

HMRC licences and conditionality consultation

LGA response – February 2018

Key messages

- The LGA supports the Government's increased focus on preventing businesses from entering the hidden economy, alongside its existing compliance activity in this area.
- Introducing tax registration as a condition of access to some licences or permits is equivalent to other checks (for example, Disclosure and Barring Service checks, or checks on the right to work under the Immigration Act) and we therefore agree it could in principle be incorporated into the licensing process. However, it is important in doing so that this does not increase burdens for authorities overseeing the licensing process.
- To ensure that a tax registration check does not impose burdens and delays for licensing authorities and applicants, it is vital that there is a simple method enabling licensing authorities to undertake a simple check on an applicant's tax status, with cases referred to HMRC in the event of any discrepancies. There should be no expectation that licensing authorities would be expected to undertake any further investigative work.
- Introducing legislation that allowed licensing authorities to refuse to process an application without evidence of relevant tax registration would be the most effective mechanism to support conditionality.
- The LGA believes that there is scope for extending the principle of conditionality more widely in relation to licensed businesses. For example, licensing authorities experience difficulties with a small number of licenced premises which continue to operate despite being significantly in arrears on their business rates accounts; there are also ongoing problems with businesses that don't pay their licence fees. The LGA would welcome a similar approach of conditionality in this area, with licences able to be frozen where businesses have repeatedly failed to pay their licence fees or business rates.

Further information

- The LGA is supportive of the consultation's objective of preventing businesses from entering the hidden economy, which should reduce the need for later compliance work.
- We recognise that there is a significant overlap between businesses which are non-compliant for tax purposes, and those which may also be non-compliant in relation to other areas of regulation which local authorities are responsible for overseeing.

- Licensing authorities are used to undertaking certain checks as a condition of specific licences. One long-standing example is the requirement for Disclosure and Barring Service checks for taxi and private hire vehicle licences. Government has introduced a responsibility to check an applicant's right to work in the UK as part of the process of securing taxi/private hire licences and more recently applications for alcohol/entertainment licences.
- Therefore, it is in principle possible to introduce a tax registration check as part of a condition of securing a licence. However, the process for doing so must be simple and straightforward to avoid creating burdens on licensing authorities and unnecessary delays in the process of issuing licences.
- A new process would be required to facilitate a tax registration check and we agree with the principle that the process should depend on applicants submitting required proof of registration for tax.
- If licensing authorities were to initiate a tax registration check, they would need to be able to undertake a simple check to verify registration. HMRC would need to provide clear guidance for licensing authorities and applicants around acceptable evidence of registration. There would need to be clear processes for escalating and quickly resolving issues where there are discrepancies.
- In these circumstances, we would not anticipate a tax registration check imposing significant, if any costs on a licensing authority in the case of the licenses included in consultation where fees are set at cost recovery level.
- There would be a need to update legislative gateways and statutory forms in order to incorporate tax registration as a condition of gaining a licence.
- Similarly, consideration would need to be given as to the interaction with tests for granting licences specified in some legislation. Our view is that the simplest way to do this would be to make tax registration a pre-requisite rather than a condition, giving licensing authorities the ability to refuse to process a licence application, without relevant tax information provided.
- In considering the principle of conditionality, we propose that this could be extended more widely, for example in relation to businesses which are reliant on the licensing process to continue to operate but which have outstanding tax debts owed to the same authority which licences them.
- Councils must issue, and cannot suspend, a licence to a business that may owe them many thousands of pounds in unpaid taxes or licence fees. While councils would not seek to exercise suspension until all other options had been exhausted, as it would render future payment even less likely, they should have the option to suspend and revoke the licence in these circumstances.

Response to specific questions

Question 1: Please provide comments or evidence on the suitability of the government's proposals to apply conditionality to one or more of the

licensing schemes outlined above. In your answer, please comment on:

- The extent to which checks on people's tax-registration status would address problems highlighted in the relevant sectors, or whether additional or alternative measures of compliance should be considered.
- How effective conditionality would be in improving standards of tax compliance in the sectors concerned.
- Any positive or negative effects that conditionality would have upon the compliant majority who trade in the relevant sectors; please provide details of any additional one-off or ongoing costs that might be incurred.

The LGA supports the Government's proposal to apply conditionality to the licensing schemes outlined in the consultation as a way to prevent businesses from entering the hidden economy.

This approach would promote compliance by requiring businesses to register for tax purposes or be excluded from the market in which they intend to operate.

The potential drawbacks are that if applicants cannot easily provide, or licensing authorities easily check this information, it could prove burdensome, slowing down or complicating the licensing process. This can be avoided by making it simple for individuals and businesses to provide evidence of tax registration, and for licensing authorities to check it.

Where there is an issue and further checks are required, the application will be held up with the potential for a business to be disrupted. There will need to be clear processes in place for escalating issues and HMRC should endeavour to respond to queries relating to licences within a defined/ reasonable period of time. A 'grace' period for existing licence holders (which is already part of some licensing processes by virtue of the Provision of Services Regulations 1990) would be one way to avoid unnecessary disruption.

A potential risk of the proposal is that in some sectors it could force businesses to operate outside of the licensed framework, as well as the tax framework, rather than ensuring they operate within both of these. Landlords for example might be deterred from applying for a licence which would remove an important stage for landlords in understanding the responsibilities they are taking on in running an HMO or other licensed property, and for councils in making contact with landlords and assessing the quality of their property and ability to manage it.

Question 2: Please provide comments or evidence on the suitability of applying forms of conditionality – or similar approaches to promote tax compliance – in the construction sector?

- **Are there any other sectors that the government should consider for similar applications of conditionality?**

There has been a recent increase in people establishing 'home dog boarding' businesses licensed under the Animal Boarding Establishments Act 1963. As with dog breeding, this is potentially lucrative and could be open to the risk of people operating within the hidden economy.

Applications for dog breeding and home dog boarding businesses may also be an area that the government could consider for conditionality in the future.

Question 3: please describe how tax-registration or a similar standard of compliance could be introduced into existing terms and conditions of licences:

- **Would it be best to introduce tax conditionality as a new, standalone condition of licences, or would it better included as a consideration with fit-and-proper person or similar checks?**
- **Would tax-registration be the best standard of compliance, or should a similar or broader standard of compliance be introduced – if so, what additional factors should be considered?**

We agree that tax registration is a good standard of compliance. The LGA's view is that the most effective way to introduce conditionality would be to make tax registration a prerequisite for applications - legislation could effectively allow licensing authorities to refuse to process a licence without relevant tax information being provided.

For example: "No application for the renewal of a licence may be accepted and determined by a [licensing authority] unless the [licensing authority] is satisfied that the applicant has provided evidence of their tax registration."

Legislation would also need to clarify the requirements for when an existing licence is transferred from one licence-holder to another. It must be clear whether the new licence-holder would be required to prove tax registration before the licence transfer takes effect, or whether they would be treated as a new applicant and therefore only required to prove registration when renewing that licence.

Including conditionality into existing licence conditions such as the 'fit and proper test' could be more challenging given the range of different licensing objectives or equivalent tests for granting licences specified in legislation governing the different licensing regimes.

For private housing there is no formal government guidance on what constitutes a fit and proper person. This leaves councils open to challenge by landlords, and some councils have introduced their own local policy on fit and proper landlords in order to provide a robust and transparent basis for their decisions. Bristol City Council and Runnymede Borough Council have both introduced their own policies in this respect. A similar argument applies in relation to taxi and private hire vehicle driver licensing.

A landlord can appeal to a First Tier Tribunal (Residential Property) if a council refuses to grant a license on the grounds that they are not a fit and proper person. Whilst we do not believe conditionality should be included as part of a fit and proper test, if this was the governments preferred option, they will need to consider what support councils and tribunals would need to uphold license refusals on the grounds of non-compliance with tax requirements. Property rental can generate significant returns, and any legal loopholes will be quickly tested and exposed.

Question 4: please comment on the proposed process for introducing tax checks into new licences.

- **How effective would it be in promoting registration?**
- **How easily could the required changes be introduced into licensing processes?**
- **Please provide details of any additional one-off and ongoing costs that might be incurred.**

We support the proposed approach to conditionality which would require a new applicant to make a declaration that they understand tax obligations. Evidence of registration would then be provided at renewal stage. This seems to strike a proportionate balance between promoting compliance and giving businesses time to fulfil tax registration requirements. As noted earlier, this should promote registration as it would in effect force businesses to register or be excluded from the market in which they intend to operate. Again, as highlighted earlier, there would also be scope for HMRC to use data collected through mechanisms such as the National Fraud Initiative to undertake checks outside in advance of a renewal process as appropriate.

In practice this is a relatively straightforward change to be made. There would be initial time and resource required for councils to update application forms, policies and internal procedures for processing applications for which there would be a cost. Adding an extra step into processing of applications would also add to the administrative time taken to process applications, again adding a cost. However, these costs could be recovered through fees.

There would need to be an appropriate lead in time before any new proposals were brought in to allow licensing authorities to plan for and implement changes.

Recent changes brought in by the Immigration Act, which require licensing authorities to check applicant's right to work in the UK as part of application for alcohol/ entertainment licences involved similar changes to forms/ processes.

Changes would need to be supported by guidance for licensing authorities and licensees. It would be helpful if local authority officers could be involved in the process of drafting this guidance. HMRC would need to publish guidance in advance of new requirements coming into force.

In terms of HMOs, most councils use their own HMO licensing form, either in a paper version or online application. This ensures that the license form data is compatible with software used to manage other housing and financial functions. . It would be necessary for each council to amend the application form to request additional information. The same is true for most other licensing regimes.

Additionally, councils would need to update information provided to applicants and potentially in policy documents, for example an enforcement policy.

Costs will vary by council. The administrative cost of HMO licensing is highest for councils with small numbers of HMOs. For this reason, processes should be simple and streamlined.

Question 5: please provide evidence on the likely effectiveness of these proposals in motivating more applicants to register with HMRC.

A legislative prohibition on processing renewals unless tax registration can be demonstrated should provide a clear incentive to register with HMRC.

Question 6: please provide further evidence on the suitability of the options described for verifying the tax-registration status of people applying for licences.

- **If evidence of an applicant's registration status is generated through personal or business tax accounts, how could applicants transfer this to a licensing authority in a secure and efficient way?**

- **If evidence is generated through use of documentation, how could applicants transfer this to a licensing authority in a secure and efficient way?**
- **Would an option be needed for those who do not engage digitally with HMRC?**

We agree that applicants should be required to evidence registration for tax.

The process for checking this evidence would need to be straightforward. HMRC could develop a list of acceptable documents to evidence tax registration in a similar way to the list the Home Office publishes on acceptable documents as evidence of entitlement to work.

There would need to be clear processes for escalating and quickly resolving issues where there are discrepancies.

HMRC would need to issue clear guidance for businesses to make clear the steps they need to evidence registration, this should include options for those who do not digitally engage.

There would also need to be guidance and training for licensing authorities on checking documentation.

For many applicants, English will be their second language so thought would need to be given to this and processes kept as straightforward as possible.

Question 7: How frequently would applicants have a permissible reason for not being registered in the sectors outlined in chapter 2?

- **If applicants have a permissible reason for not being registered, how should they be able to demonstrate this in order to obtain the licence?**
- **How can HMRC ensure that any process is simple for applicants and licensing authorities to administer?**

There will be some cases where someone will hold a licence but not currently be using this to trade or generate income. For example, someone may hold a taxi/PHV licence but not be actively working as a driver, this would be a legitimate reason for not being registered for tax.

Rules relating to such a circumstance would need to be clear, and our expectation would be that any further checks required should be undertaken by HMRC. The options outlined in the proposal need further thought – there should not be a burden on the licensing authority to demonstrate that the licence holder has a legitimate reason for not being registered for tax.

Question 8: Should licensing authorities refuse to process licences where no evidence is provided to verify an applicant's declaration that they are registered for tax?

Yes. There is a distinction between refusing to grant a licence as opposed to refusing to process a licence, without relevant tax information provided.

For example, it would be possible to introduced legislation to the effect that 'No application for the renewal of a licence may be accepted and determined by a [licensing authority] unless the [licensing authority] is satisfied that the applicant has provided evidence of their tax registration.'

Question 9: Please comment on data powers that might be needed to support the tax-registration checks described in this chapter.

A new process would be required to facilitate a tax registration check. Existing processes for exchanging data between councils and HMRC are governed by specific legal gateways and based on either bulk sharing of data or individual requests for specific items of data, neither of which would be suitable for these circumstances.

Question 10: please comment on the circumstances in which HMRC could disclose relevant information back to a licensing authority.

- **What action would licensing authorities wish to take in these cases?**
- **Are there circumstances in which licensing authorities would wish to be informed about a licence holder engaging in tax non-compliance, beyond a failure to register for tax? Please describe what these would be.**

There would need to be absolute clarity on when HMRC would disclose relevant information to licensing authorities, and what actions licensing authorities would be expected or required to take.

A licensing authority is likely to only take account following a conviction for an offence that is relevant to that licensing regime.

Question 11: What one-off and on-going costs and administrative burdens do you think will arise as a result of this proposal? Please provide evidence on the extent to which these proposals would minimise additional administrative burdens for licensing bodies?

See response to Question 4.

Question 12: Are there any extra steps or safeguards that should be considered, particularly for customer groups who may find it difficult to provide proof that they are registered for tax?

Further consultation should be undertaken with specific customer groups to understand this. For example, Gypsies and Travellers in relation to Scrap Metal licensing.

Question 13: Do you agree that the proposals set out in chapter 3 strike an appropriate balance between the need to safeguard customer privacy and to address risks posed by the hidden economy? Are there any different or additional safeguards that the government should consider?

Yes, we agree the proposals strike an appropriate balance.

Question 14: please provide evidence on the extent to which these proposals would minimise administrative burdens for licensing authorities. Are there any extra steps or safeguards that should be considered?

The process for checking this evidence of applicants registration would need to be straightforward. HMRC could develop a list of acceptable documents to evidence tax registration in a similar way to the list the Home Office publishes on acceptable documents as evidence of entitlement to work.

Clear guidance for local authorities would need to be developed, clarifying what changes would need to be made to internal processes, with an adequate lead in time for any changes to be brought in.

There would need to be clear processes for escalating and quickly resolving issues where there are discrepancies.

HMRC would need to issue clear guidance for businesses to make clear the steps they need to evidence registration, so that local authorities do not have to deal with questions from applicants about what is/ is not acceptable evidence.

Question 15: Please describe appeal mechanisms that would, or should, apply in relation to the proposals detailed in chapter 3. Please describe any additional one-off and on-going costs or any administrative burdens associated with these proposals, and how these could be kept to a minimum.

If conditionality is solely predicated on the basis of non-processing of applications, there would not be need for an appeal mechanism if it is also easy for applicants to register for tax.

General comments

- The Government announced in December 2017 that it will extend the scope of mandatory HMO licensing¹, with a potential start date of October 2018. The simplified definition is expected to bring an additional 141,484 properties into the scope of mandatory licensing.*
- The increased volume of HMO licence applications would be an opportunity to test proposals for conditionality. Councils and landlords should experience a co-ordinated approach to the introduction of extended HMO licensing and checks on taxation. We recommend that HMRC and MHCLG work together to provide effective guidance to councils and landlords.*

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/670536/HMO_licensing_reforms_response.pdf