

17 July 2006

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## **Implementation of the Licensing Act 2003**

### **Decisions**

1. The Board is asked to note the current situation.

### **Actions Required**

2. As determined by the Board.

Action by:

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## Implementation of the Licensing Act 2003

### 1. Summary

This report gives the Board an update on the current situation regarding the implementation of the Licensing Act 2003 by local authorities, including items requested at the last Board meeting.

### 2. Background

2.1 Board Members were last updated regarding the transitional period in June 2005.

2.2 From 24 November 2005 (2<sup>nd</sup> appointed day) the new regime has been fully operational and delivered by local authorities.

2.3 Due to late submission of applications and other matters, including late publication of Regulations by the Department for Culture, Media and Sport (DCMS), the short statutory timeframes for decision making, and delays in getting responses to key queries from DCMS officials, the transitional period was extremely burdensome and resource intensive on local authorities. Despite this, local authorities were extremely pro-active in encouraging applications and raising awareness with local businesses to ensure that they met statutory deadlines.

2.4 Recently the, as was, Office for the Deputy Prime Minister (ODPM) Select Committee published the findings of its inquiry into the implementation of the Act, and this was followed by the Better Regulation Commission's study into the regulatory burden of the Act on business. Both these reports were critical of the burden placed on authorities and business by the Act and of the project management delivering this new legislation by the DCMS. LACORS/LGA made robust submissions to both these pieces of work and the conclusions of both reports broadly echo representations received from licensing authorities. The DCMS eventually published its response to the ODPM inquiry, with the opening statement:

"We welcome this report as a contribution to both the review of Licensing Guidance and independent Elton Review of fees which have already been announced. We will consider carefully the Select Committee's recommendations and are already planning to take a number forward. However, the Government does not accept the central criticism of the Select Committee report that we have failed local authorities and believes the Committee has misunderstood Departments' roles. The Government also believes that the report includes a number of inaccuracies and several examples of where criticism laid at the implementation relates to requirements in the primary legislation which was agreed by Parliament following full scrutiny.'

### 3. Current Position

#### Fees

3.1 LACORS and the LGA are working with the Independent Fees Review Panel (Chaired by Sir Les Elton) to gather and analyse evidence from licensing authorities with regards to the costs

associated with the regime. LACORS and the LGA are also working on an alternative fees model to submit to the Panel, whose final report is due to be published in autumn 2006.

3.2 We are still awaiting a response from the Government on the Interim Report from the Fees Review Panel which was published in December 2005. The Report recommended that the Government set one date for the collection of annual premises licence fees. The Government has not yet responded to this report, however, since April 2006, licensing authorities have been collecting annual fees but industry and press speculation that the date is about to be set is causing confusion and in some cases, reluctance, in collecting monies now due. Furthermore, LACORS has been made aware that some licensing authorities have decided to collect the annual fee on the 24th of November 2006 which is contrary to the current Licensing Act requirements that annual fees are due a year after grant of the licence. LACORS has written to the new Licensing Minister, Shaun Woodward MP on this issue, although there is concern from authorities that if an annual fee is now set by the Government, this will create further confusion and some local practical issues for those licence holders who have already paid.

### Review of Guidance

3.3 The DCMS announced last year a two stage review of the statutory Guidance in an attempt to address concerns made by stakeholders following transition and early testing of the legislation. LACORS/LGA met with officials in September 2005 to discuss our specific concerns about the legislation (e.g. discretion for local authorities to amend errors, presumption of grant in favour of longer hours, clarification of Member's role and advertising etc). Many of these concerns formed the basis of LACORS' response to the initial review, although we are aware that these issues will need legislative change to be addressed. Nevertheless we have asked the Minister that such issues are resolved. LACORS' response to the initial review of the Guidance is attached as Annex 1 to this paper. However, we are concerned that the initial review has included some issues, particularly around live music – the promotion of which is not a licensing objective and not something authorities are funded to monitor. Furthermore the format of the revised guidance is not user friendly.

3.4 Following the initial review of Guidance the DCMS received clearance to lay revised Guidance before Parliament on 22 June 2006. This initial review of Guidance was limited to clarification, factual changes and issues of where there was a broad consensus amongst stakeholders. Issues where there was less consensus amongst stakeholders will be considered during the full review, which will involve a full public consultation and is expected to start in August 2006.

3.5 In preparation for the full review, LACORS will be re-consulting with local authorities and specifically Members and (local authority) responsible authorities to ensure our submission is as complete and inclusive as possible. In addition we will continue to meet with other stakeholders affected by the regime (e.g. Network of Residents Association) and cross referencing the submission for areas of agreement with the ODPM and Better Regulation Commission reports.

### Central Licensing Register

3.6 LACORS has asked the Minister for an update on the status of implementation of the Central Licensing Register. LACORS has been working with the Government on this issue for a number of years and continues to express concerns that the offences in the legislation relating to personal licence holders and temporary event notices cannot be enforced without a database.

### Dissemination of Information (including Appeals) to Licensing Authorities

3.7 LACORS uses the Licensing reference section of its website to share information with licensing authorities such as guidance, examples of licensing policy statements and enforcement protocols as well as the outcome of appeals. As soon as any Court judgements are issued, this information is also disseminated to local authority colleagues via specialist emails. However it should be noted that decisions of Magistrates' Courts are not binding on other Magistrates Courts. Recent examples of a successful case at Guildford regarding extended hours; along with the outcome of hearings on the issue of duplicating health and safety matters, which found in favour of the local authority (Leeds) are attached as Annex 2.

#### Implications for the reputation of Local Government

3.8 LACORS continues liaising closely with DCMS and the trade to promote consistency amongst authorities in the processing of applications. LACORS has a procedure to respond to trade queries (form attached as Annex C) and ensures that the relevant councils are advised where appropriate, although many of the issues often turn out to be unfounded and anecdotal and the number of issues has tailed off in recent months.

3.9 A number of authorities have still not issued the new premises licence to businesses and it has been reported that a number of the licences have been issued with errors. LACORS takes all such allegations seriously and is actively carrying out discussions with those local authorities concerned. Feedback from authorities informs us that the reasons for the continuing delay include: authorities were so overburdened with transitional arrangements and short statutory timeframes for holding hearings and decision making as well as finding that drafting licences required expertise and taking longer than anticipated to create. The issuing of licences is not subject to statutory timeframes and has been prioritised accordingly by authorities who are now being overburdened with variation applications, changes to Designated Premises Supervisors, carrying out reviews and issuing Temporary Events Notices. Nevertheless, business and their representatives have raised their concerns regularly in the media and at meetings with Ministers.

#### Relationship between licensing and planning

3.10 The LACORS submission on the guidance review requested, amongst other things, clarity on the relationship between planning and licensing legislation and which takes priority. The supplementary guidance laid on 22 June 2006 has added further detail on the existing guidance:

##### **Extract from existing guidance 3.51**

"A statement should also indicate: that planning, building control and licensing regimes will be properly separated to avoid duplication and inefficiency. Applications for premises licences for permanent commercial premises should normally be from business with planning consent for the property concerned. Licensing applications should not be a re-run of the planning application and should not cut across decision taken by the local authority planning committee or following appeals against decisions taken by that committee. Similarly the granting by the licensing committee of any variation of the licence which involves a material alteration to a building would not relieve the applicant of the need to apply for planning permission or building control where appropriate. Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee on the situation regarding licensed premises in the area, including the general impact of alcohol related crime and disorder. This would enable the planning committee to have regard to such matters when taking its decisions and avoid any unnecessary overlap."

**Additional information in supplementary guidance:**

“However, there are circumstances when as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law”

**4. LACORS Licensing Priorities for 2006/07**

The main issues on the horizon for LACORS in relation to the Licensing Act 2003 include the work of the Independent Fees Review Panel; the second stage of the review of the guidance; links with the Violent Crime Reduction Bill, particularly Alcohol Disorder Zones; and enforcement issues, which will also be discussed with the police and other colleagues on the National Strategic Licensing Forum.

**5. Implications for Wales**

The Independent Fees Review Panel remit covers England and Wales

**6. Financial/Resource Implications**

Following discussions with LGA, LACORS will be taking the lead on all issues relating to both the Licensing Act 2003 and Gambling Act 2005, from now on although the LGA will remain involved in discussions with the Independent Fees Review Panel and the work on the alternative fees model and will be kept informed of any other issues with wider political implications.

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