

## Basildon Borough Council Environmental Health Services Licensing of Drivers of Hackney Carriages and Private Hire Vehicles

### Policy guidelines on establishing the suitability of applicants who have spent time outside of the UK

#### 1. Background

- 1.1 Licensing laws require the local authority to determine whether an applicant for a licence is a 'fit and proper' person to hold a licence. As part of this process, it is standard procedure to request an 'enhanced' disclosure from the **Disclosure and Barring Service (DBS)**. The Council will then decide whether any information contained in the disclosure means that the applicant should not be granted a licence.
- 1.2 Basildon Council will consider the history of residence rather than an applicant's origin since the **DBS** is unable to provide criminal record information for non-UK countries. Where an applicant has been absent from the UK for a continuous period of more than 6 months, a **DBS** check alone would not be sufficient evidence of the person's entire past record. It is therefore possible for a licence applicant to have a 'clean' UK criminal record but have committed a serious criminal offence outside of the UK, of which the **DBS** is unaware.
- 1.3 These guidelines relate only to the procedure for ensuring that the applicant is suitable for licensing in terms of their past convictions and eligibility to work in the UK. Applicants should also refer to other criteria adopted by the Council for establishing an individual's overall suitability for licensing.
- 1.4 ***The Immigration Act 2016 has amended existing licensing regimes in the UK to seek to prevent illegal working in the hackney carriage and private hire sector. With effect from 1 December 2016, the provisions of the Immigration Act 2016 mandates all licensing authorities not to issue licences to illegal immigrants and to discharge their duty by carrying out checks.***

#### 2. Policy Guidelines

- 2.1 All applicants (including those renewing a licence) must complete a questionnaire as part of the application process. This will state what periods of time, if any, the applicant has spent resident outside of the UK since the age of 10.  
PLEASE NOTE: Under s57 of the Local Government (Miscellaneous Provisions) Act 1976 it is an offence to knowingly or recklessly make a false statement or to omit information required by the Council.
- 2.2 Applicants who have continuously stayed in any other country for 6 months or more will be required to provide a Certificate of Good Conduct (or similar documentary evidence) from each country in which they have resided. For these purposes, a Certificate of Good Conduct means an extract from the judicial record or equivalent

document issued by a competent judicial or administrative authority in the relevant country testifying to good conduct or to any criminal convictions recorded against the individual. The applicant must meet any cost incurred in obtaining the document(s).

- 2.3 An Environmental Health Manager may also decide to approach directly the relevant Embassy, appropriate official body or government agency to verify the authenticity of the submitted documents. The applicant will be advised of any costs to be incurred and the applicant would have to meet these costs.
- 2.4 Where necessary, documents must be translated into English or another language by a translator approved by Basildon **Borough** Council Environmental Health Services. The applicant must meet the cost of obtaining an appropriate translation.
- 2.5 Notwithstanding the above requirements, all applicants will be required to obtain an *enhanced DBS* check to cover the periods of time they have been resident in the UK.
- 2.6 All licence applicants are required to ***provide evidence*** that they are lawfully ***permitted to be present in the United Kingdom and that they are lawfully permitted to work in the United Kingdom without conditions that prohibit them from holding such a licence. Where a person's immigration permission to be in the UK is time-limited to a period less than the statutory length of time for a driver or operator's licence, the licence will only be issued for a duration that does not exceed the applicant's period to be in the UK. In the event that the Home Office curtails or revokes a persons' permission to remain in the UK, any licence that person holds will automatically lapse.***
- 2.7 Obtaining a licence does not verify that the holder has an unqualified right to work in this country.

### **3. Applicants unable to comply**

- 3.1 It is possible that some applicants, such as refugees who are seeking or who have been granted asylum, may not be able to provide the documentation described above. As a result, such individuals may have their applications referred to a committee of the Council for determination. However, in all cases the licensing authority must be satisfied that the candidate is a fit and proper person before granting a driver's licence.
- 3.2 The absence of a Certificate of Good Conduct or equivalent document will not prevent an application being considered but the failure to provide such information without good reasons will be taken into account when making the decision.
- 3.3 Where an applicant is unable to produce a Certificate of Good Conduct or equivalent document, it is recommended that he or she should produce references and any other appropriate documents from reputable individuals or bodies who can vouch for his or her conduct abroad (including reference to the absence or otherwise of any criminal offences committed in that country).
- 3.4 ***The absence of original documentation that proves the applicant's right to remain and work in the UK will result in the application being refused.***

3.5 Incomplete applications will not be accepted and will be returned to the applicant.

#### **4. Appeals**

4.1 Any person aggrieved by a decision by the Council to refuse the grant of a licence may appeal to a magistrates' court within 21 days of receiving written notification of the decision.

4.2 Further details of how to appeal would be given at the time of refusal.