

**REPORT FROM: PLANNING, ECONOMIC DEVELOPMENT AND
REGULATORY SERVICES MANAGER**

TO: POLICY AND RESOURCES COMMITTEE

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**TAXIS AND PRIVATE HIRE VEHICLES (SAFEGUARDING AND ROAD SAFETY)
ACT 2022**

PURPOSE OF REPORT

To provide a mechanism to safeguarding or road safety concerns about drivers licensed in other licensing authorities and to record decisions made on our licensed drivers onto a licensing database.

RECOMMENDATION

That the policy as outlined in appendix 1 be adopted.

REASON FOR RECOMMENDATION

In the interest of public safety to assess whether an individual is a fit and proper person to hold a licence and share concerns with other local authorities.

BACKGROUND

1. The Taxis and Private Hire Vehicles (Safeguarding and Road Safety) Act 2022 has two main aspects which are set out below.
 - (i) From 31 May 2022, if any licensing authority in England has information about a taxi or private hire vehicle driver licensed by another authority that is relevant to safeguarding or road safety concerns in its area, it must share that information with the authority that issued that driver's licence and any licensing authority provided with such information by another authority must consider whether to suspend or revoke the driver's licence and inform the authority that shared the information of its decision.

- (ii) The act requires licensing authorities in England to input, into a central database, instances where the authority has refused, suspended, chosen not to renew or revoked a hackney carriage or private hire driver's licence.

ISSUES

1. Guidance has been provided which focuses on supporting compliance with the first aspect of the act, the new duties came into effect from 31 May 2022, which is to provide any safeguarding or road safety issues with the local authority the driver is licensed with so that they can take any necessary action. Only the authority in which the driver is licensed in can take any necessary action.
2. Licensing authorities are required to satisfy themselves that those holding hackney carriage and private hire driver licences 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 licence period.
3. The process of assessing whether an applicant or licensee is "fit and proper" may vary between authorities,
4. 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 may be missed and an individual might be able to get a new licence in another area, despite having their licence revoked elsewhere.
5. Guidance on the second aspect of the act, the refusals, suspension and revocations database, will be made available to licensing authorities in due course but it is expected that Councils have adopted a database and started inputting any decisions made before the guidance is issued.
6. The act gives the Secretary of State for Transport the power to provide or designate the database. The database currently set up and used is hosted by the National Anti-Fraud Network (NAFN) and known as the NR3 register.
7. Attached as appendix 1 is an update to our taxi licensing policy which sets out our policy to reflect the reporting of safeguarding and road safety issues and the use of the NR3 register and the new processes arising from it.

IMPLICATIONS

Policy:

The taxi licensing policy adopted on 1 April 2022 is required to be updated to reflect the new act.

Financial:

An annual fee of £1600 will be payable to the NAFN and recovered from the hackney carriage and private hire driver licensing fees.

Legal:

There is a legal requirement to adopt a policy to reflect the new act.

Risk Management:

There are no risk management implications arising directly from this report

Health and Safety:

There are no health and safety implications arising directly from this report

Sustainability:

There are no sustainability implications arising directly from this report

Community Safety:

To deal with any safeguarding or road safety concerns and share these with relevant authorities.

Equality and Diversity:

To deal with any offence or concerns regarding Equality and Diversity and share these with relevant authorities.

The Taxis and Private Hire Vehicles (Safeguarding and Road safety) Act 2022

Reporting safeguarding or road safety concerns about drivers licences by other licensing authorities

The act requires licensing authorities in England to report safeguarding and road safety concerns about drivers licensed by other authorities to the licensing authority that issued the driver's licence.

This is because only the authority that issued a driver's licence can suspend or revoke it.

Before the requirement to report concerns applies, the following must be true:

- The licensing authority is in England
- The hackney carriage or private hire driver was granted the driver's licence by a licensing authority in England, Wales or Scotland.
- The licensing authority has become aware of information raising safeguarding or road safety concerns about a driver's conduct when in its licensing area
- The driver's conduct in its area is of such a type that the licensing authority would have considered suspending or revoking the driver's licence based on the safeguarding or road safety concerns if it had granted the licence.

Once the licensing authority becomes aware of the safeguarding or road safety concerns, it has 10 working days to provide the relevant information and any other information to identify the driver to the licensing authority that issued the driver's licence.

When sharing information, the relevant licensing authorities should cooperate as fully as possible, subject to their obligations under data protection legislation.

What counts as safeguarding and road safety concerns?

The act defines the information that would constitute a safeguarding and road safety concern and states that this would include information indicating that the person:

- Committed a sexual offence (regardless of whether the person was charged with, prosecuted for or convicted of the offence)
- Harassed another person
- Caused physical or psychological harm to another person (regardless of whether the person was charged with, prosecuted for or convicted of the offence)
- Committed an offence that involves a risk of causing physical or psychological harm to another person
- Committed an offence under section 165, 168 or 170 of the Equality Act 2010 (regardless of whether the person was charged with, prosecuted for or convicted of the offence)
- Did anything that constitutes unlawful discrimination or victimisation against another person for the purposes of the Equality Act 2010
- Threatened, abused or insulted another person
- Poses a risk to road safety while driving

- May be unsuitable to hold a hackney carriage or private hire driver's licence for other reasons related to the safeguarding of passengers or road safety

Furthermore, attempting to or conspiring to commit the above offences also constitutes a valid safeguarding or road safety concern.

Further detail on what driver conduct constitutes a safeguarding or road safety concern can be found in the act.

Considering safeguarding or road safety concerns report by another licensing authority

The act requires licensing authorities in England that receive a report of safeguarding or road safety concerns about a driver it has licensed to consider whether to suspend or revoke the driver's licence.

The requirement applies when the concerns are reported by a licensing authority in England, Wales or Scotland.

The decision must be based on the information provided about the safeguarding or road safety concerns and any other information available to the licensing authority.

Within 20 working days of receiving the concerns, the licensing authority must inform, in writing, the licensing authority that reported the concerns whether it has suspended or revoked the driver's licence (or intends to suspend or revoke the licence).

The licensing authority must also provide its reasons for the action it has taken or intends to take. Where a licensing authority decides not to revoke or suspend a licence, the reasons for this might also include any actions short of suspension or revocation that it will take.

National Register of Taxi Licence Refusal and Revocations (NR3)

The licensing authority provides information to the National Register of Taxi Licence Refusal and Revocations (NR3), a mechanism for licensing authorities to share details of individuals who have had a hackney carriage or private hire driver's 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 private hire driver's licence.

Therefore:

- Where a hackney carriage/private hire driver's licence is revoked, or an application for one refused, the authority will automatically record this decision on the NR3 register.
- All applications for a new licence or licence renewal will automatically be checked on the NR3. If a search of the 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 licence application and will not be retained beyond the determination of that application.

The information recorded on the NR3 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 or being granted, a hackney carriage or private hire driver's licence.

Information will be processed in accordance with the Data Protection Act (DPA) and General Data Protections Regulation (GDPR). Any searches, provision or receipt of information 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.

Policy in respect of requests for information, disclosure of information, and use of information as a result of an entry on NR3.

This policy covers the use that Pendle Borough Council 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' licence. 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 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.

When an application for a new drivers' licence, or renewal of an existing drivers' licence is received, this authority 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 application.

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 stated. 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 determined.

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

Making a request for further information regarding an entry on the NR3

When an application is made to this authority for the grant of a new, or renewal of a hackney carriage or private hire driver's licence, this authority will check the NR3.

This authority will make and then retain a clear written record 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. there is an entry in the register for the same name and identifying details) and will be retained for the retention period of 25 years.

If this authority 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 for further information about that entry. That request will also include details of this authority's 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 and will be posted or emailed to the contact address of the authority that entered those details which will be detailed in the register.

Responding to a request made for further information regarding an entry on the NR3.

When this authority 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 years.

This authority 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 will conduct a Data Protection Impact Assessment. This will consider how the other 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 destructions of the data at the end of that period. It is expected that if the other authority has adopted a policy similar to this, that should be a reasonably straightforward process.

If this authority is satisfied that the other authority's data protection procedures are satisfactory, consideration will then be given as to what information will be disclosed. 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 will not disclose information relating to every entry. Each application will be considered on its own merits.

This authority will disclose information relating to a revocation or refusal to grant a drivers' licence in accordance with timescales contained within our convictions policy. Where the reason for refusal to grant or revocation relates to a conviction 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 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 will make and then retain a clear written record of every decision that is made as a result of a request from another authority. This will details:

- 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.

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.

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

When this authority 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 with convictions.

This authority 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 his authority will make in relation to the application.