for refusal

If a licence applicant is refused, you should provide full reasons for your decision. This will not only help the applicant to understand the refusal but will allow a Magistrates Court to clearly understand the reasons should the applicant appeal the decision.



Home Office

Scrap Metal Dealers Act 2013

Supplementary guidance

Last updated: December 2013

Revisions to the guidance

Date	Revision
11 December 2013	Wording of section 5.4 regarding a collector's licence.

Introduction

The purpose of this document is to provide guidance on commonly raised issues in relation to the Scrap Metal Dealers Act 2013 which can be found using the following link:
<http://www.legislation.gov.uk/ukpga/2013/10/enacted>

This guidance document represents the Home Office's interpretation of the Scrap Metal Dealers' Act 2013 at the point that it is published. However, ultimately, it will be for the courts to interpret the meaning of the legislation, and their construction will be binding.

Useful documents

The Scrap Metal Dealers Act 2013 (Commencement and Transitional Provisions) Order 2013:
<http://www.legislation.gov.uk/uksi/2013/1966/made>

Scrap Metal Dealers Act 2013 Licence fee charges:
<https://www.gov.uk/government/publications/scrap-metal-dealer-act-2013-licence-fee-charges>

The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013: <http://www.legislation.gov.uk/uksi/2013/2258/made>.

The Scrap Metal Dealers Act (Prescribed documents and information for verification of name and address) Regulations 2013: <http://www.legislation.gov.uk/uksi/2013/2276/contents/made>.

The Scrap Metal Dealers Act 2013: Determining suitability to hold a scrap metal dealer's licence (statutory guidance for local authorities in England and Wales):
<https://www.gov.uk/government/publications/determining-suitability-to-hold-a-scrap-metal-dealers-licence>

Local authorities may wish to visit the Local Government Association's Knowledge Hub (<https://knowledgehub.local.gov.uk/>) and join the Tackling Metal Theft group which will provide access to the latest advice about the licensing regime.

Useful contacts

- British Metals Recycling Association
Tel: 01480 455249
admin@recyclemetals.org
<http://www.recyclemetals.org/>
- Motor Vehicle Dismantlers' Association of Great Britain
Tel: 01543 254254
mail@mvda.org.uk
www.mvda.org.uk
- British Vehicle Salvage Federation
Tel: 01303 814325
email@bvsf.org.uk
<http://www.bvsf.org.uk/cms/>

1. Timetable for licence applications and transitional arrangements

- 1.1 Scrap metal dealers can apply for a scrap metal dealer's licence from 1 October 2013.
- 1.2 If a person is a scrap metal dealer and was registered under the Scrap Metal Dealers Act 1964 or Vehicles (Crime) Act 2001 (as a motor salvage operator) they need to submit an application on or before **15 October 2013** and they will be deemed to have a temporary licence which is valid until a licence decision is issued. We recommend that local authorities issue a formal licence decision by **1 December 2013**. If scrap metal dealers were not previously registered with the local council under the Scrap Metal Dealers Act 1964 or the Vehicles (Crime) Act 2001 they must submit an application and wait for a licence to be issued before they can trade legally.
- 1.3 Local authorities will complete checks to assess applicant's suitability to hold a licence between 15 October and 1 December (the date by which we recommend a formal licence decision should be issued).
- 1.4 If a scrap metal dealer was previously registered under the Scrap Metal Dealers Act 1964 or Vehicles (Crime) Act 2001 and does not submit an application on or by 15 October their deemed licence will lapse on 16 October. A deemed temporary licence which has lapsed does not give rise to a right to appeal. The dealer must submit an application and wait for a licence to be issued before they can trade legally again.
- 1.5 A local council can impose conditions on a deemed temporary licence pending an appeal against the refusal of a licence.
- 1.6 The transitional arrangements are set out in 'The Scrap Metal Dealers Act 2013 (Commencement and Transitional Provisions) Order 2013' which can be found at: <http://www.legislation.gov.uk/ukSI/2013/1966/made>. This Order also sets out when each of the provisions within the Act will come into force.

2. Scrap metal dealer licences

- 2.1 Section 1 (1) of the Act states that *"No person may carry on business as a scrap metal dealer unless authorised by a licence under this Act (a "scrap metal licence")"*. Section 21 states that a person carries on business as a scrap metal dealer if a person *'carries on a business which consists wholly or partly in buying or selling scrap metal, whether or not the metal is sold in the form in which it was bought, or carries on business as a motor salvage operator (so far as that does not fall within paragraph (a))'*.
- 2.2 From 1 December 2013, scrap metal dealers will be committing an offence if they are operating without a licence and, if convicted, may receive a fine.
- 2.3 It will be a question of fact for a court to decide whether, under all the circumstances, the buying or selling of scrap metal forms the whole or part of a person's business, or alternatively, whether the buying or selling of scrap metal forms such a minimal part of their overall business dealings that the definition of scrap metal dealer in the Act is not made out. There are many factors a court may consider in reaching its judgment such as the proportion of the business related to scrap metal in terms of value or volume.
- 2.4 An exemption is provided for manufacturers selling scrap only as a by-product or as surplus materials not required for manufacturing.

Motor salvage operators

- 2.5 Motor salvage operators will need to hold a scrap metal dealer's licence which replaces the need to separately register with the local council. The Act repeals Part 1 of the Vehicles (Crime) Act 2001 which is the requirement to register as a vehicle salvage operator.

Producers of ferrous and non-ferrous metals

- 2.6 Producers of ferrous and non ferrous metals purchase processed scrap metal as a raw material used in their manufacturing process. Whilst on a case by case basis this may meet the test of wholly or partly buying or selling scrap metal, the Act was never intended to extend beyond those who were expected to register under the Scrap Metal Dealers Act 1964 or the Vehicles (Crime) Act 2001 which this Act replaces. Therefore, we do not intend these companies to be required to comply with the licensing requirement. We have communicated this to appropriate industry associations via the Department for Business, Innovation and Skills.

Agent, broker or trader

- 2.7 A person that buys or sells scrap metal on paper without actually operating a scrap metal site carries on business as a scrap metal dealer and will require a licence. This person will carry out their business as a scrap metal dealer from premises and will need to hold a site licence as a site is any 'premises used in the course of carrying on business as a scrap metal dealer (whether or not metal is kept there)' (section 22 (9)).

Skip Hire Company

- 2.8 Skip hire companies may need a scrap metal dealer's licence. It will be a question of fact for a court to decide whether, under all the circumstances, the buying or selling of scrap metal forms the whole or part of the person's business, or alternatively, whether the buying or selling of scrap metal forms such a minimal part of their overall business dealings that the definition of scrap metal dealer in the Act is not made out.
- 2.9 There are many factors a court may consider in reaching its judgment such as the proportion of the business related to scrap metal in terms of value or volume. If a skip hire company places skips only at businesses/demolition sites to process and sell on the scrap metal this may be considered to be the whole or part of their business and therefore require a licence. However, a company that only rents skips to households where recoverable scrap metal forms a minor part of the skip contents and the company's business that they may not require a licence.

Tradespersons

- 2.10 Tradespersons will not require a scrap metal dealer's licence if buying or selling scrap metal is an incidental function of their business (eg being a plumber or electrician). It will be a question of fact for a court to decide whether, under all the circumstances, the buying or selling of scrap metal forms the whole or part of the person's business, or alternatively, whether the buying or selling of scrap metal forms such a minimal part of their overall business dealings that the definition of scrap metal dealer in the Act is not made out.

Civic amenity sites

- 2.11 Civic Amenity sites, run by councils or contracted out to others, will not require a licence.

Vehicle collection companies

- 2.12 If a scrap metal dealer (who is a motor salvage operator) holds a site licence and employs or sub-contracts a company to pick up cars on the company's behalf in the

course of the business from that site we do not consider that they will need individual mobile collector's licences as this is not regularly engaging in collecting waste materials and old, broken, worn out or defaced articles by means of visits from door to door but pre-arranged appointments. If the vehicle is to be scrapped, the collection company will be committing an offence if they buy the vehicle for cash and do not verify the name and address of the supplier on behalf of the site licence holder. The scrap metal dealer will be responsible for ensuring that the vehicle collection company complies with these requirements.

3. The application process

- 3.1 Scrap metal dealers can apply for a licence from the licensing authority – in this case the local council. It is a requirement of the EU Services Directive that applicants are able to complete applications online, therefore there should be no requirement for applications to be made in person. For further information scrap metal dealers should contact their licensing council directly; the details can be found using <https://www.gov.uk/find-your-local-council>. Guidance is provided on how to complete the application form.
- 3.2 The licensing council must not issue or renew a scrap metal licence unless it is satisfied that the applicant is a suitable person to carry on business as a scrap metal dealer. In determining whether the applicant is a suitable person, the council may have regard to any information it considers to be relevant. This may include whether the applicant or site manager has been convicted of a relevant offence or been the subject of relevant enforcement action; any previous refusal of a licence application or renewal; refusal of a relevant environmental permit; revocation of a scrap metal licence or whether the applicant has demonstrated that there will be adequate procedures in place to ensure the provisions of the Act are complied with.
- 3.3 The application form must provide details of any conviction of the applicant for a relevant offence (Schedule 1, Para 2 (1) (j)). To verify the information provided in the application form, local authorities request that applicants submit a Basic Disclosure Certificate for themselves and any person listed on the application form including the site manager (if applying for a site licence), each partner if a partnership, and, if a company, for the director(s), shadow director and company secretary. The Certificate will list unspent criminal convictions. If the Certificate is not submitted, this may delay the consideration of the application.
- 3.4 When assessing the applicant, partnership's or company's suitability to hold a scrap metal dealer's licence, the local council will check each Basic Disclosure Certificate against the list of convictions for relevant offences set out in the Schedule of The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013. The Regulations can be found using the following link: <http://www.legislation.gov.uk/ukSI/2013/2258/made>.
- 3.5 Basic Disclosure Certificates can be applied for at www.disclosurescotland.co.uk/apply-online, or Disclosure Scotland can be on 0870 609 6996 for information about other ways of applying. *Please note that Disclosure Scotland will not be able to answer any questions about scrap metal dealer licensing.*
- 3.6 A certified copy¹ of the disclosure certificate will be sufficient to allow for the fact that many applicants will have businesses whose directors' suitability will need to be

¹ Guidance on certifying a document is available at <https://www.gov.uk/certifying-a-document>

confirmed in several licensing areas. Councils should clearly set out who they consider to be an appropriate person to certify copies.

- 3.7 Tacit consent should not apply in relation to scrap metal dealer licence applications as there is an overriding public interest in ensuring that the suitability of applicants is assessed before the licence is issued.

4. Scrap metal dealer's licence fee

- 4.1 Each application for a scrap metal dealer's licence will need to be accompanied by a fee (Schedule 1, Para 6 (1)). The fee is set by each local council and is calculated on the basis of recovering certain costs of administering and ensuring compliance with the licensing scheme. The Home Office has issued guidance to local authorities on how to set scrap metal dealer licence fees which can be found at: <https://www.gov.uk/government/publications/scrap-metal-dealer-act-2013-licence-fee-charges>

5. The licence

- 5.1 Scrap metal licences are valid for three years and there are two types: a site licence or a mobile collector's licence (section 2 (2)). A licence can be issued to an individual, a partnership or a company.

A site licence

- 5.2 A site licence authorises the licence holder to carry on business at any site in the council's area which is identified in the licence (section 2 (3)). A site licence holder can transport scrap metal from third party businesses by arrangement from any other local council area providing it is in the course of the business from that site. A site licence holder cannot regularly engage in collecting waste materials and old, broken, worn out or defaced articles by means of visits from door to door in the area they are licensed or elsewhere, as this would constitute carrying on a business as a mobile collector. It would be acceptable to collect by arrangement, for instance where a motor salvage operator is asked to transport a damaged vehicle from an address to their site. It is not possible to hold both a mobile collector's licence and a site licence from the same council (section 2 (9)).

- 5.3 If a site licence holder uses self-employed mobile collectors to collect scrap metal which will be processed by the site, each collector would need a mobile collector's licence.

A collector's licence

- 5.4 A collector's licence authorises the licensee to carry on business as a mobile collector in the licensing council's area only (section 2 (5)). A mobile collector is a person who " a) carries on business as a scrap metal dealer otherwise than at a site, and (b) regularly engages, in the course of that business, in collecting waste materials and old, broken, worn out or defaced articles by means of visits from door to door (section 22 (4)). A person carries on business as a scrap metal dealer if a person "carries on a business which consists wholly or partly in buying *or* selling scrap metal..." (section 21(2) (a)).

- 5.5 A mobile collector's licence will cover any employees working for that business. If they are not employed directly by that mobile collector's business and are self-employed, they will need their own collector's licence even if they are collecting metal from the same van as a person who has a mobile collector's licence.

- 5.6 Mobile collectors and site licence holders need to ensure they comply with relevant environmental legislation and regulation when carrying out their business.

6. Refusal of a scrap metal dealer's licence

- 6.1 If a local council proposes to refuse an application, it must give the applicant notice of the proposed decision. The applicant has 14 days in which to make representations. When the local council has made a final decision, it provides a notice of the decision with reasons. The applicant has 21 days in which to appeal. The local council will advise the applicant how to do this.

7. Displaying a licence

- 7.1 A site licence holder must display a copy of the licence in a prominent place, that is accessible to the public, at each site identified in the licence (section 10 (1) (2)). A scrap metal dealer who holds a mobile collector's licence must display a copy of the licence on any vehicle that is being used in the course of the dealer's business so as to be read easily by a person outside the vehicle (section 10 (3) (4)). It is an offence not to do this.
- 7.2 A site licence holder may wish to carry a copy of the relevant site licence in their vehicle so they are not mistaken for an unlicensed mobile collector. However, there is no legal requirement to do this.
- 7.3 If a mobile collector holds several scrap metal licences, they must ensure that the correct licence is displayed when collecting in the relevant licensing council area. Failure to do so is an offence.

8. Revocation of a scrap metal dealer's licence

- 8.1 Under section 4 of the Act, licences can be revoked by the council for the following reasons:
- it is satisfied that the licensee does not carry on business at any of the sites identified in the licence;
 - that a site manager named in the licence does not act as a site manager at any of the sites identified in the licence;
 - it is no longer satisfied that the licensee is a suitable person to carry on business as a scrap metal dealer.
- 8.2 If a local council proposes to revoke a licence, it must give the licensee notice of the proposed decision. The licensee has 14 days in which to make representations. When the council has made a final decision, it provides a notice of the decision with reasons. The licensee has 21 days in which to appeal. The local council will advise how to do this.

9. Offence of buying scrap metal for cash

- 9.1 From 1 October 2013, cash cannot be used by any scrap metal dealer to buy scrap metal. It is an offence to buy scrap metal for cash under section 12 of the Act and there are no exemptions. Only payment by a non-transferable cheque or an electronic transfer of funds will be acceptable. This will mean that the payment will be linked to a readily identifiable account, for both the payee and the payer.

Cheque payments

9.2 Cheque payments are acceptable within the cashless operating model but this is limited to non-transferable ("crossed cheques"), which are payable to a named individual(s) or firm and not made out to cash. The money will be paid to the intended beneficiary of the cheque.

Electronic transfers

9.3 The Act provides a clear focus on electronic transfers of money. This means that non-paper forms of payment such as direct debit, direct credits, BACS payments, faster payments, standing orders, credit transfers, on-line, phone and mobile banking are all acceptable forms of payment within the legislation. These methods of payment all provide the required traceability with a record of the transaction from the payer's account to the payee's account.

9.4 Re-loadable Electronic-Money products which are issued to a named account (which verifies the customers identification) and undertakes full customer due diligence and "Know Your Customer" checks under the Money Laundering Regulations are permitted. If scrap metal dealers are unclear whether an E-Money product undertakes full customer due diligence and "know your customer" checks they are strongly advised to make payment by other means.

9.5 The payment methods listed above ensure compliance with the Act. The list is not, however, exhaustive. The electronic payments market is rapidly evolving with new products regularly entering the market.

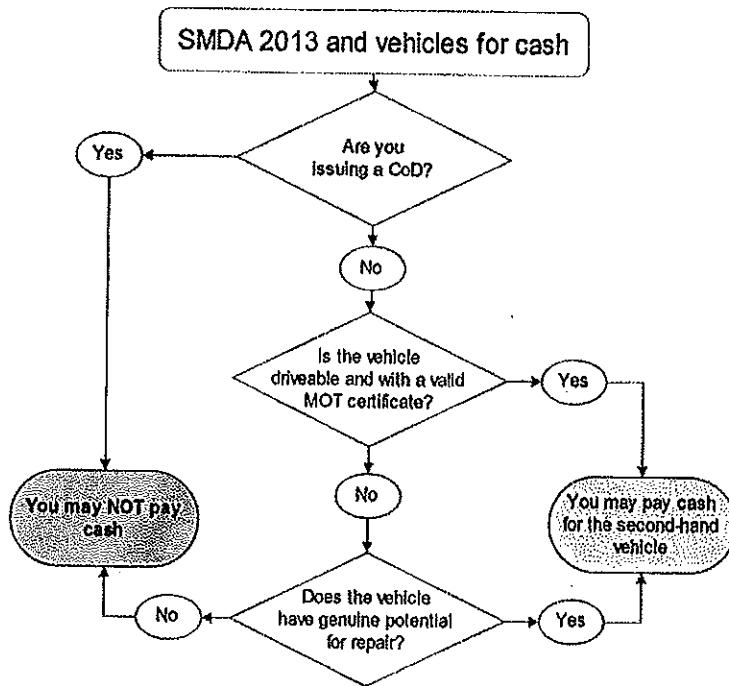
Unacceptable methods of payment

9.6 Payment instruments which do not come within the methods above (non-transferable cheque or electronic transfer) and which provide anonymous or near cash alternatives are not acceptable within the legislation. This includes the use of postal orders, foreign currency, electronic vouchers, virtual currencies, mobile phone airtime credits, retailer / supermarket gift cards and vouchers. Single, non-reloadable pre-paid debit cards and reloadable debit cards which are anonymous in nature and require only simplified due diligence under the Money Laundering Regulations are unacceptable.

Buying vehicles for cash

9.7 Whether a vehicle will be considered to be scrap (and may not therefore be bought with cash) depends on all the circumstances of the case, and may not always be clear-cut. If a certificate of destruction is issued, the car is considered to be scrap and a buyer must not pay cash for it. If a certificate of destruction is not issued, then it will depend on a number of other factors. For example, it may be argued that a car with a valid MOT certificate and that is driveable without repair is not scrap (therefore, a buyer may pay cash for it) regardless of the way in which the vehicle is subsequently handled by the buyer.

9.8 It is not possible to set out a precise checklist that can in every case guarantee to predict the decision a court may make where illegal payment of cash for scrap metal is alleged. However, the flowchart below should assist in deciding whether it may be permissible to pay cash. Potential buyers should note that, if you elect to pay cash for an un-driveable vehicle that has no valid MOT certificate, you may have to justify your assessment of repairability in court. There needs to be a genuine potential for repair and re-sale in order for cash to be used. Cash cannot simply be paid for everything on the basis a buyer might repair and resell it if they have no facilities for repairing vehicles and no history of selling vehicles. Similar issues may arise for the purchase of other items and appliances.



10. Record keeping requirements

- 10.1 Sections 13-15 of the Act require scrap metal dealers to keep records of metal received and disposed of as well as details of the person it was received from, documents used to verify the name and address of the supplier and the payment. Records must be recorded in a manner which allows the information and scrap metal to be easily identified by reference to each other (section 15 (1)). Records must be kept for three years (section 15 (3)).
- 10.2 The requirement to link recorded descriptions to the scrap metal to which they relate is intended to be proportionate and it may not be possible to go into the same level of detail for larger deliveries. If the scrap is (for example) one washing machine, it would be sensible to say so rather than use a more generic term. The records should contain sufficient identification detail to ensure there is no intention to obscure the identity and type of metal being processed.

11. Scottish scrap metal dealers trading in England and Wales

Mobile collectors

- 11.1 A mobile collector who resides in Scotland but collects scrap metal in England or Wales will need to hold a licence for every local council area in England and Wales where they collect scrap metal. The mobile collector will be subject to the licensing requirements and will need to comply with all the requirements in the Act.

Site licence holders

- 11.2 A scrap metal dealer who has a company that operates a site in Scotland will not require a scrap metal dealer's site licence. However, if that dealer travels to England or Wales to trade they will need to follow the requirements within the Act; that is: they will not be able to buy scrap metal for cash (section 12); will be required to verify the name and address

of the supplier before receiving scrap metal (section 11) and will need to keep records of the metal received (section 13).

12. Verifying the name and address of the supplier

- 12.1 Scrap metal dealers must not receive scrap metal from a person without verifying their name and address by reference to documents or other information which are set out in "The Scrap Metal Dealers Act (Prescribed documents and information for verification of name and address) Regulations 2013" at:
<http://www.legislation.gov.uk/ukxi/2013/2276/contents/made>.
- 12.2 A scrap metal dealer must keep a copy of any document used to verify the name and address of the supplier (section 13 (3)). A scrap metal dealer can verify the name and address of repeat suppliers by referring to a copy of the document(s) retained in their records which were used to verify name and address before the first transaction.
- 12.3 In the course of collecting door to door, it may not be possible for a mobile collector to verify the name and address of the supplier if the waste materials and old, broken, worn out or defaced articles have been left on the roadside. However, a mobile collector must record the description of the metal, including its type (or types if mixed), form, condition, weight and any marks identifying previous owners or other distinguishing features (section 13 (2) (a)) and the date and time of its receipt (section 13 (2) (b)). If a mobile collector collects scrap metal from a person, they will need to verify the name and address of that person.

LICENSING COMMITTEE**National Register of Taxi Licence Revocations and Refusals****9 January 2020****Report of Commercial Protection Manager****PURPOSE OF REPORT**

For the Committee to provide a recommendation to the Executive Member regarding the adoption of the National register of Taxi Licence Revocations and Refusals.

The report is public.

RECOMMENDATIONS

- (1) That the Committee provides a recommendation to the Executive Member supporting the adoption of the National Register of Taxi Licence Revocations and Refusals.**

1.0 Introduction

- 1.1 The Council is responsible for licensing hackney carriage and private hire drivers. In determining such applications the legal test is that the Council must be satisfied that the applicant is a “fit and proper” person to be granted a licence. There is no precise definition as to what constitutes “fit and proper” and the Council’s discretion is wide ranging.
- 1.2 In assessing an application for a private hire/hackney carriage driver’s licence, the Council currently requires successful completion of the following - driver knowledge test, practical driving assessment, medical, criminality check, and check of DVLA driving licence for penalty points.
- 1.3 All applicants are asked on the application form if they have ever had a licence application refused or revoked by a local authority. If they indicate yes, then further investigations are undertaken with the relevant local authority. If an applicant indicates that they have never had an application/licence refused or revoked, the Council currently has no means to check the accuracy of the statement. There is the potential for an applicant to have had a licence application refused or a licence revoked without Lancaster City Council knowing, and whilst it is reasonable to assume that an enhanced DBS will detail relevant convictions, a DBS will not provide details of customer complaints made against a licence holder.
- 1.4 The situation described in paragraph 1.3 above can be reversed, in that a licence driver whose licence has been revoked by Lancaster City Council due to complaints/conduct issues may chose not to disclose this on any subsequent application made to another Local Authority.

- 1.5 In recent years there have been high profile cases where the conduct of licensed drivers has been unacceptable and whereby one means or another those people have been allowed to continue to operate within the industry. This has undermined public confidence in the taxi/ private hire industry and left some licensing authorities open to criticism for something which has been very difficult to control.

2.0 Report

- 2.1 In September 2018, a Department for Transport Ministerial Task and Finish Group published a report with 34 recommendations regarding steps towards a safe and more robust taxi licensing system. Included as recommendation 23 is the use of the National Anti-Fraud Network (NAFN) register of drivers who have been refused or had revoked hackney carriage/ private hire driver licences.
- 2.2 In February 2019 the Government (DfT) published its response to the Task and Finish Group report. Within the summary of that response is the following statement - "the Government accepts the three key measures recommended to achieve a safe service for passengers" – one of these was a national Licensing database
- 2.3 In August 2018, the Local Government Association (LGA) launched a national register of taxi and private hire licence refusals and revocations. The register allows Councils to record details of where hackney carriage or private hire drivers' licences have been refused or revoked and to check new applicants against the register, whilst the LGA and the Institute of Licensing have encouraged local authorities to adopt the register, it is a voluntary issue.
- 2.4 The LGA considered that a register was needed to tackle the issue of individuals making applications to different authorities following refusal or revocation of hackney carriage/private hire driver licences/applications. This view was clearly endorsed by the recommendations of the DfT Ministerial Task and Finish Group and the Government's response to the Task and Finish Group report
- 2.5 The LGA commissioned the National Anti-Fraud Network (NAFN) to develop and host a register, the National Register of Taxi (also incorporating Private Hire) Revocations and Refusals – known as NR3
- 2.6 NAFN is a local authority-owned not-for-profit organisation and is hosted by Tameside Council. To utilise the register, local authorities are required to be members. Lancaster City Council is already a member of NAFN.
- 2.7 If the Council chooses to adopt the NR3 register it will involve the Council providing information for the database on revoked or refused driver licensees/applicants and responding to data requests on the named individuals in the event of that individual applying to another local authority for a hackney carriage/private hire driver's licence. The database will record that a licence has been refused or revoked but will not provide the reasons or the background for the decision. Such information will only be considered as a result of a formal data access request.
- 2.8 The operation of the database needs to be effectively controlled to ensure data is handled fairly, sensitively and in accordance with all data protection requirements.
- 2.9 Attached to the report at **Appendix 1** is a copy of the LGA guidance on adopting the National register of Taxi Licence Revocations and Refusals (NR3)

- 2.10 With particular reference to the guidance (**Appendix 1**):

Section 4.1 of the guidance refers to membership of NAFN and the need to sign up to data processing agreements with NAFN. There are no additional costs associated with this, although NAFN membership costs £1,500 per annum and the Council's Corporate Fraud Manager has suggested that, if the register is adopted, the licensing budget partially funds the annual membership fee.

Section 4.3 of the Guidance refers to historic data migration and refers to data being retained for 25 years on the NR3 register. If the Council chooses to adopt the register, it will be required to write to each individual who has been refused or revoked during the relevant period and advise them that their information will be uploaded to the register and the reasons for this. Any individual may request that their information is not uploaded and any requests of this nature will have to be fully considered before a final decision is made. A template suggested wording of the letter to be sent to these persons whose licences have been revoked or refused during the period is included at Annex C of the guidance.

Section 5.3 of the Guidance refers to the disclosure of information relating to refusals and revocations and the need for the Council to have a policy which governs its approach to the circumstances in which it will share receive and use information data from the register. The Guidance provides a template policy at Annex D.

- 2.11 If the view of the Council is to adopt the register, licensing officers would work with colleagues in Information Governance to agree the data processing agreements.

3.0 Details of Consultation

- 3.1 The decision as to whether to adopt the register is an Executive decision. The Licensing Committee is a consultee, and is being asked to make a recommendation to the Executive Member regarding adoption of the register.
- 3.2 If the Executive makes a decision to adopt the register, those persons whose historical revocation/refusal is intended to be included within the register will be advised of the intention and offered the opportunity to make representations regarding the same.
- 3.3. If the register is adopted, new applicants and existing licence holders will be advised at the application stage of the intention to utilise NR3 register and records.

4.0 Options

- 4.1 Make a recommendation to the Executive to adopt the NR3 register. This is the officer's preferred option for the following reasons:
- Supports the recommendation in the Ministerial Task and Finish Group report;
 - Provides enhanced opportunity for public safety;
 - Provides an enhanced measure for assessing the "fit and proper" standard;
 - Provides information to other local authorities to enhance their decision making;
 - Provides support for the national Licensing database.
- 4.2 Make a recommendation to the Executive not to adopt the NR3 register.

The potential for an applicant who has previously had a licence revoked or refused by another local authority to be granted a licence by Lancaster City Council will remain.

Similarly the potential for a person who has had their driver's licence revoked or refused by the Council to be granted a licence by another local authority remains.

5.0 Conclusion

5.1 It is an Executive decision as to whether the Council adopts the voluntary NAFN NR3 register as part of the taxi licensing administrative processes. The Executive Member has requested the Licensing Committee consider the matter and make a recommendation to the Executive.

**CONCLUSION OF IMPACT ASSESSMENT
(including Health & Safety, Equality & Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing):**

If the register is adopted the impact would be the same across all equality groups.

If the register is not adopted, then there is a potential to impact on public safety, as the measure taken to assess the "fit and proper" standard required of taxi drivers will not include a check on the register of refusal/revocations in other local authority areas.

A decision to revoke or refuse a licence does have the potential to impact on Human Rights. However, this is limited by public law where it is necessary and proportionate to share information in the interest of public safety and the protection of the rights and freedoms of others.

LEGAL IMPLICATIONS

Hackney carriage and private hire licensing is a statutory function of the Council. In undertaking the statutory function in relation to licensed drivers the Council has to be satisfied that the applicant/licence holder is a "fit and proper" person to hold a licence.

The adoption of the NR3 Register and Guidance would enhance the decision making in terms of the fit and proper test.

Participation in NR3 is voluntary. There are no statutory requirements for the Council to participate. However, it is recognised that NR3 is supported by the DfT Task and Finish Group and the Associated Government response to that report.

FINANCIAL IMPLICATIONS

There is an annual cost associated with membership of NAFN. The Council is already a member and therefore there are no additional costs to the Council. It is realistic to expect the Licensing budget to make a contribution towards the annual membership costs. The LGA guidance suggests that this is a cost which is recoverable from hackney carriage/private hire driver licence fees.

OTHER RESOURCE IMPLICATIONS, such as Human Resources, Information Services, Property, Open Spaces

In the event of a decision to adopt the register, there will be some staff resources required to collate historical records and administer data processing requirements. It is envisaged that this can be managed within existing resources but may be at the expense of other proactive project work.

Once the systems are in place, it is envisaged that a check of the register will add 5 minutes to the administration process of a new/renewal driver licence. There are approximately 200 driver renewals and 50 new driver applications per annum.

There is also likely to be a number of data requests from other authorities in respect of Lancaster revoked/refused drivers/applicants. It is estimated that this will not exceed 20 requests per annum. Each request would take an estimated 30 minutes to process.

BACKGROUND PAPERS

Department for Transport - Taxi and private hire vehicle licensing steps towards a safer and more robust system - 24 September 2018

Government response to report of the Task and Finish Group on taxi and private hire vehicle licensing – Moving Britain ahead – February 2019

Contact Officer: Jenette Hicks

Telephone: 01524 582732

Email: jhicks@lancaster.gov.uk

Ref:



Guidance on adopting the National Register of Taxi Licence Revocations & Refusals (NR3)

Contents

1. Background
2. Objective of NR3
3. Voluntary disclosure of previous licensing history
4. NR3 - an overview
 - 4.1. Accessing the register
 - 4.2. Register functionality
 - 4.3. Historic data migration
5. Updating licensing processes and procedures
 - 5.1. Informing applicants of the NR3 register
 - 5.2. Adding details of a refusal or revocation
 - 5.3. Checking the register as part of the application and renewal process
 - 5.4. Acting on detailed disclosures
6. Complying with data protection requirements
 - 6.1. Updating the licensing policy, application forms and guidance
 - 6.2. Making existing licensees aware

Annex A – guidance on amendments to policies and forms

Annex B – suggested notification to existing licensees of NR3

Annex C - suggested notification to former licence holders or applicants whose details will be entered onto NR3

Annex D – Suggested template policy relating to requests for information, disclosure of information, and use of information as a result of an entry on NR3, including template disclosure form

1. Background

Licensing Authorities are required to satisfy themselves that those holding hackney carriage and Private Hire Vehicle (PHV) driver licences¹ are 'fit and proper' to do so. This is done firstly during the determination of an application for a licence, and then at any time during the currency of a licence. For example when evidence is obtained that suggests that a licensed individual is not a fit and proper person the licensing authority is entitled to suspend, revoke or refuse to renew a licence.

The process of assessing whether an applicant or licensee is 'fit and proper' may vary between authorities but there is widespread consensus on the need to increase consistency and set national minimum standards for the fit and proper test at a suitably high level. This would help prevent individuals who have had a licence revoked by one authority from simply going to another area and securing a licence - assuming the second authority was aware of the earlier revocation.

At the moment, if drivers do not disclose information about a previous revocation or refusal of a licence, there is often no way for a licensing authority to find this information out. This means that vital intelligence about an applicant's past behaviour is being missed and an individual might be able to get a new licence in another area, despite having their licence revoked elsewhere. High profile instances of this happening have undermined public confidence in the safety of hackney carriages and PHVs, and left licensing authorities open to criticism for something that is currently very difficult for them to control.

In response to this issue, the Local Government Association (LGA) has commissioned the development of a national register of hackney carriage and PHV driver licence refusals and revocations, the 'National Register of Refusals and Revocations' or NR3. The new register will allow licensing authorities to record details of where a hackney carriage or PHV drivers' licence has been refused or revoked, and allow licensing authorities to check new applicants against the register. This should help to prevent people found to be not fit and proper in one area from securing a licence somewhere else through deception and non-disclosure. For the avoidance of doubt, NR3 does not extend to vehicle or operator licensing decisions.

This guidance note provides information on the steps that licensing authorities should take to ensure that they have the necessary supporting procedures in place to make use of the register. Specific user guidance and training materials on using the register will be published separately.

Important

Licensing authorities will be data controllers in relation to their processing of personal data in connection with NR3, including in relation to uploading information to NR3, consulting NR3, and disclosing or receiving information about individuals who appear on NR3. Licensing authorities are therefore strongly advised to work closely with their information governance and legal teams to assure themselves that they are taking the necessary steps to comply with data protection and other laws in regard to NR3.

¹ Throughout this document, this term includes dual or combined Hackney / PHV licences.

2. Objective of NR3

The simple objective of the national register is to ensure that authorities are able to take properly informed decisions on whether an applicant is fit and proper, in the knowledge that another authority has previously reached a negative view on the same applicant. This will be achieved by providing a mechanism for licensing authorities to be able to check whether an individual has had a licence refused or revoked. Whenever a licensing authority processes a new application for a hackney carriage/PHV driver's licence, or for a renewal, it should check the register at a suitably early stage of the process to confirm whether the applicant was subject to a previous licensing decision that they should be aware of.

Every application must always be considered on its own merits. A licensing authority must not fetter its decision-making, or appear to have simply relied upon the previous decision of another authority. The purpose of the register is not to mean that an applicant who has been refused a licence on one occasion will always be refused.

However, it will always be relevant for an authority to consider a previous refusal or revocation, and the reasons for that decision. That previous decision may in many cases warrant significant weight to be given to it. Licensing authorities will wish to think carefully about taking a different view to an earlier decision. Depending on the nature and context of the earlier decision, they may require strong and new evidence to support a different view, having regard to the representations of the applicant. Any authority will wish to have proper respect for the decision of a previous authority, having regard to the fact that a driver had the right of appeal to the Magistrates' Court against a decision which was wrong or flawed. Without this approach, the objectives of safeguarding and consistency – and the reputation of local government – will be undermined.

The register will not record suspensions of drivers' licences. This is for the following reasons:

- i. any suspension that was later lifted because the original information was false or unsubstantiated would have to be removed from the register, but any search during the period that the information remained in the register might prejudice a subsequent application
- ii. suspension should not be used as an interim step pending revocation. If the matter is serious enough to warrant a driver being prevented from driving, revocation should be the action taken²; and
- iii. where a suspension period is imposed as a short-term punishment for minor transgression, this should not influence a subsequent decision, as further serious non-compliance should lead to revocation³. Accordingly any pattern of unacceptable behaviour should be identified by revocations or refusals to renew, rather than by a recurring pattern of suspensions.

For these reasons, no records of suspension should be included, including migration of historic records relating to suspension.

² See *R (on the application of Singh) v Cardiff City Council (Admin)*, [2013] LLR 108 and *Reigate & Banstead Borough Council v Pawlowski* [2018] R.T.R. 10

³ Suspension as a punishment is permissible – see *R (on the application of Singh) v Cardiff City Council* [2013] LLR 108

3. Voluntary disclosure of previous licensing history

NR3 provides a mechanism for sharing information about an individual's previous licensing history if they have had a licence revoked or an application for one refused. Most licensing authorities already ask applicants to indicate on their application forms whether they have previously had a licence revoked or refused. With the introduction of NR3, authorities should ensure that the request for this information is clearly set out on the application form and accompanying guidance notes. Where an applicant fails to volunteer information that has been clearly requested but which is subsequently identified through NR3, this may in itself raise questions about the applicant's integrity and status as a fit and proper person.

4. NR3 - an overview

4.1. Accessing the register

The national register is hosted by the National Anti-Fraud Network (NAFN). Access to the register is only available to members of NAFN. Licensing authorities are encouraged to join up to NAFN and recover the cost of this through their taxi licence fees. NAFN can be contacted by email on general@nafn.gov.uk.

NAFN members will need to sign up specifically to the NR3 element of the NAFN database, which will allow access to the dedicated portal. This is a relatively straightforward process and can be done by contacting NAFN.

A relevant officer will need to be designated as a single point of contact (SPOC) as part of the registration process. Authorities which already use the NAFN system will already have an existing SPOC in place (or potentially multiple SPOCs for different areas of functionality), so consideration will need to be given to the interaction between existing NAFN contacts and the new NR3 functionality.

Once set up on the register, other officers will be able to create user accounts which will allow them to submit data or search the register, but these accounts will need to be verified/ approved by the SPOC. Consideration should be given to the number of officers that need to be set up with user accounts to enable them to use the register to search / input information.

Subscribing to the national register will require local authorities to sign up to data sharing and data processing agreements with NAFN. These agreements outline the necessary steps the authority will need to take to ensure compliance and will cover requirements under both the General Data Protection Regulation (GDPR) and Data Protection Act 2018 (DPA).

4.2. Register functionality

The register has two basic elements of functionality; it enables authorities to record details of relevant drivers, and it enables them to undertake searches of the data held in the register.

Licensing authorities will be responsible for adding basic details of drivers who have had a licence revoked or an application for one refused. The intention is that when a licensing authority receives an application for a licence or a renewal, the applicant's details will be checked on the register to confirm that there is no record of them having being revoked or refused elsewhere.

Details contained on the register will be limited to information that will help to identify an individual to a certain degree of accuracy, but will not give a reason or explanation of why an action was taken. It will be up to individual authorities to follow up on any searches which come back with a match with the appropriate licensing authority, whose contact details will be included in the search result.

Details will be kept on the register for a period of 25 years, and local authorities will therefore need to ensure that their own information governance policies reflect this. The register has been developed to support public safety through the potential sharing of information that is relevant to consideration of whether an individual is a fit and proper person to hold a taxi licence. There will be instances where the basis for an individual's licence being revoked or refused is sufficiently serious as to remain relevant to a future taxi licence application however far in advance it is submitted; for example, where it concerns an issue of sexual misconduct in relation to a passenger. The data retention period for the register has therefore been set to reflect the potential gravity of some revocations and refusals, and the need for this information to be shared. However, as set out later in this document and in the supporting policy at Annex D, any information to be shared between authorities outside of the register must be shared on a proportionate and time limited basis, in accordance with the authority's policy for doing so. If an authority did not take a case specific approach but chose to share all data over the full retention period, this would be likely to be disproportionate and therefore unlawful.

Authorities will need to ensure that their information governance policies are updated to make reference to the NR3 retention period, the associated retention period for supporting taxi licence data, and the rationale for it.

4.3. Historic data migration

The first step once subscription to the register has been completed is to populate the register with historic data of licence revocations and refusals. To do this, licensing authorities will need to submit historic data via CSV file to NAFN. NAFN have provided a standard template to use to submit data.

The majority of licensing authorities will use an electronic licensing system, and therefore will be able to obtain extracts from their licensing systems which can then be cut and pasted into the spreadsheet. However, if authorities use a manual system to issue licenses, they will need to manually fill out the spreadsheet.

In order to comply with data protection law, there must be a point beyond which historic data will not be uploaded. It is difficult to determine what that should be. However as the retention period for data on the register is 25 years, this appears to an appropriate period. Accordingly no historic data more than 25 years old should be uploaded to the register. It is important to note here that the 25-year data retention period begins at the point at which a licence was refused or revoked, rather than the date when the data was uploaded to the register.

Crucially, it is vital to ensure that any historic data which is uploaded by a licensing authority has not been retained in contravention of that authority's own retention policy. It is accepted that this may lead to differing ages of historic data being uploaded, but that is unavoidable to ensure compliance with data protection law.

Before any historic data is uploaded, the authority must write to those individuals who the data concerns stating that the data will be uploaded at a future date, which should be a

period of not less than 28 days. Individuals should be informed about the purposes of the data processing, the legal basis for it, and their various rights to object in regard to this.

Although the letters do not specifically need to invite representations about the proposal, any representations that are made in that period should be considered by the authority and data should only be uploaded where the authority feels that it is fair and appropriate to do so. This will not prevent historic data being uploaded, but will ensure that where data is held which may be uploaded, there is an opportunity for the authority to reconsider whether that is the correct action to take. A template letter for contacting former licence holders is attached at Annex C.

Once historic data has been submitted, any new revocations or refusals will need to be entered onto the NAFN register portal by a licensing officer as and when decisions are taken.

5. Updating licensing processes and procedures

Using the register will necessitate some key changes to the way applications and renewals are processed and information recorded.

5.1. Informing applicants of the NR3 register

Applicants must be informed of the existence of the NR3 register and that it will be consulted in connection with their application (and subsequent applications to renew licences).

They must also be informed that their personal data will be placed on the register if at any time their licence is revoked or renewal is refused.

Licensing authorities in receipt of applications must ensure that applicants are given the contact details of the data protection officer for the licensing authority, contact details for NAFN, and are advised of the fact that the information can be retained for up to 25 years (which is the retention period) and the fact they have a right to lodge a complaint with the Information Commissioner, together with the contact details for the Information Commissioner. It is suggested that this information is included in the privacy information provided to individuals when they apply for a licence. This is discussed further in 6.1.

5.2. Adding details of a refusal or revocation

When an application for a licence is refused, or an existing licence is revoked, authorities will need to enter this information onto NR3. It will be important to ensure that authorities only enter refusals that have genuinely been considered and refused; NR3 is not intended to capture details of incomplete applications which an authority does not process. The key point is that a decision has been taken because there is evidence that an individual is not a fit and proper person to hold a licence.

Entering this information will be a simple and quick step, as only a limited amount of information will be added to the register: the individual's details; the date of the decision; the date it takes effect; and the decision taken – but not the reason for the decision.

Several authorities have reported that individuals who have had a licence revoked have previously moved very quickly to try to gain a licence elsewhere. It will therefore be important that authorities are prompt in adding the details of refusals or revocations to the register, so

that the information is available in the event that an individual does seek to secure a licence from another authority.

Authorities should ensure that they include the entries onto NR3 in their authority wide records of their data processing activities.

5.3. Checking the register as part of the application and renewal process

The second process change will relate to applications for hackney carriage/ PHV driver licences. Licensing authorities will also wish to check the register when they undertake licence renewals; firstly to confirm any historic information that may have been added in respect of one of their licensees, but also because it is possible that some drivers may hold more than one licence, and could therefore have one revoked in another area.⁴

This in itself is a two-stage process: stage one is the checking of the register; stage two is making a request to the authority that uploaded the information to the register for details of the revocation or refusal.

Once signed up to the register, licensing authorities will need to ensure that they check the details of new applicants on the register, to identify whether they have a previous licensing history (which may or may not have been disclosed on an application). Individual authorities will need to determine the appropriate point in their application process at which to check the register; however, it is suggested that this is done at a very early stage so that the authority can process the application with the knowledge of any previous history, if the applicant has one.

Guidance on using the register will set out the search parameters that authorities can use. It has been recognised throughout the process that individuals may use different names or provide different details to different authorities - perhaps in an attempt to avoid association with any previous issues – and searches should therefore take this into account.

If a search of the register does not indicate that an applicant has any previous history the authority should be aware of, then the authority should continue to process the application as normal. A negative search result will not, of course, mean that the applicant is a fit and proper person; that will be for the authority to assess in the usual way.

If a search does indicate a possible match on the register, then the authority will need to move on to stage two and seek further information. The register will indicate which authority has entered a possible match, and provide contact details for that authority.

It is suggested that an authority seeking information from another authority about an entry on the register should make a request in writing for the information on which the decision recorded in the register was based (a suggested form is included at the end of Annex D). Authorities are encouraged to respond to such requests as soon as possible, and ideally within 10 working days of receiving a request.

⁴ The growth of app-based models and sub-contracting changes introduced by the Deregulation Act have both facilitated increased 'out of area' working, and may therefore make it less likely that in the future, under the existing framework, a driver would hold more than one licence.

The sharing between licensing authorities of this more detailed data - which may often involve the processing of special category personal data⁵ - is not included within the data processing and data sharing agreements governing use of the register itself. Any authority which shares information in response to a request, and any authority which receives information having made a request, must have in place a clear and published policy which governs its approach to the circumstances in which it will share, receive and use information of this type. It must be recognised that information will not be shared following every request. The authority that receives the request must consider whether it is actually proportionate to share this information, and ensure that disclosures are not arbitrary. This must also be detailed in their policy document. Having such a policy is a requirement of data protection law, Article 8 of the European Convention on Human Rights and of public law.

If such a policy is in place which properly differentiates between circumstances, both authorities will be entitled to rely on processing conditions under Article 6(1)(e) and, in cases of special category data, Articles 9 and 10 GDPR⁶. Licensing authorities will need to satisfy themselves that they have followed the appropriate processes in sharing this more detailed data.

The authority that receives the request must consider what information, if any, to reveal to the requesting authority. This is not intended to undermine the effects of the register: it is essential to ensure that disclosures are compatible with the Data Protection Act, the General Data Protection Regulations, and the Human Rights Act. In making its decision the authority must consider the nature and seriousness of the conduct which led to the revocation or refusal to renew, and the time that has elapsed since the decision was made.

This will require not only a clear published policy, but also a decision-maker who has sufficient training and knowledge of the requirements to enable him/her to make an informed decision regarding disclosure.

It is suggested that where the time that has elapsed since the revocation or failure to renew exceeds the time limits relating to the particular conduct that are contained in the Institute of Licensing's "Guidance on Determining the Suitability of Applicants and Licensees in the Hackney and Private Hire Trades"⁷, serious consideration should be given as to whether or not the information should be revealed.

A suggested template policy is attached at Annex D.

To ensure compliance with article 30 of the GDPR, the authority must maintain a clear written record of every disclosure made following a search of the register. This should be a separate document, and it is not sufficient to simply mark an existing register of licences.

⁵ Special category personal data is sensitive data that could reveal someone's racial or ethnic origin, political opinions, religious beliefs, trade union membership, and data concerning health or sex life.

⁶ Found in Parts 1, 2 and 3 of the DPA 2018.

⁷

[https://cplresourcestorage.blob.core.windows.net/documents/226798_Guidance%20on%20Suitability%20ONLINE%20PDF%20\(2\).pdf?sv=2013-08-15&sr=b&sig=sLMffzDNvtMihhMQ2xu1vOIUEQbD1n05TTY%2BrDTv9UM%3D&st=2018-07-17T14%3A28%3A32Z&se=2018-07-17T14%3A34%3A32Z&sp=r](https://cplresourcestorage.blob.core.windows.net/documents/226798_Guidance%20on%20Suitability%20ONLINE%20PDF%20(2).pdf?sv=2013-08-15&sr=b&sig=sLMffzDNvtMihhMQ2xu1vOIUEQbD1n05TTY%2BrDTv9UM%3D&st=2018-07-17T14%3A28%3A32Z&se=2018-07-17T14%3A34%3A32Z&sp=r)

The document must include the fact that disclosure was made, but not specify the contents of that disclosure.

5.4. Acting on detailed disclosures

The licensing authority that receives a disclosure under stage two must then act upon it. As detailed above, the information may warrant significant weight being attached to it, but it is vital authorities do not use evidence of a previous refusal or revocation as the sole basis for their current decision.

To ensure compliance with article 30 of the GDPR, the authority must maintain a clear written record of the action that is taken following the receipt of information from the register. This should be a separate document, and it is not sufficient to simply mark an existing register of licences.

6. Complying with data protection requirements

Licensing authorities will need to ensure that any individuals whose data is uploaded or entered onto NR3 is made aware of this: it is a legal requirement that data subjects must be made aware of the collection, storage and use of their personal data via a privacy notice.

In relation to NR3, the following details must be included in a privacy notice:

- The name and contact details of the licensing authority.
- The contact details of the authority's data protection officer.
- The purpose of the processing.
- The lawful basis for the processing.
- The recipients or categories of recipients of the personal data.
- The retention periods for the personal data.
- The rights available to individuals in respect of the processing.
- The right to lodge a complaint with a supervisory authority.

For current licensees or applicants, authorities should ensure that information about NR3 is included in:

- licensing policies
- application forms
- correspondence to named individuals that confirms that a licence has been revoked, or that an application for a licence has been refused.

These should fulfil the requirements for privacy notices, and suggested wording is provided in Annexes A and B.

Authorities will also need to ensure that they inform individuals in respect of whom a historic decision has been entered onto the register. Again, this correspondence should fulfil the legal requirements for privacy notices, and the LGA has developed a template letter that licensing authorities may wish to use for this purpose (Annex C).

Individuals whose details are contained on the register may submit a 'subject access request' (SAR) seeking copies of their details from the register at any point. **Full details of the process, mechanism and suggested point of contact for submitting a SAR must therefore be included within each local authority's policy, and also contained within application forms and supporting documentation when a licence is issued.** Should a SAR be received by an individual licensing authority, it should be dealt with as per the relevant authority's process. Licensing authorities, as the data controller, will need to liaise with NAFN, as the data processor, to fulfil SARs.

Licensing authorities will need to ensure that anyone whose details are included on NR3 is aware of their rights in relation to their data. In addition to the right to being informed, under the Data Protection Act, data subjects may have other rights in relation to the processing of their data. Various of these rights will apply in relation to the NR3, including: the right to object, the right to request access to data; the right to rectification or erasure of data, and the right to restrict processing of data.

It is important to note that although data subjects have the right to make these requests, the licensing authority does not have to agree to them. The fact that NR3 has been deemed necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller makes it very unlikely that an authority would agree to these rights, other than the rights to access individual data on the NR3 and the rectification of data where an error has been made. However, authorities will need to respond to these requests within thirty days, setting out their decision.

6.1. Updating the licensing policy, application forms and guidance

Licensing authorities will therefore need to update their hackney carriage / PHV licensing policies to reflect the use of the register and the new processes arising from it, including that relevant information on the register will in future be part of the process for assessing licence applications and whether an individual is a fit and proper person.

Authorities will similarly need to update their application forms and related paperwork (such as guidance notes) to make it clear that:

- all applicants will have their details checked against the register, and any relevant information taken into account in assessing the application
- where an application is refused, or where a licence is granted but subsequently revoked, this information will be entered into the register.

These statements should provide assurance that this information will be processed in accordance with the DPA and GDPR. Suggested forms of words are included at Annex A.

Where an authority decides to refuse or revoke a hackney carriage / PHV licence (the first authority), the decision notice should refer to the authority's earlier notification in guidance and on application forms that the decision will be entered onto NR3. It should also make clear that if the individual makes an application to another licensing authority (the second authority) for a drivers' licence at a later date, the second authority will check the register, and the details of the refusal or revocation may be provided to them by the first authority, in line with their policy for disclosing information.

6.2. Making existing licensees aware

As well as new applicants, you will also need to make existing licensees aware of the fact that the authority has signed up to the register, and that if their licence is subsequently revoked or not renewed, this will be recorded. A suggested form of words is included at Annex B.

Annex A – guidance on amendments to policies and forms

Authorities will need to update their application forms and related paperwork (such as guidance notes) to make it clear that:

- all applicants will have their details checked against the register, and any relevant information taken into account in assessing the application
- where an application is refused, or where a licence is granted but subsequently revoked, this information will be entered into the register.

The statements included in forms and guidance should provide assurance that this information will be processed in accordance with the DPA and GDPR. Critically, it should also make clear that there is a lawful basis for processing the data, which is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller – that is, assessing whether an individual is a fit and proper person to hold a hackney carriage or PHV licence.

Where an authority decides to refuse or revoke a hackney carriage / PHV licence, the decision notice should refer to the authority's earlier notification in guidance and on application forms that the decision will now be entered onto the national register.

I. Suggested form of additional wording for licensing policy document and application paperwork

The licensing authority provides information to the National Register of Taxi Licence Refusals and Revocations (NR3), a mechanism for licensing authorities to share details of individuals who have had a hackney carriage or Private Hire Vehicle (PHV) licence revoked, or an application for one refused. This is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the licensing authority – that is, assessing whether an individual is a fit and proper person to hold a hackney carriage or PHV licence

Therefore:

- Where a hackney carriage/ PHV licence is revoked, or an application for one refused, the authority will automatically record this decision on NR3.
- All applications for a new licence or licence renewal will automatically be checked on NR3. If a search of NR3 indicates a match with an applicant, the authority will seek further information about the entry on the register from the authority which recorded it. Any information received as a result of an NR3 search will only be used in respect of the specific license application and will not be retained beyond the determination of that application.

The information recorded on NR3 itself will be limited to:

- name
- date of birth
- address and contact details
- national insurance number
- driving licence number
- decision taken

- date of decision
- date decision effective

Information will be retained on NR3 for a period of 25 years.

This is a mandatory part of [applying for] [being granted], a hackney carriage / PHV driver licence. The authority has a published policy on the approach it will take to requests by other authorities for further information about entries on NR3, and about the use it will make of any further information provided to it. You can read that policy at [link / set out separately].

Information will be processed in accordance with the Data Protection Act (DPA) and General Data Protection Regulation (GDPR). Any searches, provision or receipt of information of or under NR3 are necessary to the authority's statutory licensing functions of ensuring that all drivers are fit and proper to hold the applicable licence. It is not intended that any NR3 data will be transferred out of the United Kingdom.

If you wish to raise any issue related to the data protection legislation, including by relying on any of the rights afforded to data subjects under the GDPR, you can do so to the authority's Data Protection Officer at [contact details]. This includes submitting a subject access request.

You always have the right to make a complaint to the Information Commissioner's Office (ICO). Advice on how to raise a concern about handling of data can be found on the ICO's website: <https://ico.org.uk/make-a-complaint/>

II. Suggested form of additional wording for decision letter concerning refusal of an application

In accordance with [insert appropriate reference to policy document or application paperwork explaining membership and implications of NR3], the decision to refuse your application will be entered onto the National Register of Taxi Licence Refusals and Revocations (NR3). The information entered onto NR3 will be limited to your:

- name
- date of birth
- address and contact details
- national insurance number
- driving licence number
- decision taken (but not the reason for it)
- date of decision
- the date the decision took effect.

This information will be processed and shared in accordance with the Data Protection Act (DPA) and General Data Protection Regulation (GDPR), and is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the licensing authority – that is, assessing whether an individual is a fit and proper person to hold a hackney carriage or PHV licence.

Recording this information on NR3 does not mean that you will be automatically prevented from securing a licence in future, but is intended simply to ensure that licensing authorities

are able to access your full licensing history should you make further licence applications elsewhere. Information will be held on the register for 25 years. If during that time another authority requests further details relating to this decision because you have applied to it for a licence, we may provide our reasons for the refusal of this application, in accordance with our policy at [details/link].

You have various rights in relation to your data: the right to request access to your data; the right to rectification or erasure of your data; the right to restrict processing of your data, and the right to object to the processing of your data for this purpose. The authority will consider any such requests and respond within one month.

If you wish to raise any issue related to the data protection legislation, including by relying on any of the rights afforded to data subjects under the GDPR, you can do so to the authority's Data Protection Officer at [contact details]. This includes submitting a subject access request.

You always have the right to make a complaint to the Information Commissioner's Office.

III. Suggested form of additional wording for decision letter concerning revocation

In accordance with [insert appropriate reference to policy document / application paperwork / letter to existing licence holders explaining membership and implications of NR3], the decision to revoke your licence will be entered onto the National Register of Refusals and Revocations (NR3). The information entered onto NR3 will be limited to your:

- name
- date of birth
- address and contact details
- national insurance number
- driving licence number
- decision taken (but not the reason for it)
- date of decision
- the date the decision took effect.

This information will be processed and shared in accordance with the Data Protection Act (DPA) and General Data Protection Regulation (GDPR), and is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the licensing authority – that is, assessing whether an individual is a fit and proper person to hold a hackney carriage or PHV licence.

Recording this information on NR3 does not mean that you will be automatically prevented from securing a licence, but is intended simply to ensure that licensing authorities are able to access your full licensing history should you make further licence applications elsewhere. Information will be held on the register for 25 years. If during that time another authority requests further details relating to this decision because you have applied to it for a licence, we will provide our reasons for the revocation of this licence in accordance with our policy at [details/link].

You have various rights in relation to your data: the right to request access to your data; the right to rectification or erasure of your data; the right to restrict processing of your data, and

the right to object to the processing of your data for this purpose. The authority will consider any such requests and respond within one month.

If you wish to raise any issue related to the data protection legislation, including by relying on any of the rights afforded to data subjects under the GDPR, you can do so to the authority's Data Protection Officer at [contact details]. This includes submitting a subject access request.

You always have the right to make a complaint to the Information Commissioner's Office.

Annex B – suggested notification to existing licensees of NR3

To all hackney carriage / PHV / dual [combined] licence holders

Dear licensee

National Register of Taxi Licence Refusals and Revocations

I am writing to make you aware of a new initiative which X authority is involved in to help strengthen hackney carriage/ Private Hire Vehicle (PHV) licensing for the benefit of both passengers and responsible hackney carriage and PHV drivers.

As you may be aware, the Local Government Association (LGA), the representative body for local councils, has commissioned a new National Register of Taxi Licence Refusals and Revocations (NR3). The register will be hosted by the National Anti-Fraud Network (NAFN). The intention of this is to prevent drivers who have had a hackney carriage or PHV licence revoked or an application for one refused, going to another authority to dishonestly secure a licence by failing to disclose their previous licensing history.

Instances of drivers doing this in the past have undermined public confidence in the hackney carriage and PHV trade and licensing authorities. The purpose of the NR3 initiative is therefore to provide a mechanism for licensing authorities to share details of individuals who have had a hackney carriage or PHV licence revoked or an application for one refused. The development of NR3 has been welcomed by all sections of the taxi trade, safety groups and charities, the Department for Transport and by licensing authorities.

From [insert date], this authority will begin using the NR3. This means that from that point:

- Applications for new hackney carriage/PHV licences and for renewals will be checked on the NR3.
- Where an existing licence is revoked or an application for renewal or a new licence is refused, this will be recorded on NR3.

This authority, and other licensing authorities, will also be adding historic information on refusals and revocations of licences to the register. Historic data will not go back beyond the retention period of 25 years. Any relevant data entered onto NR3 which relates to existing licence holders may be considered as part of future renewal processes.

The information recorded on NR3 will be limited to your:

- name
- date of birth
- address and contact details
- national insurance number
- driving licence number
- decision taken
- the date of the decision
- the date decision was effective

Information will be retained on NR3 for 25 years.

Where an applicant's details are flagged on NR3 during a search, this will be followed up separately between the authorities. Any such request in relation to your record will be responded to in accordance with the authority's published policy at [details/link]. Licensing authorities will still be required to consider each application on its own merits, but the introduction of NR3 will help ensure that they are able to do so on the basis of all the information that is relevant to an application.

All data processing and sharing undertaken by this authority on the NR3, and with individual authorities in regard to entries on the NR3 will be undertaken in accordance with the Data Protection Act (DPA) and the General Data Protection Regulations (GDPR). The legal basis for processing this information is that it is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the licensing authority – that is, assessing whether an individual is a fit and proper person to hold a hackney carriage or PHV licence. It is not intended that any NR3 data will be transferred out of the United Kingdom.

If you wish to raise any issue related to the data protection legislation, including by relying on any of the rights afforded to data subjects under the GDPR, you can do so to the authority's Data Protection Officer at [contact details].

You always have the right to make a complaint to the Information Commissioner's Office.

Yours sincerely

Licensing authority

Frequently asked questions

Why has the register been set up?

NR3 has been developed to improve public safety and confidence in hackney carriage and PHV licensing. There have been numerous high profile cases where drivers who have been refused licences or had a licence revoked in one area have gone to another area and received a licence in that area by failing to disclose their previous history. This undermines public safety, if there are legitimate reasons why a licence was refused or revoked, and damages confidence in the hackney carriage / PHV licensing regime and trade. This is why the initiative has been widely supported by reputable drivers and firms, as it will provide a mechanism for ensuring information about refusals and revocations can be shared between all licensing authorities in a safe and secure way, removing this potential loophole.

How will the register work – what information will be recorded?

When an authority revokes a licence, or refuses an application for one, it will record this information on NR3. The information recorded will be limited to:

- name
- date of birth
- address and contact details
- national insurance number

- driving licence number
- decision taken
- date of decision
- date decision effective

Licensing authorities will then search the register when they are processing new applications or renewals. Where an authority finds a match for their applicant on NR3, it will contact the licensing authority that recorded the entry to seek more information, which, if shared, will then be used to help reach a decision on the application.

Will I automatically be refused a licence if I am on the register?

No. Licensing authorities are legally required to consider each licence application on its own merits, and cannot refuse an application simply because an applicant may be recorded on NR3. The purpose of NR3 is to ensure that authorities have the full information necessary to help them reach a decision on whether an individual is fit and proper. If circumstances have materially changed since the decision that has been recorded on NR3, it may be appropriate for another authority to award a licence.

What if my licence is suspended?

Suspensions of licences will not be recorded on NR3. This is because suspension should be used as either a short-term punishment or to overcome a short-term situation (e.g. driving or medical issues). Where a driver is no longer considered to be a fit and proper person to hold a licence, the licence should be revoked.

Can I find out if my details are on the NR3?

Individuals whose details are added to NR3 will be notified of this at the point at which they are advised of the decision to refuse or revoke a licence.

Outside of these times, an individual can make a subject access request (SAR) for any of their personal data held on NR3. The 'data controller' in respect of this data is this licensing authority, to whom a SAR should be submitted in the first instance. As the 'data processor', that is the organisation storing the data, the National Anti-Fraud Network will fulfil this request. Similarly, the exercise of any other rights provided under data protection legislation should be made to this authority in the first instance.

How long will details be held on NR3 for?

Data will be retained on the register to help licensing authorities fulfil their statutory duty to be satisfied that a person is a fit and proper person to hold a taxi or PHV licence. These duties are set out under sections 51, 59 and 61 of the Local Government (Miscellaneous Provisions) Act 1976; sections 13, 16 and 17 of the Private Hire Vehicles (London) Act 1998; section 3 of the Private Hire Vehicles (London PHV Driver's Licences) Regulations 2003; sections 25 and 30 of the London Cab Order 1934; sections 9 and 19 of the Plymouth City Council Act 1975 and section 46 of the Town Police Clauses Act 1847. In accordance with this purpose, data will remain on NR3 for 25 years.

Annex C - suggested notification to former licence holders or applicants whose details will be entered onto NR3

Dear XXX

National Register of Refusals and Revocations

I am writing to make you aware of a new initiative which X authority is involved in to help strengthen hackney carriage / Private Hire Vehicle (PHV) licensing for the benefit of both passengers and responsible hackney carriage and PHV drivers.

The Local Government Association (LGA), the representative body for local councils, has commissioned a new National Register of Refusals and Revocations (NR3). The register will be hosted by the National Anti-Fraud Network (NAFN). The intention of this is to prevent drivers who have had a hackney carriage or PHV licence revoked or an application for one refused, going to another authority to dishonestly secure a licence by failing to disclose their previous licensing history.

Instances of drivers doing this in the past have undermined public confidence in both the hackney carriage and PHV trade and licensing authorities. The purpose of the NR3 initiative is therefore to provide a mechanism for licensing authorities to share details of individuals who have had a taxi or PHV licence revoked or an application for one refused. The development of NR3 has been welcomed by all sections of the hackney carriage and PHV trade, safety groups and charities, the Department for Transport and by licensing authorities.

From [insert date], this authority will begin using the NR3. This means that from that point:

- applications for new hackney carriage/PHV licences and for renewals will be checked on the NR3
- where an existing licence is revoked, or an application for renewal or a new licence is refused, this will be recorded on NR3.

This authority, and other licensing authorities, will also be adding historic information on refusals and revocations of licences to the register. Historic data will not go back beyond the retention period of [25 years / the authority's own data retention period]. As part of this process, it is intended that the details of your previous [licence revocation / refusal] will be added to the register in 28 days' time.

The information recorded on NR3 in respect of your case is limited to:

- name
- date of birth
- address and contact details
- national insurance number
- driving licence number
- decision taken
- date of decision
- date decision effective.

Information will be retained on NR3 for 25 years.

Where an applicant's details are flagged on NR3 during a search, this will be followed up separately between the authorities. Any such request in relation to your record will be responded to in accordance with the authority's published policy at [details/link].

Licensing authorities will still be required to consider each application on its own merits, but the introduction of NR3 will help ensure that they are able to do so on the basis of all the information that is relevant to an application.

All data processing and sharing undertaken by this authority on the NR3, and with individual authorities in regard to entries on the NR3 will be undertaken in accordance with the Data Protection Act (DPA) and the General Data Protection Regulations (GDPR). The legal basis for processing this information is that it is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the licensing authority – that is, assessing whether an individual is a fit and proper person to hold a hackney carriage or PHV licence. It is not intended that any NR3 data will be transferred out of the United Kingdom.

You have various rights in relation to your data: the right to request access to your data; the right to rectification or erasure of your data; the right to restrict processing of your data, and the right to object to the processing of your data for this purpose. The authority will consider any such requests and respond within one month.

If you wish to raise any issue related to the data protection legislation, including by relying on any of the rights afforded to data subjects under the GDPR, you can do so to the authority's Data Protection Officer at [contact details]. This includes submitting a subject access request.

You always have the right to make a complaint to the Information Commissioner's Office.

Yours sincerely

Licensing authority

Frequently asked questions

Why has the register been set up?

NR3 has been developed to improve public safety and confidence in taxi and PHV licensing. There have been numerous high profile cases where drivers who have been refused licences or had a licence revoked in one area have gone to another area and received a licence in another area by failing to disclose their previous history. This undermines public safety, if there are legitimate reasons why a licence was refused or revoked, and damages confidence in the hackney carriage / PHV licensing regime and trade. This is why the initiative has been widely supported by reputable drivers and firms, as it will provide a mechanism for ensuring information about refusals and revocations can be shared between all licensing authorities in a safe and secure way, removing this potential loophole.

How will the register work – what information will be recorded?

When an authority revokes a licence, or refuses an application for one, it will record this information on NR3. The information recorded will be limited to:

- name
- date of birth
- address and contact details
- national insurance number
- driving licence number
- decision taken
- date of decision
- date decision effective.

Licensing authorities will then search the register when they are processing new applications or renewals. Where an authority finds a match for their applicant on NR3, it will contact the licensing authority that recorded the entry to seek more information, which, if shared, will then be used to help reach a decision on the application.

Will I automatically be refused a licence if I am on the register?

No. Licensing authorities are legally required to consider each licence application on its own merits, and cannot refuse an application simply because an applicant may be recorded on NR3. The purpose of NR3 is to ensure that authorities have the full information necessary to help them reach a decision on whether an individual is fit and proper. If circumstances have materially changed since the decision that has been recorded on NR3, it may be appropriate for another authority to award a licence.

Can I find out if my details are on the NR3?

Individuals whose details are added to NR3 will be notified of this at the point at which they are advised of the decision to refuse or revoke a licence.

Outside of these times, an individual can make a subject access request (SAR) for any of their personal data held on NR3. The 'data controller' in respect of this data is this licensing authority, to whom a SAR should be submitted in the first instance. As the 'data processor', that is the organization storing the data, the National Anti-Fraud Network will fulfil this request. Similarly, the exercise of any other rights provided under data protection legislation should be made to this authority in writing in the first instance.

How long will details be held on NR3 for?

Data will be retained on the register to help licensing authorities fulfil their statutory duty to be satisfied that a person is a fit and proper person to hold a taxi or PHV licence. These duties are set out under sections 51, 59 and 61 of the Local Government (Miscellaneous Provisions) Act 1976; sections 13, 16 and 17 of the Private Hire Vehicles (London) Act 1998; section 3 of the Private Hire Vehicles (London PHV Driver's Licences) Regulations 2003; sections 25 and 30 of the London Cab Order 1934; sections 9 and 19 of the Plymouth City Council Act 1975 and section 46 of the Town Police Clauses Act 1847. In accordance with this purpose, data will remain on NR3 for 25 years.

Annex D – Suggested template policy relating to requests for information, disclosure of information, and use of information as a result of an entry on NR3

Once an authority has signed up to the NR3, it is able to search the register when an application is received for a new drivers licence, or to renew an existing drivers licence. In this annex, the searching authority is referred to as ‘the second authority.’

If a match is found, then a request can be made to the authority that entered the information onto the NR3 (in this annex, this authority is referred to as ‘the first authority’) asking for more details of the revocation or refusal of a drivers’ licence by the first authority.

The first authority can then provide information to the second authority, enabling the second authority to take the earlier action into account and make an informed decision as to whether or not the licence should be granted or renewed.

To comply with the Data Protection Act, the General Data Protection Regulations, and the Human Rights Act, it is essential that the first authority which provides information about entries on the NR3 register, and the second authority that requests and receives such information, have a clear policy detailing how and when such information will be requested, provided, and how any information provided can then be used.

This is a suggested policy to address those situations. As each authority that signs up to the NR3 may at some point be both the first authority and the second authority for the purposes of this policy, the policy is drafted as a chronological progression through the process an authority may work through as either the first or second authority.

Policy for **Council/TfL** in respect of requests for information, disclosure of information, and use of information as a result of an entry on NR3

In this policy, the ‘first authority’ refers to a licensing authority which made a specific entry onto the National Register of Refusals and Revocations; the ‘second authority’ refers to a licensing authority which is seeking more detailed information about the entry.

I. Overarching principles

This policy covers the use that this authority **Council/TfL** will make of the ability to access and use information contained on the National Register of Taxi Licence Revocations and Refusals (NR3). The NR3 contains information relating to any refusal to grant, or revocation of, a taxi drivers’ licence⁸. This information is important in the context of a subsequent application to another authority for a drivers’ licence by a person who has had their licence refused or revoked in the past.

This authority **Council/TfL** has signed up to the NR3. This means that when an application for a taxi drivers’ licence is refused, or when an existing taxi drivers’ licence is revoked, that information will be placed upon the register.

⁸ Throughout this policy reference is made to ‘taxi drivers licence.’ This generic term covers a hackney carriage drivers licence, a private hire drivers licence and a combined/dual licence.

When an application for a new drivers' licence, or renewal of an existing drivers' licence is received, this authority [Council/TfL] will make a search of the NR3. The search will only be made by an officer who has been trained in the use of the NR3 and who is acting in accordance with this policy. If details are found that appear to relate to the applicant, a request will be made to the authority that entered that information for further details.

Any information that is received from any other authority in relation to an application will only be used in relation to that application, and the determination of it, and will not be used for any other purpose. Any data that is received will only be kept for as long as is necessary in relation to the determination of that application. This will include the period of processing that application, making a decision, notifying the applicant of the outcome of that decision, and the appeal processes.

For the avoidance of doubt, any such data will be kept for a period of no more than 35 days from the date of the service of the written notification of the determination of the application⁹.

Where an appeal to the magistrates' court is made, the data will be retained until that appeal is determined or abandoned. Where the appeal is determined by the magistrates' court, there is a further right of appeal to the Crown Court. In these circumstances, the data will be retained for a period of no more than 35 days from the date of the decision of the magistrates' court. If an appeal is made to the Crown Court, the data will be retained until that appeal is determined or abandoned. Where the appeal is determined by the magistrates' court or the Crown Court, it is possible to appeal the decision by way of case stated¹⁰. Accordingly, the data will be retained for a period of no more than 35 days from the date of the decision of the Crown Court (if the decision was made by the magistrates' court, the retention period has already been addressed). If an appeal by way of case stated is made, the data will be retained until all court proceedings relating to that appeal by way of case stated (which will include potential appeals to the Court of Appeal and Supreme Court) have been determined¹¹.

The data will be held securely in accordance with this authority's [Council/TfL] general policy on the secure retention of personal data [which is available at...]. At the end of the retention period, the data will be erased and/or destroyed in accordance with this authority's [Council/TfL] general policy on the erasure and destruction of personal data (which is available at....).

⁹ The appeal period is 21 days from the date on which the written notification of the decision was received by the applicant/licensee. An appeal must be lodged within that time period, and no extension of that period is permissible (see *Stockton-on-Tees Borough Council v Latif* [2009] LLR 374). However, to ensure that the information is available if an appeal is lodged and there is a dispute over time periods, a period of 35 days is specified.

¹⁰ Any appeal by way of case stated must be lodged within 21 days of the decision of either the magistrates court or the Crown Court (see The Criminal Procedure Rules R35.2). To ensure that the information is available if an appeal is lodged by way of case stated and there is a dispute over time periods, a period of 35 days is specified.

¹¹ Decisions of the local authority, magistrates' Court and Crown Court are also susceptible to judicial review. Generally any right of appeal should be exercised in preference to judicial review, but there are occasions when leave has been granted for judicial review in the circumstances. Any application for judicial review must be made "promptly; and in any event not later than 3 months after the grounds to make the claim first arose" (see The Civil Procedure Rules R54.5). If an application for judicial review is made after any relevant data has been destroyed, this authority will request the information again and then retain that information until all court proceedings relating to that judicial review (which will include potential appeals to the Court of Appeal and Supreme Court) have been determined.

II. Making a request for further information regarding an entry on NR3¹²

When an application is made to this authority [Council/TfL] for the grant of a new, or renewal of, a taxi driver's licence, this authority [Council/TfL] will check the NR3.

This authority [Council/TfL] will make and then retain a clear written record¹³ of every search that is made of the register. This will detail:

- the date of the search;
- the name or names searched;
- the reason for the search (new application or renewal);
- the results of the search; and
- the use made of the results of the search (this information will be entered to the register at a later date).

This record will not be combined with any other records (i.e. combined with a register of licences granted) and will be retained for the retention period of 25 years.

If this authority [Council/TfL] discovers any match (i.e. there is an entry in the register for the same name and identifying details) a request will be made to the authority that entered those details (the first authority) for further information about that entry. That request will also include details of this authority's [Council/TfL] data protection policy in relation to the use of any data that is obtained as a result of this process.

This request will be made in writing in accordance with the form at appendix 1 of this policy. It will be posted or emailed to the contact address of the authority that entered those details (the first authority) which will be detailed in the register.

III. Responding to a request made for further information regarding an entry on NR3¹⁴

When this authority [Council/TfL] receives a request for further information from another authority a clear written record will be made of the request having been received. This record will not be combined with any other records (i.e. combined with a register of licences granted) and will be retained for the retention period of 25 years¹⁵.

This authority [Council/TfL] will then determine how to respond to the request. It is not lawful to simply provide information as a blanket response to every request.

This authority [Council/TfL] will conduct a Data Protection Impact Assessment. This will consider how the other authority (the second authority) will use the data, how it will store that data to prevent unauthorised disclosure, the retention period for that data, and the mechanism for erasure or destruction of the data at the end of that period. It is expected that

¹² This section of the template policy relates to the submission of a request by the second authority.

¹³ This can be electronic, rather than "pen and paper" hard copy.

¹⁴ This section of the template policy relates to the handling by the first authority of a request for information by the second authority.

¹⁵ This record can be combined with the written record of the action taken as a result of the request.

if the second authority has adopted a policy similar to this, that should be a reasonably straightforward process.

If this authority [Council/TfL] is satisfied that the other authority's (the 2nd authority) data protection procedures are satisfactory, consideration will then be given as to what information will be disclosed¹⁶. This will be determined by an officer who has been trained to discharge this function.

Any disclosure must be considered and proportionate, taking into account the data subjects' rights and the position and responsibilities of a taxi driver. Data is held on the NR3 register for a period of 25 years, but this authority [Council/TfL] (the 1st authority) will not disclose information relating to every entry. Each application will be considered on its own merits.

This authority [Council/TfL] will disclose information relating to a revocation or refusal to grant a drivers' licence in accordance with the timescales contained within the Institute of Licensing's "*Guidance on Determining the Suitability of Applicants and Licensees in the Hackney and Private Hire Trades*"¹⁷ [or own policy if this differs]. Where the reason for refusal to grant or revocation relates to a conviction (or similar as defined in the IoL guidance) which is within the timescales determined in those guidelines, the information will be disclosed. Where the reason for refusal to grant or revocation relates to a conviction (or similar as defined in the IoL guidance) which is outside the timescales determined in those guidelines, the information will not be disclosed. However, in every case, consideration will be given to the full circumstances of the decision and there may be occasions where information is provided other than in accordance with this policy.

Any information about convictions will be shared in accordance with this policy under part 2 of scheduled 1 to the Data Protection Act (DPA) 2018; that is, the processing is necessary for reasons of substantial public interest in connection with the exercise of a function conferred on the authority by an enactment or rule of law.

The officer will record what action was taken and why. This authority [Council/TfL] will make and then retain a clear written record¹⁸ of every decision that is made as a result of a request from another authority. This will detail:

- the date the request was received
- how the data protection impact assessment was conducted and its conclusions
- the name or names searched
- whether any information was provided
- if information was provided, why it was provided (and details of any further advice obtained before the decision was made)
- if information was not provided, why it was not provided (and details of any further advice obtained before the decision was made) and
- how and when the decision (and any information) was communicated to the requesting authority.

¹⁶ If the 1st authority is not satisfied that the 2nd authority's data protection policy is satisfactory, no disclosure can be made. In such circumstances it is essential that discussion takes place as a matter of urgency between the data protection officers of the 1st authority and the 2nd authority.

¹⁷ Available at

<https://www.instituteoflicensing.org/NewsJobsArticle.aspx?NewsID=11318&NewsOrJob=news>

¹⁸ This can be electronic, rather than "pen and paper" hard copy.

This record will not be combined with any other records (i.e. combined with a register of licences granted) and will be retained for the retention period of 25 years.

IV. Using any information obtained as a result of a request to another authority

When this authority [Council/TfL] receives information as a result of a request that has been made to another authority, it will take that information into account when determining the application for the grant or renewal of a taxi drivers' licence. This will be in accordance with the usual process for determining applications [insert reference to the [Council/TfL]'s policy for determining applications].

This authority [Council/TfL] will make and then retain a clear written record of the use that is made of the results of the search (this information will be added to the register detailed above).

Information that is received may warrant significant weight being attached to it, but it will not be the sole basis for any decision that this authority [Council/TfL] will make in relation to the application.

Appendix 1 - information disclosure form

This form is submitted following a search of the National Register of Refusals and Revocations (NR3).

(For completion by requestor authority)

Name of licensing authority requesting information:

Requestor authority reference number:

Name of licensing authority from which information is sought:

Name of individual in respect of whom the request is made:

Decision in respect of which the request is made: Refusal / revocation

Other details for this record:

Address:

Driving licence #:

NI #:

Reference number:

Declaration by requesting authority:

The authority hereby confirms that this information is being sought in connection with the exercising of its statutory function to ensure that holders of taxi / PHV licences are fit and

proper persons, and that the processing of this data is therefore necessary in the performance of a task carried out in the public interest.

The information provided below will only be processed, used and saved by the authority in connection with this particular application and in accordance with all relevant data and privacy requirements, as previously advised by the authority to applicants for and existing holders of taxi and PHV licences, and will be retained in accordance with the Authority's retention policy relating to the provision of such information.

To enable the authority to conduct a data protection impact assessment, details of this authority's policy in relation to the use of information obtained as a result of this request is attached to this document/can be accessed at ??.

Signed:
Name:
Position:
Date.....

(For completion by providing authority)

Further information to support the decision recorded on NR3 in respect of the above named individual

Declaration by providing authority

The authority hereby confirms that it has conducted a data protection impact assessment.

It also confirms that the information above is accurate, and has been provided after thorough consideration by the authority as to the proportionality and lawfulness of making this disclosure. The information reflects the basis on which the decision recorded in the National Register of Refusals and Revocations was made. In the event that the authority becomes aware that this information is no longer accurate, we will advise the above named authority accordingly.

The authority also confirms that, as part of the basis for securing, retaining or applying for a taxi / PHV licence, the above named individual has been made aware of to the fact that this information will be shared, in accordance with all relevant data and privacy requirements

Signed:
Name:
Position:
Date: