

8 June 2015

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.

Action

Officers to progress as directed

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Regulatory services update

Outcome of the election on regulatory services

1. The Conservative manifesto did not include any specific commitments in relation to licensing or regulatory services, although there were media reports of the Conservatives committing to freezing licensing fees.
2. At this stage, we therefore anticipate that our priority areas will continue to be those set out at the start of the Board cycle and updated as the year has progressed:
 - 2.1. Delivering on the Rewiring Licensing proposals for the simplification of licensing regimes, and specifically the commitment in the Autumn Statement to create a single online application process by 2018.
 - 2.2. Lobbying for reform of taxi and PHV licensing legislation.
 - 2.3. Supporting local government to consider the options for creating sustainable regulatory services given financial pressures, alongside the implementation of the Open for Business vision.
 - 2.4. Developing an evidence base for localisation of licensing fees.

Licensing issues

Licensing fees - Hemming case

3. The Supreme Court's verdict in the Hemming case was published on 29 April. The judgement was generally very positive for local government. Westminster's appeal was upheld, as the court ruled that Westminster were entitled to recover the cost of compliance and enforcement activity (in relation to both licensed and unlicensed operators) from licensees. However, the court referred to the European Court of Justice the question of *how* Westminster levied the fees.
4. The court identified two possible approaches to charging fees:
 - Whereby a council charges a fee upon application (covering the costs of authorisation procedures) and a subsequent fee to successful applicants (covering the cost of enforcing the framework) - the 'type A' approach, or
 - Where a council charges a single fee on application covering all costs, on the basis that the relevant proportion of the fee (covering compliance and enforcement) would be refunded to unsuccessful applicants – the 'type B' approach.
5. The Court found the type A approach of charging two fees is permissible under the Services Directive but felt that the type B approach of charging a single fee upfront was more problematic, on the basis that in legal terms it could mean that a charge has been incurred from the application, which is contrary to the Services Directive. The Court suggested that a charge could possibly include borrowing, or loss of interest during the period in which the application was considered. On that basis, the court referred the issue for consideration by the ECJ.
6. There is therefore an ongoing risk that, were the ECJ to rule that the type B approach – applied by most councils across most licensing frameworks – is unlawful, councils could

still be subject to claims for restitution. Such an outcome would also have implications for how councils charge licensing fees, requiring a more resource intensive approach of charging separate fees at different stages of the process.

7. We have issued a circular to councillors and licensing officers summarising the Supreme Court's judgement and next stage of the legal process. We have also committed to publishing a further note to councils in late summer / Autumn, to coincide with fee and budget setting processes. This will also enable us to reflect our expected work on licensing fees more widely (see below)

Licensing fees – government against localisation

8. In February the government announced, that following its 2014 consultation on localisation of licensing fees, it had decided against the introduction of locally set licensing fees. The decision was prompted by a limited response rate to the consultation's request for detailed information about the current costs of running the licensing framework. With just 20 councils providing this information, government argued that the evidence based for localisation was both limited and contradictory, with some of the evidence provided actually suggesting fees should fall.
9. The previous government invited the LGA to work with the Home Office to develop a fuller picture of current costs across a representative sample of councils (considered to be 40% of the sector). It also advised that previous evidence (ie the 2007 Elton review) was no longer considered relevant, meaning that the sector needs to develop a completely new evidence base to support not just localisation, but even an increase in nationally set fees.
10. We have confirmed that we are willing to undertake this work with the Home Office. However, before commencing this work – which we anticipate would require external support, and involve local finance teams as well as licensing officers - we will be seeking assurances from the new Minister that the new government remains committed in principle to either localisation or at the very least increases in nationally set fees. This is due to comments during the election campaign suggesting that the Conservative party intended to freeze licensing fees, although this may relate solely to community premises.
11. A detailed study of licensing fees would require councils to evidence the breakdown of different costs in the licensing process, eg application processes, compliance and enforcement, renewals etc. This is of course relevant to the potential implications of the Hemming case, as a result of which some councils may decide to separate out licensing fees in other areas.

Taxi licensing handbook and conferences

12. In March, we ran two extremely successful conferences on taxi licensing. Over 200 delegates attended events in Manchester and London, covering issues relating to child sexual exploitation, data sharing with the police and licensing reform. Our revised and expanded [taxi licensing handbook](#) for councillors was launched at the events, and has been well received by members.
13. The LGA continues to offer bespoke support to those areas experiencing CSE, including the provision of mentors to elected members overseeing the licensing process.

Gambling handbook

14. Following publication of the taxi licensing handbook, we have also developed a new councillor handbook on gambling regulation. The handbook summarises recent and forthcoming changes announced by the Gambling Commission which are intended to support both licensing authorities and businesses in developing approaches which are much more locally focused. The new handbook will be published in the next few weeks.

Westminster-Manchester gambling research

15. In March, Westminster and Manchester councils launched a research project considering the scope for identifying and mapping local areas' vulnerability to gambling related harm. The project has been part funded by the LGA, and the findings are intended to help councils understand how local factors and issues should shape local gambling policies. The findings of the project will be made available to all councils when the project concludes.

Other issues

16. We are expecting the report of the Independent Reviewer of Terrorism Legislation into the use of interception powers and **communications data** to be published shortly. The LGA and council officers contributed to the review in regard to the use of communications data by council.
17. As part of our ***Remodelling public protection*** work, we are running a conference on commercialisation in regulatory services on Tuesday 16 June.