Local Government Association (LGA) briefing: Deregulation Bill (House of Commons Report Stage)

14 May 2014

Briefing

KEY MESSAGES

- The LGA welcomes the move by the Government to use this Bill to reduce the legislative burden on business, civil society, individuals and public sector bodies.

- The burden of "red tape" and legislation is an important issue to all in local government. Councils will still have over 1200 statutory duties to fulfil even if this Bill passes. Regulation and bureaucracy are often cited by our members as barriers to growth and the locally based decision making that would better serve our residents and communities.

- The LGA has been campaigning to reduce red tape through its "Rewiring Public Services" campaign. We are calling for more localised decision making in order to drive growth and reshape public services around the individual and place by allowing councils greater flexibilities and freedoms from central government control and regulation.

- The LGA remains concerned about the Government's approach, at House of Commons committee stage of the Bill, of implementing measures to deregulate a number of activities, such as Private Hire Vehicle (PHV) licences and dog breeding controls, without any consultation with councils. The even more substantial clause on ancillary sales of alcohol has been introduced at Report Stage without advance warning to key partners that it would appear in this Bill.

- We also urge the Government to look again at their approach to Right To Buy, household waste and include new measures to provide a review of complicated Licensing arrangements faced by councils.

PRIVATE VEHICLE LICENSING REFORMS

- We do not believe that Government should have brought forward New Clauses to the Deregulation Bill in the Commons Committee Stages **in advance** of publication of the Law Commission's in-depth review of all Taxi and PHV legislation.

- As set out in our recent Rewiring Licensing[1] proposals, the LGA believes that more robust and proportionate regulations are established when they are considered in the context of legislation as a whole, and not in piecemeal fashion, as is the case here.

CLAUSE 8 – PRIVATE HIRE VEHICLES: CIRCUMSTANCES IN WHICH DRIVER'S LICENCE REQUIRED

- We understand the rationale behind this proposal, which seeks to balance professional and reasonable personal usage of a car by PHV drivers and their families. However, we believe that it goes too far and undermines the fact that drivers of PHVs are in a responsible and privileged position and users of these vehicles therefore need to be assured that drivers are thoroughly checked. **The LGA therefore believes that this clause is fundamentally flawed as drafted and should be deleted.**

[1] http://www.local.gov.uk/documents/10180/5854661/L14-40+rewiring+open+for+business.+v3.pdf/6b8aa308-94cd-4af5-9b3a-5f2696a9a4b5

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- The clause as it stands permits anyone to drive the licensed vehicle. Should anyone be able to drive a PHV, it would therefore be impossible to be assured that the person driving a vehicle is in fact the person who has been through the proper vetting process for licensed drivers.

- The reverse burden of proof in the clause does not provide the necessary protection and assurances for passengers, as it relies on the vehicle being stopped once the passengers are in it. Unfortunately, licensing officers do not have the power to stop moving vehicles, meaning the opportunity for intervention is limited only to when the passenger is embarking or disembarking. We understand that the Law Commission work may contain a proposal to remedy this, but in the present circumstances councils' ability to maintain safety is seriously undermined if this clause were introduced as drafted.

- In principle, we believe the nomination to the council of a specific family member as alternate driver would achieve a more appropriate balance between the greater flexibility for families that the new clause aims to achieve with the need to reduce risk and provide assurances for passengers.

- If this clause is amended, it will need to consider a number of important areas of risk. For instance, the investigation and enforcement of traffic offences will be complicated as licensed drivers could claim that their nominated driver was responsible, thereby avoiding a review of their licence to operate as a PHV.

- Similarly, vehicles are clearly marked as licensed vehicles and, in many areas, it is not possible to remove these markings to distinguish between times when the vehicle is actively available for hire and when it is not. There is therefore a great risk that people will enter the marked vehicle in the belief that the driver has been through the proper vetting process for licensed drivers. This could be addressed through a strengthened enforcement system, but only limited action could be taken with the present system.

- Separately, insurance companies have advised us that many vehicles will not be covered for additional drivers, or for driving outside limited geographical areas, and that the costs may outweigh the benefits for many PHV drivers.

CLAUSE 9 – DURATION OF LICENCES

- **We support this proposal as drafted, as it is consistent with existing legislation and moves towards the principle of a 'licence for life' set out in the LGA's Rewiring Licensing proposals.**

- It is important that councils are able to retain valid checks on drivers. The reformed Disclosure and Barring Scheme (DBS) now offers the opportunity for councils to be alerted to new convictions when they occur, but only if the individual driver voluntarily signs up to that service. If the driver does not sign up to that additional service, then it may be appropriate to retain more frequent licence renewals to ensure that drivers do not persist in driving after they have been convicted of a relevant offence.

- Although courts should already notify councils about any convictions affecting licences, many local courts have failed to ensure this notification system is

effectively implemented. We urge government to work with local courts to ensure that this important check is properly implemented.

CLAUSE 10 – SUB-CONTRACTING

- **The LGA opposes this clause on the grounds that the necessary measures to protect the public are not in place.** A member of the public may place a booking with a PHV firm for many reasons, including a positive previous experience or familiarity with a local firm. Sub-contracting across licensing areas would mean that the passenger would have no idea of the quality or, in some cases, the name of the company that arrives to deliver the service.

- There are also questions about who would retain responsibility in the event that the sub-contractor was unable to deliver the contract (for instance, in the event of a breakdown or puncture), as well as consumer protection issues surrounding the question of how a passenger can identify and complain to the correct licensing authority, which could be on the other side of the country. This is a serious concern, as the legislation currently limits enforcement to a designated officer of the licensing authority, leaving enforcement officers from other councils powerless to intervene even where a journey takes place in a different local area.

- The above issues are further complicated by the failure of the clause to specify the number of times that sub-contracting could take place. In theory, the booking could be passed on 5 or 6 times, leaving the passenger with virtually no understanding of who was providing the service, or how to trace the correct route for redress or complaint if something goes wrong.

- We understand that the Law Commission proposals for reform may address this issue, enabling this clause to be brought forward again as part of any wider necessary reform. **We strongly believe that work on cross-border sub-contracting should wait until the Law Commission has reported.**

CLAUSE 26 - RIGHT TO BUY

- **The Bill misses an opportunity to reform the current operational arrangements for the Right To Buy which undermine the ability of local authorities to replace housing sold under the scheme.** The LGA is pressing for changes to the Bill to address these disincentives to much needed new housing supply.

- The Bill relaxes the eligibility criteria for the Right to Buy. This makes it more important than ever that the system delivers replacement homes for those sold. A blanket discount cap, as is currently in place, ignores the large differences in property values up and down the country, and in some areas will not provide a discount sufficient to generate sales and vice versa. Greater flexibility should be provided to enable councils to set the Right to Buy discount locally, to reflect local housing markets and stimulate sales.

- A new council home should never be sold for less than it cost to build, and protection is provided by a “cost floor” on the sale price. The current cost floor arrangements are time limited and act as a disincentive to building. This is outside the scope of the Deregulation Bill, but forms part of wider LGA activity to ensure that councils are able to replace homes sold under Right To Buy.

- Under the current system, the amount of receipts kept by the Treasury is based on the predicted amount of Right to Buy sales in each authority. This means that only when the Treasury has received the predicted amount does money become available to be retained locally.

- The restrictive criteria which accompany Homes and Communities Agency agreements to retain receipts locally also restricts the ability of local authorities to invest in housing. For example, the agreements limit councils to funding only 30 per cent of new build costs from Right to Buy receipts, as well as limiting the use of other housing revenue account receipts as funding.

- The Deregulation Bill should allow for full retention of receipts and greater flexibility over how they are used. This would incentivise councils to use their assets, such as land, for replacement housing and could allow councils to bring development sites forward that may not be attractive or viable to other providers.

- **The Bill represents an opportunity to alter the current arrangements to enable additional reinvestment in new affordable housing and we call on the Government to use the opportunity to allow councils to reinvest significantly in new homes.**

CLAUSE 36 - HOUSEHOLD WASTE

- **Councils and residents have transformed recycling and waste services levels in the last decade.** Household recycling rates have almost quadrupled to 43 per cent over the last decade and the amount of waste sent to landfill has reduced by over 70 per cent. At the same time residents are becoming increasingly satisfied with the service they receive.

- Operating standard collection arrangements is crucial to help councils and residents build on this success and further increase recycling levels and meet EU targets. The small minority of households who fail to comply cause nuisance to neighbours by leaving rubbish out on the street or failing to separate waste for recycling which can lead to contamination and additional costs for disposal. The cost of contamination is shared by all taxpayers, the majority of whom have taken care to separate waste for recycling.

- **The Deregulation Bill removes the power to prescribe collection arrangements.** The new trigger for a penalty is that the resident's behaviour is "detrimental to amenities of the locality". This is a novel test with no legal precedents to define it. It almost certainly would not allow a council to enforce, for example, the recycling arrangements which may be needed to get best value for money from a waste collection contract. **This change is unnecessary and should be removed from the bill as it will hamper the wider efforts of residents to increase recycling rates.**

- The Deregulation Bill also removes the offence, punishable by a £1,000 fine, of not complying with prescribed arrangements for refuse collection and converts this to a £60 civil penalty.

- The current arrangements are used proportionately and principally as a deterrent by councils. Councils will only enforce as a last resort where efforts to resolve the problem locally had failed. In 2008/9 just over two penalties issued per council area each year or one for every 26,000 households. **The proposed civil fine of £60 will not serve as an effective deterrent and will**

undermine the work of councils to encourage and support residents to increase recycling rates. The LGA believes the current fine level of £1000 should be reduced to a level one fine of £200.

CLAUSE 69 – LEGISLATION NO LONGER OF PRACTICAL USE

SCHEDULE 18, PART 6 - BREEDING OF DOGS ACT (1973)

KEEPING OF ACCURATE RECORDS

- **The LGA does not support this clause as it stands.** Firstly, the level of information that will be included on the microchip does not mirror or equal the information that is required for current records. In particular, the information that will link a puppy to a specific bitch, essential in the case of tracing hereditary illness, will not be available. This will make it virtually impossible for enforcement officers to trace a puppy's lineage and guarantee its health or its pedigree.

- Secondly, we believe that it is premature to introduce this clause before new micro-chipping requirements have been introduced and successfully embedded. If it is to be introduced, this clause requires a guarantee that it would not commence before the necessary database of records for microchips was fully established. If this were not the case, then enforcing authorities would be left without any method by which they could track and trace dogs, leaving the country at risk of the spread of disease, infection and trafficking of illegal dogs. The unfortunate experience from the introduction of horse passports, where a central database has never been established, must be learned from if we are to introduce a workable system.

REMOVING THE NEED TO DELIVER A DOG WITH A COLLAR

- **The LGA opposes this clause on animal welfare grounds.** If a dog becomes lost then anyone who finds it is able to read the information on a collar. Members of the public will not be able to read a microchip and determine where an animal properly belongs. This will make it harder for members of the public to contact owners when they come across a stray dog.

- This would increase the likelihood that people deliver unidentified pets to the local authority, as the public body responsible for stray dogs, as they will not readily be able to identify the rightful owner. This will increase the financial burden on councils already struggling to adequately maintain these services in the face of cuts of 40 per cent to overall council budgets over the life of the current Parliament.

- **It is unhelpful to put even more pressure on councils by removing an opportunity for members of the public to return pets to their rightful owner if they are willing to do so. This would constitute a new burden and therefore needs to be fully funded.**

NEW CLAUSE 5 – SALE OF ALCOHOL AT COMMUNITY EVENTS ETC AND ANCILLARY BUSINESS SALE OF ALCOHOL

- The LGA supports the principle of simplifying licensing regulation where this is proportionate and does not compromise public protection. We gave provisional support to the concept of an ancillary sales notice during the consultation on the Alcohol Strategy and looked forward to the additional

engagement that was promised in both the consultation document and the 'Next Steps' response to the consultation.

- We are disappointed that this has not taken place in advance of the introduction of this clause, as it limits our ability to comment on what is a substantial amendment to the licensing of alcohol sales. We would like assurances from Government that we will be fully engaged in developing the detail of the secondary regulations that will be required by this clause.

- We are also disappointed that Government continues to introduce amendments to licensing regimes, across diverse subjects, in a piecemeal fashion, rather than taking the strategic and coherent approach that the LGA proposed in Rewiring Licensing. This increases the risks that there will be unintended consequences from amendments, as well as requiring constant changes to procedures that are unhelpful for councils and the businesses that they licence.

- Introducing this clause as a standalone item means that it cannot be considered in the context of a potential public health licensing objective, which the LGA strongly believes should be brought forward, and which the Government has said it is still considering. The proposed clause could be said to increase the availability and accessibility of alcohol, contributing to the high-levels of alcohol-related health harm that exist. **We would like to know what consideration Government has given to this potential contradiction; and why public health and child protection authorities are not able to comment on these notices, in contrast to their involvement with other applications to sell alcohol.**

NEW DEREGULATORY CLAUSES RECOMMENDED BY THE LGA

LICENSING REVIEW

- **We support a New Clause that will commit the Government to undertake a review of all local authority licensing regulations and how they could be simplified.**

- Given the concerns expressed by the Government on the time-frame of a review at Commons Committee Stage, we propose lengthening the suggested review period to 24 months. We do not believe such a review would be burdensome on central Government, but believe it would be beneficial to small business growth.

- There are well over 150 licences, permits, consents and registrations issued by councils, and many more issued by Government and its agencies. A business establishing even a standard business model can be required by law to submit numerous licence applications, relating to the same premise and containing overlapping information, to different parts of the relevant council.

- For example, a small restaurant could be required to apply for up to 8 or 9 different licences or registrations. At the other end of the scale, we know that some large businesses have to employ a dedicated person to keep track of the different renewal dates that their multiple licences require. This is costly and burdensome, and detracts from their core focus of growing their business and serving their customers.

- This issue arises because some licensing legislation, most notably the Licensing Act, requires that councils must use the application forms set out in regulations. This means they are unable to combine forms so that a business provides basic information, such as its name and address, only once. Instead, applicants must complete this for each and every form required. Councils would like the freedom to remove this burden by combining and simplifying forms and licences. Ending prescribed forms in legislation would enable this to happen without needing parliamentary time.

- Individually, licensing regimes make sense and mostly continue to provide valuable safeguards. Typically, they have been brought in to tackle specific problems as they occur, as we have seen with the Scrap Metal Dealers Act 2013, and this has been taking place for hundreds of years. However, tackling problems on an individual basis requires a time-consuming process that can last years.

- Moreover, collectively, licensing regimes are a complex mess of conflicting and irrational rules. The Licensing Act 2003 made an initial attempt to bring together multiple licences in one form – alcohol, entertainment and late-night refreshment. We want to take this approach further by rationalising and updating the legislation across at least 5 departments. A review of all local authority licensing legislation is a necessary first step to achieving this.

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