

# LICENSING REGULATORY COMMITTEE

## Immigration Act 2016 – Amendments to The Local Government (Miscellaneous Provisions) Act 1976 to Prevent Illegal Working in the Taxi and Private Hire Sector in England and Wales 5<sup>th</sup> January 2017

### Report of the Licensing Manager

#### PURPOSE OF REPORT

To inform members of the amendments to the Local Government (Miscellaneous Provisions) Act 1976 implemented by the Immigration Act 2016 that require licensing authorities in England and Wales to prevent illegal working in the taxi and private hire sector. The report is to note.

**This report is public.**

#### RECOMMENDATIONS

1. That the Committee note the changes to the Local Government (Miscellaneous Provisions) Act 1976 brought about by the enactment of the Immigration Act 2016 which require the licensing authority to prevent illegal working in the taxi and private hire sector.
- 1.0 Report
- 1.1 The provisions of the Immigration Act 2016 that relate to Taxi and Private Hire Licensing came into force on the 1<sup>st</sup> December 2016.
- 1.2 The Immigration Act 2016 (the 2016 Act) amended existing licensing regimes in the UK to seek to prevent illegal working in the private hire vehicle (PHV) and taxi sector. With effect from 1<sup>st</sup> December 2016, the provisions in the 2016 Act prohibit all licensing authorities across the UK from issuing to anyone who is disqualified by reason of their immigration status and the local authority must discharge this duty by conducting immigration checks. The 2016 Act also embeds other immigration safeguards into the existing licensing regimes across the UK.
- 1.3 The new provisions mean that driver and operator licences must not be issued to people who are illegally present in the UK, who are not permitted to work, or who are permitted to work but are subject to a condition that prohibits them from holding such a licence.
- 1.4 Licensing authorities must discharge this duty by requiring the applicant to submit one of a number of prescribed documents which show that the applicant has

permission to be in the UK and undertake work as an operator or a private hire or taxi driver. The check must be performed when the applicant first applies for a licence or first applies to renew or extend their licence whether for the full statutory term or a lesser period on or after 1<sup>st</sup> December 2016. For those who have limited permission to be in the UK, the licensing authority must repeat the check at each subsequent application to renew or extend the licence until such time as the applicant demonstrates that they are entitled to remain indefinitely in the UK.

- 1.5 Where a person's immigration permission to be in the UK is time-limited to less than the statutory length for a driver or operator licence, the licence must be issued for a duration which does not exceed the applicant's period of permission to be in the UK and work. In the event that the Home Office cuts short or ends a person's immigration permission (referred to as curtailment or revocation), any licence issued as a consequence of an application which was made on or after 1<sup>st</sup> December 2016, that the person holds will automatically lapse.
- 1.6 The provisions also add immigration offences and penalties to the list of grounds on which operator and private hire and taxi driver licences may be suspended or revoked by licensing authorities. In circumstances where the operator or driver licence expires, is revoked or suspended on immigration grounds, it must be returned to the issuing licence authority. Failure to return the licence will be a criminal offence, punishable on conviction in a Magistrates' Court by a fine
- 1.7 A person is disqualified from holding an operator or a PHV or taxi driver licence by reason of their immigration status if:
  - the person requires leave to enter or remain in the UK and has not been granted it; or
  - the person's leave to enter or remain in the UK is invalid,
  - has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time, or otherwise), or
  - is subject to a condition preventing the person from doing work of that kind.
- 1.8 A person is also disqualified from holding a licence if they are subject to a condition on their permission to be in the UK preventing them from holding licence, for example, they are subject to an immigration restriction that does not permit them to work.
- 1.9 The checking requirements are not retrospective. Licensing authorities do not have to check the immigration status of those people who already hold a licence which was issued before 1<sup>st</sup> December 2016, or who sent their licence application to the licensing authority before this date. The check must be performed when the applicant first applies i.e. sends the application for a licence to the licensing authority or first applies to renew their licence or extend their licence on or after 1<sup>st</sup> December 2016.
- 1.10 For those who have time-limited permission to be in the UK, the check must be repeated at each subsequent application to renew or extend the licence until such time as the applicant demonstrates that they are entitled to remain indefinitely in the UK, and as a result, there are no restrictions on their ability to work. The Home Office

have issued Guidance to licensing departments in respect of what documents are acceptable.

- 1.11 To ensure that we do not discriminate against anyone, the Home Office Guidance says that we should treat all licence applicants in the same way when they first apply on or after 1<sup>st</sup> December 2016 during the licence application process. This will also demonstrate a fair, transparent and consistent application process. We should not make assumptions about a person's right to work in the UK or their immigration status on the basis of their nationality, ethnic or national origin, accent, the colour of their skin, or the length of time they have been resident in the UK.
- 1.12 Migrants who are subject to UK immigration control may be granted permission to enter or remain in the UK, with a condition permitting employment, on a time-limited basis or on an indefinite basis. When the person's stay is time limited, this will be shown in their immigration documentation. It is possible for a migrant to apply to extend their stay, and if they do so before their previous status expires, they continue to have any right to work that they previously had while their application and any associated administrative review or appeal are outstanding. In such cases, a person's status may be confirmed by officers contacting the Home Office's Evidence and Enquiry Unit.
- 1.13 A licence issued in respect of an application made on or after 1<sup>st</sup> December 2016, will lapse when the holder's permission to be in the UK comes to an end. This could be because their permission to be in the UK has time-expired or because the Home Office have brought it to an end (for example, they have curtailed their permission to be in the UK). The licensing authority are under no duty to carry out on-going immigration checks to see whether a licence holder's permission to be in the UK has been brought to an end. The migrant will be aware when their time limited permission has come to an end and the Home Office will inform them if they curtail their permission to be in the UK, however there is no system in place for the Home Office to inform the licensing authority about permissions that have been curtailed or come to an end.
- 1.14 The Home Office may provide us with information, or we may obtain information from other sources, which will cause the authority to wish to suspend or revoke a licence on the basis that the licence holder's immigration status has changed on or after 1<sup>st</sup> December 2016, for example their permission to be in the UK has been curtailed, they have been served with a deportation order or they have been convicted of an immigration offence (generally, but not limited to, convictions under the Immigration Act 1971) or subjected to an immigration penalty which has not been cancelled following an objection or appeal. An immigration penalty will have been issued, for example, because they employed an illegal worker or let premises to someone who does not have a right to rent. Civil penalties may be issued to UK citizens as well as migrants who breach the relevant regulations.
- 1.15 On any appeal relating to an operator or driver licence decision whether it is to grant, revoke or suspend the licence, the court is not entitled to consider whether the licence holder should have been convicted of an immigration offence or received an immigration penalty or should have been granted by the Home Office permission to be in the UK. This is because separate rights of immigration appeal, or to have an immigration decision administratively reviewed, exist.
- 1.16 The following statement has been added to the Councils taxi page of the web site and also inserted into the Rules, Regulations and Procedures for Hackney Carriage

and Private Hire Licensing. All applicants after the 1<sup>st</sup> December have been asked to sign a right to work declaration.

'Your right to work in the UK will be checked as part of your licence application, this could include the licensing authority checking your immigration status with the Home Office. We may otherwise share information with the Home Office. You must therefore provide a document or document combination that is stipulated as being suitable for this check. The list of documents is set out on our website. You must provide the original document(s), such as your passport or biometric residence permit, as indicated in the published guidance, so that the check can take place. The document(s) will be copied and the copy retained by the licensing authority. The original document will be returned to you. Your application will not be considered valid until all the necessary information and original document(s) have been produced and the relevant fee has been paid.

If there are restrictions on the length of time you may work in the UK, your licence will not be issued for any longer than this period. In such circumstances the check will be repeated each time you apply to renew or extend your licence, If, during this period, you are disqualified from holding a licence because you have not complied with the UK's immigration laws, your licence will lapse and you must return it to the licensing authority. Failure to do so is a criminal offence.'

1.17 A list of the required documents is attached at appendix 1 to this report.

## 2.0 Conclusion

2.1 The report is to note.

### **CONCLUSION OF IMPACT ASSESSMENT**

**(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)**

The proposed change does not have the potential to cause negative impact or discriminate against different groups in the community based on age, disability, gender, race/ethnicity, religion or religious belief (faith), sexual orientation, or rural isolation.

### **FINANCIAL IMPLICATIONS**

There are no financial implications

### **LEGAL IMPLICATIONS**

The legal implications are included in the report.

### **BACKGROUND PAPERS**

Home Office Guidance For Licensing Authorities To Prevent Illegal Working in the Taxi and Private Hire Trade

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