

# LICENSING COMMITTEE (LICENSING ACT 2003 FUNCTIONS)

## Agenda Item 17

Brighton & Hove City Council

<b>Subject:</b>	<b>House of Lords Select Committee – review of the Licensing Act 2003</b>		
<b>Date of Meeting:</b>	<b>23 November 2017</b>		
<b>Report of:</b>	<b>Director of Neighbourhoods, Communities and Housing</b>		
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<b>Ward(s) affected:</b>	<b>All</b>		

### FOR GENERAL RELEASE

#### 1. SUMMARY AND POLICY CONTEXT:

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 report was published in April 2017, and made a number of far reaching recommendations for the Government to consider. A summary of the report and a link to the full report was circulated to members on the 6<sup>th</sup> April 2017, inviting officers and members to submit their comments to the Institute of Licensing who will gather views on the recommendations within the report and will report on the findings in due course.

A Government Response to Select Committee reports was expected within 2 months of the report being published. The response has just been published (6 November). The Government has rejected the headline proposal to merge planning and licensing and there will be limited legislative change. See 3.3 below for more detail. Select committee recommendations carry considerable weight, but that does not mean that the Government/ Departments have to accept them, or act on them (at all or within a specified period of time).

There will be a debate in the House about the Government's response, which would highlight any dissatisfaction that the Committee / Lord Chairman might have with the responses to particular recommendations.

#### 2. RECOMMENDATIONS:

- 2.1. That members note the contents and officers report back when legislative and guidance changes are finalised..

#### 3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS

Key findings of the Select Committee include suggestions that the responsibilities of the Licensing Act 2003 should have been incorporated with the planning regime when first implemented.

The report recommends a trial merger of licensing committees with planning committees and appeals to be considered by Planning Inspectors. Other recommendations and findings include references to the licensing objectives, MUP, EMROS, the levy and training for councillors and police licensing staff.

### 3.1 A summary findings and recommendations:

- Merger of Licensing Committees with Planning Committees should be trialled (legislation to remain distinct)
- No new licensing objectives but statutory requirement for 'disabled access and facilities' statement should form part of the application.
- There should be close coordination between licensing and planning systems with planning decisions taken into account by licensing and vice versus.
- 'Agent of Change' principal should be adopted in licensing and planning to protect residents and businesses from consequences of new development.
- Provision of a national database for personal licence holders linked to the Police National Database.
- Planning Inspectors should hear Licensing Appeals
- There should be mandatory licensing training for councillors.
- If Minimum unit pricing is introduced in Scotland, it should also be introduced in England and Wales once Scottish minister have published a statutory assessment of the working of MUP in Scotland. In the meantime, the Government should seek other means of controlling excessive alcohol consumption through taxation and pricing measures.
- Scotland's provisions for the off-trade should be adopted in England and Wales as soon as possible with encouragement to adopt in the meantime via the Guidance:
  - Restrictions on multi-pack pricing
  - Ban on 'buy one get one free' or other offers including free alcohol
  - Restrictions on advertising drinks promotions, restricting them to specific designated alcohol display areas
  - Challenge 25 policies
- Licensing authorities should publish reasons where cases have been settled out of court.
- S182 Guidance should place onus on Licensing Committee Chairs to enforce standards of conduct for sub-committee members and exclude them from sitting where appropriate.
- Minimum training requirements for councillors should be set out in the s182 Guidance.
- Sub-committee quorum should be set in Regulations to three.
- S182 Guidance should set out the structure and process of hearings, making clear that parties must be given sufficient time to make representations.
- Requirement for newspaper advertisements should be removed, but blue notice retained.
- Local authorities should be able to object to TENS.

- TENS made simultaneously for adjacent plots of land in order to enable a larger event should result in objection by police / EHOs - Guidance to make this clear.
- There should be better record retention relating to TENS - Guidance to set out the requirements.
- Gov.uk platform should be used for online applications and recording relevant information.
- Proposals to introduce CANs should be abandoned.
- There should be dedicated, trained police licensing staff (officers or civilian staff) with a dedicated police licensing training programme.
- Clarification should be provided within the s182 Guidance in relation to s19 closures.
- Discretion to impose immediate effect on decisions should be taken at the full review hearing.
- Support for champions of the night time economy
- EMROs should be repealed and plans for Group Review Intervention Powers should be abandoned.
- Late night levy amendments should be enacted for a period of 2 years and levy provisions should then cease until the Government resolves to retain them following consultation.
- Support for best practice initiatives as alternatives to late night levies.
- Introduction of locally set fees should be progressed.
- Act should apply in airports, ports and hover ports
- Enforcement of s141 (sale of alcohol to a person who is drunk) should be taken more seriously in an effort to address issues with pre-loading and excessive drunkenness.

### 3.2 Commentary and opinion

**Institute of Licensing** – Clear theme throughout the report of promoting clarity, consistency and transparency within the licensing system, whether that is through the sub-committee, TEN system, the application process or a personal licence database. The IoL has consulted members to gather views on the recommendations within the report and will report on the findings in due course.

#### **Commentary (Sarah Clover, Barrister – advisor to Select Committee)**

Since introduction of LA03 there have been a series of piecemeal amendments; 9 Acts of parliament over 11 years, with the pendulum swinging between deregulation and regulation. The most recent being the Policing and Crime Act 2017, which the Government has said will not come into effect until the HoL's report had been considered.

**The Licensing Process** – Variability of Committees - lack of consistency, decisions not based on licensing objectives. HoLs recommending mandatory training for committees. Problems with licensing system itself and separation of planning and licensing closely related. Licensing and planning should be more closely related. Debate and consultation should begin now and the pilots as soon as possible. Licensing Officers should be on par with Planning Officers with a bespoke qualification.

**Appeals** – need reviewing (timescales & inconsistencies of Mags court). Adopt similar approach to planning appeals system (planning inspectorate with specialist inspectors).

**Training** – Mandatory for Cllrs, Police and Licensing Officers.

**Licensing Objectives** – HoLs looked at 3 further objectives: Enjoyment, Disability Access and Health. However, they noted that objectives should not just be a list of matters that would be desirable to achieve, so there is no point including something that cannot be related to a particular premises. There was strong support for a Health and Wellbeing objective but no one could say how it would work or relate to the premises and how it would work within the licensing regime. The Enjoyment and promotion of culture as an objective was thought to be a lovely idea; recognising the benefits of the trade and licensing industry but no one could see how it could work as an objective. They also looked at Access for Disabled People as an objective but question marks over using one statute to compel compliance with another; premises have to do this anyway (Equality Act 2010).

**Off Trade** – issue of pre-loading – what to do about it, problem is access to cheap alcohol – review/wait on outcome of MUP in Scotland. Super strength schemes problematic (voluntary and issues with competition law).

**TENs** – not applications and not just intended for “community venues”, not being used as a loophole and not being abused. TENs originally introduced to continue the Little Ship Rule (allowing Clubs to open their doors to the public a limited number of times). Nothing wrong with using TENs to trial later hours; good idea to flush out problems but problem if used for routine extensions. Fee (£21) too low. Recommending LA be able to object, better system for notifying cllrs & residents, conditions.

**Police** – more training (specialist role) and didn’t like s182 guidance police reps – shouldn’t mean “accept without question”.

**Late Night Levy** – burdensome and bureaucratic – should be abolished but possibility that changes proposed by PCA 2017 could work – review.

**EMROs** – should be scrapped.

**BIDs and voluntary schemes** – supportive.

**Live Music** – important in venues. Support for deregulation.

**Fees** – support for these being locally set.

**Sell to drunk** – only 6 prosecutions nationally, no convictions – huge resourcing effort for little reward.

## **Opinion**

Plenty of opinion. Most agree the report is fairly radical with the headline-grabbing recommendation being the proposed merger of planning and licensing committees. If nothing else the report should be used as a foundation and stimulus for debate.

**Jon Foster** (institute of alcohol studies) – report gives an overly administrative account of the Act, focusing on procedures and formalities, while overlooking problems with how it’s applied and decisions made in practice.

Act was designed as a pro-business deregulatory measure, but marketed as a way of civilising the night-time economy (hence the unrealistic “café culture” idea). Over the next 11 years there was a series of piecemeal amendments with the pendulum swinging between deregulation and regulation.

The report is not clear why planning committees are regarded as better than licensing committees. Better training of Members and Licensing officers should take more of a proactive approach and give more support to committee members. Better communication between licensing and planning officers.

Appeals should lie with planning inspectorate – result in more thorough appeals where arguments from both sides are considered in a less confrontational manner. Licensing objectives – ignores the policy role within licensing. LOs should be promoted. HoL took a very narrow “premises by premises” approach, where venues considered in isolation from their environment, which is not entirely supported by the Act.

Interestingly detailed in some administrative respects, but with significant gaps regarding the application of the act’s decision-making process. Regrettable that the headlines focused on MUP and planning committees and danger that the debate will focus on some rightly scandalous anecdotes before skipping quickly onto these eye-catching recommendations...

**Andy Eaton** (Rother Legal) - Focused on some rightly scandalous anecdotes and a horror story of one committee – ignore the fact that the vast majority of members are trained, thinking rationally and logically about complex licensing cases...

Same could be said of planning committees? Depicts the planning process as without fault.

Not seen a politically-driven decision – only based on objectives

Lords clearly heard evidence of poor practice, and rather than make suggestions on how to deal with these issues, instead propose a wholesale revolution.

Support a licensing inspectorate rather than mag court (NB current wait for planning inspectorate hearing 8-9 months then 3-4 months to receive a decision).

Report is a wasted opportunity.

**Susanne Fitzgerald QC** – Lords did not hear evidence about how planning works in practice, plenty of horror stories. Both areas highly specialised, and licensing officers require different skills and knowledge to planning officers. It would need a major change in law. However, the two sides should work closer together and appeal system does need overhauling. Don’t be blinded by the controversy over licensing/planning suggestion, but let us support the excellent recommendations including extra training for cllrs and police and replacement of LNL with initiatives such as BID.

**Philip Kolvin QC** – A curate’s egg. Proposal to scrap licensing committees and pass their powers to planning committees, with appeals to planning inspectors – unlikely to happen as opposed to by LoL and would require primary legislation. If the issue is training the answer is to train.

Better Training

Support initiatives

MUP legality still to be determined

### 3.3 Government response

The Government has just published its response to the Report. The Government has rejected the major proposal to merge planning and licensing committees and systems but will focus attention on improving training and providing stronger

guidance on how licensing hearings should be conducted. They do not propose to transfer appeals from the Magistrates Court to the planning inspectorate, but will explore ways of improving the current appeals system with partners.

They will not permit licensing authorities to object to TENS but will amend the guidance to recommend that licensing authorities consider how to bring TENS to the attention of residents affected.

The late night levy will continue and the proposed amendments to allow authorities to target particular areas and include late night refreshment premises will be enacted but there will be no 2 year 'sunset clause' as requested by the Report. They will continue to monitor the situation with minimum pricing and keep newspaper adverts for applications. Cumulative impact policies will be put on a statutory footing as previously proposed. There are no immediate plans to change the fee structure.

The guidance will be amended to remove the emphasis on accepting police evidence (para 9.12). They agree no new licensing objectives but do not accept requiring applications to contain a disabled access and facilities statement proposing instead to consult relevant organisations.

More points and detail can be found in the response at

<https://www.gov.uk/government/publications/the-government-response-to-the-report-from-the-house-of-lords-select-committee-on-the-licensing-act-2003>

#### **4. FINANCIAL & OTHER IMPLICATIONS:**

5.1 Financial Implications: Once the Government has reported back on the Select Committee recommendations, the financial implications can be fully assessed and report back to committee.

Finance Officer Consulted: Monica Brooks      Date: 10/10/17

5.2 Legal Implications: None directly arising; the body of the report details key proposals

Lawyer Consulted: Rebecca Sidell      Date: 6.10.17

5.3 Equalities Implications:

5.4 Sustainability Implications:

5.5 Crime & Disorder Implications:

5.6 Risk and Opportunity Management Implications:

5.7 Corporate / Citywide Implications:

<b>COMMITTEE</b>	<b>Agenda Item</b> Brighton & Hove City Council
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**SUPPORTING DOCUMENTATION**

**Documents In Members' Rooms:**

**Copy of the House of Lords report**

**Copy of Journal of Licensing July 2017**

None

**Background Documents:**

None

