

**REPORT TO:** LICENSING COMMITTEE - 26TH SEPTEMBER, 2002

**REPORT ON:** REVIEW OF THE LICENSING PROVISIONS CONTAINED IN THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982

**REPORT BY:** DIRECTOR OF SUPPORT SERVICES

**REPORT NO:** 722-2002

## **1.0 PURPOSE OF REPORT**

1.1 To respond to the Consultation Paper issued by the Task Group for review of the 1982 Act with regard to licensing matters, copies of which document are available in the Members' Lounge and have been issued to the Group Secretaries.

## **2.0 RECOMMENDATIONS**

2.1 The City Council should submit the responses narrated in the Appendix to this Report.

## **3.0 FINANCIAL IMPLICATIONS**

3.1 None.

## **4.0 LOCAL AGENDA 21 IMPLICATIONS**

4.1 None.

## **5.0 EQUAL OPPORTUNITIES IMPLICATIONS**

5.1 None.

## **6.0 MAIN TEXT**

6.1 Following consideration of a report submitted by the Convention of Scottish Local Authorities, Scottish Ministers determined that the licensing provisions contained in the 1982 Act should be reviewed and that a Task Group should be set up for this purpose. The 1982 Act contains provisions which requires or allows local authorities to licence a number of activities such as taxis and private hire cars, street traders, window cleaners and sex shops. The licensing provisions were the first to apply throughout Scotland and were introduced following an extensive review of the various licensing practices previously adopted by individual local authorities.

6.2 The remit of the Task group is "to re-examine the principles and mechanisms of licensing as they are set out in the Civic Government (Scotland) Act 1982 and having done so, review the existing provisions and any proposals for change submitted to the Scottish Executive. In doing so, the Task Group will be required to ensure that the provisions are compliant with the European Convention on Human Rights and that they properly apply the principles of the Enforcement Concordat, which provides for fair, practical and consistent enforcement policy and practice".

6.3 The Task Group has concluded that before submitting its Report to Ministers it wishes to consult with interested parties on its initial findings and seek views on a number of issues before finalising its recommendations.

6.4 It is recommended that the City Council responds to the consultation in the terms narrated in the Appendix to this Report. The numbers of the responses correspond to the paragraph numbers in the Consultation Document.

**7.0 CONSULTATION**

None.

**8.0 BACKGROUND PAPERS**

8.1 "Review of Licensing Provisions contained in the Civic Government (Scotland) Act 1982 - Task Group Report".

Director of Support Services ..... Date .....

**RESPONSES TO QUESTIONS CONTAINED IN  
TASK GROUP CONSULTATION PAPER**

**Chapter 2: Part I and Section 9 of Part II of the Act**

- 2.1 We agree that the current 6 month period for the determination of an application should be retained.
- 2.2 We agree with the Task Group's recommendation that licensing authorities be given the power to attach conditions in the event of the deemed grant of a licence.
- 2.3 Given the increasing use of civilian staff, such an amendment would appear sensible.
- 2.4 We agree with the proposal.
- 2.5 The current offence provisions are satisfactory.
- 2.6 The 9 month period does seem excessive, although the views of the businesses involved should be taken into account before reducing it.
- 2.7 No additional comment.

**Chapter 3: Section 10 to 23 Taxis and Private Hire Cars**

- 3.1 There would be merit in moving to a single-tier system for the reasons stated. As for the points in favour of retaining the two-tier system, private hire cars in Dundee are all driven by holders of Taxi Driver's Licences who have passed the requisite street knowledge test. This is because all private hire cars in Dundee have chosen to have a meter installed, the effect of which is that the current lanes structure must apply and drivers must go by the shortest route. Therefore, it is our experience that there is no difference in expectations amongst passengers as regards taxis versus private hire cars.
- 3.2 This Council currently inserts expiry dates on plates, and would be supportive of the introduction of such a proposal.
- 3.3 We would support the introduction of provisions allowing for the transfer of licences. At the moment, when a business changes hands, there is an inevitable delay whilst the new proprietors attempt to obtain a licence in their own name. This usually results in the new owners operating without a licence or attempting to trade on the existing licence. Also, the lack of transfer provisions can lead to taxi plates being "hired" where an authority has decided to limit the number of taxis. This practice would be pointless if licences could legally be transferred.
- 3.4 The current provisions are inadequate for the reasons stated in 3.3 above.
- 3.5 The Council would support the introduction of a test specifically for taxis and private hire cars and which would be of a higher standard than a standard MOT. Indeed, the Council's own test is of such a higher standard. However, we would not support the test being carried out by any registered MOT testing station. Such institutions may have a commercial interest in finding faults in the vehicle, whereas the licensing authority has no such interest and is completely independent. There may also be a conflict of interest when the contract for such services is awarded since bidders may already be doing servicing work for taxis.
- 3.6 We would support making failure to present the vehicle without reasonable cause to be a ground for immediate suspension of the licence, which should last until the vehicle passes its test.
- 3.7 We would agree that this power should only be used for serious defects.
- 3.8 We agree with the Task Group's conclusion that an appeal is not necessary.

- 3.9 The current provisions are satisfactory.
- 3.10  
&  
3.11 We agree with these proposals.
- 3.12 The Council would support the introduction of mandatory medical checks, but only the initial medical for new applicants should be paid for by the licensing authority. Other tests should be paid for by the licence holders because it would be unfair to expect those who do not require such tests to subsidise those who do.
- 3.13 We would support mandatory knowledge tests.
- 3.14 The current provisions are sufficiently wide, particularly given the word "feature" in section 14(1).
- 3.15 We fail to see the point of this. Commission of a criminal offence would be grounds for suspension even if it was not a breach of condition.
- 3.16 We would agree with the Task Group that such charges should either be absorbed as part of the fare or the taxi meter programmed accordingly.
- 3.17 We would support this proposal. In Dundee, the fares are reviewed every 12 months anyway.
- 3.18 The proposal is acceptable.
- 3.19 This Council has experienced no problems with Section 17.
- 3.20 We would agree with this.
- 3.21 The contents of Paragraph 23 are surely dependent upon whether the two-tier system of taxis and private hire cars is retained. Paragraphs 24-27 present no problems.
- 3.22 Dundee already has a test regime under which older vehicles are tested more frequently. If there is to be a power to set age limits, would it not be better if this was fixed at a national level in order to ensure consistency?
- 3.23 Given that the burden of proof in criminal cases is "beyond reasonable doubt", surely this is impossible?
- 3.24 Given that passengers are being carried, there would be a case for abolishing these exemptions. If a licensing authority is to be concerned with issues of public safety then it should have some control over the categories of vehicle currently exempted by Section 22.
- 3.25 The Council has experienced no difficulties with the definitions contained in Section 23, other than the question of what constitutes a "public place" (see response at 3.29 below).
- 3.26  
&  
3.27 The Council has experienced no problems with unregulated vehicles. However, surely chauffeur-driven vehicles are private hire cars and should be treated as such.
- 3.28 These vehicles should not be exempt for the reasons stated at 3.24 above.
- 3.29 This Council has encountered problems with whether areas such as the forecourt of a bus station or a supermarket car park constitute "public places". The bus station posed a particular problem in that pedestrians could walk across the area in question although cars were not allowed to park there without the permission of the station owners. Does the definition of "public place" as "any place to which the public have unrestricted access" mean pedestrian access, vehicular access or either or both? In other words, if there is no unrestricted vehicular access, is it still a public place?

- 3.30 Consideration should be given to including a definition in Section 10 of what is meant by the "operation" of a vehicle as a taxi or private hire car. Does this mean ownership of the vehicle is necessary or is it sufficient for the licence holder to have management and control of the vehicles? This should be defined in the Act in order to cover those situations where the licence holder does not own the vehicle.

#### **Chapter 4: Sections 24-27 Second-Hand Dealers**

- 4.1 Licensing of second-hand dealers should be mandatory in the interests of the prevention of crime and to ensure consistency across all local authority areas.
- 4.2 Second-hand motor dealers' licensing should be mandatory for the reasons stated in 4.1 above.
- 4.3 The Council supports the COSLA proposal, although it has no particular concerns within its own area.
- 4.4 The Council would agree with COSLA that this definition be deleted. It is too subjective and could lead to inconsistency.
- 4.5 The Council has encountered no difficulties in this area.
- 4.6 Consideration should be given to amending Section 24(4) to allow computer records to be kept, subject to appropriate safeguards to prevent abuse of such a method.

#### **Chapter 5: Sections 28-37 - Metal Dealers and Itinerant Metal Dealers**

- 5.1 This activity should be retained in the interests of the prevention of crime.
- 5.2 The scheme should be mandatory for the reasons stated in 5.1 above.
- 5.3 This provision should be deleted. All metal dealers should require a licence.
- 5.4 - This Council has never had any licence holders in this category and is unable to comment.
- 5.6

#### **Chapter 6: Section 38 - Boat Hire**

- 6.1 This Council has never had any licence-holder in this category and is unable to comment.

#### **Chapter 7: Section 39 - Street Traders**

- 7.1 The Council agrees that street traders should continue to be licensed as at present. However, the definition of street trading should be extended along the lines suggested by COSLA so that everyone involved in the sale should be licensed and not solely the person completing the sale.
- 7.2 Section 39(3)(d) should be deleted. This would mean that all persons trading on the street would be licensed in the area in which they are trading.
- 7.3 The definition of "public place" in Section 133 also applies to street trading. If amendment is being considered insofar as the definition relates to taxi and private hire cars, the effect on street trading will also have to be taken into account.

#### **Chapter 8: Section 40 - Market Operators**

- 8.1 Although car boot sales may fall within the definition of "private market", a formal licensing procedure may be cumbersome and difficult to enforce. A system of registration with, and advance notification to, the local authority would enable the necessary regulatory checks to be carried out prior to the event.

- 8.2 See comments at 8.1 above.
- 8.3 The Council would agree that the exemption should be deleted, although such organisations should not have to pay the full fee.
- 8.4 The Council has no additional comment to make under this Chapter.

#### **Chapter 9: Section 41 - Public Entertainment**

- 9.1 The Council agrees with the Task Group's conclusion for the reasons stated in the Consultation Paper.
- 9.2 The Council has no other comment to make under this Chapter.

#### **Chapter 10: Section 41A - Indoor Sports**

- 10.1 The Council agrees these provisions should be retained.
- 10.2 The Council has no other comment to make under this Chapter.

#### **Chapter 11: Section 42 - Late Hours Catering**

- 11.1 A definition should be considered since this phrase is too ambiguous.
- 11.2 We agree with the Task Group's recommendations for the reasons stated in the Consultation Paper.
- 11.3 The Council has no additional comment under this Chapter.

#### **Chapter 12: Section 43 - Window Cleaners**

- 12.1 Yes. Window cleaners have privileged access within the curtilage of dwellinghouses and should continue to be licensed on public safety and crime prevention grounds.
- 12.2 No, for the reasons stated in 12.1 above.
- 12.3 We would agree with the proposed arrangements.
- 12.4 The Council has no additional comment to make under this Chapter.

#### **Chapter 13: Section 45 and Schedule 2 - Sex Shops**

- 13.1 As the Council has never granted any licences under these provisions, it is unable to comment.

#### **Chapter 14: Schedule 1**

- 14.1 The date and place of birth of the applicant should be included on the form. Also, applicants for licences relating to vehicles should be required to provide their DVLA details.
- 14.2 The Council is satisfied with the present arrangements.
- 14.3 The Council has no problem with this. However, there is already provision for allowing late objections if the licensing authority is satisfied that there is sufficient reason why they were not made timeously.
- 14.4 The Council has no strong views either way, although it has not encountered any difficulties with the 7 day time limit.
- 14.5 The Council agrees with the proposal.
- 14.6 The Council agrees with this recommendation.

- 14.7 The period of 10 days for issuing written reasons should be amended to read 10 working days. Since meetings of the Licensing Committee in Dundee are on Thursdays, this means that, if reasons are requested at the time of the decision, they have to be issued by the Friday of the following week, thus reducing the period effectively to 8 days,
- 14.8 The Council has no comment to make.
- 14.9 The present provisions are adequate. Any difficulties which have occurred have related to finding proof of such a situation rather than the definition.
- 14.10 The terms of Paragraph 13(2)(b) are unclear as to whether a licence delivered upon the holder giving up the activity ceases to have effect. In any event, are both Paragraphs 13(1) and (2)(b) necessary? Surely one or the other would do. Also, the word "may" in Paragraph 18(7) should be amended to "shall" in order to end once and for all the arcane debate over whether or not the Sheriff is obliged to uphold an appeal if one or more of the grounds are established.

### **Chapters 15: Proposed New Licensing Activities**

- 15.1 Reference is made to the comments at 8.1 above.
- 15.2 All brokers of second-hand goods, including car/motor auctions, should be licensed.
- 15.3 This Council has recently become aware of the unsatisfactory nature of statutes such as the Riding Establishments Act 1964 and the Performing Animals (Regulation) Act 1925 which contain no specific ground for refusal of applications (such as those contained in Paragraph 5(3) of Schedule 1 to the 1982 Act), the giving of reasons or the conduct of appeals (Paragraphs 17 and 18 of Schedule 1 to the 1982 Act). In order to remedy this, either the 1982 Act should be extended to include these other activities presently regulated under various different statutes or, alternatively, some or all of the provisions of Schedule 1 to the 1982 Act should be applied to the processing of applications and appeals under these statutes.

In addition, the Council would propose that the sale of fireworks be included as an additional activity. This activity has caused the Council some concern for a considerable time and particularly over the last 12 months or so. It feels that the present provisions requiring registration by persons intending to sell fireworks are inadequate and, in particular, there is no provision for checking the fitness of such persons. The Council has already brought this matter to the attention of both the Scottish Executive and the Westminster Parliament and all of the Council's members are supportive of this initiative. A resolution to this effect was passed by the Council's Policy & Resources Committee on 9th September 2002. There is doubt, however, as to whether this activity could be dealt with in Scottish Legislation and additional devolved powers should be sought from Westminster as necessary.

### **Chapter 16: Enforcement**

- 16.1 The Council agrees with the Task Group's proposals.
- 16.3
- 16.4 We would not favour the introduction of fixed penalties by local authority officers and share the Task Group's concerns on the practicalities involved.
- 16.5 The Council agrees that there is no need to extend the existing powers.
- 16.6 The Council has no additional comment to make.