

**EAST AYRSHIRE COUNCIL**

**LOCAL GOVERNMENT LICENSING PANEL  
17 MARCH 2005**

**NATIONAL REVIEW OF PROVISIONS OF CIVIC GOVERNMENT (SCOTLAND)  
ACT 1982**

**Report by Executive Director of Neighbourhood Services**

**1. PURPOSE OF REPORT**

- 1.1 To advise the Panel members of the findings and recommendations of the Task Group established by the Scottish Ministers to review the licensing provisions contained in the Civic Government (Scotland) Act 1982.

**2. BACKGROUND**

- 2.1 Members of the Task Group were drawn from the Scottish Executive; the Association of Chief Police Officers in Scotland; the Federation of Small Businesses; COSLA; the Society of Local Authority Chief Executives; the Society of Local Authority Lawyers and Administrators in Scotland and the Society of Chief Officers of Trading Standards in Scotland.
- 2.2 The Task Group was asked “to re-examine the principles and mechanisms of licensing as they are set out in the 1982 Act and, having done so, review the existing provisions and any proposals for change submitted to the Executive”. In so doing the Task Group had to ensure that the provisions of the Act, and any recommendations for change, were compliant with the European Convention on Human Rights and that the principles of the Scottish Executive’s Enforcement Concordat were properly applied.
- 2.3 Having considered the rationale for licensing the Task Group concluded that the underlying principles were still relevant and needed no change. These are that “Licensing should only be introduced where it is known to be necessary to prevent crime, to preserve public order or safety, or to protect the environment”.

**3. DISCUSSION - SUMMARY OF RECOMMENDATIONS FOR CHANGE**

- 3.1 Part One and Section 9 of Part Two of the 1982 Act - It is recommended that:-
- 3.1.1 Licensing authorities should continue to be required to issue a licence if it has not made or reached a decision on an application within 6 months (or sought an extension through the courts) but, instead of such a licence being unconditional, licensing authorities should be permitted to attach standard conditions to avoid other licence holders having to trade at a disadvantage.

3.1.2 The current provisions at S.5(1) which allow certain authorised officers to enter and inspect premises for the purposes set out in S.5(2) be extended to include civilian staff employed by the police under the provisions of S.9 of the Police (Scotland) Act 1967.

3.1.3 In the interests of public safety, the legislation be amended to make it a mandatory condition of licence that the licence (or a copy) be displayed or, where this is not practical, for the licence to be carried by the day-to-day manager, For other activities individuals should be required to carry the licence (or a copy) on their person, unless it is a condition of licence for another form of identification to be displayed or shown on demand.

3.1.4 Ministers consider whether a general review of the criteria for fines on the standard scale needs to be undertaken and whether the level of fines themselves also require to be reviewed.

### 3.2 Taxis and Private Hire Cars (phc) – it is recommended that:-

3.2.1 The current two-tier licensing system for taxis and phcs remains but that the merits of a single tier licensing system be re-examined as part of any future review of numerical controls on taxis.

3.2.2 Licensing authorities continue to have discretionary power to restrict the number of taxis in their area if there is no significant demand which is unmet but that the ability to do so should be re-examined 2 years after the proposed vehicle specification requirements resulting from the Disability Discrimination Act 1995 are introduced. Such a review should also consider further the merits of single tier, given that the powers to limit the number of taxis do not apply to phcs. In the meantime, in view of the concerns expressed over the frequency and methodology used in the surveys undertaken by licensing authorities to restrict numbers, the proposed Focus Group, outlined in Ministers' response to the OFT report, be set up without undue delay to ensure that the necessary guidance is issued as soon as possible.

3.2.3 Licensing authorities be encouraged to use their existing powers under Schedule 1 of the Act to insert an expiry date when issuing vehicle plates.

3.2.4 The legislation be amended to provide for the complete transferability of the licence in the event of the death or permanent incapacity of the licensee, subject to the proposed new licensee meeting the requirements of the "fit and proper person" check and that licensing authorities should establish a fast track system to consider such requests and this approach be adopted for all the business activities licensed under the Act.

3.2.5 While the Task Group concluded that the arguments for allowing the complete transferability of licences under all circumstances, subject to the "fit and proper person check" are finely balanced, it is recommended that the Scottish Executive

should investigate further the merits of introducing such arrangements, both for taxi and phc vehicle licenses, and for other business activities covered the Act.

- 3.2.6 A new MOT test should be introduced for taxis and phcs and, given that this matter is reserved to the Westminster Parliament, Scottish Ministers should write to their Department for Transport counterparts requesting that consideration be given to its introduction. In the meantime, the issue of standards for vehicles should be incorporated in the best practice advice resulting from the OFT report.
- 3.2.7 Licensing fees for taxis and phcs should continue to be ring-fenced but that the wording of S.12, and the other activities covered by para.15 of Sch.1 and para.18 of Sch.2, should all be amended to ensure that licensing authorities cannot profit from the fees charged.
- 3.2.8 The review of licence fees charged by licensing authorities referred to at para. 3.13.5 of this report should extend to taxis and phcs.
- 3.2.9 S.13(3) be amended to reflect the fact that “any continuous period of twelve months” means the twelve months immediately prior to the application for a licence and not any period of twelve months.
- 3.2.10 A minimum age requirement of 21 years be introduced for taxi and phc drivers.
- 3.2.11 There be a mandatory initial medical for all new applicants: mandatory medical check every 5 years for those 45 and over but under 65; and annual check for those 65 and over, the cost of which to be met by the licensing authority but recoverable through the fees charged under S.12 of the Act.
- 3.2.12 Licensing authorities’ discretionary powers to require taxi drivers to undertake topographical knowledge testing be extended to phc drivers.
- 3.2.13 Legislation is introduced to require all taxi and phc drivers to pass a vehicle knowledge test before a licence is granted or renewed.
- 3.2.14 The provisions of S.14 which prohibits certain signs on a phc be repealed and replaced by a similar mandatory condition of licence to allow a licensing authority to deal with any breach as a suspension of licence as opposed to via the courts, although this option would still be available through the general offence provisions at S.7(2).
- 3.2.15 For the avoidance of doubt, and given the changes that have occurred in the way taxi bookings are made and paid for, the Scottish Executive, in conjunction with licensing authorities and the trade, further review the provisions relation to taxi fares at S.17(1) of the 1982 Act to ensure that they are appropriate to modern day needs.

- 3.2.16 S.17(2) should be amended to make it clear that the fare scale review should be completed, and not merely commenced, within the 18-month period.
- 3.2.17 The 5-day period prescribed at S.17(5) for licensing authorities to notify interested parties of a review of taxi fares should be extended to 7 days.
- 3.2.18 The drafting of S.18 be reviewed taking into account the various criticisms made in court proceedings.
- 3.2.19 S.18(1) be amended to allow representative bodies, as well as individuals, to submit appeals to the Traffic Commissioner in relation to taxi fare scales set by a licensing authority.
- 3.2.20 In view of the concerns expressed by the trade over the non-payment of fares, and the difficulties in obtaining corroborative evidence for a conviction, that Scottish Ministers at the next review of criminal offence provisions consider the merits of allowing prosecutions for the non-payment of fares to be based on the evidence of a single witness.
- 3.2.21 Scottish Ministers issue guidance to licensing authorities encouraging them to adapt their existing licensing regime to incorporate vehicles, e.g. limousines, converted fire engines and ambulances etc., which are unregulated but fall within the definition of phcs and that SOLAR be asked to assist the Executive to draw up model conditions for such vehicles for incorporation within the guidance. It is further recommended that Scottish Ministers review the position two years after the guidance and model conditions have been issued.
- 3.2.22 In view of the difficulties encountered by the trade with the general definition of “public place”, a separate definition for taxis and phcs be introduced through consultation with licensing authorities and the trade.

### 3.3 Second Hand Dealers

- 3.3.1 No recommendations for change.

### 3.4 Metal Dealers and Itinerant Metal Dealers – it is recommended that:-

- 3.4.1 Given the decrease in these types of activity over the last 20 years, the current mandatory licensing regimes for metal dealer and itinerant metal dealers should be repealed and replaced with optional licensing schemes.
- 3.4.2 The exemption provisions from any requirement to obtain a licence for a metal dealing business should remain, but the annual turnover requirement of more than £100,000 should be repealed and that under the proposed optional licensing scheme, individual licensing authorities should be allowed to determine what any amount should be.

### 3.5 Boat Hire

3.5.1 No recommendations for change.

### 3.6 Street Traders – it is recommended that:-

3.6.1 While the task group noted that the general public were not aware of the difference between street trading and peddling, it was not considered that this interfered with the interface between the two types of licences. However, while strictly outwith their remit, it was recommended that Scottish Ministers consider reviewing the Pedlars's Act 1871 with a view to determining whether it remains appropriate to modern day needs. In the interim, the task group is content that the exemption for pedlars at S.39(3)(d) of the Act remains valid.

### 3.7 Market Operators – it is recommended that:-

3.7.1 The Scottish Executive considers improving the definition of “market operator” to make clear that car boot sales can be regulated under the provisions and that in the meantime guidance is issued to licensing authorities to clarify that the existing licensing provisions can be used for this purpose.

3.7.2 The exemption from the licensing requirement for non-commercial organisations at S.40(2)(a) should be repealed and licensing authorities should thereafter consider amending their fee structures to take account of licences issued to charitable organisations.

### 3.8 Public Entertainment – it is recommended that:-

3.8.1 The exemption at S.41(2)(f) for premises which already hold a liquor licence under the Licensing (Scotland) Act 1976 should be retained, subject to the arrangements proposed in the White Paper on liquor licensing which would allow the nature of this entertainment to be specified being introduced.

3.8.2 S.41(2) should be amended so as to remove the exemption for events which are free to enter.

### 3.9 Indoor Sports Entertainment – it is recommended that:-

3.9.1 While it would not be practical or appropriate to amalgamate the licensing provisions for public entertainment and indoor sports entertainment, consideration should be given by the Scottish Executive to issuing guidance to clarify the circumstances in which each type of licence is required.

### 3.10 Late Hours Catering - it is recommended that:-

3.10.1 The words “meals and refreshments” at S.42(1) should be replaced with the phrase “food and drink” to ensure that licensing authorities have the power to

license any premises selling food or drink at late hours. It is further recommended that the Section be renamed "Late Hours Food and Drink Provision".

3.10.2 The exemption for liquor licensed premises from the licensing requirement at S.42(4)(a) be amended so as to exempt only the sale to, and consumption by, the public of food and drink within the premises.

3.10.3 To address the concerns expressed by the police that late hours catering establishments are continuing to take food orders right up to their specified closing time, and thus continuing to serve food beyond their closing time, the conditions of licence should make it clear that the premises should be empty of customers by a specified time.

3.11 Window Cleaners – it is recommended that:-

3.11.1 The existing optional licensing regime for window cleaners should remain. However, in order to minimise the administrative burden for the trade, it is further recommended that licensing authorities, perhaps via SOLAR, should draw up model conditions of licence with a view to entering into agreements with neighbouring authorities to avoid the need for window cleaners to obtain multiple licences when operating in more than one licensing authority area.

3.12 Sex Shops and Schedule 2 to the Act – it is recommended that:-

3.12.1 The right to anonymity for objectors to the granting or renewal of licences for sex shops should be removed.

3.12.2 The review of licence fees charged, referred to at 3.13.5 should extend to sex shops.

3.12.3 The recommendations contained at para.3.13.5 should also apply to the equivalent provisions contained at Sch.2.

3.13 Schedule 1 to the Act – it is recommended that:-

3.13.1 The legislation is amended to add "date of birth" and "place of birth" to the list of details which are required on a licence application form.

3.13.2 The time allowed for making representations in respect of any application for the grant or renewal of a licence should be extended from 21 to 28 days.

3.13.3 The period of notice which licensing authorities must give for attendance at a hearing in respect of a licence application should be increased from 7 days to 14 days.

3.13.4 The minimum period of notice which must be given before a suspension hearing can take place should be reduced from 21 days to 14 days.

3.13.5 A review of *all* licence fees charged by licensing authorities should be undertaken by SOLAR with a view to guidance being issued in an attempt to reduce the variance in the level of fees charged by different licensing authorities.

3.13.6 The timetable for a licensing authority notifying the applicant (and others) of the outcome of a decision, for interested parties obtaining reasons for that decision and for any appeal to a sheriff should be revised. A licensing authority should continue to be required to notify an applicant (and others) within 7 days of any decision taken on an application. Thereafter, the applicant should have 21 days from the date of the decision to request reasons from the licensing authority, and the licensing authority should have 10 days to comply with this request. The applicant should continue to have 28 days from the date of the decision to lodge an appeal with the Sheriff, subject to any discretion to hear appeals outwith this period.

3.13.7 The Act be amended to allow licensing authorities to consider licence renewal applications received after the expiry date as renewals rather than treating them as applications for grant for up to 28 days after the expiry of the previous licence, subject to them being satisfied that due cause for the lateness has been shown.

3.14 Proposed New Licensing Activities - it is recommended that:-

3.14.1 In view of the conclusion that a new registration or licensing scheme for one-day sales is not appropriate, the Scottish Executive should make representations to the Department of Trade and Industry, outlining their concerns about the lack of protection currently afforded to consumers at one-day sales with a view to action being taken to address this.

3.14.2 While the task group concluded that a licensing scheme is required to regulate car and motor auctions, because this issue is considered to be reserved, it is recommended that the Scottish Executive submit representations to the Department of Trade and Industry outlining their concerns and suggesting that consideration be given to the introduction of such a scheme.

3.15 Enforcement - it is recommended that:-

3.15.1 A statutory obligation should be placed upon licensing authorities to ensure that any licensing requirements they have in place are adequately enforced.

3.15.2 A local authority civic government licensing enforcement network be established through SOLAR to assist licensing authorities in developing their enforcement strategies.

#### **4. FINANCIAL IMPLICATIONS**

4.1 There are no financial implications at this time.

#### **5. LEGAL AUTHORITY/IMPLICATIONS**

5.1 East Ayrshire Council is the Licensing Authority in terms of the Civic Government (Scotland) Act 1982.

#### **6. POLICY IMPLICATIONS**

6.1 Nil.

#### **7. CONCLUSIONS**

7.1 In undertaking this review the Task Group considered the adequacy and relevance of existing provisions; whether there was an ongoing need to licence these activities; whether licensing should be optional or mandatory; if there was scope for a national regime; whether provisions were ECHR compliant and whether the underlying principles of the Enforcement Concordat were met.

7.2 The recommendations outlined in this report are yet to be considered by the Scottish Ministers and no date has been set for that consideration.

#### **8. RECOMMENDATIONS**

8.1 The Committee are recommended to note the contents of the report.

William Stafford  
Executive Director of Neighbourhood Services

WS/AJS

25<sup>th</sup> February 2005

#### **LIST OF BACKGROUND PAPERS**

1. A Report by the Task Group set up to Review the Licensing Provisions contained in the Civic Government (Scotland) Act 1982 – Edinburgh, December 2004.

Any person wishing to inspect the background papers listed above should telephone 01563 57611 and ask for Mr John Crawford, Head of Protective Services or e-mail [john.crawford@east-ayrshire.gov.uk](mailto:john.crawford@east-ayrshire.gov.uk)