

WYRE FOREST DISTRICT COUNCIL

LICENSING AND ENVIRONMENTAL COMMITTEE

14TH JULY 2008

**Right to Work and Enhanced Criminal Record Checks
For Foreign Nationals – Taxi Drivers**

| OPEN | |
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| RESPONSIBLE OFFICER: | Head of Planning, Health and Environment |
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| APPENDICES: | Appendix A - Department for Transport Guidance Appendix B – Guidance under Section 8 of the Asylum and Immigration Act 1996 |

1. PURPOSE OF REPORT

- 1.1 To seek approval to amend the current procedure for criminal records checks in relation to applications received from foreign nationals and other persons who have lived abroad and to introduce measures to ensure that an applicant has the right to live and work in the United Kingdom before applications are processed.

2. RECOMMENDATION

2.1 The Committee is asked to RECOMMEND to Council that:

- 1) **the current procedure for criminal records checks in relation to applications received from foreign nationals and other persons who have lived abroad be amended, as set out in paragraph 4. below; and**
- 2) **measures be introduced to ensure that an applicant has the right to live and work in the United Kingdom before applications are processed.**

3. BACKGROUND

- 3.1 The Local Government (Miscellaneous Provisions) Act 1976 requires that a District Council must be satisfied that all applicants for Hackney Carriage and Private Hire Driver's Licenses are 'fit and proper persons'.
- 3.2 Current procedures require all applicants to provide details of previous convictions; however, the only formal enquiry into an applicant's background is made via the UK Criminal Records Bureau (CRB).
- 3.3 For UK nationals, this enhanced check will provide details of any criminal record, as well as other information released at the discretion of the Chief Officer of the relevant Police Force.

- 3.4 Unfortunately the CRB checks are not appropriate when applied to foreign nationals and other persons who have been resident abroad, as they refer exclusively to UK records.
- 3.5 At present there is no formal procedure in place to determine whether an applicant for a Hackney Carriage or Private Hire Driver's Licence has the right to live, or work, in the United Kingdom.
- 3.6 The recently issued Department for Transport Best Practice Guidance October 2006, (*Appendix A*) has indicated that Councils should be taking steps to determine the immigration status of any applicant before an application is processed and taking the findings into account when assessing whether an applicant is a 'fit and proper person' (see paragraph 43 of the Best Practice Guide).

4. KEY ISSUES

Proposed Procedures for Criminal Records Checks

- 4.1 As applicants originate from so many diverse and varied countries of origin, it would be impractical for Officers to seek a formal relationship with every Embassy, Consulate, or High Commission which might ultimately be contacted for verification of an applicant's good character. The onus must be on the applicant to provide evidence of his, or her, own criminal record.
- 4.2 It is proposed that all applicants who have lived outside the United Kingdom should be required to produce a document from the relevant Government or Embassy of his or her country of origin, or last place of residence if more appropriate, which provides a comprehensive criminal record. This document should provide contact details for the Embassy or Government, in order that officers can check its authenticity.
- 4.3 The Council needs to deal with applications consistently, but may receive reports or certificates from different countries which vary significantly in quality and detail.
- 4.4 It is proposed that, where an applicant has lived in a foreign country, sufficient documentary evidence must be produced in support of the application, detailing convictions, or showing that there are none. Such information is a proper requirement if Licensing Officers and the Licensing Committee / Magistrates' Court are to be satisfied that the applicant is "fit and proper."
- 4.5 Any relevant offences will be put before the Licensing Committee so Members can make an informed decision as to the suitability of the applicant, just as they would for any driver with similar matters disclosed on a CRB check.
- 4.6 Currently the Hackney Carriage and Private Hire Driver's Licence application form does not require applicants to disclose whether they have lived abroad or whether they have any foreign convictions. In order that the same standards should apply to both British and foreign applicants (as far as is reasonable the checks should provide a comprehensive criminal record check and not allow for any gaps), it is suggested that the Hackney Carriage and Private Hire Driving Licence application form include the following question:
 - *Have you ever been convicted or cautioned for any offence in the UK or outside of the UK ?*

- *Have you been domiciled in any country outside of the UK ?*

4.7 It is envisaged that from time to time, there may be exceptional circumstances which prevent an applicant producing a CRB or its foreign equivalent. In such cases it is suggested that the potential applicant should be given the opportunity to appear before the Licensing Committee, however, the applicant must still sign the declaration confirming whether or not they have any convictions.

5. FINANCIAL IMPLICATIONS

5.1 There are no financial implications arising from this report

6. LEGAL AND POLICY IMPLICATIONS

Proposed Procedures for Establishing Right to Work

- 6.1 The Asylum and Immigration Act 1996 places an obligation on employers to check the status of job applicants in order to establish a legal right to work. Employing a person who does not have the right to work in the United Kingdom is a criminal offence under Section 8 of The Asylum and Immigration Act 1996 and employers can face prosecution for breaches of the Act.
- 6.2 As a result of this legislation, there is a wealth of guidance available to employers to show them how they can comply with the law and to give them the information they need in order to establish a prospective employee's right to work.
- 6.3 As a licensing authority, Wyre Forest District Council does not employ the drivers who are the recipients of Hackney Carriage and Private Hire Licences. However licensing authorities are recommended in the Department for Transport Best Practice Guidance to establish the right to work, to determine whether an applicant is a 'fit and proper person'.
- 6.4 Although there is no legal obligation to do so, it would seem, to be both sensible and responsible to adopt the procedures and recommendations for employers in determining a person's right to work. This is particularly pertinent when it is considered that members of the 'taxi' trade are almost exclusively self employed, so if the licensing authority does not check on an applicant's right to work, it is highly unlikely that any employer ever will.
- 6.5 The procedures referred to are already used by Wyre Forest District Council (*Appendix B*) when recruiting new employees and by extending those requirements to all new applicants for Hackney Carriage and Private Hire Driver's Licences, the Licensing Team would be adopting a well established and nationally recognised procedure, which is supported by regularly updated guidance from the Home Office
- ### **Other Implications**
- 6.6 These proposals will help to improve public safety, particularly for those reliant on public transport.
- 6.7 There are no specific Human Resource, Social Inclusion or Sustainability Implications arising directly from this report.

7. RISK MANAGEMENT

7.1 There are no risk management issues arising from this report

8. CONCLUSION

8.1 The content of this report seeks to bring applicants who have previously lived abroad into line with United Kingdom resident applicants, by requiring them to reveal details of any criminal record and to show that they have the right to live and work in the United Kingdom.

8.2 All new applicants will be asked the same questions and be required to meet the same standards.

9. CONSULTEES

- Head of Legal and Democratic Services
- Wyre Forest Taxi Association
- Criminal Records Bureau

10. BACKGROUND PAPERS

- Department for Transport Best Practice Guidance for Taxi and Private Hire Licensing.