



East Suffolk House, Riduna Park, Station
Road, Melton, Woodbridge, IP12 1RT

Licensing Committee

Members:

Councillor Keith Robinson (Chairman)
Councillor Mark Newton (Vice-Chairman)
Councillor Paul Ashdown
Councillor Edward Back
Councillor Jocelyn Bond
Councillor Linda Coulam
Councillor Janet Craig
Councillor John Fisher
Councillor Tess Gandy
Councillor Tony Goldson
Councillor Colin Hedgley
Councillor Frank Mortimer
Councillor Trish Mortimer
Councillor Rachel Smith-Lyte
Councillor Steve Wiles

Members are invited to a **Meeting of the Licensing Committee**
to be held on **Monday, 20 July 2020 at 6.30pm**

This meeting will be conducted remotely, pursuant to the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020.

The meeting will be facilitated using the Zoom video conferencing system and broadcast via the East Suffolk Council YouTube channel
at <https://youtu.be/Mmxlu2HTg84>

An Agenda is set out below.

Part One – Open to the Public

| | Pages |
|---|----------------|
| 1 Apologies for Absence and Substitutions | |
| 2 Declarations of Interest Members and Officers are invited to make any declarations of Disclosable Pecuniary or Local Non-Pecuniary Interests that they may have in relation to items on the Agenda and are also reminded to make any declarations at any stage during the Meeting if it becomes apparent that this may be required when a particular item or issue is considered. | |
| 3 Minutes To confirm as a correct record the Minutes of the meeting held on 20 January 2020. | 1 - 4 |
| 4 Adoption of the National Register of Taxi and Private Hire Licence Revocations and Refusals ES/0407 Report of the Cabinet Member with responsibility for Community Health | 5 - 35 |
| 5 Introduction of a Drug Testing Policy for New and Existing Licensed Drivers ES/0408 Report of the Cabinet Member with responsibility for Community Health | 36 - 43 |
| 6 Licensing Services Response to Covid-19 ES/0441 Report of the Cabinet Member with responsibility for Community Health | 44 - 48 |
| 7 Issued Licenses in East Suffolk and an Overview of the Work of the Licensing Sub-Committees in 2020 ES/0409 Report of the Cabinet Member with responsibility for Community Health | 49 - 54 |
| 8 Exempt/Confidential Items It is recommended that under Section 100A(4) of the Local Government Act 1972 (as amended) the public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A of the Act. | |

Part Two – Exempt/Confidential

9 Exempt Minutes

- Information relating to the financial or business affairs of any particular person (including the authority holding that information).

Close



Stephen Baker, Chief Executive

Filming, Videoing, Photography and Audio Recording at Council Meetings

The Council, members of the public and press may record / film / photograph or broadcast this meeting when the public and press are not lawfully excluded. Any member of the public who attends a meeting and objects to being filmed should advise the Committee Clerk (in advance), who will instruct that they are not included in any filming.

If you require this document in large print, audio or Braille or in a different language, please contact the Democratic Services Team on 01502 523521 or email:

democraticservices@eastsoffolk.gov.uk



The national Charter and Charter Plus Awards for Elected Member Development
East Suffolk Council is committed to achieving excellence in elected member development
www.local.gov.uk/Community-Leadership

Minutes of a Meeting of the **Licensing Committee** held in the Deben Conference Room, East Suffolk House, Melton on **Monday, 20 January 2020 at 6.30pm**

Members of the Committee present:

Councillor Edward Back, Councillor Jocelyn Bond, Councillor Linda Coulam, Councillor John Fisher, Councillor Colin Hedgley, Councillor Mark Newton, Councillor Keith Robinson, Councillor Steve Wiles

Officers present:

Teresa Bailey (Senior Licensing Officer), Chris Bing (Legal and Licensing Services Manager), Sarah Carter (Democratic Services Officer)

1 Apologies for Absence and Substitutions

An apology for absence was received from Councillor Ashdown.

Councillor Cooper attended the meeting as a substitute for Councillor Ashdown.

2 Declarations of Interest

There were no Declarations of Interest.

3 Minutes

RESOLVED

That the Minutes of the meeting held on 21 October 2019 be confirmed as a correct record and signed by the Chairman.

4 Taxi and Private Hire Matters: Minor amendments to conditions and policy - Penalty point scheme and Disclosure and Barring Service update

The Committee considered report ES/0217 which sought approval for minor amendments to the Council's Licensing Conditions and Policy to prohibit vaping in vehicles and to require new applicants and existing licensed drivers to sign up to the Disclosure and Barring Service (DBS) update service.

The Legal and Licensing Services Manager reminded Members that the existing penalty point procedure was linked with vehicle and drivers' conditions and allowed officers to impose a sanction for non-compliance. The scheme now required updating to allow sanctions for failure to prohibit vaping in a licensed vehicle. Paragraph 2.2 of the

report outlined the requirement in the current scheme relating to vaping. Currently, if any licensee achieved 12 points they would be referred to a Licensing Sub-Committee. However, there was currently no penalty for not meeting the vaping condition and it was proposed that three penalty points could be imposed where there was an instance of vaping in a licensed vehicle.

In addition, the Committee was advised that, in 2013, the DBS had introduced an update service which allowed individuals to reuse an existing DBS certificate if they applied for similar roles in the same workforce which would allow an individual to save time and money. This update service was an on-line subscription which allowed someone to keep their standard or enhanced DBS certificate up to date and allowed employers to check a certificate on-line. The cost to an applicant to join the update service was currently £13 per year compared to a single DBS check costing £40. An applicant who joined the update service was given a code which could then be passed to the Licensing Team to allow instant access to their DBS record as opposed to having to complete a form, produce documents and have a face to face appointment with an officer of the Council. Some drivers had already signed up to the update service and it was working well for both drivers and the Council in undertaking relevant checks and in processing licence applications.

The Legal and Licensing Services Manager advised that it was a beneficial and quicker process for both the drivers and the Council and, as a result it was proposed that all licensed drivers be required to subscribe to the DBS update service, moving existing drivers to that service when their licence renewal became due in the next three years. All new drivers would be required to sign up to the service once they had received their initial DBS certificate. The Senior Licensing Officer explained that the DBS was transferable for a similar role in the same workforce saving a driver money in the long term.

Members supported the proposals contained in the report and unanimously

RESOLVED

1. That the amendment of the Council's existing Penalty Point Scheme to provide for a sanction of three penalty points on the driver's professional licence for vaping or failing to prohibit vaping in a licensed vehicle be approved.
2. That the amendment of the application criteria for drivers to make it a mandatory requirement for new applicants and existing licensed drivers to sign up to the Disclosure and Barring Service update service be approved.

5 A snapshot of currently issued Licences in East Suffolk and an overview of the work of the Licensing Sub-Committee in 2019

The Committee received report ES/0218 which gave Members an overview of the current number and type of licences issued by East Suffolk Council. The report also summarised the applications received in 2019 and the work of the Licensing Sub-Committee in 2019.

The Legal and Licensing Services Manager gave a brief overview of the licence applications received and explained that, contrary to national trend with media reports

that pubs were closing, the number of licensed premises in east Suffolk had increased not decreased. It was hoped to submit a quarterly report to Committee which would also allow a trend analysis to be undertaken.

The Chairman invited questions.

In response to a question relating to the premises that had had its licence taken away, the Legal and Licensing Services Manager advised that it was not possible to discuss that particular licence in public as it might prejudice the case which was being considered at the Magistrates' Court in early February. The information listed under applications determined, as contained in the report, was already in the public domain. He confirmed that out of all decisions, only one had been appealed.

Members noted the content of the report and believed the increase in licence applications was good news for the promotion of East Suffolk. There being no further discussion, it was

RESOLVED

That the report relating to currently issued Licences in East Suffolk and the Overview of the Work of the Licensing Sub-Committees in 2019 received and noted.

6 Taxi and Private Hire Matters: Introduction of a drug-testing policy for new and existing licensed drivers

The Committee considered report ES/0216, the purpose of which was to seek approval to consult upon a proposal to introduce a new Drug Testing Policy in connection with the granting of licences to drive private hire and hackney carriages to persons who may have drug related offences. In addition, the drug testing policy would be introduced for the detection of currently licensed drivers who might be using illegal drugs.

The Senior Licensing Officer explained that in the last 18 months, two licences had been suspended/revoked, both as a result of being arrested in separate incidents at the roadside. A Licensing Sub-Committee had also recently imposed a condition on a driver to undergo a drug test before a licence was granted and, in another case, random drug testing of a driver for a specified period had been required after the granting of their licence. Whilst it was believed drug driving for taxi drivers was not a huge problem in east Suffolk, it was still important to be aware and any cases brought to the attention of the Licensing Authority needed to have an appropriate policy in place. She drew attention to the draft policy for drug testing which was set out in Appendix B to the report.

Members questioned whether there could have been numerous other cases of which the Council was not aware. The Senior Licensing Officer explained that the Police had informed the Council because being a taxi driver was a notifiable occupation; one of the arrests had been down to intelligence that had been received. The Licensing Team had engaged the services of a toxicology company to conduct drug testing of applicants and existing drivers and one test had been undertaken at the Council's offices by a 'collector' provided by that company. In addition, if a test was positive, the licence plates had to be handed in.

As Members wished to discuss the drug testing in detail and the information contained in exempt Appendix A, it became necessary to go into exempt session at this point in the meeting. The Committee resolved to exclude the public from the meeting on the grounds that it involved the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended).

Following detailed discussion and then having resolved to go into open session, it was unanimously

RESOLVED

1. That the proposed draft Policy for Detecting Use of Illegal Drugs set out at Appendix B to report ES/0216 be approved for the purposes of consultation with Hackney Carriage Drivers, Private Hire Drivers and Private Hire Operators licensed by East Suffolk Council.
2. That, prior to making any final decision to adopt the policy, as drafted or as amended in response to consultation responses, a further report be submitted to a future Licensing Committee setting out the responses to the consultation.

The meeting concluded at 7.02pm.

.....
Chairman



LICENSING COMMITTEE

Monday, 20 July 2020

ADOPTION OF THE NATIONAL REGISTER OF TAXI AND PRIVATE HIRE LICENCE REVOCATIONS AND REFUSALS (NR3)

EXECUTIVE SUMMARY

To seek approval to sign up to the National Register of Taxi and Private Hire Licence Revocations and Refusals (known as NR3).

| | |
|-------------------------------|--|
| Is the report Open or Exempt? | Open |
| Wards Affected: | All |
| Cabinet Member: | Councillor Mary Rudd, Cabinet Member with responsibility for Community Health |
| Supporting Officer: | Chris Bing Legal and Licensing Services Manager 01394 444408 chris.bing@eastsuffolk.gov.uk |

1 INTRODUCTION

- 1.1 When considering applications for hackney carriage and private hire vehicle driver's licences, the Council must be satisfied that the applicant is a fit and proper person to be granted a licence. The term 'fit and proper' is not further defined in legislation and the Council's discretion is wide ranging.
- 1.2 The Local Government Association (LGA) and National Anti-Fraud Network (NAFN) have implemented a National Register of Taxi (also incorporating Private Hire) Revocations and Refusals, to be known as the NR3 and the Committee is requested to consider adopting the NR3 Register and associated Guidance.

2 BACKGROUND AND INFORMATION

- 2.1 All applicants for taxi and private hire licences are asked, on the application form, if they have ever had a licence application refused or revoked by a local authority. If an applicant answers "yes" to this question, they also have to give the name of the local authority concerned and officers can ask that authority for information. However, if an applicant states "no", there is no way to check this information is correct. Therefore, there is the potential for an applicant to have had a licence application refused or a licence revoked by another local authority to obtain a licence elsewhere.
- 2.2 Similarly, there is the potential for a person who had their licence revoked/refused by East Suffolk Council to obtain a licence in another local authority area.
- 2.3 Regulators within the licensing trade have been advocating for a very long time for there to be a national register of licence revocations/refusals in order that adequate checks could be made against licence applicants, and the LGA, in conjunction with the NAFN, has now implemented such a database.
- 2.4 Guidance on adopting the NR3 Register produced by the LGA and NAFN is attached at **Appendix A**. The guidance stipulates the procedure would need to follow in order to provide data for the NR3 Register and for the Council to access data.
- 2.5 If the Committee is minded to adopt the register, it will involve the Council providing information for the database on revoked or refused licences and responding to information requests on these data subjects in the event that the person applies to another Local Authority for a licence. When a person applies for a licence, the database will be checked by a licensing officer, and if an applicant appears on the database, an information request will be sent to the appropriate Local Authority. Where there are doubts as to an applicant's suitability to be granted a licence, the applicant will be referred to a Licensing Sub Committee for it to determine if the applicant is fit and proper to be granted a licence.
- 2.6 Section 4.1 of the Guidance refers to membership of the NAFN and the need to sign-up to data sharing and data processing agreements with NAFN. The Council is already a member of NAFN, therefore there will be no additional cost associated with this.
- 2.7 Section 4.3 of the Guidance refers to historic data migration and refers to data being retained for 25 years on the register. The Council only holds data for the previous 6 years, which relates to 8 individuals and it will be necessary to write to each of these and advise them that their information will be uploaded to the register and the reasons for

this. An individual may request that the information is not uploaded and any requests of this nature will be fully considered before a final decision is made.

- 2.8 New applicants will be made aware of the register by changes to the form/online application which will inform applicants of the register and that their information may be uploaded to it if their application is refused or any subsequent granted licence being revoked. Existing licence holders will be made aware of the register when they come to renew their licence, via changes to application forms. Information will also be available on the Council's website.
- 2.9 Section 5.3 of the Guidance refers to the disclosure of information relating to refusals/revocations and the need for the Council to have a policy which governs its approach to the circumstances in which it will share, receive and use information of data from the register. A suggested template policy is attached at Annex D to the Guidance. A separate record will be made of all requests for information.
- 2.10 The Committee is requested to consider the adoption of the National Register for Taxi Licence Revocations and Refusals together with the Guidance produced by the LGA and NAFN.

3 HOW DOES THIS RELATE TO THE EAST SUFFOLK BUSINESS PLAN?

- 3.1 Licensing plays an important role in the building of a strong, sustainable, and dynamic local economy and in ensuring East Suffolk remains a safe place for our communities.

4 CONSULTATION

- 4.1 There has been no consultation with holders of private hire and hackney carriage driver's licences. Any individuals whose details will be submitted to the register will be notified.

5 REASON FOR RECOMMENDATION

- 5.1 The licensing authority is responsible for ensuring that only fit and proper persons who are suitable to be licensed drivers are granted licences and remain licensed. Were this authority not to adopt the proposed policy and use NR3, it may licence individuals who have failed to disclose information about having had a previous licence refused or revoked by another local authority as there is no other means of checking this licence history.

RECOMMENDATIONS

That the Committee approve the adoption of the National Register of Taxi Licence Revocations and Refusals (NR3) and the Guidance produced by the LGA and NAFN.

APPENDICES

| | |
|-------------------|--|
| Appendix A | Guidance on adopting the NR3 Register produced by the LGA and NAFN |
|-------------------|--|

BACKGROUND PAPERS - None



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

Contents

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

Annex A – guidance on amendments to policies and forms

Annex B – suggested notification to existing licensees of NR3

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

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

1. Background

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

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

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

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

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

Important

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

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

2. Objective of NR3

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

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

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

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

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

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

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

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

3. Voluntary disclosure of previous licensing history

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

4. NR3 - an overview

4.1. Accessing the register

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

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

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

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

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

4.2. Register functionality

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

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

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

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

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

4.3. Historic data migration

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

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

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

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

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

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

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

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

5. Updating licensing processes and procedures

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

5.1. Informing applicants of the NR3 register

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

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

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

5.2. Adding details of a refusal or revocation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A suggested template policy is attached at Annex D.

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

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

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

⁷

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

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

5.4. Acting on detailed disclosures

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

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

6. Complying with data protection requirements

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

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

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

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

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

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

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

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

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

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

6.1. Updating the licensing policy, application forms and guidance

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

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

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

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

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

6.2. Making existing licensees aware

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

Annex A – guidance on amendments to policies and forms

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

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

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

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

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

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

Therefore:

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

The information recorded on NR3 itself will be limited to:

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

- date of decision
- date decision effective

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Annex B – suggested notification to existing licensees of NR3

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

Dear licensee

National Register of Taxi Licence Refusals and Revocations

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

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

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

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

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

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

The information recorded on NR3 will be limited to your:

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

Information will be retained on NR3 for 25 years.

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

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

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

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

Yours sincerely

Licensing authority

Frequently asked questions

Why has the register been set up?

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

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

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

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

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

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

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

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

What if my licence is suspended?

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

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

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

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

How long will details be held on NR3 for?

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

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

Dear XXX

National Register of Refusals and Revocations

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

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

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

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

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

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

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

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

Information will be retained on NR3 for 25 years.

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

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

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

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

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

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

Yours sincerely

Licensing authority

Frequently asked questions

Why has the register been set up?

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

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

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

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

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

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

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

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

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

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

How long will details be held on NR3 for?

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

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

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

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

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

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

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

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

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

I. Overarching principles

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

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

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

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

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

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

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

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

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

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

¹¹ Decisions of the local authority, magistrates' Court and Crown Court are also susceptible to judicial review. Generally any right of appeal should be exercised in preference to judicial review, but there are occasions when leave has been granted for judicial review in the circumstances. Any application for judicial review must be made "promptly; and in any event not later than 3 months after the grounds to make the claim 1st arose" (see The Civil Procedure Rules R54.5). If an application for judicial review is made after any relevant data has been destroyed, this authority will request the information again and then retain that information until all court proceedings relating to that judicial review (which will include potential appeals to the Court of Appeal and Supreme Court) have been determined.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁷ Available at <https://www.instituteoflicensing.org/NewsJobsArticle.aspx?NewsID=11318&NewsOrJob=news>

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

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

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

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

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

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

Appendix 1 - information disclosure form

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

(For completion by requestor authority)

Name of licensing authority requesting information:

Requestor authority reference number:

Name of licensing authority from which information is sought:

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

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

Other details for this record:

Address:

Driving licence #:

NI #:

Reference number:

Declaration by requesting authority:

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

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

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

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

Signed:

Name:

Position:

Date.....

(For completion by providing authority)

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

| |
|--|
| |
|--|

Declaration by providing authority

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

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

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

Signed:

Name:

Position:

Date:



LICENSING COMMITTEE

Monday, 20 July 2020

INTRODUCTION OF A DRUG TESTING POLICY FOR NEW AND EXISTING LICENSED DRIVERS

EXECUTIVE SUMMARY

On 20 January 2020 **ES/0216** proposed a draft Drug Testing Policy for consultation.

It was agreed that any responses to the consultation would be reported to the Licensing Committee at a future meeting in order that the policy can be considered for approval and implementation.

This report documents the responses received during the consultation period.

| | |
|-------------------------------|--|
| Is the report Open or Exempt? | Open |
| Wards Affected: | All |
| Cabinet Member: | Councillor Mary Rudd, Cabinet Member with responsibility for Community Health |
| Supporting Officer: | Chris Bing Legal and Licensing Services Manager 01394 444408 chris.bing@eastssuffolk.gov.uk |

1 INTRODUCTION

- 1.1 At its meeting on 20 January 2020 the Licensing Committee approved the draft Policy for Detecting Use of Illegal Drugs for consultation with existing licensed private hire and hackney carriage drivers and private hire operators.

This consultation is now complete.

2 CONSULTATION

- 2.1 The draft Policy for Detecting Use of Illegal Drugs, agreed at the January meeting, was sent out for consultation for a six week period ending 4 March 2020.
- 2.2 All existing licensed private hire and hackney carriage drivers and private hire operators were notified of the draft policy by way of a letter.

3. RESPONSE TO CONSULTATION

- 3.1 During the consultation period the Licensing Team received no comments on the draft policy.
- 3.2 The draft policy, as approved by the Licensing Committee on 20 January 2020, is attached as **Appendix A**.

4 HOW DOES THIS RELATE TO THE EAST SUFFOLK BUSINESS PLAN?

- 4.1 Licensing plays an important role in the building of a strong, sustainable, and dynamic local economy and in ensuring East Suffolk remains a safe place for our communities.

5 REASON FOR RECOMMENDATION

- 5.1 The licensing authority is responsible for ensuring that only fit and proper persons who are suitable to be licensed drivers are granted licences and remain licensed. An applicant, or licensed driver, who uses illegal drugs would risk compromising the safety of those they transport, other drivers and themselves and so would not be a fit and proper person. The licensing authority needs a policy which provides for the mandatory drug testing of applicants with a known history of illegal drug use and existing drivers who the licensing authority has reason to believe may be using drugs or where the licensing authority understands a driver is under investigation by the police, and/or has been arrested and/or cautioned and/or charged and/or prosecuted and/or convicted for misuse of drugs.

RECOMMENDATION

That the draft Policy for Detecting Use of Illegal Drugs be adopted.

APPENDICES

Appendix A

Draft Policy for Detecting Use of Illegal Drugs

BACKGROUND PAPERS – None



Taxi & Private Hire Licensing
Draft Policy for Detecting use of Illegal Drugs

AIM OF THE POLICY

The Council currently licences 589 Taxi and Private Hire drivers and it has come to light recently that a very small minority of these drivers use illegal drugs on a recreational basis or possibly as habitual users. The Council views such drug use as completely incompatible with being fit and proper persons to be entrusted with the safe carriage of the general public as well as the dangers presented to other road users by such licensed drivers.

This Policy therefore aims to establish procedures to allow for intelligence-led drugs testing of licensed drivers, and the testing of licensed drivers where a licence has been granted subject to random drug testing, with the intention of both detecting drivers who use illegal drugs and also deterring such persons from continuing to use drugs.

The Policy also provides a discretionary power for certain applicants for the grant of licences to drive taxis or private hire vehicles, and who have a criminal record involving drug-related offences, to be required to pass a drugs test at their own expense as one part of the application process.

Finally, the Policy also provides a discretionary power for applicants seeking to renew their licences to drive taxis or private hire vehicles, and who have been convicted during the currency of their licence of drug-related offences, to be required to pass a drugs test at their own expense as one part of the renewal application process.

The Council strongly encourages any person who uses illegal drugs to seek assistance from their GP or Drug Counselling agencies such as FRANK (<https://www.talktofrank.com/>) before reaching a point where their livelihood, their safety and the safety of others is put at risk from their drug use.

APPLICABILITY OF PROPOSED POLICY

1. New Applicants with Drug-related conviction(s)

In the case of any applicant for a new taxi / private hire driver's licence who has any drug-related conviction or caution (whether for drug-driving, drug possession, supply / intent / conspiracy to supply or production of drugs) obtained within the period of 3 years prior to the date of application, the Legal and Licensing Service Manager be given discretion to require them as part of the application process to undergo at their own expense a drug test by the Council's appointed toxicology company. This urine analysis test must produce a negative (pass) result. If a positive (fail) result is given, then further testing of the urine must be carried out at the company laboratories. For the avoidance of doubt, the provision of such a negative test result will be merely one aspect of the consideration process as to whether the applicant satisfies the "fit and proper person" test and shall not of itself prove determinative. The applicant will be required to pay the cost of the test.

This discretionary procedure is intended to be used in a very limited number of cases as ordinarily the mere fact of drug convictions will be sufficient to justify refusing the application. It may still be necessary for the applicant to go before the Licensing Sub-committee before a final decision is made, even where a test is negative, if the applicant has had a drugs conviction within 3 years of applying for a licence or where officers have concerns as to an applicant's specific circumstances, such as a repeat pattern of offending in relation to the misuse of drugs.

2. Applicant for Renewal with recent Drug-related conviction(s)

In the case of any licensed driver seeking to renew their taxi / private hire driver's licence who has any drug-related conviction or caution (whether for drug-driving, drug possession, supply / intent / conspiracy to supply or production of drugs) obtained within the period of 3 years prior to the date of application, the Legal and Licensing Service Manager be given discretion to require them as part of the application process to undergo at their own expense a drug test by the Council's appointed toxicology company. This urine analysis test must produce a negative (pass) result. If a positive (fail) result is given then further testing of the urine must be carried out at the company laboratories. For the avoidance of doubt, the provision of such a negative test result will be merely one aspect of the consideration process as to whether the licence should be renewed and shall not of itself prove determinative. The applicant will be required to pay the cost of the test.

Again, this discretionary procedure is intended to be used in a very limited number of cases as ordinarily the mere fact of drug convictions will be sufficient to justify refusing the application. It may still be necessary for the applicant to go before the Licensing Sub-committee before a final decision is made, even where a test is negative, if the applicant has had a drugs conviction within 3 years of applying for a licence or where officers have concerns as to an applicant's specific circumstances, such as a repeat pattern of offending in relation to the misuse of drugs.

If the initial screening test is positive (fail), then that sample will be required to be sent to the Councils' appointed company's testing laboratory for a confirmatory test which will determine exactly what substance was taken and in what quantities. During this time the person who was tested may have any licence to drive taxi and private hire vehicles revoked with immediate effect by the Head of Legal and Democratic Services acting under delegated powers on the grounds of public safety. In the event that the confirmatory analytical laboratory result is below the level of quantification or consistent with declared medication then the person who has had their licence revoked may have their revocation rescinded by the Head of Legal and Democratic Service if he / she is satisfied that it is appropriate to do so.

3. Intelligence led Drug Testing

This would be based upon the Legal and Licensing Services Manager being satisfied that credible reasons exist to suspect that a licensed private hire / taxi driver may be using illegal

drugs. Where he/she is so satisfied the driver will be required in writing to undergo, at the Council's expense, a urine analysis carried out by the Council's appointed toxicology company as specified by the Council on a certain date. Failure to comply with such a requirement may result in the driver committing an offence of obstruction pursuant to Section 73(1) of the Local Government (Miscellaneous Provisions) Act 1976 and / or may result in the driver's licence being reviewed to ascertain whether the non-compliance gives rise to "reasonable cause" for the driver's licence to be revoked or suspended. The Legal and Licensing Services Manager will have a discretion at all times to consider whether the driver had a reasonable excuse for not complying with the requirement and may, as he sees fit, require the driver to attend for testing on an alternative date. The licensing authority will cover the cost of the drug testing where the drug testing is intelligence led.

4. Licence granted subject to a condition requiring random drug testing

There may be occasions where a licence is granted to a driver subject to a condition that a driver is subject to random drug testing for the duration of their licence or for a specified period of time less than the duration of their licence. For example, where the Sub-Committee is satisfied that despite a misuse of drugs incident in the past, an applicant/driver is sufficiently reformed so as to be fit and proper but the Sub-Committee wish the driver to be subject to random drug tests to ensure the driver's suitability to be licensed does not change over time, through a return to misusing drugs, to protect the travelling public. The licensing authority will cover the cost of the drug testing where a licence is granted subject to a condition requiring random drug testing.

DRUGS TESTING PROCEDURE

Introduction

There are different methods of testing for drugs in the body. Testing for drug misuse depends on the collection of samples for analysis, which can be achieved by the use of a portable testing kit for preliminary screening or the sample can be sent to a toxicology laboratory for analysis.

The Council's nominated UKAS accredited toxicology company will be used for the initial test, any detailed analysis and confirmation of samples.

Drug testing procedures involve up to five stages depending on whether a positive result is obtained; all are strictly controlled by a process referred to as "Chain of Custody". The stages involved are summarised here:

1. Sample Collection 2. Preliminary Screening 3. Confirmatory Analysis 4. Medical Review (MRO) 5. Reporting of Results

Sample Collection

Chain of Custody is the name given to the procedures that are employed to ensure that the integrity of a sample is maintained from the sample first being provided up to and including the reporting of the laboratory results and possible medical review.

The person being tested will be asked to donate a sample for screening using the procedures for sample collection provided by the nominated company.

The person being tested will witness the sample collection and also the record keeping and identification procedure for the sample.

Adulteration Testing for Urinalysis Only

The whole procedure will be carefully witnessed to prevent adulteration or substitution of other substances by the person being tested. The sample is taken and inspection of colour and temperature conducted. The sample will be tested using an on-site device.

Note: If a urine sample cannot be provided by the person being tested within three hours then this will be treated as a failure to provide a valid sample.

Confirmatory Analysis

If the sample proves to be positive, then the two samples (in the sealed containers) obtained at collection will be sent to the analytical laboratory for confirmatory analysis.

Toxicology and Reporting of Results

All stages of the analysis are carefully monitored by the analytical laboratory toxicologists and/or the Medical Review Officer. Once the results are known then they may be reported to a laboratory toxicologist who will interpret the results of the analysis which will be subsequently confidentially reported to the Council.

Drug Testing Collection Procedure

The person being tested will be informed of the requirement to be tested for drugs and the testing procedure will be explained to them.

The person being tested attends the Council offices where the samples are to be collected.

The person being tested is then required to sign a consent form regarding this impending test.

The sample is taken by the 'collector' from the nominated company.

If it is ascertained that adulteration has occurred, then this will constitute an invalid sample which shall be reported to the Council.

If any person being tested refuses to provide a urine sample, they will be informed that such a refusal is a failure to comply with this Policy and, as such, will be reported to the Council which may result in their licence being suspended or revoked.

For point of care testing devices which provide an instant result, the person being tested may be required to provide information of any drug(s) and prescription or non-prescription medication taken (including dosage and frequency) if the sample is positive.

If the screening test is positive, then that sample will be required to be sent to the analytical laboratory for a confirmatory test which will determine exactly what substance was taken and in what quantities. During this time the person who was tested may have their licence to drive taxi and private hire vehicles revoked with immediate effect by the Council's Head of Legal and Democratic Services acting under delegated powers on the grounds of public safety. In the case of a new applicant, no licence will be issued. Once further test results are known a decision will be made as to whether to issue a licence. In the event that the analytical laboratory result is below the level of quantification or consistent with declared medication then the person who has had their licence revoked may have their revocation rescinded by the Legal and Licensing Services Manager if he / she is satisfied that it is appropriate to do so.

If the analytical laboratory result is positive, the revocation of licence will not be rescinded. A licence will not be issued to a new applicant.



LICENSING COMMITTEE

Monday, 20 July 2020

LICENSING SERVICES RESPONSE TO COVID-19

EXECUTIVE SUMMARY

This report provides an overview of the actions taken by Licensing Services to assist licensees during the Covid-19 global pandemic and now, with the easing of lockdown, in the recovery phase.

| | |
|-------------------------------|------|
| Is the report Open or Exempt? | Open |
| | |

| | |
|------------------------|-----|
| Wards Affected: | All |
|------------------------|-----|

| | |
|------------------------|---|
| Cabinet Member: | Councillor Mary Rudd, Cabinet Member with responsibility for Community Health |
|------------------------|---|

| | |
|----------------------------|--|
| Supporting Officer: | Chris Bing Legal and Licensing Services Manager 01394 444408 chris.bing@east Suffolk.gov.uk |
|----------------------------|--|

1 INTRODUCTION

- 1.1 Covid-19 has adversely impacted the licensing trade and the nighttime economy in East Suffolk, like the rest of the UK, in a very significant way.
- 1.2 Pubs and restaurants were closed for 15 weeks, between 23 March 2020 and 4 July 2020.
- 1.3 Latitude, one of the biggest music festivals in the country, which usually brings 40,000 thousand people to Henham Park near Southwold over 4 days in July, was cancelled.
- 1.4 There has been little business for the taxi trade when schools have been closed, people have not been socialising outside their home and there has been limited shopping in stores.
- 1.5 East Suffolk Licensing has played, and is continuing to play, an important role in supporting licensed premises and licensed drivers, to maintain and, where possible and practical, keep running their businesses in incredibly challenging circumstances.

2 LICENSED PREMISES

- 2.1 On the evening of 20 March 2020, in his televised address to the nation, the Prime Minister requested that licensed premises close to prevent the spread of the coronavirus (Covid-19). On 23 March 2020, Regulations came into force requiring licensed premises to close.
- 2.2 The steps Licensing Services have taken to support licensees of licensed premises during lockdown have included:
 - Permitting licensees to defer paying their Premises Licence fee until 30 September 2020.
 - Advising premises which wished to remain open as to how to lawfully provide takeaways and off sales.
 - Issuing credits for the application fees for Temporary Event Notices for events which were unable to go ahead.
 - Signposting licensees to central government grants and hardship funds which they may be eligible to claim.
- 2.3 Licensed premises were able to reopen from 6am on 4 July 2020. Licensed premises are being encouraged to make greater use of outside space to be able to accommodate and serve a sufficiently large customer base, to make running the business viable, whilst upholding social distancing “1 metre plus” requirements for public health reasons.
- 2.4 To this end, under the Business and Planning Bill which is currently going through Parliament, district councils are to be given powers to issue Pavement Licences, to permit the placement of stalls on highway adjacent to premises to sell or serve food or drink and to permit tables and chairs on the highway for the consumption of food and drink. The only statutory consultee on a Pavement Licence is the Highway Authority (Suffolk County Council). However, in addition to the sole statutory consultee, ESC will also be consulting with Town/Parish Councils, district Councillors, Environmental Health and the Police on Pavement Licences. The 3rd reading of the Business and Planning Bill is due to take place in Parliament on 20 July 2020. Once the Bill becomes an Act, and the Act becomes law, there will be a 7 days statutory consultation period and then a further 7 days for a Pavement Licence application to be determined. Therefore, the parliamentary timetable and statutory requirements are such that East

Suffolk Council's Licensing Services is likely to be able to start issuing our first Pavement Licences from late July 2020/early August 2020.

- 2.5 The Council's Asset Management team is also issuing land licences, wherever possible, to licensed premises wishing to use ESC land for tables and chairs for their customers. These land licences are also being issued by ESC at no charge to licensees.

3 TAXIS

- 3.1 The steps Licensing Services have taken to support hackney carriage and private hire drivers during lockdown have included:
- Permitting licensed drivers to spread the cost of their annual licence upon renewal by granting 3 month licences rather than just 12 month licences.
 - Sourcing alternative garages for mechanical inspections, when garages closed because of Covid 19, to enable vehicles to remain licensed.
 - Agreeing to drivers installing protective screens in their vehicles to protect both drivers and the travelling public and so give the public greater confidence to continue to use taxis during lockdown.
 - Signposting licensees to central government grants and hardship funds which they may be eligible to claim.

4 COMMUNITY EVENTS

- 4.1 On 8 July 2020, Licensing Services rolled out a scheme to facilitate Town Councils and community groups in holding fairs and markets over the summer.
- 4.2 With some towns in East Suffolk currently subject to street trading regulations, the council will be viewing street markets, fairs and other related commercial events as community events, which do not require a street trading licence or consent.
- 4.3 The council wants to encourage outdoor events, during the summer months. Therefore, organisers will only be asked to complete an application form for a Single Event Trading Licence (which can cover multiple days), to provide food safety information on what each stall will be selling and Public Liability insurance for the event. Unlike applications for street trading licences, there will be no consultation required with a range of third parties and there will be no fee. Licensing Services has also committed to turning these applications around within 24 hours.

5 FUTURE OUTLOOK

- 5.1 The Licensing Service's key objective now is to help the licensed trade to recover from the damaging impact of Covid-19. The licensing trade and hospitality sector make a significant contribution to the local economy, especially the night-time economy in East Suffolk. They are also an important part of the tourist offer in East Suffolk.
- 5.2 In January 2020, East Suffolk Council had issued 1072 Premises Licences and Club Premises Certificates. Indeed, East Suffolk Council was bucking the national trend of closures with a small but steady growth in the number of licensed premises since 1 April 2019. On 1 July 2020, there were only 2 fewer licensed premises than there had been on 1 January 2020. In this period, 9 Premises Licences were surrendered, 2

Premises Licences lapsed and 1 was revoked. There was also one fewer Club Premises Certificate issued. However, 11 new Premises Licences were granted.

- 5.3 The full impact of Covid-19 on licensed premises may not yet be truly reflected in the statistics, with some premises choosing to maintain their Premises Licence but defer the payment of their annual licence fee until September 2020. Therefore, the figures reported to the October 2020 Licensing Committee should give a clearer picture as to the impact of Covid-19 on the number of licensed premises in East Suffolk.
- 5.4 In the short term, as a result of the impact of Covid-19, the total number of licensed premises may fall further but the challenge for the Licensing Service, and the wider Council, is to try to use whatever leverage it has and support it can give to reduce the number of closures to the absolute minimum by supporting existing licensees, whilst encouraging those looking to start up new businesses in the licensed trade and hospitality sector.
- 5.5 In terms of the impact of Covid-19 on taxis, there is already a clearly identifiable trend, with a reduction in the number of licensed vehicles and licensed drivers, both Hackney Carriage and Private Hire during lockdown. However, we have not been accepting new applications from prospective drivers during lockdown and this, coupled with the granting of 3 month licences, is likely to mean the figures reported to the October 2020 Licensing Committee, will give a truer reflection of the impact of Covid 19 on the taxi trade.

East Suffolk Council issued licences

| | 1 April 2019 | 1 January 2020 | 1 July 2020 |
|--|--------------|----------------|-------------|
| Licensed premises (including social clubs) | 1059 | 1072 | 1070 |
| Hackney carriage vehicles | - | 136 | 108 |
| Hackney Carriage/Private Hire drivers | - | 237 | 223 |
| Private hire vehicles | - | 349 | 301 |
| Private hire drivers | - | 352 | 341 |

- 5.6 The challenges faced by the licensing trade and hospitality sector to recover from Covid-19 are significant and should not be underestimated. However, the Council's Licensing Services working together with other service areas from across the council and in partnership with other responsible authorities, with licensees and with local

residents, will seek to continue to address these challenges, rebuild and, in time, return to growing, East Suffolk's licensed trade and hospitality sector.

6 HOW DOES THIS RELATE TO THE EAST SUFFOLK BUSINESS PLAN?

- 6.1 Licensing plays an important role in the building of a strong, sustainable, and dynamic local economy and in ensuring East Suffolk remains a safe place for our communities.

7 REASON FOR RECOMMENDATION

- 7.1 To note and consider Licensing Services response to Covid-19 to support licensees.

RECOMMENDATIONS

That the report be noted

APPENDICES - None

BACKGROUND PAPERS – None



LICENSING COMMITTEE

Monday, 20 July 2020

ISSUED LICENCES IN EAST SUFFOLK AND AN OVERVIEW OF THE WORK OF THE LICENSING SUB-COMMITTEES IN 2020

EXECUTIVE SUMMARY

This report provides an overview of the current number and type of licences issued by East Suffolk Council. The report also summarises the applications received and the work of the Licensing Sub-Committees since the beginning of 2020.

| | |
|-------------------------------|------|
| Is the report Open or Exempt? | Open |
| | |

| | |
|------------------------|-----|
| Wards Affected: | All |
|------------------------|-----|

| | |
|------------------------|---|
| Cabinet Member: | Councillor Mary Rudd, Cabinet Member with responsibility for Community Health |
|------------------------|---|

| | |
|----------------------------|--|
| Supporting Officer: | Chris Bing Legal and Licensing Services Manager 01394 444408 chris.bing@eastssuffolk.gov.uk |
|----------------------------|--|

1 SUMMARY OF LICENSING ACT 2003 APPLICATIONS RECEIVED

1.1 The following is a summary of the outcome of Licensing Act 2003 Sub-Committee hearings and applications mediated or determined under the delegated authority since 1st January 2020.

1.2 Applications determined

| Premises And Type of Application | Address | Hearing / Mediated | Date of Hearing | Outcome And Date of Issue |
|---|--|--|---|--|
| Smashing Wines NEW PREM2184 | Unit B14, Base Business Park, Rendlesham, Woodbridge, IP12 2TZ | N/A | N/A | Issued 7.1.20 |
| Beach Lodge NEW WITHDRAWN | Brudenell Street, Aldeburgh, IP15 5BU | N/A Objections Were received before the application was withdrawn | N/A | Cons end – 13.1.20 Discovered on the 30.12.19 that it had been incorrectly advertised. Withdrawn on 7.1.20 |
| Village Rise Supermarket APPEAL WPREM2397 | Weston Road, Lowestoft, NR32 4PT | Yes | 17.10.19 | Revoked 17.10.19 Appealed 31.10.19 Consent Order Agreed 12.5.20 - Licence reissued with conditions |
| Smashing Wines SURRENDER PREM2127 | 12 Quay Street Woodbridge, IP12 1BX | N/A | N/A | Surrendered 15.1.20 |
| Railway Tavern VARIATION PREM2163 | 25 Albion Street, Saxmundham, IP17 1BN | Yes | 5.3.20 | Variation was granted at hearing Issued - 6.3.20 |
| Alba Chiara Restaurant NEW PREM2185 | 91-93 Undercliff Road West, Felixstowe, IP11 2AF | N/A | N/A | Issued – 17.2.20 |
| Saltwater Fish & Chips NEW PREM2186 | Forum Centre, Sea Road, Felixstowe, IP11 2QN | N/A | N/A | Issued – 3.3.20 |
| Harbour Inn SUMMARY REVIEW WPREM2447 | Royal Thoroughfare, Lowestoft, NR33 0AG | YES | Interim – 7.2.20 Review - 2.3.20 | Conditions added in line with interim steps. Issued – 31.3.20 |

| Premises And Type of Application | Address | Hearing / Mediated | Date of Hearing | Outcome And Date of Issue |
|---|---|-----------------------|---|---|
| International Food NEW WPREM2540 | 6 Upper Olland Street, Bungay, NR35 1BG | objections | N/A | Issued 12.3.20 Objections were withdrawn. |
| Trinity Ales SURRENDER WPREM2478 | Wild Hearts Cottage, Church Road, Gisleham, NR33 8DS | N/A | N/A | Surrendered 5.2.20 |
| Thoroughfare Deli SURRENDER WPREM2087 | 4 Thoroughfare, Halesworth, IP19 8AH | N/A | N/A | Surrendered 5.2.20 |
| Tudor Rose SUMMARY REVIEW WPREM2392 REVOKED | 233 St Peters Street, Lowestoft, NR32 2LT | Yes | Interim 26.2.20 Review 23.3.20 | Interim – suspension of licence Review – Revoked 15.4.20 - Licence revoked following end of appeal period. |
| Nexus Trading Ltd Convenience Store NEW WPREM2539 | 20 Pinbush Road, Lowestoft, NR33 7NL | N/A | N/A | Issued – 10.3.20 |
| Lowestoft Seafront (First Light Festival) NEW WPREM2541 | Lowestoft South Beach and Kensington Gardens, Lowestoft | N/A | N/A | Issued – 9.4.20 |
| Royal British Legion Club Felixstowe SURRENDER CLUB0035 | Goyfield House, 39 Mill Lane, Felixstowe, IP11 2NL | N/A | N/A | Surrendered 27.2.20 |
| Prandium of Southwold SURRENDER WPREM2499 | 35 High Street, Southwold, IP18 6AB | N/A | N/A | Surrendered 27.2.20 |
| Woodbridge Community Hall MINOR VARIATION PREM0234 - cancelled NEW - No alcohol one PREM2187 | Station Road, Woodbridge, IP12 4AU | N/A | N/A | Issued – 19.2.20 PREM0234 was cancelled and new licence for no alcohol was created PREM2187 |
| Long Shop Museum NEW PREM2188 | Main Street, Leiston, IP16 4ES | N/A | N/A | Issued 16.4.20 |
| Common Room SURRENDER PREM2044 | 22 Bridge Street, Framlingham, IP13 9AH | N/A | N/A | Surrendered 30.4.20 |
| St Felix School SURRENDER WPREM2355 | Halesworth Road, Reydon, IP18 6SD | N/A | N/A | Surrendered 11.5.20 |

| Premises And Type of Application | Address | Hearing / Mediated | Date of Hearing | Outcome And Date of Issue |
|---|--|--|--------------------|---|
| Kesgrave Hall NEW PREM2190 | Hall Road, Kesgrave, IP5 2PU | Yes – objections from residents | 2.6.20 | Cons end 5.5.20 Hearing 2.6.20 Licence granted |
| Kesgrave Hall SURRENDER PREM0602 | Hall Road, Kesgrave, IP5 2PU | N/A | N/A | To be surrendered if new licence granted |
| The Bull Hotel VARIATION PREM0178 | 2 Market Hill, Woodbridge, IP12 4LR | N/A | N/A | Issued 19.5.20 |
| The Green Man Inn NEW PREM2189 | Woodbridge Road, Tunstall, IP12 2JE | N/A | N/A | Issued 26.5.20 |
| House of Wolfe LICENCE LAPSED WPREM2322 | 1 Commercial Road, Lowestoft, NR32 2TD | N/A | N/A | Company dissolved 2.7.19 Lapsed on lalpac 5.5.20 |
| Enjoy Takeaway LICENCE LAPSED WPREM2488 | 10 Denmark Road, Lowestoft, NR32 2EQ | N/A | N/A | Company dissolved 2.4.19 Lapsed on lalpac 5.5.20 |
| Martley Hall Building B11 NEW | Framlingham Road, Easton Woodbridge, IP13 0EN | N/A | N/A | Issued |
| Morrisons VARIATION WPREM2254 | 18 Tower Road, Gisleham, Lowestoft, NR33 7NG | | | Cons end 20.7.20 |
| Beach Lodge NEW | Brudenell Street, Aldeburgh, IP15 5BU | | | Cons end – 27.7.20 |

1.3 Current applications

Appeals to Magistrates' Court:

The decision of the Licensing Sub-Committee on the Village Rise review application had been appealed to Ipswich Magistrate's Court. A Consent Order was agreed, and the revocation was cancelled, conditions were added to the existing licence and it was re-issued.

28 day consultation period has passed and application is still to be determined:

There are currently no applications waiting to go to a hearing.

In consultation:

Variation of Premises Licence – Morrisons, 18 Tower Road, Gisleham, Lowestoft, NR33 7NG.
Consultation period ends on the 20th of July 2020.

2. NUMBER OF PREMISES LICENCES WITHIN EAST SUFFOLK

- 2.1 On the 1st of July 2020 there were 1003 Premises Licences and 852 of these included alcohol on the licence.
- 2.2 There were 68 Club Premises Licences.
- 2.3 11 new Premises Licences were granted between the 1st of January and the 1st July 2020.
- 2.4 9 Premises Licences were surrendered.
- 2.5 2 Premises Licences lapsed due to the Premises Licence Holder (Company) going into liquidation, and the Licensing Authority were not informed within 28 days.
- 2.6 1 Premises Licence was revoked following a summary review.
- 2.7 In summary, on the 1st of January 2020 there were 1072 Premises Licences and Club Certificates, and on the 1st of July 2020 there were 1070.

3. GAMBLING PREMISES LICENCES FOR EAST SUFFOLK

- 3.1 No new applications and or surrender/cancellations have been received since 1st of January 2020 for any type of Gambling Premises licence.
- 3.2 On the 1st of July 2020 there were 40 Gambling Premises Licences in total.
- 3.3 There are 9 Bingo Premises Licences
- 3.4 There are 11 Adult Gaming Centre Premises Licences.
- 3.5 There is 1 Family Entertainment Centre Premises Licence.
- 3.6 There is 1 Betting Premises Licence (in respect of a track)
- 3.7 There are 18 Betting Premises licences (in respect of a premises other than a track).

4. TAXI LICENCES

- 4.1 On 1 July 2020, East Suffolk Council licensed:
- 4.2 108 hackney carriage vehicles and 223 hackney carriage/private drivers
- 4.3 301 private hire vehicles and 341 private hire drivers
- 4.4 75 private hire operators
- 4.5 In 2020 so far, there has been 1 Sub-Committee hearing regarding a taxi licence in the North of the district.

5 HOW DOES THIS RELATE TO THE EAST SUFFOLK BUSINESS PLAN?

- 5.1 Licensing plays an important role in the building of a strong, sustainable, and dynamic local economy and in ensuring East Suffolk remains a safe place for our communities.

6 REASON FOR RECOMMENDATION

- 6.1 To consider a snapshot of the currently issued licences in East Suffolk as a starting point for analysing trends in demand for different types of licence over time and to review the work of the Licensing Sub-Committees in 2019.

RECOMMENDATION

That the report be noted.

APPENDICES - None

BACKGROUND PAPERS - None

| Date | Type | Available From |
|-------------|-------------|-----------------------|
| | | |