

Regulatory Services Update

Purpose

For information and direction.

Summary

This report provides an update on LGA policy work and developments affecting regulatory services that will be of interest to the Stronger and Safer Communities Board.

Recommendation

That the Board notes the activities outlined, in particular:

- the amended position on Community and Ancillary Sales Notices in paragraph 6
- the challenge to Reducing the Strength Campaigns in paragraph 16.

Action

Officers to progress as directed

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Regulatory services update

Licensing issues

Ministerial changes

1. Norman Baker resigned as Minister for Crime Prevention on 4 November. He has been replaced by Lynne Featherstone as Minister for State. The roundtable with Chairs of Licensing Committees planned for 11 November was postponed due to this change, and the invitation to speak at the annual Licensing Conference on 15 January extended to the new Minister.

Taxi licensing (Deregulation Bill)

2. The Board will be aware that in October, following concerted LGA lobbying, the Government announced that it was dropping the most controversial of its three taxi licensing deregulation measures; the proposal to allow anyone to drive a private hire vehicle when it is 'off-duty.' The LGA had warned that this could increase public safety risks and was an inappropriate step in light of evidence that taxis and PHVs have been used in child sexual exploitation cases.
3. Two remaining measures (to enable sub-contracting of bookings between licensing districts, and to increase the standard duration of taxi / PHV driver licences to three years) remain in the Deregulation Bill, but government has committed to considering a series of safeguards the LGA has prepared to improve the proposal around sub-contracting.

Community and Ancillary Sales Notices (Deregulation Bill)

4. As discussed at the Board meeting in September, the Deregulation Bill includes a proposal to create a new licensing authorisation of Community and Ancillary Sales Notices (CANs) The Deregulation Bill proposal outlines only the overarching framework for CANs, with much of the detail left to secondary regulations.
5. The Home Office has now launched a four week consultation on the issues to be dealt with by regulation, including the limits on alcohol that can be sold or provided under a CAN, the size of business and the types of eligible community groups that can utilise CANs. The consultation also asks licensing authorities about the level of fee that should be charged, maintaining the position of centrally set fees.
6. Although the LGA has previously supported the intention behind the CANs, as the aim of simplifying licensing for small business is a core principle of Rewiring Licensing, the additional detail published in the consultation indicates that the execution of this new notice will be complicated and difficult to explain to the groups who could be eligible for it. Additionally, enforcement costs will be disproportionate for this type of notice meaning that either enforcement will not take place or the licensing authority will have to further subsidise this work from the general fund.
7. A number of licensing officers have also contacted the LGA to express concerns about these proposals. Subject to Board approval, we therefore propose to amend our position in light of this new information, to express our members' concerns and ask that the proposals are redrawn in line with the original intention for the notice.

Personal licences

8. Legislation currently requires that personal licences to sell alcohol, required by anyone overseeing the sale of alcohol in a pub, club or event, are renewed every 10 years. The Home Office plans to abolish this requirement to renew licences and has tabled a clause in the Deregulation Bill to this effect.
9. Unfortunately, the first batch of personal licences become due for renewal in early 2015 and the Deregulation Bill will not receive Royal Assent in time. This means that they must be renewed if they are to comply with the remaining legal requirement for personal licences.
10. The LGA, and industry, have been pressing the Home Office to publish guidance on how the transitional period will be managed. The Home Office have only recently shared this guidance with the LGA, in advance of wider publication. The LGA believes the initial drafts were inadequate and has provided the Home Office with a list of frequently asked questions to be included, drawn from our licensing forum and the recent Institute of Licensing Conference.
11. Publication is now urgently required and, in addition to our own direct lobbying, we have asked BIS to make representations to the Home Office on behalf of the industry bodies who are equally concerned about the lack of clarity.

Hemming case

12. Following approval by lead members at their meeting in November, officers are working with the LGA's legal team and appointed counsel to develop a short witness statement to form a written submission on behalf of the LGA to the Hemming v Westminster case when it returns to the Supreme Court on 13-14 January 2015.
13. The objective of the intervention is to outline the impact a decision to exclude compliance costs would have on local authority licensing teams and their ability to take compliance and enforcement action against unlicensed operators (and potentially licensed operators were the original judgement extended). To support this work, a survey on the costs of compliance and enforcement activity by licensing teams was undertaken during October.

Reducing the strength style schemes

14. Following ongoing engagement with industry and retailer associations and the Competition and Markets Authority, officers have worked with colleagues in the public health team to develop good practice guidance for councils considering introducing 'Reducing the Strength' schemes.
15. The document does not advocate this approach over any other: councils will need to reach their own decisions on whether Reducing the Strength is appropriate for their areas based on local circumstances, and different councils are reaching different conclusions. However, the objective is to ensure that those councils that do implement these schemes are aware of the risks and concerns linked to these schemes, and are able to design them in a way that addresses these concerns and ensures they are as effective as possible.

16. The Board will wish to note that following a clear steer from the CMA that they did not have strong concerns that these schemes would breach competition law, and that any infringement would be by retailers rather than councils, the National Association of Cider Makers' commissioned their own legal advice. The NACM legal opinion challenges the legality of these schemes and seeks to identify a route whereby councils, rather than retailers, would be liable: it even goes so far as to suggest that simply on the basis of publishing a guidance note on this issue, the LGA could be liable for claims for damages.
17. We have sought further advice from the CMA and LGA legal team on this, and discussed the position with the Home Office; this indicates consensus that the industry legal opinion misinterprets the status of the LGA and over-states the risks from competition law. We are therefore continuing with our plan to publish the guidance, which has been reviewed by the CMA, at the end of the November. Our view is that the continued legal scare-mongering on this by elements of the alcohol industry, following the earlier circular letter sent to local authority chief executives by four producer / retailer associations, simply emphasises the need for councils to be aware of the concerns and risks in this area, and for LGA guidance to highlight this. While neither the NACM nor any other body has thus far challenged a Reducing the Strength scheme in the courts – despite strong objections being expressed from the start – it is clear that the NACM will do so if they can find a way to target councils rather than retailers.

Licensing reform

18. Cornwall Council have established a project team and begun mapping the licences issued across all council departments as part of their work on Rewiring Licensing. This is a project funded by the Better Regulation Delivery Office, who are promoting Rewiring Licensing and Open for Business as part of their training package to authorities on the Regulators' Code.
19. Cornwall Council, along with a similar project led by Mole Valley District Council, are hoping to identify opportunities to streamline their licensing processes and present Government with barriers to making further efficiencies. Cornwall Council presented their early findings alongside the LGA at the recent Institute of Licensing Conference, and will provide a further progress update at the LGA's annual licensing conference on 15 January.

Illicit alcohol survey

20. The Board will recall that as part of our work on a joint industry-government Alcohol Anti-fraud Taskforce, we commissioned a short survey of trading standards officers relating to their work on illicit alcohol and tobacco. The taskforce is exploring how to drive greater intervention against businesses and individuals that are selling non-UK duty paid alcohol through licensed premises.
21. The survey revealed more activity than had been expected by the Taskforce, but further reinforced concerns that the relationship between councils and HMRC is not as effective as it should be. This has been fed back to the Taskforce, who will publish case studies of some of the most effective practice, including an example of partnership working with HMRC. The full survey report is available on the LGA website.

Events

22. Councillor Page will be presenting on Rewiring Licensing on 3 December at the Chartered Institute of Environmental Health's Licensing Conference.

23. The agenda and majority of speakers have now been confirmed for the LGA's annual licensing conference on 15 January and bookings are being taken on www.local.gov.uk. We plan to launch the Betting Commission's Framework for Local Engagement and further promote the new Reducing the Strength guide. In addition, we have invited the LGA's counsel to provide the latest update on the Hemming case to delegates, following the Supreme Court's hearing on the two days immediately before the conference.