

Committee: LICENSING

Agenda Item

Date: 4 March 2015

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Title: UPDATE ON DRAFT LEGISLATION

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Item for information

Summary

1. This report is to inform members of the progress of the Deregulation Bill, local fee settings and also of government proposals with regard to functions and responsibilities within an executive structure.

Recommendations

2. That members note the contents of this report.

Financial Implications

3. None.

Background Papers

4. None.

Impact

- 5.

Communication/Consultation	None
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	None
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

6. Notwithstanding very detailed work carried out the Law Commission which resulted in the production of a draft bill to carry out wholesale reform of the law relating to hackney carriages and private hire vehicles, the government decided to include three amendments to the law in the Deregulation Bill which is currently progressing through the parliamentary system. These amendments were to allow unlicensed drivers to drive licensed vehicles when they were not being used, and were not immediately available, for the carriage of fare-paying passengers; to allow cross-border hiring and to require driver licences to be issued for three years and operator licences for five years save for in exceptional cases.
7. These proposed amendments have not found universal support and indeed there has been a great deal of opposition as the Bill has progressed. As a result of this opposition the proposal to allow unlicensed drivers to drive licensed vehicles has been dropped from the Bill. The other two provisions regarding cross-border sub-contracting and the length of licences remain however.
8. With regard to cross-border sub-contracting the Bill provides that this is permissible providing that the sub-contract is made with a private hire operator licensed by the district in which he carries on business and that vehicles and drivers licensed by the same authority are used to fulfil the contract. A suggested amendment to require the consent of the customer to the sub-contracting was defeated and the Bill specifically provides that the consent of the person who made the booking is irrelevant.
9. Although the government's stated intention was that licences should only be granted for less than three years for drivers or five years for operators in exceptional circumstances, the Bill is not worded in such a manner. Instead it provides that the licence will be for 3/5 years or for such lesser period as the district council thinks appropriate in the circumstances of the case. Consideration will need to be given as to what circumstances may justify a shorter licence (i.e. if the driver were to request a licence for a shorter period).
10. Apart from the provisions relating to taxis, of relevance to this committee are amendments to the Licensing Act 2003. The requirement for personal licences to be renewed will be abolished. Members will recall that personal licences were granted for 10 years. The Licensing Act 2003 first came into effect in 2005. It follows therefore that licences are now starting to expire. By virtue of secondary legislation passed by the government fees for renewals can no longer be charged nor can DBS checks be carried out on renewal. Licences will therefore be renewed for a further period of 10 years which will be converted to perpetual licences once the Deregulation Bill becomes law and is effective.
11. The Bill also makes provision for a new form of authorisation for community events and ancillary business sales. Members will recall being consulted with regard to the government's consultation response. The number of temporary event notices which may be served in respect of any premises will increase from 12 to 15 in a calendar year with effect from the 1 January 2016. Sale of liqueur chocolates to children will no longer be an offence. The council will have the ability to dis-apply the Licensing Act in respect of late night refreshment should it wish to do so. Finally it will no longer be a requirement to report lost or stolen licences to the police.

12. The Bill is scheduled to have its third reading in the House of Lords on 4 March 2015. This is the last opportunity for amendments to be made to the Bill. The Bill then goes back to the Commons for consideration of the Lords amendments. If the amendments of the House of Lords are accepted the Bill will receive Royal Assent. If not the matter will go backwards and forwards between the two houses until such time as agreement is reached. There is of course little time for this process. Parliament is due to be dissolved on the 27 March. At a recent seminar James Button suggested that if there remains opposition to the provisions regarding hackney carriages and private hire vehicles in the Commons the government may be prepared to forsake that part of the draft legislation in order to ensure that the remainder of the Bill is passed into law before the general election.
13. When the Licensing Act was first passed, licence fees were set nationally by the government. The Act was amended to enable the Secretary of State to lay regulations which would empower licensing authorities to set their own licensing fees. On the 13 February 2014 the government consulted on its proposals for local fee setting. The consultation lasted for 8 weeks until 10 April 2014. According to the government's website, the government is still analysing the feedback from the consultation. It is highly unlikely that any secondary legislation dealing with the local setting of fees will be laid before parliament prior to the general election.
14. The government has also recently launched a consultation on draft regulations dealing with functions and responsibilities of councils operating executive arrangements. These draft regulations deal with the issue of scrap metal dealer's licences. Virtually all licences which are issued by councils are the responsibility of the council and are delegated to the licensing committee or officers. When the Scrap Metal Dealers Act 2014 was passed no mention was made as to where responsibility for the functions under the Act lay. By default therefore, the functions became a responsibility of the executive. The draft regulations propose making licensing functions under that Act a local choice function. That is to say that it is for the council to determine whether the function should be a council or executive function. In the event that the council decide it should be a council function then the presumption is that it will be delegated to this committee.

Risk Analysis

15. There are no risks associated with this report.