

REPORT OF THE EXECUTIVE DIRECTOR FOR CITY DEVELOPMENT

LICENSING AND REGULATORY COMMITTEE – 6 JUNE 2022

INTRODUCTION OF THE TAXIS AND PRIVATE HIRE VEHICLES (SAFEGUARDING AND ROAD SAFETY) ACT 2022

1.0 Purpose of the Report

- 1.1 To advise the Committee about new legislation introduced under the Taxis and Private Hire Vehicles (Safeguarding and Road Safety) Act 2022, (“the Act”), in relation to taxis, (ie. hackney carriage vehicles), and private hire vehicles for purposes relating to the safeguarding of passengers and road safety. The Report also informs the Committee about why the legislation was introduced, how the Licensing Section currently operates in respect of recording information and any changes that will be required as a result of the introduction of the Act. A copy of the Act is set out in the Appendix.

2.0 Description of Decision (Recommendation)

- 2.1 The Committee is requested to note the contents of this Report.

3.0 Background

- 3.1 In 2018 a national database was created by the National Anti-Fraud Network, (“NAFN”), to allow licensing authorities to record details of applicants and existing licensed taxi and private hire drivers who had been refused the renewal of their licence, or who have had their licence revoked. This database is known as the NR3.
- 3.2 The Local Government Association, (“the LGA”), had originally commissioned NAFN to develop and host the NR3. NAFN is a shared service, hosted by Tameside Council, which supports public authorities to tackle fraud and share intelligence. NAFN worked with the LGA and a user group comprised of licensing officers from a number of local authorities to develop the NR3 register.
- 3.3 This was an important step to tackling the issue of individuals making applications to different licensing authorities following a refusal, or revocation by another licensing authority. Historically, if drivers did not disclose information about a previous revocation, or refusal of a driver’s licence there was often no way for a licensing authority to find out about this information, with them having to rely upon the honesty of the individual to disclose. This means that vital intelligence about an applicant’s past behaviour was potentially being missed and an individual might be able to be granted a new licence in another area, despite having their licence taken away elsewhere, or having been refused the grant of a licence.
- 3.4 Currently, 90% of local authorities are members of NAFN and have access to the NR3 database for the purpose of checking driver licence applications, or recording pertinent information regarding the refusal, or revocation of a licence. However, not all local authorities are members of NAFN. Prior to the Act, there has been no requirement to record information about refusals, or revocations. Use of the NR3 has been voluntary. It is important to highlight that information about suspensions is not presently recorded on the NR3.

- 3.5 The Council is a member of NAFN. Licensing Officers routinely check the NR3 database upon receipt of all new applications for a hackney carriage, or private hire vehicle driver's licence. It is also checked when considering renewals and when the possible suspension, or revocation of a licence is considered under Section 61 of the Local Government (Miscellaneous Provisions) Act 1976, ("the 1976 Act"). Additionally, we ensure that information relating to any applicant, or driver that has been refused, or revoked is updated onto the NR3 database.
- 3.6 In addition to the NR3, the Council also shares information with neighbouring licensing authorities regarding revocations, refusals and suspensions of drivers' licences. This is done under the Regional Register of Revocations, Refusals and Suspensions, ("the Regional Register"). Those licensing authorities which share information about applicants and existing licensed drivers are, :-
- (a) Sunderland City Council;
 - (b) Darlington Council;
 - (c) Durham County Council;
 - (d) Gateshead Council;
 - (e) Hartlepool Council;
 - (f) Middlesbrough Council;
 - (g) Newcastle City Council;
 - (h) North Tyneside Council;
 - (i) Northumberland County Council;
 - (j) Redcar and Cleveland Council;
 - (k) South Tyneside Council; and
 - (l) Stockton Council
- 3.7 Members will note that the unlike the NR3, the Regional Register also includes information about suspensions. When a decision is taken to refuse, suspend, or revoke a licence to drive hackney carriage vehicles, or private hire vehicles the issued outcome letter explains the existence of the NR3 and the Regional Register and what information is shared.
- 3.8 The Act received Royal Assent on 31st March, 2022. It introduces the following new duties on licensing authorities, which includes the Council, which are designed to promote the overriding objectives of public safety and the sharing to information to ensure that only "fit and proper persons" are licensed to drive licensed vehicles, :-
- (a) Under Section 2 of the Act a statutory duty is introduced for licensing authorities to record information in a database concerning licensing decisions that have been taken by a licensing authority. The following decisions in respect of a driver's licence are in issue, :-
 - (i) Refusal to grant;
 - (ii) Refusal to renew;
 - (iii) Suspension; and
 - (iv) Revocation.

For the avoidance of any doubt, these decisions can be taken at Officer, or Committee level. The following information is required to be recorded on the

database within five working days commencing with the day on which the licensing authority notifies the person of its decision, :-

- (a) The person's full name, date of birth, home address and national insurance number;
- (b) If the person holds a licence to drive a motor vehicle granted under Part 3 of the Road Traffic Act 1988, the driver number shown on the licence;
- (c) If the person holds a Northern Ireland driving licence, the driver number shown on the licence;
- (d) If the person holds a Community licence, the number of the licence;
- (e) The name of the licensing authority and details of how further information about the decision can be obtained from the authority;
- (f) The date on which the decision was made and, (if different), the date on which it takes effect;
- (g) Confirmation of the decision that was made;
- (h) The date on which any subsequent change to the decision was made and, (if different), the date on which it takes effect;
- (i) If the decision is to suspend the person's driver's licence for a period, the date on which the suspension is to end; and
- (j) Such other information as the Secretary of State may by Regulations made by statutory instrument prescribe.

From the Council's perspective, the recording duties under Section 2 commences when the person receives a copy of their respective decision letter, as opposed to when they are told orally about the decision, such as occurs at Meetings at the Licensing and Regulatory Committee. There is a duty to ensure that the entry is kept up-to-date, ie. due to any appeals that may be presented to the Magistrates' Court and the Crown Court.

At the date of this Report it is not yet known if the NR3 is to be used as the database, or if a new database is to be established. The date when these recording duties are to come into effect are yet to be confirmed. Nothing is prescribed in the Act about decisions reached in the past. It is assumed that decisions taken as from the commencement date will only need to be added to the database, as opposed to decisions reached prior to the commencement date.

- (b) Under Section 3 of the Act before making a decision on an application for a driver's licence, or the renewal of a driver's licence the licensing authority making the decision, ("the decision-making authority"), is subject to a statutory duty to undertake a search of the database for entries relating to the person in issue. If an entry has been made in the database by a recording authority the decision-making authority is required to make a request in writing to the recording authority for "*relevant information*" on which they relied when making the decision which is recorded in the database. "*Relevant information*", as to a person, is defined under the Act as meaning "*information indicating that the person*" has, (underlined emphasis added), :-
 - Committed a sexual offence, (regardless of whether the person was charged with, prosecuted for, or convicted of the offence);
 - Harassed another person;

- Caused physical, or psychological harm to another person, (regardless of whether the person was charged with, prosecuted for, or convicted of the offence);
- Committed an offence that involves a risk of causing physical, or psychological harm to another person;
- Committed an offence under Section 165, 168, or 170 of the Equality Act 2010, (regardless of whether the person was charged with, prosecuted for, or convicted of the offence);
- Did anything that constitutes unlawful discrimination, or victimisation against another person for the purposes of the Equality Act 2010;
- Threatened, abused, or insulted another person;
- Poses a risk to road safety while driving; or
- May be unsuitable to hold a driver's licence for other reasons related to the safeguarding of passengers, or road safety.

Whilst there is no specific reference to dishonesty issues in the above list, dishonesty may come into play under the last provision.

The decision-making authority who receives this information "*must have regard to the information when making*" their decision in relation to the person. The recording authority must provide the requested information to the decision-making authority within 20 working days starting on the day the request is received. The following points are highlighted as to the Council, :-

- (a) The information received from the recording authority will be considered by Licensing Officers in the first instance. If the case is put before the Committee for consideration, then the received information will be shared with the Committee in the Report that is prepared;
- (b) Whilst "*relevant information*" is defined in the Act it remains to be seen whether decision letters are shared following requests to share information. It may be best practice for such decision letters to be shared, since these letters should set out the issues of concern which were taken into account when a decision was made;
- (c) Given the 20 working days period in which to respond to information requests, there may be a slight delay in how long it takes to process applications;
- (d) The duty under Section 3 does not seem to be engaged when issues arise in relation to a licensed driver which are considered under Section 61 of the 1976 Act, ie. when consideration is being given to the possible suspension, or revocation of a licence. Section 3(1) of the Act states : "*Before making a decision on a person's application for, or for the renewal of, a driver's licence, a licensing authority....must search the licensing information database for entries relating to the person*". It seems contrary to the intention of the Act, (ie. the safeguarding of passengers and road safety), that Section 3 is not engaged when consideration is being given to the possible suspension, or revocation of a licence, but is only engaged when an initial application for a driver's licence, or a renewal is in issue. Given the importance of public protection and safety, it is the intention of Licensing Officers to also seek information under Section 3 when consideration is being given to the possible suspension and revocation of a driver's licence. However, this will only be done in "routine cases", ie. information will not be sought under Section 3 if it appears that "*the interest of public safety require*

the suspension or revocation of the licence to have immediate effect” under Section 61 (2B) of the 1976 Act. Having to wait a maximum of 20 days to receive information is incompatible with the need to suspend, or revoke with immediate effect; and

- (e) The date when the duties under Section 3 are to come into effect are yet to be confirmed.

- (c) Under Section 5 of the Act there is a new statutory duty on English licensing authorities, (“the first authority”), to report concerns about drivers licensed by other licensing authorities, (“the second authority”, ie. English, Scottish, or Welsh licensing authorities, or equivalent), when the first authority becomes aware of “*relevant information*” about a person who has driven in their area, but they are licensed by the second authority, ie. a duty to report concerns about drivers licensed in other areas. Only the second authority can make licensing decisions regarding the driver’s licence, not the first authority. In real terms, the Council already shares information of this type. Section 5 now puts this on a statutory footing.

Section 5 is engaged where, :-

- (i) The first authority is aware of “*relevant information*” about a person who has driven in their area under a driver’s licence, or relevant licence granted by the second authority;
- (ii) The “*relevant information*” relates to the driver’s conduct in the first authority’s area; and
- (iii) The first authority is satisfied, (ie. on the balance of probabilities), that, had it granted the driver’s licence, it would have considered suspending, or revoking it in reliance of the “*relevant information*”.

Where Section 5 is engaged the first authority is required to provide to the second authority the following information before the end of 10 working days starting with the day on which the first authority became aware of the “*relevant information*” relating to the licensed driver, :-

- (a) The “*relevant information*”; and
- (b) Any other information which is relevant to identifying the person.

The duties under Section 5 commenced on 31st May, 2022.

- (d) Section 6 of the Act leads on from Section 5, ie. a statutory duty as regards reported concerns about drivers licensed in other areas. In summary, Section 6 sets out what is to be done when an English licensing authority receives information in accordance with Section 5, as explained above. The second authority, (who has received information from the first authority), has 20 working days from the date it becomes aware of the information from the first authority to, :-
 - (i) Consider whether it is to suspend, or revoke the driver’s licence in reliance of the information received from the first authority, plus “*any other information available to*” it. Upon receipt of information from the first authority it is assumed that the second authority will undertake an appropriate investigation of its own, with the catalyst for this being the information

received from the first authority. This may involve contact being made with Licensing Officers from the first authority to discuss matters and the licensed driver being interviewed. The scope of the investigation will be determined by the case facts. Consequently, other persons may be interviewed too, such as passengers;

(ii) To inform the first authority in writing about whether, or not it has suspended, or revoked, or intends to suspend, or revoke the licensed driver's licence; and

(iii) The reasons for that action, or the intended action.

The duties under Section 6 also commenced on 31st May, 2022. Where Sections 5 and 6 are engaged it may well be the case that the second authority also undertakes a check of the database to see if there is any further information available about the licensed driver. Again, it has not been uncommon for issues and concerns to be raised with the Council's Licensing Section by passengers using licensed vehicles in the City of Sunderland which are licensed by neighbouring authorities. This has occurred when passengers have thought that the Council was responsible for the licensing of the driver in issue. When matters have been reported to the Licensing Section, such information has been shared with the licensed driver's correct licensing authority, if known.

If a decision is taken by the second authority to suspend, or a revoke a licensed driver as a result of information received from a first authority, the second authority will then need to comply with its duty under Section 2 of the Act to record information about licensing decisions in the database.

On 23rd May, 2022 the Department for Transport published statutory guidance about Sections 5 and 6 of the Act.

4.0 Current Position

- 4.1 As detailed above, the Council is a member of NAFN and routinely consults the NR3, plus the Regional Register. Having had experience consulting and updating these resources will help Licensing Officers once the new database is introduced. It is imperative that licensing authorities add information to the new database, with it being updated as required.
- 4.2 The Licensing Section will review its working practices in line with the time frames required under the Act to ensure compliance with the new duties. As appropriate, training will be provided to staff to ensure that they understand the new duties introduced under the Act.
- 4.3 When future Reports are prepared concerning applications for licences to drive hackney carriage vehicles and private hire vehicles, plus the consideration of the possible renewal, suspension, or revocation of a licence, the Reports will confirm what provisions of the Act have been applied.
- 4.4 Information about the Act will be shared with the trade as part of the Licensing Section's issued newsletters. Decision letters will also be subject to minor

amendment to confirm that information is being recorded on the database established under the Act.

5.0 Reason for the Decision

5.1 No decision is required to be taken by the Committee. This Report has been prepared to provide the Committee with an update about the important developments regarding the new duties introduced under the Act relating to the safeguarding of passengers and road safety.

6.0 Alternative Options

6.1 None submitted.

7.0 Relevant Considerations / Consultation

7.1 None submitted.

8.0 Appearance before Committee

8.1 Not applicable.

9.0 Appendices

9.1 Taxi and Private Hire Vehicles (Safeguarding and Road Safety) Act 2022.

10.0 Background Papers

10.1 None.