

COMMITTEE:	GENERAL LICENSING COMMITTEE
DATE:	12 DECEMBER 2016
TITLE:	TAXI LICENSING AND THE IMMIGRATION ACT 2016
PURPOSE:	FOR INFORMATION
AUTHOR:	HEAD OF REGULATORY SERVICES

BACKGROUND

1. The Immigration Act 2016 (the 2016 Act) amends existing licensing regimes in the UK to seek to prevent illegal working in the private hire vehicle and Hackney carriage licensing sector. From the 1st of December 2016, the relevant provisions of the 2016 Act will come in to force to ensure that Licensing Authorities do not to issue licences to illegal immigrants and to discharge this duty through immigration checks. Only persons with a right to remain in the UK and work in the UK can be granted, and then retain either a driver licence (both Hackney and private Hire) or a private hire operators licence.
2. The 2016 Act identifies that the Private Hire and Hackney taxi sector is at high risk from illegal working, due to high levels of self-employment meaning drivers are not subject to the usual right to work checks as a part of an employment relationship.
3. The 2016 Act also embeds other immigration safeguards into existing licensing regimes in respect of the Licensing Act 2003 across the UK . Commencement dates for these provisions have not yet been confirmed, and the Central Licensing Committee will be briefed on these provisions once the Home Office has confirmed commencement dates; and relevant Guidance has been published.
4. **Effect of the new measures**
5. The provisions in the 2016 Act amend existing licensing regimes to prevent people without lawful immigration status and the right to work from holding hackney carriage or a private hire driver or operator licence. This has been achieved by adapting existing licensing legislation contained in the Local Government (Miscellaneous Provisions) Act 1976 .
6. 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. Where a person's immigration permission to be in the UK (known as their 'leave') 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. In the event that the Home Office cuts short or ends a person's permission to be in the UK (referred to as curtailment or revocation), any licence that person holds will automatically lapse.
7. The provisions also add immigration offences and penalties to the list of grounds on which hackney carriage or a private hire driver or operator licence may be suspended or revoked by licensing authorities. In circumstances where the driver or operator 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 .

8. Licensing authorities are under a duty not to issue licences to people who are disqualified by their immigration status from holding them. In determining whether someone is disqualified, licensing authorities are under a statutory duty to have regard to guidance issued by the Home Office.
9. The requirement to check the immigration status of licence applicants does not amend or replace the existing 'fit and proper' test that licensing authorities must perform; this includes the obtaining the Certificate of Good Conduct for applicants who have resided abroad for a period of time.

10. **Persons disqualified from holding a licence**

A person is disqualified from holding an hackney carriage or a private hire driver or operator licence by reason of their immigration status if:

- the person requires permission to enter or remain in the UK and has not been granted it; or
- the person's permission 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.

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 a licence, for example, or they are subject to an immigration restriction that does not permit them to work.

11. **Duty of Licensing Authorities**

12. The Officers of the Licensing Unit will be required to undertake several new checks on all new applications or renewal applications, or requests to review current licences from the 1st of December 2016.
13. The Home Office has indicated that Licensing Officers 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.
14. The provisions will also impose enforcement duties on Licensing enforcement officers to suspend or revoke Private Hire or Hackney Vehicle licences or Operator licences where the immigration status of a person disqualifies them from holding a licence.
15. The checking requirements in respect of new licence applications or applications to renew is not retrospective; the immigration status of persons whose licences were issued before 1st of December 2016 will not be subject to extra checks until the licence is due for renewal.
16. For those who have limited permission to stay 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.

17. For both driver and operators, if the person loses the right to remain in the UK during the lifetime of the licence; the licence ceases to have effect and must be returned to the Licensing authority. Failure to return a licence to the Licensing Authority in these circumstances is a criminal offence .
18. These provisions only apply to the applicant and do not apply to the MOT or other vehicle check. They also do not apply to DVLA driver's licences, although the Immigration Act 2014 and the 2016 Act introduced provisions regarding the issue and revocation of DVLA licences in respect of illegal migrants and provided for a new criminal offence of driving illegally in the UK
19. Licensing Officers must be satisfied that a person is not disqualified from holding a licence **before** a licence is issued.

Checking a person's documents to determine if they can hold the licence comprises **three key steps**:

- **Obtain** the person's original document(s);
 - **Check** the document(s) in the presence of the applicant; and
 - Make and retain a clear **copy** of the document(s).
20. The Home Office will issue a detailed list of documents which will need to be checked by the Licensing Authority. If the applicant fails to provide the necessary documents; the application or renewal will be refused.
 21. In most cases licensing officers should be able to make an assessment that the person is not disqualified from holding a licence by making a visual check of the document(s) against the person presenting them. This will include all cases in which the applicant is a British citizen. The Home Office will be able to provide assistance where the immigration status cannot be verified through the relevant documents.
 22. The documents must always be checked in the presence of the applicant so as to verify that the documents are genuine , and that the applicant is the same person as indicated in the documents.
 23. Where the licensing officer is satisfied from examining the applicant's documents that there is no restriction on the right to work in the UK; the document checks will not be required upon an application to renew the licence.
 24. **Resource implications**
 25. Licensing Officers already check some of the documentation required under the Immigration Act 2016 - for the purposes of enabling a DBS Criminal Record check when a renewal or new driver application is received. However, all the checks must be carried out in the presence of the applicant; and the checks may take longer , and initially applications may take longer to be processed. Officers will require additional training in the identification of forged documents.

RECOMMENDATION

To note the contents of the report