

Implementation of the Licensing Act 2003

Decisions

1. The Board is asked to note the current situation and action plan.

Actions Required

2. As determined by the Board

Action by: Secretariat

Contact Officer: Trish O'Flynn, 020 7664 3129, trish.o'flynn@ga.gov.uk

20 June 2005

Implementation of the Licensing Act 2003

Summary

1. The Board is asked to note the continuing crisis in the licensing transition process and the action plan agreed by the LGA Executive on 19 May 2005. The Executive also agreed that, while not lobbying for the timetable to change, the LGA would advise the Minister that unless effective action is taken immediately, successful implementation by the published date will not be achievable.

Background

2. The Licensing Act received Royal Assent in July 2003 and the Guidance was approved by Parliament in July 2004. Local licensing authority policy statements were all published by 7 January 2005.
3. From 7 February 2005 licence holders have six months to apply to transfer or vary their existing licences (liquor, entertainment, late night refreshment, night café, registered club) or lose their current guaranteed licence permissions ("grandfather" rights). Licensing authorities must determine all applications within two months of receipt or default options apply: in the case of a straightforward conversion the licence is deemed granted; in the case of a variation application, for example for extra hours, the application is deemed refused, greatly increasing the likelihood of an appeal against the refusal and the extra costs that will bring.
4. The opportunity to secure grandfather rights closes on 6 August and the Minister, James Purnell MP, announced on 8 June that the new system is to go "live" on 24 November 2005 (the "Second Appointed Day"). On this date all existing licences will be cancelled, regardless of expiry date. This means that businesses that have not had their new licences granted by the "Second Appointed Day" will be unable to offer licensable activities and will run the risk of prosecution if they continue to do so. Some may have to close.

The picture so far

5. At the time of writing this report, two thirds through the transition period, councils have received only a tiny proportion of the expected number of applications. Information received by LACORS indicates that, at the end of April, less than 5% of premises licence and less than 4% of personal licence applications have been received by the licensing authorities who responded. Authorities have not reported any large increase in the application rate since April, although anecdotal evidence suggests that applications are approaching 10% in some areas. Large numbers of applications are also being rejected because licence holders are struggling to provide all the information required in the prescribed format.
6. This has very serious implications for councils in their licensing and responsible authority roles as a huge influx of applications is now expected between now and November 24th. The lack of applications, and lack of income arising, has almost certainly not led to any savings because councils have had their staff and

structures in place since February and many councils report that these staff are being used to contact and help licence holders. In terms of economic well-being councils, as much as businesses, are starting to look at the issues for tourism and economic prosperity of large numbers of premises being left unlicensed on the Second Appointed Day. There will also be implications for enforcement and the potential for negative publicity about council regulatory approaches in the run-up to Christmas.

7. LGA/LACORS has sought feedback from licensing authorities and other stakeholders as to the reasons for the lack of applications. These are given as the:
 - lack of awareness, particularly in small independent businesses;
 - late laying of Regulations;
 - due date for annual fees, being the anniversary of the grant of the licence;
 - absence of a 'slip rule' to give councils flexibility in accepting applications with minor defects;
 - lack of clarity around permissions and conditions to be carried over to the new licences from the wide variety of existing licences;
 - complexity of the application forms, which are over 20 pages long; and
 - confusion over requirements for plans.
8. Much uncertainty remains about interpretation of the law relating to all aspects of the process. Three of the major trade associations – British Institute of Innkeeping (BII), British Beer and Pub Association (BBPA) and the Association of Licensed Multiple Retailers (ALMR) - have been granted permission to seek Judicial Review of three councils' licensing policies (Canterbury, Doncaster and Gloucester). The hearings are expected in late June, except for the Doncaster case which has been settled. A number of other authorities report further threats of Judicial Review from the same three trade associations.

Action to date

9. These problems first became apparent in March when less than 1% of applications had been received after six weeks, and some lobbying and press activity has already taken place, albeit restricted by the pre-election purdah restrictions. A press release, 'Last orders could be called on pubs unaware of licensing laws', was issued on 18 March and got coverage in national papers (Guardian, Times and Times Public Agenda), local government and licensed trade papers and extensive coverage in local papers.
10. A further press release, 'Calling time on landlords', targeted at small business, was issued on 13 May and got coverage in national papers (Guardian, FT and the Daily Mirror), local government and licensed trade papers and extensive coverage in local, regional and specialist press.
11. On 30 March LGA, LACORS, ALG, the Association of Chief Police Officers and trade stakeholders (Business in Sport and Leisure, BII, BBPA, ALMR, Bar Entertainment and Dance Association, Popplestone Allen solicitors) wrote jointly to the Minister urging action to deal with the points raised in paragraph 7 above and offered solutions mutually acceptable to the signatories. The Minister responded on 18 April and, while sharing the concerns was unable to commit an incoming Government to a particular course of action, declined the suggestions other than to support a pro-active communications campaign from May.
12. LGA and LACORS are members of the Government's cross departmental High Level Ministerial Group set up to monitor the progress of the new regime; officers of both organisations continue to attend the Department for Culture,

Media and Sport (DCMS) Advisory Group and Communications Working Group where these issues are discussed.

13. LACORS secretariat meets with DCMS officials on a fortnightly basis to discuss issues raised by councils about the practical implementation of the regime. LACORS continues to assist authorities with implementation of the new Act, by issuing guidance and keeps officers and Members informed of the issues raised via electronic bulletins and the LACORS website, which has a discussion forum for councils to share experiences and good practise.
14. LACORS is liaising closely with DCMS and the trade to promote consistency amongst authorities in the processing of applications. LACORS responds to trade queries and ensures that the relevant councils are advised where appropriate; however many of the issues often turn out to be unfounded and anecdotal. A letter has been sent by LACORS to key trade associations setting out expectations for reporting concerns and follow up.
15. Licensing authorities report much local activity to advise the trade of the new regime and encourage more applications. This includes local licensing groups, road shows, seminars and workshops, face-to-face meetings, mailshots, regular newsletters, local media and phone calls to all known premises.

LGA/LACORS action plan

16. The action plan proposes national and local approaches, carried out both publicly and privately, taking into account the very limited time left for applications to be submitted and granted grandfather rights, (by 6 August), and before the 24 November. The table attached as appendix 1 shows progress against the agreed activities and an oral update will be provided at the meeting.

Financial/Resource Implications

17. None identified.

Implications for Wales

18. The application forms are not available in Welsh. DCMS are considering the translation costs.

Contact Officer: Trish O'Flynn, 020-7664-3129, trish.o'flynn@ga.gov.uk

LICENSING ACTION PLAN UPDATE – 20 JUNE 2005

	ITEM	ACTIVITY
1	LGA post election briefings and meetings with Ministers to reflect these issues and show how councils are central to making the new system a success	General introductory meeting with DCMS Ministers set for 20 June; separate meeting with Minister on licensing requested
2	Look at possibility of further liaison with police and trade bodies to respond to Minister's letter and request joint delegation with a view to getting more flexibility into the law for councils	Ongoing
3	Meeting with DCMS and Home Office officials to discuss post Second Appointed Day enforcement issues	Meetings requested
4	Use of parliamentary contacts for parliamentary questions, Early Day Motions etc:	Ongoing;
5	Greater involvement with the Independent Fees Review Panel through Secretariat and research activity to ensure that the cost to councils of the unanticipated lack of applications is properly recognised:	<ul style="list-style-type: none"> - Sir Les Elton (ex Chief Executive, Gateshead MBC) appointed as Chair of Independent Panel; - Worryingly low level of response (22 replies) to LACORS' request for costs spreadsheets relating to pre-February 2005 set up costs - further communication to Chief Executives planned.
6	Pro-active communications campaign targeted to small business, trade and ethnic media on the implications of not getting applications in on time and made available for use by local press teams	Ongoing
7	Joint press release or event with police and trade bodies if Minister not receptive to suggestions for action	To be reviewed after Ministerial meeting.
8	Provide information to elected members to enable portfolio holders to promote the issue through local partnerships and networks (e.g. regeneration, economic development, community safety, regulation);	In progress.
9	Write to all Chief Executives encouraging sign up to LACORS' information network and completion of LACORS cost data spreadsheets and DCMS monitoring form:	In progress.
10	Offer targeted activity, examples of best practise and templates to District Councils:	In progress.
11	Encourage councils to get council owned	LGAlert issued 8 June;

	premises licensed	
12	Provide more information to elected members, Chief Executives and front line officers on lobbying activities	<ul style="list-style-type: none"> - Minister Q&A article in first agreed with DCMS; - Ongoing via LGA and LACORS bulletins, Chief Executives' letters etc
13	Continued day to day interaction with DCMS on issues, communications etc	Ongoing