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## **Licensing Committee**

Wednesday, 05 December 2018

**NOTICE IS HEREBY GIVEN** that a Meeting of the **Licensing Committee** is to be held at **Council Chambers, Council Office, High Street, Elgin, IV30 1BX** on **Wednesday, 05 December 2018 at 09:30.**

### **BUSINESS**

- 1 Sederunt**
- 2 Declaration of Group Decisions and Members Interests \***
- 3 Minute of the Meeting of 10 October 2018** **5 - 10**
- 4 Written Questions \*\***
- 5 Review of Policy on Foreign Convictions Checks for** **11 - 30**  
**Licence Applicants**  
Report by the Corporate Director (Corporate Services)
- 6 Question Time \*\*\***  
Consider any oral question on matters delegated to the Committee in terms of the Council's Scheme of Administration.

### **Summary of Licensing Committee functions:**

To deal with all aspects of the issue of licenses by Local Authorities as required by Government; to deal with matters of Licensing and registration not falling within the functions of any other Committee.

**Any person attending the meeting who requires access assistance should contact customer services on 01343 563217 in advance of the meeting.**

<b>GUIDANCE NOTES</b>
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\* **Declaration of Group Decisions and Members Interests** - The Chair of the meeting shall seek declarations from any individual or political group at the beginning of a meeting whether any prior decision has been reached on how the individual or members of the group will vote on any item(s) of business on the Agenda, and if so on which item(s). A prior decision shall be one that the individual or the group deems to be mandatory on the individual or the group members such that the individual or the group members will be subject to sanctions should they not vote in accordance with the prior decision. Any such prior decisions will be recorded in the Minute of the meeting.

\*\* **Written Questions** - Any Member can put one written question about any relevant and competent business within the specified remits not already on the agenda, to the Chair provided it is received by the Proper Officer or Committee Services by 12 noon two working days prior to the day of the meeting. A copy of any written answer provided by the Chair will be tabled at the start of the relevant section of the meeting. The Member who has put the question may, after the answer has been given, ask one supplementary question directly related to the subject matter, but no discussion will be allowed.

No supplementary question can be put or answered more than 10 minutes after the Council has started on the relevant item of business, except with the consent of the Chair. If a Member does not have the opportunity to put a supplementary question because no time remains, then he or she can submit it in writing to the Proper Officer who will arrange for a written answer to be provided within 7 working days.

\*\*\* **Question Time** - At each ordinary meeting of the Committee ten minutes will be allowed for Members questions when any Member of the Committee can put a question to the Chair on any business within the remit of that Section of the Committee. The Member who has put the question may, after the answer has been given, ask one supplementary question directly related to the subject matter, but no discussion will be allowed.

No supplementary question can be put or answered more than ten minutes after the Committee has started on the relevant item of business, except with the consent of the Chair. If a Member does not have the opportunity to put a supplementary question because no time remains, then he/she can submit it in writing to the proper officer who will arrange for a written answer to be provided within seven working days.

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# **THE MORAY COUNCIL**

## **Licensing Committee**

### **SEDERUNT**

Councillor Amy Patience (Chair)  
Councillor Louise Laing (Depute Chair)  
Councillor James Allan (Member)  
Councillor Theresa Coull (Member)  
Councillor Gordon Cowie (Member)  
Councillor Paula Coy (Member)  
Councillor John Divers (Member)  
Councillor Ryan Edwards (Member)  
Councillor Donald Gatt (Member)  
Councillor Marc Macrae (Member)  
Councillor Aaron McLean (Member)  
Councillor Maria McLean (Member)  
Councillor Ron Shepherd (Member)

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**Minute of Meeting of the Licensing Committee**

**Wednesday, 10 October 2018**

**Council Chambers, Council Office, High Street, Elgin, IV30 1BX**

**PRESENT**

Councillor James Allan, Councillor Theresa Coull, Councillor Gordon Cowie, Councillor Paula Coy, Councillor John Divers, Councillor Ryan Edwards, Councillor Donald Gatt, Councillor Louise Laing, Councillor Amy Patience, Councillor Ron Shepherd

**APOLOGIES**

Councillor Marc Macrae, Councillor Aaron McLean, Councillor Maria McLean

**IN ATTENDANCE**

Also in attendance at the above meeting were Sean Hoath, Senior Solicitor, Jo Larson, Licensing Standards Officer and Tracey Sutherland, Committee Services Officer.

**1. Declaration of Group Decisions and Members Interests \***

In terms of Standing Order 20 and the Councillor's Code of Conduct there were no declarations from group leaders or spokespersons in regard to any prior decisions taken on how Members will vote on any item on the agenda or any declarations of Member's interests in respect of any item on the agenda.

**2. Minute of Previous Meeting - 15 August 2018**

The minute of the meeting of the Licensing Committee dated 15 August 2018 was submitted and approved.

**3. Written Questions \*\***

The Committee noted that no written questions had been submitted.

**4. Application for Late Hours Catering Licence - 18-003**

A report by the Corporate Director (Corporate Services) invited the Committee to consider an application for the grant of a late hours catering licence received on 26 April 2018 subject to adverse representation received on behalf of Police Scotland, local residents and Keith Community Council.

The Committee noted that the Applicant was not in attendance despite notifying the Senior Solicitor that they intended to be present.

Following consideration, the Committee agreed to defer this item to later in the agenda as the applicant had indicated he would attend the meeting however, was currently not in attendance. The Committee felt that by discussing the application later in the agenda, it would give the applicant time to arrive in case they had been held up in traffic.

#### **5. Application for Late Hours Catering Licence - 18-004**

A report by the Corporate Director (Corporate Services) invited the Committee to consider an application for a late hours catering licence received on 9 July 2018 subject to an adverse representation received on behalf of Police Scotland.

The Committee noted that the applicant's Solicitor, Mr Neil Ross of Grigor and Young was in attendance. The Chief Constable of Police Scotland was represented by Sergeant Wood, Police Scotland.

The applicant's Solicitor, Mr Ross addressed the Committee and responded to questions raised by the Committee.

Sergeant Wood, Police Scotland addressed the Committee and responded to questions raised by the Committee.

Following consideration, the Chair asked Mr Ross and Sergeant Wood if they were happy with the proceedings and if they felt they had received a fair hearing.

Mr Ross and Sergeant Wood advised that they were both happy with proceedings and confirmed that they felt they had had a fair hearing.

Following consideration the Committee agreed to grant the application for a late hours catering licence in respect of Case No. LHC/18/004.

#### **6. Application for Late Hours Catering Licence - 18-005**

A report by the Corporate Director (Corporate Services) invited the Committee to consider an application for the grant of a later hours catering licence received on 21 August 2018 subject to adverse representation received from local residents.

The Committee noted that the Applicant was in attendance along with his legal representative, Mr Hunter. The Committee also noted that several objectors were also in attendance and would be represented by Mr Fairclough.

The Senior Solicitor informed the Committee that following an internal process issue, 2 representations were received on time but were not included in the Committee papers distributed. The additional representations were handed out to the members of the Committee.

The Senior Solicitor also informed the Committee that 1 further representation had been received outwith the consultation deadline from Forres Community Council, the Committee were asked whether they wished to include the late representation. The reason for the representation being late was due to the timing of the Community Council meeting falling outwith the consultation period.

Following consideration Councillor Coull proposed a motion to accept the late

representation as she acknowledged that Community Council meeting dates are pre-set, this was seconded by Councillor Coy.

Councillor Cowie moved that the Community Council could have convened a special meeting to discuss the Late Hours Catering licence and therefore did not think the representation should be considered, this was seconded by Councillor Gatt.

On the division there voted:

For the motion (5) Councillors Coull, Coy, Divers, Edwards and Patience

For the Amendment (5) Councillors Cowie, Gatt, Allan, Laing and Shepherd

Absentions (0)

There being an equality of votes, and in terms of Standing Order 62(e), the Chair cast her casting vote in favour of the motion.

Accordingly the motion became the finding of the meeting and the Committee agreed to accept the late representation from Forres Community Council.

Mr Fairclough addressed the Committee and responded to questions raised by the Committee.

Mr Hunter addressed the Committee and responded to questions raised by the Committee.

Following consideration, the Chair asked Mr Fairclough and Mr Hunter if they were happy with the proceedings and if they felt they had received a fair hearing?

Mr Fairclough and Mr Hunter advised that they were both happy with proceedings and confirmed that they felt they had had a fair hearing.

Following consideration the Committee agreed to grant the application for a late hours catering licence in respect of Case No. LHC/18/005.

## **7. Application for Late Hours Catering Licence - 18-006**

A report by the Corporate Director (Corporate Services) invited the Committee to consider an application for the grant of a later hours catering licence received on 3 September 2018 subject to the difficulty in the Applicant obtaining a Foreign Convictions Certificate and if they were so minded to consider granting the application at the meeting ahead of the end of the consultation delegating to the Senior Solicitor, if no further representations were received to grant the licence to the applicant.

Following consideration, Councillor Gatt proposed a motion to suspend the Foreign Convictions Certificate Policy and review applications as merited.

In response, the Senior Solicitor explained that to suspend the Policy in its entirety would then mean that no licence applicants would need to provide Foreign Convictions Certificates, including taxi drivers, for whom the policy was introduced. He further advised, that the Committee could decide to come away from the policy for this applicant and any others of a similar nature and undertake a wider

review of the policy.

Following the Senior Solicitor's explanation, Councillor Gatt withdrew his motion.

Following consideration, the Committee agreed to suspend the policy on Foreign Conviction Certificates for this applicant given the circumstances provided to the Committee and to consider the application at the meeting. It was further agreed that a revised policy on the need for Foreign Conviction Certificates would be brought back to a future Committee.

The application form and representation from Police Scotland in relation to application LHC/18/006 were distributed to the Committee.

The Committee noted that the applicant and his Solicitor, Mr Neil Ross of Grigor and Young were in attendance. The Chief Constable of Police Scotland was represented by Sergeant Wood, Police Scotland.

The applicant's Solicitor, Mr Ross addressed the Committee and responded to questions raised by the Committee.

Sergeant Wood, Police Scotland addressed the Committee and responded to questions raised by the Committee.

Following consideration, the Chair asked Mr Ross and Sergeant Wood if they were happy with the proceedings and if they felt they had received a fair hearing.

Mr Ross and Sergeant Wood advised that they were both happy with proceedings and confirmed that they felt they had had a fair hearing.

Following consideration Councillor Coy proposed a motion to grant the licence as applied for, with a closing time of 1.30am Thursday to Sunday with the exception of Keith Show and Keith Music Festival, closing at 2.00am, subject to no further negative representations being received before the end of the consultation period, this was seconded by Councillor Coull.

Councillor Cowie moved that the licence be granted in line with other similar businesses in Keith with a closing time of 12.30am with the exception of Keith Show and Keith Music Festival where closing could be extended until 2.00am, this was seconded by Councillor Gatt.

On the division there voted:

For the Motion (5) Councillors Coy, Coull, Allan, Laing and Patience

For the Amendment (5) Councillors Cowie, Gatt, Divers, Edwards and Shepherd

Abstentions (0)

There being an equality of votes, and in terms of Standing Order 62(e), the Chair cast her casting vote in favour of the motion.

Accordingly the motion became the finding of the meeting and the Committee agreed to grant the Late Hours Catering Licence in respect of Case No. LHC/18/006 and delegating to the Senior Solicitor on the provision that no further negative



representations are received prior to the end of the consultation period.

Councillor Divers left the meeting at the conclusion of this item.

## **8. Application for Late Hours Catering Licence - 18-003**

A report by the Corporate Director (Corporate Services) invited the Committee to consider an application for a late hours catering licence received on 26 April 2018 subject to adverse representations received on behalf of Police Scotland, Keith Community Council and a number of neighbour objections. The item had been deferred earlier in the meeting to allow the applicant, who had indicated he would attend the meeting to arrive.

The Committee noted that the applicant was still not in attendance and agreed to proceed with the application in his absence as he had been given sufficient notice of the meeting and also time to attend.

The Chief Constable of Police Scotland was represented by Sergeant Wood, Police Scotland. Also in attendance were a number of objectors, one of which acted as spokesperson.

The spokesperson for the objectors addressed the Committee and responded to questions raised by the Committee.

Sergeant Wood, Police Scotland addressed the Committee and responded to questions raised by the Committee.

Following consideration, the Chair asked the spokesperson and Sergeant Wood if they were happy with the proceedings and if they felt that they had received a fair hearing.

The spokesperson and Sergeant Wood advised that they were both happy with proceedings and confirmed that they felt they had received a fair hearing.

Following consideration the Committee was satisfied the applicant was not a fit and proper person to be the holder of that licence and so the Committee refused the application for a late hours catering licence in respect of Case LHC/18/003.

## **9. Application for Taxi Driver Licence - 18-003**

A report by the Corporate Director (Corporate Services) invited the Committee to consider an application for a Taxi Driver Licence received on 27 June 2018 subject to an adverse representation received on behalf of Police Scotland.

The Committee noted that the applicant was not in attendance and agreed to proceed with the application in his absence. The Chief Constable of Police Scotland was represented by Sergeant Wood, Police Scotland.

Sergeant Wood, Police Scotland addressed the Committee and responded to questions raised by the Committee.

Following consideration, the Chair asked Sergeant Wood if she was happy with the proceedings and if she felt she had received a fair hearing.

Sergeant Wood advised that she was happy with proceedings and confirmed that she had had a fair hearing.

Following consideration the Committee was satisfied the applicant was not a fit and proper person to be the holder of that licence and so the Committee refused the application for Taxi Driver Licence in respect of application TD/18/003 due to discrepancies in his application.

#### **10. Application for Taxi Driver Licence - 18-004**

A report by the Corporate Director (Corporate Services) invited the Committee to consider an application for a Taxi Driver Licence received on 30 July 2018 subject to an adverse representation on behalf of Police Scotland.

The Committee noted that the applicant was in attendance. The Chief Constable of Police Scotland was represented by Sergeant Wood, Police Scotland.

The Applicant addressed the Committee and responded to questions raised by the Committee.

Sergeant Wood, Police Scotland addressed the Committee and responded to the questions raised by the Committee.

Following consideration, the Chair asked the applicant and Sergeant Wood if they were happy with the proceedings and if they felt they had received a fair hearing.

The applicant and Sergeant Ross advised that they were both happy with proceedings and confirmed that they felt they had received a fair hearing.

Following consideration the Committee agreed to grant the application for a Taxi Driver Licence in respect of Case No. TD/18/004.

#### **11. Taxi Communications Strategy**

A report by the Corporate Director (Corporate Services) sought the approval of the Taxi and Private Hire Communication Strategy.

Following consideration the Committee agreed to approve the Taxi and Private Hire Communications Strategy.

#### **12. Question Time \*\*\***

There were no further questions.




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**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:	<a href="https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants">https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants</a>
Ref:	SH



## **Discussion Paper on Foreign Convictions Certificates**

### **The Current Policy**

The current policy is to require a criminal convictions certificate form all applicants who have spent more than 6 months abroad (at any time) to cover that period spent outwith the UK.

The procedure is for applicants to obtain a certificate to produce with their application. An application can be accepted without a required certificate but a licence cannot be granted without the required certificate.

### **The Aim**

The legitimate aim is the protection of the public. That is, in fact, the whole aim of licensing.

In alcohol licensing there are specific licensing objectives of securing public safety, preventing public nuisance and protecting children / young people / vulnerable people from harm. The civic licensing regime is based around older legislation but would likely have similar licensing objectives if phrased now.

The policy is designed to plug a gap in the assessment of an individual's fitness to hold a licence of a specific type.

At present only those residing in the UK are checked for convictions by Police Scotland. Police Scotland are unable to check for convictions from jurisdictions outwith the UK within the timescales required by licensing legislation (21 days). So, in the absence of a policy on criminal records checks, applicants who have resided abroad for any length of time will not have convictions checks for that period(s).

Applying a policy of requiring applicants to produce foreign convictions certificates also addresses the inequality faced by UK residents, who may be less likely to achieve their aim of obtaining a licence by virtue of having to pass checks that others residing outwith the UK don't.

### **The Problem Raised**

Applying a policy to all applicants means that some applicants who come from or who have lived in certain jurisdictions outwith the UK may be disadvantaged by a reduced ability to comply with the policy. That may be because of a lack of record keeping by the relevant authority and/or the lack of a clear and reliable system of accessing records.

For example the UK Government's system of checking has this to say about Saudi Arabia: "The UK is not currently aware of a process for obtaining criminal record certificates from the Saudi Arabian authorities."

In some cases, there may also be an element of inconvenience to applicants who may have to travel to embassies to access records and obtain certificates. Therefore there is potential for the policy to be indirectly discriminatory.

However the policy is one that is well established, very widely used and is a proportionate means of achieving a legitimate aim.

If it is considered to be a proportionate means of achieving a legitimate aim then indirect discrimination can be justified in pursuit of that aim.

### **The Current View**

The policy and the system of licensing as a whole are there to reduce risks to the public. So it is generally held to be a legitimate aim (pursuant to the aim of licensing as a whole).

The issue then is one of proportionality i.e. is it appropriate and necessary?

It is certainly appropriate. The Institute of Licensing has this to say on the appropriateness of checking convictions:

"The licensing process places a duty on the local authority to protect the public. Given the nature of the role, it is paramount that those seeking a living in the trades meet the required standards. As the previous offending behaviour can be considered as a predictor in determining future behaviour as well as culpability, it is essential that the decision maker considers all relevant factors including previous convictions, cautions and complaints and the time elapsed since these were committed."...

"Static factors are historical and do not change such as age, previous convictions and gender. They can be used as a basis for actuarial assessments and are fundamental in considering an individual's potential to reoffend in future. For example, recent published statistics revealed that 44% of adults are reconvicted within one year of release. For those serving sentences of less than twelve months this increased to 59%. It is also widely accepted that generally persons with a large number of previous offences have a higher rate of proven reoffending than those with fewer previous offences."

In order to examine necessity it is helpful to examine some of the alternatives:

Removing all convictions checks could be an option. However licensing regimes are roundly criticised for not undertaking criminal records checks and thus allowing criminals into the system. Just about every licence issued by every council in the UK is subject to consultation with the police and as part of their consultation the police will undertake UK criminal records checks. It is directly relevant to the applicant's fitness to hold a licence. Removing the requirement for all criminal records checks



makes a nonsense of a large number of legislative provisions and the licensing process as a whole.

It is not possible to filter convictions checks to only require applicants to disclose more serious offences. There is either disclosure of offences or there is not. It is achieved by legislation, to an extent, through the Rehabilitation of Offenders Act 1974 and subsequent legislation amending and supplementing the same, particularly legislation providing for exclusions and exceptions.

It is not possible to rely on self disclosure. It has been shown by a great many applications in the past that applicants fail to disclose relevant convictions on their applications forms. Convictions that are then disclosed through criminal records checks by the police. Whether the failure to disclose is deliberate or inadvertent, there is no doubt a consistent failure to disclose.

The only argument that the policy is not proportionate comes from the difficulties in obtaining a certificate for certain applicants. However it is considered that some inconvenience in obtaining a certificate does not make the system as a whole disproportionate. Convenience may be relevant to proportionality but certainly less so when it is clear that people go to great lengths visiting embassies to get visas / passports just for holidays. In difficult cases the problem lies with the jurisdiction in question and not the policy. Many jurisdictions have perfectly good, quick, easy and cheap methods of obtaining a certificate.

### **Examples of Similar Policies**

Glasgow

<https://www.glasgow.gov.uk/CHttpHandler.ashx?id=5315&p=0>

Edinburgh

[http://www.edinburgh.gov.uk/downloads/file/1948/taxi -  
\\_new\\_driver\\_application\\_form](http://www.edinburgh.gov.uk/downloads/file/1948/taxi_-_new_driver_application_form)

Both of the councils have requirement for taxi / PH drivers to criminal records certificates for all countries where the applicant has spent more than 6 months.

The SIA introduced the same checks many years ago.

<https://www.sia.homeoffice.gov.uk/Pages/licensing-overseas-checks.aspx>

So did the CAA

<https://www.caa.co.uk/Commercial-industry/Security/Regulation/Overseas-criminal-record-checks/>

The GTCS

<http://www.gtcs.org.uk/registration/pvg-scheme-overseas-checks.aspx>

The NHS

<http://www.nhsemployers.org/news/2017/01/overseas-criminal-record-certificates-for-tier-2-visa-applicants>

Universities

<https://www.exeter.ac.uk/dbs/policechecks/>

The list is almost endless.

There are also many jobs where there are enhanced criminal records checks undertaken by employers.

Criminal records checks for EU and non EU applicants have been part of the best practice guidance for taxi licensing since 2012 at least. It is also part of the Scottish Government's stated aim to produce guidance that extends across all 1982 licence types regimes requiring local authorities to establish the criminal history of people who have spent time outside the UK.

The existing Scheme

The existing checking system is provided by the UK Government at:

<https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>

The Institute of Licensing has developed a scheme for determining taxi / PH driver licence applications in England & Wales available here:

<https://www.instituteoflicensing.org/Resources.aspx>

Owing to the wide variety of offences it has necessitated an approach based around the nature of the offence.

### **Analysis of Other Policies**

The SIA and CAA suggest two tweaks in that they cover the previous 5 years and they might accept an oath and character reference where official sources are unavailable.

The 5 years maybe relates to the UK rehabilitation period for certain offences and is in line with the PVG scheme.

The GTCS require checks for the prior 10 years, if someone has spent 3 or more months in another country – twice as onerous as the SIA and CAA in both respects.

The NHS asks for checks for 10 years but only for places where applicants have lived for more than 12 months.

These examples demonstrate the almost arbitrary nature of selection criteria. However they may provide useful examples as to how the current policy might be tweaked so as to make it more proportionate.

## **Options**

### **1. Continue to apply the requirement to all licence types**

The reason is as stated above. Irrespective of licence type, licensing is for the protection of the public. Different offences may be relevant to different licence types. For example driving offences may be relevant to the applicant for a taxi driver's licence but not necessarily to a window cleaner. However a conviction for an offence of dishonesty may be relevant to both.

It is not the case that licence types other than taxi driver licences present no risk.

It has been highlighted by previous cases like Rotherham that licensing has an important part to play in the protection of the public and children/young people in particular. Predators can use places where young people congregate e.g. outside takeaways on a weekend as 'hotspots' to take advantage of the social situation at the time for that child/young person. They often find this a viable way to both introduce and get to know that child/young person. Taxis were and are being used to ferry vulnerable young people into dangerous and exploitative situations, often entering hotels alone at night. These instances are all indicators that there may be increased vulnerability. A fit and proper licence holder (late hours catering / taxi driver / alcohol personal licence holder) should be able to spot these signs and take action to protect young people from harm. A licence holder who is not properly checked for a criminal history and who is not a fit and proper person may choose not to do so.

### **2. Allow for different requirements for different licence types**

Taxi / PH drivers may present a higher level of risk than other licence holders. Taxi / PH drivers are in charge of the vehicle and so determine where the vehicle and the occupant(s) go. This almost one-to-one closeness, the lack of control for the customer and often the vulnerable nature of the customer (e.g. intoxication) are all increased risk factors. For this reason taxi/PH drivers in Scotland are subject to a higher level of criminal records check than most licence applicants. The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 (as amended by the 2018 Order) provides that even convictions that are ordinarily considered spent (Under the Rehabilitation of Offenders Act 1974) may be considered by licensing authorities when determining an application for a taxi/PH

driver's licence, if certain criteria are met. The criteria depend on the type of offence, the age of the offender at the time and the time that has passed.

On the generally accepted view that taxi / PH drivers should be more stringently controlled it is recommended that checks are undertaken by the applicant and a certificate required from the applicant (on application) to cover any period of 6 months or more spent outwith the UK in the 10 years prior to application.

In relation to all other licence types administered by the Licensing Committee it is recommended that checks are undertaken by the applicant and a certificate required from the applicant (on application) to cover any period of 6 months or more spent outwith the UK in the 5 years prior to application.

It should be recognised that there is still a risk in modifying the requirements in any way. Requiring an applicant to only produce a certificate for offences in the last 5 years could miss a very serious offence 6 years ago. A certificate requiring applicants to disclose details of convictions in the last 5 years may not provide details of a serious offence 6 years ago. The offence may not be spent but it does not fit the certificate criteria. It is impossible to know how different jurisdictions will deal with such a request.

### **3. Allow for Other Evidence or Checks**

In line with schemes operated by the SIA and CAA allow applicants to demonstrate their fitness to hold a licence in other ways for example by an oath made before a notary / solicitor and/or character reference(s) and to delegate to officers to determine whether alternative evidence is sufficient to process the application on the basis that in cases of doubt officers will refer the case to the Committee for a decision.

### **4. Allow for Individual Decisions**

As is the case with every policy of the licensing authority, the licensing authority can choose to disapply the policy in the light of an individual's circumstances.

So in the event that an applicant experiences difficulty in obtaining the required certificate or other suitable evidence the applicant can apply to the Licensing Committee to disapply the policy in their case, having regard to their circumstances.

### **5. Allow for Special Cases**

#### **Refugees**

Note a refugee has a right to seek work in the UK. If they have sought asylum in the UK because of a real fear of prosecution, they cannot get a certificate of good behaviour from their home country. In addition it may prove impossible to obtain

alternative evidence. In those cases an individual decision will have to be made depending on the circumstances.

### **Behaviour that May be Criminal Outwith the UK but is Not Unlawful in the UK**

Applicants should not be disadvantaged on the basis of foreign convictions for behaviour that isn't against the law in this country, for example: being gay is a criminal offence in certain, overseas jurisdictions; or being a member of a political party that has been banned for reasons that are in contravention of international law. In such cases it is not possible to know or list/filter all offences that need not be disclosed. To an extent people will also be at the mercy of the foreign jurisdiction as to what is disclosed and they should obviously not be encouraged to try and redact the certificate themselves. On this basis each case has to be considered on its merits and obviously offences that are not relevant e.g. a woman being convicted of driving in Saudi will not be taken into account when determining the licence application. It is recommended that in clear cases officers should have delegated power to ignore such convictions when processing applications. If doubt should arise at any time then officers will refer the case to the Committee for a decision.



## 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
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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.	<p>Name: Hilary Locker</p> <p>Position: Solicitor (Litigation and Licensing)</p> <p>Date: 30 October 2018.</p>
Authorisation by Director or Head of Service	<p>Name:</p> <p>Position:</p> <p>Date:</p>

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**

<b>Action</b>	<b>Start</b>	<b>Complete</b>	<b>Lead Officer</b>	<b>Expected Outcome</b>	<b>Resource Implications</b>

