
Report To:	General Purposes Board	Date	13 August 2025
Report By:	Head of Legal, Democratic, Digital & Customer Services	Report No:	LS/099/25
Contact Officer:	Anne Sinclair	Contact No:	01475- 712034
Subject:	Criminal Records Checks for Taxi/Private Hire Driver Licence Applicants Born Outwith the United Kingdom		

1.0 PURPOSE AND SUMMARY

1.1 ☒ For Decision ☐ For Information/Noting

1.2 The purpose of this Board is to update members of the General Purposes Board and to seek the view of the Board in relation to the process for considering the fitness of Taxi and Private Hire Driver licence applicants who were born outwith the United Kingdom or those applicants who have spent more than 6 months outwith the UK.

1.3 It is appropriate that the Board is consulted in relation to the process for checking the previous convictions of applicants who wish to be licensed as a Taxi or Private Hire Driver, and who have either been born or have resided outwith the UK for a period in excess of 6 months.

2.0 RECOMMENDATIONS

2.1 It is recommended that the Board:

- (i) notes the contents of this report: and
- (ii) considers and determines whether it is appropriate to revise the current process for considering the fitness of Taxi driver licence and Private Hire driver licence applicants to drive in relation to what criminal record checks are requested from applicants born outwith the UK and consider the options set out in paragraph 4.1 of this report;
- (iii) approves the option set out in paragraph 4.1 (3) of this report.

Lynsey Brown
Head of Legal, Democratic, Digital & Customer Services

3.0 BACKGROUND AND CONTEXT

- 3.1 The Council as licensing authority is responsible for the processing of applications for a Taxi/Private Hire Car Driver's licence under the Civic Government (Scotland) Act 1982 ("the 1982 Act"). In terms of section 3 of the 1982 Act, a licensing authority must consider an application within three months of it having being made and reach a final decision on the application within the period of six months beginning with the end of the three month period (i.e. 9 months).
- 3.2 The preamble of the 1982 Act sets out that it is an Act to make provision as regards the licensing and regulation of certain activities for the preservation of public order and safety and the prevention of crime. A successful licensing regime is intended to ensure that a safe, reliable and accessible service is available to the public. One of the main factors to be addressed within the taxi licensing regime is that drivers of Taxis and Private Hire Vehicles (PHVs) are vetted and tested to ensure they are fit and proper and appropriately qualified to drive a licensed vehicle
- 3.3 The UK government changed the law regarding Taxi/PHV driver's licensing with effect from 1 December 2016. Since that date licensing authorities have been prohibited from issuing licences, including renewal licences, to anyone who is disqualified by reason of their immigration status. Accordingly, licensing authorities require to check that an applicant has permission to be in the UK and undertake work as a taxi driver.
- 3.4 With effect from 2 October 2023 new taxi requirements were introduced by the UK Government in relation to applications for a taxi driver licence. All applicants now require to apply for a tax check with HMRC which issues a 9 character code that must be provided to the Council's licensing team in order that the necessary tax check can be carried out by the licensing authority.
- 3.5 As part of the application process, every new application and every renewal application requires to be intimated to Police Scotland as a statutory consultee in terms of the 1982 Act. Police Scotland is asked to provide information on an applicant's criminal history, including any previous convictions, and the applicant's suitability for the licensed activity. UK citizens are therefore subject to stringent checks and held to a high standard. However, Police Scotland does not have access to criminal records outwith the UK. It is important that licence applications from persons who have recently immigrated to the UK, or those who have previously resided in other countries, are subject to the same level of checks as applicants within the UK in respect of applicable convictions to ensure compliance with the overarching principles for the 1982 Act as detailed in paragraph 3.2 above.

Declaration of Previous Convictions

- 3.6 Applicants for both taxi driver and PHV 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 require to declare that 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 2015 Order referred to above excluded these provisions in respect of proceedings relating to the grant or renewal of a Taxi driver's licence or PHV driver's licence. Hence, spent convictions which are not protected may be considered along side unspent convictions in such licence applications.

3.8 As part of the necessary checks, applicants are asked on all Inverclyde Council Taxi/PHV driver application forms if they have lived outwith the UK for a continuous period of 6 months or more. In the case of any applicant falling within this category, they are required to provide a criminal record check from every country in which they have resided for such a period. In the accompanying Guidance notes on the application form advice is provided for Applicants who were born or have been resident outside the UK for 6 months or more. The following information is contained within the Guidance notes:

- (a) *If the applicant was born outwith the UK, a criminal record check must be provided from their country of origin, Applicants must provide a criminal record check for any country in which they have been resident for six months or more.*
- (b) *If the applicant was born in the UK, but has lived in any other country or countries for six months or more, a criminal record check must be provided from those countries.*

The criminal record check provided must have been obtained within the six months prior to submitting the application and must be verified by the relevant UK based Embassy/High Commission where obtained from authorities outwith the UK. The following link may assist you on how to obtain a criminal record check from overseas:

<http://www.cpni.gov.uk/Personnel-security1/Overseas-criminal-record-checks>

NOTE- Your application will not be accepted without the required information.

- 3.9 There has been a noticeable increase in the number of applications from foreign nationals seeking a Taxi/PHV driver's licence in recent years. Most of these applicants reside locally with some applicants residing outwith the Inverclyde area. Whilst some foreign national applicants have been able to comply with the requirement to provide criminal record checks, most applicants from countries such as Syria, Afghanistan etc. have advised licensing staff that they are unable to obtain a criminal record check from their country of origin due to the conflict within such countries. The Council's licensing section staff when rejecting applications, have faced increased challenges from both applicants and their advisers in relation to the current approach.
- 3.10 In an effort to ensure the Council as licensing authority is adopting a consistent approach with other licensing authorities, officers have considered what approach is being adopted by other Scottish licensing authorities. This issue is also under review by at least one other licensing authority which has shared the results of a benchmarking exercise undertaken in 2024. As a result of the information available, it appears that out of 32 licensing authorities in Scotland at least 12 licensing authorities have specific information in their applications or guidance notes about criminal records checks for applicants born outwith the UK. Of the 12 licensing authorities with specific information about criminal records checks for foreign nationals, 6 licensing authorities have similar requirements to those stipulated by Inverclyde. Information regarding what documentation is requested by the 12 licensing authorities referred to above is set out in **Appendix 1** to this report.
- 3.11 City of Edinburgh Council, which has a similar requirement to Inverclyde Council, has a Policy whereby if 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. However, Edinburgh's Policy has a condition that applications will be accepted from any applicant who immigrated to the UK with their parents, has resided in the UK since childhood, and is able to evidence such residence, but is unable to produce a 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 years of age).

- 3.12 Some licensing authorities only request Criminal Record Checks from the applicant's country of origin if they have lived outwith the UK for a specified period of time. Falkirk, Perth & Kinross and Moray Councils all request criminal records checks or a Certificate of Good Conduct from applicants who have not lived within the UK for a 10 year period immediately prior to the date of application for a Taxi driver licence. Any criminal record check must have been obtained within 6 months of the date of the application if required. Both East Renfrewshire and Glasgow City Councils request criminal records checks from the country of origin if the applicant has not resided within the UK for a period of 5 years before the date of an application. Any applicant who has not resided within the UK for this period must provide a criminal records check for every country the applicant has resided in outwith that period and documentation must be dated within 6 months of the application

4.0 PROPOSALS

- 4.1 In order to ensure a consistent approach is adopted by the Council, as licensing authority, it would be helpful if the Board considers the following options:

- 1. To continue with the status quo in relation to foreign nationals whereby an application for a new licence from any applicant who is unable to produce the relevant criminal record check, is treated as incomplete, and therefore will not be processed;**

The advantage of the above option is that it assists the Council to discharge its duties in relation to public safety. No application can be accepted in circumstances where an applicant is unable to provide a criminal record check from their country of origin. One disadvantage is that 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 due to circumstances out with their control.

Under this option, 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 will not be processed. Another disadvantage is that there is no flexibility in the above approach which prevents applicants who are unable to produce documentation regarding criminal records checks, due to circumstances out with their control, from ever being granted a licence regardless of the length of time they have spent residing in the UK.

- 2. To remove the existing requirement relating to foreign nationals whereby a criminal record check *must* be produced from the applicant's country of origin; To stipulate that such documentation *should* be produced, however to accept such applications for processing with a letter of explanation from the applicant as to why they are unable to produce the documentation, with this documentation being considered on a case by case basis;**

The advantage of the above option is that it is not as prohibitive as option 1 above as it does not permanently exclude applications from foreign nationals who have resided in the UK for a period of time from applying for a licence. However, it should be noted that there is a greater risk of challenge as an element of discretion is being applied, whether that be on the part of Officers under delegated authority or on the part of the Board.

Should the Board determine that the stipulation for criminal records checks should be removed as per option 2 in the case of foreign nationals who are unable to produce such documentation, it is appropriate that the Board consider whether such applications require to be referred to the Board to determine or should be granted under delegated authority.

3. To amend the existing requirements to allow applications to be accepted for processing without criminal records checks from the country of origin in circumstances where applications are received from foreign nationals who have resided in the UK for a period of at least 5 years immediately prior to the date of the application, or such other period as appears reasonable to the Board.

The advantage to the above option is that it is not prohibitive, it does not permanently exclude applications from foreign nationals who have resided in the UK for a specified period of time from making an application. It is open to the Board to have a policy whereby applications from foreign nationals are accepted after a specified period of time, with such a period being determined by the Board. It should be noted that such applications will still be subject to the fit and proper checks by Police Scotland in respect of any period the applicant has resided in the UK. Such a policy would provide a balanced approach, minimise the risk of challenge and ensure the preservation of public order and the safety. One disadvantage of such an approach is that the imposition of such a “time limit” may possibly be criticised as being arbitrary in nature. However, the risk of such a challenge would be mitigated due to having been carefully considered by the Board. Such an approach would provide applicants, passengers and Council Officers with a clearly defined framework against which a decision whether or not to process an application can be made. As a result of this approach applicants who have resided in the UK for less than 5 years, or such other period as the Board may determine, must provide criminal record checks from their country of origin failing which their application will be treated as incompetent and will not be processed.

5.0 IMPLICATIONS

- 5.1 The table below shows whether risks and implications apply if the recommendation(s) is(are) agreed:

SUBJECT	YES	NO
Financial		X
Legal/Risk	X	
Human Resources		X
Strategic (Partnership Plan/Council Plan)		X
Equalities, Fairer Scotland Duty & Children/Young People's Rights & Wellbeing		X
Environmental & Sustainability		X
Data Protection		X

- 5.2 There are no financial implications in respect of this report.

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report	Virement From	Other Comments
N/A					

Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From (If Applicable)	Other Comments
N/A					

5.3 Legal/Risk

There is a risk of legal challenge by way of Judicial Review in relation to any policy decision by the Board.

6.0 CONSULTATION

6.1 None

7.0 BACKGROUND PAPERS

7.1 None

APPENDIX 1

APPROACH TAKEN BY LOCAL AUTHORITIES IN SCOTLAND TO CRIMINAL RECORDS CHECKS FOR APPLICANTS BORN OUTWITH THE UK

ARGYLL & BUTE

Those born or resident out with the UK for 6 months or more, there **must** be produced documentation in relation to criminal record checks. Such documentation must be within 6 months of the application and must be verified by relevant UK Embassy/High Commission.

CITY OF EDINBURGH

Criminal Record Checks **must** be obtained within the 6 months immediately prior to submitting an application, translated into English and verified by the relevant UK based Embassy or High Commission. Applications without this documentation are treated as incompetent and not processed.

For those born in the UK but who have lived in any other country for 6 months or more, they **must** provide a criminal record check from that country;

For those born out with 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 6 months or more;

If born out with 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 they were a child under 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.

WESTERN ISLES

Criminal Record Check required for each country where you have lived since aged 16 years. If you have lived in any other country/countries for 6 months or more, you **must** provide a Criminal Record Check from those countries dated within the last 6 months verified by the relevant UK based Embassy/High Commission and translated in English.

EAST DUNBARTONSHIRE

If resident out with the UK for a period of at least 6 months you may be asked to submit further documentation. This is likely to include a criminal record check from the jurisdiction where you were resident

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ORKNEY ISLANDS

Criminal Records Checks required from any person born out with the UK from any country of origin and Criminal Record Checks from any country in which you have been resident for 6 months or more.

Criminal Records Checks must be obtained within 6 months prior to the date of submission and verified by the relevant UK based Embassy/High Commission.

HIGHLANDS

Applicants seeking a new Licence who were born or have been resident out with the UK for 6 months or more need a Criminal Record Check from the country of origin and from any other country in which resident for 6 months or more.

Such documentation to be dated within 6 months of the date of the application and must be verified by the relevant UK based Embassy/High Commission.

WEST DUNBARTONSHIRE

If born out with the UK or resident outside the UK for 6 months or more must produce documentation for Criminal Record Checks and from any country in which you have been resident for a period of 6 months or more.

Documentation must be dated within 6 months prior to submitting application and be verified by the relevant UK based Embassy or High Commission.

Local Authorities Which stipulate Criminal Record Checks required if applicant has lived out with UK for specified period of time:

FALKIRK

If you have lived outside the UK for 6 months or more within the last **10 years** a Certificate of Good Conduct or Criminal Record Check from the country where you resided **must** be obtained within the last 6 months prior to the application.

If the information is not in English you need to arrange for it to be translated and meet the costs.

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PERTH & KINROSS

If applicants have not lived in the UK for at least **10 years** they need to produce a Certificate of Good Conduct or Criminal Record Check from country of origin.

If this documentation is not in English it needs to be translated and you need to meet the cost and arrange.

MORAY

If born in the UK but lived in any other country within the **10 years** prior to your application for a continuous period of 12 months or more a Criminal Record Check. If born out with the UK you must provide a Criminal Record Check from the country of residence if it was in the last 10 years.

Also need a Criminal Record Check for any country in which you have been resident for a period of 6 months or more.

Documentation to be dated within 6 months prior to submission of application, be translated into English and be verified by UK relevant based Embassy/High Commission.

EAST RENFREWSHIRE

Applicants not resident in the UK or who have been resident in the UK for less than **5 years** prior to an application **must** provide (at their own expenses and officially translated if necessary) a Certificate of Good Conduct from the country they resided in.

GLASGOW CITY COUNCIL

If not resident in the UK for a period of **5 consecutive years** prior to the application you need to provide details of any countries out with the UK where you have lived since you were born and you **must** provide a Criminal Record Check for any country that you have lived since the age of 16. Criminal Record Checks must be dated within 6 months of the application.

Where Criminal Record checks are not in English, you must arrange a translation into English and they must be verified by the relevant UK based Embassy, Consulate or High Commission.