**REGULATORY SERVICES COMMITTEE**

**WEDNESDAY 8 MARCH 2017**

**PART I – NOT DELEGATED**

**5. EFFECT OF IMMIGRATION ACT 2016 ON APPLICATIONS FOR PRIVATE HIRE & HACKNEY CARRIAGE LICENCES**

(DCES)

**1.** **Summary**

1.1 The Immigration Act 2016 amended existing licensing regimes in the UK to seek to prevent illegal working in the private hire and Hackney carriage sector. With effect from 1 December 2016 the provisions in this Act prohibit all licensing authorities across the UK from issuing to anyone who is disqualified by reason of their immigration status. A local authority therefore discharges this duty by conducting immigration checks. The Act also embeds other immigration safeguards into the existing licensing regimes across the UK. This report is for information purposes only.

**2.** **Details**

2.1 The provisions of the Immigration Act 2016 amend existing licensing regimes to prevent people without lawful immigration status and the right to work from holding an operator or a private hire vehicle (PHV) or taxi driver licence. This has been achieved by adapting existing licensing legislation across the UK: for Three Rivers District this is by amendments to the Local Government (Miscellaneous Provisions) Act 1976.

2.2 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.

2.3 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 to 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 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.

2.4 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 held by that person issued as a consequence of an application which was made on or after 1 December 2016 will automatically lapse.

2.5 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.

2.6 **Who is disqualified from holding a licence?**

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.

2.7 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.

2.8 The consequences to the Immigration Act 2016 apply to applications and requests for new and renewal licences sent to licensing authorities on or after 1 December 2016.

2.9 It should be used by licensing authority staff responsible for the issue, renewal, suspension and revocation of operator or driver licences.

2.10 These provisions only apply to the applicant and do not apply to the MOT or other vehicle check.

2.11 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 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 December 2016. A postmark may be acceptable evidence of date of application.

2.12 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.

2.13 **How do you conduct checks?**

1. Obtain original versions of one or more acceptable documents.

2. Check the document's validity in the presence of the holder

3. Make and retain a clear copy.

Where a passport or residence permit is issued and in force then the checks can be carried out by simply checking the document and copying it.

However, where these are not available or where the applicant has a current application or appeal with the Home Office, then the procedure in verifying is different. The licensing authority must validate the applicant’s right to work in the UK with the Home Office directly using a form issued by the Home Office.

2.14 When the licence has been issued on the basis of a Certificate of Application which states that work is permitted and which has been verified by our Evidence and Enquiry Unit, the licence may only be issued for a maximum period of six months from the date of the Certificate of Application.

2.15 When the licence has been issued on the basis that the applicant has an outstanding in-time Home Office application, appeal or administrative review which has been verified by the Evidence and Enquiry Unit, the licence may be issued for a maximum period of six months from the date of the licence decision.

2.16 This may have an impact to both the applicant and the licensing authority in that the applicant may be required to make a number of applications. A licence is normally issued for a period of three years unless there are exceptional circumstances. This would be considered within the exceptional circumstance bracket but could result in the local authority issuing 6 licences in a period of three years where the Home Office has not made a decision on an application.

2.17  **Is there a need for any enforcement?**

The Home Office may provide licensing authorities with information, or licensing authorities may obtain information from other sources, which will cause them to wish to suspend or revoke a licence on the basis that the licence-holder’s immigration status has changed on or after 1 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. Please note that civil penalties may be issued to UK citizens as well as migrants who breach the relevant regulations.

2.18 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.

2.19 Upon receiving such information, the licensing authority may also wish to consider whether the licence-holder continues to meet the ‘fit and proper’ test.

2.20 The licence-holder is required to return the licence to the licensing authority, once that licence has expired, or been suspended or revoked on immigration grounds. This is underpinned by criminal offences of failing to comply with the return requirement under existing taxi licensing legislation.

2.21 If the licence-holder, without a reasonable excuse, fails within 7 days to return the licence, badge and any other evidence of identification issued by Three Rivers District Council to Three Rivers District Council, they commit an offence. The maximum fine is level 3 on the standard scale. (Currently £1000).

**3.** **Options/Reasons for Recommendation**

3.1 To note the report on the effect of the Immigration Act 2016 on applications for Private Hire & Hackney carriage licences

**4.** **Policy/Budget Reference and Implications**

4.1 The recommendations in this report are within the Council’s agreed policy and budgets.

**5.** **Financial Implications**

5.1 None specific.

5.2There will be a small increase cost to processing applications. This will include items such as time to carry out these extra checks and photocopying costs. There will also be a cost in time and where necessary for any appeal where the licence has been suspended and / or revoked. New taxi procedures and fees were implemented on 1 October 2015 and Officers have advised they will review the procedures and fees by October 2017. This fee review will also consider any cost implications of the implementation of the requirements of this new legislation.

**6.** **Legal Implications**

6.1 There is a statutory requirement on Three Rivers District Council as the licensing authority to implement the provisions of the Immigration Act 2016 which came into effect on 1 December 2016.

**7.** **Equal Opportunities Implications**

7.1 **Relevance Test**

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| Has a relevance test been completed for Equality Impact?  *The Authority must legally implement the provisions of the Act as a legal requirement* | No |
| Did the relevance test conclude a full impact assessment was required? | No |

7.2 **Impact Assessment**

The Authority must legally implement the provisions of the act as a legal requirement.

**8.** **Staffing Implications**

8.1 The impact of the Immigration Act 2016 may have staffing implications. Essentially, this is adding another level of check the licensing service will need to carry out to determine an application. There may also be an increase in applications that the licensing service could potentially see. This will happen where a person’s right to work has not been fully determined with the Home Office and an application for a licence will be made for a shorter period rather than every three years.

8.2 Also licences will need to suspended and/or revoked where there are immigration grounds. This will lead to an increase in officer time.

**9.** **Environmental, Community Safety, Public Health and Risk Management and Health & Safety Implications**

9.1 None specific.

**10. Customer Services Centre Implications**

10.1 As the Customer Service staff are accepting applications for renewals they will be required to carry out the Obtain, Check, and Copy part of the process. As the Customer Service Centre are creating driver licences, they may see an increase in the number of applications.

**11.** **Communications and** **Website Implications**

11.1 Information in regard to the application process for Operator and Driving licences will require updating.

**12.** **Recommendation**

12.1 That the report on the effect of The Immigration Act 2016 on applications for Private Hire & Hackney Carriage licences be noted and a further report be presented to Committee detailing any cost implications (including staffing) as part of the taxi licensing fee review.

12.2 That the Committee recommend to Council that the Council Constitution be amended to reflect the requirements of the Immigration Act 2016.

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**Data Quality**

Data sources:

*None specific.*

**Background Papers**

Home Office Guidance for Licensing Authorities to prevent Illegal Working in the Taxi and Private Hire Sector in England and Wales

**APPENDICES**

Appendix A - Home Office Guidance for Licensing Authorities to prevent Illegal Working in the Taxi and Private Hire Sector in England and Wales