

REPORT

To: GENERAL PURPOSES COMMITTEE		Subject: REVIEW OF THE LICENSING PROVISIONS CONTAINED IN THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982
From: DIRECTOR OF ADMINISTRATION		
Date: 7 January 2005	Ref: WK/AMK	

1. **Purpose of Report**

1.1. The report advises of the main recommendations contained in the Report of the independent Task Group set up to review the licensing provisions in the Civic Government (Scotland) Act 1982 which has now been submitted to Scottish Ministers for consideration.

2. **Background**

2.1. The remit of the Task Group was "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 doing so the Task Group were required to ensure that the provisions of the Act, and any recommendations for change, were compliant with the European Convention on Human Rights and that they properly apply the principles of the Scottish Executive's Enforcement Concordat which provides for fair, practical and consistent enforcement policy and practice. The 1982 Act provides a framework for local authorities to license taxis and private hire cars, second-hand dealers, metal dealers, boat hire operators, street traders, market operators, places of public entertainment, indoor sports entertainment, late hours catering, window cleaners and sex shops.

2.2. In addition to the above, the Task Group were required to consider whether any other activities required to be regulated. At the end of 2002 Ministers extended the remit of the Task Group to consider and report back on whether there was a need to provide a licensing regime for table and lap dancing establishments.

2.3. The Task Group consulted on their emerging findings in 2002 and used the responses to develop and finalise the conclusions and recommendations contained in their Report. A copy of the full Task Group Report has been lodged in the members library.

3. **Summary of Recommendations**

3.1. In relation to the provisions contained in **Part One** of the Act, it is recommended that licensing authorities should continue to be required to issue a licence if they have not made or reached a decision on an application within six months 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. It is recommended that, 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 in premises, vehicles and vessels and, where this

is not practical, for the licence to be carried by the day to day manager. For other activities it is recommended that individuals shall be required to carry the licence (or a copy) on their person, unless under its discretionary powers the licensing authority has made it a condition of licence for another form of identification to be displayed or shown on demand.

- 3.2. In relation to **taxis** and **private hire cars** it is recommended that the current two-tier licensing system for taxis and private hire cars remains but that the merits of a single tier licensing system should be re-examined as part of any future review of numerical controls on taxis. It is recommended that licensing authorities continue to have a 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 two 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 licensing, given that the powers to limit the number of taxis do not apply to private hire cars. It is recommended that the legislation be amended to provide for the complete transferability of the licence plate in the event of the death or permanent incapacity of the licence holder, subject to the proposed new licence holder meeting the requirements of the "fit and proper person" check. (It is recommended that this approach be adopted also for all the business activities licensed under the 1982 Act.) Ministers are further asked to consider the merits of permitting complete transferability of licence plates under all circumstances. It is recommended that a new MOT test should be introduced for taxis and private hire cars and, given that this matter is reserved to the Westminster Parliament, Scottish Ministers are asked to write to their Department for Transport counterparts requesting that consideration be given to its introduction. It is recommended that a minimum age requirement of 21 years be introduced for taxi and private hire car drivers. There are further recommendations in relation to medical checks, topographical knowledge tests and vehicle knowledge tests for drivers.
- 3.3. In relation to **second hand dealers** there are no recommendations for change.
- 3.4. In relation to **metal dealers** and itinerant metal dealers it is recommended that, given the decrease in these types of activity over the last 20 years, the current mandatory licensing regimes for metal dealers and itinerant metal dealers should be repealed and replaced with optional licensing schemes. In relation to the exemption provisions where a metal dealing business has an annual turnover of more than £100,000, it is recommended that the exemption provision remains but that under the proposed optional licensing scheme individual licensing authorities should be allowed to determine what any amount should be.
- 3.5. In relation to **boat hire** there are no recommendations for change.
- 3.6. In relation to **street traders**, it is recommended that Scottish Ministers consider reviewing the Pedlar's Act 1871 with a view to determining whether it remains appropriate to modern day needs.
- 3.7. In relation to **market operators**, it is recommended that the Scottish Executive considers improving the definition of "market operators" to make it 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. It is further recommended that the exemption from the licensing requirement for non-commercial organisations should be repealed and that licensing authorities should thereafter considering amending their fee structures to take account of licences issued to charitable organisations.

- 3.8. In relation to **public entertainment**, it is recommended that the exemption 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. It is recommended that the exemption for events which are free to enter should be removed.
- 3.9. In relation to **indoor sports entertainment** it is recommended that, 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. In relation to **late hours catering**, it is recommended that the words “meals and refreshments” at Section 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 recommended that, to address concerns expressed by the Police and others 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. In relation to **window cleaners**, it is recommended that the existing optional licensing regime should remain. However, in order to minimise the perceived administrative burden for the trade, it is recommended that licensing authorities should, perhaps via SOLAR, 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. In relation to **sex shops**, it is recommended that the right to anonymity for objectors to the granting or renewal of licences for sex shops should be removed.
- 3.13. In relation to the provisions contained in **Schedule 1** to the Act, it is recommended that the legislation be amended to add “date of birth” and “place of birth” to the list of details which are a mandatory requirement on a licence application form. It is recommended that 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. It is recommended that 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. It is recommended that 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. It is recommended that 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. There is a recommendation that 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 slightly. There is a recommendation that 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 a new licence for up to 28 days after the expiry of the previous licence, subject to authorities being satisfied that due cause for the lateness has been shown.

- 3.14. In relation to **proposed new licensing activities**, it is recommended that, while 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 concerns expressed about the lack of protection currently afforded to consumers at one-day sales with a view to action being taken to address this. 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 to Westminster, 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. In relation to **table and lap dancing establishments**, it is recommended that any action to be taken to improve the regulation of lap dancing clubs should be considered through the current review of liquor licensing provisions rather than via the 1982 Act.
- 3.16. In relation to **enforcement**, it is recommended that a statutory obligation should be placed upon licensing authorities to ensure that any licensing requirements they have in place are adequately enforced. It is further recommended that a local authority civic government licensing enforcement network be established through SOLAR to assist licensing authorities in developing their enforcement strategies.
- 3.17. On publication of the Task Group Report the Minister for Finance and Public Service Reform indicated that the Scottish Executive will now consider the implications and merits of the recommended changes contained in the report and will announce their findings in Spring 2005. The Executive will also be examining the options for delivering any legislative changes and the Minister has stressed that the Executive will consult on any changes that require legislation before they are taken before Parliament. As any legislative proposals will impact on the policies and procedures adopted by this Committee for the administration of civic government licensing further reports will be presented to Committee at the appropriate stage.

#### 4. **Actions being processed separately by the Scottish Executive**

- 4.1. In the course of the consultation on the licensing provisions contained in the 1982 Act a number of related issues were raised with the Task Group for consideration.
- 4.2. In relation to private hire car/taxi radio control rooms, there had been a proposal for the introduction of a licensing requirement for control rooms. The Task Group was of the view that given the powers available to local authorities to license vehicle owners and drivers, there would be merit in providing similar powers with regard to the people operating taxi and private hire car booking offices. The Police supported such a step in the interests of crime prevention. The Task Group noted that this matter is being progressed separately by the Scottish Executive and it is understood that a consultation paper will be issued shortly by the Executive's Transport Group.
- 4.3. In relation to door stewards, security guards, precognition agents and private investigators, the Task Group noted that the Scottish Executive had made a commitment to introduce statutory regulation of the private security industry which will be achieved by extending the remit of the Security Industry Authority, which currently regulates the industry in England and Wales.

- 4.4. In relation to cosmetic skin treatments, the Task Group noted that the Health Department of the Scottish Executive is taking forward proposals to regulate this issue.

5. **Recommendation**

- 5.1. It is recommended that members note the submission to Scottish Ministers of the report of the Civic Government Task Group and the recommendations contained therein.

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*W* . **Director of Administration**

*Members seeking further information on this report should contact Mitch Kerr, Chief Solicitor (District Courts and Licensing), on extension 2371.*