

# South Hams Licensing Committee



<b>Title:</b>	<b>Agenda</b>										
<b>Date:</b>	<b>Thursday, 23rd August, 2018</b>										
<b>Time:</b>	<b>2.00 pm</b>										
<b>Venue:</b>	<b>Cary Room - Follaton House</b>										
<b>Full Members:</b>	<p style="text-align: center;"><b>Chairman</b> Cllr May <b>Vice Chairman</b> Cllr Holway</p> <p><i>Members:</i></p> <table style="margin-left: auto; margin-right: auto;"> <tr> <td>Cllr Baldry</td> <td>Cllr Foss</td> </tr> <tr> <td>Cllr Blackler</td> <td>Cllr Hitchins</td> </tr> <tr> <td>Cllr Brown</td> <td>Cllr Hopwood</td> </tr> <tr> <td>Cllr Cane</td> <td>Cllr Pringle</td> </tr> <tr> <td>Cllr Cuthbert</td> <td>Cllr Rowe</td> </tr> </table>	Cllr Baldry	Cllr Foss	Cllr Blackler	Cllr Hitchins	Cllr Brown	Cllr Hopwood	Cllr Cane	Cllr Pringle	Cllr Cuthbert	Cllr Rowe
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Cllr Cane	Cllr Pringle										
Cllr Cuthbert	Cllr Rowe										
<b>Interests – Declaration and Restriction on Participation:</b>	Members are reminded of their responsibility to declare any disclosable pecuniary interest not entered in the Authority's register or local non pecuniary interest which they have in any item of business on the agenda (subject to the exception for sensitive information) and to leave the meeting prior to discussion and voting on an item in which they have a disclosable pecuniary interest.										
<b>Committee administrator:</b>	Member.Services@swdevon.gov.uk										

- 1. Apologies for absence**
- 2. Minutes of last meeting** **1 - 4**

to approve as a correct record and authorise the Chairman to sign the minutes of the meeting of the Licensing Committee held on 11 January 2018;
- 3. Division of Agenda**

to consider whether the discussion of any item of business is likely to lead to the disclosure of exempt information;
- 4. Declarations of interest**

Members are invited to declare any personal or disclosable pecuniary interests, including the nature and extent of such interests; they may have in any items to be considered at this meeting;
- 5. Exclusion of Public and Press:-**

to consider the following resolution to exclude the public and press:-

“That in accordance with Section 100(A)(4) of the Local Government Act 1972, the public and press be excluded from the meeting during consideration of the following item of business in order to avoid the likely disclosure to them of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A to the Act”;
- 6. Determination of whether to grant a Hackney Carriage and Private Hire driver licence, in effect to determine whether the applicant can be deemed a 'fit and proper person' in light of previous criminal convictions and other relevant motoring offences** **5 - 40**
- 7. Re-admittance of Public and Press**
- 8. Consideration of an amendment to the Hackney Carriage and Private Hire Licensing policy to adopt a process to check and update the new National Register of Taxi Licence Revocations and Refusals.** **41 - 74**
- 9. Adoption of procedures and fees in relation to the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018** **75 - 82**

- 10. Agreement to consult on the advertising and adoption of a new taxi rank at Clifton Place, Salcombe. 83 - 90**

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## MINUTES OF THE MEETING OF THE LICENSING COMMITTEE HELD AT FOLLATON HOUSE, TOTNES ON THURSDAY 11 JANUARY 2018

### MEMBERS

\* Cllr D W May - Chairman

\* Cllr T R Holway - Vice-Chairman

* Cllr K Baldry	∅ Cllr R J Foss
* Cllr J I G Blackler	∅ Cllr P W Hitchins
* Cllr D Brown	* Cllr N A Hopwood
∅ Cllr B F Cane	* Cllr K Pringle
* Cllr P K Cuthbert	* Cllr R Rowe

\* Denotes attendance

∅ Denotes apology for absence

Officers in attendance and participating:

All Agenda Items: Senior Specialist – Licensing; Licensing Specialist; Solicitor and Specialist – Democratic Services

### L.11/17 MINUTES

The minutes of the meeting of the Licensing Committee held on 12 October 2017 and the Licensing Sub-Committee meeting held on 12 October 2017 were both confirmed as a correct record and signed by the Chairman.

### L.12/17 DECLARATIONS OF INTEREST

Members were invited to declare any interests in the items of business to be considered during the course of the meeting, but there were none made.

### L.13/17 EXCLUSION OF THE PUBLIC AND PRESS

#### RESOLVED

“That in accordance with Section 100(A)(4) of the Local Government Act 1972, the public and press be excluded from the meeting during consideration of the following item of business in order to avoid the likely disclosure to them of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A to the Act”

L.14/17

## **DETERMINATION OF WHETHER AN APPLICANT FOR A HACKNEY CARRIAGE AND PRIVATE HIRE DRIVING LICENCE IS A 'FIT AND PROPER PERSON'**

Consideration was given to an exempt report that asked the Committee to determine whether an individual was a 'fit and proper person' to hold a Hackney Carriage/Private Hire Driver Licence in accordance with Section 59 of the Local Government (Miscellaneous Provisions) Act 1976.

The Licensing Specialist introduced the report and the individual was invited to make representations to the Committee. He presented a written reference which was shared with the Committee. At the conclusion of his address, Members of the Committee asked a series of questions.

Once all parties were satisfied that they had no more questions or issues to raise, the Committee adjourned at 12.25pm in the presence of the Solicitor.

Having fully considered the matter, the meeting was then re-convened at 12:40pm and the Chairman read the decision as follows:

Members of the Licensing Committee have considered very carefully your application for a Hackney Carriage and Private Hire Driver Licence

- We have read the Licensing Officer's report, which you have had sight of and the SHDC taxi licensing policy
- We have taken into consideration that you have no previous offences shown on your UK DBS certificate of DVLA record
- We have listened to the reference you have provided and listened very carefully to what you have told us today
- The main priority of the licensing regime is to ensure public safety. As this is a civil matter, the evidence of proof is based on the balance of probabilities, the onus being on yourself to satisfy the Authority that you are a 'fit and proper person' to drive a Hackney Carriage or Private Hire Vehicle.

The Committee has decided to **GRANT** your Joint Hackney Carriage and Private Hire Driver Licence. This decision is based on:

1. This interview we have had with you and your openness
2. You have told us that you have travelled in and out of your home country with your passport without encountering difficulties with the authorities
3. We have applied the balance of probabilities test regarding whether you are a 'fit and proper person' and we would have no concerns regarding a member of any of our families travelling in a car with you.

L.15/17

## **RE-ADMITTANCE OF THE PUBLIC AND PRESS**

### **RESOLVED**

That the public and press be re-admitted to the meeting.

L.16/17 **REVIEW OF PROPOSED LICENSING CHARGES IN RELATION TO TAXI LICENSING**

Members were presented with a report that set out proposed fees and charges in relation to taxi licensing and sought approval to present those fees for public consultation, prior to recommendation to full Council.

The Licensing Senior Specialist introduced the report and responded to queries.

It was then:

**RESOLVED**

1. That, having reviewed the proposed Fees Table, a period of public consultation in accordance with s70 of the Local Government (Miscellaneous Provisions ) Act 1976 be approved; and
2. That full Council be **RECOMMENDED** that the proposed fees be adopted with effect from 1 April 2018, subject to the outcome of the public consultation.

(Meeting commenced at 12 noon and concluded at 12.45 pm).

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Chairman

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# Agenda Item 8

Report to: **Licensing Committee**

Date: **23<sup>rd</sup> August 2018**

Title: **Consideration of an amendment to the Hackney Carriage and Private Hire Licensing policy to adopt a process to check and update the new National Register of Taxi Licence Revocations and Refusals.**

Portfolio Area: **Customer First**

Wards Affected: **All**

Relevant Scrutiny Committee:

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken: If decision is made to adopt the National Register, the policy will be brought back to Licensing Committee on 1<sup>st</sup> November.

Author: James Kershaw Role: **Senior Specialist**

Contact: **Tel: 01803 861287**  
**email: james.kershaw@swdevon.gov.uk**

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## **Recommendations:**

1. That the Committee considers an amendment to the Council's Taxi Licensing Policy to adopt a procedure to consult **National Register of Taxi Licence Revocations and Refusals.**

## **1. Executive summary**

- 1.1 In August 2018 the Local Government Association wrote to all authorities with their guidance on adopting the National Register of Taxi Licence Revocations and Refusals.

- 1.2 The guidance stipulates the procedure a local authority would need to follow in order to provide data for the national register and to access the data ourselves.

## **2. Background**

- 2.1 Following a number of high profile child sexual exploitation cases involving the taxi industry nationally a review was undertaken of the current licensing regime UK wide.
- 2.2 It was recognised that there is no consistency across the country when assessing whether a licensee is a 'fit and proper' person. It was hoped that by setting up a national register of revocations and refusals this would help to increase the consistency of decision making as it would help to prevent individuals moving from one authority to another just because they have been refused a licence or their licence has been revoked.
- 2.3 Unless an applicant for a licence voluntarily discloses that they have previously been refused a licence or had a licence revoked, there is currently no way for an authority to verify this. Potentially vital intelligence about an individual's past behaviour is often lost and they may be able to obtain a licence elsewhere after having a previous licence revoked.

## **3. Outcomes/outputs**

- 3.1 Before we can provide information to the network we will need to write to all previously refused or revoked licensees to inform them that we are seeking to upload their data to the database and to give them an opportunity to make representations against their data being uploaded. Any objections must be considered by the local authority and a determination made of whether the representation is pertinent or not.
- 3.2 The guidance suggests that for data retention purposes a maximum period of 25 years of data is appropriate.
- 3.3 It will also be necessary should the Council adopt the policy to undertake another review of our licensing policy to include mention of this new checking procedure, and to update our application forms, to ensure compliance with the General Data Protection Regulation. The policy will then need to be brought before this committee for approval before adoption by full council.

## **4. Options available and consideration of risk**

- 4.1 Section 59 of the Local Government (Miscellaneous Provisions) Act 1976 states:

'Notwithstanding anything in the [Town Police Clauses] Act 1847, a District Council shall not grant a licence to drive a Hackney Carriage

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

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

- 4.2 The Council's taxi policy has only just been updated and included a tightening of the application process to reflect national good practice, and a revised conviction policy to provide guidance on the relevance of previous convictions. Just because an applicant appears on the register would not automatically bar them from applying for a licence at another authority., That authority would still need to consider the relevance of the reason for the revocation or refusal themselves.
- 4.3 The implementation of policies to adopt the national register is not a mandatory requirement. There will be an amount of resource required to write to all previously refused applicants and revoked licensees, to consider any representations made and to update the policies and forms. It may be felt that the risk of approving a taxi driver who has previously had a licence revoked or an application refused does not outweigh the level of resources required to implement the new national register.
- 4.4 If the reason for the revocation or refusal was due to a criminal conviction then this would appear on the enhanced DBS check that the Council requires as part of our application process.
- 4.5 There is a risk should we not adopt a policy to review the national register that we may be seen as a 'soft touch' for applicants. This could lead to a number of inappropriate applicants using this authority to obtain a driver licence which would allow them to operate elsewhere in the country.

## **5. Proposed Way Forward**

- 5.1 That the Committee consider the guidance in relation to the National Register for Revocations and Refusals.
- 5.2 Having considered the resource implications and the risk of not adopting the national register determine whether to instruct the Licensing Specialist to undertake a review of the Council's Taxi Policy, application forms, and to write to all former taxi driver applicants who have been previously refused a licence or who have had their licence revoked in the last 25 years.

- 5.3 Alternatively the Council could choose to only supply information on refused and revoked licences from the past 6 years, this would be in line with the Council's data retention policy.

## 6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance		See Para. 4.1. The addition of a policy to check the National Register of Revocations and Refusals as part of an application process would allow the Council to consider whether the applicant has been refused a licence or had a licence revoked elsewhere and obtain information on the reasons for that decision being made.
Financial		There is a cost to the local authority of joining the National Anti Fraud network, who will host the national register. The LGA guidance states that the cost of this can be reclaimed through the taxi licensing fees charged to drivers, should a decision be made to proceed with drafting an amendment to the policy we will also consider the impact on the fees.
Risk		<p>Failure to adopt the national register into policy may lead to a reputational risk to the authority for not following the LGA practice, however this can be off-set by the stringent checks that we already have in place in regards to the suitability of an applicant.</p> <p>There is also the reputational risk that we grant a licence to a driver whom another authority has deemed as being unsuitable, due to the De-Regulation Act that applicant may then still be able to offer some taxi services in that authority area.</p>
Comprehensive Impact Assessment Implications		
Equality and Diversity		None foreseen.
Safeguarding		There is a slight risk if we do not adopt the national register that the Council could grant a licence to an

		applicant that another authority has deemed unsuitable to be a driver.
Community Safety, Crime and Disorder		None foreseen
Health, Safety and Wellbeing		None foreseen
Other implications		None foreseen

### **Supporting Information**

#### **Appendices:**

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

#### **Background Papers:**

### **Approval and clearance of report**

<b>Process checklist</b>	<b>Completed</b>
Portfolio Holder briefed	<b>Yes</b>
SLT Rep briefed	<b>Yes/No</b>
Relevant Exec Director sign off (draft)	<b>Yes/No</b>
Data protection issues considered	<b>Yes/No</b>
If exempt information, public (part 1) report also drafted. (Cabinet/Scrutiny)	<b>Yes/No</b>

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## 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 licences<sup>1</sup> 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.**

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<sup>1</sup> 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 taken<sup>2</sup>; 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 revocation<sup>3</sup>. 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.

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<sup>2</sup> 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

<sup>3</sup> 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](mailto: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.<sup>4</sup>

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.

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<sup>4</sup> 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 data<sup>5</sup> - 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 GDPR<sup>6</sup>. 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"<sup>7</sup>, 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.

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<sup>5</sup> 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.

<sup>6</sup> Found in Parts 1, 2 and 3 of the DPA 2018.

<sup>7</sup>

[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 you:

- 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’ licence<sup>8</sup>. 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.

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<sup>8</sup> 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 application<sup>9</sup>.

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<sup>10</sup>. 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<sup>11</sup>.

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....).

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<sup>9</sup> 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.

<sup>10</sup> 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.

<sup>11</sup> 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 NR3<sup>12</sup>

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 record<sup>13</sup> 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 NR3<sup>14</sup>

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 years<sup>15</sup>.

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

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

<sup>13</sup> This can be electronic, rather than "pen and paper" hard copy.

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

<sup>15</sup> 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 2<sup>nd</sup> authority) data protection procedures are satisfactory, consideration will then be given as to what information will be disclosed<sup>16</sup>. 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 1<sup>st</sup> 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*"<sup>17</sup> [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 record<sup>18</sup> 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.

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<sup>16</sup> If the 1<sup>st</sup> authority is not satisfied that the 2<sup>nd</sup> 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 1<sup>st</sup> authority and the 2<sup>nd</sup> authority.

<sup>17</sup> Available at

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

<sup>18</sup> 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: .....

# Agenda Item 9

Report to: **Licensing Committee**

Date: **23<sup>rd</sup> August 2018**

Title: **Adoption of procedures and fees in relation to the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018**

Portfolio Area: **Customer First**

Wards Affected: **All**

Relevant Scrutiny Committee:

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken: At Full Council on 27<sup>th</sup> September 2018

Author: James Kershaw Role: **Senior Specialist**

Contact: **Tel: 01803 861287**  
**email: james.kershaw@swdevon.gov.uk**

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## **Recommendations:**

1. That Committee recommend to Full Council; the adoption of the discretionary powers contained within the Animal Welfare Act 2006, and the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, and delegate decisions in relation to the determination of licences and enforcement action to the Community of Practice Lead for Environmental Health and Licensing by the 1<sup>st</sup> October 2018.
2. That the Committee recommend to Full Council that the Council's Constitution be amended to reflect a new sub-committee structure to consider Objections to conditions on an Animal Licence.
3. Having reviewed the proposed fees table, committee recommend to Full Council that the proposed fees and charges in relation to animal licensing as of 1<sup>st</sup> October 2018 are adopted.

## **1. Executive summary**

- 1.1 In April 2018 the Government passed the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018. This legislation amalgamated, and replaced a number of pieces of legislation that governed the licensing of animals.
- 1.2 The legislation allows licensing authorities to charge a reasonable amount to cover the cost of considering the grant, renewal or variation of a licence.
- 1.3 The new regulations have amended the previous licensing regime in a number of ways but the three key changes are:-
  - A premises can have a single licence covering a number of licensed activities (similar to premises licences under the Licensing Act 2003).
  - The change of licensing authority from County to District for the consideration of licences pertaining to performing animals.
  - That a licence can last for 1 – 3 years depending upon a risk assessment produced in line with Secretary of State guidance.
- 1.4 Having undertaken an inspection of a premises the Council may impose conditions where they deem it appropriate to do so in accordance with s.15 of the regulations. A licence holder has a right of appeal to the Council against the imposition of conditions or variation of their licence, and it is recommended that this is heard by a sub-committee of the Licensing Committee rather than the full committee.

## **2. Background**

- 2.1 The Animal Welfare Act was brought into force in 2006, and until this point the Local Authority has not needed to use the legislation. The legislation aims to ensure that animals are not mistreated, statutory guidance made under the legislation introduced the 5 freedoms of animal welfare which are:-
  - For a suitable environment (place to live)
  - For a suitable diet
  - To be housed with or apart from other animals
  - To be protected from pain, suffering, injury and disease
  - To exhibit normal behaviour patterns
- 2.2 The Act is the enabling legislation for new regulations that cover the licensing of activities involving animals. The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 repeals and amends the following legislation previously used:-
  - Animal Boarding Establishments Act 1963
  - Breeding of Dogs Act 1973
  - Breeding of Dogs Act 1991
  - Pet Animals Act 1951
  - Performing Animals (Regulation) Act 1925

- Riding Establishments Act 1964  
Etc. a full list can be found in Schedule 9 and 10 of the act.

2.3 The Council can charge a fee for the consideration of an application for the grant, renewal, or variation of a licence. Section 13 of the regulation states:

“**13.**—(1) A local authority may charge such fees as it considers necessary for—

(a) the consideration of an application for the grant, renewal or variation of a licence including any inspection relating to that consideration, and for the grant, renewal or variation,

(b) the reasonable anticipated costs of consideration of a licence holder’s compliance with these Regulations and the licence conditions to which the licence holder is subject in circumstances other than those described in sub-paragraph (a) including any inspection relating to that consideration,

(c) the reasonable anticipated costs of enforcement in relation to any licensable activity of an unlicensed operator, and

(d) the reasonable anticipated costs of compliance with regulation 29.

(2) The fee charged for the consideration of an application for the grant, renewal or variation of a licence and for any inspection relating to that consideration must not exceed the reasonable costs of that consideration and related inspection.”

It is not lawful for the Council to make a profit from its licensing functions, and the proposed fees have been set based on the guidance set out above and a reasonable estimate of the costs in undertaking this.

2.4 As part of the inspection process the Council will determine the level of risk posed by the activities on site using the DEFRA guidance. This risk assessment will determine the length of time that a licence will last for.

2.5 A person can appeal against a risk assessment score, and this appeal will be determined by the Community of Practice Lead for Environmental Health and Licensing.

2.6 A licensee can also request a re-score visit at any time, however the local authority can charge for this revisit score, and may charge the reasonable costs that they incur in doing so.

2.7 Based on the above it is recommended that the Council adopts the following fees and charges in relation to the granting of licences under the Act;

Licence Type	Licence Fee Proposed
Fee for a licence covering a single licensable activity	<b>£234</b>
Fee for each additional licensable activity	<b>£87</b>
Rescore visit	<b>£120</b>
Vets fees	<b>A recharge to the licensee of the cost to the Authority</b>

2.8 The current fee table for the licensable activities is set out below;

<b>Animal Boarding Establishments (to 31 Dec each year)</b>	Licence (per animal)	£5.00
	Minimum	£129.00
	Maximum	£187.00
	Home Boarding	£120.00
<b>Dog Breeding Establishment</b>	Licence Fee	£167.00
	Plus vet's fees and expenses	Actual Cost
<b>Pet Shop (to 31 December each year)</b>	Licensing Fee	£120.00
	Plus vet's fees and expenses	Actual Cost
<b>Riding Establishment</b>	Up to 10 horses	£168.00
	Plus for each additional horse	£8.00
	Plus vet's fees and expenses	Actual Cost
	Maximum Fee	£304.00

It is not possible at this moment to determine the impact that the proposed fees will have on the budget, although it is not envisaged that there will be a significant impact.

2.9 When considering the conditions that are placed on a licence the legislation states that the licensing authority may: suspend, vary or revoke a licence if they are satisfied that –

- a) The licence conditions are not being complied with,
- b) There has been a breach of the Regulations
- c) Information provided by the applicant was false or misleading,
- d) It is necessary to protect the welfare of an animal

2.10 Where the authority chooses to vary or suspend a licence, the licence holder has 7 days in which they can make written representations to the authority, which must be considered within 7 days of receiving those representations.

- 2.11 Due to the timescales involved in trying to organise a full licensing committee it is recommended that the constitution of the Council be amended to allow these representations to either be heard by the Community of Practice Lead for Environmental Health and Licensing, or where they believe that there is wider social or economic issues being raised by the written representation that the matter be heard by a sub-committee of 3 members. It will also be necessary that the standard rules on publication of committee agendas be altered to allow a shorter time period, but the minimum period needs to ensure that the committee have ample time to properly consider the implications.

### **3. Outcomes/outputs**

- 3.1 Under the constitution of the Council, decisions in relation to the determination of licences is currently delegated to the Community of Practice Lead for Environmental Health. It is proposed that similarly the new legislation is delegated in the same way.
- 3.2 We are not expecting that there will be a significant number of appeals against imposed conditions, however in order for there to be appropriate oversight and scrutiny of decisions made by the authority it is proposed that appeals that may have wider social or economic impacts are considered by a sub-committee of 3 members. It would be pertinent for the new committee structure to be in place for the 1<sup>st</sup> October 2018.
- 3.3 The fees and charges proposed above have been produced using a cost calculator and reflect predicted outgoings for considering the grant of a licence, the cost of enforcement of both licensed and unlicensed premises and the cost of providing the annual return. These are the reasonable costs that we are allowed to recover as described in the legislation.

### **4. Options available and consideration of risk**

- 4.1 In relation to the fees and charges proposed there is the potential that we could try and seek to add additional costs, however based on our expectation of how we will licence under the new regime we believe that the proposed fees are appropriate in accordance with the legislation.
- 4.2 There will be a review of the fees after the first year of operating to assess whether they are appropriate and produce a report to this committee suggesting a new fee and charge if they are not.
- 4.3 Whilst all appeals against the imposition of a condition could be heard by committee it was felt that where there is a technical rather than socio-economic impact these would be best heard by the Community of Practice lead. The department will produce a report each year to the committee to show what action has been taken under delegated powers, so that the committee can be satisfied that this approach is appropriate.

## 5. Proposed Way Forward

- 5.1 That Committee recommend to Full Council; the adoption of the Animal Welfare Act 2006, and the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, and delegate decisions in relation to the determination of licences and enforcement action to the Community of Practice Lead for Environmental Health and Licensing by the 1st October 2018.
- 5.2 That the Committee recommend to Full Council that the Council's Constitution be amended to reflect a new sub-committee structure to consider Objections to conditions on an Animal Licence.
- 5.3 Having reviewed the proposed fees table, committee recommend to Full Council that the proposed fees and charges in relation to animal licensing as of 1st October 2018 are adopted.

## 6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance		Failure to act appropriately under the legislation will make the Council non-compliant with legislation and prevent appropriate regulatory action being taken to safeguard the welfare of animals in the Council area
Financial		Failure to approve an appropriate fee for the licence that will mean that licences cannot be charged for or the fee may be challenged.  The proposed fees should provide a cost neutral approach to the animal licensing regime.
Risk		Failure to regulate animal welfare activities may result in serious harm to animals and have serious reputational impact on the Council.
Comprehensive Impact Assessment Implications		
Equality and Diversity		None foreseen.
Safeguarding		None foreseen.
Community Safety, Crime and Disorder		None foreseen



Health, Safety and Wellbeing		None foreseen
Other implications		None foreseen

## **Supporting Information**

### **Appendices:**

### **Background Papers:**

Hansard report on the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018:  
[https://hansard.parliament.uk/Lords/2018-03-27/debates/077B086C-FFA3-4F67-8C6B-95C8948D80B2/AnimalWelfare\(LicensingOfActivitiesInvolvingAnimals\)\(England\)Regulations2018](https://hansard.parliament.uk/Lords/2018-03-27/debates/077B086C-FFA3-4F67-8C6B-95C8948D80B2/AnimalWelfare(LicensingOfActivitiesInvolvingAnimals)(England)Regulations2018)

Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018:  
<http://www.legislation.gov.uk/uksi/2018/486/contents/made>

Local Government Association: Open for business: LGA guidance on locally set licence fees

DEFRA guidance on the Animal Licensing Regime:  
<http://www.cfsg.org.uk/layouts/15/start.aspx#/SitePages/Legislation%20and%20Guidance.aspx>

## **Approval and clearance of report**

<b>Process checklist</b>	<b>Completed</b>
Portfolio Holder briefed	<b>Yes</b>
SLT Rep briefed	<b>Yes/No</b>
Relevant Exec Director sign off (draft)	<b>Yes/No</b>
Data protection issues considered	<b>Yes/No</b>
If exempt information, public (part 1) report also drafted. (Cabinet/Scrutiny)	<b>Yes/No</b>

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Report to: **Licensing Committee**  
Date: **23<sup>rd</sup> August 2018**  
Title: **Agreement to consult on the advertising and adoption of a new taxi rank at Clifton Place, Salcombe.**  
Portfolio Area: **Customer First**

Wards Affected: **All**

Relevant Scrutiny Committee:

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken:

Author: James Kershaw Role: **Senior Specialist**

Contact: **Tel: 01803 861287**  
**email: james.kershaw@swdevon.gov.uk**

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## **Recommendations:**

1. That the Committee considers the proposal by Devon County Council to adopt a Road Traffic Order in Clifton Place Salcombe, which would restrict parking in the area to Taxis only.
2. Having considered the proposal that the committee resolves to exercise the Council's powers under s.63 of the Local Government (Miscellaneous Provisions) Act 1976, to consult the public and Chief of Police on a new taxi stand as defined by the act on Clifton Place, Salcombe.
3. If no written representation or objection is received relating to the notice published in accordance with (2) above within the 28 days period following the publication of that notice, or received and subsequently withdrawn, the taxi stand referred to in paragraph 1 of this recommendation be deemed appointed.
4. Any representation or objections to the proposed stand will be brought back to this committee for determination as to their relevance.

## **1. Executive summary**

- 1.1 In July 2018 the Devon County Council Highways Traffic Orders Committee (HATOC) (South Hams) determined to adopt a new Traffic Regulation Order (TRO) creating a no waiting except for Taxis bay on Clifton Place, Salcombe. See Appendix A.
- 1.2 Whilst a TRO can restrict parking to Taxis only it does not mean that the parking bay is a hackney carriage stand as defined by the Local Government (Miscellaneous Provisions) Act 1976. Adopting a hackney carriage stand can only be done by the Licensing Authority having carried out a statutory consultation exercise with the public and the Police.

## **2. Background**

- 2.1 Section 63(1) of the Local Government (Miscellaneous Provisions) Act 1976 states that: 'a District Council may from time to time appoint stands for hackney carriages for the whole or any part of the day on any highway maintained at public expense and, with the consent of the owner, on any other land.' The Council may also alter or revoke any stand so appointed.
- 2.2 These powers do not allow the Council to appoint stands:
  - so as to unreasonably prevent access to premises;
  - so as to impede the use of bus stops or will not unreasonably interfere with access to passenger road transport operator's stations or depots.
  - on the highway without the consent of the highway authority.
- 2.3 Before exercising its powers, the Council must give notice to the Police and publish the proposal in at least one local newspaper allowing 28 days for objections or representations to be made.

## **3. Outcomes/outputs**

- 3.1 Having received a request from the HATOC (South Hams) to consider the appointment of a new taxi stand on Clifton Place, Salcombe, and with agreement of committee, the Council would need to place an advert in a local newspaper advertising the intention to appoint the stand. This would allow the public 28 days to raise objections to the proposal. Objections would be pertinent if they raised concerns that a stand would cause an obstruction to premises or buses or any other public service vehicles.
- 3.2 Having reviewed the proposed location the Licensing Specialist consulted with Salcombe Harbour Master due to the close proximity of the rank to the slipway on Clifton Place and the potential obstruction that a taxi rank in this location may have on the public's

access to this slipway. The Harbour Master has confirmed that he has no objections.

- 3.3 Should no objections be received to the public consultation or from the Police, the stand would be deemed appointed. Should objections be received, this committee would need to hear and determine whether they are relevant to the appointment of the stand.
- 3.4 Once appointed, the stand can be revoked using the same process as the adoption process.
- 3.5 Hackney carriage stands on the public highway must be marked out in accordance with the Traffic Signs Regulations and General Directions 2016 Schedule 7, Part 4 Item 5. Devon County Council have confirmed that this will be done by themselves on appointment of the stand by this authority.

#### **4. Options available and consideration of risk**

- 4.1 The provision of Hackney Carriage stands is an important part in ensuring an adequate supply of taxis in the district and ensuring adequate access for the vulnerable in society.
- 4.2 There are currently no taxi stands in Salcombe and due to the pressures on off-street and on-street parking there is limited opportunity for a bay.
- 4.3 There is no appeal against the adoption of a taxi rank that has been duly made, however the Licensing Authority can revoke a taxi stand using the same provisions as stated above if a significant problem did arise.

#### **5. Proposed Way Forward**

- 5.1 That the Committee having considered the request made by Devon County Council for a new taxi stand at Clifton Place, Salcombe determine to either:-
  - a. Approve the commencement of a statutory consultation period of no less than 28 days to appoint the taxi stand
  - b. refuse to appoint the taxi stand due to the potential obstructions that may arise due to its location.

## 6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance		<p>There is no right of appeal regarding the designation or amendment of a taxi rank.</p> <p>The Council is legally required to consult with both the Devon County Council (as the Highways Authority) and the Devon and Cornwall Constabulary. Both the County Council and the Police have indicated that they support the taxi rank provision. The Licensing Office has also had discussions with bus operators and shop proprietors who may be affected by the proposals. The discussions have not resulted in any issues or objections.</p> <p>It is an offence for any person without reasonable cause to permit any vehicle other than a hackney carriage to wait on a hackney carriage stand.</p>
Financial		<p>There is a cost to the local authority of advertising the proposed taxi rank, this cost is covered by the charges imposed on Taxi vehicle owners through the licensing fee.</p>
Risk		<p>Failure to provide sufficient taxi ranks could lead to vulnerable users being unable to access taxis. Although they could still be pre-booked.</p>
Comprehensive Impact Assessment Implications		
Equality and Diversity		None foreseen.
Safeguarding		None foreseen.
Community Safety, Crime and Disorder		None foreseen
Health, Safety and Wellbeing		None foreseen
Other implications		None foreseen

## **Supporting Information**

### **Appendices:**

Appendix A: Map showing location of the proposed taxi stand

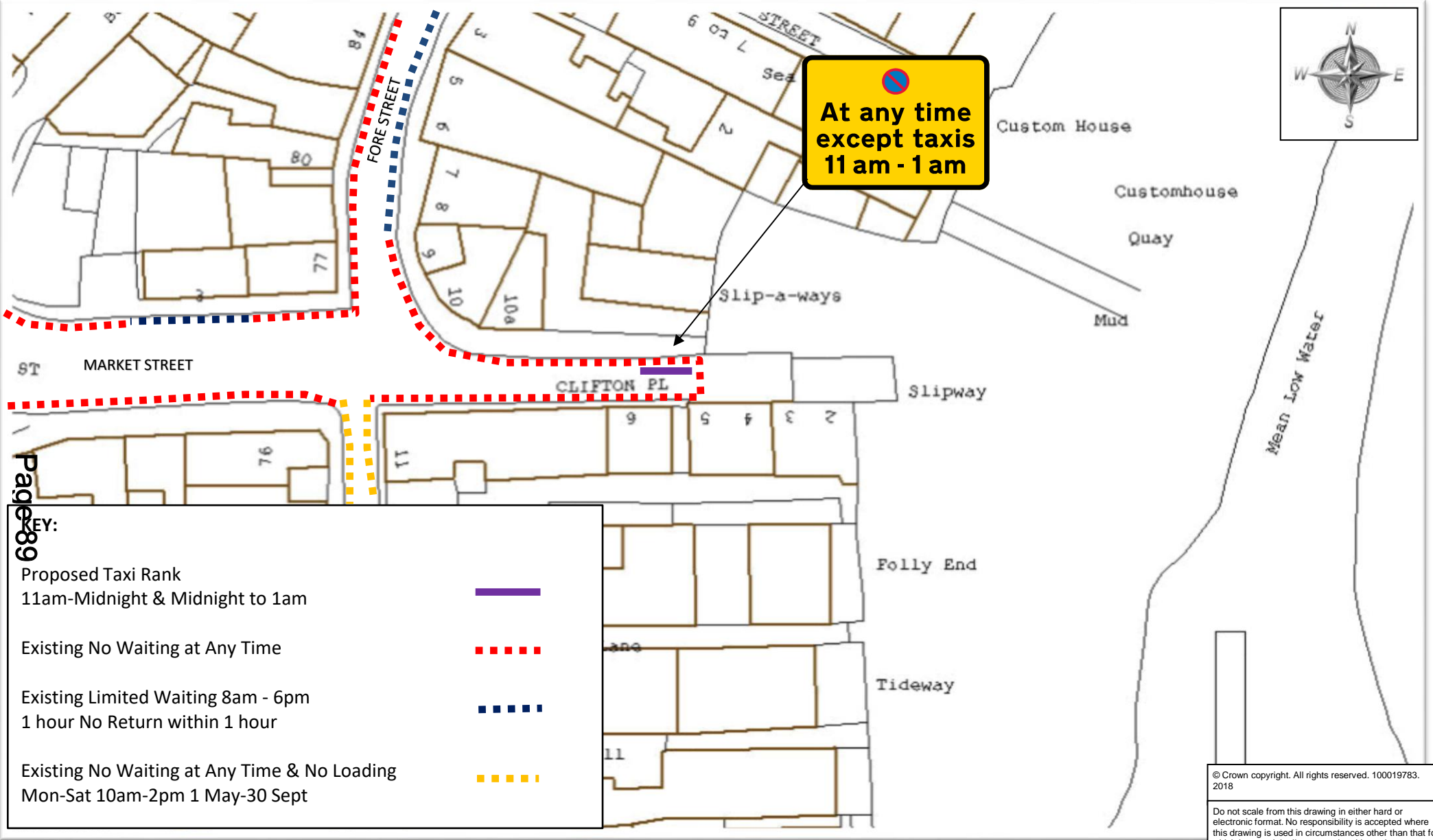
### **Background Papers:**

## **Approval and clearance of report**

<b>Process checklist</b>	<b>Completed</b>
Portfolio Holder briefed	<b>Yes</b>
SLT Rep briefed	<b>Yes/No</b>
Relevant Exec Director sign off (draft)	<b>Yes/No</b>
Data protection issues considered	<b>Yes/No</b>
If exempt information, public (part 1) report also drafted. (Cabinet/Scrutiny)	<b>Yes/No</b>

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**At any time  
except taxis  
11 am - 1 am**

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**KEY:**

Proposed Taxi Rank 11am-Midnight & Midnight to 1am	
Existing No Waiting at Any Time	
Existing Limited Waiting 8am - 6pm 1 hour No Return within 1 hour	
Existing No Waiting at Any Time & No Loading Mon-Sat 10am-2pm 1 May-30 Sept	

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Meg Booth - Chief Officer for Highways, Infrastructure Development & Waste

TRAFFIC ORDERS & POLICY TEAM  
DEVON COUNTY COUNCIL, HIGHWAY MANAGEMENT, LUCOMBE HOUSE, COUNTY HALL, TOPSHAM ROAD, EXETER, EX2 4QD

Telephone 0345 155 1004

**SCHEME**

CLIFTON PLACE, SALCOMBE

**DRAWING**

PROPOSED TAXI RANK

drawn by	scale
MS	NTS
date	O.S.Ref
08-Jun-2018	274097, 39054
drawing number	
<b>ENV5760-013 (A)</b>	

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