

Consultation Response

Tackling the hidden economy:
expanding tax conditionality
to new sectors

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Licensing Law Sub-Committee welcomes the opportunity to consider and respond to the HM Revenue & Customs: Tackling the hidden economy: expanding tax conditionality to new sectors. The sub-committee has the following comments to put forward for consideration.

General comments

We wish to respond with general observations regarding the consultation questions on extending Tax Conditionality, particularly with regard to taxi and private hire car licensing.

Tax conditionality has now been implemented by Scottish licensing authorities for over a year in relation to taxi and private hire car drivers, booking offices and metal dealers. For those applying for the first time, the procedure requires them to confirm simply that they have read the published guidelines, while for existing licensed businesses they require to provide a share code.

Prior to the introduction of this, there was engagement with Scottish licensing authorities over a significant period of time, including consultation, correspondence and discussions. This enabled representations to be made regarding the peculiarities of the Scottish licensing legislation. Should any extension now be considered so as to apply similar requirements to taxi and private hire car licence applications, or to introduce other changes, we would request that similar engagement takes place to ensure that any provisions are again workable and can be properly implemented. Similar peculiarities will equally apply in relation to the further licences now said to be in scope for possible inclusion.

To this end, we would also request that there is an opportunity to consider the terms of any draft legislation in advance of it being made, to allow representations to be made as to any necessary changes.



It is important, once legislation is made, that there is then an adequate period of time between the legislation being put in place, and its subsequent implementation. In particular, Scottish licensing authorities are now largely accepting application forms for licences electronically. This means that their licensing teams will need time, after the provisions are finalised, to work with their ICT colleagues in order to develop adjustments to any digital forms within the scope of the changes and to allow those staff who verify application forms an opportunity to be trained in relation to any new requirements.

Regarding whether any checks should now be applied to new businesses, it is not clear what the case for this is at this time. The current checks licensing authorities operate allow those seeking to start a new business an opportunity to understand the requirements in the first instance and to become registered before their next renewal. Further, those applying for a new licence for the first time will not yet be licensed to operate the activity they seek a licence for: indeed, as the Civic Government (Scotland) Act 1982 allows a period of 9 months for determining a licence application, they may not be in a position to start work for a number of months. As such, they won't immediately be required to register for tax. It may also be noted that, since the coronavirus pandemic, the number of taxis/ private hire cars and their drivers has fallen: if tax conditionality checks were to be made at the outset as part of a licence application, this may make the process more difficult for applicants to understand, which may have an impact as to whether they will still apply to enter the taxi or private hire trades.

We are not aware of any licensing authorities who have indicated they would wish to roll out checks to first-time applicants, if that facility were offered.

Regarding the principle of whether checks should be extended to taxi/ private hire vehicle licence applications, many of these applicants will already be subject to checks (as there is an overlap between those who apply for vehicle/ driver licences).

Finally, we would seek clarification of Paragraph 3.52 of the consultation document. Annual licences are not a requirement under Scottish licensing law. Licences can be granted for a maximum period of three years under the terms of the Civic Government (Scotland) Act 1982. Regarding safety checks, distinct from licensing, taxis require an MOT annually, while private hire cars so require three-yearly. Individual licensing authorities may have their own additional testing requirements in accordance with their own licensing conditions.

Questionnaire

We have no specific comments to make in response to questions 1-19, and refer to our general comments above.



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