

# HOUSE OF LORDS SELECT COMMITTEE REPORT

|                           |                     |
|---------------------------|---------------------|
| <b>Committee</b>          | Licensing Committee |
| <b>Officer Reporting</b>  | Legal Services      |
| <b>Papers with report</b> | None                |
| <b>Ward</b>               | All                 |

## SUMMARY

To inform the Licensing Committee that the House of Lords has published its post-legislative scrutiny report (the "Report") on the Licensing Act 2003.

## RECOMMENDATION:

**That the Committee notes the contents of the report.**

## SUPPORTING INFORMATION

Committee Members were advised at a Licensing Committee Meeting on 13 July 2016 that the House of Lords had embarked on a post-legislative scrutiny of the Licensing Act 2003. On 04 April 2017 the House of Lords published the Report of its findings. The report and submissions to the House of Lords can be accessed via the following link:

<http://www.parliament.uk/business/committees/committees-a-z/lords-select/licensing-act-2003/news-parliament-2015/licensing-act-report-published/>

Her Majesty's Government is obliged to respond to this report.

The introduction to the Report suggests, amongst other matters that "A radical comprehensive overhaul is needed, and this is what our recommendations seek to achieve".

For ease of reference, the recommendations and conclusions contained in the Report have been reproduced below. Key considerations have been highlighted.

### The Background to the Act

We think it unfortunate that in the 11 years since the full implementation of the Licensing Act there have been piecemeal amendments made by nine different Acts of Parliament, a large number of significant amendments made by other Acts and by secondary legislation, and further changes to licensing law and practice made by amendment of the section 182

Guidance. (Paragraph 54)

1. We regret that there will no longer be any opportunity for Parliament to scrutinise the Guidance in draft, nor even to ensure that there has been adequate consultation during its preparation. (Paragraph 55)
2. Assuming that minimum unit pricing is brought into force in Scotland, we recommend that once Scottish ministers have published their statutory assessment of the working of

MUP, if that assessment demonstrates that the policy is successful, **MUP should be introduced in England and Wales.** (Paragraph 86)

3. We urge the Government to continue to look at other ways in which taxation and pricing can be used to control excessive consumption. (Paragraph 87)

### **The Licensing Process**

We appreciate that we are perhaps more likely to receive evidence critical of the way the licensing process operates than evidence saying it operates well or better. We believe — we certainly hope — that most members of licensing committees take their responsibilities seriously, adopt a procedure which is fair and seen to be fair, are well advised, and reach sensible conclusions. But clearly reform of the system is essential. (Paragraph 116)

1. **Sections 6–10 of the Licensing Act 2003 should be amended to transfer the functions of local authority licensing committees and sub-committees to the planning committees.** We recommend that this proposal should be trialled in a few pilot areas. (Paragraph 154)
2. We believe that the debate and the consultation on transferring the functions of licensing committees and sub-committees to the planning committees must start now, and the pilots must follow as soon as possible. (Paragraph 155)

### **Appeals**

1. Licensing authorities should publicise the reasons which have led them to settle an appeal, and should hesitate to compromise if they are effectively reversing an earlier decision which residents and others intervening may have thought they could rely on. (Paragraph 173)
2. **We recommend that appeals from licensing authorities should no longer go to magistrates' courts, but should lie to the planning inspectorate, following the same course as appeals from planning committees.** This change is not dependent on the outcome of our recommendations on the licensing function, and should be made as soon as possible. (Paragraph 206)

### **Immediate Changes**

1. The section 182 Guidance should be amended to make clear the responsibility of the chair of a licensing committee for enforcing standards of conduct of members of sub-committees, including deciding where necessary whether individual councillors should be disqualified from sitting, either in particular cases or at all. (Paragraph 213)
2. **We recommend that the Home Office discuss with the Local Government Association, licensing solicitors and other stakeholders the length and form of the minimum training a councillor should receive before first being allowed to sit as a member of a sub-committee, and the length, form and frequency of refresher training.** (Paragraph 218)
3. The section 182 Guidance should be amended to introduce a requirement that a councillor who is a member of a licensing committee must not take part in any proceedings of the committee or a sub-committee until they have received training to the standard set out in the Guidance. (Paragraph 220)
4. **We recommend that where there are no longer any matters in dispute between the parties, a sub-committee which believes that a hearing should nevertheless be held should provide the parties with reasons in writing.** (Paragraph 222)
5. The Hearings Regulations must be amended to state that the quorum of a subcommittee is three. (Paragraph 229)

6. Regulations 21 and 23 of the Hearings Regulations leave everything to the discretion of the committee. They regulate nothing. They should be revoked. (Paragraph 230)
7. The section 182 Guidance should indicate the degree of formality required, the structure of hearings, and the order in which the parties should normally speak. It should make clear that parties must be allowed sufficient time to make their representations. (Paragraph 231)
8. We recommend that where on a summary review a licence is revoked and the livelihood of the licensee is at stake, magistrates' courts should list appeals for hearing as soon as they are ready. (Paragraph 236)
9. **We recommend that notice of an application should not need to be given by an advertisement in a local paper. Notices should be given predominantly by online notification systems run by the local authority.** (Paragraph 242)
10. Local authorities should ensure that blue licensing notices, as for planning applications, should continue to be placed in shop windows and on street lights in prominent positions near the venue which is the subject of the application. (Paragraph 243)
11. **Coordination between the licensing and planning systems can and should begin immediately in all local authorities. The section 182 Guidance should be amended to make clear that a licensing committee, far from ignoring any relevant decision already taken by a planning committee, should take it into account and where appropriate follow it; and vice versa.** (Paragraph 246)

### The Licensing Objectives

1. We have received submissions in both written and oral evidence that three further objectives should be added to the four already listed. Our consideration of them is based on our view that the objectives are not a list of matters which it would be desirable to achieve, but simply an exhaustive list of the grounds for refusing an application or imposing conditions. **There is therefore no point in including as an objective something which cannot be related back to particular premises.** (Paragraph 250)
2. **Promotion of health and well-being is a necessary and desirable objective for an alcohol strategy, but we accept that it is not appropriate as a licensing objective.** (Paragraph 261)
3. We do not recommend that "enjoyment of licensable activities", "the provision of social or cultural activities", or anything similar, should be added as a licensing objective. (Paragraph 265)
4. We do not recommend adding as a licensing objective "compliance with the Equality Act 2010" or "securing accessibility for disabled persons". (Paragraph 272)
5. We recommend that the law should be amended to require, as in Scotland, that an application for a premises licence should be accompanied by a disabled access and facilities statement. (Paragraph 277)

### The Off-Trade

1. **We do not recommend that powers to ban super-strength alcohol across many premises simultaneously be granted to local authorities.** (Paragraph 309)
2. The Coalition Government's Responsibility Deal on alcohol did not achieve its objectives, and appears to have been suspended. **We believe much more still needs to be done to tackle the production of super-strength, low-cost alcoholic products.** If and when any similar schemes are developed in the future, there must be greater provision for monitoring and maintaining them, and greater collaboration between all parties involved, including both public health experts and manufacturers. They should also account for the realities of super-strength alcohol, with particular focus on, for example, ABV rather than the specificities of packaging. (Paragraph 310)

3. **We believe that proposed Group Review Intervention Powers, which would give local authorities the power to introduce mandatory blanket conditions on all premises in a particular area, should not be introduced. As a blanket approach to problems which can normally be traced back to particular premises, they are likely to suffer from the same problems as Early Morning Restriction Orders, and the same results can be achieved through existing means.** (Paragraph 316)
4. While there appears to be some merit to a few voluntary schemes, the majority, and in particular the Government's Responsibility Deal, are not working as intended. We believe there are limits to what can be achieved in this way, and many of the worst operators will probably never comply with voluntary agreements. We strongly believe that the Alcohol etc. (Scotland) Act 2010 offers a proportionate and practical basis for measures specifically regulating the off-trade. (Paragraph 321)
5. We recommend that legislation based on Part 1 of the Alcohol etc. (Scotland) Act 2010 should be introduced in England and Wales at the first available opportunity. In the meantime, the section 182 Guidance should be amended to encourage the adoption of these measures by the off-trade. (Paragraph 322)

### **Temporary Event Notices**

1. Temporary Event Notices are used for a wide range of purposes, and the impact of a particular event on local residents cannot be reliably determined by whether they fall into broad 'community' and 'commercial' categories. We do not recommend the division of the current TENs system into 'community' and 'commercial'. (Paragraph 344)
2. **We recommend that licensing authorities be given the power to object to Temporary Event Notices, alongside police and environmental health officers. A system for notifying local councillors and local residents of TENs in a timely fashion should also be implemented.** (Paragraph 349)
3. We recommend that section 106(2) of the Licensing Act 2003 be amended, replacing the words "before a hearing" with "before or during a hearing", to enable TENs to be amended during a hearing if agreement is reached. (Paragraph 352)
4. Where it appears that notices are being given for TENs simultaneously on adjacent plots of land, resulting in effect in the maximum number attending exceeding the 500 person limit, we would expect the police or environmental health officers to object, and the licensing authority to issue a counter-notice. We recommend that the section 182 Guidance be amended to make this clear. (Paragraph 354)
5. Although it is difficult to know whether the inadequate recording of TENs is widespread among local councils, we recommend that the section 182 Guidance be strengthened and clarified with respect to the collection and retention of TENs. It should clarify what personal information should be retained and in which particular format. (Paragraph 357)
6. This information must be retained in a system allowing for its quick and easy retrieval, both by local authorities and by the public, and in such a way that local and national statistical data can be produced from them. The national GOV.UK platform should be used for receiving and processing TENs. (Paragraph 358)
7. We recommend that section 67 of the Deregulation Act 2015, relating to Community and Ancillary Sellers' Notices, should not be brought into force, and should be repealed in due course. (Paragraph 368)

### **Crime, Disorder and Public Safety**

1. We are convinced that **licensing is a sufficiently specialist and technical area of policing, requiring a distinct and professional body of police licensing specialists.** Although we are aware of the many demands currently placed on police resources, the proper and attentive licensing of premises has a considerable if sometimes indirect

impact on public reassurance and wider aspects of crime and disorder. It is therefore important that the role of police licensing officers should not be diluted or amalgamated, as evidence suggests is occurring in some constabularies. They do not need to be sworn police officers, and in many cases it may indeed be preferable that this role be performed by civilian police staff. (Paragraph 379)

2. We recommend the development and implementation of a comprehensive police licensing officer training programme, designed by the College of Policing. While we accept that such an undertaking will require additional funds, these costs will likely be more than offset if the quality of police licensing decisions is improved, thereby reducing the number of appeals and other corrective procedures. (Paragraph 388)
3. We believe it is highly likely that licensing committees will take police evidence seriously, especially if it is presented in a consistent and compelling fashion, regardless of whether they are required to by the section 182 Guidance. The risk that presently exists is that this additional emphasis could lead some licensing committees to partially or fully abdicate their responsibility to scrutinise police evidence to the same high standards as they would any other evidence. Our evidence suggests this is indeed occurring in some areas. **It is entirely wrong that police evidence should be given more weight than it deserves solely because of its provenance.** (Paragraph 400)
4. Given evidence that paragraph 9.12 of the section 182 Guidance is being misinterpreted by licensing committees, and the fact that similar sentiments, more clearly stated, are already expressed in paragraph 2.1 of the Guidance, we recommend that paragraph 9.12 be removed. (Paragraph 401)
5. **We support the Government's current move to transfer Cumulative Impact Policies from the section 182 Guidance and to place them on a statutory footing**, as this will introduce much needed transparency and consistency in this area. (Paragraph 409)
6. We agree with criticism of the drafting of the new section 5(5A) of the Act, as it threatens to remove discretion from local authorities on how they may interpret their own cumulative impact policies. (Paragraph 412)
7. We were surprised to learn that the Home Office have not collected centralised figures on the use of relatively serious police powers until now, and that figures relating to section 169A closure notices are presented in such a confusing and misleading way. (Paragraph 416)
8. **We recommend that the section 182 Guidance be amended to make clear that the service of a Closure Notice pursuant to section 19 of the Criminal Justice and Police Act 2001 does not:**
  - **require the premises to close or cease selling alcohol immediately; or**
  - **entitle the police to require it to do so; or**
  - **entitle the police to arrest a person on the sole ground of non-compliance with the notice.** (Paragraph 421)
9. We sympathise with the police, practitioners and businesses who cannot always fully comprehend the complex process surrounding interim steps. We conclude that instead of conferring discretion upon the sub-committee to impose further interim steps upon a licensee pending appeal, a discretion to impose with immediate effect the determination that the sub-committee reached upon the full review would be preferable. This final decision must represent the sub-committee's more mature reflection upon the situation, based upon the most up to date evidence, and this ought to be the decision that binds the licensee, if immediacy is a requirement, rather than the superseded interim steps. (Paragraph 431)

10. Within the Anti-Social Behaviour, Crime and Policing Act 2014, the power of the magistrates to “modify” the closure order is curious wording, which has already perplexed the magistrates’ courts, given that the magistrates are just as likely to be invited to exercise their power to lift the revocation and re-open premises at a time when the original closure order has expired as they are during the currency of that closure order. We recommend a clarification of this wording. (Paragraph 436)

### **The Night-Time Economy**

1. We believe that the appointment of the Night Czar and other champions of the night time economy (NTE) has the potential to help develop London’s NTE and ease the inevitable tensions that arise between licensees, local authorities and local residents. We believe that greater transparency should be expected of these roles if they are to secure the co-operation and trust of key parties in London’s NTE. In time Night Mayors may also offer a model to other cities in the UK. (Paragraph 450)
2. **We believe it is appropriate that no Early Morning Restriction Orders have been introduced and we recommend that, in due course, the provisions on EMROs should be repealed.** (Paragraph 466)
3. While we acknowledge the concerns of local residents, we believe that overall the Night Tube is likely to have a positive impact for London’s late night licensed premises, their staff, and local residents. Not only will it provide a welcome boost to London’s night-time economy, which must be allowed to grow if London is to continue to prosper as a global city in the 21st century, but it may well also bring advantages for residents by dispersing crowds more effectively and efficiently. (Paragraph 472)
4. The Late Night Levy was introduced in large part to require businesses which prosper from the night time economy to contribute towards the cost of policing it. Yet the evidence we have heard suggests that in practice it can be very difficult to correlate the two with any degree of precision, which contributes to the impression, held by many businesses, that the levy is serving as a form of additional general taxation, and is not being put towards its intended purpose. (Paragraph 487)
5. We have received from ministers, verbally and in writing, categorical assurances that the provisions of the Policing and Crime Act 2017 regarding Late Night Levies will not be implemented until the Government has considered and responded to the recommendations in this report. (Paragraph 501)
6. **Given the weight of evidence criticising the Late Night Levy in its current form, we believe on balance that it has failed to achieve its objectives, and should be abolished.** However we recognise that the Government’s amendments may stand some chance of successfully reforming the Levy. We recommend that legislation should be enacted to provide that sections 125 to 139 of the Police and Social Responsibility Act 2011 and related legislation should cease to have effect after two years unless the Government, after consulting local authorities, the police and others as appropriate, makes an order subject to affirmative resolution providing that the legislation should continue to have effect. (Paragraph 502)
7. If the Government, contrary to our recommendation to abolish the Late Night Levy, decides to retain it, we further recommend that Regulations be made under section 131(5) of the Police Reform and Social Responsibility Act 2011 amending section 131(4) of the Act, abolishing the current 70/30 split, and requiring that Late Night Levy funds be divided equally between the police and local authorities. (Paragraph 503)
8. The EU Services Directive is an additional consideration which could have implications for the legality of the Late Night Levy. If the Government, contrary to our recommendation, decides to retain the Late Night Levy, the Home Office should satisfy

itself that any further action relating to the Late Night Levy complies with the EU Services Directive. (Paragraph 505)

9. We welcome all the initiatives of which we heard evidence, including BIDs, Best Bar None, Purple Flag and others, and recognise the effort which goes into them and the potential they have to control impacts and improve conditions in the night time economy. We commend the flexibility which such schemes appear to offer, and the bespoke way in which they are developed to match the needs of their locality. (Paragraph 518)
10. **We welcome the initiative of local authorities such as Cheltenham which have abandoned Late Night Levies in favour of Business Improvement Districts. While recognising that local authorities cannot impose Business Improvement Districts in the same way that they can Late Night Levies, we recommend that other local authorities give serious consideration to initiating and supporting Business Improvement Districts and other alternative initiatives.** (Paragraph 520)

### **Live Music**

1. **We believe that the Live Music Act 2012 is working broadly as intended, but that there is not presently a case for further deregulation, let alone the complete removal of all live music-related regulation from the Licensing Act 2003.** (Paragraph 541)
2. We recommend that more be done to spread awareness of the provisions of the Live Music Act 2012 and its implications for licensed premises among local councils, licensed premises and local residents. (Paragraph 542)
3. **We recommend that a full 'Agent of Change' principle be adopted in both planning and licensing guidance to help protect both licensed premises and local residents from consequences arising from any new built development in their nearby vicinity.** (Paragraph 553)

### **Fees and Fee Multipliers**

1. **We recommend that section 121 of the Police Reform and Social Responsibility Act 2011 be brought into force, and new Fees Regulations made requiring licensing authorities to set licensing fees.** (Paragraph 565)
2. The Opinion of the Advocate-General in the case of Hemming has cast doubt on the legality of any element of a licensing fee which goes beyond the cost to a licensing authority of processing an application. Accordingly we consider that it would not be sensible to recommend the extension of the fee multiplier to supermarkets at this time. (Paragraph 581)
3. We recommend that the Home Office should consider whether the Fees Regulations should be amended to make them compatible with the EU Services Directive and the Provision of Services Regulations 2009. (Paragraph 582)
4. If, as we recommend, the power to set licence fees is devolved to licensing authorities, then this power will inevitably have to be constrained by any conclusion which the Home Office draws on the compatibility of fees generally with the Directive and Regulations. (Paragraph 583)

### **Other Matters of Importance**

1. We recommend further development of the GOV.UK platform for licensing applications, to ensure that it is working with local authority computer systems, and fully compatible with the provisions of the Licensing Act 2003. In due course, its uniform adoption by all local authorities in England and Wales should be encouraged by the Government and the section 182 Guidance updated accordingly. (Paragraph 590)

2. We believe the enforcement of section 128 and 132A of the Licensing Act 2003 would be facilitated by a national database of personal licence holders, against which to check those who are convicted of relevant offences. **We recommend the creation of a national database of personal licence holders for use by courts and licensing authorities, linked to the Police National Database.** (Paragraph 594)
3. **We do not recommend that licensing committees be given the power to suspend or revoke a premises licence for non-payment of business rates.** (Paragraph 599)
4. The evidence we received on the application of the Act specifically to clubs suggests that they have adapted to it well. (Paragraph 609)
5. Given the decline in most forms of members' clubs, and the social value they hold in many communities, we believe that even minor adjustments which may help them should be made. We therefore recommend the removal of Conditions 1 and 2 by the repeal of section 62 (2) and (3) of the Licensing Act 2003, abolishing the two-day waiting period required of new members. We acknowledge that at least some clubs will want to keep this waiting period in their club rules, and they will still be entitled to do so. (Paragraph 610)
6. **The designations of airports as international airports for the purposes of section 173 of the Licensing Act 2003 should be revoked, so that the Act applies fully airside at airports, as it does in other parts of airports.** (Paragraph 620)
7. The 1964 and 2003 Acts both refer to ports and hoverports as well as to airports, so that the same arrangements can be made portside. Our discussion has centred on airports. Any similar designations made for ports and hoverports should also be revoked. (Paragraph 621)
8. The sale of alcohol on a railway journey does not need to be licensed. We accept that the Act cannot sensibly apply to a moving train, and the railway companies have their own applicable bylaws. They also have the power where necessary to ban the sale and consumption of alcohol altogether, for example on train journeys to football matches. These powers seem to us adequate. (Paragraph 622)
9. **We are concerned that section 141 of the Licensing Act [sale of alcohol to a person who is drunk] is not being properly enforced, and the few concerted attempts by local authorities to date have been lacklustre at best. Notwithstanding the difficulties of defining drunkenness, we believe that enforcement of section 141 needs to be taken far more seriously, and by doing so many of the problems currently associated with the Night Time Economy, in particular pre-loading and the excessive drunkenness and anti-social behaviour often linked with it, would be reduced.** (Paragraph 629)

#### **Implications on related Council policies**

None at this stage.

#### **Financial Implications**

None

#### **Legal Implications**

None

#### **BACKGROUND PAPERS**

NIL