

# Local Government Association (LGA) briefing: Deregulation Bill – Second Reading House of Lords 7 July 2014



## KEY MESSAGES

- The LGA welcomes Government's objective to use this Bill to reduce the legislative burden on business, civil society, individuals and public sector bodies. **However, we are concerned about the way in which government has consistently introduced a number of significant new clauses at a late stage of the Bill without prior consultation with councils.** In addition, we believe that in some areas, notably licensing, government is taking a piecemeal approach to deregulation where there is an opportunity for more comprehensive reform.
- 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. This has significant resource implications for both councils and the people and businesses that are regulated by them.
- The LGA has therefore 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 Government needs to give a firm commitment that the ban it proposes on the use of CCTV for parking enforcement under Clause 38, will not come into force until the exemptions it has promised to make to that ban are in place. The Government also needs to make additional exemptions.
- The LGA and an array of other organisations including the police, taxi associations and safety charities are extremely worried about proposed changes to controls of Private Hire Vehicles (PHV) (Clauses 10 and 12) and the implications for public safety from these changes.

## PRIVATE VEHICLE LICENSING REFORMS – CLAUSES 10, 12

- We do not believe that Government should have brought forward new clauses deregulating private hire vehicle (PHV) controls without consulting with councils in advance. We also believe that these measures pre-empt the opportunity for more comprehensive reform offered by the Law Commission's recent review of all Taxi and PHV legislation.
- The Commission's recommendations included significant safeguards and new enforcement powers that would enable councils to retain effective oversight of drivers. Government should not compromise the integrity of the licensing system by attempting to deregulate without these additional safeguards.
- Government has repeatedly said that these proposals are introduced with the support of the industry. The LGA has been in contact with all the major business associations in this field, as well as charities such as the Suzy Lamplugh Trust, and none of these organisations support the proposals. We therefore believe that Government should state clearly the evidence base for who is supporting these proposals.
- Government also cites the fact that these proposals are already in force in London. While we support the creation of a consistent national framework, it is

# Briefing

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important to note that London has additional safeguards in place to manage these issues that are not being replicated in these proposals. However, since London has significant problems with unlicensed operators even with these additional safeguards, we do not agree that this aspect of the London framework should be extended to other areas.

#### **CLAUSE 10 – 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.**
- 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.
- 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.
- 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 12 – 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 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.
- The recent Law Commission proposals set out some additional safeguards on this aspect, but we are unconvinced that the academic approach to redistributing funding for enforcement would work in practice. We therefore believe this proposal should be the subject of more detailed discussion before it is brought forward again.

### **CLAUSE 29 - 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.
- 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 restrict 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.

### **CLAUSE 38 – PARKING and CCTV**

- **The Government needs to give a firm commitment that the ban it proposes on the use of CCTV for parking enforcement under Clause 38, will not come into force until the exemptions it has promised to make to that ban are in place. The Government needs to make additional exemptions.** This is because it is crucial for the purposes of ensuring safety that there are exemptions that allow the use of CCTV for enforcing parking

regulations at bus stops, in bus lanes, outside school and on clearways. The Government appears to have undertaken no impact assessment in relation to these proposals and to have done no work on the equalities implications of it.

- Clause 38 seeks to ban the use of CCTV, but it does allow the Secretary of State to make exemptions to these rules in guidance. The Government has already undertaken to grant exemptions at bus stops, in bus lanes, outside schools and on clearways. If the Bill takes effect before the guidance is in force it will become impossible to enforce parking restrictions in the locations referred to. The government needs to give a cast-iron assurance that the exemptions it has promised will be placed in guidance and brought into effect before – or at the same time as – the powers in the bill come into force. Alternatively it could place the exemptions on the face of the Bill (which would have the same effect).
- If bus reliability is to be maintained in England it will be necessary to exempt enforcement of all ‘no stopping’ and ‘no loading’ contraventions from the CCTV ban. This would still maintain the spirit of the Government’s proposals without bringing misery to the many thousands of people who travel to work each day by bus and making it harder for shoppers to reach our high streets.
- London Travel Watch and London Councils have advised the LGA that 95 percent of the London bus network operate on London borough roads (not on TfLs Red Route network) **which, under these proposals, would be subject to reduced levels of enforcement, potentially affecting 6.5 million journeys a day.** Most of these roads cannot be designated clearways as they allow street parking and/or loading for part of their length and parking restrictions on them may only apply for part of the day. The position is the same in the rest of England. **Bus users make up 29% of all city centre spending and 30% of shoppers rely on the bus as they have no access to a car or van, with a further 6% having only infrequent access.**<sup>1</sup>
- **The proposed exemptions represent a significant LGA campaigning success as we have argued that CCTV is needed to enforce parking restrictions near schools, in bus lanes, at bus stops or on red routes.** CCTV enforcement is important for protecting the public. Nevertheless we remain opposed to the ban in principle. Banning CCTV parking enforcement is an attempt to make it easier to break the law. This is not a sensible move on the Government’s part. Democratically elected councils are best placed to make decisions about enforcing parking restrictions.
- **Aside from principled opposition, the LGA has a number of concerns with the Clause 38 which are:**
  - Parliament is currently being asked to pass a blanket ban on the use of CCTV – something the LGA, the British Parking Association, head teachers and charities representing blind and disabled people have argued against – and then to empower the Secretary of State to grant exemptions at a later date. This means that a future Secretary of State will be free to remove the exemptions without amending legislation.

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<sup>1</sup> <http://www.greenerjourneys.com/2013/12/bus-first-choice-city-centre-visitors/>

- The exemptions mentioned by the Minister for Transport do not go far enough. In addition to schools, bus stops, bus routes and clearways, the no-stopping zones around pedestrian crossings should be exempted from the ban on the same safety grounds.
- The Government has now published its response to the consultation it issued in December on parking. This response shows that the ban on CCTV enforcement was opposed by cycling groups, disability campaigners, the bus industry, transport groups and schools, while businesses and motoring groups offered mixed responses, with some motoring groups calling the ban a retrograde step and some businesses stressing that CCTV could remain beneficial at particular times and at particular locations. **The LGA has called for parking guidance to be reviewed by a working group of stakeholders, rather than the unthinking approach of passing a ban which has very limited support.**

#### CLAUSE 43 - 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 52 – 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<sup>2</sup>. 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.**

## **SCHEDULE 20, 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

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<sup>2</sup> <http://www.local.gov.uk/documents/10180/5854661/L14-40+rewiring+open+for+business.+v3.pdf/6b8aa308-94cd-4af5-9b3a-5f2696a9a4b5>

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 and increase the likelihood that people will deliver stray dogs to councils.
- **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.**

## **ADDITIONAL DEREGULATORY MEASURES RECOMMENDED BY THE LGA**

### **LICENSING REVIEW**

- Councils support the need to help local businesses and cut red tape, as set out in the LGA's vision for local regulation, Open for Business. However, the Government could do more to help them achieve this.
- The LGA's 'Rewiring Licensing' proposals would consolidate existing licensing requirements and enable businesses to apply for a single licence, rather than the multiple licences required under the current complex and outdated legislation.
- **We urge Peers to press the Government to commit to a review of all local authority licensing regulations and how they could be simplified as part of the Bill.**

### **STATUTORY NOTICES**

- It is a legal requirement for local authorities to pay to advertise public or statutory notices in local newspapers, covering a range of subjects such as informing residents about planned road closures, certain types of planning and licensing applications, road traffic orders and changes to local education provision.
- The requirement dates back to 1972, a time when local and weekly newspapers and radio were popular sources of information. The last 41 years has seen vast changes in technology and shifts in consumer preferences. **This requirement remains in force despite evidence that the way people access news and information has changed significantly and the circulation of local newspapers is failing.**
- **The legal duty to publish statutory notices in local newspapers should be removed.** This reform would not remove the duty on councils to inform their residents about statutory notices or any other area of council policy, it would simply allow them to decide whether or not the local newspaper was the best place to do this. For instance, licensing applications are also advertised

through notices placed on the building, and the majority of representations are triggered by seeing these notices, rather than those in the paper.

- Statutory notices are an expensive and ineffective way of communicating with residents. Councils spend £26 million a year on public notices; 84 per cent of councils say there are more cost-effective ways to publish public notices, such as on websites and direct emails; 42 per cent of councils are charged more by local newspapers to publish public notices than for other general advertising and the costs are continuing to rise. Businesses also incur significant costs through this archaic requirement and the British Beer and Pub Association has recently joined the LGA in calling for their scrapping.
- These are substantial costs at a time when local government is facing the dual challenge of financial stability and sustainability. Statutory notices are also out of date when evaluated in the context of recent technological advances in online communications (websites, Facebook, twitter and e-mail being some of the most popular digital platforms). **We urge the Government to remove the duty to publish statutory notices in local newspapers.**

## REMOVING THE HOUSING BORROWING CAP

- Meeting housing need and demand locally will not be achieved through the current operating model. The private sector cannot and will not deliver on the scale required. It has averaged 130,000 completions a year over the last 40 years. Housing Associations are also capacity constrained. Building over 200,000 units per annum is achievable only if councils play a full part in delivery including building on their own account.
- Removing the housing borrowing cap would align council borrowing for housing with the wider approach to local government borrowing. This approach means that local government can only borrow what it can afford to pay back, a principle which is enshrined in the Prudential Code. We estimate that **the total level of borrowing that would occur, if the cap was removed, would be insignificant when compared to national debt.**
- Research by Capital Economics, of economists, fund managers and credit ratings analysts indicates that **there would not be a significant reaction from the markets** to the likely increase in borrowing (£7 billion over five years) that would result from lifting the borrowing cap. This is mainly due to the relatively small size of the figure, which is far smaller than the statistical error for public borrowing.
- **The LGA's call for removal of the cap is supported by a large number of housing stakeholders including:** Shelter; the CLG Select Committee; Home Builders Federation; Federation of Master Builders; Chartered Institute of Housing; National Housing Federation; London Councils; National Federation of Builders; National Federation of Arms-Length Management Organisations; and Association of Retained Council Housing.
- In the 2013 Autumn Statement, the Government announced that borrowing limits for the Housing Revenue Account will be raised by £150 million per year in 2015/16 and 2016/17. **The LGA has welcomed the announcement as recognition by the Treasury that the current model to cap local authority borrowing is not fit for purpose. We see this as an important first step to support local authorities to increase supply of affordable housing.**