

Regulatory Committee

9.30am, Thursday, 2 December 2021

Criminal Records Checks for Taxi and Private Hire Driver Licence Applicants Born Outwith the United Kingdom

Executive/routine
Wards All
Council Commitments

1. Recommendations

- 1.1 It is recommended that the Regulatory Committee notes the contents of this report and the revised process for considering fitness of taxi and Private Hire drivers.

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Criminal Records Checks for Taxi and Private Hire Driver Licence Applicants Born Outwith the United Kingdom

2. Executive Summary

- 2.1 This report provides an update for Committee on the process for checking the previous convictions of applicants who wish to be licensed as taxi or Private Hire drivers born, or who have resided, outwith the United Kingdom.
- 2.2 As a result of the COVID-19 pandemic, it is proposed that a minor change to the application of the policy should be made for existing taxi and Private Hire drivers if they are unable to obtain the relevant criminal convictions check.

3. Background

- 3.1 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 ('PHC'), and taxi and PHC drivers, to be licensed under the provisions of Sections 10 and 13 of the 1982 Act.
- 3.2 Having determined to license the taxi and PHC 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 licensed drivers.
- 3.3 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).
- 3.4 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 UK but has limited or no access to criminal records from outwith the UK. 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.

- 3.5 UK citizens are therefore subject to more stringent checks and held to a higher standard than applicants born outwith the UK.

Declaration of Previous Convictions

- 3.6 Applicants for both taxi driver and PHC driver 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') which created a category of 'protected convictions'. Where an applicant has no convictions, they are required to declare that this is the case. Applicants are subject to a criminal records check, carried out by Police Scotland, however this check will not reveal details of any convictions outwith the UK.
- 3.7 The Rehabilitation of Offenders Act 1974 makes certain provisions relating to convictions that are considered 'spent'. However, the 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 PHC driver's licence, and this means that spent convictions which are not protected convictions, may be considered alongside unspent convictions in such licence applications.
- 3.8 At the Regulatory Committee meeting on [19 September 2016](#), the committee agreed to introduce a new policy which would take effect from 1 November 2016, to address some previously identified concerns. Applicants for taxi driver and PHC driver licences would be required to provide the records and information of any previous non-UK criminal convictions, to enable assessment. This policy was updated by the Committee on [24 October 2017](#) and [6 February 2018](#).

4. Main report

- 4.1 The Licensing Service has continued to operate throughout the COVID-19 pandemic, but this has not been without difficulties for both the service and for applicants. Some drivers have been unable to obtain conviction documentation from their country of origin and this has been particularly problematic for existing licensed drivers.
- 4.2 The policy requires that anyone applying for the grant or renewal of a taxi or PHC driver's licence is required to provide evidence of the following:
- 4.2.1 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 that country; or
 - 4.2.2 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; or
 - 4.2.3 If they were born outwith the UK, immigrated to the UK with their parents and have resided in the UK since childhood and are able to demonstrate this, but are 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 of offending history of UK nationals and would not normally be considered by the authority.

- 4.3 In all cases, the Criminal Record Checks provided must have been obtained within the six months immediately prior to submitting an application, translated into English and verified by the relevant UK based Embassy or High Commission.
- 4.4 The current policy in relation to Criminal Record 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 whether or not to process an application can be made.
- 4.5 A number of enquiries/complaints have been received regarding the perception that the current policy is unfair and discriminates against existing applicants who are unable to obtain relevant documentation, and that this prevents them from earning a living. There has been some ambiguity about whether renewal applications can be granted in those circumstances.
- 4.6 In light of the above, it is proposed to clarify the application of the policy so that unless an existing licence holder has been out of the country for a period of six months or more since their last licence renewal, new certification will not be required on the renewal of an existing licence. Where an existing licence holder has been unable to provide evidence after being out of the UK for six months or more these cases will be referred to committee for determination. Where a previous licence holder has failed to renew their licence and allowed it to lapse, they shall be treated as a new applicant.
- 4.7 Where an applicant for a new licence has been unable to produce the relevant Criminal Record Check, the application will be treated as incomplete, and therefore will not be processed. Whilst noting this concern that this means some applicants will be unable to progress an application, which has been raised by a small number of individuals, it is considered that this has to be balanced against the needs of the users, and in particular the fundamental duty of the licensing authority to protect public safety. Taxi and PHC drivers operate in a unique environment where they are unaccompanied in a car while providing transport for passengers, some 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 authority is maintained.
- 4.8 It is not recommended that any further changes are made to the application process, whereby applicants will be required to obtain 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. Appendix 1 sets out the policy for noting.

5. Next Steps

- 5.1 The taxi trade will be notified that this process has been approved, application forms and the Council website will be updated.

6. Financial impact

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

7. Stakeholder/Community Impact

- 7.1 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.
- 7.2 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.
- 7.3 The policy will prevent applicants who are unable to provide criminal convictions checks from their country of origin's local authority from working in the taxi and PHC trade.
- 7.4 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.
- 7.5 The contents and recommendations neither contribute to, nor detract from, the delivery of the three Public Sector Equality Duties.
- 7.6 The contents and recommendations described in the report do not deliver any outcomes relating to the ten areas of rights, nor do they enhance or infringe them.
- 7.7 There is no environmental impact arising from the contents of this report.

8. Background reading/external references

- 8.1 [Production of Criminal Records and Evidence of Right to Work in the UK by Taxi & PHC Driver's Licence Applicants](#) – Regulatory Committee on 19 September 2016
- 8.2 [Production of Criminal Records Checks for Taxi and Private Hire Car Driver's Licence Applicants Born Outwith the UK](#) – Regulatory Committee on 24 October 2017
- 8.3 [Criminal Records Checks for Taxi and Private Hire Car Driver's Licence Applicants Born Outwith the United Kingdom](#) – Regulatory Committee on 6 February 2018

9. Appendices

- 9.1 Appendix 1 – Policy on Criminal Records Checks

Policy on Criminal Records Checks

1. 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 on the application form, even if they are otherwise “spent” for the purposes of the Rehabilitation of Offenders Act 1974, unless they are “protected” convictions.
2. In addition, anyone applying for the grant of a taxi or PHC driver’s licence is required to provide evidence of the following:
 - 2.1 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 that country; or
 - 2.2 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; or
 - 2.3 If they were born outwith the UK, immigrated to the UK with their parents and have resided in the UK since childhood and are able to demonstrate this, but are 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 of offending history of UK nationals and would not normally be considered by the authority.
3. In all cases, the Criminal Record Checks provided must have been obtained within the six months immediately prior to submitting an application, translated into English and verified by the relevant UK based Embassy or 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
4. Where an applicant for a renewal of a taxi or PHC driver’s licence has been outwith the UK for a period of six months or more since the last renewal criminal records certificates shall be provided. If an applicant is unable to do so then their application will be accepted, processed and referred to the committee to determine whether the application should be considered an exception to the policy.
5. Where an applicant for a new licence has been unable to produce the relevant Criminal Record Check, the application will be treated as incomplete, and therefore will not be processed. In addition, following the statutory amendments introduced by the Immigration Act 2016, applications will not be accepted from an applicant who cannot demonstrate the right to work in the UK.

6. Where a previous licence holder has failed to renew their licence and allowed it to lapse they shall be treated as a new applicant and paragraph 4 above shall not apply.