

**Licensing authorities: requirements to give or obtain tax information  
Draft clause and Schedule, Finance Bill 2020-21  
Response from the Low Incomes Tax Reform Group (LITRG)**

**1 Executive Summary**

- 1.1 LITRG welcomes the opportunity to comment on the draft clause and Schedule for Finance Bill 2020-21 in relation to tax checks on certain public sector licence renewal applications. LITRG responded to the consultations leading to the publication of this draft legislation.<sup>1</sup> Our comments in this response mainly concentrate on how the changes will impact individuals rather than companies.
- 1.2 We would like to take the opportunity to reiterate that in order for tax conditionality to be a success, we hope that the government will ensure that it is paired with a greater focus on educating the general public about the importance of using licensed businesses in the first instance. This ‘two-pronged’ approach would help to ensure that the introduction of tax conditionality will not drive businesses further into the hidden economy by operating without even the relevant licence.
- 1.3 We are especially pleased that the government has, at this stage, decided not to introduce tax conditionality for licences issued under the Housing Act 2004 for houses in multiple occupation. In light of the fact that such licences are only renewed every five years, we do not believe the intervention would have been effective in preventing hidden economy

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<sup>1</sup> <https://www.litrg.org.uk/sites/default/files/180302-LITRG-response-Public-Sector-Licensing-FINAL.pdf>,  
<https://www.litrg.org.uk/sites/default/files/files/161014-LITRG-response-Hidden-economy-Conditionality-FINAL.pdf>

activity in this area. Furthermore, the potential impact on tenants and the fact that undeclared rental receipts is a much wider issue together mean that a different approach is required to tackle this issue.

1.4 Under the draft legislation as proposed, we note that HMRC, rather than the licensing authority, will be the entity to verify that the licence applicant is properly registered for tax. We think this is sensible, given that the alternative which was originally suggested would have involved the licensing authority having to make an assessment which they are unlikely to have the expertise or resources to carry out effectively. The use of an electronic verification process by the licensing authority should ensure that the process from the point of view of the licensing authority is made as streamlined as possible.

1.5 We note that the draft legislation does not appear to make any anti-avoidance provision to prevent phoenixism (i.e. the dissolution of a limited company followed by the registration of another which carries on the same business with the same owners, directors, employees, premises, operations, clients, etc.). Corporate entities could use this in order to avoid ever having to be subject to a tax check by ensuring each licence application is treated as a “first-time application”.

1.6 We provide more detailed comments on the draft legislation below. In particular, we think that:

- the process for first-time applications should be improved in order to better achieve the aim of preventing individuals from entering the hidden economy;
- the time window for an individual to complete their tax check in cases of renewed applications is not determinable in advance by the individual and should be redefined;
- HMRC should be obliged to complete the tax check within a certain timeframe; and,
- the tax check seems to go far beyond the policy intent of simply checking whether the taxpayer is properly registered for tax.

## **2 About Us**

2.1 LITRG is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.

2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.

2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT’s primary purpose is to promote education and study of the

administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

### **3 Detailed comments**

#### **3.1 *Draft clause***

3.1.1 The title of the draft legislation refers to licensing authorities having a requirement to “give or obtain tax information”. This is not accurate as the licensing authority would not have any requirement to obtain tax information, rather they would simply have a requirement to obtain confirmation from HMRC that the applicant has completed a tax check.

3.1.2 There does not appear to be any rationale for the commencement date of 4 April 2022. Would it not make more sense to align this with either the tax year (6 April) or the financial year (1 April)?

#### **3.2 *First-time applications***

3.2.1 Under paragraph (2)(2)(a) of the Schedule, the licensing authority is to draw the applicant’s attention to “such guidance relating to tax compliance as is for the time being specified for the purposes of this paragraph by the HMRC Commissioners”. However, the regulation-making powers of the Commissioners under paragraph 9 seem to only cover the “form or manner” of such information, not the information itself. We suggest that the information which the licensing authority is to provide is specified by regulation, and that paragraph 9(1)(a) is updated accordingly. This will help ensure that the information to be provided is appropriate and adequate in order to meet the policy’s aim of preventing businesses from entering the hidden economy from the outset.

3.2.2 It will be especially important to get this guidance correct. The summary of impacts within the Policy Paper indicates that the new measures will disproportionately affect older and ethnic minority taxpayers.<sup>2</sup> Steps must therefore be taken to mitigate these impacts. For example, the information and routes for accessing tax checks need to be clear, accessible and not too long; the guidance should not simply be a list of hyperlinks.

3.2.3 Paragraph 2(2)(b) states that the licensing authority is to “obtain confirmation from the applicant that the applicant is aware of the contents of that guidance”. We suggest this should go further: what form should such a confirmation take, how long does it need to be retained, and should it be dated?

3.2.4 Furthermore, we question whether it is sufficient that the applicant is “aware of the contents” – should the applicant not be asked to explicitly confirm that they have

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<sup>2</sup> <https://www.gov.uk/government/publications/new-tax-checks-on-licence-renewal-applications/new-tax-checks-on-licence-renewal-applications#detailed-proposal>

understood and will comply with the necessary tax reporting obligations, and be signposted to sources of further help if required?

- 3.2.5 We also think that paragraph 9(1)(b) should be expanded to include confirmations given under paragraph 2(2)(b) and not just 3(2)(a).
- 3.2.6 One significant omission from the items to which the licensing authority must draw the applicant's attention is the fact that they will need to undergo a tax check when they renew their licence. This will surely encourage applicants to be aware they will not be able to set out with an intention to operate in the hidden economy.
- 3.2.7 In addition, we think it should be explicit that the applicant is made aware of both:
- the 120-day period during which they must undergo a tax check prior to the renewal of the application; and
  - HMRC's powers under paragraph 8 (Disclosure of information).

### 3.3 ***Renewed applications***

- 3.3.1 The 120-day period is problematic in the sense that it is defined rather awkwardly as ending on the day that the *licensing authority* makes the request to HMRC to confirm that the applicant has completed a tax check. This makes it impossible to understand with certainty when the 120-day period starts, other than in retrospect. Would it not make more sense for the 120-day period to end on the date that the *licence applicant* makes the renewal application to the licensing authority, or even on the expiry of the existing licence? This would mean that the taxpayer would be able to plan better for the fact they will need to undergo a tax check before renewing their licence.
- 3.3.2 Ideally, the taxpayer would receive a reminder in good time to allow the tax check to be completed, and practically speaking this should come from the licensing authority as they will be aware of when the existing licence will need to be renewed. This then begs the question, should the licensing authority be required by statute to issue this reminder?

### 3.4 ***Tax checks***

- 3.4.1 With regard to paragraph 4(a), which states "HMRC must make arrangements (whether by means of a website *or otherwise*) for...enabling tax checks to be undertaken..." (our emphasis). This wording would seem to allow HMRC to meet this requirement solely by means of a website. Not everyone is able to transact digitally – the legislation should therefore include a statutory requirement on HMRC to provide a non-digital means of taxpayers accessing tax checks. This is especially important when having regard to the fact that the new changes are expected to disproportionately affect older taxpayers and ethnic minority groups, who may each be more likely to be less digitally able.
- 3.4.2 With regard to paragraph 5(1)(a) of the Schedule, we suggest further clarity is provided over whether or not a person has "complied with the person's reporting obligations" (defined in paragraph 10 in the case of an individual as an obligation under s7 and s8 of TMA 1970). We

had understood that tax conditionality would be concerned with whether or not a person was properly *registered* for tax (s7), and not – for example – whether or not that person had filed a Self Assessment tax return or whether or not such a return was correct (s8).<sup>3</sup> Why is s8 included in the definition of “reporting obligations”? According to the Policy Paper published alongside the draft legislation, “Conditionality is designed to test compliance with these two obligations, where they apply.” This refers to s7 of TMA 1970 (for individuals) and Paragraph 2 of Schedule 18 to Finance Act 1998 (for companies). There is no mention of s8 of TMA 1970. We suggest that paragraphs 5(1)(a) and 5(2)(e) are reworded to refer to registration rather than reporting obligations, that references to s8 of TMA 1970 are removed and the definition in paragraph 10 is amended accordingly.

- 3.4.3 Furthermore, a taxpayer’s obligations under s7 TMA 1970 are generally not required until six months after the end of the relevant tax year. What would happen in the case that an individual has trading income under the trading allowance, meaning that they do not have any obligations under ss 7 (or 8)? Or otherwise, what would happen if the renewal is required before the six-month deadline for the relevant tax year (for example, if the trading allowance had meant that they had not been required to register for tax in their initial years of trading)? For which tax year would HMRC be checking whether taxpayer obligations under ss 7 (and 8) are met?
- 3.4.4 The scope of paragraph 5(1)(b), which allows HMRC to request information in order to “assess the effectiveness of this Schedule in improving the tax compliance of persons carrying on authorised activities”, seems unclear. This would appear to allow HMRC to request information from the taxpayer in relation to third parties in very broad circumstances, with no corresponding safeguards. We suggest it is removed.
- 3.4.5 In fact, the information required under paragraph 5(2) seems to go far beyond the confirmation that the individual is appropriately registered for tax. It includes, for example, “information about any relevant authorised activity income”. Would such information include the amount of the income, and will HMRC be checking it has been reported correctly? How would they propose to do this if the deadline for reporting that income (31 January following the end of the tax year, in the case of an individual) falls well after the date of the licence renewal application?
- 3.4.6 There appears to be no time-constraint on HMRC to actually complete the tax check. This needs correcting – there should be a clear timescale (set out in legislation) for the completion of a tax check by HMRC and a notification of the outcome. What if HMRC’s delay means that the taxpayer is unable to renew their licence? How long should the taxpayer allow HMRC to complete the tax check, so that they can be assured it will be completed in

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<sup>3</sup> See paragraphs 1.11 to 1.13 of the *Summary of responses* document:  
<https://www.gov.uk/government/consultations/tackling-the-hidden-economy-public-sector-licensing>.

time? Taxpayers must have a clear deadline by which they request a tax check so that they can rely on paragraph 7(2) in case of undue delay by HMRC.

- 3.4.7 Paragraph 5(3) states that the tax check ends “on the day on which HMRC are first satisfied that they hold all of the information that they have requested”. Should this not refer to the point at which HMRC is satisfied that the person “has complied with the person’s reporting obligations” (paragraph 5(1)(a)) – or otherwise their “registration obligations” as we suggest in 3.4.2 – rather than simply the point at which they hold the information. What if they conclude, from the information duly provided, that the person has not complied with the relevant obligations?

### 3.5 ***Cases involving HMRC’s default***

- 3.5.1 Paragraph 7(4) appears to waive the requirement for the licensing authority to require confirmation that a tax check has been completed if they have made the request to HMRC and not heard back within 3 days. We understand that HMRC will be making online arrangements for licensing authorities to make the necessary request and we hope that they will get an immediate response in most cases. However, in case the licensing authority makes the request by other means, such as in writing (paragraph 4 states “by means of a website *or otherwise*”), the requirement for HMRC to respond within 3 days would appear to be insufficient.
- 3.5.2 Finally, we think that paragraph 4 needs to include arrangements for confirmations made under paragraph 7(2)(b) and not just paragraph 3(2)(a), as well as requests made under paragraph 3(2)(a).