



City of Westminster

Licensing Committee Report

Date:	Wednesday 29 th November 2017
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Title:	The Government Response to the Report from the House of Lords Select Committee on the Licensing Act 2003
Report of:	Director of Public Protection and Licensing
Wards Affected:	All
Financial Summary:	N/A.
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1. Executive Summary

- 1.1 On the 4th April 2017 the House of Lords Select Committee published its report into the Licensing Act 2003. The report made 73 recommendations on how the Licensing Act or associated regulations could be amended, repealed or enhanced. These recommendations were the result of evidence submitted in writing and orally at hearings.
- 1.2 The Government published its response to the House of Lords Select Committee report on the 6th November 2017. The Government has responded to each of the recommendations within the report.
- 1.3 This report summarises the recommendations made by the House of Lords Select Committee, and the Government's response to those recommendations. It also considers the potential impact of recommendations on Westminster's Licensing Service and possible next steps.

2. Reasons for Decision

- 2.1 The report has been provided for the Licensing Committee for its information.

3. Background information, including policy context

- 3.1 On the 25th May 2016 the House of Lords Select Committee on the Licensing Act 2003 (the Act) was appointed to consider and report on the Act's implementation. On the 30th June 2016 the Committee issued a call for evidence and the Council submitted a written response.
- 3.2 The Committee received a large number of responses from local authorities, licensed operators and businesses, residential representatives and those involved in the legal profession. The Committee accepted 175 submissions, one of which was from Westminster City Council.
- 3.3 In addition to written submissions, the Committee invited respondents to provide oral evidence. The Committee heard from 65 witnesses and Mr Richard Brown, on behalf of Westminster's Licensing Advice Service, provided oral evidence at the hearing. He spoke about the potential impact of licensable activities on residents and empowerment of residents within the Act enabling them to respond to emerging licensable activity and issues within their neighbourhood.

4. House of Lords report recommendations and Government response

- 4.1 The 75 recommendations made by the Select Committee can be considered across a number of main themes. A summary of the key recommendations is set out below in bold type, alongside the government's response.

Taxation

- 4.2 **The Government should bring in minimum unit pricing within England and Wales.**

The Government's response to this was that minimum unit pricing was still under review and that once the legal case between the Scottish Government and the Scotch Whisky Association was completed the government would assess evidence. On the 15th November the Supreme Court handed down its judgement in this case. The Supreme Court has ruled in favour of the Scottish Government in implementing the minimum unit pricing. We await further response from the Government.

- 4.3 **The Government should look at other methods of taxation to control excessive drinking.**

The Council's written response to the House of Lords relating to taxation stated that the authority did not consider pricing and taxation as an appropriate or effective form of control for alcohol. The government responded to this recommendation by setting out the work that has been undertaken in commissioning Public Health England to review the evidence and provide advice on the public health impacts of alcohol. The government will continue to consider a range of options to control excessive alcohol consumption through taxation and pricing.

Licensing fees

4.4 **Support for the need to locally set fees. The Select Committee urged the Government to enact the provision for permitting locally set fees, which was introduced via the Police Reform and Social Responsibility Act 2011.**

The Council, in its written submission to the Select Committee, set out the need for the power to be given to the council to set its own fee. At present the Council has a deficit of approximately £1.387m per annum, based purely on costs of administering the system without any wider considerations of costs incurred.

4.5 The Government's response to enabling locally set fees was to state that they do not intend to change the fees for licences under the Act. Although the Government acknowledges that the existing fees do not recover the costs for many licensing authorities. The Government also points to concerns from smaller local authorities that the process for calculating fees is resource intensive and complicated. The Government's final justification for not moving forward on locally set fees is because of the recent rise in business rates which has, for some, meant that their rates and annual licence fees has increased. They believe that locally set fees or any increase in centrally set fees would undermine the assistance in rate relief given to some licensees (public houses).

Coordination of planning and licensing systems.

4.6 **Proposal for the coordination and/or transfer of functions of Licensing Committees to Planning Committees.** The evidence presented to the Select Committee indicated that within some authorities there were issues with the current determination of applications at Licensing Committees. Unfortunately, the negative experiences presented to the Committee were enough to persuade them that the current system was in need of reform.

4.7 The Select Committee report recommended that the debate and the consultation on transferring functions of the licensing committee and sub-committees to planning committees should start now and that guidance should be amended to provide for better coordination between planning and licensing.

4.8 The Government response to this was that it recognises the recommendations by the Committee and that this is the start of the debate. The Government stated that it is a matter for the local authority to determine the best arrangements for their area and that the local authority can determine how to deliver their statutory functions. There is no intention to implement the recommendations of the Committee relating to the transfer of functions between the licensing committee and planning committees.

4.9 The Government does acknowledge that planning and licensing could work better together and encourages coordination where appropriate. Section 182 licensing guidance already recommends that licensing authorities secure proper integration of licensing policies with planning. The National Policy

Framework encourages parallel processing of consents. The government intends to review the guidance on the coordination between planning and licensing with a view to strengthening the call for consistency, wherever possible.

- 4.10 **Recommendation that the ‘Agent of Change’ principle be adopted in both planning and licensing guidance. This would protect both licensed premises and local residents from the consequences arising from any new developments.** The Government referred to the recent Housing White Paper which has included a proposal to amend the National Planning Policy Framework to emphasise the “Agent of Change” principles in planning policies and decisions. Consultation on this paper closed earlier this year and the Department for Communities and Local Government is currently reviewing those responses. The outcome of this consultation and any subsequent change to the National Planning Policy Framework will be consistent with the Act’s guidance.

Member training

- 4.11 **Recommendation for a minimum level of training for Councillors before they are permitted to sit on a Licensing Committee or Sub-Committee.** The Select Committee proposed that the guidance should be amended to introduce a requirement that councillors cannot take part in a hearing until the minimum level has been attained.
- 4.12 The Government accepts that improvements can be made on the effectiveness and consistency of the implementation of licensing processes and decision making. The Government recognises the importance of councillors undergoing training before being allowed to sit as a member of the sub-committee. They state that the Licensing Authority is responsible for determining what level of training is required for their committee members and that the training can be delivered in a number of different ways.

Committee processes and police evidence

- 4.13 **Recommendation that in cases where there are no longer any matters of dispute between parties but a hearing is still required by the Licensing Authority, the reasons for this should be specified.** The Government accepted that it is reasonable for the Licensing Authority to provide the reasons for requiring a hearing to be held when agreement had been reached. The Government will amend the guidance relating to this and it will set this out within the LGA licensing handbook when it is produced.
- 4.14 **Recommendation that the Licensing Act 2003 (Hearings) Regulations 2005 (Hearing Regulations) are amended to specify a quorum of three for all sub-committees. The Select Committee also recommended that regulation 21 (procedure at the hearing) and 23 (form of the hearing as a discussion) of the Hearings Regulations should be revoked as these do not regulate the process.** The Act requires that a licensing sub-committee shall be made up of three members of the licensing committee. However, the

Select Committee heard evidence that in some areas decisions are being made by a sub-committee that has more or less than three members.

- 4.15 The Government response to these recommendations is that the Act is clear in that the sub-committee must be made up of three members. They believe that there is no need to amend the Hearings Regulations relating to this but they will make their views clear within the guidance to ensure compliance in the future. The Government also do not intend to revoke regulations 21 or 23 of the Hearing Regulations as they are necessary to explicitly set out the licensing authority's power to set their own procedure for hearings.
- 4.16 The House of Lords reviewed evidence that suggested that licensing authorities are likely to take police evidence seriously without the level of scrutiny that they would undertake for other evidence presented by other parties. The Committee recommended that the guidance is being misinterpreted by licensing authorities on this matter and that the guidance should be amended. The government has agreed to amend the guidance to make the interpretation clearer.

Community and Ancillary Notices, Early Morning Restriction Orders and late Night Levy's

- 4.17 **Recommendations to repeal elements of the Act that they felt are not effective, such as Community and Ancillary sellers Notices, Early Morning Restriction Orders and Late Night Levy.** Community and Ancillary sellers Notices (CANs) were introduced within the Act by the Deregulation Act 2015 although this provision hasn't been brought into force yet. The purpose is to deregulate the serving of small quantities of alcohol by community premises and some small businesses such as guest houses and B&B's. The Committee recommended that CANs should not be introduced and the legislation relating to it repealed. The Government's response to this was that it notes the points made by the Committee in relation to concerns of abuse and the level of complexity another notification scheme may have. They are currently giving further consideration to the impact of introducing CANs in the future and will report to the House of Lords in due course.
- 4.18 Early Morning Restriction Orders (EMROs) were introduced into the Act via the police Reform and Social Responsibility Act 2011. EMROs permit a local authority to issue a blanket ban on premises operating during a period beginning at or after midnight and ending before 6am. They can be applied to particular days of the week, or different time periods on different days of the week, and can be applied to the whole or any particular part of a local authority area. They are to be used to address recurring problems such as high levels of alcohol-related crime and disorder in specific areas at specific times; serious public nuisance; and other instances of alcohol-related anti-social behaviour which is not directly attributed to specific premises.
- 4.19 The House of Lords Committee heard evidence that EMROs were not effective and that there are none in operation in England and Wales. A number of the respondents felt that these were fundamentally wrong in

principle and were vehemently opposed from those within the industry. This resulted in the Committee recommending that EMROs are repealed. The Government response to this was that they believed that EMROs are a powerful tool for local authorities to consider and that although no authority had adopted an EMRO they should remain as a tool for implementation when it was felt appropriate to do so.

- 4.20 There were a number of criticisms made towards the Late Night Levy (LNL) provisions within the Act. These related to the scope of the LNL in that it applied to all late night alcohol venues across the local authority area rather than being limited to those that caused the additional impact. There was also a view that the LNL is a general taxation on businesses and had limited benefits in policing and managing the [evening and] night time economy. One local authority had ceased using a LNL in favour of Business Improvement Districts which was supported by the Committee. Westminster's written response was also critical of the current blanket provisions of the LNL provisions. In our submission we made it clear that there needed to be a more flexible approach to the levy, which allows local authorities to target the levy at problem premises or groups of premises, based on particular characteristics.
- 4.21 The House of Lords Committee recommended that the LNL should be abolished in its current form. However, during the course of the enquiry the Government was planning amendments to the Act via the Policing and Crime Bill. The Bill proposed a number of changes to the LNL to enable them to be more targeted to particular problem zones rather than applying them to the whole of the local authority area. The Bill also proposed to include late night refreshment venues within the LNL which were exempted under the current system. The changes to the LNL were enacted via the Policing and Crime Act 2017. The House of Lords Committee recommended within its report that the changes to the LNL via the Policing and Crime Act 2017 should not be implemented until the Government had considered the Committees' report and responded to the recommendations.
- 4.22 The Government's response to the House of Lords Committee recommendations was that it felt that the LNL provisions are an important tool for local authorities, enabling them to collect a financial contribution from business that profit from selling alcohol late at night. This financial contribution can be channelled into funding late night policing and other costs associated with the [evening and] night time economy. Although the Committee recommended that the current split (30/70) between the local authority and the police should be changed the government doesn't intend to change the current split in income. In March 2016 the Deputy Mayor for Policing and Crime agreed to delegate the responsibility for taking decisions relating to the late light levy to the MOPAC Chief Operating Officer, these decisions can allow licensing authorities to retain up to 100% of the levy where they can demonstrate that they have considered other options and are prepared to deliver a best practice model that align with MOPAC priorities.

- 4.23 Now that the Government has responded to the Committee's report it now intends to implement the Policing and Crime Act 2017. In addition to the LNL changes this implementation will also see the introduction of Licensing Authority Cumulative Impact policies defined in statute and that there will be a requirement to produce evidence that supports that policy.

Licensing objectives

- 4.24 **Recommend that no additional licensing objectives should be added to the Act at this time.** There have been discussions about additional licensing objectives relating to public health and well-being, enjoyment of licensable activities, the provision of social or cultural activities and compliance with the Equalities Act 2010. These issues were considered by the House of Lords Committee through written and oral evidence. The addition of any new licensing objectives will either be very difficult to relate to individual premises and/or create a conflict between objectives which doesn't exist now. However, they did recommend that an application for a premises licence should, as they do in Scotland be accompanied by a disabled access and facilities statement.
- 4.25 The Government's response to the House of Lords Committee recommendations not to add additional licensing objectives was supported by the Government. However, they do not intend to amend the Act to make it a requirement for new premises to submit a disabled access and facilities statement at this time. The Government does intend to consult with organisations that represent disabled people to better understand the extent of the perceived issues with access. The Government will also look to engage with other key stakeholders including representatives from the trade to explore what practical measures can be taken without the need for additional regulations.

Appeals

- 4.26 **It was recommended that licensing authorities should publicise the reasons which have led them to settle the 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 upon.** The House of Lords Committee found from the evidence before it that when appeals were settled out of Court there was a lack of transparency for local residents in particular. Local residents may attend the hearing and then expect the decision to be implemented. If an appeal is lodged and the licensing authority then agrees to settle the appeal without going to court then the settlement may be difficult for local residents to accept.
- 4.27 The Government agree that there should be transparency around the decisions made on licensing appeals. It is their view that a licensing authority should justify with clear reasons their decision and publicise that revised decision and the reasons for the revision. The government does not intend to amend legislation surround this but does intend to amend the guidance to extend the current principles of decisions made after a hearing.

- 4.28 The quality of appeal hearings was a key point discussed by the House of Lords Committee. It was the view of some of the submissions presented to the Committee that the magistrate's courts struggle to deal with appeals appropriately and that the system should be improved. Consideration was given to alternative approaches to an appeal to the magistrate's court that are undertaken in other area of licensing such as appeals against Gambling Commission decisions going before a First-Tier tribunal and the planning system where appeals are considered by the Planning Inspectorate. In line with the earlier recommendation of transferring the licensing committee function to the planning committee it was also felt that the appeal of any of the decisions should be considered by the Planning Inspectorate and not the magistrates' courts.
- 4.29 The Government's response to this was that it did not intend to amend the appeal system within the Act. However, they accept the Committee's finding that the licensing appeals system could be improved. They intend to explore with partners best practice in this area so that they may offer ideas for future consideration.

Temporary Event Notice

- 4.30 **Recommend that Temporary Event Notice (TENs) system are not divided into community and commercial, that Licensing Authorities are given to power to object to TENs, allow the amendment of TENs at a hearing and that the guidance is amended to provide clearer guidelines on TENs simultaneously operating on adjacent plots.** The Committee considered the current TENs scheme and whether changes were needed to improve the effectiveness of the scheme if necessary. Evidence considered by the Committee related to the view that there is a need to differentiate the difference between commercial and community based TENs.
- 4.31 The Westminster's written submission set out our views on TENs, which was specifically quoted in the House of Lord Committee report. Our submission stated that 85% of the 3100 TENs received in a year were from existing licensed premises seeking an extension of their licensable activities. We proposed that an alternative would be to implement a new scheme for extending licensable activities in licensed premises for a limited period. The scheme could be similar to the approach taken for minor variations whereby the authority could consider the proposed extension and ensure that the activity is operated within the bounds of the licence conditions.
- 4.32 Unfortunately the House of Lords did not agree and actively rejected the proposal to distinguish the difference between commercial and community within the TENs system. Their view was confirmed by the government in their response and they confirmed that they have no intention to introduce a division between commercial and community premises within the TENs system.

- 4.33 The House of Lords did recommend that the Licensing Authority should be given the power to oppose TENs alongside the police and environmental health officers as well as a system to notify local councillors and local residents of TENs in a timely fashion. The Government did not feel that the evidence supported and in fact they had received views from local authorities to the contrary that licensing authorities should be able to object to TENs. It is the Government's view that there are sufficient powers for the police and environmental health officers to oppose TENs when the event will not promote the licensing objectives. The Government will however, amend the guidance to recommend that licensing authorities consider how to bring TENs to the attention of residents who may be affected by TENs.
- 4.34 The Committee also recommended that the Act is amended to enable the amendment of a TEN not only before the hearing but also during the hearing itself. At present the Act prohibits the amendment during the hearing and as a result all discussions and agreements should have been established prior to the hearing itself. Once the hearing commences the TEN will be considered as presented and either permitted or issued with a counter notice. The Government did not agree with the Committee's recommendation as it believes that there would be an impact on the effectiveness of the decision making process leading to resource implications and administrative burdens.
- 4.35 Evidence was presented to the Committee associated with the use of TENs simultaneously on adjacent plots of land and in effect creating an event in excess of the limitations on the maximum number of people permitted (499). The government's response to this was that the Act is clear on the restrictions associated with the number of TENs that can be permitted at a premises and the maximum number of persons permitted at an event. If there are concerns about the event and if it is viewed that the maximum number of persons attending the event will exceed 499 then the police and environmental health officers have the power to make an objection.

Other proposed changes

- 4.36 **Recommended that licensing authorities are provided with the power to implement a ban on super strength alcohol and blanket conditions on premises.** The Government does not intend to provide powers to local authorities to ban super-strength alcohol or implement blanket conditions on premises as recommended by the Committee.
- 4.37 **Recommended that public notices in the press to advertise an application should be removed.** The Government has stated that the previous Government had consulted on this proposal as part of a deregulatory measure in 2012. The Government is clear that these notices are important for informing the local community relating to applications and therefore they have no intention of amending the Act to remove this requirement.
- 4.38 **Recommended that blue public notices should continue to be placed in shop windows and on street lights.** The Government agrees that these are important measures to inform local residents and businesses and that it

intends to strengthen the guidance to emphasise the importance prominently displaying the notices on or near the premises to which the application relates.

- 4.39 **The House of Lords highlighted the [evening and] night time economy and welcomed the appointment of the Night Czar and other champions of the [evening and] night time economy.** The government echoed the Committee's view on the appointment of the Night Czar and other champions of the [evening and] night time economy. They believe that they will help develop the [evening and] night time economy and ease tensions between residents, local authorities and businesses. The night tube was also seen as a positive step forward for London and the development of the [evening and] night time economy.
- 4.40 **The Committee welcomed initiatives such as Business Improvement Districts, Best Bar None, and Purple Flag to develop and improve the [evening and] night time economy.** The Government welcomes the views from the Committee and are committed to continuing to work closely with the Local Alcohol Partnership Group through the Home Office Local Alcohol Action Areas programme.
- 4.41 **The Committee recommended that the Live Music Act 2012 is working broadly as intended and that there is no case for further deregulation surrounding live music. They also recommended that more is done to spread awareness of the Live Music Act 2012 to local authorities, licensed premises and local residents.** The Committee considered evidence about the Live Music Act 2012 and how that is working along with concerns about the broader risks associated with the loss of live music venues. The Government confirmed that music venues are a vibrant and vital part of society, culture and the economy and that it is keen to support and promote an environment in which the UK's live music industry can continue to thrive. The government does state that positive collaboration between venues, local authorities and residents, including raising awareness, are key to supporting this important and dynamic sector. However, they do not mention any intention to make amendments to the guidance.

5. Licensing Service approach to response

- 5.1 As expected the Government have not proposed to make any legislative changes as a result of the recommendations from the House of Lords report. There are no timeframes on the Government's proposals to amend the statutory guidance but some of the proposed clarifications and enhancement of the guidance should be reasonably simple to implement.
- 5.2 The Government response relating to the ability for local authorities to set their own fees is extremely disappointing. The Licensing Service along with colleagues within the Policy team will continue to lobby the government on the need to change the approach to licensing fees so that local authorities, especially those within London can recover their costs.

- 5.3 The Licensing Service along with colleagues from the Planning Department have already begun discussions relating to developing efficient and effective processes through best practice and IT developments. It is intended to continue to build on this to look at further options for better co-ordination between the planning and licensing process. This approach will support the Council's transformation programmes in working towards:
- 5.3.1 One front door for our customers
 - 5.3.2 Modern digital public services
 - 5.3.3 Excellent community engagement
- 5.4 The Licensing Service will produce an action plan from the House of Lords report and government response to their recommendations. Priorities will be given to changes that can be implemented quickly and achieve the Government supported recommendation or the proposed approach by Government. The action plan will also identify areas where more consideration is needed and further investigation into the potential benefits and risks can be undertaken.
- 5.5 The Licensing Service is actively working with Business Improvement Districts such as the Heart of London Business Alliance (HOLBA) and North Bank relating to the development of measures to support and improve the evening and night time economy. HOLBA is currently the pilot area for the implementation of Westminster's Licensing Charter, which is one of the year 2, City for All commitments for the Council. HOLBA's area has already been given Purple Flag accreditation and has just launched Best Bar None. The Council has also been successful in bidding for the Home Office Local Alcohol Action Area (LAAA) status for the HOLBA area. As part of the LAAA the Licensing Service will continue to work with business and other stakeholders to promote better self-regulation and the introduction of initiatives to further develop the evening and night time economy.

If you have any queries about this report or wish to inspect any of the background papers, please contact:

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Background Papers

Westminster City Council's response to the House of Lords Select Committees call for evidence (House of Lords Reference LIC0090)

House of Lords Select Committee report on the Licensing Act 2003 dated 4th April 2017

Government response to the House of Lords select Committee report into the Licensing Act 2003 dated 6th November 2017