



REPORT TO: LICENSING COMMITTEE ON 5 DECEMBER 2018

SUBJECT: REVIEW OF POLICY ON FOREIGN CONVICTIONS CHECKS FOR LICENCE APPLICANTS

BY: CORPORATE DIRECTOR (CORPORATE SERVICES)

1 REASON FOR REPORT

- 1.1 To invite the Committee to review the requirement for licence applicants to produce either evidence of foreign convictions, or confirmation that they have none, in the form of a certificate.
- 1.2 This report is submitted to Committee in terms of Section III (H) (1) and (2) of the Council's Scheme of Administration relating to exercising the function of the Council as licensing authority for the Moray Council area and issuing and suspending, revoking and refusing applications for all licences in terms of the Civic Government (Scotland) Act 1982.

2. RECOMMENDATION

2.1 It is recommended that the Licensing Committee:

- (i) note the content of this report;**
- (ii) consider the issues around the current foreign convictions application process, which places the onus on an applicant to provide information at the outset of the application; and**
- (iii) determine whether to make changes to the previously agreed process in light of the information in this report.**

3. BACKGROUND

- 3.1 On the 3 March 2018 (para 6 of the minute refers) the Committee agreed to introduce a system of convictions checks for applicants who had spent more than 6 months outwith the UK by requiring those applicants to produce a convictions certificate, in relation to any such period, along with the licence application. The requirement was introduced to fill a gap in the current system whereby applicants who had spent time overseas would not be subject to criminal records checks. This was because Police Scotland were unable to make such checks within statutory timescales for responding to application consultations.
- 3.2 A Licensing Authority has a duty to ensure that a licence is not granted to a person who is not 'fit and proper'. The system was introduced as past convictions

(overseas or otherwise) are relevant to the issue of the applicant's fitness to hold a licence and the UK Government's system (on the Gov website for which there is a link under background below) is used as a means of obtaining the certificates.

- 3.3 However, after introduction of the system, it became clear that the information sought was not readily available in all cases. Certain countries appear to have deficiencies in their records systems, which make it very hard or, in some cases, impossible to comply with the requirement to produce a convictions certificate.
- 3.4 On the 10 October 2018 the Committee agreed to disapply the foreign convictions policy in respect of an applicant who had applied for a late hours catering licence but was unable to obtain the required overseas convictions certificate. The same applicant had also complained to the Equalities and Human Rights Commission (EHRC) about the application of the Committee's policy. On the 16 October 2018 the EHRC wrote to the Council with concerns about the foreign convictions policy and the requirement for an equalities impact assessment.
- 3.5 An equalities impact assessment had not previously been carried out as the policy was considered to be a proportionate means for achieving a legitimate aim, that aim being the protection of the public.
- 3.6 In order to address the issues raised it is necessary to review the policy to determine whether it remains valid in principle and, if so, whether it should be amended to better address the requirements of proportionality.
- 3.7 The author has produced a discussion paper around the issues and a copy of that paper is attached at **Appendix 1**.
- 3.8 In concert with the Council's Equalities Officer the author has also completed an equalities impact assessment and that is attached at **Appendix 2**.

4. SUMMARY OF IMPLICATIONS

(a) Moray 2026: A Plan for the Future and Moray Corporate Plan 2015-2017

The provisions of licensing directly relate to the priorities within the 10 Year Plan (Moray 2026) in relation to a growing and diverse economy and safer and healthier communities. The various licenseable activities within industry all aid a growing economy in terms of production, retail and the positive effects on tourism. Regulation of the licensed activities contributes to a safer community by ensuring those providing licenseable goods and services are fit to do so.

(b) Policy and Legal

This has been explained in the body of this report.

(c) Financial implications

Increase potential on applicants, may involve paying fees to embassies etc.

(d) Risk Implications

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.

Continued reliance on Police Scotland providing criminal background checks in respect of foreign nationals increases the risk of granting a licence to an applicant who is not a fit and proper person.

If the policy is not considered to be a proportionate means of achieving a legitimate aim then there is a risk of the policy being deemed to be discriminatory and open to challenge by applicants and/or the EHRC.

(e) Staffing Implications

None

(f) Property

None

(g) Equalities

The changes to the existing practice and policy were introduced to meet the Council's statutory obligations in respect of changes to legislation. An Equalities Impact Assessment is attached to consider whether the system remains a proportionate means of achieving a legitimate aim and therefore whether further changes are required.

(h) Consultations

The Equalities Officer and Tracey Sutherland, Committee Services Officer have been consulted and their comments included within this report.

5. CONCLUSION

5.1 That the Committee considers the recommendations set out in section 2 of the report.

Author of Report:	Sean Hoath, Senior Solicitor
Background Papers:	https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants
Ref:	SH