
Report To:	General Purposes Board	Date:	9 November 2022
Report By:	Head of Legal & Democratic Services	Report No:	LS/104/22
Contact Officer:	Anne Sinclair	Contact No:	712034
Subject:	HMRC Tax Conditionality		

1.0 PURPOSE AND SUMMARY

1.1 For Decision For Information/Noting

1.2 The purpose of this report is to ask members of the General Purposes Board to note amendments which are being introduced to the Finance Act 2021 by the Finance Bill 2022 which will oblige licensing bodies in Scotland to comply with additional HMRC tax conditionality obligations in relation to certain types of civic licence applications.

1.3 In Scotland, the changes which are due to take effect from 1 April 2023 will apply to applications and renewal applications for taxi/private hire drivers, taxi/private hire operators, taxi/private hire booking offices, licences to deal in scrap metal on a fixed site and licences to carry on business as an itinerant metal dealer.

2.0 RECOMMENDATIONS

2.1 It is recommended that Members of the Board note the regulations being introduced which will oblige the Council to comply with additional HMRC tax conditionality obligations in relation to the processing of applications for taxi/private drivers, taxi/private hire operators, taxi/private hire booking offices, licences to deal in scrap metal on a fixed site and licences to carry on business as an itinerant metal dealer, these being due to take effect from 1 April 2023.

Iain Strachan
Head of Legal & Democratic Services

3.0 BACKGROUND AND CONTEXT

3.1 Current legislation is contained in Section 125 and Schedule 33 to the Finance Act 2021 which imposes tax conditionality obligations upon licensing bodies who administer applications for certain public sector licences to either:

- give information about tax requirements to first time applicants;
- get confirmation from HMRC that a renewal applicant has completed a tax check.

This current legislation relates only to licences in England and Wales.

3.2 As a consequence of provisions within the Finance Bill 2022/23, an amendment, which has a commencement date of 1 April 2023, has been made to the table of relevant licences in paragraph 1(2) of Schedule 33 to the Finance Act 2021 which adds tax conditionality obligations to licences which currently operate in Scotland and Northern Ireland, similar to those tax conditionality obligations which currently apply to licences in operation in England and Wales. In Scotland these are licences to drive taxis or private hire cars, operate taxis or private hire cars, operate a booking office for a private hire vehicle or car business, deal in scrap metal on a fixed site or carry on business as an itinerant metal dealer. This amendment has a commencement date of 1 April 2023.

3.3 The legislation will also make changes to Section 3 of the Civic Government (Scotland) Act 1982 and paragraphs 7 and 8 of Schedule 1 to the 1982 Act. These changes clarify how tax conditionality and licensing legislation interact.

3.4 Currently, in terms of section 3 of the Civic Government (Scotland) Act 1982, applications for civic licences in Scotland must be considered and a decision made on the application within a fixed period, failing which the licence will be deemed to be granted. Amendments to Section 3 of the Civic Government (Scotland) Act 1982, as a result of the new Finance Bill 2022/23, will clarify that this period only begins once a licensing authority has fulfilled its tax conditionality obligations, if applicable, for that licence application. This will prevent an applicant being able to have their licence deemed to be granted without completing the tax check.

3.5 In addition, when an applicant applies to renew their licence, their existing licence will be extended until the application has been dealt with. If the licensing body is prevented from considering a renewal application by the requirements of tax conditionality (in cases where an applicant does not provide confirmation of completion of the tax check) amendments to paragraph 7 and 8 of Schedule 1 to the Civic Government (Scotland) Act 1982 will cause the existing licence to expire. This will happen on either its normal expiry date, or, 28 days after the licensing body makes a request for further information from the applicant to enable it to fulfil its tax conditionality obligations, whichever is later. This will prevent a licence being extended indefinitely as a result of the applicant failing to provide confirmation of the tax check.

3.6 Similar consequential amendments were made when the legislation was introduced in England and Wales. These further amendments are intended to ensure the tax conditionality rules are applied consistently for licensing bodies across the UK where licences are used to drive a taxi, private hire vehicle or car, operate a booking office for a private hire vehicle or car business, deal in scrap metal on a fixed site or carry-on business as an itinerant metal dealer.

3.7 HMRC has stated that its approach to tax conditionality is as a result of an aim to address part of the hidden economy, consisting of individuals and businesses with sources of taxable income that are hidden from HMRC, by helping applicants for certain public sector licences better understand their tax obligations by making access to the licence they need to trade conditional upon completing a tax check.

4.0 PROPOSALS

- 4.1 Paragraph 2 of Schedule 33 to the Finance Act 2021 will set out the obligations licensing bodies, such as the Council, will be subject to when dealing with first time applications in relation to licence applications to drive a taxi, private hire vehicle or car, operate a taxi, private hire vehicle or car, operate a booking office for a private hire vehicle or car business, deal in scrap metal on a fixed site or carry on business as an itinerant metal dealer. In particular, licensing bodies must draw applicants' attention to HMRC guidance about their tax obligations and information about HMRC's powers. Prior to considering an application, the licensing body must get confirmation from the applicant that they are aware of the guidance. Accordingly, a declaration will require to be added to the application form asking applicants to confirm that they are aware of the content of HMRC guidance relating to their tax legislation obligations. The licensing authority will not be able to grant or refuse a licence if the applicant has not confirmed that they are aware of their tax responsibilities.
- 4.2 In relation to applications for renewal of a licence the applicant will require to complete a tax check then provide the licensing authority with a tax check code on their application if they are:
- renewing a licence;
 - applying for the same type of licence they previously held, but ceased to be valid less than a year ago; or
 - applying for the same type of licence they already hold with another licensing authority.
- 4.3 The licensing authority will then require to confirm the tax check has taken place. The licensing authority will not be able to grant or refuse a licence if they cannot confirm the applicant has completed a tax check.
- 4.4 The Council will now require to ensure that it has the appropriate systems and processes in place to be prepared for the changes which are due to take effect on 1 April 2023 as the Council will need to:
- ask applicants if they currently hold, or have held in the last 12 months, any licence in relation to an activity which is the same as the current licence being applied for, to include holding the same type of licence with one or more licensing authority (including the licensing body to which the applicant is now applying);
 - ask the applicant for their nine-character tax check code if they have to complete a tax check, so they can confirm that that has been done;
 - record their company number, if the applicant is a company; and
 - make the applicant aware that HMRC has powers to obtain information from licensing authorities. Schedule 23 to Finance Act 2011 (Data Gathering Powers) and Schedule 36 to Finance Act 2008 (Information and Inspection Powers), grant HMRC powers to obtain relevant information from third parties. This includes licensing bodies being required to provide information about licence applicants.
- 4.5 The Council will also require to give applicants who do not need to complete a tax check the following gov.uk website addresses for HMRC guidance about tax registration obligations:
- PAYE information: www.gov.uk/income-tax/how-you-pay-income-tax
 - registering for self-assessment: www.gov.uk/register-for-self-assessment
 - corporation tax information: www.gov.uk/corporation-tax
- 4.6 Members of the Board are asked to note the additional work that licensing staff will require to undertake in order to prepare for the new changes to licensing concerning applications for licences to drive taxis and private hire cars, licences to operate taxis, private hire vehicles or cars,

licences to operate a booking office for a private hire vehicle or car business, licences to carry on the business of a metal dealer on a fixed site and licences to carry on business as an itinerant metal dealer. Steps will be taken to notify operators and drivers of the new legislation with information posted on the Council's licensing website for new applicants.

5.0 IMPLICATIONS

5.1 The table below shows whether risks and implications apply if the recommendation(s) is(are) agreed:

SUBJECT	YES	NO	N/A
Financial	X		
Legal/Risk	X		
Human Resources		X	
Strategic (LOIP/Corporate Plan)			X
Equalities & Fairer Scotland Duty			X
Children & Young People's Rights & Wellbeing			X
Environmental & Sustainability			X
Data Protection			X

5.2 Finance

There will be additional costs in relation to the extra staff time for work that will be involved in carrying out the necessary tax conditionality checks with HMRC. It is currently anticipated that this will be met from existing resources and is one factor being taken account of in the annual review of licensing fees. The extra work involved will be kept under review.

One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report	Virement From	Other Comments
N/A					

Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From (If Applicable)	Other Comments
N/A					

5.3 Legal/Risk

The legal issues are set out within this report.

5.4 Human Resources

It is anticipated that the Council's existing licensing staff will be in a position to undertake the additional work under the current budget.

6.0 CONSULTATION

6.1 It is proposed that officers will notify relevant licence holders of the new changes in legislation and post relevant information on the Council's website.

7.0 BACKGROUND PAPERS

7.1 None