

Regulatory Committee

9.30am, Tuesday, 24 October 2017

Production of Criminal Records Checks for Taxi and Private Hire Car Driver's Licence Applicants Born Outwith the UK

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Executive Summary

This report provides an update following the introduction of the policy on Criminal Records Checks for Taxi and Private Hire Car Driver's Licence applicants born outwith the UK.

The report highlights some of the issues identified during the operation of the policy and clarifies some of the anomalies that have been created.

It is proposed that a minor change to the policy should be made in respect of any applicant who immigrated to the UK with their parents and has resided here since childhood, beyond which no changes are recommended to the existing application process.

Production of Criminal Records Checks for Taxi and Private Hire Car Driver's Licence Applicants Born Outwith the UK

1. Recommendations

- 1.1 It is recommended that Regulatory Committee:
 - 1.1.1 notes the content of this report;
 - 1.1.2 agrees the minor changes set out in paragraph 3.14 below in respect of applicants who were children, thus considered to be below the age of criminal responsibility in Scotland i.e. 12, when they entered the UK; and
 - 1.1.3 notes there will be no further changes to the existing policy.

2. Background

- 2.1 In terms of Section 9 of the Civic Government (Scotland) Act 1982 ('the 1982 Act'), the City of Edinburgh Council, as the licensing authority, has previously resolved to require taxis and private hire cars, and taxi and private hire car drivers, to be licensed under the provisions of Sections 10 and 13 of the 1982 Act.
- 2.2 Having determined to license the taxi and private hire trade the council has a duty to ensure that a licence is not granted to a person who is not 'fit and proper' and thus to provide members of the public with confidence in the suitability of the applicants.
- 2.3 In terms of Section 3 of the 1982 Act, a licensing authority must consider an application within three months of it having been made and, subject to provisions, reach a final decision on the application within the period of six months beginning with the end of the three month period i.e. nine months.
- 2.4 As part of this process Police Scotland provides information on an applicant's criminal history including previous convictions and the applicant's suitability. The system has a number of limitations in that Police Scotland has access to criminal records held within the United Kingdom, but has limited or no access to criminal records from outwith the United Kingdom. Consequently, licence applications from persons who have recently immigrated to the UK, or those who have previously resided in other countries, may not be subject to adequate checks in respect of applicable convictions.

- 2.5 The 1982 Act gives the Police 28 days from the date on which they were notified of an application in which to make any objections or representations regarding an application. Any representation by the Police, in respect of previous convictions, must thereafter take account of the 2015 Order. This period may be extended at the discretion of the licensing authority.
- 2.6 Information concerning both an applicant's immigration status and/or previous non-UK criminal history is frequently not immediately available within the 28 day period for objections and representations permitted to the police in terms of the legislation. Often, for the reasons outlined at paragraph 2.4 above, information regarding previous convictions or confirmation that the applicant has not been previously convicted may not be accessible at all.
- 2.7 UK citizens are therefore subject to more stringent checks and held to a higher account than applicants born outwith the UK.

Declaration of Previous Convictions

- 2.8 Applicants for both taxi drivers' licences and private hire car drivers' licences are required by law to provide details of any previous convictions, subject to the provisions of the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2015 ('the 2015 Order'). Where an applicant has no convictions they are required to declare that is the case. Applicants are subject to a criminal records check, carried out by Police Scotland, however this check may not reveal details of any convictions outwith the UK.
- 2.9 The Rehabilitation of Offenders Act 1974 makes certain provisions relating to convictions that are considered "spent". However, the previous Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 excluded these provisions in respect of proceedings relating to the grant, renewal or cancellation of a taxi driver's licence or private hire car driver's licence, and this means that spent convictions may be considered alongside unspent convictions in such licence applications.
- 2.10 The 2015 Order introduced a category of "protected convictions". These are spent convictions which are either not listed in the schedules to the 2015 Order, or are listed but do not meet certain requirements as to the age of the offender and the number of years since the conviction.
- 2.11 As a consequence of the 2015 Order, which came into effect on 10 September 2015, previous provisions which allowed all spent convictions to be considered automatically have now been restricted so that protected convictions can now only be referred to if the Committee goes through a preliminary determination process and finds that justice cannot be done without hearing the details of the convictions.
- 2.12 At the Regulatory Committee on 25 September 2016 the committee considered:
- a) the findings of the 'Casey Report' - the Independent Inquiry commissioned in October 2014 by the UK Government into the operation of Rotherham Metropolitan Borough Council. A section of the report dealt with the risks

to vulnerable adults from weaknesses in how taxis and private hire cars were licensed; and

- b) the review carried out by Council Officers and the issues identified in the Casey Report that related directly to the licensing of taxis and private hire cars in Edinburgh.

2.13 The main concerns within the 'Casey Report' included:

- a) Weak or inadequate policies. The policies in that Council were outdated and not regularly reviewed to ensure they protected the public.
- b) Undue influence from the licensed car hire trade and others seeking to influence determination of application.
- c) Poor complaint handling.
- d) Cases would only be considered for suspension if met criminal standard of evidence as opposed to balance of probabilities
- e) Public perception that hire vehicles 'not safe to use'
- f) Staff within licensing did not understand Child Sexual Exploitation

2.14 A review carried out by council officers took the opportunity to consider how this Council deals with licence applications from sexual or violent offenders, or where allegations of that type are made against existing licence holders. The review found that:

- a) If an applicant has lived in Scotland throughout his/her lifetime, the Scottish Criminal Records Bureau and Police Scotland were able to provide any relevant offending history and records of any complaints about violence.
- b) If the applicant was born outwith the UK and was not previously a resident, it was impossible for the Council or Police Scotland to check the history of these applicants to the same level as that which would be applied to a UK citizen.

2.15 To test any weakness in the vetting system, an analysis of requests for suspension on the most serious grounds for drivers of hire vehicles, was carried out on the three years of available data (going back to April 2012). The data showed that 33 suspension requests were received during that three year period, relating to 29 drivers. Sixteen of these requests related to sexual or other violent crimes. The information available makes it difficult to distinguish between UK Citizens and residents who may have moved to the UK and subsequently obtained citizenship. However, the information did show that in at least 50% of the suspension requests the drivers are not UK citizens. This reinforced the concerns that had been previously identified regarding the Council's limited capacity to check such an applicant's offending history prior to any grant of a licence.

2.16 At the Regulatory Committee on [19 September 2016](#) the committee agreed to introduce a new policy to address some of the previously identified concerns, which would take effect from 1 November 2016, whereby applicants in respect of taxi drivers' and private hire car drivers' licences would be required to provide the records and information of any previous non-UK criminal convictions, to enable assessment in respect.

- 2.17 The adoption of the new policy mirrors those already adopted by other local authorities e.g. Glasgow City Council and other statutory bodies e.g. the Security Industry Authority.

3. Main report

- 3.1 The new policy requiring production of Criminal Records Checks for Taxi and PHC Driver's Licence applicants born outwith the UK was commenced on 1 December 2016.
- 3.2 The policy requires that anyone applying for the grant or renewal of Taxi or Private Hire Driver's Licence is required to provide evidence of criminal history:
- a) **If they were born in the UK** but have lived in any other country for six months or more they must provide a Criminal Record Check from those countries; or
 - b) **If they were born outwith the UK** they must provide a Criminal Record Check from their country of origin. They must also provide a Criminal Record Check from any other country in which they have resided for six months or more.

In all cases, the Criminal Record Checks provided must have been obtained within the six months immediately prior to submitting an application, must be translated into English and be verified by the relevant UK based Embassy or High Commission.

- 3.3 Immediately after the introduction of the new policy a number of applications were accepted from applicants without the relevant information and/or the relevant Criminal Record Check. These applications were subsequently refused.
- 3.4 In order to improve the application process where an applicant has been unable to produce the relevant Criminal Record Check, the application is now treated as incomplete, and therefore will not be processed. In addition applications are not accepted from an applicant who cannot demonstrate the right to work in the UK.
- 3.5 The vast majority of applicants have been able to produce the relevant documentation at time of application or have been provided with advice or guidance and subsequently managed to obtain the relevant documentation.
- 3.6 A very small number of new applicants or existing licence holders have approached the Licensing Service as they have been unable or unwilling to obtain relevant documentation. A number of countries including Sudan, Iraq, Somalia and Syria do not provide Criminal Record Checks and others including Iran apparently will not provide Criminal Record Checks for refugees. In the absence of these checks applicants have subsequently had their applications refused or not considered.
- 3.7 Applicants who have entered the UK with refugee/asylum status are unable to provide Criminal Record Checks from their country of origin and it is not possible to carry out the same level of same scrutiny as would be carried out for other

applicants. In the absence of these checks applicants have subsequently had their applications refused or not considered.

- 3.8 A small number of applicants were born outwith the UK, immigrated to the UK with their parents and have resided here since childhood. Applicants in these circumstances who were able to demonstrate this and show that they were considered to be below the age of criminal responsibility in Scotland i.e. 12, subsequently had their applications approved. It is recommended that this practical implementation is accepted to the policy
- 3.9 Since 1 December 2016 fewer than 30 applicants of the existing 5,500 drivers or new applicants have had their applications refused or not considered.
- 3.10 A number of enquiries/complaints have been received regarding the perception that the current policy is unfair and discriminates against applicants who are unable to obtain relevant documentation, and prevents them from earning a living. Whilst this might be true for a small number of individuals, this has to be set against the needs of the users, and in particular the fundamental duty of the licensing authority to protect public safety.
- 3.11 Taxi and PHC drivers operate in a unique environment where they are unaccompanied in a car while providing transport for passengers, many of whom are vulnerable. Passengers have an expectation that drivers will have been suitably checked by the local authority and it is essential that public confidence in the licensing regime is maintained.
- 3.12 The Casey Report into Rotherham highlighted that passengers should be at the centre of a licensing authority's taxi and Private Hire licensing policies and processes, stating:
- 'The safety of the public should be the uppermost concern of any licensing and enforcement regime: when determining policy, setting standards and deciding how they will be enforced'*
- and*
- 'Accordingly, there is no area where this is more important than in the application of the 'fit and proper person' test'.*
- 3.13 The current policy in relation to criminal conviction and immigration checks is designed to assist the Council to discharge its duties in relation to public safety. It provides applicants, passengers and council officers with a clearly defined framework against which a decision not to process or refuse an application can be made.
- 3.14 It is recommended that the Council accepts that where an applicant was born outwith the UK, immigrated to the UK with their parents and has resided here since childhood and is able to demonstrate this, but is unable to provide criminal record documentation relating to the period when they were a child under the age considered to be below the age of criminal responsibility in Scotland i.e. 12, that this is accepted as the equivalent offending history of UK nationals and would not normally be considered by the authority. Beyond that it is recommended that no

changes are made to the existing application process outlined in Appendix 1, whereby applicants will be required to provide evidence of their right to work in the UK, and provide the records and information required to enable assessment in respect of any previous non-UK criminal convictions.

4. Measures of success

- 4.1 That taxi and private hire car drivers licensed by the Council comply with relevant legislation.
- 4.2 Members of the public are confident that appropriate checks are carried out as part of the application process for taxi and private hire car driver licences in respect of criminal convictions and that public confidence in the licensing regime is maintained.

5. Financial impact

- 5.1 There is no direct financial impact on the Council. All costs are contained within existing budgets.

6. Risk, policy, compliance and governance impact

- 6.1 A Licensing Authority has a duty to ensure that a licence is not granted to a person who is not 'fit and proper', and that they have a right to work and remain in the UK.
- 6.2 Continued reliance on Police Scotland providing criminal background checks in respect of foreign nationals or persons born outwith the UK increases the risk of granting a licence to an applicant who is not a fit and proper person.
- 6.3 The policy will prevent applicants who are unable to provide criminal convictions checks from their country of original local authority from working in the Taxi and Private Hire trade.
- 6.4 There is a risk that an applicant may challenge this policy in the courts. It is believed that the need to protect the overall public safety mitigates against that risk.

7. Equalities impact

- 7.1 An Equalities and Rights Impact Assessment was previously prepared and completed.
- 7.2 There is no adverse impact on the public sector equalities duty. The introduction of the policy provide greater clarity and transparency for future applicants and assisted the council meet it responsibilities in relation to it statutory duties. The

policy is specifically designed to ensure that safety of passengers including those vulnerable user is prioritised and safeguarded.

8. Sustainability impact

8.1 There is no environmental impact arising from the contents of this report.

9. Consultation and engagement

9.1 Council officers and the previous Convenor of the Regulatory Committee briefed representatives of the trade on the measures contained within the previous committee report during two liaison meetings in February and July 2016.

10. Background reading/external references

- 10.1 [Independent Inquiry into Child Sexual Exploitation in Rotherham \(1997 - 2013\)](#)
- 10.2 [Licensing of Hire Vehicles: Protecting Vulnerable Passengers Regulatory Committee Report 25 September 2016](#)
- 10.3 [Production of Criminal Records and evidence of Right to Work in the UK by Taxi and PHC Drivers licence applicants Regulatory Committee Report 19 September 2016](#)
- 10.4 [Criminal records checks for overseas applicants - Publications - GOV.UK](#)
- 10.5 [Countries A to F: applying for a criminal records check for someone from overseas](#)
- 10.6 [Countries G to P: applying for a criminal records check for someone from overseas](#)
- 10.7 [Countries Q to Z: applying for a criminal records check for someone from overseas](#)

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11. Appendices

- 1 Guidance Notes - Application Process Licensing Action Plan and Workstreams – updated September 2017

Taxi & Private Hire Car Driver Licence

Guidance Notes

These guidance notes have been provided to help you complete the application form. All questions on the application form must be answered. If a question is irrelevant please mark it “not applicable” unless otherwise stated.

Applicants should submit their application in person to allow a photograph to be taken. The photograph will be added to any licence documents for identification purposes. You are required to submit a valid driving licence entitling you to drive in the UK when lodging your application.

Before lodging an application for a Taxi or Private Hire Car driver licence please ensure that you have read the following guidance.

PART 1 – APPLICATION TYPE AND CHECKLIST

You must indicate which application you are applying for:

- **Taxi driver** - a Taxi driver licence allows you to drive a Taxi or a Private Hire Car. If you wish to operate a vehicle as a Taxi you will need to submit a separate licence application for a ‘Taxi Vehicle’ licence in addition to the drivers licence
- **Private Hire Car driver** – a Private Hire Car driver’s licence allows you to drive Private Hire Cars only. If you wish to operate a vehicle as a Private Hire Car, you will need to submit a separate licence application for a ‘Private Hire Car’ licence in addition to the drivers licence

Checklist

Any application submitted without a fully completed checklist i.e. application form, evidence of entitlement to work, a paper or photo card driving licence, completed criminal convictions list and the relevant fee, will be deemed to be incomplete and will be returned.

- **Paper or Photo card driving licence** - your original photo card driving licence must be produced with your application which will be checked and returned to you at the time of lodging your application. We cannot accept an application unless you have held a licence entitling you to drive in the UK for a continuous period of 12 months prior to making your application. Your driving licence must also show your current home address before your application can be accepted.

- **Application fee** - Payment is due at the time of submitting an application. No refund of application fees will be made for applications which are subsequently refused or withdrawn.

PART 2 – APPLICANT DETAILS

All questions in part 2 must be fully completed, you must provide your:

- full name
- any maiden or previous name
- current address
- place and date of birth
- contact telephone numbers
- current email address
- any previous addresses during the last three years

any maiden or previous name, place and date of birth must be provided as the Council is required to copy your application to Police Scotland who require this information to carry out appropriate vetting checks.

Previous convictions checks

Anyone applying for a licence, who was born or has been resident outside the UK for 6 months or more, must produce documentation in relation to criminal record checks

- If you were born outwith the United Kingdom, a criminal record check must be provided from your country of origin. You must also provide a criminal record check from any other country in which you have been resident for six months or more.
- If you were born in the United Kingdom, but have lived in any other country or countries for six months or more, you must provide a criminal record check from those countries.

In all cases, the criminal record checks provided must have been obtained within the six months prior to you submitting your application for a licence, must be translated into English and must be verified by the relevant UK-based Embassy/High Commission.

Information on how to obtain criminal record checks overseas can be found on the GOV.UK web site:

www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants

Please contact the licensing team on 0131 529 4208, if your Country of origin does not have a process for obtaining criminal record certificates

PART 3 – EVIDENCE OF ENTITLEMENT TO WORK IN THE UK

From **1 December 2016**, the Council is under a legal duty to check that **any** applicant for a **taxi or private hire car driver licence** is not disqualified due

to their immigration status from holding such a licence. A licence cannot be granted without these checks being completed.

From this date all applicants for new and renewal taxi or private hire car driver licences are required to produce original documents demonstrating that they have the **right to work in the UK**.

Licensing staff must check the validity of the **original documents** in the **presence of the applicant before the application can be processed** and a licence issued at a later date.

You will be invited to attend an interview with a licensing officer where evidence of your entitlement to work in the United Kingdom must be provided.

The following documents should be provided when you attend for interview:

- If you are a British citizen you should provide your current passport. If you do not have a passport, you should provide **original documents** from List A on the attached 'Right to Work checklist' of acceptable documents.
- If you are an EU national, you should provide your current passport.
- If you are neither a British citizen nor an EU national, you must provide **original documents** from List B on the attached 'Right to Work checklist' of acceptable documents.

You must produce original documents which will be checked in your presence by licensing staff, copied and returned to you.

PART 4 – PREVIOUS LICENCES HELD

Please provide details of any previous Taxi driver, Private Hire Car driver and any other licences you have held with this or any other local authority as well as any other licences you may have had.

You should also provide details of any licences that have been refused or suspended.

If you have applied for and been refused a licence for a private hire car driver or taxi driver licence by the City of Edinburgh Council within the past 12 months, you cannot apply for the same kind of licence within one year of the date of refusal, unless there has been a material change in circumstances.

You should also provide details of any medical condition that you feel could affect your ability to drive a taxi or private hire car.

PART 5 – DRIVING LICENCE DETAILS

An application cannot be accepted unless you have held a licence entitling you to drive in the UK for a continuous period of 12 months prior to making your application. Your

paper driving licence and/or photo card driving licence must also show your current home address. All the information requested from your driving licence must be entered onto the application form.

All applicants are required to pass a medical examination prior to the grant of a licence. The Council has generally adopted the Group 2 standards for Fitness to Drive and will require you to submit to regular medical examinations as appropriate. A copy of the report from the medical advisor will be retained for the duration of the licence. Details of Group 2 standards for Fitness to Drive can be found on the GOV.UK web site at:

www.gov.uk/guidance/assessing-fitness-to-drive

PART 6 - ACTIVITY

Please indicate whether you are self employed or whether you will be employed by someone else to drive their Taxi or Private Hire Car.

If you are self employed you will have registered with HMRC and received a 10 Digit Unique Tax Reference (UTR). You must provide your 10 digit UTR on the application form.

If you are not self employed please provide the information requested regarding the persons employing you to operate as a taxi or a private hire car driver.

PART 7 – DETAILS OF CONVICTIONS

Subject to the Rehabilitation of Offenders Act 1974, as amended by the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 and the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2015. All convictions must be declared, even if they are otherwise “spent” for the purposes of the Rehabilitation of Offenders Act 1974, unless they are “protected” convictions.

PART 8 – APPLICANTS DECLARATION

Before signing and dating the application form, please ensure that:

- The application form has been completed fully and all information provided is accurate and complete.
- You have read the Council’s data protection statement. **By signing and lodging this application form you are deemed to have given consent for your personal data to be held and processed for the stated purpose.**
- You have read the copy of the Council’s Standard Licensing Conditions provided with this application form and that that you understand that any Taxi or Private Hire Car drivers licence granted will be subject to these conditions

ADDITIONAL INFORMATION

TOPOGRAPHICAL TEST – TAXI DRIVER LICENCE APPLICATIONS ONLY

Anyone applying for a new taxi driver's licence is required to sit and pass a 'knowledge test' prior to any licence being granted. You may wish to read the guidance notes in relation to the knowledge test which are available from our website at www.edinburgh.gov.uk/licensing. You can apply to sit the topographical test before you submit your application.

PROCESSING YOUR APPLICATION

When your application is submitted together with the relevant fee, all required documentation, checked and validated, a copy of your application will be sent to Police Scotland who will carry out their own investigations before reporting back to the licensing Section.

The Civic Government (Scotland) Act 1982 prohibits the Council from making a decision on your application until a minimum of 28 days has passed from the date a valid application is submitted. During this time any person can object to your application.

The majority of applications with no representations or objections will take 4-6 weeks to process, however applications that are to be considered by the Licensing Sub-Committee will take longer to determine. The Council has a maximum of 9 months from the date a valid application is submitted within which to make its decision.

If an objection or representation is received in relation to your application you will be sent a copy of the representation or objection. Your application and any letter of objection or representation will then be referred to the next available Licensing Sub-Committee for consideration. You will be written to and invited to attend the meeting and given an opportunity to address the committee before a decision is made.

CONDITIONS OF LICENCE

The current Taxi and Private Hire Car Conditions for drivers is available from our web site and a copy will be issued to you with any new licence granted. A breach of a condition of licence is a criminal offence, therefore you should have a thorough understanding of these conditions and they should be retained as they form part of your licence.

DURATION OF LICENCE

Applications for the grant of a licence are generally granted for a period of one year, whilst applications to renew an existing licence are normally granted for one or three years.

ISSUE OF LICENCE

Once you are in receipt of your licence and ID badge, you must ensure that they are not altered, or defaced in any way. They should be kept clean and legible and must not be lent to or used by any other person. If your licence or ID badge is lost damaged or becomes illegible, you must obtain a replacement from the city of Edinburgh Council on payment of the appropriate fee.

REGISTER OF APPLICATIONS

The City of Edinburgh Council will keep a register of applications in which it will enter the date of receipt, the name and address of the applicant, the decision, the issue date and duration of the licence, and a note of any suspension, or surrender of the licence. This information is available for inspection by any member of the public.