

# **Legislative Changes (and proposed changes) Affecting Taxi Licensing & Licensing Act 2003**

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## **Purpose of Report**

To inform the Committee of proposed changes for both Taxi Licensing and the Licensing Act 2003, contained within the Immigration Act 2016 and the Policing and Crime Bill.

## **Recommendation**

That Committee Members note the content of this report.

## **Report**

### **1. Immigration Act 2016 and Taxi Licensing**

The Immigration Act 2016 passed at the end of the last session of Parliament will introduce new sections to taxi legislation relating to the right to work. No official start date for these amendments has been set but unofficially October 2016 has been mentioned.

Once the provisions are in force, only persons with a right to remain in the UK and work in the UK, can be granted and then retain either a drivers licence (both hackney and private hire) or a private hire operators licence.

### **Disqualified Persons**

Two new sections will be introduced and inserted into the Local Government (Miscellaneous Provisions) Act 1976 (referred to as LG(MP)A 1976 for remainder of report), 79A and 79B which will detail those who are disqualified from holding any hackney carriage drivers, or private hire drivers or operators licence by reason of immigration status and explain the meanings of immigration offences and immigration penalties.

### **79A Persons disqualified by reason of immigration status.**

*(1) For the purposes of this Part of this Act a person is disqualified by reason of the persons immigration status from carrying on a licensable activity if the person is subject to immigration control and –*

- a) The person has not been granted leave to enter or remain in the United Kingdom: or*
- b) The persons leave to enter or remain in the United Kingdom \_*
  - i) Is invalid;*
  - ii) Has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise);or*
  - iii) Is subject to a condition preventing the person from carrying on the licensable activity.*

*2) Where a person is on immigration bail within the meaning of Part 1 of Schedule 10 to the Immigration Act 2016-*

- a) *the person is to be treated for the purposes of this Part of the Act as if the person had been granted leave to enter the United Kingdom; but*
- b) *any condition as to which the persons work in the United Kingdom to which the person's immigration bail is subject is to be treated for those purposes as a condition of leave.*

3) *For the purposes of this section a person is subject to immigration control if under the Immigration Act 1971 the person requires leave to enter or remain in the United Kingdom.*

4) *For the purposes of this section a person carries on a licensable activity if the person-*

- (a) drives a private hire vehicle;*
- (b) operates a private hire vehicle; or*
- (c) drives a hackney carriage.*

Section 79B will define what is meant by 'Immigration Offence' and 'Immigration Penalty.'

All new applications (and renewals) for drivers licences will be subject to this as a consequence of a new subsection introduced to the existing Section 51 within the LG(MP)A 1976. This will mean that in addition to being a 'fit and proper person' an applicant for a drivers licence must not be disqualified from holding a licence as a result of their immigration status.

Section 51(1) will read (*new words in italics*):

#### **'51 Licensing of drivers of private hire vehicles**

1) Subject to the provisions of this Part of the Act, a district council, shall on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver's licence:

Provided that a district Council shall not grant a licence-

- a) Unless they are satisfied-
  - i) That the applicant is a fit and proper person to hold a driver's licence; and
  - ii) *That the applicant is not disqualified by reason of the applicants immigration status from driving a private hire vehicle; or*
- b) To any person who has not for at least 12 months been authorised to drive a motor car, or is not at the date of the application for a drivers licence so authorised.

In addition the new S51 (1ZA) will require the local authority to have regard to Guidance issued by the Secretary of State (It is assumed this will be published by the Home Office but that is not made clear in the Act yet).

*(1ZA) In determining for the purposes of the subsection (1) whether an applicant is disqualified by reason of the applicants immigration status from driving a private hire vehicle, a district council must have regard to any guidance issued by the Secretary of State .*

There are then identical provisions in respect of applicants for private hire operators licences under the proposed S55(1)(b) and S55(1A).

#### **Drivers Licence Duration**

A new s53A will be inserted into LG(MP)A 1976 covering applicants for drivers licences who only have a limited time to remain in the UK. This will prohibit the local authority from

granting a licence beyond the period of permission to remain and it can be for a shorter period.

### **‘ 53A Drivers licences for persons subject immigration control**

*(1) Subsection (2) applies if –*

*(a) a licence within section 53 (1) (a) or (b) is to be granted to a person who has been granted leave to enter or remain in the United Kingdom for a limited period (‘the leave period’);*

*(b) the persons leave has not been extended by virtue of section 3C of the Immigration Act 1971 (continuation of leave pending variation decision);and*

*(c) apart from subsection (2) the period for which the licence would have been in force would have ended after the end of the leave period.*

*(2) The district council which grants the licence must specify a period in the licence as the period for which it remains in force; and that period must end at or before the end of the leave period.’*

If the applicant has an extended leave to remain, the local authority cannot grant a licence for more than 6 months, but again it can be for a shorter period s53A(3) and (4).

### **Operators Licence Duration**

Identical provisions in relation to Operators licences will be contained in section 55ZA covering operators licences who only have a limited time to remain in the UK. Local authorities will be unable to grant an operators licence that would continue beyond that limit of leave to remain in the UK (similar to drivers) but the authority can also grant a licence for a shorter period under section s55za(2). The same provisions are repeated in relation to extended leave periods under section s55ZA(4).

### **Lapse of Licence**

For both drivers and operators, if the person loses the right to remain in the UK during the lifetime of their licence, the licence ceases to have effect. This is covered by S53A(5) for private hire drivers, S53A(6) for hackney carriage drivers and S55ZA(5) for operators.

### **Return of Licence**

In relation to both drivers and operators, the licence (and badge for drivers) must be returned within 7 days of the expiry of the licence – S53A(7) (drivers) and S55ZA(7) (operators). The same applies where the licence ceases to have effect due to the loss of the right to remain in the UK and the licences must be returned within 7 days – S53A(8) (drivers) and S55ZA(8) (operators).

### **Offences**

Where the licence has either ended or ceases to have effect, failure to surrender it to the Licensing Authority within 7 days is an offence under S53A(9)(drivers) and S55ZA(8) (operators).

It is not currently known how these additional conditions will work in practice as it will depend on the requirement within the guidance which we still await. However the additional checks will require additional work on the part of the staff to ascertain the ability of the applicant to be granted or retain a licence.

As these costs would appear to be associated with the 'issue and administration' of the licence the additional expenditure (once known) can be recovered via the drivers and operators fees under sections 53 and 70 of the LG(MP)A 1976.

These additional costs would need to be levied across all licensees and will lead to an increase in licence fees for drivers and operators.

### **Equality Act and Taxis**

During a recent debate at parliament the Parliamentary Under Secretary of State at the Department for Transport stated ' the government intend to commence sections 165 and 167 of the Equality Act 2010 this year....'

Section 165 places a duty on drivers of wheelchair accessible hackney carriage and private hire vehicles listed by the local authority under s167 to carry passengers in wheelchairs and provide assistance loading and unloading the passenger and handling the passengers luggage.

It is possible for a driver to apply for an exemption certificate on medical or physical grounds under section 166.

Section 167 gives local authorities a power (but not a duty) to maintain lists of hackney carriages and private hire vehicles that are suitable for carrying persons in wheelchairs.

Licensing will continue to monitor the situation and encourage the fleet to improve wheelchair access of vehicles.

### **New Disability & Equality Training Proposals**

On the 29<sup>th</sup> June 2016 Andrew Gwynne MP, put forward the Disability Equality Training (Taxi & Private Hire Vehicle Drivers) Bill to Parliament. It is aimed at ensuring all private hire and hackney carriage drivers complete disability equality training. The second reading of the Bill is set for the 18<sup>th</sup> November. Members will be comforted to know that this training is part of the requirements for all new drivers in South Somerset and has been since the Taxi Policy was amended in 2015.

### **Law Commission Taxi Reforms**

On the 4<sup>th</sup> May 2016 Andrew Jones MP, Parliamentary Under-Secretary of State for Transport, confirmed in a House of Commons debate<sup>1</sup>, the Government is "considering the Law Commission's recommendations" but "cannot give a date for when the scrutiny will be complete". When and even whether, the law reform proposals would indeed be implemented has been an uncertain issue from the moment of the original publication in May 2014. It is understood however that Mike Penning MP, Minister of State (Home Office), has recently assured the LGA of the Governments' ongoing commitment to pursuing this legislative reform of taxi licensing.

The Licensing Manager will endeavour to keep members up to date with any progress on this important issue.

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<sup>1</sup> Taxi Licensing Regulations, Hansard Vol 609

## **Immigration Act and the Licensing Act 2003.**

The Immigration Act also makes changes to the Licensing Act 2003 in relation to the right to hold a premises or personal licence. These are in Section 36 and Schedule 4 of the Immigration Act. There is no confirmed commencement date, similar to that of the proposed changes for taxi licensing but October 2016 is likely. Words in italics represent the new legislation.

### **Entitlement to Work**

A new section 192A will be inserted into the Licensing Act 2003 which will detail a persons entitlement to work.

#### **192A Entitlement to work in the United Kingdom.**

*(1) For the purpose of the Act an individual is entitled to work in the United Kingdom if-*

*(a) the individual does not under the Immigration Act 1971 require leave to enter or remain in the United Kingdom, or*

*(b) the individual has been granted such leave and the leave-*  
*(i) is not invalid*

*(ii) has not ceased to have effect (whether be reason of curtailment, revocation, cancellation, passage of time or otherwise), and*

*(iii) is not subject to a condition preventing the individual from doing work relating to the carrying on of a licensable activity within section 1 (1)(a) or (d).*

*(2) Where an individual is on immigration bail within the meaning of Part 1 Of Schedule 10 to the Immigration Act 2016-*

*(a) the individual is to be treated for the purposes of subsection (1) as if the individual has been granted leave to enter the United Kingdom, but*

*(b) any condition as to the individuals work in the United Kingdom to which the individuals immigration bail is subject is to be treated for those purposes as a condition of leave.*

### **New Responsible Authority**

The Secretary of State (presumed to be the Home Secretary but not actually defined in legislation) will be an additional Responsible Authority for premises (excluding vessels) where the premises licence authorises the sale of alcohol or late night refreshment.

Responsible Authorities under the Licensing Act are public bodies that must be fully notified of applications and that are entitled to make representations to the licensing authority. It is not known currently whether we will consult with the Home Office, as a Responsible Authority, on only those with immigration issues or all new applications.

### **Prohibition on applying for or holding a premises licence**

There will be a prohibition on a person applying for a premises licence for alcohol or late night refreshment if they do not have the right to work in the UK. This will be contained in s16(2a) inserted by Schedule 4 para 4 of the Immigration Act;

*S16(2A) An individual who is resident in the United Kingdom may not apply for a premises licence authorising premises to be used for licensable activity within section 1(1)a or (d) unless the individual is entitled to work in the United Kingdom.*

## **Restrictions on the use of Interim Authority Notices**

When a premises licence for alcohol sales or late night refreshment is in existence, it will lapse if the holder ceases to have the right to work in the UK (in the same way as on death, insolvency etc.) by virtue of a new S27(1a) inserted by Schedule 4 para 5.

In these circumstances and any other situation where an interim authority notice is served, it can only be served by a person who has a right to work in the UK. This is contained in a new s47(3a) inserted by Schedule 4, para 9 of the Immigration Act.

The Secretary of State can object to an interim authority notice if *'the exceptional circumstances of the case are such that a failure to cancel the interim authority notice would be prejudicial to the prevention of illegal working in licensed premises.'* Any such objection must be made within 2 working days of the receipt of the notice.

## **Restrictions on Transfer of Premises Licence**

As above any application for the transfer of a premises licence must have the right to work in the UK by virtue of a new s42(2a) inserted by Schedule 4, para 6 and if the premises is for alcohol sales or late night refreshment the notice must also be given to the Secretary of State as well as the Police. The Secretary of State can then object to the transfer within 14 days of the notification under the new s42(8) and (9) inserted by Schedule 4, para 6 of the Immigration Act.

In those circumstances when an objection is received from the Secretary of State the Licensing Authority must reject the transfer if it *'considers it appropriate for the prevention of illegal working in licensed premises to do so.'*

## **Personal Licence Restrictions**

In relation to personal licences there is a similar approach to that for taxi drivers.

A personal licence can only be granted to an applicant if;

*'he is entitled to work in the United Kingdom'*. (new s120(2)(aa) inserted by Schedule 4, para 15 of the Immigration Act)

And it lapses if that entitlement ends;

*'(2A A personal licence ceases to have effect if the holder of the licence ceases to be entitled to work in the United Kingdom.'* (s115 (2a) inserted by Schedule 4, para 14 of the Immigration Act)

## **Personal Licence Relevant Convictions**

The offences in Schedule 4 of Licensing Act 2003 are amended to add 'immigration offence' and 'immigration penalty'.

## **Personal Licence Applicant Alterations**

If an applicant for a personal licence has been

*'a) convicted of an immigration offence,*

*b) convicted of a foreign offence that the authority considers to be comparable to an immigration offence' or*

*c) required to pay an immigration penalty,*

*the authority must give the Secretary of State a notice to that effect.'*

On receipt of that notice the Secretary of State can then give notice within 14 days if he is *'satisfied that granting the licence would be prejudicial to the prevention of illegal working in licensed premises.'*

### **Existing Personal Licence Alterations**

A person who currently holds a personal licence, must give notice of any immigration conviction or penalty to the Licensing Authority.

### **Powers of Entry**

An Immigration Officer can enter any premises, under S179 as amended, if they *'have reason to believe'* a premises are being used for sale of alcohol or late night refreshment *'with a view to seeing whether an offence under any of the Immigration Acts is being committed in connection with the carrying on of the activity.'*

### **Policing and Crime Bill 2016 and the Licensing Act**

The Policing and Crime Bill 2016 contains proposals which will amend the Licensing Act 2003. It is still making its way through the parliamentary process so no commencement date for these changes have been announced.

### **Definition of Alcohol**

The definition of Alcohol will be extended by clause 108 of the Policing and Crime Bill to include vaporised or dehydrated alcohol, which has apparently become widely available. This is achieved by the introduction of the words 'in any state' after the word 'alcohol'. This will cover any future developments of alcohol.

### **Summary Review Changes**

There are some significant changes to summary reviews (often referred to as expedited reviews) of premises licences.

If interim steps are imposed following a summary review (under S53B) the premises licence holder can make representations against those, and at present can repeat that process without limit. The Licensing Act will be amended to allow initial representations, but after that, he can only seek to make further representations *'if there has been a material change in circumstances since the authority made its determination.'* Material is not defined, but it should prevent repeated challenges where there have been no changes, whilst allowing licensing authorities to respond where the licensee has made a significant move towards addressing or overcoming the problems that led to the summary review.

The uncertainty concerning the continuation (or not) of the interim steps after the full review, but before the appeal should be clarified by Section 53D which it is proposed will be inserted into the Licensing Act 2003, by clause 110(5) Policing and Crime Bill.

The Licensing Authority can determine that some or all of the interim steps stay in place pending any appeal. If they do remain in place, there is a right of appeal against those which must be heard by the Magistrates Court within 28 days of the application to appeal being lodged.

### **Legal & Financial Implications**

None at this stage

### **Implications for Corporate Priorities**

None at this stage

### **Carbon Emissions & Climate Change Implications**

None

### **Equality and Diversity Implications**

None

**Background Papers:** Immigration Act 2016  
Policing & Crime Bill  
Taxi Licensing Regulations, Hansard Vol 609

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