

The Legislative Reform (Provision of Information etc. relating to disabilities) Order 2022

Explanatory Document by The Department for Transport

Chapter one: Introduction

1.1. This explanatory document is laid before Parliament in accordance with section 14 of the Legislative and Regulatory Reform Act 2006 (“the 2006 Act”) together with the draft of The Legislative Reform (Provision of Information, etc. Relating to Disabilities) Order 2022 which we propose to make under section 1 of that Act. The purpose of the draft Order is to amend the Road Traffic Act 1988 to remove a burden and allow registered healthcare professionals, as well as registered medical practitioners, to provide the Driver and Vehicle Licensing Agency (DVLA) with information to assess fitness to drive.

1.2. This explanatory document contains information for the Delegated Powers and Regulatory Reform Committee and the Business, Energy and Industrial Strategy Committee.

Chapter two: Background

2.1. DVLA determines fitness to drive for holders of and applicants for driving licences in Great Britain. DVLA administers that statutory function on behalf of the Secretary of State for Transport, who is ultimately responsible for making the decision as to whether a driving licence holder or applicant meets the minimum medical standards for driving.

2.2. The medical licensing system is based on a ‘self-notification’ process and all drivers and licence applicants have a legal duty to notify DVLA of a medical condition that may affect safe driving. In some cases, DVLA will be able to make a licensing decision from the information received from the driver or applicant. However, in many cases, further information may be required.

2.3. DVLA may gather evidence about health conditions from the driver, their doctors, and in some circumstances, commission driving assessments from other specialists. The largest source of expert medical information is collected, with a driver’s consent, via specially designed questionnaires completed by doctors from information held on medical records. Section 94 of the Road Traffic Act 1988 requires that a driver may only provide authorisation for a registered medical practitioner (that is a doctor registered and licensed to practise by the General Medical Council (GMC)) to provide information to DVLA. The authorisation provides the driver’s consent for the doctor to provide the information. Section 94 also provides that only doctors can be paid for completing questionnaires. In practical terms this means that DVLA can only accept medical questionnaires completed by a doctor.

2.4. The current law does not reflect current clinical practice in some areas, where other healthcare professionals may be primarily responsible for managing certain medical conditions. Amending the wording of the legislation to allow a driver or licence applicant to authorise a “*registered healthcare professional*” (which would include a doctor) to provide medical information will ensure that information is provided directly by the most appropriate healthcare professional. This addition means that a driver who knows that their care is mainly provided by another healthcare professional can give their consent to that other healthcare professional to provide information which they hold. DVLA will, in any event, continue to ask for details of the driver’s GP.

2.5. Amending the legislation to provide that where an authorisation has been given, another registered healthcare professional can provide information that will remove a burden which currently rests solely with doctors and will provide greater flexibility to individual GP surgeries and hospital teams. The change will not require the doctor to ask another healthcare professional to provide the information, but will allow another healthcare professional to provide information where the GP surgery or hospital team considers it appropriate to do so. The aim of the measure is to allow the most appropriate healthcare professional to provide the information which they have; in some cases that will remain the doctor but in other cases GP surgeries and hospital teams will be able to change their current practice and allow a different healthcare professional to provide the information.

2.6. The power to make this order is section 1 of the 2006 Act - Power to Remove or Reduce Burdens. The order seeks to reduce the burden on doctors. Currently section 94 of the Road Traffic Act 1988 requires interaction with a doctor when considering the driver's medical condition. But a doctor may not be primarily responsible for the management of certain medical conditions. In some cases, medical conditions are managed by other healthcare professionals, for example, diabetes specialist nurses, who would not meet the current criteria as set out in legislation, although they have direct information about the driver's disability.

2.7. Removal of this burden requires amendments to Section 94 of the Road Traffic Act 1988. The following provision would require amendment to allow drivers and licence applicants to authorise other healthcare professionals to provide medical information to DVLA and for DVLA to pay that healthcare professional for completing the questionnaire.

2.8. Section 94(6)(b) currently allows drivers to authorise "*any registered medical practitioner who may at any time have given medical advice or attention to the applicant or licence holder concerned to release to the Secretary of State any information which he may have, or which may be available to him, with respect to the question whether, and if so to what extent, the applicant or licence holder concerned may be suffering, or may at any time have suffered, from a relevant or prospective disability.*"

2.9. This order will substitute "*registered healthcare professional*" for "*registered medical practitioner*". It will also remove the requirement that the medical professional referred to in the authorisation must have at some time given medical advice or attention to the driver or applicant. The accuracy of the medical records will be crucial in completing the questionnaire, and any registered professional with the appropriate access to those records could do this.

2.10. The Order will define a "*registered healthcare professional*" to mean a person regulated by, and on the register of, one of the following bodies: The General Chiropractic Council; General Medical Council; General Optical Council; General Osteopathic Council; the Nursing and Midwifery Council, or the Health and Care Professions Council.

2.11. New subsections 94(6A) and (6B) will allow a registered healthcare professional who is authorised to give a copy of that authorisation to another registered healthcare professional where they consider that another healthcare professional has information which is relevant to the question set out at section 94(6)(b). On receipt of that authorisation, the other healthcare professional is authorised to provide the information to the Secretary of State. This will relieve a burden on healthcare professionals by allowing them to pass on the request for information where they determine another healthcare professional is better able to provide the information.

2.12. The provision of information is only in respect of the question set out at section 94(6)(b); that is whether the driver is suffering, or may have suffered, from a relevant or prospective disability. The fact that the registered healthcare professional is on the register of their regulator, coupled with the fact that they have information relevant to that question, will provide sufficient assurance that the healthcare professional has both the knowledge and experience to provide the information requested by DVLA. For complicated conditions, where treatment is given by a healthcare professional who is not a doctor, their level of knowledge and experience may put them in a better place than a GP to provide detailed information to DVLA based on their direct knowledge of the driver.

2.13. The objective is to provide greater efficiency in relation to the completion of the medical questionnaires that DVLA requires to decide whether an individual with medical condition(s) meets the appropriate health standards for driving. The intention is not to replace the role of doctors in the medical licensing process but to ensure that the most appropriate healthcare

professional provides the information and to allow that information to be provided more efficiently. Where an authorisation has been provided which names a doctor, it will then be up to individual GP practices and hospital teams as to which healthcare professional in practice completes a questionnaire requesting information sent to them by DVLA.

2.14. The proposal also omits the requirement that the person authorised has themselves given medical advice or attention to the driver. The current provision requires drivers to authorise any registered medical practitioners who may at any time have given medical advice or attention. This arguably means that a driver should authorise all doctors who have given them medical advice or attention, potentially stretching back over a number of years. A driver with a long-term condition which has become more acute is required to inform DVLA in accordance with section 94(1)(b). The proposal seeks to target the appropriate person to answer the question set out in section 94(6)(b), and to remove the burden on both the driver and the authorised doctor who may not be able to answer that question, because the advice and assistance they gave was historic, and they may no longer hold any medical records for the driver. The driver's current GP, or other healthcare professional, will still be able to provide relevant information, however, because the information will be available to them on the basis of the patient's current medical records. It is likely that the healthcare professional authorised will have provided recent medical advice or attention (and therefore be able to provide information as to the question set out in section 94(6)(b)), and this accords with current practice.

2.15. The proposal will ensure that information is provided by the most appropriate healthcare professional. The aim is to reduce the administrative burden on doctors and increase operational flexibility for individual GP surgeries, which aligns with the Department of Health and Social Care's (DHSC) aim to "Reduce GP Bureaucracy" and also to improve turnaround times for driving licence applications. This measure will benefit both professional drivers who are self-employed and those employed by the road haulage industry. Businesses may also benefit from a faster turnaround providing more certainty and allowing more effective planning.

2.16. Section 94(9) currently provides that DVLA may "*defray any fees or other reasonable expenses of a registered medical practitioner in connection with...*". This order will substitute "*registered healthcare professional*" for "*registered medical practitioner*" in subsection 9.

2.17. This order will not impose any new burdens.

Chapter three: Consultation Summary

3.1. The Department for Transport carried out a consultation on the proposal between 8 November 2021 and 6 December 2021 in accordance with section 13 of the Legislative and Regulatory Reform Act 2006. Details of the consultation and the responses received can be found below.

3.2. The consultation provided an explanation of the proposed measure to change the Road Traffic Act 1988, as amended, to enable healthcare professionals other than registered medical practitioners to complete DVLA medical questionnaires and the Legislative Reform Order process. The consultation invited written responses from those working within the healthcare professions and their representatives, as well as other interested parties.

3.3. The consultation document was published on GOV.UK and can be found at:

<https://www.gov.uk/government/consultations/amending-the-road-traffic-act-1988-to-allow-registered-healthcare-professionals-to-complete-dvla-medical-questionnaires>

3.4. A list of all organisations that responded to the consultation can be found at Appendix 1.

3.5. A list of all of the consultation questions can be found at Appendix 2.

3.6. A full summary of the consultation responses and Government responses can be found at Annex D.

3.7. A total of 411 responses were received. Not all respondents commented on all the questions in the consultation, instead commenting on those where they had a particular interest. While some responses were not fully complete or were on matters not relevant to the proposal, all responses were scrutinised and any relevant information or opinions were extracted and featured within the analysis. Nearly 82% of the respondents strongly agreed or agreed with the proposal.

3.8. There were 229 consultation responses received from members of the public and 182 responses from representative bodies within the health sector, medical and healthcare professionals and road safety groups.

3.9. The majority of respondents in favour of the proposal agreed that it would provide greater flexibility and would allow the GP surgery or hospital team to determine who would be the most appropriate healthcare professional to provide the DVLA with medical information. Many respondents thought the proposal would reduce bureaucracy and improve efficiency, resulting in quicker licensing decisions by the DVLA for some drivers.

3.10. Several of the respondents said that they disagreed with the proposal, conveying their concerns that other healthcare professionals would not have the skills and knowledge to complete DVLA medical questionnaires, and that doctor oversight would still be needed. The issue of professional indemnity insurance was also raised as this does not fall under NHS arrangements, it was felt that any fee being offered to a registered healthcare professional to complete DVLA medical questionnaires, would need to cover the cost of indemnity.

Government response

3.11. This proposal adds flexibility to the current system of gathering information on medical conditions for driver licensing purposes and improves efficiency. It does not compel any GP surgery or hospital team to give a copy of the authorisation to another healthcare professional. The proposal aims to ensure that the right person with the appropriate level of knowledge of the driver or applicant and the appropriate level of experience, provides DVLA with the information needed to assess fitness to drive. In some cases, this will be a doctor and in others it will be another healthcare professional who has in practice been treating the driver or applicant.

3.12. The proposed new system is designed to allow GP surgeries and hospital teams the flexibility to decide where these requests for information should be directed. In some cases, the Government accepts that there may be a need for oversight at doctor level, but this should be decided by doctors and healthcare professionals themselves, rather than forced by legislation. The system will also allow healthcare professionals who are not doctors to determine that the request is better responded to by a doctor.

3.13. The government does not propose to make any change to the new system in relation to professional indemnity insurance. The principle on which fees are reimbursed is set out in section 94(9) of the RTA 1988, and nothing in this proposal changes the basis of that fee; the fee provisions are being extended to healthcare professionals.

3.14. The Government published its response on 12 May 2022 which is available at:

[Amending the Road Traffic Act 1988 to allow registered healthcare professionals to complete DVLA medical questionnaires - GOV.UK \(www.gov.uk\)](#)

3.15. After considering the responses, the Government has decided to proceed with the LRO to change the wording in the legislation to allow other registered healthcare professionals as well as doctors to be able to provide information to DVLA.

Chapter four: The Order

4.1. The Order is made under Section 1 of the Legislative and Regulatory Reform Act (LRRRA) 2006

Compliance with section 3(2) of the 2006 Act – Preconditions

4.2. The Secretary of State considers that the conditions in section 3(2) (where relevant) are satisfied for the following reasons.

Non legislative solutions

4.3. There is no non-legislative option for achieving the aim of widening the pool of medical professionals that can complete DVLA's medical questionnaires as the Road Traffic Act requires that this can only be done by doctors.

4.4. If the legislation is not changed to allow a wider pool of registered healthcare professionals to complete questionnaires, DVLA will still need to obtain medical information, but it will only be doctors who are authorised to provide this information.

4.5. With DVLA's medical caseload increasing year on year, the impact of "do nothing" would be most acutely felt by doctors as they will be asked to complete an ever-greater number of questionnaires requesting information each year. GPs' surgeries and hospital teams would be denied the flexibility to administer their resources effectively to manage the conflicting priorities in clinical practice. The indirect time-saving benefits of having other registered healthcare professionals who can complete the questionnaires would be lost.

4.6. Drivers and businesses are also likely to be impacted by potential delays to the decision on whether the driver can be licensed to drive.

Proportionality

4.7. The effect and impact of the provision is proportionate to DVLA's statutory obligation to ensure that all drivers meet the minimum specified standards of fitness to drive. The objective of the provision is to improve the existing process and remove the current burden on doctors in providing crucial medical information to DVLA. The Secretary of State therefore considers the draft Order to be proportionate to the policy objective.

Fair Balance

4.8. The provision proposes a more efficient, streamlined and targeted approach to the existing process/policy and does not impact on the interests of any person or the public interest in determining fitness to drive to any greater extent that already exists in the medical licensing process.

Necessary Protection

4.9. The provision does not remove any necessary protection. All licensed drivers and driving licence applicants must currently meet the minimum health standards to drive and that legal obligation is not impacted or affected by the provision.

Rights and Freedoms

4.10. The provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise; the provision will not alter the existing obligation that DVLA, acting on behalf of the Secretary of State, must refuse a licence if the licence holder or licence applicants does not meet the minimum health standards for driving.

Constitutional Significance

4.11. The Secretary of State does not consider the provision to be of constitutional significance as it does not fundamentally alter the current legislative status quo, given current practices of doctors having to collate information from other healthcare professionals. The provision streamlines existing practices and seeks to ensure that essential information as to someone's capacity to continue driving is provided by the person best able to provide it.

Other Ministerial duties under the Legislative and Regulatory Reform Act 2006

Removal of burdens

4.12. The LRO proposes a reduction in the overall burdens imposed by Section 94 of the Road Traffic Act 1988 by reducing administrative inconvenience for doctors, and removing an obstacle to efficiency as follows:

- allowing doctors, the flexibility to determine that another registered healthcare professional is better able to address a driver's medical condition will free up their time to focus on vital patient care;
- removing the requirement that information be provided only by a doctor. Modern medical practice sometimes means that drivers will be seen more frequently by other healthcare professionals, who may have better and more up to date information available to them more readily. Whilst doctors are able to respond to requests for information now on the basis of information they receive from those healthcare professionals, the measure removes the burden of seeking information from another healthcare professional and interpreting that information themselves where they are aware that they are not the most appropriate respondent. The healthcare professional may decide either to collate information from their records or a range of healthcare professionals, respond with the information they have available to them, or ask another healthcare professional to provide the information directly;
- removing the requirement that the medical professional referred to in the authorisation must have at some time given medical advice or attention to the applicant. This relieves a burden in two ways. Firstly, it removes a burden on the driver to consider whether that professional has in fact provided medical advice and attention. It allows a healthcare practitioner who has not in fact provided medical advice and attention to the driver (perhaps because their previous healthcare professional left the practice or retired) to provide information from the information available to them, such as the driver's medical notes. Secondly, it improves the clarity of the provision, by removing the implication that the driver must nominate all medical professionals who have given them medical advice or attention about specific conditions (see paragraph 2.14 above). This will enable DVLA and drivers to concentrate on the most appropriate person to provide information about the driver's current condition;

- increase efficiencies by allowing the most appropriate registered healthcare professional to provide information directly to DVLA, enabling DVLA to make a licensing decision more promptly. It is anticipated that the ability for other healthcare professionals to provide information will speed up the process in two ways. Firstly, drivers will be able to name, as well as their doctor, the other healthcare professionals who are able to provide information. In that way, DVLA will be able to directly approach those healthcare professionals. In addition, doctors will no longer have to wait for responses from healthcare professionals, potentially collate those responses and interpret them and respond to DVLA themselves; if they consider another healthcare professional has information and can themselves provide answers, they can direct the request for information to that person;
- removing the burden from doctors without creating any additional burden within the NHS, as other healthcare professionals already assist doctors in completing DVLA medical questionnaires, but are not themselves authorised to provide information directly;

4.13. The Secretary of State has considered whether the provisions would in fact lead to further delay, with requests for information being passed around healthcare professionals. However, it does not consider that risk is likely to arise. It is considered more likely that the change will lead to a more streamlined approach where the right person is able to provide information which they have directly to DVLA, quicker. Given the support for the measure shown in the consultation responses, the Secretary of State considers that the change is a small change which will improve the overall system of determining whether drivers are able to continue driving. The Secretary of State will, of course, keep the change under review.

Parliamentary Procedure

4.14. The draft Order makes relatively small and straightforward changes to the existing regulatory framework and is a measure to remove an unnecessary burden. The change is not constitutionally significant and is not controversial (although some consultees have argued against it). The measure will remove an unnecessary burden on GPs' surgeries and hospital teams, and, where they have been authorised, doctors will have the choice as to whether they or another healthcare professional is better placed to provide information to the Secretary of State.

4.15. To make rapid progress the Secretary of State for Transport, the Rt Hon Grant Shapps MP, recommends that the affirmative resolution procedure is used (as set out in Section 17 of the Legislative and Regulatory Reform Act 2006).

4.16. Bringing the Order in to effect swiftly will address pressure on doctors, the NHS and the freight industry in the exceptional circumstances caused by the pandemic. The pandemic and vaccine programme has meant non-essential services have been scaled back, and this has had an impact on those with a medical condition where further information is needed from a medical professional to renew their driving entitlement. The Order is also measure 31 of the packages of measures announced by the Government in 2021 to address the haulier shortage and to keep supply chains moving.

4.17. Allowing other medical professionals to provide information to DVLA will alleviate the pressure on the NHS and doctors. In turn, DVLA will be able to deal with driving licence applications more quickly.

European Convention on Human Rights

4.18. The Secretary of State for Transport, the Rt Hon Grant Shapps MP, has made the following statement regarding Human Rights:

“In my view the provisions of the draft Order are compatible with the European Convention on human rights.”

Territorial Extent and Territorial Application

4.19. This entire instrument applies to England and Wales and Scotland. It does not relate to Northern Ireland, as the Road Traffic Act 1988 applies to Great Britain only.

4.20. In the United Kingdom, a driving licence is the official document which conveys entitlement to drive. Driver licensing is administered in England, Scotland and Wales by DVLA. Driver licensing is a devolved matter in Northern Ireland and is administered by the Driver & Vehicle Agency (DVA).

4.21. Officials in Northern Ireland have been informed of this proposal.

Impact

4.22. There is no impact on business, charities or voluntary bodies, or the public sector as a result of this draft Order. Given the impact of the draft Order is limited, a De Minimis Assessment has been prepared for this instrument. A De Minimis Assessment is submitted with this memorandum and is published alongside the Consultation Document.

Contact

Keya Lianne Nicholas

Strategy, Policy and Communications Directorate, Driver and Vehicle Licensing Agency

Email - keya.nicholas@dvla.gov.uk