

LGA Group submission to Home Office consultation on the licensing of alcohol

Summary

Attached, for information, is the LGA Group submission to the Home Office consultation on the licensing of alcohol. The submission relates to proposals in the current Policing and Crime Reduction Bill.

The proposal follows previous discussions at the board. It was cleared by CTS lead members and shared with Chairs of LGA Safer Communities and Community Wellbeing boards for information.

Recommendations

Members are asked to note the attached submission.

Action

None required.

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Safe. Sensible. Social. Selling Alcohol Responsibly: LGA Group response to the consultation on the new code of practice for alcohol retailers 05 August 2009

LGA Group

This LGA Group submission has been prepared by the Local Government Association and LACORS (Local Authorities Coordinators of Regulatory Services). The LGA Group consists of six organisations whose shared ambition is to make an outstanding contribution to the success of local government. Together we work with and on behalf of councils to:

- *lobby for changes in policy and legislation*
- *build a strong and positive reputation for local government*
- *support them and their partnerships to continuously improve and be innovative.*

We provide services at the national level which support and are complementary to the regional and local support provided to councils, as well as the work councils themselves undertake.

Key Messages

- *The LGA Group welcomes the consultation on the new code of practice for alcohol retailers, and the opportunity to respond on behalf of our member authorities. **Tackling the irresponsible retail and excessive consumption of alcohol is a priority shared by local and central government.***
- ***The LGA Group opposes the introduction of a mandatory code of conduct for alcohol retailers.** The use of blanket regulation is in opposition to the Hampton principles for more proportionate, targeted, consistent, accountable and transparent regulation, and also the partnership spirit of the Licensing Act 2003.*
- ***At the same time the new local licensing powers unnecessarily tie the hands of local licensing authorities** which are best placed to recognise problem premises, both in the on and off-trade. Only at the local level can conditions be applied in a proportionate and targeted way to minimise the burden for industry and the council tax payer.*
- ***The Government's objectives could be best met through empowering local elected councillors and licensing authorities** to lead local action in partnership with other agencies. The LGA has helped legislators lay amendments to the Policing and Crime Bill to achieve these ends (details are included at paragraphs 15-17 below).*
- ***The mandatory code will penalise the vast majority of responsible on trade retailers** at a time when the industry can not afford this. It is also likely to **impose new burdens on councils** at a time when they are already funding a £100m deficit in the cost of the current licensing regime and public sector funds are becoming ever tighter. Over 60% of authorities*

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are planning staff redundancies in order to balance their budgets; new burdens must only be imposed where they will have a substantial positive impact.

- *Unless a workable appeals system with much shorter timescales is implemented **we believe the new local powers will be under-utilised**, as councils are unlikely to have the resources necessary to fight the inevitable multiple, complex appeals. All the evidence from our members points to a very low uptake of the new local powers, on a par with Alcohol Disorder Zones*

The opposition of the LGA Group to the mandatory code and the new local powers as presently defined has been regularly communicated to the Home Office; as have our proposed legislative amendments and the thinking behind these. Given this, we have not answered all the questions in the consultation document exhaustively.

Mandatory code

Do you have any suggestions that will improve the proposed mandatory licensing conditions and requirements to reduce crime and disorder?

1. *The mandatory licensing conditions would be improved if they were clearly set out on the face of the Policing and Crime Bill, thereby giving stakeholders the opportunity to develop worked examples of how they might be implemented. This would allow all parties to understand and improve the conditions*
2. *Any conditions that are proposed, should the Bill gain Royal Assent, must tackle practices which there is evidence to prove take place in a substantial minority of premises. Blanket conditions on all premises to tackle practices which take place only in a handful of premises place a disproportionate burden on industry and local authorities. Well run local pubs provide a social and economic hub in many communities, and councils are keen to support the industry in difficult economic times.*
3. *The proposal to require unit content information to be clearly visible to those purchasing alcohol has merit. However, given that the rationale for this move is to improve health outcomes, we do not believe it should be introduced as a mandatory condition attached to all premises licenses. The improvement of public health is not an objective of the licensing act, and to introduce conditions aimed at achieving this will undoubtedly confuse the licensing regime.*
4. *We would support the voluntarily roll out of improved unit content information at the point of sale. This can be achieved through educational campaigns (such as by building on the know your limits campaign) and by encouraging better labelling of products by alcohol retailers and, in particular, producers; many of which have already taken positive steps in this direction.*

Is the drafting of these mandatory licensing conditions explicit enough to capture the intended activities? If not, can you provide alternative wording that may be more effective?

5. *The mandatory conditions as drafted are, in the main part, explicit enough to capture the intended activities. The following are exceptions:*

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- *There is no specific mention of “happy hours” within condition 1, despite the nature of their “encouraging the consumption of large quantities of alcohol or the rapid consumption of alcohol”;*
 - *The phrase “reasonably available” in the wording of condition 4 is too vague. The condition should stipulate explicitly the circumstances in which a premises is exempt from this condition. We understand this to be premises with no connection to a mains water supply;*
 - *A draft wording for condition 5 has not been provided. We suggest the condition should be based on a requirement for proof of age identification at the point of delivery and not at the point of purchase. Alternatively, we suggest that the Home Office officials consult separately on a condition based on due diligence if this their preferred approach.*
6. *We also strongly recommend that the Home Office produce guidance, in consultation with stakeholders, on remote sales and age verification procedures. Local Authorities will also require guidance and funding for test purchasing operations regarding on-line sale and delivery of alcohol.*

Are there any types of licensed premises that you feel should be exempt from one or more of the mandatory conditions? If so, which types and why?

7. *In line with our opposition to mandatory conditions, we feel that all premises should be exempt. This exemption though must be coupled to empowered local action to target those premises that are causing problems for local residents. Such action would be encouraged by adopting the measures set out in paragraphs 15-17 below.*

Do you think that banning sales below the prices level of excise duty plus VAT would be effective and proportionate in reducing irresponsible, harmful and/or binge drinking?

8. *Below cost selling is an issue focused almost solely on the off-trade. There is a close link between the consumption of alcohol purchased in off-licences and disorder and public nuisance occurring in or near on-licensed premises. Any further regulation of the on-trade must be balanced with measures to address off-sales; a focus on price is one such potential measure.*
9. *In relation to excise duty plus VAT as a minimum price we note that, with excise duty levied on the percentage abv within a hectolitre of product, this would, amongst comparable products (beer or wine for example), create a “minimum abv” price. For example, 4% beer would necessarily be cheaper than 5% beer. This mechanism would very closely resemble a “minimum unit price” that the government has explicitly stated will not be introduced.*
10. *Furthermore, LGA commissioned research presented in the 2008 publication Unfinished Business: a state of play report on alcohol and the licensing act 2003 showed that the demand for alcohol is particularly price inelastic. A one per cent increase in duty on off sales of bottled beer, for example, would have a negligible effect. In order to reduce consumption by 10%, duty would have to increase by 85%, or a 17% increase in the price of beer to the consumer. Given this evidence, the minimum price calculated by excise duty plus VAT is unlikely to effect a change in consumption habits.*

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11. *The LGA Group has specific concerns about the low rate of excise duty applied to super-strength “white cider” products, and would like to see this amended. These benefit from excise rules designed to apply to genuine cider products but unlike other ciders are very strongly associated with specific but very common problem-drinking and anti-social behaviour in public places.*

Local conditions

Do you have any suggestions that will improve the impact of the proposed conditions in reducing nuisance and disorder in your area?

12. *The local conditions and new powers, as currently drafted, are far too prescriptive and will prevent authorities using innovative, tailored solutions to tackle problems in their local areas. This situation could be easily be changed by removing the need for local conditions applied under the code to be drawn from a finite list approved by the Secretary of State.*
13. *Best practice in tackling alcohol-related harm, such as Best Bar None and the Community Alcohol Partnership, shows us that the most successful approach is one that develops as a partnership between licencees, retailers, regulators and community groups. Denying local authorities the chance to develop innovative approaches on a collective basis, backed up with the possibility of innovative, locally relevant collective licence conditions, is a missed opportunity.*
14. *Local authorities’ hands are also tied by anomalies in the present licensing regime which disempower licensing authorities (in relation to other responsible authorities) and local elected councillors. The LGA Group has helped legislators lay amendments to the Policing and Crime Bill that would give local authorities and politicians the powers to take strong and targeted action to reduce alcohol-related harm.*
15. *Elected councillors and licensing authorities need to be able to **instigate a review of a premises licence**. This is the first step to focusing interventions on those premises that are causing the problem, and thereby applying targeted and proportionate regulation*
16. *Elected councillors should be an **interested party in licence reviews** of premises in their ward, and able to act on their own initiative. This is a basic democratic principle and gives councillors the power that they should already have to represent the opinions of their electors*
17. *Licensing authorities and council Environmental Health services should be able to **object to Temporary Events Notices** where they believe an event would compromise public safety or create a public nuisance, such as that which accompanies widespread binge drinking. Requiring them to co-opt a police intervention simply adds to the burden of bureaucracy.*

Is the drafting of these proposed local conditions explicit enough to achieve the intended impact? If not, can you provide alternative wording?

18. *It is not the explicit (or otherwise) nature of the wording of the proposed conditions that will determine whether or not they achieve the intended impact, but the abstract nature of conditions that are drawn from a centrally determined list. In addition, any finite list of*

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conditions will act only as a new set of parameters and barriers for problem retailers to circumvent

19. *The review system at present works best for all parties when premises specific conditions are applied following negotiations and, if necessary, a full hearing. Conditions that are not drafted with the particular premises affected in mind, and that do not take account of local circumstances, will have far less of an impact.*
20. *Specifically, we are concerned that conditions which stipulate timings, days, seating ratios, discount volumes and other variables in increments (conditions 1, 2, 4, 5, 6, 7, 8, 11 and 16) may be impossible to enforce. There is no responsible authority that will consider the enforcement of, for example, external glass collection every 30 minutes to be a proportionate or targeted use of resources.*

If limits are to be placed on supermarkets, convenience stores, etc. for discounting large volumes of alcohol, what levels do you consider should be set? Should it differ for different types of drinks (beer, wine, spirits etc)?

21. *Drawing on the LGA's commissioned research set out in paragraph eight; we note that limits would need to be severe in order to have a significant effect on consumption.*

Questions 12-16, relating to training, seating, background music and reducing harassment and intimidation in premises, are dealt with collectively here.

22. *The conditions outlined in questions 12-16 can not be determined in the abstract. It is for Licensing sub-committees to consider on a case-by-case basis when dealing with such establishments, taking into account the nature of the premises, the structure and layout of the premise, and factors such as the staff, the nature of the clientele and whether other licensable (and non-licensable) activities also take place in the premises. Removing the requirement for local conditions to be drawn from a list approved by central government would allow all these issues to be dealt with in a targeted, proportionate and effective way at the local level.*

Do you think that the enforcement process that we have suggested is appropriate? Can you suggest an alternative?

23. *There is a lack of information as to how the scheme will work once the new conditions are in place. No funding has been offered to councils to enforce the new regime, and we consider the idea that the mandatory conditions will enforce themselves to be, at best, naïve. There is not, at present, a process explicitly set out in the consultation that relates to the enforcement activity that will need to take place after the imposition of local conditions.*
24. *We assume, therefore, that the conditions proposed would be enforced as under the present Licensing Act 2003 system and according to each licensing authority's existing enforcement protocol. We note that this system has already cost local council tax payers over a £100 million more than was anticipated. Naturally, this leaves local authorities sceptical about claims that the new conditions will not result in a financial burden upon councils.*

**Do you think that the appeals process we have suggested is appropriate?
Can you suggest an alternative?**

25. *There is an absence of detail regarding the likely appeals process in this consultation. This has been raised repeatedly as a substantial concern by the LGA Group in discussions with the Home Office. Where conditions are applied to multiple premises on the basis of a single evidence case, any appeals by the premises will undoubtedly be lodged separately, using different solicitors. Councils are unlikely to have the financial and other resources to deal with multiple appeals from multiple premises at the same time.*
26. *Additionally, we believe that, as the powers are currently drafted, should one operator within a group of premises that has been targeted with new local conditions successfully appeal, all the other operators included in the group review will escape the conditions imposed as a result. It is also unclear if, in order to defend appeals, councils will need to provide evidence for their not applying conditions to a specific premises where it is in close proximity to a group of premises have been targeted with new local conditions.*
27. *At present, licensing sub-committee decisions are also frequently undermined by retailers who lodge appeals against decisions as soon as they are imposed, in the knowledge that magistrates' courts often take at least a year to hear the appeal. During this time the retailer is free to trade unencumbered by any of the conditions imposed by the licensing sub-committee following a s53 Licensing Act review. Improvements to this system, including measures to speed it up, would have a greater impact on the irresponsible retailing of alcohol than the introduction of new legislation.*

How widely do you think these powers will be used and why?

28. *Following our concerns above, we believe the proposed discretionary powers, however the conditions themselves are ultimately drafted, will not be widely used. Principally this is because of the cost burdens to local authorities that will result from appeals, and the difficulty of trying to establish an evidential link between anti-social behaviour / crime and disorder / public nuisance and specific groups of premises targeted. This is particularly the case where alcohol has been consumed prior to visiting these premises. This problem reflects the over emphasis within the code on increased regulation of the on-trade.*
29. *All our evidence and consultations therefore point to a very low uptake, on a par with Alcohol Disorder Zones*

Other comments on the mandatory code and local discretionary conditions:

30. *At present, licensees and all other staff on licensed premises are made aware of the conditions of their licence by their licensing authority, and all conditions are listed on their premises licence. The proposal by the Home Office to send letters to all premises licence holders outlining the new mandatory conditions will mean that a licensee has two documents that impose conditions on the sale of alcohol. This undoubtedly will cause confusion amongst licensees and regulators, and there will inevitably be problems for enforcement agencies in attempting to enforce conditions which don't appear on the face of the licence.*

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31. Licensees will also make enquiries to licensing authorities about the effect of the mandatory conditions, and the burden of explaining the effect and requirements of the mandatory conditions will therefore fall to local authorities. This represents a further, unfunded new burden on local authorities.

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