

Moray Council Equality Impact Assessment

Important

Under the Equality Act 2010 we must assure that all decisions are taken only after an active assessment of the impact of the decision on people affected by the decision. Where necessary, those who may be affected should be consulted beforehand.

If this is not done, the decision could be unlawful and the council can be prevented from acting upon the decision until the impact has been assessed. This will result in major delays in the implementation as well as financial, reputational and other potential damage and loss to the council.

London Councils had decided to cut £10 million from their grants budget of £26 million. No act of consideration or assessment was given of the impact of the decision on the users of services supported by the grants. Court action was taken by the users against the councils. The Court decided in January 2011 that the decision was unlawful and instructed the councils to assess the impact of the decision. The Court also decided that no grant was to be terminated until 3 months after the conclusion of the assessment exercise.

Service: Legal and Democratic

Department: Corporate Services

Title of policy/activity: Disclosure checks for license applications

1. What are the aims and objectives of the policy/activity?

As the Licensing Authority for Moray, we are responsible for processing and regulating licence applications. The various licensable 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 licensable goods and services are fit to do so.

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. This is because Police Scotland cannot determine whether applicants have been convicted of offences outwith the UK and respond to the licence consultation within the statutorily prescribed period of 21 days. Therefore no checks were undertaken.

The objective of the policy is, through the introduction of a new process, to place the

onus on an applicant to provide information not previously required; applications that do not include the required information will be classed as incomplete and returned to the applicant.*

*This has since been modified to confirm that if an applicant is having difficulty obtaining the required information, the the application will still be accepted and processed and will be referred ot the Licensing Committee to decide whether the licence can be granted without the information.

2. List the evidence that has been used in this assessment

Internal data (customer satisfaction surveys; equality monitoring data; customer complaints)	One customer complaint that it is too onerous a requirement from an applicant of ethnic origin who has held a Late Hours Catering licence for many years and has lived in Scotland since the age of 5 years.
Consultation with officers or partner organisations	Feedback from stakeholder meetings with Police Scotland and council officers. Consultation with Equal Opportunities Officer
Consultation with community groups	
External data (statistics, census, research)	Other councils in Scotland, including Edinburgh and Glasgow, have a similar policy in place.
Other	

3. Detail any gaps in the information that is currently available?

- There is uncertainty about systems that are in place for criminal records checks in some countries.

It is also uncertain how those who have refugee status can get a valid criminal record check from their country of origin, given that they are at a real risk of prosecution in their country of origin.

4. What measures will be taken to fill the information gaps before the policy/ activity is implemented? These should be included in the action plan

Measure	Timescale
Check to what extent leave to remain on humanitarian grounds removes the need for additional overseas criminal record checks.	Before next licensing committee meeting

5. Are there potential impacts on protected groups? Tick as appropriate

	Positive	Negative	None	Unknown
Age – young	The proposals are a reasonable means of ensuring the safety of vulnerable members of the			

	public who come into contact with licence holders.			
Age – elderly	As above			
Disability	As above			
Race	As above	Some applicants are of ethnic origin and the foreign criminal check may be more time-consuming than a national check undertaken by Police Scotland. However, there is a risk of indirect discrimination to applicants who have never lived outside UK and were born in the UK if foreign convictions were not checked whilst national convictions are checked. Language barriers - Council's interpretation and translation service available. Strategy statement that we will ensure that our communications are clear, jargon-free, in plain English, and easy to understand.		
Religion or belief	As above	Refugees who fear persecution in their country of origin for religious reasons may not be able to get a certificate from their country of origin.		
Sex	As above			
Pregnancy and maternity	As above			
Sexual orientation	As above	Refugees who fear persecution in their country of origin because of their		

		sexual orientation may not be able to get a certificate from their country of origin.		
Gender reassignment	As above	Refugees who fear persecution in their country of origin because they are transgender may not be able to get a certificate from their country of origin.		
Marriage and civil partnership	NA			

6. What are the potential negative impacts?

Time and cost taken for applicants to complete foreign conviction check may be viewed as onerous.
Refugees may not be able to complete foreign conviction check for various reasons outlined above.

7. Have any of the affected groups been consulted. If yes, please give details of how this was done and what the results were. If no, how have you ensured that you can make an informed decision about mitigating steps.

There has been no public consultation on this, but officers have sought guidance from other local authorities, the Institute of Licensing and the equal opportunities officer.

8. What mitigating steps will be taken to remove those impacts? These should be included in the action plan.

Mitigating step	Timescale
Time is given for renewal applications to avoid the applicant's existing licence meanwhile lapsing; the check at renewal is not part of the validation process. Set a reasonable screening term.	Something less than 9 months, given that that is the statutory time limit for the Licensing Authority to reach a decision.

Accept that refugees have undergone a criminal record check as part of their application for right to remain.	
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9. What steps can be taken to promote good relations between various groups?
These should be included in the action plan.

Overseas checks should be required for anyone who has lived abroad for 6 consecutive months during the last 10 years (possibly 5 for some cases), regardless of country of origin.
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10. How does the policy/activity create opportunities for advancing equality of opportunity?

The guidance for the Licensing Committee will need to ensure that the proposed procedures are proportionate.
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11. What monitoring arrangements will be put in place? These should be included in the action plan.

N/A

12. What is the outcome of the assessment? Tick as appropriate.

1	No impacts have been identified	
2	Impacts have been identified, these can be mitigated as outlined in question 8	Y
3	Positive impacts have been identified in relation to the need to:	
	a) Eliminate discrimination, harassment, victimisation and other behaviour prohibited by the Equality Act 2010	
	b) Promote equality of opportunity	Y
	c) Foster good relations between groups who share a protected characteristic and those who don't.	Y
4	The activity will have negative impacts which cannot be mitigated fully	

13. Set out the justification that the activity can and should go ahead despite the negative impact?

The proposals are a proportionate means of ensuring the safety of the public who come into contact with licence holders.

Sign off and authorisation

Department	Corporate Services
Title of Policy/activity	Foreign Convictions Policy – Civic and Miscellaneous Licensing
We have completed the equality impact assessment for this policy/activity.	Name: Hilary Locker Position: Solicitor (Litigation and Licensing) Date: 30 October 2018.
Authorisation by Director or Head of Service	Name: Position: Date:

The impact assessment should now be authorised by either the Director or Head of Service.

Please return this form, along with the completed screening process and full assessment forms, to the Equal Opportunities Officer, Chief Executive's Office.

Action plan

Action	Start	Complete	Lead Officer	Expected Outcome	Resource Implications