

# Regulatory Committee

10.00am, Monday, 2 October 2023

## Criminal Records Checks for Taxi and Private Hire Car Driver Licence Applicants Born or who have Resided Outwith the United Kingdom

Executive/routine  
Wards

All

### 1. Recommendations

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- 1.1 It is recommended that the Regulatory Committee notes the contents of this report and approves the revised procedure in relation to the provision of criminal record checks by applicants for taxi and private hire car driver licences born or who have resided outwith the United Kingdom.

#### Paul Lawrence

Executive Director of Place

Contact: Andrew Mitchell, Head of Regulatory Services

E-mail: [andrew.mitchell@edinburgh.gov.uk](mailto:andrew.mitchell@edinburgh.gov.uk) | Tel: 0131 529 4042

Contact: Gordon Hunter, Regulatory Officer (Licensing)

E-mail: [gordon.hunter@edinburgh.gov.uk](mailto:gordon.hunter@edinburgh.gov.uk) | Tel: 0131 529 4042

## Criminal Records Checks for Taxi and Private Hire Car Driver Licence Applicants Born or who have Resided Outwith the United Kingdom

### 2. Executive Summary

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- 2.1 This report provides an update on the procedure adopted by the Licensing Service when implementing the Council's policy in respect of criminal record checks for applicants who wish to be licensed as taxi or Private Hire Car (PHC) drivers. It relates to drivers who were born, or who have resided, outwith the United Kingdom or have left the UK for six months or more at any one time.

### 3. Background

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- 3.1 In terms of Section 9 of the Civic Government (Scotland) Act 1982 ('the 1982 Act') the City of Edinburgh Council, as licensing authority, previously resolved to require taxis and PHCs, and taxi and PHC drivers, to be licensed under the provisions of Sections 10 and 13 of the 1982 Act.
- 3.2 The Council has a duty to ensure that no licence is granted to any person who is not 'fit and proper', and thus provide members of the public with confidence in the suitability of licensed drivers.
- 3.3 Police Scotland, as a statutory consultee under the 1982 Act, provides responses to the Council detailing an applicant's criminal history, including previous convictions. Police Scotland has access to criminal records held within the UK but typically has no access to criminal records from outwith the UK. Consequently, Police Scotland may be unable to provide relevant information regarding criminal convictions checks for licence applications from persons who have recently immigrated to the UK, or those who have previously resided in other countries.
- 3.4 Therefore, it may appear that applicants who are born in the UK and have lived their whole life here are subject to more stringent checks and held to a higher standard than applicants born outwith the UK.

#### **Policy development**

- 3.5 In 2016, Committee agreed to introduce a policy to address the concerns regarding lack of information on any criminal records of applicants which could not be

provided by Police Scotland in their statutory consultation responses. This policy was subject to minor amendments by Committee on [24 October 2017](#), [6 February 2018](#) and [2 December 2021](#) (Appendix 1).

- 3.6 Since the introduction of the policy the UK has left the European Union and, as a result, it is necessary to amend the existing policy to address issues with verification and certification.

#### **Declaration of Previous Convictions**

- 3.7 Applicants for both taxi driver and PHC driver licences are required, by law, to provide details of any previous convictions (subject to Rehabilitation of Offenders legislation (Appendix 4).

#### **Analysis of suspension requests**

- 3.8 When the policy was originally introduced in 2016, Council officers analysed available data (dating back to April 2012) on requests for suspension of licensed drivers based on the most serious grounds. As reported to Committee, over half of these requests related to sexual or other violent crimes. The information available showed that at least 50% of the suspension requests were for drivers not born in the UK. The exercise was repeated for the period between April 2021 and August 2023, and results showed that twenty-five of the thirty-five drivers (71%) subject to suspension requests concerned licence holders who were not born in or who had spent time outwith the UK. This analysis reinforced a previously identified concern regarding the Council's limited capacity to check such an applicant's offending history prior to grant of a licence.

## **4. Main report**

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- 4.1 Where an applicant for a new taxi or PHC driver licence has been unable to produce the relevant Criminal Record Check, the application is considered as incomplete and returned to the applicant. Consequently, a small number of applications are unable to be progressed. This issue has to be balanced against the needs of the public using licensed vehicles and, in particular, the fundamental duty of the licensing authority to protect public safety. Passengers have an expectation that drivers will have been suitably assessed by the Council as licensing authority, and it is essential that there is public confidence in the robustness of the licensing process.
- 4.2 The current policy was originally approved by Regulatory Committee, due to safeguarding requirements and the Council's duty to ensure that all drivers are fully checked prior to being granted a licence.
- 4.3 Since the introduction of the policy, a small number of drivers have been unable to obtain criminal conviction documentation from their country of origin. As a result, the Licensing Service receives regular complaints regarding the perception that the current policy is unfair and discriminates against applicants who are unable to

obtain relevant documentation due to circumstances outwith their control such as civil unrest, refugee status etc.,.

- 4.4 There has also been a recent increase in the volume of enquiries regarding applicants who cannot obtain a Criminal Record Check or who have been unable to get such documentation certified (as required by current policy) from particular countries including Iran, Sudan, Somalia, Syria and Afghanistan. In such cases, the UK Government guidance does not provide a recognised route for certificates to be obtained from these countries. Despite the lack of recognised route, Licensing officers have recently identified a trend in the submission of documentation and ‘certification’ for these countries, which raises concerns over authenticity. These documents purport to be genuine, but in the absence of the country having an Embassy located in the UK it is not possible for officers to check the authenticity of such documents.
- 4.5 The current policy requires that, in all cases, Criminal Record Checks documentation provided must be obtained within six months immediately prior to submission of an application, translated into English and verified by the relevant UK-based Embassy or High Commission.
- 4.6 It is proposed that the Council should amend the process on Criminal Records Checks (‘CRC’) to reflect the most recent UK Government Guidance, as follows:

<b>Applicant nationality</b>	<b>CRC verification requirement</b>	<b>Other</b>
EU CRC (where applicant is a national of the EU State issuing the CRC)	If CRC is not in English, it must be accompanied by a <a href="#">Multilingual Standard Form</a> or a certified translation carried out by a person qualified to do so under the law of a Member State. <i>(A multilingual standard form is a translation aid designed to help the receiving authority to understand a public document which is in a language not accepted b the receiving EU country. An MSF must always be issued and signed by an authority of the EU country where the public document is issued).</i>	-
All other CRCs	The CRC provided must be translated into English and verified by the relevant UK-	Alternatively, the document can be verified by way of an

	based Embassy, Consulate or High Commission	Apostille Certificate <sup>1</sup> (Appendix 2)
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- 4.7 Where an applicant for a new licence has been unable to produce the relevant CRC in line with the revised procedure, the application will be considered incomplete and returned to the applicant. Appendix 3 sets out the recommended changes to the current procedure and Committee is asked to agree these changes in respect of the Criminal Records checks policy.

## 5. Next Steps

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- 5.1 If approved, the taxi and Private Hire trade will be notified. Application forms and the Council website will also be updated.

## 6. Financial impact

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

## 7. Equality and Poverty Impact

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- 7.1 The contents and recommendations neither contribute to, nor detract from, the delivery of the three Public Sector Equality Duties.

## 8. Climate and Nature Emergency Implications

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- 8.1 There are no identified duties relating to climate emissions and biodiversity or environmental impacts created by this policy.

## 9. Risk, policy, compliance, governance and community impact

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- 9.1 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.
- 9.2 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 that risk.

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<sup>1</sup> if the document was issued by a designated authority in a country where the Hague Convention of 1961 Abolishing the Requirement for Legalisation of Foreign Public Documents ('the Apostille Convention') is in force (Appendix 2).

An apostille is a certificate that authenticates the origin of a public document. The aim of an apostille is to prevent the need to get documents authenticated by the embassy or consulate of the country where they will be used.

## **10. Background reading/external references**

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- 10.1 [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
- 10.2 [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
- 10.3 [Criminal Records Checks for Taxi and Private Hire Car Driver's Licence Applicants Born outwith the United Kingdom](#) – Regulatory Committee on 6 February 2018
- 10.4 [Criminal Records Checks for Taxi and Private Hire Car Driver's Licence Applicants Born outwith the United Kingdom](#) – Regulatory Committee 2 December 2021

## **11. Appendices**

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- 11.1 Appendix 1 – Policy on Criminal Records Checks
- 11.2 Appendix 2 – The Apostille Convention
- 11.3 Appendix 3 – Updated Procedure for Criminal Records Checks
- 11.4 Appendix 4 – Rehabilitation of Offenders

### Existing 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](http://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.



### The Apostille Convention

The [Apostille Convention](#) was adopted in 1961 and currently has 115 member countries.

An apostille is a certificate that authenticates the origin of a public document. It is issued by a country that is party to the Apostille Convention to be used in another country which is also a party to the Convention.

The aim of an apostille is to prevent the need to get documents authenticated by the embassy or consulate of the country where they will be used. The UK is party to the Convention and has a system where if you have an Apostille certificate that has been issued in the UK you can verify the document online:

<https://www.gov.uk/verify-apostille>

The process in the UK to get an apostille certificate is submitting the document to the Legalisation Office online either electronically or in paper form. The Legalisation Office will check the document and see if any signatures, stamps or seals match their own records. If they do match, they'll legalise the document by attaching an 'apostille' (stamped official certificate).

By way of example

Spain is a subscriber to the Apostille Convention.

Their apostille document is issued in 3 languages, Spanish, English, and French and directs you to the Spanish Government website.

You enter the date and the unique codes on the certificate and the site will verify the codes and show you an electronic version of the document so you can verify the apostille document.

All that the apostille document will do is confirm the reference number of the document that has been checked and verified.

Independent of the apostille document there is a separate process where you can verify that the CCC is valid by supplying the document number and a secure code that is printed on the document.

The CCC will be in Spanish so it will still need a translation for the CCC.

### Updated 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:
  - 3.1 **For EU Criminal Record Check (only where you are a national of the EU State issuing the Criminal Record Check):**

Where the Criminal Record Check is not in English, it must be accompanied by a Multilingual Standard Form, or a certified translation carried out by a person qualified to do so under the law of a Member State.
  - 3.2 **For all other Criminal Record Checks:**

The Criminal Record Check provided must be translated into English and verified by the relevant UK based Embassy, Consulate or High Commission. Alternatively, the document can be verified by way of an Apostille Certificate if the document was issued by a designated authority in a country where the Hague Convention of 1961 Abolishing the Requirement for Legalisation of Foreign Public Documents (the Apostille Convention) is in force.

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](http://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 then criminal records certificates as detailed above for new applicants 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.

Applicants for both taxi driver and PHC driver licences are required by law to provide details of any previous convictions.

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 excludes 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.