

LICENSED TAXI DRIVERS' ASSOCIATION (LTDA) – WRITTEN EVIDENCE (DFE0011)

Draft Finance Bill 2020-2021 inquiry

SUMMARY

1. The LTDA is in principle supportive of proposals to implement new tax checks on licence renewal applications for taxi drivers and others, as part of the Government's efforts to address the 'hidden economy'.
2. Creating conditionality, can be a simple and effective way to identify and prevent non-compliance. The new checks will help to ensure that all drivers fully understand their tax obligations and are properly declaring taxable income to HMRC. This will benefit the UK economy and will both directly and indirectly benefit taxi drivers.
3. There are however risks associated with these proposals. Honest, hard-working taxi drivers could be negatively and disproportionately impacted by the additional burden these provisions place on them. They also create additional bureaucracy in the licensing process.
4. Steps must be taken to mitigate the impact of these new checks and ensure that they are not disruptive and damaging for taxi drivers. Clause one of the draft legislation contains a number of welcome and important provisions, which will give drivers some protection and these must not be diluted.
5. Should the legislation become law, there is also a clear need for robust statutory guidance to underpin it, setting out clear duties for applicants, HMRC and licensing authorities. This must also ensure processes put in place to complete the checks and fulfil the requirement are workable and do not overly burden applicants. It is important that these processes allow for effective burden sharing between the different parties and we propose two models that could work based on the process for Enhanced DBS checks and DVLA records checks, currently used by Transport for London. An information campaign will also be required to ensure that both licensing authorities and those individuals who will be required to complete the new check understand the changes and can navigate the process successfully.

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6. If implemented effectively and with appropriate safeguards built-in to protect drivers' ability to make a living, these checks can be a fair and proportionate way to address the hidden economy.
 7. Conditionality should be extended to other trades to make this the 'norm', promote broader tax compliance, and more fully address the 'hidden economy'. This is also important to ensure certain trades, including the taxi trade, are not unfairly scapegoated.

NEW TAX CHECKS ON LICENCE RENEWAL APPLICATIONS

Are the proposals for tax checks on licence renewal applications fair and proportionate?

8. The professional taxi drivers the LTDA represents pride themselves on providing a high-quality service, giving back to their communities, and contributing to the UK economy, including paying their fair share of tax. This is an important part of being a "fit and proper" taxi or private hire vehicle (PHV) driver or operator.
9. We recognise in the past there have been problems and a small minority of taxi drivers may have been part of the hidden economy. However, in recent years the taxi trade in London has changed significantly – transitioning from a largely cash business, to one where card payments are the norm. Indeed, since October 2016, it has been mandatory for all black cabs in London to accept card payments. This has helped to further formalise transactions and guarantees income is accounted for appropriately – with less room for error and nowhere to hide for those intent on breaking the law. This shift was welcomed by the LTDA and our members.
10. There are now more significant tax compliance problems within the PHV trade, both with regard to individual drivers, and operators and these proposals represent an important way to address this.
11. With the emergence of new app-based operators, the PHV trade has changed beyond recognition. We have seen exponential growth in the number of self-employed licensed PHV drivers responsible for managing their own tax affairs. This growth will have no doubt resulted in more non-compliance – accidental, through drivers not understanding their obligations, and with malicious intent – both of which these new checks will address.
12. Within the PHV trade, less stringent licensing requirements mean that there also tend to be more drivers who work on an informal, part-time basis, as a way to supplement their income. It is

often drivers in such circumstances who fail to properly declare their income and pay the appropriate tax. We also know that operators like Uber pay drivers via IBAN, transferring money into international accounts, which can result in drivers avoiding their tax obligations.

13. These new checks will help to prevent such practices and ensure there is a level playing field between the taxi and PHV trades – protecting those who play by the rules from unfair competition.
14. If enacted, this legislation will also assist licensing authorities in addressing broader issues of non-compliance and identifying drivers and operators not “fit and proper” to hold a licence. Where the checks identify problems, this will serve as a red flag, as not paying their fair share of tax could indicate they are not playing by the rules in other areas. This should therefore help licensing authorities to identify problems before they put passengers at risk.
15. Given the benefits outlined above, if introduced correctly and with due regard for drivers’ rights and not creating significant delays in the licence renewal process, overall, we believe these proposals can be fair and proportionate.

How effective is the legislation likely to be, and is any amendment needed?

16. Creating conditionality, is a simple and effective way to identify and prevent non-compliance. These new checks will prevent anyone not appropriately registered for tax from renewing their licence and being able to work, ultimately making it impossible for anyone who holds a licence to avoid paying tax on their income.
17. There may still be some rogue individuals who evade the checks, for example we know Uber has had some challenges with drivers using other people’s IDs to work on their platform and likely not declaring the income, but this can be addressed through other means.
18. Clause 1 of the draft legislation will also not address instances where PHV operators themselves are failing to pay their fair share of tax by exploiting international taxation rules. For example, Uber London Limited – a subsidiary of Uber in the UK – pays tax on its declared profits and would therefore be classed as appropriately registered. However, it is well documented that the company uses aggressive tax planning arrangements to ensure that its tax liability is kept to a minimum in the UK with its self-employed UK drivers

using the platform paying their commission to Uber International BV, registered in the Netherlands.¹

Building-in effective safeguards

19. The effectiveness of the legislation must also be measured on whether it can achieve its objective in a way that does not unduly impact drivers and licensing authorities.
20. The licensing application and renewal process can already be cumbersome and challenging for drivers to complete. For example, in London, drivers must renew their licence every three years (annually for drivers over 66) and this includes completing an enhanced DBS check, a DVLA records check and a medical assessment. One of the LTDA's core services is assisting our members to navigate this process successfully and ensuring they do not encounter any damaging delays.
21. When implementing these new checks, steps must therefore be taken to mitigate their impact. We note that there are a number of welcome safeguards in the draft legislation, which will help to ensure drivers' livelihoods are protected. These must not be diluted in anyway.
22. These include the following provisions:
 - The legislation obliges HMRC to respond, *"within 3 days, to a licensing body's request for confirmation that an applicant has completed a tax check"*. This is positive as it will prevent reporting delays once a driver has submitted their application. This must be facilitated through efficient and appropriate data sharing, with due regard for a driver's privacy and personal information, which must be handled sensitively.
 - *"The tax check must have been completed no more than 120 days before the licensing body requests the confirmation"*. In London, we currently advise drivers to start the process of applying for their licence by applying for an Enhanced DBS check 90 days before their current licence expires. This generally ensures they have enough time to complete the process. This 120-day period should therefore provide ample time for drivers to complete the check and licence renewal process, and for TfL to process the application. However, the draft legislation should be amended to include a legal obligation for HMRC to complete the checks within a specific timeframe once requested by a driver, similar to the

¹ <https://www.theguardian.com/business/2016/oct/10/ubers-main-uk-business-paid-only-411000-in-tax-last-year>

obligation to respond to licensing authorities requests within three days.

- *"Where an HMRC failure prevents the licensing body from meeting its requirement to obtain confirmation of the completion of a tax check, that requirement will cease to apply" and "HMRC will also have discretion to waive the requirement where an HMRC failure prevented the applicant completing their tax check."* This is important as it means that if, through no fault of their own, a driver's tax status can not be confirmed, they will not be penalised and will be able to renew their licence and keep working.
23. We note HMRC Commissioners will have the power through secondary legislation to substitute "a different number of days" in the provisions above. If changes are to be made to these provisions there must be due consultation, to ensure the new timeframes are workable and do not negatively impact applicants. HMRC must work with relevant trade bodies and licensing authorities to achieve this.
24. As it stands, in London, whilst a driver is in the process of applying to renew their licence, their current licence is temporarily extended. The draft legislation would amend existing legislation so that where a licensing body has been unable to obtain confirmation of completion of the tax check for 28 days an applicant's licence expires. We accept this is required to ensure people can't work on a temporary licence indefinitely. However, this 28-day period should only come into effect, if a person has not provided any information to HMRC for the tax check.
25. Where there are problems associated with the person's tax status or they have made a mistake in completing the process effectively, there must be a separate process for resolution. This must give the applicant sufficient time to sort out the problems and the ability to continue trading on a temporarily extended licence in the meantime. There must also be a clearly established appeals process, with drivers able to continue working until the matter is resolved. The legislation should be amended to make clear provisions for this.

Statutory guidance to ensure effective implementation

26. This legislation must be accompanied by clear and robust statutory guidance to ensure HMRC and licensing authorities put appropriate systems in place, which are easy to navigate and fulfil their obligations effectively.
27. The Government and individual licensing authorities must also make sure drivers are properly informed about the changes to avoid

unnecessary delays and problems. We note that the legislation would come into effect from April 4th 2022, which provides plenty of time to do so. The Government has also committed to “produce clear guidance and work with licensing bodies and industry representative bodies to make individuals aware of the new requirement”. This will be vitally important and the LTDA would be delighted to work with Government and all parties involved to ensure guidance is suitable and to disseminate the relevant information.

Workable systems

28. The regulations making provision for how the checks will be completed will be made via statutory instruments. There must be due consultation with all the key stakeholders to ensure that the proposed system is effective.
29. In London, drivers renewing their licences must already successfully complete an enhanced DBS check before they can be relicensed. Many of our members, both those applying for their first licence and those renewing, have been negatively impacted by delays in receiving DBS checks back. Indeed, when this was first introduced as a requirement, there were a lot of serious teething problems which disadvantaged drivers. Lessons must be learnt from this.
30. The LTDA now assists members in completing their DBS checks to ensure they do not encounter problems. Working with TfL, we have also educated drivers on the need to apply for their DBS well ahead of their renewal – ideally 90 days before expiry based on our experience.
31. In some extreme cases even drivers who have started the process well in advance and ahead of this 90-day timeframe have still sometimes faced unavoidable problems obtaining a DBS, through no fault of their own. TfL has a process in place to enable drivers who have been disadvantaged by DBS delays to make a claim for loss of earnings. There must be a similar process in place for those who are delayed by these new checks despite supplying all the relevant information and complying with the requirement.
32. Depending on what is most feasible, these checks should operate in the same way as either Enhanced DBS checks or DVLA status checks currently completed as part of the licensing process in London. For an Enhanced DBS check an applicant applies for the check and then is given a reference number or ‘e-number’ they can put on their licence renewal form, which confirms they have applied for the check. This allows TfL to start processing their renewal

application and subsequently confirm directly with the Disclosure and Barring Service that they are suitable to hold a licence.

33. For the DVLA check, a driver registers with the DVLA via their website which generates a DVLA share or check code which they then put on their renewal application and this allows TfL to access their records and confirm they hold a valid licence.
34. TfL then liaises with these bodies directly as part of the application process to confirm the applicant's status. Both of these systems work well and share the burden fairly between the licensing authority and the driver. Tax checks should follow a similar model.

Sign-posting for new applicants

35. Under the legislation licensing authorities will have to draw a new licence applicant's attention to HMRC guidance to ensure they understand their tax obligations in advance of considering their application. This is designed to confirm new drivers and those returning to the trade after more than a year, are appropriately registered for tax and to promote compliance.
36. This is positive as it will help to avoid any problems further down the line and any delays to renewal arising from driver's tax affairs. However, this guidance must be clear and easy to understand. Under the legislation, licensing authorities must also confirm applicants are aware of the guidance before considering the application. This should not be a simple tick box exercise but a robust process which ensures drivers are properly informed and understand their obligations.

7. What is your view of the principle of conditionality and its use in the tax system?

37. We recognise the need to tackle the hidden economy, particularly at a time when the UK economy as a whole is under significant strain. Introducing such conditionality is in principle an effective way to ensure compliance. Making tax registration part of the licensing process will remove any doubt or confusion as to a driver's tax responsibilities. For some self-employed drivers, navigating the tax system can be challenging, however if this legislation comes into effect, when a driver first applies for a licence it will ensure they fully understand their obligations and subsequently upon renewal, it will ensure they have their tax affairs in order.
38. Most drivers work with accountants who handle their tax affairs and ensure they are fully compliant but for those who do this

themselves, this will also build in an extra check to ensure they are doing everything correctly, allow any genuine mistakes to be swiftly rectified and avoid problems down the line.

43. However, it is vital this does not become burdensome for drivers and introduce an added layer of red tape causing delays to licence renewals, which could result in loss of earnings.
44. Similarly, the burden on licensing authorities must be kept to a minimum, as most of these bodies already have limited resources and capacity to take on more administrative work, with budgets already tight and a relatively small number of staff. They must be given the resources and support they need to make this workable.
45. Overall, the Government must safeguard compliant individuals and businesses, so that they are not penalised unfairly and negatively impacted by measures, designed to bring a minority who seek to evade or avoid their responsibilities, into line.

8. How do you view the Government's stated intention to extend conditionality to other trades?

46. Where appropriate, conditionality should be applied to other trades. This will ensure everyone is paying their fair share of tax and will create a fairer system, where everyone plays by the same rules and being appropriately registered for tax is an established prerequisite for any business or self-employed person.
47. Making conditionality the norm would also help to further educate people on their obligations, make tax evasion and avoidance harder, stigmatise it further and, ultimately, help to bring more money back into the Exchequer. This would also ensure that the specific trades currently covered by the provisions in this Draft Bill are not singled out and vilified as part of the problem, instead making it clear that these measures are designed to identify non-compliance wherever it occurs.

Wednesday 7th October 2020