

**TITLE OF REPORT:**           **The Government response to the report from the House of Lords select committee on the Licensing Act 2003**

**REPORT OF:**               **Paul Dowling, Strategic Director, Communities and Environment**

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## **1. Purpose of the Report**

To provide Members with an update on the Government response to the report from the House of Lords Select Committee on the Licensing Act 2003.

## **2. Background**

The Select Committee on the Licensing Act 2003 was set up on 25 May 2016 with the task of conducting post-legislative scrutiny of the Act. The Committee looked at the provisions of the Act, in its original form and with its subsequent amendments, at its implementation, and at related developments.

A public call for written evidence was made on 30 June 2016 from anyone with an interest in the operation of the Licensing Act 2003. Gateshead Council contributed to a regional response through the North East Strategic Licensing Group which then fed into the Local Government Association response.

In particular the Committee were interested in a number of issues including:

- should there be additional objectives eg the protection of health and wellbeing
- does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?
- do local communities engage effectively in the licensing regime, and if not, what could be done?
- how effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services?
- should the Government introduce minimum unit pricing in England?
- do licence fees need to be set at national level?

Some of the additional issues raised through the region include:

- The lack of a national database of personal licence holders, allowing unsuitable applicants to move between councils as and when their premises gets shut down

- The absence of many Designated Premises Supervisors (DPS) from the premises itself and the general weakness of this role
- Weaknesses in the review/appeals system that allows unscrupulous operators to transfer the licence or delay closure for significant periods of time
- Concerns around enforcing the duty plus VAT mandatory condition
- The fact that a licence cannot be refused where a business owes the council unpaid business rates
- The fact that licences cannot be removed where a premises has ceased trading and, in some cases, where it has been turned into a carpark. This means a council has to carry the debt from unpaid fees in perpetuity, and distorts the national picture of how many licences are in existence.

### **3. Public evidence sessions**

Public evidence sessions began on 5 July 2016 and thirteen sessions took place, the last one on 13 December 2016. The Committee then met in private four times and published its report on 4 April 2017.

### **4. The report**

The report contained more than 70 recommendations. Some of the main recommendations of the report were as follows:

- There should be a trial merger of Licensing Committees and Planning Committees. This is not a merger of licensing and planning law that is recommended, but rather Councillors who sit on Planning Committees consider licensing applications using the procedures and practices, and with the same support that they already have to deal with planning applications. The recommendation is that this proposal should be trialled in a few pilot areas;
- The equivalent of The Planning Inspectorate, which hears planning appeals, to hear licensing appeals, rather than the Magistrates' Courts;
- All Councillors sitting on Licensing Committees should undertake compulsory training, and the Guidance is amended to introduce a requirement to undertake training to a standard set out in the S182 Guidance;
- If a minimum unit price is brought into force in Scotland, once Scottish ministers have published their assessment of its workings, if the assessment demonstrates that the policy is successful, a minimum unit price should be introduced in England and Wales;
- Applicants should not need to give notice by advertisements in the local newspaper, but notices should be given prominently by online notification systems run by the Local Authority;

- Licensing Committees should take into account and, where appropriate, follow any relevant decision given by a Planning Committee, and vice versa;
- The promotion of health and wellbeing is a necessary and desirable objective for an alcohol strategy, but it is not appropriate as a licensing objective;
- Whilst not recommending as a licensing objective, “compliance with the Equality Act 2010” or “securing accessibility for disabled persons”, the law should be amended to require, as in Scotland, an application for a Premises Licence should be accompanied by a disabled access and facilities statement;
- Licensing Authorities should be given the power to object to Temporary Event Notices, alongside Police and Environmental Health Officers, and a system for notifying local Councillors and local residents of TENs in a timely fashion should be implemented;
- The provisions relating to Community and Ancillary Sellers Notices should not be brought into force and should be repealed;
- The development and implementation of a comprehensive Police Licensing Officer training programme, designed by the College of Policing;
- Paragraph 9.12 of the Guidance should be removed, which provides Licensing Authorities should “accept all reasonable and proportionate representations made by the Police unless the Authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives”;
- The powers providing for the introduction of Early Morning Restriction Orders should be repealed;
- The powers for Licensing Authorities to introduce Late Night Levies also be repealed and, if not, the pending amendments to Levies should be reviewed and the legislation abolished unless an affirmative resolution is passed for Levies to continue. If they do continue, the proceeds to be split 50/50 between Police and Councils;
- Support for the Government’s intention to transfer Cumulative Impact Policies onto a statutory footing from the Section 182 Guidance;
- Licensing fees should be set locally to reflect the fact that the cost of administering the Act varies from place to place;
- The creation of a National Database of Personal Licence Holders for use by Courts and Licensing Authorities which is linked to the Police National Database;

- The removal of the requirement for a two day waiting period for new members of premises holding Club Premises Certificates;
- The Licensing Act 2003 be amended so that it applies airside at airports, ports and hoverports, so that premises providing licensable activities would require a Premises Licence that are airside or portside.

## 5. The Government's Response

The Government published its response to the report from the House of Lords Select Committee on the Licensing Act 2003 on 6 November 2017. The response is very long and comprehensive but the general feeling is that while the Committee's report states that the Act requires a 'radical comprehensive overhaul' it is unlikely that there will be anything in the way of legislative change as a result but rather where the Government does agree with the Select Committee's recommendations the Statutory Guidance is likely to be amended.

The Government believes that rather than the numerous piecemeal amendments made to the Licensing Act 2003 and the Statutory Guidance since its implementation being problematic as suggested by the Committee's report, they have served to make the legislative framework stronger and more effective.

With respect to some of the main recommendations the Government responded as follows:

- The Government rejected the Committee's proposed transfer of the functions of local authority licensing committees and sub-committees to the planning committees but accepted that the Committee had raised important points in its report on the effectiveness of licensing processes and decision making. It accepted that improvements could be made in some local areas and that synergies between planning and licensing should be part of an ongoing discussion about supporting local improvements. The Government stated that they are focusing on improving training for Councillors and providing stronger guidance on how licensing hearings should be conducted. Similarly, the Government do not intend to change the system so that licensing appeals no longer go to magistrates' courts but to the planning inspectorate.
- The Government said that it will consider the evidence of the impact of any decision by the Scottish Government to introduce a minimum unit price for alcohol
- The Government said that it has no plans to revisit the requirement for an applicant to publish a notice in a local newspaper.
- With respect to the Committee's proposal for the amendment of the Statutory Guidance to make it clear that a licensing committee should take into account a decision already taken by a planning committee, and where appropriate follow it (and vice versa) the Government's response is to revisit the Guidance with a view to strengthening the call for consistency wherever possible.

- The Government agrees with the Select Committee's view that the promotion of health and well-being as a licensing objective is not appropriate.
- The Government agrees with the Select Committee's view that the additional licensing objectives should not be used to achieve compliance with disabled accessibility in licensed premises but does not agree that the law should be amended to require that an application for a premises licence should be accompanied by a disabled access and facilities statement. It does however commit to exploring what practical measures can be taken resulting in significant improvements for disabled people without the need for additional regulations.
- The Select Committee recommends that licensing authorities are given the power to object to Temporary Event Notices alongside police and environmental health officers, and should notify local councillors and residents of TENs. The Government rejects this recommendation but proposes that the Statutory Guidance should recommend that licensing authorities consider how to bring TENs to the attention of residents who may be particularly affected for example if there have been previous complaints about a premises.
- The Government notes the Committee's recommendation that Community and Ancillary Sellers' Notices should not be brought into force but advises that it is giving further consideration to the impact of introducing this measure in the future.
- The Government agrees with the Committee's view that comprehensive training should be available for all police officers undertaking licensing duties and commits to working with the College of Policing to consider whether a police licensing officer training programme should be commissioned in the future.
- The Government agrees with the Select Committee's view that it is wrong that the Statutory Guidance requires that police evidence to Licensing Committees should be given additional weight solely because of its provenance and will amend the guidance to remove this emphasis.
- While the Select Committee recommends that the provisions on Early Morning Restriction Orders (EMRO) should be repealed the Government maintains that the EMRO is a powerful tool and it is important to keep it available should any licensing authority wish to consider whether it is suitable for use in their area.
- The Government rejects the Committee's recommendation that the Late Night Levy is abolished and has no plans to change the current 70:30 police and licensing authority split of Late Night Levy funds.
- The Government acknowledges that the costs of licensing vary significantly between licensing authorities but does not accept that allowing fees to be set locally is a simple answer; the Government does not intend to change the existing fees in the near future.

- The Government considers that it would be disproportionately complex, resource intensive and expensive for the Government, local authorities and magistrates' courts to create and administer a database of all personal licences as proposed by the Select Committee. It does however, see merit in the creation of a central register limited to records of refused, suspended and revoked personal licences and commits to working with the Local Government Association and partners to examine the possibility of adding these records to the proposed national register of taxi and private hire vehicle drivers refusals and revocations.
- The Select Committee recommended that the two day waiting period required of new members in the case of members clubs be abolished however the Government do not consider this to be a significant burden and have no intention of altering or removing this provision.
- The Government will issue a call for evidence on the Committee's recommendation that the Licensing Act should apply fully airside at airports so that the practicalities and resources required to implement the Act in these environments can be carefully assessed.

## **6. Recommendation**

The Committee Members are asked to note the content of this report.